

# **The Right to Bank**

*A Proposal for Introducing a New Human  
Right under International Law*

By

**Clara Barbiani**

**The Right to Bank: A Proposal for Introducing a New Human Right  
under International Law**

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# List of Acronyms

ABS	Alternative Bank Switzerland
AFI	Alliance for Financial Inclusion
AGCM	Autorità Garante della Concorrenza e del Mercato
AI	Artificial Intelligence
BaaS	Banking as a Service
BE(A)TLES	Banking sector, Ecological, Technological, Lifestyle, Economic, Social
BRT	Business Roundtable
BSR	Banking Social Responsibility
CDO	Collateralized Debt Obligations
CDS	Credit Default Swaps
CEO	Chief Executive Officer
CFBP	Consumer Financial Protection Bureau
CGAP	Consultative Group to Assist the Poor
CSR	Corporate Social Responsibility
CWES	Centre for Women's Economic Safety
DREAM	Disinvest, Respect, Engage, Act Fairly, Make an Impact
ECHR	European Convention on Human Rights
EctHR	European Court of Human Rights
EMAS	Eco-Management and Audit Scheme
EMIR	European Market Infrastructure Regulation
ESG	Environmental, Social, Governance
ESMA	European Securities and Markets Authority
EU	European Union
FAST	Finance Against Slavery and Trafficking (initiative)
FCA	Financial Conduct Authority
FEBEA	European Federation of Ethical and Alternative Banks and Financiers

FIGG	Financial Inclusion Gender Gap
FinCEN	Financial Crimes Enforcement Network
FinTech	Financial Technology
FOS	Financial Ombudsman Service
FSB	Financial Stability Board
GABV	Global Alliance for Banking on Values
GBF	Global Biodiversity Framework
GDPR	General Data Protection Regulation
GFP	Global Policy Forum
GPFI	Global Partnership for Financial Inclusion
HKMA	Hong Kong Monetary Authority
HNWI	High Net Worth Individual
IAF	Impact Appetite Framework
ICAN	International Campaign to Abolish Nuclear Weapons
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICIJ	International Consortium of Investigative Journalists
IDG	Inner Development Goals
IEA	International Energy Agency
IMF	International Monetary Fund
INAISE	International Association of Investors in the Social Economy
IRAC	Issue, Rule, Application, Conclusion
ISO	International Organization for Standardization
LDC	Least Developed Countries
KYC	Know Your Customer
MCD	Mortgage Credit Directive
MiFID	Markets in Financial Instruments Directive
NBFI	Non-Banking Financial Intermediation
NGO	Non-Governmental Organization

NINJA	No Income, No Job or Assets
NPSR	National Payment Systems Regulations
OECD	Organisation for Economic Co-operation and Development
PAD	Payment Accounts Directive
PSI	Principles for Responsible Insurance
RMBS	Residential Mortgage-Backed Securities
ROA	Return on Assets
ROE	Return on Equity
RTS	Regulatory Technical Standards
SAR	Suspicious Activity Report
SDG	Sustainable Development Goals
SFC	Securities and Futures Commission
SMCR	Senior Managers and Certification Regime
SME	Small and Medium-Sized Enterprises
SPV	Special Purpose Vehicle
STEEP	Social, Technological, Economical, Ecological, Political
VUCA	Volatile, Uncertain, Complex, Ambiguous
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNCTAD	UN Conference on Trade and Development
UNEP FI	UN Environment Programme Finance Initiative
UNDP	UN Development Programme
UNISEF	UN Children's Fund
UN PRB	UN Principles for Responsible Banking
UN PRI	UN Principles for Responsible Investment
WEF	World Economic Forum

## ABOUT THE AUTHOR

**Clara Barbiani** is a legal innovator specialized in international financial law and regulation and a consultant to the financial sector. She is a Chartered Member of CISI and regularly trains professionals on several aspects of compliance and financial regulation. Her career as legal professional in London focused on enhancing compliance governance as framework to bring ethics in finance. She has worked as Compliance Manager in the private banking and wealth management sector for many years and, previously to that, she worked in the central compliance team of the London branch of Société Générale, investment banking division. She graduated in International & EU Law (LLB) in the Hague with a specialization in International Financial Law (University of Hong Kong). She completed with distinction a LLM in Banking & Finance Law (Queen Mary, University of London). She holds a PhD in Law & Business (LUISS). She lectured financial regulation, legal aspects of central bank independence, climate change financing and sustainable finance to students of Executive LLM programs, professionals and diplomats. She holds seminars on sustainable banking and ethical finance within the ethical banking circuits.



