

Human Rights Disparities between Europe and the United States: Conflicting Approaches to Poverty Prevention and the Alleviation of Suffering

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Abstract *The US and most of Europe disagree over the validity of a human rights approach to economic development and planning. These differences manifest themselves in policy outcomes with higher protections in Europe for the poor, the vulnerable, and the weak. The US approach of limited state action, on the other hand, appears to create insecurity for the needy. Europe's success in poverty alleviation presents an ethical challenge to US reluctance to accept legal obligations to provide a basic right of subsistence to its citizens.*

Introduction

Since the end of the cold war, differences between key European states and the US over the proper role of the UN and the importance of multilateral diplomacy have erupted. On a variety of issues – from war crimes and the International Criminal Court to environmental degradation and the Kyoto Protocol – Europeans and Americans have vigorously disagreed and ultimately parted ways. These tensions boiled over into outright hostility over the US decision to invade and occupy Iraq, with some US commentators going so far as to label France the 'new enemy'. The common bonds between the two regions of history, ethnic heritage, democratic polities, and market economics seem to no longer provide the amity to resolve tensions and accommodate difference.

One area of severe disagreement between the US and most of Europe (which has received scant attention in the media or in the scholarly community) is the issue of economic and social human rights. While the US resists incorporating economic and social human rights norms into its domestic legal structure, Europe has established the world's strongest regional human rights system. These differences manifest themselves in policy outcomes with higher protections in Europe for the poor, the vulnerable, and the weak. If a poor person could control where they were born, it would be in their interest to be born in one or other nation of Western Europe and not in the US. The base of the disagreements between the US and key European states is a fundamental difference in outlook on the responsibility of the government to respect, protect, and fulfil economic and social human rights.

After summarising the major differences between key European states and the US regarding the utility of a human-rights-based approach to development, I analyse how concretely each region addresses the 'right to subsistence',

that is, claims to basic needs of food, clothing, housing, and medical care made by the sick, unemployed, aged, disabled, widowed, and others faced with circumstances beyond their control. This review reveals the vitality and strength of the European human rights system to provide for the basic needs of defenceless groups. The US approach of limited state action and responsibility, on the other hand, appears to create insecurity for the needy.

However, this study points to an even deeper, and perhaps more disturbing, issue. The result of the US ignoring the basic needs of the bottom third of its population is that the country is experiencing the phenomenon of the 'development of underdevelopment'. 'Underdevelopment' is not a natural state for the US, a resource-rich country. However, this condition can be created when a nation ignores the human development of its people. With the social health of the nation deteriorating, the question becomes: should the US now be identified as an 'underdeveloped' state?

The US Approach

Since the 1940s, the US has passed legislation to guarantee key economic and social entitlements, including social security, Medicare and unemployment benefits. However, President Franklin D Roosevelt is probably the only American president to fully embrace and act on the conception of 'economic and social human rights'. In 1941, Roosevelt first articulated his commitment to these rights claims in his famous 'Four Freedoms' speech. Roosevelt further elaborated a clear vision of economic and social rights for America in his call for an 'Economic Bill of Rights' in his State of the Union address of 1944 (Roosevelt 1944). It is interesting to note the many ways in which these rights received later articulation in the Universal Declaration of Human Rights (UDHR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) (UN General Assembly 1948; 1966). Roosevelt's 1940s vision is codified in these key UN human rights documents, which include the following economic and social human rights claims: the right to work, the right to just and favourable remuneration, the right to housing, the right to health care, the right to social security and unemployment insurance, and the right to education (see Appendix 1).

Through his 'New Deal', Roosevelt was able to push through legislation enacting public policy in areas from social security to unemployment benefits to jobs programmes. State intervention was seen as key to the success of these policies, since it was often 'market failure' that had led to exorbitantly high rates of unemployment and a general maldistribution of income. Yet, during the cold war, 'rights' language came to be seen as problematic. Claims of a 'right' to employment, health care, and housing seemed to run counter to the American ethos of individualism, personal responsibility, hard work, and individual initiative. The cold war politicised this debate. Economic and social rights were associated with the values of Communism, while civil and political rights were said to reflect the ideals of liberal US capitalism and democracy.

All presidents since Roosevelt, Republicans and Democrats alike, have refused to expend needed political capital to make the case for economic and social human rights. President Jimmy Carter is a slight exception. In October 1977, Carter did transmit the ICESCR to the US Senate for its consent. In doing so, however, Carter proposed reservations to the treaty to clarify that the US understood

the provisions of the ICESCR to be 'goals to be achieved progressively rather than through immediate implementation' and that the provisions of the Covenant were 'not self-executing' (Henkin et al 1999, 1112). In other words, even if the Senate had ratified the ICESCR, the US government would not have been required to immediately implement its obligations under the treaty.¹ Even these strong reservations were not enough to obtain Senate ratification.

The Reagan administration of the 1980s reversed many human rights policies of the Carter years, including presidential support for the ICESCR. More fundamentally, Reagan sought to recast the vocabulary of the human rights debate. The phrase 'human rights' was meant to refer to only political rights and civil liberties. In fact, there was a move away from 'human rights' as a term, and instead the Reagan administration spoke of 'individual rights', 'political rights', and 'civil liberties'. The strategy was simply to define 'economic rights out of existence' (Alston 1990, 365, 372-5). Assistant Secretary of State Elliott Abrams defended this approach in a Congressional hearing when he argued that recognition of economic and social human rights 'tends to create a growing confusion about priorities in the human rights area and a growing dispersion of energy in ending human rights violations'. Abrams argued that economic and social human rights were 'easily exploited to excuse violations of civil and political rights' (Abrams 1982).

Abrams's testimony crystallised the growing conservative sentiment in the US that the very concept of economic and social rights was antithetical to American principles. Abrams stated, 'The great men who founded the modern concern for human rights ... established separate spheres of public and private life ... Social and economic and cultural life was left in the private sphere.' He concluded that 'the rights that no government can violate [that is, civil and political rights] should not be watered down to the status of rights that governments should do their best to secure [that is, economic, social and cultural rights]' (Abrams 1982).

This rejection of the very idea of economic and social human rights became even more consolidated throughout the 1980s. This dismissal, for example, was dramatically on display in November 1988, when the US representative told the Third Committee of the UN General Assembly that responsible adults select their own careers, obtain their own housing, and arrange for their own medical care. The state should encourage a legal framework that encourages fairness and prohibits fraud and then get out of the way to allow individuals to live their lives as they see fit. She went on to criticise UN bodies for departing from 'the traditional concern for civil and political rights' and having 'from time to time ... decreed the existence of so-called social and economic rights' (Byrne 1988, quoted in Henkin et al. 1999, 1114).

¹Gerhard von Glahn explains this issue: 'In the United States, a self-executing treaty becomes domestic law as soon as the instrument enters into force internationally. Non-self-executing agreements require implementing legislation before they come into effect domestically. In the United States and elsewhere, the courts look at that implementing legislation in arriving at decision in relevant cases' (Glahn 1992, 568). It should be noted, however, that legal scholars are virtually unanimous in the belief that the declaration that a treaty is 'non-self-executing' does not exempt the ratifying state from its treaty obligations.

