



Redefining and combating poverty

Human rights, democracy and common goods
in today's Europe

Publishing
Editions



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Human rights, democracy and common assets in today's Europe

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FOREWORD

This publication *Redefining and combating poverty – Human rights, democracy and common assets in today's Europe* is the result of the project “Human rights of people experiencing poverty” co-financed by the European Commission (DG Employment, Social Affairs and Inclusion) and the Council of Europe (DG Democracy).

The following articles in this volume invite us to rethink poverty in light of human rights in their integrality (social, civil, political and cultural) and their full meaning in societies where democracy is emphasised as the very foundation of living together. They encourage us, moreover, to investigate the causes of poverty in terms of socio-economic and political interrelations between systems of power and the deprived, rather than to think it a natural phenomenon or the consequence of a lack of will or responsibility of people that fall victim to it, paying sometimes a very high price.

While analysing poverty in terms of social interaction, the rise in inequalities – as is the case in present-day Europe – raises the fear of cancelling out all the positive impact promises in the fight against this phenomenon. How can we pose the question of reduction in poverty and equitable access to rights while instability and increasing precariousness become a daily reality for a growing number of people amid record-breaking concentrations of income and wealth at the upper extremity of distribution? The equation is increasingly difficult to solve.

How do we prevent the chaos and loss of confidence in democratic institutions spreading steadily among the population? This volume proposes – first of all – that poverty and increasing precariousness should be thought of as political phenomena that impact on social life and the well-being of everyone. Then, it suggests we should debate the proposals made in the name of principles of justice, an idea of justice propounded by Amartya Sen, that goes beyond the compensatory role of existing institutions, whose responses serve more and more to unremittingly reveal – among those asking for help – their own inability to provide for their needs or to integrate into the labour market. Finally, it advocates establishing approaches that avoid stigmatisation and unshackle people with the aim of returning to everyone the dignity of life, belonging, citizenship and dialogue.

Several contributions explore possible approaches: guaranteed basic income, access to commons and the preservation of public goods, particularly the welfare state and fiscal mechanisms that maintain the quality

of access to rights for everyone. They demonstrate that responsibility for the eradication of poverty is shared: the whole group of actors in co-operation must find solutions for social cohesion and living together well.

If Europe is to recover the quest for justice that defines societies that adopt the respect for human dignity as their founding principle, political will must be stirred to follow these approaches and enable voices to resonate – including the points of view of those that suffer the consequences of poverty and impoverishment.

I would like to acknowledge many people: first and foremost, the authors and in particular, Alessandra Sciarba, Researcher at the University of Palermo in Italy, who accepted the responsibility for the editing of the volume, in close co-operation with each contributor; the staff of the Social Cohesion, Research and Early-Warning Division, in particular, Anne-Iris Romens and Malcolm Cox; and colleagues in the translation and publications services of the Council of Europe.

Enjoy reading,

Gilda Farrell

*Head of Social Cohesion,
Research and Early-Warning Division,
Council of Europe*

INTRODUCTION – REDEFINING POVERTY SO AS TO FIGHT IT

Alessandra Sciarba

1. Why this ambitious project?

We now live in an era where inequalities between rich and poor are spreading and intensifying day after day.¹ While the vast majority of people are becoming poorer and poorer, the wealth of a small percentage continues to grow, thanks to their continuing hold over most of the planet's resources and to the dynamic processes that regulate the financial economy.

While the situation of extreme poverty experienced by the majority of those living in developing countries frequently goes hand in hand with structural conditions characterised by a lack of democracy and by constant violations of people's most fundamental rights, a not insignificant share of the population of so-called "first world" countries also has to contend with poverty (albeit mostly "relative") and with a total disregard for their rights.

In view of this situation, millions of people in dozens of countries are mobilising to denounce political choices that are aimed more at safeguarding financial earnings than at supporting personal incomes.² They are above all calling for greater equity and democracy in the redistribution of wealth.

These phenomena are particularly present in Europe, the situation of which is analysed here. All over the continent, poverty – regardless of the yardstick by which it is measured – is rising, and at the same time living conditions are becoming increasingly insecure, generating growing industrial and social unrest. In these circumstances, it came as no surprise that the European Parliament and Council decided to designate 2010 as the European Year for Combating Poverty and Social Exclusion.³

As a consequence of the economic and financial crisis millions of jobs are being lost in Europe, and for many of those still in work highly precarious working conditions are becoming the norm. The crisis and, frequently, the

1. See, for example, the discussion document for the joint ILO-IMF Conference on the Challenges of Growth, Employment and Social Cohesion (September 2010).

2. Social Watch 2009 – for which the organisation collects data from many countries worldwide – shows how political responses have so far proved inadequate to alleviate the sufferings of elderly people and the "new poor", which have increased during the crisis.

3. Decision No. 1098/2008/EC of the European Parliament and of the Council of 22 October 2008 on the European Year for Combating Poverty and Social Exclusion (2010), *Official Journal of the European Union*, L 298/27.

policies adopted to cope with it have further undermined the dignity and rights of people who were already living in a state of poverty. However, at the same time they have increased the vulnerability of other people previously at no risk of experiencing poverty in the course of their lifetimes, who had made plans for their futures which have now become impossible to achieve.⁴

Moreover, as has often occurred in human history, economic insecurity is translating into greater social tensions – heightening xenophobia, for example – and is thereby increasing the risk of a “war among the poor”, a phenomenon that governments sometimes have a tendency to encourage with the aim of displacing their citizens’ fears, to which it is hard to propose tangible, effective responses.⁵

And yet the economic and financial crisis could constitute a key opportunity to rethink the economic and social system as a whole: although in modern societies poverty has never solely been an issue of a lack of resources, in today’s situation this observation holds truer than ever before.

The crisis has in fact highlighted the system’s weak points, such as the unsustainable use of natural resources by private enterprise or the inadequacies of the social model in the light of the substantial changes that have taken place in the employment market and in the life cycle itself. Given these challenges, it is becoming clear that the solution lies in a fairly radical change of the institutional approach to dealing with the new conditions.

There is therefore obviously now a pressing need to develop a new discourse on poverty. It was with this objective in mind that the Council of Europe’s Social Cohesion Research and Early-Warning Division, with the backing of the European Commission’s DG for Employment, Social Affairs and Inclusion and in co-operation with the European Social Charter Department and the European Court of Human Rights, instigated the work on the project Human Rights of People in Poverty.

This publication is the outcome of the lengthy research work and sharing of knowledge and experience undertaken by the project’s three working groups. Throughout 2011 more than 50 researchers, activists from social justice NGOs, spokespersons for those living in poverty and representatives of institutions held an exchange of views aimed at developing a common line of thought on what is one of the key, and the most difficult, issues for today’s world.

4. French National Observatory of Poverty and Social Exclusion 2010: 14.

5. See, for example, Bauman 2003.

From the beginning the project set out to determine where the origins of poverty lie, to identify its causes and its consequences – including how poverty affects people’s ability to avail themselves of their democratic prerogatives and their rights as citizens – with the aim of devising effective strategies for eradicating it.

To that end, as the project’s title indicates, it was decided to start from human rights as the preferred angle from which to address this question of poverty.⁶ As the project advanced, this initial approach was supplemented so as to take better account of the multifaceted nature of poverty, as reflected in the diversity of views on the subject and the numerous aspects to be taken into consideration.

The project also took as a starting point a more complex definition of poverty than traditional ones based, for example, on income. Following the same lines of reasoning as famous authors such as Amartya Sen,⁷ the participants in the working groups centred their discussions on themes linked to human dignity and the inequalities that threaten it (whether economic, social or power inequalities). They accordingly concerned themselves with individuals’ “capacities” as compared with those of others.

Special attention was also paid to the theme of migration, not only because migrants are over-represented among the poor, but also because challenges to the rights of migrants jeopardise the whole human rights edifice. It is true that, as things stand at present, even those with formal citizenship are witnessing a regression in the recognition of civil, political and social rights, whereas, as Marshall pointed out, these rights are a component part of citizenship (reference can be made for example to the severing, or at least the weakening, of the ties between social rights and work). According to the contributors to this publication, this process is not divorced from the situation of the millions of non-citizens present in Europe, the violation of whose rights has consequences in terms of a redefinition of market mechanisms (on account of their exploitation as a labour force with reduced rights) and an erosion of the substance and the protection of everyone’s rights.⁸

6. The focus was first on the link between poverty and violations of civil and political rights, as well as social rights, with emphasis on the indivisibility, universality and substantive equality of rights as fundamental elements for guaranteeing the effectiveness of rights themselves.

7. See, among the author’s other works, Sen 1992.

8. In this connection, see also Benhabib 2004.

To take account of this complexity, the need for a change of perspective was a key concern in the project work, so as to move away from the charitable approach present in all the discourses and theories that merely bring to the fore the most obvious effects of poverty, treating the issue as if it were a “natural” phenomenon, such as a rain shower, an earthquake or a disease, to which the sole response can be to “reduce the negative consequences”.

The experts working on the project accordingly asked themselves which conditions were likely to “engender” poverty in the various contexts. Poverty was described as a problem linked to the redistribution, and even the production, of wealth and as a question bound up with governance and the political decisions that can help to increase or reduce inequalities.

2. A joint effort to redefine poverty and its consequences

Pursuing this line of reasoning, Emilio Santoro and Laurent Bonelli wrote the first two contributions to be found in Part A of this issue of Trends in Social Cohesion on the topic of poverty. In his article Emilio Santoro takes a historical look at the phenomenon, stripping it of its current-day characteristics. In this way he enables us to understand how specific mechanisms and particular economic and social dynamics contributed, from the start of the modern era, to poverty’s “emergence” initially as an individual problem and subsequently as a political issue and question of social inclusion, to the point where we are now witnessing the exclusion of part of the population that is – more or less directly – being denied a place in society. Formal exclusion is often experienced by migrants, but this kind of banishment also affects a large proportion of people finding themselves in very serious situations of social disqualification. In the age of globalisation and given the crisis of the old economic model, democratic processes can in fact become a means of defence used against all those who are perceived as dropouts, misfits or superfluous to needs.

Laurent Bonelli underlines that poverty has more to do with a social continuum than a partitioning of society. He sets out to give us means of thinking “poverty” outside the most commonplace boxes within which this phenomenon is “managed”. A relational analysis makes it possible to perceive the direct link between poverty and the unequal distribution of production costs and benefits, within a triangle of relations/tensions between the state, persons experiencing poverty and other groups and social players. These three poles are never stable in either time or space, and this accordingly allows the balance of power between them to assume an infinite number of configurations.

Part B of this issue is more concerned with the link between poverty and human rights. Fundamental rights, as analysed here, are not at all conceived as the rights of *homo sacer*,⁹ whose “bare life” is taken into account only within a “purely humanitarian” sphere, concerned with those who have no access to the fundamental “right to have rights”.¹⁰ Approaching the issue from the human rights angle also makes it possible to move beyond the “humanitarian intervention” logic that consists in assisting those who are marginalised within society while, in the process, contributing to their categorisation and their labelling as such. In the fight against poverty the power of human rights, as defined in this chapter, helps to construct a genuine collective process of social and political change.¹¹

In that sense, Diane Roman’s paper underlines the indivisible and universal nature of fundamental rights and sheds light on the violations of civil and political rights, as well as social rights, which poverty entails. The author also considers the real guarantees and the limits that the legal formulation of these rights is today revealing in respect of poverty.

Johannes Gerds then looks at the way in which the principal European legal instruments address the theme of poverty. His two separate contributions analyse, in particular, the European Convention on Human Rights and the revised European Social Charter, highlighting their inputs, but also their deficiencies, with a view to taking effective action against poverty, and also providing a very useful overview of the related case law.

The next two articles describe tangible examples of violations of human rights and possible causes and consequences of poverty, while also focusing on the situation of certain population groups – first and foremost the Roma – who are particularly affected by poverty. Lidia Prokofieva and Ilona Tomova analyse the situations in the Russian Federation and Bulgaria, discussing the specific position of the so-called “transition countries”. These countries’ specificities are studied from both the local and the global standpoints and also with regard to their interaction with the complexities of the current economic phase.

Part D makes the connection between democratic participation and poverty and social injustice. In this section, Dirk Berg-Schlosser describes the forms and instruments of contemporary democracy and, echoing Santoro’s analysis, the conflicts that may occur within dynamic democratic processes. He

9. Agamben 1995.

10. Arendt 1966.

11. Žižek 2005.

considers that these conflicts are more present in “multi-ethnic” societies and are more frequent when they are accompanied by parallel processes weakening normative democracy which allow the democratic engagement of part of the population to run counter to the normative principles of democracy itself, creating an extremely dangerous vicious circle.

Federica Sossi’s paper expands upon these considerations while focusing on the theme of migration. She describes immigration control policies as some of the most powerful means of generating and managing the “circle of poverty”, one fundamental feature of which is the “silencing” of the poor. Citing the example of the revolt of exploited migrant workers in Rosarno, Italy, she also shows that individuals and groups particularly hard hit by poverty and deprivation are nonetheless capable of speaking out and taking action.

Lastly, the paper contributed by Anna Coote and Faiza Shaheen examines the “Big Society” experiment in the United Kingdom, shedding light on this example of a social process that is seemingly participatory and democratic but has at its core the complete dismantling of the post-war welfare system. This study of the UK proposals warns against the potential dangers of such approaches in terms of the shrinkage of resources allocated to the social system and the lessening of state responsibility. To avoid these risks, the authors propose introducing into the Big Society model elements of genuine change – linked more to the concept of “co-production” – so as to ensure social justice and invest resources in promoting more democracy in economic choices.

3. Innovative proposals

The variety of the themes and approaches addressed by the authors – whose papers nonetheless harmoniously complement one another – reflects the diversity of the knowledge pooled in the course of the project and the depth of the exchanges of views that took place.

The vision of poverty that emerges is therefore multifaceted and complex. It is also that of a phenomenon that is structurally well seated in the modern world’s economic, social and even political system. This emphasises the need to identify solutions that themselves work on a structural level and have the capacity to overcome the habitual constraints, and even to change the traditional goals, of most forms of social action. For this reason the working groups’ reflections were not restricted to action in the context shaped by the current characteristics of the free market economy – which has its own key priorities such as profitability, to the

detriment of protection of people's rights – but sought to delve further into the possibilities of devising a new language and genuinely egalitarian and democratic approaches.

The project's experts put forward innovative concepts, often confined to academic circles or the voluntary sector, which, thanks to the focus on poverty, they were able to supplement, adding as yet little explored nuances and meanings to them.

The first section of Part E accordingly concentrates on the proposals to introduce a basic income, as described by Yannick Vanderborght, who explains the concept's key characteristics and argues that it constitutes a vital means of establishing a viable form of social justice. He underlines that, among its other advantages, a basic income system includes absolutely no form of categorisation and therefore helps to combat poverty without labelling or targeting "the poor". Nonetheless, as the author points out, this kind of allowance must go hand in hand with other means of social and economic intervention and also requires tax system reform. Along the same lines, Louise Haagh discusses basic income conceived as a means of guaranteeing and founding the "right to security" and a measure that must therefore apply to everyone, in a universal, unconditional manner, so as to combat poverty and inequality.

In the course of the working groups' meetings, the advocates of a basic income were able to discuss their views with other experts who entertained doubts about the "individualistic" nature of this means of redistributing resources, since its complete unconditionality, while offering a protection against intrusive measures such as those linked to the workfare model, could be perceived as disregarding the values of sharing and social cohesion and simultaneously remaining confined to a solely "pecuniary" dimension of social justice.

However, the ideas proposed by Vanderborght and Haagh proved to be fully compatible with approaches more directly based on an interrelational concept of society, and the group's discussions made it possible to incorporate the proposal for a basic income into what was to be identified as the project's benchmark strategy for fighting poverty: that based on common goods.

That the concluding section of this issue of Trends in Social Cohesion contains three contributions on the proposal to use common goods as a tool for fighting poverty, and, as Ugo Mattei says, guaranteeing direct access to social justice, is not down to chance. Mattei perceives the common goods concept as a solution that can and must play a leading

role in reintroducing social justice into the very core of legal discourse, well removed from the arbitrary whims of the markets and from economic and financial upheavals. Recognising the values and principles of the common goods concept would also make it possible to transfer part of the procedures and the decision-making powers into the hands of the people.

What are today's common goods? Tommaso Fattori and the Observatorio Metropolitano give a comprehensive answer to this question by describing their essential characteristics, consistent with the theoretical framework proposed by Mattei: common goods are the goods people need to lead a dignified life and that is why no one can claim ownership of them and sole access to them. One of the first examples that comes to mind is natural resources.

In this connection, Fattori's contribution has the merit of going deeper into the relationship between poverty and two types of injustice – social and environmental – which are connected and can both be countered by asserting and safeguarding the joint ownership of a territory's resources by its inhabitants. This can be seen to be of vital importance if it is borne in mind that, in today's world, environmental rights are the very cornerstone of many fundamental rights such as the right to health or, in general, the right to lead a decent life. Fattori is one of the spokespersons of the Italian movement against water privatisation, which is described in this publication and which succeeded in winning a referendum in which a key argument was in point of fact the protection of common goods.

Lastly, based on a historical reconstruction of the "loss" of social value of common goods, the article by the Observatorio Metropolitano shows that the current economic crisis involves a further risk that they will be called into question by growing privatisation, which poses unprecedented obstacles in terms of access to these goods and hampers the possibilities of managing them in a democratic manner, making it increasingly difficult to find answers to social needs.

All these contributions affirm the importance, first and foremost, of the identification and the recognition of common goods – the point at which a collective awareness emerges – and reject criticisms that under-rate the human capacity for shared management of resources, setting aside the logic of profitability. The authors lastly explain how the challenge posed by common goods also offers the possibility of a far-reaching renewal of democratic processes whether taking the form of a genuine redistribution of decision-making power or of a redefinition of community boundaries and the adoption of new rules to end the "defensive democracy" described by Santoro and Dirk Berg-Schlosser.

Above all else, the common goods approach opens up, if only as an ideal to be aspired to, the possibility of creating a new sphere for devising theories and actions that foster social justice and combat poverty, by revisiting, with a greater focus on equity and solidarity, such fundamental concepts as ownership and efficiency.

The “common” could then become a vital new terrain for the exercise of the rights of those suffering poverty, with a view to enabling them to escape their condition through the free, responsible use of resources (instead of the often selective and irresponsible manner in which they are now consumed).¹²

The project behind the articles published here went only a little way along the path that leads in this direction. It nonetheless constitutes a contribution requiring an enhanced awareness and thorough consideration of the problems posed by a world in which the values of shared responsibility, solidarity and social justice are increasingly called into question and are, at the same time, more essential than ever. A world in which the issues raised by the economic, social and political changes taking place mean that we must also have the courage to rethink certain concepts which have up to now been taken as given and perceived as unchangeable.

Special thanks to all those who participated in the project working groups, to Anne-Iris Romens, who played a key role in the project’s implementation, and to Gilda Farrell, who strongly desired that this project take place and without whom it would not have been possible.

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12. This naturally does not mean that consumption cannot be responsible. See, for example, Council of Europe 2008.

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PART A

POVERTY YESTERDAY AND TODAY: TYPES OF APPROACH

A HISTORICAL PERSPECTIVE: FROM SOCIAL INCLUSION TO EXCLUDING DEMOCRACY

Emilio Santoro

1. Introduction: changing the framework

In order to outline the range of possible policies to tackle the problem of poverty, we need to focus on how this problem has been dealt with in the modern age. This work would seem to be of fundamental importance because we have come to a dead end, where the problem of poverty cannot be solved unless we abandon our certainties about how to deal with it. In other words, we are at a point in history when, in order to continue reflecting about poverty and to look for solutions, we have to look for ways of thinking about and seeing it that are different from the ways we are now using to think about and see it. This diachronic inspection is meant precisely to problematise the ways we think about poverty and to try to deal with it as something that is historically determined and not “natural”. Today, the only solutions to tackle this problem seem those dictated by market mechanisms. These mechanisms constitute the framework within which governments think their policies should be inscribed and individuals and workers think their claims should be inscribed: the ideology of globalisation shapes policies and claims. Only a naive conception, in which claims express claimants’ real needs, can lead us to think that we should start with “needs” to outline strategies capable of solving the problem of poverty. If we think instead that needs and the ensuing claims are determined by context and by the prevailing conditions regarding their assertion, we realise that unless we devise a new way of thinking about what is going on, we are bound to remain trapped in the idea that only the market can solve the problems of poverty, even though the history of the last two centuries tell us that it is unable to do so.

2. The market paradigm: poverty as an individual problem

By adopting an historical perspective we can see that the problem of poverty was considered originally as one that could and should be solved through the market. Adam Smith can be considered the father of this approach, which originates in Malthus’ ideas. According to Smith, poverty

and the related wish to get rid of it, and more generally the wish to enrich oneself, is indeed the necessary engine of a market that will make everyone richer (or, better, the rich richer and the poor less poor), and in any event will meet, if not everyone's wishes, at least everyone's needs in the medium term. It is worth quoting the well-known passage of *An inquiry into the nature and causes of the wealth of nations* that is the manifesto of this approach: "it is not from the benevolence of the butcher, the brewer, or the baker that we expect our dinner, but from their regard to their own interest. We address ourselves, not to their humanity, but to their self-love, and never talk to them of our own necessities, but of their advantages".¹³ The increase of general well-being will result from the fact that increasing one's fortune is "the means by which the greater part of men propose and wish to better their condition",¹⁴ that is, from the rich's greed¹⁵ and the poor's wish to escape need:

it is thus that the private interests and passions of individuals naturally dispose them to turn their stock towards the employments which, in ordinary cases, are most advantageous to the society. But if from this natural preference they should turn too much of it towards those employments, the fall of profit in them, and the rise of it in all others, immediately dispose them to alter this faulty distribution. Without any intervention of law, therefore, the private interests and passions of men naturally lead them to divide and distribute the stock of every society among all the different employments carried on in it; as nearly as possible in the proportion which is most agreeable to the interest of the whole society.¹⁶

These passages express the belief, still widespread, in the intrinsic functionality and morality of market society's *modus operandi*: the material well-being "of the whole society" improves when everybody is allowed to pursue one's self-interest. The best way to foster general wealth is to leave every member of society free to pursue one's (material) self-interest. In this context, poverty is a fundamental basis of the possibility to improve the conditions of society as a whole and of its individual members: it is the stimulus that drives all people to roll up their sleeves and produce things to sell on the market, thereby making everyone richer with more goods at one's disposal.

13. Smith 1776: 26-7.

14. *Ibid.*, p. 341.

15. Mandeville had already aptly illustrated the emerging paradox of the public utility of private vices, such as greed and avarice.

16. Smith 1776: 630.

At the beginning of the 19th century this view found the ideal conditions of its success. For, on the one hand, it appeared fully consistent with the fundamental idea of the liberal political organisation by which states should provide every individual with an effective chance to achieve, within the broadest possible limits, his or her values or interests, without requiring any “political virtue”, that is, the duty to co-operate with others for the community’s good. On the other hand, it fitted in with a social and economic context that made it possible to present the poor’s involvement in the production process as the main path to improve their conditions, even if resulting from coercion or, better, poverty that forced them to be disciplined and become workers in factories and manufacturers. In the wake of the enthusiasm generated by the Industrial Revolution, it seemed that the only limitation to the steady enrichment of the whole population was the lack of manpower, the inability of people expelled from the country to become workers. This idea mostly characterises Bentham’s views in his discussion of the English Poor Law, which are the foundation of his *Panopticon*.

In this picture poverty was not a political and not even a social problem, but only an individual problem: if someone were poor it was his or her fault, he or she was unable (or would not work hard enough) to take advantage of the opportunities offered by the market. It is therefore natural that 19th-century policies on poverty show clear traces of the approach that, for argument’s sake, we can call “Smithian”. They were aimed at helping only the poor that accepted the wage and work conditions offered by the labour market, which were not properly regulated since they included a shattering 10 hours a day, six days a week, with no protection even for children. Those policies excluded the so-called “undeserving poor”, who refused to accept those conditions, from any form of relief. The only poor deserving help were those who could not stay in the market either temporarily (injury, sickness, etc.) or permanently (invalidity, old age, etc.). The others did not deserve any help and should indeed be punished, because their refusal to accept the conditions of the labour market, hence to be productive, harmed the possibility for the whole community to become richer.

As a consequence of this approach, social rights at that time in England were not conceived of as citizenship rights but as rights meant to compensate people who were excluded from citizenship and to protect the members of the community that were not fully entitled to the status of citizen. For instance, the Poor Law of 1834 provided benefits only for the workers who retired from the labour market because of old age or sickness. T. H. Marshall, the father of the idea that a full citizen should be entitled to a range not only of civil and political, but also social rights,

writes that this law “treated the claims of the poor, not as an integral part of the rights of the citizen but as an alternative to them: as claims which could be met only if the claimants ceased to be citizens in any true sense of the word”.¹⁷ The very same logic inspired the Factory Acts, concerning working hours and conditions. Those laws:

meticulously refrained from giving this protection directly to the adult male – the citizen *par excellence*. And they did so out of respect for his status as a citizen, on the grounds that enforced protective measures curtailed the civil right to conclude a free contract of employment. Protection was confined to women and children, and champions of women’s rights were quick to detect the implied insult. Women were protected because they were not citizens.¹⁸

In fact, the first to raise doubts about this approach was Adam Smith himself, who emphasised how market logic, while it battles poverty, destroys sociality. In the first book of his *Wealth of nations*, Smith praises the division of labour arguing that it “so far as it can be introduced, occasions, in every art, a proportionable increase of the productive powers of labour”.¹⁹ His views seem perfectly parallel to Bentham’s. Speaking of the “17 operations” in which the production of pegs is divided, Bentham argued that the division of labour allows even “useless arms”, that is, as one reads in the *Panopticon*, people with no working skill, to become productive and escape poverty. Smith, instead of the 17 operations needed to make pegs, speaks of the “about 18 distinct operations, which, in some manufactories, are all performed by distinct hands”, in which “the important business of making a pin” is divided.²⁰ But, pegs or pins, the conclusion is the same: an astonished admiration for the effects of the division of labour.

Thus, for Smith as for Bentham, the division of labour allows any individual, however unskilled, to be highly productive. This reasoning leads him to argue that the division of labour, even though seemingly imposed upon men from outside, is in their interest. Its strength is that it is the means through which not only well-being is created, but it is extended to the lower sectors of the population.²¹ Ultimately, it is because of the division of labour that the poor can be included in the labour market and exit from poverty.

17. Marshall 1950: 88.

18. *Ibid.*, p. 89.

19. Smith 1776: 15.

20. *Ibid.* In his *Lectures on Jurisprudence* (Report dated 1776, p. 329, Glasgow Edition, 539) Smith mentions, besides the seventeenth operation necessary for a pin, the eighteenth necessary for a button.

21. Cf. Jonas 1989: 112.

Smith, however, adds an important reflection to this view: while it is the case that the division of labour allows many people to exit from poverty, it is also the case that it lowers people's moral and cultural level. For, with the division of labour, "the employment of the far greater part of those who live by labour, that is, of the great body of the people, comes to be confined to a few very simple operations; frequently to one or two".²² And:

the man whose whole life is spent in performing a few simple operations, of which the effects, too, are perhaps always the same, or very nearly the same, has no occasion to exert his understanding, or to exercise his invention, in finding out expedients for removing difficulties which never occur. He naturally loses, therefore, the habit of such exertion, and generally becomes as stupid and ignorant as it is possible for a human creature to become.²³

Thus, industrial work emerges from Smith's analysis as a serious threat to the social subjectivity of popular classes, hence to social cohesion itself. For, with the spreading division of industrial labour, "the common people":

have little time to spare for education ... they must apply to some trade, by which they can earn their subsistence. That trade, too, is generally so simple and uniform, as to give little exercise to the understanding; while, at the same time, their labour is both so constant and so severe, that it leaves them little leisure and less inclination to apply to, or even to think of anything else.²⁴

This is the condition in which "the labouring poor, that is, the great body of the people"²⁵ are forced to live.

One century later, Smith's views were repeated by Tocqueville who emphasised how relying on the market, hence on the division of labour, to rescue individuals from poverty, destroys social cohesion and creates two parallel societies: the society of the rich and the society of those who are forced to annihilate themselves to avoid being poor. I quote from Tocqueville's second volume of *De la démocratie en Amérique*, where he cites the Smithian example of work "parcellisation" necessary to produce a nail, at full length, for I think we can hardly find better words to describe this phenomenon:

when a workman is unceasingly and exclusively engaged in the fabrication of one thing, he ultimately does his work with singular dexterity;

22. Smith 1776: 781.

23. Ibid., p. 782.

24. Ibid., pp. 784-5.

25. Ibid., p. 782.

but at the same time he loses the general faculty of applying his mind to the direction of the work. He every day becomes more adroit and less industrious; so that it may be said of him that in proportion as the workman improves the man is degraded. What can be expected of a man who has spent 20 years of his life in making heads for pins? and to what can that mighty human intelligence, which has so often stirred the world, be applied in him, except it be to investigate the best method of making pins' heads? When a workman has spent a considerable portion of his existence in this manner, his thoughts are forever set upon the object of his daily toil; his body has contracted certain fixed habits, which it can never shake off: in a word, he no longer belongs to himself, but to the calling which he has chosen. It is in vain that laws and manners have been at the pains to level all barriers round such a man, and to open to him on every side a thousand different paths to fortune; a theory of manufactures more powerful than manners and laws binds him to a craft, and frequently to a spot, which he cannot leave: it assigns to him a certain place in society, beyond which he cannot go: in the midst of universal movement it has rendered him stationary.

In proportion as the principle of the division of labour is more extensively applied, the workman becomes more weak, more narrow-minded, and more dependent. ...

Whereas the workman concentrates his faculties more and more upon the study of a single detail, the master surveys a more extensive whole, and the mind of the latter is enlarged in proportion as that of the former is narrowed. In a short time the one will require nothing but physical strength without intelligence; the other stands in need of science, and almost of genius, to insure success. This man resembles more and more the administrator of a vast empire – that man, a brute. The master and the workman have then here no similarity, and their differences increase every day. They are only connected as the two rings at the extremities of a long chain. Each of them fills the station which is made for him, and out of which he does not get: the one is continually, closely, and necessarily dependent upon the other, and seems as much born to obey as that other is to command.²⁶

Thus, both Smith and Tocqueville understand that to trust the market to solve the problem of poverty means producing a society racially split in two parts, which in the long run become anthropologically different.

26. Tocqueville 2005: 441-2.

Moreover, it means nullifying every possibility to develop the personalities of the poor and to make them unable to adapt themselves to the transformation of society.

3. State and population: poverty as a political problem

3.1. “The architect of legitimate social inequality”: the *raison d'état* versus citizenship

The definition of citizenship as a status to which three kinds of rights – civil, political and social – are attached is traditionally linked with the views proposed by Thomas H. Marshall in the early years following the Second World War. Marshall is chiefly credited with “pointing out that a full citizen ... is entitled to a package of rights that are not only civil and political, but social”.²⁷ Marshall’s main goal was to defend the welfare state that had been just established in Britain by the Labour government.²⁸ To this end, he drew a “continuist” narrative whose historical credibility appears today quite dubious.²⁹ He grafted the liberal assumption that all individuals are free and equal, entitled to the same rights and able to use these rights to build their lives, onto the evolutionary perspective of 19th-century English historiography, thus creating an evolutionary account of rights:

the story of civil rights in their formative period is one of the gradual addition of new rights to a status that already existed and was held to appertain to all adult members of the community This *democratic*, or *universal*, character of the status arose naturally from the fact that it was essentially the status of freedom ... the terms “freedom” and “citizenship” were interchangeable.³⁰

According to Marshall, by guaranteeing that no person or group is legally privileged, citizenship provided “the foundation of equality on which the structure of inequality could be built”.³¹ He was aware that entitlement to civil and political rights does not itself guarantee citizens’ substantial equality; he knew that civil rights have a functional role in market logic, which requires that individuals be “free and equal in status though

27. Zincone 1989: 22.

28. Barbalet 1988.

29. Marshall’s theoretical account is inspired by the “Victorian optimism” that characterised the works of H. S. Maine, T. B. Macaulay, G. M. Trevelyan, E. Power, R. H. Tawney and F. W. Maitland.

30. Marshall 1950: 84, my emphasis.

31. *Ibid.*, p. 96.

not necessarily in power”.³² He knew that those rights draw a society in which, while social differences are no longer determined “and defined by the laws and customs of the society”, they “emerge from the interplay of a variety of factors related to the institutions of property and education and the structure of the national economy”.³³ In his narrative, however, the recognition of civil rights triggered a process that would change the bases of individuals’ social value, shifting it “from economic substance to personal status”.³⁴ By making the belief in individuals’ substantial equality widespread, “partial” citizenship, that is not including social rights, paved the way for overcoming many differences stemming from class distinction. It made for a less formal conception of equality as “equal social worth and not merely equal natural rights”.³⁵

Owing to the success of this new conception – Marshall³⁶ argues – at the beginning of the 20th century the logic by which the recognition of civil rights, by providing every individual with “the power to engage as an independent unit in the economic struggle”, made it perfectly coherent “to deny to him social protection on the ground that he was equipped with the means to protect himself” was undermined. The existence of a common status became “the architect of legitimate social inequality”.³⁷ Thus, the requirement was established of “a universal right to a real income which is not proportionate to the market value of the claimant”.³⁸

Many authors have rightly stressed that this account of the rise of citizenship rights tends to hide the role of social conflict in this process. In my view, however, it mostly overlooks that the engine of this process was states’ will to power. Social rights were born to reinforce national capitalist systems that states relied upon for their power. They were born when states realised that “a failure rationally to provide for public health means to decrease collective wealth, out of the loss of work days and the costs of maintaining children who die before reaching the work age, as well as of maintaining people who become invalid for lack of timely and sufficient treatment”.³⁹

32. Ibid.

33. Ibid., p. 94.

34. Ibid., p. 86.

35. Ibid., p. 101.

36. Ibid., p. 96.

37. Ibid., p. 77.

38. Ibid., p. 106.

39. Rossi 1956: 1433-60.

Fortunately for the poor, during the 18th century the logic of the market and the liberal order was accompanied by the power logic of states. In this period, as Michel Foucault emphasised, there emerged a field of knowledge called *Polizeiwissenschaft* in Germany, which concerned:

the theory and analysis of everything “that tends to affirm and increase the power of the state, to make good use of its forces, to procure the happiness of its subjects” and chiefly “the maintenance of order and discipline, the regulations that tend to make their life convenient and provide them with the things they need to live”.⁴⁰

States relied upon this field of knowledge for a chance “to stake out and improve [their] position in the game of rivalries and competition between European states, and to guarantee internal order through the ‘welfare’ of individuals”:⁴¹

What is characteristic of a police state is its interest in what men do; it is interested in their activity, their “occupation”. The objective of police is therefore control of and responsibility for men’s activity insofar as this activity constitutes a differential element in the development of the state’s forces.⁴²

For police:

is the set of techniques that ensure that living, doing better than just living, coexisting, and communicating can in fact be converted into forces of the state. Police is the set of interventions and means that ensure that living, better than just living, coexisting will be effectively useful to the constitution and development of the state’s forces. So with police there is a circle that starts from the state as a power of rational and calculated intervention on individuals and comes back to the state as a growing set of forces, or forces to be developed, passing through the life of individuals, which will now be precious to the state simply as life.⁴³

The goal of *Polizeiwissenschaft* was, in the last analysis, that of making the population, that until then had been seen as an untidy ungovernable mass of individuals, into a resource for the state. Its subject matter was “the ensemble of mechanisms serving to ensure order, the properly channelled growth of wealth and the conditions of preservation of

40. Foucault 2004b: 474.

41. Ibid.

42. Ibid., p. 417.

43. Ibid.

health ‘in general’”.⁴⁴ The science of police was but “the calculation and technique that make it possible to establish a mobile – but nonetheless stable and controllable – relation between the internal order of the state and the growth of its forces”.⁴⁵ “Medicine developed at the end of the eighteenth century in response to economic conditions,” Foucault writes, in that it was supposed to “provide society with strong individuals who were capable of working, of ensuring the constancy, improvement and reproduction of the workforce. Medicine was called on as an instrument for the maintenance and reproduction of the workforce essential to the functioning of modern society”.⁴⁶

It is not accidental that the development of this science was connected with the emergence of the Westphalian system. After the end of the dream of reviving imperial Rome, a new historical perception no longer aims at uniting all of the sovereign entities that originated from the dissolution of the empire but realises that new states are bound to fight against each other in order to survive. When the world appears as an arena for the competition between states, the major problem becomes that of the rational techniques for developing a state’s forces. In this context the population quickly becomes the main resource on which a state’s diplomatic influence rests. Thus, two new techniques of power management develop together. On the one hand, this calls for military-diplomatic technology aimed at securing and developing a state’s forces through a system of alliances and the organisation of military apparatus. The Westphalia treaties, meant to crystallise a European equilibrium, are the outstanding product of this political technology. On the other hand, there emerges “police” according to the definition of that time, that is the set of means required to make a state’s forces grow from within. The subject of these two power techniques is the couple population–wealth: enrichment through commerce is expected to lead to an increase of population, manpower, production and export, hence the possibility of having large, strong armies.⁴⁷

The population becomes at the same time “the subject of needs and aspirations” and the source of a state’s power: therefore, it turns into the “ultimate end of government”, but at the same time is an object in the government’s hands. *Polizeiwissenschaft* is the science of governing the

44. Foucault 1976b: 170.

45. Zanini 2006: 126.

46. Foucault 1976a: 16.

47. Foucault 2004a.

population by means of the population. From now on, the end of government will be the well-being of the population, the improvement of its conditions, the increase of its wealth, its longevity, its health, etc.⁴⁸

3.2. The source of state power: taking care of the population, the birth rate and the poor

The connection between population and health is the centre of the political economy – which was born precisely between the end of the 18th and beginning of the 19th centuries out of a perception of the links between population, territory and wealth – “built around the discourse of increasing states’ wealth”.⁴⁹ Political economy marks the transition from the art of government to political science, from a “regime dominated by structures of sovereignty to a regime dominated by techniques of government”.⁵⁰ The key issue that political economy is called upon to deal with is “by and large” that of preserving, keeping and protecting the “labour force”. It sets itself the “objective at best to make poverty useful by fixing it to the apparatus of production, at worst to lighten as much as possible the burden it imposes on the rest of society”.⁵¹ While the new technologies of government do not configure the population as a set of legal subjects, they do not simply conceive of it as a simple agglomerate of arms for work (even though this reduction may be found in some late 18th-century theories, such as those of Bentham). Their ambition is to tackle a broader problem: “the economico-political effects of the accumulation of men”.⁵² The new science of government aims at planning society, conceived “as a milieu of physical well-being, health and optimum longevity”. It is characterised, first, by the appearance “of the health and the physical well-being of the population in general as one of the essential objectives of political power”; the production requirements take into account “the specific problem of the sickness of the poor ... in the relationship of the imperatives of labour to the needs of production”.⁵³

Since the early 19th century, European countries, especially in western Europe, have lived two centuries characterised by the steady social and political inclusion of the poorer classes. At the political level, those that during the 18th century were considered dangerous classes became little

48. Rosen 1993: 100.

49. Procacci 1991: 154.

50. Foucault 2004b: 142.

51. Foucault 1976b: 169.

52. *Ibid.*, p. 171.

53. *Ibid.*, pp. 169-70.

by little, through the extension of franchise, an integral part of the *demos* waging political sovereignty. At the social level, the well-being of members of those classes became a state problem, indeed the major problem for states which saw the well-being and health of their populations as the main source of their economic and military power. State administrators and physicians were aware that relying on the natural condition of health and fertility of populations was not enough for states' prosperity, but they had to take responsibility for removing obstacles to the full development of the "population resource". To this end, it was necessary to create the conditions for fostering health, preventing diseases and making medical treatment easily accessible to those in need of it.⁵⁴ As Giovanna Procacci emphasised,⁵⁵ hygiene makes it possible to invent and justify the new rules of an orderly and decipherable coexistence: "rules for urban public hygiene, 'houses police', rules on hygiene in workplaces, marriage hygiene (of Malthusian reputation)". The positions held in 19th-century England by the Public Health Movement of the lawyer Edwin Chadwick, one of the most significant supporters of bio-political technologies,⁵⁶ are indicative of the relevance of this hygienist-regulatory aspect of bio-politics; of how, if you like, government had to define the operational scope of the economy rather than being limited to comply with it. In a report published in 1842, *Sanitary conditions of the labouring population of Great Britain*, the movement focused on the causal links between poverty and sickness and claimed it had "proved beyond any doubt" that diseases stemmed from precarious environmental conditions, polluted water supply, lack of sewage draining, and untimely and insufficient collection of garbage.⁵⁷ The increasing economic laissez-faire of the industrial age was to blame for these conditions. In the logic of Chadwick and other reformers, it was tantamount to a licence for exploiting the poor, the workers and in general the ever-more numerous city dwellers.

Thus, towards the middle of the 19th century states began to perceive that, as a means to reinforce their power, they could not always rely upon a strategy functional to the market. Sometimes choices in opposition to its logic were needed; one began to think that the market should be regulated for it to be functional in the increase of collective well-being and, as a consequence, of state power. Since the end of the 19th century one has realised that the ability of the labour market to support the growth

54. Foucault 2004b: 142.

55. Procacci 1991: 165.

56. Parodi 2002: 199.

57. Rosen 1993: XXVI.

of economic well-being is doubtful or indeed altogether absent. States, concerned with their power, realised that they needed to intervene in a much more direct way to improve their citizens' life conditions and therefore, ultimately, their power.

It is in this context that the welfare state originates. After *medizinische Polizei*, *hygiène publique* and "social medicine", the welfare state was the latest technological instrument used by states to look after their populations in order to increase their own economic (and military) power. On the one hand, the apparatus of the welfare state was born from the idea, by then consolidated, that managing the population required a reduction in child mortality, the prevention of epidemics, the provision of sufficient medical facilities, and influence on individuals' living conditions through the enforcement of rules relating to food, environmental management and urban organisation. On the other hand, it developed with the emergence of the belief that, contrary to what had been thought for about a century, the labour market on its own was absolutely unable to secure these goals. The need for intervention to reinforce states' taking charge of their populations, hence of their power, clearly emerged when Britain, at the time the leading colonial power, had such a difficult time coping with Afrikaner settlers during the two Boer Wars (1880-81 and 1899-1902). Unsurprisingly, it was in Britain itself that, towards the end of the 19th century, the first structures of the welfare state began to emerge. In Bismarck's Germany, too, the first moves towards a welfare state were made under pressure from aggressive Prussian policies at the end of the 19th century. During the 20th century this kind of population management seemed able both to meet states' need for power and to "manage" workers' demands. Thanks to this ability, with the two world wars the welfare state developed throughout Europe, though with different modes and contents, and was consolidated as an essential device of economic reconstruction after the Second World War.

In my view it was no mere coincidence that an essential step that prepared the ground for the establishment of welfarist policies was an ability to see freedom of contract in a different way. According to the liberal approach, this was a natural right belonging to individuals' basic liberties, which, as John Locke claimed, included: liberty of the person, freedom of speech, thought and faith, the right to own property and to conclude valid contracts, and the right to defend and assert all one's rights on terms of equality with others and by due process of law. Max Weber was the first to emphasise how in fact freedom of contract was qualitatively and substantively different from the other rights and was rapidly eroding significant

spheres of freedom. Weber's analysis suggests that the label of "terrible right", that Beccaria attached to ownership, is rather more appropriate for contractual freedom:

the increasing significance of freedom of contract and, particularly, of enabling laws which leave everything to "free" agreement, implies a relative reduction of that kind of coercion which results from the threat of mandatory and prohibitory norms. Formally it represents, of course, a decrease of coercion. But it is also obvious how advantageous this state of affair is to those who are economically in the position to make use of the empowerments. The exact extent to which the total amount of "freedom" within a given legal community is actually increased depends entirely upon the concrete economic order.⁵⁸

Freedom of contract, whatever its legal configuration, always means, says Weber, "that the more powerful party in the market, i.e. normally the employer, has the possibility to set the terms, to offer the job 'take it or leave it,' given the normally more pressing economic need of the worker, to impose his terms upon him". It is evident to the German sociologist, who bears in mind the dramatic conditions of early 20th-century workers, that "the formal right of a worker to enter into any contract whatsoever with any employer whatsoever does not in practice represent for the employment seeker even the slightest freedom in the determination of his own conditions of work".⁵⁹ A similar reasoning applies to any contract exchange made between two parties with remarkably different economic and social power. In the field of freedom of contract "the statement '*coactus voluit*' [he wishes it, coerced] applies with peculiar force just because of the careful avoidance of the use of authoritarian forms ... it is left to the 'free' discretion of the parties to accept the conditions imposed by those who are economically stronger by virtue of the legal guaranty of their property".⁶⁰

It is worth emphasising, however, that the emergence of the welfare state did not entail the delegitimising of the market; indeed, it was in a sense its sublimation. In the new conception the success of government technologies consists in the production of good citizens contributing to state power through their work, but the market is the ultimate measure of this

58. Weber 1922: 189.

59. *Ibid.*, p. 188. Weber adds that "such availability is prevented above all by the differences in the distribution of property as guaranteed by law".

60. *Ibid.*, pp. 189-90.

operation. The introduction of the economy within the political process⁶¹ removes citizens' governance from the labour market and entrusts it to "hygienic" policies, although the market is called upon to judge the success or failure of government techniques as a whole. By allocating wealth among different states players, it becomes the criterion of both the validation and the legitimisation of policies. In this situation, therefore, politics establishes the end and the means, and the market certifies the adequacy of the means.

3.3. From the worker political actor to the consumer (of social services)

After the Second World War, the military power of western European states has become ever less important (initially with the partial exception of France and Britain), since the collective defence of western Europe is entrusted to NATO and ultimately the United States. But economic competition among states keeps them concerned with their populations' well-being. The development of welfare policies culminated in the 1970s when Keynesianism and Fordism joined together.

For over one hundred years the two locomotives, "hygiene government" and the market, have run on parallel tracks, favouring the development of the state. Since during the first stage the economy seemed mainly to need a disciplined workforce to grow, the developments in the market and discipline seemed perfectly symbiotic, as in Bentham's design. The situation did not change and the two tracks continued to run parallel even when Fordist policies were complemented by welfare policies and Smith's 18th-century idea that poverty is a key stimulus of economic growth – by activating human resources – was turned completely upside down. The Fordist approach shifts focus from the market of labour to that of goods and holds that wealth rather than poverty is the fundamental stimulus of economic growth. For only wealth can produce consumption, hence the demand that activates production. As mentioned above, the 18th-century approach, in its Smithian, Malthusian and Benthamite versions, was associated with the idea that the only limitation of production was the lack of manpower; if there were manpower, wealth could increase indefinitely. Instead, the Fordist view considers the late 19th and early 20th-century experience of overproduction as crises, namely the fact that without demand production generates no wealth. It realises that the problem is not so much scarcity of producers, as Bentham and Smith

61. Foucault 2004b: 126-45.

thought, but scarcity of consumers. Full employment and the steady rise of workers' wages are seen as the elements necessary to create a continuously expanding market. While they totally inverted the 18th-century logic, Fordists did not give up the idea that the market is the measure of policies' legitimisation, and tended, at least ideally, to restrict again welfarist intervention to those who, being temporarily or permanently unable to stay in the labour market that is allegedly able to guarantee full employment, cannot take advantage of the steady rise of wages.

In my view, however, the most significant aspect of Fordist policies is an element that is seldom noticed: they finally accepted that labour and its market cannot play the role of society's integration engine. Fordists accepted that the equivalence of the terms "worker" and "citizen" no longer held, that full insertion into the labour market does not itself guarantee full participation in the community's social and political life. This idea was already behind the development of welfare policies between the end of the 19th and the beginning of the 20th centuries, not coincidentally at the same time as the birth of sociology. The problem characterising the reflections of Durkheim, Weber, Simmel and the other fathers of sociology stems precisely from their awareness that the attempt to ground the legitimacy of the social order in the division of labour was showing all its flaws. Sociology was born to deal with the increasing emergence of conflict and anomic phenomena, and the demise – as anticipated by Tocqueville – of all forms of bonds in a society based on individualism and competition.

Welfare state theorists seemed not to realise the disappearance of labour's integration force. Conceiving of social services no longer as ways of compensating those who could not stay in the labour market but as devices of social inclusion, welfare policies were limited to creating a life jacket neutralising more destructive anomic effects. As shown by the first articles of the Italian Constitution, establishing a "democratic Republic based on labour" (Article 1) and "the effective participation of all workers in the political, economic and social organisation of the country" (Article 3), in the years after the Second World War the dyad worker-citizen was still considered the source of social integration. Fordism, instead, implies a clear perception that the core of the social order cannot be an agent who finds the meaning of his or her existence in labour. Little by little, it is replaced by a "consumerist" agent, driven by an awareness of the often alienating nature of labour to look for the meaning of life in consumption. This compensation for labour's "miseries" is the implied promise of Fordist policies, based, as we have said, on full employment guaranteed by wages high enough to enable employees to be relevant consumers in

the market for goods, including voluptuary goods, and hence capable of supporting a high demand for commodities and services.

Marshall with his undoubted analytical capacity seems to realise the importance of this shift. In *Reflections on power*,⁶² an essay written about 20 years after *Citizenship and social class*, he makes weaker the irenic bias of his earlier account and claims that there is a significant discontinuity between the logic underlying the conferment of civil and political rights and that underlying the conferment of social rights. He argues that social rights pertain to individuals as “consumers” rather than “actors”. However, he does not develop this idea but contents himself with holding that the essential element of the distinction is to be found in the fact that consumers’ rights, unlike civil and political rights, do not empower their holders.

This claim may appear rather ambiguous, although perhaps it reveals that Marshall no longer thought, unlike in the early years after the Second World War, that social rights increase poor people’s ability to structure the political and social order. If we place it in the context of the more general dichotomy of liberal thought, namely that we take into account that the characters of the actor and the consumer imply different rationalities, ultimately distinct anthropological models, Marshall’s remark appears even insightful. For it allows us to see that the conferment of social rights was an essential part of a strategy meant to better poor people’s conditions, hence to increase state power, without rebalancing the distribution of social power to their advantage.

Marshall’s “power” is the power to structure the political-social organisation. According to the classical liberal conception, civil and political rights are means available to an individual (an actor) whose behaviour is strategically oriented towards setting up a social and political environment enabling him or her to make free choices. The link between these rights and the rationality attached to individuals is the heart of liberal theory. The grounding concern of this theory is to show that citizens are rationally and morally bound to undertake a political obligation if the government guarantees their life, property and freedom.⁶³

Thus, the normativity of liberal discourse addresses both the “sovereign”, whose legitimate exercise of power is restrained, and the individual upon whom a model of substantive rationality is imposed. Besides the “vertical” legitimisation of institutional processes concerning the relationship between

62. Marshall 1969.

63. The shift from “rationally” to “morally” to express the nature of political obligation was sanctioned ultimately by Kant and corresponds to a thicker anthropological model.

government and citizens, contract theory, which is the source of all liberal thought, performs a “horizontal” legitimisation of a specific individual identity, a specific form of rationality and particular practices through which agents would attach meaning to the world and their lives. It is the “horizontal” level of legitimisation that in everyday life makes the market, the democratic process, the inviolable sphere of rights and the other elements of liberal theory appear not simply as platitudes but as values.

In this theoretical context to say, as Marshall does, that an individual claiming and using civil and political rights is an “actor” is to assume an ideal texture of rights, determining how an individual can interfere with another’s freedom, as a reference and an horizon of meaning. For an “actor” is an individual able to rein in his or her passions and to realise that submitting to a political authority committed to protect citizens’ rights is in his or her “natural” interest.

A consumer, as distinct from the holder of civil and political rights, is instead a Humean agent whose interests are not co-ordinated with rational principles or a transcendent morality, but express passions having their own “original existence”.⁶⁴ The interests of a “consumer” may well lead him or her to disavow the social contract and violate others’ “rights”.⁶⁵ Whereas the individual actor is by definition committed to act upon “rational” principles because the consequences of his or her behaviour affect the public sphere (concern the arrangement of the social and political environment), the individual consumer is free to act upon his or her own drives because their actions only concern their own private domain and take place in the space of the market, which works precisely through individuals’ idiosyncratic and irrational preferences.

To think of social rights as stemming from one’s right to “be a consumer”, to stay in the market, is facilitated by their originally being a replacement for wages, which allowed workers to stay in the market. Moreover, they only allowed access to the market of bare subsistence. In other words, while citizens’ access to the market was considered a basic right, access to this right was dependent on a citizen’s ability to work. Social rights

64. Hume 1739: II.iii.iii.

65. Hume made a famous critique of contract theory. This critique is known to be based on a conception of rationality different from that of natural law. According to Hume “’Tis not contrary to reason to prefer the destruction of the whole world to the scratching of my finger. ’Tis not contrary to reason for me to chuse my total ruin, to prevent the least uneasiness of an Indian or person wholly unknown to me. ’Tis as little contrary to reason to prefer even my own acknowledg’d lesser good to my greater, and have a more ardent affection for the former than the latter” (Ibid.)

allowed very limited access to the market by intervening only when a citizen – for a variety of reasons – lacked the ability to work and hence to stay in the market.

Social rights were extended upon the realisation that one's ability to stay in the labour market, hence to access the consumption market, depends only partially on one's skills and will, and that full employment, hence the universalisation of the right to be a consumer, is a Utopia. Thus, the extension of social rights is connected with an increasing awareness that:

until the allocation of productive factors between possible utilisations, and the distribution of consumption goods in meeting different needs, is dependent on a market mechanism – which automatically determines prices as balance positions of supply and demand, and only rewards those who take part in the production process, in proportion to the productivity of one's contribution – there will always be a certain number of people who (owing to age, health conditions, unemployment, laziness, excessive family burdens, inability to perform the services actually demanded) will be unable to earn an income sufficient to keep their heads above the level of poverty.⁶⁶

While the replacement of the citizen-worker (or perhaps, better, the worker-citizen) with the citizen consumer (or the consumer-citizen) at first is not culturally disruptive, since the capacity for consumption is associated with wage and therefore with labour, it quickly leads to a booming social demand. As Barbalet⁶⁷ remarks, we should assume that every individual's preferences are the same. Civil and political rights can be universalised because they are a corollary of the anthropological model of the rational actor. However, when social rights are conceived as the rights which pertain to individuals as "consumers", they must meet specific individual needs. Thus they fall within that domain of consumption that liberal theory always saw as ungovernable and subject to an individual's free choice.

At the beginning of the 19th century, this view found the ideal conditions of its success. For, on the one hand, it appeared fully consistent with the fundamental idea of the liberal political organisation. On the other hand, it fitted in with a social and economic context that made it possible to present the poor's involvement in the production process as the main path to improve their conditions, even if it resulted from coercion or, better, poverty that forced them to be disciplined and become factory workers. In the wake of

66. Rossi 1956: 202-3.

67. Barbalet 1988: 100.

the enthusiasm generated by the Industrial Revolution it seemed that the only limitation to the steady enrichment of the whole population was lack of manpower, the inability of people expelled from the country to become workers. This idea mostly characterises Bentham's views in his discussion of the English Poor Law, which are the foundation of his *Panopticon*.

The idea that the liberal political organisation can provide every individual with an effective chance to achieve, within the broadest possible limits, his or her values and interests, without requiring any "political virtue", that is, the duty to co-operate with others for the community's good, is a rhetorical fiction. Liberal authors, either contractarian or utilitarian, have no difficulties explaining the social order because they imagine a state of nature where individuals have well-defined preferences and exchange their natural freedom for political security freely or, as Kant put it, autonomously. The liberal model of the political market is one where rational "actors" rather than Humean "consumers" are at work. Given the individual's configuration as an "actor", the subjective ends protected by civil and political rights do not have a disruptive potential. Government can therefore emerge not as the ephemeral outcome of blind interest or passion but as the stable product of rational reflection. Liberal authors trying to explain the political order by assuming a Humean anthropology run into serious troubles. They cannot find a balance between the priority of individual choice and the easy prediction that, if a society is ruled by individuals with an allegedly unlimited range of preferences, the consequence cannot be but chaos.⁶⁸

As the range of the services guaranteed by social rights was broadening, going beyond bare subsistence, the idea that such a transcendental element as Smith's "hidden hand" could harmonise consumption expectations that, not being restrained by any normative scheme, would give rise to a "dialectic of spontaneous multiplication"⁶⁹ appeared a rhetorical fiction. Without a normative model of the social consumer allowing legitimate demands to be distinguished from illegitimate demands, as Michel Foucault aptly observed, "one is entering an order of values that gives rise to an absolute, infinite demand. The problem raised is, therefore, that of the relationship between an infinite demand and a finite system".⁷⁰

Moreover, as Ernesto Rossi brilliantly remarked in the years when Italian welfare was being designed, the choice to configure social rights as severed from political agency, namely as functional to the existing political

68. See Sen 1977; Arrow 1963; Runciman and Sen 1965.

69. Gordon 1991: 21.

70. Foucault 1988: 163.

and social order rather than as means to alter it, as consumers' rights rather than political actors' rights, triggered a mechanism that, as we see today, undermined the foundations of social solidarity. Rossi wrote:

[the] market mechanism, by turning most co-operative relations necessary for collective production into the buying and selling of commodities and services at a price objectively determined by the meeting of the supply curve with the demand curve, tends to shape a merely self-interested mentality for which whoever has an income sufficient to live according to his wishes thinks he no longer needs others and can ignore everything that does not directly affect him or his family. "What I want I buy, and of what happens out of my house I do not care about" becomes a life principle for "sensible" people.⁷¹

The idea that social rights, effectively and ultimately, are but a replacement for money and allow us to buy goods and services on the market, rather than rights whose claiming and exercise configure our society, slowly led the identity of a Humean consumer to prevail over that of a political actor, as Rossi feared. It ended up configuring us – making us see ourselves – as Humean consumers, seeing their actions and claims only in terms of the immediate satisfaction they cause, rather than as political actors, namely as agents aware that their actions impact the life of the whole *polis* and the distribution of power within it.

The differentiation and exponential growth of consumption that this transformation of the welfare state stimulates immediately engenders the feeling that not all kinds of consumption can be guaranteed to everyone and that the qualitative and quantitative explosion of consumption, as the standardising capacity of the welfare state vanishes, produces a plurality of identities that begin to perceive themselves as radically alternative and based on life (consumption) styles that are not negotiable.

In order to cope with the risk of social disruption involved in configuring citizens as consumers,⁷² states developed, together with social

71. Rossi 1946: 127.

72. The clearest manifestation of the awareness that the organisation of contemporary societies involves the risk of social collapse is probably Talcott Parsons' massive attempt to put forward a sociological foundation of order. Parsons is aware that citizens cannot lay claim to everything they can think of, and behave in such a way as to maximise their pleasure, whatever it is. He sees the cornerstone of social order in the family and the other institutions of primary socialisation, entrusting them with the task of socialising children. Social solidarity is guaranteed to the extent that children learn that they should not disappoint social expectations about their behaviour. Parsons defines deviant acts, that is acts that require not only repression but a new socialisation, as all behaviours that disappoint these expectations.

rights, a network of administrative arrangements capable of collecting and storing information on individuals so that they can “watch” and “direct” them.⁷³ They set up a new power code. The power traditionally thematised by liberal doctrine is one operating in accordance with the lawful/unlawful binary code, essentially directed to set limits such that citizens and officials abstain from doing what they are not allowed to do. Instead, the power affecting the domain of social rights is one “whose operation is not ensured by right but by technique, not by law but by normalisation, not by punishment but by control”, and is wielded “on all levels and in forms that go beyond the state and its apparatus”.⁷⁴ This new kind of power is the basis of a statecraft that:

depends upon ... a proliferation of techniques for the disciplinary integration of individuals at critical points in the social order ... natural-social man appears as a *normal* man, the correlate and target of specific kinds of professional expertise which address the problems of integrating individuals into forms of social order ... what might be called a natural-social demand for order, or for mechanisms to integrate individuals into appropriate schemes of behaviour and activity, is met by an expertise licensed by the state but formally independent of it: medicine, psychiatry, psychology, criminology, pedagogy and so on.⁷⁵

An awareness that the created liberal social order, in that it relies on the market to structure individuals’ personality, carries with it *à la* Nietzsche the principle of its own destruction imperceptibly leads to a radical change in the normativity of liberal societies.⁷⁶ The law, that in the liberal conception was supposed to transcend empirical contingency and to issue uniform commands to all subjects, is subordinated to human sciences (psychology, criminology, sociology, etc.) in both the criminal and the civil field, so that individuals are no longer conceived of as abstract entities able to determine their choices autonomously but as beings whose profiles are elusive and problematic, and intrinsically tied to the surveillance methods adopted by the state apparatus in its political activity.⁷⁷

73. Giddens 1981: 169.

74. Foucault 1976c: 89.

75. Burchell 1991: 142.

76. Marshall (1950: 122) himself seemed to be immediately aware of this process, for he wrote: “social rights in their modern form imply an invasion of contract by status, ... the replacement of the free bargain by the declaration of rights”.

77. Giddens 1985: 205.

In order to deal with this situation the range of social rights has been steadily increasing, trying to compensate the forced standardisation of preferences with the increased number of those that are satisfied by state provisions. This strategy triggered the so-called “fiscal crisis”,⁷⁸ that is, we have arrived at a point where taxation needed to set up the administrative arrangements required to standardise and meet ever-newer needs no longer appears legitimate with respect to the services it provides. The crisis of the welfare system, with a drastic reconsideration of Keynesian policies and a noticeable reduction of social expenditure, ended up depriving the different disciplinary technologies of their reference framework. As Albert Hirschman has argued,⁷⁹ the crisis of the welfare state was not a consequence of fiscal problems: the sudden discovery of the ineffectiveness of its structures only indicates that their underlying political project no longer appears viable. The paradoxical outcome of the welfare strategy has been the simultaneous emergence in Western societies of demands for state provisions⁸⁰ and the opposition to them in the name of civil rights, namely the idea that a part of citizens’ income should be left available to them to be spent in the market. It would be a mistake to blame this opposition as a petty defence of property and privilege, though this aspect is not negligible. While critiques of social rights can be seen as the expression of interests crystallised around the figure of the private owner, and therefore functional to the market, they are also the expression of that normative ideal of individual freedom that is the basis of the notion of

78. Cf. O’Connor 1973. The book was anticipated by an article with the same title in *Socialist Revolution*, 1, January-February 1970, pp. 12-54. James O’Connor (p. 6) from a Marxist perspective glimpsed the problem of a social integration based on consumption. For he stressed that the modern capitalist state should “fulfil two basic and often contradictory functions”: (1) to secure the formation of capital, that is the flow of investment (the “accumulation function” of the state); (2) to care about preserving its legitimacy securing appropriate standards in the fields of consumption, health and education (the “legitimisation function” of the state). In his view these two contradictory demands generate budget imbalances, inflation and fiscal revolt. Thus, he argues that “the accumulation of social capital and social expenses is a highly irrational process from the standpoint of administrative coherence, fiscal stability and a potentially profitable private capital accumulation” (O’Connor 1973: 10). In 1975 O’Connor’s views were taken up by Samuel Huntington in the chapter on the United States in Crozier, Huntington and Watanuki 1975. On a right-wing reading, O’Connor’s crisis is not a crisis of capitalism, an economic crisis, but essentially a political crisis. Huntington (p. 73) sees the “welfare shift” as the prime culprit of the “crisis of democracy”: in his view the United States and other Western democracies risked becoming “ungovernable”, “overloaded” by their peoples’ demands.

79. Hirschman 1991.

80. Cf. Crozier, Huntington and Watanuki 1975; Offe 1973; O’Connor 1973.

citizenship.⁸¹ This opposition, therefore, should also be seen as a claim to an independent source of power and economic initiative,⁸² motivated by an deeper sense of dependency on institutions and their decision-making power.⁸³ They signal when “disciplinary normalisation” (as defined by Foucault) begins to be perceived as incompatible with the anthropological model of the subject of rights held by liberal theory.

4. The impact of globalisation

Towards the end of the last century we were therefore faced with a deep and seemingly irreversible discrediting of welfare policies. This ideological given was accompanied by the advent of globalisation, which radically altered the scenario. For globalisation is characterised by three elements, all ultimately due to technological development: the amount of manpower needed to produce goods drops significantly; moving production to the parts of the world offering the most advantageous economic conditions becomes relatively easy, which extends the practice of delocalising industrial facilities; and moving from one part of the world to another becomes relatively quick and this intensifies migrations that take on a totally new dimension in terms of the speed of movement and the number of people moving.

Thus, the state being called upon to deal with this epochal change is one that seems totally unable to recover its legitimacy as a reliable allocator of resources. It appears inefficient, expensive and slow to react to the needs of current societies. Indeed, given the political fragmentation of the *demos* characterising these societies, it cannot react owing to its inability to work out shared policies. At the political level, the rapid dissemination of ideas through new forms of communication and migration fragment the *demos*. The latter, which many states had made a unified body through centuries of work and at the cost of great sufferance and sacrifice, often through violence, quickly becomes the place of cultural, religious, social, linguistic and other differences. It is utterly implausible to imagine that it can express a general will, or even that its components are ready to accept majority decisions.

In this context the belief becomes widespread that, while hygienic rules and workers’ discipline are surely useful, they no longer enable states to withstand the economic competition that secures their power. The belief

81. Habermas 1991: 136.

82. Barbalet 1988: 20.

83. Foucault 1988: 163.

has become more and more powerful that the market should be freed up in order to consolidate state power. Thus we see the accomplishment of the economic laissez-faire policy that Chadwick considered the cause of the poor's disastrous life conditions. The relationship between state and market has been inverted. There develops "a state under the supervision of the market rather than a market supervised by the state".⁸⁴ The market is no longer a principle of government self-limitation that the sovereign state imposes on itself in its political autonomy to maximise its power but "a sort of permanent economic tribunal confronting government".⁸⁵

4.1. The end of population

Therefore, the market seems to have achieved its final victory: it broke the banks that confined it within state sovereignty, so that today it is state sovereignty that is inscribed within market logic. The relationship between market and *raison d'état* has been inverted: yesterday, even though the market was the judge of individual policies' success, it was state reason that defined the modes of the market's development in order to secure state power; whereas today, it is the market's operation that defines the limits within which state reason can operate to secure the power of the state itself. This is not simply an inversion of the relevance of political technologies and the market. The rise of the market to the only standard for assessing a state's force has a devastating impact: it undermines the synergy between discipline and the market. As much as government technologies require full visibility to allowing multidimensional devices to operate, the domain of the market is a domain of interests that, as Hayek taught us, condemns as the capital sin of *hybris* any attempt to make it intelligible and allow for planned interventions in its dynamics. The market is refractory to the sovereign control and order: it claims the role of organising itself. Being the best allocator of resources, it cannot be an object of government; on the contrary, it is the proper measure of the social utility of a government's functions. The globalisation of financial markets has risen to an irresistible force that states need to comply with, giving up the governance of the economy.

For poverty policies such an inversion entails a deep change: as long as the market could develop through government intervention guided by "state reason", its development coincided with that of a population's well-being, by means of different government techniques that culminated in welfare

84. Foucault 2004a: 116.

85. Ibid., p. 247.

policies. A state's power was connected with its ability to develop policies of inclusive citizenship based on the steady extension of rights and social welfare to new sectors of the population.

Today, the allegedly "objective" laws of the market, producing common imperatives worldwide, seem able to neutralise differences and provide a measure of any government's capabilities. The market, connecting production, need, supply, demand, value, price and so on, is raised to a device of impartial and culturally neutral verification of any government practice, from adopted measures to enforced rules. Good government is no longer a just government, namely one whose operation is inspired by moral rules, or a government maximising its political power, according to the canons of state reason, but a government functioning in accordance with market laws. Driven by this belief, the marginalist economy has turned into an ideology that aims at pervading any sphere of life and guiding all sorts of actions.⁸⁶

A widespread ideology,⁸⁷ which seems to have also resisted the economic and financial downturn that started in 2008 and is still ongoing, holds that the new world of "nomadic capital", unhindered by state-created barriers, will make everyone's lives better. Freedom, first of all freedom of commerce and movement of capital, is seen by states as the essential ingredient that allows wealth to grow to unprecedented levels, to the benefit of their populations. The market's control of the economic system is supposed to favour the stability of planetary social organisation. With a complete inversion of Polanyi's suggestions, civil life itself has come to be seen as dependent on the market, so that society should be organised in such a way as to allow the market to function according to its own laws. It is no longer the economy that should be compatible with a given system of social relations, but it is social relations that should be adjusted to the market economy: the regulation of civil life becomes supplementary to the market's operation. The whole process of world economic integration can be seen as the defeat of public law, with the removal of limitations, rules and checks, and the victory of major private economic powers.

86. The most striking example of the pervasiveness of economic theory is Gary Becker's view that economic laws and analysis can be perfectly applied even to non-rational conducts, that is conduct that is not simply meant, if at all, to optimise the usage of scarce resources to a given end. According to this author, the subject matter of economic analysis is any conduct that responds to environmental variables in a non-random, hence systematic, way. On the basis of these assumptions Becker writes papers on criminal policies, as well as on marriage choices. See the essays collected in Becker 1976.

87. Scott 1997. This "ideology" has come to be known as the "Washington consensus" and many economists, cleverly taking advantage of their authority, perform a function of "organic intellectuals" transmitting its slogans through the mass media.

Driven by the globalisation of financial markets, politics seems finally to have endorsed the position that any attempt to regulate economic processes is counterproductive and, after vowing to repudiate the function of compensating for market effects, programmatically claims to perform an ancillary function to the market itself. Governments use their capital of legitimacy to build consensus about the privatisation and deregulation of large spheres of economic life.⁸⁸ They only operate in an authoritative way to try and “keep their worried multinationals at home and attract foreign businesses with the promise of a favourable economic set-up”;⁸⁹ otherwise they tend to act in the market at the same level as private operators (hence in conditions of inferiority with respect to big international corporations, which are more powerful⁹⁰ than many states).

The problem is not so much the steady vanishing of state sovereignty, as a received view would have it, as the breakdown of the triad that has traditionally made up a state: government, population and territory. The idea that emerged towards the end of the 19th century was that, in order to secure a state’s power, government should take care of the population on its territory and make it productive for the industries that are likewise on its territory. Today, the territory to be governed no longer has its own population and industries: European governments are faced with an apparently uncontrollable flow of migrants, often highly skilled, and with keeping or chasing industries in search of locations where production is more convenient.

“Population”, as distinct from “workforce” and as a delimited portion of the “human species”, is defined by sovereignty: it is policies taking care of individuals that make up a specific population.⁹¹ As soon as the market becomes the frame of state reason, it allows no more room for “taking charge of the population”. Governing the population seems no longer possible. In this field, too, today the market rules: it is the arbiter of the demand and supply of population, of the valuing or devaluing of available human resources. People and commodities circulate quickly, or very quickly like financial resources: this obsolesces not only the very slow disciplinary devices, but all techniques of taking charge of marginalised people in the labour market, which is inescapably slow compared with market speed. With the globalisation of markets (including the labour market), the population becomes itself a “worldwide” resource, no longer tied to a specific sovereignty. Today, the population is

88. Crouch and Streeck 1997: 3-30.

89. R. Dore, “Un commento”, in Crouch and Streeck 1997: 31-8.

90. “Power is the probability that one actor ... will be in a position to carry out his own will despite resistance, regardless of the basis on which this probability rests” (Weber 1978: 53).

91. Foucault 2004b; Pandolfi 2006.

conceived of as just one of the many resources that must freely move rather than the main object of government activity.

Taking charge of the poor's well-being rested on the assumption that every state has a given people that require regulation of the mechanisms of birth, death and life conditions. As a consequence of the mass migrations that have affected European states during the last decades, the population is no longer a predefined set of individuals requiring regulation of their births, lives and deaths. Today's states cannot "govern" the population. The population can now be redefined at any time by admitting or expelling migrants and marginalising nationals. This change radically alters the problem of the political and social order. It is no longer necessary to ask how "to set the 'able-bodied' poor to work and transform them into a useful labour force". Nor is it necessary to ask how "to assure the self-financing by the poor themselves of the cost of their sickness and temporary or permanent incapacitation".⁹² Because of immigration, the population can now be manipulated without limits. A state can select very easily its own population: through a variety of inclusive or exclusive devices, it can build up a population that is only made up of actors capable of operating in the market, with no need to "discipline" or support members of its own allegedly predetermined population who turn out to be unfit to operate in it. There is no more need to produce "good" citizens and "useful" self-entrepreneurs: they can be simply selected.

4.2. The market as a zero-sum game and the emergence of excluding democracy

Since the population is no longer seen as a given resource that needs to be cultivated and taken charge of in order to increase state power, the prospect is one of a society where politics no longer takes charge of individuals and groups, is no longer devoted to setting up an environment for their transformation and support, but is limited to filtering and selecting them. This situation has turned affluent democracies, characterised, as Tocqueville foresaw, by a society split into two groups completely extraneous to each other, into "dictatorships of a satisfied class": the rich, the wealthy, the affluent have always existed but today they no longer feel forced to defend their privileges by promoting social mobility: they can afford immobility and refuse to share resources with the new poor.⁹³ Such historical-social conditions produced in all European countries a more or

92. Foucault 1976b: 169.

93. Galbraith 1993.

less extended social subclass, often ethnically defined, who are deprived of legitimate access to available economic and social resources. It is depicted as dangerous and a threat to social security and, because of its exclusion, to citizens' physical and economic security.

Within such a scenario politics withdraws into a corner and its role seems limited to protecting the security of a restricted *demos* living in the democratic *polis*, limiting market risks (but not the market which is global, hence by definition outside of states' control). From Adam Smith's times until the end of the 1980s the central place of the market had been coupled with the idea that economic growth itself would guarantee all individuals enough income to allow them to secure (no matter whether through private market or state welfare management) a quiet old age, to neutralise the risk of being unproductive because of sickness, to obtain sufficient possessions to guarantee a decent life even in case of unforeseen events and, last but not least, to allow their descendants to live better lives. Instead, during the last decades the perception, bolstered by the ideology of globalisation, that the resources states can use for social purposes are inevitably scarce has led to a widespread belief that securing rights entails the exclusion of migrants and, next in line, of "undeserving" nationals from these rights.⁹⁴

After two centuries, during which the role of politics had been perceived as that of running a game where all players at the end of the match would be better off, owing to economic, scientific and social progress, we find ourselves in a situation in which players perceive the prizes to share out as steadily and inexorably reducing. In the Western world, for the first time since the beginning of modernity, new generations are not sure that they will be definitely better off than their parents and grandparents; on the contrary they take it for granted that their lives will be worse and harder. This situation led to a belief that we are playing a zero-sum or even negative-sum game: everyone sees a resource reserved for somebody else as one of which he or she has been deprived, rather than as an investment

94. The fact that failure to recognise migrants' rights is accompanied by the erasure of citizens' rights is indicated by the increasing number of unregistered people in Europe. They are not only irregular, hence invisible, aliens. More and more often, at least in Italy, they are citizens who lose their residence. Unregistered people do not exist and have no rights, but are often working or otherwise useful. Being unregistered implies an inability to claim and being easily exploited. It is worth emphasising that at the same time in countries like Brazil, where the area of social well-being is broadening, many invisible people who used to live in the *favelas* register. Instead, Europe seems to have turned down the road that leads to the creation of *favelas* inhabited by the invisible.

that will be eventually in his or her interest. We live in the knowledge that we must reduce the harm that we are bound to suffer, rather than managing our future advantages.

The belief is ubiquitous in European societies that the delocalisation of industries and migrations are making it both harder and totally pointless for states to invest in their populations to improve their conditions. Our minds are more and more pervaded by the thought that today's political priority is to attract production investments through a steady squeezing of production costs, which causes economic and social dumping whose consequences – increased employment precariousness of young people, who often cannot plan their lives even at 30; pensions that will force drastic downsizing of life conditions; not to mention the consciousness that our well-being is often dependent on neo-slave-like forms of work being imposed upon migrants – we must live with.

Given the perception that neither the market nor politics can guarantee that we are all going to be better off, what most European voters care about is preventing an uncontrolled admission of migrants to citizenship rights from resulting in a considerable reduction of their own traditional social security. European citizens, believing that social rights are a zero-sum game, are haunted by the fear that granting migrants and “scroungers”, the contemporary version of the undeserving poor, the benefits of social welfare may further decrease their own benefits, which are already being reduced as a result of economic and financial globalisation.

5. From commodification to commonification: the need to make poverty a political issue again

This summary sketch of historical developments demonstrates that taking the market as the criterion for assessing a government's performance is structurally incompatible with any form of social equalisation. A policy taking the market as the measure for its assessment cannot set itself the goal of socialising consumption and income. From the beginning of this development, Smith had correctly seen that the market needs inequality to function: inequality (of interests, performances, goals, rewards, etc.) is the engine of competition that guarantees the optimal allocation function carried out by the market: “price-based competition requires and produces differentiation processes; therefore, a social policy aimed at social equalisation, however relative, would be anti-economic in that it would break the formal economic principles of free competition itself”.⁹⁵

95. Zanini 2006: 138.

The justification of this inequality rests on the assumption that it is crucial for economic growth, which, in turn, has always been seen as the main factor of upward social mobility, namely the factor enabling individuals to improve their social condition, by creating new jobs automatically in both the lower and the upper social sectors. In other words, as in the 17th century, the background idea is that the market offers everyone an opportunity to enrich oneself; those who do not take it are not skilful enough: are idlers. It is this belief that revived Victorian rhetoric and led to arguments for replacing welfare with workfare. However, this return to social Darwinism clashes with the market's apparent inability to solve the problem of poverty. The absurdity of this new moralisation of poverty is evident. In the 18th century it rested, as mentioned above, on the belief that the only limitation to employment was scarcity of the workforce; today, there is not the demand that allows for (possibly forceful) full employment. Thus, the situation is a schizophrenic one. After three centuries, in the age of globalisation the ethics of labour no longer performs its function as a cornerstone of the social order, leaving us with an incoherent cultural picture. Today, individuals are asked to comply with the ethics of labour in a context unfavourable to it: its cultivation is a purely private, almost ascetic, exercise. Within global markets, it is outer objective conditions that govern the localisation of business activity by determining the productivity of investments. The ethics of labour does not guarantee the opportunity of finding a job, nor does it favour its stability if you find it. If the conditions of infrastructure and services, the level of taxation, the cost of manpower in a certain area make it more profitable for entrepreneurs to invest elsewhere, the ethics of labour, whether autonomously developed or imposed by a multitude of institutions, does not guarantee employment at all. The link between ascetic discipline and worldly success, that Weber saw as the key feature of capitalist ethics at its beginning and Smith assumed as the basis of the social order, seems to have dissolved. Society still expects rigour and discipline from those who work or prepare to work, but can no longer ensure that those capable of self-discipline are successful.

All data show instead that in Western countries globalisation only enabled the upper classes further to increase their earnings, through the new opportunities provided by markets, whereas the lower classes have seen a further reduction in their labour income because of competition in the global jobs market and the lack of adequate protection against risks.⁹⁶ The

96. Gallino 2000: 81.

assumption that in a dynamic economy, with high rates of development, security could be easily guaranteed by the large number of quick compensations on the labour market has proven itself to be totally groundless. The unending multiplication of flexible jobs was based precisely on that assumption, which has proven to be unrealistic and ideological even in the United States and countries with higher growth rates. The financial crisis further aggravated the problem: not only does the economy create new jobs at a much lower rate, but it might take many years to recreate the lost ones. Luciano Gallino took a snapshot of this situation arguing that in Europe we are seeing a transfer of market-created risk from businesses and states to individuals,⁹⁷ through the spread of jobs that ensure no stability: by now, about one third of the working population is employed in part-time or temporary jobs.⁹⁸

In spite of such data, not a single liberal democratic government rejects the assumption that civil life itself depends on the market and that, consequently, society should be set up so as to allow the market to function in compliance with its own laws. Nothing can convince us of the impossibility of relying on the market-operated redistribution of wealth to combat poverty, an impossibility proven instead by the phenomenon of the working poor, an increasing number of workers living in a condition of poverty. The most alarming effect of states undergoing without resistance, and indeed doing all they can to favour, the complete subordination of traditional liberal legal rules to market requirements shows up in the field of labour. Labour law – the public law part of which, laid down during the 20th century to protect workers' freedom even against themselves in situations of necessity, is being increasingly eroded – is steadily turning into a sector of commercial law. A commentator writes that "a 'strong commercial law' and a 'poor labour law' appear as two hinges of the projects of legal globalisation".⁹⁹ The strength of cross-border commercial law seems to require the weakness of labour law;¹⁰⁰ for the former's reasons are opposite to the demands for protection that labour law took charge of. As the labour market becomes just one sector of the global market, labour law becomes a part of the global market law and the defences it used to provide (mostly in European countries) disappear, if for no other reason that, being necessarily linked to local production and

97. *Ibid.*, p. 72.

