



HOUSING AND LAND RIGHTS NETWORK
Habitat International Coalition

**Addressing Marginality: Some Theoretical and Practical
Contributions from Social Science and Law**

By Joseph Schechla, *coordinator*
Housing and Land Rights network – Habitat International Coalition

“Marginality: Concepts, practices and directions for action”
Centre d'Études et de Documentation Économiques, Juridiques et Sociales,
Workshop sponsored by the Ford Foundation
Cairo, 27 September 2009

This paper seeks (1) to contribute to understanding and, eventually, defining the normative content of human “marginality,” as the concept has developed over the past century in ethical philosophy and other social sciences in application to a variety of circumstances and contexts, and (2) to apply a human rights framework and methodology to the subjects of human marginality as a means to remedy its consequences.

Thus, the term “marginality” has become commonly linked to both the social and the economic dimensions of poverty and impoverishment. Since its social science origins (Park: 1928), the “theory of marginality” has emerged beyond the narrow application to minority status in the United States indeed to address factors of poverty and exclusion everywhere.

The period following publication of Park’s seminal article posing a theory of marginality has coincided with research on, and development of specific applications of the concept such as those addressing social marginality; marginality and psychological stress; spatial marginality; a subdiscipline within urban sociology; grievance of urban social movements, the conditions of indigenous peoples, minorities, nomadic and traveling people; queer theory; the women’s rights movement and feminist theory; and the growing field of refugee and migrant studies and rights advocacy, among others. Other usage of the term equates marginality with the mere “insignificance” of a person or group in the economic, social, numerical or political sense (El-Abed: 2009, Chapter 6).

Marginality and Ethical Philosophy

The social and cultural dimensions of the meaning and usage of the term often are assumed to be intersectional, and those dimensions are widely understood to coincide with economic disadvantage coupled with social exclusion. While the notion of economic marginalization and its factors are widely debated, its actual definition and measurement in quantitative terms remain a matter of nascent methodological development, especially in the fields of economic, social and cultural rights (ESCR) and public policy. Some of the most-productive discussion on marginality and marginality theory today emanates from the context of multiculturalism programs and policies in countries as diverse as Canada and India.

In the Canadian context, for example, Taylor argues that classic liberalism, in the Kantian sense, fails to enable the politics of recognition; whereas, humans naturally achieve fulfillment through their relations with the world in association with “significant others.” By applying “difference-blind” criteria, classic liberalism fails to treat the unique circumstances affecting a person’s status (i.e., level of one’s achievement and/or fulfillment). Instead, such liberalism applies a kind of preconception; i.e., a kind of “scenario fulfillment” that forces all people into a common mould that often is self-contradicting by its actual hegemonic nature and effect (Taylor: 1969, 43).

Applying human rights methodology to the concept and experience of marginality (later in this paper) necessarily traces back to sources and concepts of moral systems, in general, and, in particular, to ethical philosophy and social science incorporating Kant's notion of "universal justice." Its more-recent philosophical development includes "a theory of justice" (Rawls: 1971, 1999) and "a theory of human need" (Doyle and Gough: 1991), both of which provide ethical underpinning to the ideology and corresponding methodology of both human rights and public policy.

Rawl's "original position" can be seen as a complement to Taylor's argument about liberalism's methodological assumption of human sameness, but that assumption is mitigated by people's widely differing conditions and circumstances. Rawls goes on to build the theoretical elements of justice grounded in the principles of building "equality" and equitable distribution ("distributive justice") to ensure fairness. Doyle and Gough argue that a person's "autonomy" and, at an optimum level, "critical autonomy," are essential for the realization of a bundle of conditions that mutually fulfill common human need.

This autonomy notion in *A Theory of Human Need* is akin also to the capability requisites of "freedom," even physical survival (Sen: 1982, 1999). In elaborating the nexus between development and freedom, according to Sen's theoretical and applied work, has given rise to further developments in capabilities theory, including its application to specific marginalized social groups (e.g., women) (Nussbaum: 2000, 2004).

Many are the structural and environmental factors and causes—as distinct from personal choice—of the marginalized person or group's incapability to achieve fulfillment of common human needs, rights and/or freedom. Discrimination or exclusion from the means of achieving those human values in relations with "significant others" in the social context may be based on economical means or status; ethnic, cultural, religious or other minority group identity; social ostracism; language barriers; ideological/political exclusion by the state; lack of education, information and/or skills (i.e., capabilities); shame/humiliation; physical displacement; absence of a sufficient social network (social capital); geography (spatial marginalization); sexual minority status; cultural conflict; gender; migration or resident status; or other gaps in citizenship or status affecting the individual or group enjoyment of rights and freedoms codified as the entitlement of every human. Marginalization of any kind is constructed and may be variously institutionalized: by administrative means, legislation and law enforcement, social mobilization, "forced removal," or other violent force.