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In the past years, I had the chance to meet some incredible persons that had the courage to endorse the different direction I was pointing towards since the beginning, while I was introducing ideas that could find no place in the world yet. Accordingly, I would like to thank my Professors at the University of Hong Kong and at Queen Mary, University of London and I would like to provide a special thank to Sir William Blair, not only for having decided to write the Preface of this Book but also for having offered to me the opportunity to publish two interesting academic articles together, sharing with me a vision in which a quest for ethics is ultimately set, in order to move towards restoring trust in the financial system.

Six months after publishing together “The Beauty of Ethics” I discovered the existence of ethical banks thanks to Banca Etica. Being able to open a bank account there gave me an indescribably high level of satisfaction. I have subsequently learnt about the movement of social banking, thanks to the initiatives of the Institute for Social Banking, which allowed me to meet many insightful professionals working in this field. Within this context, a special thank goes to Ugo Biggeri, co-founder of Banca Etica and European Regional Representative of the Global Alliance for Banking on Values. I am pleased that he decided to write the Postface of this Book and I am grateful to him, not just for that, but also for having transformed a noble cause into a concrete mission, bringing positive transformation into the world through the banking sector and dedicating his life to that: this is source of inspiration not just for me and my peers but also for the generations to come. Ethical bankers put concrete effort, every single day, for transforming the banking sector into a force for good and this is why I admire them. My thanks, thus, also go to the wonderful persons that I have met within the ethical banking and social banking circuits and that engaged into exchanges of views and ideas, participating to my seminars, and showing interest for my book when it was still in the process of being written.

When a project for a book starts, there is a delicate phase, as the beginning part is often the hardest. The reviewers of this academic book deserve, therefore, a special thank too, as they demonstrated enthusiasm towards this project when it was still far from what it developed into. I thank for that: Professor Paul Gower of the University of Warwick; Professor Andy Schmulow of the University of Wollongong.

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# PREFACE

Sir William Blair<sup>1</sup>

The question of banking and debanking is currently a controversial one. In short, the consequences of debanking can be serious for a customer, but at the same time, banks are under extensive regulatory obligations as regards the suitability of their customers – anti-money laundering is a prime example. There are some complex regulatory duties imposed on banks, and the difficulties these pose for management should be recognised and understood. But there is also the wider context of financial inclusion and exclusion at a time when lack of access to basic banking services particularly, at a time of increasing contactless payments, as regards payment mechanisms, can make ordinary life difficult, if not impossible for those without access.

This has been recognised for some time. In the EU, the right to open a basic bank account has existed for consumers legally resident in the EU since 2014. This includes the making deposits, withdrawing cash, and receiving and carrying out payments (for example direct debits and card purchases). This trend continues to be progressed further. In the UK, for example, regulation as regards debanking is found in the Payment Services (Contract Terminations Amendment) Regulations 2024.

As the title of this book states, Clara Barbiani argues for the creation of a new international human right to bank, placing it in the context of a discussion of the ethics of banking generally. The author argues that consensus can be built around the (justified) assertion that, within the current system, is unrealistic to imagine a State that works on the achievement of a social and economic order that support economic rights without acting in partnership with the financial sector. It follows that the performance of the sector is a matter of the public good, as indeed is the

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<sup>1</sup> Professor of Financial Law and Ethics, Centre for Commercial Law Studies, Queen Mary University of London.

basis of the complex system of financial regulation that has emerged in the last half century or so.

Clara Barbiani argues that a right to bank would result in greater attention being given to the role of financial institutions, acknowledging their fundamental role in the achievement of a social and economic order supportive of economic rights as a whole. She sees that in an international context, since the issues are broadly the same internationally, though the particular circumstances differ from country to country. The right to bank could act as a powerful tool, favouring the interests of everyone: unbanked individuals would benefit from gaining an express right to access the financial system, an equitable system would facilitate economic development, and banks themselves would benefit from higher standards both in a commercial business sense and in an ethical sense.

As argued in the book, there is a practical side to this as well. Banks will, it is said, succeed in the future if they show a capacity to operate in a positive way in their customers' changing lifestyles, tailoring their services and products to new ways of living that people are shifting towards. Should they ignore this, they will risk becoming obsolete, losing their customer basis. Conversely, offering to customers a rights dimension than is wider than the contractual rights they enjoy as clients would foster a sense of trust in banks that non-banking providers – like the tech companies which, actually or potentially, provide ever more competition for banks – will find hard to achieve. In short, as it is argued, a new human right can act as a game changer, the focus being on financial inclusion, and this will support banks as viable economic players as well.

