

Introduction: Politics, Human Rights and Poor Global Health

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Can Campaigns to Prevent and Treat HIV and AIDS Revive and Strengthen Campaigns for the Right to Health, Access to Legal Services and Social Justice?

[Introduction](#)¹

Coming over the next few weeks:

- Chapter 1: Politics and the Global Public Health Crisis
- Chapter 2: Health and the Inequality of Poverty: Towards a Rights Based Convention on Global Health
- Chapter 3: South Africa's Treatment Action Campaign: An example of a successful human rights campaign for health?
- Chapter 4: Health and the Law: Using the law to Protect and Fulfill Human Rights; Using Human Rights to Health to Strengthen the Law
- Chapter 5: AIDS in the Time of Freedom: Law and Politics in the Response to South Africa's AIDS Crisis

In 1845, in his thesis on Feuerbach, Karl Marx wrote the now famous maxim that: "Philosophers have only interpreted the world, in various ways; the point is to change it."² Over 160 years later, much the same criticism can be laid at the door of public health analysts. Prompted in large part by the HIV pandemic, the growing crisis of world health, particularly "third world" health, and its social determinants has become a subject of an enormous amount of research and writing.⁴ or alcoholism. But in countries mired in poverty and inequality it causes disaster and death.

The avoidance of politics and political analysis in the plethora of analyses on health, in my view, sometimes leads to utopian constructions and arguments about how to improve health.

Indeed, to escape the problem of government and politics, a range of theories about "governance" are being invented that dissipate state responsibility, and seek *a fortiori* to find theories that justify the shedding and shifting of governmental responsibilities in protecting or advancing health.

These theories often seize on the symptoms of the health crisis, rather than its causes. For example, what is the real significance of the alliance of bona fide but ad hoc organizations, measures and agreements (both at a national and international level) that have emerged which aim to promote or improve health?⁵ Are they part of a shift towards a necessary global governance ("outlines" that need to become "pillars" in the words of David Fidler⁶) or are they a patchwork of institutions that have inserted themselves into the breach of governmental omission and operate from a range of different perspectives "humanitarian and political. Undoubtedly they are starting to ameliorate some of the symptoms of global ill health and bring relief to millions of people across the globe. But they simultaneously delay the need to address the underlying causes of the decay. And now, because so many lives are dependent on them, major questions must be asked both about their sustainability and unintended consequences.⁷

This paper does not reject these initiatives. They do contain the seeds of a new order of health. But I argue that if activists are going to change the course of global health, a more political approach to health advocacy is necessary.

rooted in the active propagation of human rights and be assisted by more purposeful national and international legal frameworks on health and rights. Above all it must link health to the political struggles of poor people for genuine democracy.

Various writers have pointed to the de facto globalization of health governance and from the academic literature about an international governance framework for health it would seem that all roads lead to support for the idea of a Framework Convention on Global Health (FCGH).⁸ A framework convention would therefore seal and codify a process that is already underway. But a framework convention, albeit vitally necessary, can be either an opportunity or a threat, it can begin to break the bad ways of conducting health or entrench them.

How, by who and on what principles a FCGH is constructed will decide this.

There are debates raging with different opinions about the relevance and efficacy of human rights based action and advocacy as one means of tackling both health inequality and governmental omission in investment and management of health. There is a justifiable scepticism about the anaemic models for human rights that have been advanced thus far, often academic and hard to apply to real life, and the failure of the international conventions on human rights to regulate governmental conduct.⁹

From the left there is a skepticism about human rights and particularly law as drivers for social change, both of which are viewed as liberal notions, spawned and re-legitimised by globalisation.¹⁰ But what is overlooked is how, inadvertently, globalisation may have given potential new power to human rights and agency to the poor people who use them. Combining political activism, legal action and human rights might be a new tool to 'govern governments?' (in the word of Burris)¹¹ and insist on the right to health.

The following chapters admit that the efficacy and applicability of human rights will vary across countries. However, model health campaigns, in embryonic and, politically untheorised forms, have begun to take shape in a number of community-based responses to threats to health, including that of the Treatment Action Campaign (TAC) in South Africa.

