

Social Security and Children: Testing the Boundaries of Human Rights and Economics

Malcolm Langford

9.1. INTRODUCTION

Seymour and Pincus (2008) mount the argument that human rights and economics are not two disciplines in timeless conflict. Rather they are complementary fields with different epistemological foundations. Their model posits that human rights provide the normative standards while economics provides the tools for choice-making and trade-offs within it. They do not elucidate at length on what standards are relevant but they do note that child labour, for example, is out-of-bounds, even if children might provide a cheap and efficient form of labour from a pure neoclassical 'welfare economics' perspective. In terms of trade-offs, they are sceptical in terms of allowing human rights theorists 'to use the principle of progressive realization as a "get-out-of-jail card" that excuses them from difficult choices between consumption today and investment for tomorrow' (2008: 403). In other words, if human rights can't provide the hard answers, economics must take over.

This unitarian approach is welcome but questions still need to be answered about the relevant boundaries between the two fields in practice. Does the 'devil in the detail' really permit such complementarity? This chapter takes up the case of child social grants, as one classical pillar of social security.²⁶⁶ Such grants are currently enjoying a renaissance amongst development economists and human rights advocates but there remains significant divergence in the policies proposed. The World Bank, for example, places a greater emphasis on a fixed fiscal envelope, targeting and the imposition of conditionalities (Fizbein and Schady 2009). ILO economists and human rights groups tend to call for a flexible approach to fiscal space, are cautious about targeting, and are sceptical or opposed outright to conditionalities (Cichon and Hagemeyer 2006; Bradshaw and Quirós Viquez 2008).

266. The classical nine pillars of social security are: healthcare, sickness benefits, old age benefits, unemployment benefits, employment injury coverage, family and child support, maternity benefits, disability benefits and survivor's benefits. See ILO Convention 102 and also CESCR (2008) General Comment No. 19.

The question is how one resolves these apparent conflicts. Can one neatly place them in different human rights and economics baskets as Seymour and Pincus seem to suggest? In answer, this chapter first provides in Sections 9.2 and 9.3 a historical and contemporary overview of child grants from the perspective of human rights and economics. The bulk of the chapter is then devoted to the question of fiscal affordability of child grants. Section 9.4 posits a human rights/economic framework for determining affordability, while Section 9.5 examines the current economic evidence for the three tests, particularly in relation to Africa and Asia. Within this discussion the common issue of universal vs targeted schemes is briefly addressed from both perspectives and the diversity of views within each is noted. The question of conditionalities is taken up briefly in the conclusion.

Section 9.6 concludes with the case that a more nuanced approach or perhaps a sliding scale in assessing the boundaries of human rights and economics is needed where there are potential or real conflicts. Where the human rights claim exhibits relativity dimensions, preference might be given to economics. On the other hand, where economic claims are ambiguous, empirically weak or strongly contested, the preference might work in the opposite direction.

9.2. CHILD BENEFITS – A RICH ENCLAVE

Family or child benefits are not something original in social security praxis. A cocktail of demographic crises, labour and maternalist movements and recessionary shocks in the late nineteenth and early twentieth centuries helped propel the early development of social security systems in the West (Larsen 1995). Single women with children were seen as one particularly disadvantaged grouping. Between 1911 and 1919, Norway, together with forty States in the United States, introduced cash benefits to single and widowed mothers.

A half century later, the International Labour Organization adopted Social Security (Minimum Standards) Convention 102 (1952). Ratifying states must choose, at a minimum, three of the nine pillars of social security for implementation, one of which is 'family benefits'. Families with children with responsibility for the maintenance of children are entitled to a benefit valued at 1.5–3 per cent of the wage of an ordinary adult male labourer. If we fast forward again, it is evident that family benefits represent a settled part of many social security systems in the West. By the early 1970s, Gauthier (2002/3) calculates that direct and indirect cash benefits for families had stabilized at 11 per cent of average earnings in twenty-two OECD countries, and gradually grew to 13 per cent by the mid-1990s. There is of course considerable variance between Western countries as regards social security benefits, including child grants. Benefit levels in Southern European countries and 'liberal' countries such as the United States are significantly lower than the 'corporatist' countries – the Nordics, Germany and France.

If we look East, transitional countries in the wake of the fall of the Berlin Wall experienced a rather abrupt shift from a system of universal family benefits to means-tested targeted benefits. Forster and Toth (2001) defend these new benefits

on the basis that poverty would have been two-thirds higher in the Czech Republic and Hungary in the absence of these cash transfers. Marginalized groups such as the Roma have often struggled to secure these rights, while benefit levels for the unemployed and homeless have been set quite low in some countries (Langford 2008a).

If we turn to the South, the difference could not be starker. The development of social security systems in conformity with ILO Convention 102 of 1952 is minimal. Most developing countries have only established schemes for those working in the formal sector, whether private or public sector. This usually accounts for the minority of the workforce. According to the ILO, the result is that only one in five persons has access to formal social security systems (Cichon and Hagemer 2006). For child benefits, a 1999 survey of fifty-seven non-OECD countries revealed that only four countries recorded supporting family allowances (Roddis and Tzannatos 1999).

The kitchen cupboard of social security thus looks pretty bare after sixty years of international development thinking and practice. Townsend (2008) argues that today's developing countries have progressed more slowly in the field of social security than the United States at comparative points in economic development. By 2005, the World Bank provided only 10 per cent of loans for broadly defined social protection, of which social security is just one element (Hall 2007). Amongst bilateral donors, only Germany and the United Kingdom have provided sustained support to country level programmes, and in the former, there is bureaucratic resistance to any expansion despite parliamentary direction to do so (Kunemann 2009).