This is an ambitious agenda, the author proposing the amendment of the Universal Declaration of Human Rights to contain a "Right to Bank" consisting of a right to be respected as bank customer that is, to be treated equitably, fairly and honestly. States in turn would commit to ensure these rights. Specifically, the following practices would not be allowed, unless valid grounds apply: de-banking; freezing bank accounts and imposing restrictions on cash withdrawals. A wider argument is set forth which proposes that within its scope there should be the right to be free of abusive practices in lending money and selling financial products.

As noted, these questions are not being ignored by regulators or by banks themselves. The legal right to a basic bank account is now firmly recognised in Europe at least. But as the age of cash recedes, sooner or later these issues will have to be faced everywhere, because access to basic banking services and in particular access to payment systems will be necessary not only for financial inclusion in a broad sense, but also, quite simply, for day-to-day living. In her wide-ranging study, Clara Barbiani is to be congratulated in raising some fundamental questions, and proposing some fundamental answers, that will help guide us to a better future place than we are in currently.

Sir William Blair  
London  
April 2024

# INTRODUCTION

*Sunt lacrimae rerum et mentem mortalia tangunt.*

*Virgil, Aeneid*<sup>1</sup>

This verse of the *Aeneid* is considered as popular as enigmatic;<sup>2</sup> philologists keep wondering how the expression *lacrimae rerum*, which can be literally translated as ‘tears of things’, should be interpreted. Classicist Maurizio Bettini argues that this expression allows two different interpretations: the first one lies with acknowledging that ‘things’, intended as facts and events, can make people burst into tears; the second one suggests instead that ‘things’ are also wet with tears.<sup>3</sup> According to Bettini, it may be the case that Virgilio wanted to generate ambivalence by using this expression, in order to “enhance the sorrowful charm of the words pronounced by Aeneas.”<sup>4</sup> The whole verse has then been translated in different ways. Robert Fagles, for example, advanced the following interpretation: “[t]he world is a world of tears, and the burdens of mortality touch the heart.”<sup>5</sup> Augusto Rostagni, instead, interpreted this verse as follows: “[h]istory is tears, and human suffering moves the mind.”<sup>6</sup> Maurizio Bettini endorsed a more literal translation: “they are tears of things and mortal affairs move the souls.”<sup>7</sup> Independently from the translation chosen, the sentence draws our attention to the tragedies we are observing and experiencing as human beings: wars, catastrophes and all other dramatic events causing collective suffering. The verse of Virgilio suggests that these events stimulate human compassion. Yet, thinking about the world we created and how the world looks in 2023, the question comes naturally: is it so? Do we all feel moved by what is happening? I certainly do and I write this book in the hope that, together with me,

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<sup>1</sup> Vergilius Maro, P. (29-19 B.C.). *Aeneid*. I, 459-63.

<sup>2</sup> Bettini, M. (2019). *Homo sum – Essere “umani” nel mondo antico*. Einaudi. pg.11.

<sup>3</sup> Ibid.

<sup>4</sup> Ibid. pg. 12.

<sup>5</sup> Virgil, P., Fagles, R. (2010). *The Aeneid*. London: The Folio Society.

<sup>6</sup> Virgil, P., Rostagni, A. (1944). *L’Eneide*. Mondadori.

<sup>7</sup> Ibid. note [2] Bettini.

billions of human beings around the world, in this moment, feel profoundly touched by the negative events that hit humanity in 2023 and previous years. The feeling I have from some time is that, as humanity, we are touching the lowest point of our civilization: when the war in Ukraine started, many of us were left profoundly shocked while observing how the situation quickly degenerated in a conflict that in many ways could have been avoided. Why the international community failed to reach consensus through diplomatic measures? Why did we fail to preserve peace between nations? How could the rules-based order established at international level, following the Second World War, fall apart so easily and quickly?<sup>8</sup> Is there anything in the world that could be considered worse than a war exploding in the heart of Europe? The shock in the mind of many of us has been severe, since reality went much beyond what the collective imaginary could envisage: as Virgilio stated, *sunt lacrimae rerum*.

Now that other conflicts are gaining traction, as the one between Israelis and Palestinians, we may wonder if the world is getting ready for a Third World War, if we are getting used to tragedies we should never get used to as humanity and if all this sorrow was really unavoidable -as some people are trying to argue- and, mostly, how much sorrow more we should endorse as humanity before we start moving in the opposite direction. In a world that looks always more fragmented, divided, and grieved, it is the right time to remember ourselves about the existence of common rights that belong to all human beings<sup>9</sup> and the need as humanity to ensure these are respected. The Universal Declaration of Human Rights was adopted in 1948. With its introduction, an important chapter for the history of humanity was written: by formally acknowledging the existence of a series of human rights belonging to all human beings, we have set the premises

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<sup>8</sup> As an article published by the Guardian in 2019 highlights: “The result of all this postwar statecraft was to fashion a rules-based international order of a kind that the world had never before seen. This did not serve humankind perfectly, but it was a vast improvement on what had gone before.” Rawnsley, A. (2019). Brave new world: the search for peace after the second world war. *The Guardian*. [online] 1 Sep. <https://www.theguardian.com/theobserver/2019/sep/01/second-world-war-united-nations-nato>.

