IMFing with your Economic Rights: The Greek Tragedy of the Eurozone

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Abstract

While international human rights law promulgates that economic, social and cultural rights (economic rights) be supported just as fervently as civil and political rights, the reality is, they are not. The Greek debt crisis and resulting austerity measures demonstrate how a growing world economy is having an increasingly large impact on economic rights. States treat economic rights obligations similar to how businesses treat risk – that is, states seek to reduce their obligations like businesses seek to reduce their risk. As a result, economic rights remain second fiddle to their civil/political counterpart and a victim of supranational monetary monoliths like the Economic Monetary Union and the International Monetary Fund.
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Introduction

“Excess generally causes reaction, and produces a change in the opposite direction, whether it be in the seasons, or in individuals, or in governments.”

- Plato (427 - 347 BC)

While the global economy slowed in the early 2000’s, Greek fiscal policy remained fast and loose, resulting in the Greek debt crisis and the implementing of austerity measures.\(^1\) The economic crisis alone is having rippling effects for the Greek people, and the compounding austerity measures, which represent tax hikes and significant cuts to public expenditures, are overwhelming and stifling the healthcare sector as available resources dwindle while the need surmounts,\(^2,3\) fueling greater unemployment with both the public and private sectors making job cuts,\(^4\) and undermining the education system by shrinking budgets for public schools and disincentivizing higher education through the tax code.\(^5\) These austerity measures are horizontally applied and subsequently have a significant and disproportionate impact on the lower socioeconomic constituents of Greece – as they see their wages lowered or jobs eliminated while the cost of everything rises.\(^6\) This paper will explore the impact of the Greek austerity measures through the lens of International Human Rights Law, and more specifically, economic,

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\(^{1}\) See Chrysa Leventi et al., *Modelling the Distributional Effects of Austerity Measures: The Challenges of a Comparative Perspective*, 3 (3rd GEN. CONF. OF THE INT’L MICROSIMULATION ASS’N, 2011) (explaining that the fiscal measures enacted by Greece were an explicit reform package referred to as austerity measures). Available at: http://www.scb.se/Grupp/Produkter_Tjanster/Kurser/_Dokument/IMA/Sutherland_paperIMA.pdf

\(^{2}\) See Georgios Tsoulfas, *The Impact of the European Financial Crisis on Clinical Research Within the European Union or “when Life Gives You Lemons, Make Lemonade”*, 16 IPPOKRATIA 6, 7 (2011) (discussing the compounding effects of budget cuts on healthcare and how a financial crisis environment leads to a deficit to in the healthcare sector, both by limiting access and resources).


\(^{5}\) See Leventi, *supra* note 1, at 9.

social, and cultural rights\textsuperscript{7} (hereinafter: economic rights) as recognized by the International Covenant on Economic, Social, and Cultural Rights.\textsuperscript{8,9}

Part I will endeavor to explain developing economic rights and enforcement mechanisms, and state responsibility which will be central to evaluating the issues arising out of the Greek debt crisis. Part II will summarize the economic and political environment in Greece that led into the debt crisis and how austerity measures are affecting the people of Greece. Part III will evaluate the conflicting interests in bail-out negotiations with particular attention toward international law obligations to economic rights owed by Greece as a Eurozone member, and the Troika\textsuperscript{10} as a supranational monetary monolith of three — the European Commission, the European Central Bank, and the International Monetary Fund.

**Part I: Economic Rights and State Responsibility**

*The World Stage*

Human rights are most commonly thought of in the traditional civil and political sense; however, in recent decades the international community has undergone something of a human rights enlightenment by recognizing the importance of economic rights, and calling for action to preserve these rights. This enlightenment, however, has proven to come at a great cost; the human rights violations that occurred during the Holocaust in WWII forced awareness of the need for universal human rights.\textsuperscript{11} After the war and on both sides of the pond, allied powers

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\textsuperscript{7} See Fons Coomans & Marlies Galenkamp, Economic, Social and Cultural Rights 3 (1995) (defining what constitutes economic, social and cultural rights and distinguishing between them).


\textsuperscript{10} See Gert Tinggaard Svendsen & Gunnar Lind Haase Svendsen, Handbook of Social Capital: The Troika of Sociology, Political Science and Economics 1 (2010) (explaining that “troika” is used in modern parlance to refer to a 3-member entity, and is derived from the Russian word for “threesome” and/or a sleigh drawn by three horses requiring coordination and precision of the driver to achieve the tireless efficiency of the horses) (In the context of the Greek debt crisis, the Troika refers to the European Bank, the European Commission, and the International Monetary Fund).

\textsuperscript{11} Cataclysm and World Response, Franklin and Eleanor Roosevelt Institute, http://www.udhr.org/history/overview.htm#Cataclysm and World Response (last visited April 14, 2013).
became steadfast in their resolve toward the “enthronement of human rights,” as Winston Churchill once put it.\textsuperscript{12} In 1941, President Roosevelt included this sentiment in his State of the Union address when he proclaimed four essential freedoms comprising the freedom of speech & expression, freedom of religion, freedom from want, and freedom from fear.\textsuperscript{13} Just four years later in San Francisco, what was previously mere sentiment materialized into an institution with the founding of the UN and the setting the stage for international dialogue to further human rights.\textsuperscript{14}

In early 1947 John Peters Humphries\textsuperscript{15,16} was entrusted by the UN Secretary General to draft an international bill of rights.\textsuperscript{17} Humphries, and his committee comprising – among others, Eleanor Roosevelt, came to write the Universal Declaration of Human Rights,\textsuperscript{18} adopted by the General Assembly on December 10, 1948,\textsuperscript{19} and what is now the most translated document in the world.\textsuperscript{20} Over the next 18 years, continued drafting and increased state ratification has hardened the law on economic rights.

