“De-Growth and Sustainable Development: Rethinking Human Rights Law and Poverty Alleviation”

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1. Introduction

For a long time, development was equated with economic development. With the adoption of the 2030 Agenda for Sustainable Development and the Sustainable Development Goals (SDGs), the world’s development agenda for the coming decades, the ecological sustainability dimension has been firmly integrated into development and poverty alleviation efforts. In the 2030 Agenda, economic growth, social development and ecological sustainability go hand in hand. The language of inclusive and sustainable development illustrates more generally an incorporation of the social and ecological dimension in thinking about development.

Economic development and poverty alleviation are based on orthodox economics, and therefore on assumptions of (the need for) never ending economic growth: “growth is an axiomatic necessity”. The notion of sustainable development may qualify, but does not necessarily challenge this assumption. Commonly, sustainable development is explained in terms of a triple bottom-line (the three Ps of profit, planet and people), suggesting that it is about balancing economic growth with environmental and social considerations. For example, SDG no. eight mentions the promotion of sustainable and inclusive economic growth. In what follows, I will refer to this approach as the weak definition of sustainability.

Strong definitions of sustainability deplore that sustainable development “has become to mean “environmentally friendly economic growth”” (references omitted). In strong definitions, sustainable development has been argued to imply the prevalence of the environmental dimension over the economic one. The prioritization of the environmental (planet) and social (people) pillar over the economic (profit) one, requires a rather radical departure from assumptions of economic growth, such as zero-growth or even de-growth, as discussed in post-growth or ecological economics.

This paper asks the ‘what if’ question. What if unorthodox, ecological economics got it right that post-growth is the new economic norm? What are the implications for human rights law, and for the field of human rights and development? The objective of this paper to draw out in an exploratory way some of the implications of strong definitions of sustainable development for human rights law and its relevance for development.

To be clear, as a human rights lawyer, I am not in a position to take sides in the economics debate as to who got it right. Admittedly, ‘the [steady-state economy] and the de-growth

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2 G. Kallis, et al., The economics of degrowth, 84 ECOLOGICAL ECONOMICS 172, 172 (2012). For references to literature on the desirability of unlimited economic growth, see e.g. Christian Kerschner, Economic de-growth vs. steady-state economy, 18 JOURNAL OF CLEANER PRODUCTION, 544 (2010).
5 For arguments about the desirability and feasibility of degrowth, see the references in Kallis, et al., ECOLOGICAL ECONOMICS, 173-175 (2012).
6 For an overview of some of the debates between the economic schools of thought, see Kerschner, JOURNAL OF CLEANER PRODUCTION, (2010).
economy respectively are socio-politically utopian at the present state of affairs. Nonetheless, compelling evidence about the planetary boundaries necessitate out of the box reflection, also in human rights law. I therefore engage in a thought experiment on what it would take for human rights law to take strong definitions of sustainable development seriously.

Strong definitions of sustainable development do no reject social justice (‘people’ in the triple bottom-line) as a legitimate objective. Taking a strong definition of sustainable development does therefore not necessarily imply that economic, social and cultural rights are challenged or questioned. To the contrary, if it is accepted that extreme inequality is problematic, as is now also more and more acknowledged from an orthodox economic perspective, economic, social and cultural rights should even gain more prominence. Alston, a leading human rights scholar and currently UN Special Rapporteur on Human Rights and Extreme Poverty, has argued

A serious commitment to tackle extreme inequality is only possible in the context of policies and programmes that take the concept of economic, social and cultural rights seriously and give them prominence and priority equal to that of civil and political rights. [...] In circumstances in which economic, social and cultural rights are not a fundamental part of the overall approach, there are no obvious limits to inequality.

Whereas it may be true that ‘human rights have the potential to transform economic thinking and policy-making with far-reaching consequences for social justice’, in a strong definition of sustainable development, that social transformative potential is only one piece of the puzzle, since in addition to social justice, ecological sustainability must be fully factored in. Therefore, only if human rights law undergoes a paradigmatic shift in the understanding of socio-economic human rights and its role in development, it may keep that transformative potential in post-growth economies.

In what follows, I will examine how to factor in the consequences of post-growth economics in the conceptual analysis of socio-economic human rights, and in the role of human rights law in development (cooperation), globally and nationally. In particular, I will try and set a research agenda on two issues that require further examination: the redefinition of obligations of international assistance and cooperation in human rights law; and the reconceptualization of equality in human rights-based development cooperation interventions (towards redistributive equality). My approach is quite global and abstract at this stage. Implications at regional, country and local level will have to be drawn out later on, and in more detail, elsewhere. Given my disciplinary background and the primary focus of the paper on the human rights law implications, I rely on secondary literature on post-growth economics. I will look into two strands in particular: a more radical one, de-growth economics, and a more moderate one, doughnut economics.