Marginality and Law

With a view to the legal dimensions of marginality, some notions have been established early in the human theory and practice of law, and have their continuity today. For example, the long tradition of law and statecraft has produced antecedents establishing

rights, recognition of difference and nonexclusion as a value of governance and a matter of remedy (Cyrus the Great, 635 B.C.).

The Roman Law concept of *homo sacer* (Latin for "sacred man," or "accursed man") is a person who is officially banned and whose killing would be deemed acceptable, except in a religious ritual. That person is excluded from all civil rights, while his/her life is deemed "holy" in a cynical sense of being rare and limited.

The contemporary Italian philosopher Agamben has revived this ancient concept and described the *homo sacer* as an individual who effectively exists in the eyes of the law as an exile, an outsider, without legal protection under the jurisdiction of law applying to all others in the same territory (Agamben: 1998). Therefore, the *homo sacer* falls outside the gambit of rights to which other citizens—and even other humans—are entitled.

Agamben perceives a paradox: It is the law that makes it possible for society to recognize the individual as *homo sacer*; therefore, it is also the law defining rights that creates the "gaps" that mandate the *homo sacer's* exemption from rights. The same legal field and tradition that establish rights and criteria of protection, therefore, also can create categories that exclude entire classes of persons from such protections, either explicitly and directly, or by silent omission.

Agamben maintains that life exists in two dimensions: natural, biological life (Greek: *zoë*) and political life (*bios*). He relates the existence reduced to mere *zoë* as analogous to Arendt's depiction of the refugee's "naked life" (1951), a quintessential example of human marginality. The effect of *homo sacer* status is a schism of one's biological and political lives. As having "bare life," the *homo sacer* finds her/himself subject and submitting to the authoritarian power's state of exception. Although s/he has biological life, that existence carries no political standing, significance, or rights. The marginalized person, thus, may fall into a category otherwise termed as "human debris" (Arendt), "wasted lives" (Bauman) or "surplus peoples" (Surplus Peoples Project).

Marginalization in this way can be seen in the continuity of legal and policy discrimination that derogates a range of rights based on official criteria. Historic and contemporary examples of such "constructed" or "attributed" marginality arise from colonial interests and their institutions, "scientific racism,"¹ *apartheid*, Zionism, or other ideologies of arbitrarily established exclusion, differentiation. Current situations in which exclusion is created by the law (or specious interpretation of it) may include restrictive immigration and residency policy, the clash between colonial and indigenous normative systems, or "extraordinary rendition," among other circumstances.

¹ Based on claims of scientifically proven difference attributable to genetic make-up, the Nuremberg Laws, decreed at the 1934 Nazi "Party Conference on Freedom" included a law on citizenship, "which deprived all those 'not of German blood' of their rights as citizens" (Müller: 96–97).

Toward a Definition

The search for a definition may treat “marginality,” as a state of being, and “marginalization” as the consequence of a process of being sidelined or excluded. In that search, one should explore at least two assumptions about the subject: (1) that the affected person or group does not choose the exclusion and outsider status and, consequently, would prefer to be more integrated, “recognized” (Taylor; Coulthard) and involved as a full participant in the civil, cultural, economic, political and social dimensions of life. In pursuing the objective of a “remedy” to marginality, these assumptions remain, with qualification.

Integration, as a presumed value anathema to marginality, must be weighed against other objectified values that actually may accompany marginality, such as exception from law and bureaucracies, and/or a level of meaningful autonomy. Marginality, in some alternative senses, may be synonymous with avant-guardism, characterized as a status enabling or embodying choices and opportunities for self-expression. While the state of marginality could be subject to interpretation such that marginality as described as the external position in a spatial core-versus-periphery relationship, an alternative view of some types of marginality could consider the periphery rather as an actual frontier, as in the instance of marginalized artists, thinkers or spiritualists. Thus, the concept of marginality as a wholly negative state of being may be subjective, and marginality, in that sense, is in the eye of the beholder. Depending on the type of marginality considered or attributed, that state may even be “chosen.”

This is marginality in a sense that is not mainly materially or economically defined. It is not suggested here to generalize marginality as a chosen condition. The risk in such an assumption is often to blame the victim. In the case of economic and social marginalization, that assumption could lead to criminalizing poverty and the poor, of which we have many examples. To avoid this and other false and hazardous assumptions, a diagnosis of marginality should assume a case by case approach.

