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Ratification of the International Covenant on Economic, Social, and Cultural Rights: No Longer the Whimsical Desire of the West in the Cycles of Economic Meltdown

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Abstract: This work is a reexamination of the historic economic rights debate in light of two major changes in American public policy. The first change considers the effect of the debate by the passing of the Affordable Care Act (Obamacare). The second policy change considers how the debate should include the effects of the economic bailout brought about by the TARP program. These changes are explained first, as government interventions made in response to widespread suffering and medical cost bankruptcies due to the United States' healthcare system having no guaranteed right to healthcare. The second change focuses on the necessity of a national economic bailout conducted in response to a "Great Recession," as an historic proof that government must intervene when severe economic downturns threaten to collapse the national economy. These interventions support the passage of economic rights and show how the opposition to the passage of economic rights have been based on faulty moral argumentation and reasoning. The essay concludes with a continued call for the passage of the International Covenant on Economic, Social, and Cultural Rights.

Keywords: human rights; economic rights; interdependency of rights; Affordable Care Act; International Covenant on Economic; Social and Cultural Rights; political ethics



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1. Introduction

The United States of America is one of the richest countries in the world. Despite its wealth, it is content to tolerate widespread poverty and suffering.¹ This essay is not a full explanation as to why this state of affairs persists. That explanation, if there is one, would require extensive research, historical analysis and much soul searching. Our focus here is to explain how one public policy change that might address this situation remains unused—namely, the instantiation of economic rights. Our explanation examines the United States' selective and partial embrace of human rights—its embrace of civil and political rights and its disdain for economic rights.

Our sources are the historical record of the US embrace of the Covenant of Civil and Political Rights and its rejection of the International Covenant on Economic, Social, and Cultural Rights (the ICESCR, hereinafter referred to as the Covenant). The disciplines used for this analysis are legal, social, cultural, theological, and ethical. Further, this essay draws extensively on my previously published work, primarily but not exclusively upon *God Bless the Child that's Got its Own: The Economic Rights Debate* (Trimiew 1997). While that text closely addresses the public and academic discussions of the struggle of the Carter administration's attempt to instantiate the Covenant, we now need a reexamination of that debate. Why? An updating of the literature and changes in public policy demand a reexamination. In particular, two historical changes are of note and change our understanding of economic rights. The first is the adoption of Obamacare, or the Affordable Care Act. The second is the passage of TARP, the historic massive bailout of the economy to avoid the collapse of the US economy circa 2006–2008. These changes require attention since our current way of life is still susceptible to near-total collapse.

Thus, this work seeks to restate my previous arguments; show why my suggested policy approach is still cogent; and show why the arguments opposing the implementation of the Covenant were wrong then, remain wrong now, and yet still fail to compel public policy implementation. This essay is therefore an updating and recasting of my previous work. The continued toleration of widespread poverty and suffering that could be addressed and ameliorated by the ratification of the ICESCR and has yet to be addressed constitutes a deep moral stain on the United States of America.

My thesis is relatively simple, namely that the refusal to take on the responsibilities for the implementation of the Covenant and the reasons given for refusing were mistaken and were, in fact, reductionist understandings of the responsibilities of government. Further, the same arguments that forbade the government from using enormous sums of tax money then and in the future to save US citizens as might be required by the ICESCR were in fact applied to help rescue the managerial capitalist system including its primary economic actors—the banks, major industries, and insurance systems—by TARP. This bailout was conducted instead of such funds being applied directly to pay for services or goods for the well-being of US citizens, the common people for whom the Covenant was drafted to protect. The TARP policy showed an implicit preference for attending to the needs of corporations prior to addressing the needs of the poor.

Using the taxes of all citizens, including the poor, to save huge corporations was not seen then, and is not now seen as an example of creeping socialism. Nor should it have been so regarded. This policy was better than doing nothing but much worse than establishing the Covenant.

The ICESCR is one of the two principal covenants that evolved out of the Universal Declaration of Human Rights. The other, the Covenant on Civil and Political Rights, has long since been signed and ratified by the United States. The ICESCR was signed by President Jimmy Carter in 1977 but has never been ratified by the United States. The failure to ratify this Covenant means that the United States is not a treaty party to the Covenant and is not, thereby, legally bound by its provisions as are other signatories who have ratified it. Our failure to ratify the Covenant puts us in the company of some interesting bedfellows such as South Africa, Saudi Arabia, and Cuba.

Be that as it may, states that are parties to this Covenant and consider themselves bound by it are our closest allies—countries such as Great Britain, France, Germany, Japan, and Canada. All in all, there are 160 full partners, indeed, most of the world. The United States stands nearly alone as a center of non-ratification. Why is this so? This essay explains why.