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7 Id. at, p. 550.
8 Philip Alston, Extreme inequality as the antithesis of human rights § 2017.: ‘International economic actors like the World Bank, the International Monetary Fund (IMF), the World Trade Organization (WTO), and the Organization for Economic Cooperation and Development (OECD) have begun to speak about the negative economic consequences of such inequalities.’
In the next section, I introduce ecological economics and doughnut economics. In section 3, I spell out the implications for human rights-based development interventions, and in section 4, for obligations of international cooperation and assistance. Section five concludes.

2. Ecological Economics and Doughnut Economics

If environmental and social aspects are to prevail over (and not just balanced with) economic growth in order to achieve sustainable development, as strong definitions of sustainable development suggest, no-growth is to replace economic growth as the normal.\(^{11}\) Given the ‘limited ecological space’ in light of the planet’s carrying capacity, ‘managing without growth’ becomes the challenge.\(^{12}\)

Steady-State Economics, the New Economics of Prosperity and De-growth are three different strands in ecological economics, with diverging positions on the need for de-growth, zero-growth or selective growth.\(^ {13}\) None of them see de-growth as a permanent feature: it is ‘the path of transition’.\(^ {14}\) For some, ‘zero-growth could be the new long-term normal’\(^ {15}\) at least in the global North. But even though it is only a transitory stage, questions remain as to which level of the economy it will lead to, and what will happen during the transition period: will social welfare and employment be affected dramatically? Kallis et al. conclude that ‘combating climate change equitably will include an unprecedented degrowth, with a dramatic restructuring of the State and a reconfiguration of work.’\(^ {16}\) Since whatever the length of the transition, ‘[g]rowth economies do not know how to degrow. They collapse.’\(^ {17}\)

But Kallis and others have not only made that daunting analysis; they have also scrutinized how de-growth may go hand in hand with social sustainability, or in other words, how ‘prosperous de-growth’ can be realized.\(^ {18}\) An important building block of prosperous de-growth is offered by happiness economics, which submits that ‘a more equal distribution of income and investment in public services that make a difference in the quality of life, can have greater welfare effects than generalized growth.’\(^ {19}\) Second, proposals for work-sharing, unpaid work and a minimum income have been launched in order to ensure full employed in a de-growth scenario.\(^ {20}\) In these proposals, and in particular in the one for a minimum income financed through taxation, distribution is again the key word: granting a basic income is ‘a fundamental new way of distributing national product and surplus.’\(^ {21}\) Third, de-growth ‘entails a very strong State’, given the level of intervention that is required, e.g. in imposing social and ecological caps or in introducing a minimum income.\(^ {22}\)


\(^{13}\) For references, see id. at.

\(^{14}\) Id. at, 173.

\(^{15}\) Enrico Perotti, Zero-growth could be the new long-term normal in developed economies: Six charts that explain why.


\(^{17}\) Id. at, 172.

\(^{18}\) Id. at.

\(^{19}\) Id. at, 174.

\(^{20}\) Id. at, 176.

\(^{21}\) Id. at.

\(^{22}\) Id. at, 177.
The de-growth literature is not very explicit on whether it applies across the board to all economies, but it seems to target primarily advanced economies in the North. In Kerschner’s analysis, economic de-growth is ‘the rich North’s path towards a globally equitable’ Steady-State Economy. The steady-state economy is a concept coined by Daly to refer to a zero-growth economy. In other words, economic de-growth is a necessary stage the rich North has to go through for some time (a transition), to reach ‘stabilisation’ of the economy. The reason for this is the following: ‘rich industrialised countries have evidently surpassed sustainable limits already, and de-growth is therefore essential’; and ‘the rich North will need to de-grow in order to allow for some more economic (vs. uneconomic) growth [references omitted] in the poor South. This is to balance the service obtained from the steady-state level of stock and throughput between the rich and the poor’.[27] Un-economic growth is used here by Kerschner to refer to growth that does not contribute to welfare. He builds inter alia on Max-Neef, who has argued that each society has its threshold point beyond which economic growth is matched with a decrease in quality of life (Threshold hypothesis). The threshold point is the point ‘where quantitative growth must be metamorphosed into qualitative development.’[30]