In 1919 the Treaty of Versailles saw to the formulation of the International Labour Organization (ILO) – a moment reflected upon today as an international awakening to a constitutional conscience.\textsuperscript{21} On December 16, 1966 the General Assembly recaptured that

\begin{itemize}
\item \textsuperscript{12} Id.
\item \textsuperscript{13} \textbf{Johannes Morsink}, \textit{The Universal Declaration Of Human Rights: Origins, Drafting, And Intent} 5 (1999).
\item \textsuperscript{14} Id. at 1
\item \textsuperscript{15} See Id. (explaining that John Peter Humphrey was the UN’s Director of the Secretariat’s Division on Human Rights at the time he was tasked to write the first international bill of rights).
\item \textsuperscript{16} See Peter Andre Globensky, \textit{The Life of a Canadian Internationalist: Dr. John Peters Humphrey and the Universal Declaration of Human Rights}, 47 U. OF NEW BRUNSWICK L.J. 5, 7 (1998) (remembering Humphrey as a renaissance man, who, through adversity, remained dedicated to justice, and quoting Ronald St. John Macdonald at Humphrey’s retirement from McGill University: “undeniably one of the most distinguished international civil servants of our time”).
\item \textsuperscript{17} See Morsink, supra note 13, at 5.
\item \textsuperscript{19} See Morsink, supra note 13, at 11.
\item \textsuperscript{20} \textit{The Universal Declaration of Human Rights is the Most Universal Document in the World, The Office Of The High Commissioner For Human Rights}, http://www.ohchr.org/EN/UDHR/pages/WorldRecord.aspx (last visited April 14, 2013).
\item \textsuperscript{21} Steve Charnovitz, \textit{The emergence of democratic participation in global governance}, 10 Indiana Journal of Global Legal Studies 45, 47 (2003) (quoting Bruce Ackerman and explaining that a “constitutional moment [is] [s]uch a moment of political renewal eventuates when ‘normal politics’ gives way to ‘higher lawmakers’”).
\end{itemize}
momentum and adopted two covenants supporting the two sets of human rights, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Upon sufficient ratification in 1976, these two covenants transformed the rights found in Humphrey’s Declaration into legally binding obligations.\(^{22}\) The ICESCR does more than to just protect workers from unjust/dangerous conditions and provide for equal access to healthcare,\(^ {23}\) it serves as our international constitution on economic rights. Echoing and sometimes overlapping with the ICCPR, the ICESCR enumerates several rights including the right to work,\(^{24}\) collective labor action,\(^{25}\) social security,\(^ {26}\) protection of the family\(^ {27}\), an adequate standard of living,\(^ {28}\) access to healthcare,\(^ {29}\) education,\(^ {30}\) and the benefit of science and culture.\(^ {31}\) The UN General Assembly has since adopted additional covenants\(^ {32}\) expounding on these rights and providing clout to their respective purposes.

Post-ratification, some parties point to the language in Article 2(1)\(^ {33}\) of the ICESCR and assert that economic rights are mere aspirations, and that they do not satisfy the human rights test\(^ {34}\) because of the inherent diversity of people, states, and resources.\(^ {35}\) The more specific

\(^{22}\) PHILIP ALSTON, & RYAN GOODMAN, INTERNATIONAL HUMAN RIGHTS 277-78 (2013).


\(^{24}\) See ICESCR supra note 8, art. 6. Available at http://www.un-documents.net/icescr.htm

\(^{25}\) See ICESCR supra note 8, art. 8. Available at http://www.un-documents.net/icescr.htm

\(^{26}\) See ICESCR supra note 8, art. 9. Available at http://www.un-documents.net/icescr.htm

\(^{27}\) See ICESCR supra note 8, art. 10. Available at http://www.un-documents.net/icescr.htm

\(^{28}\) See ICESCR supra note 8, art. 11 (providing the right to adequate food, water, housing, and clothing). Available at http://www.un-documents.net/icescr.htm

\(^{29}\) See ICESCR supra note 8, art. 12. Available at http://www.un-documents.net/icescr.htm

\(^{30}\) See ICESCR supra note 8, arts. 13 & 14. Available at http://www.un-documents.net/icescr.htm

\(^{31}\) See ICESCR supra note 8, art. 15. Available at http://www.un-documents.net/icescr.htm

\(^{32}\) The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1979 and the Convention on the Rights of the Child in 1989 are both, in part, responsible for the hardening international law and exemplify the human rights enlightenment as it began to blossom through the 1980s.

\(^{33}\) See ICESCR supra note 8, art. 2(1) (providing, “Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures”). Available at http://www.un-documents.net/icescr.htm

\(^{34}\) MAURICE CRANSTON, HUMAN RIGHTS, REAL AND SUPPOSED, 50-51 (D.D. Raphael ed., 1967) (distilling that the human rights test requires rights to be fundamental, universal and justiciable, with delineated state responsibility and capacity for enforcement).

argument is that states may be limited in providing for its people and forcing international redistribution of resources within and between states – calling for a new world order of international socialism. The international community’s majority position is that in a world rich with resources, it is a fundamental injustice to deny life sustaining basics.

Despite the critics, economic rights find qualification and a module for application through substantive minimalism and justificatory minimalism. Substantive minimalism qualifies economic rights as negative liberties of the individual, for which the government has a moral and ethical imperative to protect. Justificatory minimalism stands for the proposition that human rights are a guide for a broadly shared outlook and that because they are broadly shared, they can be subject to external criticism. The result is a global society with accepted norms that endorse universal human rights outside the institution of the state. The application module provided through justificatory minimalism and protecting liberties from the concept of substantive minimalism provide a culturally sensitive framework through which economic rights pass the human rights test as fundamental, universal and justiciable, with delineated state responsibility and capacity for enforcement.