First is a brief presentation of the historic economic rights debate. This section explores the moral and theological arguments for and against the implementation of economic rights. While not rehearsing this complex struggle in full, the broad outlines are presented as well as a persuasive conclusion that implementation makes more philosophical, theological, legal, and ethical sense.

Second, in conjunction with this discussion is a brief examination of the historical record and actions taken to address our recent near economic collapse, and how such actions change the discussion of the viability and necessity of ratifying the Covenant. Our recent history (as well as the COVID epidemic) exposes our terrible susceptibility to national economic collapse.

We conclude with an exposition of how the ratification of economic rights would provide an important moral and legal tool for dealing with poverty and suffering in the United States.

2. Economic Rights Revisited in the Twenty-First Century

Economic rights have been characterized as a second generation of rights system (Montgomery 1986, p. 69). What is meant by that designation is merely that the recognition and discussion of them, as well as a disputation of them, is a later development in human rights discussions.

What are economic rights? First it should be understood that economic rights are a subset of human rights, and a discussion of them requires a brief discussion of human rights. We turn to philosopher Alan Gewirth for a useful definition. Gewirth maintains:

Human rights are a species of moral rights: they are moral rights which all persons equally have simply because they are human. To call them “moral” is to say that they are based upon or justifiable through a valid moral principle. To call a principle “moral,” in turn, is to indicate that it sets forth as categorically obligatory certain requirements for action that are addressed at least in part to all actual or prospective agents and that are concerned with furthering the interests, especially the most important interests, of persons or recipients other than or in addition to the agent or the speaker. (Gewirth 1983, p. 1)

Gewirth’s definition is useful for many reasons but the primary one is as follows: “Gewirth’s careful definition uses moral language concisely and rightfully emphasizes and integrates the concepts of agency, interests, obligation, action and personhood. These concepts are essential for any ethically perceptive theory of rights.”²

Useful as it is, Gewirth’s definition did not instantiate human rights in a legal and policy-wise sense. Human rights became international law by means of the adoption of the Universal Declaration of Human Rights, which was passed by the United Nations. Lewis Henkin, an international jurist, outlines this process in full (Henkin 1981).

Since their international adoption, the recognition and regard of human rights has posited them as an international code of behavior for nation-states: they have in fact, become the gold standard for foreign policy conduct among nation-states. Accordingly, rights discussions among states and rights claims made by citizens of UN members are taken very seriously by nation-states and international courts. Thus, when a right that was not fully recognized by the initial historical rights discussions process claims to also be a human right, a claim for international recognition of a new moral claim is thereby simultaneously made. As such, human-right-claiming states must make sure that the right suggested is not simply brushed aside.

We must now clearly state what economic rights are. However, clearly stating what economic rights are is not itself easy because the instantiation of such rights varies from nation to nation depending upon the sustainability and material conditions that prevail in each recognized nation-state. Thus, one state might provide an economic right that another state might not. So, a wealthy state might recognize an economic right that a poor state might not. The international consensus is, however, that an economic right is a right that is a basic right—a right that must be recognized for all as a requirement of economic justice. Economic rights are a subset of human rights and must be recognized and implemented by rights-recognizing states.

The best statement of basic rights is that of Henry Shue, to whom we now turn. Shue writes:

Basic rights are a restraint upon economic and political forces that would otherwise be too strong to be resisted. They are social guarantees against actual and threatened deprivations of at least some basic needs. Basic rights are an attempt to give to the powerless a veto over some of the forces that would otherwise harm them most. Basic rights are the morality of the depths. They specify the line beneath which no one is to be allowed to sink. (Shue 1980, p. 18)

Shue maintains that all states have a duty to enable the acquisition of basic needs for all people. Shue therefore insists upon at least the recognition of a basic right to subsistence. Without being overly specific, he defines such rights as follows:

A right to subsistence would not mean, at one extreme, that every baby born with a need for open-heart surgery has a right to have it, but it also would not count as adequate food a diet that produces a life expectancy of 35 years of fever-laden listlessness. (Shue 1980, p. 23)

This governmental duty obligates, if necessary, that a state provides basic goods for people if necessary and not merely follows the duty to restrain itself from interfering in the actions of people. As such, some basic rights constitute some form of positive rights. Economic rights skeptics have claimed that it is this aspect of economic rights (their positivity) that disqualifies them as “true” human rights. This, as we shall discuss later, forms one of the major objections to economic rights by some analysts and states.

Since the end of WWII, human rights have been understood to be important moral and, in some cases, religious constructs. Their recognition or rejection are now tied to the moral reputations of nation-states by their peers. The Carter administration made a novel US claim, that is, for the recognition of economic rights as human rights. In doing so, it called into question the integrity of human rights claimants by all other nation-states that had not done so previously.

