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**PUTTING ECONOMIC, SOCIAL AND CULTURAL RIGHTS BACK
ON THE AGENDA OF THE UNITED STATES***

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PUTTING ECONOMIC, SOCIAL AND CULTURAL RIGHTS BACK ON THE AGENDA OF THE UNITED STATES

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Abstract

For almost three decades the United States has played a central role in discouraging and sometimes blocking the development of the concept of economic, social and cultural rights, particularly in the context of the international human right regime. US opposition has not, however, followed a single unchanging course and this article traces the historical evolution of the relevant policy from 1945 through 2008. It concludes by advocating a policy of constructive engagement in relation to these rights on the part of the new administration.

Putting Economic, Social, and Cultural Rights Back on the Agenda of the United States

Philip Alston

The internationally recognized catalogue of human rights consists of two broad categories. First and, in the view of most, foremost, are the more traditional civil and political rights. Because their ancestry is most readily traceable to two eighteenth-century landmarks—the United States Bill of Rights and the French Declaration of the Rights of Man and the Citizen—their importance is almost never challenged in the United States. Second and, according to the United Nations, of equal importance, are the economic, social, and cultural rights that the sociologist T. H. Marshall famously referred to as the major contribution of the twentieth century to the evolution of human rights.¹ Because most of these have no counterpart in the U.S. Bill of Rights, they are inevitably considered more exotic within the United States.

Despite the UN's insistence that all human rights are "indivisible and interdependent and interrelated,"² the reality is that civil and political rights (CPR) have dominated the international agenda while economic, social, and cultural rights (ESCR) have been accorded second-class status. This is not to say that ESCR have not been the subjects of long and noisy rhetorical campaigns championed in particular by developing countries, or that the UN and other actors have not mounted a significant number of initiatives designed to promote and enhance the status of these rights. The bottom line remains, however, that ESCR continue to enjoy an inferior status and that endeavors to enhance that status have often been blocked.

While the background to this analysis is the largely negative role played by the United States in the post-World War II era in relation to economic and social rights,³ its principal focus is forward-looking. The inauguration of a new president in January 2009 will provide an important opportunity to revisit existing policies and fashion new approaches that are more consonant both with the U.S. national interest and with the fundamental principles of human rights.

It is a fact, albeit an uncomfortable one for many non-American observers and proponents of international human rights law, that the United States has been the single

¹ T. H. Marshall, "Citizenship and Social Class," reprinted in *Citizenship and Social Class*, eds. T. H. Marshall and T. Bottomore (London: Pluto Press, 1992), p. 10.

² The language comes from the declaration adopted by the Second World Conference on Human Rights, held in Vienna in 1993. See United Nations, "The Vienna Declaration and Programme of Action," in *Report of the World Conference on Human Rights: Report of the Secretary-General*, UN doc. A/CONF.157/24, part I (New York: October 13, 1993), para. 5.

³ Cultural rights are largely absent from the analysis that follows. They have not been accorded significant attention by the relevant UN bodies that deal with ESCR as a whole nor have they been an important element in U.S. policy in this domain. Cultural rights are generally pursued through the lens of CPR rather than ESCR and are raised most often in the context of major violations of the CPR of those who would assert their cultural rights.

most important force in shaping the international human rights regime. This is by no means the same as arguing that it has been the most positive or constructive force; only that its influence has made a very big difference for better or worse in relation to many of the more important initiatives.

This impact is important to note in the present context because the United States has played a central role in discouraging and sometimes blocking the development of the concept of ESCR. This opposition has not, however, followed a single unchanging course. As a result, one of the principal challenges in terms of exploring future policy options for the United States in this domain is to identify the precise nature of recent or current U.S. policy. This quest is not assisted by the fact that this policy has been subjected to little sustained attention from human rights groups, scholars, or policymakers.

Economic, Social, and Cultural Rights before Bush

President Franklin Delano Roosevelt is often credited with having first launched the specific proposals that led to the inclusion of ESCR in the Universal Declaration of Human Rights.⁴ In developing the notion of freedom from want into a proposed “second Bill of Rights” for the United States, Roosevelt urged the recognition of “the right of every family to a decent home; the right to adequate medical care and the opportunity to achieve and enjoy good health; the right to adequate protection from the economic fears of old age, sickness, accident, and unemployment; [and] the right to a good education.”⁵

President Harry Truman supported including ESCR in the Universal Declaration and it was under his auspices that Eleanor Roosevelt participated in the early and crucial phases of the drafting of the International Covenant on Economic, Social, and Cultural Rights (ICESCR). President Dwight Eisenhower, under the impetus of the debates surrounding the Bricker amendment, repudiated both the draft covenant and the draft of the International Covenant on Civil and Political Rights (ICCPR) but neither he nor other opponents of the UN’s human rights aspirations expressed special animus toward the covenant that dealt with ESCR.⁶

The administration of President Lyndon Johnson not only participated in the resumed drafting of the ICESCR but also voted in favor of its adoption in 1966 by the UN General Assembly. And the same administration supported the inclusion of economic and social

⁴ Cass R. Sunstein, *The Second Bill of Rights: FDR’s Unfinished Revolution and Why We Need it More than Ever* (New York: Basic Books, 2004).

⁵ “Eleventh Annual Message to Congress (January 11, 1944)” in *The State of the Union Messages of the Presidents, 1790–1966*, vol. 3, ed. Fred L. Israel (New York: Chelsea House, 1967), p. 2881. See generally Sunstein, *The Second Bill of Rights*.

⁶ The Bricker Amendment—after Republican Ohio Senator John Bricker— would have constitutionally restricted the ability of the president to negotiate and the Senate to ratify treaties with foreign powers. The amendment, which was designed to ensure that international law did not regulate or supersede domestic law, was defeated by a single vote in the Senate.

rights provisions in the International Convention on the Elimination of All Forms of Racial Discrimination.

In 1975, President Gerald Ford signed the Helsinki Accords, which proclaimed that the participating states would “promote and encourage the effective exercise of civil, political, economic, social, cultural and other rights and freedoms all of which derive from the inherent dignity of the human person and are essential for his free and full development.”⁷ By agreeing to a follow-up declaration, adopted in Vienna in January 1989 by the Conference on Security and Cooperation in Europe, the United States joined other countries in recognizing that the promotion of ESCR “is of paramount importance for human dignity and for the attainment of the legitimate aspirations of every individual.”⁸ Accordingly the United States said it would guarantee the “effective exercise” of economic, social, and cultural rights and to consider acceding to the ICESCR.⁹

The administration of President Jimmy Carter embraced ESCR as a central part of its human rights policy; Carter signed the ICESCR in 1978 and transmitted to the Senate for its advice and consent. Although hearings were held which included coverage of the ICESCR, the Senate took no action in relation to it.