The Clinton administration in the 1990s made only minimal efforts in the area of economic and social human rights and did not press for ratification of the ICESCR. Under President Bill Clinton, the US did affirm the indivisibility of all internationally recognised human rights (economic, social, cultural, civil and political) at the 1993 World Conference on Human Rights in Vienna. The US endorsed the 'Vienna Declaration and Programme of Action', which states, 'All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.'²

Yet, despite this endorsement of the totality and indivisibility of all human rights, the US continued under Clinton to deny the validity of economic and social human rights. Examine, for example, the US response to the Committee on the Elimination of All Forms of Racial Discrimination (CERD). On 10 October 1994, the US ratified the CERD (with reservations), and it entered into force on 20 November 1994. In September 2000, the US government belatedly submitted its first periodic report to the CERD Committee titled 'Initial Report of the United States of America to the Committee on the Elimination of All Forms of Racial Discrimination'. The report documents the many ways minority groups in the US face economic disadvantage and are disproportionately at the bottom of the income distribution curve. US government statistics disclose that members of minority groups are more likely to be poor than are non-minorities, a consequence of persistent discrimination in employment and labour relations, especially in the areas of hiring, salary and compensation, tenure, training, promotion, layoffs, and the work environment generally. The report also documents violations of minorities' social rights, including the lack of educational opportunities and inadequate access to health insurance and health care. The report notes, for example, that in 1998 the poverty rate among blacks was more than triple the poverty rate of white non-Hispanics. And the poverty rate among Hispanics was not statistically different from that of blacks (US 2000, 17-18, 76).

Thus, the US government clearly acknowledges the vast disparities in economic and social rights fulfilment that exist between ethnic and racial groups in the US. The well-documented report is a useful tool for exposing the effects of ongoing discrimination and bigotry in the US. However, in the report the US government sidesteps its responsibility to respect, protect, and fulfil economic and social human rights (Felice 2003, 127-56).

The US government makes two key points in its discussion of these human rights. First, it makes it clear that it does not view these claims as human rights claims at all. Concerning CERD Article 5, the US government writes, '[s]ome of the enumerated rights, which may be characterized as economic, social and cultural rights, are not explicitly recognized as legally enforceable "rights" under US law'. By denying their legal status, the US does not have to accept the state obligations

²See in particular point 5 of the 'Vienna Declaration and Programme of Action' (UN General Assembly 1993).

and duties that correspond to these categories of human rights. Within this limited view of human rights, the US is not legally required to develop strategies to respect, protect, and fulfil the economic, social, and cultural rights of minorities. And, since the CERD does not require states parties to provide for these rights, but only to prohibit discrimination in their enjoyment, the US argues it is, in fact, in full compliance with the requirements of the convention (US 2000, 40–41, 66).

Second, while the US does acknowledge severe problems in the economic and social well-being of its minority citizens, it does not accept an international legal obligation to ameliorate their situation. In fact, when the US ratified CERD in 1994, it made the following reservation: 'the United States does not accept any obligation under this Convention to enact legislation or take other measures under ... Article 5 with respect to private conduct' (US 1994). While acknowledging that 'significant disparities continue', the US government writes in 2000 that 'the sources or causes of socio-economic differences are complex and depend on a combination of societal conditions, such as the state of the national and local economies, continued racial and ethnic discrimination in education and employment, and individual characteristics, such as educational background, occupational experiences, and family background' (US 2000, 75–6). Clearly, all of these areas must be examined. Yet, some international conventions suggest that the state remains ultimately responsible for guaranteeing the realisation of economic and social human rights. It is the state's responsibility to guarantee the maximum utilisation of its available resources to meet the 'right of everyone to an adequate standard of living', including rights to food, housing, and clothing (ICESCR, Article 11). It is unfortunate that the US government does not accept this duty as an international legal obligation, notwithstanding its substantial wealth and economic prosperity.

In its concluding observations on the US report, the CERD Committee expressed concern 'about persistent disparities in the enjoyment of, in particular, the right to adequate housing, equal opportunities for education and employment and access to public and private health care. The Committee recommends the State party [the United States] to take all appropriate measures, including special measures ... to ensure the right of everyone, without discrimination as to race, color, or national or ethnic origin to the enjoyment of the rights contained in article 5 of the Convention' (CERD 2001).

In contrast to Europe, there is no strong regional human rights system monitoring compliance with economic and social human rights in the Americas. The US has played a marginal role in both the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights, not ratified the 'American Convention on Human Rights' and neither signed nor ratified the 'Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights' ('Protocol of San Salvador') (Organization of American States General Assembly 1988). The Protocol of San Salvador, which entered into force on 16 November 1999,³ is the attempt by the countries of the Americas to strengthen and consolidate the economic and social human rights

³ Ratification information on the Protocol of San Salvador (1999) is available at the Inter-American Commission on Human Rights website <<http://www.cidh.oas.org/Basicos/basic6.htm>>, accessed 5 January 2006.

laws of the region. Building on the ICESCR, the Protocol of San Salvador addresses the right to work, just conditions of work, trade union rights, the right to social security, the right to health, the right to a healthy environment, the right to food, and the right to education. The intent of the Protocol of San Salvador, similar to that of the European 'Social Charter' (described below), is to strengthen regional compliance with key economic and social human rights. Through its refusal to participate, the US belittles this regional endeavour.

As of January 2006, the US has ratified neither the ICESCR nor the Protocol of San Salvador and appears unlikely to do so in the foreseeable future. The Bush administration's continuing hostility to multilateral treaties and UN initiatives makes it implausible that US policy will change during this administration.

The European Approach

As opposed to the US reluctance to embrace economic and social human rights, the democratic states of Europe have overwhelmingly accepted this framework. These European states have joined together in the Council of Europe to create the world's strongest regional human rights system. They have adopted enforceable economic and social human rights in the European Social Charter. In addition, these states have been actively engaged with the UN Office of the High Commissioner for Human Rights in Geneva in the adoption and enforcement of international human rights norms. These states have ratified the ICESCR and participated in the reporting and enforcement mechanisms set up by this committee. A review of these European efforts reveals the stark difference between US and European approaches to economic and social human rights.

The Council of Europe and the European Social Charter

The member states of the Council of Europe have accepted the legal obligations in international law to respect, protect, and fulfil economic and social human rights. Scholars have defined 'a human rights system' as consisting of: (1) clear lists of internationally guaranteed human rights; (2) permanent institutions; and (3) compliance or enforcement procedures (Ruhl 1996). The Council of Europe has created such a human rights system with economic and social rights clearly defined, institutions established, and compliance procedures in operation.

Beginning with ten Western European states in 1949,⁴ the Council of Europe had expanded its membership to 45 states by 2004.⁵ Membership in the Council is conditioned de facto upon adherence to the European Convention on Human Rights and Fundamental Freedoms (ECHR) and its 11 protocols. The European system was path-breaking in its creation of an international court for the protection of human rights and the establishment of procedures for individual

⁴The Statute of the Council of Europe was signed in London on 5 May 1949, on behalf of Belgium, Denmark, France, Ireland, Italy, Luxembourg, The Netherlands, Norway, Sweden, and the UK, <<http://conventions.coe.int/Treaty/EN/CadreListeTraites.htm>>, accessed 5 January 2006.