Over time, the recognition of human rights has generated a kind of unspoken international civil religion and moral community. One human rights commentator has recognized this reality. Robert Traer has written:

To decide then whether faith in human rights is true involves faith itself: faith that there is a moral universe in which it is meaningful to affirm human dignity. This is logically problematic, but makes sense in experience. For faith is not founded on reason, but is the foundation of reason . . . Human Rights are a response to that which transcends what is known, which is to say that they are a matter of faith. And human beings find this truth confirmed in their experience, as they choose to live out their faith in human dignity and in human rights. Thus human rights are not merely a matter of political or ethical concern, but a matter of faith; not “blind faith” but the faith of courage and commitment to standards of human dignity, even at risk to one’s own life, despite the inability to probe to the satisfaction of others that such standards are true. (Traer 1988, p. 310)

New claims to the contents of the human rights pantheon are, because of their international recognition, defended and/or opposed by carriers of the human rights tradition as well as opponents to it. And, sometimes the most vigorous denouncers of economic rights claims are the most faithful defenders of the initial human rights claim system.³ For these defenders, alternative definitions or characterizations of human rights are not mere variations, but threats to the clarity and truth of human rights themselves. Indeed, this is evidenced in their adherence to their version of human rights they understand as having enormous power and import. Their position is such that nation-states themselves are limited and constrained in their actions by the need to recognize and embrace civil and political rights (negative rights). Accordingly, they were alarmed by claims such as Carter’s that included economic rights, since these skeptics did not recognize such rights and did not want to be bound by such recognition, nor did they want their own states compelled to recognize and implement such rights.

I have previously discussed this portion of the economic rights in full, in several of my texts, and will not rehearse such discussion herein.⁴ Suffice to say the debate over economic rights is at a low ebb after the defeat of Jimmy Carter. The Reagan administration’s rejection of economic rights as human rights focused its attack on Carter on this very aspect of human rights. Perhaps successors to the presidency took note of this pragmatic political reality and left the Reaganite position alone, except indirectly as such a position was inherently modified or even partly rejected by the adoption of the Affordable Care Act, also known as Obamacare. We now must turn our examination to this history and discussion.

3. Economic Collapse and an Ad Hoc Rescue

Most of us remember the historic US economic collapse of 2006–2008 and the following economic chaos. The poor will be with you always, so said Jesus of Nazareth, and so it appears to be still true and prophetic in the 21st century United States.

On a cyclical basis, from time to time, many citizens are out of work. As of February 2023, the US unemployment levels are the lowest that they have been since 1969. Of course, during economic booms, most US citizens can maintain middle class lifestyles. As a people, however, we have never felt guilty for those who are chronically unemployed or under-employed, the so-called meritorious poor. Yet economic boom is not of course guaranteed—even in the twenty-first century, we simply do not guarantee economic sustainability to citizens, especially by means of an economic rights policy.

I would suggest that a US understanding of the duties of government in contrast to the duties of the multinational corporation and the duties of citizens militate against the requisite political aspect will be necessary to enable ratification of the Covenant to take place. Another way of making this point is to say that we have traditionally been more wed to the mega-myth of the “rugged individualist” taking care of his/her own needs apart from governmental assistance than to any other myths (see [Betsworth 1990](#)). US citizens, as a people, do not want handouts and sometimes do not even want a helping hand. Indeed, government intervention that would be required by the ratification of the Covenant could in the eyes of some observers appear to be evidence of “creeping socialism.” Only over time have those in the United States accepted government economic safety nets, the primary one being Social Security.

One need not be committed to neo-McCarthyism to see the American reluctance to move in that direction. Consider the following quote from a noted socialist, Tom Eley. His views are those of a socialist, but in looking at the bailout, he has an insightful and accurate evaluation of common capitalist claims about our economy. He writes:

The breakdown of the US financial system and the government bailout of Wall Street have seriously discredited the ideological justifications of capitalism.

Worship of the “free market” has long been something of a secular religion in the US. Capitalist ideology has proclaimed that the market’s “invisible hand” will best advance the interests of historical progress, that taxes on the rich and regulations on big businesses must be reduced because only the “risk-takers” know where resources can best be allocated, that any sort of government intervention to improve the living conditions of workers, the poor, the elderly and jobless youth creates a “climate of dependency,” that government cannot simply “throw money” at problems, etc., etc.

All these shibboleths now stand exposed as rank hypocrisy, as the biggest financial institutions belly up to the public trough. Yet amidst this historic crisis of the capitalist system, some of those opposed to Treasury Secretary Henry Paulson’s Wall Street bailout have claimed that the measures employed are “socialist.” . . .

