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JOHN VEIT-WILSON'S PAPERS
ON CONCEPTS, DEFINITIONS AND MEASURES OF POVERTY,
ON INCOME ADEQUACY AND ON MINIMUM INCOME STANDARDS.

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**NO RIGHTS WITHOUT REMEDIES:
NECESSARY CONDITIONS FOR ABOLISHING CHILD POVERTY.¹**

Abstract: If EU governments' National Action Plans for Social Inclusion aim to abolish child poverty, they must clarify which of the many types of poverty is targeted and how families are to achieve the right to incomes adequate for human dignity and social participation asserted by international conventions. The paper argues that necessary conditions for child poverty abolition and social inclusion must include the juridification and justiciability of children's right to household incomes based on empirical standards of adequacy for dignity and participation.

Introduction.

European countries have signed many international declarations of human social (welfare) rights. But are the many social rights asserted in international declarations any more than rhetorical 'manifesto rights' (Feinberg, quoted by Dean 2002 p 11)? In recent years, the EU has declared everyone's right to the resources needed to combat social exclusion, for the experience of human dignity and for the promotion of social inclusion. If the poverty of exclusion and humiliation which children experience (Ridge 2002) is to be abolished, the right to the resources needed to overcome it must be *juridified* – that is, embodied in laws that can be enforced nationally – and must be *justiciable* – subject to test and remedy in the judicial system of courts and tribunals.

Abolition of child poverty requires *enforceable* laws obliging EU member states to ensure that all children have access to the necessary resources. International conventions endow children with many rights, but this paper is only about their right to be protected from poverty. Because children do not live in economies insulated from their parents or carers, the households in which children live must always have, among their essential resources, incomes not below the level at which the asserted qualities of human dignity and full social participation are demonstrably achieved. Anything less is by definition inadequate to achieve EU goals; failure means persisting poverty.

The philosophical discussion of human social and welfare rights rarely focuses on the practical delivery and enforcement of asserted rights, generally leaving implementation issues to politicians. But much of the political debate on poverty and social exclusion is generalised and imprecise. Few commentators express doubts about the principles embodied in the declarations, but many are sceptical about whether their aim was implementation in any case. Each of these subjects has its own large literature, but this paper refers only to aspects pertinent to policies for the abolition of child poverty.

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An operational meaning of poverty.

Although the term poverty is given many meanings, it “cannot be defined in any way one likes” and its “technical definition in research should not stray too far from the everyday meaning of the word” (Van den Bosch 2001 p 295). In everyday usage poverty commonly means lack of money resources and of social respect to the levels demonstrably contextually required to achieve the minimum standards of, as the jargon has it, respect for human dignity and full social participation or inclusion, or the avoidance of exclusion. In this context, other meanings are irrelevant. Percentiles of income distributions do not represent experienced poverty if they are not based on empirical evidence of the levels of disposable income at which human dignity and social inclusion are achieved. Broad descriptions of social exclusions obscure the customary meaning of the enforced lack of resources demonstrably needed for respect and inclusion. A study of a variety of kinds of poverty measured in various ways concluded that –

... the defining characteristic of the poor is that they have a material standard of living that is socially regarded as unacceptable; they do not share any other characteristic or combination of characteristics that distinguishes them from the non-poor. The poor are not necessarily excluded in the sense of having low status or being restricted in their social contacts. They cannot be identified on the basis of behaviour, or any other observable characteristic only. (Van den Bosch 2001 p 412)

Longitudinal poverty research shows that many more people experience poverty over time than are captured by cross-sectional counts (e.g. Leisering and Leibfried 1999). Characteristics and culture are shared, but those in poverty lack sufficient resources, and the cure for this ordinary poverty is higher incomes. In marketised economies, which Europe indisputably is, adequate resources chiefly means sufficient money to buy and experience a decent, dignified and acceptable level of living. The lack of respect for human dignity, as with many social exclusions, may be caused by other factors such as prejudices based on class, ethnicity or gender which need other remedies, but it is also an aspect of poverty where it is associated with an unacceptable lifestyle caused by lack of money.