One of the first acts of President Ronald Reagan’s administration in the human rights field was to signal a clear and straightforward policy of opposition to economic and social rights.¹⁰ The earliest and best known statement of policy was included in the introduction written in 1982 by the new assistant secretary of state for human rights and humanitarian affairs, Elliott Abrams, and published in the State Department’s annual review of human rights practices around the world.¹¹ This report explicitly removed the treatment of economic and social rights, which had previously been included in the reports. Abrams subsequently offered several justifications for the policy change. The most significant was that the inclusion of these rights blurred “the vital core of human rights.” The distinction he drew was between economic and social rights, which he portrayed as “goods [which] the government ought to encourage over the long term,”¹² and civil and political rights, which are “rights [that] the government has an absolute duty to respect at any time.”¹³ The second reason given was that economic and social rights

⁷ Conference on Security and Co-Operation in Europe, “Final Act” (Helsinki, August 1, 1975), para 1(a) VII <http://www.osce.org/documents/mcs/1975/08/4044_en.pdf>.

⁸ Conference on Security and Co-Operation in Europe, “Held on the Basis of the Provisions of the Final Act Relating to the Follow-up to the Conference,” from *Concluding Document of the Vienna Meeting of Representatives of the Participating States of the Conference on Security and Co-operation in Europe* International Legal Materials 28 (1989), p. 534, para. 14 (1989).

⁹ *Ibid.*, p. 533, para. 13(a) and (b).

¹⁰ For a detailed and systematic review of the policies of the Reagan administration in relation to ESCR, see Philip Alston, “U.S. Ratification of the Covenant on Economic, Social and Cultural Rights: The Need for An Entirely New Strategy,” *American Journal of International Law* 84 (1990), p. 365.

¹¹ U.S. Department of State, “Introduction,” State Department Country Reports on Human Rights Practices for 1981 (1982).

¹² Secretary Abrams was apparently unmindful of John Maynard Keynes’s admonition that in the long term we are all dead.

¹³ Hearing Before the House Subcommittee on Human Rights and International Organizations, “Review of State Department Country Reports on Human Rights Practices for 1981,” April 28, 1982, 97th Cong., 2d Sess., pp. 13–17.

are easily exploited for propaganda purposes by unscrupulous governments whose real aim is to avoid respect for civil and political rights. Because such abuses have occurred, the more prudent path was seen to be to deny the very existence of economic and social rights.

The administration of George H. W. Bush was considerably less ideologically engaged, at least overtly, in its opposition to these rights but, when it advanced (and achieved) the ratification of the Covenant on Civil and Political Rights in 1992, no thought was given to advocating concurrent action on the “other” covenant.

The administration of President Bill Clinton initially proclaimed an inclusive approach that included a commitment to support ESCR in international fora and to promote U.S. ratification of the covenant. As a result, one of its first major international acts was to participate in the consensus emerging from the 1993 Vienna World Conference on Human Rights, which proclaimed that “all human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis.”¹⁴ Fairly soon thereafter, however, the Clinton administration began to distance itself from its original embrace of ESCR and adopted a number of policies effectively designed to marginalize them.¹⁵

It reluctantly signed on to the Convention on the Rights of the Child (CRC) but the fact that this treaty contained a number of provisions giving effect to ESCR was often cited as a reason for not proceeding with ratification. This was rather ironic since most of the relevant formulations had in fact been significantly watered down at the insistence of the Reagan administration during the process of drafting the CRC in the 1980s. At the end of the day, the Clinton policy was an uneasy combination of affirming its general support, at least in principle, for ESCR¹⁶ while creating considerable difficulties in relation to most efforts under-taken in UN fora to make progress in relation to specific rights. It also made no attempt to promote ratification of the ICESCR, insisting only that its priority was to achieve ratification of the Convention on the Elimination of All Forms of Discrimination against Women.

The Bush Administration and Economic and Social Rights

¹⁴ See Marshall, “Citizenship and Social Class.”

¹⁵ See generally Philip Alston, “The U.S. and the Right to Housing: A Funny Thing Happened on the Way to the Forum,” *European Human Rights Law Review* 1 (1996), p. 120.

¹⁶ In a 1998 press conference, Ambassador George Moose, U.S. permanent representative to the UN in Geneva, affirmed that “the United States supports the whole principle of economic, social, and cultural rights. It’s an integral part of the Universal Declaration of Human Rights. We supported the provisions on economic and social and cultural rights of the Vienna Declaration, as well as the provisions in that declaration regarding the right to development. We believe strongly that economic and social and cultural development is a fundamental part of creating international peace and stability.” United Nations, “Press Conference on the Results of the 54th Session of the Commission on Human Rights,” Transcript (April 24, 1998).

The administration of President George W. Bush has not diverged fundamentally from the policies towards ESCR that its predecessors had developed since 1982. “Goods” such as food, housing, education, and water are acknowledged to be desirable components of an adequate standard of living but they do not constitute “human rights” in the full sense of the term. Thus there can be no claim to their realization as a matter of right on the part of those who are being denied those “goods” even if the denial threatens the individuals’ survival. Despite this, the United States regularly invokes the Universal Declaration (with its clear recognition of ESCR) in relation to other states.¹⁷

Because the administration has not adopted any comprehensive policy statements relating to economic and social rights, its views must be discerned from the various speeches and interventions made by U.S. officials in the context of debates and votes within the relevant international forums. The most important of these has been the UN Commission on Human Rights up until 2006, and subsequently the Human Rights Council. Close inspection reveals that the Bush administration has varied its attitude toward economic and social rights significantly in the course of its first seven years.

At least four separate concerns relating to economic, social, and cultural rights motivate the United States position, although they are usually expressed together as though they were part of a seamless whole. They are :1) a belief in the chronological priority of civil and political rights; 2) an objection to the terminological equivalence of the different sets of rights; 3) a concern over what might be termed the “internationalization of responsibility” for failures to meet economic and social rights; and 4) a concern about the justiciability of economic and social rights. Each of these warrants more detailed consideration.