The most sustained development initiative in the area was the World Bank push for privatization of pension schemes. This was piloted in Chile in 1981 and later extended, fully or partly, to many countries in Latin America and Eastern Europe (Muller 2003). The results have not been looked on favourably by the World Bank's own evaluators or international human rights and labour committees. For example, the Chilean system has been criticized by the UN Committee on Economic, Social and Cultural Rights (2004: par. 20) for its failure to 'guarantee adequate social security for a large segment of the population who do not work in the formal economy or are unable to contribute sufficiently to the system'.²⁶⁷ In the case of the IMF, the focus has principally been on preventing debtor governments from maintaining or increasing levels of social spending. In the current economic crisis, the IMF in a Keynesian tone has accepted that social security systems can be important economic stabilizers (IMF 2009), but its approach in practice has only partly changed (Stiglitz Commission 2009; Ekeberg 2009).

The conspicuous absence of social security in international development practice is most evident in the Millennium Development Goals, which arguably represent a consensus on development priorities amongst bilateral and multilateral development agencies. Search as one might, there is no target for progress on

267. A complaints committee established under Article 24 of the ILO Constitution also found it violated many of the earlier ILO Conventions Chile had signed – ILO (1998).

social security. Target 1.1 calls for a reduction in income poverty by half and one might assume social security could be a useful strategy in this regard. But key guidance documents, such as UNDP's *Human Development Report 2003* barely mention the topic. When it comes to the related target of halving hunger (1.b), there is passing reference to social security in the report from the Jeffrey Sachs-led UN Millennium Project Task Force on Hunger (2005: 149–52). However, the concrete recommendations are only for the establishment of so-called 'productive safety' such as food-for-work schemes, microfinance and restoring degraded environments. More recently, the UN Office of Human Commissioner for Human Rights (2008) has called for States to consider setting national targets for social security as part of their contextualization of the MDGs.

9.3. CONVERGING HUMAN RIGHTS AND ECONOMIC DISCOURSES

9.3.1 Human Rights

This absence of social security in development practice is difficult to square with the human rights that all States have committed themselves to in international treaties and declarations. Along with the right to equal treatment, the right to social security is the only right to be mentioned twice in the UDHR. The right is recognized in Article 22 while Article 25 re-emphasizes its importance in realizing the right to an adequate standard of living and health, and adds that childhood is 'entitled to special care and assistance':

A series of subsequent international²⁶⁸ and regional²⁶⁹ human rights conventions provide further recognition. Article 9 of the International Convention on Economic, Social and Cultural Rights 1966 (ICESCR), ratified by 160 states, provides that 'The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance'. Article 26 of the more recent and almost universally ratified Convention on the Rights of the Child 1989 is more specific as to children's right to benefits:

1. States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.

268. See also International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), Article 5(e)(iv); Convention on the Elimination of All Forms of Discrimination against Women, Articles 11, para. 1(e) and 14, para. 2(c).

269. See also the American Declaration of the Rights and Duties of Man, Article XVI; Additional Protocol to the American Convention on Human Rights in the Area of Economic Social and Cultural Rights (Protocol of San Salvador), Article 9; European Social Charter (and 1996 revised version), Articles 12, 13 and 14.

2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

What is interesting to note is that the recognition of the *human* right to social security in the West was correlated with national development of social security systems. Disentangling cause and effect is difficult and one should in no way ascribe a prominent role for the legal recognition of rights. But it is notable that many of the schemes have a rights-based character in that they were codified in law and provide some form of remedial relief. The right to social security was included in a number of post-First World War constitutions such as Germany and Finland (1919), Iceland (1920), the Netherlands (1922) and Spain (1931), and a series of ILO treaties on social security from the 1930s began to codify obligations of states. In the post-Second World War era, the European Social Charter was adopted while national legislation and schemes were solidified in combination with administrative law remedies (Annan 1988). The rights-flavour of these developments is perhaps best seen in the reasons advanced by the US Supreme Court that finally allowed President Roosevelt's New Deal: there was 'liberty in a social organization which requires the protection of the law against the evils which menace the health, safety, morals and welfare of the people.'²⁷⁰

However, part of the lack of emphasis in the development field today may lie in some of these legal instruments. The 1952 ILO Convention for instance does not place much emphasis on ensuring a minimum threshold of non-contributory benefits. Such a principle has become common to economic and social rights jurisprudence over the last two decades but has only emerged recently in the ILO context. This is not to say that the ILO did not begin to take other human rights dimensions of social security seriously in the intervening period. From the 1960s to the 1990s, the ILO focused on discrimination leading to the adoption of C118 Equality of Treatment (Social Security) Convention 1962) and specific conventions on migrant workers and workers with family responsibilities.²⁷¹ Such developments coincided with international and national human rights jurisprudence in the West, which was mostly discrimination-focused as well as international treaties on elimination of discrimination against women and racial discrimination.²⁷²

270. US Supreme Court, *West Coast Hotel v. Parrish*, 300 US 379 (1937) (emphasis added).

271. See, for example, C143 Migrant Workers (Supplementary Provisions) Convention, 1975; C156 Workers with Family Responsibilities Convention, 1981.

272. For jurisprudence, see, for example, the decisions of the UN Human Rights Committee: *Zwaan-de Vries v. The Netherlands* (Communication No. 182/1994 (9 April, 1987)); *S. W. M. Brooks v. The Netherlands*, Communication No. 172/1984 (9 Apr. 1987) *Pauger v. Austria*, Communication No. 415/1990 (1995) and *Gueye et al v. France*, Communication No. 196/1983 (3 Apr. 1989). See also *Gaygusuz v. Austria*, European Court of Human Rights, 16 Sept. 1996 and *Schuler-Zgraggen v. Switzerland* [1993] IIHR 48 (24 June 1993), European Court of Human Rights; European Committee on Social Rights (Complaint No. 14/2003, *International Federation of Human Rights Leagues (FIDH) v. France*, Decision on the Merits); Spain (Decision of the Constitutional Court of Spain, Case No. 130/1995, (1995) 3 *Bulletin on Constitutional Case-Law* 366); Switzerland (V

The first signs of recognition of the need for a minimum threshold appeared in the 2001 General Conference of the International Labour Organization. The final resolution begins by referring to the original vision of the ILO Constitution, namely the 'extension of social security measures to provide a *basic income to all* in need of such protection and comprehensive medical care' (emphasis added). It simultaneously affirmed social security as a 'basic human right' and notes the importance of improving and extending social security coverage to all. The resolution recommends that countries with limited resources prioritize pressing needs, and that they consider ways to address those living in the informal economy. This is not to overstate the breakthrough – much of the document is not concerned with the lack of a basic social security for all, which has led to a discussion amongst some on the possible need for a new ILO standard.