A more moderate version of postgrowth economics is Raworth’s ‘doughnut economics’. Raworth seeks to redefine economic development as inclusive and sustainable economic development. In ‘doughnut economics’, between the outer boundary, i.e. the ecological ceiling (composed of Roxtrom et al’s nine planetary boundaries) and the inner boundary, i.e. the social foundation (twelve social boundaries drawing on ‘internationally agreed minimum social standards’), ‘lies an environmentally safe and socially just space in which humanity can thrive.’ She identifies three main shifts in focus in ‘doughnut economics’: to more attention for goods and services provided outside the monetary economy; to changes in the level of wealth; and to the distribution of economic benefits. Here too, an economy that is ‘distributive by design’ is at the centre. However, she does not position herself necessarily within post-growth economics: ‘GDP could grow, so long as it remained compatible with staying within social and planetary boundaries.’[34] But she does seem to suggest that at least for some parts of the world, consumption patterns will have to change, and redistribution will be necessary: ‘the biggest source of planetary-boundary stress today is excessive resource consumption by roughly the wealthiest 10 per cent of the world’s population.’ ‘Social justice demands that this double objective [of eradicating poverty to bring everyone above the social foundation, and reducing global resource use, to bring it back within planetary boundaries] be achieved.

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24 For a description of the steady state economy, see e.g. Id. at, 545-546.
25 Id. at, pp. 547 and 550.
26 Id. at, p. 549.
27 Id. at, 549.
28 Id. at, p. 549.
30 Id. at.
34 Kate Raworth, Doughnut Economics, available at http://www.humansandnature.org/economy-kate-raworth. She does admit though that her answer is a theoretical one, and that history does not bode well on whether GDP growth could be achieved in practice within her model of inclusive and sustainable economic development (id. at.). Elsewhere, she flagged this as the critical question, without unequivocally answering it (see A Safe and Just Space for Humanity: Can We Live within the Doughnut? (2012).
through far greater global equity in the use of natural resources, with the greatest reductions coming from the world’s richest consumers. On the other hand, she argues that addressing poverty requires surprisingly little additional financial resources, and does not need to stress the ecological ceiling/planetary boundaries. Moreover, she does envisage subservience of the economic objective to the ecological and social one: ‘The economy’s over-arching aim is no longer economic growth in and of itself, but rather to bring humanity into the safe and just space – inside the doughnut – and to promote increasing human well-being there,’ and therefore recommends ‘to be agnostic about growth’, ‘in the sense of designing an economy that promotes human prosperity whether GDP is going up, down, or holding steady.’

Raworth’s analysis too primarily targets the global North: there are ‘vast inequalities of resource use’, whereby high income countries have a disproportionate impact on the planetary boundaries (the ecological ceiling). Hence, it is up to high income countries to take up responsibility. What does that mean for the level of social protection reached in these countries? Does de-growth mean austerity and a drastic reduction in welfare and living standards? Raworth engages explicitly though rather uncritically with human rights, suggesting that they ‘provide the cornerstone’ for defining the social foundation below which lies ‘unacceptable human deprivation’. The section on human rights very quickly moves from human rights (only referencing the Universal Declaration of Human Rights) to the MDGs and other policy documents, such as governments’ social priorities for Rio+20 at the time. What is missing is a solid engagement with human rights law and the implications of the proposed model.

The challenge posed by (prosperous) de-growth for human rights law is huge: how to factor in the main consequences of de-growth in the conceptual analysis and operationalization of economic, social and cultural rights (ESC rights)? In this paper, I will not examine the consequences for ESC rights in the domestic legal order of advanced economies, although they are considerable, since current scholarship on ESC rights takes the tenets of mainstream economic theory for granted, and builds on the assumption of economic growth as the basis for prosperity, social progress and a progressive realization of economic, social and cultural rights, domestically and globally. Rather, I zoom in on the implications for human rights-based development interventions in developing economies (section 3), and for obligations of international cooperation and assistance (section 4).

3. Challenges for human rights-based approaches to development

In human rights-based approaches to development (HRBADs), the realization of ESC rights is premised on economic growth. HRBADs have been adopted mainly by external actors (donor countries, international organizations) in their development interventions in developing economies. Following a common understanding of UN agencies on HRBAD in 2003, the

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35 Raworth, Doughnut Economics 5.
36 Id. at, p. 19.
37 Id. at, 8.
38 RAWORTH, Doughnut Economics. Seven Ways to Think Like a 21st-Century Economist p. 245. 2017.
40 Raworth, Doughnut Economics.
41 Id. at, pp. 8-9.
43 Report Second Interagency Workshop on Implementing a Human Rights-based Approach in the Context of UN Reform, Stamford, USA, 5-7 May, 2003,
Office of the High Commissioner for Human Rights (OHCHR) defined a human-rights based approach as ‘a conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights’.\textsuperscript{44} In the words of Darrow and Tomas, ‘[a] human rights-based approach represents both a ‘vision’ of development as well as a way of ‘doing’ development.’\textsuperscript{45} Central features of most HRBAs can be summarized in the acronym PANEN, i.e. participation, accountability, non-discrimination, empowerment and normativity (the latter has sometimes also been referred to as linkage to human rights).\textsuperscript{46}