Chronological Priority

In a general statement of human rights policy issued in 2004, Richard Williamson, U.S. ambassador to the UN Commission on Human Rights, noted that “the keys to prosperity are . . . created by economic and political freedom.” This emphasis on economic freedom rather than economic rights is justified on the grounds that “nations that share a commitment to protecting human rights and fundamental freedoms and to guaranteeing political and economic freedom will be able to unleash the potential of their people and assure their future prosperity.” Williamson went on to assert that “there is no doubt that

¹⁷ See for example this statement in regard to the Universal Declaration of Human Rights, which makes no distinction between the civil and political rights and the economic and social rights components of the declaration:

These reports describe the performance of governments in putting into practice their international commitments on human rights. These fundamental rights, reflected in the United Nations Universal Declaration of Human Rights, constitute what President Bush calls the “non-negotiable demands of human dignity.” As Secretary Rice has said, the full promise of the UN Universal Declaration cannot be realized overnight, but it is urgent work that cannot be delayed.

Bureau of Democracy, Human Rights, and Labor, “Country Reports on Human Rights Practices: 2006” (March 6, 2007) <<http://www.state.gov/g/drl/rls/hrrpt/2006/78717.htm>>.

societies that respect civil and political rights, practice democracy, and respect the rule of law can do a better job of allowing individuals to fully realize the needs of their citizens [sic], including education, health care, and the eradication of hunger and poverty.”¹⁸

Later in the same session of the commission, a different speaker used very similar language, suggesting that this was a clear “message” that the United States was keen to present as the essence of its policy.¹⁹ Marc Leland, the U.S. delegate to the commission, noted that “There is no doubt that societies that respect civil and political rights, practice democracy, and respect the rule of law can do a better job of allowing individuals to fully realize their economic, social, and cultural rights.”

There is, however, a revealing difference between the statements by Williamson and Leland. Williamson spoke in terms only of meeting citizens “needs” while the statement by Leland treated those needs as being the equivalent of economic and social “rights.”

The most noteworthy common element of the two statements involves the use of the phrase “societies [that respect civil and political rights] ... can do a better job” rather than the assertion that they “do.” “Can” would appear to concede that a strong performance in civil and political rights does not automatically result in the satisfaction of the other set of rights. This is significant because the assertion of an automatic linkage or flow-on effect for economic rights once civil and political rights are respected would justify a focus only on one set of rights. But if it is conceded that a positive flow-on effect is neither inevitable nor sufficient, then it remains necessary to address economic and social rights specifically and not only as mere corollaries of efforts to ensure the operation of a democratic political system.

Rejection of Terminological Equivalence

One of the most important elements in the United States position is that, while the United Nations refers to all rights as human rights and does not contest abstract assertions of their indivisibility, the United States insists that the two sets of rights are fundamentally different from one another. Thus, for example, in a statement on the right to food, the United States emphasized that it must be seen as “a goal or aspiration to be realized progressively” and that it translates into “the opportunity to secure food; it is not a guaranteed entitlement.”²⁰ Or as the U.S. representative to the 2003 meeting of the UN Commission on Human Rights expressed the difference, economic and social rights “are

¹⁸ Remarks of Ambassador Richard Williamson, “Address to CHR, Item 17 Statement: Promotion and Protection of Human Rights,” at the 60th Session of the United Nations Commission on Human Rights, April 16, 2004 <<http://www.humanrights-usa.net/statements/0416Item17.htm>>.

¹⁹ Remarks by Public Delegate Marc Leland, “Item 10: Economic, Social and Cultural Rights,” at the 60th Session of the United Nations Commission on Human Rights, March 29, 2004 <<http://www.humanrights-usa.net/statements/0329Leland.htm>>.

²⁰ Statement by Jeffrey de Laurentis, “Explanation of Vote on the Resolution on the Right to Food” at the 60th Session of the United Nations Commission on Human Rights, April 16, 2004 <<http://www.humanrights-usa.net/statements/0421Food.htm>>.

aspirational; [civil and political rights] inalienable and immediately enforce-able.”²¹ As Marc Leland noted:

One of the elements which distinguishes the two sets of rights concerns the nature of the obligation, especially in terms of resources. Thus, [i]t is not an excuse to say that economic difficulties prevent a country from respecting civil and political rights. On the other hand, economic, social and cultural rights are to be progressively realized. While they require government action, they are not an immediate entitlement to a citizen²²

Ironically, it is the first part of this position that is the least sustainable. Economic realities affect the realization of civil and political rights dramatically. A lack of resources does not make it necessary or excusable to torture but it does make it much more difficult to fund some of the measures taken to train police in other law enforcement techniques, to deter the use of torture, to monitor behavior, and to punish effectively. On the other hand the proposition that economic and social rights do not necessarily give rise to immediate entitlements is certainly correct in many, but not all, contexts. That leaves open, however, the question of what the nature of the resulting entitlement is. The United States sought to clarify that issue in 2004 when it proposed a generic preambular paragraph to be included in all commission resolutions dealing with ESCR.

The proposal was prompted by a concern that “language frequently used in these resolutions...raises important sovereignty and legal concerns about the legal entitlements of such rights.” The draft paragraph read as follows:

Bearing in mind that sovereign States must determine from time to time through open, participatory debate and democratic processes the combination of policies and programs they consider will be most effective in progressively realizing the achievement of economic, social and cultural rights and objectives; that each State must determine in accord with its own system the role of various institutions in its society in carrying out such policies and programs; and that each State must define in a manner consistent with its own legal system the administrative and legal recourse available to those seeking review of the implementation of those policies and programs.²³

This proposal is quite revealing. It is premised first of all upon an assertion of the sovereign power of governments to determine their own policies. In the abstract this appears true but in fact if governments opt for approaches that are inconsistent with

²¹ Statement of the United States of America delivered by Richard Wall, “Item 10: Economic, Social and Cultural Rights” at the 59th Session of the United Nations Commission on Human Rights, April 7, 2003 <<http://www.us-mission.ch/humanrights/statements/0407Item10.htm>>.

²² Leland, “Item 10: Economic, Social and Cultural Rights.”

²³ Ibid.

human rights obligations, they are considered to be in violation of those obligations, considerations of sovereignty notwithstanding. Caveats regarding sovereignty have never been put forward in the commission context in relation to civil and political rights because the reality is that a commitment to international human rights standards is in fact seen as providing some form of constraint upon the prerogatives of governments.

Aside from this dimension, the statement contains three propositions: 1) economic and social rights policies are matters to be decided by the democratic process; 2) institutional arrangements in relation to economic and social rights are matters for the state to decide for itself; and 3) the provision of legal and other forms of recourse are also matters for each state's own determination.