As noted, this growing emphasis on ensuring a minimum level for all coincides with developments in economic, social and cultural rights. The widespread ratification of international human rights treaties in comparison to ILO Convention 102 (forty-one ratifications) means that that human rights treaties potentially provide a path towards holding more states accountable for developing social security systems. Moreover, in the field of social security, 'it is likely that the ICESCR requires that States go beyond their incremental obligations under ILO conventions and address the excluded' (Langford 2007: 41). Ginnikin (2003: 2) has claimed more strongly that 'This situation of low coverage reflects a failure by governments, by countries and the international community to meet their obligations under Article 9 [of the ICESCR]: A number of national courts from Switzerland²⁷³ to Colombia²⁷⁴ have indeed found that there is an obligation to provide a minimum level of social security.'

In January 2008, this understanding of a minimum core obligation of all states to provide some form of basic social security was affirmed by the UN Committee on Economic, Social and Cultural Rights (2008) in General Comment No. 20. States have the immediate duty:

To ensure access to a social security scheme that provides a minimum essential level of benefits to all individuals and families that will enable them to acquire at least essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic forms of education. If a State party cannot provide this minimum level for all risks and contingencies within its maximum available resources, the Committee recommends that the State

v. *Einwohnergemeine X und Regierungsrat des Kantons Bern* (BGE/ATF 121 I 367, Federal Court of Switzerland, 27 Oct. 1995). See also Supreme Court of Argentina, *Eicheverry, Roberto E. v. Omiti Sociedad Anónima y Servicios*, General Attorney's brief of 17 Dec. 1999, Court decision of 13 Mar. 2001 and Constitutional Court of South Africa, *Khosa & Ors v Minister of Social Development & Ors* 2004(6) BCLR 569 (CC).

273. *V v. Einwohnergemeine X und Regierungsrat des Kantons Bern* (BGE/ATF 121 I 367, Federal Court of Switzerland, 27 Oct. 1995).

274. T-207/95, T-254/93, T-539/94 and T-431/94. See Sepúlveda (2008) and Arango and Lemaitre (2002).

party, after a wide process of consultation, select a core group of social risks and contingencies.

This minimum-style obligation has been a stable part of the Committee's approach. In 1991, it was official derived from the general duty of states in Article 2(1) of ICESCR to 'take steps to "progressively achieve" the rights within "maximum available resources" (UN CESCR 1991). In other words, a state must immediately meet a minimum standard and then progressively realize an adequate level over time. However, the Committee is less axiomatic than Ginnikin and remains sensitive to country situations. A state can claim it lacks sufficient resources, but it carries the burden of proof if it fails to meet the minimum.²⁷⁵ To make this argument, the State must also demonstrate that it has sought to secure international assistance (CESCR 2008: para. 61).

9.3.2. Economic Interest and Emerging Models

These human rights arguments have coincided with the increase in interest in social security and/or cash transfers in development policy. There are two principal empirical reasons for this. The first is the persistence of income poverty in developing countries despite high levels of economic growth. For instance, Son and Kakwani (2006) demonstrated that over 237 spells or periods of economic growth amongst eighty developing countries, only 23 per cent of these led to pro-poor outcomes in income poverty (i.e. the average increase in income for the poorest deciles was higher than average). This suggests that redistribution, and not just growth of average income, plays a critical role in reducing poverty. This conclusion is largely buttressed by transatlantic econometric studies of North America and Europe. Brady (2005: 1) concludes that 'substantial, even dramatic, differences exist across rich Western democracies' due to the respective size of the social welfare state. Other studies have also indicated that initial high levels of income equality are important for ensuring that future growth is pro-poor (World Bank 2006).

Second, a number of Southern countries have managed to develop social security and cash transfer schemes or programmes despite assumptions that they lacked the financial capacity and administrative competence. These have included *unconditional* schemes such as South Africa's child, disability and old age grants and India's and Brazil's old-age pension system. It has also included *conditional* cash transfer programmes. Mexico's *Progresa* and Brazil's *Bolsa Familia* programmes, which condition grants to children on mothers meeting various conditions, such as school attendance and health check-ups for children, are the

275. In order for a state party to be able to attribute its failure to meet at least its minimum core obligations to a lack of available resources, it must demonstrate that every effort has been made to use all resources that are at its disposal in an effort to satisfy, as a matter of priority, these minimum obligations (CESCR, 2008: 60).

most well known. India's Rural Employment Guarantee Act also provides the right to 100 days of income each year if basic employment cannot be provided by the State. Evaluations of these programmes have demonstrated that they have had a direct impact in reducing poverty with some multiplier and knock-on effects in other areas (Aguero, Carter and Woolard 2007; Medeiros, Britto and Soares 2008; Villanger 2008; Ravillion 2007).

The emerging proposals on child grants are not uniform. They can be crudely distinguished by different policy constellations amongst development economists and institutions, increasingly backed by development aid. One school of thought is largely represented by the International Labour Organization and HelpAge International (Cichon and Hagemeyer 2006; Kulke 2007; Stefanoni 2008) although World Bank economists such as Ravillion (2007) are sympathetic to some arguments. The two organizations have called for a Global Social Security Floor on the basis of both human rights and economics. They prefer a fiscal space approach to affordability and often reveal a preference for universal and unconditional schemes.