Additionally, some have argued that the two areas of human rights are inherently so intertwined that to tease them apart would create a hierarchy of rights, affording some rights

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36 See CRANSTON, supra note 34, at 33.
38 See Joshua Cohen, Minimalism about human rights: the most we can hope for?, 12 JOURNAL OF POLITICAL PHILOSOPHY 190, 192 (2004) (defining substantive minimalism as, “a position about the content of human rights and, more broadly about norms of global justice. The central idea of substantive minimalism is that human rights are confined to protections of protections of negative liberty […]”).
39 Id. (explaining justificatory minimalism refers to the “global public reason” for human rights in an “ethnically pluralistic world” while respecting the autonomous and independent reasoning of the differing groups, states, religions, and effectively subject actors to culturally sensitive external criticism).
40 See Quentin Skinner, The idea of negative liberty: philosophical and historical perspectives, in PHILOSOPHY IN HISTORY, 193, 197 (1984) (explaining liberty refers to an action available to an individual, and is theoretically is better represented when referred to it in the negative, or in other words, the freedom stems from an absence of imposition on the individual, rather than the existence of a right and therefore, the “concept of liberty is truly a negative one,” as Jeremy Bentham put it).
41 See Cohen, supra note 38, at 194.
42 Id.
greater weight than others.\textsuperscript{43} To this point, during the Cold War economic rights and civil/political rights did become even more polarized and distinct,\textsuperscript{44} but the differences between these sets of rights does not detract from their purpose codified in their respective covenants. It was during the Cold War that economic rights became synonymous with welfare state, while civil and political rights were considered privileges of those who lived in the developed world.\textsuperscript{45} Exploring how these rights were viewed, Amnesty International\textsuperscript{46} writes,

> On one side the achievement of economic, social and cultural rights was presented as requiring a political commitment to socialism. On the other, civil and political rights were portrayed as a luxury that could only be afforded once a certain level of economic development had been achieved.\textsuperscript{47}

A hierarchy of rights was forming, but the weight given to both sets of rights was little, if any – demonstrating that the resulting hierarchy mattered little, if at all. The hierarchy argument also fails to appreciate there are actual differences between rights that need to be understood if we are to construct a proper human rights regime. The argument’s perception of the relationship between international sentiment and the right is skewed; it would be a misguided practice to adhere untrue characteristics to a right to inspire its respect amongst the international community. The better process is for the international community to eventually adopt the right as is – to embrace it, then to construct an enforcement regime based on the nuances of that right. While fears about developing the hierarchy of rights came to fruition, such a development is seemingly only a step in the process toward a truer human rights institution.

In the 1980’s, this international evolutionary process was evidenced by the international community’s response to the corruption surrounding the rapid growth in economic reform programs, large infrastructure projects, and debt burdens. A small grass roots movement called

\textsuperscript{43} Id.
\textsuperscript{45} Id.
\textsuperscript{46} An international non-governmental organization that supports human rights. Information available at, https://www.amnesty.org/en/who-we-are
\textsuperscript{47} \textit{See} Amnesty International, \textit{supra} note 44, at 7.
for fiscal responsibility and allocation of budgetary resources to social services.\textsuperscript{48} The massive corruption demonstrated the need to protect economic rights, heightened awareness as to what violations look like, and reinforced the simple notion that economic rights must first be recognized\textsuperscript{49} before they can achieve their intended purpose.\textsuperscript{50}

The revitalization of the economic rights revolution that took place throughout the 1980’s was kicked-off by the United Nations in 1979 with the adoption of the Convention on the Elimination of All Forms of Discrimination Against Women\textsuperscript{51} (CEDAW), and culminated with the Convention on the Rights of the Child\textsuperscript{52} (CRC) in November 1989. The CRC was an especially momentous occasion, as the date it was opened for signatures, November 20\textsuperscript{th} 1989, was the 30\textsuperscript{th} anniversary of the Declaration of the Rights of the Child, which recognized that children needed protection.\textsuperscript{53} Both covenants, as a practical matter, reaffirm the international community’s commitment to economic rights, and provide needed recognition of economic rights to ensure legitimacy within the international community.

\textit{Roles of Responsibility}

Differences between economic rights and civil and political rights are most pronounced when trying to determine what a state’s obligations are. For civil and political rights, the state responsibility is backward-looking and it must avoid violative conduct, while for economic rights, the state must be forward-looking and proactive to prevent violations.\textsuperscript{54} The generally

\begin{itemize}
  \item \textsuperscript{48} See Amnesty International, \textit{supra} note 44, at 13.
  \item \textsuperscript{49} Recognition refers to the international community’s general acceptance of the right with a nuanced understanding of the true nature of the right.
  \item \textsuperscript{50} Purpose refers to the nature of the right that is to be protected by imbibing the states with responsibility.
  \item \textsuperscript{52} Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3. Available at http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx
  \item \textsuperscript{54} \textit{Id.}
\end{itemize}
accepted rule is that economic rights are “positive rights,” as the state has an obligation to act;\textsuperscript{55} hence the “political commitment to socialism” referred to above by Amnesty International, while civil and political rights are considered “negative rights,” and the state’s responsibility is to simply abstain from violating\textsuperscript{56} the right.\textsuperscript{57} In either case, the state has an obligation to fulfill human rights – achieved by the state being legislatively proactive, which includes the establishment of potential redress for violations.\textsuperscript{58}

In 1985, a resolution by the Economic and Social Council established the Committee on Economic, Social and Cultural Rights (hereinafter: the Committee) to monitor states compliance with the ICESCR.\textsuperscript{59} The Committee comprises geographically representative independent expert members with four year terms,\textsuperscript{60} and receives complaints and produce General Comments.\textsuperscript{61} The supervision of the member states by the Committee occurs by member states filing regular reports under guidelines.\textsuperscript{62}

Drawing on the legal and practical expertise of its members, the Committee can also assist Governments in fulfilling their obligations under the Covenant by issuing specific legislative, policy and other suggestions and recommendations such that economic, social and cultural rights are more effectively secured.\textsuperscript{63}

Specific differences between states, like resources, and general differences like ideologues, factor into what a state will be capable of, but for enforcement, these points are mooted by the

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\textsuperscript{56} See United Nations, International Human Rights Law, THE OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS, http://www.ohchr.org/en/professionalinterest/Pages/InternationalLaw.aspx (last visited April 14, 2013) (explaining that the state’s negative duty to not violate is the “respect” prong of the state’s overall obligation that is to “respect, to protect and to fulfil [sic] human rights.”)

\textsuperscript{57} See CYNTHIA SOOHOO, CATHERINE ALBISA & MARTHA F. DAVIS, BRINGING HUMAN RIGHTS HOME, 129 (2008) (comparing and contrasting positive and negative rights).