Each of these propositions is defensible, at least in formalistic terms. The problem again is to determine what constraints exist on a state's freedom of action as a consequence of the recognition of a specific set of human rights. Is a state free, for example, to decide that laissez-faire policies are the best option for promoting economic and social rights, that majority decisions in the Congress or parliament are the only appropriate institutional arrangements, and that the courts shall have no role whatsoever? If it is, then how does the designation of something as a right (a right to education, say) make any difference by comparison with the status of any other policy preference? How are we to interpret the right to a remedy in cases where human rights have been violated? Where is the element of accountability that is the foundation stone of twenty-first century human rights law? Finally, would any of these propositions be acceptable if proposed in relation to civil and political rights?

It seems that the U.S. position of insisting that economic and social rights are merely "aspirational" is to be taken literally. These rights are not to be considered rights in any moral, legal, or administrative sense since they do not give rise to any specific obligations in those spheres. Rather, they are matters to which individuals might aspire, if they so wish. And the role of a government is to ensure that no one stands in the way—in the sense of positively obstructing—the opportunity to seek those rights,

But this interpretation is not only incompatible with the formal approach long agreed to within the UN; it also distorts the concept of a human right beyond recognition and plays into the hands of those who argue that economic and social rights are not in fact human rights at all because they have no clear content and because no tangible obligation attaches to them. It amounts to a rejection or repudiation of the approach reflected in the UDHR and the ICESCR, both of which give clear content to rights, as well as to the positions advanced by the UN Committee on ESCR, which have not only been consistently endorsed by the Commission on Human Rights but also have been extensively cited and applied by constitutional courts in a wide range of countries.

The Bush administration restated its position in September 2004 when it agreed to endorse the "Voluntary Guidelines to Support Member States' Efforts to Achieve the Progressive Realization of the Right to Adequate Food in the Context of National Food Security" that had been adopted by the Food and Agriculture Organization. In doing so, it appended a formal statement to the guidelines, noting that the United States did not thereby:

recognize any change in the current state of conventional or customary international law regarding rights related to food. The United States believes that the attainment of any “right to adequate food” or “fundamental freedom to be free from hunger” is a goal or aspiration to be realized progressively that does not give rise to any international obligations nor diminish the responsibilities of national governments toward their citizens.²⁴

The “Internationalization of Responsibility”

Another recurring theme in the Bush administration’s attitude to economic and social rights is that they “will not be achieved through shifting blame from a country’s government to the international community.”²⁵ In other words such rights do “not give rise to international obligations . . . , nor [do they] diminish the responsibilities of national governments toward their citizens.”²⁶ The concern is that an obligation to international cooperation could be interpreted as requiring wealthy countries to support poor countries that are unable from their own resources to satisfy the economic and social rights of their own citizens.

Three sources of an international obligation to cooperate are usually cited. They are the general undertaking given in the UN Charter; Article 28 of the Universal Declaration of Human Rights, which provides that “everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized;” and the reference in Article 2(1) of the ICESCR to states parties’ obligation “to take steps, individually and through international assistance and co-operation.” Concern that the obligation to cooperate would be extremely costly for a wealthy country such as the United States has been around at least since the U.S. Senate Committee on Foreign Relations held hearings into the ICESCR in 1979. Conservative advocate Phyllis Schlafly asserted at those hearing that, if ratified, the covenant “would obligate us to take steps by all measures, including legislation, to distribute food all over the world and to finance a rising standard of living” for other nations.²⁷

Despite these concerns, it must be emphasized that no UN body has yet accepted the proposition that any given country is obligated to provide any specific assistance to any other country. The nature of any obligation posited as emerging from these provisions is, at best, a generic one that attaches to the international community.

²⁴ Intergovernmental Working Group for the Elaboration of a Set of Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security, FAO Doc. CL 127/10-Sup.1, Annex 2 (Rome, September 23, 2004) .

²⁵ Ibid.

²⁶ De Laurentis, “Explanation of Vote on the resolution on the Right to Food.”

²⁷ Phyllis Schlafly, “Power Grab Through Executive Orders,” *The Phyllis Schlafly Report*, May 1999 <<http://www.eagleforum.org/psr/1999/may99/psrmay99.html>>.

The Justiciability of Economic and Social Rights

To say that a right is justiciable is to posit that it raises issues that can be, and appropriately are, dealt with by the courts. The claim that ESCR are justiciable does not imply that every issue arising in relation to the implementation of these rights is best determined by a court nor even that individuals should be able to bring a legal claim in respect of every single dimension of a particular right. Nonetheless, as the Committee on Economic, Social and Cultural Rights has observed, “While the general approach of each legal system needs to be taken into account, there is no Covenant right which could not, in the great majority of systems, be considered to possess at least some significant justiciable dimensions.”²⁸

In 2003 the United States decided to throw down a strong challenge to this notion. “By agreeing to [justiciability],” the U.S. delegate to the UN Commission on Human Rights said:

You—as governments—agree to provide housing for the millions who claim their present housing is not “adequate.” You agree to provide food for each and every one of your citizens. And, even where not possible, you agree to provide the best available medical care for each and every citizen. If you fail to provide these “rights,” you agree to provide monetary compensation. A claim that these “rights” are justiciable is a false promise because it cannot be fulfilled.²⁹

The following year the U.S. representative returned to the same issue by insisting that the progressive realization of ESCR “will not be achieved through...efforts to make these rights the basis for an individual legal cause of action against a government by persons who differ with that government’s policy approaches or priorities.”³⁰

Both of these statements betray a failure to understand the concept of justiciability or the ways in which it has been applied by a variety of constitutional courts, including those following a common law system similar to that of the United States. The latter comment is off-target because, where a government chooses not to make a right justiciable, any court challenge taken by those who oppose the government’s policy will need to be launched under another concern, such as equal protection, due process, or anti-discrimination. Where the government has opted to make the right in question justiciable, the claim will generally not be brought by those opposed to the government’s policies in general but by those who feel that they personally have been wrongly excluded from the reach of a particular program.

The former statement also entirely misrepresents the consequences of justiciability. If we take the example of the application of the justiciability clauses of the South African

²⁸ Committee on Economic, Social and Cultural Rights, “General Comment No. 9: Domestic application of the Covenant,” UN Doc. E/1999/22 (1998), Annex IV, para. 10.

²⁹ Statement delivered by Wall, “Item 10: Economic, Social and Cultural Rights.”