98. According to Eurostat data relating to 2006, part-time jobs make up 20.8% in EU-15, whereas temporary jobs represent about 14.7% (cf. <http://epp.eurostat.ec.europa.eu>).

99. Monateri 1998: 37.

100. Cf. Ferrajoli 2007: 297.

life conditions, they end up becoming elements that make investment less remunerative. Workers are brought back to the late 19th-century situation that gave the cue for Weber's reflections, when the conditions of their employment, hence of their life, were treated as any other commodity and left to the parties' free bargaining, and so ultimately to the will of the stronger contractor.

In order to design a strategy against poverty suitable for the age of globalisation we must stop viewing poverty as an individual problem, as was the case in the 18th century, and find a scenario that enables us to re-conceptualise it as a political problem, as was the case when states feared it could undermine their power. We should "invent" a new theoretical framework that enables us to understand that the conflict is no longer one between liberalism and socialism, but between the "marketing" of life, the idea that everyone should realise oneself in the market, and the idea that we should build up a society in which an individual's self-realisation is associated with large spaces of socialisation protected against the market. And, to begin with, we should battle the perverse effects of the assimilation of freedom rights to the freedom of contract, which produced the idea that all rights, like freedom of contract, are the expression of an individual's social, political and economic powers rather than autonomous sources of a power given to all on a prospectively equal basis.

In other words, we should acknowledge that what we can define, in Habermas' language, as market colonisation, the market's becoming the paradigmatic space of more and more personal relations, is undermining the bases of social solidarity. Already one century ago Max Weber stressed that:

the market community as such is the most impersonal relationship of practical life into which human beings can enter with one another ... The reason for the impersonality of the market is its matter-of-factness, its orientation to the commodity and only to that. Where the market is allowed to follow its own tendencies, its participants do not look towards the persons of each other but only towards the commodity; there are no obligations of brotherliness or reverence, and none of those spontaneous human relations that are sustained by personal unions. They all would just obstruct the free development of the bare market relationship.¹⁰¹

We are in a situation similar to that of the late 19th century when, prior to the emergence of state welfare, industrialisation seemed to challenge the

101. Weber 1978: 636.

existence of Western societies. Today, we need a new theoretical effort comparable to that made by the fathers of sociology: we have to start again with the premise that society and its order do not exist by nature or magic, so that we cannot take them for granted, but are the product of hard work. Societies exist because many people spontaneously perform important social work that is hardly recognised. The most striking example is care in the home and protection of the environment, work often performed by women that in recent years has had some form of legal recognition. But the time needed to get better informed and choose what to buy, to listen to music, see films and exhibitions, etc., is also fundamental: these activities enable people to describe these experiences, and these descriptions are an important part of social life and social bonds.

In order to tackle the de-socialisation problem caused by the steady pressure on citizens to think of themselves as consumers, 70 years ago Ernesto Rossi proposed that social provisions should not consist of money but only services and, chiefly, to replace taxes with a *corvées* system: all citizens should be forced to perform social work. He saw this drastic move, almost pre-modern in character, as essential in saving social solidarity, in “re-educating” the citizen that has been transformed into a consumer: “*corvées* might have been a suitable means to force him to take part, with his personal activity, in collective production”.¹⁰² This recipe is surely unviable and unacceptable because, though proposed by a most prominent liberal economist of post-war Italy, it has a Maoist, not to say medieval, flavour. However, its spirit and essential core probably deserve to be saved. We could stop thinking of social rights as economic rights that compensate for the lack of a wage or replace it, and provide the means to stay in the market. Social provisions should no longer be seen as commodities supplied by the government because they cannot be found in the market or are too expensive.

We should take advantage of the fact that people are realising, besides the fact that states’ bureaucracies are expensive, inefficient and oppressive, that the market, far from being a resource as we had long thought, is a threat to religious freedom, artists’ creative freedom, scientists’ freedom of research, and generally to our freedom to follow our preferences and our calling and to choose our preferred life. We are more and more aware that market relations endanger the sources of the moral and material enrichment of individuals and societies. Starting with these perceptions, we could begin to think of social rights as both rights and duties to participate in the management, and to share the usage, of common goods. In

102. Rossi 1956: 20.

proposing this solution, I am not thinking of “by nature” common goods such as water, air, landscape and so on, but of services with a common utility (from education to health care and social work) and not only because they are useful to everyone individually, but first of all because thanks to them all of us can live in a better society, such as one in which everyone is healthy and educated.

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EXAMINING THE RELATIONSHIPS OF POVERTY

Laurent Bonelli

Introduction – Looking at the relationships rather than the essence of poverty

Poor people, persons in extreme poverty or in very insecure situations, the excluded, the sub-proletariat, the homeless, people on the fringes of society, people living in “Fourth World” conditions, vulnerable people, persons in inappropriate housing, casualties of modern society: the list goes on. There are countless categories, administrative, political, academic or used by the media, to which destitute individuals and groups are consigned. Each is defined in its own way, with varying degrees of accuracy, depending on context and point in time. They refer, depending on circumstances, to levels of malnutrition or income, to housing standards, even to sociological or psychological aspects. It may be important, where “poverty” is concerned, to do what sociologist Emile Durkheim recommended, that is throw off “the yoke of these empirical categories which, from long continued habit have become tyrannical”.¹⁰³ “Social problems” are indeed established in all the instruments helping to shape the ordinary vision of the social world, whether these be bodies and regulations striving to solve them or corresponding categories of thought and perception.¹⁰⁴

Thus the dividing up of social reality according to these practical (that is, action) categories leads to dividing lines in the dynamic processes of impoverishment and tends to set apart groups and individuals in their own, independent, right. The segmentation of groups in poverty is thus scarcely any more meaningful than the division of emigrants from immigrants.¹⁰⁵ The enduring idea that “poor people” come from all social backgrounds is wrong. The story of the senior executive who ends up on the streets following dismissal is not in fact typical. The overwhelming majority of poor people are from the working classes, meaning all those social groups from manual workers to lowly clerks, extending up to the humblest members of the lower middle classes.¹⁰⁶ Although heterogeneous, these groups share some common features. They occupy low

103. Durkheim 1938.

104. Lenoir 1996: 55.

105. Sayad 1999.

106. Hoggart 1957.

positions in terms of the distribution of wealth and status, and they are far removed from academic knowledge, as passed on and required within the education system.¹⁰⁷ And in this respect, poverty relates more to a continuum than a division. They are extraordinarily porous lines that divide a workman in an insecure situation from a homeless man, or an unemployed woman addicted to drugs from a prostitute or an inmate of a women's prison. Many individuals occupy such different positions in succession as they go through life.¹⁰⁸ Hence the need to avoid basing knowledge on state action and management categories¹⁰⁹ and to find ways of thinking about "poverty" that lie outside the more ordinary management frameworks.

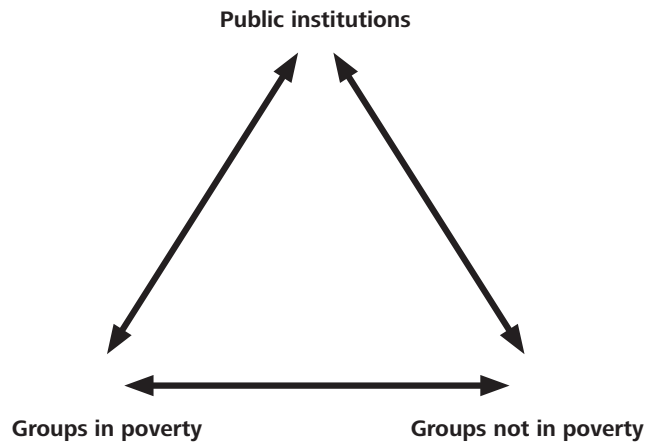
A first avenue to explore so as to avoid focusing on the essence of "poverty" might be to reintroduce an analysis of the relationships of poverty. In other words, it is surely impossible to grasp all of poverty's different facets if we consider only the people suffering from it. The focus also needs to be broadened to include two-way relationships between those who are poor and, firstly, the public institutions responsible for dealing with poverty, and, secondly, the other social groups in a more privileged position in terms of the distribution of wealth and capital. Unlike groups with "despised sexuality", which, according to Nancy Fraser, are denied recognition, the poor actually stand at the very heart of the economic system. Poverty is a direct result of the unequal distribution of the costs and benefits of production. In a capitalist economy, therefore, redistribution is a prerequisite of its reduction.¹¹⁰ That redistribution itself depends on the relationships between groups that are not in poverty and the state, and particularly on whether – or not – they are willing to contribute through tax to the socialisation of the risks of life. The diagram below shows this in summary form.

107. Schwartz 1998.

108. From his study of 75 homeless drug addicts in San Francisco, anthropologist Philippe Bourgois concluded that such people, erstwhile members of an evangelical church, lapsed into addiction. For a few months or years they worked in lawful low-paid jobs, then either lapsed into addiction or combined the two for a period of time: holding down a lawful job while selling or taking drugs. The categories were far less clear-cut than those concerned admitted. Bourgois 2010: 125-50. Also see Bourgois and Schonberg 2009.

109. Lenoir 2000: 96.

110. Fraser 2005: 22 ff. The author describes redistribution as a "corrective remedy", leaving the economic structure untouched. Attempts to reorganise production relationships, or the social division of labour, are described as "transformative remedies", those historically associated with socialism (*ibid.*, pp. 32-3).

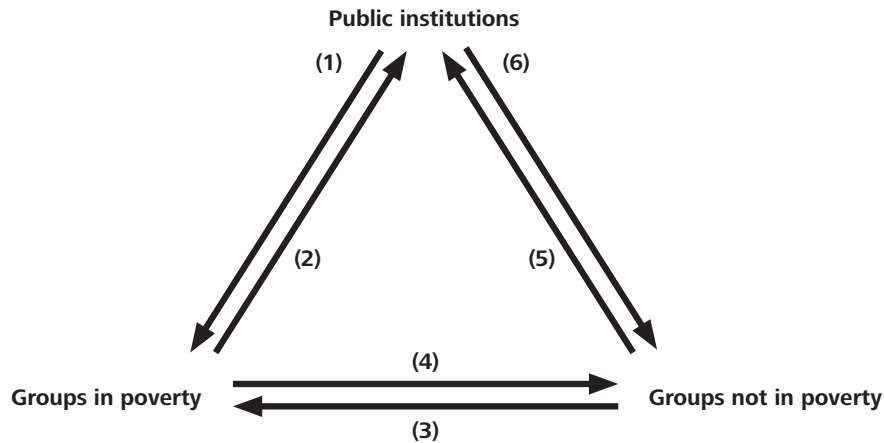


Our analysis, however, becomes even more complicated if we suggest that the three poles of this relationship system are stable in neither time nor space. In the United Kingdom and France, the public institutions responsible for dealing with poverty in the 18th century are no longer the same in the 21st. Those of the 1950s are not even the same as those of 2010. The collapse of socialist regimes and adoption of a market economy have meant that this question arises in a quite different way in the countries of central and eastern Europe. And even if we consider the same period of time, the situations are not alike: compare Germany with the United States, for instance.

The same is true of the groups described as poor. Do they form closed communities where all social mobility is prohibited, as in some Roma villages in Hungary, Brazilian *favelas* and inner-city slums of Mexico City? Or are these people in extreme – and reversible – situations of insecurity? Are we talking about situational or positional poverty?

And, finally, what is to be said about “other” social groups? Are they an extension of those which are poorest? Or do they distance themselves from them to make their own social integration clear? Do they base the theology of their domination on charity?

In short, if we consider the interaction between all the varying situations of the poles and the diversity of the relationships that are possible between them, we find that the possible configurations are infinite. In order to explore these, we propose to break these relationship systems down into six series of observable interaction between the different poles, although we shall not forget that this is an artificial division, and that the relationships between any two poles are never independent of those with the third.



We shall study in turn some of the relationships between public institutions and groups in poverty (1 and 2), between groups in poverty and groups not in poverty (3 and 4) and between groups not in poverty and public institutions (5 and 6).

1. Public institutions and groups in poverty

1.1. *The state and the poor, showing two different faces*

Patrick Bruneteaux and Daniel Terrolle¹¹¹ write that, historically, and because of the Christian tradition associating Christ with the poor, there has always been an oscillation between hostility and hospitality, assistance and repression. Thus they emphasise the ambivalent registers of the public intervention observable on Path 1.

When France introduced its *Hôpital général* system in the mid-17th century, followed by the setting-up of workhouses in England in the early years of the 18th century, a model of enforced assistance spread (across Europe, then to the United States and Australia) with the intention of rehabilitating the poor, locking them in and forcing them to work in order to improve their behaviour.¹¹² This “great confinement”, while aimed primarily at what the Lord Mayor of London described as “this vermin that troops about the city, disturbing public order, assaulting carriages, demanding alms with loud cries at the doors of churches and private houses”,¹¹³ actually affected huge numbers of jobless people, tramps,

111. Bruneteaux and Terrolle 2010a: 41.

112. On this subject, see Foucault 2001.

113. Quoted by Michel Foucault (2001).

demobilised soldiers and deserters. In a context of industrial revolution, the aim was to transform the poor into proletarians, and to discipline them so that they adopted the behaviours expected of them by those in charge of the organisation of production.¹¹⁴ Charity and supervision remained closely interlinked in this context.

Nevertheless, in the course of the 18th century, this formula came to seem less and less appropriate. The growing numbers of poor people, largely due to economic reorganisation, made charity insufficient and confinement impossible. Obsessive concern about numbers thus devalued charitable giving and accelerated the process whereby dealing with poverty became a secular matter, as well as a social issue. Secular intervention, according to Giovanna Procacci, meant an end to helping all the poor without distinction, as seemed only fair to charitable hearts, and making a distinction between those who really deserved assistance and those who did not. Professional vagabonds, punished by being sent to prison, were separated out from the poor who felt shame, who, for their part, were to benefit from organised assistance and employment.¹¹⁵

Work indeed occupies a very central position in this view. The elites of the day, influenced by the physiocrats, who considered that states' wealth depended on their population, had the intention of doing away with idleness, both that of the nobility and that of the poor. As the political role of Europe's urban middle classes increased, a representation of societal organisation in line with their own ethics imposed itself, based mainly on work and labour.¹¹⁶ This new government rationality, "economic government", did not, according to Procacci, attempt to do away with poverty or with the social distinctions between rich and poor, but to put an end to the kind of social alliances and dependencies engendered by nobility and poverty in a social order alien to that of work. Poverty belonged to a different economy, and now it was time to root it out of society by attacking poor people's well-established habit of slipping through society's net, with the pure and simple – sometimes now described as "selfish" – aim of surviving.¹¹⁷ A concept bluntly summarised by convention member Jacques Pierre Brissot just before the French Revolution, when he said that, as there would always be rich people, there would also always have to be poor people. He explained that, in well-governed states, the

114. On this subject, see Rabinow 1995; also Thompson 1967.

115. Procacci 1994: 206-19.

116. Reference is made to Max Weber's classic: Weber 1958.

117. Procacci 1994: 60.

poor worked and lived, while in others, they dressed in rags and, through idleness, imperceptibly sapped the strength of the state. The objective of a good government should be to have poor people, but no beggars.¹¹⁸ From this utilitarian philosophy stems the centrality of the value of work to society, at least in the West.

This situation, however, raises the question of those people who are no longer able to work: the elderly, workers with illnesses or who have fallen victim to changing economic circumstances. Those who are poor no longer feel that they have done something wrong. It is no longer simply a question of individual responsibility. Poverty is now, in contrast, perceived as a result of collective factors which affect individuals as part of a group (the sick, the elderly, the victims of economic depression) and which provide the uncertain background characteristic of workers' condition.¹¹⁹

Each state looks for its own paths to follow, but almost everywhere social insurance programmes have been introduced for people in employment, and social assistance programmes for those temporarily or permanently unable to work.

The Third Republic in France backed mutual providence systems for workers and introduced fairly broad assistance policies (free medical assistance in 1893 for the destitute, extended to the elderly, infirm and incurable in 1905), depriving the church of this responsibility. Germany under Bismarck's chancellorship made social insurance compulsory for workers (in order to ensure their loyalty). In 1881 a law was passed obliging employers to take out insurance against accidents involving their employees; an 1883 law introduced compulsory sickness insurance for industry's poorest workers (contributions shared between employees and employers; workers in the majority on the management body), and this was subsequently extended to most employees; an 1884 law brought into operation the occupational accident insurance made compulsory in 1881; an 1889 law introduced invalidity/old-age insurance, with the first compulsory employer/employee contribution system. In England, an act passed in 1572 during the reign of Elizabeth I, making a distinction between the "deserving poor" and the "undeserving poor", was repealed in 1834. Anyone capable of work but finding none was entitled to temporary relief at a workhouse, while the destitute and those unable to work received assistance. However, not until the acts of

118. Brissot 1871, quoted by Procacci 1994: 52.

119. Merrien, Parchet and Kernén 2005: 75.

1908-11 were sickness and invalidity insurance, retirement pensions and compulsory unemployment insurance introduced.¹²⁰

This phase during which public responsibility for the risks of poverty emerged saw arguments continuing to rage. The idea won over a number of reformers, experts and politicians, but encountered suspicion, even hostility, from a large proportion of the working-class movement (which favoured a mutual benefit system, as in France and Great Britain), from employers (especially small firms), from small farmers, from craftsmen and from traders. This option was nevertheless perceived by social elites as the only way of putting an end to the poverty and destitution which persisted in industrial societies. An ethical and philosophical need as much as a practical one, for it was believed at the time that poverty was fertile ground for those ideologies which sought to disrupt the established social order. A large number of writers have referred to this question of the balance of power between groups in poverty and public institutions when explaining the huge 20th-century success of the welfare state, both in Great Britain and France and in its varying forms elsewhere.¹²¹

The balance of power between those in control of the means of production and those putting them into use (in other words, between capital and labour) determines the level of redistribution, social groups' aspirations and interrelations, the degree of conflict and the type of social institutions which dominate. The role and form of public intervention reflects these relationships.¹²²

Repression of the poor has never disappeared from any of these patterns, although it takes other forms. Michel Foucault demonstrated that the *Ancien Régime* economy of illegalities underwent a sea change with the

120. Harris 2004.

121. In a classic work, for example, Frances Piven and Richard Cloward give an explanation of the development of social policies in the United States (1930s and 1960s) and their regression as a result of social conflict. When social disorder erupts, governments (federal and individual states') tend to allow social programmes. In less agitated times, in contrast, they pay more attention to the arguments of taxpayers, employers and groups hostile to such policies. Piven and Cloward 1971.

122. Gøsta Esping-Andersen also makes a distinction between the "liberal", or residual, welfare state, which leaves a central role to the market, providing just a safety net for the weakest (United States, Canada, Japan, Australia), what is called the "conservative" or "corporatist" model of general social insurance depending on paid employment, with at least a portion of income continuing to be paid in the event of accident, unemployment, sickness or old age (Germany, France, Italy, Austria, Belgium) and a "universalist" or "socialist" model providing a high level of social protection financed by a highly progressive tax (Scandinavia, Netherlands). Esping-Andersen 1990.

development of capitalism and the building of the state. Changes in the status of land ownership – with the introduction of intensive farming – and of commercial and industrial property – with the rapid development of ports, warehouses, large-scale workshops – divided the illegality of goods from the illegality of rights.¹²³ Practices which had previously been considered to be customary rights, accepted as minor illegalities, came to be pursued as offences pure and simple, and punished as such. On this foundation were developed the judicial systems and penal institutions of the day, focused on punishing behaviours associated with the working classes. Hence the extraordinary over-representation of poor people in Western states' prisons and the striking lack of what is known as white-collar crime. In the year 2000 in France, the likelihood of people of the same age being sent to prison was 4.8 times higher for working-class people than for senior managerial staff.¹²⁴

1.2. Mobilisation, resistance and avoidance: an ambivalent relationship between poor people and the state

The reader will have grasped by now that the mobilisation of social groups in poverty plays a prominent role in shaping the ways in which the authorities deal with poverty. The poverty of US Negroes, that of European workers, and even that of the unemployed, the undocumented and the poorly housed, each has in its own way influenced legislation, authorities and even public philosophies on dealing with destitution.

Path 2 is itself ambivalent. Depending on how it is configured, such mobilisation may give way to resistance and avoidance. Historian Arlette Farge gave a good account of the riots which occurred sporadically during the poor people's revolt against police repression,¹²⁵ and it is not insignificant that the early days of the French Revolution saw hospitals and prisons providing the first targets for the Parisian mobs. In the present day, we are sometimes surprised at how often certain homeless people turn down the chance to go to emergency shelters theoretically designed for them. We need to look at detailed ethnographical studies to realise that the violence (usually symbolic, but not exclusively) which these institutions exert on them repel them to the point at which they prefer to get by on the streets

123. "In that movement which transformed a society of juridico-political levies into a society of the appropriation of the means and products of labour, theft tended to become the first of the great loopholes in legality", Foucault 1977: 87.

124. Cassan, Toulemon and Kensey 2000.

125. See in particular Farge and Revel 1988.

rather than be cared for at an institution.¹²⁶ Similar forms of avoidance can be observed among migrants and refugees, sometimes alternating with episodes of collective resistance. In France, for example, those who were living in Sonacotra hostels refused to pay their rents for a long period (1973-81) in protest at the paternalistic and police-style management at these special residential establishments for foreigners.¹²⁷

At a more banal level, counter staff's relations with the groups at greatest disadvantage reveal the arbitrary nature of official categories – both administrative classifications and judgment categories – which require individuals to view their own lives in a certain way. They assign a place to them, even if it is neither the one that they desire nor the one that they demand.¹²⁸ This ambivalent domination combining assistance and coercion (helping people in difficulty to “cope” while keeping them “in their place”) inevitably produces reactions. There are many ways in which people in receipt of benefits can resist, from taking an aggressive line to staying in the background, from mockery to strategic use of the identity allotted to them.¹²⁹

It is probable that, however configured, mobilisation, resistance and avoidance coexist. Depending on the circumstances, however, it is one or the other of these kinds of action which dominates. Thus, when the groups in poverty are large and organised, they have every chance of successfully obtaining redistributive policies in their favour. Conversely, when their numbers are smaller, or they are less organised, they are at risk of having imposed on them more judgment categories alien to them, such as those which underlie workfare in the UK or the hunting of “welfare queens” in the United States (see below). It is therefore important to turn our attention now to the relationships which groups in poverty have with those which are not poor.

2. Groups in poverty and other groups

The nature of interaction between these groups depends on the relative power of each in the configuration under consideration. We shall make a schematic distinction between two kinds of relationships, the symbiotic and the conflictual.

126. See, *inter alia*, Bruneteaux 2006: 105-25, and Soutrenon 2001: 38-48.

127. See Hmed 2007: 55-81; Bernardot 2008: 144 ff.

128. Dubois 2010. Also see in respect of foreigners Spire 2008.

129. On this point, also see Siblot 2006.

2.1. Charitable symbiosis, political symbiosis or hostility?

There are two kinds of relationships which may be described as symbiotic, although they are of course not completely tension-free. One is charity, the other political integration.

In the West, charity long functioned as the justification for domination. The theology of the dominant groups was based on this natural order legitimised by religion. For Christians, relieving other people's poverty was a way of atoning for their own riches. Solidarity with the poor was a moral duty (Path 3), and in return the poor accepted the inequality of their conditions (Path 4). Variations on this principle are also found in other religions, such as Islam, which has its *Zakat*, the obligation to give a portion of one's assets to the poor in the community. Although it is now often promoted through the media by religious charitable organisations, charity continues to play a not insignificant part in helping people in poverty.

The same is true of its secular counterpart, philanthropy, which enables wealthy businessmen or artists to feel better about their personal riches,¹³⁰ and to such an extent that this kind of private intervention sometimes exceeds that of states and international organisations.¹³¹ It will be noted here that this development along Path 3, more common in the US than Europe, differs radically from that along Path 5, since direct private financing contrasts with redistribution by the state, via taxation.

A less unequal kind of symbiotic relationship is based on political integration. American political sociologist Barrington Moore showed that the setting-up of contemporary systems of government (parliamentary democracies, fascism, communism) very much depended on the kinds of alliances which had been forged between the different social groups, that is small farmers, unskilled workers, the middle classes and the landed aristocracy, and the respective influence of each of these groups.¹³² Schematically, the alliance between aristocrats and small farmers in powerful positions was conducive to the development of authoritarian regimes (as in Germany and Japan), whereas, in order to bring about political systems more favourable to them, middle-class traders had greater need of the support of unskilled workers. And it is surely not insignificant that it was precisely at this point in time that assistance to the poor became a secular matter for institutions to deal with. Paths 3 and 4 were based on a political trade-off: support

130. Guilhot 2004.

131. Annual donations from the Bill and Melinda Gates Foundation to health programmes worldwide are reported to exceed World Health Organization (WHO) expenditure.

132. Moore 1966.

in exchange for solidarity.¹³³ Now that the main parliamentary democracies are seeing very high abstention rates among the working classes, this symbiosis seems to have had its day.

It should not be over-hastily consigned to oblivion, however, for it continues in a number of states. This is demonstrated by sociologist Javier Auyero in his survey of a shanty town (*villa miseria*) in the suburbs of Buenos Aires, in Argentina.¹³⁴ The author studied the structure and reproduction of Justicialist Party (PJ) networks in one of its strongholds.¹³⁵ The township is divided into basic units (*unidad básica* – UB) led by political militants (*punteros*). Each UB is responsible for transporting large numbers of people to political meetings and events, at which it distributes bread, chorizo sausage, sugar, powdered milk, rice and beer, as well as T-shirts and caps in the PJ's colours. *Punteros*, intermediaries in the flows of municipal goods and services and the flows of support and votes from “customers”,¹³⁶ derive their power precisely from their demonstrations of an actual political capacity to make tangible changes to living conditions, at the same time making clear what these changes owe to – albeit largely reconstructed – “Peronist ideology”. It is difficult to connect this vote-catching exercise, bringing interdependency between a political leader and his “customers”, with democratic ideals. For all that, it is a relationship underpinned by a degree of reciprocity. To paraphrase Karl Marx, we might say that the Peronist barons are dominated by their own (political) domination. In order to ensure support for themselves, they have to perpetuate the structures in which *punteros* are active in the *villas*. Thus they have both to provide material assistance to residents (foodstuffs, medicines, etc.) and to include these people in the symbolic world of the PJ (ideas, history, identity).

In this instance, the groups in poverty are not viewed as “separate”, but more as the most dominated section of society, requiring other social groups to show forms of political solidarity.

In contrast, the situation is different when the symbiotic relationships described above weaken. Then the redistribution policies historically

133. Sociologist Robert K. Merton had also highlighted similar mechanisms, albeit on a more local basis, when he studied the “political machines” of immigrant neighbourhoods in the United States and the relationships of interdependence which existed between bosses (politicians) and their customers. Merton 1957.

134. Auyero 2001.

135. This party, which continues the Peronist tradition, was founded in 1947 by General Juan Domingo Perón and has governed the country more or less continuously since 1989; most of the country's regional governors are members.

136. Auyero 2001.

associated with such exchanges lose their integrating virtue. Nancy Fraser says of these policies that, by leaving intact the deep-seated structures which give rise to class inequality, they help to give the most disadvantaged class an appearance of deficiency and insatiability, always needing more assistance, and even make it look like a privileged group undeservingly benefiting from special treatment and generosity.¹³⁷ This phenomenon is of course intensified and strengthened when the groups concerned combine this social situation with a different ethnic or cultural origin.

The many ways in which poor African Americans who depend on social assistance programmes are condemned, regarded as falling into the hotly disputed¹³⁸ category of the “underclass” in the United States or into the more specific one of “welfare queens” (young single mothers allegedly living off benefit fraud), offer a clear illustration of how redistributive policies can help to create groups which all the evidence subsequently seems to show are irreducibly different. Along Path 3, we can thus no longer think in terms of continuity, but have to draw boundaries which, from the moral viewpoint, revive the old divide between the “deserving poor” and the “undeserving poor”. The latter become not only the target of control policies, but also a model which acts as a foil for those holding a slightly more advantaged social position.

Richard Hoggart had characterised the working classes in terms of the structural division between “us” and “them”, between the working-class world and the world of “others”. This leads to great suspicion of anything which comes from the world of “others”, whether it be that of institutions (police, local government officers, social workers, primary schoolteachers, welfare assistants, judges, etc), employers or the political world more generally.¹³⁹ This relationship continues to the present day. But the social and economic destabilisation of working-class worlds probably gave rise to a different view, at least of the best protected section. In the words of Olivier Schwartz, this vision is of a world in which there is a top and a bottom and “us”, trapped between the two. The top means the people already described above. The bottom comprises the poor families which benefit from assistance. And as for “us”, we are the losers as compared to both. That is the striking feature of this view. Those who consider themselves to be in the middle feel that they are treated less well than not only those above them, which is understandable, but also those below: “they” are paid benefits without having to go out to work or pay taxes, “they” commit criminal offences and go

137. Fraser 2005: 33.

138. See, *inter alia*, Wacquant 1996: 248-62.

139. Hoggart 1957.

unpunished, and if “they” get restless and set fire to cars, their problems are dealt with. While “we”, trapped between the two, get the least attention, are seldom listened to and are treated worst.¹⁴⁰ What Schwartz calls “triangular awareness” has tangible effects on possible solidarities, as well as on the forms of political organisation capable of influencing political institutions. It is surely from this angle that we should study recent developments in most Western social-democratic parties. In strategic terms, they no longer strive to represent the most disadvantaged groups of society, for it is their intention instead to base themselves on the higher ranks of the working classes and on the middle classes, thereby aggravating internal divisions within the working classes.

2.2. *Autonomy and predatory behaviour*

The divide between the poorest people and other social groups is wider at some times and in some countries than in others. When it is at its widest, in other words when the chances of upward social mobility are almost nil, forms of poverty-centred counter-societies may come into being. A fine description of such a situation is given by Larissa Adler de Lomnitz in her study of survival strategies in the shanty towns around Mexico City. Families survive only thanks to a complete form of social organisation which compensates for the absence of financial security through mutual exchange networks for goods and services. These networks represent an informal co-operative insurance system, one of the many functions of which is to support shanty town residents during their frequent periods of unemployment or unfitness for work.¹⁴¹ One of the features of this method of operation, and one of its preconditions, remains absolute equality in poverty. This is confirmed by János Ladányi and Iván Szelényi in their analysis of the organisation of Csenyéte, a village in Hungary with a majority population of Roma: they say that communities living in a situation of extreme poverty tend to be exceedingly egalitarian, since the survival of the most disadvantaged among them in fact often depends on equal distribution of scarce resources. This egalitarianism also enables social ties and solidarity to be strengthened within the community, providing a bulwark against the “monopolisation” of resources by the best-off members of the community, immediately labelled as greedy, arrogant and therefore enemies of the community. The price to be paid for this is that the egalitarianism prevents any upward social mobility.¹⁴²

140. See Grelet, Jobard and Potte-Bonneville 2006.

141. Adler de Lomnitz 1975: 223.

142. Ladányi and Szelényi 2005: 66-87.

Confined to interstitial spaces within the city, these marginal groups feel no hesitation about engaging in a predatory economy (Path 4). The authors of the study, who noted that in Csenyête, theft had virtually been elevated to the rank of an ethical norm, were told by one villager that, "if they do not give us work, we shall just take all that our families need".¹⁴³

When income disparities are too wide, the symbolic barriers which usually suffice to keep poor people away from nice neighbourhoods are no longer enough. Thus these are coupled with physical barriers, particularly in the form of "gated communities" or fortified homes. Monitored access, armed guards, gates, walls and CCTV both protect residents from predatory behaviour and widen the social divide.

Although not always taking such extreme forms, predatory behaviour against more favoured groups is also observed in most Western cities, especially those undergoing gentrification. This term is used to describe the process whereby white middle and upper-class people reoccupy the run-down centres of major cities previously home to African Americans, and this is a process which is happening in most major European cities. In the Bastille district of Paris, for instance, the proportion of working-class residents fell from 80% in the 1970s to below 40% in 1999. There are only two ways in which the working classes are now able to stay there, either by staying in homes unfit for habitation or by living in social housing. The former are gradually being lost as premises are renovated, and the average incomes of the beneficiaries of the latter are rising.

This temporary, and undesired, sharing (often described as "socially mixed housing") gives rise to conflict on a daily basis, of a violence matching the social violence of these segregation processes. The feelings of dispossession, relegation, even social contempt engendered by looks and comments lead some teenagers in working-class families to show disorderly resistance to what they perceive as an invasion by the "bourgeoisie". Verbal, and sometimes physical, aggression are two of the methods used in these conflicts over use of space, the potential for which is maximised by inequality of access to consumer goods (with mobile phones and MP3 players seeming particularly attractive).

It should be noted here again that the relationships between groups in poverty and other groups are not independent of mediation by public institutions. As witness the amazement of Philippe Bourgois, who said that, in Marseilles, when he was walking along with psychiatrist for the homeless

143. Ibid., p. 81.

Vincent Girard, he noticed that almost all the homeless people they met were carrying large numbers of French health system treatment forms. He told him that France was a more interventionist state, giving rise to more subjective relationships with the state among members of the *lumpen-proletariat*. These ran more along the lines of dependency than of violent lawbreaking as in the United States. Poor people in France lived through their poverty wandering from one office to another seeking whatever they could get by way of minimum benefits from the state, rather than, as some do in the United States, roaming the streets killing people or stealing things. While he admitted that he was exaggerating a little in his classification of the differing state models, the contrast was nevertheless striking.¹⁴⁴

3. Groups not in poverty and the state

The state is not cut off from the rest of society.¹⁴⁵ Its form and format, like its methods of action, very much depend on the balance of power between social groups, and the agents of the state have to mediate between the different groups, not only those in poverty, of course, but also those which are not. Public institutions thus have to decide on sometimes contradictory or antagonistic claims from different groups. In different times and under different governments, the question of redistribution, meaning the financing of social policies through taxation, arises in quite different terms.

Among the petitions received by state institutions, it is only on an arbitrary basis that those relating to poverty can be singled out. It is nevertheless the case that two kinds of models seem to emerge: requests for guarantees of social integration and requests for guarantees of security.

3.1. Social integration and the maintenance of hierarchies

Social integration fairly broadly corresponds to the development of the welfare state, and reflects the forms of political symbiosis already described. Powerful working-class movements bring to power governments which are favourable to them or which act under constant pressure from them. These set up tax systems which differ in form, but are all based on a proportion of income. Sectors hostile to taxation are unable to prevent these powerful political processes (Path 5). Social expenditure grows, for the population as a whole, with large sums being transferred to those of more modest means through assistance policies.¹⁴⁶ These

144. Bourgois 2010: 143.

145. Lacroix 1985.

146. Also see Esping-Andersen 1990.

policies, carried out in the name of integration, stem from a homogenisation process which starts at the centre, through general instructions and ordinary law. The aim is to promote access for all to public services and education, spatial planning, the development of social protection and the consolidation of employees' conditions.¹⁴⁷ Through these policies, public institutions guarantee for the groups which are not in poverty a stable social order, safeguarding their position (Path 6). This is the thesis defended by numerous Marxist writers in the 1970s (especially Nicos Poulantzas in France), but it was also defended by Jürgen Habermas, who considered that the function of the welfare state was to reduce the impact of crises, including any crisis of legitimacy.¹⁴⁸ Social policies are the end result of political discussion, of which contemporary examples may be found in such countries as Argentina and Brazil.

3.2. Equity and security

The second kind of relationship between groups in poverty and public institutions is observed when a change occurs in the political balance of power between groups in poverty and those not in poverty. This results in an increased reluctance to pay taxes, particularly to fund the poorest people. Integration policies give way to the logic of positive discrimination, targeting specific groups defined as "less well-integrated" in a process which may be regarded as a collection of efforts to achieve a levelling up, bridging the gap separating some people from decent living conditions, "normal" schooling, stable employment, and so on. On Path 6, this movement translates into a shift from equality to equity. This philosophy, tending to restrict the access of the middle and upper classes to the redistribution of social benefits (family allowances, public health system, etc.), is one of the main reasons for their challenges and their disaffection with the tax system, as observed in the United States and the United Kingdom. As Mike Davis has explained, in the city of Los Angeles white middle-class people refused to pay for public services to which they had no access and moved away from the city to settle in nearby counties, such as Orange County. In consequence of this tax evasion manoeuvre (made all the easier by the local basis of taxation) by people claiming that they did not wish to pay for the poor and/or minorities, the tax base for the funding of such municipal services and the quality of those services fell dramatically.¹⁴⁹ Rawls' principle that social and economic inequalities "are just only if they

147. Castel 1999: 675 ff.

148. Habermas 1975.

149. See Davis 1990.

result in compensating benefits for everyone, and in particular for the least advantaged members of society”¹⁵⁰ is instrumentalised to legitimise the idea that inequalities may prove to be desirable (this is the old liberal idea that those on high incomes would have a “disincentive” to work or engage in entrepreneurial activity if this meant paying more tax), and that in any case they are not the problem of the state, which simply has to put in place a safety net for those who have least.

Corresponding to this concept is renewed individualisation of the poverty issue, with the emphasis on poor people’s individual responsibility. Through a subtle effect of history, thinking about the “welfare queens” targeted first by Reagan’s and then Clinton’s administration is very similar to the view taken in Elizabethan England of the “undeserving poor”. Similarly, the various ways in which people are made to work, such as workfare, are reminiscent of the strong discipline exerted in workhouses.

Greater conflict between groups in poverty and other groups also flows from the petitions put forward on security grounds by the latter (Path 5). Whether the petitioners are “local citizens’ committees” campaigning against prostitution and drug dealing in Italy, groups of traders wishing to get rid of the homeless people on the streets of city centres, or groups of flat owners trying to stop teenagers from congregating in the entrance halls to their blocks, the authorities receive large numbers of petitions asking them to intervene.¹⁵¹

This is fertile ground, in different ways and at different times, for political references to order (Path 6), reflected in real life by public order policies (this time on path 1). Whether it be the “quality-of-life policing” (incorrectly known as “zero tolerance policing”) introduced by New York Mayor Rudolph Giuliani, the UK Government’s measures to combat “anti-social behaviour” (including the infamous control orders), the “civil ordinance” adopted in 2006 in Barcelona “to reduce uncivil behaviour which may occur in public areas”,¹⁵² or the various laws passed in France to combat unlawful behaviour by working-class young people: a whole range of poverty-related conduct is to be punished: gambling, begging with children, begging with disabled persons, “aggressive” begging, windscreen cleaning at traffic lights, street peddling, street prostitution, drinking of alcohol, etc.

150. Rawls 1971.

151. See, *inter alia*, Dal Lago 1999; Bonelli 2008; Bergalli et al. 2005.

152. “Ordenanza de medidas para fomentar y garantizar la convivencia ciudadana en el espacio público de Barcelona”, January 2006, p. 5. In this context see Bonelli 2008: 91-110.

Notwithstanding the primarily political and symbolic function of all these measures (difficult to apply in practice and of little interest to the police), we should not underestimate their actual effects on both the life of groups in poverty and the representations of poor people that they foster.

Conclusion

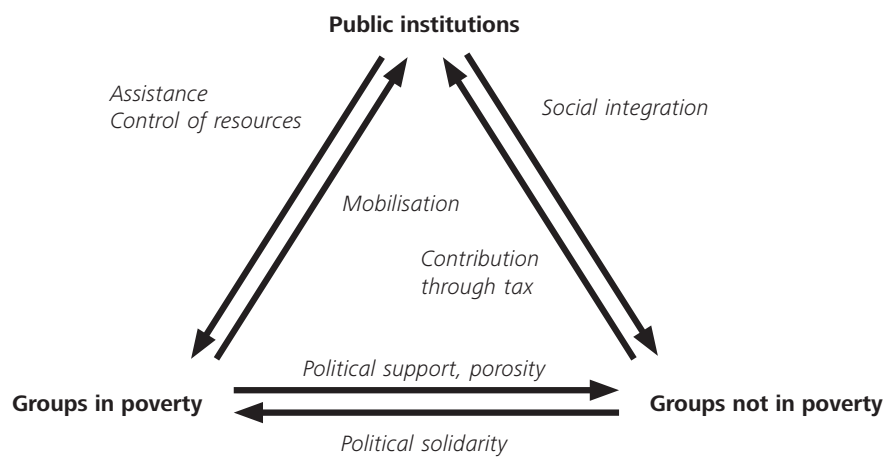
The information – inevitably of an exploratory and incomplete nature – presented in this text is an argument for reintroducing into the study of “poverty” the relationships between public institutions, groups which are in poverty and those which are not. If we take this perspective, we can include realities and situations which are nationally and historically different, and we can highlight the main kinds of observable relationships.

To illustrate this thesis, we include below a summary table of two different configurations: that of the welfare state developed in Europe after the Second World War and the more contemporary one of the neoliberal state.

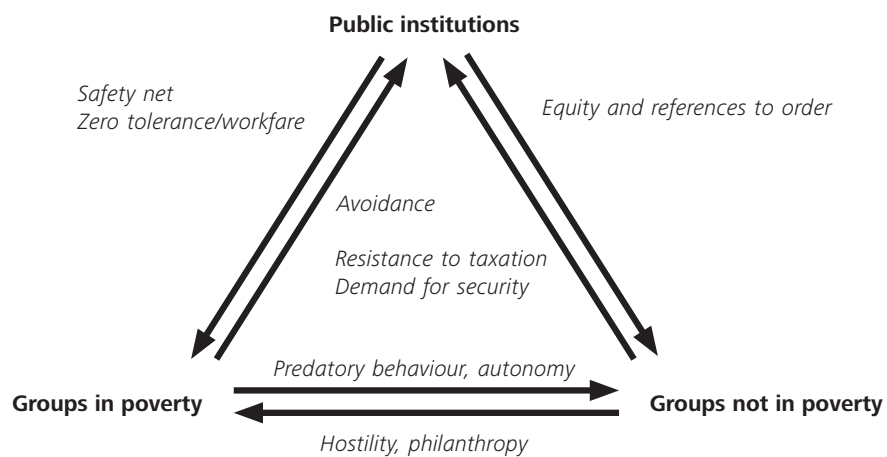
Relationships between	Paths	Type of relationship	Welfare state	Neo-liberal state
<i>Public institutions and groups in poverty</i>	1	Assistance	Strong	Weak
		Repression	Medium	Strong
	2	Mobilisation	Strong	Weak
		Resistance/avoidance	Weak	Strong
<i>Groups in poverty and those not in poverty</i>	3	Political solidarity	Strong	Weak
		Charity	Weak	Medium
		Hostility	Weak	Strong
	4	Autonomy	Weak	Strong
		Predatory relationship	Medium	Strong
<i>Groups not in poverty and public institutions</i>	5	Contribution through taxation	Strong	Weak
		Demand for security	Weak	Strong
	6	Social integration	Strong	Weak
		References to order	Weak	Strong

These two configurations thus culminate in special kinds of relationships, according to the actual and symbolic balance of power between the different groups. The diagrams below illustrate these relationships. They are not, of course, comprehensive, but do summarise the main lines within each configuration.

Thus the issue of poverty in a developing welfare state could be diagrammatically depicted as shown below:



The system of relationships is very different from that observed in a contemporary neo-liberal state:



These examples are, of course, too general, and need to be refined on the basis of the specific situation of each state. They nevertheless offer the advantage of linking elements rarely thought of together, despite being extremely interdependent.

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PART B

HUMAN RIGHTS AGAINST POVERTY

GUARANTEERING HUMAN RIGHTS IN SITUATIONS OF POVERTY

Diane Roman

1. The law and poverty, renewing the academic debate and the legal context

The last 30 years have seen a revival of the debate on human rights and poverty, as reflected in the draft guiding principles on extreme poverty and human rights currently being considered in the United Nations. Two key developments are worthy of note: first, a transformation of the legal context in which the emphasis is placed on the principles of the interdependence and indivisibility of human rights; and, second, a new perception of poverty, one which is more centred on the individual rather than being geared to the economic and monetary approach.

1.1. The indivisibility of human rights: developing a comprehensive conception of the human being

If the issue of poverty is now expressed in terms of rights, this is primarily because of the transformation in the 20th century of the very perception of human rights: whereas the fundamentally liberal 18th-century declarations of rights are focused for the most part on individual freedoms (freedom of thought, of speech, of religion, freedom from arbitrary arrest, the right to property), the texts adopted in the 20th century all stress the fragility of individuals and the need to protect human beings in the flesh. Confidence in the liberal model, which vindicated the initial declarations, gave way to a desire to afford protection. In the place of human beings in the “abstract”, who in order to develop required only freedom of action and freedom of thought, modern-day declarations focus on “tangible” human beings who must be protected from fear and poverty. The physiological needs of human beings (the need for nourishment, the need for clothing, the need for rest) are acknowledged by the contemporary texts which proclaim the right of each individual “to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing” (Universal Declaration of Human Rights, 1948, Article 25), the right to marriage and to found a family and the right to rest. In the 20th century, economic and social rights were added to supplement the previously formulated civil and political rights: they cover the right to exercise a professional activity (the right to work; the right to collective bargaining; the right to strike

and freedom of association) and the right to protective social benefits to offset the shortcomings of free market forces (the right to housing; the right to social welfare; the right to health care services). This development in human rights, a feature of the 20th century, came at the same time as the abandonment of the myth underlying the liberal conception of the Enlightenment, that of man in the state of nature. It is now accepted that the pre-social state does not exist and that every human being is part of a social community, even if reduced to the very minimum, the family unit. This explains the contemporary decline of the traditional idea that there are two types of human rights, the rights of autonomy, which are natural rights (rights and freedoms) implying abstention on the part of the public authorities, and claim-rights, rights *in personam*, arising from entry into the social pact, requiring positive action to be taken by the public authorities. In this way, there is acknowledgement of the hybrid nature of human beings, as individuals and members of society.

This overall conception of human beings justifies the emphasis, in contemporary texts, on the indivisibility and interdependence of fundamental rights. Civil and political rights protect an individual's autonomy against arbitrary action by the authorities, whereas economic, social and cultural rights protect this autonomy against social insecurity.

The first international text which endorsed this balance between civil and social rights was the Universal Declaration of 1948: one of its objectives was to guarantee comprehensive protection against poverty, picking up on the speech given by Roosevelt on 6 January 1941, which placed among the four essential freedoms, alongside the freedom of speech and freedom of religion, freedom from "want" and freedom from "fear". The 1948 text removed the distinction between civil and social rights, attesting to the indivisibility of rights and making social rights the indispensable safeguard for the protection of human life: "Everyone, as a member of society, has the right to social security and is entitled to realisation, through national effort and international co-operation and in accordance with the organisation and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality" (UDHR, Article 22).

Since then, many international instruments have reiterated the principle of the interdependence and indivisibility of rights, such as the Proclamation of Tehran, and the Vienna Declaration, 25 years later. This conception has, moreover, been confirmed by the United Nations General Assembly in numerous resolutions.

In Europe, at Council of Europe level, texts relating to human rights have for a long time reiterated the distinction between civil and political rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, and economic and social rights, set out in the European Social Charter (1961, revised in 1998). However, these two separate, but complementary, instruments have been interpreted in a way that attenuates the distinction made between them. For example, the Parliamentary Assembly of the Council of Europe stated that it was “deeply conscious of the indivisibility of economic and social rights, and political and civil rights”. It further stressed that “civil and social rights are not just indivisible but also interdependent and complementary”. In the same way, the case law of the European Court of Human Rights has vividly highlighted the refusal to establish watertight partitions between different categories of rights. For 30 years, the European Court of Human Rights has stated that “there is no watertight division separating [the sphere of social and economic rights] from the field covered by the Convention” and “whilst the Convention sets forth what are essentially civil and political rights, many of them have implications of a social or economic nature”. In the light of its evolving interpretation, the Strasbourg case law holds that the Convention is a “living instrument” which “must be interpreted in the light of present-day conditions” and states that “Eliminating what are judged to be social injustices is an example of the functions of a democratic legislature”.¹⁵³ In parallel, the European Committee of Social Rights, the body responsible for monitoring the European Social Charter, reiterated its full support for a key passage from the 1993 Vienna Declaration, repeating the wording to the effect that all human rights are “universal, indivisible and interdependent and interrelated” and declaring itself “mindful of the complex interaction between both sets of rights”.¹⁵⁴

At the other end of this historical chain, 50 years later, the European Union formally adopted its Charter of Fundamental Rights. This text brings together in a single document, for the first time in the history of the European Union, all civil, political, economic and social rights recognised in Europe, grouping them together in six main chapters: dignity,

153. European Court of Human Rights, judgment of 9 October 1979, *Airey v. Ireland*, Series A No. 32, paragraph 26; judgment of 13 June 1979, *Marckx v. Belgium*, Series A No. 31, paragraph 58; judgment of 21 February 1986, *James and Others v. the United Kingdom*, Series A No. 98, paragraph 47.

154. ECSR, 8 September 2004, *International Federation of Human Rights (FIDH) v. France*, Complaint No. 14/2003, paragraph 28.

freedom, equality, solidarity, citizenship and justice. The charter, which entered into force in 2009, guarantees amongst other things the right to social security and social welfare, the right to health protection and the right to integration of people with disabilities.

Accordingly, the concepts of the indivisibility and interdependence of rights seem deeply rooted in the contemporary conception of human rights. As Professor Meyer-Bisch stated, indivisibility is based on “the unity of the human dignity expressed and guaranteed by human rights” or, in other words, “the indivisibility of human rights corresponds to the individuality of each subject”.¹⁵⁵ Interdependence refers to the interaction between human rights. It means that the implementation of one right depends on the implementation of others: without the right to education, there is no freedom of thought; without the right of access to justice, there is no legal security. Accordingly, interdependence presupposes that the implementation of one right cannot come about without the implementation of all others.

1.2. Defining and measuring poverty: the human rights perspective

Since the late 1990s, numerous international, European and national reports have addressed the issue of poverty from a new perspective, consistent with the overall perception of the human being and his or her needs reflected in human rights: in this approach, poverty is no longer defined solely in economic and monetary terms.

From a traditional economic point of view, poverty is generally seen as a lack of income or purchasing power to meet basic needs. This insufficient level of income can be defined in absolute or relative terms. Poverty is described as extreme, insofar as it is based on a physiological criterion and poses a direct threat to life: this refers to the inability of the individual or family to cover their essential needs out of their own resources, with the result that they face mortal danger. This approach, generally used for pre-industrial societies, reduces poverty to a lack of protection against hunger, cold or illness. The restrictive nature of such a definition is difficult to apply to industrial societies such as those we see in Europe, where the question at issue is generally more one of social survival than physical survival. Consequently, a minimum understood from a relativist perspective would appear to be more appropriate. From this point of view, poverty is understood as a situation in which

155. Meyer-Bisch 2004: 48.

individuals are unable to have access to the minimum level of goods and services considered socially necessary.¹⁵⁶

This economic approach to poverty, based on income, has been the subject of numerous studies and challenges. In particular, Amartya Sen has described it as inadequate and suggested that other approaches to poverty should be taken into account, based on the well-being of human development. This new approach refers to the ability of an individual to live the life he or she wants, to “be” and “act” thanks to a number of “capabilities” each person possesses.¹⁵⁷ In this regard, poverty can be defined as a deprivation of basic capabilities. The United Nations Development Programme drew inspiration from this analysis and, as a complement to a monetary approach (resources lower than US\$1.25 per day), incorporates the human development approach. A human development index is now based on indicators such as health, education, food, nutrition, other basic needs and a decent standing of living, in addition to per capita income.

Alongside these monetary and human approaches to poverty, there are others. They place an emphasis on the social and legal dimension of poverty. This fact, which for a long time was confined to the voluntary sector, is now unanimously accepted. Poverty can be legally defined as a material situation bringing about a violation of human rights. The European Parliament was one of the first institutions to raise the possibility of a legal approach to poverty in terms of human rights: emphasising that poverty often leads to a violation of fundamental rights, that it is the result of a lack of action by the public authorities, and the inadequacy or indeed non-existence of such rights (convictions, illiteracy, indebtedness, lack of access to health care, malnutrition, unhygienic conditions, violation of privacy and family life, disconnection of water or electricity supply, etc.), it was one of the first institutions to consider that social exclusion tears apart the fabric of human

156. This is the definition adopted by the European Union, which states that “people are said to be living in poverty if their income and resources are so inadequate as to preclude them from having a standard of living considered acceptable in the society in which they live. Because of their poverty they may experience multiple disadvantages through unemployment, low income, poor housing, inadequate health-care and barriers to lifelong learning, culture, sport and recreation. They are often excluded and marginalised from participating in activities (economic, social and cultural) that are the norm for other people and their access to fundamental rights may be restricted.” This analysis is similar to that of “deprivation” by P. Townsend, whereby poverty is above all exclusion from a dominant sociocultural model or financial insecurity.

157. Sen 1999.

rights in societies which quite rightly regard these rights as one of their fundamental achievements.¹⁵⁸

Since then, the link has become permanent: the European Union defines social exclusion resulting from poverty as a denial of human dignity and fundamental rights, which include the right to sufficient resources and social protection enabling the effective enjoyment of the rights to health, housing, employment and training. Similarly, the European Parliament has stated that “poverty and social exclusion are violations of human dignity and fundamental human rights, and the central objective of income support schemes must be to lift people out of poverty and enable them to live in dignity”.¹⁵⁹

This approach has also been followed at international level: in 1996, for the first time, the Leandro Despouy report asked: “What is poverty, legally speaking, but a string of misfortunes: poor living conditions, unhealthy housing, homelessness, failure – often – to appear on the welfare rolls, unemployment, ill-health, inadequate education, marginalisation, and an inability to enter into the life of society and assume responsibilities? The distinguishing feature is that these deprivations – hunger, overcrowding, disease, and illiteracy – are cumulative, each of them exacerbating the others to form a horizontal vicious circle of abject poverty.”¹⁶⁰ Since then, there have been a number of reports by independent experts which have further developed the relationship between rights and poverty. For example, the UN’s Committee on Economic, Social and Cultural Rights stated that “in the light of the International Bill of Rights, poverty may be defined as a human condition characterised by sustained or chronic deprivation of the resources, capabilities, choices, security and power necessary for the enjoyment of an adequate standard of living and other civil, cultural, economic, political and social rights”.¹⁶¹

158. Resolution on combating poverty in the European Community, 16 September 1988, *Official Journal* No. C 262/88, p. 194.

159. European Parliament resolution of 20 October 2010 on the role of minimum income in combating poverty and promoting an inclusive society in Europe (2010/2039(INI)).

160. “The realisation of economic, social and cultural rights. Final report on human rights and extreme poverty, submitted by the Special Rapporteur, Mr Leandro Despouy”, 28 June 1996, E/CN.4/Sub.2/1996/13, paragraph 7.

161. UN Committee on Economic, Social and Cultural Rights, “Substantive issues arising in the implementation of the International Covenant on Economic, Social and Cultural Rights: poverty and the International Covenant on Economic, Social and Cultural Rights”, statement adopted on 4 May 2001, E/C.12/2001/10.

Lastly, the draft United Nations guiding principles uses the following definition: "Poverty is a human condition characterised by sustained or chronic deprivation of resources, capabilities, choices, security and power necessary for the enjoyment of an adequate standard of living and other civil, cultural, economic, political and social rights. Extreme poverty and exclusion from society constitute a violation of human dignity; consequently, the inclusion in national and international plans of measures to eliminate them is a priority."

This renewed doctrinal and intellectual context highlights two considerations: first, it substantiates the idea that poverty is prejudicial to human rights (2.3); and, second, it reinforces the belief that the law is a relevant tool in the fight against poverty (2.4).

1.3. A new approach to poverty: poverty viewed as a violation of human rights

1.3.1. Poverty and respect for dignity

Many studies and official reports have for more than 20 years been saying that poverty, and especially extreme poverty, is an affront to personal dignity: "extreme poverty and exclusion from society constitute a violation of human dignity".

Respect for personal dignity, a key principle in modern declarations of human rights, presupposes two things: (1) that the humanity of all human beings should be respected (and that no one should be used as an instrument at the service of others), and (2) that their basic needs be guaranteed so that they can develop their full potential. However, poverty can affect these two components of human dignity, by objectifying individuals and posing a grave threat to their basic needs for survival.

(1) Poverty violates human dignity when it places the individual in a situation in which he or she is reduced to a mere object. There are many situations in which poverty can lead to such a debasement of human beings, including in Europe. In its most extreme forms, poverty can lead to total reification of the individual: slavery, both in its traditional and modern form, constituting the ultimate exploitation of individuals, sex trafficking and prostitution, and organ trafficking organised by Mafia-like networks making themselves rich from poverty. These practices provide many illustrations of the major risks to which extreme poverty can expose a significant proportion of the world population. Unfortunately, Europe is not spared from this.

In a different way, the violation of human dignity can be extended to the social stigmatisation of people in extreme poverty to the point of “ostracising” them and denying their humanity: the UN Commission on Human Rights has established a link between slavery, apartheid and poverty: for the rapporteur L. Despouy, “poverty is the new face of apartheid”, placing people in servitude and insecurity, denying the enjoyment of fundamental rights, reducing people to the rank of objects or animals. Poverty is the new face of apartheid and slavery in that it creates a “caste” of subhumans, deprived of the exercise of their rights. Similarly, in its report on extreme poverty and human rights, the French National Consultative Committee on Human Rights, referring to the testimonies it had gathered, emphasised the nagging, omnipresent leitmotif of refusal, revolt and suffering at the fact that one’s human dignity goes unrecognised; being ignored, transparent or else reified and finally excluded from human society, struck down by social death.¹⁶²

NGO reports illustrate this sense of stigma experienced by people living in poverty. Accordingly, poverty could be described as a violation of dignity, when it adversely affects the part of dignity present in every human being and leads to phenomena of social stigmatisation. In this sense, it is possible to analyse these instances of stigmatisation from the viewpoint of the fight against discrimination.

Clearly, while it is usual to combine an analysis of discrimination with racism, sexism or homophobia, it may be a little more delicate to approach it in terms of “povertyism” (discrimination based on an individual’s social background and standard of living). Nonetheless, there is “a close link between such phenomena as racism, xenophobia and ‘discrimination against people because of their living conditions’”. Thus, people suffering from social exclusion are more frequently rejected than people who have higher living standards: a wealthy black person is less frequently rejected than a black person who is poor. Racist behaviour is sometimes shown towards people who are ‘different’, but such behaviour is more frequent and more intense towards people who, in addition to being poor, are socially excluded. Poverty, social exclusion and discrimination are therefore closely interrelated phenomena, so that people experiencing poverty or social exclusion are more likely to be victims of discrimination, and people who, in one form or another, suffer discrimination are more likely to be socially excluded.”¹⁶³

162. French National Consultative Committee on Human Rights 1993: 465.

163. Fresno 2005: 62.

There are three components which help identify prejudice: a cognitive component (stereotypes), in other words all the beliefs about the characteristics of members of a group expressed through verbal labels; an affective and evaluative component, namely the negative evaluation of a group, accompanied by hostile feelings towards its members; and a behavioural component, consisting of an intentional negative attitude and a tendency to marginalise and show hostility towards the members of a group.

The accounts related by people suffering from poverty reveal the very real nature and violence of some of these prejudices to which they are victim, which can underlie discriminatory behaviour and practices. In the United Kingdom, the word "povertyism" has entered everyday language following the work carried out by the Joseph Rowntree Foundation. The analyses undertaken highlight the discrimination suffered by poor people as poor people. This feeling is based on the idea that the poor are people who are of lower value and who deserve their position in society and the conditions they have to endure. We may assume therefore that such discrimination is real and that it arises from contempt for the poor, generated by prejudice and misconceptions prevalent in society.¹⁶⁴

Furthermore, the question of discrimination based on poverty and social background also ties in with harassment, which is defined in European texts as "discrimination when an unwanted conduct ... takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment"

164. Several international treaties recognise "property" and "social origin" as causes of discrimination (see, amongst others, ECHR, Article 14; ICESCR, Article 2). The Committee on the Rights of the Child, in its observations on France's compliance with the convention (Observation 28-33, 80-81) also expressed its concern "at the stigmatisation, including in the media and in school, of certain groups of children, in particular vulnerable children and children living in poverty". "The Committee recommends that the State party take measures to address the intolerance and inappropriate characterisation of children, especially adolescents, within the society, including in the media and in school." As further evidence of the growing interest in this approach to poverty in terms of stigmatisation and discrimination, "The draft guiding principles on extreme poverty and human rights: the rights of the poor" state that "Discrimination affecting persons living in extreme poverty must be punished as a violation of human rights. The stigmatisation of the poor and their associations, groups, neighbourhoods or places of residence, and their representation as persons without rights who are dangerous, violent and display other negative characteristics, must be regarded as forms of discrimination. Discrimination against the poor based on their image, their dress, their physical appearance or any other grounds related to their situation of extreme poverty constitutes a human rights violation. The State, international agencies and other parties concerned have an obligation to criticise and combat stigmatisation of the poor and to promote a balanced and fair image of persons who are in a situation of extreme poverty."

(Directive 2000/43/EC, Article 3). Although the directive in question is restricted to taking into account race or ethnic origin, the reasoning can be transposed to the situation of the poor in Europe. Institutional reports highlight “the extent to which belonging to a particular occupation or social category contributes to shaping each individual’s identity and social image and is the foundation for his or her credibility in the interplay of human relations. Nonetheless, certain people are clearly victims of blatant discrimination when they are held to be responsible for their situation, when they are criticised for their poverty and exclusion, when what they have to say is discredited and their endeavours and behaviour are belittled simply because they are individuals with no recognised status or accredited representation. This social and political discrimination gives rise in its victims to feelings of shame, guilt and suffering for not being viewed as equals to other human beings in their own society. And among those who reproduce it, even if only passively, it nurtures a trivialisation of contempt for or indifference to the poorest.”¹⁶⁵

Accordingly, it is justifiable to describe poverty as a violation of human dignity insofar as it can help to deny that part of humanity present in each and every individual and give rise to stigmatisation, vilification, discrimination and harassment. In its worst forms, it entails the total subjugation of the individual, bringing him or her down to the status of mere object.

(2) Poverty is also violation of dignity when it leads to ignoring the needs of individuals, such as access to health care, food, housing, etc. The social rights enshrined in the international and European texts are intended to ensure a minimum of goods deemed to be essential. They therefore fall under the scope of protection of dignity, in that they make it possible to demand from the competent authorities access to the economic, social and cultural services which are necessary for the enjoyment of a decent standard of living.

The European Committee of Social Rights accordingly highlights the “vital link between the safeguard of social rights and the guarantee of human dignity”. In a key decision, it describes dignity as a value which inspired the Charter, alongside the principles of autonomy, equality and solidarity. It also stated that the right to social and medical assistance, guaranteed by Article 13 of the revised European Social Charter, was of

165. Contribution by ATD Fourth World, French National Consultative Committee on Human Rights 1993: 518.

“fundamental importance to the individual” and that “health care is a prerequisite for the preservation of human dignity”.¹⁶⁶

From this perspective, poverty can be described as inhuman or degrading treatment, even though few courts have as yet moved beyond the statement of theory and punished this violation. The case law of the European Court in this respect reflects the potential behind this description and also the reluctance of the courts to go down this path. While Article 3 of the European Convention on Human Rights prohibits inhuman and degrading treatment, the European Court has not yet explicitly condemned a state party for violating dignity in connection with the situation of poverty. In an old case (*Van Volssem v. Belgium*, 1995), the European Commission of Human Rights, looking at a case submitted by a sick mother who was threatened with the disconnection of energy supplies, found the application inadmissible on the ground that “the disconnection or threatened disconnection of electricity supplies did not amount to the level of humiliation or debasement necessary to constitute inhuman and degrading treatment”. Subsequently, the Court nonetheless suggested that application of Article 3 of the Convention could be considered in situations of extreme poverty. In the *Larioshina v. Russia* (2002) decision, it said that a totally insufficient amount of pension or other social benefits could, in principle, raise an issue under Article 3 of the Convention, especially if it affected the physical and mental health of an individual in a sufficiently severe way. In 2005, the Court, for the first time, found a violation under Article 3 in connection with poor living conditions imposed on a Roma community. Having seen their houses burned in a criminal act, the applicants had been obliged to live in dilapidated conditions. The Court held that these living conditions, “in particular the severely overcrowded and unsanitary environment and its detrimental effect on the applicants’ health and well-being, combined with the length of the period during which the applicants have had to live in such conditions and the general attitude of the authorities, must have caused them considerable mental suffering, thus diminishing their human dignity and arousing in them such feelings as to cause humiliation and debasement”.¹⁶⁷ The situation of extreme poverty, coupled with the discriminatory attitude of the Romanian authorities, was deemed to be degrading treatment within the meaning of Article 3 ECHR.

166. *International Federation of Human Rights (FIDH) v. France*, cited above, 8 September 2004, paragraphs 30-31.

167. European Court of Human Rights, 12 July 2005, *Moldovan and Others v. Romania*, Application Nos. 41138/98 and 64320/01, paragraphs 103 and 110.

In the light of these solutions in case law, it is possible to describe extreme poverty, understood in the sense of a threat to the life of an individual, as a violation of human dignity insofar as it places the individual in a dehumanising position and denies the humanity which exists in every human being.¹⁶⁸ As such, social rights can serve to protect the dignity of the individual. Here too, the case law on asylum seekers is revealing.

Drawing on the principle of dignity, many European courts have concluded that there is a need to ensure basic living conditions for people, thereby shielding them from poverty. It is primarily with regard to asylum seekers that the courts have given rulings. For example, in Switzerland, dealing with a case regarding destitute asylum seekers, the Lausanne federal court established a non-written right to a decent standard of living, on the basis of a constitutional convention, which was subsequently incorporated into the federal constitution of 1999 (Article 12).¹⁶⁹ In the United Kingdom, this principle emerged by referring to the European Convention. In the *Anufrijeva* case, Article 3 of the ECHR (prohibition of inhuman and degrading treatment) was interpreted as imposing a positive obligation on the state to provide assistance to an asylum seeker. Subsequently, in the *Limbuela* judgment, the House of Lords Appeal Committee found that failure to provide such assistance constituted a violation of Article 3.¹⁷⁰ The line of reasoning put forward is particularly interesting: while the court rejects the argument that this is a political issue, it nonetheless underlined a criterion of severity: treatment is neither inhuman nor degrading unless, as a result of a seriously detrimental measure, it ignores the most basic needs of a human being. The assessment thereof varies according to the individual's situation (age, sex, physical or mental condition) and the context: accordingly, obliging an asylum seeker to remain on the street for a prolonged period constitutes degrading treatment within the meaning of Article 3. In French law, a similar solution was reached by referring to a European directive, resulting in the right of all asylum seekers to material reception conditions.¹⁷¹ Lastly, while the European Court has in the past asserted that a general duty to provide refugees with financial assistance to enable them to maintain a certain standard of living cannot

168. See the UN General Assembly Millennium Declaration, adopted in 2000, which described extreme poverty as "abject and dehumanising".

169. Swiss Federal Court 1995, case of *P.V. and M.V. v. Ostermundigen and Bern*.

170. UK, *R. v Secretary of State for the Home Department, ex parte Limbuela*, [2005] UKHL 66, [2006] 1 AC 396, unanimous judgment.

171. Conseil d'Etat, 17 September 2009, *Ministry of Immigration v. Salah*, No. 331950.

be deduced from Article 3,¹⁷² it has not ruled out the fact that “State responsibility could arise [under Article 3] for ‘treatment’ where an applicant, in circumstances wholly dependent on State support, found herself faced with official indifference when in a situation of serious deprivation or want incompatible with human dignity”.¹⁷³ More recently, the Court found against the Greek authorities for having failed to show “due regard to the applicant’s vulnerability as an asylum seeker” and for having left the applicant for several months, living in the street, with no resources or access to sanitary facilities, and without any means of providing for his essential needs. The Court held that “the applicant has been the victim of humiliating treatment showing a lack of respect for his dignity and that this situation has, without doubt, aroused in him feelings of fear, anguish or inferiority capable of inducing desperation. It considers that such living conditions, combined with the prolonged uncertainty in which he has remained and the total lack of any prospects of his situation improving, have attained the level of severity required to fall within the scope of Article 3 of the Convention.”¹⁷⁴

1.3.2. *Poverty and the right to freedom*

The idea that individual freedom can fail to be applied because of a situation of poverty ties in with Amartya Sen’s theory of capabilities, based on a set of functionings potentially available to everyone, consisting of beings and doings. These capabilities may be elementary, focusing on survival (having access to health care, being adequately nourished) but may also have a social dimension (participation in political processes and in economic, social and cultural life). “Capability is thus a set of vectors of functionings, reflecting the person’s freedom to lead one type of life or another”.¹⁷⁵ A legal analysis of the link between poverty and fundamental rights confirms Sen’s theory: as some legal writers have commented, “every freedom represents the power of choice afforded to the holder of that freedom. Its scope broadens the more possible choices there are; it decreases and becomes derisory when, as a result of a lack of resources to survive, the only choice left is between poverty and slow death.”¹⁷⁶

172. European Court of Human Rights, *Muslim v. Turkey*, No. 53566/99, paragraph 85, 26 April 2005.

173. European Court of Human Rights, *Budina v. Russia*, Decision No. 45603/05.

174. European Court of Human Rights, *M.S.S. v. Belgium and Greece* (Grand Chamber), No. 30696/09, 21 January 2011.

175. Sen 1992: 40.

176. Rivero 1985: 43.

More specifically, a lack of money may give rise to the application of legal rules which restrict the individual freedom of those experiencing poverty. Even though, in principle, the application of a legal rule should be the same for everyone, European law offers several examples of ways in which the law is applied differently depending on an individual's material resources. For example, the European Convention on Human Rights allows for the internment of persons "for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants" (Article 5.e, ECHR). On this legal basis, certain national or local government authorities have been able to criminalise begging or vagrancy, or restrict the freedom of movement of certain social groups (homeless, Roma). Furthermore, European law allows the restriction of freedom of movement in Europe depending on an individual's resources: in the words of the European directive itself, citizens of the Union and members of their families "exercising their right of residence should not, however, become an unreasonable burden on the social assistance system of the host Member State during an initial period of residence. Therefore, the right of residence for Union citizens and their family members for periods in excess of three months should be subject to conditions" (recital 10). Another example of concern, being poor might mean a higher risk of imprisonment: the most disadvantaged sections of society are at high risk of being imprisoned at all the various stages of criminal proceedings, whether remand in custody, a prison sentence or sentence adjustment measures: "poverty is a main factor in people entering prison, where the poor become even poorer".¹⁷⁷

A final example to illustrate that poverty gives rise to the application of rules which restrict the freedoms formally acknowledged to everyone, regardless of wealth status: family freedom. The placement of children from poor families is a reality and not confined to the stereotypes of the 19th century. The Committee on the Rights of the Child has highlighted the very real violations of family life resulting from poverty. For example, with regard to France, the committee noted in its 2009 report the very high proportion of children from disadvantaged families who are separated from their families and expressed its particular concern at the fact that the families experiencing the most difficulties are not receiving the assistance they should be given. It claims that too large a number of family separation measures are ordered by the courts, leading to ever-growing instances of social distress. And yet, there are alternatives. The committee recommends that states opt for other solutions to help families faced with

177. Thoraval 2000. See also Cassan, Toulemon and Kensey 2000.

serious economic difficulties. The European Court of Human Rights has taken a similar line, severely criticising the placement of families based solely on the parents' inability to provide accommodation and subsistence. In the *Walla and Wallová v. the Czech Republic* judgment (2006), the Court stated that the fact that a child could be placed in a more conducive setting could not justify the child's being forcefully taken away from the care of the biological parents. It held that the decision to put a child into care should not be based on the parents' lack of material resources, which should be compensated for by the national authorities by means other than the total separation of the family.

1.3.3. *Poverty, citizenship and the right to social participation*

The concept of citizenship covers many conceptions and definitions: over and above the intuitive connection to the concepts of nationality and civil rights, it includes a social dimension, referring to the link between the individual and not the state, but society. This ties in with the analysis made by T. H. Marshall, whereby citizenship comprises a triad of civil citizenship (corresponding to the fundamental freedoms such as freedom of expression and equality before the law), political citizenship (derived from universal suffrage) and social citizenship (resulting from a system of social welfare and the recognition of social rights). In this approach, citizenship includes: (1) a political component (participation in political decision making); and (2) a social component (economic well-being and social welfare) to which poverty constitutes a barrier.

(1) Political citizenship – citizenship covers first of all the right to vote and be represented, that is participation in political decision-making mechanisms. Traditionally excluded from citizenship under regimes set up in the past in liberal democracies in which eligibility to vote depended on payment of a poll tax, there is now formal recognition for the poor having the right to vote. Nonetheless, often this formal recognition of citizenship cannot be exercised in practice for a variety of reasons: first, because of domiciliation rules which could prevent itinerant, homeless or Roma communities from being included on the electoral roll; and, second, because it is not always made possible for them to participate politically in practice.¹⁷⁸ This

178. For example, with regard to the Roma and Sinti in Italy, the ECSR notes that “the segregation and poverty affecting most of the Roma and Sinti population (especially those living in the nomad camps) is linked to a civil marginalisation due to the failure of the authorities to address the Roma and Sinti’s lack of identification documents. In fact, substandard living conditions in segregated camps imply likewise a lack of means to obtain residency and citizenship in order to exercise civil and political participation.”

is severely criticised by the Council of Europe's Commissioner for Human Rights who has underlined the fact that "in many cases Roma communities are socially isolated and fragmented. As a result they may be less aware about political and electoral processes, and may lack vital information. They are therefore also vulnerable to electoral malpractices. ... Another major impediment is that many of them are not included in civic and voter registers, frequently lack the necessary identity documents and are therefore not allowed to vote."¹⁷⁹

This political exclusion has also been highlighted by the UN General Assembly which stated that "it is essential for States to foster participation by the poorest people in the decision-making process in the societies in which they live, in the promotion of human rights and in efforts to combat extreme poverty, and for people living in poverty and vulnerable groups to be empowered to organise themselves and to participate in all aspects of political, economic and social life, in particular the planning and implementation of policies that affect them, thus enabling them to become genuine partners in development".¹⁸⁰

In addition to restricting the exercise of political citizenship, poverty can also prevent the exercise of social citizenship.

(2) Social citizenship. As noted by Professor Daly, "A strong heritage of social rights is integral to the European social model. As European societies developed, the introduction of social rights came to be seen as closely associated with citizenship and progress. Public authorities agreed to provide a minimum set of rights to all citizens regardless of their position in the market so that people's welfare was to be no longer dependent on their capacity to support themselves or on charity."¹⁸¹

Poverty is a constituent factor in the violation of social rights: in particular the poor in Europe have seen a violation of their right to work, their right to social welfare, their right of access to health care services and their right to schooling. This dimension of poverty as an integral part of a violation of social citizenship is especially highlighted by the concept of social exclusion adopted by the European Union. As defined by the 2004 joint report on social inclusion, "social exclusion is a process whereby certain individuals are pushed to the edge of society and prevented from participating

179. Council of Europe Commissioner for Human Rights, viewpoint of 1 September 2008 on "Roma representatives must be welcomed into political decision-making".

180. United Nations, resolution of the General Assembly on human rights and extreme poverty, No. 55/106 of 4 December 2000, paragraph 2.

181. Daly 2002: 17.

fully by virtue of their poverty, or lack of basic competencies and life-long learning opportunities, or as a result of discrimination. This distances them from job, income and education opportunities as well as social and community networks and activities. They have little access to power and decision-making bodies and thus often feeling powerless and unable to take control over the decisions that affect their day-to-day lives.”

1.3.4. Poverty as a combination of numerous factors of insecurity

A study of the changes that have taken place in international and European human rights law, bearing in mind the most recent work on poverty, leads us to put forward a definition of poverty in terms of human rights. In view of the fact that the legal mechanisms to ensure the cardinal values of human rights – dignity, freedom, citizenship – are systematically undermined and misapplied in respect of people living in poverty, we should ideally adopt a legal definition of poverty, separate from economic approaches. From a legal point of view, poverty can be analysed as being the result of a series of factors of insecurity, whose effect is to undermine the security of existence and development of the individual.¹⁸²

Taking the concept of insecurity, in its various forms, as a constituent element of poverty is useful for a number of reasons. First, since it reflects the “incipient destabilisation of society, rights that are being eroded, ideal images of employment and social protection that are being shattered in the same way as is the sense of belonging to society”,¹⁸³ the concept of insecurity is the antithesis of security, in the sense of a situation in which no danger needs to be feared. Second, because it can help establish a link between the poverty which the public authorities seek to combat by introducing income support, the shortcomings of the social protection system and current trends in employment law, such as labour flexibility and the emergence of an atypical labour market. Last, because, in the context of an analysis of fundamental rights, it is the foundation of a legal definition of poverty as a violation of rights.

The Wrésinski report of the French Economic and Social Council (1987) offered the following definition: “Insecurity is the absence of one or more forms of security enabling families to shoulder their basic responsibilities and enjoy their fundamental rights. The extent of this resulting insecurity will vary and it can have consequences which may be serious or permanent. It frequently results in extreme poverty when it affects several areas of existence, when it becomes persistent and when it seriously undermines

182. Roman 2002.

183. Klebaner, Martin and Offredi 1988: 4.

the chances of once again being able to shoulder one's responsibilities and regain one's rights in the foreseeable future."

The NGO Caritas adopted a similar approach when defining poverty as a lack of well-being, including a series of situations of insecurity, typically characterised by a continued lack of financial resources. Furthermore, poverty breeds other serious restrictions and limitations: people in poverty often suffer from poor health, they are more often unemployed and for a longer period, they mostly live in cramped housing conditions, often they have had poor education and vocational training, they frequently have little job security and fairly often they have a barely viable social network, broken family ties and an uncertain residential status.¹⁸⁴

This combination of factors of insecurity is depicted by Caritas in a diagram, showing that the poorer an individual is in one of these eight dimensions, and the higher the number of dimensions in which he or she experiences limitations, the more insecure are his or her living conditions. Increasing insecurity is a "movement towards marginalisation", and poverty is a situation of living on the margins of society. Poverty leads to social exclusion and vice versa, but they are not identical. In a given society, there can be poor people who are nevertheless integrated in society, just as there can be well-off people who suffer from exclusion.

The insecurity generated by poverty (in the broader sense than extreme poverty) undermines people's development potential. It adversely affects not only the individuals themselves, but also social cohesion, which – in order to survive – requires the participation of all of its members. The generally accepted definition of social exclusion bears witness to this process which is both an individual and a collective one.

Defining poverty in terms of fundamental rights, as a combination of factors of insecurity adversely affecting the security and development of the individual, is of considerable importance for two reasons: first, it broadens the perspective adopted and makes it possible for us not to limit our focus on the problem of extreme poverty alone. While extreme poverty is indeed a terrible tragedy, it should not result in concealment of the deep-rooted cause – the unequal distribution of wealth. Viewing poverty as a series of factors of insecurity makes it possible to reintroduce the concept of solidarity and equality into the debate and go beyond the single concept of "survival". Moreover, if we define poverty as a violation of human rights, then the law can be given a very important role in the fight to eradicate it.

184. Caritas 2010.

2. The role of the law in the fight against poverty

2.1. The fight against poverty and the guarantee of human rights

Defining poverty in terms of a violation of human rights shifts the action of the public authorities and the responsibility of society from an economic and moral sphere to a legal one. As stated in the Sengupta report, “human rights obligations are binding and mechanisms must be in place to enforce these obligations. The accountability of duty bearers is essential for the enforcement of human rights, through legislation or executive actions, by special bodies or committees, national or international, or even by peer pressure and public action, separately from the countries’ judicial system” (UN 2005, paragraph 25). It also increases the effectiveness of policies to combat poverty. “Anti-poverty policies are more likely to be effective, sustainable, inclusive, equitable and meaningful to those living in poverty if they are based upon international human rights. For this to occur, human rights need to be taken into account in all relevant policy-making processes” (UN 2001, paragraph 13).

Fighting poverty through law, eradicating hunger through human rights, combating, through law, the marginalisation of the poor – there has been a constant stream of work clearly showing that the fight against poverty and destitution is not simply a major economic and political problem, it is also a legal issue and one relating to fundamental rights under the principle of the interdependence of those rights.