\textsuperscript{58} Id.

\textsuperscript{59} See Amnesty International, supra note 44, at 10.

\textsuperscript{60} See ALSTON, supra note 22, at 286.

\textsuperscript{61} Id.

\textsuperscript{62} Id.

\textsuperscript{63} Office of the High Commissioner for Human Rights, Fact Sheet No. 16 (Rev. 1), Committee on Economic, Social and Cultural Rights (June 1993). Available at: http://www.ohchr.org/Documents/Publications/FactSheet16rev.1en.pdf
baseline international standard that requires that the state do the best with what it has. Economic rights policies must strive to achieve minimums, not enforce maximums.\(^{64}\)

Aside from the formal proceedings of the Committee, states may find that international human rights organizations (IHROs) are also monitoring their compliance with the ICESCR.\(^{65}\) As described by Kenneth Roth,\(^{66}\)

\[\ldots\] the core of our methodology is our ability to investigate, expose, and shame. We are at our most effective when we can hold governmental (or, in some cases, nongovernmental) conduct up to a disapproving public \[\ldots\]. \[C\]larity is needed among three issues: violation, violator, and remedy.\(^{67}\)

To best effectuate the shaming process, and where an organization will have the most impact is when a government is engaged in arbitrary or discriminatory governmental conduct.\(^{68}\) Mary Robinson (former UN High Commissioner, 1997-2002) endorses Roth’s “naming and shaming” technique for IHROs to enforce state compliance, and points out that often the IHROs have an expertise and capacity that can be utilized by states.\(^{69}\) To this point Robinson writes,

Organizations such as Human Rights Watch and Physicians for Human Rights have a critical role to play in assisting countries in this process. Of course, "naming and shaming" may be quite effective when the issue is not the allocation of scarce resources between medical treatment and primary education but rather between schools, on the one hand, and unnecessary military expenditures on the other; or when the resource scarcity is the product of governmental corruption. In the latter circumstances, effective advocacy by international human rights organizations, aided by transparency, does have the potential to increase national resources devoted to health, education, and the like.\(^{70}\)

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\(^{65}\) *Id.* at 295.

\(^{66}\) Executive director of Human Rights Watch – IHRO


\(^{68}\) *Id.*


\(^{70}\) *Id.*
The dual existence of the Committee with IHROs creates a human rights regulatory scheme contextually and culturally sensitive, while universally applicable.

The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights represent the amalgamation of over 30 experts convened to clarify what violations are, and further, to determine what would be an appropriate response to the violation. These guidelines are part of the “remarkable normative development” of human rights by reducing ambiguity and setting expectations. More, the Maastricht Agreement founded the Eurozone and it is its standards that a member state must comply. Ultimately, these are the guidelines that Greece purported compliance with to gain entry and maintain membership in the Eurozone.

Part II: The Greek Debt Crisis

The Rising Action

In October 2009, the incoming Greek government discovered that the previous administration had been cooking the books to appear as though Greek fiscal policies complied with the Stability and Growth Pact of 1997, which touts fiscal responsibility, promotes a...

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73 See Alicia Ely Yamin, Not just a tragedy: Access to medications as a right under international law, 21 BU INT’L LJ 325, 336 (2003) (describing the development of the right to health within the international community)

74 Suhail Abboushi, Analysis and outlook of the Greek Financial Crisis, 7 J. OF GLOBAL MGMT. 1, 2 (2011).

75 See Michael G Arghyrou & John D. Tsoukalas, The Greek debt crisis: Likely causes, mechanics and outcomes, 4 (CARDIFF ECONOMICS WORKING PAPERS, No. E2010/3, 2010) (describing how, in October 2009, the newly elected government readjusted the previous administration’s debt-to-GDP ratio projection from 6% to more than double at 12.7%). Available at http://hdl.handle.net/10419/65833


culture of stability among member states, and forbids bailouts. In actuality, the Greek government had accumulated a massive and irresponsible amount of debt, and the global market was starting to doubt Greece’s ability to pay. The financial acrobatics of the prior Greek government coupled with the tenuous global economic environment had Greece facing a real possibility of defaulting on its sovereign debt, and when the debt crisis became too much for Greece to handle on its own, it had to make choice between leaving the Economic Monetary Union (the Eurozone), or hoping for a bailout – either way, fiscal reform was needed. In short, Greece was reckless with fiscal governance and fraudulent with accounting, and the EMU was faced with the dilemma of saving one of its own, or risk exposure to the economic contagion.

Hugely problematic to fiscal responsibility is the political structure in Greece. Based on political patronage and rent seeking rather than wealth producing activities, pervasive corruption has lead to a litany of seemingly endless economic inefficiencies. Nikolaos Karagiannis and Alexander G. Kondeas describe it in their article as, “a crony capitalist country with a disproportionately large state bureaucracy.” This political-economic system is inherently faulty and unsustainable, and has lead Greece to enact austerity measures not just in the wake of the crisis, but in the early 1990s when Greece attempted to clean up its act to gain entry into the Eurozone. In 1992, while commenting on the gross inefficiency of the Greek transit system, former minister of finance Stefanos Manos was quoted saying, “it would be cheaper for Greece to send every rail passenger to their destination by taxi.” The transit system at the time was essentially bankrupt, yet still paying higher wages than the private sector counterpart. While

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79 See Abboushi, supra note 73, at 3.
80 Distorted Greek deficit reports put Greece within compliance of the Maastricht Agreement granting Greece membership in the Eurozone in 2001, while reporting the actual deficit numbers would have precluded Greek admittance.
81 See Rossi, supra note 76, at 4.
83 Id. at 54.
85 Id.
“successful”\(^8^6\) in gaining admittance to the EMU in 2001, political patronage persisted with a surge in an underground economy that accounted for approximately 30\% of the Gross National Product.\(^8^7\) By the end of the first decade of the 21\(^{st}\) century, little had changed and the average public sector pay in Greece was about three times that of the private sector – not including the notorious and excessive bribes paid to officials.\(^8^8\)

Corrupt political atmosphere, excessive spending, and weak tax collection is an oversimplification of what lead to the debt crisis, but it is still fairly accurate and lends itself well to the international consensus that the Greek government was monetarily reckless.\(^8^9\) The Greek debt crisis was a perfect storm of low income and excessive spending, compounded by the recurring issuance of new debt to cover the ever-growing deficit.\(^9^0\) While this storm was easily identifiable to any amateur quasi-metaphor weatherman-economist, whether Greece can effectuate meaningful economic and political reform, has yet to be seen.