So what does a radically different starting point of de-growth mean for the role of human rights in poverty alleviation through HRBADs? How do ecological economics impact on the HRBAD principles? I submit that the impact of de-growth economics will be highest on the human rights principle of non-discrimination, since prosperous de-growth shifts the emphasis from growth to re-distribution. Whereas that is mainly and primarily the case for the global North, the steady-state as a reflection of ecological sustainability is also a worthwhile ‘unattainable’ goal\textsuperscript{47} to be pursued in the global South, if not immediately, then certainly in the longer run. Moreover, de-growth pleads for a reorientation from ‘uneconomic’ to ‘economic’ growth (i.e. growth that contributes to welfare). There is also growing evidence that inequality is as prominent within States as it is among States, also in the global South. This means that fair shares of effort to stay within planetary boundaries within countries are important too.\textsuperscript{48} This provides a second reason why the principle of non-discrimination must be revisited.

In HRBA, non-discrimination typically translates into a prioritization of the most vulnerable or marginalized in society.\textsuperscript{49} This means that development cooperation programs should not be ‘directed solely at those that are currently easy to reach’, and that ‘underlying and systemic causes of discrimination must be tackled’.\textsuperscript{50} The latter may imply priority attention for those suffering multiple discrimination, and advocacy for affirmative action ‘to level the playing field and rectify structural discrimination.’\textsuperscript{51} But beyond this, surprisingly little work has been done on the meaning of the non-discrimination principle in HRBADs.

For a long time, the human rights community has closed it eyes to extreme inequality,\textsuperscript{52} as a reality, but also as a conceptual challenge. In recent times, international economic actors and
the human rights community have started to pay more attention to extreme or radical inequality in its actual occurrence. Conceptually, it remains underdeveloped though. Human rights law has mainly focused on formal equality (at the expense of substantive equality), and on negative obligations (to abstain from discrimination) than on positive obligations (to fulfil equality). Or in the words of Balakrishnan and Heinz, ‘issues of horizontal inequality are more strongly incorporated’, at the expense of ‘vertical inequality’. Horizontal inequality is defined as occurring ‘between culturally defined or socially constructed groups, such as gender, race, ethnicity, religion, caste and sexuality’, vertical inequality as occurring ‘between individuals or between households, such as the overall income or wealth distribution of an economy.’

Moyne has argued that human rights law has so far only focused on status equality, but ignored distributive equality. And to the extent that it speaks to distributive equality, it only offers ‘a floor of protection against indigence’, not a ceiling ‘on the wealth gap between rich and poor’, i.e. ‘a ceiling on inequality’. In sum, there is an emerging awareness of human rights law’s silence on inequality and on positive obligations of redistribution. That is particularly problematic given the strong emphasis on redistribution in ecological economics.

So what is the way forward? I agree to a large extent with Moyne’s backward-looking analysis of human rights’ failure so far to offer a ‘ceiling on inequality’. However, I am not (yet) convinced about his forward-looking conclusion that human rights law cannot evolve into a better check on extreme inequality:

Could a different form of human rights than the legal regimes and movements spawned so far correct this mistake? I doubt it. […] [W]hen inequality has been contained in human affairs, it was never on the sort of individualistic, and often anti-statist, basis that human rights do indeed share with their market fundamentalist Doppelgänger. […] The drastic mismatch between the egalitarian crisis and the human rights remedy demands not a substitute but a supplement.

In my view, and although I am fully aware of the limits of human rights law, human rights law has potential to address extreme inequality, provided that it conceptually evolves. As Alston has argued,

‘If the human rights movement is to spur states to adopt such an agenda for equality, it will need first to correct its own gaps and biases, including by revitalizing normative understandings of equality, and putting questions of resources and redistribution back into the human rights equation.’

These fundamental changes that human rights law is required to make do not only arise out of increases in extreme inequality, but also out of the sustainability imperatives as spelled out in the de-growth and doughnut economics literature. Let me spell out tentatively the research and reform agenda ahead for human rights. First, more attention needs to be given to equality of outcomes (substantive equality), and questions of resources need to be ‘[put] back into

55 Id. at.
57 Alston, Extreme inequality as the antithesis of human rights.
the human rights equations’. Also, the notion of a social protection floor must be clarified in human rights language. Second and more fundamentally, there is a need to ‘revitalize the equality norm’ by incorporating inequality of income, a ceiling on inequality and issues of redistribution firmly within a legal understanding of equality. A human rights approach to tax policies can be most helpful to achieve some of this. Likewise, a right to social protection and notions like an ‘adequate standard of living’ and a minimum income or living wage may need to be fleshed out in order to strengthen the understanding of redistributive equality in human rights law.