The other school of thought is perhaps best represented by current World Bank policy and a range of economists associated with the Latin American schemes. In the early 2000s they moved from a principal focus on privatization to also supporting targeted means test social schemes (Bakvis 2007). This has now developed to embrace *conditional cash transfer programmes*. Fiszbein and Schady (2009) for the World Bank found that 'there is solid evidence of their positive impacts in reducing short-term poverty and increasing the use of education of health services'. In January 2009, the Bank announced increased loans to the area, which is likely to escalate with the decision by the G20 in April 2009 to provide 5 per cent of the 1 trillion G20 global stimulus to support social protection, boost trade and safeguard development in low-income countries. Much of this funding will come via the World Bank, although it is not clear how much will be allocated for grants for social protection and how much will be in the form of grants.

9.4. AFFORDABILITY OF CHILD GRANTS: A HUMAN RIGHTS AND ECONOMICS TEST

We now turn to the main question in the chapter of assessing whether such social security/cash transfer schemes are affordable and under what conditions: for example, targeted or universal? Can we find a comfortable fit between human rights normative standards and the economic evidence? Can the seemingly more 'rights-friendly' approach of the ILO be justified economically or do the World Bank's recommendations provide a more realistic picture of what can and should be achieved? It should be noted from the outset that the structure of many cash transfer programmes, current and proposed, do not meet international human rights and labour rights standards since they are not established as national systems in law. For the purpose of comparison at hand, we will treat them as *potential* social security models.

The biggest conceptual barrier to the introduction of social security systems in the South has been the widespread assumption that states cannot afford them. In the human rights context, this assumption requires proof. The general test is that a state must use its 'maximum available resources' for economic, social and cultural rights, and is contained in international human rights treaties such as ICESCR and CRC and a number of constitutions in Southern countries. Interestingly, regional human rights bodies have affirmed the principle in the European Social Charter and African Charter on Human and Peoples' Rights, even though both instruments do not allow states to explicitly rely on such a defence.²⁷⁶

This principle is variously viewed as both an obligation of conduct and a defence for failure to meet an obligations or right. But what does the principle mean in practice? In General Comments, the UN CESCR (1991 and 2008) has emphasized that the devotion of resources to the rights must be 'adequate' and 'reasonable', and has further emphasized principles of non-discrimination, participation, avoidance of deliberative retrogressive measures and the need for general accordance with 'international human rights standards'.²⁷⁷ The UN Committee on the Rights of the Child (2003) has set out similar principles and also emphasized the need to prioritize children.

These principles are of course quite vague and the usual response from human rights lawyers is that one needs to turn to contextualized adjudication and assessment processes. In the case of economic and social rights, this is now possible with the recent explosion of jurisprudence (Langford 2008b; Coomans 2006). However, looking to adjudicators on this *particular* principle of use of maximum available resources is difficult since courts tend to be very cautious about making orders that impact on the allocation of resources; the doctrine of separation of powers between the judiciary and executive/legislature looms large here in judicial reasoning.

Nonetheless, courts have made orders, concerning all manner of human rights, that have had budgetary consequences, even within this cautionary framework. In Langford (2005), I argued that we can discern that adjudicators tend to be influenced by the following *contextualized* factors when assessing such cases, namely: (1) the *seriousness* of the effects of the violation; (2) *precision* of the government duty; (3) *contribution* of the government to the violation; and (4) *manageability* of the order for the government in terms of resources. Most of these cases tend to concern the allocation of resources within a particular sector. For example, when faced with an argument that a particular health treatment or service is unaffordable, courts have assessed the claim by examining its proportion of the health budget. Where the figure is minimal, courts tend to

276. See *SERAC v. Nigeria*, African Commission on Human Rights, Case No. 155/96, Decision made at 30th Ordinary Session, Banjul, The Gambia, from 13 to 27 October 2001; Complaint No. 13/2002, *Autism-Europe v. France*, Decision on the Merits (European Committee on Social Rights).

be less sympathetic to government claims.²⁷⁸ However, in countries which have recognized a 'minimum core', considerations of resource constraints are sometimes given less weight (Sepulveda 2008).

If we want to examine the affordability of a particular social right from a country or macro budget perspective, then the jurisprudence of international human rights committees is potentially more useful. For example, in its concluding observations, the CESCR has taken notice of the resources of a country in making recommendations to states on the right to social security. To a wealthy state like Canada, the UN CESCR (2006b) urged the establishment of social assistance at levels which ensure the realization of an adequate standard of living for all, and interrogated the state very closely on its existing social security schemes. For countries in transition, such as Russia, the Committee required 'the raising of minimum pension levels' (UN CESCR 2003: para. 50) and criticized Georgia for failing to meet the minimum (UN CESCR 2002).²⁷⁹ In Senegal, the UN CESCR (2001) only urged the country 'to allocate more funds for its 20/20 Initiative, designed as a basic social safety net for the disadvantaged and marginalized groups of society', although it is arguable that it could have required much more of Senegal given ILO research (Gassmann and Behrendt 2006).

These back of the envelope 'Geneva observations' of a country's available resources for the right to social security are obviously not particularly rigorous from an economics perspective. The Committee is gradually taking up Robertson's (1994) call to develop standards and indicators to measure the extent to which resources (financial, natural, human, technological and informational) are available. But their approach is likely to be focused on the mutual setting of benchmarks that states must meet the next time they come before the Committee (Riedel 2003).

It remains an open question whether economists can really answer the question with any greater ease than human rights lawyers. The essential problem does not disappear. How does one take into account the direct and indirect polycentric consequences of different funding allocations? Finding the economically optimal level and distribution of social expenditure that meets the human rights test of maximum available resources is a challenging task. This is because the human rights resources test requires assessment of:

1. the resource envelope including current and potentially untapped resources;
2. consideration of the effects on other human rights if there is redistribution within the budget or prioritization of some rights over others; and
3. negative and positive externalities that impact resource availability in the short, medium and long-term.