The claim that the Wall Street bailout is a socialist measure is absurd on its face. Paulson, the former CEO of Goldman Sachs, who has an estimated personal fortune of \$700 million and is a member of the most right-wing administration in US history, has authored a bill that will ultimately divert trillions of dollars to the coffers of the biggest banks in the land. This is socialist? ([Eley 2008](#))

One need not be a socialist, like Eley, to find the claims made by some economic skeptics to border on the absurd. Though Eley’s comments are not directed at the Covenant, his criticisms of capitalism gut the basic underlying political philosophy of economic rights skepticism. In particular, his criticism undermines skepticism that economic rights are even necessary for economic fairness and sustainability in the United States. While most US citizens are afraid of communism and most still uncritically equate it with socialism and therefore reject most public policy changes that seem to move the country in that direction, many are able to discern that the instantiation of economic rights does not usher in socialism any more than Social Security did. This political fact is true despite the long history of the New Deal legislation that created our current way of life. What is now odd is that the many complaints about our Social Security system are not that the system is creeping socialism, although such claims were made in the past. Now, most US citizens

have more anxiety over the possible future collapse of that same Social Security system—it is a fear that the security net of that system will not catch and save them.

What, you may ask, have any of these issues to do with the ratification of the Covenant? This essay suggests that the time for the ratification of the Covenant could be at hand since many of the arguments that have been made against it, historically, have lost their cogency. This change is due to the historic government interventions into the market to save the American economy. In other words, the bailout of big banks and big business may not have been socialist in nature, or intent, but such actions clearly are extraordinary political interventions designed to rescue the livelihoods of citizens by preserving our national economic well-being.

The reasoning for the bailout was that doing so allowed for a continuation of our average current standards of living. Put simply, the bailout of Wall Street had no immediate direct effect upon the individual US citizen, but it did have a “trickle down” effect in that it prevented widespread economic collapse, (presumably) in which the poor would be most directly hurt. In other words, our government expended huge sums of money to, perhaps, somewhere down the line, possibly maintain a decent standard of living for most citizens by saving the lives and well-being of major corporations. In doing so, of course, the national right to healthcare—a major economic right for some, through Medicare and Medicaid, but not for average citizens—was neither insured nor paid for. Hence, we are still battling in Congress even in our post-Obamacare world for some form of healthcare reform.

Be that as is may, the ratification of the Covenant is still needed for many basic human needs. Article 12 of the Covenant references the right to healthcare and reads as follows:

Article 12

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:
 - (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
 - (b) The improvement of all aspects of environmental and industrial hygiene;
 - (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
 - (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

One interesting legal fact to consider is that if we ratified the Covenant, our healthcare would be subject to the review of the 18-member International Committee on Economic, Social, and Cultural Rights, which would examine our then required submitted reports, which would detail how well our country was promoting the rights to healthcare of its citizens. Such oversight might serve to put pressure on our current debate on this issue for our government and our country. Right now, there is no pressure from that source, and we as a people may not want international review and disapprobation. Some might think that this lack of accountability and pressure might be a very good reason for our continuing failure to ratify this Covenant. Perhaps, however, the contrary is true. A morally defensible system of distributive justice, which is entailed in the recognition of any rights, should not be afraid of international review and recommendations. After all, the Covenant, even if ratified, would not give the international community the right to intervene in national affairs.

Yet some wish to avoid this oversight as, as previously noted, they are afraid of “creeping socialism.” Again, avoidance of international oversight is, however, somewhat isolationist. That countries can only be sovereign if they are free from any international oversight with regard to how their citizens are treated and are not subject to international law and international moral regard is a strange isolationist point of view. Further, it then becomes very difficult to see how we can be critical of violators of the International

Covenant on Civil and Political Rights on other issues. Genocidal regimes, for example, become more difficult to criticize.

Still, our failure to ratify the Covenant cannot be attributed solely to our parochial non-provision of the right to a national healthcare. Article 12, for instance, does not specifically call for the implementation of a right to national healthcare, or even the so-called public option. The Covenant merely calls for “The creation of conditions which would assure to all medical service and medical attention in the event of sickness.” Do our current healthcare provisions meet this standard? Probably not.

Be that as it may, other paragraphs in the Covenant are even more unpopular than Article 12 in the legal and moral worlds of most US citizens. What bothers most commentators is Article 11, which reads in part as follows:

The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.⁵

This article suggests that a “good” state should endeavor to intervene on behalf of its citizenry in a number of ways. Adequate food, clothing, housing, and the continuous improvement of living conditions is, however, a tall order for any state to provide. This fact is true even with the qualification that the process that the parties must engage in must only achieve a “progressive realization” of the rights outlined in the Covenant. Though difficult, other western democracies have more or less stepped up to this challenge.