4. Global human rights obligations?

Ecological economics and doughnut economics built on an idea of collective responsibility and globally agreed levels of economic activity. Kerschner envisages the objective of a steady-state economy ‘on a global level at some mutually agreed upon sustainable level of throughput’ (emphasis added). With regard to the ecological ceiling in doughnut economics, Raworth makes explicitly the point that a ‘planetary perspective is essential for shaping their governance’, and that the planetary boundaries represent a ‘wake-up call for the international community … to take collective responsibility …’. This raises a second question, namely ‘how to agree on fair shares of effort for staying within planetary boundaries – e.g. through “common but differentiated responsibilities and respective capabilities”. Fair shares of effort, not only within but also among countries, is an issue that has been quite central to international environmental law, but in human rights law too, in particular in the context of extraterritorial human rights obligations. Does the burden for shouldering these efforts lie primarily with States in the global North and emerging economies, since they have benefited most from economic growth patterns in the past? As Wilde has argued, current economic inequalities can in part be linked back to colonial and imperial structures of the past. One link would be in how industrialization in the West, with its ongoing legacy in terms of economic inequality and environmental destruction, was bound up in and enabled by slavery, the imposition of unequal trade relations, and the exploitation of people and the plunder of natural resources in colonial territories.

So, both as a matter of redress for injustices in the past, but also because countries in the North have benefited most from stressing the environment and crossing planetary boundaries, it seems fair that some of the heavy lifting in the burden sharing will be done by the North. What does all this mean for the field of ‘human rights law and development’?

60 Id. at, p. 19, para. 55.
61 Compare Alston, Extreme inequality as the antithesis of human rights.: ‘Questions of resources and redistribution can no longer be ignored as part of human rights advocacy.’ Alston, Report of the Special Rapporteur on extreme poverty and human rights p. 19, para. 55
63 Id. at, p. 18, para. 51.
64 Kerschner, JOURNAL OF CLEANER PRODUCTION, p. 549 (2010).
65 Raworth, A Safe and Just Space for Humanity: Can We Live within the Doughnut? 12. 2012.
66 Id. at, p. 14.
67 Id. at, p. 21.
4.1. Extraterritorial obligations

Clearly, there are some serious limitations for human rights law. To begin with, human rights law is statist in orientation: ‘… in its inception, structure and content, the legal order of human rights is not a global legal order … The extraterritorialization of human rights law should not be understood as some kind of natural fulfilment of the telos of human rights as a cosmopolitan constitutional law for all humanity.’

On the other hand

[t]he Westphalian framing of poverty and law is problematic in a globalising world. Its constitutive assumptions are belied by the increasingly salient fact of ‘global poverty’. That expression names modes of impoverishment whose causes and manifestations cannot be located within a single territorial state. Generated by transborder processes, the harms suffered by ‘the global poor’ largely escape the parameters of national law and the control of national states. To locate them within the Westphalian frame is to misframe them.

For sure, there is a burgeoning literature on extraterritorial human rights obligations and some legal practice, but most of it focuses on civil and political rights, and on instances where an immediate and contemporary causal link between action or inaction, and harm exists. One of the rare attempts to codify extraterritorial human rights obligations in the field of economic, social and cultural rights, are the Maastricht Principles on the Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights. The Maastricht Principles do contain some principles that may help to legally capture the idea of collective responsibility. For one, Principle 8(b) refers to ‘rights obligations of a global character [...] to take action [...] to realize human rights universally’, i.e. obligations of international cooperation. International cooperation includes ‘the development of international rules to establish an enabling environment for the realization of human rights and the provision of financial or technical assistance.’ These global obligations are further spelled out in the extraterritorial obligations to fulfil. In particular, Principle 29 identifies an obligation - in language reminiscent of the Millennium Declaration and the Declaration on the Right to Development - ‘to create an international enabling environment conducive to the universal fulfilment of economic, social and cultural rights, including in matters relating to bilateral and multilateral trade, investment, taxation, finance, environmental protection, and development cooperation.’ Moreover, a soft procedural obligation (‘should’) of cooperation, ‘including in