<sup>9</sup> The ancient Greeks used this expression (τά κοινὰ τὸν ἀνθρώπον δίκαία), while referring to some common rights belonging to all human being. Polybius (220 – 146 B.C.). Ἱστορίαι. 2, 57-58.

for a society in which all persons alike can live a dignified life and be respected, by enjoying a series of rights independently from the race, gender, social status or any other elements that from time to time have unfortunately offered ground for discrimination. The ancient Romans envisaged already the need to provide each human being with some guarantees against possible violations: the expression of *ius humanum* - translating as 'human laws'- was used, while referring to situations in which extreme violence and brutality was used, triggering the violation of the minimum standards.<sup>10</sup> As we can imagine, violations of human rights were regularly perpetrated within the Roman empire and also before that: thus, the recourse to the concept of *ius humanum* should not be interpreted as an indication of the existence of a virtuous society but rather as a sign of the fact that humanity already at the time had the capacity to recognize situations in which extreme violence and brutality caused excessive harm to human beings. While we can accept that this was the case in an ancient society, having reached limited levels of civilization, it is hard to understand how we keep observing high levels of violence and brutality after thousands of years of civilization. Is this the fair price for the form of progress we advocate to have successfully achieved?

I think that many of us are starting to understand the contradictions on which our current system stands and, while challenging the overconfidence we initially chose to nurture towards different forms of innovation and society developments, we are probably wondering if a way out from the chaos is possible, if a sense of trust towards institutions, governments and other communities and organizations -in general- can truly be re-established, if we as human beings ever managed to exist as global community and if empathy can reach higher levels, now that we all experienced a global pandemic, we have witnessed a series of dramatic catastrophes due to climate change, which hit us in different parts of the world, changing the lives of millions of people all of a sudden, we have started to observe migrations at unprecedented levels from different countries and in all directions, while the raise in armed conflicts and geopolitical warfare made us victim of the feelings of uncertainty, fear and sorrow, destroying families, communities and environmental balances forever.

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<sup>10</sup> Ibid. note [2] Bettini. pg. 28.



Never more than now, we have the chance to realize that we exist as global community: as human beings, we are starting to experience the same situations all over the world. Cicero in the year 44 B.C. already envisaged the existence of this type of community, as he discusses the principles of fellowship and society that nature has established between men, as: “the most comprehensive bond that unites together men as men and all to all”.<sup>11</sup> In order to belong to this society, it is sufficient to be a human being.<sup>12</sup> Thus, Cicero unconsciously foresaw the type of society we live into: a global community in which we can all together work towards setting the premises for a better future for the good of all of us, if we want. This book embraces this vision: in a world that suffers, we must start to put order by enforcing the international legal framework that it was provided to us, thanks to the work undertaken by the generations that preceded us and that witnessed the Second World War and the struggles of humanity touching one of its worst moments in history, less than a century ago. The Universal Declaration of Human Rights is a document of paramount importance. This book introduces a proposal to amend it in order to introduce a new human right: the right to bank. In the following Chapters, the discussion will move from ‘why we need a right to bank?’ under Part I towards ‘what is a right to bank about?’ under Part II.

Part I contains two Chapters: under Chapter 1, different human rights provided under the Universal Declaration of Human Rights will be considered orderly with the purpose of explaining why a right to bank cannot currently be inferred, based on the existing international human rights framework, but it can be justified; under Chapter 2, an analysis using strategic foresight methodology will be conducted in order to draw a picture of the complex framework in which banks currently operate and will operate in the future (the chosen timeframe is 2023 – 2050), with the aim of explaining why for banks endorsing a right to bank can be highly beneficial, as this would provide them with a better chance to not collapse or disappear in the next future. Under Part II, the right to bank, which consists in getting access, being respected and trusting the system, is presented by considering each of its components separately: Chapter 3

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<sup>11</sup> Cicero, M. T. (44 B.C.). *De officiis*. I, V. 51.

<sup>12</sup> Ibid. note [2] Bettini. pg. 54.

introduces the right to access the banking system; Chapter 4 deals with the right to be respected as a bank customer; Chapter 5 contemplates the right to trust the banking system. Within each of these Chapters, the underlying issues that the new right aims to address are critically discussed, the current gaps in the legal framework are identified and the text of the new human right is presented, accompanied by observations about the benefits that the application of the new right would trigger.