The EU recognises that it must “ensure that all men, women and children have a *sufficient income* to lead life with dignity and to participate in society as full members”, as the EU’s Joint Report on Social Inclusion and its National Action Plans for Social Inclusion (NAP) put it (EC2002 p 27; emphasis added). While the EU believes the method to achieve this is global economic development and inclusion in the waged labour market, economic research found that –

Comparison of pre-and post-government poverty rates makes it clear that the market does a much poorer job than the welfare state in preventing poverty in the short, medium and long term. ... For all the countries – including the liberal Great Britain – it is not the market that prevents long-term poverty. It is through government intervention that poverty is successfully tackled. (Fouarge 2004 p 156)

The EU also requires Member States to ensure that everyone has access to ‘a wage sufficient to enable them to have a decent standard of living’ and also to ‘adequate social protection’ (EC 1989 paras 5 and 10), where adequacy means income levels (not sources) sufficient to achieve the NAP target quoted above. But how can this fine rhetoric be converted into hard reality when most countries lack any criteria of income adequacy or statistical measures of its achievement? Some countries use governmental minimum income standards which are arguably adequacy criteria (Veit-Wilson 1998), but the EU neither uses them to measure poverty nor promotes them as demonstration projects for the Open Method of Coordination to achieve EU goals. It is thus incoherent for the UK government to aim to abolish child poverty but simultaneously reject income adequacy standards as a measure goal achievement and to inform policy. It exacerbates the contradiction by emphasising service distribution by market choice but measures income inequalities instead of personal incomes sufficient for market inclusion.

What potential is there for the justiciability of the asserted welfare rights of EU citizens and the asserted obligations of the EU states? In the early 1990s it appeared that some of the states which used governmental minimum income standards also juridified the right to *adequate* social assistance benefits and made this right to adequacy justiciable (Veit-Wilson 1998). This is not the same thing as the juridified right to social assistance as such, whose benefits may or may not be adequate and

generally are not (Eardley et al 1996). Eligibility for social assistance benefits is generally juridified and justiciable, otherwise they would be no better than discretionary state charity. But in Germany, the 1961 Federal Social Assistance Act additionally required benefits to be set at levels which conform to the requirements of human dignity (*Menschenwürde*), the meaning of which could be and was tested in the administrative courts (the German idea of human dignity is not egalitarian, but it requires more than physical subsistence). The right was tempered by a less-eligibility provision relating to minimum wage rates. Similarly in Sweden, the 1981 Social Services Act required the social assistance system to 'assure the individual of a reasonable (*skälig*) level of living', and the meaning of reasonableness was often tested in the courts, which usually referred to the National Consumer Board's current budget standards based on conventional Swedish levels of living. It is also relevant that the Swedish Taxation Board used these budget standards to guide the minimum incomes below which no deductions could be made by courts because they would damage a person's welfare. Similar provisions applied in Germany and Norway. Adjudication here is not just the legal entitlement to benefit as such but embodiment of the practical meanings of these descriptions in the benefit. Adequacy is juridified in the national social assistance statutes and is justiciable in the administrative courts, where the meaning of the terms in current and changing practice, and whether the minimum social assistance benefits meet these forms of verbal criteria of adequacy, can be tested by argument with adduced evidence in the appropriate administrative or constitutional courts.

In the absence of minimum income standards, these examples suggest how income adequacy could be enforced in the EU. Some writers on poverty increasingly emphasise agency, the capacity and opportunity of those most directly affected to act on their own behalf, as opposed to action by power-holders in the perception of and reaction to poverty and its associated problems on behalf of those who suffer it (Lister 2004). Children and their families could use their experience of what poverty means to them (Ridge 2002) to test the justiciability of their ascribed rights.

Whose social rights?

A simple but contentious question is whether using the term 'right' inherently implies a commensurate obligation. The remedy or justiciable means of redress is a juridified recognition that if someone has a right to something another (having power to do so) has an obligation to enforce the exercise of the right, particularly but not only if there is a duty to supply something falling on this or another person (McCormick 1977). The questions for social rights to protection against poverty are who has the right and against whom is it held.