278. See *Eldridge v. British Columbia (Attorney General)* [1997] 3 S.C.R. (Supreme Court of Canada); *TAC v. Ministers of Health*, 2002 (10) BCLR 1033 (CC) (South Africa).
 279. *Conclusions and recommendations of CESCR: Georgia*, UN Doc E/C.12/1/Add.83 (2002), para. 17.

The first factor is particularly elastic as it could involve reallocation of existing items or new sources of income (tax, borrowings, aid, increased efficiency) while the latter makes for difficult forecasting.

To a certain degree, the issue is not new in economics. This human rights question mimics the challenge Samuelson (1954) laid out regarding public goods. He concluded that the determination of the optimal level and distribution of private and public goods was close to impossible without an 'omniscient calculating machine'. This was because the marginal utility of consumption of public goods could not be determined through standard competitive pricing, which could be used for private goods. There is simply no market for goods which are, by definition or social construction, non-excludable and/or non-rival (Kaul, Grunberg and Stein 1999). Samuelson dismissed the possibility of using questionnaires to discover utility preferences as people would send false signals in order to free ride. Highly deliberative democracies such as Scandinavia were considered as a possible way of capturing the utility preferences of all citizens but such societies remain the exception rather than the rule and consensus is partly mythical. A third possibility, foreshadowing Rawls, was the use of a Kantian categorical imperative where utopian signalling could be marshalled to set preferences. Today one might also have added human rights as an external signalling device. But given the number of human rights, which are just one subset of public goods, the complexity problem does not disappear for states with significant resource constraints.

The above does indicate that both economics and human rights communities join common cause in being somewhat distrustful of the ability of standard majoritarian democracies to determine the optimal level of distribution of public goods, whether based on utility functions or normative human rights standards. At the same time, neither has developed a fundamentally authoritative alternative to the post-factum of democratic decision-making.

Economists have though offered a number of simpler tests, including in the field of child grants, on each of the three elements of the resources test set out above. Human rights scholars have sought to give some of these tests a more human rights character (Felner 2008; Sakiko 2008). Anderson (2008) has proposed a new methodology which would allow an assessment of all three steps, although in a slightly different order, so as to determine whether a government is failing to use maximum available resources.²⁸⁰ Such evidence can be particularly useful in the policy and democratic deliberation context, and also to a certain degree in more legal forums as the *Mahlangu* case makes clear.²⁸¹

280. He examines whether the increase in expenditure on a particular human right, holding all human rights related expenditure constant, would be affordable within current and potential resources adjusted for externalities and feedback loops.

281. *Mahlangu v Minister for Social Development* Case No 25754/05 (High Court) in South Africa. See discussion in Section 5.2.

9.5. REVIEWING THE EVIDENCE ON FISCAL AFFORDABILITY

9.5.1. Affordability of Targeted or Universal Schemes

The literature on child grants and social protection for developing countries has generally been dominated by assessing the affordability or other features of targeted as opposed to universal schemes. Such schemes usually function through some form of means-testing with the aim of ensuring that the exclusion of non-poor and the inclusion of the targeted poor is maximized (Ravillion 2007). This emphasis on targeting has been justified by many on the basis that Southern countries cannot afford universal schemes, that targeted schemes are the most effective in reducing poverty, and that many of the best practices emerging from the South have used targeting. It is also common in the literature to see references to economists being in favour of targeted schemes and human rights, or social justice advocates in favour of universal schemes, which are said to avoid the problem of stigmatization and are more attuned to the idea of universal rights. The lively debates over whether Brazil's Bolsa Familia Programme should be extended universally are but one example (Villanger 2008).

The reality however is more complex, and if we take a strict approach to the fields of economics, human rights and political science, we find both conflicting views and evidence. There are well-known but often under-mentioned theoretical economic arguments *against* targeting: administration costs are usually higher, there are high levels of under-inclusion of the poor, and work disincentives and false reporting can flourish if current beneficiaries seek to avoid going over the qualifying income threshold. These elements emerge in evaluations of some schemes. World Bank economist Ravillion (2007) found in a review of social protection programmes in thirty-five Chinese cities that the coverage of and impact on the poor was not related to the degree of targeting. Kakwani, Soares and Son (2005) found that the impact on poverty from the use of 0.5 per cent of GDP for child grants in sub-Saharan Africa had roughly the same impact on poverty regardless of whether a universal or targeted child grants scheme was used. In South Africa in January 2009, the Social Development Minister actually urged potential parents to apply for child support grants due to the high numbers of potential beneficiaries not included on the potential indigent register, a common problem with targeting.

If we turn to human rights scholarship and jurisprudence, we can actually find support for targeting if resources are not available for broad-based schemes or it is a way to promote substantive equality (UN CESCR 1991, 2009). To political science, both universal and targeted schemes are promoted as being palatable to electorates and sustainable over the long-run. Universal scheme advocates assert that the 'non-poor' will support them as co-beneficiaries, while those in favour of targeted schemes point to the palatability of lower consumption of fiscal resources and perceived efficiency of directly addressing a social problem.

These intra-disciplinary conflicts means that if we are concerned with child grants in particularly poor countries, one needs an open mind on universal vs. targeted schemes. Moreover, it is in such countries that the arguments can move to their extremes. For instance, resources are highly limited but the conditions for targeting are the most challenging: administration is difficult and close-knit communities may be reluctant to divide themselves on income grounds. There are also policy variants in between strict universal and targeting approaches, such as geographical targeting, broad targeting or 'loosely enforced' targeting, which can be considered. Each country is obviously characterized differently in terms of the number of poor, available resources and bureaucratic efficiency. It is thus important to examine the affordability of both universal and targeted schemes.

