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Book Review

Broke, USA: From Pawnshops to Poverty, Inc. - How the Poor Became Big Business, by Gary Rivlin

Gary Rivlin’s Broke, USA 1 tells the story of the birth, growth, and flourishing of fringe lending, the business of extending credit to the working poor. Beginning in the 1980s, and accelerating in the 1990s and 2000s, 2 fringe lenders sprung up in gas stations 3 and pawnshops 4 across America, and by loaning small sums at high interest rates, ultimately created a multi-billion dollar consort to CitiBank, Bank of America, and other major financial institutions. While payday outlets, rent-to-own shops, and check cashers are now fixtures of the urban landscape, this was not always so. Through interviews with the entrepreneurs behind one of the fastest growing industries of the last twenty years, Rivlin gives readers a terrifying glimpse into the origins of what Rivlin dubs “Poverty, Inc.” 5 Rivlin is particularly fascinated by the de facto villain of the book, Allan Jones, the father of the payday loan industry. He also introduces us to the people who made fringe lending a success, namely, the working poor, many of whom become ensnared in loans whose terms are outrageously unfavorable. Their stories read like parables of financial mismanagement. Lillie Mae Starr, a retired factory worker, is sold a home loan with a 23.3% interest rate and comes to owe $63,000 on an initial loan of $5,000. 6 David, a retired General Motors worker, spends almost all of his modest pension juggling payday loans from seven different stores. 7 In these and other

1. GARY RIVLIN, BROKE, USA: FROM PAWNSHOPS TO POVERTY, INC. – HOW THE WORKING POOR BECAME BIG BUSINESS (2010).
2. Id. at 25-27.
3. Id. at 61.
4. See id. at 227.
5. Rivlin looks at all of these industries and sees them as part of the same problem. Rivlin devotes the most substantial amount of time, however, to the payday lender, the business that makes the rest of Poverty, Inc. seem “pint-sized.” Id. at 27. The payday loan, writes Rivlin, “is at once more pervasive than any of its scruff, low-rent cousins and far more controversial.” Id.
6. As Broke, USA focuses so many of its pages on the cash advance business, we will also focus our review on this industry.
7. Id. at 43-46.
8. Id. at 195.
cases, the consumers of fringe lending—often elderly, frequently minority, always poor—sign up for loans it is difficult to imagine a reasonable person (or, at least, a person who is not extremely desperate) agreeing to.

Rivlin’s book leaves one with more questions than answers: why, the reader wonders, do people agree to such a short-term loan with a 391% annual percentage rate (“APR”)? How will people who cannot live without a payday advance or a tax refund today be able to return these loans on top of shocking amounts of interest tomorrow? And perhaps most importantly: how can this be legal?

To answer the last question first: many of the most shocking loans in Broke, USA involve practices that are undeniably illegal (such as a 70-year-old being sold an insurance policy for people 65 and under), but to focus on the cases of illicit behavior is to miss the point. As Rivlin realizes, the more pressing question is whether payday and fringe lending, even in their “best” forms, ought to be reigned in and regulated. To be sure, by providing credit to those whom traditional banks have left behind, fringe lenders are meeting a widespread need. From the point of view of the lenders, fringe loans are a product for which there is near limitless demand. But from the point of view of the public advocacy lawyers and community activists who also populate Rivlin’s book—as well as that of Rivlin himself—fringe lenders strip equity from homes, chip away at monthly paychecks, and siphon off tax refunds (like the Earned Income Tax Credit) that are meant to help the working poor. According to this view, fringe lenders have been successful precisely because they are totally unconscionable.

The fight between fringe lenders and their opponents is really a fight over how to provide necessary financial services to low-income individuals while protecting them from predatory lending. This paradox is evident in Rivlin’s chapter on Dean Lovelace, a Dayton City Commissioner and an early critic of payday lending. After learning that his niece is trapped in a payday loan, Lovelace decides to hold a series of community meetings in Dayton to see how his constituents feel about payday lenders. Many of the residents tell stories—much like his niece’s—about how they borrowed initially to “bridge a gap” only to see the gap get wider and wider. Suriffa Rice, a home health-care worker, stands up and asks a question that takes Lovelace—and Rivlin—by surprise: “‘I can’t go to my mama,’ Rice said. ‘I can’t go to a bank. I can’t go to my church. Where I am supposed to go if I don’t have payday [loans] anymore?’” Lovelace confesses that he does not “have much of an answer for her,” and unfortunately Rivlin does not

8. Id. at 220.
9. Id. at 17.
10. See, e.g. id. at 22 (noting that the check cashing business has flourished because “[t]he banks abandoned lower-income neighborhoods . . .”).
11. See, e.g., id. at 312 (relating the “the exact moment when my view started to harden in opposition to the payday loan”).
12. Id. at 130.
13. Id.
14. Id.
have much of an answer for us, either.

To be fair, Rivlin’s project is journalistic. He aims to highlight the intractable nature of the problems surrounding payday and other types of fringe lending, and over the course of the story he speaks with economists, lawyers, and policy experts who propose various remedies. These include loan regulation—through caps on interest rates and hidden fees—and stricter disclosure standards—as well as more credit unions loaning to low-income communities. While Rivlin does not adjudicate between the proposals, after reading Rivlin’s book it is hard to deny that one option — letting fringe lenders compete in an unregulated free market for customers like Suriffa Rice—has spectacularly failed. Indeed, the failure of competition to drive down the rates of payday and other fringe loans is an economic paradox at the heart of Rivlin’s story. There are some products discussed by Rivlin, such as the all-too-often unnecessary refinance (or “refi”) loans sold door to door, where competition may well fail to lower prices. As Ian Ayres has explained in the context of car dealerships, “[i]f a consumer’s cost of searching at more than one dealership is prohibitively expensive, the dealership may realize that, as far as the consumer is concerned, it has a virtual monopoly.” Ayres famously calls a seller’s “search for consumers who are willing to pay a high markup for whatever reason” — be it lack of information, aversion to bargaining, etc. — the “search for suckers.” If the door-to-door refi lender can convince a person to take out a loan, he may have his customer in a perfect sucker’s market, especially because predatory refi salesmen, as Rivlin’s book shows, target poor and elderly people.