As previously mentioned, President Carter signed this Covenant and then championed its ratification unsuccessfully as part of his administration’s promotion of international human rights. Unfortunately, he was a one-term president. His successor, President Ronald Reagan, quickly repudiated the Carter administration’s support for the Covenant in general and economic rights in particular. Their criticism of the Covenant and of Carter’s support for it was clear, forceful, and I will argue, as I have done so previously, wrong. Despite its error, hostility to the ratification of the Covenant prevails in US politics. Yet some of the very arguments that were promulgated to thwart the ratification of the Covenant came back to haunt their defenders in our recent historic era of economic meltdown during the recession of 2007–2008.

4. Taking on the Burden of Recognizing Economic Rights

This observation brings me back again to my thesis, namely that the refusal to take on the responsibilities for the implementation of the Covenant and the reasons given for it were mistaken and were, in fact, reductionist understandings of the responsibilities of government. And, in any event, these same arguments that condemned the government using enormous sums of tax money now and in the future to save US citizens were applied to help rescue our managerial capitalist system including its primary economic actors: the banks, major industries, and insurance systems. This was done instead of being applied directly to pay for services or goods for the well-being of citizens, the common people for whom the Covenant was drafted to protect.⁶ Using the taxes of ordinary citizens, including the poor, to save huge corporations is, however, not by anyone’s definition an example of creeping socialism.

Thus, the following section proceeds by looking briefly at the actions taken by our government to rescue failed banks and other institutions and the reasons given for that rescue. Second, those actions and reasons will be compared to the reasons given by opponents to the ratification of the Covenant to see how well they match up against the dysfunctionality that those opponents predicted would occur if the Covenant were ratified and economic rights were recognized fully. Third, we should consider how government intervention in the market not on behalf of the people but to the benefit of corporations

constitutes a new application of strict economic duties in the modern world that indirectly seem to generate “new” economic rights. Namely, we now have by governmental action set a precedent that multi-national corporations shall not be allowed to perish due to market collapse or corrections without at least a massive effort on the part of government to save them.

In other words, our government’s bailout of major corporations has taken the position of treating them not just as socially and legally constructed “persons,” as they have always been viewed, but has, instead, intervened as if at least some of these corporations were actual citizens. Instead of providing our actual US citizens with “an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions,” as outlined in Article 11 of the Covenant, we have opted to act to insure the continuation of corporate survival in the market, for some corporations with no guarantees of their or our ultimate success. In short, this policy and practice have championed the survival of massive corporations over the survival and flourishing of massive numbers of poor people. This preserves capitalism without addressing the problem of poverty. This misdirection of resources helps to ensure that the poor will be with us always.

Of course, in doing so, no claim was made that the rescued corporations had a right to life—they had instead the good faith government action and billions of dollars spent on their behalf in an attempt to preserve their right to life. And, of course, these sums were used to enforce their right to continue to compete successfully or not in the market. Further, these funds were expended with little oversight except to ensure that no money was misdirected to other purposes. There were no definitions of future proper corporate action and no serious strings once the billions were received by the corporations. Most importantly, the program was put in place with no formal philosophical foundation or justification—they were merely existentially expediently funded.

As a result, the effect of these actions inherently undermines the standard economic rights skeptic’s objections to the ratification of the Covenant—that enormous sums of public funds would be used without public control or input. With the common objections to the ratification of the Covenant no longer being cogent, no logical objections to ratifying remain except political cowardice.

Finally, we close with a moral argument for the ratification of the Covenant in light of the failure of the philosophical arguments that have historically opposed it along with the realities of the necessity of the governmental intervention that the recent economic collapse has revealed to be a cyclical reality of our economy, and therefore a matter of anticipated political duty on the part of our government to ensure the well-being of our citizens and not just the well-being of our corporations.

5. A Contrast in Public Commitments

We begin with government action taken to rescue failed banks and other institutions and the reasons given for that rescue. As previously mentioned, what has changed in the philosophical landscape is the unprecedented wholesale rescue of US capitalism by the US government. *The Economist* notes:

American congressmen are used to hyperbole, but they were left speechless by the dire scenario Ben Bernanke, the chairman of the Federal Reserve, painted for them on the night of September 18th. He “told us that our American economy’s arteries, our financial system, is clogged, and if we don’t act, the patient will surely suffer a heart attack, maybe next week, maybe in six months, but it will happen,” according to Charles Schumer, a Democratic senator from New York. Mr. Schumer’s interpretation: failure to act would cause “a depression.”