Universal Schemes

In ILO-commissioned studies, Mizunoya, Behrendt, Pal and Léger (2006) and Franziska and Behrendt (2006) respectively estimated what it would cost to provide a universal child grant in five Asian and two African countries, as part of a basic social protection package. For the Asian countries of India, Nepal, Bangladesh, Pakistan and Viet Nam, the first scenario involved a universal child grant set at US\$0.25 a day in terms of purchasing power parity (PPP) for all children 0–14 years old. This was based on 25 per cent of the US\$1 a day international poverty line. In the case of Senegal and Tanzania, the benefit was set at 35 per cent of the national food poverty line and was restricted to school-age children, with all orphans added in the Tanzanian scenario. It is questionable though whether school age children should be prioritized over infants for the African grants. Empirical results from South Africa indicate that child benefits have their greatest impact on child nutrition in the earlier years of an infant's life (Jorge, Carter and Woolard 2007).

There are two important conditions or assumptions behind these proposed benefit levels. They are not intended to take *all* children above the poverty line. Rather the intention is to move a substantial number of households *towards* or *over* the line and be *complemented* by old age and disability pensions and healthcare access as part of a basic social protection package. In the case of Senegal, the authors calculate that the introduction of the child benefit would reduce the poverty headcount from 20 to 14 per cent and the poverty gap by 37.5 per cent.

We could also get a glimpse of the reasonableness of the level of benefit through a comparison with other countries. This is commonly done with neighbours in a region (Felner 2007), but this is impossible in the case of a universal child benefits.²⁸² Universal child grants exist in about half the Western countries (Clearinghouse on International Developments in Child, Youth and Family Policies 2009). Table 9.1 compares the benefit levels in Senegal and

282. In the case of pensions it is partly possible, as there are universal pension schemes in seven developing countries, ranging from 0.1 to 1.7 per cent of GDP (Villanger, 2008).

Norway as percentages of national poverty lines.²⁸³ It shows that the proportions of the national poverty lines are roughly similar. However, the result in Norway is understated since the standard benefit in Norway is supplemented for parents that are single, live in certain regions or don't use kindergartens, and is complemented by a range of other allowances and tax breaks. Thus, in comparative terms, the proposed benefit in Senegal seems reasonable in terms of making a contribution to the realization of the right to social security. Moreover, these proportions are also consistent with the benefit levels set in many of the targeted Latin American schemes (Villanger 2008).

Table 9.1. Modelled and actual benefits as proportion of national poverty lines

	Senegal (Francs) Every family	Norway (Kroner) Every family
Level of benefit (per 28 days)	3,161	970
National poverty line	18,329	6,367
Proportion of gap	17.2%	15.2%

Sources: Franziska and Behrendt (2006), NAV (2009) and Norwegian Central Bureau of Statistics (SSB), 2004.

We now turn to the fiscal affordability of such proposed grants. Economists customarily use the percentage of GDP as one rule of thumb and human rights scholars and the CESCR have embraced this measure to a certain degree (CESCR 2006; Robertson 2004; Felner 2007; Sakiko 2008, and see discussion in Anderson 2008). One disadvantage of this approach is that it doesn't take into account possible future aid flows, which could result in substantial budgetary support in some countries.

In the two ILO studies, the cost of the benefits as a proportion of GDP was calculated by first multiplying the child benefit against the beneficiary population and adding 15 per cent for administration costs.²⁸⁴ The proportion of GDP was calculated over a twenty-year period and the percentage for the *first year* of the scheme is set out in Table 9.2. Over a twenty-year period at moderate growth rates, these amounts would generally halve.

283. This type of threshold is usually more accurate and higher than the international poverty line, although in the case of Tanzania it is much lower.

284. Disaggregated in the Senegal and Tanzania case studies by urban and rural with slightly different benefit levels as a result.

Table 9.2. Universal child benefits: African/Asian projections versus European countries

Projections	Child benefit as % of GDP (2006)	Child cash benefits - % of GDP (1998)	All child and family benefits % of GDP (2006)
Tanzania	2.1	Norway 2.2	3.1
Senegal	1.2	Sweden 1.6	3.2
Nepal	2.5	Finland 1.9	3.0
Bangladesh	1.7	Germany 2.0	2.9
Pakistan	1.6	Denmark 1.5	3.9
India	0.9	Netherlands 0.8	
Viet Nam	1.0		

Sources: Franziska and Behrendt (2006), Mizunoya, Behrendt, Pal and Léger (2006), OECD (2001b), and OECD (2007).

Table 9.2 also shows the costs of the universal child benefits and all child and family allowances as a percentage of GDP in select European countries. One finds that the amounts are roughly similar except in the case of Nepal where the proportion is above the European frontier. If one includes all child and family allowances in these selected Western countries (third column), then the picture changes significantly.

Nonetheless, this suggests that for Nepal, as well as Tanzania and Bangladesh, a universal child benefit at the proposed level may not be currently affordable within *domestic recourses*. For Nepal, the total cost of the proposed overall basic social security package was actually 17 per cent of GDP due to the high healthcare costs and the authors considered this unaffordable. However, when a senior Bangladesh official was questioned on the ILO studies at a workshop in 2008, he replied that the grants were affordable and that it was only a matter of political will.

However, one is immediately struck by the inconsistencies of this ILO study with the International Poverty Centre (IPC) study by Kakwani, Soares and Son (2005). In one simulation, they tested the cost to GDP of a universal child benefit calculated respectively at 20, 30 and 40 per cent of the national poverty line – see Table 9.3. This allows some comparison with the ILO study since the proposed benefit for Senegal was 17 per cent of the national poverty line. For Tanzania it is 35 per cent of the national poverty line but 17 per cent of the international poverty line, which in this case is unusually more than the national line. What is immediately noticeable from the IPC study is that for 20 per cent of the national poverty line all the figures are considerably above the ILO results.

Table 9.3. Universal Child Benefits, IPC Study

Country	20 per cent	30 per cent	40 per cent
Burkina Faso 98	3.7	5.6	7.5
Burundi 98	8.2	12.3	16.4
Cameroon 96	3.0	4.5	6.0
Côte d'Ivoire 98	2.5	3.8	5.1
Ethiopia 00	7.6	11.4	15.2
Gambia 98	4.8	7.2	9.5
Ghana 98	5.1	7.6	10.1
Guinea 94	3.9	5.8	7.7
Kenya 97	4.3	6.5	8.7
Madagascar 01	2.6	3.9	5.2
Malawi 97	6.3	9.5	12.7
Mozambique 96	6.5	9.7	13.0
Nigeria 96	3.0	4.5	6.1
Uganda 99	4.3	6.5	8.7
Zambia 98	4.8	7.1	9.5

Source: Kakwani, Soares and Son (2005).