For almost 20 years, Europe has set an example and has incorporated its action to combat poverty and social exclusion into the field of human rights. As early as 1992, European texts have declared that Europe’s “values and goals espouse fundamental rights, including respect of human dignity, of which social exclusion constitutes, to some extent, a denial Solemn, but not binding, recognition by the community of the rights stemming from respect of human dignity would clearly demonstrate its political resolve to combat social exclusion.”¹⁸⁵ Similarly, back in 1993, the European Parliament called on the Community institutions to incorporate into the Treaty on European Union, a chapter on fundamental rights and freedoms, making specific reference to poverty and social exclusion as a violation of human rights and human dignity.¹⁸⁶

185. European Commission 1992.

186. European Parliament 1993.

A different institutional path was followed. The revision of the European Social Charter in 1998 resulted in a new Article 30, setting out a “right to protection against poverty and social exclusion”. Although it is now accepted that poverty is a situation which could give rise to a violation of human rights, it must be emphasised that the relationship between rights and poverty goes both ways: poverty often results from a previous violation of human rights. In this sense, the European Union’s Charter of Fundamental Rights (adopted in 2000 and entered into force in 2009) states that “in order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Union law and national laws and practices” (Article 34-3).

Most international reports and studies on the link between poverty and human rights have highlighted the need to guarantee the rights of the poor. The draft guiding principles place an emphasis on different rights which should be guaranteed to people living in extreme poverty: civil and political rights, the right to food, the right to health, the right to drinkable water, the right to education and culture, the right to employment and the right to justice. In reviewing the situation of people living in poverty, the guiding principles stress the need to ensure the interdependence and indivisibility of rights in order to afford protection against poverty. As such, poverty is clearly presented as the consequence of a violation of fundamental rights.

In a different, albeit complementary, perspective, attention should be drawn to the contribution from the discussions held by the Commission on Legal Empowerment of the Poor.¹⁸⁷ Its starting point was that “most poor people do not live under the shelter of the law, but far from the law’s protection and the opportunities it affords. Informal local norms and institutions govern their lives and livelihoods, and where they are not excluded from the legal system, they are often oppressed by it.” Stressing the need for the rule of law to guarantee development, the commission puts forward a new concept, that of “legal empowerment of the poor”, understood as a process of systemic change through which the poor and excluded become able to use the law, the legal system, and legal services to protect and advance their rights and interests as citizens and economic players. The commission has drawn up a comprehensive agenda for legal empowerment encompassing four crucial pillars that must be central in

187. Commission on Legal Empowerment of the Poor 2008.

national and international efforts to give the poor protection and opportunities. The commission's agenda includes: access to justice and the rule of law, property rights, labour rights and "business rights", the latter derived from existing rights related to an individual's doing business, newly bundled together under this term on the basis of their vital role in the livelihoods of the poor. Intended primarily for the situation in the developing countries, its recommendations should nonetheless not be overlooked in the reflection on the situation in Europe.

European studies, on the other hand, have tended to focus special attention on social rights, leaving to one side the question of civil and political rights.

For example, the final report of the Human Dignity and Social Cohesion project has underlined a number of major themes, such as health, social protection, employment, housing and education. The report highlighted the growing inequalities in the effective exercise of the rights granted to all and called for various different approaches. For protecting the right to health, it emphasised the need to meet the specific health care needs of groups in difficulty by adjusting health and social responses and providing equal access, based on universal social cover. With regard to the right to housing, responding to emergencies and preventing evictions; maintaining and expanding the supply of suitable housing, and meeting specific needs; drawing up area-based policies (town planning, urban policy, regeneration of the countryside). For employment, it highlighted the need to promote labour market integration/reintegration of disadvantaged and excluded or marginalised groups, by intensifying job creation and promotion initiatives at local level and in the "social economy", while doing everything possible to involve workers and employers, associations and local authorities; and strengthening equal opportunity and treatment policies for disadvantaged groups on the labour market, particularly by attacking discrimination between women and men, making it easier for people to reconcile working and family life and bringing them back onto the labour market, but also by combating discrimination against migrants, disadvantaged ethnic groups and people with disabilities. In the field of social protection, states were called upon to analyse the obstacles which prevent people from obtaining security benefits or result in their losing them; study ways in which social security systems contribute to economic and social development; consider the special role of the voluntary sector and of social workers, as the main go-betweens for excluded persons. Lastly, it underlined the fact that training and education, both formal and informal, were more than ever central to the whole problem of exclusion

Similarly, the Daly report, which is the Council of Europe's reference text on the issue of access to social rights in Europe, highlights the many obstacles to effective access to social rights and advocates various solutions. However, it focuses solely on social rights, as its name suggests, and does not cover access to justice, legal certainty and protection of family life.

2.2. Combating poverty and securing social cohesion

If poverty is the result of a series of factors of insecurity, this is because the universally asserted human rights are not guaranteed in practice. The lack of social protection safety nets in the broad sense means that people are exposed to risks.¹⁸⁸ Here, it is the inadequacy of social protection systems and poorly functioning wealth redistribution mechanisms which result in the non-effectiveness of human rights and in poverty. This is also the analysis made by NGOs such as Caritas which believe that social protection is part and parcel of well-being for all citizens and stems from three main sources: (i) productive and remunerative work on the labour market; (ii) solidarity within the family and neighbourhood networks, and (iii) the assistance provided by the welfare state. Caritas believes that poverty and social exclusion are the consequence of a dysfunction of these three sources of social protection (the labour market, the family and the welfare state), brought about by changes in society. It is for this reason that these three sources must once again be able to play their role to the full.¹⁸⁹

At the same time, asserting the guarantee of human rights underlines the importance of the concept of social cohesion and social justice. In a society that seeks to be inclusive, questions need to be asked about the acceptable limits of the gap between the rights recognised to all, and the rights effectively exercised by people living in poverty.

The European Union has developed the concept of social inclusion as a process which ensures that those at risk of poverty and social exclusion gain the opportunities and resources necessary to participate fully in economic,

188. The UN Sepúlveda report emphasises the extent to which "social protection has the potential to shield the most vulnerable segments of society from various 'shocks'. These include personal crises such as lack of income due to unemployment, disability or sickness, as well as crises at the macro level such as economic slowdowns, large-scale structural adjustments or, increasingly, crises due to climate-change-related environmental degradation (including crop failures, flooding and droughts). By transferring resources to those in need, social protection increases consumption, reduces a household's extreme vulnerabilities and prevents further deterioration in living conditions" (UN Human Rights Council, A/65/259, p. 7, paragraph 17).

189. Caritas 2010: 24.

social and cultural life and to enjoy a standard of living and well-being that is considered normal in the society in which they live. It ensures that they have greater participation in decision making which affects their lives and access to their fundamental rights as defined in the EU's Charter of Fundamental Rights. In contrast, exclusion is explicitly defined as a denial of human dignity and fundamental rights, which include the right to sufficient resources and social protection ensuring the effective enjoyment of the rights to health, housing, employment and training.

The Council of Europe has helped make significant advances in the analysis of poverty by investigating the topics of social cohesion: "the hallmark of the Council of Europe approach is to treat access to rights for all as an essential reference for a cohesive society and also as a principle facilitating recognition of the dignity of all individuals regardless of their ability to meet their own needs". Social cohesion is the capacity of a society to ensure the well-being of all its members, minimising disparities and avoiding marginalisation. For the Council of Europe, social cohesion is inextricably linked to its fundamental objectives: effective exercise of human rights, democracy and the rule of law.¹⁹⁰

The question to be asked is therefore whether, in a cohesive society, it is possible to limit the gaps. As things currently stand, there is only one lower limit: that of protection against poverty, understood in a minimalist way – ensuring that essential needs are satisfied. However, there is some criticism of the concept of essential needs adopted by the approach of the fight against extreme poverty. By focusing on what is essential to survival (minimum level of sustenance, shelter, emergency care), one might lose sight of the goal of solidarity and consequently run counter to the concept of social cohesion.¹⁹¹

This type of criticism is also made by NGOs who deplore the now central, though minimalist, objective of "the fight against extreme poverty", to

190. It is based on the four constituent dimensions of human well-being that are essential for the functioning of societies that recognise human rights and democracy as underpinning the way they are organised: fair and equal access, individual (and collective) dignity, the autonomy of the individual and participation in community life. The approach based on respect for human rights is reflected in its standard-setting work (ECHR, European Social Charter) and in the Council of Europe's intergovernmental work, in particular its Revised Strategy for Social Cohesion (2004).

191. For example, for Professor Kéba Mbaye, the concept of people's essential needs "could, for some people, be a convenient refuge enabling them to claim that only the bare minimum required for existence is the real problem in developing countries. This position, which is beginning to emerge in international circles, is reminiscent of the racist and colonialist arguments of the past whereby, for certain people, ensuring one has enough to eat should be the sole objective to pursue."

the detriment of steps to ensure the right to development. In focusing on the core content of rights, one loses sight of the goal of solidarity and reducing inequalities.

A solution could be found in an approach in terms of universal essential needs, guaranteed by the enjoyment of all human rights. However, recognition of these universal clusters of rights presupposes acceptance of two things:

- first, considering human rights from a universal perspective and not in terms of “the rights of people living in poverty”. As one author notes, “it is on the basis of the concept of essential rights that the universality of economic and social rights must be based: since everyone feels hunger and thirst and needs a roof, no matter how modest, and since no one is immune from poverty, the rights which are intended to protect these needs should be universal and inherent to human nature, in the same way as civil and political rights”.¹⁹² Clearly, universality does not mean uniformity, and assessing the satisfaction of needs is not necessarily based on an identical evaluation. However, since the aspiration to satisfy these needs is itself universal, we can perhaps find in that evaluation of self-respect and the safeguarding of dignity, the foundation of the universality of social rights;
- second, developing a global and co-ordinated approach based on social cohesion and the protection of social security. This is the direction pursued by all the work carried out by the Council of Europe, from the HDSE report (Council of Europe 1998) up to the work of the task force on social cohesion (Council of Europe 2007). It is also the main thrust of the reports presented to the United Nations. The Sepúlveda report (UN 2010, paragraph 8), for example, focuses on the idea of social protection understood as referring to “policies and programmes aimed at enabling people to respond to various circumstances and manage levels of risk or deprivation deemed unacceptable by society. The objectives of these schemes are to offset deprivation and ensure protection from, *inter alia*, the absence or substantial reduction of income from work; insufficient support for families with children or adult dependents; lack of access to health care; general poverty; and social exclusion.” The emphasis is therefore placed on the protection of universal rights, serving as safety nets for the whole population in order to prevent poverty and its perpetuation.

192. Robitaille 2008: 262.

This is also the approach pursued very recently by the European Parliament¹⁹³ which “calls for the promotion of social integration and inclusion, in order to guarantee effective protection of fundamental human rights, and clear commitments to draw up EU and national policies to combat poverty and social exclusion; considers it necessary to ensure better access, on a universal basis, which is free from physical and communication barriers, to the labour market, public health services, education (from preschool education to completion of undergraduate studies), vocational education and training, public housing, energy provision and social protection; takes the view that jobs should be high quality and barrier free with rights; believes that wages must be decent and that pensions must include a basic old-age allowance which ensures that people who have worked all their lives enjoy a dignified retirement; states that minimum income schemes for everyone must guarantee freedom from poverty and ensure social, cultural and political inclusion in keeping with national practices, collective bargaining and national legislation; notes, further, that in the long term the more the Member States invest in these various policies the less need there will be for a system based on a minimum household income; points out that such measures should be adopted in strict compliance with the principle of subsidiarity and with different practices, collective bargaining and national law in the Member States; takes the view that only in this way can each individual’s right to participate in social, political and cultural life be guaranteed.”

In analysing the legal instruments which can be used in the fight against poverty, we should focus our attention on their consequences for the existence of remedies and mechanisms to ensure that they are effective.

2.3. Instruments for reparation and effective remedies to restore rights

The now dominant approach based on the interdependence and indivisibility of human rights undermines the division of human rights into two categories: civil and political rights on the one hand; economic, social and cultural rights on the other. This also highlights the inadequacy of the traditional way of analysing social rights, with a tendency to make a distinction, among state obligations, between the obligation to act and the obligation not to act. Social rights, while they are claims demanded of the state, are not merely programmatic “claim-rights” imposing an

193. European Parliament resolution of 20 October 2010 on the role of minimum income in combating poverty and promoting an inclusive society in Europe (2010/2039(INI))

obligation of means on the public authorities, as opposed to civil and political rights conceived as negative rights, requiring merely public abstention. Internationalist writers, whether academic or institutional, have suggested moving beyond the distinction between the fulfilment of civil rights, which would require abstention by the public authorities, and that of social rights, which would presuppose active intervention by the latter. In reality, all rights, of whatever kind, impose a triple obligation on states, first to respect, then protect and finally fulfil:

- First, states have an obligation to respect rights, in the form of an obligation of abstention, prohibiting them from infringing the rights of individuals. This obligation also prohibits any discrimination in the application of social rights, particularly on the grounds of gender, disability or foreign nationality, and it also entails a general prohibition of actively violating the rights set out in the International Covenant on Economic, Social and Cultural Rights. These negative obligations are immediately applicable. However, these negative obligations are not sufficient in themselves to ensure compliance with social rights: the whole point lies in the definition of positive, immediately applicable rights, to ensure that states do not take shelter behind the programmatic nature of social rights, or their lack of available resources.
- This has led on to a positive obligation to protect the beneficiaries of these rights against any violation carried out by third parties, in particular through the drafting of protective legislation and the introduction of appropriate judicial remedies. For example, this positive obligation gives rise to the obligation to protect individuals against any infringement of the right to adequate housing committed by third parties, or the obligation to introduce protective legislation in the field of child labour or genital mutilation. The central value of the body of opinion of the United Nations Committee on Economic, Social and Cultural Rights, in its review of compliance with the ICESCR, is to demonstrate that the application of laws recognising and protecting economic and social rights is an obligation of immediate application insofar as its effectiveness lies more in the commitment of governments to take these rights into account than in the availability of sufficient resources. The committee's work demonstrates that the covenant does not contain vague objectives which cannot be transposed into domestic law and are not subject to appeal, but rather real subjective rights, on which individuals can rely in respect of third parties.

- Lastly, a similar aim is to be found in the obligation to fulfil these rights, corresponding to an obligation for the state to take action. This obligation applies not only to social, but also civil and political rights, the fulfilment of which may have a public financial cost. Nonetheless, it constitutes a key aspect of the fulfilment of social rights. As this economic aspect is undeniable, it would be unrealistic to require each state to immediately fulfil all the rights guaranteed. However, this does not prevent monitoring of the appropriateness of the measures taken. This monitoring is carried out by the Committee on Economic, Social and Cultural Rights which, in a pragmatic way, set out a two-fold guideline: first, a prohibition of any regressive measure, particularly where not justified by economic considerations. This led the committee to closely monitor the social consequences of structural adjustment programmes implemented by states at the request of the IMF or the World Bank and the extent to which they tied in with the Millennium Development Goals, which are meant to be achieved by 2015; second, the assertion of a “minimum core obligation” for every state to fulfil all the rights contained in the covenant. This approach makes it possible to go beyond the initial concept of “virtual” or pseudo-rights, the fulfilment of which is not subject to verification and sanction.

It should be noted that many national courts have adopted this distinction between the obligation to respect, protect and fulfil. Nevertheless, the implementation of procedures to penalise the lack of diligence on the part of states in implementing universal rights intended to protect against poverty is, at present, fairly random.¹⁹⁴

While the review process based on reports followed by international committees (for example, the UN Committee on Economic, Social and Cultural Rights, the International Committee for the Elimination of Discrimination against Women, the International Committee of the Rights of the Child) and European committees (for example, the European Committee of Social Rights) has given rise to a fairly demanding doctrine in terms of respect for human rights, including in the social field, referral to the courts has so far produced only moderate results.

The courts often take shelter behind a democratic argument, based on the separation of powers and claim that it is for parliament to make budgetary choices, as the courts have no legitimacy to decide on general questions

194. Roman 2010.

of an economic or social nature.¹⁹⁵ Other courts may not totally decline jurisdiction but may, using the same argument, justify limited control. For example, the European Court of Human Rights emphasises the national margin of appreciation “when, as in the present case, the issues involve an assessment of the priorities in the context of the allocation of limited State resources. In view of their familiarity with the demands made on the health-care system as well as with the funds available to meet those demands, the national authorities are in a better position to carry out this assessment.” A similar interpretation is to be found in Canada, Germany, France and Israel, where the constitutional courts have justified the restrictive nature of their control by citing the political sovereignty of parliament in deciding on the social measures required by the rights set out in the constitution.

There is therefore a very clear differential between the pro-effectiveness interpretation made by the committees and quasi-judicial bodies, and the interpretation made by the courts themselves, which are anxious to uphold the prerogatives of political power and are reluctant to verify the suitable, reasonable and comprehensive nature of social programmes. It would seem that one of the ways of overcoming this situation would be to highlight the not only moral and political but also legal responsibility of states to implement programmes which guarantee the effective enjoyment of all human rights.

This, for example, is the approach pursued by the European Committee of Human Rights and by the UN Committee on Economic, Social and Cultural Rights, which underlines the fact that the 1966 International Covenant on Economic, Social and Cultural Rights “empowers the poor by granting them rights and imposing legal obligations on others, such as States. Critically, rights and obligations demand accountability: unless supported by a system of accountability, they can become no more than window dressing. Accordingly, the human rights approach to poverty emphasises obligations and requires that all duty-holders, including States and international organisations, are held to account for their conduct in relation to international human rights law. In its General Comment No. 9 (1998)

195. This is particularly true of the Irish and American supreme courts. In the United States, the Supreme Court declared that “the 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.” SC, *Dandridge v. Williams*, 397 US 471 (1970).

on domestic application of the Covenant, the Committee remarked upon mechanisms of legal accountability for State parties. As for other duty-holders, they must determine which accountability mechanisms are most appropriate in their particular case. However, whatever the mechanisms of accountability, they must be accessible, transparent and effective" (UN 2001, paragraph 14).

In point of fact, there are a number of indicators to assess the extent to which the public authorities honour the commitments they have undertaken in pursuit of social cohesion and therefore combating poverty. In the context of the Council of Europe, reference should be made primarily to the case law of the European Committee of Social Rights and to the methodological guide on the development of social cohesion indicators.

These indicators can serve as standards for assessing the efforts exerted by states in the fight against poverty. By making the transition from moralising to actual application of the rule of law, including the fight against poverty in the scope of human rights would emphasise the legally enforceable obligation incumbent on public stakeholders to take up the challenge of building an inclusive society, based on the values of equality, dignity and solidarity.

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HUMAN RIGHTS OF PEOPLE EXPERIENCING POVERTY IN EUROPE: STANDARDS, OBSTACLES AND PERSPECTIVES OF PROTECTION IN COUNCIL OF EUROPE INSTRUMENTS

PART 1: THE EUROPEAN CONVENTION ON HUMAN RIGHTS

Johannes Gerds

1. Introduction

The European Union has committed itself to three goals in order to achieve more sustainable growth in Europe in this decade: the Strategy 2020 defines a European employment rate of 75%, school drop-out rates below 10% and a reduction in the number of people in or at risk of poverty by 20 million people as its main cornerstones.¹⁹⁶ All member states will set up their own programmes to achieve these goals. Moreover, the EU has declared 2010 as the European Year for Combating Poverty and Social Exclusion.¹⁹⁷ The Council of Europe set up a “New strategy and action plan for social cohesion” aimed at building an inclusive and more equal Europe by implementing social rights and protecting vulnerable groups of society.¹⁹⁸ Moreover, the Committee of Ministers adopted “Guidelines on improving the situation of low-income workers and on the empowerment of people experiencing extreme poverty”¹⁹⁹ and the Congress of Local and Regional Authorities of the Council of Europe adopted Resolution 182 (2004) on fighting severe poverty in towns: the role of local authorities. The Council of Europe Commissioner for Human Rights emphasised there is a long way to go to “end poverty”, and concerted actions of the member states will be necessary to fight child poverty, the exclusion of “hundreds of thousands of elderly persons” and discrimination against large numbers of Roma in Europe.²⁰⁰

196. For up-to-date details on the strategy see the European Commission’s website at: <http://ec.europa.eu/europe2020>.

197. www.2010againstpoverty.eu.

198. See Council of Europe 2010.

199. At its 1084th meeting on 5 May 2010.

200. Cf. the “human rights comments” by the Commissioner for Human Rights, Thomas Hammarberg, at <http://commissioner.cws.coe.int>.

The legally binding guarantees of human rights in Europe contribute to these goals and efforts, while it is clear that they will not alone eradicate poverty. The link between human rights and poverty has been explored quite closely by different academic authors during recent years.²⁰¹ A human rights approach to poverty shifts the viewpoint from a policy of voluntary charity to a matter of legal international obligations. Correspondingly, those affected are able to claim rights, improving their self-consciousness, instead of relying on the goodwill of society. Poverty is no longer seen as the personal failure of individuals, but a deprivation of basic human rights by the state, a malfunction in fulfilling its obligations towards its people. This approach is based on the principle of human dignity, being the *raison d'être* of all human rights.²⁰² It does not deny individual responsibility for one's well-being, but rather tries to provide the basic conditions to make use of individual capacities. Moreover, it does not aim at implementing a uniform social protection system all over Europe, because nationally, regionally and locally adapted strategies are essential, but rather at providing a legal framework of priorities.

To make it effective, a clear and focused definition of poverty is necessary. As poverty is a multidimensional and far-reaching problem, it can hardly be defined in one catchphrase. Classically, poverty has been seen as being unable to achieve the minimum standard necessary to meet basic needs in order to lead a dignified life, relying strongly on economic exclusion.²⁰³ Today, it is widely accepted that this is only one aspect; other factors are humiliation and social exclusion, and lack of access to services and personal opportunities.²⁰⁴ Following the approach of Amartya Sen, poverty is the "deprivation of basic capacities"²⁰⁵ to live in dignity. Internationally used indicators of poverty are the absence of basic shelter, food, clean water, education and access to central public services including legal aid, and a very low total income.²⁰⁶

From a legal perspective, poverty is by definition a violation of the human right to be free from poverty, as contained in Article 30 of the

201. For example, UN Sub-Commission on Prevention of Discrimination and Protection of Minorities/Despouy 1996: paragraph 98 ff; Alston 1991; and work within the European Union constitution project: Maciotti 2003: p. 43 ff.

202. Van Bueren 1999: 680.

203. See Türmen 2007: 447.

204. World Summit for Social Development, Copenhagen Declaration on Social Development, Copenhagen, 1995, Part C, Commitment 2; Despouy 1996: paragraph 125 ff; Skogly 2002: 60.

205. Sen 2000: 87.

206. See the study of the World Bank in Narayan et al. 1999 and 2000.

revised European Social Charter, which so far lacks a sufficient number of ratifications for it to be a common European commitment. Therefore, a closer look at the indirect effects of other human rights representing a wider consensus on poverty is required. Beside the so-called “social rights” such as the right to education, housing, food, shelter, employment and health,²⁰⁷ many “civil rights” like the freedom of expression, the right to vote, to be free from degrading treatment or the guarantee of property may be violated. Poverty is therefore, on the one hand, a problem of single and enumerable human rights violations, and, on the other, also a denial of the basic idea of human rights, which guarantee universal effective access to basic human needs. Poverty is hence an especially illustrative example of the interdependence of all human rights.²⁰⁸ Emphasis will therefore be put on guarantees ensuring their practical exercise.

Based on a stocktaking of the existing human rights framework affecting people in poverty, I will explore what is still missing in order to guarantee a sufficient standard of protection and how it could be accomplished in the future. The categorisation of specific “groups” of people serves the sole purpose of identifying specific human rights violations, as has also been established by the case law. It does not mean to stigmatise people or mark them as homogeneous or static groups.

Without disregarding the human rights instruments addressing poverty at the global level, especially the United Nations Universal Declaration of Human Rights and the covenants on civil and social rights,²⁰⁹ this work will focus on the European standards developed by the Council of Europe, namely the European Convention on Human Rights (the “Convention”) and the European Social Charter (the “Charter”) as well as the relevant case law of the European Court of Human Rights (the “Court”) and the European Committee of Social Rights (the “committee”). Examining the Charter of Fundamental Rights of the European Union would also go beyond the scope of this report.²¹⁰ This article (one of two) deals with the European Convention on Human Rights and its impact on poverty, while the second will address the European Social Charter.

207. Acknowledged by the World Summit for Social Development, Copenhagen Declaration on Social Development, Copenhagen 1995, Part C, Commitment 1 (f); Dierckx 2010: 57.

208. Despouy 1996: paragraph 176.

209. For details of the UN’s work on poverty see Skogly 2002: 59 ff.

210. The EU level has been intensively dealt with by Benlolo-Carabot 2010: 71 ff.

2. Poverty-related human rights in the European Convention on Human Rights (ECHR)

In contrast to Article 30 of the revised European Social Charter, there is no direct human right to be free from poverty under the Convention. Following the traditional distinction between civil and social rights, the ECHR was meant to deal with the first category alone.²¹¹ However, on second reading we find three indirect ways in which the ECHR affects people living in poverty. First of all, there are still rights directly dealing with social questions (see below 2.1), whilst others have an indirect influence on certain aspects of poverty (2.2). And, as already mentioned above, special attention will have to be drawn to effective access to rights, including participation in legal and political processes (2.3).

2.1. Human rights directly addressing social questions

2.1.1. Right to education

Although the right to education falls into the category of the so-called “social rights”, it is protected under Article 2 of Protocol No. 1 of the Convention,²¹² giving further support to the principle of the indivisibility of human rights. This right has a broad scope covering basic, higher and secondary education²¹³ and could have a great impact on people experiencing poverty, as effective access to education is a central prerequisite for the success of any anti-poverty strategy. Already in a very early judgment, the Court ruled that everyone has “a right of access to educational institutions existing at a given time” and “to obtain ... official recognition of the studies which he has completed”.²¹⁴ However, this seemingly strong statement did not lead to greater impact of the right to education. It has so far only achieved greater recognition in combination with the prohibition of discrimination. In most of the cases based on Article 2 alone, no violation was found, despite the difficult economic circumstances the applicants faced.²¹⁵

211. A comprehensive overview of the few existing social rights in the ECHR appears in Gallant 1996: 10-19.

212. From now on referred to as “Article 2”.

213. Prevailing case law since *Mürsel Eren v. Turkey*, 7 February 2006, Application No. 60856/00, overruling the earlier decision by the Commission in *X. v. the United Kingdom*, 13 March 1975, Application No. 5962/72, Decisions and Reports 2, paragraph 50 ff.

214. *Case relating to certain aspects of the laws on the use of languages in education in Belgium v. Belgium*, 23 July 1968, Application Nos. 1474/62, 1677/62, 1691/62, 1769/63, 1994/63 and 2126/64.

215. In *Lee v. the United Kingdom*, 18 January 2001, Application No. 25289/94, paragraphs 110-17, the children of Roma had to change schools several times after eviction from their home.

Two reasons can be identified for the minor role of the right to education in practice: first of all, the right to access in the view of the Court does not include “such a right to education as would require them [the states] to establish at their own expense, or to subsidise, education of any particular type or at any particular level”.²¹⁶ There is so far no commitment to a positive approach to this provision, asking the states to practically grant effective access to the whole education system and giving everyone an equivalent right according to his or her abilities, with a special view to the needs of poor and marginalised people. Nevertheless, some authors claim that the Court has already accepted such an obligation, arguing that it stresses the importance of a plural, general, state education for a democratic society.²¹⁷ But so far, an explicit statement of such an obligation in the case law is absent. On the contrary, the reluctance of the Court to implement such a positive obligation²¹⁸ and the strong controversies in the drafting process²¹⁹ argue for the opposite. In the cases of evictions of Gypsy people from their land, it was held that there is no right to access to schools adapted to the needs of such minorities and, more specifically, no obligation of the state to ensure that children can stay in a school of their choice (even if they meet the academic requirements), as long as education is generally available to everyone.²²⁰ In practice, the state is therefore not obliged to remove the significant indirect obstacles hindering the further education of people in poverty, such as the need of young people to work to support their family, special disadvantages due to the lack of family support or even bad conditions in schools in poor areas.

Secondly, there is no right to free access to education for people experiencing poverty. The question of the conformity of school and university fees with Article 2 was first raised in a case concerning the exclusion of foreigners from higher education, who were unable to pay the special non-citizens’ fees. The case is still pending and was declared admissible regarding Article 2 of Protocol No. 1, and articles 8 and 14 of the

216. *Case relating to certain aspects of the laws on the use of languages in education in Belgium v. Belgium*, 23 July 1968, Application Nos. 1474/62, 1677/62, 1691/62, 1769/63, 1994/63 and 2126/64.

217. Frowein and Peukert 2009: 673.

218. Overview in Jacobs and White 2006: 377 ff.

219. See the declarations and reservations of Andorra, Azerbaijan, Bulgaria, Georgia, Germany, Ireland, Malta, Moldova, Netherlands, Romania, “the former Yugoslav Republic of Macedonia”, Turkey and the United Kingdom at <http://conventions.coe.int>.

220. *Coster v. the United Kingdom*, 18 January 2001, Application No. 24876/94; *Smith (Jane) v. the United Kingdom*, 18 January 2001, Application No. 25154/94; *Lee v. the United Kingdom*, 18 January 2001, Application No. 25289/94.

Convention.²²¹ While it seems clear that Article 2 does not totally ban educational fees,²²² an obligation in line with the wording of the provision would be that of providing – within the margin of appreciation – financial help to people facing poverty in terms of educational fees and subsistence. It would still be left to the states to decide about the way in which support should be granted, for example via the introduction of scholarships, reduced fees or student credits.

Regarding discriminatory obstacles to educational access, the Court's case law has evolved by taking greater account of the broader context of the individual case and granting special protection to vulnerable minorities.²²³ The former ruling of the Chamber that "it is not its task to assess the overall social context" of the educational system but only "to examine the individual applications before it"²²⁴ has been overruled to some extent by the Grand Chamber.²²⁵ Consequently, the "special schools" in the Czech Republic, predominantly attended by Roma children, which for the Chamber stayed within the margin of appreciation of the state, now constitute a violation of Article 2 read in conjunction with Article 14 (prohibition of discrimination) of the Convention. Recently, this reasoning has been applied to the "special classes" in Greece and Croatia, because they were diminishing opportunities for further education and finding employment in the future.²²⁶

In general, a closer look at the hidden and indirect hindrances to access to education for the poor, referring to the overall education system, is needed to grant this right to everyone in practice, and not only as a hypothetical opportunity. It should be clear to everyone that

221. *Ponomaryov and Others v. Bulgaria*, 18 September 2007 (partly) and 10 February 2009 (final), Application No. 5335/05.

222. In this direction: Frowein and Peukert 2009: 672.

223. Judge Borrego Borrego was very critical of this approach in his dissenting opinion, drawing on the role of the Court as solely protecting individual rights and the false approach of looking at the overall situation of the Roma people; interestingly, in the dissenting opinion of Judge Jungwiert – to which Judge Borrego Borrego expresses his full agreement – he argues that the Court has not taken into account the whole background of the case, as the "special schools" had been designed to tackle the severe education problems of Roma.

224. *D.H. and Others v. the Czech Republic*, Chamber judgment of 7 February 2006, Application No. 57325/00, paragraph 45.

225. *Ibid.*, paragraphs 205-10.

226. *Sampanis and Others v. Greece*, 5 June 2008; *Oršuš and Others v. Croatia*, 16 March 2010, Application No. 15766/03, paragraphs 180-86, overruling the judgment of the Chamber of 17 July 2008 on the same matter.

positive policy measures are necessary to balance disadvantages due to the less beneficial environment of some children, and grant effective access to the right to education. If this is so, it should also be clear that close judicial monitoring of progress is needed. But so far, Article 2 is limited concerning further judicial interpretation, as the negative wording of the provision and its *travaux préparatoires*²²⁷ indicate the strong resistance of the contracting parties to judicial supervision of progressive standards.

2.1.2. *Guarantee of property*

The guarantee of property touches the core issue of the economic and social order within society. It is therefore not surprising that it was not part of the original Convention, but was introduced later in Article 1 of Protocol No. 1 to the Convention.²²⁸ Additionally, several countries made declarations or reservations regarding this right, and two Council of Europe members did not ratify it.²²⁹

- (a) The protection of social aid. The impact of Article 1, securing private property, in the fight against poverty originates from the Court's broad understanding of "possessions". It includes all forms of legitimate claims and assets, especially social security allowances that are guaranteed by the state in form of a right.²³⁰ Although not all cuts in social security allowances immediately lead to poverty, there is often a strong correlation. This is especially true for unconditional minimum social or emergency aid, providing an important tool in the fight against the worst forms of poverty, which are sometimes called "extreme poverty".²³¹ For a long time, there was much uncertainty as to what extent social security allowances were protected in the case law.²³² Some judgments suggested that individual payments of fees were necessary to acquire a

227. See European Court of Human Rights (1967); a comprehensive summary can be found in the *Case relating to certain aspects of the laws on the use of languages in education in Belgium v. Belgium*, 23 July 1968, Application Nos. 1474/62, 1677/62, 1691/62, 1769/63, 1994/63 and 2126/64.

228. In the following referred to as "Article 1".

229. Eight declarations and reservations were forwarded. Monaco and Switzerland have not ratified the protocol; for an updated list see <http://conventions.coe.int>.

230. General definition in the Grand Chamber decision in *Gratzinger and Gratzingerova v. the Czech Republic*, 10 July 2002, Application No. 39794/98, paragraph 69.

231. Cf. Andreassen and Banik 2010: 4 ff.

232. See Jacobs and White 2006: 353 ff; Gómez Heredero 2007: 22-30.

“possession”.²³³ As the condition of prior payments by the individual would primarily exclude the most basic emergency aid, the clarification later given by the Court contributed strongly to protection of the poorest. In the *Stec* case, it found that “[i]n the modern, democratic State, many individuals are, for all or part of their lives, completely dependent for survival on social security and welfare benefits. Many domestic legal systems recognise that such individuals require a degree of certainty and security, and provide for benefits to be paid – subject to the fulfilment of the conditions of eligibility – as of right. Where an individual has an assertable right under domestic law to a welfare benefit, the importance of that interest should also be reflected by holding Article 1 of Protocol No. 1 to be applicable.”²³⁴ Even regarding the granted protection of social security allowances, the legal safety net remains very fragile. First of all, the Court holds that “[t]his provision places no restriction on the Contracting State’s freedom to decide whether or not to have in place any form of social security scheme, or to choose the type or amount of benefits to provide under any such scheme”.²³⁵ Only where such a system already exists and guarantees a certain amount of money, this sum may be protected by the Convention. Moreover, the Chamber clarified in *Moskal v. Poland*²³⁶ that all conditions of the national law have to be fulfilled before a property right arises.

233. See *Gaygusuz v. Austria*, 16 September 1996, Application No. 17371/90, paragraphs 39-41, dealing with the Austrian emergency assistance system, which is conditional on payments to the unemployment insurance fund. Subsequently, in the case of *Andrejeva v. Latvia*, the Court found a violation of Article 1 in conjunction with Article 14 by a pension system excluding foreigners and the stateless. The applicant, who had worked in Latvia during the Soviet period for 24 years, received a pension of only €35 per month when she applied in 1997, the authorities arguing that the solidarity-based Soviet pension system could not be transferred to the new pension scheme.

234. *Stec and Others v. the United Kingdom*, admissibility decision of 6 July 2005, Applications Nos. 65731/01 and 65900/01, paragraph 51; judgments prior to this one are therefore only of little value.

235. *Moskal v. Poland*, decision on admissibility, 15 September 2009, Application No. 10373/05, paragraph 38.

236. *Ibid.*, paragraph 40; in the mentioned case, the applicant had failed to apply for the pension before the national authorities. The refusal to grant any pension therefore did not constitute a violation of the guarantee of property. The fact that the person was in principle entitled to the pension, that the paid social benefits were insufficient to lead a decent life and that there had been no information by the authorities about her right could not change the ruling; see also *Larioshina v. Russia*, 23 April 2002, Application No. 56869/00.

This limits the relevance of the provision for the poor and their protection against discrimination and ill-founded cuts in already acquired claims. The case law confirms that the guarantee of private property is naturally limited in providing social protection, as it was originally aimed at providing the liberal freedom to individual possessions rather than securing the basic needs of everyone. Nevertheless, it secures the protection of social benefits against arbitrary cuts: these have to be balanced and justified by economic necessities in all cases.

- (b) The protection of housing. People living in extreme poverty most often lack the means to buy or rent houses or flats; instead they may inhabit abandoned buildings or build shacks without planning permission in “poor areas”. Here, the question arises as to whether Article 1 protects their home, although it is not recognised by national law as a legal possession. A very shocking example is the case of *Öneryildiz v. Turkey*.²³⁷ A slum area in Istanbul, built without any planning permission, was situated next to a large rubbish tip. Although the authorities were aware of possible dangers, nothing to change the situation was done for five years. One day, a huge methane explosion at the tip led to a landslide destroying many houses and killing 39 people. The Court concluded that Turkey had also violated Article 1, as maybe not the land, but the destroyed houses and furnishings were possessions of the people. By tolerating the slum for a long time, the authorities had raised in the people a well-founded expectation of staying there.²³⁸

The judgment left open whether unlawfully established homes in general could be viewed as possessions. As Article 1 has been defined in an autonomous way by the Court,²³⁹ one might assume that national law is not relevant. On the other hand, however, the Court stated in a slightly different context that the legal status of the home under national law is of great importance under the Convention.²⁴⁰ The practical relevance may not be significant, as in most cases the state will know of the slums and tolerate them. But in cases where the state has notified the inhabitants sufficiently in advance of planned evictions, the question of compensation for the

237. Judgment of 30 November 2004, Application No. 48939/99.

238. *Ibid.*, paragraphs 127-9.

239. *Gasus Dosier- und Fördertechnik GmbH v. the Netherlands*, 23 February 1995, Application No. 15375/89, paragraph 53.

240. *Chapman v. the United Kingdom*, 18 January 2001, Application No. 27238/95, paragraph 102.

loss is still not answered. In this context the Court should consider the importance of the home – however poor it may be – as being often the only possession of people in extreme poverty and the only safeguard against homelessness. Additionally, in certain cases the right to a home in Article 8 might provide further protection; this will be explored below.

- (c) The right to earn one’s living by work. Some authors argue that the guarantee of property has to a certain extent evolved into a “right to earn one’s living by work”.²⁴¹ Evidence for this view can be found in some judgments insofar as property is not limited to belongings in the classical legal sense, but may include the economic or natural basis to secure human existence. In two cases concerning evictions from land that generated income for the inhabitants, the Court accepted that such economic activities fall within the scope of Article 1 of Protocol No. 1.²⁴² But one should not be misled: it is too early to conclude that a general right of this kind has already been accepted by the Court. Only where the secured, unchallenged and long-lasting possession of land comparable to its ownership has taken place can such economic interests be protected. Moreover, it is not clear whether Article 1 also applies to “illegally” occupied land, for which no planning permission or other authorisation has been obtained. As many poor residential areas in Europe have still not been “legalised”, granting protection under the Convention against forced evictions – at least some form of compensation – would give the people affected a form of security.
- (d) Adverse effects on the fight against poverty. On the contrary, Article 1 even establishes obstacles to the fight against poverty if the policy conflicts with private property. First of all, Article 1 naturally strongly protects the right of the owners to make unhampered use of their property, including their interest to evict indigent tenants.²⁴³

States may also be hindered in implementing housing programmes that rely on private property, for example fixing low rents over a longer time to counter homelessness. Such policies can only be in

241. Marguénaud and Mouly 2006: 477.

242. *Lallement v. France*, 11 April 2002, Application No. 46044/99, paragraphs 15-24 (French only); *Doğan and Others v. Turkey*, 29 June 2004, Application Nos. 8803-8811/02, 8813/02 and 8815-8819/02, paragraph 138 ff.

243. See the decision in *Hutten-Czapska v. Poland*, 19 June 2006, Application No. 35014/97.

conformity with the Convention when a balance between the public interest in fighting poverty and the private interest of the landlord to make profits is respected.²⁴⁴ However, although the Court has referred in particular to protecting the dignity of vulnerable people as a legitimate aim, and the states' margin of appreciation in weighing the interests,²⁴⁵ market limitations regarding rents remain possible.²⁴⁶

2.1.3. *Prohibition of slavery and forced labour*

Article 4 of the Convention does not only prohibit "historical" slavery, but also modern forms of forced labour including "servitude". Servitude is defined as "the obligation to perform certain services for others ... [and] the obligation for the 'serf' to live on another person's property and the impossibility of altering his condition".²⁴⁷ For people in this situation, a system of effective criminal and civil prosecution is necessary, since the victims are seldom in a position to help themselves.²⁴⁸ Therefore, the Court's unanimous finding that the lack of effective criminal-law legislation creates a violation of the Convention²⁴⁹ is a step forward in the fight against servitude.

244. *Ghigo v. Malta*, 26 September 2006, Application No. 31122/05.

245. *Urbarska Obec Trencianske Biskupice v. Slovakia*, 27 November 2007, Application No. 74258/01; *Spadea and Scalabrino v. Italy*, 28 September 1995, Application No. 12868/87; *James and Others v. the United Kingdom*, 21 February 1986, Application No. 8793/79.

246. A good example of compliance with Article 1 is the Austrian 1981 Rent Act, fixing rents below the market price (on average 80% of it) according to certain criteria, see *Mellacher and Others v. Austria*, 19 December 1989, Application Nos. 10522/83, 11011/84 and 11070/84. On the other hand, the dissenting opinion by five judges shows the risk of not finding the right balance between the public interest to affordable housing and the private profit interest, which remains a somewhat subjective task: *ibid.*, dissenting opinion of Judges Cremona, Bindschedler-Robert, Gölcüklü, Bernhardt and Spielmann, arguing that "the interferences in question do not satisfy the proportionality requirement" and that there "was a failure to respect the requisite fair balance".

247. *Droogenbroeck v. Belgium*, 5 July 1979, Application No. 7906/77, paragraph 72.

248. Such treatment often contains the worst living conditions of the victim, illustrated recently in the case of *Siliadin v. France*: the applicant, a 15-year-old Togolese girl, had been brought to France to work in different households for 15 hours per day, without days off, sleeping on the floor in the children's bedroom, wearing second-hand clothes. Her fear of being caught by the police as an undocumented migrant and her economic dependency gave the "host" family absolute power over her personal freedom: during more than four years, she was neither allowed to leave the house nor to spend time on her own. *Siliadin v. France*, 26 July 2005, Application No. 73316/01, paragraphs 10-17.

249. *Ibid.*, paragraph 148 ff.

Another form of modern slavery is human trafficking, occurring in multiple forms, but most frequently concerning women from eastern Europe or Asia, moved to central or western Europe, followed by forced prostitution or other degrading treatment. The dramatic living conditions of these women and the failure of authorities to protect them from being exploited, beaten or even killed have been shown in a very recent case.²⁵⁰ Here, the Court gave a strong response to indifference towards this problem, by demanding effective prosecution mechanisms and an efficient state strategy to fight human trafficking.

A less serious question, but still of great importance to people experiencing poverty, is whether the conditionality of unemployment benefits on the acceptance of job offers can amount to forced labour. The Court has strongly rejected this view, as such a conditionality did not raise any issue under Article 4.²⁵¹ Nevertheless, the case gives rise to reflection on the necessary severity of sanctions by the employment authorities in cases of non-compliance.²⁵² The clear language of the case suggests that even penal consequences of the refusal to co-operate are not ruled out by Article 4.

Generally speaking, case law shows that the prohibition of servitude and forced labour is limited to the physical suppression of individuals rather than the exploitation of economic misery. Other forms of (economic) exploitation such as those of undocumented migrants working on construction sites, farms or in restaurants in terrible conditions are not addressed, as it has to be shown in every case that the “serf” had to live on the suppressor’s property and that it was more or less physically impossible to leave. This narrow interpretation hinders acceptance of the general idea behind the right guaranteed in Article 4: namely, the right to earn one’s living through work without force of any kind.²⁵³ Although a positive obligation of the member states to take effective preventive measures is proclaimed, we find a huge gap in the effective enforcement of this human right. While servitude still persists all over Europe, leading to great misery and the worst forms of poverty,²⁵⁴ the *Siliadin* case remains a unique example in

250. *Rantsev v. Cyprus and Russia*, 7 January 2010, Application No. 25965/04.

251. *Talmon v. the Netherlands*, 26 February 1997, Application No. 30300/96.

252. Jacobs and White 2006: 115.

253. Tulkens and Van Drooghenbroeck 2008: 108; regarding this right in general: Marguénaud and Mouly 2006: 477 ff.

254. Council of Europe Recommendation 1523 (2001), adopted on 26 June 2001, estimates that more than four million women were sold each year to work in servitude; Recommendation 1663 (2004), adopted on 22 June 2004, speaks of “thousands of people ... still held as slaves in Europe, treated as objects, humiliated and abused”.

the case law, indicating a problem of effective access to the right. Against this, multidimensional and consistent policies are necessary, including exit programmes for the victims to protect them against violence and give them a perspective to stay and make a living in the country.²⁵⁵ Otherwise, the victims will remain trapped in a situation of fear of deportation by the authorities and vengeance by their suppressors. An obligation of that kind is still missing under the case law of the Convention.

2.2. Human rights indirectly affecting poverty

In comparison to the rights directly addressing social issues, “civil and political rights” have only an indirect impact on the social situation of people experiencing poverty. Therefore, one might expect that the effects are more limited. Moreover, the question arises of whether observing individual rights violations is the proper method to deal with poverty. A theoretical as well as a practical link of the case law to the subject of poverty has been found for the following rights: the right to life, the prohibition of torture and inhumane treatment, the right to family life and privacy, the right to liberty and security, and the prohibition of discrimination.

2.2.1. Right to life

However strong the right to life that may be protected under the Convention and the case law of the Court, its impact in the struggle against poverty is marginal. As it is interpreted as only prohibiting the direct physical termination of human existence, it offers protection only where the life of people experiencing poverty is in ultimate danger.²⁵⁶ There is no positive obligation on the state to provide for basic human needs, such as food, clean water, basic shelter and health care, even if people’s lives are threatened.

- (a) Protection against physical assaults. According to the Court, the state’s obligation under this provision mainly refers to protection against physical assaults such as murder or suicide, and arises only if the state “knew or ought to have known ... of a real and immediate risk to the life of the identified individual”.²⁵⁷ In such cases, the state

255. For such an approach, see, e.g. the Council of Europe Convention on Action against Trafficking in Human Beings, 16 March 2005, signed by 43 and ratified by 33 member states of the Council.

256. See, e.g., *Kılıç v. Turkey*, 28 March 2000, Application No. 22492/93, paragraph 62; *Keenan v. the United Kingdom*, 3 April 2001, Application No. 27229/95, paragraph 89 ff.

257. *Keenan v. the United Kingdom*, 3 April 2001, Application No. 27229/95, paragraph 89 ff.

is obliged to take the necessary preventive measures to protect the individual against third-party assaults. It has not been decided yet whether such an obligation also arises in cases of a threat to life caused by natural or weather conditions, for example by extreme coldness endangering homeless people.

Concerning repressive measures, states have an obligation to undertake “some form of official investigation”²⁵⁸ in cases of (attempted) murder, irrespective of the legal steps taken by the victim or their relatives. Marginalised groups of society such as Roma²⁵⁹ or migrants²⁶⁰ in some parts of Europe are currently faced with the reluctance of the state to properly investigate attacks on them. As people experiencing poverty, such as the homeless, are often in greater danger of violent assaults and lack the means to initiate legal action against the offenders, public proceedings may be the only effective way to protect them. In cases of involuntary manslaughter, the Court does not generally oblige the judiciary to initiate criminal actions as long as a private suit is possible.²⁶¹ Here, the problem arises of whether people experiencing poverty can take the necessary legal action; and whether they might fail to fulfil the requirements of proof in civil proceedings without the help of the public prosecution service. As a consequence, the family of a victim may be left in poverty after its main provider was killed.

- (b) Material protection of victims and their families. An interesting – but so far unique – connection between Article 2 and poverty was made in the case of *Oyal v. Turkey*.²⁶² After a case of HIV infection being caused by deficiencies in public health care, the state refused to pay any compensation for the treatment and medication of the infected. The family, left alone to bear the costs, experienced severe poverty and indebtedness over a number of years. In the particular case before the Court, it based its judgment directly on their hardship, holding that the damages later granted by the Turkish court were insufficient to compensate it.²⁶³ In such special cases, where the state can be held responsible for an immediate danger to life, the Court

258. *Nachova and Others v. Bulgaria*, 6 July 2005, Application Nos. 43577/98 and 43579/98, paragraph 110.

259. For illustrations see *ibid.*, paragraphs 114-19; *Anguelova v. Bulgaria*, 13 June 2002, Application No. 38361/97, paragraphs 112-22, additionally relying on the death of the suspect in police custody.

260. *Rantsev v. Cyprus and Russia*, 7 January 2010, Application No. 25965/04.

261. *Calvelli and Ciglio v. Italy*, 17 January 2002, paragraph 51.

262. Judgment of 23 March 2010, Application No. 4864/05.

263. *Ibid.*, paragraph 71 ff.

seems to favour an interpretation of Article 2 that obliges the state to take care immediately of the well-being of the victim and their family, and protect them from poverty.

- (c) Health care measures against life-threatening illnesses. At present, the strongest effect of Article 2 on poverty results from the positive obligation to provide basic health care to people in a life-threatening situation. Case law indicates that there is a growing awareness of this obligation and a general will to accept it,²⁶⁴ but the requirements to receive practical protection by the Court are still very high. In general, case law more or less just protects physical human existence, namely the right to survive.²⁶⁵ What is missing is a commitment to the principle underlying all human rights: the guarantee of human dignity.²⁶⁶ The positive obligation of the state under Article 2 (in combination with Article 1) is more or less limited to providing criminal and civil legal procedures. The right to life does not include the right to a decent life.

2.2.2. *Ban on torture and inhuman treatment*

The ban on torture and inhuman treatment in Article 3 is one of the most fundamental and strongest provisions in the Convention. It makes no exceptions and allows no derogations even in the event of a public emergency.²⁶⁷

Therefore, it could be a very effective tool in eradicating poverty. There seems to be an obvious connection between poverty and the prohibition of inhuman treatment, as poverty in many cases consists of inhuman living conditions. But this is not the Court's view of the scope of this article, which primarily aims at prohibiting physical maltreatment similar to torture. The case law shows that poor living conditions "alone" shall not violate this provision; in fact "exceptional circumstances" of the case have to be presented. These generally require direct and active state intervention in the sphere of the individual. Only if a special relationship of subordination between the state and the individual exists, does the state have an obligation to take care of the poor. This implies a direct responsibility of the state for the aggression – or at least a total failure to

264. *Calvelli and Ciglio v. Italy*, 17 January 2002, paragraph 48 ff; *Nitecki v. Poland*, 21 March 2002, Application No. 65653/01.

265. Similarly, Imbert 1995: 92.

266. Türmen 2007: 449.

267. *Assenov and Others v. Bulgaria*, 28 October 1998, *Reports of Judgments and Decisions* 1998-VIII, p. 3288, paragraph 93.

protect the individual against well-known third-party assaults.²⁶⁸ In the words of the Court, the article only addresses treatment that “humiliates or debases an individual, showing a lack of respect for or diminishing his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual’s moral and physical resistance”.²⁶⁹

Moreover, even if the state directly interferes with the personal freedom of the individual, there is the additional prerequisite of a certain “severity” of maltreatment.²⁷⁰

The most recent case law generally stays on this track, although it does introduce certain aspects that might lead to a broader understanding in the future: in its already famous judgment of 21 January 2011, the Grand Chamber²⁷¹ held that the poor living conditions the applicant faced during his stay as an asylum seeker in Greece led to a violation of Article 3 and Article 13. It stated that although the national authorities had in general no obligation to guarantee a certain standard of living conditions, the very bad situation in Greece amounted to a violation of the positive obligation to allocate basic housing and food. Moreover, by sending the asylum seeker back to Greece in line with the Dublin II Regulation, Belgium also violated the Convention. The evolution of the case law lies in the conclusion that the living conditions of asylum seekers in Greece – on the streets without food or shelter, in fear of their personal security and without permission to work – in themselves amount to inhuman treatment.

From this starting point, it is not far to declaring a state’s failure to guarantee a minimum subsistence standard in order to lead a dignified life in general as a breach of the Convention. This would also help the other excluded groups of society, such as Roma, undocumented migrants or homeless people. But for the time being, a state’s failure to provide the very basic necessities of

268. *D. v. the United Kingdom*, 2 May 1997, paragraph 49; *Pretty v. the United Kingdom*, 29 April 2002, Application No. 2346/02, paragraph 52.

269. Prevailing case law, see *Gladkiy v. Russia*, 21 December 2010, p. 30; *Pretty v. the United Kingdom*, Application No. 2346/02, paragraph 52 with further references.

270. For example, in a case where a criminal suspect – without conviction – had been expatriated to a small island, living in poor conditions without cultural or social infrastructure but with a basic supply of housing and food, the Court dismissed the application referring to Article 3 in a single phrase; see *Guzzardi v. Italy*, 6 November 1980, Application No. 7367/76, paragraph 107.

271. *M.S.S. v. Belgium and Greece*, 21 January 2011, Application No. 30696/09; this judgment was already the subject of a debate in the European Parliament, on 15 February 2011, entitled “State of the European asylum system, after the recent decision of the European Court of Human Rights”.

life, such as food or shelter, is not generally regarded as inhuman treatment. The judgment in *M.S.S. v. Belgium and Greece* focuses strongly on the individual case and the Court has not explicitly given up its former position. A definition of the minimum living standard every state has to provide is also missing in the judgment. General guidelines securing the absolute minimum necessary to fight at least “extreme poverty” would strengthen the predictability of legal decisions in the future. The Court could here rely on the expertise of other organisations such as the World Bank, the OSCE, Eurostat²⁷² or the case law of the European Committee of Social Rights. A consistent and general approach to Article 3 would indeed be of great value in the fight against poverty.²⁷³

2.2.3. *Right to liberty and security*

In relation to poverty, Article 5 of the Convention has been important in relation to the liberty and security of certain vulnerable groups. As Article 5, paragraph 1.e, not only allows detention of alcoholics, drug addicts, the mentally ill and people with infectious diseases, but also of “vagrants”, it cannot be said to be a socially progressive right. It is easy to discover the deficiencies of the European Convention in fighting poverty by looking at the 60 years of development of social policy following the drafting of this provision.

But still, it did have a certain impact in older cases of vagrancy, where those aggrieved had been taken into state custody after having lost their jobs or homes. Such policies, treating poverty as a failure or even the misconduct of the individual, were quite common in the 19th and early 20th century.²⁷⁴ As times have changed, it would be likely that today the

272. Especially valuable at a European level seems to be the easily measurable definition devised by Eurostat, defining the poverty line as 60% of the median net income in a given state, although it does not take into account the multidimensionality of poverty, see Eurostat 2010: 37 ff.

273. See also Türmen 2007: 456.

274. In Belgium, legislation existed until the 1970s by which “aggravated” vagrancy was a criminal offence whilst “simple” vagrancy meant that “every person picked up as a vagrant shall be arrested and brought before the police court”. Special courts should then decide whether the persons before them were “able-bodied persons who, instead of working for their livelihood, exploit charity as professional beggars” and, if so, decide about detention in a “vagrancy centre” for up to seven years; quoted in *De Wilde, Ooms and Versyp v. Belgium*, 18 June 1971, Application Nos. 2832/66, 2835/66 and 2899/66, paragraph 36. It is remarkable to note that in its decisions on the Belgian Vagrancy Act the Court did not condemn this approach in general, but merely found a breach of Article 5, paragraph 4, because there were no sufficient hearings or access to a superior court; and even this decision was reached only by a majority vote of nine votes to seven; see *ibid.*, paragraphs 74-80 and the final conclusion.

Court would prohibit such general treatment, referring to the case law developed for the mentally ill or those addicted to alcohol.²⁷⁵

In the case of *Witold Litwa v. Poland*,²⁷⁶ the Court defined some general guidelines for the detention of drunken people. A moderately drunk person had been imprisoned for more than six hours because he had complained at a post office that his box had been opened. The Chamber clarified that such measures were only legal where they were necessary for the welfare of the prisoner and no less severe actions seemed possible. Similar principles apply to other vulnerable groups such as HIV-infected people, whose detention to prevent infections is in most cases disproportionate.²⁷⁷ Article 5 provides an effective safeguard against imprisonment of “disagreeable” people, as specific reasons for the measures have to be proved. People suspected of crimes can therefore neither be confined in a psychiatric hospital,²⁷⁸ nor can those with mental illnesses be confined in ordinary prisons.²⁷⁹

Contrariwise, the safeguards of Article 5, paragraph 1.f, for migrants and asylum seekers facing custody pending deportation are very weak. They do not enjoy equal treatment with nationals, as the measures do not have to be reasonable or proportionate; they only need to be in conformity with national law. In the *Chahal*²⁸⁰ case, the applicant faced the risk of being tortured or even killed in India after his deportation. Nevertheless, he was imprisoned pending deportation for six years by the British authorities. However, the Court could not see a violation of the right to liberty in this treatment.²⁸¹ This aspect of the case law has caused great criticism, as it leaves vulnerable people with very little protection against arbitrary detentions:²⁸² the only two ways in which a migrant can claim a violation of Article 5 are either to establish the illegality of the treatment under national law, or to show that *de facto* the reason for the detention was not deportation. The first strategy was successful in *Conka v. Belgium*, where a Roma individual had been fooled by the authorities asking him to come to the police station to finalise his asylum application, when in reality deportation

275. See below; in a similar manner Jacobs and White 2006: 144.

276. Judgment of 4 April 2000, Application No. 26629/95, especially paragraphs 77-80.

277. *Enhorn v. Sweden*, 25 January 2005, Application No. 56529/00.

278. *Varbanov v. Bulgaria*, 5 October 2000, Application No. 31365/96.

279. *Aerts v. Belgium*, 30 July 1998, Application No. 25357/94.

280. *Chahal v. the United Kingdom*, 15 November 1996, Application No. 22414/93.

281. Only the formal deportation decision was declared a violation of Article 3 of the Convention because of the life and torture risk.

282. Jacobs and White 2006: 157.

was planned.²⁸³ The problem persists that the Court does not see its role in monitoring the lawful application of national law, leaving it more or less to the national courts. The second possibility seems very difficult to justify, as the migrant will scarcely be able to prove that the imprisonment was for other reasons than deportation. Neither the length of the detention nor even explicit references by the authorities to reasons of “national security” are seen as sufficiently indicating such illegitimate “other reasons”.²⁸⁴

It can be said that the freedom of liberty contains no positive obligation to provide any effective access to the right. The case law concerning Article 5 focuses strongly on physical freedom; the prerequisites to make use of one’s personal freedom and to enjoy a minimum of economic and social security are not part of the right to liberty and security. It is obvious that this provision is limited in providing social rights, but the question as to the value of such a liberty for people who cannot afford to make use of it has to be asked. As long as it is not applicable to all human beings in a given state on an equal basis, it is even questionable whether Article 5 can be qualified as a human right.

2.2.4. *Prohibition of discrimination*

Under Article 14, unjustified unequal treatment regarding the human rights guaranteed by the Convention because of sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status is forbidden. Moreover, Protocol No. 12 has introduced a general ban on discrimination regarding all rights guaranteed by national law, although it has not yet seen much of an impact.²⁸⁵ As discrimination is often a cause of poverty, a strict non-discrimination policy can help to reduce it.

A strong instrument for people facing poverty is a ban on discriminatory treatment by the social security system in the context of Article 1 of Protocol No. 1. Therefore, widows’ pensions have to apply to men and women on an equal basis if “no objective and reasonable justification” exists for unequal treatment.²⁸⁶ The finiteness of the pension system’s

283. *Čonka v. Belgium*, 5 February 2002, Application No. 51564/99.

284. See *Chahal v. the United Kingdom*, November 1996, Application No. 22414/93, paragraph 15.

285. So far, only 18 states have ratified Protocol No. 12 and one violation was found in the case of *Sejdić and Finci v. Bosnia and Herzegovina*, 22 December 2009, Application Nos. 27996/06 and 34836/06.

286. *Willis v. the United Kingdom*, 11 June 2002, Application No. 36042/97, paragraph 39.

resources is in itself not a justification for inequalities. Likewise, access to the social security system cannot be denied to non-nationals unless “very weighty reasons” are put forward by the state.²⁸⁷

In contrast, what the ECHR does not effectively sanction is discrimination because of poverty itself, also called “povertyism”.²⁸⁸ Although it is addressed in the Convention insofar as the criteria of “social origin, property, birth or other status” are included, it is hard to find cases where such discrimination was found by the Court. As poverty largely results in severe discrimination all over Europe, perpetuating poverty for generations, it is indispensable to see poverty as a cause of discrimination, and not only as an effect. In this respect, a closer look at indirect discrimination, measures not directly aimed at discriminating against people, but in fact leading to the same consequences, is necessary to reveal all forms of hidden discrimination. So far, the Court has found examples of indirect discrimination in only three cases, none of which dealt with questions of social origin, property, birth or other status.²⁸⁹

Moreover, measures directly aimed at lifting out of poverty people who cannot help themselves may be necessary. For such “positive discrimination”, similar requirements to those needed for “negative discrimination” apply: there has to be a legitimate aim and the measure has to be proportionate.²⁹⁰ But these standards should not discourage states from implementing anti-poverty strategies, as the Court grants states a wide margin of appreciation where such programmes are involved.²⁹¹ The same test is used for systems of progressive taxation, which will generally comply with the Convention as long as the financial burden is not distributed in an extremely one-sided way.²⁹²

On the contrary, the Grand Chamber has pointed out that “factual inequalities” can even oblige the state to implement measures treating

287. *Luczak v. Poland*, 27 November 2007, Application No. 77782/01, paragraph 52.

288. *Killeen* 2008: 4.

289. *D.H. and Others v. the Czech Republic*, 13 November 2007, Application No. 57325/00; *Oršuš and Others v. Croatia*, 16 March 2010, Application No. 15766/03; and *Zarb Adami v. Malta*, 20 June 2006, Application No. 17209/02.

290. *Posti and Rahko v. Finland*, 24 September 2002, Application No. 27824/95, paragraph 83.

291. *Gillow v. the United Kingdom*, 24 November 1986, Application No. 9063/80, paragraph 66, regarding a public housing programme.

292. *National & Provincial Building Society, the Leeds Permanent Building Society and the Yorkshire Building Society v. the United Kingdom*, 23 October 1997, Application Nos. 21319/93, 21449/93 and 21675/93, paragraph 88.

vulnerable groups differently,²⁹³ while leaving the conditions for such a positive obligation open.²⁹⁴ Applying it to the subject matter, people experiencing poverty could ask to be treated in a more favourable way in terms of taxation, social allowances, housing or others to combat their disadvantages. For example, a state implementing a system of “universal flat-rate benefits”, requiring the same social security contributions to be paid by all citizens, would then violate the Convention. But taking into account the limited approach by the Court so far,²⁹⁵ such hopes remain illusory. Nevertheless, it should be emphasised that the eradication of poverty will not be achieved without combating the conditions for inequalities within a society, including some redistribution of income.

2.2.5. *Right to family life and privacy*

Article 8 of the Convention provides protection for the core of the private sphere, including the right to be left alone in one’s individual or family home, and the right of parents to raise their children, irrespective of their economic background. To illustrate its relevance to people facing poverty, there is one particular illustrative judgment: a young Gypsy family of seven settled on a “Gypsy site” run by the local authorities, because in their former traditional lifestyle of travelling they had experienced ever-increasing harassment. After a while, disputes arose with the authorities, which refused to accept payments by instalment for the site deposit, even though the family was not able to pay all in one go. In the following public investigation, the authorities claimed that the children of the family had “misbehaved and caused considerable nuisance at the site” and that their father came from a family that had been “a magnet for trouble”. The family received a notice to leave the site without any written reasons. At this time, at least three members of the family experienced severe illnesses. All children, except the youngest, went to the local school and some of them received additional coaching. All judicial proceedings by the family against this decision were unsuccessful and, finally, the family was forcefully evicted from the site by the police. In search of a place to

293. *Stec and Others v. the United Kingdom*, 12 April 2006, Application Nos. 65731/01 and 65900/01, paragraph 51.

294. See *Thlimmenos v. Greece*, judgment of 6 April 2000, Application No. 34369/97, paragraph 44.

295. E.g. in the *Case relating to certain aspects of the laws on the use of languages in education in Belgium v. Belgium*, 23 July 1968, Application Nos. 1474/62, 1677/62, 1691/62, 1769/63, 1994/63 and 2126/64, Part B, paragraph 11, the Court decided that this obligation is limited in its scope insofar as there is no right to education in any language of choice.

stay, the family went to a place where short-time stays were sometimes tolerated, but after a while they were banished again. From then on, the family had to move around, being allowed to stay nowhere for more than two weeks, the children not able to go to school.²⁹⁶

What we find here is the largely persisting discrimination against people already experiencing poor living conditions and the disregard of authorities even of their basic rights. Prejudices against the poor, seen as lazy or even criminal, combine with hostile attitudes towards minorities. The ignorance of severe breaches of human rights throw the victims into even deeper poverty.

2.2.6. *Right to lead a family life*

In the case law of the Convention, the right to raise one's children contains a defensive right insofar as unjustified state interferences are prohibited. The Court emphasises that allowing children to grow up in a "more beneficial environment" – meaning one of economic prosperity in another family – is not in itself a reason for taking children into state care.²⁹⁷ This negative layer of Article 8, paragraph 1, is an effective tool for people experiencing poverty to fend off prejudiced state decisions to take children into custody. Where such orders have been lawfully taken in the interest of the child, the rights to regular contact between the natural parents and the child and to the fastest possible reunification have to be respected.²⁹⁸

What seems to be missing is a stronger sensitivity to the already mentioned phenomenon of – often unintended – povertyism. Child care orders taken on the grounds of the economic situation of the family are discriminatory in nature. As long as no physical or mental harm to the child can be proved, parents experiencing poverty have the same right to raise their children as wealthy people.²⁹⁹ It is often seen that sensitivity is missing in such cases and the educational ideals of better-off groups of society are applied. The "wide margin of appreciation in assessing the necessity of taking a child into care"³⁰⁰ could and should – taking into account the human rights intrusion – be limited insofar as only "extraordinarily compelling reasons"³⁰¹ justify public care decisions.

296. *Connors v. the United Kingdom*, 27 May 2004, Application No. 66746/01, paragraphs 8-35.

297. *Haase v. Germany*, 8 April 2004, Application No. 11057/02, paragraphs 88-90, 95.

298. *Eriksson v. Sweden*, 22 June 1989, Application No. 11373/85, paragraph 71 ff.

299. *Gnahoré v. France*, 19 September 2000, Application No. 40031/98, paragraph 12.

300. *K. and T. v. Finland*, 12 July 2001, Application No. 25702/94, paragraph 155.

301. See *K. and T. v. Finland*, 12 July 2001, Application No. 25702/94, paragraph 168 referring only to new-born babies; to my mind, there is no convincing reason to distinguish according to the age of the child.

The group of people possibly in the largest danger of not being guaranteed a family life are migrants. Under the Convention, no right to migrate to or reside in a certain country exists for migrants. Notwithstanding this fact, Article 8 does contain the right to family unification where the members had lived together shortly before the deportation in a very close relationship, which has so far only been found to exist between husband and wife, and parents and children.³⁰² But even this partial protection is limited by the content of Article 8 in so far as it does not prohibit deportation. If the family's reunification is possible in the state of expulsion, the deportation is legal because the rest of the family could follow. This raises a number of other unresolved questions as to the practicability of this case law: it remains unclear whether economic or other reasons factually hindering the reunification, such as the inability to find a job in the new country or of the child to speak the national language, affect the legality of the deportation.

As the right to a family life can in practice only be realised when the necessary means to make a living subsist, the Court has developed a positive obligation of the state to enable families to lead their life together.³⁰³ But so far, there has been little clarification as to the extent of such positive measures. The Grand Chamber recently concluded that separating children from parents for reasons of inadequate housing violates the Convention because less drastic measures would have been possible, especially providing adequate housing to the family.³⁰⁴ Reading between the lines, it could be concluded that the state is obliged to provide adequate housing to families who cannot afford it.³⁰⁵ Indeed, family assistance payments would in many cases enable families living in poverty to make effective use of their human right under Article 8. But as long as the Court has not explicitly ruled in this way, I would again not draw such a wide-reaching conclusion yet, bearing in mind the allocations of resources involved. Referring to these, the Court constantly emphasises the large margin of appreciation of the member states and denies any obligation of the state under the Convention to provide for an adequate living standard.³⁰⁶

302. See, e.g. *X and Y v. the Netherlands*, 26 March 1985, Application No. 8978/80.

303. *Haase v. Germany*, 8 April 2004, Application No. 11057/02, paragraph 84.

304. *Wallová et Walla v. Czech Republic*, 26 October 2006, Application No. 23848/04 (French only).

305. In this way: Garcia 2007: 1121 ff.

306. *W., B. and R. v. the United Kingdom*, 8 July 1987.

2.2.7. *Right to a home*

In addition to the protection of property, the Court forbids arbitrary intrusions into the private residence in Article 8. All inhabitants can therefore file suits against ill-founded evictions or other invasions; it does in principle not matter whether they own or legally inhabit their home. But nevertheless, when it comes to providing housing to homeless people or socially deprived minorities, the case law shows a very reserved position.

One group of cases in the spotlight over the last few years concerns the UK's practice of evicting Roma and other Gypsy people from caravan sites.³⁰⁷ Although the Court takes into account the special lifestyles of these minorities, most of the cases were lost by the Gypsies, as the state measures had been applied "in accordance with the law" and after "diligently weighing the public interest of preserving the environment against the individual interests" of the Gypsy people.³⁰⁸

In this respect, more attention should be paid to the right of minorities to freely choose their way of living. There should be further considerations on some aspects:

First, the evictions could be considered as a form of discrimination under Article 8 in conjunction with Article 14, as they affect the lifestyle of Roma and Travellers, forcing them to give up their traditional life. In other contexts, the Court has ruled that measures aimed against a certain lifestyle are discriminatory.³⁰⁹ At least, it should consider whether to treat such measures as indirect discriminations.³¹⁰

Second, the real question in all cases was whether the failure of planning policy to provide a sufficient number of Gypsy parking sites was in itself a violation of Article 8;³¹¹ this point was not directly addressed

307. For an overview see the European Court of Human Rights Press Unit, "Factsheet – Roma and Travellers"; regarding the often confused terminologies of Gypsy, Roma and Travellers, see Bloise 2007: 7-10.

308. *Coster v. the United Kingdom*, 18 January 2001, Application No. 24876/94; *Lee v. the United Kingdom*, 18 January 2001, Application No. 25289/94, paragraphs 110-17; *Chapman v. the United Kingdom*, 18 January 2001, Application No. 27238/95, paragraphs 71-8.

309. Especially *Dudgeon v. the United Kingdom*, 22 October 1981, Series A No. 45, concerning criminalisation of homosexual relationships.

310. See the prevailing case law of *D.H. and Others v. the Czech Republic*, 13 November 2007, Application No. 57325/00; *Oršuš and Others v. Croatia*, 16 March 2010, Application No. 15766/03.

311. See, e.g. OSCE High Commissioner, "Report on the situation of Roma and Sinti of 7 April 2000", pp. 109-14, referring to the high number of denied planning applications by Gypsies in the UK (90% in 1991) and concluding that the "itinerant lifestyle which has typified the Gypsies is under threat".

by the Court. Its reasoning – that “while it is clearly desirable that every human being have a place where he or she can live in dignity and which he or she can call home, there are unfortunately in the Contracting States many persons who have no home”³¹² – leaves the question open as to whether special measures are necessary for an effective protection of deprived minorities. The Court’s argument – that unequal treatment of Gypsies in relation to other people who want to caravan would raise concerns under Article 14 – could be answered by referring to the legitimate reason of preserving cultural and social diversity, and the necessary measures of “positive” discrimination to achieve equal opportunities. As has been shown above, the equal treatment of people in unequal situations – here of caravanning Gypsies with people who do not depend on camping sites as their homes – can also be discriminatory.

Another category of people in need of the protection afforded by Article 8 are those who are not legally entitled to inhabit a home under Article 1 of Protocol No. 1, especially because they cannot afford the rent. Although the Court does not establish general safeguards against forced evictions of poor people, it provides some protection through procedural measures. In all cases, the person concerned has to be granted effective access to a judicial review of the eviction decision, including a decision about the proportionality of the measures.³¹³ The right to a home has some further relevance regarding discrimination (Article 14) in rent acts or other laws dealing with housing.³¹⁴

2.2.8. *Right to a clean environment*

The central right under the Convention guaranteeing a clean environment is, since the problem is not directly addressed, the right to respect for one’s private and family life, home and correspondence (Article 8). People affected by poverty are often hit much harder by pollution of the environment than the rest of society, as has been sadly experienced in the *Öneryıldız*³¹⁵ case. The people directly living beside the waste tip faced extreme health risks through contaminated drinking water, pollution of the air by toxic gases such as methane, and the spread of several

312. *Chapman v. the United Kingdom*, judgment of 18 January 2001, paragraph 99.

313. See, e.g. *Kay and Others v. the United Kingdom*, judgment of 21 September 2010, Application No. 37341/06.

314. In *Karner v. Austria*, judgment of 24 July 2003, Application No. 40016/98, the Court found a violation in the national law granting protection against sudden homelessness after evictions from rented flats only to heterosexual couples.

315. Judgment of 30 November 2004, Application No. 48939/99.

diseases. It is remarkable that these conditions were not the reason for the conviction, but only the later accident. The existence of slums in Europe today, without sufficient sanitation, health care, clean water or adequate shelter,³¹⁶ violates not only the right to private and family life, but also other Convention rights, such as the right to life or the ban on inhuman treatment. Bearing this in mind, promoting the right to a clean environment could help to reduce the consequences of poverty. But so far, the Court has been reluctant to implement such an approach.³¹⁷

The reverse is also relevant: violation of environmental rights can lead to “poor” living conditions for the people concerned, even if they were not considered as poor before. In this respect, the Court held in one case that Spain violated the positive obligation of the state to guarantee this right by allowing pollution of the environment by a waste incinerating plant. Here, it found that the placement of the facility directly adjacent to the house of the applicant led to unacceptable odours and health risks.³¹⁸ Moreover, in a small town in Italy, people had experienced major health problems over several years as a result of a nearby chemical factory. The Grand Chamber ordered Italy to pay compensation for non-pecuniary damages because it had failed to protect the people against the air pollution.³¹⁹

The greatest obstacle to more efficient protection of the poor against environmental risks remains the very indirect protection afforded by the right to a clean environment in the Convention. The references to the right to life and the right to property have been quite unsuccessful,³²⁰ and the protection via Article 8 remains limited. The right to a clean environment is not specifically protected here; only interferences with private or family life are prohibited. Only if the individual experiences severe consequences in her or his everyday life caused by the environment does the Convention afford protection. The Court itself pointed out that “Neither Article 8 nor any of the other Articles of the Convention are specifically

316. These conditions have been impressively shown in Röder 2006.

317. The cases of *Moreno Gómez v. Spain*, dealing with noise disturbances by bars and discotheques, or *Hatton and Others v. the United Kingdom* and *Powell and Rayner v. the United Kingdom*, both about the noise of the Heathrow airport, deal rather with problems of the better-off parts of society. It is important here that Article 8 is not seen in a contextual relation to the area concerned, but as granting the same standard of a clean environment everywhere, see judgment of 21 February 1990, Application No. 9310/81.

318. *López-Ostra v. Spain*, 9 December 1994, Application No. 16798/90, paragraphs 44-58.

319. *Guerra and Others v. Italy*, 19 February 1998, Application No. 116/1996/735/932.

320. See Council of Europe 2006: 21 ff., 41 ff.

designed to provide general protection of the environment as such; to that effect, other international instruments and domestic legislation are more pertinent in dealing with this particular aspect”.³²¹

2.3. Effective access to and enforcement of the Convention

When talking about obstacles to leaving situations of poverty, it is often not the standard of human rights protection that is blamed, but problems associated with access to their existing rights. As Hannah Arendt has pointed out, the “right to have rights” is of greatest importance in the struggle against exclusion.³²² Judith Butler has recently impressively emphasised the importance of empowering people to make use of their rights.³²³ One way of doing that could be the effective guarantee of what one might call “access rights”, rights that enable people to effectively enjoy their guaranteed human rights. The mechanisms here may be direct ones, such as the right to legal aid, or they may function in a more indirect way, like the right to vote. In the end, it remains to be seen whether the existing guarantees are sufficient to make the voices of the poor heard, since they are often the most invisible and disregarded people.

2.3.1. Positive obligations as general safeguards

Access to the Convention’s human rights is not a right in itself, but it is to some extent guaranteed as part of every individual article of the Convention. The state is obliged, according to Article 1, to make sure that people enjoy their human rights in practice, not only in legal theory.³²⁴ This includes positive obligations to remove obstacles that may be created by other individuals or natural conditions. Positive obligations are possibly the strongest – but maybe also the most controversial – tool of the Court in the fight against poverty and exclusion.³²⁵ They ensure the horizontal impact of human rights, as people can hold the state responsible for third-party interventions and other circumstances not directly linked to state actions. Moreover, it allows people experiencing poverty to require a certain conduct from the state, especially in effectively fighting conditions that hinder their enjoyment of their human rights.

321. *Kyrtatos v. Greece*, 22 May 2003, Application No. 41666/98, paragraph 52.

322. For a comprehensive overview see Gündoğdu 2006.

323. Butler 2004.

324. This is the central message in *Airey v. Ireland*, 9 October 1979, Application No. 6289/73, paragraph 26.

325. As to its nature see Jacobs and White 2006: 28 ff.

In a precedent related to Article 8, the Court stated already in 1979 that the Convention “does not merely compel the State to abstain from such interference: in addition to this primarily negative undertaking, there may be positive obligations” and that “the existence in domestic law of legal safeguards that render possible as from the moment of birth the child’s integration in his family” is “necessary to fulfil the state’s obligations”.³²⁶ These positive obligations “may involve the adoption of measures even in the sphere of the relations of individuals between themselves. While the choice of the means to secure compliance with Article 8 in the sphere of protection against acts of individuals is in principle within the State’s margin of appreciation, effective deterrence against grave acts such as rape, where fundamental values and essential aspects of private life are at stake, requires efficient criminal-law provisions. Children and other vulnerable individuals, in particular, are entitled to effective protection”.³²⁷

Unfortunately, recent evolution of these instruments has not held true to what the early statements promised. As we have already seen, these positive obligations remain a blunt instrument as long as they are merely supplementary to defensive rights. The revival of the idea of separating civil from social rights in the case law has somehow obstructed the effective access of everyone to their human rights. Positive obligations sometimes still seem to be viewed as part of social rights alone. Admittedly, eradicating the social conditions for poverty requires active policy measures, but the same can be said of many civil rights; and there is no alternative to positive action if everyone is to be enabled to make use of their rights in the Convention.

Were they used in a way to effectively conquer conditions of inequality within societies, they might contribute strongly to giving effective access to all human rights. Positive obligations ask the states to look at the deeper symptoms of human rights violations and to balance the powers within societies. The superiority of some actors is a major reason for poverty today. By limiting it, the position of people in poverty is strengthened, leading to the improvement of all their human rights. Positive obligations should be understood as measures to empower people facing poverty to make use of their human rights, and by doing so, once again strengthening democratic institutions.

2.3.2. *Right of access to a court*

The right of access to a court is a fundamental guarantee under Article 6 of the Convention. It is a major prerequisite for the effective exercise of

326. *Marckx v. Belgium*, 13 June 1979, Series A No. 31, pp. 14 ff., paragraph 31.

327. *X and Y v. the Netherlands*, 26 March 1985, Application No. 8978/80.

all other rights guaranteed in the Convention. The basic idea is that in all (civil) cases access to some form of a court has to be guaranteed. Some time ago, access to courts was often directly denied to some groups of people that were often especially vulnerable.³²⁸ Today, such forms of direct denial of access are not found often any more, and the Convention certainly had a stake in granting this universal right.

