



THE ONATI INTERNATIONAL INSTITUTE FOR THE SOCIOLOGY OF LAW

# POVERTY & THE LAW

Edited by  
Peter Robson and Asbjørn Kjøenstad

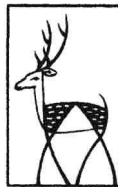
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# Poverty and the Law

*Edited by*  
PETER ROBSON  
and  
ASBJØRN KJØNSTAD

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## POVERTY AND THE LAW

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## *Series Editors' Foreword*

Poverty is one of the great problems facing individuals, families, organisations, states and international agencies at the dawn of the new millennium. Law is one among all too few tools to combat world poverty. This book explores some of the ways that law is, or might, combat poverty by focusing on the protection afforded the poor by constitutional rights, the legal ability of interest organisations to improve the living standards of their members, new kinds of unemployment, social movements of the landless and indigenous, legal services for the poor, and the defense of human rights.

This book is the product of a workshop held in 1997 at the International Institute for the Sociology of Law (IISL) in Oñati, Spain. The IISL is a partnership between the Research Committee on the Sociology of Law and the Basque Government. For more than a decade it has conducted an international master's programme in the sociology of law and hosted hundreds of workshops devoted to sociolegal studies. It maintains an extensive sociolegal library open to scholars from any country and any relevant discipline. Detailed information about the IISL can be found at [www.iisj.es](http://www.iisj.es). This book is the most recent publication in the Oñati International Series in Law and Society, a series that publishes the best manuscripts produced from Oñati workshops conducted in English. A similar series, *Coleccion Oñati: Derecho Y Sociedad*, is published in Spanish.

The workshop itself was organized by the Comparative Research Programme on Poverty (CROP). CROP is a response of the academic community to the problem of poverty. Initiated in 1992, the CROP network of scholars provides research-based information to policy-makers and others responsible for poverty reduction. Researchers from more than one hundred countries have joined the CROP network. Nearly half come from the so-called developing countries and countries in transition. With the aim of providing sound and reliable knowledge that can serve as a basis for poverty reduction, CROP brings together researchers for workshops, coordinated research projects and publications, and offers educational courses for the international community of policy-makers. Detailed information about CROP can be found at [www.crop.org](http://www.crop.org).

William L. F. Felstiner  
Eve Darian-Smith

## *CROP—The Comparative Research Programme on Poverty*

The Comparative Research Programme on Poverty was initiated by the International Social Science Council in 1992. The major aim of CROP is to produce sound and reliable research-based knowledge which can serve as a basis for poverty reduction. CROP is organised around a broad international and multi-disciplinary research arena which allows entry to all poverty researchers and others interested in a scientific approach to poverty. CROP organises regional and topical workshops and international conferences, initiates and co-ordinates comparative projects and publications, offers educational courses, and invites its members to consult for national and international agencies. More than fifteen hundred researchers and others have joined the CROP network, close to half coming from so-called developing countries and countries in transition.

As an international and interdisciplinary research programme, CROP's objectives are to:

- consider how scholars working within different paradigms can develop a joint arena for multi-paradigmatic research;
- compare different theoretical approaches so as to understand better their links and relationships;
- consider how the social sciences can contribute to the understanding of poverty in a global context;
- establish an international scientific network which will give impetus to a long-term programme;
- generate and secure high-quality data of importance for different social science approaches;
- create a body of scientific knowledge which can be used for poverty reduction.

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**Asbjørn Kjønsstad**, born in Norway; Professor Dr. Juris at University of Oslo since 1978; Dean at the Faculty of Law, University of Oslo 1986–88; Vice President in the European Institute of Social Security 1993–97; visiting scholar at Boston University Law School and Boston College Law School 1995–96; Juris Doctor Honoris Causa at Lund University, Sweden, May 1996; Visiting Professor at University of Leuven March and April 1997. He has written 32 books and about 120 articles on social security law, medical law, welfare law, tort law and family law.