It is more commonly assumed that marginality carries with it negative consequences for those subjected to it and, therefore, the condition of marginality implies a call for remedy. In other words, marginality is a problem that needs to be fixed.

It should not be assumed, however, that any alternative to marginality constitute its solution. If integration be an alternative, that should not suggest that the (former) subject of marginality lose all distinctive characteristics or features. In that sense, we confront the spectrum of exclusion, marginality, integration and, at the extreme alternative to marginality, assimilation, which ultimate alternative to marginality may not be desirable at all. The important distinction between assimilation and integration has been long contested in diverse traditions.

The centuries-long struggle for Jewish emancipation and full and equal citizenship (i.e., integration) has rejected both assimilation, amounting to dissolution and self-negation, and Zionism, which ideology calls for the reversion to an unacceptable racist definition

for people of Jewish faith and their geographical separateness from others (Berger; Kolsky).

A similar dilemma prevails in indigenous peoples' struggles for fulfillment of their needs and rights, including self-determination, in their confrontation with colonization. One prominent example is their struggle for recognition (Taylor; Coulthard), but not their further invisibility. However, states had formulated and adopted the International Labour Organisation's Convention No. 107 Indigenous and Tribal Populations Convention (1957), formally drafted with the premise that "assimilation" was the appropriate objective of law and policy affecting indigenous and tribal populations within independent states. That premise proved so offensive to indigenous peoples and added only insult to their centuries of injury. A struggle against that unfortunate treaty and legal norm resulted in the ultimate replacement of Convention 107 with ILO Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries (1989). That struggle for rights and against assimilation continues, while retaining some preferred aspects of self-defined marginality (as distinct from imposed or attributed marginalization) defined, in part, as the preservations of identity, culture, legal systems and separate space on their own lands.

So what are the main features of marginality remain that lend themselves to a definition of wide application? It would be preferable for such a working definition to avoid distorting assumptions and prescriptions, and that the negative and positive features, as well as determination of the imposed versus voluntary aspects of marginality be reserved for the case-by-case analysis and customized remedy, if required. However, an absolutely value-free definition may be elusive. In order to facilitate—not limit—understanding of what commonly marginality is, it is suggested that the concept features at least three principal elements:

1. A lack of (sufficient) entitlement (having various consequences),
2. A lack of capabilities to affect that condition,
3. Limited choices as a consequence of 1 and 2, and
4. Restricted participation.

In addition to these features, an element of discrimination is typically present and manifest in ways that impede the marginalized person's or group's access to needs as rights.

In the further discussion of the contribution of human rights to addressing marginality, we have to acknowledge a further assumption affecting both the definition and putative remedy. As in all considerations of human rights, the codified entitlements and freedoms carry corresponding obligations on the state and the collectivity of states. Therefore, that further discussion assumes also the presence of a state structure with capacity to address marginality, either by creating, enforcing, mitigating and/or eradicating conditions of marginality and marginalization processes.

Marginality and Human Rights

Applying human rights methodology to this discussion of marginality, *dignity* is an essential concept. In human rights ideology and methodology, the (yet underdefined) notion of human dignity is fundamental, creating the assumption that each human person inherently possesses that quality as a syllogistic argument for each person to be entitled to the same bundle of rights. This inherent assumption, anathema to the notion of the *homo sacer*, also opposes the condition of human marginality. This assumption is reflected in ethical philosophy as well; whereas, Doyle and Gough's notions of autonomy and critical autonomy relate organically, and lend normative content to that often cited, but otherwise underelaborated principle of dignity enshrined in so many legal texts.

The Nondiscrimination Principle

Nondiscrimination in human rights methodology is one of seven over-riding principles for implementation of the International Covenant on Economic, Social and Cultural Rights, among other binding treaties. Both human rights law and social science, even examples of imperial Persian statecraft (all cited above) affirm this standard. As a matter of treaty, nondiscrimination is to be applied in all spheres and to all rights as a matter of state party obligation. Nondiscrimination has its ethical-philosophy cohorts: actively and progressively to "recognize" difference (Taylor; Coulthard), ensure "distributive justice" (Rawls), support "critical autonomy" (Doyle & Gough), build specific "capabilities" (Sen, Nussbaum), and leave no one behind (Agamben).

As stipulated in international jurisprudence and numerous soft law instruments, nondiscrimination does not equate with the sense of formulating "difference-blind" (e.g., gender-blind, racially blind) laws and policies. Rather, that principle has normative meaning that calls for corrective action on the part of the state to ensure rights and to remedy marginalization and its negative consequences.