Instead, the central facet of the right of access to a court for people in poverty has become the right to legal aid. The denial of the right to legal aid to people lacking the necessary financial resources directly obstructs their way out of poverty.³²⁹ This right, which is not explicitly mentioned in the Convention, is found in the decision of *Airey v. Ireland*. There, the Court first stated that the Convention contains not only rights to be free from unjustified state interventions, but an obligation on the state to effectively guarantee the right to legal aid to people facing poverty.³³⁰

In this context, the free-of-charge access to the Court (Article 50 of the Convention) after exhausting all national remedies should also be mentioned as an important piece in the puzzle. It might have endangered, subject to further measures being taken, the effective access of people facing poverty to their human rights, if the suggestion in the current reform debate of introducing proceeding costs had been followed. Free access is complemented by the possibility of legal aid before the Court, covering the costs of legal representation, travelling and subsistence.³³¹ An obstacle here may arise from the practice of sending the submitted information on the financial situation of the applicant to the member state,³³² if it is not used with the greatest caution regarding the right to privacy.

The right to legal aid in Article 6 is limited in several ways. Legal aid is only granted where it is “necessary for a fair hearing” given the importance of the matter for the applicant, the complexity of the case and the individual capacity to defend oneself.³³³ Additionally, it only applies in “meritorious” cases, leaving some margin of appreciation to the states. Finally, Article 6 applies to civil proceedings only, meaning that – although the court follows

328. In the *Golder* case, which first developed this right, a prisoner was denied any appeal against a decision of the prison authorities. The Court found that a “universally recognised fundamental principle of law” had been violated here, see *Golder v. the United Kingdom*, 21 February 1975, Application No. 4451/70, paragraph 35.

329. Skogly 2002: 69 ff.

330. *Airey v. Ireland*, 9 October 1979, Application No. 6289/73, paragraph 26.

331. See Rules 100-05 of the Rules of the Court of 1 June 2010.

332. See Jacobs and White 2006: 476.

333. *Steel and Morris v. the United Kingdom*, 15 February 2005, Application No. 68416/01.

a broad definition – in a lot of social allowances cases falling under public law, there is no right to legal aid under the Convention. Bearing in mind the fundamental character of this right, it is at least surprising to see that it does not have a wider scope.

2.3.3. *Right to democratic participation*

Active and passive voting rights can be effective means to fight poverty, especially that of marginalised and ignored groups of society. Rights guaranteeing political participation in the wider sense in the Convention include the freedom of expression, the right to free elections and the freedom of assembly and association. It is still often the case that these rights are denied to people facing poverty who want to make their voices heard.

- (a) Right to free elections. Many obstacles still exist to the practical exercise of the right to vote by people experiencing poverty or exclusion. A recent example is the case of *Mólka v. Poland*,³³⁴ in which the handicapped applicant could not vote in the local elections because there were no provisions to enable wheelchairs to enter the polling room. This case is also an example of the limitations of Article 3 of Protocol No. 1 to the Convention, insofar as it only applies to “legislatures”, meaning that most local elections are not protected. Since it is most often the decisions of local governments or municipal councils that directly affect the rights of people experiencing poverty, this leaves a great gap in their protection.

The relevance of the active voting right was illustrated in a recent decision of the Grand Chamber, in which a violation of the active voting right in Article 14 of the Convention in conjunction with Article 3 of Protocol No. 1 was found because Roma and Jews were excluded from the House of Peoples and the presidency.³³⁵ It is very well established that Roma in the former Yugoslav region live in very poor conditions, unemployed or working in the grey economy, without adequate housing or access to education and health care.³³⁶ This precarious situation at least partly stems from the lack of recognition in political proceedings, making it easy to ignore the needs

334. Decision of 11 April 2006, Application No. 56550/00.

335. *Sejdić and Finci v. Bosnia and Herzegovina*, 22 December 2009, Application Nos. 27996/06 and 34836/06.

336. See, e.g. the “human rights comments” by the Commissioner for Human Rights, Thomas Hammarberg, at <http://commissioner.cws.coe.int>, especially one entitled “Austerity budgets will cause further child poverty”.

of Roma. In fact, the strong voice of minorities in the democratic process may lead to great progress in fighting poverty. It is therefore very welcome that this judgment is one of the strongest commitments to the principle of non-discrimination, because the relevant constitutional provisions here were the result of a very long process between the ethnic groups after the Yugoslav war and the central compromise to ensure lasting peace in the Dayton Peace Agreement of 1995. The dissenting opinion therefore argued that the unequal treatment was justified by the exceptional situation of the state.³³⁷

So far, no positive obligations of the states have been found in this regard. As some of the major deficiencies of political participation in Europe today, resulting in a decrease in voting especially among people facing poverty, are no longer linked to direct interferences by the state, further thought about actively removing the existing hurdles will be necessary. Indirect forms of exclusion from the political processes have to be identified, and incentives to everyone for active participation in political processes have to be considered.

- (b) Freedom of association. Article 11 of the Convention guarantees individual and collective freedom of all forms of associations including trade unions. It has been pointed out by the United Nations and its International Labour Organization that strong social partners can contribute positively in the fight against poverty. To this end, they need, on the one hand, independence and freedom from the state and, on the other hand, support and acceptance in their work. The negative state obligation of Article 11 guarantees the independent and effective work of NGOs helping vulnerable people.³³⁸ In this classical field of civil and political freedoms, the standard of protection seems to be sufficiently high. Although the negative safeguard is of greatest importance for NGOs pointing their finger at social grievances, the obligation to promote their work is at least of equal significance. In order to practically realise the right, state action to build legal, political and financial structures is needed to give a voice to the poor – and to listen to it. Guaranteeing the individual and collective freedom to form organisations alone is not sufficient,

337. *Ibid.*, partly concurring and partly dissenting opinion of Judge Mijovic, joined by Judge Hajiyev, and dissenting opinion by Judge Bonello.

338. In the case of the *Moscow Branch of the Salvation Army v. Russia*, the Chamber held that foreign, religious charity organisations have the right to establish a legal entity in order to act collectively; see judgment of 5 October 2006, Application No. 72881/01, paragraphs 71-98.

because people experiencing poverty, in contrast to workers forming trade unions, often lack the political and economic power to make themselves heard. So far, the Court has not found a single violation of the positive obligation of the state under Article 11; instead it constantly underlines the nature of the provision as a defensive right.³³⁹ Moreover, the Court stresses that no “particular treatment of trade unions or their members” is secured and that the provision “leaves each State a free choice of the means to be used to secure the right to be heard”.³⁴⁰ Where the rate of unionisation is not high enough to develop sufficient negotiation power, the state is not obliged to take any steps, as the right to collective bargaining is not part of the freedom to form trade unions.³⁴¹

2.4. Provisional conclusion

The fight against poverty is addressed indirectly by the Convention in many ways. In the last 30 years, the case law has evolved noticeably, but there still remains a long way to go. The Convention is limited in guaranteeing the human rights of the poor, both in a general structural way and in the more concrete case law. While limitations of the first category are very hard to overcome, the later ones may be changed in the short term. A structural problem of the Convention itself, which will not be fully overcome via the case law, is the historical distinction between civil and social rights, still very visible in the separate legal instruments at the European and global levels, limiting greatly the effective judicial fight against poverty.³⁴² The hierarchy between civil and social rights needs to disappear, in line with the idea of equality of all human rights and interdependence. Otherwise, from the perspective of people facing poverty, the impression could arise that “their rights” are treated as second-rate rights, whereas political and civil rights are the rights of the rich, whose primary concern is not to secure their everyday existence. The United Nations’ Universal Declaration of Human Rights is a good example of how the principle of indivisibility of

339. *Sørensen and Rasmussen v. Denmark*, 11 January 2006, Application Nos. 52562/99 and 52620/99, paragraph 58; *Wilson, National Union of Journalists and Others v. the United Kingdom*, 2 July 2002, Application Nos. 30668/96, 30671/96 and 30678/96, paragraph 41 ff; the “positive right” the Court refers to means the individual right to join associations in contrast to the “negative right” to keep away or withdraw from them, see *Gustafsson v. Sweden*, 28 March 1996, Application No. 15573/89, paragraph 45.

340. See *National Union of Belgian Police v. Belgium*, 27 October 1975, Series A No. 19, pp. 17 ff., paragraph 38 ff.

341. For a critical view, see Türmen 2007: 460.

342. See also Tulkens and Van Drooghenbroeck 2008: 106.

all human rights may be transformed into legal text. Its preamble begins with the “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family”, making human dignity the underlying principle of all human rights. Subsequently, many national constitutions have introduced human dignity as the most fundamental guarantee. The guarantee of basic social rights has not been achieved in the Convention, who only addresses a few social issues without any commitment to human dignity. This gap cannot be overcome by case law alone, some legislative measures will be necessary if a strong human rights approach to poverty is considered necessary. Another structural problem is linked to the general idea of “classical” human rights as rights in the relations of individuals with the state. They do not directly address other private actors, who – at least economically – often have stronger power than the state. Human rights can only be applied to these private actors via the state. As the power of the state is often limited in this relation, and the state has to take into account the human rights of these private actors when interfering with their rights, the influence of human rights in the private sector remains weak. Even if the positive obligations in the Convention can be further developed, they will not develop a similar strength as the negative ones.

Nevertheless, the Court could close this existing gap to some extent by relying on the principle of human dignity, which is a universal idea inherent in all human rights. In essence, this would mean to accept not only a right to physical existence, but a right to lead a life in dignity. An effective judicial protection of human rights of vulnerable people could take into account the broader circumstances of each case, since all human beings live in complex and multidimensional surroundings that affect their abilities to make use of all their human rights. Of greatest relevance are the “access rights”, which enable people living in poverty in particular to make use of their rights. So far, the danger persists that human rights are perceived as rights of the middle and upper classes. What sense does the right to privacy in the home have for homeless people? What is the value of the right to vote for people who are illiterate and therefore can neither read the ballot nor the party programmes, or who cannot afford the bus ticket to visit the polling station? In this respect, the Court may be reminded of its own statement in the *Airey* case, that “many of them [the civil and political rights] have implications of a social or economic nature”.³⁴³ Therefore, the absence of the recognition of basic “social rights” by the Court compromises the civil and political rights

343. *Airey v. Ireland*, 9 October 1979, Application No. 6289/73, paragraph 26.

of the Convention.³⁴⁴ This early, but nevertheless fundamental, judgment sometimes seems to have been forgotten in recent times.³⁴⁵ Whilst it may be an exaggeration to say that no new human rights have to be implemented, if existing rights are effectively enforced,³⁴⁶ the basic message is true. The Court has some strong tools to fight poverty more effectively as a violation of fundamental human rights – it just has to make use of them more productively.³⁴⁷ As the Court itself has ruled, the provisions of the Convention cannot be applied in a vacuum, but “should so far as possible be interpreted in harmony with other rules of public international law of which it forms part”.³⁴⁸ In relation to poverty, the most important treaty is the revised European Social Charter, especially its articles 30 and 31, which deal directly with the matter and give answers to many questions. It will be explored in the next chapter along with other questions, including to what extent it could influence the case law of the Court in the future. Considering its wide margin of interpretation, the Court is not hindered in making use of these guidelines and thereby making the positive obligations in the Convention stronger than it has done so far. Contrariwise, the wide margins of appreciation states enjoy in all cases where allocations of resources are involved limit greatly the influence of the Convention. A closer monitoring of the reasons for political decisions involving resources is not prohibited by the Convention.

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344. Likewise Imbert 1995: 93.

345. Especially in the judgment of *Zehnalova and Zehnal v. the Czech Republic*, 14 May 2002, Application No. 38621/97.

346. Tulkens and Van Drooghenbroeck 2008: 109; Decaux 2005: 5.

347. Likewise Türmen 2007: 466.

348. *Öcalan v. Turkey*, 12 May 2005, Application No. 46221/99, paragraph 163; see also *Rantsev v. Cyprus and Russia*, 7 January 2010, Application No. 25965/04, paragraph 273 with further references.

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HUMAN RIGHTS OF PEOPLE EXPERIENCING POVERTY IN EUROPE: STANDARDS, OBSTACLES AND PERSPECTIVES OF PROTECTION IN COUNCIL OF EUROPE INSTRUMENTS PART 2: THE EUROPEAN SOCIAL CHARTER

Johannes Gerds

We have seen in the first part of this study³⁴⁹ that the European Convention on Human Rights is structurally limited in effectively providing human rights protection for people living in poverty by its focus on civil and political rights, although some social questions are addressed. The European Social Charter was enacted in 1961 to compensate for this neglect. Nevertheless, for more than 30 years, the European Social Charter did not contain any “right to be free from poverty”. The Charter only dealt indirectly with poverty via specific social safeguards such as the right to social aid, the right to protection of health, the right to vocational training, the right to work, and the right to fair remuneration. The original idea was to guarantee some important individual rights while at the same time encouraging national governments to implement these guarantees as a minimum. It turned out that the original European Social Charter was insufficient in its procedures, as there was neither an individual nor a collective complaints mechanism, nor was the enforcement mechanism taken as seriously as that of the Convention.³⁵⁰ Apart from general criticism, the Charter was seen in particular as unable to reach the poorest of society.³⁵¹ It was not until the revised European Social Charter was adopted in 1996 that a “right to protection against poverty and social exclusion” was introduced, in its Article 30. As a supplement, a central issue of poverty, the right to housing, was addressed (Article 31). In the preparatory meetings of the revised Charter, the representatives of International Movement ATD Fourth World, who proposed the new Article 30, pointed out that the poor still had no effective access to human rights.³⁵² A better enforced and more targeted approach to poverty and social exclusion seemed to be necessary, establishing some concrete individual protection as well as policy guidelines for national programmes.

349. See previous chapter.

350. Brillat 2009: 62.

351. Climaxing in the description of the rights of the poor as “poor rights” by Imbert (1995: 97).

352. See Brillat 2009: 63 ff.

Two questions arise a decade after the revised Charter entered into force: Do the new provisions, as interpreted by the European Committee of Social Rights (hereinafter “the committee” or ECSR), provide the necessary standard of protection to lift people out of poverty? And, do they grant effective access for people facing poverty to their human and fundamental rights?

3. Direct legal guarantees against poverty

The revised Charter proclaims a strong statement and legal commitment against social exclusion of the most vulnerable people of society – at least at a theoretical level. The rights to protection against poverty and social exclusion (1) and to housing (2) provide a legal framework that tackles poverty as such. The Charter makes the existence of poverty a violation of human rights, obliging states to take all necessary steps in their power to alter the conditions leading to all forms of exclusion. It addresses poverty from two sides: from the side of individual human rights and from the perspective of public policy. But already at the theoretical level, one can see certain limitations or even gaps in the legal framework, hindering the effective eradication or at least reduction of poverty.

3.1. The right to protection against poverty and social exclusion

3.1.1. Co-ordinated policy approach to poverty

Theoretical framework

Article 30 of Part II obliges states parties to undertake the necessary steps to ensure the effective exercise of the right: it focuses on state policy against poverty and social exclusion. The wording makes it clear that the aim is not to eradicate poverty at once, but rather to begin effectively with the fight against poverty with all necessary means to eradicate it as fast as possible. It is not an “obligation of result”, but one of “conduct” or “performance”. Article 30, paragraph a, implements a broad policy strategy to poverty, requiring an “overall and co-ordinated approach to promote the effective access of persons who live or risk living in a situation of social exclusion or poverty, as well as their families, to, in particular, employment, housing, training, education, culture and social and medical assistance”. The wording clarifies the fact that the list of needs is not exhaustive. The provision is so vague that it needs extensive further interpretation. According to the committee, the policy “should consist of an analytical framework, a set of priorities and

measures to prevent and remove obstacles to access to fundamental rights".³⁵³ The measures taken have to "be adequate in their quality and quantity to the nature and extent of poverty and social exclusion in the country concerned".³⁵⁴ "The action plan must link and integrate policies in a consistent way."³⁵⁵ Part of it must also be a social housing policy, because sufficient housing is seen as one of the most important steps to eradicate poverty. The committee draws a connection to the right to housing in Article 31, seeing it as an integral part of the right to be free from poverty. Especially in cases of extreme poverty, where the lives of people are at risk, effective access to housing has to be guaranteed.³⁵⁶ Special attention has been drawn to housing policies for Gypsies, whose traditional lifestyle of travelling has to be taken into consideration.³⁵⁷ The states enjoy a margin of appreciation in determining their actions in the fight against poverty. According to Article 30, paragraph b, there should also be national monitoring mechanisms to review the measures. The definition of poverty chosen by the committee opens a wide area of application; it includes all "deprivation due to a lack of resources".³⁵⁸ This leaves a need for clarification as to the extent of the lack of resources and the understanding of "deprivation". The committee refers to the principle of human dignity,³⁵⁹ which in itself needs further clarification. In the state progress monitoring procedure, the committee relies on statistics on the number of people in danger of poverty. It refers to data by Eurostat, defining the risk-of-poverty threshold as less than 60% of the median net national income.³⁶⁰ The comparison of the risk-of-poverty margin before and after social transfers gives a hint as to the effectiveness of the social system in preventing poverty.

The committee considers participation in the relevant decision-making processes as a central prerequisite to effectively fighting poverty. Where this is not guaranteed, discrimination and ignorance of the poor are more

353. ECSR, Statement of Interpretation on Article 30, in "Digest of the case law of the European Committee of Social Rights", Strasbourg, 2008, p. 167.

354. ECSR, Conclusions 2003, Statement of Interpretation on Article 30.

355. ECSR, Conclusions 2003, France, p. 214; the obligation to review the strategy and revise it if necessary is explicitly proclaimed in Article 30, paragraph b.

356. ECSR, *International Movement ATD Fourth World v. France*, decision on the merits, 5 December 2007, Collective Complaint No. 33/2006, paragraphs 169 ff., 174.

357. ECSR, *European Roma Rights Centre (ERRC) v. France*, Decision on the merits, 19 October 2009, Collective Complaint No. 51/2008, paragraphs 93-6.

358. ECSR, Conclusion 2005, France.

359. ECSR, Conclusion 2003, France.

360. ECSR, Conclusion 2009, France; specifics in Eurostat 2010: 37 ff.

likely to occur, leading to marginalisation and social exclusion.³⁶¹ This connection was mainly drawn in relation to minorities such as Roma, but it also has to be part of the general anti-poverty strategy. The form of participation has not been defined by the case law, leaving the member states a margin of appreciation.³⁶²

Practical application

According to the theoretical framework developed by the committee, the states are subject to multidimensional obligations to effectively combat poverty. These include positive steps to ensure that an effective reduction of poverty is achieved. But sometimes it seems that the practical monitoring process does not fully match the theory. In its newest conclusion on Ireland, the committee approved the national action plan against poverty, although the report submitted by the state did not contain information on social exclusion.³⁶³ France was also considered to be in conformity with Article 30 between 2005 and 2007,³⁶⁴ while at the same time the committee found in a collective complaint decision that poverty and housing policy violated this provision.³⁶⁵ Moreover, the statistics indicated that poverty and social exclusions in the *banlieues* around Paris remained exceptionally high.³⁶⁶ In Portugal, 19% of the overall population, 25% of children and even 29% of elderly people lived below the at-risk-of-poverty threshold in 2005. The European Roma Rights Centre (ERRC) has lodged a complaint against Portugal claiming severe violations of articles 30 and 31.³⁶⁷ However, the situation was declared to be compliant with the Charter, as Portugal had set up an action plan against poverty. The conclusion on Belgium points out that it has one of the five highest poverty rates in Europe and that there had been no considerable reduction in

361. ECSR, *Centre on Housing Rights and Evictions (COHRE) v. Italy*, decision on the merits, 25 June 2009, Collective Complaint No. 58/2009, paragraph 109 ff.

362. The committee welcomes participation in all stages of policy, namely the “formulation, implementation, evaluation and adaptation of measures”, see ECSR, Conclusions 2005, Norway; the state reports also have to contain concrete examples of participation by social partners, other private organisations and individuals, cf. ECSR, Conclusions 2009, Portugal.

363. ECSR, Conclusions 2009, Ireland.

364. ECSR, Conclusions 2009, France.

365. ECSR, *International Movement ATD Fourth World v. France*, decision on the merits, 5 December 2007, Collective Complaint No. 33/2006, paragraphs 169 ff., 174.

366. ECSR, Conclusions 2009, France.

367. ECSR, *European Roma Rights Centre (ERRC) v. Portugal*, decision on admissibility, 17 September 2010, Collective Complaint No. 61/2010.

the reference period, while at the same time neither the Brussels-Capital Region nor the Walloon Region had presented poverty action plans. The conformity conclusion was based on the federal anti-poverty plan in Belgium.³⁶⁸ All these examples indicate that there is room for improvements in the case law.

During the monitoring process, states do not have to prove that poverty has been effectively reduced. In most cases, it is sufficient if states have shown that they had set up action plans against poverty. In Finland, poverty increased annually by 0.5 % between 2005 and 2007. Although there was nothing in the report to prove that the increase was an inevitable consequence of an economic crisis and the state had taken every step to reduce poverty, the policy was found to be in conformity with the Charter.³⁶⁹ It seems that the committee did not evaluate in detail the content and impact of the policy; it is enough if states take a broad and co-ordinated approach that aims at eradicating poverty. It therefore requires little for states to show that national policy is in conformity with the Charter.³⁷⁰ Only Italy's anti-poverty strategy has been declared insufficient, but this decision was to a large extent based on the repeated lack of information in the state's reports.³⁷¹ Still, there is no absolute annual percentage of poverty reduction the states have to achieve. In more recent case law, however, the committee asks member states to report more urgently on the "impact, the practical consequences and the results of the measures ... in terms of reducing poverty and social exclusion".³⁷² As the monitoring process of this right has started quite recently, the committee might need more time to develop a clear framework of the obligations. In the future, it might also be able to compare earlier data and look at developments over a longer time frame.

The case law on collective complaints seems to tell a different story about the justiciability of Article 30. In all cases on this matter brought before the committee so far, it has found a violation of the right to protection against poverty on the grounds of insufficient housing programmes. On closer inspection, one realises that none of these decisions actually dealt with the unique content of Article 30, but rather the right to housing, which is defined in Article 31. In *International Movement ATD Fourth World v.*

368. ECSR, Conclusions 2009, Belgium.

369. ECSR, Conclusions 2009, Finland.

370. With one exception so far, the states have complied with Article 30 or the conclusions have been deferred because of the lack of information.

371. ECSR, Conclusions 2009, Italy.

372. ECSR, Conclusions 2009, Slovenia.

France,³⁷³ the committee found that the violation of Article 31 resulted in a violation of Article 30, as the national housing programme was not sufficient. In *European Roma Rights Centre (ERRC) v. France*,³⁷⁴ the committee held that the non-existence of a national housing policy adapted to the needs of Roma and Travellers violated the Charter. Finally, the Italian housing policy was found to discriminate against Sinti and Roma in their right to protection against poverty, especially “those evicted people who were rendered homeless without any social assistance from the Italian authorities in a context of isolated ghettos with highly substandard conditions and inadequate public infrastructure or services”.³⁷⁵ In all three decisions, the committee found a violation of Article 31 and referred to it in the context of Article 30. There is no decision in which Article 30 played a pivotal role on its own.

Moreover, states do not have to demonstrate that participation measures guarantee the effective influence of the poor. There is no obligation to enact mechanisms of direct involvement in the decision-making processes and more democratic structures of participation. As it has been shown that direct forms of deliberation (in contrast to more or less formal hearings) are essential in giving a voice to people experiencing poverty,³⁷⁶ effective monitoring of these measures has to be a priority. Direct voting rights of representatives of people in poverty are not yet common to all member states, although this would give more weight to their interests. A recent collective complaint decision points the way to a stronger commitment to participation mechanisms by relying on the principle of the indivisibility of human rights. The committee stressed that “reference to the social rights enshrined in Article 30 should not be understood too narrowly. In fact, the fight against social exclusion is one area where the notion of the indivisibility of fundamental rights takes on a special importance. In this regard, the right to vote, as with other rights relating to civil and citizen participation, constitutes a necessary dimension in social integration and inclusion and

373. Decision on the merits, 5 December 2007, Collective Complaint No. 33/2006, paragraph 169.

374. Decision on the merits, 19 October 2009, Collective Complaint No. 51/2008, paragraph 95.

375. ECSR, *Centre on Housing Rights and Evictions (COHRE) v. Italy*, Collective Complaint No. 58/2009, paragraphs 136-40.

376. See the “Draft recommendation of the Committee of Ministers to member states of the Council of Europe’s Charter on shared social responsibility”, Doc. DGIII/DCS (2011) 09, and the Conference on Shared Social Responsibility in Brussels on 28 February and 1 May 2011, www.ec.europa.eu/social/coresponsibility.

is thus covered by Article 30".³⁷⁷ At a more general level, giving the poor a voice in all relevant fields should be an obligation of the state in the fight against poverty.

In general, the biggest difficulty is the effective monitoring of the overall policy strategy, because indicators are lacking to separate efficient from inefficient programmes. Case law demonstrates that as long as poverty action plans are in place, the policies will normally comply with the Charter. There are very few guidelines in the case law enabling the states to review their efforts and raise the efficiency of policies. It has not been clarified what the priorities in states' policies against poverty should include – with the exception of effective access to housing. The margin of discretion, the limits of which have not yet been clearly stated, sometimes makes it hard to discover the concrete obligations of Article 30. Further definitions of the mechanisms ensuring the co-ordinated approach would be helpful, including procedural standards to make sure that all actors get involved and people in poverty are not only heard, but actively take part in the decision-making process. Priorities for the allocation of resources could also be highlighted, which in times of shrinking budgets might at least eradicate "extreme poverty". Although the human right to protection against poverty does not require member states to effectively end poverty today, the efficiency of poverty programmes has to be monitored closely, and further efforts have to be demanded where it turns out that gaps persist in the legal framework.

3.1.2. Towards an individual human right to collective protection?

In Part I of the Charter, the "right to protection against poverty and social exclusion" is guaranteed to everyone (paragraph 30). The content of this provision is still somehow obscure. Taken literally, it could be understood as giving everyone the individual right to go to the national courts and claim to be protected against poverty. But the introduction declares that the proclaimed rights are the "aim of [the parties'] policy" and should be effectively realised over time. It is therefore convincing that Part I holds a general principle, which can be used as a guideline for the conduct of the member states and provides some legal force.³⁷⁸ The open wording of the principle does not prevent it from being justiciable, as its content can be further specified by the committee. This has been

377. ECSR, *European Roma Rights Centre (ERRC) v. France*, decision on the merits, 19 October 2009, Collective Complaint No. 51/2008, paragraph 111.

378. See Kahn-Freund 1976: 184 ff.

demonstrated impressively by many national constitutional courts, who have given many basic and human rights additional legal impact by way of interpretation.

Parts I and II describe two sides of the right to protection against poverty, which complement each other and interrelate. While in the former the dimension of the individual right is addressed, Part II deals with the counterpart of the responsibility of the state to guarantee this right. One should therefore not only focus on the sphere of the state, but develop the concrete human right that can be claimed by everyone. The committee has, as seen above, defined the obligation of the states to develop a policy to fight poverty, but it has not dealt with the individual human rights dimension. This guarantee appears more as a reflex of the obligation of the state. Through implementation of effective protection mechanisms by the state, the right of the individual shall be satisfied at the same time. The critical side of the focus on the general performance is that individual poverty is accepted, if only there is a general policy programme to fight poverty.

A new way has been taken in the Conclusions on Italy, where the committee relied partly on reports of the Commissioner for Human Rights and the European Commission against Racism and Intolerance (ECRI) and found a violation of the right to protection against poverty and social exclusion.³⁷⁹ The commissioner³⁸⁰ and the commission³⁸¹ had expressed concerns about the situation of Sinti and Roma, migrants and asylum seekers in Italy caused by new legislative measures to control immigration and discriminating discourse in public debates. In this conclusion, the committee drew a connection between poverty and discrimination that is worth further consideration, because open or hidden inequalities are most often the cause of poverty and social exclusion.

This human rights approach to poverty should receive further attention in the future, because it enables the committee to discover concrete obstacles in the fight against poverty that should be redressed immediately. Of course, poverty cannot be eradicated overnight and long-term policies are the only sustainable solution, but at least fundamental violations of human dignity should be combated at once. There is no contradiction between the guarantee of individual human rights and

379. ECSR, Conclusions 2009, Italy.

380. Hammarberg 2008.

381. ECRI, "Third report on Italy" of 16 May 2006, accessible online via <http://hudoc.ecri.coe.int/ecri>.

the policy approach taken by the committee; rather they complement each other.³⁸² But a critical side of the individual rights perspective has to be borne in mind: it runs the risk of shifting the responsibility to fight poverty back to the individual. As people experiencing poverty often lack the means to make effective use of their rights, such a view could be counterproductive. Therefore, it has to be ensured that states' responsibility to protect individual rights is emphasised.

While an overall approach to poverty is necessary, the most vulnerable groups of society and their specific needs should not be lost out of sight. The committee pointed out that the "main groups at risk of poverty and social exclusion are young people, families with children (particularly single-parent families), the long-term unemployed, homeless people, people with chronic illnesses, people with disabilities, over-indebted people, substance abusers, immigrants and people found guilty of criminal offences".³⁸³

A method to give further impact to this human right could be the identification of the minimum core obligations of Article 30. The "core obligations approach" has been developed by the UN Committee on Economic, Social and Cultural Rights (CESCR), which monitors compliance with the UN Covenant on Economic, Social and Cultural Rights. In its view, "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". To justify violations of these core obligations by lack of sufficient resources, the states "must demonstrate that every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations".³⁸⁴ In the end, the committee will have to decide about the essential elements of the right to be protected against hunger, which should include negative as well as positive obligations. A clear definition of poverty would be very helpful, identifying the basic necessities of a dignified life. The committee has made the first steps in emphasising that the states "must promote and remove obstacles to access to fundamental social rights, in particular employment, housing, training, education, culture and social and medical assistance".³⁸⁵ The collective complaints procedure provides the basis

382. If, as the committee has pointed out, "living in a situation of poverty and social exclusion violates the dignity of human beings", the aim of all poverty policy is in the end the protection of the individual human dignity of everyone, cf. ECSR, Conclusions 2003, France.

383. ECSR, Conclusions 2009, Finland.

384. CESCR, General Comment No. 3: the nature of states parties' obligations (Article 2, paragraph 1), 14 December 1990, paragraph 10.

385. ECSR, Conclusions 2003, Statement of Interpretation on Article 30.

to evolve this individual perspective, while at the same time creating an urgent need for concrete obligations that guarantee legal certainty both for the states and the people experiencing poverty.

3.1.3. The prohibition of “povertyism”

Another aspect that deserves further consideration in the fight against poverty is the ban on discrimination against people experiencing poverty. Article E of the revised Charter prohibits discrimination on grounds such as race or sex, but also national extraction or social origin, health, association with a national minority, birth or other status in the enjoyment of all Charter rights. In conjunction with Article 30, it provides protection against discrimination on the grounds of poverty.

3.2. Right to housing

The right to housing in paragraph 31 of Part I and Article 31 of Part II contains three separate obligations: namely, that member states have to promote access to adequate housing, prevent and reduce homelessness and provide affordable housing to people lacking the means. For each of these, states must provide the necessary legal, financial and operational means, maintain meaningful statistics, undertake regular reviews of the strategy’s impact, establish deadlines for achieving the objectives of each stage, and pay close attention to the impact of the policies particularly on the most vulnerable groups.³⁸⁶ The parties have to make available the necessary resources, which might have to be very substantial. If the resources are lacking to set up an overall national housing programme, states have to show that they used the maximum available resources to guarantee the right.³⁸⁷ The committee has further developed the three paragraphs of Article 31 in its case law.

3.2.1. Access to adequate housing

Article 31, paragraph 1, aims at providing adequate housing to everyone, while for the most vulnerable groups, particularly “low-income persons, unemployed, single-parent households, young persons, persons with disabilities including mental health problems”, special measures may be necessary to guarantee equality in practice.³⁸⁸ Although in market societies the

386. ECSR, *International Movement ATD Fourth World v. France*, decision on the merits, 5 December 2007, Collective Complaint No. 33/2006, paragraph 60.

387. *Ibid.*, paragraph 61 ff; *Autisme Europe v. France*, decision on the merits, 4 November 2003, Collective Complaint No. 13/2002, paragraph 53.

388. ECSR, Conclusions 2003, Italy.

state does not have direct control over private housing, it has to effectively make sure that access to adequate housing is given to everyone. This may include measures at national, regional and local levels to implement and monitor housing programmes.³⁸⁹

The central obligation in this paragraph is the provision of “adequate” housing. This term requires further interpretation and the committee has found three aspects that have to be fulfilled: firstly, the dwelling has to provide “safe” health and sanitary standards, including all “basic amenities, such as water, heating, waste disposal, sanitation facilities, electricity”. Secondly, its size has to be “suitable in light of the number of persons and the composition of the household”. And, finally, “protection from forced eviction and other threats” has to be granted.³⁹⁰ Article 31, paragraph 1, is not an obligation directly aimed at people in poverty, but a general safeguard to ensure a high standard of housing for the population. Therefore, the general planning policy, housing inventories and the provision of public services are part of it. Nevertheless, its practical impact will be felt the most by people facing poverty, as the standard of their housing is usually the lowest.

3.2.2. *Protection against homelessness*

States are obliged to protect people against homelessness by measures of two types: preventive actions to hinder the occurrence of homelessness, and reductive policies to bring homeless people back into housing (Article 31, paragraph 2). The margin of discretion of the parties is limited insofar as they “must strike the balance between the general interest and the fundamental rights of the individuals, in the particular case the right to housing and its corollary of not making [individuals become] homeless”.³⁹¹

In terms of prevention, the committee focuses primarily on the effective reduction of forced evictions. This aim shall be accomplished, firstly, by a policy to reduce the risk of forced evictions and, secondly, by strict regulations and procedures for forced evictions.³⁹² States should develop overall and co-ordinated plans to prevent non-payment of rents. In this regard,

389. ECSR, *European Roma Rights Centre (ERRC) v. France*, decision on the merits, 19 October 2009, Collective Complaint No. 51/2008, paragraph 26.

390. ECSR, Conclusions 2003, France.

391. ECSR, *European Roma Rights Centre (ERRC) v. Bulgaria*, decision on the merits, 18 October 2006, Collective Complaint No. 31/2005, paragraph 54.

392. ECSR, *European Roma Rights Centre (ERRC) v. Greece*, decision on the merits, 8 December 2004, Collective Complaint No. 15/2003, paragraph 51; relying on Article 16 of the Charter.

the committee draws attention to the importance of efficient debt-clearance plans.³⁹³

The reduction of homelessness requires emergency housing programmes that provide sufficient numbers of places in shelters and conditions to lead a decent life.³⁹⁴

3.2.3. *Access to affordable housing for people without adequate resources*

The final paragraph of Article 31 deals with the supply required of affordable housing to people facing poverty. The most important tool for the committee is the supply of social and other housing that is “financially accessible”: states should take measures to ensure the necessary construction of social and private housing and introduce housing benefits for people facing poverty.³⁹⁵ Waiting periods for the supply of housing shall not exceed a reasonable length.³⁹⁶ The committee has also defined the meaning of “affordable housing”. The overall prices for housing, including all running costs, have to be low enough in the long term to enable everyone to maintain a minimum living standard relative to the society he or she lives in.³⁹⁷

3.2.4. *Practical application*

Article 31 of the Charter is equipped with everything that is missing in Article 30 in order to give the human right a strong judicial impact: a clear focus, a specific wording and a precise interpretation in the case law. Consequently, the justiciability is mirrored by the monitoring process: seven collective complaint decisions on the merits have been taken so far, and one more has been declared admissible and is pending. In all of them, at least a partial violation of Article 31 has been found in specific aspects of national housing policies. Of the 32 conclusions on the state reports, six have found not to be in conformity with Article 31 of the Charter. A remaining obstacle in the report monitoring procedure is the high number

393. ECSR, *International Movement ATD Fourth World v. France*, decision on the merits, 4 February 2008, Collective Complaint No. 33/2006, paragraphs 81-3.

394. ECSR, *European Federation of National Organisations working with the Homeless (FEANTSA) v. France*, decision on the merits, 5 December 2007, Collective Complaint No. 39/2006, paragraphs 105-8.

395. ECSR, Conclusions 2003, Sweden.

396. ECSR, *International Movement ATD Fourth World v. France*, decision on the merits, 5 December 2007, Collective Complaint No. 33/2006, paragraph 131.

397. ECSR, Conclusions 2003, Sweden.

of deferred conclusions (20), due to the lack of information in the state reports. States will have to be convinced that providing sufficient information lies in their best interests, thereby enabling them to discover possible improvements. Another obstacle is that the member states are free to ratify only parts of the provision. Andorra, Lithuania and Ukraine have not signed the third paragraph. This leads to different protection standards in Europe and conflicts with the provision's purpose of developing an overall and co-ordinated housing policy to combat poverty.

3.3. Effective access to Charter rights for people in poverty

The Charter is a legally binding human rights treaty supplementing the Convention.³⁹⁸ It has been shown above that the Charter, in legal theory, provides some strong additional protection for people experiencing poverty. But the question remains of the impact of these standards on the everyday life of people experiencing poverty. Because the Charter does not receive similar public attention to the Convention, creating strong legal mechanisms of strict and concrete application and enforcement of the Charter are necessary to contribute in the fight against poverty. A broad scope of the Charter is essential to reach all people in poverty.

3.3.1. The scope of the Charter

The application *ratione personae* of the Charter is defined in its appendix. The original and revised Charter exclude foreigners who are not nationals of other parties, including stateless people, or are not lawfully residing within the country, from its scope.³⁹⁹ The Convention relating to the Status of Refugees and the Convention on the Status of Stateless Persons provide a much lower standard of social protection than the Charter. The non-protection of the right to basic health care, housing, working conditions, equality in legal proceedings or even non-discrimination can hardly be argued to comply with the principle of the universality of human rights. There is also a conflict with the idea of the indivisibility of all human rights as explicitly referred to in the preamble to the Charter, because the civil rights of the Convention are not limited in this way. In the monitoring process, the committee reduces this deficiency – to a certain extent – by referring to larger groups of society, e.g. to all Roma living in a given country, of whom at least some are legally entitled to stay (especially citizens of the

398. ESCR 2008: 13.

399. See also Article 13, paragraph 4, and Article 19, paragraphs 4, 5, 7 and 8; and Wiebringhaus 2012: CoE-19, paragraph 52.

EU or permanent residents).⁴⁰⁰ But still, the problem remains that certain individuals or groups of human beings in Europe do not enjoy the same human rights protection as others. Particularly marginalised groups of people – undocumented migrants and asylum seekers – therefore have no right to file a complaint against violations of articles 30 and 31 of the Charter.

3.3.2. *Application and enforcement of Charter rights*

The practical impact of the Charter in member states is very hard to measure, as political reforms are based on complex decision-making processes over a long period of time and information about the influence of the Charter is missing. But it is clear that it is so far limited, as only 15 states have accepted Article 30 and 12 have at least partially signed Article 31.⁴⁰¹ The countries that have ratified the provisions are mainly those that are said to have the lowest levels of poverty, especially the Scandinavian states. Where the application of the Charter might have a much bigger influence, there seems to be a reluctance to ratify it.

The 1961 and the revised Charter only contain “international obligations” of states, which are only subject to an international state reporting system, asking member states to submit reports on their compliance with the obligations of the Charter.⁴⁰² National courts cannot directly rely on the human rights of the Charter; some authors have therefore called the Charter a “code of conduct”.⁴⁰³ In contrast to the Convention, the Charter is not directly applicable in member states, regardless of the national system of implementation. The conclusions of the committee are not legally binding in the same way as the Court’s judgments, although they make an international legal impact as interpretations of the vaguely worded provisions of the Charter.⁴⁰⁴ In practice, there are no enforceable sanctions, such as the payment of compensation, in the Charter.

The evolution towards thorough human rights protection was marked by the adoption of the collective complaints mechanism with the adoption of the revised Charter. But compared to the Convention, its acceptance and

400. ECSR, *European Roma Rights Centre (ERRC) v. France*, decision on the merits, 19 October 2009, Collective Complaint No. 51/2008, paragraph 111.

401. See the up-to-date table on the accepted provisions at www.coe.int/t/dghl/monitoring/socialcharter/Presentation/ProvisionTableRev_en.pdf.

402. Part III of the original and Part IV, Article C, of the revised Charter; the reporting system is described in more detail in Part 4 of the 1961 Charter.

403. Smyth 1968: 293.

404. Kahn-Freund 1976: 205 ff.

impact remain weak, especially regarding the right to protection against poverty. Only three decisions have been taken so far by the committee, although six complaints have been filed altogether. More NGOs representing people in poverty will have to be made aware of this possibility. The fact that all the cases were won by the complainants should encourage more groups to lodge cases. It also indicates that a lot remains to be done by the parties in combating poverty.

3.4. Provisional conclusion about the Charter

On paper, the Charter guarantees direct and general protection against poverty. The focus on the multidimensional phenomenon of poverty itself is the only efficient way to sustainably combat poverty. The declaration that poverty per se is a human rights violation, which is so far unique in international law, implies a very strong commitment to human dignity. But as long as this legal standard does not have an impact on the living conditions of the poor, it remains an unfulfilled promise. A strong international contribution to the fight against poverty will require combined efforts by all actors in the Council of Europe. Article 31 gives a good example of a justiciable provision that provides effective safeguards for the people in poverty and guidelines for the states to improve their poverty policy.

4. Appendix: human rights protection of vulnerable groups of society

The diverse dimensions of the human rights protection of all marginalised groups of society cannot be dealt with exhaustively in this context. However, a few groups shall receive further attention, as only a deeper understanding of the specific needs and situations of certain groups of society sheds light on their human rights protection.

4.1. Stateless people

The problem of statelessness creates a great risk of poverty for the people concerned.⁴⁰⁵ In particular during the transition process of central and eastern European countries, it also became a European problem,⁴⁰⁶ and

405. The struggle of stateless people has been impressively described by Hannah Arendt (1966).

406. Exact statistics are still lacking, but the UNHCR estimate the number of stateless people at between 6.6 and 12 million people worldwide; Guterres 2010; see also Gyulai 2007: 6 ff.

has been recognised as such in recent years.⁴⁰⁷ Statelessness is a violation of the human right to a nationality.⁴⁰⁸ Under the European Convention on Human Rights, there is no specific right to a nationality, but the Court has applied a universal view of all human rights: it includes all people living in a given state. Although it has not developed a comprehensive human rights approach to statelessness, the case law guarantees some protection. Stateless people who have been residents in a given country and founded a family cannot be evicted from their home. In the case of the deportation of former personnel of the Soviet military forces from Latvia to Russia, the Court found a violation of Article 8.⁴⁰⁹ As has already been explored, the private property of the stateless is also protected by the Convention. Moreover, the prohibition of discrimination is applicable in cases of measures directly based on the status “stateless”.⁴¹⁰ Contrariwise, in the European Social Charter stateless people are generally excluded from all provisions by the appendix. This leaves a large gap in the human rights protection of stateless people facing poverty.

4.2. People with a disability

People with a disability are often excluded from participating in public and private life by several obstacles. One of these is the lack of disabled access to public buildings, addressed in several judgments. The European Court of Human Rights is very reluctant to set up an obligation of the member states to provide such access, as it sees this as a task of the European Social Charter alone, involving large allocations of resources. An exception is only made where “a special link between the lack of access to the buildings in question and the particular needs of her [the handicapped person’s] private life”⁴¹¹ exists, meaning that the access to the public building has to be of a certain significance to the exercise of the right in Article 8 of the Convention. As such a connection is very hard to prove, there is in practice no obligation in the Convention to guarantee people with a disability effective access to public or private

407. The Council of Europe Convention on the Avoidance of Statelessness in Relation to State Succession came into force on 1 May 2009.

408. Article 15 of the Universal Declaration of Human Rights guarantees a right to a nationality; more than 50 states have signed the United Nations Conventions relating to the Status of Stateless Persons and on the Reduction of Statelessness.

409. *Slivenko v. Latvia*, 9 October 2003, Application No. 48321/99, paragraph 128 ff.

410. *Ibid.*, paragraphs 130-34.

411. *Zehnalova and Zehnal v. the Czech Republic*, 14 May 2002, Application No. 38621/97; while citing the *Airey* case, the Court here draws a strict line between the Convention’s and the Charter’s rights.

buildings, public transport, polling stations or any other institutions. The lack of any right to access may exclude people with specific disabilities from all forms of participation in public life. As guaranteeing only the “mere existence” of handicapped people is certainly not intended by the Convention and the Court, a more courageous positive approach, demanding at least access to all basic institutions of everyday life, has to be found. This may be possible by reference to the prohibition of direct and indirect discrimination in Article 14 and Protocol No. 12, as denying access to people with a disability results in unjustified unequal treatment under the “other status” category.

The Charter provides some additional protection, in particular assistance in access to vocational training (articles 9 and 10) and a “right of persons with disabilities to independence, social integration and participation in the life of the community” (Article 15).

4.3. Migrants and asylum seekers

The biggest issues for many immigrants are the conditions necessary in order to obtain a permanent resident permit or, on the contrary, those of expulsion from the given country. The general principle of the case law is that there is no guarantee in the Convention to reside within a specific country,⁴¹² but certain actions of the state may constitute a violation of other rights, in particular articles 3, 8 and 14. The right to a family life guarantees, under certain conditions, the right not to be separated by expulsions and to be united for married couples and parents and children where a dependency exists between them.

Migrant workers are guaranteed the right to protection and assistance under Article 19 of the European Social Charter, including effective access to free assistance, health care and good hygiene conditions (paragraphs 1 and 2), equal treatment as domestic workers concerning working and living conditions (paragraph 4) and legal proceedings (paragraph 7), as well as education in the national and mother language (paragraphs 11 and 12). Such a guiding and stimulating approach is essential for the effective integration of arriving migrants into the host country, without at the same time assimilating and depriving them of their cultural background. The provision (read in conjunction with Article E) aims at effectively fighting all forms of discrimination against migrants. State authorities and politicians are obliged to refrain from using xenophobic rhetoric and

412. Jacobs and White 2006: 262.

other actions creating fear or hatred towards migrants.⁴¹³ Of great importance in the fight against poverty of migrants is their effective access to the labour market. Article 19, paragraph 4, guarantees equal treatment in this regard and may even ask the member states to implement special employment programmes for migrants, who often face greater obstacles in practice.⁴¹⁴ The obligatory state actions include granting equal access to adequate housing, subsidised housing and housing aid.⁴¹⁵ It may even be necessary to consider additional housing measures for migrants, where their special situation requires it.⁴¹⁶

Apart from these provisions, the application *ratione personae* limits strongly the protection of migrants from non-member states. As already explained, the European Social Charter does not apply to migrants from third states and those not “lawfully” residing or working in the host state.

4.4. Roma and Travellers

As the rights of Roma are a high-level priority in the Council of Europe,⁴¹⁷ there has already been intensive research on the case law of the Convention⁴¹⁸ and the European Social Charter.⁴¹⁹

Under the Convention, many decisions have dealt with evictions of Roma and Travellers from land where they had stationed their caravans.⁴²⁰ In this respect, special attention has to be paid to the right of the minorities to freely choose their way of living – including leading their traditional life by moving from one site to another without fixed domicile. Although taking this into account, most of the cases were lost by the Roma, as for the Court the state measures had been applied “in accordance with the law” and after diligently weighing the strong public interest of preserving the

413. Such as those of politicians of the Italian Northern League (“Lega Nord”) against Roma and migrants; see ECSR, *Centre on Housing Rights and Evictions (COHRE) v. Italy*, Collective Complaint No. 58/2009, paragraphs 136-40.

414. ECSR, Conclusions IV, Statement of Interpretation on Article 19-4; Conclusions III, Statement of Interpretation on Article 19-4.

415. *Ibid.*, paragraphs 143-7.

416. ECSR, Conclusions V, Statement of Interpretation on Article 19.

417. See the Council of Europe high-level meeting on Roma in Strasbourg on 20 October 2010, Doc. No. ROMS(2010)PV final.

418. European Court of Human Rights Press Unit, “Factsheet – Roma and Travellers”.

419. ECSR 2010.

420. E.g. *Jane Smith v. the United Kingdom*, 18 January 2001, Application No. 25154/94, paragraphs 97-111; *Lee v. the United Kingdom*, 18 January 2001, Application No. 25289/94, paragraphs 110-17.

environment against the individual interests of the Roma.⁴²¹ Put plainly, this means that where there are significant factors in favour of the majority position and the proceedings have followed the rule of law, the Court will not overrule the decision of the authorities. However, these decisions could be criticised for not being fully consistent, since the evictions directly affect the lifestyles of Roma and Travellers and the Court has ruled in other contexts that such measures are discriminatory.⁴²² At the very least, such measures should be treated as indirect discrimination, which is also banned under the Convention.⁴²³

A special focus of the case law under Article 31 of the Charter is the allocation of adequate housing to Roma and Travellers. As some of them lead a traditional itinerant life, sufficient caravan sites have to be provided. Legislation aimed at doing so has to be adequately implemented to achieve the goals in practice.⁴²⁴ The campsites must fulfil certain minimum standards to guarantee decent living conditions. The committee stresses that evictions from campsites have to meet material conditions and procedures that strictly observe the rule of law. Massive “security measures” against Roma may amount to stigmatising and thus discriminatory treatment if they are not applied in a similar way to other groups of society.⁴²⁵

5. Conclusion and perspective

The Convention combined with the Charter provides a good standard of human rights protection for people experiencing the worst forms of poverty.⁴²⁶ However, there is a lot of room for improvement.

The historical distinction between civil and social rights, still very visible in the separate legal instruments at the European and global levels, limits very strongly the effective judicial fight against poverty.⁴²⁷ The lack of effective implementation and monitoring mechanisms in the European

421. *Chapman v. the United Kingdom*, 18 January 2001, Application No. 27238/95, paragraphs 71-8.

422. Especially, *Dudgeon v. the United Kingdom*, 22 October 1981, Series A No. 45, concerning criminalisation of homosexual relationships.

423. See *D.H. and Others v. the Czech Republic*, 13 November 2007, Application No. 57325/00; *Oršuš and Others v. Croatia*, 16 March 2010, Application No. 15766/03.

424. ECSR, *European Roma Rights Centre (ERRC) v. France*, decision on the merits, 19 October 2009, Collective Complaint No. 51/2008, paragraph 40 ff.

425. ECSR, *Centre on Housing Rights and Evictions (COHRE) v. Italy*, Collective Complaint No. 58/2009, paragraphs 136-40, paragraphs 53-9.

426. Tulkens and Van Drooghenbroeck 2008: 116.

427. See also *ibid.*, p. 106.

Social Charter shows that there is still some reluctance to view poverty as a violation of human rights. It will have to be pointed out more clearly that poverty is also a European problem that has to be addressed at a European level. Over the last decades, it has become more and more accepted that civil and social rights are inseparable, drawing on the finding that they interact and affect each other in many cases. Therefore, the World Summit on Development⁴²⁸ and the World Conference on Human Rights⁴²⁹ have committed themselves to the principle of indivisibility of human rights. Poverty is a particularly strong example of this link: it is true that one can learn from the poorest people what the principle of indivisibility of human rights means in practice.⁴³⁰

In the future, hierarchies between civil and social rights should be abandoned, because all human rights are of equal value, are interdependent and cannot be clearly distinguished. Otherwise, from the perspective of people facing poverty, the impression could arise that “their rights” are treated as second-rate rights, whereas political and civil rights are the rights of the rich, whose primary concern is not to secure their everyday existence. The United Nations Universal Declaration of Human Rights is a good example of how the indivisibility of all human rights can be promoted. Its preamble begins with the “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family”, making human dignity the underlying principle of all human rights. Subsequently, many national constitutions have introduced human dignity as the most fundamental guarantee. That such a commitment is missing in the Convention is regrettable, but it does not hinder the Court from treating it as the basic, inherent idea of all human rights. In practice, this would mean accepting not only a right to physical existence, but a right to lead a life in dignity. A more coherent human rights approach to poverty by all relevant actors in Europe would be a strong contribution. As the Court itself has ruled for a long time, the provisions of the Convention cannot be applied in a vacuum, but “should so far as possible be interpreted in harmony with other rules of public international law of which it forms part”.⁴³¹ Reference to the European Social Charter, especially its articles 30 and 31, directly

428. Copenhagen Declaration on Social Development, Programme of Action, Copenhagen 1995, paragraph 15 (b).

429. Vienna Declaration and Programme of Action, Vienna 1993, paragraph 1.5.

430. Dierckx 2010: 57.

431. *Öcalan v. Turkey*, 12 May 2005, Application No. 46221/99, paragraph 163; see also *Rantsev v. Cyprus and Russia*, 7 January 2010, Application No. 25965/04, paragraph 273 with further references.

dealing with the matter and giving answers to many questions, would be an outstanding step forward for the effective access of people facing poverty.

To achieve progress in the human rights protection of people in poverty, all actors at national and international levels will have to work together. As long as some reluctance remains, the private actors involved will play a very important role, especially NGOs and human rights lawyers. For the first group, the lesson to be drawn from this study may be to raise greater awareness of the European Social Charter. Its collective complaints mechanism is custom-made for the needs of private coalitions in two respects: first, they can take action as a collective entity, guaranteeing that the financial risk does not have to be taken by an individual. And, second, they do not have to prove an individual human rights violation, which is often one of the biggest formal hurdles in legal claims.

The recommendation to human rights lawyers could be to take a two-sided approach to cases: on the one side, they should address social concerns in civil human rights cases under the Convention. Reference to the European Social Charter in the interpretation of civil and political human rights may be helpful before civil courts and the Strasbourg Court. This approach is also called the “elements approach”,⁴³² based on the finding that recent court decisions tend to interpret civil rights more extensively in order to include social rights claims, while at the same time they refuse to rely directly on social rights. On the other hand, it is also necessary to be aware of social human rights. To bring a social rights claim successfully before a court, one has to focus on the essential aspects of litigation, especially the justiciability of the individual case and the limited power of courts.⁴³³ To achieve real progress for people in poverty, cases should be broad with a clear focus on a severe human rights violation rather than general policies and economic conditions. Especially in collective complaints cases under the European Social Charter, we have seen too often that cases are brought to the committee in a very general fashion. This way, they will neither attract the necessary publicity to bring changes nor give concrete guidance to authorities. Unlike other authors, my finding here is that these two approaches do not contradict, but can be integrated into one successful strategy. It should be decided according to the circumstances

432. First named by Cavallaro and Schaffer 2004: 217, 258 ff; Cavallaro and Schaffer 2006: 345 ff.

433. For a more exhaustive list of relevant matters see Melish 2006a: 171, 333 ff; Melish 2006b: 385 ff.

of each individual case whether one or the other approach is taken, or whether they are combined in one strategy.⁴³⁴ This may get the ball rolling towards a more coherent perception of human rights as a means to guarantee human dignity to all human beings, irrespective of their economic or social situation.

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PART C

CONCRETE EXAMPLES: POVERTY AS A CONSEQUENCE OF TRANSITION

EMERGENCE OF POVERTY IN TRANSITION COUNTRIES IN SOUTH-EAST EUROPE: THE CASE OF BULGARIA

Ilona Tomova

1. Mechanisms that have increased poverty in South-East Europe following the fall of the communist regimes

1.1. When a regime collapses

The economic crisis of the post-communist period in Bulgaria was much deeper and longer than the Great Economic Depression in the United States and Germany in the late 1920s. In 2007, Bulgaria's GDP shrank to the same level as in 1989. The employment rate remained lower than it was during the socialist period. In 2007, the purchasing power of an average salary was only 61.3% of its value in 1989. The savings of many Bulgarians vanished during the first seven years of the transition period because of high inflation, bank failures and fraud. The quality of life also deteriorated because of tight restrictions on access to services. The quality of those services also declined because of severe financial cuts, the protracted and poorly managed reform of the social sector, reduced control over institutions, increasing crime, weakened technical and social infrastructure, and a poorly functioning judiciary.

One possible explanation of these factors is that Bulgaria's economy was tied to that of the Soviet Union and the other socialist states, and nearly 80% of Bulgarian production was exported there. Bulgaria's industrial and agricultural production declined rapidly with the collapse of the Soviet markets and the dissolution of the Council for Mutual Economic Assistance.

But this is only one of the macroeconomic causes for mass unemployment and poverty. The other one is partially hidden, namely the privatisation of a huge amount of state property and the accumulation of private capital. In Bulgaria (and to a great extent Romania, the Russian Federation, Moldova, Belarus and Ukraine), the transfer of state property to private firms was implemented without allowing foreign capital to participate in the privatisation of state enterprises. Instead, there was an accumulation of enormous political and economic power by several political entities. They effected a huge transfer of capital from the former state enterprises to private

companies, implemented without the necessary legal framework to legitimise those changes and to organise a new system of rights and property on the basis of market mechanisms. The consequences of this latent privatisation were: *de facto* invalidation of formal privatisation; destruction of huge material resources; de-capitalisation of the industrial enterprises; deindustrialisation of the national economy; the preclusion of technical upgrading and *de facto* elimination of options for technological improvements and innovation for the foreseeable future. A great number of material assets, generated during the years of accelerated industrialisation, were destroyed. Industrially, Bulgaria went back in time – in the mid-1990s the country's industry was at the same level as that of the 1960s. Bulgaria lost 1.3 million jobs during the period 1990-93;⁴³⁵ one must keep in mind that Bulgaria's total population, including children and elderly people, was around 8 million at the time. The spontaneous development of market relations, which began in the 1970s and 1980s, was halted and the power of "private monopolies" was established, replacing the former state monopolies. The formation of a middle class in the country was blocked for a long period of time. Middle and lower levels in the economic hierarchy – managers and workers – were robbed of any power they had, which resulted in annulment of a number of social rights for those employed, mass unemployment, a sharp reduction in workers' income and elimination of the possibility of dialogue on wages caused by the change of level at which decisions were taken. Economic and social development regressed decades.

Mass poverty in Bulgaria, caused by unprecedented unemployment, makes it necessary to examine the causes for this catastrophe.

Mass unemployment was a common phenomenon for all post-socialist countries during the first years of transition. In the Czech Republic, Poland and Hungary the unemployment rates were not that high and the governments achieved control of the situation within a comparatively short period of time. Unemployment was caused by the closure of unprofitable and technologically outdated facilities and also as a result of the difficult times that small and medium owners, who started their businesses under the protection of the socialist state, found themselves in as part of the new competitive environment. In Bulgaria and Romania the closure of enterprises was not a rational closure of uncompetitive production sites and a consequence of a technological upgrading, but the result of ineffective use of existing facilities, disintegration of traditional markets and the inability to replace the latter with new ones because of the poor

435. Beleva 2005.

competitiveness of production facilities and the artificial bankruptcies of many enterprises. When the closure of ineffective production sites started (2000-02), many jobs were, as expected, lost.

1.2. Different consequences

The central European countries took urgent measures in order to draw up a rational and transparent legal framework for rapid market-oriented and worker–manager privatisation. Concessions for state enterprises for predefined periods of time were also offered. Simultaneously, control was exercised over economically active people so that state enterprises would not suffer from embezzlement of capital and assets on a large scale. Additional measures were also taken in order to stabilise economically productive enterprises and those that had markets abroad. The credit procedures for enterprises were reformed and clear rules for the banks and the tax system were introduced. In a comparatively short period of time, a significant proportion of successful companies were bought by foreign companies in transparent conditions and for the best price. The sale to foreign economic partners turned out to be profitable because in the previously mentioned countries there were no economic agents that possessed large amounts of financial capital; because powerful investors were attracted; because the new owners introduced better managerial practice, technology and market skills; and because the integration of large socialist companies into strictly regulated and long-established international markets was facilitated. These processes were made easier by the geographic, cultural and historic closeness of central European countries to powerful western partners.

In Bulgaria and Romania the development of market relations within the socialist system was more problematic. Both countries were situated at the periphery of Europe, and the economic, cultural and historical ties with the west were weaker. In addition, the war in the former Yugoslavia made the region unattractive for foreign investment. An even more substantial obstacle turned out to be the internal environment: political instability and the accumulation of huge economic and political power within a limited circle of former Communist Party bureaucrats and certain structures of the former political and economic police and state security; unclear, contradictory and constantly changing legislation and the lack of mechanisms to enforce existing norms; administrative arbitrariness and high levels of corruption; and a poorly functioning legal system. The political elites frustrated the inflow of foreign capital and slowed privatisation in order to transform state property into their own private capital. They were not interested in the future of the industrial enterprises and made no effort to save, stabilise and develop them. The newly founded economic groups

invested their efforts in “intermediary activities” – control over internal and external trade, finance, commodity markets, real estate, insurance and the media. They had the political power to adopt and change legislation that regulated the economy, finance and taxes on behalf of the newly formed economic groups, to determine interest rates, and to impose extra-economic coercion on economically active people. They not only had the power to appoint and change the managers of the enterprises in order to serve the best interests of the privileged economic groups, but were also able to avail themselves of the “services” of newly formed structures established by former sportsmen and officers from state security and thus to “control by force” the real entrepreneurs and business leaders.

1.3. The Bulgarian case: how poverty can be created

We will now focus on the specific case of Bulgaria. Gaining control over the industrial enterprises could not be achieved directly by the former Communist Party bureaucrats because of the political changes and the activities of the opposition.⁴³⁶ That is why most often it seemed to be “latent privatisation”, which followed the same model: the ministry (e.g. representatives of the political power) assigned a director or decided to whom a certain enterprise or an industrial complex would be given or leased; in return, the director was given access to “the input stage” (e.g. purchasing raw materials, machines and credits) and to the “output stage” (e.g. the placement of the goods produced) of the firms of “intermediaries”. They sold raw materials at very high prices to the enterprises and bought the production in bulk at very low prices, often fixed by the government with special acts.⁴³⁷ This allowed the companies to

436. In Bulgaria, the first government after the fall of the former communist leader Todor Zhivkov was also communist, although rebranded as socialist. At the end of 1990, that government was followed by a government of the Union of Democratic Forces, which was in charge for a little more than a year. Then, two caretaker governments were in power for a short period of time, after which the Socialist Party took power again. As a result of a severe financial and economic crisis that government was ousted in 1997, when the currency board was introduced in order to stabilise the economy. That was the period of intensive “latent privatisation” of the state economy.

437. Managers of industrial units rapidly created their own private companies (or, indeed, asked their relatives to do so), which handled the “inputs” and “outputs” so as to facilitate the transfer of capital from state enterprises managed by them to their own accounts. This scheme was in operation for years. In cases in which the managers decided to stabilise the enterprise and not let “intermediaries” participate, directly negotiating with suppliers of raw materials and other commercial organisations, they were initially pressurised using techniques such as intimidation, blackmail, slander in the media or bribes, promised new positions, or fired or replaced with more obedient people.

embezzle the profits from both “deals”, whilst all losses were assigned to the state enterprise, which accumulated huge debts. The state enterprise was forced to take short-term credit lines from banks in order to cover its debts and provide liquidity at high and constantly rising interest rates, or to shrink production. The high interest rates made technological upgrades impossible and Bulgaria’s enterprises became uncompetitive on the international market. Some time later, this policy led to the closure of the enterprise and its assets were transferred to the banks, which were controlled by the political elites.⁴³⁸

At the same time, no control mechanisms were introduced when it came to credits. Banks allocated credit to economic structures that were close to the political power, and a large part of it was never repaid. In fact, a criminal form of coalescence was established between the banks and companies like Multigroup, Orion and Daru Car, the CEOs of which were former state security officers. Industrial enterprises had great difficulties obtaining credit, especially long term, with good conditions attached, except when they were part of the “intermediaries” schemes. The lack of control over currency transactions and external trade created the environment for the export of capital from the banks on a large scale. The political elite did not introduce economic levers and legislation, which would have provided for an effective financial policy (for instance, a national reserve fund to cover bad debts, and better discipline in returning credit). Of course, this destabilised many private banks. However, in 1995 the government ordered the Bulgarian National Bank (BNB) to refinance the debts of some of them and allocated BGN 29 billion in order to stabilise them. In the end, the private banks secretly transferred their shares to western countries and declared bankruptcy, leaving their bad debt to the BNB.

All this negatively affected the overall condition of the economy in the country. Industrial production shrank and thousands of jobs were lost. Unemployment reached high levels that persisted for years, which directly

438. The most technologically advanced enterprises were “liquidated” very fast by the banks, which had given them credit at low interest rates immediately before “the reforms”. Unilaterally, the banks violated the contracts through constant and sharp increases in the interest rates, which led to the enterprise not being able to service its loans. An additional mechanism of “decapitalisation” of the enterprises was imposed by the political class so as to achieve total control of the currency inflows from the banks. All transactions in Bulgaria had to be made in Bulgarian leva (the national currency) by law. The available foreign currency of the enterprises from the sale of their goods was exchanged by the banks at a low rate fixed by the executive branch. The enterprises then had to buy foreign currency at a high rate in order to get raw materials, for example. Profits stayed in the banks and the production enterprises accumulated losses.

led to mass and deep poverty and withdrawal of large strata of the population. The periods during which enterprises were unable to work because of lack of liquidity increased and as a result they lost customers. During these periods, employees were not dismissed, but they did not receive salaries or social security. The private sector, mainly trade, agriculture and services, was not able to compensate for the large-scale dismissal of the workforce from industry. The character of the changes in the structure of employment illustrates the deindustrialisation of the first 10 years of "transition".

The proportion of people who had permanent full-time contracts fell sharply. For years, whole economic sectors, including the state sector, contracted employees or hired them via part-time or "civil contracts", because that way they were not obliged to pay compensation in case of lay-offs or to pay social security. The proportion of people working on the grey and black markets increased sharply. Labour conditions worsened. Both the state and the private sector constantly ignored safety measures. As a result, the number of labour accidents dramatically increased, including lethal accidents. Many enterprises were paying employees' salaries after months of delay; in fact, some never paid their workers for several months' work. With the change in nature of labour contracts (or because of the lack thereof), the judiciary was excluded from resolving labour disputes. The cases in which labour disputes were solved through physical violence increased, for which extra-legal services were used.

The real income of the employed was constantly decreasing and in 1996-97 it barely represented one third of income before the changes. With alarming speed, income disparities in the recently egalitarian socialist country surpassed those in many west European countries.

Another parallel mechanism for redistribution of property was connected to the so-called "liberalisation of the prices" in 1990. Representatives of the former communist bureaucrats, with assistance from (former) state security officers, managers and workers from the commercial enterprises and extra-legal services companies, "drew out" from the market and warehouses a huge proportion of the available goods, thus not allowing new production to reach customers for months and thereby inflating prices. An unprecedented (peacetime) goods crisis was created. People received coupons, which restricted, but did not guarantee, the purchase of some major groceries (bread, milk, cheese, meat, sugar and sunflower oil). After "the liberalisation", the hidden goods appeared on the market at prices that were much higher than those at which they were contracted to supply by the enterprises. The people who "hid" these goods made huge profits. A large proportion of the population survived the trauma of the

artificially induced crisis, although they wasted a vast amount of time in queues and had to endure huge price increases afterwards. For example, the price of medications after “liberalisation” rose on average by 800%. The increase for most of the goods of first necessity was similar. Salaries increased a few months later, but did not match the hike in consumer goods prices. These, together with high inflation, were the first successful steps in the “seizure” of the “hot money” – namely, people’s savings – thereby limiting the capacity to participate in forthcoming privatisations. Naturally, the liberalisation of prices led to mass impoverishment, especially in households with unemployed people.

2. Modification of the state policy towards poverty and its consequences

2.1. Weak and destructive reforms

The collapsed economy, undergoing a series of grave crises (those associated with food, deindustrialisation, finance, structural problems and, finally, the global recession), was not prepared to support a developed system of social services. Unlike the former socialist countries in central Europe, which after a steep downturn managed to stabilise their economies and overcome the crisis in the second half of 1990s, reforms in Bulgaria were more painful and prolonged. National Statistical Institute data from the 2001 census show that only 38% of Bulgarian citizens aged 16-60⁴³⁹ were employed – the lowest rate in Europe.⁴⁴⁰ Wages in Bulgaria were among the lowest on the continent. For the period 1991-97, the average monthly salary in the country was US\$89. Even at the beginning of 2010, the average salary in the country was BGN 630 (about €320), and afterwards as a result of the economic crisis it slightly decreased. It was only in the spring of 2008 that the purchasing power of average wages reached 1995 levels, which was still only three fifths of that of 1989.⁴⁴¹

The pensions of over two thirds of the elderly population did not provide for their basic needs. Their right to social protection (Article 23 of the revised European Social Charter) was infringed. The slow improvement in implementation of this right occurred only after 2004.

439. Until 2001, the retirement age in Bulgaria was 60.

440. The employment rate increased significantly only after Bulgaria joined the EU in 2007, as a result of west European investments. However, since 2009 it has been declining again due to the global crisis.

441. According to NSI and EBRD data.

The Bulgarian state was not able to guarantee *de facto* its citizens' right to protection against poverty and social exclusion for many years, even after ratification of the revised European Social Charter in 2000. Conditions were favourable for transmission of poverty and social exclusion to future generations.

At the beginning of the 1990s, the government began to establish a system of social protection for those who had dropped out of the labour market (before that Bulgaria officially had no unemployment and thus there were no legislation, institution, personnel or funds for unemployment protection). Soon after, the rapid increase in the number of unemployed made it impossible for the state to fulfil its obligations. Never-ending legislative changes were made to the acts on social protection and social assistance, in regulations for their application and the ordinances concerning these activities. These changes had one fundamental and constant motivation: restriction of access to social funds on the basis of various criteria and a reduction in the amount of social spending for all assisted groups. As a result of changes to legislation, during the years of mass dismissals, barely a quarter of registered unemployed people received unemployment compensation or social assistance. In many instances, those long-term unemployed members of families in which the other partner had a job were not assisted, thus failing to take account of the amount of the salary and the real impoverishment of the household. For the period 1996-2000, the pressure on the social funds was so great that even people and families that were able to meet all the endless requirements and were allocated monthly social assistance were not able to receive it. The level of social assistance payments was very low and could not provide for a life of dignity for those who were entitled them.⁴⁴² At the beginning of the 1990s, several regions limited access to social assistance, which in 1998 was to a large extent accepted for the total population in the country.

In order to reduce the pressure on the labour market early retirement was authorised – 52 years for women and 56 years for men. This move led to overburdening the pension system and contributed to a lasting decrease in pensions – regardless of whether these pensions were awarded on social or labour grounds. About two fifths of the pensioners received the minimum, or close to it, pension (for the period 1991-97 it was about US\$20 per month). The average monthly pension for that period was US\$31.5. Romania and the Russian Federation faced similar situations. For

442. Even in 2009 and 2010, monthly social assistance for long-term unemployed persons and members of their households reached only BGN 35 per month (about €18) .

more than 20 years now in these countries, retirement generally means irreversible impoverishment. This tendency is set to continue in the mid-term. After 2002, the government's response was to constantly increase the age of retirement (which reached 60 for women and 62 for men) together with experimental schemes for retirement, which led to recurrent social tensions and dissatisfaction.

Even after Bulgarian accession to the EU, Article 13 and Article 14⁴⁴³ of the European Social Charter were violated. It is not surprising that the European Committee of Social Rights concluded (Conclusions 2009, Bulgaria) that: "1. The level of social assistance paid to a person under 65 living alone is manifestly inadequate. 2. It has not been established that a person in need, whose social assistance is interrupted after 12 months, can obtain adequate resources to meet the necessary costs of living in a manner consistent with human dignity. 3. The level of social assistance is manifestly inadequate. 4. It has not been established that elderly persons without resources receive adequate social assistance."

2.2. The impact on fundamental human rights: the examples of health and education

The difficult economic situation in the country unfavourably impacted on the health care system. In the former times, access to health care services for Bulgarian citizens was unlimited. Bulgaria had a comparatively good outpatient and hospital care, together with a prophylaxis system. Small children and pregnant women had free medical check-ups, prophylaxis, treatment and free medication. All these social benefits were annulled at the beginning of the transition period. The sharp increase in the price of medication and the discontinuation of free prescriptions for children caused child and infant mortality rates to rise. Child mortality caused by lung diseases increased – an indicator that continues to be seriously disturbing for Bulgaria. Diseases, forgotten for decades, like poliomyelitis, whooping cough and diphtheria, returned. The number of people diagnosed with tuberculosis increased. Deaths caused by cardiovascular diseases and cancer also increased. The budget for health care is very low (for years, Bulgaria and Romania have been famous as the countries with the lowest health care budget per capita in the EU). At the same time, Bulgarians and Romanians are themselves forced to pay for the majority

443. These articles are about: the "Right to social and medical assistance" and the "Right to benefit from social welfare services".

of their treatment in different forms, such as medical checks and test fees, additional payments for hospitalisation and high medication prices.

Poverty is a major obstacle in the use of health care services for two fifths of the Bulgarian population at the moment. At the same time, increased social inequalities and the restricted package of free medical services, which can be used by those who have medical insurance, have meant that a significant proportion of rich people and young Bulgarians pay for private medical insurance. The proportion of the poor and those who are employed in the grey economy and are not medically insured is relatively high. The weak social cohesion that exists in society leads to less funding for the health care system.

During the first years of the transition, the collapse of the economy together with poverty became major factors as regards the limitation of free access to education and the quality of such education in public schools. Free textbooks and school materials were suspended, transferring the financial burden to parents. The price of textbooks for a child in the fifth grade, for example, was equal to the assistance a family would receive for a child during half a year. Many children from poor families began to drop out of school. The system for free and subsidised meals collapsed. In addition, the system of preferential prices for children's goods and books was eliminated. It was only in 2001 that free textbooks were given to those in the first grade, and subsequently to all pupils up to fourth grade. As of the school year 2010-11, this scheme has been extended to everyone up to seventh grade. After 2004, first graders started to receive a free snack and this has gradually extended to those up to fourth grade. In 2009, the snack was replaced by a free fruit, although not all municipalities offered it free.

2.3. The main victims of poverty

2.3.1. The case of women in Bulgaria

Poverty was not evenly distributed. It disproportionately affected elderly people, the rural population, families with members suffering from chronic diseases and disabled people, families with two or more children, single mothers and divorced women who raised their children on their own, single elderly women, and members of the large ethnic groups, especially the Roma.

The first years of the transition (1990-97), saw the greatest obstacles to equality between men and women. The loss of jobs affected women to a greater extent. This fact was not based on objective causes such as

education or qualifications – during the years of state socialism, Bulgaria’s women were similar to men in terms of level of education and, in addition, women surpassed men as regards the highest educational degrees and multilingual competency. At the beginning of the transition, the most heavily affected branches were the extractive industries, metal processing, machine manufacturing and construction, in which men were the basic component of the workforce, while the feminised service sector – trade, tourism, finance and other services, in which salaries were low during socialism – was undergoing development. The increase in unemployment among women was based on differences in the positions of power,⁴⁴⁴ and the patriarchal practice according to which in situations of job shortages employers prefer to hire men and dismiss women.

Women’s employment situation deteriorated.⁴⁴⁵ The paternalistic order does not let women take leading positions over men (Bourdieu 2002). Even when the educational status, qualifications and work experience of women are equal to or better than those of men, they are ignored or discouraged from applying for senior positions. Besides, the unchanged character of the distribution of domestic chores and care for children additionally restricts the possibilities of women taking senior managerial positions. The proportion of women in government during socialism was low (Kuranov 1987), but in the 1980s quotas were imposed, which guaranteed that one fourth of all places in parliament and local governmental bodies were reserved for women. The transition period excluded women

444. A significant difference is observed when it comes to the participation of men and women in political life and the structures of civil society. Women not only drop out *en masse* from participation in these institutions, but the activities that they support or participate in also have a very different structure. The EVS 2008 data show that men participate twice as often as women in political parties or groups. Nearly twice as many men participate in trade unions and associations as women. Thus men are to a greater extent included in the structures of power, have significantly stronger influence when it comes to decision making of any kind and, what is particularly important in the era of post-socialism, they are included to a much greater extent in social networks, which give them access to the redistribution and privatisation of the socialist state’s property and European funds, as they convert the social capital of their members into an economic one.

445. Though women in Bulgaria have higher levels of education and qualifications, they are three times less likely to have well-paid and high-status positions as employers in private business than men. The proportion of women who are self-employed is increasing, and men now outnumber women only two to one in this category (it includes those who are highly qualified such as lawyers, accountants, doctors with private practices, artists and a wide spectrum of retailers and other professionals). On the other hand, in the categories “unpaid domestic workers” and “unpaid workers in private business” the share of women is, as expected, twice that of men.

from leadership positions to a greater extent and led to a sharp decrease in their representation in parliament; in local governmental bodies; at the top levels of the executive and judiciary branches; and in the trade unions. In the first free parliament, elected in June 1990, only 8.4% of the MPs were women (Petrova 1993). Even more significant was the decrease in female representatives in local governmental bodies. The percentages remained relatively stable until 2001.

During the years of transition from command economy to a free market, the disparity between male and female wages increased. In 1997 a state-employed woman had great difficulty in receiving 69% of a man's salary (Unicef 1999). That was the lowest percentage in central and eastern Europe at the time.

2.3.2. The case of Roma and others ethno-religious communities

The last years of the Bulgarian Communist Party regime were marked by violent attempts to assimilate the large ethnic and religious minorities – the Roma, the Turks and the Bulgarian Muslims. One of the major democratic changes after the fall of the communist regime was the restoration of the basic ethnic, religious and linguistic rights of all members of the minorities. Bulgarian politicians were pressurised into rethinking the model of the national state and declaring equal rights and opportunities for all Bulgarian citizens. A new political party of Bulgarian Turks and Muslims – Movement for Rights and Freedoms – entered parliament and received even better results in the local government elections. Part of the ex-communist political elite interpreted these changes as ethnic Bulgarians' loss of political power and supported the foundation of a number of national and regional nationalistic parties and organisations. They labelled the ethnic minorities "disloyal" and "dangerous" for national security and insisted that the government take political measures to intensify their emigration from the country through economic pressure. The level of unofficial unemployment in some rural and mountain regions, predominantly populated by Turks and Pomaks (Bulgarian-speaking Muslims), reached 75%. Unemployment affected the Roma more than anyone and, in 2001, only 18% of those aged between 16 and 60 were employed. The poverty rates among the Roma and Bulgarian Turks are much higher than the average for the country. The educational level of Roma children and young people deteriorated. The spatial segregation of the Roma doubled, resulting in a sharp deterioration of their living conditions, mass unemployment and poverty, and an inability to pass on social norms and values to future generations.

Spatial segregation usually means also school segregation. The majority of Roma children study in segregated schools with a very low quality of education. The proportion of institutionalised Roma children is the highest and often opportunities for their reintegration are the worst.

Negative stereotypes and prejudices towards the ethnically and religiously different block effective social programmes for their reintegration, thwart the political will for decisive action aimed at a reduction in social exclusion, advantage abuse because of a lack of control over the spending of money and resources in the different integration programmes, and lead to poor quality services for the members of these communities.

The lack of serious civil opposition to the constant shrinking of social rights, as well as political and media propaganda claiming that social funds are being drained “by irresponsible Roma people”, “unwilling to work and acting as parasites on the system for social assistance”, led to three unopposed consecutive changes to the Social Assistance Act, which stipulated a reduction in the period for monthly assistance for long-term unemployed people; firstly, to 18 months (2006) and later to 12 and then six months (2008). Along with the suspension of monthly payments for unemployment and poverty, the right to free health care services for such people was also suspended. These measures especially affected the Roma community. After a collective claim to the European Committee of Social Rights, lodged by the European Roma Rights Centre, the committee decided that there were violations of Article 11, paragraph 1 (Right to protection of health), and Article 13, paragraph 1 (Right to social and medical assistance). In the decision one can read that: “The authorities have failed to take appropriate measures to address the health problems faced by Roma communities stemming from their often unhealthy living conditions and difficult access to health services. The medical services available for poor or socially vulnerable persons who have lost entitlement to social assistance are not sufficient.”⁴⁴⁶

The accumulation of a number of causes that lead to deep poverty and social exclusion was observed among Roma. The stress caused by prolonged unemployment and poverty in the community lead to the poor health conditions of the unemployed and other family members, which turns out to be an additional obstacle for inclusion in the labour market in more favourable economic times. Poverty in the families of the long-term unemployed leads to lower levels of education and qualifications for their children. In turn, this means that these children will not be competitive

446. ECSR, Conclusions 2009, Bulgaria, p. 14.

on the labour market, will drop out of it during crises and will therefore transmit poverty to the next generation. The inhabitants of the underdeveloped rural and mountain regions have very limited access to the labour market and basic social services, which in turn leads to territorial reproduction of social isolation and poverty.