The rights in international declarations are abstract but in context and detail they are not devoid of concrete meaning. Some rights enunciated in the UN Declaration of Human Rights are relevant and applicable only in monetised and marketised industrial economies, for instance those articles (23 and 24) concerned with working (meaning employment) conditions (McLachlan 2005). Similarly, one might argue that there is no principled difference between interpreting the meaning of the detailed contents of article II-91(2) of the EU Charter of Fundamental Rights (as it was set out in the draft Constitution) which states that "every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave", and interpreting article II-94(3) which states that, "in order to combat social exclusion and poverty", the EU "respects the right to social ... assistance so as to ensure a decent existence". Such interpretation would naturally have to take account of article II-61 which states that "human dignity must be respected and protected". The only apparent difference between the rights offered by these articles is that the citizen's right to decent employment conditions is held against the employer, but the right to decent minimum incomes respecting human dignity is held against the government. Why these similar rights receive contradictory political treatment deserves investigation.

Similarly, T H Marshall's seminal work on "The Right to Welfare" (1965) made a crucial point about who holds the right against whom, in the context of a discussion of the English Poor Law of 1930. Marshall did not directly define rights in this essay, tacitly treating them as the counterpart of duties and obligations which could be tested, legally or by approbation depending on whether they were statutory or social and moral. The issue was on whom the duty to meet the right fell. He pointed out that "the pauper was a person deprived of rights, not invested with them", since "he was the *object* of the action taken, just as he had previously been the *object* of charity". Marshall quoted Sir Ivor Jennings that the duty to relieve poverty was "a duty owed to the public and not to the poor person

himself”, and continued, “consequently no action could be brought by the poor person to whom relief was denied, and any negligence of an official in his treatment of the poor was an offence, not against the pauper, but against the public who employed him to look after paupers” (Marshall 1965 pp 262-263; emphasis in original).

A prerequisite for action is, then, to establish who is the holder of the rights and on whom the duty falls of meeting them. If the population in general has a right to expect that government will protect it from the risks of modern life – social protection is a central demand of European politics – then government should protect everyone against the social risks which persistent widespread poverty creates as externalities for the non-poor just as much as for the poor. Many commentators on rights assume that the appropriate means of redress for this duty of protection, if it is undischarged, is the political ballot box and not the courts. This may be because courts demand close identification of the victim of the damage of the unmet right and statutory articulation of the victim’s right and its corresponding obligation, and both are hard to prove in the case of diffuse social risks. But the call for political action may not achieve the desired results, since in democracies with stratified poverty, the majority vote might not offer rights to the minority; the persistence of ethnic poverty in many countries is an example. This is a particular problem where the rights in question are not universal. When welfare rights first became an issue in the UK, Lynes distinguished between “rights that people have *although* they are poor – rights to equal treatment with the better-off members of the community – and rights which people have *because* they are poor” (Lynes 1969 p 3). It is the latter which in practice appear to be those which never become juridified or justiciable. They remain declamatory.

However, if the persistence of poverty leads to consequences not only for those in poverty but externalities in the forms of social evils (social disorders, crime, education and health costs, loss of working power and so on) which cost the rest of society, then it could be argued that citizens have a right to expect the government to abolish the poverty experienced by some which demonstrably gives rise to the social costs borne by all citizens (whether or not directly or equally). This could be justified either by a collectivist view of the role of the state, or by a broader interpretation of individual contractarian views than sometimes argued.