**The Falling Action**

The economic partnering of the EU’s member states including Greece, referred to as the Eurozone, makes it so Greek problems could easily become EU problems.\(^9^1\) The contagion factor was increasingly cause for concern and was becoming evident throughout the Eurozone. To this point Rossi writes,

Greece has served to spread the risk to other weak and indebted euro area economies such as Portugal, Italy and Spain. Together with Greece, these countries have been given the rather unflattering acronym of PIGS (or PIIGS if both Ireland and Italy are included)[…]. Unsurprisingly, the market reaction to Greece’s debt dilemma has caused some degree of collateral damage to these

\(^8^6\) See Markus Rotherhöfer, Greek Debt Crisis: Background and Possible Improvements 3 (2011) (explaining that the standards for admittance to the EMU were not actually met, and that entry to the EMU was premised on fraudulent information provided by the Greek government).

\(^8^7\) Id. at 5.

\(^8^8\) Id.


\(^9^0\) See Rotherhöfer, supra note 86, at 7.

\(^9^1\) See Akram, supra note 89, at 124-25.
other economies, especially given the fear that a worsening Greek situation could lead to major fiscal crises among the other PIIGS.\textsuperscript{92}

Knowing this, the EU Council had admonished Greece in 2009 for irresponsible fiscal policies, and in 2010 the Council called for Greece to deal with the surmounting deficit by 2012.\textsuperscript{93} As a member state of the Eurozone, Greece had only once meet the minimum deficit target as outlined in the EU’s Stability and Growth Pact of 1997, and its debt-to-GDP ratio ranked among the highest in the world.\textsuperscript{94}

On May 2, 2010, concerns about the Greek debt crisis permeating the rest of the Eurozone led to the ratification of the Memorandum of Economic and Financial Policies that extended loans to Greece at below market interest rates.\textsuperscript{95} Through this instrument, the European Commission (EC), the International Monetary Fund (IMF), and the European Central Bank (ECB), collectively called the “Troika,” collectively bailed out Greece conditioned on the implementation of austerity measures.\textsuperscript{96} The crux of these austerity measures had Greece reduce its surmounting deficit by raising taxes on income, consumer and luxury items, and on property and real estate, while reducing expenses like public employee salaries and pensions, public works, and education.\textsuperscript{97}

While the overarching goal of the austerity measures is to stabilize the Greek economy and protect the EMU, realistically, Greece can expect a further recession based on lower demand of its goods and services.\textsuperscript{98} The forced reduction of public expenditures inherently limits resources and because their allocation is dictated by population rather than income, urban areas stand to gain at the expense of the more needy rural areas.\textsuperscript{99} The reduction in public

\begin{itemize}
\item \textsuperscript{92} See Rossi, \textit{supra} note 76, at 5.
\item \textsuperscript{94} See Rossi, \textit{supra} note 76, at 5.
\item \textsuperscript{96} \textit{Id.}
\item \textsuperscript{97} Georgios P.Kouretas & Prodromos Vlamis, \textit{The Greek crisis: Causes and implications}, 57 PANOECONOMICUS 391, 397 (2010).
\item \textsuperscript{98} \textit{Id.} at 398.
\item \textsuperscript{99} Vassilis Monastiriotis, \textit{Making geographical sense of the Greek austerity measures: compositional effects and long-run implications}, 4 CAMBRIDGE J. OF REGIONS, ECON. & SOC’Y 323, 327-28 (2011).
\end{itemize}
expenditures translates to fewer social services, and has a compounding effect on those who were needy prior to the crisis, or have become part of the needy class through unemployment spurred by the measures.\textsuperscript{100} An individual who loses his job due to the austerity measures can reasonably expect mal health effects arising out of the stress associated with losing his job,\textsuperscript{101} and yet will be less able or likely to obtain help due to the reduction in the healthcare sector because of the austerity measures that established the need via the initial laying-off of the individual.

In the same vein, the public education system, which was so inefficiently run before the crisis that citizens almost uniformly supplemented it with the private sector, will see a further reduction in its resources during a time citizens will be less likely to afford the private sector supplement they grown accustomed to utilizing. Additionally, the cessation of higher education tax credits serves as a disincentive to the institution of education,\textsuperscript{102} and will depreciate the human capital of Greece. As evidenced by the labor, education, and healthcare sectors, by reducing expenses and increasing taxes, austerity measures are reducing resources and increasing need.

**Part III: The Impact of the Greek Austerity Measures on Economic Rights**

**The Conflict**

Leading up to debt crisis, Greek fiscal policies were anything but sound. The IMF was particularly in awe when they observed that Greek accounting practices amounted to nothing more than to know how much money was available, and no process for tracking the spending of that money.\textsuperscript{103} It was as if a child with no concept of money was responsible for the nation’s finances. Upon discovery of this, Greece was properly chided, then, as a warden of the

\textsuperscript{100} Id.


\textsuperscript{102} See Leventi, *supra* note 1, at 7.

\textsuperscript{103} MICHAEL LEWIS, BOOMERANG: TRAVELS IN THE NEW THIRD WORLD 44 (Norton 2012).
Eurozone, *directed* to open a credit card with the IMF. The arguments supporting the austerity measures endorse a greater good sentiment, while the arguments against the austerity measures point to the horizontal cuts as capriciously conceived and arbitrarily applied. Neither argument seems concerned with holding the previous Greek administration accountable for the reckless governance that brought on the crisis.