³⁰ Leland, “Item 10: Economic, Social and Cultural Rights.”

constitution by the Constitutional Court, there is no sustainable claim that can be made by the millions of citizens who consider their housing inadequate. The claims that have been entertained are those that demonstrate that government policies have irrationally or that they unreasonably failed to address an issue of urgency and magnitude and the absence of resources can be an entirely adequate justification for the inability to resolve a particular problem.

The same applies in relation to the right to food. The Indian Supreme Court has had the issue under consideration for several years in the context of public interest litigation brought in 2001 by the People's Union for Civil Liberties (Rajasthan). In this case the court has devised a range of affordable measures that governments have subsequently implemented.³¹ Nevertheless, a number of right-to-food proponents are not necessarily in favor of full justiciability for the right. As Jean Drèze has noted, many of the issues that arise in relation to the right to food ultimately belong "to the domain of democratic politics rather than of legal enforcement." Moreover, in his view "even if the right to food is deemed fully justiciable, it will remain necessary to spell out the constructive interventions through which this right is to be protected."³²

The limited nature of claims to the justiciability of ESCR has been underscored in a general comment on the subject by the UN Committee on Economic, Social and Cultural Rights:

It is sometimes suggested that matters involving the allocation of resources should be left to the political authorities rather than the courts. While the respective competences of the different branches of government must be respected, it is appropriate to acknowledge that courts are generally already involved in a considerable range of matters which have important resource implications. The adoption of a rigid classification of economic, social and cultural rights which puts them, by definition, beyond the reach of the courts would thus be arbitrary and incompatible with the principle that the two sets of human rights are indivisible and interdependent. It would also drastically curtail the capacity of the courts to protect the rights of the most vulnerable and disadvantaged groups in society.³³

The United States has also invoked the justiciability argument as one of the main grounds for its opposition to the drafting of an optional protocol to the ICESCR by which states that have ratified the covenant (of which the United States is not one) would have the option of also ratifying a protocol that would provide for a complaints procedure. Under such procedures, which are now common in the human rights field, individual citizens or groups within the country concerned could allege violations of the rights recognized in

³¹ Writ Petition (Civil) 196 of 2001, *PUCL vs. Union of India and others*; for further details, see <www.righttofood.com>.

³² Jean Drèze, "Democracy and the Right to Food," in *Human Rights and Development: Towards Mutual Reinforcement*, eds. Philip Alston and Mary Robinson (New York: Oxford University Press, 2005).

³³ UN Committee on Economic, Social, and Cultural Rights Nineteenth Session, "General Comment No. 9: The Domestic Application of the Covenant," (Geneva, November 16—December 4, 1998).

the covenant. Perhaps the most puzzling element in seeking to understand U.S. opposition to this initiative is that comparable optional procedures that permit matters relating to ESCR to be contested already exist in relation to both the International Convention on the Elimination of All Forms of Racial Discrimination and the International Convention on the Elimination of All Forms of Discrimination against Women.

The U.S. government's official position with regard to the protocol conflated several different elements, including the question of justiciability—which by definition applies to judicial application of these rights (whereas the committee does not exercise judicial functions)—the technical expertise available to the committee, and the type of powers to be given to, and functions to be performed by the committee.³⁴ Nevertheless, the basic thrust of argument is that ESCR are simply not susceptible, in any respect, of effective treatment by the courts.³⁵

Curiously, this argument flies in the face of very extensive practice in the United States in relation to a range of matters that would fall within the purview of an optional protocol. They include issues surrounding the right to education, going well beyond questions of discriminatory practices and rights to exemption for religious or other reasons (including home-schooling). Indeed, they embrace the most wide-ranging dimension of economic and social rights review, which is the question of whether the state has provided sufficient resources to ensure that each child covered by a given school system is able to receive an adequate education.³⁶

One of the most enduring laments of those who oppose economic and social rights is that the introduction of rights beyond those contained in, for example, the U.S. Bill of Rights, dilutes or devalues the catalogue of “real” rights and constitute a distraction from the main challenge that is defined solely in terms of civil and political rights. This position was expressed in surprisingly blunt terms by the U.S. ambassador in his address in 2003 to the UN Commission on Human Rights:

³⁴ The official statement argued that:

As a substantive matter, the idea of elaborating an optional protocol modeled on other conventions is ill-advised as economic, social and cultural rights are not justiciable in the same way as other rights. The Committee cannot be expected to have the capacity or experience to review the most fundamental resource allocation decisions of governments. These decisions, which are based on exceptionally complex facts and projections, involve everything from macroeconomic employment and monetary policy at the national level to the social welfare decisions of local governments. The Committee will be ill-equipped to review these decisions, leaving it with almost limitless discretion to opine on the essential resource and regulatory decisions of nation-states.

Statement delivered by Velia De Pirro, Political Officer, U.S. Mission, “U.S. Statement on the Optional Protocol to the ICESCR” to the Human Rights Council, June 27, 2006. <<http://geneva.usmission.gov/Press2006/0627U.S.StatementToICESCR.html>>.

³⁵ Ibid. In fairness it should be noted that U.S. opposition to the proposed optional protocol was also based on procedural grounds, including the fact that the working group responsible for drafting the protocol had not been able to reach consensus (in good measure due to U.S. opposition), and that the group had requested its chairperson to prepare a draft of the protocol rather than putting an initial draft together on the basis of diplomatic inputs.

³⁶ See generally Michael A. Rebell, “Poverty, ‘Meaningful’ Educational Opportunity, and the Necessary Role of the Courts,” *North Carolina Law Review* 85 (2007), p. 1467; and Goodwin Liu, “Education, Equality, and National Citizenship,” *Yale Law Journal* 116 (2006), p. 330.

The future effectiveness of the Commission . . . requires prioritization: in other words, a return to the time-honored basics such as freedom of speech, thought, assembly, worship, and the press; the equal protection of the law; and of governments limited in power, subject to the will of the people expressed through competitive, regularly-held elections.³⁷

One implication seemed to be that the commission should not devote any of its time and resources to other issues, perhaps including the rights of women, children, minorities, indigenous peoples, and other groups. But the main targets were economic and social rights, as was made clear when the ambassador went on to express concern about the “recent proliferation of special rapporteurs who dissipate the Commission’s limited resources, and whose mandates stray from the Commission’s core mission.”³⁸

In the end, no single clear and comprehensive policy statement out-lines the Bush administration’s approach to economic and social rights. On the basis of the various elements reviewed above we can, however, discern the key elements of the policy. First, the United States has moved from some early statements denying that ESR are rights to a stance that acknowledges them as rights but proceeds to distinguish them in fundamental ways from civil and political rights. Second, the United States has been consistently negative in debates on economic and social rights and has used characterizations of the quality and status of those rights that no other countries feel constrained to make and that rarely garner support from any others. Third, this underlying negativism has resulted in long and intense struggles within the UN over any initiative designed to improve the status of economic and social rights, illustrated by efforts to promote the right to health and to establish an optional protocol to the ICESCR.