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**Hélène Grandvoinnet** wrote this chapter for the OECD Development Centre, where she worked for three years on poverty and corruption issues. After collaborating with the World Bank World Development Report 2000 on poverty, she is now a Public Sector Specialist in the World Bank (Africa Region).

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**Nicola Loughran** is preparing her doctoral thesis on the socio-legal effects of welfare-to-work policies. She also teaches legal theory to law undergraduates. She has co-authored *Children & Young Offenders in Scotland – A Review*, *Evaluation of Parties' Experience of Mediation*, *Edinburgh Mediation Project Report* and *Edinburgh Mediation Project, Final Report*.

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**Paul Spicker** is a Senior Lecturer in Social Policy at the University of Dundee. He is the author of several books on related subjects, including *Stigma and Social Welfare* (1984), *Poverty and Social Security: Concepts and Principles* (1993), *Social Policy* (1995), *The Welfare State: A General Theory* (2000) and a range of academic papers.

# *Introduction*

ASBJØRN KJØNSTAD and PETER ROBSON

This collection of essays represents the second stage in a programme developed by CROP to focus attention on the global impact of legal policies on levels of poverty. They stem from a Conference/Workshop on Law and Poverty held at the Institute for the Sociology of Law in Oñati in 1997. The papers collected here illustrate the distinct dimensions of poverty in a range of different political and cultural settings. They also show how poverty is exacerbated by quite discrete local cultural factors in some instances. There is nonetheless a universal element which runs through all the contributions. The fate of those who are disadvantaged in society depends crucially on their access to the goods through the world of work. Access to the fruits of people's labours may be restricted by accidents of birth. Thus gender, ethnic background or disability can result in individuals having a much higher chance of experiencing poverty than those outwith these groups. The success of these unprivileged groups in achieving a measure of prosperity is bound up with geographical and political factors.

The papers presented here represent both broad themes and specific policy developments. Most address the experiences within one particular political culture and concentrate on current experience rather than historical developments. This focus is quite deliberate at this stage in the CROP Law and Poverty Workshop. We are concerned to build up a picture of the interface of law and poverty in a range of distinct cultures so that we can develop comparative perspectives. From the particular we seek to make links between successful strategies operated in individual struggles and to identify the factors which appeared to bring success. Perhaps in the era dominated by unrestrained free market capitalism across the world it is more frequent that we have to identify the setbacks and problems encountered by the poor and those working with them on poverty issues. The lessons to be learned in this process, however, are invaluable.

## INTRODUCTION

The Workshop was concerned to explore the effectiveness of programmes of poverty eradication. We were particularly interested in the role of legislative and other rights under law in this process. In order for us to conduct an informed debate we need to give some thought to both our definitions of poverty and our notions of rights. Paul Spicker's contribution to this book reminds us of the

range of meanings which poverty connotes. He then explores an area with which this debate is intimately connected, namely the complex nature and status of rights. The problems which arise from attempts to deal with poverty through the mechanism of individual rights are a central theme of this paper.

#### THE EXPERIENCE OF POVERTY

Over the years studies, from the first observational reports in the nineteenth century through to the statistical compilations and ethnographic studies of the twentieth century, have delved into the lives of the poor. Their experiences have informed the nature and extent of social reforms. The additional stresses and problems of existing with restricted choices about how and where to live have resulted in programmes designed to overcome these limitations. What also need to be noted are the arcane areas which have been accorded limited attention. These range from the difficulties and humiliations which the poor have been required to undergo before they receive help to the side effects of the lack of power that is the mark of poverty.

In relation to the first of these themes Yuri Kazepov provides a brief guide to the complex patchwork of entitlements and claims of poor individuals in Italy. With its decentralised system of administration we can see how the accidents of local geography play a major part in determining the level of provision for those outwith the world of waged work. This provides an even more fragmented picture than we receive from studies of poverty provision in the United States and is in interesting contrast to national poverty alleviation programmes found in Britain and Scandinavia.