Unable to effect fiscal reform on its own, on May 2, 2010 Greece requested a rescue package from the Troika – a 3-year loan guarantee of €110 billion.104 Because the Troika was not commissioned for economic rights, but rather for the sole purpose to achieve fiscal stability, hard and fast numbers to deal with the crisis consumed the Troika’s attention.105 The lender Troika was reasonably concerned with the unsustainable fiscal policies of the borrower Greece and so required implementing austerity measures forcing Greece to bear the cost of insuring the bailout loans. The mass injection of capital stayed Greek default for the then immediate future, but the negative impact on the economic rights of Greek citizens was felt immediately as well. Unlike the €110 billion, the arbitrary and potentially discriminatory austerity measures have some staying power – leaving the economic rights of the Greek population to languish.

Despite working collectively to achieve fiscal stability in the Eurozone, the EC, ECB, and the IMF each have its own responsibilities and interests, which are antagonistic the finesse required for a properly driven traditional Russian troika.106 The EC and ECB are institutions of the EU and are bound by IHRL in as much as observer status obligates the EU. The EC and ECB are extensions of the EU whose goals and duties relate to the whole Eurozone, rather than any one state. In the same vein, when a state becomes a member to the Eurozone, it is resigning fiscal sovereignty to the supranational entity. Through their inclusion, states partially unburden themselves of the economic rights obligations associated with constructing national economic policy. Relinquished fiscal sovereignties from the states are amassed in the Eurozone, but despite its sovereign surrogacy, it has diverging interests from its member states, and it has

104 See Abboushi, *supra* note 74, at 1-8.
diminished responsibilities to economic rights. States reduce economic rights obligations through an international bureaucracy, similar to how collateralized debt obligations reduce risk though asset securitization.\(^{107}\)

As a member state of the United Nations and as a party to the ICESCR, Greece must support economic rights. The Troika however, comprised entities none of which can be a member state of the United Nations and party to the ICESCR. The three constituting the Troika, the EU, European Bank, and IMF are non-state and non-UN-bound actors with diverging interests and responsibilities. While the EU has been granted observer status,\(^{108}\) it is only truly represented by its member states’ concurrent membership in the UN. Greece is the only party during bailout/austerity negotiations with any real responsibility to support economic rights and as the country that brought on the catastrophe and now finds itself in crisis, Greece has little bargaining power compared to its Troika counterpart. For prevailing rate loans – the bailout, Greece would impose austerity and trade economic rights for economic stability.

Created by agreement among member states, the IMF “is, and is required to function as, an independent international organization.”\(^{109}\) On its website the IMF describes itself in the About the IMF section as, “an organization of 188 countries, working to foster global monetary cooperation, secure financial stability, facilitate international trade, promote high employment and sustainable economic growth, and reduce poverty around the world.”\(^{110}\) Appearing neither in its website, nor in its Articles of Agreement, is any language obligating the IMF to human rights. Originally, the IMF functioned to provide stability with short term financing to member

\(^{107}\) Sellers of debt are able to diversify out of risk through the bundling and resale of debt obligations, and states are able to diversify out of responsibility tied to their sovereignty – similarly through a bundling process. Keeping with the parallelism, CDOs have been criticized as not accounting for systematic risk, thereby attributing to the financial crisis that began in 2008; states should be criticized for not accounting for economic rights obligations, thereby attributing to human rights violations.

\(^{108}\) A list of intergovernmental organizations that have been granted observer status is available at http://www.un.org/en/members/integovorg.shtml


states, and created gravitas for its member states to be amenable to the current capital system.\textsuperscript{111} When the IMF was formed in 1945, the capital structure at the time was a par value system that limited the IMF’s reach into domestic policies for adjustment, leaving the IMF with primarily macroeconomic considerations – such as government debt and budget deficits.\textsuperscript{112} The IMF’s secondary concern as to how the member states achieved success on macroeconomic issues was mooted because the IMF could do nothing anyway,\textsuperscript{113} nor would it care to unless it was effecting macroeconomic issues.\textsuperscript{114}

The replacement of the par value system with the market-orientated exchange rate system in 1971 made it so the currency value of member states is subject to those economic considerations once considered wholly domestic.\textsuperscript{115} As a result of the new capital structure and a shift from industrialized state to developing state clientele, the IMF has been increasingly concerned and involved in domestic policies of those member states, and member states have been increasingly concerned and critical of the IMFs meddling in domestic affairs.\textsuperscript{116} Daniel Bradlow explains the reality of this tension in his article when he points out,

\begin{quote}
If the State has a healthy economy or is rich enough that it is unlikely to need the resources of the IMF, it is free to accept or reject the IMF’s views. On the other hand, poor States or those States that are using or expect to use the IMF’s financing facilities can not treat the IMF’s advice so dispassionately. Only at a theoretical level do these States have the same capacity as the rich Member States to accept or reject the IMF’s advice. Consequently, the IMF tends to have much greater influence over the policies of poorer States than over richer States.\textsuperscript{117}
\end{quote}

Bradlow further contends that this dynamic between the IMF and its member states has been at the expense of human rights.\textsuperscript{118} Because the IMF is primarily concerned with monetary policy

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\item \textsuperscript{112} \textit{Id.} at 68-69.
\item \textsuperscript{113} See Martin Feldstein, \textit{Refocusing the IMF}, 77 FOREIGN AFFAIRS - NEW YORK 20, supra (1998) (explaining that the IMF should provide “limited financial assistance necessary to deal with a funding crisis” and “[i]t should not use the opportunity to impose other economic changes that, however helpful they may be, are not necessary to deal with the balance-of-payments problem and are the proper responsibility of the country’s own political system”).
\item \textsuperscript{114} \textit{Id.}
\item \textsuperscript{115} See Bradlow, supra note 111, at 69-70.
\item \textsuperscript{116} \textit{Id.} at 71.
\item \textsuperscript{117} \textit{Id.} at 70.
\item \textsuperscript{118} \textit{Id.} at 72.
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and operates with short-term horizons, long-term considerations such as human rights remain outside the wheelhouse of the IMF. 119, 120