A sucker’s market might explain certain phenomena, such as refi loans. In addition, other types of predatory loans may have supracompetitive prices because the nature of certain lending industries allows them to compete on something other than price; research cited by Rivlin indicates, for instance, that many credit card owners are not “price sensitive but instead [are] preoccupied with the minimum payment they need to make each month.”

Be that as it may, given that many of the neighborhoods that Rivlin
describes have payday stores on nearly every block, it is difficult to understand why these stores would not be competing with each other on the interest rates of their loans. One answer might be that fringe lenders are engaging in monopolistic behavior. For several reasons, however, successful monopolies are unlikely in this industry. Rivlin’s story about James Eaton, a payday lending pioneer who started up his store in a shack, indicates just how low entry costs are for this business. Moreover, there are simply too many competitors in the industry to make concerted activity feasible.

The potential failure of the market for fringe lending leads to another, perhaps more central question: whether extending credit to the poor ought to be left to the market in the first place. After reading Broke, USA, it is hard to believe that a competitive market, even a properly functioning market, is the right venue for fringe lending. Consider the fact that fringe loans are, according to the private lenders themselves, a valuable means for allowing low-income people to secure money during emergencies. As former football pro turned payday store owner Willie Green tells Rivlin, payday loans are designed for the times when “God forbid, an emergency comes up where the refrigerator goes out or the child needs a doctor.”

On a minimum-wage income or less the next financial emergency is always looming. Taking fringe lenders at their word, fringe lending is at the very least a form of price gouging. As Rivlin demonstrates, however, fringe lenders often push unwanted and unneeded credit onto their customers. This is to be expected however. In a competitive market, fringe lenders will not be content with serving customers who are in the midst of a genuine emergency, especially since many of these companies are public and have shareholders who demand aggressive annual growth. The problem is analogous to the fee-for-services model in health care: in both industries the financial incentives of the sellers run contrary to the well-being of their customers and of society as a whole. Thus, it comes as no surprise that Chris Browning, a former Check ‘n Go store manager, paints a picture of the payday loan that has little in common with the “emergency”

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23. See id. at 127 (quoting one payday insider explaining that, by 2001, the business had become “unbelievably competitive . . . It was literally a race from space to space.”); see also id. at 193-94 (noting that, from a certain Check n’ Go payday store profiled by Rivlin, one “could see the Advance America that had opened directly across the street in 2006. Cashland has leased a storefront a few doors down . . . in 2003 and a fourth store called Quick Cash opened in 2005.”).
24. Id. at 61.
25. See ROGER D. BLAIR & DAVID L. KASERMAN, ANTITRUST ECONOMICS 144 (1985) (noting that cheating within a cartel—and by extension, the eventual demise of a cartel—is more likely the more firms there are).
26. RIVLIN, supra note 1, at 231.
27. See SHANNON BROWNLEE, OVERTREATED: WHY TOO MUCH MEDICINE IS MAKING US SICKER AND POORER 5, 40 (2007) (explaining that America “spend[s] between one fifth and one third of its health care dollars . . . on care that does nothing to improve our health” and that this problem is connected to “[f]ee-for-service reimbursement, still the dominant form of payment in the United States, make most physicians pieceworkers; they are paid for how much they do, not how well they care for patients.”).
product described by Green. According to Browning, as a store manager she was under constant pressure to increase the number of loans she made, and the corporation placed special emphasis on turning occasional customers, those who only came in when the refrigerator broke, into regulars. Browning explains that each and every morning she received a list of customers who had not been in the store in sixty days. “We were supposed to call every person on that list and then send them a letter. And that person kept showing up on your reports until they came back in . . . . As far as I was personally concerned, we were being told to harass people until they walked back in the door . . . .”28

Store managers who lured back a large percentage of these infrequent borrowers received perks, and those whose “customer reactivation rate” fell too low were browbeaten.29 Additionally, Browning describes the corporation’s policy of pressuring customers to borrow the maximum amount at all times.30 Given the focus the industry seems to put on bringing “loyal” customers back into the store, it is perhaps no surprise that customers who take out twelve or more payday loans a year—and not the customers coming in for the occasional emergency loan—appear to account for over half of the payday lending industry’s profit.31

There is no question that, given the difficulty working class people have getting a traditional bank loan, the service payday lenders provide to the working poor is an essential one. As one payday advocate explains to Rivlin, “Fundamentally you have an entire sector of the population, whether people like it or not, living outside the American banking system.”32 If the market solution is inadequate, what are the alternatives? Rivlin hints that credit unions might be able to fill some of this need with so-called “stretch pay loans.”33 For instance, according to CFSA, a New Orleans credit union is able to give its customers up to $500 of open-ended credit for a $4 weekly fee and a 12% APR.34

Although Rivlin might have further fleshed out these and other alternatives, he presents a provocative image of the world of predatory lending. Rivlin’s work leaves us somewhat perplexed about the best ways to reform payday-lending, but it leaves no doubt in the reader’s mind that something needs to change. This is enough to make Rivlin’s project a worthwhile one. Broke, USA not only describes the growth of Poverty, Inc., but also gives a thorough account of the state of the political and legal battle

28. RIVLIN, supra note 1, at 192-93.
29. Id.
30. Id. at 193.
31. Id. at 231 (explaining that “[i]n Colorado, for instance . . . customers taking out twelve or more loans in a year generated 65 percent of the industry’s revenues in the state. Other states reported similar findings . . . .”).
32. Id. at 280.
33. Id. at 130.
over the future of fringe lending. Though the book gives accounts of several major victories for consumer advocates, Rivlin intimates pessimism about the ability of public interest lawyers and community activists to bring down interest rates on payday loans. At one point, Rivlin is speaking with Bill Brennan, a legendary lawyer from Atlanta Legal Aid. Brennan’s office is littered with awards, but these, writes Rivlin, mostly make him crestfallen: “I find all the awards discouraging,” [Brennan] said. For Brennan they served as periodic reminders of how hard they had worked and how little things had changed. “You work on something for twenty years,” he said, shaking his head, “and it’s been worse than it’s ever been.”