2.4. *Joining the European Union*

The initial years of Bulgaria's membership of the European Union, 2007 and 2008, were very good considering, especially considering the realisation of various projects and programmes directed at a reduction in social exclusion of a large proportion of vulnerable groups. These were the years of the greatest foreign investment (mainly from the EU), which led to increases in employment, income, pensions and remuneration while unemployment decreased constantly until the end of 2008. The years 2007 and 2008 were quite favourable for the start of different projects and programmes aiming at a reduction in poverty and social exclusion because of new opportunities for funding from the European Social Fund and some of the pre-accession funds targeting a reduction in social inequalities, the development of backward regions and an increase in administrative capacity. These were years were characterised by continuous and intensive experience being gained from the EU as regards legislative changes, and programme and project proposals directed at the gradual reduction of poverty and social exclusion in the country. The impact of the global economic crisis was felt only slightly at the end of 2008, whilst the suspension of a significant proportion of EU investment, because of corruption and mismanagement, impeded economic development and social integration in 2009. In 2009, after general elections, the Bulgarian Government changed. The new government, formed by the GERB political party, started its mandate with a serious attempt to investigate the abuses of power of the political and economic elites, to restrict corruption and to strengthen the rule of law in the country. At the same time, it has given contradictory signals as regards respect of human rights. The economic crisis reduced the capacity of the government to manage the deficit of resources. It was often criticised by civil society and the opposition for excessive cuts in public welfare and services like education, science and health care, and allocating increased resources to the Ministry of the Interior.

3. Enduring deficiencies in the rule of law and their consequent effect on creating and increasing poverty in transition countries

The transition period was characterised by the introduction of an “ineffectual legal framework” (normative chaos; lack of control over the observance of the law in economic and social relations; a poorly functioning judiciary; ineffective administrative services) and artificially weak institutions. This anomic development of society and institutions was completely subordinated to the interests of the newly formed economic and (the not exactly new) political elites, which were accumulating great wealth by “extracting” capital from state enterprises. “Latent privatisation”, an intrinsic characteristic of the transition period, was implemented throughout the whole period in dubious legal circumstances, whilst laws were constantly being changed to suit the interests of the big “economic players”. The consequences of such action – deindustrialisation, devastating destruction of assets, loss of foreign markets and positions in the interstate “distribution of labour” – led to mass and prolonged unemployment and deep poverty.

The substitution of state monopolies with private ones enforced the vulnerability of consumers of goods and services. This is most evident when it comes to the energy sector’s monopolies. They were able to raise their prices constantly without the necessary investment to improve the infrastructure they were using or the quality of their products/services; they even charged their clients for all the losses associated with depreciation of their facilities. They were obviously exploiting their monopolistic positions. It also raised the production cost of goods, created unfavourable conditions for development of small and medium enterprises and contributed to further impoverishment.

Poor legislation and a lack of clear regulations led to ineffective institutions, which constantly reproduced corrupt practices inherited from the previous regime and were widespread in the post-communist period. A large proportion of the managers of state enterprises received commissions and payments in order to give access to their production to a given dealer and not to another one. Administrative officers were able to protract by months and even years decisions on government contracts concerning facilities and assets, construction licences or execution of any type of activity. This was done in order to force the client to give them bribes. Mayors and municipal counsellors implemented obviously unprofitable deals with private companies just because they were able to offer bribes.

Even doctors received commission from large pharmaceutical companies when prescribing their medications to ill people. Ministers, deputy ministers and members of parliament received huge “payments for consultancy” from companies in order to guarantee a government contract or access to a European fund. Ministerial officers “did not notice” blatant discrepancies between wages and the price of services in the financial budgets of companies that were approved to implement various projects.

These practices have not changed since Bulgaria’s legislation was harmonised with EU standards after accession. In the period 2007-10, there were a series of scandals unearthed by the media concerning huge corruption schemes that involved top-level politicians. In very few cases were the claims investigated, with only an insignificant number of them reaching court. The courts’ judgments make people more convinced that people are not equal before the law.

Since they were on a large scale, these cases led to freezing and even cancellation of certain payments provided by European programmes in 2009, and are a threat to many others. At the moment, the money from structural funds is the main hope for the technological upgrading of the Bulgarian economy, for the development of infrastructure, for the development of environmentally friendly production, for the economic development of underdeveloped regions, for modernisation of agriculture, for new jobs ... Bulgarian society cannot afford to lose it.

The ineffective functioning of institutions and poor application of the law did not lead to increased civil activity directed at correcting politicians’ behaviour. People started (were forced) to find solutions to their problems through means that turned corruption and illegal activities into everyday phenomena. They pay bribes to corrupt traffic policemen in order to avoid fines and other punishment for real or fake breaches of traffic regulations. They pay money to doctors in order to be sure that they will receive high-quality medical services. They give “gifts” to administrative officers in order to receive faster service. Sometimes, these payments can be substantial, leading to (temporary) poverty; thus poverty can lead to restricted access to services.

What happened was a change of values. For a great number of Bulgarian politicians their participation in politics has nothing to do with common welfare and prosperity, but is an opportunity to use political power for personal or group benefit. Social values like solidarity, justice, tolerance, acceptance of difference, respect for dignity and freedom of others are being eroded. Society is not only in a moral crisis but is also threatened by anomie. Such a society cannot mobilise itself in order to fight against

growing social inequalities, poverty and social exclusion. It is indicative that Bulgarian citizens have a very low rate of participation in the civil society structures that are searching for a solution to the problems of vulnerable groups, and even trade unions, as shown in the European Value Survey 2008. Poverty is a natural feature of such a society.

4. Perspectives for change and proposals in order to construct and develop social cohesion in Bulgaria

On the basis of a comparative analysis of the socio-economic development of EU member states forecast that more than 20 years would be needed for Bulgaria to reach 75% of the average socio-economic development in the Union. This is an optimistic forecast. The success of the development will depend on restricting the power of the Bulgarian oligarchy, the introduction of better conditions for development of businesses, and stabilisation and extension of the middle class. The mobilisation of a tired, sceptical and apathetic society in order to fight for a reduction in inequalities and poverty is of great importance. A key factor in all this is the effective legal regulation needed to overcome the crisis. During the period between 2005 and 2007, harmonisation of Bulgaria's legislation with that of the EU was completed, but there are still serious financial and organisational obstacles when it comes to application of accepted rules and norms in practice.

Many of the recommendations for poverty reduction and development of social cohesion appear self-evident: development of high-tech production and increases in labour productivity; reduction of unemployment; fair wages; lessening of large inequalities in regional development; guaranteed access to social services and especially to public preschool establishments, education and health care for all; social assistance for those who have dropped out of the labour market, disabled people and those who suffer from chronic diseases, mothers and children, elderly people; improvement of housing and infrastructure in the country (especially in the villages and in the Roma neighbourhoods); complex measures for reintegration of vulnerable minority communities; proper management of social funds; transparency of institutional activities; and constant monitoring to include representatives of all interested groups and academia. Of particular importance is improved allocation of European structural funds, which represent large-scale investment for the country, an opportunity for more and better jobs, the possibility of big infrastructure projects, development of underdeveloped regions and assistance to vulnerable groups, and access to best practice and organisational experience.

A first step towards a reduction in the scope and depth of poverty would be an increase in all minimum wages and social assistance. In contradiction to a recommendation adopted by the European Council in 1992, impoverished Bulgarians who receive minimum wages cannot provide for themselves and their families adequate income in order to lead dignified lives. An additional problem is that the proportion of people whose income is very close to the minimum wage is very large. But an increase in minimum wages and social assistance (which was achieved after pressure from the EU between 2005 and 2009) whilst maintaining the rest of the wages at low levels only strengthens the sense of social injustice, a lack of meritocracy and downgrading, especially among state-employed people who have a college/university degree or qualifications (those working mostly in science and health care).

In a situation of economic crisis, Bulgarian governments are encouraged to make budget cuts, which by default affect the educational system, health care, science and culture. This unequal distribution of the financial burden leads to social tensions. For example, the budget for science for 2011 is much lower than the money for phone tapping (the so-called "means for special investigation"). The budget cuts for education, health care, science and culture lead to more widespread and acute poverty, and its transmission to future generations.

Bulgarian society is seriously lagging behind when compared to the so-called "developed democracies" when it comes to guaranteeing effective equality for men and women, ethnic and religious minorities, people with mental illness or other health problems, people with different sexual orientations and emigrants. An established culture of sensitivity with regards to discrimination does not exist. Openly and constantly, the media, politicians, governmental officers, teachers and social workers violate with impunity the rights of the members of the above-mentioned groups through actions or hate speech, and through sexist or ageist statements. This discrimination and intolerance of different and vulnerable groups is passed on to younger generations. It is therefore necessary to create an atmosphere of zero tolerance towards acts of racism, sexism, ageism, discrimination of institutionalised people, and stigmatisation of and discrimination against persons with mental illness and other health problems. This should start immediately with the inclusion of organisations of vulnerable groups when priorities are being outlined, action plans are being developed and integration projects are being implemented. Schools need urgently to introduce civil education and involve students

and other young people in activities aimed at assisting and supporting members of vulnerable communities.

The Bulgarian Government has adopted a number of strategies, programmes and policies directed at social inclusion of different vulnerable persons and groups. But many of these programmes are falling short because of unclear or incomplete phrasing of objectives, lack of action plans or their outdatedness, inadequate measures, insufficient funding, fake concern or lack of control. Often, the proclaimed aims and tasks of the programmes are not accepted by the administration, they face the resistance of those in charge to implement them or are assigned for implementation to people who do not have the necessary skills and motivation, and they are not supported by the majority of the population, especially when it comes to the Roma or people in institutions.

It is necessary that legislation concerning the social rights of Bulgarian citizens becomes more sustainable. The constant changes create difficulties and, in practice, reduce the capacity of citizens to understand their rights; hamper the work of social workers and officers from institutions in charge of their application; and impede analysis of the effectiveness of the adopted changes.

The government should implement monitoring of projects directed at social inclusion in conjunction with non-governmental organisations representing vulnerable communities, and academia. It is important to change current practice – monitoring based only on documentation – because such a practice hampers those in charge from determining the real effects of the resources spent.

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SOCIAL JUSTICE AND POVERTY IN RUSSIA

Lidia Prokofjeva

1. Poverty trends and distribution over the last 20 years

1.1. Introduction

In Russia, as in all post-socialist countries, the transition to a market economy and a new political system took place against the backdrop of a severe economic crisis accompanied by a sharp fall in GDP and in people's incomes,⁴⁴⁷ as well as a budget deficit.

The socio-economic trends in Russia in the 1990s led to the emergence of a relatively large group of people with limited access to sources of income and welfare programmes, and hence to growing poverty among the population.

The definition of the poor given by the UN Economic and Social Council includes individuals, families and groups of people whose resources (material, cultural and social) are so limited that they are unable to maintain the minimum standard of living deemed acceptable in the country where they live.⁴⁴⁸ Poverty therefore involves standards of living that are unacceptable in material terms and reduces people's access to social and cultural goods, leading to the breakdown of society's physical and social capital, and a decline in the quality of human potential.

At the start of the reforms, a third of the country's population were classed as poor. Since 2000, there has been a steady decline in the poverty level – in 2009, the share of the population with incomes below the poverty line⁴⁴⁹ was 13.2%, or 19 million people (Table 1).

447. In 1992, income and GDP were halved.

448. Ramprakache 1994.

449. It should be noted that this official evaluation of the poverty level was obtained from income distribution modelling rather than from the results of household surveys (Appendix 1, "Methodological notes").

Table 1. Population with monetary incomes below the poverty line and a monetary income deficit

	1992	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Population with income below the poverty line as a % of total population	33.5	22.4	24.8	22.0	20.7	23.3	28.3	29.0	27.5	24.6	20.3	17.6	17.7	15.3	13.4	13.4	13.2
Monetary income deficit as a proportion of the population's total monetary income	5.9	3.3	3.9	3.1	2.8	3.5	4.8	5.0	4.5	3.7	2.6	2.1	2.1	1.6	1.3	1.3	1.3

Source: "Social status and living standards of the Russian population", State Statistics Service (Rosstat), Moscow, 2010.

It can be seen that poverty rose slightly in 1995 as a result of the budget crisis and then fell until the financial crisis in August 1998. After that crisis, the impact of which was particularly marked in 1999, there was a steady decline in poverty, which actually began in 2000 but was not reflected immediately in the statistics, as Rosstat adjusted the subsistence level upwards that year (Appendix 1). In 2005, the consumer basket used to define the subsistence level was again extended following the growth in the needs of the population. Since 2005, there has been a steady reduction in the share of the population in Russia living in poverty.

The use of other poverty indicators such as the income deficit indicator⁴⁵⁰ gives a further, in some cases more accurate, indication of the poverty dynamic (Table 1). When considered as a percentage of the subsistence level, the figure here was

⁴⁵⁰ The Russian Statistics Service defines this as the sum of all the income that would need to be paid to all the poor so that they were no longer poor, expressed as a percentage of the total income of the entire population (Appendix 1, "Methodological notes").

32% in 2000 and 31% in 2006: in spite of the substantial fall in the share of poor people in the population between the two dates, it can therefore be seen that this positive economic situation benefited those who were close to the poverty line rather than those still suffering extreme poverty.

1.2. Main factors in poverty

- (a) Access to employment. The social and economic situation of individuals and households largely depends on their position on the labour market, in other words, on access to the main economic resource in the form of paid employment. In Russia in 2009, the unemployment rate (ILO definition) was 8.8%. However, registered unemployment stood at only 3.3% (around a third of the unemployed). This major discrepancy between unemployment according to the ILO definition and registered unemployment is a peculiarity of the contemporary Russian labour market (Appendix 2). The unemployment rate is higher in the republics of the Northern Caucasus (47-53%)⁴⁵¹ but almost nil in the greater Moscow area (1-2%). Almost 70% of the registered unemployed are women; men prefer other means of finding employment. The vast majority of the unemployed seek to solve their problems without the assistance of the state, whose action is not effective.
- (b) Income inequality. During the transition period, the gap in average income between the poorest 10% of the population and the richest 10% tripled (Chart 1). In 2009, the income coefficient⁴⁵² was 16.7, almost three times higher than in France (6.67).⁴⁵³

The trend in the Gini coefficient, which is more sensitive to changes in the middle range, confirms this income polarisation. With a coefficient of 0.26 in 1991, Russia was less unequal than most countries in Europe; however, the figure rose to 0.4 during the 1990s and is now higher (0.422 in 2009).⁴⁵⁴

In terms of wages, differentials more than tripled during the period of economic reforms. Having stood at 7.8 in 1991, the figure had reached 25 by 2006.

451. At the same time, the proportion of undeclared employment is also fairly high in those republics (see Zubarevich 2008).

452. The income coefficient is the ratio of the total income of the 10th decile (individuals with the highest incomes) to that of the first decile (those with the lowest incomes).

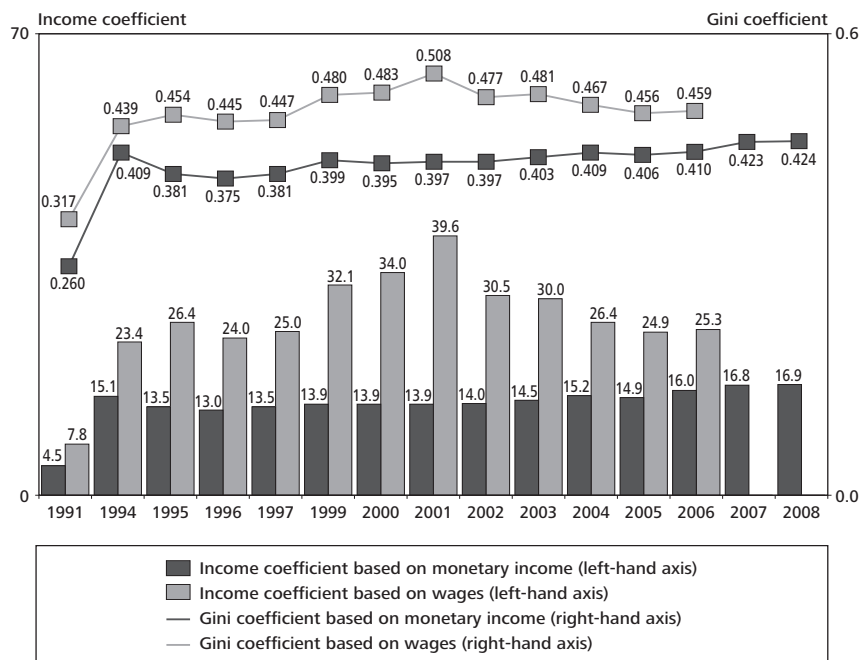
453. www.insee.fr/themes/document.asp.

454. In France, for instance, it is 0.289.

There are several factors in these major wage differentials:

- the first is the decentralisation of the process of wage formation as a result of the weakness of the state's regulatory functions and of the social partnership as an institution; this means that wage formation mainly depends on companies' economic position and the goodwill of entrepreneurs and owners;
- the second, not insignificant, factor is the low level of the minimum wage set by the state and used on a mandatory basis in state organisations. In private companies, it more or less serves as the benchmark for in-house minimum rates.

Figure 1. Income and wage inequality



- (c) The system of minimum social guarantees. In principle, a market economy geared towards social development requires a specific system of minimum social guarantees, operating within a logical framework:
- minimum wages and pensions are higher than minimum social benefits;
 - insurance payments also offer protection against poverty;
 - some population groups who are unable to work receive specific assistance which raises their income to the subsistence level;
 - poor families receive targeted benefits which raise their incomes to a guaranteed minimum.

These instruments form the backbone of the safeguards, making it possible to achieve the standards of consumption accepted by the society concerned.

In Russia, the system of minimum social guarantees is enshrined in law, but the levels are inadequate. Minimum wages, retirement pensions and unemployment benefits are beneath the subsistence level.⁴⁵⁵ In 2009, the minimum wage accounted for 79% of the subsistence level, and 30% of employees earned it. However, the minimum wage only reached this level in the last two years: in 2000, it was 7% of the subsistence level and in 2007 it was 27% (Table 2). The minimum wage should be at least 40% of the average wage; it now stands at 23%.

Table 2. Level of minimum social guarantees, as a % of the subsistence level

	1993	1994	1997	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Minimum wage	39	28	19	10	7	13	16	20	24	23	22	28	48	79
Minimum (basic) pension	63	79	79	42	48	44	37	36	34	28	35	35	44	44
Minimum unemployment benefit			20	9	6	6	5	4	4	23	20	18	16	15
Minimum monthly allowance for children of poor families ⁴⁵⁶	19	20	15	7	5	5	4	3	3	3	3	3	3	3

Source: "Social status and living standards of the Russian population", State Statistics Service (Rosstat), Moscow, 2010, p. 185.

455. Child benefit (for children under 16) for poor families must be included in this group, as the minimum wage does not cover this.

456. Only for children under 16.

The minimum retirement pension accounts for only 44% of the subsistence level, while the allowance for children in poor families is very low, at 3%.⁴⁵⁷ The minimum unemployment benefit accounts for 15% of the subsistence level.

This situation worsens the problems of poverty.

- (d) Regional inequality in poverty. Russia is marked by major regional differences, with regions with several different levels of social and economic development existing side by side in a single country. The inequalities between regions are much larger than the inequalities between households in individual regions.

Based on per capita gross regional product weighted for price levels in each region, the difference between the region at the top of the list (Tyumen region) and those at the bottom (Ingushetia and Buryatia) is a factor of 14. The regions hardest hit by poverty (over 20% of the population poor) lie in different parts of the country: Siberia, the south, the centre and the Volga.

Another disparity which can be seen is related to where people live: the rural population and the inhabitants of small towns are in a more difficult situation, and poverty levels among them are much higher than in large cities and the various capitals.⁴⁵⁸

Regional differences in living standards are more marked today than in the period before the reforms as a result of the ending of the centralised policy to eliminate regional economic disparities.

- (e) The demographic profile of poverty. The type of household is also a key factor in poverty: single-parent families, large families and traditional groups with high birth rates are left in extreme poverty by the low participation of the state. At the same time, it is couples with one or two children and single persons who make up the majority of poor households. They form a category of "new poor", for whom the factors in poverty are social and economic conditions (low wages for those in employment or unemployment of family members who are fit to work, low level of retirement pensions).⁴⁵⁹

457. In 2005, the government transferred responsibility for funding the monthly allowances for the children of poor families from the federal to the regional level. Since then, Rosstat has stopped publishing these figures; those given here are estimates based on regional information.

458. In 2008, 20% of the rural population and 10% of the urban population were poor ("Socio-economic poverty indicators", Moscow, Rosstat, 2009).

459. Korchagina et al. 2005: 219.

2. The social protection system in Russia and the development of different mechanisms for combating poverty – Conditions of access to public assistance for the poorest

2.1. Social responsibility

The official definition of the poverty line in Russia is used as the basis for statistical analysis of poverty itself and by the social protection system, and therefore can be seen as determining the subsistence level. It should be underlined that meeting the latter is not guaranteed: poor families are entitled to social assistance but it is not enough to reach subsistence level.

The social protection system in Russia is very complex: some types of support from the Soviet era have been retained, while new types made necessary by poverty becoming a serious problem have been introduced.

There are two levels of responsibility:

- (a) The federal level, which covers:
 - the social protection system of the social insurance type (pensions, temporary disability benefit, unemployment benefit, maternity leave, etc.);
 - the family policy designed to boost the birth rate (birth grant, parental leave, “maternal capital” for women who have a second child, pregnancy/childbirth certificate, reduction of fees for kindergartens or nursery schools);
 - social assistance in kind (privileges, payment reductions) for persons with federal entitlements (war veterans, labour medal holders, people with disabilities, etc.).
- (b) The regional level, which covers:
 - the monthly allowance for families with children aged under 16 (or 18 if they are in education);
 - housing benefit for families whose expenditure on public housing services exceeds 22% of the family’s total income;
 - targeted assistance (allowance for poor families);
 - social assistance in kind (privileges, payment reductions) for persons with regional entitlements.

All the measures for assisting poor families are therefore the responsibility of regional government and their level essentially depends on regional budgets.

2.2. The different types of allowances and support

- (a) The monthly allowance for children in poor families. This allowance has only been funded by the regions since 2005. According to the Rosstat official data for 2009, 15.5% of all households receive the benefit and 41% of children aged under 16 are covered by it, but it accounts for only 3% of the incomes of the families concerned. The allowance does not therefore solve the problems of poor families with children.
- (b) Housing benefit. This is the second most important benefit for vulnerable families. Beneficiaries must provide proof of their incomes and work status. The benefit is granted for six months, after which fresh proof of the income and employment of all people in the household must be submitted. According to Rosstat official data, the benefit is paid to 8.3% of households. The figures for one of the regions in central Russia (Tver) show that almost 20% of households receive the benefit, which amounts to an average of 14% of the regional subsistence level.⁴⁶⁰
- (c) Targeted assistance for poor households. This type of assistance is characterised by diversity of the categories of beneficiaries and the rules for awarding it. Analysis of regional legislation shows that in half of the regions (40 out of 79), entitlement to state social assistance applies to all families and single persons on low incomes, while in the remaining 39 regions it applies to certain categories of poor families and single persons in a vulnerable position: large families, families including people with disabilities, families who look after children with disabilities, and pensioners who do not work and live alone. There are no official state statistics about the payment of this benefit and only surveys can give an estimate of the number of beneficiaries. According to our investigations,⁴⁶¹ 8% of households receive this type of assistance, including 6% in the form of a monthly allowance for three or six months a year. This can involve monetary assistance or assistance in kind, for instance coal, food or clothes. The assistance accounts for 5% of the recipient families' budgets.

460. Prokofieva 2010: 394.

461. National survey of living standards and public participation in social programmes (NOBUS), conducted in 44 000 households in 2003 by Rosstat with the participation of the World Bank.

The category-based approach does not guarantee that access to social assistance is limited to certain needy groups. Moreover, the targeted social assistance programmes are intended to support needy families primarily by means of targeted benefits in the form of allowances. That is an important aspect of social policy. However, from the point of view of helping the families, it is not enough as a means of overcoming difficult situations and increasing the ability of adult family members to adapt. This means that there is a greater need to increase the effectiveness of regional targeted social assistance programmes by moving towards qualitatively different allocation principles which actively encourage families to solve their problems.

The Decree of the Government of the Russian Federation No. 1663-r of 17 November 2008 on the main activities of the Government of the Russian Federation until 2012 set out to increase the effectiveness of social benefits by introducing a system of social contracts for the award of targeted assistance to the poor.⁴⁶² This new approach to social policy involves significant functional and structural changes in the work of social services at regional and municipal level, as well as greater co-ordination of the work of the various welfare bodies in providing targeted assistance for the poor. At present, 12 of the 79 regions in Russia use the possibilities of the new model for granting targeted social assistance to the poor, while the relevant methods are being trialled or are under consideration in eight other regions.

Overall, 23% of Russian households were covered by at least one means-tested targeted social assistance programme. If we add the programmes for particularly needy groups, which are not means-tested, the coverage rate is 24%.⁴⁶³

- (d) Social benefits in kind and other privileges.⁴⁶⁴ These benefits have formed a very important part of social protection in Russia since the Soviet era. There remains a legacy from the past, the founding principle of which has always been the same, namely to give as much as possible not to those who need it but to those who are “worthy” of

462. See Chapter 6 on the creation of conditions for stable growth in people’s incomes, p. 13.

463. Figures from the GGS survey conducted by the Independent Social Policy Institute in 2007 in a sample of 11 000 households.

464. For instance, no charges, or reduced rates, for public transport, health care, medicines or housing-related costs.

it.⁴⁶⁵ According to the data from the NOBUS survey,⁴⁶⁶ 50% of Russian households are entitled to these benefits or privileges. In value terms, the programmes make up approximately 9% of the total available resources of the beneficiary households. At present, it is pensioners who continue to receive benefits in kind (80% of all beneficiaries) rather than the poorest households, namely single-parent and large families.⁴⁶⁷

Minimum social benefits should include universal access to care and access to basic education for all children.

In terms of health, restrictions on access to care are one of the conditions which affect the poor and amount to a form of social exclusion. It should be underlined that even though access to care for children in Russia does not currently depend on their families' income, as the health system is still free for them, there is a trend towards the extension of charges for medical services. In the case of adults, more and more services now attract charges and compulsory medical insurance only covers a very limited range of care. Inequality in access to care has worsened with the deterioration in the public health service, the rapid expansion of private care and the informal payments made to doctors in public hospitals.

In terms of education, Russia inherited a school enrolment ratio of almost 100% from the Soviet Union, but access to higher education has become more unequal: children from poor families are now more likely to leave the education system at the age of 16 years or even earlier. The possibility of completing higher education is being limited by the rising costs for food and accommodation, for instance, even though no tuition fees are charged. The poor have access to basic vocational colleges and intermediate vocational colleges.

465. During the Soviet era, the system of social benefits and privileges involved a distributive mechanism which, alongside egalitarian wages, nevertheless produced inequality. The system was intended to support persons deemed particularly deserving by the authorities (the political and administrative elites, military personnel, members of the militia, prosecutors and Heroes of Socialist Labour, etc.), to which war veterans and the disabled were added. In the early 1990s, the most acute social problems were solved by introducing new benefits in kind so as to maintain the living standards of many population groups, again, as before, without means testing.

466. National survey of living standards and public participation in social programmes (NOBUS), conducted in 44 000 households in 2003 by Rosstat with the participation of the World Bank.

467. Ovcharova and Prokofieva 2007.

- (e) Family and voluntary support networks. Networks of families and friends play an important part in supporting poor families in Russia and to some extent make up for the shortcomings of the social protection system, mainly providing support to families with children (single-parent and large families). According to the NOBUS survey data, 30-40% of these families receive financial support from such networks, accounting for 10-25% of their incomes.

In contrast, private associations and foundations providing support for the poor, including charitable foundations, are not yet widespread in Russia. According to the survey, even in disadvantaged areas, only 1-3% of people turn to organisations of this kind.

Support for families suffering hardship may also be provided through associations whose purpose is to offer direct support to particular types of families and through the representation of the interests of the most vulnerable groups within local authorities. Associations representing large families or families with children with disabilities are fairly widespread. In places where they operate at municipal or regional level, they arrange practical assistance for families suffering hardship (clothes exchanges, organisation of crèches, distribution of restaurant vouchers for children, organisation of leisure activities and cultural education for children from large families, etc.), but they usually only receive minimum support from the authorities.

3. Attention paid by public authorities to poverty issues in official discourse

There have been three phases in post-reformist Russian social policy, which differ according to the degree of attention paid to poverty issues by the state and to the goals pursued:

- (a) The period from 1991 to 1995. During this initial phase, attention focused on the need to reform institutions in the social sphere which no longer corresponded to the new social and economic circumstances. This period saw the establishment of extra-budgetary social funds such as the pension fund, the health insurance fund and the social protection fund. The transition to a market economy required the establishment of a support system for new vulnerable groups such as the unemployed: in 1991, the law on employment of the Russian Federation's population was passed and defined the status of the unemployed for the first time. In the same year, the Fund for the Employment of the Population was set up to provide compensation

for unemployment, while the Federal Employment Agency was also established to register the unemployed and help them find new work.

However, all these measures had only a limited impact on the situation of the poor at the time. It can be said that the first governments of the new Russia were preoccupied with economic reforms and paid little attention to social issues and support for the groups who were close to destitution. That is the conclusion which may be drawn from analysis of the annual "Messages from the president to the Federal Assembly",⁴⁶⁸ which give an idea of the development programme for the country for the following year. In the messages from the then president, Boris Yeltsin, for instance, attention was focused on issues relating to privatisation, inflation and other economic matters. Apart from noting the difficult situation concerning people's living standards, none of the messages made any specific proposals. It may also be noted that experts and politicians did not pay sufficient attention to poverty during this period insofar as it was regarded as reflecting a normal increase in socio-economic problems in the context of the economic crisis and the implementation of reforms leading to a market economy.

- (b) The period from 1996 to 2004. During the second phase, the government began to design a social policy that was marked by major changes. A whole series of changes in the social sphere began to be discussed and prepared. However, it is clear that social issues were still not priorities in government activities at the time. Attention focused on maintaining financial stability (reducing inflation and establishing a budget surplus), reforming natural monopolies and other measures of the same type. President Putin's first message to the Federal Assembly (8 July 2000) set the objective of introducing a "realistic social policy", which meant moving away from "untargeted social allowances and privileges" towards "priority benefits for people whose incomes are well below subsistence level". However, this task remained unaccomplished until 2005.

It was only after 2005 that most of the decisions in the area of social support for the population were adopted and implemented. They included the "monetisation" of the existing privileges and the reform of the system of targeted allowances for the poor. In 2005, the

468. The president has made annual statements to the Federal Assembly since 1994: www.kremlin.ru; www.intelros.ru/index/php.

Government Programme for the Economic and Social Development of the Russian Federation for 2005-08 was adopted. It stressed the need to increase the effectiveness of the support programmes for the poor by creating the conditions to encourage poor citizens who were fit to work to engage in economic activity.⁴⁶⁹ However, it was during this same period that responsibility for several areas of social protection was transferred from the federal to the regional level, which increased the social obligations of regional budgets without providing equivalent compensation from central government. Inequality in access to social benefits between the various regions in Russia therefore worsened.

- (c) The period from 2006 to today. Recent years have been marked above all by boosting of the policy to increase birth rates. Existing parental and maternity allowances have been increased and new measures introduced to support families where a second child is born (“maternal capital”). However, the president’s messages to the Federal Assembly in 2009 and 2010 did not mention poverty, as if the problem had already been overcome. In his annual statement in 2010, President Dmitri Medvedev noted that “the task we set ourselves of ensuring that all pensioners had incomes above the subsistence level has been achieved”. This declaration was based on the fact that a new regional allowance had been introduced which must be paid to all pensioners with pensions below the subsistence level.

Various Russian and foreign experts note that the government has demonstrated real commitment over the past 10 years regarding the need to reduce poverty, even though several politicians have shown “a surprisingly contemptuous attitude towards the poor”. In most interviews conducted with members of the political “elite” in Russian cities, the poor were made out to be responsible for their own predicament.⁴⁷⁰ Liberal politicians sometimes make public statements like “Russians are poor because they do not want to work enough” or “the poor want far too much”.⁴⁷¹ Attitudes like that towards the poor among large sections of the political elites at federal and regional level inevitably generate a feeling of antagonism and insecurity regarding potential assistance by the state in difficult situations.

469. www.polit.ru/article/2005/02/15/program1.html.

470. Manning and Tikhonova 2004.

471. Round 2005.

4. Conclusions

Following the last 20 years of social and economic reforms, the situation in Russia is completely different from what it was before the changes. The country has moved from a statist, paternalist system to a liberal system with low social involvement. At the same time, according to the 1993 constitution, Russia is a social state. The legal aspect of the formation of the system of social guarantees is therefore particularly important.

In 1992, a document on the fundamental principles and orientations of Russian social policy for 1992-93 was drawn up by various ministries and bodies. The principles included universality, combined with an approach that differentiated between the various social groups, an active and targeted approach, social partnership and the delimitation of the powers of the different tiers of government. Unfortunately, these principles have not all been implemented. The principle of universality is reflected in attempts to include as many people as possible in one or other form of social protection; the differentiated approach can be seen in the provision of social benefits or privileges for particular categories of the population without taking account of their needs.

Neither the federal nor the regional programmes regard the poorest households as priority groups. On the basis of the allocation of funds and household commitment levels, the “non-poor” continue to be the main beneficiaries of the various privileges and benefits in kind. The social programmes in question do not therefore do enough to help reduce poverty.

At present in Russia, total welfare payments do not exceed 2% of GDP and account for almost 3% of total monetary income. The poor have not yet become the priority group in the social protection system: expenditure on benefits for the poor account for only 14% of the total volume of benefit expenditure.

Appendix 1 – Methodological notes on the calculation of poverty in Russia

The definition of the poor given by the UN Economic and Social Council includes individuals, families and groups of people whose resources (material, cultural and social) are so limited that they are unable to maintain the minimum standard of living deemed acceptable in the country where they live.

The choice of measurement methods depends, in particular, on the types of poverty (absolute or relative poverty) which predominate in a given society, as the concept of poverty includes an absolute and a relative element.

Absolute poverty is the inability of the individual or household to meet their basic needs for survival (food, clothing and housing). From a long-term perspective, absolute poverty is also relative, as the list of basic needs changes over time.

Relative poverty is defined according to the standards of a given society. It involves the inability to maintain the level of well-being generally accepted (most widespread) in that society. Relative poverty exists in societies with all levels of well-being and in all stages of development.

National definitions are far from unified. The approaches usually described as absolute are adopted in the United States, various English-speaking countries like Australia, and certain east European countries, including Russia. This absolute approach to poverty was also used in Russia in the Soviet period.

Western Europe traditionally employs a relative approach – 40-60% of median income. Poverty is regarded as a type of inequality: the poor are individuals and households whose living standards are very far below those of the majority of the population. The relative poverty indicator is therefore a hybrid construct, which is neither an indicator of poverty nor really an indicator of inequality, even though it is closer to measures of inequality than of absolute poverty.

In Russia following the liberalisation of prices in 1992, approximately 70% of the population found themselves with incomes which were below the Soviet subsistence level. An extension of poverty on this scale began to contradict the idea that poverty corresponded to a form of exclusion from the dominant lifestyle in society. This brutal collapse in Russian living standards in the early 1990s forced the government to define a new method of calculating poverty. As before, it was based on an absolute approach, and is still used by the state today.

It defines the poor as households or individuals whose monetary incomes are below the subsistence level.

In 1992, a new basic consumer basket was defined, whose value was half of the Soviet subsistence level. The main component of the consumer basket – the basic range of foodstuffs – was determined by the Food Institute of the Russian Academy of Medical Sciences taking account of the World Health Organization's recommendations based on the food energy and the range of nutrients needed by the body. In 2000, the basket was extended to include non-food expenditure which had become more important. In 2005, it was extended again.

At present, the official method employed by the State Statistics Service (Rosstat) to determine the percentage of the population who are poor is based on

comparison of average per capita monthly incomes with the subsistence level, that is with the cost of the basic consumer basket. The latter comprises the references of 11 groups of products, 10 groups of non-food commodities and seven groups of services for which charges are levied.

The official evaluation of the poverty level is obtained from income distribution modelling using a normal-log method rather than from the results of household surveys. The procedure includes a method for adjusting average income levels on the basis of data on expenditure by the population, but income dispersion is measured on the basis of the results of surveys of household budgets.⁴⁷²

In economic terms, this correction is justified by the fact that a large proportion of income is not declared. This includes income from second, undeclared jobs or other sources of undeclared income such as the renting out of flats or the provision of informal services. At the same time, free education and health services no longer exist, which explains why the subsistence level, which is calculated without taking account of expenditure on education and medical care, no longer reflects the basic needs of the population.

The indicator of the number of poor people can be regarded as a good indicator of poverty. It is entirely suitable as an instrument for properly understanding the reduction in poverty. In spite of everything, in some cases, including for analysing the influence on the poor of particular policies, the indicator of the proportion of the population who are poor is not suitable for measuring the effects produced. This happens, for instance, when a programme established specifically for the poorest does not have the practical effect of removing the beneficiaries of social assistance from the poverty category, even though their income levels have increased substantially. In cases of this kind, the income deficit gives the most accurate estimate of the dynamic. This poverty indicator may be interpreted in several ways. The Russian statistics service defines it as the sum of all the income which would need to be paid to all the poor so that they were no longer poor, expressed as a percentage of the total monetary income of the entire population.

472. In Russia as elsewhere in the former Soviet Union, the main sources of information about the level and structure of incomes come from the Rosstat annual survey of the budgets of 49 000 households in all regions of Russia.

Appendix 2 – Unemployment in Russia

Unemployment is lower in Russia than in the other countries of eastern Europe. “Universal employment” under the socialist model had led to surplus employment. To overcome this problem, most transition countries undertook restructuring of their labour markets which also led to a sharp rise in unemployment.

In Russia, the authorities opted for moderate official unemployment levels accompanied by substantial reductions in real wages in place of potentially very high unemployment affecting at least a third of the population. At the start of the period of the reforms in Russia, the state continued massively to subsidise businesses which had very low levels of profitability (the subsidies amounted to 32% of GDP in 1992). Later, the regional authorities took over from central government in keeping businesses afloat which otherwise would have failed.

In periods of economic crisis, the most widespread managerial policy is to reduce working hours (part-time work or unpaid leave, sometimes for lengthy periods) and employees often accept this solution to avoid becoming unemployed.

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PART D

DEMOCRACY, SOCIAL JUSTICE AND POVERTY

POVERTY AND DEMOCRACY – CHANCES AND CONFLICTS

Dirk Berg-Schlösser

Introduction: basic relationships and dilemmas

The relationships between poverty and democracy are conflictual and, at least, threefold. At the most abstract (“macro-”) level, this concerns the overall level of socio-economic development and the emergence and chances of consolidation of democracies in modern times. Many authors, most prominently Lipset,⁴⁷³ considered a higher level of development and modernisation as a “requisite” for the transition to and the sustainability of contemporary democracies. More recently, more differentiated views prevail, showing various patterns and paths of democratisation.⁴⁷⁴ At a more concrete level, this relationship refers to inner-societal conflicts and patterns of democratic representation and interest mediation. In this respect, three major forms can be distinguished: pluralist, corporatist and “clientilistic”, each of which shows certain forms of under-representation and exclusion of socially weaker groups.

In the (today, in many countries prevailing) pluralist form of open, competitive interest representation, economically better off and more powerful groups tend to be in the forefront. As one of the earlier critics put it: “The pluralist choir tends to sing with an upper-class accent”.⁴⁷⁵ In the corporatist or neo-corporatist form in countries with a well-organised labour force, as in Scandinavia and parts of western Europe, the dominant interests of organised capital and labour co-operate closely with governments and tend to disregard, again, the less organised and weaker social groups such as the unemployed or otherwise socially disadvantaged people.⁴⁷⁶ The third, clientilistic, form privileges groups having easy access to central power holders and “patrons”, often on an ethnic, regional or similar basis, at the expense of other socially and politically excluded groups.⁴⁷⁷

473. Lipset 1959.

474. See Przeworski et al. 2000; Acemoglu and Robinson 2006; Berg-Schlösser 2007 and 2010.

475. Schattschneider 1960: 30 ff.

476. See, e.g., Schmitter and Lehmbruch 1979; Crouch and Streeck 2006.

477. Kitschelt and Wilkinson 2006.

A third, more indirect relationship concerns situations where the perceived interests of a majority are mobilised against socially weak minority groups, again often on an ethnic, immigrant or otherwise “targeted” basis. This often occurs in “populist” or nationalist forms where the basic human rights of such groups are violated on behalf of the titular national majority. Not infrequently this has been the case in recently democratised countries where majorities turned against minorities or where a high level of immigration has taken place in a short time. Here, focusing on the European context of more or less established and relatively prosperous democracies, we will deal mainly with the second and third forms of these relationships. The first one, where large majorities of a population may live below the poverty line, mostly applies to the less and least developed countries, to use United Nations terminology.

In the following, I will, first, briefly address problems of definitions of democracy and poverty, and situate them in the contemporary European context, as it is broadly understood. Then, possible “voices” and actions of poor people and how they may affect their situation are discussed in greater detail. In addition to such conventional or unconventional participatory forms, rights-based approaches are then presented. How both types of democratic intervention may be confronted by adverse populist or anti-democratic reactions will be dealt with in the last section, followed by a brief conclusion. All this can, of course, be covered here, given the constraints of time and space, only in a very condensed and summarising way.

1. Definitions and context

Democracies consist of both functional (institutional) and normative elements. The functional side, in all its variations, is usually laid down in explicit constitutional documents outlining specific institutional arrangements like presidential or parliamentary systems, the separation of powers, electoral laws, etc., whereas the normative side is often embedded in a separate “bill of rights” or preambles, and also in more universal documents like the respective charters of the United Nations which, at least formally, have been accepted and ratified by most contemporary states.

Functional aspects, as in Robert Dahl’s concept of “polyarchy”⁴⁷⁸ emphasising broad-based political participation and open pluralist competition, and the subsequent forms of “empowerment” of poor people, are discussed in section 3 below. Such formal-institutional aspects are, for

478. Dahl 1971 and 1989.

example, also operationalised and regularly measured in the “polity” data set.⁴⁷⁹ The normative side of democracy, based, in the last resort, on the universal dignity of all human beings, and its implications for poor and marginalised groups of society, referring to their “entitlement” and advocacy by others, is covered in section 4. Some more limited aspects of such rights, covering “political rights” and “civil liberties”, are measured in the respective Freedom House indices.⁴⁸⁰

The concept of poverty is subject similarly to a wider range of definitions and measurements. The notion of “absolute poverty” concerns the sheer minimum of basic living conditions to sustain a person’s physical existence including food, shelter and clothing. This is often expressed and operationalised in indicators such as the purchasing power of one or two US dollars per person per day.⁴⁸¹ In contrast, “relative poverty” refers to the income position of persons and groups with regard to the specific economic context they are living in. In Europe, this is defined as having an income of less than 60% of the median of a population in a statistical sense.⁴⁸² According to this definition, therefore, there will always be “relative” poverty with regard to others depending on the overall income distribution even for groups experiencing a relatively affluent way of life compared to populations in absolute poverty elsewhere.

However, in this respect as well, “relative” poverty can also be conceived in a rights-based way, again derived from a concept of human dignity, but now explicitly related to the broader standards of living in any given society and the right to a decent, non-discriminatory way of life including both material and immaterial aspects such as the mutual recognition of each other’s dignity.⁴⁸³ In this context the concept of “extreme poverty” also is a relational one.⁴⁸⁴ Understood in this sense, relative poverty cannot be operationalised and measured so directly, but is reflected in the life situation of the most marginalised and often discriminated groups in each society. In the words of Christian Bay: “The crucial test for judging a democracy or any other system of government is the extent to which its decision processes favour the protection and expansion of human rights, or the expansion of the freedom of those strata that at a given time are least free – whether

479. Jagers and Gurr 1996.

480. Freedom House 1978.

481. See, e.g., UNDP 1990; World Bank 1978.

482. Eurostat, https://epp.eurostat.ec.europa.eu/portal/page/page/employment_social_policy_equality/omc_social_inclusion_and_social_protection/social_inclusion_strand.

483. Daly 2002.

484. Dierckx 2010.

their chains are made by economic or cultural impoverishment, political disenfranchisement, or lack of equality in the courts of law."⁴⁸⁵

All this will be dealt with here in the "European" context, in the Council of Europe's sense of the term. This implies both a more general level of existing democratic rights and procedures, and a variety of forms and implementations of contemporary "welfare states".⁴⁸⁶ It is in this context that the following discussion is to be understood. Elsewhere more "absolute" and more easily "objectifiable" conditions of poverty exist, but even in Europe a great variation in material living conditions and available private and public resources can still be observed.

With regard to the major aspects of these definitions of democracy and poverty, and the implementation of welfare policies among the 47 Council of Europe member states, at least three broad groups can be distinguished. One refers to the longer-established, relatively prosperous democracies of western Europe. Here, the central functional and normative aspects of democracy are generally well respected, and a relatively broad range of welfare measures is in place. Nevertheless, some especially "vulnerable" groups even in these countries require special attention. The second group consists of the new EU member states in central and eastern Europe. These countries have become more or less consolidated democracies in a functional sense, but some of the normative aspects with regard to the firm establishment of the rule of law, protection of minority rights and similar aspects still leave something to be desired. Similarly, the economic situation after the difficult transition from a state-controlled economy to a market system is still more precarious for larger parts of the population. The third group comprises the remaining post-communist states in the former Yugoslavia and the Soviet Union. Democratic procedures and rights there are still more endangered concerning, for example, free and fair elections, the independence of the media, respect of the rule of law, etc. Economically, they also show a very mixed picture depending on the kinds of resources available, such as in some countries oil or gas, and the kind of transition to a more market-oriented economy. In addition, Turkey is a somewhat special case; having initiated a number of democratic and judicial reforms in recent years and showing high levels of economic growth, strong political tensions and social inequalities still remain.

This is, of course, only a rough categorisation and the situation in each country with regard to these broader criteria has to be assessed in greater

485. Bay 1970: 351.

486. See, e.g., Esping-Andersen 1990.

detail with the help of some of the more readily available major indicators including the political indices mentioned, but also statistical data from the World Bank, UNDP, OECD, etc.⁴⁸⁷ A more fine-tuned assessment on the basis of the broad range of “social cohesion” indicators still has to be further operationalised and implemented.⁴⁸⁸ In the following, only the more general aspects of the relationships between poverty and democracy can be discussed. A concrete, up-to-date, country-by-country empirical assessment would, of course, require a broader separate study.

2. Democracy’s “voices”

The formal-institutional side of democracy offers a number of clearly defined channels to articulate and aggregate the interests and demands of the citizenry at large. The most obvious of these are regular “free and fair” elections of the most important political decision makers at all levels (local, departmental, provincial, national or even supranational, as the case may be). In addition, there is a broad range of established forms of political participation such as contacts with elected representatives face-to-face, by phone, mail, or today the Internet, membership and active involvement in political parties, or taking part in direct political decision making through people’s initiatives, referenda, and the like.⁴⁸⁹ These more or less direct political channels are supplemented by an even wider array of socio-economic and other interest groups and their specific forms of lobbying including contributions to party and campaign financing sometimes blending into dubious and illegal activities.⁴⁹⁰ Furthermore, and increasingly since the 1970s and 1980s, more “unconventional” forms of political participation and political action have come to the forefront. These include (sometimes violent) demonstrations, boycotts, strikes, occupation of land or buildings, etc.⁴⁹¹

With regard to poverty-related issues, our main concern here, these forms of political participation and the respective studies also reveal a number of concerns and deficits. In the past, in Europe and elsewhere, with

487. See, e.g., Berg-Schlosser 2004.

488. Council of Europe 2005.

489. Standard works discussing such procedures are, e.g., Milbrath and Goel 1977; Verba et al. 1978. See also International Institute for Democracy and Electoral Assistance (IDEA) 2008.

490. Pinto-Duschinsky 2002.

491. The first broader study of such activities in the Western context was Barnes and Kaase 1979; a Third World-related study is Berg-Schlosser and Kersting 2003.

increasing industrialisation and urbanisation the poorer parts of society have become increasingly organised in secular social-democratic, socialist or communist parties and strong labour unions, and also in church-related organisations such as Christian Democratic parties and unions. For these groups, democratisation and the right to vote and to participate in other ways meant an additional important resource to influence and improve their way of living through legislation (regulating, for example, work hours and work conditions) and social security and redistributive measures of public finances. Their strength could mainly be expressed through their sheer numbers and their effective organisation (in elections, strikes, etc.).

Nevertheless, as mentioned before, there can be and have been concerns about the equality of opportunity with regard to conventional and also unconventional forms of political participation. These concerns have shifted, but not diminished in the course of time with increasing activities in the services sectors and trends towards relocating labour-intensive industries and other forms of globalisation. The membership and influence of unions in Europe and elsewhere has declined in general, and in many of the new forms of political activity and protest as organised by NGOs and over the Internet the better-educated (new) middle-class groups tend to dominate.⁴⁹² As Dalton et al. put it: "Indeed, our analysis suggests that this tension between participation and equality exists across various vastly different contexts and is particularly apparent in more affluent and democratic societies. Thus, the expanding repertoire of political action in these nations may raise new issues of generating the equality of voice that is essential to democracy."⁴⁹³

This is even more true for the smaller and often specifically characterised and "labelled" groups who experience more extreme forms of poverty. For them to be organised and to be heard in effective forms of "collective action"⁴⁹⁴ is significantly more difficult. This applies to the considerable number of (de-unionised) unemployed or (mostly younger) people who have never entered the official labour market, although it also concerns parts of the "working poor" who find themselves in low-paid temporary employment that is much more affected by the vicissitudes of business cycles and financial crises. Here, some forms of self-organisation, self-help and voluntary outside support exist,⁴⁹⁵ but their political influence to change this situation

492. Della Porta 1995.

493. Dalton 2010.

494. For this term and its implications see, e.g., Olson 1965; Offe 1973.

495. O'Kelly and Corr 2010.

generally remains very low, which not infrequently results in forms of political apathy out of despair or cynicism leading to a more or less permanent “exit” from the political arena in Hirschman’s sense.⁴⁹⁶

The “empowerment” of low-income workers and of people experiencing extreme poverty has thus come to be seen as a principal concern by both social scientists and political action groups.⁴⁹⁷ Empowerment being understood here as a “process by which people, organisations, and communities gain mastery over their affairs ... in the context of changing their social and political environment to improve equity and quality of life”.⁴⁹⁸ Empowerment in this sense refers to individual, group-related and political aspects. Whereas the former can be enhanced by specific social services and policies (for which the political will has to be mobilised), the latter depend, in part, on the mobilisation of the affected groups themselves. Group action requires some form of common solidarity and organisation together with possibly some outside support. However, the more extreme certain forms of poverty are, concerning for example single mothers, the homeless, alcohol or drug addicts or combinations of such situations, the more isolated, secluded and often discriminated against these groups become. Effective organisation of such persons is, therefore, severely hampered and their potential to raise awareness of their situation remains very limited. Nevertheless, a number of forms of self-organisation at local, national and even European levels, such as the European Federation of National Organisations Working with the Homeless (FEANTSA), the Youth Empowerment Partnership Programme (YEPP), or the European Older People’s Platform (AGE), to mention but a few, do exist. By themselves, however, such organisations often remain weak, have highly fluctuating memberships and require outside assistance by civil society groups or governmental institutions. For this reason, other political mechanisms have to come into play.

3. Democracy’s rights

As briefly mentioned in the introduction, democracy in a more encompassing sense of the term has not only functional-institutional but also normative rights-based aspects to it.⁴⁹⁹ These rights can be claimed by affected persons and groups both in a material and an immaterial sense. In Europe with its different forms of social welfare states (in spite of all

496. Hirschman 1970.

497. Dierckx 2010.

498. *Ibid.*, p. 58.

499. See, e.g., also Dworkin 1977; Bobbio 1987.

their continuing problems and weaknesses), such rights and services are clearly regulated. But often more detailed information about such rights is lacking, the requisite bureaucratic procedures are cumbersome, and it happens that some of the personnel in such services may be less than helpful and friendly. This especially applies to the most marginalised and often stigmatised groups in society.

Here, civil society organisations of concerned people not belonging to the more seriously affected groups themselves can and do play an important role. "Advocatory" interest representation on behalf of economically, socially and therefore also politically weak groups has gained increasing importance in recent decades. Such advocacy can help to provide direct material assistance, mostly at the local level, such as free meals and other supplies, clothing and similar items. It may also include free legal assistance and similar support where needed. Over and above such services these advocacy groups can also raise the awareness of the general public about specific groups and issues, even influencing more general reforms and legislation in these respects.⁵⁰⁰

One particular issue, however, has to be mentioned here, which affects the legal position of specifically targeted groups, such as migrants, refugees and asylum seekers in a fundamental way, namely the question of citizenship. Basic public social services are usually confined to those who are legally part of the respective welfare system and who are entitled to specific benefits and services. Persons without citizenship or, at least, residence permits remain in a much more precarious situation. They are often grouped in special homes or camps, not being entitled to work, and often facing extradition. Their legal position is defined by the Geneva Convention relating to the Status of Refugees or special asylum laws, as in Germany. Even though their human dignity cannot be put in any doubt, as is the case for everyone else, the kind of formal assistance such persons can receive remains extremely limited. This often forces them into clandestine informal and illegal activities. In Europe, such problems have become all the more pressing with recent crises in particular countries and regions, such as in the former Yugoslavia in the 1990s or currently the Middle East and parts of Sub-Saharan Africa. Attempts to find some kind of joint solution at a European level or, at least, more tolerant forms of accommodating such persons have not come to much so far. On the contrary, such problems have even triggered strong populist and xenophobic reactions in a number of places and countries.

500. See Baumgartner and Leech 1998; Berry and Wilcox 2007.

4. Adverse reactions and conflicts

Democratisation offers new rights and freedoms to people who have lived for long periods under different forms of authoritarian rule. At the same time, however, it may give rise to conflicts that had been forcefully suppressed by the previous regimes or that had even been created by such regimes favouring certain groups and regions, and fanning sentiments of envy and revenge. This applies, in particular, to multi-ethnic or multi-religious countries where certain groups or regions had been dominated by others. Formal democratic majoritarian procedures alone cannot regulate such conflicts. The definition of the *demos* cannot be left to a single group or even a large majority. It must include specific, resident minorities or socially weak groups, as for example the Roma, as well.

It is in this respect, that the normative side of democracy, basic human rights and the rule of law must be emphasised once again. In this regard, the concerns of resident minorities or more recently immigrated groups, as mentioned in the previous section, may coincide. They both may be, and often have been, confronted with strong reactions of at least parts of the national majority. Such sentiments are often instigated by populist politicians triggering acts of violence or strong xenophobic movements. It is precisely this disregard of the normative side of democracy and its legal implications that distinguishes such populist, often highly personalised movements or political parties from truly democratic ones.⁵⁰¹

On occasions, it is society's more disadvantaged groups themselves – such as the unemployed and less educated people living under difficult circumstances – that turn on or are mobilised against specifically targeted groups, such as ethnic minorities or migrants. In this way, evoked and provoked nationalist pride and the respective symbols serve to overlook their own misery. The democratic mobilisation of such groups can then turn against the normative principles of democracy itself. If such developments are not contained by strong legal institutions based on such principles or civil engagement by others this may, again, lead to fascist kinds of rule as in a number of countries in the past.

Conclusions

The relationships between poverty and democracy have been shown to be multifold and often conflictual. In situations where large parts of a

501. Mény and Surel 2002.

population are affected by poverty, democratisation can empower people to raise their “voices” and to make their weight felt in the overall democratic process at all levels. Their sheer numbers can shift the political balance in their favour; as is presently the case, for example, in Argentina and Brazil.

In the European context with longer-established democracies and welfare states, “absolute poverty” is much more rare and the forms of “relative poverty” provide a much more mixed picture. Further differentiations are also needed concerning different groups of countries in their transitions to democracy and market economies, as mentioned above. More broadly speaking, increasing globalisation with its important economic and social structural changes has led, generally, to a weakening of socialist parties and unions in Europe and more precarious forms of employment, but also to the emergence of “new middle classes” in the services and similar sectors. Furthermore, demographic and other social changes have increased the burden on existing welfare systems and some of the reforms undertaken have widened the gaps between the poorer and the better-off parts of society. Income disparities, on the whole, have been on the increase in recent decades. The “voices” of the relatively (and often increasingly) poor show a mixed picture as well. “Unconventional” forms of political participation have become much more common, but these are open to other groups, too, and sometimes are utilised for very narrow local interests or the mobilisation of discriminatory sentiments.

People experiencing “extreme” poverty under such circumstances do not usually benefit much from democratic procedures alone. Their numbers are (relatively) small and often fragmented in different groups and categories, which makes their joint organisation difficult and keeps their voices weak. Some forms of self-organisation and self-help do exist, but these often have to be supplemented by “advocatory” forms of interest representation based on the normative and rights-based side of democracy. It is in this respect that their support, based on generally approved principles, has to be further enhanced.

All this becomes even more diverse and complicated when such rights are disputed concerning specific minority groups such as the Roma or recently immigrated persons. Not infrequently, populist sentiments are mobilised against such groups, leading to social tension and even acts of violence. The very essence of democracy, the respect of universal human rights and the rule of law, may then be put in danger. It is in this respect that the social cohesion project of the Council of Europe gains its legitimacy and merits its overall support.

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“POOR BODIES” IN SUSPENSION

Federica Sossi

1. Poverty from the historical perspective of population government

In *Madness and civilisation: a history of insanity in the age of reason*,⁵⁰² where Foucault describes and reconstructs the archaeology of the “Great Confinement”, under which, for a few years in the mid-17th century, a section of the population were removed from society and shut up in premises for the dual purpose of rescuing and punishing them, he appries us of the wide variety of elements that came together in this event, so characteristic of the period. One element was the change of perception of poverty, shedding the sacral aspect that had been bestowed on it in the Middle Ages to become a secularised problem of public and social order. Whereas it had previously been linked to the religious experience and accordingly glorified and sacralised, uplifted by a charitable and hospitable gesture that was required for its own salvation, it was now an existence devoid of any positive element and condemned as sloth and public disorder, and repugnant to the work ethic that was emerging at the time. Consequently, as in the case of madness, poverty had to vanish from the stage, with the creation of a dedicated environment where it could be interned, together with a range of figures and existences that only seem fairly homogeneous from our vantage point because our mindset is still based on the bedrock of continuity with the linkage that the Enlightenment era saw among the poor, the mad, syphilis sufferers, prostitutes, the unemployed and alcoholics. From 1600 onwards, the latter made up the great host of internees created by a state that deprived them of their liberty and simultaneously, for the first time in history, actually looked after them.

All these existences were transformed by the abrupt transition of the Great Confinement, breaking the daily intermingling of encounters and familiarity, into figures “rebellious” against the bourgeois social order and the proper system of work, which are restored by segregating them. The practice and mode of exercise of power is thus inverted, namely from a negative power of mere exclusion to action on the exclusion itself. Segregating bodies in a space where the process of recovery, normalisation

502. Foucault 1965.

and regulation can gradually begin. In other texts,⁵⁰³ Foucault describes the development of these processes with reference to the 18th and 19th centuries, mentioning the technologies of knowledge and disciplinary power that now extend to the whole of society via the individualisation of bodies and the emergence of bio-power, which creates and regulates the population as a new basic collective political subject.

Techniques to control bodies and make subjects pliable, based on a centripetal mode of functioning which spatially isolates them and which, after the Great Confinement period, will assign them the new living environments of the factories, schools, prisons, lunatic asylums and families, accompanied, on the other hand, by security mechanisms based on a centrifugal, expanding mode of operation and influencing and regulating reality, leading to the collective subject with its own depth and weight, namely the population, which becomes the specific object of the art of government, striving after its reproduction, optimum wealth production, regulated distribution of resources, decreasing mortality rates and increasing birth rates. However, not only the lives that are subject to the disciplinary practices geared to producing these docile bodies ready to become a proletarianised workforce meeting the demands of production organisation, but also the new collective subject, which is to be regulated as a state force, must be linked up to the political horizon of the nation state, where the subject is a citizen and the population belongs to the state and the territory defined by its sovereignty. Both these entities are thus moulded and regulated simultaneously on the basis of the rationale of forming a subject that is again both singular and collective, reflected in an identity of national belonging, in which practices of cultural, social, economic and political inclusion infiltrate the lives of all citizens precisely via their belonging to the state's space/territory,⁵⁰⁴ which becomes the "specific territory" of each individual as well as of the "population", as a collective subject.

I thought I had to make these few points at the outset because, in my view, not only the perspective set out by Foucault but also his reference to the nation state horizon help to posit a number of substantive questions in broaching the theme of poverty: what power mechanisms create and simultaneously manage poverty? What is the rationale behind these mechanisms? Against the background of which processes and political spaces? What kind of power and knowledge technologies forge the

503. Cf. Foucault 1975, 2004a and 2004b.

504. See Noiriél 1988 and 2001.

perception we have of poverty, etc? The second reason is that I would like to concentrate on one specific feature of the current production and management of poverty, analysing it as one of the most widespread, pervasive elements of contemporary societies. Whether poverty was concealed behind walls, removing it from the public view for over a century in a gesture that destroyed both its familiarity and its sacrality, or whether it was relegated to multiple spaces for controlling bodies and transforming them from “poor bodies” into a workforce in the subsequent period, it was always a question of “places”, because in both cases the power-based mechanisms for dealing with the poor operated under a dynamic that granted the poor, guilty or proletarian body its belonging to the territory, designating its assigned “place”. This also happened because, at first merely as an emerging state and later as a fully developing state and as the only possible model, the nation state with its delimited territory based on the monolithic rationale of “one state/one territory/one sovereignty/one population/one nation/one language/one culture” was able to create “belonging subjects”, both individual and collective, simply by means of innumerable exchanges behind which *jus soli* was emerging for citizens as a kind of “naturalised” law.

2. A space for suspension: “poor bodies” on the borderline

Bodies involved in illegal work, at permanent risk of expulsion; European citizens managed under a policy of “permanent exclusions” or compulsory “invitations” to “voluntary repatriations”; homeless persons removed from their usual meeting places – railway stations, underpasses, doorways – under town-planning policies transforming such places into showcases for the consumer society; satellite suburbs devoid of any possible links with the rest of the metropolis; urban areas rid of all possible stopover places for the foregathering of “marginal bodies”; mobile “exile corridors”⁵⁰⁵ or “border camps” adhering to individuals’ bodies; and work stations in which the insecure workforce is constantly replaced. This is one photograph of poverty in towns and cities in wealthy countries, alongside the snap of the “favelisation” of deindustrialised towns with high workforce intensity, as superbly captured by Mike Davis in his *Planet of slums*,⁵⁰⁶ in the case of southern countries. Marginal and transitional towns, with improvised, flexible installations ready to vanish and relocate in another provisional location, inhabited

505. Agier 2011.

506. Davis 2006.

by these “interstitial residents” into which the urban poor in the South have been transformed by town-planning initiatives supported by the World Bank and various NGOs. Lastly, the permanent “exile corridors”, tent towns for refugees and displaced or “internally displaced” persons, permanently housing displaced existences in a dislocated area.

An interstitial, in-between space. Or better still, an oxymoronic “space of suspension”, which has emerged in recent decades as a predominant system for creating and managing poverty. As a result, a section of the global population is now destined for a transitional, atopic existence, a kind of paradoxical suspension that constantly changes territory. It is, furthermore, a population of invisible persons whose invisibility is not necessarily the product of the creation of a separate place, or of a definitive exclusion from the production market, but is rather inherent in economic and political power mechanisms, which have replaced the creation of docile, disciplined bodies with the production of “immaterial” bodies, to the extent that the physicality of any body on earth, whether human, animal or vegetable, predetermines its spatial location. If the territory of the nation state, the place specific to the citizen, was once the setting for the spatial implementation of a workforce trained to meet the requirements of labour organisation in major industrialising cities, while in the increasing shadow of the colonial environment experiments in dominating and exploiting subjects were being conducted, accompanied by terror and violence, not always stopping short of the subjects’ annihilation or extermination, the post-colonial environment, in which the absolute separation of territory and nation state and the colonial space of confinement has dwindled, is configured by the paradox of this suspension. The hybrid or superimposed sovereignty structures, which are no longer exclusively national, in the economic organisation of late capitalism, with its constant production and reproduction of lives in excess of labour market needs, are matched by this “transitional population” for whose bodies there is no specifically assigned area apart from the internal limits of their own corporeity.⁵⁰⁷

3. Migrants and poverty: constructing and exploiting an existential condition

We are workers who were forced to leave Rosarno after we had demanded our rights. We worked in inhuman conditions. We lived in derelict factories without water or electricity. Our work was

507. See Sossi 2007 and Sciarba 2009.

underpaid. We would leave our sleeping quarters every morning at six o'clock, only getting back at 8 pm, for 25 euros, although we did not actually receive even the whole amount. ... We could not carry on waiting for help which would never have come because we are invisible, we do not exist for the authorities of this country. We showed ourselves, we took to the streets to scream our existence. People do not want to see us. How can someone who does not exist demonstrate?⁵⁰⁸

On 7 January 2010, in Rosarno, a small town in the Province of Reggio Calabria, the African workers employed for seasonal harvesting of oranges and mandarins invaded the main streets and staged a revolt, destroying cars and signposts, attacking a number of passers-by and kicking over bins. The incident which triggered the revolt was one of the many gunpoint intimidations that occurred after they finished work. In the subsequent days, the law enforcement agencies arrested a number of migrants, although this did not prevent a few local residents from conducting a veritable manhunt. The Minister of the Interior responded by precipitately and furiously deporting all the migrants to detention centres. Later, after charging the "illegal" migrants with their acts of violence, he noted that many of them had residence permits. Arriving in Rome at the end of January, several migrants set up a collective and after their first assembly issued a communiqué entitled "Mandarins and olives do not fall from the sky", explaining the reasons for their revolt. Conditions of exploitation as a workforce bordering on slavery, ruins, derelict factories and abandoned farms as dormitories, the *caporali*⁵⁰⁹ who extort their daily pittance, the occasional intimidatory gunshots, and the social and political invisibility. That is what farm work is like in southern Italy, but the seasonal working conditions in the rural areas of many European countries are not very different, even if these countries implement regulations on quotas for seasonal workers from North African countries who are "licensed", subject to the conclusion of agreements on repatriation of their citizens and migrants who have transited through their territory. That is the situation in agricultural work, but also in construction work in the northern and southern parts of various European countries. This applies to agriculture and building, but not exclusively, because the conditions of labour exploitation have spread to many other labour market sectors in

508. "I mandarini e le olive no cadono dal cielo", Assembly of the African Workers of Rosarno in Rome (Italy, January 2010), www.storiemigranti.org/spip.php?article680.

509. A *caporale* is a person who recruits the workers, takes them to their workplaces and demands a "tip" at the end of the working day.

very similar configurations. Furthermore, the flexible, insecure “bodies” of many European Union citizens are subject to the same labour exploitation conditions, with variants that depend on existential conditions other than occupational ones. A sequential scale of poverty, at the bottom of which we often, but not exclusively, find the arms and bodies of workers without residence permits, with just above them the categories of workers with residence “contracts”, who are exposed to blackmail because in some member states their continued residence in the national territory is inseparably linked to their employment contract. The precarious workers include undocumented and documented migrants, European citizens of new member states and younger citizens. This forms a circle in which poverty, flexibility and dispensability go hand in hand with employability; they form a single horizon rather than being separate or divergent elements.

4. The magnifying glass of government migration policies: what demands can be made?

Analysis of the migration control policies implemented by the EU and by each individual member state has been and still is a kind of magnifying glass for analysing the functioning of such a system. Foucault held that scrutinising prisons and psychiatric hospitals, which are apparently marginal loci for social functioning, in fact provides a better understanding of the reticular knowledge and power mechanisms of the disciplinary society to the extent that both these institutions, precisely, represent the most advanced mode of experimentation in the exercise of power over, and formation of knowledge on, individuals that is disseminated throughout society. In the same way, in contemporary societies, policies on the control of migration and migrant mobility have been, and still are, a kind of experimental nucleus for the formation of “immaterial bodies” which, being invisible and “non-existent”, constitute one of the model figures that are vital to the current development of capitalism. It is a case not of a subjectified subject as identified, individualised, made unique by the different angles from which power looks at him or her, but of a mobile body or spirit capable of moving on the basis of market requirements, aware of his/her dispensability, without claims to subjectification, sometimes acting as a supernumerary workforce, sometimes incorporated into the market, capable of independently finding his/her own strategies of existence and subsistence during periods of work and unemployment. And last but not least, it is a case of a mobile body or spirit devoid of specific interlocutors to contact or combat in demanding his/her rights. “We worked in inhuman conditions. ... Our work was underpaid. ... We are invisible, we do not exist for the authorities of this country.

... People do not want to see us", as the African workers of Rosarno write in their communiqué, listing their many potential interlocutors: their work providers, the state authorities, the whole of society, and, as they add in the letter, the *caporali*, the most direct and most easily condemnable of all the forms of interposition between work providers and workers, of which temporary employment agencies are the socially acceptable face. To whom are the demands to be addressed? What demands? Less exploitation by the work providers? A wage rise or a reduction in the "taxation" of the *caporali*? Should they demand residence permits from the national authorities, excluding those who already have such permits? More attention from "people"? Scattered interlocutors, resulting, to a constantly increasing extent, not only for the migrant pauperised workforce, in a context not only of inclusion but also of differential exclusion of male and female migrants and nationals, who are both included and excluded, with periods of employment and unemployment, and periods of access to survival assistance and of lack of access to such services, based on various gradations fragmenting their efforts to demand rights, expressing their opinions and taking action. At the same time, the potential shared perception of their existences is also fragmented.

5. The dispossessed of the earth/national soil: a new form of "existential poverty"

Seen through this magnifying glass of the analysis of policies for controlling migration, which in a very few years have radically changed the dynamics of space and sovereignty in the nation state tradition, giving rise to a reticular space of confinement inside and outside the European Union and its member states, the fragmentation of perception is following a "meta-border",⁵¹⁰ so to speak, which no longer projects division in absolute differentiation between the territory of the nation state and the colonial space, but grows up within the global environment. It gives rise, via the equally ramified framework of a "great narrative" legitimising control policies, to a new dimension of humankind corresponding to this now unified post-colonial space in which, since the vast "elsewhere" of the colony has now disappeared, it must be reproduced and universally disseminated, with various gradations and intensities. This is not really, or not only, a European apartheid⁵¹¹ but an apartheid extended to a much larger scale comprising not only the European Union but also geographical Europe

510. Mezzadra 2008.

511. Balibar 2001.

and the whole globe. Among the figures of the dispossessed, rather than the damned,⁵¹² of the earth/national soil, even if we focus on EU control policies rather than global ones, the new division of humankind produces different destinies in a completely random manner: depending on individual luck, migrants starting off from Afghanistan, Eritrea or Congo may end up integrated into the fairly minimum system of provision for their lives as refugees in a European Union country, in a self-managed “dumping camp” in some southern or northern European country, legal or illegal employment in the Schengen space, a Libyan concentration camp, in a situation of a suspended refugee document which has been recognised by the High Commissioner’s Office but not by the country where they have been halted, or in a watery or sandy grave, depending on the border-crossing and dodging tunnels that they have pinpointed and the barriers facilitating or blocking their progress.

Against the background of this new division between human and non-human lives,⁵¹³ projected and superbly constructed in the fabric of the “great narrative”, combining the words of politicians, journalists, international agencies, “migration experts” and even fairly compliant and complicit NGOs, experimental practices can be produced and reproduced at some point along the line, while on the other hand, the certainty of a demarcation line prevents us from discovering the encroachments of these same practices over the borderline. The enormous resultant production of poverty is not completely unrelated to the labour market, but is rather complementary to it, or even a product of it, including the production of a human fringe working in the least socially representable sectors such as drug dealing or the sex trade. This poverty is not only economic but also bio-political, because it infiltrates the web of existential substance, wiping out sentiment, opportunities for expressing opinions and relational exchanges, and giving rise to an “existential poverty”, of which the most obvious example is perhaps the silent army of *colf* and *badanti* women employed in Italy as carers for others, or home work providers, who are often in turn impoverished by the fact of remunerating their employees.

6. Acting in invisibility

“How can someone who does not exist demonstrate?” ask the African workers of Rosarno. This is certainly an incendiary question against the background of another equally fundamental question: how can men and

512. Fanon 1961.

513. Butler 2005.

women who work, produce commodities and services, sleep, eat and invest the public, visible space with their lives and bodies not exist? This is a question exclusively about visibility, because if we concentrate on this aspect we are liable to find, or rather attempt to find, spaces for possible action in accordance with outdated criteria which, although they are still present, fail to provide a complete picture of current realities. At the present time, the dividing line between possible action and “silencing”⁵¹⁴ does not coincide with that between public and private space, or even exclusively with the line between a walled area and a space where people can move freely. The reason is that non-existent lives, like those of the African workers of Rosarno, who, after demonstrating, ask us how they could ever have done it, are present – albeit in suspended mode – in the same space as more, or even fully, existent lives. To fail to see in their revolt a mode of action capable of merging dispersed interlocutors into a whole by means of improvised subversion of their “suspended space”, their invisibility and their “unliveability”, would be to reproduce a “proper order” of the *polis* within these “walled democracies”,⁵¹⁵ where the walls are often constituted by people’s bodies and lives. A proper order of the *polis*, which, if it is to be retained as it stands in the flux of claimable rights, offers the sole possible action of vaguely reciting human or fundamental rights that could not, and still cannot, be guaranteed under any type of sovereignty, whether that of the nation state or the multiple, diffuse sovereignty of present-day political configurations.

We have noted the existence of a “right to have rights”, as Hannah Arendt⁵¹⁶ wrote with reference to the early 20th century, when a growing mass of individuals were being placed in the situation of being unable to exercise this right. Concurrently, the “proper order” of the *polis* in the then liberal democracies was importing the camps that had already been thoroughly tested in the colonial world. While more recent reformulations of her reflection tend to see or affirm a broader margin for action in the fact of demanding (the right to claim rights) or in performatory action, it nevertheless continues to be an inherently conflicted modality for ensuring the emergence of this missing right, given that its active or performatory exercise can only ever come from those who are in the situation of being unable to exercise it. Judith Butler⁵¹⁷ suggests that “the right to rights” is not conducive to enshrinement in a law or a state constitution, making it a right that the

514. This expression is widely used in post-colonial critical literature.

515. Brown 2010.

516. Arendt 1973.

517. Butler and Spivak 2007.

state cannot provide for or grant; I would go so far as to say that the only possible state action on “the right to rights” is to negate it. Or even better, the only possible action not only by the state but by the powers that be – by which I mean a much broader concept embracing the dominant discursive and perceptive systems – is to negate it. On the other hand, there are situations, still according to Butler, in which this strange obscure, secret “right” enters the full light of day, namely when the subjects lacking this right act to claim it. The example that she quotes are the demonstrations by undocumented South American migrants in Los Angeles in 2006, when demonstrators sang the American national anthem in Spanish, thus destroying the monolithic pretence that underlies every nation state, namely “one people, one language”. This example, however, is perhaps still too close to the traditional sphere of action: subjects managing to present themselves as plural subjects, as “we, us” in the sphere of visibility, a new “we, us” annihilating the space for visibility and expression that had formerly negated it, in order to proclaim their existence and doing so by manifesting it and claiming it, precisely, as a right.

The possibilities for acting and expressing viewpoints do not always emerge in this way, which basically presupposes that performatory action – I demand and I therefore act to give rise to something that does not exist or which did not exist until I exercised it – enters a bi-unique dynamic with only one sovereignty, namely that of the nation state, from Butler’s interesting perspective, as well as the subtle approach adopted by Isin.⁵¹⁸ It also presupposes that the “proper order” of the *polis*, or the orderly distribution of the *police*, can be affected, challenged by a body that agrees to act according to its laws on visibility and expression. In many cases, “he who speaks out of turn, he who takes part in something that does not concern him”⁵¹⁹ fails to respect the pre-established rules of self-expression and “taking part”. His speaking out, which is necessarily conflicted, can be the silence of a gesture, as in the Rosarno revolt, just as his “taking part” may find, in clandestine practices that are not necessarily aimed at the public space of the *polis*, a capacity for action obviating and upsetting the multiple sovereignties which make his existence “poor” and “non-participative”. The final subversion effected by an outflanking tactic overturning the order of the European *polis* was the silent revolution of Tunisian migrants arriving in Lampedusa, playing the clandestinity “game”, defying the rules of reproduction and dissemination of spaces from elsewhere, preventively filling the “elsewhere” predestined for them

518. See Isin 2009; and Isin and Nielsen 2008.

519. Rancière 1998.

by control policies with bodies and jasmine, and thus indirectly inviting us to the spectacle of these policies going off the rails.

This partially unitary sovereignty that the European Union tried in various conflicted ways to superimpose on national sovereignties over its many years of fighting migrants has once again unravelled in a mad tangle of opposing sovereignties struggling against each other, with the consequence of the final exposure of this system for controlling mobility that pulls out the space from under people's feet. The bodies of these Tunisians should not have "existed" in Italy, or France, or anywhere else in Europe, while their own government refused to repatriate them. As bodies that do not exist but that persist in standing there, "poor lives" riposted with communiqués in which they expressed themselves by subverting all traditional conceptions of the organisation of political sovereignty, inviting us to attempt to conceive of a three-state identity, or rather an identity with one state and two places (an island and a city) and two continents. While the "Lampedusa Tunisians in Paris" collective⁵²⁰ occupies a building in the city and while the *polis* order feverishly casts around for some means of recovering its composure, it is left to political thought to conceive of what they already are.

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SOCIAL JUSTICE, DEFICIT REDUCTION AND DIMINISHING SOCIAL RIGHTS – LESSONS FROM THE UK’S “BIG SOCIETY”

Anna Coote and Faiza Shaheen

1. Introduction

This paper describes a radical experiment under way in the UK to transform the post-war welfare state, and considers the implications for social justice, poverty and human rights.

The coalition government, led by Conservative Prime Minister David Cameron, has announced its intention to reduce government functions and build a “Big Society”. This runs parallel with a major programme of deep and rapid public spending cuts. In a nutshell, the intention is to shift responsibility for meeting social needs from the state to individuals, families and communities, and to shift service provision from the public sector to charities, local community-based groups and businesses. It raises important questions about: sustainable social justice; the role of civil society and businesses; accountability and the implications of a shrinking state; and developing new paradigms for decision making, and service design and delivery. Together, the government’s deficit reduction strategy and its plans for a “Big Society” mark a watershed in economic and social policy and the end of the post-war settlement.

While the UK’s experience differs from that of other European countries, it reflects a wider shift towards lower levels of public spending and shrinking welfare provision across the region, as most countries struggle with the consequences of the global economic downturn and the need to adapt 20th-century welfare systems to the challenges of the 21st century. There are therefore key messages that emerge from this analysis that are relevant well beyond the boundaries of the UK. These are:

- The government is calling for social needs to be met through more localised control and action, and more direct participation by citizens and community-based groups. This has wide appeal as public services are increasingly perceived as over-centralised and tending to encourage a “dependency culture”, while costs spiral upwards.
- The scale and speed of deficit reduction through cutting expenditure on public services are likely to prevent the best ideals of the “Big Society” from being realised in any plausible form.

- Those who are poorest and most marginalised will be least able to participate in the “Big Society” or benefit from it. They will be hardest hit by public spending cuts, through job losses and diminished public services.
- Small local organisations that are expected to fill gaps left by a retreating state will find the challenge too burdensome and out of tune with their current ethos and purpose. They are already suffering from reduced support as a result of cuts to local government budgets.
- Large corporations are well placed to bid for new contracts and are likely to take over a large proportion of contracted-out services.
- Scaling back the size and responsibilities of the state carries serious risks – not least for the protection of human rights, combating poverty, the fair allocation of resources and clear lines of accountability.
- To realise the best ambitions of the “Big Society”, the government must substantially revise its economic policies, to include rebalancing through a green industrial policy, scaling back spending cuts to invest in social justice, promoting economic democracy and moving towards a shorter working week.
- It is vital to create the conditions for everyone, especially those who are poor and marginalised to be able to participate in and benefit from the “Big Society”.
- To create a genuinely empowering, effective, affordable and sustainable welfare system, co-production must become the standard way of defining needs and designing and delivering services.
- What is needed to make all this possible is a smart, strategic state that is strong enough to protect human rights, combat poverty, ensure the fair allocation of resources and promote sustainable development – with clear lines of accountability.