The indivisibility, interdependence and nonhierarchy of rights pose a methodological dilemma. However, the elaboration of "autonomy" and, especially, "critical autonomy" in the theory of human need, the "capabilities" approach to development as freedom, the requisite of equitable distributive to the "theory of justice" all call for essential ingredients, effectively a staged or hierarchical approach, or what human need theorists would call "interim needs." In this connection, it is important to note that, unlike the ethical philosophy as developed through the social sciences, human rights law and its corresponding methodology have not yet developed to recognize either "capabilities" or "distributive justice" as explicit obligations of treaty law. These elements reside rather in human rights culture and the arguments arising, as it were, from the *margins* of human rights law.

The recognition of the inherent dignity—and, therefore, corresponding rights—of any human person and the complementary principle of nondiscrimination point to a common conceptual ground upon which to build a legal (and ethical) argument advocating a key

human rights as pivotal to the objective of combating “marginalization.” Being liberated from marginality then should enable the human person to realize the rest of the congruent rights and entitlements provided so far in human rights law. One key right affecting the integration/marginality status of a person is the “human right to participation” (ICCPR, art. 21).

The Right to Participation

The methodological work to define the normative content and the central importance of the human right to participation already has developed to some great extent. In the light of human rights treaty obligations of states, it is possible to proffer general guidance and actual indicators toward the elimination of marginality through implementation of standards on the human right to participation (see annex). However, its practical application in monitoring has only begun and needs further development, as we will see below.

In addition to the various legal instruments and interpretive sources addressing the right to participation as an antidote to marginality and essential to the respect, protection and fulfillment of other human rights, the classic definitions of the integral right to participation classically cover two contexts: (1) certain persons’ (i.e., citizens’) participation in public and political life and (2) any human person’s right to participate in cultural life (ICESCR, article 15).

Three foundational instruments of international law define the right to political participation: the 1948 Universal Declaration of Human Rights (UDHR, article 21), covering both political and cultural dimensions of the right to participation; the 1966 International Covenant on Civil and Political Rights (ICCPR, article 25), covering political participation; and the International Covenant on Economic, Social and Cultural Rights (ICESCR, article 15), guaranteeing the right to participation in cultural life. The UDHR is a statement of general principles and, since it is not a treaty, the commitments to standards of state behavior that it defines only have the status of nonbinding norms. However, ICCPR and ICESCR and its human rights guarantees are legally binding on states parties, and subject to periodic monitoring, review and assessment through their respective treaty bodies.

In ICCPR, the right to participate is guaranteed in language similar to UDHR (article 21), and the Covenant’s article 25 states:

Every citizen shall have the right and the opportunity, without...unreasonable restrictions:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors.

In the context provided above, participation is a political right that presupposes a community of individual members (citizens) in association with others in some

institutional form (government). Sharing this assumption, the Covenant and the Declaration refer to this political status in slightly different terms: The Covenant referring to “citizens” (“Every *citizen* shall have the right...”) and the Declaration referring to “government” (“Everyone has the right to take part in the *government* of his country...”) [emphases added].

With both formulations conditioning the right to participation on the existence of political institutions, some observers have interpreted that the right to participation does not exist, but for the context of the political institutions of citizenship and government. (Hence, our assumption of the presence of the state.) However, since participation is a *human* right, such an interpretation would be unnecessarily proscriptive, as such rights arise from human dignity and the nature of being human, and thus are not dependent upon their validation by formal institutions. They would apply to a human person in circumstances not involving “citizenship” criteria, such as a tribal order, a refugee camp (of noncitizens in their location), or other condition of statelessness. Theoretically, human rights, particularly in light of the right to participation constituent to every other human right, are anathema to the citizenship-based interpretation, as it could generate the unacceptable status of *homo sacer* (the very marginality and gaps in protection from violation of rights).

ICCPR refers to participation in both a general and a specific form. Participation in its general form is “to take part in the conduct of public affairs.” Public affairs might include the activities of civic associations, neighborhood groups, social movements, and social clubs, as well as formal procedures of governments and the state. Thus, although participants in certain aspects of public affairs must be citizens, the domain of action is not restricted to formal political institutions, nor is it restricted to persons of a particular civil status, but includes social activities of a public nature affecting all humans.

The second form of political participation is more specific: elections. Suffrage is just one mode of public participation, but is widely recognized and utilized in governance and statecraft. Whether a central element in a political system, or just a limited one, whether open to all citizens, or just some, most states and their constitutions provide for some kind of elections in some part of their governing system. As the one participation mechanism specifically identified in ICCPR, elections are recognized as a common field of participation in the modern state, and assume special importance for participation in the text of the Covenant.