⁵Ratification information on the Statute of the Council of Europe is available <<http://conventions.coe.int/Treaty/EN/CadreListeTraites.htm>>, accessed 5 January 2006.

complaints and denunciations of human rights violations. Over time the institutional structures and normative guarantees have been strengthened.

Progress has been particularly impressive in the European approach to economic and social human rights. The three components of the European human rights system (clearly enunciated rights, permanent institutions, and enforcement procedures) have evolved and developed in the following manner.

Clear list of internationally guaranteed human rights. In 1961, the European Social Charter (ESC) was adopted with the revised version entering into force on 1 July 1999.⁶ The ESC is an extensive validation of the key economic and social rights found in the ICSECR. Key rights guaranteed by the ESC include the following:

- Housing: a commitment to universal access to decent, affordable housing and a reduction in the number of homeless persons.
- Health: a commitment to provide accessible, effective health care facilities for the entire population.
- Education: a pledge to provide free primary and secondary education, free vocational guidance services, and a ban on work by children under the age of 15.
- Employment: all individuals have the right to earn their living in an occupation freely entered into, and each state will design a social and economic policy to ensure full employment.
- Social protections: everyone is guaranteed the right to social security, social welfare, and social services, and to be protected against poverty and social exclusion.

Permanent Institutions. The European Committee of Social Rights (ECSR) was established to determine whether member states honour their commitments in the ESC. This committee is composed of 13 independent and impartial members elected by the Council of Europe for six-year terms, renewable once. The ECSR advises on whether or not national law and practice by the states parties are in conformity with the Charter.

Enforcement Procedures. States parties submit yearly reports on how they are implementing the ESC both in law and in practice. The ECSR examines the reports and publishes its conclusions on whether or not the country concerned is in conformity with the ESC. If a state ignores the recommendations and remains out of compliance with the ESC, the Committee of Ministers will recommend changes in law or in practice to the violating state. In addition, a collective complaints procedure came into force in 1998, through which individuals and organisations are entitled to raise state party violations of the ESC directly to the ECSR.

A review of these enforcement procedures illustrates their strengths and weaknesses.

⁶ The texts of the European Social Charter of 1961, the Revised European Social Charter of 1996 and all relevant protocols are available at <<http://www.coe.int/Treaty/EN/Cadre>ListeTraites.htm>>, accessed 5 January 2006.

ECSR State Reports and Conclusions. States parties to the ESC submit yearly reports to the ECSR on how they implement the ESC in law and in practice. In odd years the state reports cover the central provisions (Articles 1,5,6,7,12,13,16, 19, and 20) and in even years the other provisions. The ECSR examines the reports to determine whether the country concerned is in compliance with the ESC. Its conclusions on state practices are published every year. If a state takes no action to come into compliance with the ESC, the Committee of Ministers sends a recommendation to that state, asking it to change the situation in law or in practice. In addition, a Governmental Committee made up of representatives of the states parties to the ESC, in consultation with representatives of the European social organisations participating as observers, considers decisions of non-compliance. The state concerned is expected to establish measures it will take to remedy the situation and provide a timetable for achieving compliance. If a state fails to take these actions, the Governmental Committee may recommend that the Committee of Ministers address a further recommendation to the state concerned to take appropriate measures to remedy the situation. The Governmental Committee reports to the Committee of Ministers yearly on its actions, including delinquent states and issues/areas of non-compliance.⁷

ECSR Collective Complaint Procedure. The vitality of the European human rights system in relation to economic and social human rights can be demonstrated through an examination of the collective complaints procedure. Since 1998, when this procedure came into operation a total of 25 complaints have been lodged with the ECSR against the following countries: France (9), Greece (5), Portugal (4), Belgium (2), Italy (2), Ireland (1), Sweden (1), and Finland (1). The ECSR has reached final decisions on 13 of these 25 cases, with 12 still pending. The 13 decisions were as follows: eight violations, four non-violations, and one inadmissible case. The eight violations led to strong recommendations for changes to the state parties involved. In most cases changes were made at the national level to protect citizen's economic and social human rights. This trajectory of complaint, hearing, decision, state deliberation, and often compliance is impressive evidence of a strong human rights system (Council of Europe 2005).⁸

European States and the ICESCR

In addition to the ESC, the nations of Europe also participate actively in the mechanisms established by the UN to monitor economic and social human rights. Unlike the US, European states have signed and ratified the ICESCR. Substantive provisions in Part 3 of the ICESCR include rights to the following: an adequate standard of living, including food, clothing, and housing; physical and mental health; education; the opportunity to work; just and favourable conditions of

⁷Information on ECSR state-reporting procedures is available at <<http://www.coe.int/T/E/Human%5FRights/Esc/4%5FReporting%5Fprocedure/>>, accessed on 5 January 2006.

⁸Summaries of the eight violations of social and economic human rights declared by the ECSR may be found at <http://www.coe.int/T/E/Human_Rights/Esc/4_Collective_complaints/List_of_collective_complaints/default.asp#P239_26280>, accessed 5 January 2006.

work; rest and leisure; social security; special protection for the family, mothers, and children; and the right to form and join trade unions and to strike.

The group of independent experts charged with implementation responsibility of the ICESCR is the Committee on Economic, Social and Cultural Rights (CESCR). The CESCR is composed of 18 independent experts elected by the UN Economic and Social Council for four-year terms. The reporting procedure is similar to that of the ECSR and involves a dialogue between the state party and the CESCR. Regular country reports are submitted by state parties, deliberations are held, and general comments are published.

Most European states follow through on their reporting requirements to the CESCR and appear to take the work of the committee seriously. These states are concerned about their reputations, and they thus respond to committee requests. The CESCR utilises a three-part approach to economic and social human rights, requiring states to respect, protect, and fulfil these rights. Of particular importance to the committee is the issue of respect, which implies an obligation of an immediate nature. No matter what the economic condition of a state, if it has ratified the ICESCR, it must respect the economic and social rights of its citizens. A state may not use resource scarcity as an excuse to avoid its obligations. The CESCR is clear: each state must achieve the realisation of economic and social human rights to the maximum of its available resources. It takes no money, for example, to desist from violations and little money to review legislation to make sure that a state's laws are in conformity with the ICESCR. The convention calls for progressive compliance with demonstrable progress. The CESCR thus looks for steady improvement and does not accept a nation standing still or going backward (Felice 2003, 78–82).

Once a state has submitted its report, the CESCR gathers further information from a variety of sources beyond the state, including UN agencies (International Labour Organisation, UN Development Programme, UN Environment Programme, World Health Organisation, Food and Agricultural Organisation and so on) and non-governmental organisation (NGO) sources as well. A special rapporteur is often assigned to conduct an independent country investigation and to submit a draft of preliminary observations to the committee. The final step is a three-hour hearing by the CESCR on the state's compliance with the ICESCR. The CESCR will then adopt either preliminary observations or concluding observations. Actions recommended by the CESCR may include the adoption of new legislation, the repeal of existing legislation, the implementation of existing legislation, the encouragement of preventive actions and the implementation of plans devised by NGOs, and other specific policy measures (Leckie 2000, 134).