In other words: business is booming.

35. Id. at 59.
Book Review

Freedom Is Not Enough: The War on Poverty and The Civil Rights Movement in Texas,  
by William S. Clayson

Publisher: University of Texas Press (2010)  
Price: $55.00  
Reviewer: Nicolas Y. Riley

In many ways, the grand ambitions that characterized Lyndon B. Johnson’s War on Poverty during the 1960s mirrored those of the civil rights movement. Federal antipoverty officials took their cues from contemporary civil rights leaders and, often, sought to emulate their work. Moreover, many civil rights leaders themselves viewed their own efforts to combat racial inequality as inextricably linked to a broader struggle for increased economic opportunity. Yet, despite these common aspirations, LBJ’s War on Poverty ultimately left behind a very different – and much less celebrated – historical legacy than did the civil rights movement.

In his recent book, Freedom Is Not Enough: The War on Poverty and The Civil Rights Movement in Texas, William S. Clayson sheds new light on the historical relationship between these contemporaneous campaigns for social justice. He reexamines the much-maligned history of the War on Poverty by exploring its often-overlooked connections to black and Latino civil rights activists during the late 1960s. While Clayson’s account fails to seriously address this history’s impact on contemporary antipoverty

1. In 1963, John Lewis, then the leader of the Student Nonviolent Coordinating Committee, criticized the Kennedy Administration for failing to tackle poverty with the same enthusiasm with which it sought to address civil rights. At the 1963 March on Washington, he asked, “[w]hat is in [President Kennedy’s civil rights bill] that will protect the homeless and starving people of this nation?” Frances Fox Piven & Richard A. Cloward, Poor People’s Movements: Why They Succeed, How They Fail 256 (1977).

2. In his final State of the Union address, President Reagan famously captured prevailing popular sentiment towards LBJ’s Great Society antipoverty programs: “My friends, some years ago, the Federal Government declared war on poverty, and poverty won.” President Ronald Reagan, Address Before a Joint Session of Congress on the State of the Union (Jan. 25, 1988), in 1 PUB. PAPERS 87 (Jan. 25, 1988).

programs, it nevertheless offers a keen and nuanced analysis of many previously unexplored ties between national civil rights struggles and local antipoverty campaigns in this period.

Clayson focuses, in particular, on the federal government’s Community Action Program – the most controversial piece of Johnson’s antipoverty agenda – and how it operated in Texas’s poorest communities. He describes how the Community Action Program, created by the Economic Opportunity Act of 1964 (EOA), aimed to empower poor communities by helping them “organize politically” and facilitating their efforts to “confront unresponsive local establishments.” The program provided federal funding to “community action agencies,” which would operate local antipoverty programs. These community action agencies sought to include the members of the communities they served – for both staff and leadership support – so that each agency could target its community’s particular needs. Clayson’s work highlights the specific community organizations and grassroots activism that the program supported across Texas and, in so doing, offers new insight into the impact that the War on Poverty had on political mobilization at the local level.

*Freedom Is Not Enough* opens with a grim description of Texas’s racial and socioeconomic demographics in the 1950s and early 1960s, just before the passage of the EOA. While postwar Texas resembled the rest of the South in many ways – with widespread racial segregation and poverty rates that exceeded the national average – Clayson is careful to identify several of the state’s unique characteristics in order to justify his choice of scholarly focus. He notes, for instance, that the state’s large Mexican-American population distinguished Texas ethnically from many other states in this period and thereby complicated both racial politics and local competition for federal antipoverty resources. He also explains how Lyndon Johnson’s own Texas roots – specifically, his experience working in some of the state’s poorest communities – informed the design of EOA and, at the same time, inevitably colored many state politicians’ perceptions of...
After setting the stage in this way, Clayson shifts his focus and briefly recounts the politicking that surrounded the EOA’s enactment before launching into a description of the legislation itself. Although Clayson covers all of the Act’s major components - including VISTA, Job Corps, Head Start, and other well-known programs - he quickly homes in on the centerpiece of the legislation: the Community Action Program (CAP). He notes that the newly created Office of Economic Opportunity (OEO) devoted a significant portion of its resources to CAP and that, as a result, CAP quickly became the focus of criticism for many of Johnson’s political rivals.

While Clayson provides an engaging summary of the political jockeying that gave rise to CAP, his description of the program’s impact on Texas politics is ultimately much more interesting. He describes how the program - which provided only minimal control to state government officials - fueled anti-civil rights sentiment among white Texans, despite the Johnson Administration’s best efforts to dissociate its civil rights legislation from its antipoverty legislation. The book also explains how the government’s poor implementation of CAP frustrated other key constituencies. For instance, the OEO’s failure to achieve “maximum feasible participation” by the poor in community action agencies - along with its stated commitment to a “colorblind” antipoverty agenda - angered the increasingly militant racial justice activists in Texas’s black and Latino communities.