More than fifteen years have passed since the global financial crisis and, somehow, the perception is that the problems we faced at the time are gone because we don't hear about these topics anymore, not that often at least. Certainly, an increased level of regulatory oversight and the introduction of new laws to protect bank customers in many jurisdictional contexts may have provided us with some additional confidence. Yet, the reality is often different and the struggle that many bank customers experience has exacerbated, while new challenges are raising and the cost-of-living crisis, during this year, has caused unprecedented complications to families already close to the poverty threshold. While the Universal Declaration of Human Rights vests us with economic and social rights, the enforcement of these rights is difficult within the banking context. More than one billion of people around the world lack access to the banking system, while thousands keep falling into poverty due to unsustainable levels of debt, the incapacity to withdraw their funds from the bank and the mis-selling of financial products by financial advisors that unjustly take advantage of the vulnerable position of retail clients. While all this happens, the increasing lack of trust in financial institutions leads to a high number of retail clients switching to underregulated financial institutions, digital banking providers of uncertain credentials and cryptocurrency circuits. In summary, more than fifteen years have passed since the financial crisis, banks have not regained investors' trust, despite the significant changes undertaken since then and the exponential growth of budget allocated to compliance activities. Yet, we cannot let banks go down this route, we cannot accept that the only financial institutions from which we as retail clients can still expect reasonable levels of accountability and respect are distrusted and dismissed. We are on a crossroad and the future of banks as well has never been so uncertain. The recent collapse of Credit Suisse is a sign that reputation matters in today's world.

As this book aims to demonstrate, we are getting closer to a point in which either there will be a future for all of us, as humanity, or there will be a future for none. In this context, banks play a role of paramount importance and we, as human beings, can all assert an active role in pointing them towards the right direction before it is too late. The Principles of Banking Social Responsibility, which I elaborated and that get introduced under Chapter 5 aim to provide individuals with the capacity to play a more active role in the banking context. We like to think about an unlimited timeframe being available, yet we are starting to realize that climate change has set a countdown, which is irreversible. If we fail as global community to undertake significant changes in the next few years, everything will be lost. If we study the data, read the reports and analyze the current framework, we realize that this is not a storm in a teacup: the challenge is real. In this scenario of extreme hardship, caused by us as human beings - as the term 'Anthropocene' used to describe the era we have entered reminds us- we are all urged to apply our best skills and knowledge to foster the change that the global community needs to embrace.

As Cicero envisaged, the establishment of a single community to which all human beings belong is possible if we behave in a way that shows respect towards the principle according to which the enjoyment of common goods implies the act of taking some benefits as well as providing them. It is not just about recognizing our entitlements but also about acknowledging to have obligations towards others.<sup>13</sup> These duties -the *communia*- include specific actions, between which we can find the duty to provide an honest advice to those that need to take a decision (*consilium fidele deliberanti dare*).<sup>14</sup> If I would have to explain the motivation that led me to write this book, I would use the same expression. While the world in recent years has slowly slipped into the chaos of misinformation, climate weirding and social polarization, I have struggled to develop a sufficiently clear vision about the world, the direction that it is moving towards, in different areas, and the several hidden challenges that modern society is posing, whether I succeeded in doing so, I cannot tell: I let you be the judge of that. I have found a lot of useful sources in my research journey and leveraged on my

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<sup>13</sup> Ibid.

<sup>14</sup> Ibid. note [11] Cicero, I, V. 51.

working experience, the different academic enquires, and several valuable insights gained from financial industry participants to develop a vision that I want to share with you and which I hope you will simply welcome as an honest advice to those that need to take a decision. The research functional to develop this academic book was conducted during the last seven years and has not been founded by any organization. Accordingly, this represents an independent research initiative, which I carried on out of my genuine interest for the banking sector, the sympathy I always nurtured for the most vulnerable persons in the world and my closeness to several persons that, as bank customers, experienced significant hardship, while dealing with financial institutions in recent years. The advice provided under this book is addressed to banks, governments, and all human beings alike, as all of these parties represent crucial players that will need to take an important decision moving forwards, meaning: choose to be part of the problem or part of the solution.