The European states' participation in this human rights machinery set up by the UN has strengthened the protection of economic and social human rights of the vulnerable in these countries. Let us examine, for example, how the governments of the UK, Spain and Finland respond to the 'Concluding Observations' of the CESCR.

The UK. The UK has reported consistently to the CESCR. An examination of the Concluding Observations of the CESCR to the periodic reports submitted by the UK demonstrates the usefulness of this high-level dialogue. In 1994, the CESCR in its Concluding Observations noted with regret a number of points, including the following: First, the CESCR⁸ was disappointed that the UK report did

not include the concerns and views expressed by the public and by non-governmental organisations. The Committee noted the importance that judges and other members of the legal profession be involved to help in the consideration of the ICESCR within domestic law. The CESCR criticised the UK for not making the process more open and inclusive of the public at large. And, second, the CESCR was concerned that insufficient measures were taken to address disparities in employment patterns and opportunities of certain minority groups and between men and women. The Committee specifically regretted that women were still employed disproportionately in lower-paid occupations (CESCR 1994).

In 1997, the UK reported back to the CESCR. In its Concluding Observations, the CESCR noted progress in these areas of concern from 1994. First, the Committee welcomed the fact that an 'extensive and elaborate administrative infrastructure' was set up in the UK to facilitate giving effect to the provisions of the Covenant. This structure should create opportunities for NGOs and qualified legal experts to participate in the process. Second, the Committee welcomed the UK proposal to enact the European Convention on Human Rights into domestic legislation, which constituted a considerable departure from the traditional approach not to incorporate international human rights treaties in UK domestic law. Later, Parliament adopted the Human Rights Act 1998, which gives legal effect to Convention rights in UK courts. The Committee also reacted positively to the proposal for a 'new deal' to give positive support to employment through Training and Enterprise Councils, and job subsidies to the private sector to provide additional employment opportunities, with increased targeting of ethnic minorities who suffer from above average rates of unemployment (CESCR 1997).

The UK did not enact these positive policies solely as a result of pressure from the CESCR. However, the work of this Committee helped to establish an environment whereby the international reputation of the UK was to be judged by its adherence to these human rights norms. This type of international milieu supports national human rights efforts to bring about local change.

It is important not to overstate the advances. For, despite progress, the Committee in 1997 also noted the following: 'despite the elaborate machinery and legislation for protection against discrimination, there continues to exist to a significant degree de facto discrimination against women, blacks and other ethnic minorities. The Committee notes that women continue to occupy a significantly lower percentage of managerial positions, particularly in the private sector, and a disproportionate percentage of lesser paid jobs and part-time work. It also notes the persistence of a substantially higher rate of unemployment among Blacks and other ethnic minorities and their disproportionate numbers in lesser paid jobs. The Committee is alarmed that the rate of unemployment among Catholics in Northern Ireland is approximately twice that of Protestants and is substantially above the national rate of unemployment' (CESCR 1997).

In 2002, the CESCR took under consideration the Fourth Periodic Report of the UK and issued its Concluding Observations. The CESCR again noted progress in a number of areas, including the enactment of policies such as the new deal programme for employment, the introduction of a national minimum wage in 1999, and measures taken to reduce homelessness and permanent exclusion from schools. However, the 2002 report overall seemed intentionally designed to push the UK to take further actions. After listing only six 'positive aspects', the

Committee elaborated 13 'principal subjects of concern' and 22 'suggestions and recommendations'. A key focus of the Committee is to pressure the UK (and other states) to incorporate international human rights law into their domestic legal systems. As the Committee wrote, '[t]he Committee deeply regrets that, although the State party has adopted a certain number of laws in the area of economic, social and cultural rights, the Covenant has still not been incorporated in the domestic legal order and that there is no intention by the State party to do so in the near future. The Committee reiterates its concern about the State party's position that the provisions of the Covenant, with minor exceptions, constitute principles and programmatic objectives rather than legal obligations that are justiciable, and that consequently they cannot be given direct legislative effect (see paragraph 10 of the Committee's concluding observations of December 1997 (E/C 12/1/Add 19))' (CESCR 2002).

And the Committee's first suggestion to the UK was: '[a]ffirming the principle of the interdependence and indivisibility of all human rights, and that all economic, social and cultural rights are justiciable, the Committee reiterates its previous recommendation (see paragraph 21 of its 1997 concluding observations) and strongly recommends that the State party re-examine the matter of incorporation of the International Covenant on Economic, Social and Cultural Rights in domestic law. The Committee points out that, irrespective of the system through which international law is incorporated in the domestic legal order (monism or dualism), following ratification of an international instrument, the State party is under an obligation to comply with it and to give it full effect in the domestic legal order. In this respect, the Committee draws the attention of the State party to its General Comment No 9 on the domestic application of the Covenant' (CESCR 2002).

Spain. Scholars note that the level of awareness of the ICESCR and its impact in Spain is very low. The economic reforms of the 1980s, for example, have not been attributed to pressure from the CESCR. There is no central governmental body that coordinates policies on economic, social, and cultural rights. There has been a lack of interest in this process among both trade unions and NGOs. Despite these limitations, the ICESCR is a part of Spain's national legislation (Heyns and Viljoen 2002, 606-7).

In response to Spain's second report, the CESCR in its Concluding Observations asked Spain to adopt a series of measures that were, unfortunately, ignored and not implemented by the next reporting cycle. The CESCR, for example, asked Spain to eradicate disparities in the conditions of employment of teaching staff in the field of education in private and public schools; to eliminate the gap between theory and practice in vocational training; and to revise the juridical aspects of the protection of intellectual property in relation to discrimination. In its third report to the CESCR, Spain reported that no significant or relevant measures were implemented to reform these areas of concern (Heyns and Viljoen 2002, 597-8).

However, some of the recommendations of the CESCR in its Concluding Observations from Spain's third report were addressed. The CESCR asked Spain to continue efforts to ensure effective equality between men and women, in particular with regard to access to education and jobs and equal pay for equal work. Spain took on this task with the Plan of Equal Opportunities 1997-2000.

The CESCR pushed Spain to take all appropriate preventive and penal measures to effectively combat all forms of racial discrimination. Spain passed a new Penal Code which went into force on 26 May 1996. This code recognises racism and anti-Semitism as aggravating circumstances in offences against persons and property. Additional offences include the provocation of discrimination, hatred or violence on racist grounds, and job discrimination on ethnic or racial grounds (Heyns and Viljoen 2002, 598).

Finland. The ICESCR has been incorporated into the domestic law of Finland, and as such it is legally binding. However, scholars have noted that Finish lawyers are not very familiar with this human rights law and do not argue this framework in court. This tendency seems particularly the case in relation to economic, social, and cultural rights, which are often seen as implying goals rather than strict binding obligations. This view is changing. Many rights guaranteed by the ICESCR have been implemented in Finland as part of the welfare state ideology. Economic and social human rights have been central to the Nordic welfare state approach. Since 1995 there has been constitutional recognition, and elaboration of, economic and social human rights (Heyns and Viljoen 2002, 294).