Clayson illustrates several other instances in which the OEO’s vague policy agenda left it vulnerable to attacks from both ends of the political spectrum. He notes, for example, that while some condemned the EOA as a capitalist tool designed to “quell the discontent seething in the nation’s ghettos,” others denounced it as a “socialistic scheme” designed to move the country toward “collectivization.” These various and conflicting critiques of the government’s poverty alleviation efforts reaffirm the conventional historical narrative under which a combination of poorly-defined goals, ineffective administrators, and unclear messaging effectively doomed the War on Poverty from the start.

12. Id. at 1-2, 26-31, 40-43.
13. Id. at 31-35.
14. Id. at 35.
15. Id. at 36 (citing ALLEN MATUSOW, THE UNRAVELING OF AMERICA: A HISTORY OF LIBERALISM IN THE 1960s 244 (1984)).
16. Id. at 36-39, 47-49.
17. Id. at 47-49.
18. Id. at 58, 141.
19. Id. at 86-88.
20. Id. at 100-06.
21. Id. at 36 (describing Frances Fox Piven and Richard Cloward’s critique of the EOA).
22. Id. at 47 (quoting Republican Senator John Tower’s critique of President Kennedy’s early domestic Peace Corps proposal).
23. Clayson succinctly summarizes this traditional view with his observation that the OEO
But even as Clayson readily acknowledges these shortcomings, he also manages to subvert this traditional historical narrative by uncovering some of the substantive benefits that the OEO’s antipoverty work produced. Importantly, he does not try to cast these benefits in economic terms; rather, he describes them in political terms. Clayson explains how CAP-supported grassroots organizations helped invigorate and sustain the Chicano movement in Texas. These organizations, he writes, “gave young people valuable lessons in political organization and confrontation.” In addition, they provided young organizers and activists with critical “access to people.”

Clayson documents how the OEO supported the formative political experiences of many major players in the movement for racial equality and Latino civil rights. Although these OEO-supported organizations were themselves subject to criticism from more militant groups – many of which, by the late ‘60s, had abandoned integration in favor of more radical goals – they nevertheless “provided thousands of civil rights and antipoverty activists with both financial resources and political experience.”

Clayson notes that CAP created a “spirit of community action politics” that continued even after the program was disbanded. He specifically highlights groups such as the Industrial Areas Foundation (IAF), a privately-supported network of grassroots organizations, which helped “fill[] the void left by the demise of the OEO.” Since many of these groups continue to support organizing in Texas today, Clayson suggests that they have become key participants in what he and other historians have dubbed the “long war on poverty.” In the final chapter of his book, Clayson asserts that this long-term perspective is precisely what is needed to overcome the roadblocks that hindered past efforts to achieve economic justice.

While Clayson’s descriptive analysis is well-founded – private foundations have clearly taken up the fight for economic justice in many places where the federal government has abandoned its own antipoverty efforts – his prescriptive analysis seems incomplete. After all, the systematic dismantling of LBJ’s Great Society programs in the 1970s and 

“was held accountable for the militant revolt among minority groups, blamed for causing urban violence or not doing enough to prevent it, and accused of racial bias from all sides.” In short, the agency “could not seem to please anybody.” Id. at 138.

24. Id. at 108.
25. Id. at 109.
26. Id.
27. Id. (describing the experience of Irma Mireles, who later became the head of the Mexican American Cultural Center in San Antonio, and her early political experience as an assistant at a CAP-sponsored community organization).
28. Id. at 149.
29. Id. at 150.
30. Id.
31. Id. at 157.
32. Id. at 155-56 (“A final lesson the history of independent grassroots organizing teaches is patience.”).
1980s deprived antipoverty advocates of more than just financial support - it deprived them of the government’s public endorsement of their cause. By suggesting that private foundations can somehow fill the void left by defunct War on Poverty programs, Clayson overlooks the legal and symbolic power that governmental action carries. Even if the EOA fell short of creating positive economic rights for individual citizens, it nevertheless represented the government’s firm commitment to expanding economic opportunity. Indeed, Johnson’s antipoverty program was, in many ways, the closest the federal government ever came to recognizing poverty as a substantive violation of individual rights - something that organizations like the IAF, regardless of how well they are funded, cannot ultimately achieve without governmental support. The demise of these War on Poverty initiatives, therefore, represented more than simply a lack of funding: it also represented the death of American antipoverty advocates’ last real opportunity to create substantive legal safeguards against poverty.

Despite this minor shortcoming in its conclusion, Freedom Is Not Enough still has plenty to offer, both to students of American political history and to current civil rights and antipoverty advocates. Clayson’s exploration of the local political impact of the OEO’s antipoverty agenda - and, specifically, its Community Action Program - provides an engaging and nuanced perspective of Johnson’s War on Poverty. In this way, Clayson’s narrative complements other recent scholarship documenting the OEO’s impact on local movements for racial and economic justice during this period. Additionally, Freedom Is Not Enough offers valuable lessons to contemporary antipoverty advocates seeking to replicate CAP’s inclusive model of community development today by describing the specific political roadblocks that the program initially encountered and thereby flagging potential pitfalls to avoid. Finally, Clayson’s work suggests that historians have more work to do in exploring the local benefits produced by the War on Poverty. Without further analyses like Clayson’s, traditional accounts of the relationship between racial and economic justice movements of the 1960s will remain incomplete.