The IMF owes a defined duty to its member states as oppose to the abstract moral and ethical responsibility to the citizens of a violating state – if imposing sanctions on a state because of human rights could reasonably have adverse effects on financials and subsequently the IMF would be in breach of its fiduciary duty if it exercised power of the purse inappropriately. To this point Bradlow writes,

[A]s the manager of the international monetary system, the IMF must balance its responsibilities to the citizens of the violating State against its responsibilities to the other stakeholders in the international monetary system. Consequently, it cannot easily impose sanctions on a State that violates human rights if this would have a substantial adverse effect on the international monetary system. 121

The result is that the IMF is more concerned with loan repayment, than how Greece will cope with implementing austerity measures. To the IMF, the austerity measures are nothing more than greater assurance of repayment, 122 and the human rights implications are a domestic issue to be contemplated solely by Greece. However, facing default while in the midst of a debt crisis, Greek options were little else than to abide by the terms set forth by the IMF/Troika. The IMF’s myopic perspective coupled with Greece’s lack of options creates a compound threat to the economic rights of the Greek people. 123

In a somewhat obsequious Letter of Intent from Greece to the IMF dated December 21, 2012, 124 Greece makes note of several fiscal policy advancements in the wake of the crisis, and their continued resolve to lessening the deficit via austerity measures. Among those

119 See Feldstein, supra note 113 (explaining, “A nation’s desperate need for short-term financial help does not give the IMF the moral right to substitute its technical judgments for the outcomes of the nation’s political process”). 
120 See Bradlow, supra note 111, at 72.
121 Id. at 73.
122 Kevin Featherstone, The financial institutions overseeing the Greek bailouts are ignoring the domestic impacts of austerity measures, LSE EUROPEAN POLITICS AND POLICY (EUROPP) BLOG (April 7, 2012), http://blogs.lse.ac.uk/europppblog/2012/04/07/greece-bank-bailouts/ 
123 Id.
“advancements” includes the strengthening of the banking system, tightening of fiscal policies, and increasing tax participation.125 While fiscal reform should be embraced, some have argued that the strengthening of the banking system and tightening of fiscal policies does little for Geeks as an underground and illicit economy persists and a tax hikes add to the already rampant tax evasion problem.126 Reform premised solely on international monetary concerns without addressing the impact on human rights domestically is proving to be counterproductive to society’s originating purpose for these international institutions.

Resolution?

The UN is the premier institution associated with protecting and promoting human rights. Using its “deep pool of ‘social capital’”127 […] to induce compliance by states,“128 the UN serves to ensure state compliance with human rights. To achieve this, the UN furnishes independent experts to evaluate conduct in specialized fields (e.g. finance), and supports non-governmental organizations (NGO) promoting awareness and recognizing violations.

Article 71 of the UN Charter provides NGOs consultative arrangements with the Economic and Social Council, but nothing more in the way of exercisable power.129 Since 1945, these consultative arrangements have expanded greatly,130 but while NGOs are having an increased role in many areas of international law, the risk and responsibility associated with adopting proposals still rests solely on member states. This allocation of responsibility makes

125 Id.
129 See U.N. Charter art. 71, para. 1 (providing, “The Economic and Social Council may make suitable arrangements for consultation with non-governmental organizations which are concerned with matters within its competence[…]”).
130 Peter Willetts, From Consultative arrangements to partnership: The changing status of NGOs in diplomacy at the UN, 6 GLOBAL GOVERNANCE 191, 191 (2000).
sense in that member states have decision-making power, but it fails to consider the potential strong-arming of a vulnerable and distressed member states by outside forces.  

In scrutinizing the negotiations between Greece and the Troika, International human rights organizations (IHRO) are actively looking for arbitrary or discriminatory conduct to expose human rights violations. If the IHRO can show an actor is contributing to an economic rights shortfall via arbitrary or discriminatory conduct, it can easily justify the shaming process to achieve the remedy of reversing the violator’s conduct. This process of social shaming is really quite primal, and still very effective in enforcing and developing societal norms. On the topics of recession, austerity measures, and the ICESCR, IHRO Amnesty International writes,

Governments must continue to protect human rights during a recession, [...] as vulnerable communities may be especially at risk. Austerity measures [...] may be necessary but the government must balance this with the need to protect human rights. It must ensure these measures are non-discriminatory, do not disproportionately undermine existing rights, do not hit the most vulnerable and disadvantaged in society the hardest and do not drive people further into poverty.

Interestingly enough, a search of Amnesty International’s publications via their website yields little to nothing about Greek austerity measures impacting economic rights – commentaries center on civil and political rights violations perpetrated by the police during protests, rather than the economic rights violations perpetrated by the austerity measures being protested. Besides IHROs, the UN has mandated an independent expert to evaluate compliance with economic

131 Greece being the distressed state, and the Troika being the outside force.
132 NGOs that focus on international human rights issues.
133 See Roth, supra note 66, at 69.
134 Id.
135 See PAUL GILBERT & BERNICE ANDREWS, SHAME: INTERPERSONAL BEHAVIOR, PSYCHOPATHOLOGY, AND CULTURE 99 (Oxford U. Press 1998) (describing how shame is social and its presence in primates indicates that shame is not just a human construct); See also Fine, supra note 125 (stirring the question whether using social capital is essentially the same process as shaming).
136 See Amnesty International, supra note 46.
137 Mandate of the independent expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights
In the Greek bailout, the independent expert’s mandate is primarily concerned with how foreign debt and economic policies interact with economic rights and working with all parties and nations to support and protect economic rights. The UN’s independent expert is tasked to evaluate the conduct of such entities as the Troika, but can do little more than offer his endorsement, or not.

Conclusion

“Well begun is half done”

- Aristotle (384 - 322 BC)

In June 2011, the UN’s independent expert on rights and foreign debt, Cephas Lumina, warned that further austerity would “have a serious impact on basic social services and therefore the enjoyment of human rights by the Greek people, particularly the most vulnerable sectors of the population such as the poor, elderly, unemployed and persons with disabilities.” Despite the warning, the Troika’s terms remained austere and called for 150,000 jobs to be cut from the public sector over the next 10 years without addressing any of the systematic and pervasive problems giving rise to the crisis.