## PART I

### WHY WE NEED A RIGHT TO BANK?

# CHAPTER 1

## A right to bank cannot be inferred but it can be justified

### Introduction

*Where, after all, do universal human rights begin?  
In small places, close to home - so close and so small  
that they cannot be seen on any maps of the world.  
Such are the places where every man, woman  
and child seeks equal justice, equal opportunity,  
equal dignity without discrimination. Unless these  
rights have meaning there, they have  
little meaning anywhere.*

*Eleanor Roosevelt*<sup>1</sup>

The choice of introducing this chapter with a reflection on Eleanor Roosevelt is not random: the vision is the one of a woman that acted as keen activist and campaigner for social justice, while vesting the role of the U.S. First Lady between 1933 and 1945. Following her husband's death, Eleanor Roosevelt continued her campaign in favor of the rights of the people everywhere and was elected by President Truman as U.S. Delegate at the United Nations, serving as Chairman of the Commission on Human Rights between 1946 and 1951, playing a major role in the drafting and adoption of the Universal Declaration of Human Rights ('UDHR'), <sup>2</sup> which established the fundamentals of international human rights jurisprudence. International law scholars argue that understanding drafters' intention is of fundamental importance. This first Chapter considers the international

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<sup>1</sup> United Nations (2018). *The Universal Declaration of Human Rights*. [online] Un.org. Available at: <https://www.un.org/en/>.

<sup>2</sup> Caroli, B.B. (2018). Eleanor Roosevelt | Biography & Accomplishments. In: *Encyclopædia Britannica*. [online] Available at: <https://www.britannica.com/biography/Eleanor-Roosevelt>.

framework on human rights with the aim of addressing a key question: “can a right to bank be inferred?”. The answer is twofold: yes and no. In other words, it is not possible to expressly infer a right to bank, yet the provisions within the treaty allow to argue that introducing a right to bank is a choice that the international human rights framework would justify. The explanation to that is partially contained within Eleanor Roosevelt’s reflection and partially within other sources that the present Chapter will examine.

Taking into account the reflection of Eleanor Roosevelt, it is worth focusing on the “small places” because these are the ones that the financial system often fails to reach: the Global Findex Database 2021 highlights that in many countries the majority of unbanked individuals live in rural areas,<sup>3</sup> suggesting that financial inclusion represents a greater concern there. Also, people living in large cities have a wider choice while selecting banking institutions, as all main banking groups always choose to have at least a branch in the most populated States’ cities. Yet, while a general issue in relation to physical access to banking institutions can always be identified for people living in remote areas, there is also another raising issue, which lies with individuals’ capacity to access banking institutions aligned with their values. At today, getting access to a values-based bank, as an ethical or social bank, is still an opportunity available to some individuals and not all: at present stage, only those living within determined States in the world have the possibility to do that.<sup>4</sup> Another issue lies with awareness: people

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<sup>3</sup> As the Global Findex Database 2021 highlights: “[a]dults living in rural areas also represent a higher share of the unbanked in certain economies, particularly in Sub-Saharan Africa, where 62 percent of unbanked adults are rural dwellers. In Tanzania, of the 48 percent of unbanked adults, 71 percent live in rural areas. In Uganda and Zambia, 70 percent and 67 percent of unbanked adults, respectively, live in rural areas.” See: Demirgüç-Kunt, A., Klapper, L., Singer, D. and Ansar, S. (2022). *The Global Findex Database 2021 - Financial Inclusion, Digital Payments, and Resilience in the Age of COVID-19*. World Bank Group. <https://www.worldbank.org/en/publication/globalfindex/Report>.

<sup>4</sup> As indicated on the website of the Global Alliance for Banking on Values, the international network which holds as members all the banking institutions around the world that use finance to serve people and the planet, referred to as ethical and social banks, there are only 74 financial institutions of this kind around the world. Considering that there are 196 States in the world and that some States count more than one ethical bank within their jurisdiction, it can be inferred that there is still a significant number of States in which customers have no access to an ethical bank in the State where they live.

living in “small places” may have a stronger relationship with their surrounding nature and local community activities than with their bank, nothing wrong with that, yet it can be source of additional vulnerability in a bank-client relationship. How can we empower people to think about themselves as “financial citizens”?<sup>5</sup> In a modern society in which banking institutions aim to gain clients in all “small places” in the world,<sup>6</sup> there is the need to ensure that “rights have meaning there” -to use Roosevelt’s words. Establishing a human right to bank does not aim to subvert the logics according to which banks run their business but it can be concretely functional to stimulate greater customer awareness everywhere, stronger guarantees and more effective enforcement of economic rights all over the world.

It is this latter implication that this Chapter discusses. The book will examine under different Sections of various Chapters all the concrete benefits that establishing a right to bank can introduce for banks, States and individuals. This Chapter rather focuses on a specific preliminary question to be addressed: what is the international legal framework on human rights there for? This same question can also be phrased with a different twist: if Eleanor Roosevelt would be looking at the proposal of introducing a new right to bank, what would be her position on that? I suspect she would end up finding it a good idea and, through this Chapter, it will be explained

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See: GABV. Members. GABV - Global Alliance for Banking on Values. Available at: <https://www.gabv.org/members/>.