None of these considerations have, however, prevented the United States from manifesting formal support for economic and social rights. This indicates that the administration is confident that it has succeeded in defining economic and social rights in such a way that they are now considered harmless and toothless, at least for all practical purposes. Under such circumstances there is no reason not to seek the high ground and engage in rhetorical support. This policy reached its high point in President Bush’s address to the UN General Assembly in September 2007. He chose to devote almost his entire speech to human rights, based on the fact that the drafting of the Universal Declaration on Human Rights had begun 60 years earlier (an anniversary that no other government saw fit to comment upon). His speech was built around what he termed the

³⁷ Statement by Ambassador Kevin E. Moley, Permanent Representative to the United Nations in Geneva, “Item 4: The Report of the High Commissioner for Human Rights,” at the 59th Session of the United Nations Commission on Human Rights, March 21, 2003 <<http://www.usmission.ch/humanrights/statements/0321Moley%20Item%204.html>>.

³⁸ Ibid. There are currently 28 different thematic mandates, the first of which was set up in 1980. Not until 1998 was the first economic and social rights based mandate established in the form of an independent expert on human rights and absolute poverty and a special rapporteur on the right to education. Subsequently, special rapporteurs were appointed to deal with human rights and foreign debt (2000), the right to food (2000), the right to housing (2000), and the right to health (2002). The U.S. government voted against the creation of most of these mandates.

four great “missions of the United Nations”: “liberating people from tyranny and violence”; “liberating people from hunger and disease”; “liberating people from the chains of illiteracy and ignorance”; and “liberating people from poverty and despair.”³⁹

The Domestic Side of the Debate

Before considering how the Bush administration’s policy towards ESR could be changed by a new administration, it is essential to acknowledge one key dimension of that policy which is all too rarely addressed. It concerns the domestic policy constraints on support for economic and social rights in international fora. Many of the issues human rights proponents would characterize as economic and social rights are debated domestically by politicians and commentators within the United States not as human rights issues but in terms of the appropriate role played by the state in social policy matters. In stark terms Democrats tend to support an active role in various domains while Republicans advocate only minimalist state involvement in matters of private welfare.

In the lead-up to the 2008 presidential elections, the contrast has been most clearly played out in relation to health care. Most Democratic Party contenders have advocated plans to achieve comprehensive health insurance coverage. President Bush on the other hand issued only the fourth veto of his presidency in October 2007 when he rejected the State Children’s Health Insurance Program (SCHIP) on the grounds that it was a move toward a socialist-style health care system, involved excessive state intervention, undermined private insurance schemes, and cost too much.⁴⁰

It might reasonably be expected that this intense and important clash of ideological perspectives would be enough to prevent any possibility that the United States might adopt a more open and progressive stance on economic and social rights at the international level. The irony, however, is that the United States has succeeded in defining economic and social rights in such minimalist terms that the domestic policy stance of the Bush administration has not prevented it from proclaiming that its domestic policies are in fact fully in line with the requirements that would flow from the recognition of economic and social rights. Thus, for example, the U.S. representative told the UN Commission on Human Rights in 2003:

Let there be no misconception about the position of the United States on this issue. As a nation, we are committed to providing the conditions for individuals to achieve economic, social and cultural well-being, both at home and abroad. Our citizens enjoy access to free public education. Those Americans unable to find employment have access to state and federal welfare programs. Health care is

³⁹ “President Bush Addresses the United Nations General Assembly,” WhiteHouse Press Release, Sept. 25, 2007 <<http://www.whitehouse.gov/news/releases/2007/09/print/20070925-4.html>>.

⁴⁰ See generally ““Why Veto a Popular Health-Care Bill?” *The Economist*, October 4, 2007. <http://www.economist.com/daily/news/displaystory.cfm?story_id_9906843>.

provided through state and federal programs for individuals with no means to pay for it themselves. And, in the United States, an active charity community, both religious and secular, provides myriad social services covering a broad range of needs for neglected communities.⁴¹

The resulting situation is somewhat paradoxical. A Republican administration is prepared to assert that U.S. domestic policies are consistent with respect for economic and social rights and President Bush takes the extraordinary step of describing the principal missions of the UN in economic and social rights terms. Yet Democrats are promoting concrete policy initiatives that are economic and social rights-based but are keen not to characterize those initiatives in terms of human rights for fear of provoking additional resistance.

The purpose of this analysis is not to seek to resolve the inevitable inconsistencies and contradictions that permeate domestic policy in this area. In terms of human rights, the legal and policy question that arises is how far should domestic policy considerations restrain international policy options. In other words, if the Bush administration's policies are seen to be inconsistent with what would be required by accepted inter-national understandings of economic and social rights or if a new administration's policies are determinedly cast in terms which eschew the label of economic and social rights, can the United States in good faith nonetheless support these rights internationally?

It is clear that for a variety of reasons it will be a long time, if ever, before the United States adopts a set of social policies explicitly premised upon recognition of individual economic and social rights for the purposes of the domestic legal system. But the crucial point here is that all too few nations have taken steps such as according constitutional recognition to specific economic and social rights, putting comprehensive legislative frameworks in place, or making many of the rights fully justiciable. That has not prevented them from supporting and facilitating the work of the UN in the field of these rights and it has not prevented some 155 states from ratifying the ICESCR.

This is not to suggest that the United States can or should fraudulently embrace the notion of economic and social rights internationally while pursuing inconsistent policies domestically. But there is considerable space for a state to determine for itself the ways in which it will seek to give effect to economic and social rights. While ratification of the ICESCR is a step that should not lightly be undertaken and certainly not until there is a basic preparedness to address systematically and openly all of the obligations addressed in the covenant, it is important not to confuse the issue of ratification with that of international support for initiatives designed to promote respect for economic and social rights.

The Costs and Consequences of U.S. Opposition to Economic and Social Rights

⁴¹ Statement delivered by Wall, "Item 10: Economic, Social and Cultural Rights."