34. See, e.g., Melish, supra note 4, at 110-33 (calling for a “21st Century War on the Sources of Poverty” based on many of the principles that informed the original design of CAP).
Book Review

The Global New Deal, by William F. Felice

Publisher: Rowman and Littlefield Publishers, Inc.
Price: $34.95
Reviewed by: Jeff Lingwall

The table of contents of William Felice’s The Global New Deal reads like a human rights activist’s list of world problems. Felice tackles the lack of social and economic rights, problems of race and gender inequalities, excessive military spending, and environmental degradation. Then, as the title suggests, he offers large-scale international solutions, a “Global New Deal” inspired by Roosevelt’s efforts in the Depression. Felice’s perspective is that of a teacher confronted with a skeptical student, one who feels that little can be done to change the world in the face of the current system of international governance. When small-scale good deeds, “volunteerism and charity,” fail to sufficiently address world problems, he responds pointedly: “So let me scream out: There are alternatives!” The alternatives he gives include strengthening existing international agencies involved in global development and creating several new international funds and agencies related to development goals. His framework of strengthened international cooperation presents large development goals as both doable and practical.

Felice sets his policy program in the framework of human rights, but his broader argument appeals to economics: economic rights constitute global public goods. Public health, education, and other economic rights provide benefits that flow beyond national borders. Given the potential positive externalities, individual nations are failing to provide these benefits at a globally efficient level. “International organization and cooperation,” through a more powerful United Nations and other reforms, are then justified. Felice proposes that such reforms, capitalizing on the interlocking incentives of the rich and poor, are both “realistic and

2. Id. at 23.
3. Id. at 16.
4. Id. at 258.
5. Id. at 259.
6. Id. at 60-72.
7. Id. at 42.
8. Id. at 25.
doable." In this way, the work invokes something of the spirit of Jeffrey Sachs’s *The End of Poverty*, which addresses similarly sweeping problems and solutions.\(^9\)

This “big push” idea in development has been subject to criticism. For example, as William Easterly consistently preaches, “[t]he promise of a big solution to a very big problem is an outlier in the practice of economics.”\(^10\) In contrast to what Easterly might describe as Felice’s project of “setting utopian goals,” Easterly’s “piecemeal” approach to development would involve a series of smaller, less globally ambitious projects,\(^11\) more akin to the “volunteerism and charity” that Felice insists is insufficient for confronting global problems.\(^12\) While scholars may debate the effectiveness of various development methods, these contrasting approaches may not be mutually exclusive. Indeed, while Felice focuses on the UN, he applauds the efforts of the smaller NGOs that have participated actively with the UN on development issues.\(^13\) The success of the Global New Deal depends on both international action and local support.\(^14\)

Felice’s New Deal is centered on the provision of economic human rights, rights which themselves arise in response to development.\(^15\) At our current stage in history, the UN recognizes a broad class of material concerns as human rights. This broad class can be broken down into economic rights, such as the right to property and social security, and social rights, to education, housing, and welfare.\(^16\) The 160 parties to the UN’s International Covenant on Economic, Social, and Cultural Rights (ICESCR) ascribe to these statements of economic and social human rights.\(^17\) In contrast, U.S. presidents have viewed the provisions of the treaty simply as goals to be worked toward,\(^18\) or have even attempted to “define ‘economic rights out of existence.’”\(^19\) As of 2011, the United States has not ratified the ICESCR.\(^20\)

Economic rights are fundamental, according to Felice, perhaps not because of philosophical bases, but rather due to their economic

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9. *Id.* at 259.
12. *Id.* at 103-04.
14. *Id.* at 286.
15. *Id.* at 286-87.
16. *Id.* at 75.
17. *Id.* at 2.
19. FELICE, *supra* note 1, at 237 (describing President Carter’s policy).
consequences. Social rights form a global public good, a good from which positive externalities extend past national borders. An innovating, educated public spreads its benefits around the world. Clean air, water, and biodiversity are common resources that cross national borders. As disease can spread globally, public health in any country benefits the world as a whole. Secure housing would decrease the number of “economic immigrants fleeing insecure conditions” which would “benefit other countries, without rivalry or exclusion.”

Apart from economic justifications for social rights, a legal positivist finds evidence of rights in the fact that states have enshrined them by treaty. For example, the ICESCR defines economic rights for its party nations. The U.N. Convention on the Rights of the Child includes a right to health care, an adequate standard of living, and education. The U.N. Universal Declaration of Human Rights states a right to social security, an adequate standard of living, and education.

Fulfilling economic and social rights, and receiving the international benefits that flow from them, requires action by a state. These affirmative rights contrast with passive or permissive rights, which only require non-action, such as in allowing freedom of assembly or freedom of the press. For affirmative social rights, the ICESCR specifies how much action should be taken. Parties to the ICESCR have an obligation to provide economic necessities (food, education, housing, social security, etc.) by taking “all appropriate means and [using] the maximum available resources.” Although states ultimately have responsibility for compliance with their treaty obligations, Felice discusses methods by which international enforcement could become more of a reality.

Felice then discusses economic and social rights in the context of several related international issues: the environment, race and gender, and military spending. Human rights and development are often seen as conflicting with environmental protection: economic development pressures the environment, and emphasizing long-term environmental issues may distract from human rights needs. Felice, however, views “environmental protection as a vehicle for the fulfillment of human

22. FELICE, supra note 1, at 62.
23. Id. at 64.
24. Id. at 68.
25. Id. at 72.
26. Id. at 77.
27. ICESCR, supra note 18.
29. Id. art. 27.
30. Id. art. 28.
32. Id. art. 25.
33. Id. art. 26.
34. FELICE, supra note 1, at 80.
35. Id. at 101-07.
36. Id. at 129.
Though human rights treaties generally omit references to a right to a healthy environment, exceptions include the African Charter on Human and Peoples’ Rights and the San Salvador Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights. In addition to these sources, Felice appeals to “soft” international law: actions by states that, though not law, have some consequence beyond simple assertion of will. For instance, the U.N. Charter of Economic Rights and Duties of States calls for “[t]he protection, preservation and enhancement of the environment.” Policy-wise, Felice supports Dan Esty’s proposal that these concepts be strengthened with a World Environmental Organization, similar to the WTO.