The Concluding Observations of the CESCR in response to Finland's reports to the Committee have been very general in nature and it is thus hard to evaluate whether they have been implemented. Scholars do note, however, that the recommendation to undertake a study on domestic violence was observed. This study was started by the National Research and Development Centre for Welfare and Health in 1998. In addition, the recommendation by the CESCR to prohibit the possession of child pornography was also enacted. However, the minimum wage recommendations by the Committee in 1996 were ignored (Heyns and Viljoen 2002, 287).

How are we to evaluate the impact of this UN human rights treaty, ICESCR, on the domestic level? 'Impact' can be understood to reflect influence on the realisation of human rights norms in individual countries. In the cases of the UK, Spain, and Finland just examined, it is probably impossible to draw a direct causal link between the treaty body reporting system for the ICESCR and legislative or policy reform. However, this system clearly reinforces and supports efforts underway within the UK, Spain, and Finland to respect, protect, and fulfil economic and social human rights. It would be an exercise in speculation and guesswork to try to quantify the impact of this human rights system with any precision. It is more important to see the ways in which this legal framework changes the terms of the debate, supports local initiatives, and enhances an overall human rights framework in this area of economic and social rights. In these respects, this system is having an important impact in reinforcing and strengthening the economic and social human rights regime of Europe.

The Right to Subsistence

The conflicting approaches of the US and Europe over public policy to provide for a minimal level of subsistence to the poor starkly reveal the profound chasm between them over the validity of a human rights approach to poverty alleviation and the protection of the vulnerable.

Article 25(1) of the UDHR declares,

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

The respect for human dignity thus includes a minimal level of subsistence necessary for the continuation of human life beyond a bare minimum.

The US and Europe have different interpretations on the role of the state in providing this level of basic subsistence. To a large degree, the debate revolves around the extent to which this social assistance should be understood as a legal 'right'. The US limits, while the EU states expand, state responsibility to guarantee sufficient resources to all citizens as the ultimate guarantor of the right to subsistence.

The US and the Right to Subsistence

US federal courts have determined that the poor have no constitutional human rights claims to subsistence. Examine, for example, the 1970 decision of the Supreme Court of the United States in *Dandridge v Williams*. The case concerned the operation of the state of Maryland's welfare system, which established an upper limit of US\$250 a month per household in the Aid to Families with Dependent Children (AFDC) programme. The litigants had large families and argued that this maximum grant limitation operated to discriminate against them merely because of the size of their families. In deciding for the State of Maryland, the Supreme Court declared,

[A] solid foundation for the regulation can be found in the State's legitimate interest in encouraging employment ... [T]he intractable economic, social, and even philosophical problems presented by public welfare assistance programs are not the business of this Court. The Constitution may impose certain procedural safeguards upon systems of welfare administration. But the Constitution does not empower this Court to second-guess state officials charged with the difficult responsibility of allocating limited public welfare funds among the myriad of potential recipients. (Supreme Court of the United States 1970)

The Supreme Court's decision to uphold the Maryland maximum grant rule is a clear demonstration of the lack of federal protection for subsistence rights in the US. Social and economic rights are not constitutionally protected. This decision is in violation of the ICESCR as interpreted by the CESCR (see in particular General Comment 3, paragraph 10). But, since the US has not ratified the ICESCR, the country is not technically in violation of international law.⁹

The executive and legislative branches of the US government have also acted to limit the economic and social rights claims of the poor. Under the banner

⁹ CESCR (1990). Paragraph 10 states that 'a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every State party. Thus, for example, a State party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education is, *prima facie*, failing to discharge its obligations under the Covenant.'

of welfare reform, the government enacted legislation limiting direct assistance and promoting individual initiative and personal responsibility. After a tumultuous debate, in 1996 the US enacted the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA 1996). Clinton designed this statute to 'end welfare as we know it'. The PRWORA abolished the AFDC programme, a federal entitlement to subsistence aid for eligible families. To replace AFDC, PRWORA established the Temporary Assistance to Needy Families (TANF) programme, which neither guaranteed assistance to needy families nor required the states to do so. An examination of this radical restructuring of US social welfare policy in relation to the legal obligations of the ICESCR is instructive. Many of the features of PRWORA are in clear violation of the legal duties of states enunciated in the ICESCR. If the US had ratified this treaty, it is hard to see how they could have defended PRWORA before the CESCR. Examine the following:

1. Benefits under PRWORA are not guaranteed to all eligible recipients, but limited by the number of applicants and the amount of appropriation. While this limitation was imposed, the US continued to spend billions of dollars on space exploration and military projects. This is a clear violation of Article 2.1 of the ICESCR, which calls on states to utilize the 'maximum of its available resources' to progressively achieve the full realisation of the economic and social rights of its citizens. It is also a violation of Article 10, which calls for the 'widest possible protection and assistance' for the family, particularly the 'care and education of dependent children', and Article 11, which recognises the right of everyone to an adequate standard of living including 'adequate food, clothing and housing, and to the continuous improvement of living conditions' (ICESCR).
2. Individual states could interpret PRWORA as requiring recipients to accept whatever job is offered them, and cancelling their benefits if they decline. This is a clear violation of Article 6.1 of the ICESCR, which recognises the right 'of everyone to the opportunity to gain his [or her] living by work which he [or she] freely chooses or accepts'. Article 6.2 requires state parties to take steps including 'technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual' (ICESCR).
3. The PRWORA imposes a five-year limit on benefits for most recipients and is a deliberate retreat from a legal guarantee of subsistence benefits to families in need. This is a clear violation of Article 2.1, the commitment to seek to achieve progressively 'the full realisation of the rights recognised in the present Covenant by all appropriate means', and Article 5.2, limiting derogations from the Covenant (ICESCR).

While the federal government and the US Constitution do not provide protections of subsistence rights to the poor, the constitutions of at least twenty states include references and language about the care of the needy and the protection of the health of state residents. These state constitutions can be interpreted as imposing a duty on the states to aid, in particular, poor children. Bert B Lockwood, Jr, Ross Collins Owens III, and Grace A Severyn point out that many state

constitutions contain substantive provisions that deal explicitly with poverty, housing, shelter, and nutrition. Examples include New York's requirement that the legislature provide for 'aid, care and support of the needy' and Alabama's obligation to provide 'adequate provision for the maintenance of the poor'. The plaintiffs in *Daugherty v Wallace* argue that Ohio's constitutional guarantee of the right of 'obtaining safety' encompasses the right of poor citizens to receive subsistence assistance from the state, in an amount sufficient to enable them to avoid homelessness and to obtain basic health care (Lockwood et al 1993, 4, 5, 8).

This litigation in Ohio is noteworthy because many states have safety and/or happiness provisions in their constitutions. Lockwood and colleagues argue that state constitutional language such as this can serve as the basis for a constitutional right to public assistance sufficient to meet basic needs. In their view, the right to obtain happiness and safety is meaningless for the unemployed, disabled, and poor unless interpreted as imposing an affirmative right to assistance sufficient to provide shelter and medical care. In this case, Ohio's constitutional rights to happiness and safety can be interpreted to encompass a right to basic subsistence, defined as protection against deprivations of the food, clothing, shelter, and medical care necessary for a decent life. Given that many state constitutions have clauses declaring as inalienable the right to seek and/or obtain happiness and/or safety, these clauses may serve as a source of a positive right to basic needs. A strategy of litigating the happiness and safety clauses of state constitutions may be adapted by advocates of the poor in other states facing serious reductions in public assistance. State constitutions may then serve as a better vehicle than the US Constitution for responding to the needs of the impoverished (Lockwood et al 1993, 9, 28).