For the past 25 years, a succession of U.S. administrations has tended to assume that there were no costs attached to their rejection of, or reticence about, economic and social rights.

Because of its aversion to codifying these rights, the United States has insisted in recent years that the human rights dimensions of efforts to tackle poverty or to improve the plight of women should consist essentially of a focus on the establishing democracy and ensuring the rights of the relevant groups to participate fairly in the domestic political process. The problematic nature of this approach is well illustrated in remarks made by the under secretary of state for democracy and global affairs in April 2007 in launching a report on democracy:

In many countries that we reported on, ensuring women have equal access to the legal system is a fundamental part of our efforts. In Africa we supported initiatives to combat sexual violence and abuse against women and improved the ability of governments to investigate and prosecute these cases. And political participation is key. In Egypt a U.S.-funded program helped thousands of women obtain national identity and voter registration cards, allowing them to participate fully in the civic and political life of their country for the first time.⁴²

Yet there is strong evidence to show that the empowerment of women must go beyond the formalities of access to legal and political institutions. The Grameen Bank experiment in microfinancing, for example, was all about strengthening the economic roles of women, thereby empowering them across a wide range of other contexts.⁴³ A recent systematic global study of the gender gap between men and women focuses on four categories: economic participation and opportunity; educational attainment; health and survival; and political empowerment. The strong assumption is that political empowerment on its own will not serve to close the gender gap.⁴⁴ While programs designed to empower educated female elites are increasingly common, and are often supported by the U.S. government,⁴⁵ it is now widely recognized that some dimension of comprehensive economic and social empowerment, such as that implicit in the fulfillment of women's basic economic and social rights, is a necessary complement to political

⁴² Statement by Paula Dobriansky, Undersecretary of State for Democracy and Global Affairs, "On-The-Record Briefing on the Release of the Annual Report, 'Supporting Human Rights and Democracy: The U.S. Record – 2006,'" April 5, 2007 <<http://www.state.gov/g/drl/rls/rm/2007/82655.htm>>.

⁴³ For one of the early studies arguing in favor of a critical link of this type, see Sidney Ruth Schuler and Syed M. Hashemi, "Credit Programs, Women's Empowerment, and Contraceptive use in Rural Bangladesh," *Studies in Family Planning* 25 (1994), p. 65.

⁴⁴ Ricardo Hausmann, Laura D. Tyson, and Saadia Zahidi, *The Global Gender Gap Report 2006* (Geneva: World Economic Forum, 2006) <<http://www.weforum.org/pdf/gendergap/report2006.pdf>>.

⁴⁵ See, e.g., Ylli Bajraktari, "Economic Empowerment of Women in Iraq: The Way Forward" (Washington, D.C.: United States Institute of Peace, May 2006) <http://www.usip.org/pbs/usipeace/briefings/2006/0510_women_iraq

.html>: "Participants noted that most projects conducted so far have been focused mainly on empowering educated women, and not on supporting the larger number of women who are illiterate, handicapped, or marginalized by their location in remote areas."

rights-based initiatives. As long as the substance of economic and social rights remains off the U.S. agenda, however, there will be resistance to moving in this direction.

A statement by the U.S. representative to the Third Committee of the UN General Assembly in November 2006 on the issue of extreme poverty and human rights could be interpreted as representing a slight change in perspective: “Sound economic policies unleash the enterprise and creativity necessary for development. With the world’s help, and the right policies, citizens in the developing world can and should live under governments that deliver basic services and protect basic rights. There is no better way to address extreme poverty.”⁴⁶ While the reference to “governments that deliver basic services and protect basic rights” could reasonably be taken as a recognition of the need to ensure basic economic and social rights, there is no indication in subsequent statements of such a change in policy.

Another cost of the artificial exclusion of economic and social rights from the overall human rights equation is that in at least some situations involving gross violations, the most egregious aspects of the abuse are overlooked. Two examples. The first concerns North Korea, where problems of hunger and starvation and denial of medical care have been particularly acute. The U.S. statement to the Human Rights Council blocked out those dimensions and focused solely on civil and political rights issues: The North Korean “regime controls many aspects of its citizens’ lives, denying freedom of speech, religion, the press, assembly, and association. An estimated 150,000 to 200,000 persons are believed to be held in detention camps in remote areas, many for political reasons.”⁴⁷

Similarly in an impassioned attack on the human rights situation in Zimbabwe, the U.S. representative focused exclusively on political developments and related government-sponsored violence to the exclusion of the dramatic plight of Zimbabweans in relation to virtually all economic and social rights.⁴⁸

A related consequence of America’s failure to engage substantively with economic and social rights is its inability to challenge those nations that profess to place a higher priority on economic and social rights than on civil and political rights. Thus, in lamenting the architecture of the new UN Human Rights Council, Deputy Assistant Secretary of State Mark Lagon suggested that the high number of developing country members was unfortunate “because many African and Asian countries tend to favor economic, social, and cultural rights over civil and political rights.”⁴⁹ In reality, the majority of those countries are far more deeply attached to the rhetoric of ESCR than to

⁴⁶ Explanation of position by Miriam K. Hughes, Deputy U.S. Representative to the Economic and Social Council, on Human Rights and Extreme Poverty (A/C.3/61/L.21), November 21, 2006 <http://www.usunnewyork.usmission.gov/press_releases/20061121_354.html>.

⁴⁷ Statement delivered by Velia De Pirro, U.S. Mission Political Counselor, “Report of the Special Rapporteur on the Situation of Human Rights in the Democratic People’s Republic of Korea,” at the 4th Session of the UN Human Rights Council, March 23, 2007 <<http://geneva.usmission.gov/Press2007/0323DPRK.html>>.

⁴⁸ Statement by U.S. Ambassador Warren W. Tichenor on Zimbabwe, March 29, 2007 <<http://geneva.usmission.gov/Press2007/0329StatementonZimbabwe.htm>>.

⁴⁹ Testimony of Deputy Assistant Secretary Mark Lagon, Bureau of International Organization Affairs, Department of State, at a hearing on “UN Human Rights Council: Reform or Regression,” House International Relations Committee Sub-Committee on Africa, Global Human Rights and International Operations, September 6, 2006 <<http://usmission.ch/Press2006/0906LagonTestimonyHRC.html>>.

the practice and the United States would be ideally placed to make an issue of this hypocrisy if it were not for the fact that it cannot bring itself to dignify any sustained discussion of those issues. The result is that a country such as China can get great mileage out of the priority that it claims to accord to ESCR without being called to account for the fact that it does remarkably little by way of treating issues such as housing, food, and health care in terms of rights.