69 Beyond general challenges as to the transformative potential of law (id. at, pp. 172-173.) On its Northern bias and neocolonial outlook, see the TWAIL scholarship, such as BALAKRISHNAN RAJAGOPAL, INTERNATIONAL LAW FROM BELOW: DEVELOPMENT, SOCIAL MOVEMENTS AND THIRD WORLD RESISTANCE (Cambridge University Press. 2003).
71 Nancy Fraser, ibid, 10.
72 See, for example, MARKO MILANOVIC, EXTRATERRITORIAL APPLICATION OF HUMAN RIGHTS TREATIES: LAW, PRINCIPLES, AND POLICY (Oxford University Press. 2011); MICHAL GONDEK, THE REACH OF HUMAN RIGHTS IN A GLOBALISING WORLD: EXTRATERRITORIAL APPLICATION OF HUMAN RIGHTS TREATIES (Intersentia. 2009).
73 Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights, 29 NETHERLANDS QUARTERLY OF HUMAN RIGHTS 578(2011). See also Olivier De Schutter, et al., Commentary to the Maastricht principles on extraterritorial obligations of states in the area of economic, social and cultural rights, 34 HUMAN RIGHTS QUARTERLY 1084(2012).
75 Id. at.
the allocation of responsibilities’ so as to cooperate effectively, is established (Principle 30). This procedural obligation may be useful in the context of negotiating the sustainable throughput levels in a steady-state economy too. Each State’s contribution to the fulfilment of ESC rights extraterritorially has to be ‘commensurate with, inter alia, its economic, technical and technological capacities, available resources, and influence in international decision-making processes’. As part of that obligation of international cooperation, States that are in a position to do so, ‘must provide international assistance to contribute to the fulfilment of economic, social and cultural rights in other States...’76 Principle 30 of the Maastricht Principles seeks to address a gap in human rights law, namely that

International human rights law, at present, does not determine with precision a system of international coordination and allocation that would facilitate the discharging of obligations of a global character (in the meaning given to this expression under Principle 8 (b)) among those states “in a position to assist.”77

The Maastricht Principles have been criticized for failing to address the key issues flagged in no-growth economics and doughnut economics, that is collective responsibility for fundamental changes in the global economic system, and burden-sharing. Wilde has criticized the Maastricht Principles for being too reformist: ‘… the current legal regime takes the fundamental structures of global economic relations largely as is …’.78 He seeks an explanation for this modest agenda for reform in the failure to acknowledge the structural and historical roots of economic globalization:

Rich countries and their populations are operating on a blank slate in terms of the historical past and their inheritance from previous generations. No investigation is to be made into how the economic inequalities of today are in part rooted in such inequalities in the past. Thus any matters of global economic reconstruction and redistribution can be understood exclusively in terms of debates around communitarianism and charity-resulting in very modest economic consequences-not unfair, inherited privilege based on past inequality and exploitation-which might require more profound, transformatory change.79

This criticism is partly unfair, since the Maastricht Principles do elaborate on global obligations, and do reference structural issues of trade, investment, finance and the environment, to mention just a few (Principle 29). Moreover, in the Commentary, it is argued with force that ‘capacity and resources do not exhaust the basis for assigning obligations of international assistance and cooperation.’80 One of the other bases for assigning obligations is precisely ‘historical responsibility or causation, which take a compensatory approach based on some determination of liability for contributing to a problem that undermines the fulfillment of economic, social, and cultural rights extraterritorially.’81 The Maastricht Principles also clearly distinguish between international cooperation and international assistance (Principle 33). The critique that issues of global economic redistribution may end up in charity is therefore not appropriate either.

76 NETHERLANDS QUARTERLY OF HUMAN RIGHTS, (2011).
78 Wilde, p. 171. 2016.
79 Id. at, p. 172.
81 Id. at.
The Maastricht Principles clearly debunk Raworth’s suggestion that reaching the social foundation is a matter of international assistance, whereas safeguarding the ecological ceiling is a matter of international cooperation. The social foundation too requires structural measures, collectively taken.

It is nonetheless true that

The Principles remain ... fairly silent on the division of responsibility among external actors, i.e. what exactly should which foreign State or non-State actor do? In particular for the extraterritorial obligation to fulfil, it is clear what should be done, but not who should do it, notwithstanding some reference to the obligation to coordinate, “including in the allocation of responsibilities“ (Principle 30).\(^\text{82}\)

Principle 31 of the Maastricht Principles spells out the basis for assigning obligations (capacity, resources), but refrains from clarifying the distributive allocation of obligations. Which state has to do what?