The Covenant also suggests general criteria for citizenship. Since different political systems have historically constructed and conditioned citizenship upon various factors, such as wealth, gender, race, age, civil status, criminal record, and mental capacity, the criteria of citizenship are always an important element of political participation. The Covenant’s language on elections refers to “universal and equal suffrage,” which suggests that citizenship also should be universally and equally available. Who can enjoy citizenship and the concomitant right of political participation remains undefined in ICCPR, but the implication is for an inclusive definition.

In addition to ICCPR, guarantees of a right to participation apply to specific groups as enshrined in their corresponding other international treaties. For example, the right to participation without discrimination is stipulated as a means of ending racial discrimination (International Convention on the Elimination of All Forms of Racial Discrimination [ICERD], articles 4[b], 5[c]). As a means of ensuring gender equality, effective participation of women is guaranteed throughout the International Convention on the Elimination of Discrimination against Women (CEDaW) in its preamble and articles 7, 8, 10, 11 and 13. The right to participate is guaranteed similarly for people with disabilities, in the Convention on the Rights of Persons with Disabilities, in articles 1, 3, 9, 13, 19, 24, 26, 29, 30, 33, 34 and 36.

The Convention on the Rights of the Child and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families also guarantee the human right to participation; however, deferring to states to determine the conditions and extent to which that right includes political participation for those groups, as well as ICESCR provides that “Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals” (article 2.3). However, ICESCR clarifies that “the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society” (article 4). The Convention relating to the Status of Refugees (1951) does not guarantee a right to participation explicitly, except to the extent that it would be provided for in some aspect of the “nonderogable rights” set forth in ICCPR (article 4), or to the extent that the Refugee Convention, article 7, guarantees that right as among those rights granted to the most-favored alien group in a country (Hathaway).

Cultural Dimension

UDHR provides that “Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits” (article 27). In treaty form, ICESCR imposes state obligations corresponding to the right to participation culture (article 15): “The States Parties to the present Covenant recognize the right of everyone: (a) To take part in cultural life.” Likewise, ICERD also guarantees a the “right to equal participation in cultural activities” (articles 5[e][vi]).

The normative content of this right also includes unimpeded access to, and benefits of scientific advancement (“scientific progress and its applications,” ICESCR, article 15.1.[b]), as well as “protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author” (article 15.1.[c]). Such normative content of the right to participate in cultural life is emerging more clearly in relation to intellectual property rights, including collective intellectual property rights, in the urgent and threatening context of trade globalization. However, while cultural rights are considered to constitute a whole category of human rights among ESCR, a general

“right to culture” remains one of least well-defined of the rights, except with respect to the principle of nondiscrimination and its complementarity with the human right to participation (ICERD, article 5[e][vi]; Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights [Protocol of San Salvador], article 14; the African Charter on Human and Peoples’ Rights, article 17.2); and UNESCO, Recommendation on Participation by the People at Large in Cultural Life and Their Contribution to It [1976], para. I[2][f]).

Rights to Education, Information (Capacity and Capabilities), Expression and Assembly

Exercising the human right to participation, however key it may be to addressing marginality, remains illusory without the enabling rights or “interim needs” that enable affective participation. Essential is access to, and ability to manage appropriate data, documents and intellectual resources that impact upon their right to participation in any sphere. Having access to appropriate data means being informed about potential hazards, opportunities and other factors that affect the right. By its ratification of both ICCPR and ICESCR, the state bears the obligation to ensure that laws and policies facilitate such access and ward against denial of the right to participation in any field of public life, particularly on any basis of arbitrary discrimination. Unimpeded opportunity and reasonable means for public debate and expression in the process of governmental, administrative and financial procedures, market mechanisms and the activities of the private sector and others are presupposed in a democratic society.

Individuals and communities, therefore, should have access to technical assistance and other means to enable them to improve their living standards and fully realize their civil, economic, cultural, political and social rights and development potential. The state, for its part, should endeavor to promote and provide for catalysts and mechanisms for the same, including efforts to ensure that all citizens are aware of procedural measures available toward defending and realizing her/his right to adequate housing. This concept is sometimes also referred to as “empowerment,” which is defined as “a process that enhances the ability of disadvantaged (“powerless” or “marginalized”) individuals or groups to challenge and change (in their favor) existing power relationships that subordinate them economically, socially and politically” (Agarwal: 1994, 39).