Mr. Bernanke and Hank Paulson, the treasury secretary, had met congressional leaders to argue that ad hoc responses to the continuing financial crisis like that week’s bail-out of American International Group (AIG), a huge insurer, were no longer sufficient. By the weekend Mr. Paulson had asked for authority to

own up to \$700 billion in mortgage-related assets. By the time *The Economist* went to press, Congress and Mr. Paulson appeared to have agreed on the broad outlines of what is being called the Troubled Asset Relief Programme, or TARP. (*The Economist* 2008)

The bailout of major corporations would not have had any serious influence on economic rights Covenant ratification except for the rationales that have been given for the refusal to ratify. There have always been liberal political philosophical objections to economic rights, particularly as they might clash or compromise civil and political human rights. There have been many reasons given for the refusal to ratify the Covenant. What is important for this essay are the reasons given by the Reagan administration and their allies for the continued refusal to ratify—for these reasons, though wrong, are not dead and continue to haunt us and to support the immoral failure of the government to act.

First let us look at the primary objections. A primary economic rights opponent, Maurice Cranston, once wrote:

If it is impossible for a thing to be done, it is absurd to claim it as a right. At present it is utterly impossible, and will be for a long time yet, to provide “holidays with pay” for everybody in the world. (Cranston 1967, p. 50)

Another standard objection to economic rights is that they are indeterminable in nature, a listing of goals rather than a species of human rights that demand moral and legal enforcement. Opponents to economic rights maintain that such rights unduly burden and compromise the state. As I have noted elsewhere for the Reaganites, “former Ambassador to the United Nations, Jeanne Kirkpatrick, criticized President Jimmy Carter’s support for economic rights by pointing out Carter’s tendency to confuse ‘rights’ and ‘goals’.” (Kirkpatrick 1979; cited in Trimiew 1997, p. 111). Kirkpatrick goes on to criticize “the shopping list” or Santa Claus mentality inherent in some international human rights documents, such as the ICESCR that Carter signed and endorsed. (Ibid.). Further, as I have also noted elsewhere,

Kirkpatrick and Cranston both deny that the economic right to a state-paid employee’s holiday is a “human” right. Rights to a paid vacation fail to explain, to Kirkpatrick’s satisfaction, how such rights could be universal, and how and why the state should bear the obligation for paying for such entitlements.⁷

These arguments were never completely convincing to human rights analysts. However, for many, the notion that the government should ever intervene to ensure a state-paid vacation for employees did seem unconvincing as doing so would require huge amounts of taxes and would explicitly reject the Franklinesque US economic theological maxim “God helps those who help themselves.” Again, this kind of economic civil religion seemed sensible until the historic Chrysler Bailout by the government. If the invisible hand of God were to direct the destinies of corporations and the market, then any serious intervention paid for by taxpayer funds would be a wrongful redistribution of wealth to improper recipients. Yet the government so intervened, rather than to recognize the necessity of fully recognizing economic rights.

As a consequence, TARP’s massive bailout out of Wall Street became/becomes by default a wholesale rejection of any kind of divinely sanctioned rugged individualism—at least for corporations. Yet as understood by Reaganites and other neo-conservatives, the market was supposed to correct itself. The government was supposed to limit itself to its duty to uphold the right to contract and to oppose monopolies and cartels. Thus, this bailout completely mocked the historic oppositions to economic rights.

Here, the government in TARP not only rescued mega-corporations, but it did so without even requiring them to tighten their belts in the way that they conducted business. Not only did CEOs of Fortune 500 companies receive paid vacations, but they also walked away with huge bonuses for running corporations that sought questionable short-term gains. Furthermore, all of this was done in the hopes of heading off another Great Depression, a disaster that would cause masses of US citizens to suffer. This is a justification

of government intervention, but it never addressed the reasons for the collapse, or the likelihood of future recurrences of collapse.

What is more absurd is the fact that despite the institution of Obamacare, we still do not have all people covered by healthcare, and still suffer under the stiff opposition to the so-called public option in reference to a possible “right” to healthcare.⁸ This failure might not be very important except for the fact that millions of US citizens are only covered by such care if the state in which they live embraces expanded Medicaid. Unfortunately, however, no federal mandate requires states to do so. Thus, in a state such as Georgia, which refuses to expand Medicaid, millions of citizens are either bankrupted by medical bills or go untreated. Further, the whole health of the country becomes endangered when a pandemic such as COVID strikes in a country so poorly prepared to deal with it. Such a disaster ensures that masses of citizens may suffer. So, in a post-COVID world where a pandemic could run wild again, the current US position seems wrongheaded.

In other words, the historic bailout of Wall Street completely contradicted the most serious philosophical and economic objections to the ratification of the Covenant. Logically, it should also sound the death knell of the economic belief system of liberal economic political ideology—the Reaganesque economic soteriological confidence in the market.

Further, opponents to the Covenant never fully acknowledged the progressive realization aspect of its terms. Governments bound by the Covenant are only obligated in principle to endeavor to create and support relationships and redistributions that move towards meeting the paramount human needs listed in the Covenant. Thus, indeed, a paid vacation may still not be immediately realizable for many states without invalidating the concept of economic rights.