In "Strategies for Police Accountability and Community Empowerment" Ross Hastings and Ron Saunders examine an aspect of the powerlessness of the poor overlooked in the traditional literature on poverty. They discuss the ways in which policing impacts on poor communities in the often overlooked context of Canada. This theme is examined in the specific context of the policing strategies and the accountability of the police. The lack of control experienced by poor communities in respect of policing adds to their overall disempowerment. The authors discuss developments in the province of Ontario and explore a range of alternatives to the traditional models of developing police strategies and ensuring accountability.

#### STRATEGIES TO CONFRONT POVERTY

The political processes operating in different countries have produced a range of different accommodations to the threat from the dispossessed over the years. Organised labour has been successful in many industrialised nations in securing rights for poor workers through political action. Mass class parties have directly

and indirectly sought to address the questions of low wages and inadequate benefits for times of sickness and unemployment. Whilst this has transformed the political face of modern Europe in the twentieth century, some groups have been ignored in this political process.

One such group are the untouchables in southern Asia. Kalinga Tudor Silva concentrates on how in Ceylon the impact of caste has traditionally affected those at the bottom of the pyramid, the untouchables. He draws attention to developments in the political power of this group and how they have sought, as a group, to develop a credible strategy to deal with the structural inequality which is the essence of a caste system. He points out the tensions and problems experienced in operating an affirmative action programme as a method of confronting caste oppression.

A more subtle form of unequal treatment is considered by Peter Robson and Nicola Loughran. They examine the impact of neglect and absence of policies in relation to a group marginalised by social prejudice, namely disabled people. They trace efforts here to combat their exclusion from the world of work, and efforts to deal with the additional costs of disability. They suggest that there is a paradoxical situation wherein paper rights have expanded whilst the resources devoted to disability issues have kept no pace with the real costs of disability. In this area there has not been overt ideological retrenchment. The impact of the new rights on the lives of disabled people has, however, been disappointing. This is directly connected to their limited industrial and political influence.

#### ACCESS TO JUSTICE FOR THE POOR

The development of political and social rights for the powerless in society has occurred at the behest of those suspicious of the significance of justice systems. The significance of procedural rights and justice through the court system serving the interests of the rich has only recently been recognised. The importance of ensuring not only that rights are secured but that their effectiveness is guaranteed has become as a focus for the concerns of those in poverty.

In contrasting the very different socio-political contexts in the United States and Italy Antonella Mameli addresses the impact of using constitutional equal protection provisions on the success of the poor in mobilising to counter exclusion. She compares the United States and Italian experiences on this issue. The evidence suggests that the familiar division of the deserving from the undeserving which has informed poverty policies in many cultures provides the key to understanding how some groups have made advances in the twentieth century in these two political systems.

As far as the United Kingdom is concerned Mike Adler takes a detailed look at the way in which the rights of poor people to challenge those making decisions about their entitlement to benefits from the state has been steadily eroded over the past twenty years in Britain. This issue has been neglected but it is of

crucial significance for those seeking to provide a sound grounding for protecting the social claims of the poor from the vagaries of party politics.

#### OVERVIEWS

The collection concludes with two quite distinct overviews. First, Helene Grandvoinnet provides a wide-ranging geographical overview in "The Rule of Law and Poverty Reduction: a Comparative Perspective". She traces the nature of the experience of poverty in a representative selection of developing countries, and shows how strategies have been developed to engage with the poverty encountered by a range of disadvantaged groups. She notes that one of the problems they encounter is how to make effective those rights which they manage to secure from their more affluent compatriots. In contrast, Camillo Perez-Bustillo concludes this volume by considering all its themes as they affect one country. He examines the context of the uprisings of the poor in Mexico in the 1990s. He outlines the impact of the experience of poverty on indigenous people and suggests that the Chiapas actions reveal not only strategies for confronting the experience of poverty but also the relationship to access to justice of the oppressed.

These essays point the way to further work. CROP has encouraged this with a further Workshop, which evaluated the use of law as a tool to combat poverty and was held in Oñati in May 1999.

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# Introduction