European States and the Right to Subsistence

As already noted, the ESC validates a rights-based approach to development and guarantees basic subsistence rights for all citizens, including rights to housing, health, education, employment, and social protection. These economic and social human rights have been incorporated into the constitutional and legal systems of the member states of the Council of Europe. Examine, for example, the legal frameworks of Germany and Switzerland.

Germany. Article 1(1) of the post-war German Federal Constitution states, 'Human dignity shall be inviolable. To respect and to protect it shall be the duty of all state authority.' The Federal Administrative Court determined that the principle of human dignity required that provisions for the support of the poor be available as a matter of enforceable individual right, not merely as a matter of administrative policy. The Federal Constitutional Court supported this decision by adopting the position that Article 1(1), in combination with the principle that the Federal Republic of Germany is a 'social state' (Article 20[1]), signifies a guarantee of security of livelihood. This court further directed that income tax legislation should provide an exemption for the minimum level of income necessary to ensure an existence consistent with human dignity for the taxpayer's family (Henkin et al 1999, 1171).

Switzerland. Although not part of the EU, Switzerland is a member of the Council of Europe and has signed the ESC. The Swiss have adopted a rights-based

approach to economic and social welfare and development.¹⁰ The Swiss Federal Court thus declares that the security of elemental human necessities such as food, clothing, and shelter is an indispensable element of a democratic community and the rule of law. The Court states categorically that the fundamental 'right to security of livelihood satisfies [the] criteria for justiciability'. The Court emphasised the human rights basis to this decision and the inherent legal duties imposed upon the state to protect persons against 'physical ruin when necessary' (Federal Court of Switzerland 1995).

Better to Be Poor in Europe than in the US

Due to its commitment to economic and social human rights, the poor in Europe are better provided for and taken care of than their counterparts in the US. An individual in the bottom rungs of economic wealth would undoubtedly prefer to be born in Europe than in the US. These conclusions can be seen through an examination of differences in family benefits, health care, sickness and accidental injury benefits, disability benefits, poverty relief, and workers rights and labour legislation in Germany and Sweden, on the one hand, and the US, on the other.

Family Benefits

- Germany and Sweden: Child benefits are available without regard to income until the child reaches 18 (Germany) or 16 (Sweden), but these limits can be extended if the child pursues higher education. Using 1999 PPP (purchasing power parity) adjusted dollars, each child entitles the representative German household to monthly benefits of US\$136 (Germany) or US\$87 (Sweden).
- US: Family allowances do not exist in the US. Each child entitles the representative US household to monthly benefits of zero. The US does have a fixed child yearly tax credit of US\$600 per child (in 2001) (Alesina and Glaeser 2004, 21-2).

¹⁰ For example, the Federal Court of Switzerland in 1995 stated the following:

The security of elemental human necessities like food, clothing and shelter is the precondition for human existence and development. It is simultaneously an indispensable element of a community based on democracy and the rule of law. Therefore security of livelihood satisfied the requirements for being guaranteed as an unwritten constitutional right.

The principle that a citizen who falls into economic need must be supported (by his home municipality) has long been known in Swiss law; it dates back to the Sixteenth Century. The Federal Court for its part has explained in older decisions on the subject of intercantonal disputes over care of the poor that it is both a humanitarian obligation and a duty inherent in the purpose of the modern state to preserve persons found within its territory against physical ruin when necessary.

In scholarly writings a fundamental right to security of livelihood is almost unanimously recognized ... The view primarily expressed in scholarship is that it

Health Care

- Germany and Sweden: Both countries provide universal coverage, with unlimited benefits including payments for doctors' fees, hospitalisation, and the cost of pharmaceutical products.
- US: The US does not provide universal health care coverage for its citizens. The US Medicare programme targets the elderly, while Medicaid serves low-income households and people with disabilities. Unemployed workers have no coverage. Employed workers must rely on their employer to offer health insurance as part of their compensation package (Alesina and Glaeser 2004, 22).

Sickness and Accidental Injury Benefits

- Germany and Sweden: German and Swedish legislation guarantee sickness benefits to replace the loss of earnings due to sickness for all persons in paid employment. These benefits replace up to 70% (Germany) and 80% (Sweden) of gross earnings.
- US: There are no federal sickness and accidental injury benefits in the US. Only five states in the US offer any kind of sickness benefit at all (Alesina and Glaeser 2004, 22–3).

Disability Benefits

- Germany and Sweden: Germany requires five years of employment and Sweden three years of employment before a worker can receive benefits to replace income due to inability to engage in gainful activity. The Swedish scheme provides a basic minimum pension, enhanced with an income-based supplement and care and handicap allowances. The German benefit is calculated using the level of income and the number of years of contribution.
- US: The US requires at least five years employment to qualify and the disability benefit is based on the worker's average monthly earnings. The US benefits are much smaller than their European counterparts. While the average benefit in the US corresponds to approximately 43% of the workers' average wage, in Sweden the corresponding figure is 80% (Alesina and Glaeser 2004, 23).

Poverty Relief

- Germany and Sweden: These two countries rely on unlimited and unconditional plans (called Sozialhilfe and Socialbidrag, respectively)

Footnote 10 continued

involves an unwritten constitutional right. Various other constitutional starting points have also been invoked: the constitutional principle of human dignity, which guarantees to every person what she may expect from the community by virtue of her humanity; the right to life as the core of personal freedom, which would no longer be preserved if the most minimal prerequisites of survival were not ensured. (Federal Court of Switzerland 1995)

to alleviate poverty. These government programmes are directed at persons unable to support themselves and not covered by other schemes (disability benefits, etc).

- US: The US does not have a plan aimed at the poor as a general category. Instead, there are arrays of programmes targeting different groups. Supplemental Security Income (SSI) targets aged, blind, and disabled persons with annual gross incomes below about US\$14,500. The TANF programme is limited to two years of assistance and recipients who are able to work must find a job at the end of that period. Low-income households can also receive food and nutrition assistance (food stamps) and some housing assistance (Alesina and Glaeser 2004, 23–4).

Workers' Rights and Labour Legislation

Overall in the EU, the minimum wage is 53% of the average wage, against 39% in the US. But this figure only explains a small part of the difference in attitudes towards workers' rights between the two. In almost all categories of workers protections, from fair labour standards, employment protection policies, and minimum annual leave policies, ranks below all the US European states (Alesina and Glaeser 2004, 38, 40).

'Development of Underdevelopment' in the US?