Ironically, the TARP bailout was distributed as if there were economic rights applicable to corporations. One recent commentator, Lanse Minkler, in favor of economic rights has noted:

The surest way to economic rights policy implementation might appear to come from relaxing the budget constraint or from increasing either tax revenue or foreign aid. Of course, doing either could prove quite difficult and may be completely unsuccessful in the end. The poorest countries simply do not have the resources to eliminate poverty. The richest countries lack the political will to raise taxes sufficiently or, if their budget is already sufficient, are unable to allocate it properly . . . A common refrain is that too many countries waste too much of their budget on military security at the expense of human security. (Minkler 2009, p. 379)

Many Americans simply refuse, however, to discuss the fact that all budgets engage in balancing costs such as defense, for example, in comparison to other governmental functions such as policies that ensure a right to work, and/or a livable wage. Without broadening the focus of this essay, it is not unfair to note that the bailout took place while the United States was financing and fighting two formal wars. These wars were also large government expenditures.

And why again did the American government save corporations? So that they would not fail. Ironically, the prevention of suffering and the furtherance of the flourishing of citizens, in contrast, have always been one of the philosophical foundations for human rights. Corporations and banks are very useful entities, but for all their usefulness, corporations are not human beings, they are merely legal and economic proxies for citizens. They are constructs that further economic development and other useful human endeavors. Furthermore, corporations do not always do right.

Without blaming corporations for all of our ills, it is not unfair to note certain facts. First and most of all is that corporations do not actually hunger, nor do they bleed. They do not thirst, and they do not have bodies, souls, or spirits. They are not created in the image of God. Previously, capitalism has always operated with the notion that if and when corporations die, it is the natural death of market forces, the will of the invisible hand, and they do not need, therefore, traditional economic rights—positive rights of

government provision. Simply put, they do not need human rights because they are not human. Their human dignity does not need to be protected because, again, they are not human. Accordingly, if they fail and people are put out of work, people will still have the right and duty to seek employment and or sustenance elsewhere. The market presumably will fill the void left by a failed corporation, or the government under the requirements of the Covenant will have to step in and deal directly with poor people.

In other words, the most logical approach to corporate collapse would be to increase funds that come from taxes to go directly to people who are suffering economically to help relieve or prevent their suffering. But this kind of logic has not prevailed.⁹ What is most interesting about corporations is not only do they not bleed, but they also do not vote—at least not directly.

Turning back to looking at the Covenant, nation-states that are signatories to the Covenant have themselves provided to a larger or lesser extent the progressive realization of economic rights. Most in the West have a right to national healthcare, for example. Others have differing economic rights in force in differing ways. Yet economic rights are complicated and do not yield uniform expression or instantiation.

If we ratified the Covenant, what is the worst that could happen, that we might have a servile state? Michael Novak has taken this position in relation to the economic rights covered in the Covenant. He has maintained that their implementation might create “servility in the populace (particularly, the poor) and an overbearing paternalistic, interventionist state.” (Novak 1985).

This is a critique of such policy, but its reasoning applies equally to corporations; might they not also become servile, dependent upon state bailouts? Such a state might also impair the recognition of the human dignity of the desperate people who benefit from such interventions. While human dignity infringement is a genuine moral and religious concern, there seems to be no political problem in denigrating the dignity of corporations with a bailout. This fact alone is precisely what is wrong with a system of rights that recognizes, in terms of governmental provision, the economic needs of corporations while refusing to do the same for people.

Further, we must now examine briefly the functionality of states wherein the Covenant was ratified and economic rights were recognized fully to see how objectionable their system is.

What is most interesting to note is the fact that not all signatories to the Covenant are in a servile relationship with their government. About the worst that can be said about many of them is that, for instance, with regard to the right to national healthcare, perhaps their system, such as the British system or the Canadian system, does not work as well as ours. Even this position is, at best, arguable. Our first question is “work as well for whom”? Average citizens receive healthcare under such systems and at a lower cost. What is more important is the fact that such beneficiaries do not understand themselves to be beggars, receiving a handout, but citizens enjoying their basic needs being met. And, of course, they feel that way precisely because the governmental provision is characterized by everyone in that society as their rights, rather than their privileges. We feel similarly about many of our governmental provisions, such as police protection, fire protection, and especially social security rights. We say in relation to these policies that we are citizens, that we pay taxes, and we have a right to these provisions.