Thirdly, as the Commentary bears out, the Maastricht Principles do not establish a regime of shared responsibility for violations of the global obligations. In other words, whereas collective legal obligations are recognized, the Maastricht Principles rely on an ‘individualized regime of legal responsibility in the event of a breach of those obligations.’ (footnote omitted).\(^\text{83}\) As argued elsewhere, I find the international law regime of independent responsibility for internationally wrongful acts inadequate for human rights violations, and even more so for violations of global human rights obligations.\(^\text{84}\)

In an attempt to fill this double void (the absence of a distributive allocation of obligations, and of a shared responsibility regime) somewhat, I have suggested some principles for the distributive allocation of obligations, and for shared responsibility for violations.\(^\text{85}\) First, I take the primary obligation of the domestic State as the natural point of departure.\(^\text{86}\) Second, I consider the extraterritorial obligations to respect and to protect as parallel obligations for all States: they apply simultaneously to the territorial and foreign States. The extraterritorial obligation to fulfil is only secondary: it is triggered by the inability or unwillingness of the territorial State to abide by its human rights obligations.\(^\text{87}\) As to the distributive allocation among foreign States of the extraterritorial obligation to fulfil, I have argued in favor of identifying duty-bearers and their respective obligations in some detail: merely establishing ‘a generic [obligation] that attaches to the undifferentiated international community’\(^\text{88}\) will not do. I have suggested a smart mix of more abstract principles (such as those States traditionally

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\(^{83}\) De Schutter, et al., *HUMAN RIGHTS QUARTERLY*, p. 1152 (2012).


\(^{87}\) Id. at, pp. 335-340.

belonging to the donor community, legal and political commitments made) and more context-specific elements (such as causation, capacity, vicinity).\textsuperscript{89}

Leaving the primary obligation with the territorial State is open to challenge in light of a global human rights obligations paradigm as put forward by the Maastricht Principles, since ‘the global order in its entirety’ can be blamed for structural obstacles to human rights realization.\textsuperscript{90} It may be even more challengeable by de-growth economics and doughnut economics, given the global and interconnected nature of the planetary challenges, and the structural external impediments that countries in the global South often face. De-growth and doughnut economics hence question the longstanding principle in human rights law and in development law of the primary responsibility of the domestic state. That raises new questions though, as the ‘primary responsibility of the domestic State is based on its sovereign rights to determine policy choices on development strategies and exploitation of natural resources.’\textsuperscript{91}

Efforts to better grasp ‘fair shares of effort’ in ecological economics can benefit from the work done to clarify the specific obligations of States in human rights law. At a basic level, the tripartite typology of respect, protect and fulfil obligations is useful to clarify that not all obligations are resource-intensive. There remain nonetheless considerable challenges to flesh out the differentiation of (fulfil) obligations much more, in order to operationalize the ‘fair shares of effort’ notion. Historical causation may play a prominent role to differentiate obligations, but on this point too, human rights legal thinking is in its infancy.

Beyond extraterritorial obligations and their codification in the Maastricht Principles, the right to development - the best attempt to date to conceptualize so-called third generation rights or solidarity rights – has sought to clarify duties and duty-bearers for development.

4.2. The right to development

The right to development was coined and legally framed in the late 1960s and early 1970s. A Declaration on the Right to Development was adopted by the United Nations General Assembly in 1986.\textsuperscript{92} Unanimous political recognition to the right to development as a human right was accorded in 1993, in the Vienna Declaration and Plan of Action.\textsuperscript{93} The right to development is to be understood as an attempt of countries in the Global South to realize socio-economic self-determination in the wake of political independence through decolonization.\textsuperscript{94} Justification for the right to development was sought in the strategic, economic and political domination of the North over the global South, which was considered to justify making the North responsible for development in the South.\textsuperscript{95}

In origin, the right to development was a comparatively radical framing, since it sought to challenge prevailing international economic relations and to introduce alternative legal

\textsuperscript{89} Vandenhole & Benedek, pp. 341-349, 2013.
\textsuperscript{90} MARGOT E SALOMON, GLOBAL RESPONSIBILITY FOR HUMAN RIGHTS p. 187 (Oxford University Press 2007).
\textsuperscript{91} Towards a Framework Convention on the Right to Development. (2013).
\textsuperscript{92} GA resolution, UN Doc A/RES/41/128 (4 December 1986). Compare voting patterns on NIEO and the right to development.
\textsuperscript{93} Art. 10 Vienna Declaration and Programme of Action, UN Doc A/CONF.157/23 (12 July 1993).
principles for international relations, such as international solidarity, substantive equality and international justice. These principles relate to the external dimension of the right to development, i.e. the claims of a developing state towards third states or the international community for international cooperation and assistance, or the right to secure the removal of structural obstacles to development inherent in prevailing international economic relations. The right to development was meant to address underdevelopment as a structural violation of human rights.