In the rest of this paper we provide an overview of the concept of the “Big Society” and the progressive potential inherent in the idea. We offer a definition of sustainable social justice and well-being for all, as primary goals for social, economic and environmental policy. We identify the main challenges that the “Big Society” and public spending cuts pose for the pursuit of those goals. Finally, we recommend ways of making the best of the idea and realising its progressive potential.

2. The “Big Society”: definition, positive insights and critical points

2.1. What is the “Big Society”?

The “Big Society” is a defining policy of the coalition government and Prime Minister David Cameron’s big idea. It is also a government-led programme for major structural change. The goal is to devolve power to the lowest possible level and use the state to galvanise community engagement. As the prime minister put it to the Conservative Party conference in 2010, his government is leading the change “from state power to people power” and “from big government to the big society”.⁵²¹

The idea goes hand in hand with deep cuts in public spending. The cuts are only feasible alongside a strategy for shifting responsibility away from the state – to individuals, small groups, charities, philanthropists, local enterprise and big business. The cumulative effects of the spending cuts will have a strong influence on the way the “Big Society” is realised. There will be many more people out of work, facing a punitive benefits system and drastically pared-down public services, and more polarisation between rich and poor neighbourhoods. Unpaid labour and the charitable and voluntary sectors are due to fill the gaps left by public services, providing support to increasing numbers of poor, jobless, insecure and unsupported individuals and families.

There is no master plan or blueprint for the “Big Society”, because the government says it wants decisions to be taken locally. There are, however, three core components: “empowering communities”, “opening up public services” and “promoting social action”. A suite of government-backed initiatives is intended to help build the “Big Society”, including a “Big Society Bank”, a new cohort of “community organisers”, a “Big Society Network”, a national “Citizens’ Service”, four “vanguard communities”, a rebranded government Office for Civil Society, and structural reform plans for the civil service, with six departmental priorities including “supporting the building of the ‘Big Society’”.⁵²²

The ideas behind the “Big Society” are traced back, variously, to John Locke, Edmund Burke, William Cobbett, Thomas Carlyle and John Ruskin. More recent influences include American conservative communitarians who call for a return to “community and civic order”. Steve Hilton, the

521. Cameron 2010a.

522. Cabinet Office 2010; Cameron 2009.

prime minister's director of strategy, has described the "Big Society" as "nothing less than [an attempt] to wean this country off its apparently unbreakable dependency upon the state, centralism, welfare, and rule from Whitehall: the corrosive habits of half a century".⁵²³ As we have argued elsewhere, this is "not about shared responsibility, or equal partnership, or mutual exchange, but replacement, even obliteration" of the post-war welfare system.⁵²⁴

2.2. What is good about the "Big Society"?

It is important to note that there are strong, sensible ideas at the heart of the "Big Society" vision, which embody its progressive potential:

Encouraging citizens' involvement and action. It aims to increase levels of engagement and participation by citizens. More people are supposed to get together locally and become more involved in running their own affairs. More power and responsibility is expected to go to families, groups, networks, neighbourhoods and locally based communities. There are plans for more community organisers, neighbourhood groups, volunteers, mutuals, co-operatives, charities, social enterprises and small businesses – all taking more action at a local level, with more freedom to do things the way they want. This builds on a rich and cherished tradition of co-operation, self-help, mutual aid, community development and local organising that dates back to the early days of the Industrial Revolution and has flourished in countless ways and places ever since. It would be hard to find anyone to argue with conviction or support that we needed less of any of these things.

Recognising that everyone has assets, not just problems. More important still, it appears to recognise and value what citizens themselves can contribute. People do not just have problems to be fixed by others, but assets and resources that have real worth. These are embedded in the everyday lives of every individual (time, wisdom, experience, energy, knowledge, skills) and in the relationships among them (love, empathy, responsibility, care, reciprocity, teaching and learning). They are the basic building blocks for a flourishing society.⁵²⁵

Building and strengthening social networks. When individuals and groups get together in their neighbourhoods, make friends, work together and help each other, there are usually lasting benefits for everyone involved:

523. Ibid.

524. Coote and Franklin 2010.

525. Boyle et al. 2010: 11. See also Goodwin et al. 2003.

networks and groups grow stronger, so that people who belong to them tend to feel less isolated, more secure, more powerful and happier. When people are connected with others, when they feel they have more control over what happens to them and are able to take action effectively, this is likely to be good for their physical and mental well-being.⁵²⁶

Using local knowledge to get better results. When people are given the chance and treated as if they are capable, and when their potential is acknowledged, they often find they know a great deal about what is best for them; they can work out how to fix problems they may have, and how to pursue their hopes and aspirations.

When local knowledge based on everyday experience is combined with professional expertise and brought to bear on planning and decision making, this usually leads to better results than leaving it to the “experts” alone. It is also likely that a range of smaller, locally based organisations can respond more flexibly and appropriately to diverse local issues than large national or international organisations.

Offering ways of transforming the welfare state. For all these reasons, the “Big Society” holds out a promise to transform the welfare state. For more than 60 years, the model designed by William Beveridge has rested on the premise that the economy will continue to grow, yielding ever-more taxes to pay for more and better public services. In spite of its phenomenal achievements, it has arguably generated a culture of dependency, driven up expectations beyond the system’s capacity to deliver, and produced a glut of targets and regulations that stifle local creativity. It has done little to prevent needs arising, reduce demands for services or stem the rapid spiralling of costs.⁵²⁷ Now, continuing economic growth is not only uncertain because of the nature of the global crisis, but also, some argue, fatally inconsistent with the government’s commitment to cut carbon emissions.⁵²⁸ It is time to look for new ways of getting things done: time to build a new, sustainable well-being system that is fit for the 21st century.⁵²⁹ Stronger local communities and more direct participation by citizens will almost certainly provide the backbone of that new system.

2.3. The challenge for sustainable social justice

526. Marmot and Brunner 2005; Huppert 2008.

527. Coote and Franklin 2010.

528. Jackson 2009.

529. Coote and Franklin 2009.

We define “sustainable social justice” as the fair and equitable distribution of social, environmental and economic resources between people, places and generations to achieve well-being for all. By well-being, we mean a positive physical, social and mental state, which requires that basic needs are met, that individuals have a sense of purpose, and that they feel able to achieve important personal goals and participate in society. It is only compatible with social justice if it is genuinely for all, by which we mean that conditions must be in place to ensure that everyone, regardless of background and circumstance, has an equal chance of achieving it.⁵³⁰

Over recent decades, the UK has experienced increasing inequality in income, falling levels of social mobility and greater disparities in key well-being outcomes, such as health, between the rich and poor. Resources have become increasingly concentrated – the top 10% income decile now has wealth (including personal possessions, net financial assets, housing and private pension rights) 100 times that of the bottom decile. Power too has become increasingly concentrated among the wealthy elite. Such disparities have been further enforced in the aftermath of the recession – both job losses and public sector spending cuts have and will continue to hit the poorest hardest.⁵³¹

Is the “Big Society” the right strategy to tackle these problems? For all its progressive potential, does it provide an appropriate alternative to the 20th-century welfare state? Below we summarise the main challenges posed by this initiative to the pursuit of sustainable social justice.

2.4. Social justice, equality and cohesion

The biggest challenge for the “Big Society” is whether it is big enough for everyone. Can each of us take part and benefit as easily as everyone else? Almost certainly not, because the conditions that make it possible are not equally distributed. This applies to capacity, whether individuals are able to participate; access, who can join in and who gets left out; and how much time people have to play a meaningful part in the “Big Society”.

Capacity. Not everyone has the same capacity to help themselves and others. It depends on a range of factors, including education and income, family circumstances and environment, knowledge, confidence and a sense of self-efficacy, available time and energy, and access to the places where decisions are taken and things get done. All are distributed unequally among individuals, groups and localities. A combination of social

530. Ibid.

531. IFS 2010.

and economic forces, working across and between generations, result in some having much more and others much less. While these inequalities persist, people who have least will benefit least from the transfer of power and responsibility, while those with higher stocks of social and economic resources will be better placed to seize the new opportunities. Many of those who are currently poorest and least powerful are at risk of being systematically excluded from any benefits that arise, in spite of the prime minister's declared intention that no one should be "left behind".⁵³²

There is a danger that inequalities will be widened by the move towards local decisions and actions, as well as by fiscal decentralisation (depending on how far this goes) and the spending cuts. More localism inevitably brings more diversity. Richer areas may do less to help disadvantaged neighbourhoods within their boundaries. Poorer areas may have fewer resources, hindering efforts to help their own communities. The combined effects of what is often called the "postcode lottery" (but has much less to do with chance than with politics and economics) are likely to intensify social injustice. If powers to raise and spend taxes are devolved to local areas, redistribution of resources between rich and poor areas becomes a lot more difficult.

If citizens and local groups are pitched against each other to compete for diminishing resources, or for access to depleting services, there will be less cohesion in communities, more polarisation of interests and more social discord, undermining a central tenet of the "Big Society" vision that we are "all in this together".

Access. Families, networks, groups, neighbourhoods and communities all have boundaries. These are determined, variously, by blood, law, friendship, duty, obligation, tradition, geography, politics, wealth, status and class. Inevitably, they include some and exclude others; indeed some build their strength on exclusivity. Resources are already shared unequally between these institutions. The prime minister says that the "Big Society" is "about enabling and encouraging people to come together to solve their problems",⁵³³ but there is nothing in the government's plans to encourage the inclusion of outsiders, to break down barriers created by wealth and privilege, to promote collaboration rather than competition between local organisations, or to prevent those that are already better off and more dominant from flourishing at the expense of others.

532. Cameron 2010b.

533. Cameron 2010c.

Time. Building the “Big Society” depends crucially on people having enough time to engage in local action. While of course everyone has the same number of hours in the day, some have a lot more control over their time than others. People with low-paid jobs and big family responsibilities – especially lone parents – tend to be poor in discretionary time as well as in money.⁵³⁴ Unemployed people who are not caring for children or elderly relatives may have plenty of free time, but of course unemployment traps people in poverty, and one of the government’s main aims is to get them into paid work. Committing time to unpaid local activity would put many at risk of losing benefits that depend on actively seeking full-time employment. Part-time workers may have more time for civil engagement, but seldom earn enough to feed a family. Some people have to work all hours to make ends meet, or have no choice about when they start and finish each day. In short, long hours, low wages and lack of control over how time is spent undermine a key premise of the “Big Society”, which is that social and financial gains will come from replacing paid with unpaid labour. According to a typology of participation cited by the National Council for Voluntary Organisations, the “formal volunteer is more likely to be female, of a higher social grade, in a managerial position, degree educated, and middle aged”; the “voter/traditional public participant is more likely to be white, aged 65 and above, middle class, professional higher earner”; and the “local-level public participant is more likely to be white, older, better educated, richer, middle class”.⁵³⁵ These patterns reflect current distributions of capacity, access and discretionary time. Replacing paid with unpaid labour will intensify them, widening social inequalities.

2.5. Economic policy and spending cuts

Plans for a “Big Society” often appear to be disconnected from economic policy, as though society somehow floats free of how the economy works. This continues a well-established pattern of government intervention. Over several decades, efforts to breathe new life into poor or “broken” neighbourhoods have all had the same point of departure: poverty is a problem for poor communities, which are “vulnerable” to social ills and must therefore be helped to build up “resilience” so that they are better able to cope. Very few have made a substantial or lasting impact on social inequalities or on cycles of deprivation that afflict successive generations.

534. Burchardt 2008.

535. Pathways Through Participation 2009.

The lesson is that responsibility for tackling the effects of poverty and powerlessness cannot be left solely to those who are disadvantaged and disempowered. Building resilience – the ability to deal with life’s problems – is a useful thing to do, but no alternative to removing the systemic barriers that produce the disadvantages for which resilience is required. And if change is created at the local level only, it will not survive in a system where inequality is endemic. This is a matter not just for social policy, but for economic policy too.

Essentially, the responsibility that is being shifted is for dealing with risks that are unpredictable and/or beyond the control of individuals on their own, which is often the case with unemployment, poverty, ill-health, and a lack of decent education and housing. These risks are themselves determined by the condition of national and global economies, and by the government’s economic policies.

Rather than tackling the systemic causes of poverty and inequality, the coalition government is introducing reforms to create a tighter and more punitive benefits system, which will add to the burdens of the unemployed and polarise interests between and within neighbourhoods as the poorest are put to flight in search of affordable accommodation.

These changes have been justified as part of the government’s plans to reduce the public debt. It insists that rapid, deep spending cuts are essential, but in fact the scale and speed of deficit reduction are entirely a matter of political choice.

The “Big Society” is the social policy that makes the economic policy of deficit reduction possible. The government could not have taken up its axe to the public sector with such composed ruthlessness if it had not had a story to tell about what will fill the gaps left by a retreating state. The “Big Society” is that story. At the same time, the public spending cuts make it well-nigh impossible to realise the progressive potential of the “Big Society”.

2.6. Dangers of a shrinking state

Together, plans for a “Big Society” and spending cuts on an unprecedented scale seem to mark the end of the post-war settlement. That means bidding goodbye to the ideals on which the welfare state was founded: a government committed to raising taxes to build a secure framework of public goods and services that enable everyone, regardless of background and circumstance, to be protected against the risks of illness and unemployment, to be decently educated and housed, and to have enough money to live on.⁵³⁶

536. Timmins 2001.

As we have noted, the UK welfare system – like many others across Europe – is clearly struggling to cope with circumstances, demands and attitudes that have changed profoundly since it was founded more than 60 years ago. Policy makers on the left and right believe it is time for substantial reform. But do the plans for a “Big Society” point in the right direction? The call for more “sharing” of responsibility plays a strong role in the “Big Society” narrative, but much depends on what that means in practice. One option is to pool responsibility through the machinery of a democratic state that is collectively owned and controlled by the population as a whole. Another is to share out or divide it between individuals, groups, localities and organisations in the private and voluntary sectors. Each one creates a very different set of relationships between citizens and the state. From a latticework of links through the entitlements and services of the welfare state, we move to a set of horizontal connections between citizens and groups, outside the state. How will the rights of individuals be protected, how will essential services be guaranteed, how will those who are poor, powerless and marginalised be defended against those who are better off, better connected and better able to promote their own interests? Private and third-sector organisations cannot be expected to do this, as they usually serve sectoral or specialised interests, rather than those of the nation as a whole. The implications for social justice could be profound.

To achieve social justice, the UK needs a strategic state – one that is democratically controlled, that is able to exercise a strategic and accountable overview, and that becomes an effective facilitator, broker, enabler, mediator and protector of our shared interests. Democratic government is the only effective vehicle for ensuring that resources are fairly distributed, both across the population and between individuals and groups at local levels. It is our only mechanism for safeguarding human rights and reconciling the interests of all citizens. If it is pruned so drastically that it is neither big enough nor strong enough to do this, we shall end up with a more troubled and diminished society, not a bigger one.

2.7. Impact on community and third-sector organisations

The “Big Society” ostensibly represents a great boost to community groups, charities and other non-profit organisations. It implies a ringing endorsement of their achievements and potential, puts them centre stage, and seems greatly to prefer their character, ethos, structures and approach to those of the public sector. It promises to free them from unwelcome restrictions and encourage their development, and apparently wants to give them a lot more state-funded contracts, handing over huge chunks of government business.

The sector (let us call it “civil society”), which is almost infinitely varied, has responded in a wide variety of ways – from untrammelled enthusiasm, through keen interest and engagement, to apprehension, derision and outrage. Certainly, most of the sector wants more opportunities to do more of what it does well. There are worries, meanwhile, about the scale of transformation that is planned: where is it all going and where will it end? How much is being demanded and can civil society cope with what is required of it? Nobody knows yet.

There are concerns that the thrust of change is ultimately at odds with the character and purpose of many groups and organisations. The government has plans to support community-based groups so that they are able to take up opportunities offered by the “Big Society”, alongside business. This involves, in Cabinet Office parlance, searching online for tool kits and resources, following signposts to infrastructure services, accessing skills from pro bono volunteers, applying for bursaries; local organisations are also encouraged to merge, grow and become more entrepreneurial.⁵³⁷ People usually choose to participate in community activities when they find them optional, small-scale, convivial and life-enhancing, but this seems altogether different: conditional, formalised, complicated and hard graft. The drive towards growth and commodification would seem to threaten some essential features of civil society, not least diversity, spontaneity and free spirit.

It is not clear, in any case, whether the support that is on offer will be at all sufficient. The government is giving some transitional support to the charitable and voluntary sector. But the £470 million over four years, earmarked by the spending review, will not go very far. The small, locally based organisations that are supposed to provide the backbone of the “Big Society” are already losing grants and other kinds of support that have been provided by local government. However keen they may be to rise to the challenge (and most are very keen), they will find themselves doubly embattled as a result of economic policies. Not only will they have to cope with more – and more acute – social needs; they will also have to do so with reduced and less secure funding and support. This is the main concern of most civil society organisations: that efforts to reduce the deficit will undermine the very networks and groups that are most needed as life gets tougher for those who are already the most disadvantaged.

This message was underlined by Dame Suzi Leather, Chair of the Charities Commission, who warned that the government’s spending cuts could

537. Cabinet Office 2010.

cost voluntary organisations some £5 billion; cutting funding to charities that were providing key public services would be short-sighted, she said, and threatened to “pull the rug out” from under the “Big Society”.⁵³⁸

2.8. The role of business

As the state retreats and small locally based organisations face dwindling resources, who will be well placed to step in to run services? The government claims it wants to encourage more social enterprises (businesses run primarily for social purposes), co-operatives (that are owned and operated by their members) and mutuals (where ownership is shared among clients or customers). Value-driven organisations with alternative forms of ownership are likely to multiply, although they may struggle and take time to establish themselves in the “Big Society” market place. Larger for-profit enterprises with experience in government contracting will also be bidding for business.

The doors are wide open, it seems, for big global corporations such as United Health, Serco, Capita, Accenture, KPMG, Price Waterhouse Coopers and Deloitte to take over state functions – whether by providing back-room support such as accounting, auditing, IT and management, or by running entire services in health, social care, education, employment, benefits and housing. Paul Pindar, Chief Executive of Capita, leading contractor for out-sourced government business, told the *Financial Times* that he was “eagerly anticipating the forthcoming age of austerity” and expected “a greater degree of activity over the next five years than in the previous five”. There was, he said, “a whole series of initiatives that could take place right across government where there are some relatively quick wins”.⁵³⁹

There are two challenges here. The first concerns the influence of commercialisation. How far will for-profit businesses change the ethos, purpose and outcomes of services, how will this affect actual or would-be service users, and what will be the cumulative effect on the quality of life and opportunities of those who are most in need? Commercial organisations whose main responsibility is to their shareholders are bound to put profit first. There is evidence that this does not always coincide with the interests of service users.⁵⁴⁰ Secondly, how much room will the big corporates leave for all those small voluntary organisations with local knowledge and personal connections that are crucial for enabling citizens to engage and

538. BBC 2010.

539. Gray 2010.

540. National Audit Office and DWP 2010.

take action? Will the monoliths of the public sector simply give way to a new set of big, impersonal providers with incentives to “pile high and sell cheap”? If so, how in the world will people gain more control over what happens to them in their own communities? Where will we find the creativity and flexibility to respond to the wide diversity of local needs and circumstances? The big corporate brands have already stripped the individuality out of UK high streets and given each a generic “clone town” look and feel.⁵⁴¹ Will global business do the same to local services?

2.9. Where – and how – does the buck stop?

If power is devolved from the centre to “communities”; if responsibility is shifted from the state to a range of third-sector and commercial organisations; if the “Big Society” ends the era of targets, indicators and tight regulation; if who does what and how becomes a matter for customised local decisions, then where does the buck stop? Who can be held accountable, where are the audit trails and how can these be identified and followed? The government says it wants to make local government more accountable to local people, through greater transparency of money spent and business processes. But transparency is only one component of accountability. It does not address the matter of who is to be accountable and how for, firstly, the cumulative effects on people’s lives of how government at local and national levels puts the “Big Society” into practice, and, secondly, the impact on individuals of the front-line activities of non-state organisations.

We may not be entirely content with the way the public sector operates at present but there are reasonably clear lines of accountability. There are none of these in the “Big Society” as it seems to be envisaged. Yet the countless activities that will be undertaken under this umbrella provide countless opportunities for things to go awry – with disruptive, distressing, detrimental and even fatal consequences for individuals and groups who may be on the receiving end. People will need to know what they can expect, how their expectations can be realised, who will listen and take notice, who is supposed to take action, how to complain or appeal, where to place the blame when things go wrong and how to change what they do not like. Without clarity and a degree of formal process for accountability, and in the absence of a shared regulatory body, only those who can shout loudest or whip up the most colourful media outrage will be heeded.

541. Simms, Kjell and Potts 2005. For an update on nef’s work on clone towns see: <http://neweconomics.org/publications/delivering-post-bank>.

It is hard to imagine how an indeterminate number of infinitely varied organisations can be knitted into an accountability framework, but the problem cannot be ignored. Without accountability, there will be no way of building up public confidence and trust in new ways of getting things done. Without high levels of trust, the “Big Society” cannot possibly be sustained.

According to this analysis, the “Big Society”, as currently conceived, attacks social justice on several fronts – from reinforcing economic and gender inequalities to removing the accountability framework that ensures the most vulnerable are protected and properly catered for in a welfare state. As such, its introduction into UK communities is a worrying prospect.

3. What can be done to release the progressive potential of the “Big Society”?

The “Big Society” is deliberately open-ended. It can be seen as an opportunity to be seized – to be defined and shaped by the people who need it most. Below, we set out proposals for making the best of the big idea. They depend, in the first instance, on the government revising its economic policies.

3.1. Economic policies for a fair and sustainable “Big Society”

Rebalance the economy. The coalition government has made a number of statements about rebalancing the economy, in terms of both tackling the dominance of the service sector and addressing the north–south spatial economic divide.⁵⁴² It is widely recognised that the growth of the service and financial sectors has led to wider wage disparities and fewer middle-rung jobs and practically skilled jobs (the so-called “hollowing out” of the labour market). These challenges can only be addressed, in our view, by means of industrial policy, and in particular green industrial policy.⁵⁴³ If spatially tilted towards economically depressed regions, this approach will not only create jobs demanding a range of practical and intellectual skills in the places where unemployment is highest, it will also enable the UK to shift towards a low-carbon economy. Integral to a green industrial policy will be a training programme to equip sections of the workforce with the necessary skills. This will help to reduce inequality, as many of the jobs created would be relatively high skilled and well paid, putting the “middle” back into the UK’s income distribution.

542. Cameron 2010d.

543. Green New Deal Group 2010.

Invest in the means for achieving social justice. Changing its current direction of travel, the government must find ways to provide and sustain adequate funds, to invest in local government and essential services, the development of local enterprise, and the provision of adequate and enduring support for community groups and third-sector organisations. The scale, speed and manner of deficit reduction is, as we have noted, a matter of political choice. There are alternative ways of raising and saving funds, and of handling the current economic crisis, which have been discussed extensively elsewhere.⁵⁴⁴ It will only be possible to realise the best ideals that have inspired the “Big Society” vision if the government revises its policies on public spending cuts.

Promote economic democracy. The central principle underpinning the vision for a “Big Society” – that power should be decentralised and people enabled to run their own affairs locally – should be extended to the economy, giving people more ownership of resources and more power to influence the way markets work and their impact on social justice. The move to encourage mutual and co-operatives models, and more non-profit, locally based enterprise, is certainly a welcome development. But it is only a beginning. Smaller, value-driven organisations will have to be protected from incursions by profit-driven enterprises and large corporations.

The banking system is ripe for a radical overhaul to shift power towards the citizens who paid for its rescue from the “credit crunch”, and to give everyone, but especially those on lower incomes, ready access to credit and finance. In short, we need a much more open, accessible economy, with stronger democratic control to ensure that it works in the interests of society and the environment, not just global business and finance.⁵⁴⁵ Without this, action to realise the vision of a “Big Society” will be thwarted at every turn.

A shorter working week. The “Big Society” implies a big demand for unpaid, discretionary time. One of the biggest levers for unlocking the “Big Society”, according to the *Local Government Chronicle*, “would be government legislation to reduce the working week”.⁵⁴⁶ The New Economics Foundation has proposed a slow but steady move towards a much shorter paid working week, with an ultimate goal of reaching 21 hours as the standard.⁵⁴⁷ In a time of rising unemployment, this will

544. Dolphin 2010; Wolf 2010; Elliott 2010.

545. Simms and Greenham 2010. Postbank Coalition 2009.

546. Muir 2010.

547. Coote, Franklin and Simms 2010.

help to spread opportunities for paid employment. And people who currently have jobs that demand long hours will get more time for unpaid activities as parents, carers, friends, neighbours and citizens. It will also be essential for managing an equitable, low-carbon economy and for reducing unnecessary carbon-intensive consumption.

An obvious objection is that shorter hours in paid work would reduce earnings and hit low-income groups the hardest. But a gradual transition, over a decade, should allow time to put compensating measures in place. These would include trading wage increments for shorter hours year-on-year, giving employers incentives to take on more staff, limiting paid overtime, training to fill skills gaps, raising the minimum wage, more progressive taxation and arrangements for flexible working to suit the different needs of employees – such as job sharing, school-term shifts, care leave and learning sabbaticals. Redistributing paid and unpaid time will be especially important for redressing inequalities between women and men.

3.2. Focus on inclusion and equity

The “Big Society” must be for everyone, not just those who are already better off, better informed, better connected and more confident and experienced in making things happen locally and getting things done. As we have noted, that means making sure everyone has enough capacity to participate, that everyone has sufficient access to networks, groups and other community-based assets, and that paid and unpaid time is distributed much more evenly across the working population and especially between women and men (see below). This implies a radical transformation of social and economic conditions: to extend opportunities well beyond the white, older middle classes who currently predominate, so that everyone can participate – and in ways that substantially improve their lives, rather than adding to the burdens they already have to bear.

Opening up opportunities is never enough. Special efforts will be needed to include groups and individuals who are currently marginalised. Usually, this has to involve letting people do things their own way, on their own terms, in their own words and on their own territory – to decide for themselves what they want and how to get it. This perfectly reflects the spoken philosophy of the “Big Society”, but not the government’s strategies for making it happen. There are plans for a “Community First Fund” to encourage neighbourhood action in disadvantaged areas.⁵⁴⁸ However, this

548. Office for Civil Society 2010: 9.

does not begin to tackle the systemic causes of unfairness and exclusion, or to achieve the transfers of resources that are necessary to “empower and enable” those who are under the radar of mainstream government intervention.

Special efforts will also be needed to include all the small local groups and voluntary organisations that struggle to keep going at the best of times, and may find it well-nigh impossible to take on new responsibilities. There are useful lessons to be learned from the successes as well as the failures of a range of government programmes aimed at regenerating neighbourhoods over the last 20 years.⁵⁴⁹ Those with less capacity need help to build up knowledge, skills and confidence, as well as the material means (such as access to information, training, IT, communications media and premises) that enable them to take action and stay in business. Establishing sound financial mechanisms, and providing adequate and consistent support for local organisations is a vital function of government. It costs money and the investment is crucial. If this is allowed to fall victim to the spending cuts, the “Big Society” will add to the pressures on those who have least and widen inequalities.

3.3. Make co-production the standard way of getting things done

There is no point shifting functions away from the state to independent organisations if the new “providers” replicate the delivery models of the state. As we have noted, these have often given rise to a “them and us” culture of dependency, where all-knowing professionals do things to and for passive and needy recipients. This model has to change and co-production offers a route to something much more empowering, effective, preventative and cost-efficient.

Co-production is closely aligned to some of the key ideas behind the “Big Society”, but goes further. It applies to the detail of shared decision making and service delivery, and builds on extensive practical experience. It describes a particular way of getting things done, where the people who are currently described as “providers” and “users” work together in an equal and reciprocal partnership, pooling different kinds of knowledge and skill. In practice, co-production taps into an abundance of human resources and encourages people to join forces and make common cause. It builds local networks and strengthens the capacity of local groups. It draws upon the direct wisdom and experience that people have about

549. CLG 2010.

what they need and what they can contribute, which helps to improve well-being and prevent needs arising in the first place. By changing the way we think about and act upon “needs” and “services”, this approach promises more resources, better outcomes and a diminishing volume of need. It is as relevant to third-sector bodies as to government institutions and public authorities. Applied across the board and properly supported, it can help to realise the best ambitions of the “Big Society”.⁵⁵⁰

For co-production to move into the mainstream, professionals and others who provide services, whether directly in public sector organisations or in independent bodies, will need to change how they think about themselves, how they understand others and how they themselves operate on a day-to-day basis. They must learn to work in partnership with those at the receiving end of services, to value and respect them, and to help them do more to help themselves and each other. They must learn to facilitate action by other people and to broker relationships between them – working with people, rather than doing things to or for them. This requires an understanding that what people do in their professional capacity is just one piece of the jigsaw: what is needed is a whole-systems approach to the whole person, not just targeted solutions to specific problems or needs. Without this kind of thorough-going transformation, implementing plans for the “Big Society” could simply shunt the prevailing doing-to culture of public services from the state to business and the third sector.⁵⁵¹

3.4. Accountability and measurement

There must be some form of accountability running through the “Big Society”, so that people know how responsibilities are shared out and how public resources are expended, to what purpose, by whom and with what results. Introducing greater transparency will help, but will not suffice. If there are clear goals and explicit measures for ensuring that everyone has an equal chance to participate, there must also be transparent and accessible ways of checking how these are being realised in practice. There must be accountability, at government level, for both the cumulative effects on people’s lives and the impact on individuals of front-line services. With the Audit Commission due to be axed, this will require some creative innovation. There are obvious trade-offs between greater

550. Boyle et al. 2010. Boyle and Harris 2009.

551. Boyle, Slay and Stephens 2009.

devolution of power and resources, on the one hand, and clear accountability on the other.

This is not only about establishing channels of accountability but also about finding appropriate methods of assessment. It matters a lot how new ways of working are measured, and how efficiency and success are defined. As nef has argued elsewhere,⁵⁵² what should count are not just short-term financial effects, but the wider and longer-term impacts on individuals and groups, on the quality of their relationships and material circumstances, on the environment and on prospects for future generations. It is also important to notice and take account of the unintended consequences of different actions: these are often overlooked or swept under the carpet, but they can have substantial impacts in the longer term.

The best way to arrive at criteria for evaluating local activities is to work with those directly involved, especially those who are supposed to benefit from them, finding out what matters most to them, what they hope to achieve and (later) whether they think that things have turned out as they hoped. It should be this kind of in-depth understanding that informs the design of quantitative research findings (to measure, for example, income, health and experienced well-being), and that shape judgments about efficiency and success, and future planning and investment.⁵⁵³

3.5. Sustainable development

For a “Big Society” to realise its best ambitions, it must be viable for the future – in other words, it must be sustainable in environmental, social and economic terms. For the environment, all its activities and transactions must be geared to protecting the natural resources on which human life and well-being ultimately depend. Cutting carbon emissions and reducing society’s ecological footprint must be integral to the “Big Society”, shaping the way homes, institutions and neighbourhoods are designed and managed, as well as how people and organisations use energy, travel, shop, eat and manage water and waste. For society to flourish, it must plan for future generations and have their interests at heart. It must give priority to preventing illness and other kinds of risk, so that fewer people have problems that need fixing. It must help to loosen our attachment to carbon-intensive consumption and give greater value to relationships, pastimes and places that absorb less money and carbon.

552. See <http://neweconomics.org>.

553. Lawlor, Nicholls and Neitzert 2009.

For the economy, it will be important to ensure that public funding to support local action is adequate and long term. A strong focus on prevention will help to make the “Big Society” economically sustainable by reducing demand for services and so constraining future costs. A shift of values will help to shape an economic order that does not depend on infinite growth with potentially catastrophic consequences for the environment.

There are synergies between some of the ideas of the “Big Society” and the goals of sustainable development. For example, decarbonising the economy depends in large part on changing human motivation and behaviour. Devolving power, sharing responsibility and giving citizens more control over what happens to them could help to generate more sustainable attitudes, lifestyles and patterns of consumption. On the other hand, widening inequalities will undermine this effect.

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PART E

PRESENT-DAY STRATEGIES FOR OVERCOMING POVERTY

(A) BASIC INCOME: A PROPOSAL

BASIC INCOME, SOCIAL JUSTICE AND POVERTY⁵⁵⁴

Yannick Vanderborght

1. Introduction

In December 2010, at the end of the European Year for Combating Poverty and Social Exclusion, the European Commission launched a new initiative on poverty. Officially designated the “Platform against Poverty and Social Exclusion”, it is part of what has been christened the Europe 2020 Strategy, which aims to achieve a number of ambitious targets by 2020. They include reducing by at least 20 million the number of Europeans affected by or threatened with poverty and social exclusion.⁵⁵⁵

In this context the European authorities aim to take resolute action to foster social innovation. However, at least up to now, it has merely been a question of applying already tried and tested policy measures, beginning with the reinforcement of minimum income systems, which have nonetheless clearly shown their limits.

Why not take advantage of this window of opportunity in order to hold an open discussion on genuinely innovative proposals? Would it be possible for the Council of Europe itself – by offering a forum for debate ranging beyond the 27 EU member states – to lead the European Union players in this direction, while encouraging them to rethink to a large extent their ideas on social justice and poverty?

It is with this aim in mind that I here wish to advocate a concept which, although not really unheard of, as we shall see below, has never been implemented in practice.⁵⁵⁶

Referred to in French as the *allocation universelle* (universal grant), or sometimes “citizenship income”, this concept is now more frequently designated by the English term “basic income” (*revenu de base*) and seems very simple to define: a regular income paid by a political community to each of its members on an individual basis and unconditionally.

554. This article is based on the author’s earlier works, in particular together with Philippe Van Parijs (see, for example, Vanderborght and Parijs 2005).

555. Cf. the Europe 2020 targets on the European Commission’s Internet site, <http://ec.europa.eu>. In 2009 (the most recent data available), over 80 million Europeans were living under the poverty line, set at 60% of median disposable income.

556. Apart from the specific case of the oil dividend paid by the state of Alaska since 1982.

During the 20th century this idea was already advocated by UK Labourites, Dutch socialists, French liberals, Catalan nationalists, Belgian ecologists and many others. It was also explored by many academics, including a number of Nobel Prize economists.⁵⁵⁷ In 1986 a few European researchers and activists founded the Basic Income European Network (BIEN),⁵⁵⁸ headquartered in Louvain-la-Neuve, a European network set up to conceive and promote the basic income concept. Since 2004 this, now global, network has gone by a new name, the Basic Income Earth Network. Today, the network is more active than ever before and publishes a regular newsletter. It has also instigated the launch of an academic journal, *Basic Income Studies*.⁵⁵⁹ The network held its most recent congress in São Paulo (Brazil) in July 2010, on which occasion its Executive Committee had a meeting with President Lula da Silva. The next congress will take place in Munich (Germany) in September 2012.

The arguments advanced through these congresses and publications and, even more so, during the extensive debates on the subject that have taken place in many countries – recently in Germany, Spain and Italy, in particular⁵⁶⁰ – show that many questions remain unanswered regarding this proposal. Some consider it too radical, and others too moderate, as a means of combating exclusion. However, it is now clear that in a debate on how to overcome poverty in Europe the idea can no longer be ignored.

2. More ambitious than a minimum income, different from a minimum wage

The standard definition of basic income, on which the remainder of this paper will be based, has already been referred to above: a regular income paid by a political community to each of its members on an individual basis and unconditionally.

This makes it possible to identify from the outset three key differences between a basic income and the minimum income mechanisms already established in most European countries:⁵⁶¹

557. For an overview of the most important works on basic income, see Widerquist (forthcoming).

558. www.basicincome.org.

559. This journal is an invaluable source of information for those wishing to learn more about basic income schemes and to read critical commentaries on them: www.bepress.com/bis.

560. See respectively www.grundeinkommen.de, www.redrentabasica.org and www.bin-italia.org.

561. Among the EU member states, the notable exceptions include Hungary, Greece and Italy.

1. A basic income is strictly individual, whereas traditional social minima are awarded taking into account household composition.
2. As the French term itself implies (the term “universal grant” is also sometimes used in English), this form of income is awarded on a universal basis, that is without means-testing. Both rich and poor receive it, regardless of their income level, whereas traditional social assistance schemes are naturally targeted at the poorest.
3. It is awarded unconditionally, with no requirement of availability for work and no obligation to sign any kind of rehabilitation or social reintegration contract, as often provided for by legislation in this field.

It is true that there are also some similarities: like traditional social minima this is a cash sum, in principle financed from taxation and paid on a regular basis. However, the three differences set out above make it clear that, if and when implemented, such a measure would entail a substantial change in social inclusion policies.

It must nonetheless be said that these three non-conditions do not really constitute a revolution. A number of European countries already have universal systems of family benefits, basic pensions and sickness insurance, which are often very popular.

Proponents of the basic income therefore perceive it as a more ambitious measure than payment of a minimum income.

It must also be distinguished from the minimum wage, the minimum level of remuneration provided for by law or under collective agreements in many industrialised countries. It goes without saying that only workers may benefit from such a minimum wage, whereas the basic income is paid to everyone, without anything being required in return.

Although opinions diverge on this issue,⁵⁶² it can be assumed that the basic income and the minimum wage constitute complementary rather than conflicting measures. It is true that, if one wishes to avoid employers using the existence of a basic income as a pretext for applying a general wage cut, it may prove necessary to adopt strong legislation on the minimum wage, actively supported by trade unions. This should nonetheless take account of the fact that persons who are less skilled and less productive (in the direct economic sense) could find themselves lastingly excluded from the labour market if the legislation is too inflexible.

562. See, for example, the discussion on this matter in Blais 2001: 82 ff.

3. The right to work or the right to an income?

One of the main bones of contention with regard to the basic income concept is in fact its impact on the employment market. At a time when all the countries of Europe have adopted “active” inclusion policies, is there not a risk that such a blatantly unconditional basic income would undermine the progress made in this direction? Does it not amount to seeking to do away with exclusion by encouraging dangerous inactivity? Would it not be better to guarantee a genuine “right to work”, for example in the form of mass subsidising of low-skilled jobs or through the creation of public sector jobs?

Basic income’s supporters consider that the only way of achieving a right to work is, in point of fact and paradoxically, to guarantee the right to an income. This would not be a second-best alternative to full employment, but a strategy for achieving it. This is because traditional social assistance schemes, like all targeted programmes, do indeed tend to dig a genuine inactivity trap by penalising those who succeed in finding low-paid work. The gains from taking up work are sometimes more than offset by the reduction, or complete withdrawal, of transfer payments, which results in implicit marginal taxation rates close to (or even exceeding) 100%.

A number of European countries have already taken account of this pernicious effect of targeted measures when reforming their welfare policies. This has led to the introduction of so-called “incentive” or “socio-professional exemption” mechanisms, enabling those concerned to continue receiving part of their benefits at the same time as they earn income from an occupation.⁵⁶³

This was, for instance, one of the key aspects of the reform of the French minimum income system, the *Revenu Minimum d’Insertion* (RMI), which in 2009 became the *Revenu de Solidarité Active* (RSA). This new policy is expressly aimed at allowing beneficiaries to retain part of the minimum income when they find work.

Such mechanisms in fact bring the benefits schemes closer to the basic income concept, in any case to its “negative tax” format.⁵⁶⁴ They nonetheless continue to have latent defects: they are highly complex, and therefore often poorly known and understood and not well planned for; they are frequently also subject to time limitations, which merely postpones

563. On this subject see the study commissioned by the King Baudouin Foundation (Belgium): De Vil and Van Mechelen 2011.

564. See Friedman 1968.

the problem of the decrease in income after finding work. What is more, their targeted – and therefore non-universal – nature creates unjustifiable inequalities in the employment market: a worker formerly in receipt of the minimum income benefits from an income supplement that is not available to colleagues paid the same hourly wage. It comes as no surprise that the initial evaluations made following the introduction of the French RSA scheme revealed significant shortcomings: reference is made to the “system’s complexity”, “incomprehensible” payment and calculation methods, “administrative hassle”, “breaks in support” and so on.⁵⁶⁵

For its part, the basic income also makes it possible to encourage people to seek work, even low-paid, low-productivity or part-time work, because that lastingly improves their net income as compared with what they receive when they are inactive. Disregarding mechanisms for its subsequent recovery through taxation, the basic income is retained in full by the recipient whatever the circumstances.

However, its universal nature differentiates it from the systems described above: it can be compared to a stable, permanent employment subsidy, available to everyone, regardless of their prior employment history. It accordingly avoids creating income inequalities at the bottom of the wage structure, while being far more transparent as regards conditions of entitlement.

Despite appearances, the basic income is therefore perfectly consistent with an active inclusion strategy. However, it must be clearly distinguished from the more hard-line version of such a strategy, consisting in a forced return to work through workfare. This is because its unconditionality gives the most vulnerable recipients some negotiating power, enabling them to refuse menial, dead-end jobs that offer them neither training nor future prospects. In short, while the measure’s universality makes it an effective subsidy for work that is unprofitable (again in the direct economic sense), its unconditionality prevents it from functioning as a subsidy for degrading work.

4. How does it affect poverty and inequalities?

Despite the worrying increase in the number of working poor throughout Europe,⁵⁶⁶ it is clear that access to employment remains a key means of escaping poverty. In the light of the above, it therefore follows that the basic income can be conceived as a component of an anti-exclusion policy.

565. Rollot 2010.

566. On this subject, see, for example, Clerc 2008.

The fact nonetheless remains that there is something disconcerting about the basic income concept. If the aim is to tackle the pressing problem of poverty head on, would it not be clearly more intelligent to target expenditure at those who are really in need of it? It would indeed make no sense to award a basic income to all members of the public, if that entailed an increase in disposable income for each of them. However, the aim of a basic income is not to bring about a net improvement in the situation of the richest members of society, and that would not be its end result. One way or another, the allowance has to be funded, like any other redistribution scheme. Most versions of the basic income concept involve a restructuring of current social transfer and personal taxation systems. In concrete terms, this would mean, firstly, eliminating or reducing certain transfers to the poorest members of society – but never in an amount greater than the basic income – and, secondly, ending tax exemptions (or reduced rates) benefiting the rich rather than the poor. Depending on the amount of the basic income, taxes would have to increase by a more or less insignificant (or significant) amount. Whether this tax were to be levied on a progressive or a proportional basis, and in the form of a traditional tax or a universal social contribution, it would of course primarily be the richest people who would pay it.⁵⁶⁷

A basic income awarded even to those who are rich is therefore not better for the rich. But why would it be better for the poor? In this connection, a brief comparison of the countries having a universalist tradition, chiefly in Scandinavia, with those where the focus is traditionally on targeting, such as the United Kingdom, Ireland or the United States, is instructive. Everything goes to show that the former succeed far better in reducing poverty and inequalities than the latter.⁵⁶⁸ A number of explanations are usually given for this seeming paradox.

Firstly, potential beneficiaries' knowledge of targeted transfer schemes is poor, as it is hard to find one's way through the maze of organisations, rules and categorisations. Secondly, the very nature of targeted schemes entails verifying, sometimes in an intrusive, humiliating manner, that the beneficiaries effectively meet the entitlement criteria. Lastly, targeted schemes are not very good at guaranteeing continuity of entitlement. As explained above, transfers are partly or fully terminated if the recipient's status changes, which does not encourage beneficiaries to take risks in order to reintegrate into the employment market. By avoiding these three

567. For information on the many financing possibilities, see the recent publication co-ordinated by the network BIEN-Switzerland (2010).

568. See, for example, Wilkinson and Pickett 2009.

pitfalls inherent in targeting transfers at the most disadvantaged, regular payment of a basic income helps to give them more economic security.

It nonetheless has to be acknowledged that the basic income alone cannot solve the problem of poverty, which is by essence multidimensional. Other reforms, for example concerning access to housing or education, are also needed. Social workers will continue to play a fundamental role here. However, the elimination of complex – and often arbitrary – procedures will enable them to focus on supporting, rather than checking up on, the most disadvantaged.

5. A liberal-egalitarian reform

Beyond the pragmatic arguments advanced to show how the basic income can be an effective means of combating unemployment and poverty, it is important not to lose sight of the standards-based justifications for it. After all, as John Rawls wrote at the very beginning of his famous work *A theory of justice*, justice is indeed “the first virtue of social institutions”.⁵⁶⁹ Even if Rawls himself was sceptical about the potential of this proposition, it is clearly fully consistent with the so-called liberal-egalitarian tradition.⁵⁷⁰

As already mentioned, the payment of this kind of basic income, combined with funding through progressive (or proportional) taxation, should help to decrease inequalities, as has been observed with other universal schemes.

In addition, a number of the key features of the basic income confer on it a unique potential for emancipating individuals. As Philippe Van Parijs showed in one of his most commented works on the subject, it maximises “real freedom” for those who have the least of it.⁵⁷¹

It can be noted that the “egalitarian” nature of the concept became apparent from the very outset of theoretical debate on basic income, at the end of the 18th century. At the time its advocates described it as a form of just reward for the appropriation of common goods by a small minority. This argument was to be frequently utilised throughout the 19th century by thinkers with more or less utopian leanings. For example, in 1848 in Brussels, the socialist Joseph Charlier published his *Solution to the social problem*, in which he maintained that everyone was entitled to a dividend (which he

569. Rawls 1971.

570. See Parijs 1991. For arguments in favour of a basic income founded in other traditions of political theory, see in particular Parijs 1992.

571. Parijs 1995. See also, for example, Widerquist 2011.

subsequently christened the “territorial dividend”) corresponding to the per capita value of national territory and its natural resources.⁵⁷² This reasoning subsequently became more and more widespread and is still present today, in more sophisticated forms. The aim is very frequently to demonstrate that our economies produce wealth of which we are the collective owners, but which remains very unequally distributed.⁵⁷³ A convenient way of organising the necessary redistribution is to grant everyone access to basic resources leaving them free to lead what they regard as a well-lived life.

This is naturally where the profoundly “liberal” nature of the basic income lies, and it is this aspect of it that has sometimes perturbed the usual proponents of egalitarianism within social-democratic parties or trade unions.⁵⁷⁴ It is true that guaranteeing everyone such an income, without conditions, is a way of equalising opportunities to enjoy greater individual freedom. Some people accordingly consider that such a measure would foster individualism and a withdrawal into the private sphere, without regard for the need to forge social ties and for the concept of the common good. However, it is precisely because the basic income severs the link between income and making a productive contribution in the narrow sense that it has been construed, in particular by ecologists, as favouring autonomous, non-commercial activities.⁵⁷⁵

6. Guaranteeing participation?

While the basic income constitutes a subsidy for low-paid employment, it can hence also be considered as a subsidy for other forms of activity to which the market attaches no value. In principle, there is therefore nothing to prevent individuals from deciding to make the most of their resulting financial independence and free time by spending their days surfing on the Malibu beaches.⁵⁷⁶ To avoid this type of “parasitic” behaviour⁵⁷⁷ and encourage everyone to contribute to the common good by fulfilling their obligation to reciprocate, it would be possible – some say desirable – to arrive at a compromise regarding the radically unconditional nature of the basic income, but without relapsing into the shortcomings of traditional

572. Charlier 1848. See also Cunliffe and Erreygers 2001.

573. See , for example, Herbert 2001.

574. See Vanderborght 2005a.

575. See, for example, Offe 1992; Gorz 1997; Parijs 2009; or more recently Arnsperger 2010; and Arnsperger and Johnson 2011.

576. This example refers to the discussion in Parijs 1991.

577. See Van Donselaar 2009.

welfare mechanisms. It is with this aim in mind, that advocates of this solution frequently defend the concept of a “participation income”, as proposed by the British economist Anthony Atkinson.⁵⁷⁸

The idea seems simple. Rather than granting everyone an unconditional allowance, why not pay an income to those who perform a “socially useful” activity and thereby contribute to the common good? This participation income, entailing low conditionality, would make it possible to put a value on autonomous activities without rewarding idleness, as does the basic income. Atkinson lists a whole series of occupations that would confer entitlement to this allowance, including in particular taking care of people who are dependent, actively looking for work, training or recognised forms of voluntary work. Although he considers it logical that this participation income must also be paid to workers, he above all stresses the fact that, unlike classic welfare programmes, a measure of this kind would allow for people “opting out of the formal employment status for significant periods of their lives, pursuing some alternative lifestyle”.⁵⁷⁹

A number of key objections can be raised with regard to this apparently attractive proposition. Here, I shall focus briefly on just two of them.⁵⁸⁰ Firstly, at least if the amount of the allowance is significant – so as truly to permit the pursuit of autonomous activities – it stands to reason that an appropriate supervisory mechanism will have to be put in place. The public authorities will have to stipulate the nature and extent of the activities conferring entitlement to the participation income, while rigorously verifying the effective performance of these activities. As with traditional welfare mechanisms, these verifications will be complex and costly to implement, paving the way for arbitrary administrative decisions and a risk of non-take-up of the allowance, particularly among the most vulnerable members of society. Secondly, it is worth asking which criteria will be applied to distinguish between “socially useful” activities and those regarded as “socially useless”. Is a non-arbitrary boundary line possible? Will someone who devotes their time to a sports association be entitled to the allowance in the same way as someone who is active in a human rights organisation or a political party? The stricter the criteria, the greater the risk of confining payment of the allowance to those who have the cultural or social capital required to be able to take an active part in the

578. It should be noted that Atkinson in fact tended to view participation income as a policy device for circumventing the reciprocity obligation. See, in particular, Atkinson 1996.

579. Atkinson 1998: 147.

580. For a more detailed discussion, see Vanderborgh and Parijs 2001; and Wispelaere and Stirton 2007.

civil society networks. The more flexible these criteria become, the more the participation income will resemble the basic income.

Attempting to guarantee reciprocity and a contribution to the common good by introducing such conditionality accordingly appears to be a fairly unpromising path. It might be said that the need to delimit the scope of what is “socially useful” as it were entails a highly paternalistic approach, which is likely to operate to the detriment of the poorest members of society. It is better to forgo these attempts and accept the idea that a measure such as the basic income will facilitate pursuit of a dual goal: promoting participation in a multiplicity of autonomous activities, on the one hand, and substantially increasing the real freedom of the most disadvantaged, on the other hand.

7. Some challenges: training, individualisation, migration

An unconditional basic income has many advantages that help make this proposal a serious alternative to traditional poverty reduction schemes. Nonetheless, it should not be inferred from this that its acceptance would not pose difficulties. In particular, the moral objection that it is unacceptable to tear asunder the link between a right (to income) and the corresponding duty (to contribute) continues to stir up debate. In addition, the proposal’s advocates have to contend with a number of practical challenges.

Firstly, is there not a risk that establishing the basic income would result in a huge waste of human capital? In 1995 two Dutch economists published an article on this subject in one of the Netherlands’ oldest economic journals.⁵⁸¹ At the time the coalition in power in their country was seriously envisaging introducing a basic income, which had become a topic of heated discussion.⁵⁸² Although Lans Bovenberg and Rick van der Ploeg shared some of the concerns of the idea’s proponents – in particular regarding the problem of inactivity traps – they drew attention to one major drawback, which can briefly be summed up as follows. If young people know that, upon reaching their majority, they will be entitled to an unconditional allowance, there will be no incentive for them to train and study so as to improve their skills. They will opt for undemanding, low-productivity jobs, without investing their energies in their schooling. The two authors maintained that “these developments threaten the most important capital good in a

581. Bovenberg and Ploeg 1995.

582. See Vanderborgh 2005b.

knowledge-intensive society: the human capital and the work discipline of future generations".⁵⁸³ The worrying level of youth unemployment in many European countries, due, *inter alia*, to low qualifications and dropping out from school, requires that this challenge should be taken very seriously. One cannot reasonably consider it enough to say that access to conditions allowing maximum individual freedom must also apply to young people. Although that is important, it must nevertheless be acknowledged that free choices made during adulthood are very different from those that may be exercised at the age of 16 or 18, when the employment market is still a very distant, abstract thing and it is hard to anticipate the negative and long-lasting consequences of the options envisaged.

Some proponents of the basic income have concluded from this that, although the low conditionality inherent in a participation income would be unworkable if it were applied generally to the population as a whole, it would not be unreasonable to impose it in the case of the youngest, for example those aged between 18 and 25. The basic income would then take the form of a subsidy for training in the broadest sense, making it possible to extend to a larger share of the population the financial support that is currently all too often reserved for students alone.⁵⁸⁴

The second challenge is whether the proponents of a basic income do not underestimate the real cost of this measure. Of course, as in any universal scheme, a distinction must be made between the gross and the net cost. However, would there not inevitably be an extra cost because, unlike all traditional income support schemes, the basic income would be paid on an individual basis? This is a criticism frequently heard concerning any suggested individualisation of benefits. Calculating benefit levels according to a household's composition makes it possible to take account of the economies of scale obtained through living together and *de facto* reduces the overall amount of the transfers made. If it became necessary to give everyone the amount currently awarded solely to those living alone, the additional cost would not necessarily be prohibitive, but would certainly be considerable.

A possible answer would be to devise an unconditional basic income payable to households.⁵⁸⁵ However, is the allocative efficiency that would be achieved through such an adaptation of the proposals sufficient to

583. Bovenberg and Ploeg 1995: 103. See also Groot and Veen 2000.

584. See Vanderborgh and Parijs 2005: 99.

585. For instance, this is what Denis Clerc proposes in the French context: Clerc 2010. See also the answer proposed by Y. Vanderborgh and P. Van Parijs in the same issue of *L'Economie Politique*.

justify abandoning one of the key features of the reform as proposed here? Probably not, for at least two reasons.

Firstly, if the income's level depends on the household's standard of living, there will be an incentive for the most disadvantaged to declare themselves as living alone even when that is not true – this is a phenomenon already noted with many selective benefits. As a result, the administrative verifications would have to be continued, or even reinforced, so as to guarantee the scheme's sustainability and legitimacy. A genuine, individual basic income, by definition independent of the household's composition, would make these costly verifications superfluous. As those who decided to cohabit would not be penalised by a reduction in their income, this solution would also favour shared living, which is known to be a condition conducive to poverty reduction.

Secondly, at a more fundamental level, individualisation must be regarded as an essential component of any egalitarian strategy. An individualised guaranteed income improves the situation of the most vulnerable partner, ensuring that he or she will benefit from uninterrupted payment of an allowance, regardless of the household's overall income. On account of the unconditional nature of this individual allowance, the formula makes it possible not only to limit the harmful consequences of inequalities within families, but also to increase the real freedom of each family member, which is a measure particularly in favour of women.⁵⁸⁶

The last challenge lies in the fact that it can legitimately be asked whether such an allowance would be viable in a Europe whose frontiers are increasingly easy to cross. Within the European Union, in particular, it is no longer possible to restrict access to social rights to a country's citizens alone. If a single member state introduced a basic income and a residence requirement continued to apply, that would probably not suffice to discourage migration by those wishing to benefit from such a basic income, especially if it represented a quite significant amount.

Furthermore, if one of the objectives is indeed to equalise opportunities by redistributing genuine freedom for the benefit of the most disadvantaged, it would seem absurd to preclude awarding the allowance to migrants (from inside or outside Europe), when they are on average far poorer than the rest of the population.

586. An issue of the journal *Basic Income Studies* was devoted to this question of feminism and basic income. See *Basic Income Studies*, 3 (3), December 2008, www.bepress.com/bis/vol3/iss3.

This challenge highlights an inevitable stress point to be found in all redistributive schemes in a globalised economy. The selective migration that can already be observed in some industrialised countries⁵⁸⁷ exerts pressure on the most generous systems and may result in their levelling down. A benefit that is as radically unconditional as the basic income can be seen to be particularly exposed to this risk.

It is not only easily accessible, but also provides no particular incentive for immigrants to integrate, for example by improving their language skills. The latter characteristic could rapidly make it unpopular with the indigenous population. A simple, satisfactory response to this challenge is therefore not necessarily feasible. Would it be enough to show that the integration of persons of foreign origin into the employment market would, in point of fact, be facilitated by the subsidy for low-skilled work that the basic income constitutes? Would it be possible to win over the sceptics by showing that the positive effects on the jobs supply would easily suffice to cover the cost of the scheme?

Whatever the answers to the above questions,⁵⁸⁸ the migration challenge requires us to envisage the possibility of creating a basic income at a supranational level.

While it seems unrealistic – albeit probably desirable – that such a measure could be implemented at world level, it is not incongruous to imagine that it might serve as a basis for reform at regional level. For example, the American philosopher Michael W. Howard has explored the idea of establishing a dividend within the NAFTA (North American Free Trade Agreement) countries – Canada, the United States and Mexico. He argues that this dividend would make it possible to reduce inequalities, which are growing in these three countries, would provide a useful development tool and would at the same time guarantee that regional co-operation “benefits the least advantaged”.⁵⁸⁹ It is naturally desirable to consider introducing a similar scheme within the most integrated regional entity worldwide, the European Union.

587. Borjas 1999.

588. For a more detailed discussion, see Vanderborgh and Parijs 2009. See also Howard 2006.

589. Howard 2007.

8. Conclusion: towards a Euro-dividend?

The solution of introducing a basic income can now no longer be disregarded by anyone who views fighting poverty not as a charitable obligation, but as a demand for justice.

Taking into account the difficulties described above and the radical nature of this reform, it is nonetheless doubtful that it could be introduced anywhere by suddenly transforming welfare systems.⁵⁹⁰ However, it is not at all illusory to hope that the proposal, and the underlying ethical and pragmatic arguments, will serve as inspiration for reforms substituting universality for selectivity, thereby reversing a dominant trend in the majority of European countries.

There is even reason to think that, as the growing powerlessness of nation states forces us to devise and implement a scheme of inter-individual redistribution at European level, the idea of a basic income will gradually take hold. One means of transition that should be explored in this context is the establishment of a genuine “Euro-dividend”, which could initially take the form of universal family benefits financed at EU level.⁵⁹¹ The amount of these benefits could vary according to the cost of living in each member state. While both supporting and being a partial substitute for the Union’s cohesion policies, such a Euro-dividend would simultaneously constitute a first step towards an at last fully renovated European social model.

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590. Concerning the difficulties of implementing a universal grant, see Clerc 2011.

591. For a discussion of the various possibilities for paying a Euro-dividend, see Parijs and Vanderborght 2001.

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THE BASIC INCOME AND THE DIFFERENT EGALITARIAN RIGHTS TO SECURITY

Louise Haagh

1. Introduction

The basic income (henceforth BI) proposal has gained a number of supporters in the European debate about the welfare state in an era of growing threats to economic security.

The BI is an unconditional right to a regular income grant paid without a means test or behavioural conditions, as distinct from other rights where access to resources depends on particular needs or the accomplishment of certain requirements as regards searching for a job, etc.

This paper argues that there is a strong case for administrative moves to make basic income support unconditional, although broader redistributive conditions are needed to strengthen complementarities with rights to welfare and other aspects of economic security.

In this context, the value of the basic income that pertains to its separation from production and its strict egalitarian character should not be seen to be in conflict with distributive shares based on security within production, or on needs and desert.

The latter (conflictual) view fits within a programme both of political philosophy and (economic) policy that is overly concerned with justifying inequalities within production on (market-based) social utility grounds, and elaborating distributive schemes *ex ante* or post hoc in the market economy.

This association of the BI with the Anglo-Saxon trend is unattractive for liberal egalitarians, given the alternative, which is to explore the contribution a BI can make to a more broad-based scheme of rights in support of equal freedom in the realm of economic security. To elaborate, the structure of the paper proceeds as follows: it begins by clarifying the grounds for promoting the BI as a foundation for other rights to security, and considers reasons why this constructive view has been fairly marginal within the debate. One particular reason, the rejection of desert in liberal-egalitarian thought after Rawls, is then discussed in more detail, given its pivotal role. It is argued that greater attention to the value of freedom in work and other activities in liberal thought provides grounds for including a revised

desert-based conception of rights within a broader view of what a commitment to solidarity or fraternity means. Lastly, the paper considers the wider institutional basis for this in the form of high and progressive taxation and strategic commitments to the systemic pursuit of low inequality.

2. Reasons why access to the BI and security must be unconditional

There are good practical and historical reasons to promote unconditional access to a minimum level of income security, and to be suspicious of schemes of basic assistance that operate on the basis of needs or desert. The practical reasons should be considered in the context of a growing tension between, on the one hand, rising uncertainty and, on the other, a commitment to the expansion of individual liberty. As regards needs tests, in more uncertain economies, the conflict between accuracy (as fairness) and the liberty of claimants is exacerbated, as shown in the case of the detailed scrutiny of individuals' homes and possessions under targeted cash grants.⁵⁹² The principle of desert, on the other hand, entails the use of officials to monitor behaviour, which in complex societies is a particularly unreliable and intrusive proxy for encouraging the motivation to work.

There are then many practical reasons to consider the BI as one of the fundamental human rights in modern societies. The BI's contribution – in this context, to support autonomy – is composed of several aspects. The first and most basic relates to the individual's inability to generate their own security: here the justification for the right to vote and for the BI is similar; just as direct participation in the making of rules is no longer possible, so the making of our own economy is no longer feasible to the extent where an encompassing connection between effort and outcome can be reasonably made. A second condition of autonomy relates to our ability to become integrated within society. Pateman sums up the position where she argues that material security is the foundation of other elementary (including political and other republican) freedoms.⁵⁹³

However, thirdly, the BI can also in this context be seen as a condition of the individual's relative freedom from society and the political process. Democratic consensus is never perfect and if the foundation of a free society is political competition, then the opposition members of a given period must have their freedoms secured.

592. Haagh 2011b.

593. Pateman 2007.

The proposal I want to make is that the same conditions of modern complexity that I claim in defence of the BI in relation to basic autonomy and political freedom also justify egalitarian distribution in other realms of economic security, both within and outside production.

Thus understood, the matter of choosing the relevant principle (unconditionality, needs or desert) is one of pragmatic judgment in the context of the overall aim to advance prospects for equal security as a source of equal freedom and more developed autonomy.

The broader conditions for making this feasible would in turn seem to hinge on the level of overall political and social commitment to a conception of common assets and a form of solidarity in which the advancement of equal security is a more general aim. In the context of a comparison of actual welfare states, this is arguably most developed in the Scandinavian and other small European welfare states, where progressive taxation positively interacts with an egalitarian aim of this kind, as I explore in section 4 below.

3. The right to equal security for all: the Danish example

In order to proceed, however, it is important to first understand how the perception of the BI's relations with other institutions is dependent on the point of reference used.

To see how, consider how the BI is different from most other (monetary) welfare state distribution, because it follows a strict egalitarian formula whereby everyone is given exactly the same. The problem here is that using this as our point of reference for the BI's relations with other rights lends itself to a kind of logical fallacy, whereby it is seen that a defence of the unconditional aspects of the BI is strengthened by an insistence on the general application of egalitarian principles.

Flat taxes, for instance, have been commonly associated with a defence of the BI, at least until recently. The BI has been contrasted with minimum wages, and with work-time regulations and certain aspects of welfare provision (preference for individual choice). Other times the BI has been defended on the grounds that world production cannot be governed. Technology is seen inevitably to limit the number of jobs and to concentrate skills. Global uncertainty is regarded as fixed and thus renders a project to improve the stability of social positions unlikely to succeed.

What such views share with the Anglo-Saxon welfare state is a tendency to prioritise distribution outside production and also a view of solidarity that is demanding in respect of its voluntary (private) contractual basis.

Choosing instead as our reference point a general sense of equal security allows us a more encompassing framework for identifying the nature of the complementarities that exist among distributive schemes.

A positive interaction for instance refers to the way that basic security as a common asset strengthens the quality or the sense in which other distributions based on needs or desert may be called rights.

Consider for instance that whilst we would presumably think it right and proper that interview panels assess job candidates on merit, and applicants for promotion on their performance – processes where assessing and rewarding desert are at stake – we would feel oddly skewed in our judgment, if the consequences might be to leave particular candidates in an unfree or destitute state. The same is true for access to publicly subsidised opportunities or compensation, the right to which we might want to organise in particular ways.

Arguably, here, we have assessed only one complementarity. It can be argued that selection, even against a background of basic security, produces unequal freedom where not enough reasonable opportunities (through education, in different occupations) exist. But what this shows is only the relevance of considering more institutions, and in particular taking the overall scope of public policy into account.

The importance of this is raised in an historical context in which the same uncertainty that strengthens the case for the BI also threatens to undermine individuals' interests in secure opportunities in other important dimensions.

An example is secure compensation during employment transitions. The BI alone cannot provide this in a context in which it is very likely to be quite small. To promote in this sense a degree of equal security, whilst considering other egalitarian aims, requires a mix of institutions and principles, as illustrated in the Scandinavian states (as I explore below in section 5). Whereas in the British case there is only one effective layer of (basic conditional) income security, in Denmark, there is a second (upper) tier of (partially contributory) income support, in the form of unemployment insurance.⁵⁹⁴ This insurance operates according to a combination of principles of access, based on desert and need, in the context of a fairly developed project to advance a sense of equal security.

The first is pure compensation entitlement (for loss of employment), based on the simple principle of desert for (past) effort in respect of the

594. Haagh 2006.

performance of work. A second desert principle treats people unequally based on the notion of desert with respect to previous pay (in Denmark, starting at around 90%) even if this means in effect that some receive (absolute) unequal amounts (under a maximum level). This is only partly justified by contributions, as the state pays a subsidy. A third aspect of desert enters the scheme when, after specified periods of time, individuals are required to perform certain tasks to continue to qualify. Finally, there is a strong needs component, as lower earners are subsidised when benefits fall below a certain acceptable level.

Without commenting further on the individual components we can see that – given a context of scarcity – the combination of principles here is a result of ensuring that more and different (in theory reasonable) egalitarian considerations are met.

The notable point is that it would be nigh-on impossible to identify the justification for this complicated mix using a pure procedural formula where justification rests on accuracy in the narrowest contributory sense. What justifies the mix in the Danish case is the more general combined aim of low relative poverty and equal security. It fulfils what some desert-positive theorists advocate in the form of an improvement (as distinct from a perfect measurement) standard.⁵⁹⁵

Note, however, that equal security in this case is not only an egalitarian aim, but a liberal one. This is expressed, for instance, in the recognition of the right to equal security for all (not just for those who are unemployed or are poor), as exemplified in the unemployment benefit scheme's consideration of previous pay. A liberal conception is also apparent in the recognition of the presence – and value – of at least some element of choice and free will, in so far as the scheme recognises effort. In the value the scheme places on equal security, the design also inevitably incorporates – and thereby legitimates – both indeterminate competitive processes and inequalities in pay on the labour market. This includes individuals' right to recuperate a mix of effort, talent and luck (although notably constrained by progressive taxation – section 4).

The mixture of egalitarian principles in the social-democratic institutions described does not then make these institutions the same as the Anglo-Saxon welfare state model. A basic difference, as indicated, is a liberal-egalitarian objective in the form of substantial aspects of access to equal security and secure opportunity – and therefore a sense of freedom – within production.

595. Moriarty 2005.

This differs from the way social policy in the Anglo-Saxon welfare state and in principle the conflictual view of the BI are both tendentially motivated to support and compensate individuals outside production. With respect to defence of the BI, this conflictual view is, in important measure, the result of a more general tendency – in particular since Rawls – to consider moral issues and measurement problems so strong as to render egalitarian or freedom objectives in this sphere to be largely unworkable. In the next section, I briefly discuss these objections and present reasons why the focus on security as a freedom value helps overcome them.

4. Security as a freedom value

Since Rawls there has been a tendency in liberal-egalitarian discourse to dismiss desert as a basis for distributive justice because, it is argued, effort cannot be prised apart from good fortune and natural talent. As he puts it, “the better endowed are more likely, other things equal, to strive contentiously, and there seems to be no way to discount for their greater good fortune. The idea of rewarding desert is impracticable.”⁵⁹⁶

This view of things then transfers desert and needs questions largely outside production, and leaves unresolved the problem of the justification for work compensation, and the possible inequalities in the market that follow.

Rawls’ solution in the form of a general distribution criterion, the difference principle, by which distributions should favour the least well-off in society, is broadly recognised to be overly general. Notably, Rawls regards the difference principle as a method for translating the more general idea of fraternity (or as he defines it a form of solidarity or social security), but the vagueness of the principle as regards, in particular, its relation with production, renders it compatible, at least at face value, with quite opposed institutions and outcomes as regards, for instance, income equality.

On the one hand, if taken quite literally, it would seem to lead to perfect (income) equality (as Van Parijs seemed to object), if indeed every public action must favour the poorest (at least as regards income).⁵⁹⁷ An opposite interpretation, which, as noted, has had policy currency, is to argue that any – or in any event quite high – inequality favours the poorest if (in a counterfactual sense) it produces higher growth, which benefits the poorest the most, or allows the poor to benefit more than they would

596. Rawls 1971: 274.

597. Parijs 1995: 132.

have from less inequality. It is clear that neither extreme is what Rawls would have wanted given, on the one hand, his clear reference to social utility as entailing unequal shares (“premiums earned by scarce natural talents ... to cover the costs of training and to encourage the efforts of learning”),⁵⁹⁸ and, on the other hand, his frequent references to the reasons for the restraint of social utility by egalitarian concerns connected to his primary goods (for instance, in education),⁵⁹⁹ or his view of reciprocity as connected to the scheme of co-operation in the everyday sense.⁶⁰⁰

In the absence, however, of a clear means to judge fair distribution (in production), social utility – understood in neoclassical terms as productivity drive – has become, since Rawls, a standard means to justify production-related (read, market-based) distributive shares.

This solution to the problem of distribution is odd, first because it sacrifices individual rights and freedoms (in production) to social interest in a way that does not seem generally compatible with liberal-egalitarian sentiments. Detaching compensation from effort completely seems to dispense with the rightful claims of those who raise everyone’s welfare to freedom (and monetary reward). Second, it is odd to use productivity as our exclusive standard because if the reason for abandoning effort (moral desert) is the problem of measurement, we run into possibly even greater problems of this kind when accounting for productivity-related, or some other social utility, standard with respect to market reward.

Using (market-generated) social utility standards assumes a number of things about education, work and markets that we have reason to doubt: (i) that individuals will do what they are best at, (ii) that they train purely with a view to earn, (iii) that people in fact earn what their social contribution is worth (or rather that market demand-based reward is worth – that price is value – consider the pay of a doctor and a footballer, for example, in relation to iii).⁶⁰¹

A very well-structured attempt to correct for both (i) and (iii) was made by White, in a scheme whereby a person’s wage is reduced where it is found that choice of occupation is secondary to that person’s (socially measured) talent.⁶⁰²

598. Rawls 1971: 274.

599. *Ibid.*, pp. 63, 73, 92.

600. *Ibid.*, pp. 84, 88.

601. Haagh 2007.

602. White 2003.

The person in White's scheme is still free to do a job of his or her choosing (although earning less), but this leaves three remaining problems both for measurement and for a liberal account of reward. First, there is the problem of measuring alternative talents accurately and therefore fairly. Second, there is the problem of whether the market allocates work to talent anyhow, as I have argued it does not, or at least only very imperfectly. However, third, a solution to this that insists on accurate reward for (strictly measured) social utility would be to tie White's scheme to full-scale development planning, which in turn might stamp out competition and free exchange altogether, and also entail intrusive means to allocate work.

Social utility is then only a partial guide to rewarding productive effort, and the form this reward takes, in a market economy.

If the fairness of wage distribution has to be taken, in this context, to some extent as indeterminable, can we nonetheless produce some other freedom-related grounds that can both justify some of this indeterminacy and set some bounds for it?

As noted elsewhere, one of the reasons (besides that of measurement) why the size of pay seems inadequate to express what people deserve for their work is that this does not reflect the freedoms liberal egalitarians themselves attach, in general, to productive activity. For Rawls⁶⁰³ the Aristotelian (motivational) principle implies that the process of learning, and the attendant planning of one's life, is a key source of human motivation and expression – indeed, of liberty. White recognises that individuals have a core integrity interest in having control over work.⁶⁰⁴

Pogge and Van Parijs represent, in this context, two plausible routes, respectively inside and outside production, in emphasising the independent value of freedom in relation to work and reward.

Pogge, for example, asks why it is possible or fair to expect that those of superior (natural) advantages should give up on all aspects of personal (including monetary) gain that follow from their natural gifts.⁶⁰⁵ This is an important point, because it suggests that the enterprise of prising apart effort and talent is not only impossible for reasons of measurement, and not only an offence to freedom because of the processes and social relations involved, but the idea itself that the two should be detached is wrong in some other sense.

603. Rawls 1971: 374-6.

604. White 2003: Chapter 1.

605. Pogge 2002: 58.

Part of this enterprise, for instance, might be considered an offence to freedom because the freedom to labour on and derive fruits from one's abilities, such as they are, is part of what it means to lead a free life, without most or all outcomes being predetermined by society or potentially reduced by other individuals' needs. In short, whilst we may owe something to others, even distant others, we are entitled to keep something for ourselves, even if this is derived from innate advantage (or presumably gifts or luck), and even if this is reduced quite a bit by (for instance) taxation, for other ends (such as to secure overall lower inequality – as in section 5).

Another route to assigning a clear value to freedom with respect to the organisation of work and reward is Van Parijs' defence of the BI as a right to independence from the labour market,⁶⁰⁶ which is partly (historically) justified by the scarcity of social positions (meaningful or stable formal employment). In turn this helps justify market (remaining) inequalities (again partly), in so far as these are necessary for social utility (to raise productivity).

What is attractive about this position in general is the way personal freedom to exercise basic control over choice of activity (paid work or other activities) allows social utility to recede in some measure so as to give aspects of personal freedom priority. (This argument is of course central to a defence of the BI.)

On the other hand, this position (still) leaves relatively unspecified the level of acceptable (remaining, market-determined) inequality, and – thereunder – the extent to which distribution (through taxation) should emphasise the value of the BI or other socially organised services, in relation both to welfare and the organisation of work.⁶⁰⁷ A second unspecified value relates, in this context, to the value of freedom in relation to work within (formal, paid) employment. The specification seems to rely mainly on the opportunity not to work that the BI provides.⁶⁰⁸

Against this background a promising way to progress, as already indicated, is to see the BI as supportive in some sense of institutions to motivate and reward work in the (equivalent) domain of security.

This is a logical counterpart to the BI itself: a simple justification for giving freedom-bearing values to formal employment is to point to the need for a form of equivalent freedom for workers to control their activities (their life plan) to those who voluntarily or involuntarily do not work under a BI reform.

606. Parijs 1995.

607. Haagh 2011a.

608. Parijs 1995: 121.

In fact, we can take control of activities as a source of freedom as in some sense resolving the tension in Rawls' work (and the tradition after him) between the rejection of institutions' rewarding effort and the valuation of freedom, in this sense of being able to make, carry out and revise life plans (informed by the Aristotelian principle).

The only institutional reference point that Rawls is happy to give to this in production, namely the observance of contracts and rules in the market economy, in order to generate a sufficient level of "legitimate expectations" to frame economic and social life,⁶⁰⁹ is – like the difference principle – overly vague.

There are, however, several plausible ways to proceed. One I have proposed is with reference to what a sense of developmental freedom entails for our control of activities within, as well as outside, production.⁶¹⁰ One dimension of this is control of learning, work and occupation throughout the life cycle (dynamic control), whereas another (static control) relates to our ability to dedicate time to formal work and other activities. So, for instance, the value of dynamic control might justify aspects of employment and occupational security, minimum wages and sources of compensation for loss of employment (the unemployment scheme, as above). Raising static control, on the other hand, could justify containing competitive (occupational) pressures, through reduced working time or work-sharing, to a degree where, in practice, individuals – of both genders – can choose to dedicate time to leisure and care activities, without systemic risks to their occupational security.

Measures such as these are arguably sufficiently close to Rawls' idea of what legitimate expectations demand as to almost eradicate the distinction with respect to desert (replacing moral desert with desert as entitlements related to effort).

As Rawls notes, legitimate expectations apply when "those who, with the prospect of improving their condition, have done what the system announces it will reward are entitled to have their expectations met".⁶¹¹ He calls this an entitlement as distinct from desert, but this seems to be because he wants to refer to the initial rules rather than to how far individuals made efforts within those rules as a determinant of what they receive. Either way, what counts is effort, and so whilst moral desert

609. Rawls 1971: 76.

610. Haagh 2007 and 2011b.

611. Rawls 1971: 89.

(judging someone's intrinsic worth) is not what we seek, we are still looking at a form of effort-related desert that is anchored in a sense of stability.

Indeed, Rawls though he notes that occupational positions may not (and cannot be expected to) be equal (for example, between "dairy farmers, wheat farmers, farmers working on large tracts of land, and so on"),⁶¹² and assumes that the problem for justice relates to positions, the positions themselves are, at least reasonably, stable.

Rawls, or anyone, could still take the problem of discounting for talent and luck to be so serious or insurmountable that it can be understood to override the sense of equal (fair) entitlement to security. But this seems unlikely if entitlements to security (the BI, universal welfare and work-based security) can be argued to support an overall improved sense of it for all. The difference principle here is then plausibly not attached or fixed to particular persons, but to situations each may potentially face. The overall stability and personal control that arises from the set of separate entitlements can be seen then as providing a measure not only of the "property owning" he wished persons should have at the beginning of "each period" but in the course of it, as seems consistent with this ideal of "a fair system of co-operation over time".⁶¹³ An additional advantage of freedom and desert values in the form of security is precisely that they are less demanding (and intrusive) in respect of measurement and discrimination between individual persons. To some extent, it is their being crude and general (as opposed to variable by some constantly moving measurement target) that give them merit as reliable rules in relation to which individuals can regulate their efforts and time. Effort in this sense is something (unlike talent) over which individuals do have control, and which is important as an expression of realised choices, which in turn is one of the ways that effort – and entitlements connected to them – is related to freedom.

The problem of (greater) modern uncertainty seems then not only to lend support to the BI but also to sources of security within production and over the life course. In the last section, I will give the reasons to think that this objective relies on a more general strategic pursuit of low inequality and, in this context, universal welfare and progressive taxation.

612. *Ibid.*, p. 82.

613. *Ibid.*, XV.

5. Equal security and low inequality: the importance of high and progressive taxation

A general reason why equal security is tied to low inequality concerns the complex and interdependent nature of modern economies, as discussed at the outset. The BI is a form of recognition of this, but alone it is insufficient. In complex economies, equal security presupposes low inequality in several fields, including economic opportunity, welfare and income. In turn, there are specific reasons to think that supporting this in practice points to a scheme of quite high and progressive taxation.

High and progressive public finance serves the function, through direct provision and public subsidy, of undercutting price competition in welfare goods, thereby promoting their high and even quality, and in this sense their value as common assets. In other words, high and progressive taxation helps lower the market-based inequality that could otherwise generate unequal welfare and enables policy makers to direct spending on services.

Putting this in perspective is the divergent trend in market earnings and social policy in the social-democratic economies as opposed to the British one. A wage study of seven OECD countries shows that the change in annual earnings of parents was about three times lower in the 1990s in Britain as it was in Norway. In Norway, earnings of the lowest 10% among paid mothers went up between 1991 and 2000 by 96%, and that of fathers by 5.8%, whereas transfers went up by 33.6%. In Britain, annual earnings of the lowest 10% of paid fathers went down by 8.2%, whereas that of mothers in this group went up by 29% and social transfers went up by 39%.⁶¹⁴ These figures illustrate the wage-based component of the high and growing income inequality in Britain compared with the Nordic states, which (notwithstanding a rise in inequality as well, especially in Finland) have all retained higher levels and more progressive systems of tax, higher spending on services, and much smaller and more even income distributions (on tax and spending).⁶¹⁵ The OECD Questionnaire on Income Distribution and Poverty shows that the ratio of rich to poor, measured as the difference between the 10th and 1st decile, is still lowest in Denmark at 4.6, followed by Sweden at 4.7, the UK at 8.6, and the US at 16.

These labour market and distribution trends help explain why, despite high benefit levels relative to the median wage, and despite a significant

614. UNICEF 2005.

615. Haagh 2011a: appendix.

reduction in child poverty rates in the 1990s, Britain still has one of the highest poverty rates of any OECD country in Europe. The child poverty rate in the UK before taxes and transfers was 25.4% in 2005, compared with 11.8% in Denmark, 18.1% in Finland, 15.5% in Norway and 18.0% in Sweden. These four countries all reduced this rate further through transfers to below 5% (in Denmark to the lowest level, at 2.4% of median income). The UK reduced their rate to 15.4%, but in a context of sustaining one of the highest levels of minimum income support relative to the average wage.⁶¹⁶

The example shows how even quite high public spending in absolute terms has less effect where labour market institutions or taxation have been ineffective in raising income equality. This lower impact of public spending in a context of high inequality has other dimensions that indicate how a high or low-tax equilibrium has a systemic impact on the presence or absence of a strategic pursuit of low inequality.