To try to support the argument for using human rights as drivers of politics, in Chapter Three of this paper, I analyse some of the methods and achievements of the TAC. I try to provide the evidence that, under the pressure of a mobilized citizenry, states and private corporations, can be held accountable and cajoled, shamed or forced into meeting their positive duties around population health. However, while I argue that TAC offers a model that is applicable for social justice campaigns, I also assert that the TAC must itself evolve from being a grass roots movement that has primarily focused on HIV, to one that uses the same methods to campaign for the realization of the right to health and social justice more broadly.

This is necessary for several reasons: firstly to sustain the various achievements in increasing access to HIV treatment that TAC has catalysed thus far. Secondly, to lay the basis for a far-reaching change to the national and global equations of political power and priorities that, as one of their side-effects, decide the health of poor people.

Finally, I analyse one other issue that features in all of these discussions: the role and rule of law. But again, my take is a different one.

One of the features of governance internationally, post the end of Stalinism, has been the spread of the rule of law ?sometimes deliberately fostered by organizations such as the World Bank, sometimes voluntarily embraced by people and governments wanting to protect themselves from arbitrary government and dictatorship. My argument is that a necessary component in the equation for health is for poor people to have progressively expanding access to the law, as a means to enforce human rights and in particular governmental duties. But by access to the law, I do not mean a theoretical constitutional right, but practical access beginning at a local level, but spreading to all areas of the legal system.

In this context I conclude this paper with an examination of the experience in South Africa, looking at what has been

achieved by using the law, the inaccessibility of law to tackle inequalities, and what needs to be done to make it accessible. In particular, I argue that the South African constitution creates a similar duty on government to provide legal services as it does for health services ? and that access to legal services is an essential part of democracy.

Finally, it is worth reminding ourselves that questions that are broached above are not academic or theoretical. On their answers and the actions that flow from them depend millions of lives.

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- K Marx, *Theses on Feuerbach*, 1845, Karl Marx and Fredrick Engels, *Selected Works in One Volume*, Lawrence and Wishart, 1968, p. 30.
- See for example: Burris, Scott C. and Gostin, Lawrence O., *The Impact of HIV/AIDS on the Development of Public Health Law*. Also: *Dawning Answers: How The HIV/AIDS Epidemic Has Helped To Strengthen Public Health*, Ronald O. Valdiserri, ed., pp. 96-117, Oxford University Press, 2003 Available at SSRN: <http://ssrn.com/abstract=1022029> ; O Aginam, *Global Health Governance, International Law and Public Health in A Divided World*, University of Toronto Press, 2005.
- See, for example, Wyatt, S. et al. 2006. *Overweight and Obesity: Prevalence, Consequences, and Causes of a Growing Public Health Problem*. *American Journal of the Medical Sciences*. 331(4):166-174, April 2006.
- For example the Global Fund to Fight AIDS, TB and Malaria (GFATM), The Bill and Melinda Gates Foundation, the Clinton Foundation, The International AIDS Vaccine Initiative (IAVI), etc.
- D Fidler, *Constitutional Outlines of Public Health's New World Order*, 77 *Temple L. Rev.* 313 (2004).
- J Cohen, *The New World of Global Health*, *Science*, Vol 311 Jan 2006, 162-167; L Garrett, *The Challenge of Global Health*, *Foreign Affairs*, Jan/Feb 2007.
- Lawrence O. Gostin, Georgetown University, O'Neill Institute for National & Global Health Law Scholarship, Research Paper No. 1, *Meeting Basic Survival Needs of the World's Least Healthy People, Toward a Framework Convention on Global Health*.
- An article by Sofia Gruskin (*Temple Law Review*, Vol 77 No 2, Summer 2004) exemplifies this. Although promisingly titled: *Is there a Government in the Cockpit: A Passenger's Perspective*, it fails to look at governments at all.
- Krista Johnson for example makes the wish mother to the thought when she writes, without serious research or analysis that: "human rights as an ideological and political initiative continues to be shaped within the hegemonic neoliberal framework that demands that we understand the AIDS pandemic as a health issue rather than as a development or human security issue, as an individual concern rather than as a community or global concern." See: *AIDS and the Politics of Rights in South Africa: A Contested Terrain*, *Human Rights Review*, Jan-March 2006.
- S Burris, *Governance, Microgovernance and Health*, *ibid*, p 339 ("Non-state actors have taken on the role of governing, not just other private entities but the state itself.")

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