The Bush administration's misgivings about economic and social rights, notwithstanding its selective rhetorical embrace of them, have had a major negative impact on its attitude toward key international treaties other than ICESCR. The most notable casualties are the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women. One of the administration's first international statements, in February 2001, focused on the dangers of the Convention of the Rights of the Child because of its inclusion of ESCR:

The Convention on the Rights of the Child may be a positive tool in promoting child welfare for those countries that have adopted it. But we believe the text goes too far when it asserts entitlements based on the economic, social and cultural rights contained in the Convention and other instruments. The human rights-based approach, while laudable in its objectives, poses significant problems.⁵⁰

The Bush administration has continued to object systematically to the inclusion of references to the Convention on the Rights of the Child in the annual resolutions of the General Assembly and the Human Rights Council on children's rights. The administration's line has changed slightly, however, so that the objection to ESCR is no longer quite as explicit but is instead phrased in terms of respect for states' rights. Thus, for example, in explaining the U.S. "no" vote on the annual resolution dealing with children's rights in the General Assembly in 2006, the U.S. representative stated:

The U.S. has repeatedly made clear that the Convention raises a number of concerns. In particular, the Convention conflicts with the authority of parents, and the provisions of state and local law in the United States. Many of the activities covered by the Convention in areas such as education, health and criminal justice are primarily the responsibility of state and local governments in the U.S.⁵¹

⁵⁰ "Bush to UN—U.S. is Pro-Family: A Report from the Front," Report from the United Nations, February 1, 2001 [_http://www.hslda.org/docs/nche/000010/200104240.asp_](http://www.hslda.org/docs/nche/000010/200104240.asp), quoting the official statement by Michael Southwick, assistant secretary of state for international organization affairs. This statement and most others of this vintage have been removed from the official website of the U.S. mission to the UN, where one would have expected to find them.

⁵¹ Explanation from Ambassador Richard T. Miller, U.S. Representative to the UN Economic and Social Council, on UN Doc. 63 A/C.3/61/L.16: Rights of the Child, "Explanation of Vote Before the Vote," November 22, 2006 <http://www.usunnewyork.usmission.gov/press_releases/20061122_407.html>.

While the problems raised by the Bush administration and other actors in relation to the child rights convention go well beyond the economic and social rights dimension,⁵² it is clear that they remain an important stumbling block.

Policies for a New Administration

What should the approach of a new administration be with regard to economic and social rights? The following are the main components of any such policy:

- State clearly that the United States supports the indivisibility of the two sets of rights;⁵³
- Affirm that it will be supportive of efforts within the UN to promote respect for economic and social rights;
- Amend the policy that defines economic and social rights as being fundamentally different in nature from civil and political rights so as to recognize not that the two sets of rights are identical but that substantive obligations do in fact attach to the recognition of economic and social rights;
- Drop the position that insists that there is no freestanding right to housing and that it is merely a component of the right to an adequate standard of living;
- Engage seriously and constructively with the debates on the right to health and the right to food;

⁵² There have been various attempts to analyze the arguments invoked to justify U.S. nonratification of the Convention on the Rights of the Child. See, for example, Howard Davidson and Cynthia Price Cohen, eds., *Children's Rights*

in America: UN Convention on the Rights of the Child Compared with United States Law (Chicago: American Bar Association Center on Children and the Law, 1990); B. Hafen and J. Hafen, "Abandoning Children to Their Autonomy: The UN Convention on the Rights of the Child," *Harvard International Law Journal* 37 (1996); A. D. Renteln, "United States Ratification of Human Rights Treaties: Who's Afraid of the CRC?," *ILSA Journal of International and Comparative Law* 3 (1997); Susan Kilbourne, "The Convention on the Rights of the Child: Federalism Issues for the United States," *Georgia Journal of Fighting Poverty* 5 (1998), p. 327; Susan Kilbourne, "Placing the Convention on the Rights of the Child in an American Context," *Human Rights* (Spring 1999), p. 27; Andre R. Imbrogno, "Corporal Punishment in America's Public Schools and the U.N. Convention on the Rights of The Child: A Case for Nonratification," *Journal of Law and Education* 29 (2000), p. 125; and American Bar Association Project on the U.N. Convention on the Rights of the Child, "Briefing Paper: State Education Law Compared to the UN Convention on the Rights of the Child."

⁵³ Inspiration in this respect can be drawn from Franklin Roosevelt's statement about the relationship among different rights: We have come to a clear realization of the fact that true individual freedom cannot exist without economic security and independence. "Necessitous men are not free men." People who are out of a job are the stuff of which dictatorships are made. In our day these economic truths have become accepted as self-evident. We have accepted, so to speak, a second bill of rights, under which a new basis of security and prosperity can be established for all—regardless of station, race, or creed. "Eleventh Annual Message to Congress" in Israel, *The State of the Union Messages of the Presidents*.

- Focus systematically on the economic and social rights components of the debates over the right to development;
- Engage actively with those civil society actors, such as Amnesty International and Human Rights Watch, which have now developed serious programs designed to promote and defend economic and social rights.

These guidelines for the new administration rest on a series of conclusions drawn from the preceding discussion in this essay. First, rather than representing a fundamental break with the past, the authentic embrace of economic and social rights would involve reverting to a policy that was more or less accepted by a succession of American administrations from Truman through Carter. Second, given the superficial or rhetorical support for these rights that characterizes current U.S. policy, the required change in policy in order to take them seriously at the international level is not nearly as dramatic as it might seem.

Third, the adoption of a more affirmative and supportive attitude to international efforts to promote economic and social rights need not await a dramatic change in domestic policy. The United States would be acting consistently with the approach adopted by many other free market economies that firmly espouse and support economic and social rights internationally but have not implemented formal structures for the promotion of these rights per se at the domestic level. And fourth, there are powerful instrumentalist arguments in favor of constructive engagement by the United States in this rights debate. It will give the United States the credibility needed to expose the hypocrisy of those states that pretend to prioritize economic and social rights while in fact ignoring both sets of rights. It will make the domestic debate over ratification of the Convention on the Elimination of All Forms of Discrimination Against Women and the Convention on the Rights of the Child much more manageable. Moreover, it will enable the United States to promote a more rounded and compelling notion of human rights both in terms of its own approaches to issues such as democracy and women's rights and in exposing the shortcomings of chronic human rights violators whose assaults affect economic and social rights every bit as much as civil and political rights.