Felicé confronts the additional challenge of delivering social rights to potentially marginalized members of society, such as minorities and women. Parties to the International Convention on the Elimination of All Forms of Racial Discrimination agree to give minorities equality before the law regarding economic rights such as education, health care, and housing. The ICESCR forbids discrimination on account of sex and gives protection to mothers before and after childbirth. Felice proposes that women and minority rights be strengthened by reforming United Nations committees. The U.N. Minority Rights Committee has need of a larger staff devoted to its work and a greater level of professionalism in its operations, and the U.N. Women’s Rights Committee can increase its focus on education and health care.

The final policy area Felice considers is the role of military spending on economic and social rights. Heavy military spending necessitates a tradeoff with domestic spending that might go towards education, health care, and housing. Felice points to the United States as an egregious offender in the realm of excessive military expense, comprising 41.5% of all global military spending, with billions of U.S. taxpayer dollars supporting the international weapons trade. Yet, especially given the liberal classification of global public goods earlier in the book, one might consider the public good aspect of U.S. military spending. For instance, as Eyal Benvenisti writes:

37. Id.
38. Id. at 130.
39. Id. at 132.
41. FELICE, supra note 1, at 268-72.
43. ICESCR, supra note 18, art. 2.2.
44. Id. art. 10.
45. FELICE, supra note 1, at 173-76.
46. Id. at 274-77.
47. Id. at 209.
48. Id. at 228.
49. See id. at 27-72.
The US has a strong motivation, coupled with reasonably sufficient military strength, to maintain global stability. This serves both its own interests and the interests of many other communities, certainly in the developed world, but also of many developing societies. This global stability constitutes what economists call a “pure public good.”

This example highlights one area where readers may benefit from reading beyond *The Global New Deal*. For instance, when speaking of solutions to racial disparities, Felice states that “[t]he costliness or burdensome nature of such actions cannot be used as an excuse for inaction.” Cost should not be used as an excuse for inaction, but weighing of costs, and the evaluation of empirical evidence, is constantly needed in development. Otherwise, the risk is ineffectual intervention, or intervention that causes more harm than good. For example, when discussing the use of experimental evaluation of development programs in the context of education, Banerjee and Duflo state that “it is clear that some [interventions] are much cheaper than others. . . . [T]he cost per extra year of education induced ranges from $3.25 to more than $200. . . . Moreover, it became clear that economists were not the only people clueless [about costs and benefits]; implementing organizations were not much better informed.”

It remains to be seen whether Felice’s proposals are “realistic and doable,” and whether the international community can fully address the deep issues raised in his work. While Felice goes beyond much of the human rights literature in offering an economic rationale for intervention in social rights, the book is lighter on the economics or empirics that will underlie the proposal. The book works well, however, as an introduction to global problems and the international agencies combating them. And, as Felice’s central tenet holds, if improved public health, education, and standards of living across the world result from such international aid, the ensuing international public goods will benefit rich and poor alike. Felice’s enthusiasm for the topic and the hope he brings to progress on deep international issues is infectious. *The Global New Deal* is an excellent overview of global problems and the potential of the future.


51. FELICE, supra note 1, at 163.


53. Id. at 153. Peter Uvin believes that “Rwanda is an extreme example of this failure of development aid.” He “faced many unanswered questions about the role of the whole enterprise: its manifest incapacity to promote genuine improvements in the quality of life for the vast majority of the poor; its top-down, external nature; and its interaction with the forces of exclusion, oppression, and powerlessness . . . .” PETER UVIN, AIDING VIOLENCE: THE DEVELOPMENT ENTERPRISE IN RWANDA 5 (1998).

54. FELICE, supra note 1, at 259.
Book Review


Publisher: Stanford University Press  
Price: $24.95  
Reviewer: Cynthia Okechukwu

While treaties like the International Covenant on Economic, Social, and Cultural Rights (ICESCR) affirm the rights to health, adequate housing, food, work, and education, civil and political rights continue to dominate the agenda of the international human rights community. Stones of Hope: How African Activists Reclaim Human Rights to Challenge Global Poverty, edited by Lucie E. White and Jeremy Perelman, foregrounds economic and social rights (ESR) advocacy within the field through a series of case studies and interpretive essays. The contributors examine how activists are embracing human rights values while rejecting traditional, top-down approaches to human rights practice. The book is the culmination of White’s “Stones of Hope” project, begun in 2006 as a collaboration between human rights activists and scholars to explore innovative ESR advocacy strategies across Africa. Stones of Hope is far from an authoritative guide to effective ESR advocacy. The contributors do, however, demonstrate that by looking beyond traditional human rights institutions and legal remedies, advocates can drive and sustain structural change, realizing tangible rights at the grassroots level. In addition, the theories and practices the authors present should stimulate continuing reflection and more rigorous analysis of ESR strategies.

In Part I, four case studies offer compelling illustrations of the diversity of grassroots ESR advocacy in Africa. Felix Morka documents the efforts of the Social and Economic Rights Action Center (SERAC) to combat forced

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evictions in the Ijora-Badia community (Badia) in Lagos, Nigeria. When the Lagos State government announced plans to demolish Badia and fourteen other informal settlements to make way for the World Bank-funded Lagos Drainage and Sanitation Project (LDSP), SERAC began a campaign to resist these forced evictions. First, the organization provided human rights education to Badia’s residents that framed the provision of social and economic goods as a duty of the state. This new conception of goods and services as human rights empowered the residents to mobilize through rallies and protest marches, as well as to engage directly with public officials. SERAC also used the World Bank’s internal accountability mechanisms to pressure the organization to end its funding of the LDSP. SERAC appealed to the World Bank Inspection Panel with the claim that the LDSP violated not only human rights but also the Bank’s own policies. Media attention resulting from the inspection request eventually halted the World Bank’s support of the project. Badia residents’ effective grassroots mobilization and ongoing engagement with the government over development support Morka’s assertion that “[c]ommunity members found a collective voice to launch opposition to powerful government and international financial actors who threatened to destroy their homes.”