<sup>5</sup> Financial citizenship concerns the ability of an individual to access financial services and products adequately (Khalil). Financial citizenship can also be perceived as a concept vested with a mission: promoting the participation of people in their own economic well-being and social constructs and acting as a deterrent for social oppression through power and money. See: Khalil, M. (2020). Financial citizenship as a broader democratic context of financial literacy. *SAGE, Citizenship, Social and Economics Education*, 20(1). <https://doi.org/10.1177/2047173420948411>; Lucey, T.A., Bates, A.B. (2012). Conceptually and developmentally appropriate education for financially literate global citizens. *SAGE, Citizenship, Social and Economics Education*. 11(3): 160; Sleeter, C.E. (2008) *Teaching for democracy in an age of corporatocracy*. Teachers College Record. 110(1): 139–159.

<sup>6</sup> As data of the Global Findex Database 2021 highlight, global account ownership increased from 51 percent to 76 percent between 2011 and 2021, showing that the number of people gaining access to a bank account all over the world is increasing steadily, yet about 1.4 billion adults are still unbanked; most of them are based in China and India. Ibid. note [3].



why. In the following sections, the four different types of rights and entitlements that are triggered, while considering the introduction of a right to bank, will be examined orderly, respectively: the right to wellbeing; the right to freely dispose of own wealth; the right to property; the entitlement to a social and economic order that support economic rights' realization. As it will be discussed, each of these provisions are fundamental to strengthen the international human rights framework on economic rights, yet they do not allow to infer the existence of a right to bank. However, most of these provisions can be relied on for advancing the argument that it is in the interest of the international community to introduce a new right. The right to bank, in fact, would help giving traction to the enforcement of the existing legal provisions on economic rights, explaining why Eleanor Roosevelt could have endorsed this proposal. In these modern times, the financial system acquired an increasingly central role in people's lives all over the world: this obliges us to review the existing framework on economic rights, with the aim of preventing the risk of these latter ones becoming outdated or hardly enforceable.

## 1. The right to wellbeing

Economic and social rights aim to provide protection to the freedom, dignity and well-being of individuals by guaranteeing state-supported entitlements to education, public health care, housing, decent working conditions, a living wage, and other social goods.<sup>7</sup> As Article 25 of the Universal Declaration of Human Rights states: "[e]veryone has the right to a standard of living adequate for the health and well-being of himself and of his family". As it can be imagined, guaranteeing the well-being of individuals can be pursued in different ways, depending on the context. It is difficult to understand the ultimate aim of this high-level commitment, without addressing a fundamental question: what does wellbeing mean? Cambridge Dictionary defines wellbeing as: "the state of feeling healthy

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<sup>7</sup> Ahmed, D. and Bulmer, E. (2017). Social and Economic Rights. International Institute for Democracy and Electoral Assistance. Available at: <https://www.idea.int/sites/default/files/publications/social-and-economic-rights-primer.pdf>.

and happy".<sup>8</sup> If this definition applies, it may be quite difficult to obtain a standard definition of wellbeing that can be applied to all human beings alike. Being healthy can roughly be defined in objective terms but how can a State commit to guarantee the happiness of its citizens?

Happiness as subject to be studied attracted in recent years the interest of the scientific community, yet modern scholars admit that the validity of subjective wellbeing measurements remain controversial.<sup>9</sup> Notwithstanding that, the individual's search for happiness arises as an entitlement in many contexts: as Layard argues, happiness can be described as the ultimate goal of individuals to which all others are aimed.<sup>10</sup> Thus, no wonder why the scientific community is interested in studying happiness and the insertion of wellbeing under Article 25 of the Universal Declaration of Human Rights ultimately aims to address an international quest for happiness. It is possible to argue, for example, that a State does not guarantee the wellbeing of its citizens when a significant number of them do not have access to medical care and, as result of that, cannot be healthy. However, it is hard to prove that a State fails to guarantee its citizens' wellbeing just because its citizens find themselves not happy. Thus, the risk of this statement is to appear excessively wide to become enforceable. It is possible to argue that the capacity to be part of the financial system and be respected as customer contributes to the economic aspects of individuals' wellbeing. However, is it possible to establish a solid correlation between happiness and money? According to some, yes: psychologist Killingsworth has recently published a study that proves that well-being rises with income,<sup>11</sup> placing at challenge previous studies in this area, which supported the thesis that wealth is correlated to happiness only if not

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<sup>8</sup> Well-being. In: *Cambridge Dictionary*. At: <https://dictionary.cambridge.org/dictionary/english/well-being>.

<sup>9</sup> Lane, T. (2017). How does happiness relate to economic behaviour? A review of the literature. *Journal of Behavioral and Experimental Economics*, 68, pp.62–78. doi: <https://doi.org/10.1016/j.socec.2017.04.001>.