One of the dimensions concerns the problem of equal-quality schooling. The UK, for instance, has seen public funding grow at a higher rate than most other OECD countries between the mid-1990s and 2005 (at 146%, against an average of 138%). Overall private funding, however, at 174%, grew even faster.⁶¹⁷ Hence, the opportunity structure became more vertical, and there was a depreciating effect on the equality of public spending even as public funding was growing.

The upshot of this is that the UK retains one of the highest resource inequalities between private and state schools in the OECD. In 2007, the difference in the ratio of teaching staff to students between these sectors was about slightly favourable for state schools in Denmark, compared with nearly three times as many students per teacher in state compared with private schools in the UK (the lowest in the OECD).⁶¹⁸

Equality in schooling has a knock-on effect on public demand for diversified publicly funded training and work opportunities, and on the way the labour market rewards different levels of education in the form of relative employment and income returns. Youth apprenticeships are much more common in Scandinavia (estimated at over 40% in Denmark), and relative employment and income return-rates to lower qualifications are better than the OECD average.⁶¹⁹

616. UNICEF 2005: 21.

617. See OECD 2008b and Haagh 2010: 40.

618. Haagh 2011a: 63.

619. *Ibid.*, p. 64.

The role of income transfers in reducing relative poverty is also lowered where public funding is not able to deliver equal-quality family benefits and (in this context) real incentives to work. The Nordic countries have much higher rates of public spending, for instance 0.7% and 0.6% of GDP in Denmark and Sweden respectively in 2005, as compared with 0.4% in the UK.⁶²⁰ The ratio of children to teaching staff in formal daycare services are correspondingly lower, namely 6.9 in Denmark and 11.2 in Sweden, compared with 17.6 in the UK (in 2009),⁶²¹ at the same time fees comprise a smaller component of earnings. The out-of-pocket cost for dual earners earning 167% of the average wage, for instance, is higher in the UK and Ireland (45% in the UK) than anywhere else in the OECD. Although subsidies reduce this for lone parents, the average lone parent still pays 21% of earnings, and lone parents on 67% of average income pay 14.5% of earnings compared to 8.4% in Denmark, 4.1% in Finland and 4.8% and Sweden.⁶²²

To this we should add the higher levels of funding of work opportunities and training in employment transitions in Scandinavian countries. Public spending on – mainly unemployed – training was 1.53 % of GDP in Denmark, compared with 0.12% in the UK, in 2005.⁶²³

The structure of income security, including the way, as discussed, it contains a desert-based component in Scandinavian countries, fits within the broader redistributive paradigm that is sustained by high and progressive taxation. In this context, the British model is a best-possible compensatory scheme (in a deregulated economy) in the sense that the lowest value of income protection for single households is the highest in the OECD relative to the average wage (at 70%, followed by Denmark at 61%, with an OECD average of 41%, in 2005).⁶²⁴

However, the average compensation rate of initial average income protection (also including the unemployment insurance scheme) is higher in Denmark, at 76% of average wages, compared with 63% in Britain (in 2008; in 2005, 78% and 60% respectively).⁶²⁵

In summary, the fact that the (domestic) relative value of the lowest income compensation in Britain is high is not an expression of low (overall) inequality, or high overall equal opportunity for security, but

620. OECD 2008a.

621. OECD 2010b.

622. OECD 2007b: 155-6.

623. OECD 2007a.

624. OECD 2009: Chapter Six, Equity Indicators, Table EQ4.1.

625. OECD 2010a: Table 39720238, Net Replacement Rates for Six Family Types.

rather of how (higher overall) inequality – of income, welfare and opportunity – is shaped by the top-end distribution.⁶²⁶ The assisted and working poor and middle classes have in common low effective incentives to work as regards income and security.⁶²⁷ The British system can, in effect, be likened to Rawls' case (above) of a welfare state that compensates "at the end of each period".

This contrasts with the Nordic economies in which security is accessible both at the start of life and during each period. In these cases, a funding balance in welfare that favours public provision is not only a defining characteristic of the strategic pursuit of low inequality, it is also a way in which, in practice, complementarities between institutions composed of different distributions (unconditional, needs- and desert-based) generate a commensurability of experience of opportunities for control over central activities, both inside and outside formal production.

This has some implications for how we might think about a BI reform. For instance, maximising the BI's value cannot take priority over the provision of common or standardised goods, and reasonable desert-based claims, as the latter are important to secure equality as well as co-operation over time, across gender and for dependants.

Conversely, it is conceivably also more likely that the overall concern with equal security in social democracy, and its support through public finance, would render financial and social support for a BI sustainable.

As Colombino and others argue in their comparative study of BI prospects in Denmark, Britain, Italy and Spain, only Denmark and Britain have a level of taxation and income support to entertain a BI.⁶²⁸ At the same time, they single out Denmark as perhaps being the least in need of a BI, given the level of income (and other sources of welfare) support.

The different ways that Britain and Denmark are closer to being able to realise a BI scheme highlights, then, again, the importance of a non-conflictual view of it. Both the Danish and British transitions would depend on an integration of current tax credit, tax-free allowances and basic income support systems. Moreover, in both countries it is likely that the BI would be very low: in Britain most calculations point to only a partial BI,

626. Hence, in short, if there is a small difference between assisted and working-poor households and between these and average earners, in Britain, it indicates that the average working person is not well-off compared to those higher up the scale.

627. This is recognised in UNICEF 2005: 28.

628. Colombino et al. 2010.

and given the already high level of income support in relation to low-paid jobs, it would be politically (not to mention financially) hard to defend present benefit levels on an unconditional basis. The same is potentially true for Scandinavian countries, which would explain hesitation about the BI, as there would be more to lose for everyone if the payment were to be introduced as a trade-off for even quality social provision in welfare.

The effect of a low BI in these countries, however – on access to equal security, and on the least well-off – would be entirely different. In Britain there would be a more equal sense of basic autonomy (not attached to household or parental status), without any obvious change in the inequality of access to other forms of security. In the absence of equal-quality welfare, the likely continuing high levels of parental poverty would still be passed on to the next generation. In the Danish case, there would be a more equally felt increase in general autonomy from an activation system that is more generally accessed (as distinct from Britain, where access is attached to an underclass). In a positive scenario this could turn currently well-funded education and training systems into service centres with more scope for democratic debate about development and production (in a society where this is already high).

The positive link between high and progressive taxation and equal security does, however, raise one pivotal issue about the motivational effects on business and highly skilled persons of this kind of co-operative scheme. For instance, all states have cut business taxes significantly in the last two decades, and the Scandinavian states have even been at the forefront of this.⁶²⁹ So far tax returns (in relation to GDP) have not diminished – but this could conceivably change. It is possible, however, to take a more positive view. States with high levels of equal security have assets in the form of social infrastructure that, as Chang⁶³⁰ and Amadeo⁶³¹ argue, are highly, and possibly increasingly, valued by business (especially, the domestic and high value-added sectors). In addition, the idea that low tax and unlimited bonuses are necessary to motivate talent in general (outside the internationalised banking sector) has been discredited by studies suggesting that the highly talented would be the least affected by higher marginal rates (as they have relatively little to gain and more to lose from ceasing to work).⁶³² On the other hand, the less talented and low-paid or those with

629. OECD 2008c.

630. Chang 2010: 78-9, 257.

631. Amadeo 2003: 258-9, 265.

632. Colombino et al. 2010: 16.

least occupational advantages are (naturally) affected the most by high marginal rates. In this light, the optimal taxation scheme to motivate work is progressive taxation, not a regressive or flat tax regime. In turn, if this is the case, it attenuates the seemingly most important point in favour of a more limited and compensatory regime, and against high and progressive taxation, which is that high inequality and low taxation is an unhappy but necessary feature of social utility.

6. Conclusions

Having looked from different perspectives at how the BI relates to the welfare state, we can revisit the tendency to assume that its defence entails a wider exposition of a strict egalitarian principle or to see it as detached from rights to work and to welfare (the conflictual position).

This can be seen to fit within a wider tendency in policy and liberal thought to advocate a role for social policy that is orientated to provide basic assets and compensations, seen as ante or post hoc to the market economy. The market-based view of social utility, combined with the perceived need (in liberal-egalitarian thought) to prise effort from talent, conspired to make it seem impossible to identify any criteria for a just distribution in relation to work.

The view of production as ungovernable in the political sense leaves room, however, for quite the opposite, yet equally unsustainable, interpretations of the BI's relation to other institutions, and production especially.

On the one hand, if the BI is a compensation for loss of the opportunity to work (because of technology, global uncertainty and so on), the implication is that the value of the basic income should be maximised: as the BI is a compensation for those left out of competitive processes, there is little or no justification left to finance the generation of work opportunities or work-based security. This then clearly sets up the conflictual position. But, on the other hand, if what governs production is pure (market-based) productivity (the reason for the loss of jobs) then it might follow that both taxes and the BI should be low, as productivity in this model relies on low and flexible wages (at the bottom) and high concentrations at the top (to motivate talent).

What we can see then is that this view of production as apolitical makes it impossible to specify a reliable criterion for judging the BI's value and position within a more general scheme of social justice. Essentially, if the BI is high (the first interpretation) there are few (security or monetary)

incentives to work. If it is low in a low-tax regime (the second interpretation), the consequence is to stratify society into low and high-quality welfare and work opportunities.

In both cases, the BI becomes a contributor to a scheme with low incentives to work and in which the lack of freedom-based motivations to work (in the form of secure opportunity) sets up a clear conflict between workers and others. The popular perception of this conflict will undermine the BI politically, whereas the lack of work motivation and popular support for tax rises will undermine it financially.

The alternative is to justify the BI within an overall scheme to promote equal security in the form both of universal welfare and low inequality.

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PART E

PRESENT-DAY STRATEGIES FOR OVERCOMING POVERTY

(B) THE STRATEGY OF COMMON ASSETS

**PROVIDING DIRECT ACCESS TO SOCIAL JUSTICE
BY RENEWING COMMON SENSE:
THE STATE, THE MARKET AND SOME PRELIMINARY
QUESTIONS ABOUT THE COMMONS**

*Ugo Mattei*⁶³³

1. Introduction – Dominant wisdom

Social justice is pursued in Western democracies by the (currently declining) institutions of the welfare state. Access to social justice programmes is normally guaranteed by “second-generation rights”. These social rights are not merely negative (a defence against infringement), like property rights, but are considered positive, that is they imply specific state obligations.

This vision, which places the specific burden of satisfaction of social rights on the state, is coherent within the evolution of Western jurisprudence. Since the Renaissance and the Reformation, social justice has been excluded from the core domain of private law.⁶³⁴ The scholastic notion of law – still rooted in the Jesuit jurists of Salamanca (16th century) according to which there were two (distributive and commutative) concepts of justice – was abandoned with the advent of modern Western jurisprudence. Starting from Grotius (17th century), concerns over justice were equated to issues over fairness in contractual exchanges entered into by individuals. According to this vision, distribution, which was intended to pertain to the whole society and not just to its parts, was considered an exogenous factor, and hardly ever critiqued within the core of the law, made as it is on contractual and property rights. Since Grotius, such a “reduction” of justice from the distributive to the commutative sphere (from the whole to the parts) was assumed natural, as common sense in the dominant wisdom: distributive justice was expelled from legal science. Economics itself, developed as an autonomous branch of knowledge in the 18th century, also shared and continued to strengthen such

633. This paper was prepared as part of the project Human Rights of People Experiencing Poverty, organised by DG III Social Cohesion of the Council of Europe. I wish to thank Saki Bailey for her long-term discussions with me on these ideas, and all the project participants for the fruitful debates in Paris.

634. See Gordley 1991.

a vision.⁶³⁵ According to this dominant wisdom, issues of distribution cannot be part of a scientific discourse based on positivism. Distribution is considered entirely in the domain of the “ought to be” and not of the “is”; of political values rather than empirically measurable facts. As a result of the dominance of individualism as the foundation for the discourse on rights, distributive justice became a matter of politics to be dealt with (if at all) by state institutions of public law. The birth of the welfare state in the early 20th century was thus considered as an exceptional regulatory intervention (by means of fiscal policy) of market order, with the specific aim to guarantee an element of social justice to the weaker members of society. In the West, since then, social justice has never been able to capture again the core of legal discourse, and consequently has remained constantly at the mercy of fiscal crises: no money, no social rights.⁶³⁶

The most recent fiscal crisis has been no exception. In the wake of urgent challenges to both the European Union and the global system, the inadequacy of both state and market mechanisms has become increasingly evident. Such a crisis presents an opportunity to rethink the unnatural zero-sum relationship between fiscal crisis and social justice, in order to restructure institutional arrangements at both domestic and global levels. The concept of the commons can today provide exactly the right tools, both legally and politically, to address the increasing marginalisation of social justice under crisis capitalism. Being outside the state/market duopoly, the commons, as an institutional framework, presents an alternative legal paradigm, providing for more equitable distribution of resources and, as a direct consequence, social justice.

The current vision presents the opposition between “the public” (the domain of the state) and “the private” (the domain of the market and of private property) as exhausting the entire range of possibilities (in a sort of zero-sum game). This gridlocked opposition is a product of the individualist tradition still dominant today in law and economics. The discourse around the commons attempts to overcome this assumed traditional equivalence between public sector and the state, as well as rejecting the role of the market, in so far as it reduces individuals from citizens (entities with rights) to consumers (entities functional to the ends of capitalism). The commons bypasses these mediating forces of market and state, thus presenting a world view that reunites individuals with collective action in a direct relationship. The commons (water, knowledge, health, energy and cultural heritage

635. See Blaug 1962.

636. See Mattei and Fernanda 2006.

also known as common-pool resources within the “institutional analysis” of Ostrom)⁶³⁷ are resources that belong to the people as a matter of necessity, depend upon free access, and do not rely upon the special intervention of state and market forces. Consequently, they do not depend on the fiscal availability of resources. They are not concessions. If properly theorised, the commons can serve the crucial function of reintroducing social justice into the core of the private law discourse. However, such a shift requires a significant break with dominant wisdom, which assumes that management of resources must be mediated through either the state or private property. How can the commons overcome this “dominant wisdom”, to carve power away from private property/the market and the state, and transfer it directly into the hands of the people? Overcoming the dominant wisdom includes several steps: (1) recognising the commons that are already providing us with a resource, (2) unearthing the source of the dominant wisdom in the Western legal tradition that assumes the management of resources must be mediated through the state and/or market; and (3) encouraging a more holistic paradigm that uses the ecosystem as a model in forming an alternative legal institution of the commons.

2. Recognising the commons

The first step in overcoming the dominant wisdom is to “recognise” the commons that are already present. The commons provide services that are often taken for granted by their users: those who benefit from the commons do not take into account their intrinsic value, only acknowledging it once the commons are destroyed and substitutes need to be found. To some extent, the universal services provided by common goods are similar to household work, that is never noticed when the work is being done. Only when no one is there to do the dishes, does one notice its value. In other words, you do not miss something until it is gone. Two striking examples of this feature are represented by mangroves and by coral barriers: people living on the coasts are not able to estimate the value of the services they provide simply because they do not even know that these goods have a specific function, that they are doing something for them. Only when a tsunami hits, destroying villages, does the value of such vegetation become apparent. Similarly, when Italians destroyed the coral barrier so as to let large cargo boats dock in Mogadishu and load them with their colonial plunder, they in fact created an entrance for sharks, which flocked in, attracted by the nearby slaughter-house blood that was being discharged

637. See Lapadula and Pennacchi 2010.

into the sea. Mogadishu's beach thus became one of the most dangerous places in the world to swim. Recreating a barrier to keep sharks away from the coasts would have required huge investment, both technologically and financially. This example demonstrates how the value of a common good is only acknowledged once it runs out and needs to be replaced. In the same manner, mangroves have been destroyed to breed shrimp.⁶³⁸ However, prior to their destruction, mangroves played a major role in protecting coastal villages from tsunami waves. Again, it would be highly expensive to build a similar barrier artificially.

Public awareness of the fundamental role/value of a commons may only be achieved by investing in the demand side, in such a way as to make people acknowledge their importance. As mentioned above, if commons do not seem to produce any return, this is simply because their users are not aware of the huge benefits that can be derived from them. They are indeed essential in satisfying basic human needs. Only their recognition can mobilise society to save them and expand their domain.

3. Unearthing the source of the dominant wisdom in Western legal tradition that assumes the management of resources must be mediated through the state and/or market

It could be said that the commons are disappearing as a result of a structural incompatibility inherent in the deepest foundations of Western "legality," a legality that is founded on the universalising and exhaustive combination of individualism and the state, and the private property/market dichotomy.

Centuries before, in ancient Rome, the early clans routinely extended their landholdings by usurping the commons; the privatisation of the commons was already described by Engels as the most fundamental economic pattern of European development. Thus Western law has served a very important role in destroying the commons, certainly not in protecting them.⁶³⁹ This still seems to be the pattern of development in cognitive capitalism:⁶⁴⁰ think about prosecution of peer-to-peer Internet exchanges.

Furthermore, given the institutional framework seeking the solution of conflicts between private owners (individual property rights holders),

638. Brown 2009.

639. Engels 1880.

640. Boyle 2003.

in practice it has always been problematic for the commons to find someone that would represent them in court, by suing those who tried to seize them. Both historically and today, those who benefit most from the commons are not “owners” in the technical sense, but usually poor farmers (or today young Internet surfers) with no means of entering the court system. Let us remember how easily such farmers fell victim to the enclosures in England, the crucial phase in the development of early capitalism that provided the necessary proletarian workforce for the factories. Such enclosures and such violent procurement of a workforce from dispossessed peasants would simply have been impossible without the fundamental alliance between private ownership and the state.⁶⁴¹

The commons as diffused power (or absence of hierarchical power) is also structurally incompatible with the adversarial Western trial. The structure of the adversarial trial as a zero-sum game requires an interest to act that must be specifically referable to a specific individual. The commons, characterised by its diffused access, “belonging” to all, prevents it from appointing anyone that could be considered a holder of such a special interest and thereby legitimising his/her presence in court. In other words, in a trial conceived of as a zero-sum game, between a winner and a loser there is no space in court for the commons framework (except in special technical trial mechanisms, such as class actions, which were recently developed as an exception). It is the issue known in the American legal debate as the “standing to sue”: who among the enormous number of beneficiaries of drinking water (or fresh air) could differentiate enough of his interest from others, in order to become its saviour, exercising his/her right in a hearing? Such a problem has a large practical impact because courts are reluctant to admit anything that departs from the archetypal zero-sum game, a problem that different legal systems solve (when they do) as an exception rather than as a formalised rule.

4. Piercing the veil of the state versus private property (market) dichotomy

Today, we can see that the state versus private property debate presents a false dichotomy, a distinction without a difference. The state is no longer the democratic representation of the aggregate of individuals, but instead a market actor among many (Coase 1960). The collusion or merger of state and private interests, with the same actors (corporations) on both

641. Tigar 1977.

sides of the equation, and the technocracy developed to veil the political nature of this centralisation of power, leaves little room for a commons framework, no matter how convincing the evidence about the benefits may be.

Private property and the state in their various forms are the two major legal and political institutions that carry on the dominant view of the world. The common wisdom, founded on the long-standing dualistic and reductionist opposition between state and market, shows them to be radically conflicting. It assumes, in a cryptic way, that state and the market have a zero-sum relationship: more state is equal to less market and less market is equal to more state. In this reductive scheme, the state and private property become quintessentially public and private poles of opposition. Of course this picture is totally false on both historical and modern levels because the two entities, as social and living institutions, can only be structurally linked in a relationship of mutual symbiosis. The fabricated clear-cut opposition between the two is a precise ideological choice in the individualistic tradition.⁶⁴²

However, its historical falsehood is irrelevant in reflecting the hegemony of a given political discourse, so that the pervasiveness of state and private property as, respectively, representatives of the public and the private leaves no room for any third gender. This reductive analysis and practice is actually the product of a common structure of property (market) and sovereignty (state) aimed at the concentration of power. Private structures (corporations) concentrate their decision making and power of exclusion in the hands of one subject (the owner) or within a hierarchy (the CEO). Similarly, public structures (bureaucracy) concentrate power at the top of a sovereign hierarchy, symbolised by the exclusion of any other decision-making entity within a given sphere of jurisdiction (the model of territorial sovereignty and its political-administrative elements).

Many scholars, in particular Kenneth Galbraith, argue that the development of the private sector (determined by marketing techniques) requires a similar development within the public sector (which is, still, insufficient due to the lack of proper marketing investment).⁶⁴³ Here, Galbraith assumes a structural equivalence between the private sector and the public one, among which the former relies basically upon the idea-archetype of

642. This conflict is at the very origins of liberal individualism. Locke and Hobbes would be the two champions of private property and state sovereignty respectively. See Macpherson 1962.

643. Galbraith 1958.

private property, whereas the latter relies upon the archetype of state sovereignty. Both archetypes are inserted into a fundamental structure: the rule of a subject (an individual or a company, on the one hand, and the state on the other) over an object (a private good, a piece of property, a territory). However, any structural dichotomy between public sector and private sector and the assumption that one is structurally opposed to the other is indeed a political and cultural invention. Such opposition between two domains sharing allegedly the same structure does not exist but is the result of Western reductionist, quantitative and individualistic thought. Hence, to some extent, the marketing pursued from time to time by the public (hierarchical and bureaucratic) sector may indeed be called propaganda, in so far as it does not introduce any relational ambition upon individuals, enabling some qualitative transformation of their being together, but rather tending to limit itself to the promotion of more individualism and consumption-based values.

Most of the goods produced by the current capitalist model of production – for example, a new model of car, branded shoes, the umpteenth mobile phone – do not represent a need, either private or public. From the state's perspective, nonetheless, these goods are needed in so far as their production boosts growth and development of the national economy. In this regard, "growth" is again conceived of as a merely quantitative function (production for the sake of production), which is now a completely irresponsible ideology. The need for private goods is created (or invented) by manipulating demand by means of specific and massive investments called marketing. Marketing is designed to persuade consumers to think that they need superfluous private goods and that these serve a precise useful function in satisfying their desires and wants. In some cases, marketing activities increase the consumption and accumulation of private goods as if there were a need for them, thus damaging the commons (such as in the case of commercial adverts for bottled drinking water). The individual isolated from his community succumbs, finding himself functional to the production needs of capitalism, which aims to sell its products to the "lonely crowd".⁶⁴⁴ The strategy of marketing was developed precisely in order to invent new private wants and needs. Marketing induces consumer behaviour that has devastating ecological effects, by creating false images and materialistic myths of an egocentric and narcissistic character. The individual left alone, narcissistic and wanting, finds in products, in goods, in objects, rather than his fellow man or the environment which

644. Riesman, Glazer and Denney 1950.

sustains him, his social contractual relationship. His own major relational horizon is determined “objective” by the system of prices to be paid for the satisfaction of various increasingly complex “needs”.

Marketing is also used to promote the public sector. This is sometimes required as the amount of goods produced by the private sector is so huge (for example, cars) that the development of the public sector’s activities (for example, building car parks and roads) is vital to repair (for example, fostering the sales of cars) this over-abundance. Often, in these cases, state-focused marketing is called propaganda. Such marketing, both by the private and public sectors, results in the excess consumption of common goods and ultimately their destruction; and, through market mechanisms, it distributes them unequally to the wealthy, depriving the poor of basic necessities.

The typical individualistic “fiction” of the liberal tradition (the myth of Robinson Crusoe) disconnects need from real survival necessities (necessities that can be satisfied in a qualitatively different but quantitatively constant way) and “invents” the need in function of its very satisfaction (supply-side economics). Thus, here, it becomes clear that a qualitative paradigm submits to a quantitative one, because the more a need is induced, the more it grows, and the more money can be collected to fulfil its satisfaction. Unfortunately, ecology and “systemic” thinking – the paradigms capable of revealing that these dynamics of individualistic accumulation are devastating for community life – are notably absent in contemporary politics, which has elected the “social sciences” (particularly microeconomics, political science and marketing) as its only repository of ideas (or as its ideological apparatuses, in Althusserian terms). Contrary to Garrett Hardin’s famed phrase in the “Tragedy of the commons”, “a commons is a place of no law and therefore ruin”,⁶⁴⁵ it seems that state and market mechanisms, which rely on the “individual” as its object, are in fact the culprits of this ruin today. “Privatisation usually provides incentives for rational exploitation of the resource. If the owner has property rights in the resource and those rights are tradable, both the costs and benefits will accrue to the same owner and will be reflected in the market price of the resource, giving the owner the pecuniary incentive to refrain from destructive use. These incentives, however, are not necessarily consistent with sustainable use.”⁶⁴⁶

645. Hardin 1968.

646. Feeney et al. 1990. These authors are part of Ostrom’s research team and apply an institutional analysis based on case studies performed over several decades.

5. Tragedy of the commons: two world views in conflict – Competition versus co-operation

As Adam Smith put it, “We are not ready to suspect any person of being defective in selfishness”.⁶⁴⁷ To put it quite simply, this is the central assumption underpinning Hardin’s analysis. Only the crude application of the model of *homo economicus*,⁶⁴⁸ an individual maximiser of short-time utility, explains the results (and academic success) of the so-called “tragedy of the commons”.⁶⁴⁹ In fact, the well-known parable of the microbiologist Garret Hardin, presented to the public in a famous essay in 1968, now “refuted” by Nobel laureate in economics (2009) Elinor Ostrom, has perverted ordinary wisdom so as to see the commons as a place of no law.⁶⁵⁰ According to Hardin, a common resource, capable of being freely appropriated, stimulates the opportunistic behaviour of accumulation and ultimately destructive and “inefficient” consumption. This reasoning conjures up the image of a person invited to a buffet where food is freely accessible, and rather than sharing the bounty with others, rushes to try to maximise the amount of calories that can be stored at the expense of others, efficiently consuming the largest possible amount of food in the least possible time.

Hardin and Olsen (free rider theory) in their models assume: (a) that humans are “rational actors” in the sense that they are wealth maximisers; (b) that self-interest has nothing to do with community interest; (c) communication and its role in trust building are not considerations; and (d) all commons are open access regimes rather than common property regimes that have established the rules of benefits and responsibility. The sense of limits set naturally within a community based on respect towards others and nature is excluded from their model, which fails to consider the qualitative relationships essential in an analysis of community resource management based on participation of (still) civilised human beings.

The “Tragedy of the commons” highlights two world views in conflict. The dominant world view being substantially based on the Darwinian idea, which makes “competition”, “struggle” and “emulation” between physical and legal persons the essence of reality. The other is a recessive view, which vanished from practice in the West long ago (and is under attack in places

647. Smith 1776.

648. The concept originating in the work of John Stuart Mill, and in the 18th century brought into mainstream political economy by Adam Smith and David Ricardo.

649. Hardin 1968.

650. See Ostrom 1990.

such as African or Andean village communities where it is still partially resistant); this view is instead based on an ecological and holistic view of the world and displays relationship, co-operation and community as its typical patterns. The dominant model is constantly proposed in the rhetoric of growth, progress and development (synonymous with one another as ways “up” and “out” of poverty) used by government, non-governmental organisations and the media, despite the current catastrophic ecological and economic situation in which we find ourselves. This dominant model considers the alternative one as the legacy of a medieval political-legal experience, where feudal fragmentation of power is maintained, and paternalism dominates in a view of society at odds with the modern liberal conception of governance. To be sure, at a purely analytical level, in the recessive model we find at the centre of social life the pre-state guild community.⁶⁵¹ There are a number of possible narratives capable of explaining the abandonment of this community-based model in the West; the most relevant for our purposes is an economic historical narrative that views its demise as the product of “progressive” modernising market forces relying on state-wide political institutions. It is a fact that the alliance between state institutions and private property interests has been the force behind the race for colonial plunder and increased concentration of capital (the original accumulation of Marxist memory).⁶⁵² The recessive model, still present in the organisation of communities at the “periphery” (the West being the centre), suffered and continues to suffer a merciless assault by the structural adjustment and comprehensive development plans of the World Bank and International Monetary Fund, extending the model of the early enclosures to the very present. Such mechanisms have encouraged and resulted in the “commodification” of land, and of local knowledge, supported by a process of cultural adjustment (human rights, rule of law, gender equality, etc.) that serves as justifying rhetoric for continuity in plunder.⁶⁵³

6. Going beyond the tragedy

Elinor Ostrom and her team of social scientists successfully dispelled the myth, established as truth by Garret Hardin’s “Tragedy of the commons”, of the superiority of private property rights in resource management. She

651. The medieval life experience in the city took place almost entirely within communities (the guilds), where the professional life of individuals was shaped by the group preferences expressed by those pre-state organisations. Similarly, in the countryside the peasant enlarged family in its relationship with the master was the defining authority. See Grossi 1995.

652. See Mezzadra 2008.

653. See Mattei and Nader 2008.

demonstrated through an overwhelming amount of empirical evidence that co-operative property arrangements are in fact successful, and that Hardin's case rather than being the rule, as previously believed, is in fact an exception and only applies to a minority of situations. While Ostrom's work undeniably marks a critical turning point in economic theory, it still remains trapped between the state versus private property dichotomy. Without consideration of the historical, political and legal context of the fierce public and private debate, Ostrom's findings remain limited in their applicability. Property law from its early development in the West (Rome and English Feudalism) acted to justify the power of dominant sovereigns over weaker subjects in the effort to secure resources. Property law continued to persist in this direction through *terra nullius* doctrines during the period of colonialism. In more recent times, such domination has taken on a more subtle and hegemonic form. When viewed in context, Hardin was far from the naive microbiologist who happened to discover the applicability of evolutionary theory in the realm of the political economy; rather he contributed to a long lineage of economists and lawyers, securing a place for radical individualism and the eventual dismantlement of the public domain in favour of private interests. Hardin's work contributes to the work done in the 1950s and 1960s by Friedman, Buchanan, Tollock and Olsen from the schools of radical individualism and early neoclassical economics that eventually led in the 1970s and 1980s to the Chicago school, and the law and economics movement with its primary purpose of dismantling the public in favour of private interests.

Given the pervasiveness of the false opposition of the state versus the market/private property, competition versus co-operation, and the individual versus the community, one should be suspicious of taxonomies trying to make order out of many types of commons (natural commons – environment, water, etc. – versus social commons – culture, knowledge, historical remembrances) that do not fully embrace the needed shift to a more phenomenological understanding of our current historical moment. These suggestions (and much of the Nobel-prized liberal literature on the commons) should be critically examined so as to avoid reproducing once again the traditional mechanistic view, the separation between object and subject, and the resulting commodification.⁶⁵⁴ Alongside the empirical data now available, we must critically assess our current institutions and reclaim our common sense about the issue of resource distribution, for too long perverted by the neo-liberal agenda. The commons project must be as much about a new framework for participatory government

654. Rota 1991.

as alternative property arrangements. In his notebooks, Gramsci explains his notion of common sense, which refers to “the philosophy of the non-philosophers”⁶⁵⁵ – in other words, when a certain ideology filters into mass consciousness and is naturalised into “common sense”. Gramsci explains that the task of renewing the common sense depends upon the articulation by intellectuals of a counter-hegemonic narrative capable of challenging the status quo. The holistic revolution, or ecological view of the world, may present exactly the narrative capable of renewing common sense and paving the way for the commons.

The holistic revolution: rehabilitating common sense

Interestingly enough, the counter-hegemonic narrative to the cornerstone of individualism, private property, and competition originated in the sciences. Holistic attitudes, based on the qualitative mapping of relationships, rather than on quantitative measurements and the positivistic reductionism of Galileo, Descartes and Newton, also eventually emerged in the natural sciences through physics and systems biology.⁶⁵⁶ Quantum mechanics in particular, and Einstein’s relativity, have caused an epistemological revolution which such newer disciplines as cognitive science and consciousness studies are attempting to address. This holistic revolution, at the philosophical level, has ancient roots, from Aristotle’s ontological investigations to later philosophers like Husserl and Heidegger, who employed concepts of phenomenology such as *fundierung*⁶⁵⁷ and “relevance” to signal the end of an “objective” world where subjects are separate from their objects of observation or, in other words, individuals from their very environment. Similarly, Bourdieu describes the contrast between a substantialist mode of thinking that recognises “objective” things only observable through direct observation, and a relational mode of thinking that “identifies the real not with substances but with relations”.

Regardless of the richness of the imprint that this holistic revolution has made in these disciplines, this revolution has yet to be embraced in the social sciences, let alone in politics and society. Here, the Anglo-American empiricist tradition (with roots in Baconian scientism), especially in relation to economics, political science and sociology, and the Anglo-American analytical philosophical tradition still dominate the academic landscape. And these approaches dominate today in law.

655. Gramsci 1971.

656. Capra 1997.

657. *Fundierung*: a term coined by Heidegger to describe the layers of contextuality that constitute our perception of reality. Heidegger 1962.

The commons can be described only from a phenomenological and holistic perspective and are therefore incompatible with the above-mentioned reductionism. The commons are radically incompatible with the idea of individual autonomy as developed in the rights-based capitalistic tradition, an ideological tradition born out of enclosures and the plundering of the commons.⁶⁵⁸ In this respect, commons are an ecologically qualitative category based on inclusion and access, whereas property and state sovereignty are rather economically quantitative categories based on exclusion (produced scarcity) and concentration of power into a few hands. Commons represent a shift from anthropocentrism, constructed as the domain of the rights-bearing individual, to eco-centrism, constructed as the domain of communal duties towards its members and the environment. As Josee Johnston says about eco-centrism:

To be ecocentric, rather than anthropocentric, does not mean that one can stop thinking like a human, but rather, it means that we deliberately resist the tendency to prioritise human needs above all others. Like racism, or sexism, or classism, anthropocentrism does not mean it is possible to completely abandon our own positionality. But it does demand that we think about how our privilege – as men, or as a global elite, or as white people, or as humans – allows us to dominate others.⁶⁵⁹

Generally, sustainable development discourse does not challenge the hegemonic anthropocentrism that underlies capitalist commodification; it is almost so obvious as to go unnoticed in the common sense.

All this evidently requires a jurist's attention to the difficult and urgent task of constructing the new foundations of a legal order capable of transcending the dualisms discussed above that are inherent in the current order. Given the dominance of private property, individualism and competition in the current legal order, the new order must correct this imbalance by focusing on the collective and the commons as the centre, creating an institutional setting reflecting long-term sustainability and full inclusion of all the global commoners especially the poorest and most vulnerable. To do so, first we need epistemic (and political) emancipation from the predatory appetites of both the state and private property, the two fundamental components of dominant imperialistic Western wisdom.

The creation of a demand for the commons requires a specific investment, which can be described as a "critical culture", representing a

658. Neeson 1993.

659. Johnston 2003.

common in itself. Common goods lie beyond the reductionist opposition of “subject-object”, producing the commodification of both. Commons, unlike private goods and public goods, cannot be turned into commodities. They express a qualitative relation. It would be reductive to say that we have a common good: we should rather see to what extent we are the commons, in as much as we are part of an environment, an urban or rural ecosystem. Here, the subject is part of the object. For this reason, commons are inseparably related and linked to individuals, communities and the ecosystem itself.

7. Political shift

Today, we can see from examples all around us, from global warming to economic collapse, that the politically recessive but philosophically more sophisticated holistic paradigm offers us a fundamental and necessary shift in the perception of reality. In this context, the commons can offer an institutional setting that reflects the need to reject the false illusion of modern liberalism and rationalism. This is why we cannot settle to see the commons as a mere third way between private property and the state, as most of the current debate seems to suggest. To be sure, in the current academic resurgence of interest, the commons appear to be reduced to a new institutional setting. On the contrary, we believe that the commons must be promoted to an institutional structure that genuinely questions the domains of private property (and its ideological apparatuses such as self-determination and “the market”) and that of the state: not a third way but an ecologically legitimised foe of the unholy alliance between private property and the state. The commons should become an alternative legal institution, based on a different world vision, capable of returning power to the people (including the poor) to directly participate in the management and control of what belongs to them as part of a human and ecological community.⁶⁶⁰ Within such a vision of the commons, social rights are secured within institutional settings that do not require the mediation of the state.

The shift that we need now to accomplish politically, not only theoretically, is to change the dominant wisdom from the absolute domination of the subject (as owner or state) over the object (territory or, more generally, the environment) to a focus on the relationship of the two (subject–nature), from anthropocentrism, constructed as the domain of the rights-bearing

660. Negri and Hardt 2009.

individual, to eco-centrism constructed as a domain of communal duties towards its members and the environment. We need to generalise an idea based on something like reciprocal care (nutrition and nourishment) within a type of dependence between the individual and the earth, which is either symbiotically or parasitically relational. We need a new common sense recognising, outside the Western liberal *hubris*, that each individual's survival depends on its relationship with others, with the community, with the environment. The first necessary shift that becomes apparent is the move from a focus on quantity (the fundamental idea of the scientific revolution and of capitalist accumulation) to quality, a key notion of the alternative holistic vision. Care, nutrition and dependence are qualitative kinds of relationships, while the requirements of survival, as measured by the dominant technological perspective, are met in terms of a constant quantity for each individual entity (litres of water, calories, etc.). Qualitative differences belong to relationships and patterns, not to individuals, and thus cannot be accumulated.

Common property frameworks must use the "ecosystem" as a model, where communities of individuals or social groups are linked by a horizontal mutual connection to a network where power is dispersed; generally rejecting the idea of hierarchy (and competition, produced by the same logic) in favour of a participatory and collaborative model, which prevents the concentration of power in one party or entity, and puts community interests at the centre. Only in such a framework can social rights actually be satisfied. In this logic, a common (water, culture, the Internet, land) is not a "commodity" but rather a shared conception of the reality that challenges with the culture of critique the seemingly unstoppable trend of privatisation\corporatisation. This does not mean that a radical change of conception means the return of management to a bureaucratic, authoritarian or collusive public sector. Nor do we mean that the pre-enclosure commons can be restored by a return to a pre-modern logic. Rather we believe that we finally need a catalogue of best legal practices for participation in the commons in order to free ourselves from the ideology of the zero-sum game between the market and the state. By understanding these genuine alternatives to corporatisation, we can develop and offer a viable legal and political alternative legitimised by the needs of survival of life on earth.

8. Conclusion

For the time being, the way forward seems a highly diffused form of institutionalisation of participative governance, stemming from spontaneous practices of struggle, able to engage directly in a co-operative spirit users and worker communities, in a dialectic capable of claiming back new

turf for anti-corporate systems of production – as Article 43 of the Italian Constitution of 1948 clearly states: “For the purposes of the common good, the law may establish that an enterprise or a category thereof be, through a pre-emptive decision or compulsory purchase authority with provision of compensation, reserved to the Government, a public agency, a workers’ or users’ association, provided that such enterprise operates in the field of essential public services, energy sources or monopolies and is of general public interest.” Today, in Italy, an impressive movement against privatisation of water and corporatisation of public utilities has collected almost 1.5 million signatures to reverse a predatory law, making the sale of public utilities to corporations mandatory, including the national water supply.

Political clarity on this point is essential because even today, despite the dramatic crisis of 2008, when free market ideology showed its catastrophic nature, state intervention, dubbed Keynesian policy, has been utilised to transfer massive amounts of public money to the private sector. The logic of plunder shared by both the private and the state sector could not be more open. It should be clear that what we need is a large extension of the commons framework to subvert the domination of private property (with its rhetoric of autonomy and of the rule of law) that is currently sustained by both the state and the market. Commons expansion favours the opposite logic of authentic participatory democracy in both the state and market domains. The agenda of “less government, less market, more commons” is, we believe, the only way to resurrect an alternative narrative of social inclusion (and direct satisfaction of social rights) capable of regaining hegemony. Translating these preliminary observations into an actual legal and institutional agenda that is capable of achieving the inclusion of the most vulnerable is no easy task. However, if we are truly to understand the role of common assets in combating poverty and securing access to rights for the weak in society, we must unearth the legal and economic structural deficiencies at the heart of the issue.

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COMMONS, SOCIAL JUSTICE AND ENVIRONMENTAL JUSTICE

Tommaso Fattori

1. Commons: a definition of the field

1.1. Commons and the global commons movement

Many of the ongoing battles for social and environmental justice, at both the local and global levels, are centred on commons. Within the movements and the territorial and global claims, various different definitions of commons are interwoven, which are not mutually exclusive (in fact they often overlap) but which lead to different possible taxonomies and categorisations.

Some definitions are more “essentialist” (and concentrate on the intrinsic characteristics of the goods), whereas others are more relational/constructivist and focus on the function of commons as creators of societies, relationships, communities (as connecting structures). A general distinction between natural-material commons and immaterial-digital commons is widely accepted, whereby the intrinsic characteristic of “non-rivalry” of immaterial goods, such as knowledge, information and communications – the consumption of the good by one person does not limit the possibility for other people to consume it, nor does it decrease the overall amount of the good available – makes a profound distinction between them and natural commons. Natural commons, which are finite resources, are often broken down into global commons (for example, the oceans, biodiversity or the atmosphere) and local commons (for example, a specific drainage basin, a specific forest or – in the claims of many movements – even a specific “territory”): this distinction is not inessential because it is connected to the question as to which is the reference community that makes decisions and defines the rules for the common use of the good and for its shared management. Who holds sovereignty and what type of democracy does the management of commons require? In the global commons movement, two approaches exist side by side without conflict: one a universalistic type that concentrates on the “common goods of humanity” and another more territorial – or communitarian – that sees commons as goods belonging to a specific territory and with a specific reference community, always with an intergenerational outlook. Obviously, all categorisations are conventional and each time represent those that are functional to the objectives of the communities and movements that are laying

claim to the commons. Indeed, in order to constitute commons, the goods must first of all be recognised as such. This is the basis of the “historicity” of the commons themselves, and the impossibility of gathering them all together in a complete and definitive list. If back in the times of the *Corpus Juris Civilis* (AD 528-34) of the Roman emperor Justinian, air and water were recognised as *res communes omnium*, that is, things belonging to everyone and therefore not to be appropriated by anyone (the opposite of *res nullius*, things belonging to no one and therefore capable of being appropriated by anyone), it would have been extremely difficult to predict that one day the Web would have been considered a commons, or that the frontiers of private appropriation would have pushed forward as far as the human genome or the patenting of seeds. The commons movement nowadays appears to be the container into which the movements for social justice and for environmental justice converge and intermingle or, in other words, the language of commons becomes the common language of different movements, local or international and which, far from being identifiable as originating in NIMBY (not in my back yard) movements, campaign for justice in the distribution of resources and new forms of democracy to manage the things they own in common. In this galaxy, the commons are all that is considered essential to life, not merely in the biological sense. Goods that no one can claim they made themselves and that the collectivity receives as a gift from nature (no one “produced” the water cycle, or air, or forests) or receive as a gift from the generations who preceded them, such as condensations of collective thinking and acting (such as codes, languages and knowledges).

1.2. Natural commons: community, autonomy, rules

The fact of being goods over which no one must be able to claim the right to exclusive use does not mean that there must not be any rules that limit access to them, with the aim of ensuring fairness and the very preservation of the good for future generations. Indeed, over the “classic” commons, that is, those natural goods (such as water, forests, arable or grazing land, fishing areas) from which the poorer two thirds of humanity derive or integrate their means of subsistence,⁶⁶¹ a debate raged over several decades, set off by Hardin’s famous article “The tragedy of the commons”,⁶⁶² in which the author claimed that the “rational” behaviour of each individual herdsman (*homo economicus*), directed to maximising his own self-interest and with no idea of co-operative behaviour, would

661. UNDP 1998.

662. Hardin 1968.

lead him to gradually increase the size of his herd (given that the herder receives all of the benefits from an additional sheep, while the damage to the common is shared by the entire group), leading to overgrazing and potential destruction of the common grazing area. Grazing land that could have been saved from the “crazy rational” herdsman, to borrow Sen’s expression, thanks to the intervention of an external regulating authority (state). Or thanks to privatisation of the common-pool resource. But Hardin’s mistake was in not distinguishing between common property and open access regimes, as Ciriacy-Wantrup and Bishop state: “we are not free to use the concept ‘common property resources’ or ‘commons’ under conditions where no institutional arrangements exist. Common property is not ‘everybody’s property’ To describe unowned resources (*res nullius*) as common property (*res communes*), as many economists have done for years ... is a self-contradiction.”⁶⁶³

The Nobel prizewinner for Economics Elinor Ostrom returned to this misuse of terms: common property regimes are “where the members of a clearly demarcated group have a legal right to exclude non-members of that group from using a resource. Open access regimes (*res nullius*) – including the classic cases of the open seas and the atmosphere – have long been considered in legal doctrine as involving no limits on who is authorised to use a resource.”⁶⁶⁴

During her studies in this field, among the various conditions that Ostrom identified as important for attaining successful communal resource management (including the preference for resources with definable boundaries or resources that it was impossible or very difficult to replace with other resources), there are two in particular that I would like to highlight. First of all, the presence of a community, in the sense of a stable population with a strong social network and social norms promoting conservation. However, it seems to me that one can also always find a biunivocal correspondence between community and management of common-pool resources: just as it is true that the presence of a community is vital to appropriate management of common resources – as Ostrom’s studies show – so it is true that common management of that which is held in common builds up and nourishes the community itself, strengthening social cohesion and social ties; vice versa, privatisation of commons breaks social bonds and undermines social cohesion, contributing to the growth of atomised societies of individual consumers (competing with one another for access to scarce resources and

663. Ciriacy-Wantrup and Bishop 1975: 714.

664. Ostrom 2000: 335-36.

commoditised services). The second condition identified by Ostrom is the capacity of the community itself to establish rules for self-governance of the commons, that is, the putting in place of appropriate community-based rules and procedures with built-in incentives for responsible use and punishments for overuse. To express myself in Kantian terms, if Hardin's answer to the "tragedy" was heteronomy, or the intervention of an external regulatory authority (the state), for Ostrom the answer is autonomy, that is the capacity of the community itself to draw up rules and norms for managing commons. At the same time, the movements and communities that lay claims to the commons are insisting on the necessity of going beyond the paradigm of "ownership", which is even stronger in legal systems based on the Napoleonic code, which bring everything down to the two opposites: publicly owned and privately owned goods.

Finally, we must remember that traditionally commons are not only physical and material goods (such as the grazing land in Hardin's example, or a watercourse): they are also the common rights from Anglo-Saxon traditions (common law), common or collective rights to use the fruits deriving from a natural good or the easements that are attached to those natural commons from which the communities derive their means of subsistence.⁶⁶⁵

1.3. Commons: old "threats" and new horizons

Within the global commons movement, the list of natural or social, material or immaterial goods recognised or labelled as "commons" continues to grow. Sometimes one has the feeling that commons are multiplying in our heads while they are disappearing from real life. They are disappearing for a double reason: on the one hand, their plunder within the rule of law,⁶⁶⁶ which began with the "enclosure" of commons in England and Wales back in the 15th century and which expands today into biopiracy; on the other hand, because of the destruction of the environment and natural resources caused by a production–consumption model that refuses to see the economy as a subset of the physical environment, with its limits and its laws, starting from the second principle of thermodynamics.⁶⁶⁷ Privatisation and environmental injustice – which, as we shall see, impact the poorest most of all, both at the global level and within individual countries – have given rise to innumerable conflicts over commons. If we consider the conflicts and the movements against the privatisation of water, those to

665. Ricoveri 2010: 21.

666. Mattei and Nader 2008.

667. Georgescu-Roegen 1971.

defend land or against climate injustice, commons are becoming a horizon of sense, which flags up at least two strongly felt requirements: (1) the “de-commodification” of that which is essential to life, in terms of fairness and a universal guarantee of access to fundamental goods and services (to which the claim for fundamental rights is often connected) for all; (2) self-management and self-governance of these goods and services in accordance with rules and methods agreed to and shared by the collectivity (for example, through forms of participative democracy).

2. Commons and the fight against poverty

2.1. Against poverty: fair access to commons and protection of the same

It is difficult – if not artificial – to clearly separate conflicts of a social nature and conflicts of an ecological-environmental nature when one is talking about the natural commons (and the conflicts that arise around their destruction or privatisation). Commons contain in themselves both the dimension of social justice in terms of sharing and fair access to natural goods (through rules that prevent their over-exploitation by free riders, be they individuals or powerful corporations) and the dimension of protection of the natural good and ensuring its conservation and availability in intergenerational terms.

If guaranteed access to commons and their services for the members of the “reference collectivity” assures them their right to life and constitutes a basis for individual and collective riches, vice versa the destruction or privatisation of commons – on which the life of many communities depends directly or immediately – produces poverty and sometimes death. This even happens in prevalently urban or industrialised societies, where the relationship with natural commons is more mediated, at least because it is invariably related to a service, such as in the case of the integrated water service for the inhabitants of any town where it is not possible to have direct access to the natural common good and hence a social service is necessary.

2.2. New technical possibilities of excluding the poor from access to goods that have been made scarce

Commons reveal the insufficiency of the ownership categories contemplated in legislation based on the Napoleonic code, but also the inadequacy of the categories with which economics has defined “public goods” (and the other types of goods): the properties of non-rivalry and non-

excludability.⁶⁶⁸ Non-rivalry (when the consumption of a good by one person does not limit its consumption by others, nor does it decrease the amount of the good available) and non-excludability (the impossibility, mainly technical but it can also be political or economic, of excluding an individual from consuming the good) are only in appearance intrinsic properties of the good itself, whereas in actual fact these are characteristics that can change over time. On the one hand, technological processes and, on the other, our model of development are creating “excludability” and “rivalry” over goods that were once considered “pure public goods”. D’Alisa highlights the fact that the “technocentric premise underlying the definition of public goods contains the seed for their extinction; indeed, having built a classification which starts from technical limits to excludability, it will be the so ardently desired technological progress which will dictate their demise”.⁶⁶⁹ Nowadays, it is becoming technically possible to exclude access to goods that were once non-excludable. A typical example is that of the television broadcasting system, the programmes of which could be seen by everyone: it was considered a pure public good inasmuch as it was “non-rival” (the size of the audience does not decrease the amount of the good available) and “non-excludable”. But nowadays, thanks to encryption systems, it is possible to exclude non-paying spectators from watching programmes (the decoder mechanism). As concerns our subject, natural commons, ever-more sophisticated ways of excluding those who do not pay are being invented to exclude the poorest strata of the population from access to goods, such as water, that are essential to life: the prepaid water-meter system, for example, allows the private provider of water services to supply water only to those families that have paid the price of the commodity in advance. This is a system widely used in South Africa as the answer of private actors to the inability of poor families to afford the prices of water services, a decision which led to protests and open revolt in towns such as Soweto (“the new gadgets work like pay-as-you-go cellphones, only instead of having a dead phone when you run out of money, you have dead people, sickened by drinking cholera-infested water”).⁶⁷⁰ But it is not only the market and technology that produce scarcity of natural and social commons, and consequently exclusion and rivalry (one can think, for example, of the production of scarcity through the mechanism of intellectual property): environmental disasters, pollution, climate change and other damage to the environment caused by our production–consumption model are also producing scarcity

668. Samuelson 1954.

669. Alisa 2007: 3 (the translation is mine).

670. Klein 2003.

and rivalry where there used to be none. As is well known, the quantity of water available for human use is decreasing above all because of pollution and contamination which degrade its quality (however, this is also sometimes a consequence of climate change): in this case, too, we have creation of scarcity of a natural commons.

These processes favour the privatisation of commons: the poorest are excluded from access to fundamental goods and services and lose the rivalry challenge. In short, the predatory and polluting model of development turns theoretically abundant natural resources into scarce resources: technological progress brings the opportunity to build new barriers to limit access to those who are not able to pay for them.

3. The relationship between social injustice and environmental injustice

3.1. Privatisation of natural commons, destruction of the environment and production of poverty

Thus, the natural commons are threatened by the two-pronged attack of privatisation and destruction of the environment caused by the production–consumption model, which considers nature as an immense deposit of raw materials to be extracted and as a gigantic refuse dump for any waste, but naturally with a disproportionate use of environmental resources and services by the rich and powerful. If, as we have said, over-exploitation of resources and pollution lead to scarcity (and then open up the road to privatisation), on the other hand it is the very privatisation of the commons which leads to further damage to the environment and to the impoverishment of the populations who derive their means of subsistence from the natural commons. There are plenty of examples, and they are often relative to public assets belonging to the state for which governments have awarded public concession contracts to corporations for their private exploitation, usually without limits or conditions to the exploitation. Incidents range from the drying up or pollution of water sources vital to entire populations caused by industries (from extractive and mining industries to bottling industries such as Coca-Cola), to the textbook case of destroying the mangrove swamps to set up industrial shrimp farming for export (a case rightly considered a “rape-and-run industry”),⁶⁷¹ up to the issue of the soil and agricultural land, which is ever-more depleted and degraded because of agribusiness monoculture export crops, a type of agriculture that relies on large external inputs, both natural (enormous quantities

671. UNDP 1998.

of water taken away from other land to irrigate their crops) and chemical, of fossil origin (fertilisers and pesticides). To the point that modern agriculture has undoubtedly increased productivity levels from the economic point of view, but on the physical side it has enormously decreased energy efficiency levels:⁶⁷² “a sector which over all previous millennia had been a net producer of energy – in the shape of calories of animal and vegetable origin – in the second half of the 20th century has become a sector which uses up more energy than it produces”.⁶⁷³ Chemical fertilisers used in agribusiness pollute water tables and – in the absence of animal manure – over-mineralise the soil and fill it with heavy metals, decreasing its fertility. So, in contrast to Hardin’s predictions, one could conclude that not common management of common-pool resources, nor smallholder farming, but on the contrary the “green revolution” and privatisation by large agribusinesses have led to the impoverishment and over-exploitation of the soil, as claimed by the movements for the defence of land as a commons and those for food sovereignty (Via Campesina and the Sem Terra). These processes, moreover, have also led to the impoverishment of millions of people, small farmers who have found themselves deprived of any source of income, dispossessed by industrial-scale agriculture, which has eroded the basis for the survival of agricultural economies. Farmers have been forced to migrate to large cities, where shanty towns have sprung up and multiplied.

3.2. Let the poor eat pollution

3.2.1. The “Lawrence Summers principle”

It is a well-known fact that the plundering of natural resources (often practically given away by the very governments of the Global South, in connivance with powerful international economic groups) and/or the disposal of toxic and hazardous waste (since the Basel Convention, through the delocalisation of heavily polluting industries from countries in the North to the South) take their toll prevalently on poor areas and populations, and there are even theories about it from influential economists who see this as an “economically efficient” transaction. Some 90% of hazardous waste is produced in the industrialised countries of the Global North and – despite the bans contained in the Basel Convention – most of it is still today exported to Latin America, Africa and South-East Asia. According to Pellow, Weinberg and Schnaiberg,⁶⁷⁴ this is due to the fact that in the Global

672. Leach 1975.

673. Bevilacqua 2006: 101 (the translation is mine).

674. Pellow, Weinberg and Schnaiberg 2001.

North there are more stringent environmental regulations, which basically constitute an incentive for polluters to seek disposal sites in poor countries, but also to the fact that the countries of the Global South have a desperate need for money, for reasons whose roots are to be found in both colonialism and contemporary debt arrangements. And so government officials in Africa, Asia and South America accept financial compensation in exchange for permission to dump chemical waste on their land. There are an infinite number of examples, both “historic” (the owner of the polluting industry that caused the catastrophic accident in Bhopal, India, in 1984 was, as will be remembered, the American company Union Carbide) and contemporary, such as – to stay in India – the export of ships for dismantling to Alang, on the Gujarat coast: the exposure to health risks from asbestos and heavy metals is on the shoulders of poor labourers working on the beaches for starvation wages.⁶⁷⁵ To describe these phenomena, Juan Martinez-Alier, the theorist of “environmentalism of the poor”, coined the expression “the poor sell cheap”, otherwise known as the “Lawrence Summers principle”, from the name of a well-known US economist, a former President of Harvard University and former Chief Economist of the World Bank, who worked for the Clinton administration and also for the Obama administration until December 2010. In a memo intercepted by *The Economist* (8 February 1992) and included in an article to which the publishers gave the significant title “Let them eat pollution”, Summers noted: “Just between you and me, should not the World Bank be encouraging more migration of the dirty industries to the LDCs [Least Developed Countries]? ... A given amount of health-impairing pollution should be done in the country with the lowest cost, which will be the country with the lowest wages. I think the economic logic behind dumping a load of toxic waste in the lowest-wage country is impeccable and we should face up to that.” The market or pseudo-market evaluation of damages indicates that it is much more economically attractive to transport toxic waste or locate polluting industries in poor areas than where the rich live.

675. Among other things, it is pointed out that: “shrimp farming is directly linked to the loss of mangroves – the nurseries of marine life. In Thailand 200,000 hectares of mangroves have been lost to shrimp farming, in Ecuador 120,000 and in Vietnam almost 70,000. The result is eroding coastal land and dwindling shelter and habitat for fish and other marine life. Shrimp farming has two distinct economic effects on poor people. First, in most cases shrimp farms have been developed on productive agricultural lands, and the activities monopolized by rich local farmers, big exporters and multinationals. So poor people find themselves facing constraints in producing staples for their families. Second, to produce each ton of industrial shrimp requires 10 tons of marine fish, limiting the access of poor people to a low-priced but nutritious source of animal protein.” UNDP 1998: 76.

The delocalisation of hazardous industries (also including energy producers) and hazardous waste to poor areas does not only occur at the international level, from countries in the North to those in the South, but also within countries in the North. The movement for environmental justice in the United States grew up precisely around battles against the deliberate location of toxic waste dumps, landfills and incinerators in poor areas or in areas lived in by minorities (blacks, Latinos), both because the latter had few economic alternatives and because they were not fully aware of the risks involved. The examination of the enormous disproportion in the impact of pollution in areas lived in mainly by disadvantaged ethnic groups⁶⁷⁶ led to the coining of the expression “environmental racism”.

3.2.2. An example from Italy

The recognition that some communities are disproportionately subjected to higher levels of environmental risk than other segments of society has recently led to the examination of other cases of waste management policies in this light, for example the situation of the Campania region in southern Italy. The waste management crisis in Campania began in 1994 with the declaration of a “state of emergency”, a legal measure that is normally taken to deal with a sudden threat, which should be exceptional and temporary but here was protracted for over 15 years. The paradox is that the state of emergency was cancelled by Law No. 195 dated 17 December 2009, at the very peak of the crisis. This is confirmation that the crisis is structural and not a contingency. The accumulation of urban and industrial waste, often illegal and related to the worst kind of complicity between mafia business and the official economy, has led to serious contamination of water, land and the air in Campania, with very grave consequences for the health of the population. In Campania, the waste cycle is in part run by the eco-mafia, which also applies the “Lawrence Summers principle”: criminal organisations that have set up a parallel market that takes care of “disposing of” waste (both urban and industrial) from other regions. A recent study revealed how:

the Campania waste crisis illustrates the Lawrence Summers principle on both regional and national levels. Regionally, direct links between poverty and contamination are apparent, particularly for the provinces of Caserta and Naples, where as we have shown there are direct links between sites of contamination and economic disadvantage.

676. See Bullard 1990 and 2005; Pulido 1996; Camacho 1998; Carmin and Ageyman 2010.

From a national perspective, Campania is one of the poorest regions in Italy, where 21% of families live below the poverty line. In 2003, the regional average wage per capita per year was around 11.000, approximately half the national average. Campania also has a low education level, with only 15% of the region's population between 15 and 52 years having completed compulsory education in 2001. In Campania life expectancy is also below the national average especially in the provinces of Caserta and Naples.⁶⁷⁷

Over the years, bitter conflicts have developed, where the local communities have tried to get organised and make their voices heard by the administrations that to date have completely excluded them from the decision-making processes. These conflicts:

are not simply NIMBY conflicts. International agreements including the Aarhus and Basel Conventions continue to be openly flouted in violation of the peoples' right to maintain their traditions and landscape, and to engage in decision-making processes aimed at ending the trade of illegal hazardous waste, reducing waste production, and promote zero-waste policies. Activists are not asking for financial compensation within an economic valuation framework. They are arguing in terms of landscape, health, ecology and democracy. In this sense, the escalation of the conflict is linked to new voices expressing different values from those of decision makers, voices which have found themselves unacknowledged in decision-making processes so far. Campania's social unrest can easily be understood as a manifestation of an environmental justice movement. Actors are concerned not only with waste management efficiency, but also with the increasing amount of waste in Campania coming from elsewhere, the presence of illegal toxic dumps, abuses of political power, anomalous increases in disease rates, dangers posed to future agricultural production, and the right to be heard.⁶⁷⁸

3.3. The "environmentalism of the poor"

3.3.1. A definition

The environmentalism of the poor⁶⁷⁹ is moved by a materialistic approach and should be distinguished both from ecologism as "a cult

677. Greyl et al. 2010: 287.

678. Alisa et al. 2010: 247.

679. See Guha and Martinez-Alier 1997; Guha 2000; Martinez-Alier 2002.

of the wilderness” and defence of the beauty of nature in a pristine and uncontaminated state, and from the ecologism of “eco-efficiency” (which believes in compatibility with standard growth economics). It relates to that part of the global social movements that challenges the unequal distribution of ecological goods and the evils resulting from economic growth.

The global “social metabolism” (flows of energy and materials in the world economy) is growing, despite the economic crisis. Nowadays, the global economy needs to feed itself by taking ever-more natural resources from the earth and dumping enormous quantities of waste in the environment: the frontiers of this environmental colonisation led by the largest economies are continually advancing.

The consequence for whole populations is the loss of access to natural resources and environmental services, as well as suffering from their pollution. The communities of people who live in these territories react and open a new field of environmental conflicts on resource extraction and waste disposal. Ordinary women and men who try to contrast the plundering and destruction of the land, forest, water and air around them. These conflicts show how wrong the point of view expressed in the Brundtland report is, namely that environmental damage is caused by poverty, whereas care of the environment becomes a factor only once a certain level of income has been attained.⁶⁸⁰ On the contrary, it is the over-consumption by the rich that, already today, prevents the poor from having fair access to resources and environmental space. In the world there are people who consume 250 gigajoules of energy a year (mainly from fossil fuels), and there are others who are content with about 10 gigajoules (including the energy they get from food).

To keep such unequal ecological distribution of access to resources, to maintain also the inequities of waste disposal (including unequal access to the carbon dioxide sinks) the powerful exercise power, sometimes disguised by market relations and unjust property rights. Power is sometimes brute force, sometimes it is the ability to set the agenda and to impose decision procedures excluding whole classes of people as in the international negotiations on biodiversity and climate change.⁶⁸¹

And so these conflicts are kept alive by impoverished populations struggling against the disproportionate use of environmental resources

680. UNWCED 1987.

681. Martinez-Alier 2010.

and services by the rich and powerful. These are ecological and social conflicts, related to the disappearance and appropriation of natural commons, and their targets are not only large corporations but also the state (which is often guilty of opening up the way to privatisation of commons).

3.3.2. *Cases of environmentalism of the poor*

Among the “historic” examples of environmentalism of the poor, the most often cited are those of the Chipko movement in India, and the movement of the *seringueiros* (rubber tappers) linked to Chico Mendes during the second half of the 20th century.

Among the contemporary examples, we can cite the Ogoni and the Ijaw people protesting against the damage caused by oil extraction by Shell and the Italian company ENI in the Niger Delta; resistance against eucalyptus plantations in Thailand and elsewhere on the grounds that “plantations are not forests”; the movements against dam construction, for example on the Narmada River in India, in Brazil or against the Ilisu dam in Turkish Kurdistan (the latter could probably also be considered a case of “environmental racism”, as the damages will be felt by the Kurdish minority); and the new peasant movements such as Via Campesina and Sem Terra, battling agro-industries and biopiracy. Martinez-Alier lists a series of conflicts accompanied by a useful reference bibliography:

There are conflicts on the unsustainable extraction of biomass (against deforestation including the defence of mangroves, against tree plantations, agro-fuels, land grabbing, excessive fishing), conflicts on mining (gold, bauxite, iron ore, copper, uranium) or on oil and gas exploration and extraction, conflicts on the use of water (dams, river diversions, aquifers).⁶⁸² There are also conflicts on transport and on the infrastructures required for transport, and conflicts on waste disposal in cities, in the countryside or overseas (waste dumps or incinerators, air and soil pollution, electronic waste exports, ship-breaking).⁶⁸³ The largest waste disposal conflict is over property rights in the oceans and the atmosphere to dump the excessive amounts of CO₂. There are also many conflicts on

682. See Carrere and Lohman 1996; McCully 1996; OCMAL 2010; Bebbington et al. 2007; Bridge 2004; Martinez-Alier 2001a and 2001b; GRAIN 2007; Gerber, Veuthey and Martinez-Alier 2009; Echave et al. 2009; Svampa and Antonelli 2009; Urkidi and Walter 2011; Orta-Martínez et al. 2008; Orta-Martínez and Finer 2010.

683. Demaria (forthcoming).

the application of new technologies (cyanide in open pit gold mining, GMOs, nuclear energy) that cause uncertain risks unfairly distributed.⁶⁸⁴

One might wonder whether some of the European environmental conflicts mentioned in this paper – such as the No-Tav conflict which I discuss further on, or that over waste disposal in Campania – can also be usefully interpreted as forms of “environmentalism of the poor”, which is normally considered a form of conflict typical of the Global South.

3.4. People experiencing poverty are more affected by environmental damage and disasters

3.4.1. The irony

It is universally recognised that environmental damage hits the poor hardest: environmental injustice and social injustice lie also in the fact that it is the consumer patterns and the production activities of the rich that cause the environmental disasters, the brunt of which fall on the poor:

environmental damage almost always hits those living in poverty the hardest. The overwhelming majority of those who die each year from air and water pollution are poor people in developing countries. So are those most affected by desertification – and so will be those worst affected by the floods, storms and harvest failures caused by global warming. All over the world poor people generally live nearest to dirty factories, busy roads and waste dumps. There is an irony here. Even though poor people bear the brunt of environmental damage, they are seldom the principal creators of the damage. It is the rich who pollute more and contribute more to global warming. It is the rich who generate more waste and put more stress on nature’s sink.⁶⁸⁵

For a long time environmental justice and social justice (intergenerational equity and intra-generational equity) were considered as fields that concerned fairness towards future generations (the former) and fairness to the poor in the present (the latter).

But what is clearly emerging now is that environmental injustice already hits the poor hardest and that there is a link between environmental

684. European Environment Agency 2002; Pengue 2005; Pereira and Funtowicz 2009. Quotation from Martinez-Alier 2010. An even more complete and detailed list, although less recent, can be found in Martinez-Alier 2002. Original title: *El ecologismo de los pobres. Conflictos ambientales y lenguajes de valoración*.

685. UNDP 1998: 66.

injustice and growth of inequality, between income inequality and environmental degradation at the international, national and local levels. The benefits of the current production–consumption model are enjoyed by a small portion of humanity whereas the poorest suffer its negative impacts: the ecological footprint of a US citizen is nine times that of an Indian citizen (and also double that of a European). The year 2010 was the point when we crossed the critical threshold beyond which the rate of consumption of natural resources exceeds the rate at which nature regenerates them.⁶⁸⁶

3.4.2. *Local environmental damage and poor people*

As already highlighted and recognised by the UNDP⁶⁸⁷ itself, it is not only global warming as an international environmental problem that constitutes a particular menace to the poor in the world: local environmental damage is also a threat, as it affects human health and people’s livelihoods. The threats emphasised as the most serious are summarised below:

Water pollution and contamination. It is the cause of death from disease (diarrhoea and dysentery) every year for about 5 million people, the majority of them children, who do not have access to clean drinking water.

Air pollution. It damages the health of everyone but in particular that of the children of the poorest urban dwellers who often live near busy roads.

Waste disposal. The poor often live near waste disposal sites, and their children are the waste pickers.

Hazardous industrial waste and chemicals. Poor smallholders use pesticides without protective garments and without receiving any training; the poor who live near the most degraded industrial areas are more at risk from the impact of their emissions/discharge and any accidents; finally, a separate issue is that concerning the export of toxic waste from countries in the North towards the Global South (in line with the Summers principle).

Soil degradation and desertification. The medium- and long-term impact will be devastating in many areas, given that natural systems are the direct and immediate basis of life for hundreds of millions of people in this world.

686. Global National Footprint Network 2010. National Footprints data. See: www.footprintnetwork.org.

687. UNDP 1998.

Deforestation. About a third of the earth's original forests have disappeared, and those which remain have for the most part been altered and impoverished. Forests, however, are still today able to supply at least half the nutritional needs of many communities in the Global South, who thus avoid going hungry.

Loss of biodiversity. As we will now see, biodiversity is the main means of support for those who have no access to other assets and productive resources.

The disappearance of natural commons due to privatisation and environmental disasters causes and produces further poverty, both in the North and the South. In the South, until they are deprived of them by the "ecological invaders" (those who live off the resources belonging to other territories and peoples) and by the pollution caused by the development model of the countries of the Global North, "ecosystem people",⁶⁸⁸ who live off the resources of their own territory in a biodiversity-based economy, can count on the riches offered by nature:

biodiversity is the means of livelihood and the means of production for poor people who have no access to other assets and productive resources. For food and medicine, for energy and fibre, for ceremony and craft, poor people depend on the wealth of biological resources and their knowledge of a diverse biosphere. Biodiversity helps poor people survive in times of scarcity. The erosion of biodiversity thus has more than ecological consequences. It also translates into destroyed livelihoods and unfulfilled basic needs for the poorer two thirds of humanity living in a biodiversity-based economy. An estimated 3 billion people depend on traditional medicine as the principal source of cures for illness.⁶⁸⁹

3.4.3. *Global environmental damage and poor people: impact of the "enclosure" of the atmosphere and climate change*

In addition to the worrying loss of biodiversity (which also includes the phenomena of biopiracy and proprietary patenting of living organisms), among the new "enclosures" of global commons we must count that of the atmosphere. Here, too, the guilty are known and the figures are reversed: just 500 million people (7% of the world's population) are

688. Dasman 1988; Gadgil and Guha 1995.

689. UNDP 1998: 75.

responsible for half of the global emissions of carbon dioxide, while the poorest 50% are responsible for just 7% of emissions.⁶⁹⁰ The atmosphere has become a private space in which to dispose of polluting substances and climate-changing gases in quantities beyond the ecosystems' capacity to absorb them. The poor in the South, that is, those least responsible for the problem, suffer more from the impact of rising sea levels, changes in the distribution and seasons of rains, more extreme weather conditions, flooding, desertification and droughts, which have an immediate impact on the production of food, on the availability and quality of water and on the spread of disease.⁶⁹¹

And so, if it is true that human activity can change the environment to the point of putting the survival of the human race at risk, it is even more true that already today the most serious effects of climate change are impacting the poorest, even sometimes in unexpected ways: from a famous study conducted on the fishing communities hit by the 2004 tsunami in Sri Lanka, for example, it emerged that only experienced fishermen with relatively high educational backgrounds were able to recover.⁶⁹² But the problem does not only concern the impact of climate change as such, for example the advent of more extreme weather conditions, but also the different degrees of "vulnerability" of human systems hit by these phenomena: if particularly severe monsoon rains hit a slum built on top of a waste site, it is not difficult to predict that the area will become saturated with water and the slum dwellings will collapse. This is why it has been maintained that reduction of vulnerability can be considered a human right.⁶⁹³ In Europe, too, the intensification of certain extreme weather conditions is anticipated⁶⁹⁴ and it would be important to consider the impact this will have on the Roma camps or on the ramshackle shanty towns in which so many immigrants are forced to live on the outskirts of our big cities.

3.4.4. Two cases from the Global South and the Global North

One of the negative effects of global warming on water resources is that there is also a continual reduction of the cryosphere. The melting of glaciers and eternal snows is causing rising sea levels (with the consequent salinisation of many coastal aquifers). The impact this melting has on rivers and lakes fed mainly by glaciers – and on the ecosystems and societies which

690. UNFPA 2009.

691. UNDP 2007; IPCC 2008.

692. Silva and Yamao 2007: 11.

693. Sarewitz et al. 2003.

694. IPCC 2007.

depend on them – is serious. One of the most famous cases concerns the Bolivian Andes, where the temperature has increased by about 0.15° C per decade since the 1950s. The IPCC experts forecast the definitive loss of the glaciers in the Andes within the next 10 years, while the Chacaltaya glacier has already been lost (six years prior to the date forecast by the experts). The indigenous communities that are totally dependent on glacier water (to drink, for personal hygiene but also for their economy, based on agriculture and animal husbandry) are about to be eradicated and forced to emigrate to the big cities, where shanty towns and slums keep on growing, partly because of environmental emigration: “the degradation of natural resources and the toll of climate extremes have aggravated the emigration to the urban centres of La Paz and El Alto. Without efficient means of adaptation, communities like Khapi could find themselves forced to migrate.”⁶⁹⁵

If part of the world’s population derive their means of subsistence directly from natural commons, this does not mean that the peoples of the North live in a dematerialised world; albeit in a more indirect and mediated way, it is still natural resources that constitute the basis of human life and of all kinds of economic production (starting from ecosystem services, given free by nature and the value of which some have tried to calculate in monetary terms). From the case of the Andean indigenous communities, whose life depends directly on the river originating from the glacier, we will now change latitude and observe the case of the Po Valley, an area within which approximately 50% of the Italian GDP is produced, an area considered the second in Europe in overall wealth, after the Île-de-France. In the former area are concentrated 35% of Italian agricultural production, 37% of the industrial production and 55% of livestock farming. What is the backbone of this system? The River Po: “if the Po Basin gets sick, the whole Po Valley and national economy will get sick too”.⁶⁹⁶ Unfortunately, the River Po is now nearing a terminal state because of its high levels of pollution and for reasons related to climate change, just as in the case of the Andes, since the Alpine glaciers that feed the Po Basin have halved in size over the last 60 years, with a marked acceleration in the last 30 years.

4. Environmental damage, degradation of commons and creation of new poverty in European cities

Environmental disasters, in threatening the natural commons around which lives and economies are based, will also generate new poverty in

695. Castellon and Häussermann (forthcoming).

696. Jampaglia and Molinari 2010: 29 (the translation is mine).

European countries. The town planner Magnaghi started from a similar idea in a fundamental text of the “territorialist school”, as he attempted to explain the divarication between the rising curve of GDP and the descending curve of ISEW (the index of sustainable economic welfare). As development increases (understood solely in terms of economic growth), so “new poverty” is created and impacts the majority of the population, precisely because it is linked to the deterioration of commons:

a local example: the urban area of Milan for centuries based its long-lasting residential structure and constant agricultural-industrial economic development on the wealth of its waters; ... over the last 60 years ... the environmental element that constituted the founding value of its riches (the abundance and quality of the waters on which added territorial value was built) has been rapidly transformed into new poverty (lack of and contamination of surface aquifers and deep waters, bursting of banks, floods, desertification of the ecosystem, poor soil permeability, etc.). Values are inverted: the factor of wealth becomes a factor of danger, disease, scarcity, and degradation of the environment and the landscape. This inversion of value, which has occurred over a very short time frame if compared to the thousand-year-old civilisation, impacts the vast majority of the population, who drink bottled mineral water, paying for it, an eloquent symbol of the more general process of degradation of the quality of the environment and the territory.⁶⁹⁷

It is precisely the degradation of natural commons – that is, of common wealth – and of “relational assets” that is one of the keys of interpretation of the apparent paradox that shows how economic growth is accompanied by a decrease in overall well-being. That which used to be free for everyone now has to be paid for. In the city where I live, Florence, the first “swimming pool” was free, in the River Arno; today, only a mad parent would let their children swim in the river, and of course entry to swimming pools has to be paid for; just as we buy airline tickets in order to escape from our polluted cities and go to walk around and breathe in some distant paradise (or else we buy a home theatre video to make up for the dearth of relational assets). These are but simple examples from daily life which show once again how privatisation and degradation of the commons are closely linked: the production–consumption model induces us to replace commons, which used to be free, with private goods, which have to be paid for (it also urges us

697. Magnaghi 2010: 55-6 (the translation is mine).

to work harder in order to be able to pay for the new private goods, making ourselves poorer in terms of time and relationships).

This continual replacement generates profit and represents a substantial element in economic growth, a growth which in its turn has a knock-on deleterious effect on the system, causing further environmental and social degradation, which will feed new growth in a sort of vicious circle. One part of society will find itself richer in private assets; the whole of society will be poorer in natural and relational commons.

5. Environmental and social injustice: the water privatisation case

The movements for social and environmental justice have linked up over the last decade in continental and international networks to prevent the privatisation and commodification of water, from the opposition to mega-dams (to supply energy to large industries and not to local companies; to supply water to industrial as opposed to farmers' agriculture), with their enormous environmental and social impact (the displacement of whole populations), to the movements against the privatisation of water services or against the bottling industries. If the movements against mega-dams (from India to Brazil via Turkish Kurdistan) can usually be classified as movements against environmental injustice, which defend their own territory and their own agriculture, the movements against the privatisation of water services are usually seen as movements against social injustice. One thing is certain: going beyond labels, in this case too the social movements feel themselves part of the same network and they all speak the language of commons.

The privatisation of water services is part of the more general wave of privatisation of public services that is taking place in many countries of the Global North and South (mostly thanks to forms of pressure from the rich countries, tied in to development loans, through the World Bank and the International Monetary Fund): it is an anti-social policy, which hits all human beings but in particular the weakest and poorest layers of society, who are denied access to fundamental common goods unless they are able to pay for them. When an essential good is paid for only through tariffs paid by the "consumer" (tariffs that are, however, translated into a "price"), the impact is always socially regressive; in the same way, cuts to available services or privatisation of services work like a tax with inverse progression, which marks the end of all social solidarity, which guaranteed everyone free access to fundamental goods and services.

The essential premise is that in the countries of the Global North – but also in many cases in the Global South, and definitely in all urban situations and megalopolises – access to drinking water is not “direct” (to breathe, all you need is lungs) but has to be “mediated”, to be precise, by a water service (plants for the capture, purification and distribution of water). It is therefore hypocritical of the pro-privatisation side to maintain that water itself is a “public good”, and what is privatised is merely the running of the service. Whoever runs the service is in substance the owner of the good, regardless of who is formally the owner. By separating the formal (public) ownership from the management of the service (private) and with the principle of “full cost recovery” (the consumer pays for everything: not only the water consumed but also extraordinary investment and the profits of the private companies), privatisation is completed. Water is a non-optional good (I cannot go without, nor can I “choose” whether or not to consume it) and the water service is always a natural monopoly: through privatisation, citizens are in practice obliged to produce profits for the holders of private capital.

The examples of privatisation of water services, also as far as conservation and protection of the natural resource water, once again show Hardin to be in the wrong: the interest of private investors is to sell as much water as possible in order to increase profits and not to protect the resource and encourage economy in its use (because that would lead to a reduction in revenue). The following anecdote about the CEO of a privatised Italian water company is well known: he said that if virtuous consumers decreased their consumption of water, there is only one choice for the company: the decrease in revenue must be made up by increasing the tariffs – by penalising the protection of the common good and cutting out the poorest even further.⁶⁹⁸

On the other hand, the water movements’ demand is that access to this fundamental commons be recognised as a human right and that the collectivity (at local, national or international level) undertakes to guarantee access to the vital minimum of water (established by WHO as 50 litres a day) for each human being, covering the costs for it. But there is another issue to highlight: if bands are to be assigned for consumption (over and above the guaranteed vital minimum), and for which a contribution (tariff) is required, equally it must be forbidden to exceed a certain “limit” to water consumption.⁶⁹⁹ The limit with respect to use of natural

698. Fattori 2008a.

699. Petrella 2001.

commons, as a necessary “rule” for the conservation of the good, echoes the reference to the capacity of the community to self-regulate studied by Ostrom and her colleagues. The principle that “the polluter pays” or “whoever over-consumes water pays more” could prove dangerous and allow the richest to over-exploit commons (think for example of the international market in carbon credits, which constitute a permit for the countries of the North to buy the right to pollute). Environmental justice and social justice would argue that the polluter should stop polluting and who consumes too much should stop consuming too much.

And so if for the ecosystem people, access to natural commons is often direct (just as the destruction of the community is instant when the river is polluted or the forest cut down), in urban contexts the right to water is never undisturbed access to a gift placed at one’s disposal by nature but a universal social right, which must be guaranteed by society to each of its members, regardless of his or her economic power. Environmental justice (we must not forget that water is a fundamental natural commons) and social justice are inextricably linked.