William Forbath details the right-to-health campaign led by the Treatment Action Campaign (TAC) of South Africa. TAC aimed to induce the South African government to provide antiretroviral treatment in the public healthcare system to prevent the mother-to-child transmission (PMTCT) of HIV. In this campaign, TAC applied a “politics-centered approach,” using litigation as one part of a long-term, multifaceted strategy, comprising nationwide rallies and marches, petitions, and dissemination of scientific research. TAC also pressured pharmaceutical manufacturers to supply PMTCT drugs for free to the public health system. Forbath argues that this approach built broad consensus that the African Nationalist Congress government’s intransigence and HIV/AIDS denialism were increasingly unreasonable, because PMTCT medications were even more available, free, safe, and effective. The author also suggests that TAC’s campaign created a sociopolitical context in which the High Court, and later the Constitutional Court, could comfortably enforce a “positive” constitutional right to health by ordering the Ministry of Health to stop placing unreasonable restrictions on access to health care. With the threat of litigation and public demonstrations serving as moral and political leverage, the campaign eventually inspired the government to implement a national treatment plan for people living with HIV/AIDS.

Ruth Buchanan, Helen Kijo-Bisimba, and Kerry Rittich chronicle the Tanzanian Legal and Human Rights Center’s (LHRC) unsuccessful efforts to attain relief for Nyamuma villagers after the Serengeti District...
government violently evicted them from their homes in 2001. LHRC brought the case before the Tanzanian Commission on Human Rights and Good Governance, a strategic choice since the Commission could look not only to the Tanzanian Constitution but also to international treaties like the ICESCR. The Commission dismissed LHRC’s initial complaint, but after a follow-up hearing, it determined that the government had committed human rights violations during the evictions. The government has since refused to accept the Commission’s findings or pay compensation to the victims, and LHRC is still attempting to enforce the ruling through the Tanzanian High Court. The authors cast the Nyamuma evictions and the failure of LHRC’s advocacy not as isolated incidents, but rather the result of the enduring conflict between economic development policies and economic and social rights. In Tanzania, land reforms such as the formalization of title and an increased focus on ecotourism and wildlife protection have led to the privatization of once-open spaces. These reforms render many Tanzanian pastoralists “poachers” or trespassers on their former lands. The authors leave open the question of whether and how local action by human rights advocates can resist these forces of land commoditization and foreign investment, and implement rights-based approaches to development.

In “Freeing Mohammed Zakari,” Jeremy Perelman and Katharine Young discuss the right-to-health campaign of Ghana’s Legal Resource Center (LRC). In 2003, LRC partnered with the Mother’s Club of Nima to free Mohammed Zakari, a man detained by a public hospital because he was unable to pay for his medical treatment. LRC initiated litigation not only to attain Zakari’s freedom, but also to challenge more broadly Ghana’s system of user fees for healthcare. LRC’s public advocacy and litigation prompted the government to increase funding for the poorly enforced “pauper exemption” to user fees and eventually to implement a national health insurance system. Perelman and Young use this story to introduce the concept of “rights as footprints.” Under this conception, rights are “collective memories of political mobilization,” generated through community participation and defined “by and for communities themselves,” rather than within the “institutionalized normative system” of courts, legislatures, and government agencies. The authors argue that the mobilization around Zakari’s cause reflects this community-focused and -reinforced conception of rights; however, the involvement of foreign student interns who drafted the petition and collected signatures for the campaign undermines this argument. Mahama Ayariga, one of the founders of the LRC, stated that “the petition signing created an important

6. Buchanan et al., supra note 2, at 96.
7. Id. at 104.
8. Jeremy Perelman & Katharine Young, Freeing Mohammed Zakari: Rights as Footprints, in STONES OF HOPE, supra note 2, at 122.
9. Id. at 125.
10. Id. at 123.
11. Id. at 139.
12. Id. at 136.
space for the interns and the people to agree on rights.”

Thus, instead of the community defining rights by and for itself, the community still had to negotiate with outsiders in order to define the rights sought. This collaborative creation of rights suggests that the rights-as-footprints paradigm is not the great departure from the more standard conceptions that the authors claim it is.

Part II is dedicated to synthesizing the lessons learned from the case studies of African ESR advocacy strategies. Perelman and White argue that the profiled campaigns share common engagement strategies, normative orientations, and prefigurative capacities, despite operating within varied geographic locations and sociopolitical contexts. The most crucial commonality is that effective activists “prefigure” long-term structural change, meaning that through local experimentation with innovative welfare delivery systems that incorporate human rights values, the activists create and sustain the positive changes to institutional practices that they generate through grassroots mobilization. For example, in the case of Mohammed Zakari, the Legal Resources Center was not content with simply attaining Zakari’s release; instead, the organization continued to fight to abolish the user fees model and took an active role with the government in designing the national health insurance system. Similarly, the ongoing efforts of community members in Badia to engage with the public officials over development and infrastructure improvement projects demonstrate a capacity for lasting structural advocacy. The ESR advocates profiled in Stones of Hope do not simply seek to redress particular grievances; they also aim to eliminate structural injustice by shaping their methods and remedies to match their long-term visions of democratic institutions that have the capacity to effectively deliver on their guarantees of economic and social rights.