While Greece adopts economic stabilization as endorsed and directed by the IMF, the Greek healthcare, labor, and education sectors all continue to suffer as cuts persist. The

Human Rights Council Resolution 7/4. March 27, 2008. Available at:


140 Kevin Featherstone, The Greek government’s target of zero public sector layoffs and the troika’s of 150,000 over ten years are both ultimately self-defeating, EUROPEAN POLITICS AND POLICY (EUROPP) BLOG (July 6, 2012), http://blogs.lse.ac.uk/europppblog/2012/07/06/troika-greece-targets-self-defeating/

ambiguity surrounding state responsibility, questions as to transferability of sovereignty, and the novelty of Eurozone has permitted states to outsource their economic sovereignty to a non-state actor with economic rights vanishing in the transfer. Where the state had a burden to be proactive in supporting economic rights, the unbridled Troika owes no such duty. The apportionment of fiscal sovereignty should transfer with it the state’s responsibilities to support economic rights to ensure adherence to international law.

The international community’s growing majority has been increasingly progressive by recognizing and supporting economic rights, but more is required than additional monitoring. When human rights violations are brought up, the typical thought goes to torture or the silencing of a political voice, and not so much access to water or healthcare. Changing how we think about economic rights and placing them on the same level as civil and political rights is essential to ensuring violations are recognized and dealt with when they occur. Concerns about resource distribution, economic burdens, and custom diversification are misguided detractors of economic rights that quell the progress of international human rights law.

Irrefutably, economic rights should not be evaded through loop-holes like taxes. When, with Frankensteinian hubris, states dare to create an artificial system and imbue it with fiscal sovereignty, how we assemble its constituent parts to ensure its compliant conduct is vital to the evolution of its more perfect form. That is to say, when we create an international entity and pack it full of piecemealed sovereignties, the responsibilities that existed for those sovereignties...

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143 See Peter Todd & Gregory Werner, Frankensteinian methods for evolutionary music, in MUSICAL NETWORKS: PARALLEL DISTRIBUTED PERCEPTION AND PERFORMANCE 313 (1999) (providing the transferable phrasing about the state’s dissipation of responsibility to economic rights through participation in the Eurozone – the specific quotes are, “Victor Frankenstein sought to create an intelligent being imbued with the rules of civilized human conduct, who could further learn how to behave and possibly even evolve through successive generations into a more perfect form,” and “But when, with Frankensteinian hubris, we dare to create an artificial system and imbue it with the spark of musical invention in our stead, how are we to assemble its constituent parts to ensure that its behavior will be on the whole pleasing and majestic […].”)

should likewise be incorporated into that newly formed entity to ensure that the responsibility is not lost or diminished. In institutionalizing expert specialization\textsuperscript{144} on particular topics, we have lost our ability to see the big picture. It is as if we asked an expert to analyze the roots of trees, another to analyze leaves of tree, and another - the bark of trees, and yet we failed to account for the tree as a whole.

The ICESCR makes it clear that states have a duty to be proactive in supporting economic rights. The questions then becomes, can states legitimately honor this obligation if they outsource their fiscal sovereignty? To answer this question in the affirmative, we must first be certain that states are not surrendering their human rights duties or positioning them as to be ignored for the pressing concerns of the monetary super powers that be. As the system stands now, there is no protection to this apparent and likely acquiescence of human rights obligations by the state.

While economic, social and cultural rights (economic rights) are to be supported just as fervently as civil and political rights, the reality is that they are not. The Greek debt crisis and resulting austerity measures demonstrate how a growing world economy is having an increasingly large impact on economic rights. Greek membership in the Eurozone is a relinquishment of its fiscal sovereignty; when times are good, a member-state must simply comply with the Eurozone’s standards, but when there is a financial crisis and economic rights are most vulnerable, the in-crisis member-state must adopt fiscal policies and austerity measures as the Eurozone sees fit. To the detriment of the economic rights of the Greek people, the Eurozone has divergent interests and responsibilities. With less access to healthcare and education, austerity measures make it harder for things to get better. With more unemployment and taxes, austerity measures make it easier for things to get worse.

\textsuperscript{144} For example, the IMF is hyper-focused on financials to the detriment of other areas of international interest it purports to endorse. More monetary efficiency does not necessarily favor human rights, and in fact, has great potential to severely undermine the human rights agenda; \textit{See IMF, supra} note 10 (explaining the goals of the IMF).
Through the transfer of fiscal sovereignty the state becomes unencumbered by the economic rights obligations associated with enacting fiscal policy, and because supranational institutions like the Eurozone and the International Monetary Fund have a burden less than states, a gap forms and economic rights become marginalized. States treat economic, social, and cultural rights obligations similar to how businesses treat risk – that is, states seek to reduce their obligations like businesses seek to reduce their risk. As a result, economic rights continue to be the redheaded-stepchild of human rights, and only the most apparent human rights violations of the civil and political nature captivate the international community. International human rights have made great progress within the past 70 years – namely with regards to civil and political rights, but the human rights enlightenment is doomed to stall unless both sets of rights are respected and developed.

*Dues ex machina*\(^{145}\)

As evidenced by the development of human rights post WWII, there is an increasing awareness of the need to protect human rights. A higher social consciousness is developing and it is much more than just accepting cultural differences – it is about protecting them. The exceedingly rapid growth of a complicated world economy is progressive and impressive in its own right, and while the future should be embraced, human rights need to be a part of it. Human rights violations can be more easily recognized and scrutinized through a better society-at-large understanding of what a supranational economy is and what it entails - independent experts, NGOs, IHROs, and the like will find more traction in their leveraging of social capital. To properly protect against violations, it is imperative for the institution of international human rights to support supranational human rights.

\(^{145}\) Latin for "god from the machine," it is a plot device used in Greek comedy plays, whereby a seemingly unsolvable problem is suddenly resolved. Typically a large contraption would be wheeled onto stage, perform its magic, and everything would be right with the world. For this paper's purpose, the advent of supranational human rights serves as our machine.