5.1. Two examples from the Global South and Global North

Nowadays, a vast number of slums and poor areas in cities the world over are cut off from access to safe water and sanitation services. The city of Johannesburg has long main roads flanked by white walls topped with barbed wire: on one side, mansions and houses with cricket pitches and swimming pools, on the other hovels and open sewers⁷⁰⁰ – an overall condition which could probably be studied in terms of “environmental racism”, a condition which might not be merely a lingering remainder from a barbarous past made up of social exclusion and racism, but a possible future of generalised social injustice, even in Europe. The risk of going towards a “Johannesburgisation” and social (or racial) ghetto-building seems to acquire real consistency after some alarming events connected to privatisation. One local example: in Zingonia, a small town in northern Italy, the privatised water services management company cut off the water supply to 150 poor families who could not afford to pay for the service. They were mainly immigrant families, who lived in some large apartment blocks on the outskirts. In addition to running serious health risks caused by the impossibility of using their sanitation, in mid-winter whole families with small children had to wash out in the open, using two standpipes belatedly installed “for their vital needs”. It was rumoured

700. Jampaglia and Molinari 2010.

that behind this event lay the interests of some property developers keen to “upgrade” the area, an action to be achieved after a sort of preventive ethnic and social cleansing. The events in Zingonia confirm that “the management of water as a commodity, in order to make money or as a political tool, can only generate situations in which economic and speculative interests prevail over respect for human beings and their dignity, and where the might of power comes out on top of legal rights”.⁷⁰¹

6. Democracy, participation and commons

6.1. The participatory management of commons and the participatory practices of the movements

Democratic participation is at the heart of the management of commons. Both in the communities studied by Elinor Ostrom, where individuals who are interdependent refuse to act as free riders and prove perfectly capable of self-governance and self-organisation in order to obtain permanent collective advantages from their management of commons,⁷⁰² and in the numerous examples of collective management of commons in towns and of the services connected to them (such as integrated water services for access to drinking water, for example), the issue of citizens’ participation is fundamental. Commons help us today to construct a new idea of non-state public ownership; they invite us to redefine democracy itself, in new forms; they prompt us to rethink sovereignty and the relationship between territory, resources and inhabitants.

Experiments with forms of “participative democracy” and participative management of commons/services are often intertwined and overlapping. There is no one universal model – nor can there be – for the participative management of commons, as commons themselves have very different natures and the geographical areas and historic traditions within which they are to be managed are equally diverse. Both when it is a question of direct management of commons/services (in the case of water services, think of the “community management” of water in many areas of Latin America, such as Colombia or Bolivia), and when it is a question of combining forms of representative democracy and participative democracy for managing commons (for water services, think of the Porto Alegre model in Brazil, Grenoble in France or Cordoba in Spain), the participation of citizens and inhabitants usually takes place at several levels: the

701. Ciervo 2010: 166 (the translation is mine).

702. Ostrom 1990.

policy-making and decision-making level, the day-to-day management level and, finally, the control level.⁷⁰³

There are another two essential issues. The first concerns the movements that claim rights to commons: the ways in which they are organised, debate and make decisions are already in themselves horizontal and participatory forms. The method used by the movements concerning commons is already a participatory practice. The second concerns the concept of democracy and of society that emerges from this area: behind the forms of direct participation in the management of commons and behind the experiments in participatory democracy lie the fact of having gone beyond an idea of society as a mere set of innate and pre-existing individual interests, which clash, which elect representatives who in their turn reach decisions by majority. On the contrary, their idea is that interests are constructed through debate with others, through dialogue and by a method of consensus. Behind the communities who consensually establish the rules of managing commons and behind the practices of participative democracy lies the different choice of the method of discussion and decision making compared to that of counting preordained majorities and minorities on options that have already been defined. Participatory politics are, as the practices of the movements over recent years prove, creative acts, not a power technique or a cobbling together of given interests. They are collective creation of common values and shared plans, not the search for a meeting-point between individual egos, nor a negotiation between pre-packaged solutions.⁷⁰⁴

6.2. The case of the No-Tav movement

We will now briefly examine two cases of environmental conflict and battles for social justice connected to natural commons, in order to extract some pointers on democracy and participation. The first is a land conflict that is well known in Italy because it has been going on for many years, A large number of the inhabitants of the Val di Susa are fighting against the construction of the new high-speed (Tav) Turin-Lyons railway line, which they consider a project of no economic use and damaging for the ecological equilibrium of an area that already houses much infrastructure such as the Fréjus motorway and numerous tunnels, dams and industries. As is true of many environmental conflicts over the last decade, the one

703. For an analysis of some participative models of integrated water management in Europe, see: Hachfeld, Terhorst and Hoedeman 2009; Sintomer, Herzberg and Houdret 2010.

704. Della Porta 2003 and 2005; Fattori 2005.

in Val di Susa cannot be seen as a “single issue” environmental protest, as it is tied in to an overall critique of the current production–consumption model, combining ecology and global justice. This is another element that fully justifies the inclusion of the conflict within the commons movement. It is no coincidence that the Val di Susa movement puts a major accent on the “defence of the territory as a common good”. This is not a NIMBY attitude, centred purely on protecting selfish interests, but a conflict that defends the “use-value” of the territory against the powerful economic interests that are more interested in its “exchange-value”. The field of battle is hence a NOPE (not on the planet earth) field.⁷⁰⁵ When announcing the twinning of the No-Tav movement with the No-Ponte movement (fighting against another “major engineering work”, which is considered equally pointless and destructive: the mega-bridge across the Strait of Messina), the common links on which the alliance is built are environmental justice, social justice and the issue of democracy and sovereignty, which can be summed up in one simple question: who makes the decisions about the future of the territory and its resources? The people who live in the area claim the right to make decisions that concern their future and denounce the inadequacy of representative democracy, as they aspire to forms of participatory democracy. Della Porta and Piazza, in a book devoted to analysing these conflicts, write that the latter are perceived by the communities in question as a consequence:

of the ineffectiveness and inadequacy of the mechanisms of representative democracy, where the protestors lay claim to a different concept of local democracy based on direct citizen participation. In this sense, the conflicts over the Tav and the bridge can be seen as part of a quest for new forms of democracy that can answer the challenges of decision making, which not only moves ever-more frequently from national states to international institutions, but also from politics to the market.⁷⁰⁶

In the words of an activist quoted by the two authors: “certain things are imposed on the local territory, as if the territories were colonies, whereas we are quite convinced that the territory must be subject to the opinion of the people who live there”.⁷⁰⁷ Exactly as is the case for the other movements that see themselves as part of the commons movement, No-Tav and No-Ponte do not limit themselves to asking for a different type of

705. Trom 1999.

706. Della Porta and Piazza 2008 (the translation is mine); see also Della Porta and Tarrow 2005.

707. Della Porta and Piazza 2008.

democracy, but they try to put it into practice through structured assemblies with inclusive decision-making processes based on the consensus method. In the end, these conflicts too present characteristics similar to those of environmentalism of the poor: “The local protests are changing the image of environmentalism: from ‘post-materialist’ issues, raised prevalently by the well-educated ‘new middle classes’, to claims of under-privileged groups, living in the most degraded areas, where incinerators and other LULUs (locally unwanted land uses) are normally situated”.⁷⁰⁸

6.3. The case of the Italian water movement

6.3.1. Fluid democracy

The other case that can shed light on important aspects of the relationship between the commons movement, the management of commons and democratic participation is that of the water movement. Here, it is not possible to consider the complex global movement against its commodification (it is the largest international network within the global commons movement after that for land and food sovereignty), but I will limit myself to the case of Italy. Italy has the strongest movement in Europe and the conflict has been going on for many years both at the local and the national level, as a reaction to the process of privatisation.

Indeed, since 1994 a number of measures have been introduced in Italy in order to open up the water services to private hands. The recent laws, 166/2008 and 135/2009, are finally opening the market totally to the private sector. Some 15 years after the gradual privatisation, half the Italian population is already served by joint ventures. In cities such as Arezzo and Aprilia, where private partners first entered, there has been an exponential increase in prices and a sharp reduction in investment. Over the last decade, tariffs in Italy have increased by 62% (compared with inflation of 25%) and investments fell by almost two thirds compared to the preceding period. Consumption of commodified water is, on the other hand, expected to grow by almost 20% in the next 10 years (the opposite of preservation of the resource, as we have already pointed out).

Following these disastrous effects in social and environmental terms and with respect to the right to water in Italy and worldwide, a strong Italian movement has grown over the past decade, bringing together hundreds of national and local organisations, associations and committees. But let us just take a step backwards to briefly trace their history. One of the earliest

708. Ibid.

territorial committees to organise locally was that of the town of Aprilia, where the core of the organisers was made up of senior citizens on the basic state pension and young people with insecure jobs. The tariff increases that always follow privatisation hit the lower classes and low-income families hardest. The 7 000 families from Aprilia who for years have been refusing to pay their bills to the private water services providers, but who regularly pay bills calculated at the old rates (lower, because they did not include the profits of the private provider) – into a special account in the name of the municipal administration – are essentially the poor. Whereas Tuscany was first to organise a regional network in 2003, made up of hundreds of social organisations: the Forum toscano dell'acqua (Tuscany water forum). The Tuscan water movements were the first to try their hands as “legislators”, and they drafted a regional-level citizens’ bill which could concentrate the movement’s proposals against privatisation. Faced with the undermining of democracy and the processes of privatisation, the movements wanted to try out local solutions, which started from the grass-roots level – from the essential and concrete needs of the citizens – to win back sovereignty over the commons. They used all the tools of grass-roots democracy allowed by the regional and national laws – such as citizens’ bills – to shake up “post-democratic” politics⁷⁰⁹ and set in motion a chain reaction that would also draw in other territories, in a virtuous circle. Once again, it is important to highlight the two levels of participation, which concern both the method and the content. The collective work on drafting the bill, through an inclusive and absorbing process that lasted months, was a participatory experience; at the same time the heart of the bill was precisely that: the introduction of the participation of citizens and water service workers into the management of the integrated water service through the institution of “Water councils territorial advisory groups” (Consulte dell’acqua). On certain fundamental decisions, on certain choices relative to the governing of water, the citizens who live in the territory must be involved and able to express themselves. In other words, this is not a bureaucratic form of management but a management that can restore to the citizens those powers that the boards of directors of the corporations have stolen from them.⁷¹⁰ The citizens’ bill was rejected by the Tuscany Regional Council but the movements’ cultural battle had already been won: throughout the region the debate on privatisation (which had taken place slowly and silently) had exploded and by now the consensus on the proposals for joint and participatory management made by the social coalition was very strong in the whole region.

709. Crouch 2000 and 2003.

710. Fattori and Striano 2005.

To cut a long story short, we can say that over subsequent years the “model” the Tuscan movements had introduced was replicated at the national level: in 2006 a broad and inclusive national network of committees, territorial movements and associations was set up – Forum italiano dei movimenti per l’acqua (the Italian Forum of Water Movements) – and in 2007 a citizens’ bill (this time a national one) was drafted with participatory mechanisms, which collected over 430 000 signatures (in Italy, the constitution states that if a draft law is presented with 50 000 signatures, then it must be debated in parliament). In this proposal water services are considered a service devoid of economic significance – hence to be removed from market and competition laws – the objectives of which are of a social and environmental nature. In this case too, the introduction of participatory mechanisms for citizens in the management of the service lies at the centre of the new model.⁷¹¹ While the draft bill is still waiting to be discussed in parliament, the Italian Government has in the meantime accelerated the privatisation process. The reaction of the movements was that of launching a direct appeal to the Italian people, using the most powerful tool of direct democracy allowed under Italian law, namely requesting a referendum to abrogate a law. During just three months’ campaigning in 2010, over 1.4 million signatures were collected (only 500 000 were necessary), more than for any other referendum in the history of the Republic of Italy, including the “historic” ones on abortion and divorce. This goes to prove that social sensitivity on commons, and in particular as regards water, is anything but dormant. Indeed, water has become the most recognisable symbol of natural commons: a good that satisfies vital needs and makes it possible to deliver fundamental human rights. A good to which everyone must have access and which no one has the right to appropriate. And so conflicts over social and environmental justice that originated at the local and territorial level (often with impetus from the poorer strata of the population, as in the cases of Aprilia and many committees in Campania) have, in less than 10 years, become organised, have grown and have moved the conflict up to the national level, adding to the protest the definition of complex and detailed proposals, drawn up through broad and participatory processes (such as the citizens’ bills proposed at the regional and national levels).

6.3.2. Background and consequences of the Italian referendum

It was this long participatory process of networked social self-organisation (for years invisible to the mainstream media) that made the triumph in the

711. Fattori 2008b.

referendum in June 2011 possible, when 27 million Italians voted against the plan of forcible privatisation of the management of integrated water services. The results of these referenda were not a sudden event, but the culmination of a complicated democratic process in which citizens, over the years, searched for ways to make themselves direct “legislators”.

The Italian movement for water and commons, as we have seen, first had recourse to a law based on popular initiative, and then to the system of referenda. Opening up the question, the issue of referenda as such (or the right of the collectivity and the individual to decide directly on essential economic and social issues) seems now to have become a crucial issue all over Europe, from the demands emerging from the Spanish *indignados* in the squares, to the Greek referendum on the cure imposed on the country by the European Union; a referendum first announced and then denied, under heavy pressure from the main European economies and the IMF. This significant episode puts a huge question mark over the limits of democracy in the context of the rules of the international economy. The accumulation of unsustainable public debt by one state seems to have brought about the loss of popular sovereignty by its citizens, who are denied the right to decide on their own futures.

So it is important to bear in mind the context within which the Italian referendum took place, that is, at the height of an economic crisis, while government policies imposed the selling off of the public patrimony, starting with commons and public services. In this context, Italians decided to close ranks, not to defend the banks and the financial system – as the government would have wished – but to defend the commons.

But what exactly were the June referendum questions about? First of all, it should be noted that popular initiative referenda in Italy can only abrogate, that is they cannot propose new laws, merely repeal bills passed by parliament. In this case the *pars construens* hidden behind the *pars destruens* of each question was perfectly clear. There were four questions voted on in all. The first and the second were about water,⁷¹² to prevent the compulsory privatisation of water management and to prevent profiting from a common good by the few, through remuneration of the

712. The third question was about the future of energy and opposition to nuclear power plants (the choice of renewable energy was the positive side implicitly contained in the anti-nuclear referendum vote). Finally, the fourth question concerned the equality of citizens before the law and brought about the abrogation of a special *de facto* immunity which would have prevented the prime minister and other ministers being put on trial while they were in office.

capital invested by shareholders. On the positive side, as we have seen, the movements demand public management, with the democratic participation of citizens and water service workers.

The first and principal difficulty in popular referenda has always been meeting the quorum, which is very high: so that for the consultation to be valid, more than 50% of those eligible to vote must go to the urns. In June, for the first time in 14 years, the quorum was easily reached: more than 57% of Italians voted. Even more prodigious was the overwhelming majority of “yes” votes on all four questions (those voting “yes” being in favour of repealing the law subject to the referendum), particularly the first two: 95.35% yes (4.65% no) on the first question; 95.80% yes (4.20% no) on the second.⁷¹³ The two questions regarding water are the ones that obtained the highest percentage of voters and the absolute highest number of “yes” votes in the entire history of Italian referenda.⁷¹⁴

Over recent years, a transformation in common sense has been taking place, which is evident in the June vote. It is a political and cultural change that was flagged up in the significant Demos-Coop survey in July 2011:⁷¹⁵ the mapping of the public and private language of Italians shows a new hierarchy of words, in which the use of words like “individualism” or “strong leader” has collapsed and in their place new terms like “commons” have spread. It represents a linguistic and conceptual revolution.

The referendum directed the growing discontent with the dominant neo-liberal doctrine, the policies of which are largely to blame for the current international crisis. A doctrine that is economic as well as political and theorises an anorexic public and a democracy with minimal participation, making the elimination of any real political manipulation of the market coincide with a hyper-oligarchic view of democracy, which is reduced to mere participation in elections, which are occasional and exercised on predetermined agendas.

The subject of democracy also remains crucial in the referenda for another reason. The phenomenon of the massive departure from a purely public role for Italian public administrations, dubbed “municipal capitalism”, has since the 1980s seen municipalities become shareholders in many hundreds of joint-stock companies. Local public services have been turned

713. In any case, on the other two questions, the percentages were only slightly lower than those on the two questions concerning water: 94.05% yes (5.95% no) on the third; 94.62% yes (5.38% no) on the fourth.

714. For a detailed analysis see Fattori 2011.

715. Demos-Coop. Osservatorio sul Capitale Sociale degli Italiani 2011.

into companies governed by private law (often with private shareholders, as well as the municipalities). In joint-stock companies, shareholders – whether public or private – are legally obliged to operate within a profit-oriented framework, directed at producing and then sharing out profit. The main objective of a public service has now become that of generating dividends for the shareholders. This flight of municipalities (and the public administration in general) from public law – to embrace private law – is at the same time a flight from democratic accountability and therefore a flight from democracy.

The referendum vote was thus also a vote against this process and the degeneration of the public sphere; and not only a vote against the parasitic profits of private entities from commons. It was a vote against the privatisation of decision making, an attempt to bring back transparency and democracy to the management of commons. The political and technical-administrative oligarchies have often considered and administered commons as if they were their own property, distancing themselves from all participation and democratic accountability. Municipal capitalism was one of the stages in this process of substantial private appropriation of commons. Unfortunately, in Italy, the degeneration of the public area has had and still has even more extreme forms: spoils systems and clientelism, this latter having gained strength precisely thanks to the conversion of public services management bodies into joint-stock companies. In all these cases, the political elite has shaped the “public” to their own private interests. For this reason, the referendum vote requested not only that private profits be excluded from commons, but also the renationalisation of the public sector.

The dual form of privatisation of the public sphere – by private capital but also by the political elite – has its crowning glory in the model called public–private partnership (PPP), which is very fashionable nowadays all over Europe. The management of fundamental goods and services is entrusted to companies with mixed public–private capital, in other words, to opaque areas of concert between economic and public powers – areas removed from any kind of democratic accountability, and which represent the latest stage in the evolution of municipal capitalism. These companies – which manage water and many other public services – have at the local level become the new post-democratic institutions: it is here that territorial public policies are actually developed, and no longer in elective councils. Elsewhere in Europe, as in Italy, for years now the tendency towards “contractualisation of public policies” has taken over.⁷¹⁶ This means that

716. Bobbio 2000.

local public administrations act as parties to a contract rather than as sole decision makers. This model for producing policies through contractual devices has now come to fruition with agreement on the establishment of new decision-making arenas, in which agreements are negotiated between private and public actors: the mixed-ownership (public–private) joint-stock companies are these new post-democratic institutions for governing the commons at the territorial level.

This represents the now institutionalised elimination of all clear and precise separation of roles and spaces between politics and the economy. The public–private partnership for managing commons becomes the institutional form of oligarchic connection between these two ever-more overlapping areas, where the inevitable victims are democracy, transparency and citizen participation.

This is why the votes in the Italian referendum are also votes against post-democracy. Renationalising the public means turning public to “common”, where the specificity of “common” is precisely the democratic and direct participation of citizens in the management of services of general interest and of the commons. The social movements’ slogan that defines “common” as a third dimension, that is, falling outside the public–private polarity (as well as the concentration of power, a characteristic common to both the capitalistic market and modern state sovereignty) updates a distinction which has survived in diffuse culture, the distant roots of which can even be traced back to Roman law. Roman law not only distinguished between *res communes omnium* and *res nullius*,⁷¹⁷ but it also clearly distinguished the *res communes* (commons) both from the *res privatae* (private assets) and from the *res publicae* and the *res universitatis* (two different categories of public assets). But whereas for the ancient Romans, the emphasis was on the “natural” dimension of *res communes* (which we would nowadays call the natural commons: air, water and shorelines), in our times the emphasis is on democratic participation in the management of the commons, both natural and immaterial. In summary, “commoning” is a way of managing and democratically governing natural common resources and social collective creations. That is, commons are characterised by a governance system to collectively share and preserve all the ecosystems and natural resources, but also all the creations of society, which we inherit or jointly produce. “Commoning” means a social practice of collective democratic governance of shared material or immaterial elements, which, in order to be effective in the

717. See section 1.2 above.

extremely diverse dimensions of today's world (including the new global metropolises), necessitates redesigning a significant number of models of democratic participation in the management of commons and services.

Finally, looking at the bigger picture, as a consequence of the Italian victory in the referendum, a process has been set in motion across the continent that aims to connect movements, trade unions and social organisations from various nations in one pan-European network. It will start as a water network (water being an element that is materially and symbolically capable of opening Europe up again to reflect on the whole horizon of natural and social commons), but may in future broaden its reach to include other elements of this overall horizon. The continental network intends to use, on a European scale too, all the tools of direct democracy currently at its disposal (such as the new European Citizen's Initiative).⁷¹⁸ These are tools that can make citizens direct "legislators". In the end, it is precisely through referenda, popular initiative bills and ECIs that the European peoples are trying to build pieces of "another Europe" and are seeking the democratisation of the European institutions. A Europe that is different to that born of the post-war pact on steel and coal, which has a strong elitist and market imprint. A Europe of commons and democratic participation.

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718. The Lisbon Treaty introduces a new form of public participation in EU policy shaping, the European Citizens' Initiative (ECI). See http://ec.europa.eu/dgs/secretariat_general/citizens_initiative/index_en.htm.

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THE COMMONS, SOCIAL COHESION AND THE AUTONOMY OF SOCIAL REPRODUCTION

*Observatorio Metropolitano*⁷¹⁹

1. The case for the commons

In Spain, historically, the significance of the commons has been recognised by legal arrangements such as *Cartas Pueblas* or *Fueros* (medieval acts of settlements) and other acts. In them, woodlands, pastures, irrigation systems, fisheries, etc. were set up as commons, and the settlers had the right to use them and were fully and collectively entitled to the wealth they produced. Also, these commons were a strong counter tendency against social inequality, allowing the poorest people in society to access resources (pastures, firewood, fruits and animals), which, in times of shortage, avoided famine and provided a decent existence for all inhabitants with the only condition being to permanently reside on the territory.

But apart from being a social device that drastically limited inequality, the commons were a permanent source of environmental sustainability. Contrary to contemporary forecasts about the “The tragedy of the commons”⁷²⁰ – namely, that commons will be destroyed by selfish and individualistic uses right up to their exhaustion – regulations and rules were established in order to guarantee their preservation and improvement, as their survival over the centuries (even millennia) demonstrates.

In fact, the only reason for the commons to disappear has been external attack. The destruction of the commons is a recent event, related to the birth of a modern capitalist class, in what is called “primitive accumulation”.⁷²¹ Huge struggles took place when enclosures were imposed and people lost

719. Observatorio Metropolitano (Madrid, Spain) is a project that brings together diverse multidisciplinary groups in a space for reflection on the phenomena of transformation that characterise contemporary metropolises, starting from the case of Madrid (see www.observatoriometropolitano.org). About its work on common assets, see Observatorio Metropolitano 2011.

720. Hardin 1968.

721. There is a whole reading of the transition from feudalism to capitalism that interprets the birth of the capitalist as a result of certain contexts of class struggles determined by the degree of resistance of peasant communities against a proto-capitalist coalition of feudal lords and rich peasants. Commons are the main battlefield of this struggle. See the long debate initiated by Brenner (1976).

their rights and access to the commons.⁷²² Market forces destroy common goods insofar as they are understood as commodities that produce a profit and not as foundations of social life.⁷²³ Commons need a community to take care of them in order to secure their social reproduction, not private owners that seek profit. They need a commitment to maintain them and to share the collective tasks. This old solidarity is still alive in the Spanish languages, where there are words for these collective tasks: *hacenderas* in Old Castilian, *auzolan* in Basque or *azofra* in Aragonese. In the 21st century, we can see the importance of the community and its work in maintaining the commons when we look at free software development, where there is a strong community that maintains it.⁷²⁴

Nowadays, in the age of global crises, natural, social and digital commons are under attack. Not only by private powers, but also by the public institutions that were supposedly in charge of their management. Natural commons are sold at bargain prices and their management left in the hands of building contractors and land developers. Digital commons are being regulated so as to restrict their circulation to benefit IT enterprises and cultural industries. Social commons are destroyed through privatisation and outsourcing of the welfare state. The results are degrading the quality of services, allowing private appropriation of goods and services that should serve the general interest, and increasing social inequality and the waste of resources. This problem – namely, that public institutions do not serve social needs – is old, and comes from the lack of openness and democracy in state management, technocracy and authoritarianism. In a way people cannot access, use and manage public goods and services, and this makes them feel that they are not their property. In accordance with current ideological trends, they are the property of the state and their experts should decide whether they are kept or they are sold, whether they are viable or whether they are not.

722. We owe to Marx the first description of this process and the term “primitive accumulation” in chapters XXIV and XXV of *Das Kapital*. It should be noted that over the last decades the discussion on “primitive accumulation” has been steadily growing. Marx 1973.

723. Karl Polanyi was the first author to note that land is one of the main components of what he called the substance of society. In fact, land, money and work are part of what he termed “fictitious commodities” that, even though they are bought and sold on the market, are not produced according to the logic of “normal” commodities. Polanyi 1957.

724. In fact this is one of the clearest points in the new interpretation of the commons that Elinor Ostrom is carrying out. A common is nothing more than the community that manages it. This point opens a new “social” way of looking at the commons as opposed to an “ontological” reading of the commons that emphasises the “natural” properties that constitute a common. Ostrom 2001.

Sadly, until now, Spanish commons (as protected by law) have been limited to a few fields, such as the maritime public domain (maritime platforms, coastline, brooks), “public use” mountains and the public domain of knowledge, which is being attacked more and more by intellectual property laws. However, these attempts at protecting the commons have overall been unsuccessful. We can easily see how the Spanish coastline has been built up; rivers are polluted open sewers, only suitable for irrigation and waste; public mountain areas catch fire every summer, because of carelessness and inappropriate reforestation; and knowledge is being turned into a commodity monopolised by IT management enterprises, multinational pharmaceutical companies and private universities, among others. Commons should have their own status, not public-state, not private, but communal. They must be regulated by principles and rules that enable communal management of resources; although there remain some old regulations, particularly concerning the exploitation of natural resources, there are new social dimensions of the commons that need new institutions.⁷²⁵ We are, in the full sense of the word, talking about designing and setting up new social institutions.

Natural, social and digital goods and services must be managed as commons: with a status that does not allow them to be sold off, and democratic regulation and communities in charge. But we cannot think of a literal translation of the traditional commons into our complex urban reality. Traditional commons were the way to access the bare necessities of life (heat, food, place to live, etc.), to secure the existence of people. Nowadays, basic income could be its functional equivalent. Beyond the advantages of the integration of different benefits and compensations and the indispensable redistribution of wealth that would improve consumption and a stable basis for the economy, a basic income is a way to guarantee the full satisfaction of needs in order to live a decent life, and to raise the standards of living for those who are worse off.

2. Commons, public property and private property

The commons were basically a strategy to guarantee an independent social reproduction, away from the arbitrary power of the feudal lords. Whatever the demands and exactions of the lords, the existence of the common lands meant a guarantee of survival for those less favoured by the property regime, and a basis of protection for the more well-off

725. The importance of building new institutions that help us move further beyond the current horizons of domination and exploitation is well defended in Wright 2010.

peasants.⁷²⁶ Also the commons served as protection against the loss of basic family networks and guaranteed a fair degree of gender equality and women's independence, which was lost in the transition to capitalism.⁷²⁷ In this way, it was possible to generate different levels of protection against social inequality. On the one hand, it was not possible for the feudal depredation to feed on the community itself and, on the other, the sustainable exploitation of natural resources was ensured. In this arrangement, social solidarity and sustainability complemented each other perfectly. As long as natural goods and services were, in principle and in practice (*de facto* and *de jure*), the material basis of communal reproduction, their destruction was the destruction of the very community.

As has been pointed out many times, the loss of these common goods was essential in order to create a proletariat underclass, dispossessed and dependent, which was finally made to participate in capitalist industrial production through a "fear of hunger". It has also been stated that, in the long run, such a dispossession generated great social polarisation, which generated enormous tension over social reproduction and, by extension, the labour reproduction. In turn, working-class movements were born; to a large extent, as a counterbalance to these huge dispossessory forces. Their history can be seen as a sort of return to the communal (in the guise of the so-called "working class"), which challenged capitalism using a mix of new analytic tools – which aimed to understand the new ways of production – and traditional ways of generating social ties that were, in large proportion, inherited from previous communities that sustained themselves as coherent collectives thanks to the regime of the commons.

In this framework, throughout the 19th and 20th centuries, the answer to the successive waves of class struggle was public property and a state-like version of the concept of social property (ownerless property),⁷²⁸ and somehow a substitute for the old commons through which the state assumed responsibility for social reproduction. Its role was, in fact, to produce public goods, a kind of production that was simply impossible under a private mercantile property regime.

726. The role of the commons as a means of maintaining a high degree of social cohesion in the feudal village, particularly in Britain, has been greatly documented by British social historians. The peasant struggles that followed the enclosures are also a classic topic in this research. See Hobsbawm and Rude 1969; and Hilton 1973.

727. Federici 2004.

728. The term "social property" and its transformation into "public property" are vital in an understanding of the mechanisms of collective insurance that underlie the arrangements of the welfare state. Hatzfeld 1989 and Castel 1995.

With this move, the state was able to internalise a large part of the class struggle's historical dynamic. What is more, after the Second World War, and with the universalisation of the Keynesian-Fordist model, this conflictual dimension of social reproduction of public property gave way to a kind of social engineering in which, via an impetus to effective demand through an increase in direct and indirect salaries, capital and labour found a fragile sphere of common interest. This situation gave rise to the strongest boost for the institutions of the welfare state that has taken place to date. Education, health and housing were, to a certain degree, de-commercialised, renamed using the adjective "public" and considered the big materialisation of social reproduction.

As we well know, the flip side of this deal was a gradual incorporation of social reproduction into the mechanism of the state, which placed the new welfare state institutions under the control of a caste of "experts" that took over the task of managing the new public resources. This transformation in procedure turned out to be essential when the 1973 economic crisis prompted the breakdown of the deal between capital and labour, which had already been eroded by the new social and labour offensive of 1968.⁷²⁹ But the long politic development of the crisis also swept away the institutional arrangements of the capitalist elites, giving way to the hegemonic dominance of capitalists and global finance. The result of this double rupture was that the Keynesian demand-side policies that constituted the technical frame that incorporated social reproduction in technocratic management ended up losing their political and economic meaning from the point of view of capital.

As we know, the new ideology of the liberal counter-revolution, which served as the main tool of reorganisation of the capitalist class, considered that housing, health and education were no longer the safeguards of the reproduction of labour, but more or less generous charitable acts granted to a social majority that had become state-dependent and had forgotten the values of sacrifice and individual work. In the absence of the modes of struggle that collaborated in their creation, this liquidation of welfare policies has forced the public property institutions into a narrow and mainly ideological monetary version of efficiency.

Accordingly, the following step consisted in getting rid of a series of "services" – as they were no longer considered to be rights – that were now seen as simple charges on capital. The method consisted in the commoditisation and privatisation of certain spaces that are essential for

729. Brenner 2002 and 2006.

social life. The same caste of experts under which the management of the public property was placed is now in charge of executing its liquidation. Curiously enough, this movement is taking place when capitalism is having great difficulties in making the same kind of profits that have characterised the post-Second World War era. The industrial cycle does not produce enough to keep the capitalist profit machine going, and the old social achievements appear as the “new commons”, for which it is possible to launch an attack in search of that lost benefit.⁷³⁰

Due to their ability – sanctioned by the institutions – to produce money, finance has become the spearhead of this process. In this way, what were once public guarantees have now become financial assets with a negotiable value in a global capital market where, to say the least, social reproduction is of no great importance. We can see a good example of this process in the way that, through private pension funds, a public social guarantee, such as a pension, has become the fuel of large financial operations. Or, in how the right to a proper house, another old right, has become a mass of mortgage debt, which permanently transfers resources from families to financial institutions.

But this process that we call “financialisation” is not only turning the old social rights and services of citizenship into assets that are quoted on the financial and property markets, new mercantile spaces are also being colonised. Natural assets like air, water, land and energy are suffering the full onslaught of this new financial colonisation, which puts them and their traditional users in the hands of an intensive mode of accumulation, both in terms of resources used and waste. On the other hand, social relations that were traditionally alien to the market, such as care, are also emerging as business niches presented as solutions to the dissolution of social relations provoked by the commoditisation and financialisation of everyday life.

The high levels of stress suffered today by the whole sphere of reproduction is the result of all these regressive processes of colonisation of the different aspects that form the nucleus of social life. We can identify this tension as a form of generalised precariousness that is translated into a need to live from day to day and that takes us back to that continuous present that has historically characterised the time experience of the dispossessed proletariat. This precariousness, although affecting the

730. The concept of “accumulation by dispossession” was coined by David Harvey; it depicts the main processes of “primitive accumulation” but avoids the philosophy of history implicit in the terms “primitive” and “originary”, whilst making it a permanent feature of capitalism, particularly of its financialised phases. Harvey 2005.

whole society, produces its strongest effects in the lives and bodies of those that either are not fit or have no access to the market. The expropriation of the non-commoditised commons and its restriction of access has meant suppression of the resources that guaranteed a more well-balanced social distribution of resources.

3. The strategy of the commons

Against this loss of the material substance of autonomous social relations, the institutions of the commons work according to a completely different logic. The difference is a social one; namely, community relations. In other words, a renewal of the fields of social reproduction that guarantee life in common cannot be done in an institutionally mediated way, at least by the existing institutions. Moreover, this renewal must be situated at the very centre in which the materiality of community life takes place. Use-value, sustainability, collective transparent management are some of its incarnations. It is, thus, important to understand that common property does not lend itself to a reduction to existing forms of property. Neither public property, nor private property, are capable of being the drivers of this project of recuperation of the social mechanisms of reproduction, nor by extension of articulating any form of sociability not dominated by the market. Maybe the right question to be asking is how we can redefine public and private property after the material and political mechanisms that guarantee their existence are recuperated.

It can be argued that, in this perspective, there are some overlooked aspects that lie at the core of the current model of capitalist power and exploitation. At first sight, the problematic of the property of the means of production, excluding the land, and the related problem of control over the labour force, lie outside the problematic of the commons. So does what we call the general problematic of political representation. So, maybe, it is useful to clarify the concrete scope of this perspective. In fact, as we have been claiming, the whole strategy is about designating the most important fields for social reproduction and protecting them against the threats of the market, and thus the first step towards their dissolution. If we take the practical interdependence of the spheres of production and reproduction into account, it is difficult to maintain that the conquest of free spaces for social reproduction does not have consequences for production. In fact, medieval commoners used to avoid selling their labour in the market and to keep their economic activities within the limits of institutions consisting of strong networks of belonging, such as the family or the village.

The setting-up of the institutions of the commons brings about a shift in the usual approach to social and political struggles. The extension of common property to social reproduction processes points towards de-marketisation and de-monetarisation of life. In a way, it will all be about massive de-proletarianisation, which could be opposed to the logic of dispossession, without it being opposed to other monetary grants such as the basic income. In a way, basic income itself can be seen as a tool to give social reality to immaterial commons, such as collective knowledge or urban creative processes that rely on Jane Jacob's externalities.⁷³¹ Anyway, the extension of common property implies both an assertion of the autonomy of social reproduction and a reinforcement of community networks. It is thus opposed, in principle, to those versions of the basic income that do not consider the problems of the growing commoditisation of social life. A similar argument can be made in relation to the possibilities of new democratic politics. The commons approach sets up direct democracy for all those aspects that directly relate to social reproduction. It would be difficult to imagine that the political system will remain intact after such a shift, but it is, however, true that the so-called problem of representation that affects higher levels of government and those decisions and process cannot be solved by a permanent community of stakeholders. The bid for direct democracy should be completed with proposals for the radical reform of political systems and the generation of new ones.

Despite the persistence of some very classic social problems, we are living an historical moment in which the development of the crises is leading to a consolidation in the political hegemony of financialisation. We find that the extraction of surplus value is as much a result of classic capitalist processes as it is of the omnipresence of credit markets that channel a growing share of social production into financial markets. Not unlike the arbitrary extractions of feudalism, financialisation makes its profits by means of the growing uptake of the social product that is centralised and redistributed only according to its own power strategies. The rest of the social body, social majorities and public institutions is submitted to a scarcity regime that determines social relationships. Public expenditure cuts, privatisation, wage stagnation, growing precariousness, unemployment: there is no need to look very far to see the consequences of this regime. In fact, from this point, a new regime opens in which we find fear as the main ideological motivation for submitting to the capitalist work

731. Jacobs 1969.

discipline, the old “fear of hunger” has now mutated into fear of downwards social mobility, of the generalised “other” or any other perceived threat to the scarce resources that financialisation has not claimed. The best known symptoms of this deep fear are well known: demobilisation, micro-fascism, the war among the poor, the psychiatric treatment of social malaise, atomisation, destructive consumption patterns, etc. But this disciplinary regime rests on a conditional that should be categorically denied: there is no real scarcity, only a tremendously unfair and polarised distribution of wealth.

The extraordinary power of the centralisation of resources carried out by financial means and its selective redistribution towards the higher end of the income pyramid, the approximately 10% (or less depending on the context) of the population that captures the vast majority of the social product, makes it difficult to ascertain the actual scale of the social wealth. This is one of the main side effects of social inequalities. On the one hand, we should consider what we can call materially existent wealth: the enormous amount of goods and capital that exist today, which when redistributed could satisfy the needs of literally the whole planet. But we should consider other kinds of wealth, such as the power of knowledge, of freed social co-operation, of autonomous social relations, all those immaterial dimensions of the productive forces that are subjected to a regime of artificial scarcity by a system of extortion that lives on social externalities, access restrictions and different kinds of “toll barrier” economies. Reinforcement of intellectual property, privatisation of higher education and limits on the potentialities of knowledge by redirecting its production to the immediate interests of capitalist enterprises are some of the most visible effects of this negation of the collective sense of production.

On the other hand, the recognition of this enormous wealth and its conversion into equally distributed use-values should liberate the pressure on what we can call, as opposed to socially scarce, physically scarce resources. We are talking about the exhaustive consumption of natural capital to the point of leading us, faster than ever, to a global ecological crisis. As opposed to the point of view that believes that a fundamental socio-economic change might occur automatically with growing pressure on resources and the position of green capitalism that believes in the possibility of a green new deal, we believe that the effective tackling of the dynamics of the ecological crises goes hand in hand with the problem of the redistribution of wealth, forms of property, political empowerment of the voiceless and the capitalist power of command. While these

dimensions remain outside the political sphere, resource scarcity will reinforce dominant models. All these processes, in which there is a major and growing divergence between social capacities and social needs, on one hand, and existing power and property relations, on the other, call for a new resource management regime that can release the existing wealth while moderating the pressure on ecosystems. This could be the function of common property.

All available evidence seems to contradict “The tragedy of the commons”,⁷³² which predicted that communal property would inevitably lead to the exhaustion of resources. In fact, we can easily argue that the commons that Hardin described were lacking the main component of the commons, namely active communal management, and thus his famous article is just a description of the rapid deterioration of the commons under the pressure of private property.⁷³³ Contrary to the predictions of Hardin, as private land extends globally, natural capital gets over exploited, with more waste being generated and ecosystems deteriorating faster. The neo-liberal discourses that serve as an ideological entrenchment for the dismantling of the commons name the efficiency of private property as an argument for privatising. As living counter examples of this trend, the few places where communal management of resources is still alive are islands of efficient management, satisfaction of needs and sustainability. These examples of efficient communal management show that private and public property may not be economically inevitable and that communal democratic management is a perfectly valid, if not superior, alternative to them.⁷³⁴ And all evidence shows that the different discourses that advocate privatisation lead to a faster destruction of resources and increased inequality of access.

Far from a nostalgic movement aiming to go back to the past, the drive towards common property may mark a different historical period that truly differentiates itself from the nihilism of financial hoarding and the dispossession that feeds the current financialised capitalism. It is important to realise that contemporary capitalism simply cannot lead us to social progress.

732. Hardin 1968.

733. The difference between an actively managed common and a system of unrestricted free access is a classical criticism of Hardin. Martinez-Alier 2005.

734. This is another of the basic ideas that underlie the works of Elinor Ostrom. Ostrom 2001.

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COMBATING POVERTY IN THE 21ST CENTURY

Gilda Farrell

Introduction: why are there poor people?

As we reach the end of this publication, there remain so many questions about poverty, a phenomenon which should have no place in democratic societies where “good governance” assumes that everyone is able to live in dignity. Good governance presupposes the appropriate understanding and management of the social and economic interrelations that give rise to inclusion or exclusion, justice or injustice. Accordingly, it should lead to the eradication, or at least the prevention of poverty. Viewing “poverty” as an isolated phenomenon (or worse still, a phenomenon dependent solely on the inability of poor people to manage their own lives) is a sign of poor governance: it compartmentalises social realities, dealing with them by means of administrative action rather than systemic approaches.

The answer to viewing the question in such terms has been to take a statistic-oriented approach to tackling poverty (or poor people). It is partly because of this that, despite the countless statistical calculations and reports which set out to identify, classify and categorise the poor, the results in terms of eradicating or at least reducing poverty have been minimal. Furthermore, the prevention of poverty, as called for in Article 30 of the revised European Social Charter, is seldom high on the political agenda.

Targeted policies ignore the causes of poverty and its relationship and interdependence, on multiple levels, with a concrete approach to securing well-being for all (and not merely “well-being for the greatest number”)⁷³⁵ in a given context. Such policies do not seek to modify the framework of relations in which poverty emerges, but rather to moderate its effects in the short term, leaving it to the labour market to stabilise situations in the long term.

Accordingly, by way of conclusion to this volume, it is essential to look at the role of measuring poverty, the links between measurements and public policies and then reflect on the ways and means of transforming

735. This utilitarian concept implies that it is enough to do as much as one can for the well-being of a part of the population, while at the same time having to accept the misfortune of the others – the majority – who have to miss out on well-being or happiness. See Galbraith 2011.

the fight against poverty into a political objective shared by society, from the angle of good governance.

Before looking at these points in greater detail, we must first consider a particular question: why are there poor people? What are the dynamics which explain why there are people in Europe who are suffering from poverty even though there is wealth, institutions, a framework for recognition of human rights and mechanisms for identifying/analysing the living conditions of individuals and social groups?

It is not easy to answer this question. However, let us consider some ideas. There is poverty in Europe because individuals or social groups:

- do not feature sufficiently in the distribution of wealth and benefits of social progress; worse still, in the current approach that attributes progress to the elite, these individuals are not viewed as necessary for the advancement of society, giving rise to the idea that it is enough to hand out crumbs in order to keep those who make no contribution to progress appeased and resigned;
- have, through a combination of factors, lost the practical ability to improve or deal adequately with their living conditions despite their own efforts and personal sacrifices;
- are subject to prejudice, stigmatisation and ground rules and power structures that seek to control them rather than promote their potential;
- do not have the ability to express their own interests in the public arena, by interacting with other social groups and, in this way, influence the choice of societal and policy priorities. Furthermore, as the conventional mechanisms for mediation (parties, trade unions, etc.) have been weakened or have refocused their attention on the middle classes and the elite, poor people remain confined to dialogue within their own universe, with people in the same situation, or are given promises that are not kept;
- are denied control of their own living environment, including the goods that are essential to human dignity: land when they wish to settle, a house or flat when they wish to be independent, water when they want to irrigate, a decent salary when they work, etc; and are obliged to live in polluted, ugly places, with no parks or recreational, cultural or relaxation facilities;
- bear the brunt of the negative consequences of the actions/decisions they have not themselves taken or been able to influence, and the

inaction of others, including by central government, the authorities, companies, etc.

- Lastly, those in Europe who live in societies that tolerate or are indifferent to justice are even poorer, since in such contexts, the weakest cannot even count on the principles of human solidarity.

These ideas show how important it is to understand the root causes of poverty so that the fight against it can become an achievable political goal. This is even more important given that the fulfilment of democratic promises is the fundamental pillar of social cohesion, and of confidence in institutions and in the future.

1. Measuring poverty

Despite the complexity of the interrelations referred to above that generate poverty, the question of reducing poverty is today addressed by means of measuring one of its consequences, namely the lack of sufficient income to satisfy one's own needs. Let us look more closely at the measurement(s) in question.

Based on economic thresholds (absolute and relative to income) or on subjective perception, one of the common features of the measurements generally used is to determine the extent to which an individual's or a family's consumption of goods and services can be or fails to be satisfied by their level of income. These definitions, which really relate to purchasing power, put the poor into categories by establishing a sort of sub-consumer class devoid of the material means to meet their own needs individually. The measurement of subjective poverty is determined by means of surveys where the questions are clearly geared to satisfaction through consumption.⁷³⁶ The other additional elements sometimes taken into account (in multidimensional approaches) most frequently relate to isolation or the lack of social ties, as characteristics of individuals and not as a result of the social dynamics of exclusion.

736. Subjective poverty measures an individual's capacity to make ends meet, or the amount necessary to live not in luxury but decently, without having to forego what is essential. The amount in question may be compared with the declared income to see whether or not the family has adequate resources. This concept shows the personal perception of a condition of ill-being or lack of consumption satisfaction relative to one's income. The idea of matching consumption to income presupposes that every individual or family has relatively well-defined consumption patterns. This type of measurement increases the socio-economic risk and specific vulnerability factors (difficulty in covering certain expenses, especially debt), along with other concerns (unemployment, lower pensions) and the effects of inflation.

In the member states of the European Union,⁷³⁷ poverty is defined in terms of family income (calculated on the basis of equivalence scales)⁷³⁸ equal to or less than 60% of the median income in the reference country.⁷³⁹ This relative poverty threshold (and definition) is a traditional barrier that raises a number of questions when it comes to implementing policies to address the root causes of poverty in order to eradicate it in the long term. Without claiming to be exhaustive, let us now examine some of these questions raised by this measurement.

- (a) It establishes no relationship between economic growth and the extent of poverty: if the income of the whole population increases in line with growth, the poverty rate remains identical.⁷⁴⁰ By defining poverty in terms of “income”, this measurement covers part of the inequalities but ignores the effect of possessing assets on the possibility of benefiting from increased wealth. According to J. Stiglitz,⁷⁴¹ 1% of the inhabitants of the United States receive roughly one quarter of the national income per year; if, however, we refer to wealth rather than income, then 1% is in control of 40%. Some 25 years ago, these figures were 12% of income and

737. In other member states of the Council of Europe, in particular the Russian Federation and other east European countries, absolute approaches to poverty are used. At present, the official method employed by the State Statistics Service (Rosstat) to determine the percentage of the population who are poor is based on comparison of average per capita monthly incomes with the subsistence level, that is with the cost of the basic consumer basket. The latter comprises the references of 11 groups of products, 10 groups of non-food commodities and seven groups of services for which charges are levied. The official evaluation of the poverty level is obtained from income distribution modelling using a normal-log method rather than from the results of household surveys. The procedure includes a method for adjusting average income levels on the basis of data on expenditure by the population, but income dispersion is measured on the basis of the results of surveys of household budgets. For further details on this question, see the article by Lydia Prokofieva in this volume.

738. Equivalence scales correspond to all the adjustment coefficients used to determine the poverty threshold of families having more than two members. In Italy, the poverty threshold of a family of four persons is equal to 1.63 times that of a family of two members, and for a family of six persons, it is 2.16 times that.

739. In the European Union, one threshold per country is used, calculated as a percentage of the median income. In most cases, the threshold used is 60%. Thresholds vary in line with each country's standard of living, and they are calculated in terms of purchasing power parity. For example, according to Eurostat in 2008, the United Kingdom threshold (€967) is six times higher than the Romanian threshold (€159). There are considerable disparities between the older European Union members and the new entrants.

740. French Senate 2008.

741. See Stiglitz 2011.

33% of wealth. In fact, the impact of growth on poverty depends on the level of concentration of assets. Stiglitz showed that the benefits of growth in recent decades – and even earlier – went to the wealthiest Americans. The concentration of wealth came about because of the absence of progressive taxation on capital gains and on the transfer of assets, and because of the low level of investment in public and common goods. This trend shows that growth rooted in a society in which there is a significant inequality of wealth has more an effect of taking wealth from the poorest and middle classes and transferring it to a much richer minority. Growth has accentuated inequalities at the expense of the majority (99% in the case of the United States) who have seen their standard of living moving further and further away from that enjoyed by the wealthiest. Where the concentration of wealth in certain countries of Europe becomes closer to that in the United States, we have to wonder about the value of this measurement in providing an understanding of the mechanisms whereby the poor can also benefit from the increase in wealth.

- (b) It fails to take into account the fall in the income of the middle classes (above the poverty threshold) that results in a reduction in the median income and may give the illusion that poverty is on the wane, whereas the living conditions of the poor remain unchanged.
- (c) It takes no account of the intensity of poverty and the increase in inequalities: inequalities may get bigger at both ends of the scale without affecting the median, which simply shows that 50% of people receive more and 50% receive less than a given income.
- (d) In addition to ignoring possession of assets, this measure also fails to take account of the differentiation in the composition of asset-related income. If we consider the seven different categories of income used in the German tax system (Table 1),⁷⁴² we see that there is a much greater inequality in the distribution of income from assets.⁷⁴³

742. The data on Germany were organized and analysed by Arne Scholz while he was working at the Council of Europe in 2010-2011.

743. The level of inequality is obtained by dividing median income by average income. The lower the value obtained, the higher the level of inequality.

Table 1. Different types of income and inequality levels, Germany, 2006

	% of total taxable income**	Average income (€)	Median income (€)	Inequality 2006 (median/average ratio)
Miscellaneous*	3.8%	7 615	6 595	0.87
Employment	76.3%	35 627	29 202	0.82
Capital assets	2.0%	6 351	1 888	0.30
Agriculture and forestry	0.8%	13 869	3 478	0.25
Real estate	0.8%	1 639	376	0.23
Business operations	10.3%	22 948	4 555	0.20
Self-employment	6.0%	31 786	5 484	0.17

Source: federal statistics; Destatis 2011: 6, 10.

* primarily pensions.

** excluding tax deductions and social security contributions.

To define the problem more precisely, it should be noted that in Germany, income from assets/capital (company profits, income from self-employment and from capital assets and real estate) increased in the national total, whereas income from employment fell between 1991 and 2007. This change is even more pronounced when we look at the distribution by deciles. In the upper decile, income from capital, more unequally distributed, increased. In 2007, the upper decile held 61.1% of total wealth (and the top 1% held 23%) whereas the seven lowest deciles held just 9%. This means that 40% of Germans have no or very few assets. Between 2002 and 2007, the assets of the upper decile increased whereas the other nine saw their assets decline in relation to the total: the Gini coefficient of wealth inequality rose from 0.777 in 2002 to 0.779 in 2007. Inequality in wealth distribution also increased. Between 1991 and 2007, after transfers, the income of the upper decile rose from 20.7% to 24% (of total revenue) while the income of the five lowest deciles fell – in the same period – from 32.9% to 30.6%. By ignoring income composition, measuring poverty by means of median income fails to result in policies that seek to ensure fair access to assets (housing, land, technology, etc.), or take into account the concept of the common good.

- e) In addition, this measurement takes no account of the role of inheritance. For example, in Germany in 2007, the lowest quintile inherited in fewer cases than the upper quintile (10.2% compared with 23%).

Table 2. Inheritance in Germany, 2007

Amount of inheritance (€)	Number of cases of inheritance by category	Total amount by category in (in thousands of €)	% of cases out of total	% of inheritance received in relation to total
< 10 000	44 765	1 116 588	24.18%	3.52%
10 000-50 000	69 012	4 042 333	37.28%	12.73%
50 000-100 000	28 018	3 441 607	15.13%	10.84%
100 000-200 000	20 491	4 363 390	11.07%	13.74%
200 000-300 000	8 230	2 667 771	4.45%	8.40%
300 000-500 000	6 370	2 977 588	3.44%	9.38%
500 000-2.5 million	6 938	6 917 512	3.75%	21.79%
2.5-5 million	784	2 047 382	0.42%	6.45%
> 5 million	516	4 171 680	0.28%	13.14%
Total	185 124	31 745 851		

Source: federal statistics, Destatis 2009b: 14.

Table 2 shows that in 2007, among the 185 000 people who received either an inheritance or a gift, 61% received less than €50 000, equivalent to 16.25% of the total inherited, whereas 0.7% received over €2.5 million, equivalent to 19.59%. Analysts (Destatis 2009b: 14;⁷⁴⁴ Rickens 2011) estimate that in Germany in the coming years, 1% of children will inherit a quarter of the wealth (today 1% of the population possesses 23% of the wealth). While inheritance tax has been reduced, most German children will be able to accrue assets solely via heavily taxed work.

- (f) It does not take into account the question of mobility by income. In Germany again, if we compare 1992-95 and 2004-07, we see that income mobility decreases at the extreme ends of the distribution. This means for the quintiles on the lowest income, it is becoming increasingly more difficult to improve their situation, whereas those on higher incomes are able to maintain their social position. (Sachverständigenrat 2009: 319-20).

744. For methodological reasons, the Federal Statistics Office provides information only for certain years, which makes it difficult to carry out a comparison over a longer period (Destatis 2009a, 7).

- (g) It does not take account of “negative income” or individual/family indebtedness, which can have a significant adverse impact on the ability of the poorest to improve their situation, especially when house prices are soaring out of control and the trend is to reduce investment in social housing. In Germany, national wealth (financial assets and real estate) doubled between 1991 and 2007, but indebtedness also increased. In France, according to INSEE in 2008 (see Table 3), “for households that have filed for overindebtedness the average monthly loan repayments correspond to 17% of their income; they generally have consumer credit currently being repaid (67% of the households in question) and they rent the accommodation in which they live. In contrast to home-owners, they have both loans to repay and high accommodation costs: 57% say that the costs relating to their main residence are burdensome (as opposed to 28% of all households); 60% have unpaid housing bills (rent, loans, taxes, electricity, gas, water, etc.), which may explain why they file for overindebtedness. Generally, these are households with a low standard of living, whose reference person is aged between 35 and 54. Some 31% of households that have filed for overindebtedness are poor (living below the poverty threshold) and 60% say that their income has fallen considerably over the previous 12 months”.⁷⁴⁵

Table 3. Reasons for overindebtedness and limited use of banking services, France 2008 (as a % of all households)

	All households		Households having limited use of banking services in 2008		Households having filed for overindebtedness	
	2007	2008	2007	2008	2007	2008
Unpaid bills (housing related)	9%	8%	15%	17%	52%	58%
Financial poverty	12%	12%	31%	32%	23%	29%

745. See www.insee.fr/fr/themes/document.asp?ref_id=ip1352 (in French only). Figures show that in 2008, indebted households in Q1 (first quintile) represented 24% of the total (6% for a housing loan, 17% for consumer credit, and 1% for both) whereas in Q5 (fifth quintile), 68% of households were in debt (36% for a housing loan, 13% for consumer credit and 19% for both).

Poverty in terms of living conditions	12%	12%	27%	28%	54%	65%
Significant drop in income (2007-08)		14%		14%		41%
Loss or reduction of employment*		51%		44%		62%
Retirement*		14%		11%		15%
Marriage/separation*		6%		7%		6%
Other		29%		38%		17%
Divorce/separation between 2007 and 2008		3%				

Source: INSEE, statistics on income and living conditions (SILC), 2008.

* main reason given for fall in income.

From the above: 17% of households having limited use of banking services in 2008 and 58% of households having filed for overindebtedness in the last 12 months had unpaid housing-related bills in 2008.

Data: households in metropolitan France included in the SILC panel data for 2007 and 2008.

- (h) Lastly, in terms of political action, the relationship between the 60% of the median and the thresholds laid down for entitlement to social benefits (social housing, free health care, etc.) is not clear. Is not any individual or family having an income lower than 60% of the median entitled to free services in order to ensure their fundamental rights?

What more can be said to conclude this short discussion on the limits of statistical measurements? Making the fight against poverty a political objective would mean, from the economic point of view, taking account of the role of assets in trends in sources of income and in the ability to benefit from the fruits of progress. The above examples show that in the supply of material wealth to be distributed, income strictly dependent on work plays a much less significant role than income derived from assets, which the poorest simply do not have. In addition, ignoring indebtedness is tantamount to denying one of the crucial aspects of the poverty spiral.

Seeking to combat poverty by means of social transfers, assistance and activation would appear to be a mammoth undertaking. On the one hand, assets play an ever-increasing role in access to income, occasioning net transfers from the poorest to the wealthiest, and there is a growing concentration of wealth, as we have seen in the United States. On the other, the differential in employment income is widening on account, amongst other things, of the extraordinary bonuses paid only in certain positions whereas other work (often insecure and part time) continues to be low paid.⁷⁴⁶

2. The political response to the measurement in terms of transfers, social welfare and activation

When personal/family income determines inclusion in the category of the “poor” or “at risk of poverty” (including, as we shall see in the more sophisticated measurements of “economic vulnerability” and “multiple deprivation”, used for example in Ireland), political action first of all comes into play to provide income support. Poverty rates are reviewed in line with the impact of social transfers,⁷⁴⁷ such as family benefit and services, unemployment, invalidity and sickness benefit, housing assistance and other forms of assistance (excluding expenditure on health, education – or transfers in kind – and pensions). Nonetheless, if we take a closer look, in certain countries retirement pensions have a major impact on the poverty rate (in Italy, for example, pensions bring the poverty rate down from 42% to 22% and the other social transfers bring the country’s poverty rate to 19%; in Sweden, pensions bring the poverty rate down from 45% to 29% and the other transfers make it possible to reduce it still further to 11%). The provision of social transfers in cash (excluding retirement pensions) is the responsibility of public agencies, in particular the social welfare services, the employment services and private organisations that are often state subsidised. Social welfare is a “residual” category designed for people whose access to their rights (or to dignified living conditions) is not guaranteed (or is less guaranteed) by their own income, social security and public investment.

746. See for example, in the United Kingdom: www.ft.com/intl/cms/s/0/e2e673ae-b22a-11e0-9d80-00144feabdc0.html#axzz1klO2Z0FM. The article by Brian Groom in the *Financial Times* of 19 July 2011 shows that, according to the Office for National Statistics, 40% of all bonuses paid in the UK went to 4% of employees in the City, while the value of the bonuses paid to workers in the education, health and social welfare sectors was negligible.

747. The impact is calculated primarily in relation to tax income, which does not take into consideration income from assets, thereby underestimating to an unknown extent the real poverty rate, see www.bip40.org.

Unlike the situation in past centuries, when assistance to the poor was a question of charity, transfers and social welfare in modern states are based on the recognition of fundamental rights (employment, minimum income, housing, food, legal address, health, justice) and are delivered by means of services funded by general taxation, or co-financed by citizens themselves. The fact that each of these rights is administered by a specialist agency often results in bureaucratic complications in defining each one's field of responsibility. Most of the action taken is conditional on three aspects: the selectivity of the needs to be covered, evidence of insufficient resources (the assistance is deemed to be residual) and participation in activation measures. The primary objective is to overcome difficulties, meet short-term needs and to make it easier, where necessary, for the beneficiaries to take part in inclusion mechanisms or, as is often underlined, to bring about the transition from social welfare dependence to occupational activity.

Assistance leads to the classification of users (the elderly, people with disabilities, people with mental disorders, the poor and victims of exclusion, drug addicts, minors and occasionally migrants) and to administrative typologies that determine the level of access to services. By means of the classifications and the conditions laid down, the public authorities place a *de facto* limit on expenditure, and the users or so-called "beneficiaries", particularly the poorest among them, can be victims of stigmatisation, humiliation, dependence, disinformation and strict monitoring mechanisms (physical presence, proof, reproduction of documents, etc.).

The conditional nature of social welfare begins with the selectivity of needs (which must fit into the aid predefined by the authorities concerned), and then continues with the requirement to prove insufficient resources (means test), in terms of both income and assets and, finally, in the case of the unemployed, participation in activation mechanisms.

These conditions appear to be independent of the predetermined poverty threshold. Their role is to govern entitlement to or disqualification from benefits; they test the applicant's capacity to satisfy all of the stipulated requirements, continue throughout the period of receipt and are regularly assessed to verify whether what is termed a "right" (although in reality it is a fairly controlled form of assistance) should be maintained or terminated.

These mechanisms are constantly being reformed, which tends to reinforce their role of control. To take just the example of France:

in the interests of "encouraging people to work", employment policies and more broadly tax and social policies have been refocused

to alternate the carrot and stick approach vis-à-vis the unemployed. The mechanisms to encourage those on statutory minimum income have been reformed on numerous occasions, the housing assistance schemes have been amended, the thresholds and duration of exemption from property tax have been reviewed, the earned-income tax credit, introduced in 2001, has been increased by successive governments, the minimum employment income made its appearance in 2004 and the statutory minimum income, which has not been upgraded for a very long time, has lost 25% of its value in comparison with the national minimum wage. ... The rights to unemployment benefit were curtailed in 2004 and 2006. ... At the same time, under the personalised action plan (PAP), the ASSEDIC (associations for employment in industry and commerce) can draw a matter to the attention of the *département* employment directorate "if it has doubts about whether a beneficiary is actively seeking work or is willing to attend a training course as set out in the PAP".⁷⁴⁸

The growing number of conditions reinforces dependence on social services, which is contrary to the official commitment to making the poor more autonomous. People are not given the opportunity to play a real role in their integration, they have to fill out forms and fulfil duties. Even when all the conditions have been satisfied, there is no sure guarantee that the application will be accepted. Those in poverty who are subject to these procedures may sometimes come up against practices that do not correspond to the law or find it impossible to assert their rights, as demonstrated by various examples provided by associations of people living in poverty:⁷⁴⁹

- (a) The right to work. Access to unemployment benefit, the statutory minimum income or other income support is conditional on willingness to enter the labour market, attend training courses or sign an unemployment assistance plan, and be available for interview, failing which such benefits will not be paid. These conditions take no account of the physical and psychological exhaustion of the person concerned, the difficulty in organising child care and the incompatibility of working hours, or employment-related expenses (transport, clothing). Employers ask for specific qualifications, but overlook experience acquired and the insecure nature of the work proposed

748. Cordonnier 2011: 35-6.

749. Collectif Associations partenaires du Rapport général sur la pauvreté 2010.

(imposed part-time working, contract of fixed duration, arduous work, etc.), bringing with it no financial security. Furthermore, providing proof of job-seeking in a context in which there is no work becomes a Herculean task.

- (b) The right to food. Food distribution (free of charge or at low cost) tends to be based on the availability of foodstuffs rather than in line with a policy to promote a healthy diet that meets specific needs.⁷⁵⁰ In some countries, there is an obligation to eat at subsidised canteens and monitoring of expenditure (budgetary guidance) is often seen by people in poverty as interference.
- (c) The right to health. It can happen that for just a few euros' difference (remuneration just very slightly above a specific amount), an individual is not entitled to free assistance. Furthermore, there is very little data on the impact on the lives of the poor of benefits falling outside the cover provided (glasses, dental care, etc.).
- (d) The right to a legal address.⁷⁵¹ This is essential in order to obtain (or maintain) an allowance, pension, etc. The "homeless" may be sent from one department to another and this can last a long time. The rights of the homeless do not disappear in theory, but in practice, such people no longer have access to them.

In conclusion, access to each "right" by people living in poverty is subject to procedures, conditions, appeals and implementation arrangements put in place by the authorities or judicial bodies. Is it a fight against poverty or against the poor?

Can we do better? Preventing and combating poverty requires at least three types of change if we are to shoulder our responsibilities in other ways: first, in terms of defining the people suffering the consequences of poverty; second, in terms of the methods adopted; and, third, in terms of the key concepts governing society. These changes are essential in order to make poverty a "common" problem, in other words, a political concern, which will lead to all social players acknowledging their responsibilities.

750. As an example, in a meeting of social workers in one European country, one referred to the repeated gratitude expressed by one mother for the basket of provisions she had been given, even though it did not contain the milk she had requested for her child.

751. See the activities of the NGO *Avvocato di strada* in Italy, website: www.avvocato.distrada.it.

3. Preventing and eradicating poverty through shared responsibility: method, concepts, definition

Let us now put forward a few ideas regarding the three changes mentioned above.

3.1. Changing the definition of poverty

When poverty is defined by measuring the ability to satisfy one's own needs through the availability of income, the political response, as we have seen, is one of assistance to supplement income or enable access to services, or to satisfy immediate needs. Such a definition gives no scope for reflection on the responsibilities that the whole of society shares for living together in equity and justice. Furthermore, it leaves no scope for acknowledging the deprivation of resources and capabilities which are essential for living in dignity in a given context, namely having fair access to the goods and services provided by society. Following the reasoning put forward by Martha Nussbaum, let us take a look at the different capabilities of which people are deprived (or "fundamental freedoms" such as being able to live a long life in good conditions, being able to engage in all forms of social interaction, being able to participate, criticise and influence decisions) and which are essential for living in dignity in the 21st century. For the individuals (social groups) who experience it, poverty can be characterised by the fact they:

- (life) have no prospect of the longest possible life in good conditions, are fearful for their own future, that of their children and their parents; are unable to satisfy their essential needs despite their sacrifices; are denied access to the goods that by nature are part of the common heritage of humanity;
- (health) despite the availability of health services, are deprived of essential care, or are given only low quality care after a long wait; are refused care or are stigmatised by the health care services;
- (bodily and psychological integrity) are afraid, feel threatened by the lack of food or poor quality of food, have no housing or are poorly housed, may be evicted from their housing or shelter, are unable to pay their rent and utility bills, mortgage repayments etc; furthermore, are obliged to get into debt in order to purchase what they need, are considered as taking advantage of social allowances and become just a number in an administrative file; are ashamed of themselves;

- (senses, imagination and thought) are deprived of opportunities for creativity or self-expression; their ideas and experiences are not taken into consideration in forging the conscience of society and what they have to say is denigrated; are constantly subject to material pressure or verbal or physical violence; are unable to stand back and take an objective view;
- (practical reason) are prevented from expressing criticism, judging the quality of services, interacting with different social groups to create references on the future of society, and on the transitions and transformations to be made; are unable to obtain the information they would like in order to exercise their rights;
- (affiliation) are subject to indifference and lack of interest, are not respected, are poorly treated or obliged to waste time waiting in queues in the offices of the public authorities or private organisations; are unable to access justice, including through legal means; are robbed of their culture or unable to express it or are considered as people who have no culture; remain outside the social networks of influence and contacts facilitating outreach and problem solving; their opinions and interests carry no weight in political life; live in run-down ghettos, in neighbourhoods without any regeneration policies; find it difficult to engage in economic, political, social and cultural exchanges;
- (relations with nature, other species and the public arena) live in polluted, noisy, unpleasant areas without any greenery or recreational facilities; their freedom to occupy public space is restricted and subject to regulations or attitudes;
- (play) have no access to leisure, the use of their own time for recreation and self-fulfilment is limited; their spare time is full of anxiety;
- (control over one's environment) are subject to exploitation and competition for poor quality and low-paid work, have little independence, as a result, amongst other things, of more limited access to higher education; are subject to constraints, inequality and discrimination in their access to rights and have to suffer the effects of decisions taken by others; are not encouraged to take initiatives or economic risks by the relevant authorities; are not masters of their own time and physical and social mobility and are often deprived of a second chance; despite their efforts they are unable to acquire a decent standard of living; they are not considered essential to progress.

3.2. Change of method

Bearing in mind the complexity of the economic, social, political and cultural relationships that generate poverty and the consequences that ensue, rather than “measuring” poverty, we should “evaluate” it in relation to the objective of social cohesion, reflected in the organisation of political processes to ensure the well-being of all.

Whereas measurement equates to a statistic, evaluation involves understanding the extent of inequalities in access to the different components of well-being. These components, both material and non-material, should be defined in relation to each context, thereby making the fight against poverty both practical and feasible, encouraging responsibilities in the broad sense, above and beyond those falling to the public authorities and NGOs that already have the task of implementing relief policies.

The approach to be followed should lead to the identification of extreme situations in the distribution of the components of the well-being of all among the populations that share “a heterogeneous area of coexistence” (a town, village, municipality, etc.).⁷⁵² For example, if in a town or city, part of the population is obliged to look for food in a rubbish bin whereas another, just a few metres away, can afford to buy organic food, we need to ask what society should be doing for those having to look in dustbins for their food. The fight against poverty should lead to processes to enable everyone gradually to have healthy food. In this case, as in so many others, by using a method of identifying social polarities, the fight against poverty means identifying specific progress objectives in the different spheres of well-being, taking as a reference the preferences and conditions of those who have a dignified quality of life in a given context in the 21st century.⁷⁵³

It is also essential to evaluate the public (or common) goods that are required for the well-being of all, in order to acknowledge that they are

752. A “heterogeneous” area of coexistence means a socially mixed area, one which is shared by people with different social conditions and roles. An example of a non-heterogeneous area would be a marginalised neighbourhood where all the residents are living in poverty, or a neighbourhood inhabited solely by people on high incomes.

753. The Council of Europe suggests that the definition of well-being that should serve as a reference in the fight against poverty should be worked out with the participation of citizens. For the last few years now, the Council of Europe has been developing a participative method to define the criterion of well-being with citizens; this same approach has been applied in different cities to engage citizens’ responsibility in fighting poverty by the identification of the causes of poverty and the social polarisation in each context. see: <https://spiral.cws.coe.int/tiki-index.php?page=Products>.

indispensable to the democratic renewal of life in the community and to invest in maintaining and developing them. Examples are: public areas, transport and public services accessible within a reasonable distance and without barriers, where everyone receives the same treatment, education and health care; architectural and historical heritage, water, landscapes and green spaces accessible to everyone, opportunities for recreation and creativity, etc. In this regard, it is essential to evaluate the impact of the public services necessary to maintain equity, such as education. For example, what is the cost for the municipality of the educational pathway followed by children from advantaged areas in relation to that of children in less advantaged areas, including in higher education? Furthermore, we need to hold a debate on access to public areas. Stations, for example, enable the homeless to feel “safe”,⁷⁵⁴ to have a minimum social life. By privatising these areas, by evicting the “undesirables”, we make the life of people even harder, whereas methods of inclusive management, based on the idea of the common good, could be put in place.⁷⁵⁵

The identification of shortcomings in both the availability and accessibility of these essential components of the well-being of all should lead to an awareness of phenomena of segregation (ghettoisation, separate schools, separate areas for consumption, leisure, public and artistic expression, opportunities, etc.).⁷⁵⁶ For example, if certain residents do not have access to a public park or a meeting place, if the environment around them is degraded and ugly, whereas others have access to such places and live in well cared-for environments, the choices made regarding the policy to combat poverty should, over time, lead to improving the availability and access of public areas and opportunities for expression and to decent, attractive and stimulating environments for everyone.

The assessment of the importance assigned to the civil, political, social and cultural rights of people living in poverty should also take account of the level and extent of the enjoyment of those rights by those who view their situation as satisfactory. For example, it is important to know whether in a representative democracy people without resources are able to express their views and aspirations and to express them with at least

754. The homeless feel constantly threatened when they are in isolated places where there are few people about.

755. Hope in Stations project and Doherty 2008.

756. Alberto Magnaghi suggests methods for identifying and reacquiring the physical and identity-related components that contribute to common well-being, which are necessary if one is to feel a stakeholder in an area, neighbourhood or town. See for example Magnaghi 2003.

some level of certainty of influencing key decisions; it is also important to understand whether the laws, policies and structures established over the years to facilitate the exercise of civil, political, social and cultural rights of everyone are funded appropriately in a lasting way or whether these are short-term promises, having no substance or stability when they concern the weakest.

It is very rare that enjoyment of the civil, political and cultural rights of those suffering the consequences of poverty becomes a true political concern. There are very few proposals linking the exercise of social rights to the enjoyment of civil, political and cultural rights and vice versa. Questions concerning the political participation rate of people in poverty, their influence in decision-making centres, their ability to assert their rights, to have access to fair justice, to avoid institutional abuse of authority, etc. should be the subject of debate. In this connection, the idea of fundamental rights as common goods should be explored, in other words “goods” that, because they are acknowledged as essential for the dignity of everyone, should not be subject to market laws and should be accessible regardless of a person’s own resources.

Next, evaluation should focus on the available public, private or shared resources that are no longer used and that could potentially contribute to the fight against poverty.

With regard to poverty, reference is always made to the dearth of available resources: public grants (which are reduced in times of crisis), the voluntary sector, donations. Nonetheless, every human community has resources, some of which may no longer be used, that could be reactivated or redeployed in order to make progress towards securing the dignity of everyone: land, houses, abandoned premises that could be made available in different forms of equitable access, knowledge and skills to be transmitted, jobs to share, risk capital to be invested in order to stimulate initiative, time to be made available, etc.⁷⁵⁷ For example, local authorities could help mediate between owners of land or houses and those needing to access property. There should be a public debate on existing resources that are no longer used or neglected at a time when parts of the population are denied access to such resources.

The evaluation should also focus on the objectives and effects of taxation. Consideration should be given to creating a tax shield to protect

757. This idea was expressed by the citizens of Covilhã in Portugal, during discussions on the establishment of a local charter of shared responsibilities in the fight against poverty.

those suffering the consequences of poverty.⁷⁵⁸ Tax arrangements should facilitate social transfers by avoiding bureaucratic processes. For example, below a certain level of income, VAT (a clearly regressive tax) could be paid back to people experiencing poverty.⁷⁵⁹ Many studies have in fact shown that households on a low income use all their income, have no scope for saving and pay a proportionately higher share of VAT. Whereas, in parallel, tax advantages are created for those capable of saving, that is the wealthier groups among European populations.⁷⁶⁰

The use of taxation mechanisms and a guaranteed income (as suggested in the articles in this volume) to give stability to the lives of the weakest should take precedence over a benefits-centred approach, which even though it affords the opportunity for human contact and exchanges, can prove to be humiliating.

These few ideas, certainly incomplete, provide food for thought on the margin of manoeuvre to engage in a genuine fight against poverty, in which the role of states, in addition to ensuring social transfers, equity in access to public services (education, health care, culture, etc.) would extend to the activation of the frameworks, conditions, structures and mechanisms to prevent and eradicate poverty in the long term. States would facilitate the harnessing of knowledge, resources and arrangements for the joint responsibility of social stakeholders, while at the same time addressing the question of the differential of power.

3.3. Changes in the understanding and content of concepts

Preventing and combating poverty would require revisiting four essential concepts that are central to life in society in the 21st century. These are:

- interdependence
- efficiency
- priority
- transformation

758. In this regard, see Hessel and Morin 2011: 45.

759. In France, for example, VAT accounted for 8.1% of the available income of households in the first decile (the poorest), 5.9% for the fifth and just 3.4% for the tenth (the wealthiest). This can be explained by the fact that the former do not save whereas the savings rate of the latter stands at 40%. See Gadrey 2005.

760. For example, in France, the savings capacity of the first six deciles is very low or non-existent. With regard to tax reform, Landais, Piketty and Saez 2011.

Interdependence governs the life of the 21st century. How can we create the conditions to acknowledge the interdependence between rich and poor, how can we address the question of the sharing of risks and responsibilities, taking into account the differential of power and influence? Rather than aid and charity, reciprocity, recognition and co-operation should be part of the definition of interdependence in order to reduce the power to exclude, to avoid situations where the decisions taken by some people have dramatic consequences on the lives of others. We must develop the idea of mutual benefit, of wealth common to all, and give greater visibility to the impact of the decisions taken by the authorities on behalf of the majority. Interdependence should encourage new agreements on the use of and access to resources, horizontal and multi-stakeholder management and decision-making arrangements, in which the weakest are included.⁷⁶¹

Understanding efficiency has been distorted by equating it to reducing the cost of (some people's) work. In order to combat poverty, efficiency means avoiding all waste, enabling the democratisation of the management of existing resources (hierarchical forms of management become wasteful). Efficiency in the prevention and eradication of poverty means creating lasting connections and relationships between the different departments, actions and institutions (including those responsible for implementing poverty relief policies),⁷⁶² capitalising on everyone's experience and knowledge and striking a balance between the satisfaction of individual needs, collective interests and common goods. The costs of exclusion should be subject to an efficiency analysis.

Prioritising is essential for a cohesive society. Since the priority is to satisfy the needs of the weakest, the democratic exercise of choice should focus on strengthening the ability to create and maintain public and common goods. In the fight against poverty, the clarification of priorities should lead to an avoidance of defensive democracy by those who, in order to protect their own rights, refuse to share the benefits of social well-being, particularly with the poor, migrants and new arrivals. Prioritisation presupposes that rather than pursuing benefits in the short term, public/citizen investments should seek to ensure equitable and long-term access to the rights of everyone. The state could take on the role of social investor, in addition to the role of state as a provider of

761. See in this connection, the European Charter of Shared Social Responsibilities.

762. Cf. the experience of multi-stakeholder social contracts.

assistance, as suggested by Hessel and Morin;⁷⁶³ citizens investing in common goods could change the perception of belonging and living together.

Transformation is also essential in a cohesive and dynamic society. A society that has concentrated powers, no social mobility, stifling any new form of justice and equity is a stagnant society, without hope. In the fight against poverty, transformation presupposes promoting the views of the weakest in the forums of democratic deliberation.⁷⁶⁴ It also presupposes mutual learning and inclusive intelligence, intelligence to reject exclusion and marginalisation and to understand the meaning of mutual interest, collective affiliation and reciprocity. Transformation is essential to create institutions and forms of coexistence that satisfy the need to develop/protect human dignity, ensure equitable access to the public goods and common goods that are essential to well-being and the fair management of conflicts and to give life to processes of learning about the constraints and advantages for everyone.

In order to fit these four concepts into the prevention of and fight against poverty, we need to have a vision of common goods. There are many people thinking about this in Europe,⁷⁶⁵ and in order to tie in such discussions with the issues of interest to us, it is essential to recognise, promote and preserve common goods, independently of the direct and immediate benefit that each person individually can derive from them.

Conclusions: in order to live in dignity of the 21st century, it is necessary to share responsibility for the future of everyone

Before writing this contribution, I looked with some feeling of anxiety at my files since the year 2000. There were so many documents on measuring poverty, the characteristics of the poor, the political commitments to combat poverty, the categorisation of the poor: poor children, the

763. Hessel and Morin 2011: 36.

764. As an experiment, deliberative processes with the involvement of citizens that have different statuses and roles, including those who suffer from the consequences of poverty, have been carried out in European cities with the aim to broaden the specific knowledge on inequalities and engage various stakeholders in the fight against poverty. The results of this work will be published by the Council of Europe in 2012, as part of a methodological guide on living in dignity in the 21st century.

765. For example, see in this volume the texts by Louise Haagh and Yannick Vanderborght.

elderly living in poverty, single-parent families, poor migrants, etc. The analysis of poverty is indeed a long story. Why are there still poor people when there has been so much investment in paper, ink and expertise? It is because the poor are a residual category. Since no conflict of interest is involved, the failure of policies for the poor (or the lack of any serious evaluation of those policies) is of no consequence.

By way of conclusion, let me put forward a few ideas. The problem is not one of ensuring the physical existence of poor people (even though there is no legal apparatus or framework to attribute responsibility when someone dies of hunger or cold in the street), but the very existence of society, without which no one can hope to live in dignity. Instead of that, people think that political, economic and other decisions can be taken without listening to the voice of the weakest, that we can do without certain people. What is the future for societies that waste human capital, where the capacities of one part of the population are denied or rendered futile and where the children of the poor are condemned to be poor? This is a question of true democracy to which we must be able to provide an answer: in order to live in the 21st century, it has become imperative to share responsibility for the future of everyone.

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We are at a point in history where economic inequalities are more widespread each day. The situation of extreme poverty experienced by the majority of the populations in developing countries ("Third World" countries) often coincides with an absence of democracy and the violation of the most fundamental rights. But in so-called "First World" countries a non-negligible proportion of inhabitants also live in impoverished conditions (albeit mainly "relative" poverty) and are denied their rights. The European situation, which this publication aims to analyse, is painful: the entire continent is afflicted by increasing poverty and consequently by the erosion of living conditions and social conflicts.

The economic and financial crisis has resulted in the loss of millions of jobs, and created job insecurity for many still working. Economic insecurity raises social tensions, aggravating xenophobia, for instance. Yet the economic and financial crisis could present a good opportunity to rethink the economic and social system as a whole. Indeed, poverty in modern societies has never been purely a question of lack of wealth.

It is therefore urgent today to devise a new discourse on poverty. In pursuit of this goal, the Council of Europe is following up this publication in the framework of the project "Human rights of people experiencing poverty", co-financed by the European Commission.



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