<sup>10</sup> Layard, R., 2011. *Happiness 2/e: Lessons From A New Science*. Penguin UK.

<sup>11</sup> Killingsworth, M.A. (2021). Experienced well-being rises with income, even above \$75,000 per year. *Proceedings of the National Academy of Sciences*, 118(4). <https://doi.org/10.1073/pnas.2016976118>.

exceeding the income of 75.000 USD per year.<sup>12</sup> As previously stated however, measuring wellbeing is subject to debate: is it concretely possible? How much reliable are the data obtained through the surveys? In summary, there is a general understanding on the fact that wellbeing holds also an economic connotation, but it would be unconscionable to infer more, just on the basis of that.

With the purpose of analyzing further the concept of wellbeing, it is worth noting that recently the World Health Organization adopted the Geneva Charter for Well-being,<sup>13</sup> which presents the current UN perspective on creating well-being societies; the Charter defines well-being as “a political choice” meaning “the outcome of the policies, institutions, economies and ecosystems in which people live.” Thus, well-being is intended as the result of a series of decisions to be taken in different important ambits. While establishing the foundations of well-being, a serious attempt to glance at the financial dimension of the problem is made, in the following terms:

“[w]ell-being economies seek to reduce harm through enforcing accountability and regulation of digital and the arms industries. They acknowledge and rectify colonial and economic policies that hamper economic and social development. Well-being priorities are translated into action through investments in health, well-being budgets, social protection and legal and fiscal strategies that ensure a healthier, sustainable economy.”<sup>14</sup>

This shows the development of a clear sense of collective awareness on the importance of orienting investment decisions, high-level policies and strategies towards a “sustainable economy” - an oxymoron according to well-known scholars that argue that saving the planet and saving the economy may act as opposite goals.<sup>15</sup> The conclusion that can be drawn is

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<sup>12</sup> Kahneman, D. and Deaton, A. (2010). High Income Improves Evaluation of Life but Not Emotional Well-Being. *Proceedings of the National Academy of Sciences*, 107(38), pp.16489–16493. doi: <https://doi.org/10.1073/pnas.1011492107>.

<sup>13</sup> WHO, Geneva Charter for Well-being (21 December 2021).

<sup>14</sup> Ibid, pg. 3.

<sup>15</sup> This view is supported by economists as Serge Latouche that in his book of 2006, *Le pari de la décroissance*, explains how approaching the topic of sustainability through economic models can represent an issue, as it leads to a way of reasoning that is

simple: the exercise of defining wellbeing is a hard one and recent guidelines provide a high-level political agenda rather than a clarification on the subject; however, these guidelines allow to identify economic wellbeing as an essential element, with an implicit acknowledgment of the important role played by the financial sector in favoring the desired transition towards an equitable economy. Notwithstanding these recent developments that provide the concept of wellbeing with a political connotation, the high-level commitment under Article 25 remains too vague to allow inferring a right to bank.

## 2. The right to freely dispose of own wealth

Within the international human rights framework, there is not only the acknowledgment of States' obligation to guarantee individuals' wellbeing but also the establishment of a right for all people to freely dispose of their wealth. In fact, within the International Covenant on Economic, Social and Cultural Rights ('ICESCR')<sup>16</sup> of 1966, Article 1 states: "2. All peoples may, for their own ends, freely dispose of their natural wealth and resources". The Article therefore establishes the principle of economic self-determination, which links to political self-determination, presented under the first paragraph of the Article 1 ICESCR, as the latter one would not be effective without a correspondent economic dimension.<sup>17</sup> As the ICESCR

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misleading: measuring the degree of sustainability of an initiative through economic parameters can force the outcome towards an unintended direction. This explains the potential divergence between measures aimed to enhance sustainability and measures that fulfil economic targets. Through sound argumentation, Latouche explains how developing this awareness leads to an ultimate choice to be made between saving the planet and saving the economy. This is why it is possible to argue that the concept of "sustainable economy" may appear as an oxymoron to economists that have studied the subject in-depth, identifying sources of contradictions and ultimate concerns. See: Latouche, S. (2010). *Le pari de la décroissance*. Fayard, pp.1-304.

<sup>16</sup> UN GA Res 2200A (XXI) (16 December 1966).

<sup>17</sup> As Veerman and Van der Ploegvan Oort argue: "Article 1 was drafted in the area of decolonization, in the 1950's. Several peoples were then struggling for independence. Other peoples had just won their politically independent status. There was a growing consciousness that political independence was not enough for determining their own development. A people should also be independent economically, able to freely dispose of their natural wealth and resources. Without this economic self-reliance, political independence was considered to be empty." See: Veerman, G.-J. and van der Ploegvan