What else may be objectionable? Well, it can be argued that the average taxpayer in these covenanted states is overtaxed. Yet this complaint is really a political argument about a decision of democratic responsibility. That is to say, in most of the actual systems that have economic rights, in times of economic difficulty, provisions of certain rights are scaled back. And that scaling back is done frequently by democratic referendum rather than emergency legislative fiat. In other words, economic rights are always relational rights. We are always in relationship with other rights holders, with other duty bearers. Some of the poor, who pay their taxes and still have no right to healthcare, are, in effect, paying for the rights of others to healthcare in the form of Medicare and Medicaid, namely the elderly—including the non-poor elderly.

6. Conclusions

We will close with the realization that the TARP bailout was not a policy based upon a well-reasoned philosophical approach. It was simply a drastic and monumental bailout to prevent national economic collapse, a governmental intervention that the recent economic collapse has revealed to be a cyclical reality of our economy.

We have now come full circle; unlike most of our allies, we now live in a country that refuses to ratify the Covenant. We are laboring under a struggle for healthcare in whatever form it will take place. Furthermore, a bailout precedent has been set. Most old and new economic orthodoxy maintains that our economy is cyclical. If that is true, then state intervention on behalf of Wall Street may have to be conducted again in the future, or at least the government is likely to make that argument again. If that is the case, then the state will probably so act again and for the same reasons, namely to rescue our economy and thereby preserve our current way of life.

If this is our present and future, then, clearly on some level, government intervention in the economy is not a whim, but a way of life. It is counter-intuitive to argue that a good state should be servile for Wall Street but should avoid such action at all costs for interventions that directly benefit ordinary citizens. Such a government is no longer of the people and for the people, but one that is of the people but is neither for the people nor the state, but for the corporation or the “economy.” This outcome would be a tragic rejection of *Rerum Novarum* in which Pope Leo 13th maintained that “Man precedes the State, and possesses, prior to the formation of any State, the right of providing for the substance of his body.”¹⁰ What Pope Leo said about the state seems to also be applicable to corporations, namely, humanity’s basic needs precede the flourishing of multi-national corporations, CEOs, or a nation’s own GNP. Accordingly, we should not be shy at this time in calling to the attention of the populace the inadequacy of anti-ratification arguments as well as the cogency of economic rights arguments.

Accordingly, better public policy suggests that the United States of America should ratify the Covenant. Becoming a party to that treaty will help not only the people of this country, it will also engender respect for the United States around the world. We cannot regain the respect of the world with millions of homeless people roaming our cities, with thousands of people bankrupted by lacking healthcare, with millions of people who want to work having no work, and no national plan to put them back to work. One of the things that the bailout has proved is that vast sums of money can be suddenly put to work to solve a problem if there is a commitment by the government to do so. We, US citizens, have bailed out Wall Street without any assurances that this action will always succeed. At this point, perhaps it will.

But what about the futures of poor citizens? Minkler notes in reference to mistakes administrators make with reference to implementing economic rights:

The third kind of error a policymaker could make that would cause her to undervalue economic rights policy implementation is the inclination to discount the future too highly. Like many different kinds of policies, economic rights policies can impose costs immediately, while benefits accrue into the future. [For example] Employment training programs increase future earnings and reduce the costs of future crime . . . (Minkler 2009, p. 377)

We have shown nearly blind faith to spend money to rescue corporations. Cannot our faith be extended further to invest money in people, human beings with souls, spirits, and lives? To serve and help people who can suffer and die and who are created in the image of God? Should not we institute public policy for all citizens?

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Notes

- ¹ According to the U.S. Census bureau, about 11.6.% of all Americans lived in poverty in 2021. See <https://www.census.gov/content/dam/Census/library/publications/2022/demo/p60-277.pdf> (accessed on 1 November 2022).
- ² For my most useful explanation see (Trimiew 1997).
- ³ The chief economic rights skeptic is Maurice Cranston. See (Cranston 1967).
- ⁴ For my most useful explanation see (Trimiew 1991).
- ⁵ <https://www.ohchr.org/sites/default/files/cescr.pdf> (accessed on 1 November 2022).
- ⁶ With the possible exception that, within TARP, mortgage assistance can given to people threatened with foreclosure.
- ⁷ Darryl M. Trimiew, *God Bless the Child*, 111. See also (Lefever 1978).
- ⁸ To date, millions of US citizens are still suffering from a lack of healthcare. See (Sainato 2020).
- ⁹ Recently the United States Department of Health and Human Services has been issuing a minimalist subsistence check to poor families. The TANF program gives federal money to states for them to distribute to poor families. Ironically, this program is oddly the type of response that would be made permanent if the covenant for economic rights were ratified. See the official TANF description <https://www.acf.hhs.gov/ofa/programs/tanf/about> (accessed on 1 November 2022).
- ¹⁰ https://www.vatican.va/content/leo-xiii/en/encyclicals/documents/hf_l-xiii_enc_15051891_rerum-novarum.html (accessed on 1 November 2022).

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