The UN Development Programme (UNDP) has played a leadership role in the development of indices and measurements of basic economic and social human rights. The UNDP is not merely concerned with economic growth alone, as measured by increases in a state's gross national product (GNP). In addition to economic growth, human development depends upon attention to public goods and basic needs as well. This human development approach thus draws on three different perspectives of poverty: income, basic needs, and capabilities. The income perspective asserts that a person is poor if his or her income level is below a defined poverty line, often determined by the amount necessary for a specified amount of food. The basic needs perspective argues that poverty is the result of the lack of the resources for the fulfilment of basic human needs, including food. This approach goes beyond the lack of private income and includes the need for basic health, education, and essential services to be provided by the community to prevent individuals from falling into poverty. In the capabilities perspective, as developed by Amartya Sen, poverty is the absence of the opportunity to achieve some basic capabilities to function (Sen 1999). Capability functions include being well nourished, adequately clothed and sheltered, able to avoid preventable morbidity, and able to partake in the life of the community. Poverty clearly cannot be reduced to a single dimension. The capabilities approach most fully captures this total picture (UNDP 1997, 16; Felice 2003, 73–8).

Mary Robinson, the former high commissioner for human rights, acknowledged the impact of Sen's capabilities approach in her remarks to the delegates attending the UN's Copenhagen Plus Five Conference in June 2000:

A new dialogue is taking place between development and human rights experts which has brought about convergences and given added depth to the law-based approaches of traditional human rights thinking. It has been enriched by Amartya

Sen's work on capability rights. This approach recognizes that human development and human rights are mutually reinforcing in that they expand capabilities by protecting rights. This dialogue has contributed to the development of people-centered sustainable development. (Robinson 2000)

The link between human development and human rights was also clearly articulated in the *Human Development Report 2000*, published for the UNDP. 'If human development focuses on the enhancement of the capabilities and freedoms that the members of a community enjoy, human rights represent the claims that individuals have on the conduct of individual and collective agents and on the design of social arrangements to facilitate or secure these capabilities and freedoms' (UNDP 2000, 20).

The UNDP's Human Poverty Index (HPI) presents a multidimensional measure of human deprivation to assess human capabilities. The HPI compiles in one index the deprivations in four basic dimensions of human life: a long and healthy life, knowledge, economic provisioning, and social exclusions. The indicators to measure these deprivations differ between developing and industrialised countries, HPI-1 and HPI-2, respectively (UNDP 1997, 18).

HPI-2 brings together these deprivations for the industrialised countries of Europe and the US. The deprivation of a long and healthy life is measured by the percentage of people not expected to survive to age 60. The deprivation of knowledge is measured by the adult functional illiteracy rate. The deprivation of economic provisioning is determined by the percentage of people living below the income poverty line. And the deprivation of social inclusion is determined by the percentage of the labour-force experiencing long-term unemployment of 12 months or more (UNDP 2000, 147).

The 2003 HPI-2 reveals that the US ranks at the bottom of human development in comparison with the industrialised, developed countries of Europe (UNDP 2003, 248-9, 342). Out of all of these wealthy countries, the US has the highest percentage of people living below the income poverty line (17.0%) and the highest percentage of people who will probably not live to the age of 60 years (12.6%). The HPI-2 further reveals that 20.7% of adults in the US (age 16-65) lack 'functional literacy skills' (UNDP 2003, 248-9). This statistic alone is alarming, as it means that over 20% of Americans cannot read the back of a prescription bottle and give the correct amount of medicine to their children.

It is hard not to conclude from these data that the alleviation of the suffering of the vulnerable and the protection of the economic and social human rights of the bottom third of the population is not a priority for the US. These dismal outcomes are the result of the refusal of the US to accept the legitimacy of a rights-based framework for development. If one judges a nation and its economic system by the way it treats its most fragile and weak citizens, the US has a poor record.

Further, there is a real issue about how long such an unbalanced state can continue to be considered a 'developed' nation. If 'development' is defined as 'human development' (and not merely economic growth), can we still consider the US a 'developed' nation? Or, is the US becoming a new 'underdeveloped' nation?

Most analysts probably consider this question odd (and maybe even absurd). After all, in hard power resources the US is doing quite well, having the world's largest economy with a GDP of US\$10,065 billion (UNDP 2003, 278), a per capita

income of US\$34,320 (UNDP 2003, 237), and the world's largest military with a yearly military budget of US\$416 billion (*New York Times* 2004). But these overall figures of economic and military power are misleading. What they ignore is the decline in living standards and the growing social insecurity, breeding despair and hopelessness, found in every American city. Since the 1980s the US economy has been working against the interests of the bottom third and these tendencies are hardening. It makes a caricature of the word 'development' to describe an economy where the real estate and stock markets are booming for the top 10%, while the bottom 25–50% experience serious declines in living standards and, in many cases, severe destitution. This creation of a huge underclass facing a deteriorating standard of living can be considered the 'development of underdevelopment'.¹¹

Since the mid-1970s, the US government has documented the decline in US standards of living. Despite growth indicators in the national economy, in the last three decades it has in fact become harder to climb out of poverty in the US. The US economy has become less and less hospitable to the young, the unskilled, and the less educated (Felice 1996, 117–20). The Census Bureau, for example, reported that the percentage of full-time workers with low earnings grew sharply in the 1980s, despite the economic expansion that brought increased prosperity to the affluent. The Bureau defined low earnings as US\$12,195 a year, expressed in 1990 dollars and adjusted for inflation. At the end of the 1970s, 12.1% of all full-time employees earned below the equivalent of US\$12,195. By 1990, that figure had risen to 18% (DeParle 1992). The number of American children living in poverty grew by more than one million during the 1980s, and in 1989 about 18% of children in the US lived in families with incomes below the federal poverty line, including 39.8% of all black children, 38.8% of American Indian children, 32.2% of Hispanic children, 17.1% of Asian-American children, and 12.5% of white children (*New York Times* 1992).

These dismal trends continued throughout the 1990s. For example, inflation-adjusted wage rates for the median worker fell in the 1980s and continued to decline sharply in the 1990s. From 1989 to 1997, real wages for the majority of workers in the vast American middle class continued to erode, the median worker's wage falling by 5% since 1989 (Krueger 1997). Average weekly earnings fell sharply: in constant dollars, earnings went from US\$312 in 1973 to US\$256 in 1996, a decline of 19% (Miringoff and Miringoff 1999, 98). The proportion of the nation's income received by the poorest fifth of American families declined dramatically, while the proportion held by the richest increased. The respected Gini Index calculates that this form of inequality worsened by 20% from 1970 to the end of the 1990s (Miringoff and Miringoff 1999, 104). The proportion of the US population lacking health insurance increased over the same time: 15.6%, a total of 41.7 million Americans, had no health insurance in 1996, up from 10.9% in 1976 (Miringoff and Miringoff 1999, 92). In September 2000, the US Agriculture

¹¹ The idea of the 'development of underdevelopment' originates in the work of André Gunder Frank, who argues that underdevelopment is not a natural condition but a product of capitalist expansion. Frank's work focuses on the creation of 'underdevelopment' in the Southern Hemisphere and the unequal relationship between the developed 'core' and the underdeveloped 'periphery'. I am applying this idea of the creation of underdevelopment to the internal economic conditions in the US today. See Frank 1967; 1969.

Department revealed the depths of hunger in America: 31 million Americans were hungry and faced food insecurity (*New York Times* 2000).