Franziska and Behrendt (2006) make passing reference to this inconsistency but state that Kakwani, Soares and Son (2005) are using much higher levels of benefits. This assertion is not correct as the calculations I have performed for Tanzania and Senegal show that the proposed benefits levels are not dissimilar. One possible explanation is that the ILO studies use the 2006 level of GDP, while Kakwani, Soares and Son (2005) appear to use much earlier growth figures. They are unfortunately not clear as to what year they take for the analysis or whether their adjustment to 1993 prices means that they are using 1993 GDP. Given the high levels of economic growth in Africa since 1990,²⁸⁵ one should certainly opt for the latest GDP figures possible. This gives more credence to the ILO over the IPC results.

In the Asian paper, Mizunoya, Behrendt, Pal and Léger (2006) also examine the impact of a basic social protection package (including a child benefit) on the state's budget. If the countries maintained their current allocations to social protection (e.g. in Bangladesh this is only 6.4 per cent of the budget), then the

countries could only absorb 5–10 per cent of the costs of the proposed universal basic social protection schemes. If however, 20 per cent of the total budget was used for social protection – an increasingly accepted benchmark – then the authors calculate that India, Viet Nam and Pakistan could almost finance the full amount of the benefit. Bangladesh and Nepal would only be able to finance about 40 per cent of the cost. The ILO concludes that these countries would need external support for the remainder.

However, the ILO authors fail to explain why taxation could not also be used as an option. For instance, tax as a percentage of GDP in Bangladesh in 2005 was 8.5 per cent, while in India it is 17.7 per cent (Heritage Foundation 2009). It is thus not surprising that they find that the benefit is more affordable for India than Bangladesh if the current fiscal budget is used. Thus, the ILO modeling could have added taxation as a variant model, perhaps using the highest tax share of GDP amongst the five countries. If this was 15–20 per cent, it is not necessarily excessive. In the West, taxation revenue accounts for 30 to 50 per cent of GDP. We therefore need to be careful with proposals that simply propose a large-scale use of international resources for child benefits (Townsend 2008), without appreciating that some countries are simply taxing too little. A better system would be international aid that provides: (i) start-up and smoothing finances, (ii) matching finances for the poorest countries, and (iii) incentives to increase the level of taxation to a reasonable level.

Targeted Schemes

Literature on the projected affordability of targeted schemes for Africa, for example, is available, but difficult to compare. It is often produced on the basis of a block grant to poor households or with a fixed resource constraint as opposed to a child grant. What could be useful is an estimation of what a South African style means-tested child grant would cost in Africa or Asia. Hanlon (2009) is one exception, and estimates that a targeted child grant and pension based on the South African model would cost Mozambique 0.8 per cent of GDP.

What we can do is examine the percentage of GDP for existing targeted child grant schemes in the South and North. This is done in Table 9.4. These percentages show that the well-known targeted schemes in the South (left-hand column) are currently less costly in terms of GDP than similar means tested schemes in the North. Indeed, the costs in Africa are likely to be of the same magnitude. Similar figures are generated by Franziska and Behrendt (2006). If a benefit of 70 per cent of the food poverty line was targeted to households without able-bodied members then the cost would be respectively 0.2 and 0.8 per cent of GDP in Senegal and Tanzania respectively.

285. These are the growth figures per year in sub-Saharan Africa: 2002 (3.5 per cent), 2003 (4.0 per cent), 2004 (6.0 per cent), 2005 (6.2 per cent), 2006 (6.4 per cent), 2007 (6.8 per cent). The estimates for the following three years are: 2008 (5.4 per cent), 2009 (1.5 per cent) and 2010 (1.8 per cent).

Table 9.4. Targeted schemes as percentage of GDP

Countries	% of GDP	Countries	% of GDP
SOUTH		NORTH	
Mexico	0.4	New Zealand	2.3
Brazil	0.8	Japan	1.2
South Africa	2.1	United States	1.1

Sources: OECD (2001b).

These results suggest that the costs of targeted schemes are not excessive. Moreover, they mostly fall below the costs of universal schemes, but not always if one compares Table 9.4 with Table 9.2. The trade-off here is that the impact on poverty may be less, particularly for those schemes which aim for very precise targeting, such as in Mexico and Zambia. For instance, in addition to the studies discussed above, in the ILO studies the universal child grant led to a 40 per cent reduction in the poverty gap in Senegal and Tanzania, but the targeted transfer led only to a 2 and 15 per cent reduction despite its promise to focus on the poorest of the poor.

9.5.2. Comparing Child Grants with Other Social Allocations

The next question, addressed in this sub-section, is whether child grants should be chosen when there are resource constraints that require trade-offs or choices between human rights. This may occur in the context of reallocations or more likely in how newly available funds should be used. There is a rich literature in the health sector on economic models to determine the best use of limited health funds (Stimnett and Paltiel 1996), but less has been done in the area of addressing income poverty and the comparative role of child grants. The growing evidence on the impact of child grants (both modelled and actual) could be used to enable comparisons with other type of policies through a systematic review. Ideally, one would also need to capture the multiplier effects of policies (see 4.3 below), and give them a quantitative value. For example, it is claimed that child benefits lead to increased schooling and health and a decrease in child labour.