Popular thought and social science both have evolved with ever-more nuanced and sophisticated views of poverty, development and rights. Understanding the root causes of poverty and deprivation of rights now goes well beyond the simple notion that low income is the main factor of impoverished living conditions. Such living conditions are specific and local and, with few exceptions, are relative to the capacity of society to meet the needs of its people (i.e., citizens and other residents) without discrimination.

Access to information (ICCPR, article 19) and skills, that is capacity building and capabilities, is an essential entitlement in the realization of all human rights and to overcoming marginality. The popular source of this legal claim comes to us from arguments borrowed from social science. Conceived by Amartya Sen, Nobel Laureate

in Economics, the capability approach has been developed in various applications by Amartya Sen, Martha Nussbaum and a growing group of others. The approach has provided the intellectual foundation for the inextricably combined rights-based *and* needs-based approaches to human development, and provides strong arguments for the human right to (social) development. (Social development is understood here as the realization of the composite a bundle of rights, including participation, toward human well-being and freedom as the central features of development.) This line of thinking has spawned considerable research in moral philosophy, economics, political theory, education, health, food security, “human security,” ecosystems, empowerment, and other areas, as exemplified above).

The link between the right to participation and the rights to freedom of expression (ICCPR, article 19), peaceful assembly (ICCPR, article 21) and association (ICCPR, article 22, and decent work (ICESCR, article 8.1) becomes clear also in the exercise of one’s “critical autonomy” (Doyle and Gough) as a vital means to access benefits, services and opportunities as measures to realize rights. Similar to the right to participation, the integral right to freedom of expression finds both political and cultural dimensions in the guarantees provided by international human rights law.

Measuring Participation toward Eradicating Marginality

In the effort to achieve meaningful social cohesion and end the discrimination that both causes and results from marginality, the respect, protection and fulfillment of the human right to participation in public and cultural life are *de rigueur*. Keeping in mind the foregoing expressions of ethical philosophy and human rights norms, the state bears the moral and legal responsibility (i.e., obligation) under treaty law to end marginality through the implementation of process rights to information, education, freedom of expression, as well as freedom of association and peaceful assembly, on a basis of nondiscrimination. Combining theories provided in social science (e.g., a theory of human need, a theory of justice, etc.) and human rights ideology, satisfying such “interim needs” is required to realize other substantive rights, such as the human right to adequate housing.

As noted, the social science and human rights sources share a further common assumption: that the presence of a state implies also that the state is effective and capable of carrying out its corresponding obligations. Those sources also assume the will of marginalized humans to take advantage of the opportunity to develop their capabilities and participate effectively in their own interest. These articles of faith allow the monitor ambitiously to undertake the next practical step of evaluating efforts and progress toward the realization of the moral/human rights objective: eradicating marginality through the practical measure of effective participation.

The human rights community has engaged in certain attempts to devise methodologies for monitoring and evaluation of state obligations toward this end. Proceeding from the

general and theoretical to the specific and practical, this paper concludes with an example of such an effort.

The annexed table of indicators reflects a method for monitoring implementation of treaty obligations to respect, protect and fulfill the human right to participation (OHCHR, 2008). In order to produce a manageable monitoring-and-evaluation tool, the contributors narrowed the scope of participation to the political dimension. They developed measurable indicators that are even more specific, in that they measure structural features, processes and outcomes that ensure participation in elections. Therefore, the indicators do not cover participation in cultural life, or other forms and fields of participation such as consultation in policy formulation or legislative development. Thus, they may be only partially useful in monitoring the eradication of marginality.

However, circumscribed, the following table of indicators can contribute—by way of illustrative example—to the potential convergence of theoretical and practical efforts in the fields of social science and law at monitoring and measuring progress toward demarginalizing individuals and groups within the jurisdiction of the state. By assessing performance against those and other possible indicators, it is possible to diagnose the phenomenon of “marginalization” and the degree of progress—or regression—in its promised remedy with the affected people as agents on their own behalf. However, as noted, this process of methodological development remains so far nascent, but also endowed with possibilities to demonstrate how human rights, informed by social science, can acquire more-ample and more-practical applications.