At first sight, the right to development may be well equipped to capture some of the key challenges raised by de-growth economics and doughnut economics in terms of global responsibility and burden-sharing. But the legal codification of the right to development, first in the Declaration on the Right to Development, as well as later attempts to clarify its meaning in reference to the global partnership for development in MDG8, do not offer much analytical clarity. As far as the external dimension of the right to development is concerned, nor the 1986 Declaration, nor the High Level Task Force clarify the distributive allocation of obligations and responsibility. Even more so, the external dimension has been more and more downplayed in recent attempts at further standard-setting.

For a decade now, the potential elaboration of a treaty, i.e. a binding instrument, has been discussed, but there is clearly a political deadlock on the matter. De Feyter has argued in favor of the elaboration of a treaty, primarily to provide a counterweight to treaty obligations in international economic law. Substantively,

The potential added value of a right to development treaty is to complement the current human rights regime with a treaty that goes beyond individual State responsibility and builds on principles derived from international development efforts, including the Paris Declaration on Aid Effectiveness that provides for mutual accountability [...]. The focus on individual State responsibility in current human rights treaty law prevents the integration of human rights into the international development effort. It also hampers international human rights law in delivering on its promise of protection to those adversely affected by globalization.

Two sets of relationships are of particular relevance here: the unilateral dimension of the duty to cooperate (extraterritorial obligations of States), including the impact of aid, trade, investment and finance; and the multilateral dimension of the duty to cooperate (through partnerships between States). De Feyter has argued more in particular for the elaboration of a Framework Convention. Framework Conventions typically ‘denote the subject matter of the treaty as one that is of concern to the international community and requires international

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96 Ibid 85-88.
100 The High Level Task Force assisted the open-ended working group on the right to development between 2004 and 2010. The open-ended working group was established by the UN Commission on Human Rights in 1998.
102 De Feyter, pp. 3-4. 2013.
103 Id. at, p. 4.
cooperation.\textsuperscript{104} State sovereignty with regard to such an issue of common concern to the international community is custodial: the State acts as the custodian of that interest.\textsuperscript{105} Interestingly, Framework Conventions are quite common in international environmental law, and allow for a holistic approach to an issue. Whereas in De Feyter’s view holistic ‘defines the integration of development and human rights concerns’,\textsuperscript{106} there is no technical obstacle to also including ecological sustainability in such a holistic approach, as he suggests himself.\textsuperscript{107}

Operationalization of such a Framework Convention could happen through compacts; funds and/or multi-stakeholder agreements. In De Feyter’s view, multi-stakeholder agreements ‘would be concluded by coalitions of the willing, consisting of a variety of public and private actors, committed to demonstrating that the right to development can be implemented in a meaningful way through joint initiatives.’\textsuperscript{108}

In sum, de-growth economics and doughnut economics necessitate rather drastic, but not impossible, conceptual developments in human rights law to better grasp notions of joint responsibility and burden-sharing. The work on extraterritorial obligations and on the right to development provides for useful entry points for such an exercise.

5. Conclusions

Sustainable development typically pursues three objectives: an economic, social and ecological one. Strong definitions of sustainable development introduce a hierarchy between these objectives, and give prominence to the ecological and social one. Ecological economics, and to some extent also ‘doughnut economics’, have argued that prominence of the ecological objective of sustainable development necessitates de-growth in the North, at least to make the transition to sustainable throughput levels. It also argues in favor of global collective responsibility for sustainable development, and of burden-sharing between North and South.

In this paper, I have explored the implications of this for human rights law in development (cooperation). Within human rights-based approaches, the principle of non-discrimination and equality must be revisited. Fundamentally, the question of redistribution needs to be factored into human rights law. This sets an ambitious research agenda on equality, ranging from fleshing out a right to social protection and the right to an adequate standard of living, to elaborating a human rights approach to tax policies and paying more attention to the question of resources.

The notion of international cooperation and assistance must equally take on new meaning. Entry points can be found in extraterritorial obligations in the area of economic, social and cultural rights, and in scholarly work on the external dimensions of the right to development. However, this conceptual ‘absorbing capacity’ of human rights law, i.e. its capacity to come to terms with these challenges, should not be confused with the extent of legal codification or political acceptance.

\textsuperscript{104} Id. at, p. 5.  
\textsuperscript{105} Id. at.  
\textsuperscript{106} Id. at, p. 8.  
\textsuperscript{107} Id. at, p. 10., where a reference is made to the environmental dimension of the right to development, drawing on the Rio Declaration on Environment and Development  
\textsuperscript{108} Id. at, 16.
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