Zapada (2007) has sought to comparatively evaluate the direct income poverty impact of child grants in comparison with a job creation programme. The impact of 350 Kenya Shilling targeted child grants to school-age children was contrasted with a job creation programme with low wages for unemployed, out-of-work seasonal workers and workers with low earnings. The study finds similar impacts on poverty headcounts, severity and depth, but that the job creation programme had a higher impact on depth and severity of urban poverty. Of course, this model rests on a number of assumptions and the author acknowledges

that a job creation programme is more administratively demanding, and that the other objectives and multiplier effects would need to be taken into account for a full evaluation.

9.5.3. Externalities

The final question is how do the negative and positive externalities of child grants affect the resource position. This debate on the relationship between the social welfare state and economic growth has been particularly strong amongst OECD countries. Mares' (2007) review of empirical literature, measuring the relationship between social protection/taxation on the one hand with growth/employment on the other finds a 'fragile' and inconclusive relationship. According to her, 'there is considerable evidence that social programmes provide a wide range of "positive externalities" which outweigh the potential distortionary effects of higher taxes.' Similar conclusions were reached by an ILO team dispatched to answer the question (Cichon, Scholz et al 2004). In essence, the reviews indicate that it is often the *shape* not the *size* of the welfare state that influences the relationship. For instance, centralized wage fixation systems tend to moderate wage growth in the face of promised social policy improvements and, curiously, high replacement ratios for unemployment benefits can create incentives for employers to provide on-the-job training.

Evaluations of this nature in the South are difficult given that social protection systems are in their infancy in many ways and, in particular, there have been no comprehensive studies of both the positive and negative impacts of child grants. Anderson (2008: 51) does review fourteen studies on the determinants of economic growth and the role of health and education spending, and concludes that 'the negative effects on economic growth associated with financing government expenditure appear to be small, compared to the positive effects on growth of raising health and education indicators'.

One analysis of the future impact of the South African child grant reveals that the improvement in human capital (measured in increased future earnings from improved nutrition) has an economic value 60 to 130 per cent higher than the cost of the actual scheme (Aguero, Carter and Woolard 2007). Indeed, the broader impacts on education, health and child labour as well as direct-income poverty lie at the heart of the *Mahlungu v Minister for Social Development* Case No. 25754/05 (High Court) in South Africa. A South African mother with NGO support is challenging the state's resistance to extending the eligibility child grant from 15 to 18, and has relied on the government's own empirical assessments of the positive effects of the benefit.

9.6. CONCLUSIONS

The question posed at the beginning of this chapter was whether a model that posits that human rights provide the normative standards while economics provides the tools for choice-making and trade-offs within it can actually function in practice. In the current chapter, we discussed an issue that appears principally in the field of choice-making and trade-offs, namely fiscal allocations for child benefits in poor countries. However, once we set the normative standards and field for choice-making, we could not identify clear and conclusive economic answers on trade-offs. The relative costs and benefits of different choices for each of the three tests for maximum available resources for child grants were not clearly borne out by existing empirical evidence.

First, the cost estimates for universal grants vary widely between studies examined, although the lower cost estimates seem more plausible. In the case of targeted schemes, the fiscal envelope is certainly smaller and thus 'available', but it seems questionable whether very tightly targeted schemes meet the test of 'maximum' resources since the impact on poverty is much lower. For the second test on alternatives, the evidence is not abundant, but does give comfort to suggestions that child grants can have at least similar impacts to other human rights friendly policies. For the third, positive externalities are more likely to weigh out the negative externalities on economic growth and thus future resource availability, at least for a basic social security package.

Obviously the research in this area will continue to grow in the coming years as social protection becomes more popular in development. This chapter has indicated some of the regression analysis that is needed. Thus economic uncertainty over the questions may narrow over time, although given the debate in the West over the externalities, it is unlikely that economic evidence will be available to resolve all the questions.

However, the human rights framework demands that states take immediate steps towards the realization of the right to social security. Therefore, where the economic evidence is open or seems more directed by ideology, it is arguable that human rights considerations should be uppermost. Many of the states surveyed seem capable of having sufficient domestic resources to *begin* providing a child grant. Thus we might argue that any decision to not take steps to provide a child grant or for most countries to set very low levels of benefits or *highly targeted* benefits would be problematic, and require strong justification on the basis of a state's human rights obligations.

Thus a nuanced approach is needed in assessing the boundaries of human rights and economics where there are potential or real conflicts. Where the human rights claim exhibits relativity dimensions, preference might be given to economics. On the other hand, where economic claims are ambiguous, empirically weak or strongly contested, the preference might work in the opposite direction. In the current example, the conclusion is somewhere in the middle.

merging social protection movement in development. Another is the imposition of conditionalities, such as school attendance and health check-ups for children (Fizbein and Schady 2009). There are now attempts to replicate this Mexican model in places as distinct as Ethiopia and New York, United States. The World Bank has signalled that it will put increasing resources into such programmes.

In the case of conditionalities, we might find that the human rights arguments are possibly stronger than economic considerations. Emerging economic evidence indicates that unconditional schemes tend to have a similar impact on poverty, nutrition and school attendance (Aguero, Carter and Woolard 2007). However, it is a contested field and evaluations are ongoing. One possible case to be considered is where school attendance for girls is unlikely to rise with an unconditional grant in *some* countries, such as Pakistan (Chaudhury and Parajuli 2006). However, other research from Pakistan has indicated that there was not a significant change, and that other factors such as school availability and quality are more important (Mukhtar 2007; Lyod 2007).

From the human rights side, conditionalities are seen as highly problematic since they make a basic right dependent on other behaviour, which defeats the purpose of a right. Some even label conditionalities a straight-out violation of the right to social security. Others note that placing the responsibility on women to carry out the conditionalities can be disempowering even if they receive the benefit on behalf of the child (Bradshaw and Quiros Viquez 2008). Therefore, with inconclusive economic arguments and stronger human rights concerns, one is probably more likely to come to a conclusion that human rights should prevail and conditionalities should not be used if a scheme is meant to provide a human right. That does not end the story though. The strongest arguments for conditionalities are actually political – they are easier to sell to sceptical middle classes. But whether human rights trumps *politics* is not up for discussion here.

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