Bibliography:

- Agamben, Giorgio. Translated by Daniel Heller-Roazen. *Homo Sacer: Sovereign Power and Bare Life* (Stanford: Stanford University Press, 1998);
- Agarwal, Bina. *A Field of One's Own: Gender and Land Rights in South Asia* (Cambridge: Cambridge Univ. Press, 1995);
- Arendt, Hannah. *The Origins of Totalitarianism* (Cleveland: World Pub. Co.; reprinted New York: Schocken Books, 1951);
- Bauman, Zygmunt. *Wasted Lives: Modernity and Its Outcasts* (Cambridge: Polity Press, 2004);
- Bell Hooks, *Feminist Theory: From Margin to Center* 2nd edition (Boston: South End Press, 2000);
- Berger, Elmer. *Judaism or Jewish Nationalism: The Alternative to Zionism* (New York: Bookman Associates, 1957);
- Berger, Elmer. *The Jewish Dilemma: The Case against Zionist Nationalism* (New York: Devin-Adair, 1945);
- Berry, J.W. "Marginality, Stress and Ethnic Identification in an Acculturated Aboriginal Community," *Journal of Cross-Cultural Psychology*, Vol. 1, No. 3 (1970), 239–52;
- Charles Taylor, *Multiculturalism and "The Politics of Recognition": An essay by Charles Taylor* (with commentary by A. Gutman, S. C. Rockefeller, M. Walzer, & S. Wolf) (Princeton: Princeton University Press, 1992);
- Coulthard, Glen. "Beyond Recognition: Indigenous Self-Determination as Prefigurative Practice," in Leanne Simpson, ed., *Lighting the Eighth Fire: The Liberation, Resurgence, and Protection of Indigenous Nations* (Winnipeg: Arbeiter Ring Press, 2008);
- Coulthard, Glen. "Indigenous Peoples and the Politics of Recognition," in Frances Negrón-Muntaner, ed., *Sovereign Acts* (Boston: South End Press, 2009. (Revised reprint of "Subjects of Empire" *Contemporary Political Theory* 6:4, 2007);
- Del Pilar, Jose A. and Jocelynda O. Udasco, "Marginality Theory: The Lack of Construct Validity," *Hispanic Journal of Behavioral Sciences*, Vol. 26, No. 1 (2004), 3–15;
- Doyal, Len and Ian Gough, *A Theory of Human Need* (London: MacMillan, 1991);
- El Abed, Oroub. Linda Butler, ed., "Chapter 6: Egypt and the PLO: Politics and Privileges," *Unprotected: Palestinians in Egypt Since 1948* (Washington: Institute for Palestine Studies, 2009);
- Grant, G. Kathleen Grant and Jeffrey R. Breese. "Exploring Black Identity Via Marginality Theory," in Robert M. Moore, ed., *African Americans and Whites: Changing Relationships on College Campuses* (Lanham MD: University Press of America, 2006), pp. 173–91.
- Grant, G. Kathleen; Breese, Jeffrey R., "Marginality Theory and the African American Student," *Sociology of Education*, Vol. 70, No. 3 (July 1997), p. 192–205;
- Halberstam, Judith. *In A Queer Time and Place: Transgender Bodies, Subcultural Lives* (New York: New York University Press, 2005);
- Hathaway, James C. *The Rights of Refugees under International Law* (Cambridge: Cambridge University Press, 2005);

- Jose A. Del Pilar and Jocelynda O. Udasco, "Marginality Theory: The Lack of Construct Validity," *Hispanic Journal of Behavioral Sciences*, Vol. 26, No. 1, 3-15 (2004);
- Kolsky, Thomas A. *Jews against Zionism: The American Council for Judaism, 1942–1948* (Philadelphia: Temple University Press, 1990);
- Lee, Jung Young. *Marginality: The Key to Multicultural Theology* (Minneapolis: Augsburg Fortress Publishers, 1995);
- Müller, Ingo. Deborah Lucas Schneider trans. *Hitler's Justice: The Courts of the Third Reich* (Cambridge MA: Harvard University Press 1991);
- Nussbaum, Martha C. *Hiding from Humanity: Shame, Disgust, and the Law* (Princeton, NJ: Princeton University Press, 2004);
- Nussbaum, Martha C. *Women and Human Development: The Capabilities Approach* (Cambridge: Cambridge University Press, 2000);
- Office of the High Commission for Human Rights (OHCHR). "Report on Indicators for Promoting and Monitoring the Implementation of Human Rights," HRI/MC/2008/3, 6 June 2008;
- Park, Robert E. "Human Migration and the Marginal Man," *American Journal of Sociology* 33 (May 1928), 881–93;
- Park, Robert E. "Human Migration and the Marginal Man," in Richard Sennet, ed., *The Classic Essays on the Culture of Cities* (New York: Appleton-Century-Crofts, 1969), pp.131–42;
- Raulff, Ulrich. Morag Goodwin trans. "Interview with Giorgio Agamben – Life, A Work of Art Without an Author: The State of Exception, the Administration of Disorder and Private Life," *German Law Journal* No. 5 - Special Edition (1 May 2004);
- Rawls, John. *A Theory of Justice* (Cambridge MA: The Belknap Press of Harvard University Press, revised 1999);
- Sen, Amartya, *Development as Freedom*, Oxford, Oxford University Press, 1999
- Sen, Amartya, *Poverty and Famines: An Essay on Entitlements and Deprivation*, Oxford, Clarendon Press, 1982.
- Starr, Paul D. "Marginality, Role Conflict, and Status Inconsistency as Forms of Stressful Interaction," *Human Relations*, Vol. 30, No. 10 (1977), 949–61;
- Stonequist, E. V. *The marginal man: A study in personality and culture conflict* (New York: Scribner's, 1937);
- Taylor, Charles. "The Politics of Recognition" in Amy Gutmann, ed., *Multiculturalism: Examining the Politics of Recognition*, (Princeton University Press, 1994).