Next, Paul Houtzager and White trace “the long arc of pragmatic economic and social rights advocacy,” a model that shows how ESR advocacy creates structural change. In this model, the arc begins in local generative spaces, where a “convening authority” such as TAC, SERAC, or LRC brings together competing social groups, focuses the campaign, and engages state power and international organizations. Then, in national political institutions, ESR advocates pressure government policymakers and agencies to adopt ESR-positive changes. Once those changes occur, the institutional innovations finally diffuse back down to the local sociopolitical field — the local communities where deliberations and negotiations between power holders and community groups take place. Houtzager and

13. Id. at 139.
14. Jeremy Perelman & Lucie E. White, Stones of Hope: Experience and Theory in African Economic and Social Rights Activism, in STONES OF HOPE, supra note 2, at 149.
15. Id. at 167-71.
16. Perelman & Young, supra note 8, at 144.
17. See Perelman & White, supra note 14, at 170.
18. Peter Houtzager & Lucie E. White, The Long Arc of Pragmatic Economic and Social Rights Advocacy, in STONES OF HOPE, supra note 2, at 172, 172.
19. Id. at 184.
White do not claim that this process manifests fully or identically in all campaigns, but they do believe the arc’s interrelated fields are “reference points” for ESR advocacy.\textsuperscript{20} The long arc is a helpful description of the different fields in which advocacy takes place, whether in the political-administrative realm through collaborations with public health officials, in the state power arena by disrupting the influence of powerful international organizations, or in the local sociopolitical field through partnerships with other community groups.

The contributors to \textit{Stones of Hope} convincingly demonstrate that the strategies and norms of ESR advocacy can be trans-substantive and transnational. A common theme among the contributors is that formal legal rights and liberal values are a double-edged sword: while the language of human rights can empower marginalized communities to mobilize for institutional reforms, rights language can also reinforce inequitable practices that favor the rich at the expense of the poor.\textsuperscript{21} Furthermore, as Duncan Kennedy notes in \textit{Commentary on Anti-Eviction and Development in the Global South}, rights discourse can also create “rhetorical dilemmas” when popular mobilization around ESR leads to collective projects that seem to run counter to liberal conceptions of individual rights.\textsuperscript{22} The authors do not resolve these dilemmas; in fact, the contributors frustratingly tend to raise these important issues without indicating possible means for dealing with them. Perelman and White do, however, identify normative commitments to critical liberal legalism and redistributive politics that should encourage ESR advocates to reach beyond formal legal remedies to more politically-oriented pursuits of distributive justice. The critical stance toward rights-based advocacy can also help scholars and activists break out of the discouraging framework that defines global poverty as an unavoidable result of development and to alternatively conceptualize it as the result of structural injustice that can be remedied by transforming democratic institutions.

The case studies’ lessons about the limited power of litigation to realize economic and social rights on the ground are especially relevant to lawyer-activists. The relative success of the litigation strategies represented varied, but Perelman and White suggest that where they were effective, as in the case of TAC and the South African court system, they were part of multi-pronged campaigns that included grassroots organizing, rights education, public advocacy, and engagement with state actors.\textsuperscript{23} Forbath’s distinction between court-centered and politics-centered models of rights advocacy is helpful for understanding how litigation may be successfully incorporated into ESR advocacy. While the court-centered model of rights advocacy views the courts as the “central arena for initiating or shaping pro-poor state policies,” the policy-oriented model uses litigation “in service of

\begin{itemize}
\item \textsuperscript{20} Id. at 179.
\item \textsuperscript{21} Perelman & White, supra note 14, at 166.
\item \textsuperscript{22} Duncan Kennedy, \textit{Commentary on Anti-Eviction and Development in the Global South}, in \textit{STONES OF HOPE}, supra note 2, at 41, 46-47.
\item \textsuperscript{23} Perelman & White, supra note 14, at 150.
\end{itemize}
many-sided strategies to open up policy-making processes" through public advocacy and coalition-building.\textsuperscript{24} The successes of cases in South Africa and Ghana, and the failure of anti-eviction claims in Tanzania suggest that instead of looking to courts to drive reform, activists should use litigation to complement and provide leverage to their political campaigns. Given the difficulties of enforcing economic and social rights through judicial remedies,\textsuperscript{25} this emphasis on a more circumscribed, supporting role for ESR litigation is a major strength of this volume.

*Stones of Hope* advances important insights about the possibilities and challenges of ESR advocacy, but its recommendations are general and tentative. White and Perelman recognize the preliminary nature of the findings, noting that, "[t]he most salient lesson from this theory-and-practice project is that ESR activism, deployed in certain contexts and designed in certain ways, can sometimes open pathways leading to positive changes,"\textsuperscript{26} Their conclusions are cautious due in part to the project’s methodology, which involved “reflective conversations” with lawyer-activists designed to surface the “tactics, calculations, expectations, theories of change, and motivating values” that undergirded and informed their practice.\textsuperscript{27} *Stones of Hope* would have perhaps benefited from a more rigorous approach, drawing on quantitative research in addition to the qualitative case studies. Evidence-based analysis, in combination with the anecdotal accounts and theoretical essays, would have helped to develop a more comprehensive picture of which practices and norms actually constitute effective ESR advocacy.

Although *Stones of Hope* is not a definitive blueprint, the lessons learned in the informal settlements of Badia and Mother’s Club meetings in Nima can still inspire campaigns for reform. The authors intend for the case studies and theoretical essays to motivate an ongoing process of collaborative analysis that can engage diverse activists in “critiquing the theory [and] theorizing the practice” of ESR.\textsuperscript{28} Activists will thus find in this book valuable starting points for investigating and defining the contours of ESR practices that address the intractable problem of global poverty by challenging structural injustice.

\textsuperscript{24} Forbath, *supra* note 4, at 87.
\textsuperscript{25} See Perelman & White, *supra* note 14, at 227 n.3.
\textsuperscript{26} Lucie E. White & Jeremy Perelman, *Introduction to STONES OF HOPE, supra* note 2, at 7.
\textsuperscript{27} Id. at 4.
\textsuperscript{28} Id. at 5.