As the US entered the 21st century, the social health of the nation continued to deteriorate. Consider that in 1980 the top 5% of all families received 14.6% of the nation's aggregate income. By 2001, this elite group of 5% was getting 21.0%. On the other side, the already small share of the nation's income going to the bottom fifth of families fell during these years by 20.8% (Hacker 2004, 40). Sterile economic figures should not hide the human tragedy represented by these economic conditions. Indicators of worsening performance include rising rates of child poverty and child abuse, and alarming numbers of teenagers committing suicide. For example, child poverty continued to worsen in the US in the 1990s. Among children under 18, poverty increased from 14.9% in 1970 to 19.89% in 1996, a 33% increase (Miringoff and Miringoff 1999, 80). The performance of the US in preventing child abuse and youth suicide has also been worsening. In 1976, official reported cases of child abuse reached a rate of 10.1 for every 1,000 children. By 1996, an estimated 3.1 million children were reported to have been abused – a rate of 47 cases for every 1,000 children, a 300% increase from 1976 (Miringoff and Miringoff 1999, 74–5). In 1996, the suicide rate among youth aged 15–24 was 12.0 deaths per 100,000, up from 8.8 in 1970 (Miringoff and Miringoff 1999, 86).

These trends continue. New York City reported in early 2004 that nearly one of every two black men between 16 and 64 was jobless and not working (Scott 2004). Academic studies in 2003 concluded that one in four US workers earn US\$8.70 an hour or less, which, at the high end, works out to US\$18,100 a year, roughly the current official poverty level in the US for a family of four. For most of these workers, job mobility is nonexistent; there is no career ladder for home health care workers, poultry processors, retail clerks, housekeepers, and janitors. These workers lack health insurance and child care and receive little or no vacation (Shulman 2003, 25–44). The Census Bureau reported that the number of Americans living in poverty increased in 2002 by 1.7 million and the median household income declined by 1.1% (Clemetson 2003). In 2003 the Congressional Budget Office published a study documenting that the gap between the rich and the poor more than doubled from 1979 to 2000. This gulf was so large that the richest 1% of Americans in 2000 had more money to spend after taxes than the bottom 40% (Browning 2003).

Conclusion

The argument is often made by US economists that the problem with Europe's social welfare approach is its negative effects on overall economic growth. These scholars argue that when an economy is enfeebled by high taxes and restrictive regulations, business incentives disappear, investments decline, and the economy slows. A slow growth economy brings in fewer tax revenues, resulting in the government's inability to pay for all the promised social benefits. To avoid painful cuts in these social welfare programmes, governments practise deficit spending, which further harms the economy. Expensive retirement programmes, health benefits, and social security protections end up being a drag on economic growth. Since everyone suffers with slow economic growth, social spending on this level

is thus counter-productive to the protection of the needs of the society as a whole, including the welfare of the vulnerable and poor.

Recent academic reports challenge these assumptions. In one study, for example, Peter H Lindert, former president of the Economic History Association and an associate of the National Bureau of Economic Research, examined levels of taxes, public investments in education, transportation and health care, and social transfers like Social Security. His findings challenged this widely accepted view that welfare state policies harm a nation's productivity. He writes, '[i]t is well known that higher taxes and transfers reduce productivity. Well known – but unsupported by statistics and history' (Lindert 2004, 227). He focuses his study on social programmes and compares the level of social spending over nine decades up to the year 2000 in 19 developed nations, including most of Western Europe, Japan, Australia, the US, and Canada. His conclusion is that high spending on these social programmes creates no statistically measurable deterrent to the growth of productivity or per capita gross domestic product. Since World War II, despite the implementation of welfare state policies, the nations of Europe continued to grow faster than the US, a nation with low social spending (Lindert 2004).

Nine decades of historical experience fail to show that transferring a larger share of GDP from taxpayers to transfer recipients has a negative correlation with either the level or the rate of growth of GDP per person. (Lindert 2004, 17–18)

In fact, Lindert finds that when we switch from GDP per person, the usual measure of income and productivity, to GDP per hour worked, a better measure of labour productivity, the high social spending countries do quite well:

Countries like the Netherlands, France, and Germany have caught up with the United States in output per labor hour. In fact, in GDP per hour worked, the United States ranked below eight other countries in 1992. Six of these eight countries with higher output per hour worked were continental welfare states. (Lindert 2004, 18)

Lindert explains his conclusion that high levels of social spending prove no deterrent to growth by noting the following three points: First, he observes that the tax systems of countries with high social spending are not 'anti-growth' because they derive much of their tax revenues from regressive consumption taxes. These nations do not penalise profits or capital investment any more than the US, and possibly even less. Second, the European social programmes with high welfare benefits usually include everyone. Since benefits are not cut off as income grows, there is no penalty for finding work or investing. And, third, a lot of this social spending is conducive to economic growth, for example spending in education and health. In nations with comprehensive public health programmes, people are healthier and live longer and, thus, more productive. He also shows how government support for child care and requirements to re-employ women after maternity leave at the same job can enhance economic growth (Lindert 2004; Madrick 2004).

It is unfortunate that the mythology of the negative impact of social spending on economic growth continues as conventional wisdom in the US. This wrong-headed view reinforces the US resistance to internationally recognised economic and social human rights. The US reluctance to accept legal obligations to provide a basic right of subsistence to its citizens has helped to create a country where

inequality is skyrocketing and the poor are ignored. Perhaps the US can learn from the European experience and come to see that the national interest corresponds with the establishment and implementation of a strong human rights system for all citizens. The other alternative, of course, is for the US to continue on its current path toward underdevelopment.

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Appendix 1

Economic and Social Human Rights embraced by Franklin D Roosevelt (FDR) and later codified in the Universal Declaration of Human Rights (UDHR) and the International Covenant on Economic Social and Cultural Rights (ICESCR).

The Right to Work

'The right to a useful and remunerative job in the industries, or shop or farms or mines of the Nation' (FDR); 'Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment' (UDHR, Art 23); 'The States Parties to the present Covenant recognize the right to work' (ICESCR, Art 6).

The Right to Just and Favourable Remuneration

'The right to earn enough to provide adequate food and clothing and recreation' (FDR); 'Everyone who works has the right to just and favorable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection' (UDHR, Art 23); 'remuneration which provides all workers, as a minimum, with ... a decent living for themselves and their families ... rest, leisure and reasonable limitation of working hours' (ICESCR, Art 7).

The Right to Housing

'The right of every family to a decent home' (FDR); 'Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and ...' (UDHR, Art 25); '... recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions' (ICESCR, Art 11).

The Right to Health Care

'The right to adequate medical care and the opportunity to achieve and enjoy good health' (FDR); 'Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and medical care and necessary social services' (UDHR, Art 25); 'The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health' (ICESCR, Art 12).

The Right to Social Security and Unemployment Insurance

'The right to adequate protection from the economic fears of old age, sickness, accident, and unemployment' (FDR); 'Everyone, as a member of society, has the right to social security' (UDHR, Art 22); 'The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance' (ICESCR, Art 9).

The Right to Education

'The right to a good education' (FDR); 'Everyone has the right to education' (UDHR, Art 26); 'The States Parties to the present Covenant recognize the right of everyone to education' (ICESCR, Art 13).