List of illustrative indicators on the right to participate in public affairs (UDHR, Art. 21) (* MDG related indicators)			
	Exercise of legislative, executive and administrative powers	Universal and equal suffrage	Access to public service positions
Structural	<ul style="list-style-type: none"> • International human rights treaties, relevant to the right to participate in public affairs, ratified by the State • Date of entry into force and coverage of the right to participate in public affairs in the Constitution or other forms of superior law • Date of entry into force and coverage of domestic laws for implementing the right to participate in public affairs, including freedom of opinion, expression, information, media, association and assembly • Date of entry into force of universal suffrage, right to vote, right to stand for election, legal provisions defining citizenship and limitations (including age limits) on permanent residents with respect to the right to participate in public affairs at national and local level • Quota, time frame and coverage of temporary and special measures for targeted populations in legislative, executive, judicial and appointed bodies • Type of accreditation of National Human Rights Institutions by the rules of procedure of the International Coordinating Committee of National Institutions • Number of registered and/or active non-governmental organisations (per 100,000 persons) involved in the promotion and protection of the right to participate in public affairs 		
	<ul style="list-style-type: none"> • Periodicity of executive and legislative elections at national and local level • Date of entry into force and coverage of laws establishing an independent national electoral body 		<ul style="list-style-type: none"> • Date of entry into force and coverage of legal provisions guaranteeing access to public service positions without discrimination • Date of entry into force and coverage of administrative tribunals or dedicated judicial redress mechanism for public service matters
Process	<ul style="list-style-type: none"> • Proportion of received complaints on the right to participate in public affairs investigated and adjudicated by the national human rights institution, human rights ombudsperson or other mechanisms and the proportion of these responded to effectively by the government 		
	<ul style="list-style-type: none"> • Number of suffrages (election, referendum and plebiscite) at national and local level held during the reporting period • Number of legislations adopted by national and subnational legislatures during the reporting period • Proportion of elections and sessions of national and locally elected bodies held as per the schedule laid down by constitutional or statutory bodies • Proportion of election campaign expenditure at national and subnational level met through public funding • Proportion of elected personnel whose term of 	<ul style="list-style-type: none"> • Proportion of the voting-age population registered to vote • Reported irregularities (intimidation, corruption or arbitrary interference) with registration, maintenance and review of electoral rolls • Number of complaints per elected position recorded and addressed in the election process by national and subnational electoral authorities • Share of public expenditure on national and subnational elections spent on voter education and registration campaigns • Number of political parties registered or recognised at national level • Proportion of voting age population not affiliated to political parties 	<ul style="list-style-type: none"> • Proportion of vacancies in (selected) public authorities at national and subnational level filled through selection of women and candidates from target population groups • Proportion of cases filed in administrative tribunals and dedicated judicial redress mechanism for public service matters adjudicated and finally disposed during the reporting period • Proportion of positions in the

	<p>service was interrupted, by cause of interruption</p> <ul style="list-style-type: none"> • Proportion of women and target groups included in the membership of national political parties or presented as candidate for election 	<p>public service reserved to nationals or citizen</p>
<p>Outcome</p>	<ul style="list-style-type: none"> • Proportion of seats in parliament*, elected and appointed bodies at subnational and local level held by women and target groups • Average voter turnout in national and local elections, by sex and target groups • Proportion of invalid and blank votes in elections to national and subnational legislatures 	<ul style="list-style-type: none"> • Reported cases of denial of access to public service or position on account of discrimination • Proportion of public service positions held by women and members of target groups
<p>24.04.08 <i>All indicators should be disaggregated by prohibited grounds of discrimination, as applicable and reflected in metasheets</i></p>		