These arguments remain politically topical. The economic discourse of global competitiveness implies, or is used openly to suggest, that the holders of any rights against the state are the ‘stakeholders’, the employers and other entrepreneurs who try to retain their competitive business advantage in global markets by maintaining low wage poverty as a European labour market incentive. The fact that employees are stakeholders too is often suppressed in such rhetorical debates. This economic usage runs beside the European Social Model where the holders of rights against the state are the general population who want protection against poverty risks, and adequate income (social security benefits) replacement to prevent it if the risk contingencies arise. In these two simplified accounts, the role of the state (at EU or national level) in the first is to implement the rights by maintaining low pay and low taxes so that global trade can make profits for some, often rationalised by a trickle-down model of economic development benefiting all; in the second it is to maintain incomes in and out of work for all and protect the population from global trade exigencies. The parallel with Marshall’s and Jennings’s example is clear – the economic model is akin to the Poor Law, while the Social Model is the only one which endows *the population itself* with the right to protection against the risk of poverty. It may be significant that the UK government changed the name of its responsible department from the Department of Social Security, offering citizens categorical rights to protection against risk, to the Department for Work and Pensions, implying the state’s right to demand labour market conditionality from working-age benefit recipients.

It appears, therefore, that in most countries the actual people in poverty have no enforceable rights to be relieved of their poverty. The point is crucial, since politicians and commentators run these two arguments – about the assumed demands and imperatives of economic globalisation against the maintenance of the Social Model, and about the meaning of rights to welfare, whose rights they are and who is responsible for meeting them – as if there were no connection between them, and yet they are deeply connected and demand, at the very least, to be demystified and debated openly. But the economic discourse seems to be so deeply entrenched in political thought that it is doubtful if discussion will be fruitful before a Social Model which starts from human and social needs, in either its conservative or social-democratic form, is more widely and strongly represented among those who are heard. The token representation of people experiencing poverty and exclusion in consultations on

the preparation of the NAPs is in practice too limited to combat the power of the economic establishment and cannot counter the discourse which disempowers the social interpretation of rights. But if numbers were reflected in voting power, those who experience poverty throughout the EU would outvote several of the smaller EU member states.

Declarations on welfare rights.

International declarations on human social rights have a long history, and commentaries on rights are even older, but only some pertinent issues are noted here. The UK signed the *League of Nations Declaration of Geneva*, later the 1989 *UN Convention on the Rights of the Child* (UNCRC), which includes a specific requirement that children must be given the resources for their material and social development (Platt 2005 p 74). Since parents have duties to maintain their children, the UK government, if it intervenes, has statutory powers to recoup costs from parents. In other words, children's right to income for their maintenance is juridified (though not necessarily adequately) and the corresponding duty can be enforced in the English courts.

The UNCRC is accepted as a point of reference in case law in New Zealand, but Hassall (the first Children's Commissioner there, 1984-89) and Davies warned that it may be more generally resisted than accepted as a potentially justiciable statement of rights. Their reasons include the conflict inherent in the Convention between the individualist and collectivist implications for states which makes juridification politically contentious. But they emphasise "because it is invariably relevant" that the UNCRC is only a normative expression which does not indicate the policies to follow to achieve children's rights, or how these relate to other policies (Hassall and Davies 2003). National contested social politics continue to determine both the juridification and justiciability of children's welfare rights.

The *UN Universal Declaration of Human Rights* (1948), article 25, refers to "the right to a standard of living adequate for the health and wellbeing" of everyone but "contains neither enforceable rights for citizens nor binding obligations on Member States" (Amitsis 2006 p 215). Amitsis suggested that the *International Covenant on Economic, Social and Cultural Rights* (ICESCR, 1966) offers more scope for justiciable remedies. Article 9 unequivocally asserts the right to social security in broad but not substantive terms, while Article 11 states that the signatories "recognise the right of everyone to an adequate standard of living" and that the signatories "will take appropriate steps to ensure the realisation of this right". Lawyers may argue over whether the ICESCR creates "enforceable rights that individuals can invoke before national or international courts" (Amitsis 2006 p 217). The Irish Human Rights Commission reviewed approaches to embedding ICESCR principles in national constitutional, legal and political structures and enforcing them in such ways as to make individual justiciability only a last resort, by examining the nature of the economic, social and cultural rights and the variety of means of implementing them (IHRC 2005). It concluded that many objections to treating social rights as fully justiciable human rights are invalid, following the explicit statements to that effect by the UN's Committee on Economic, Social and Cultural Rights in the *Limburg Principles on the Implementation of the ICESCR* (1986). Furthermore, the Committee's *Maastricht Guidelines on Violations of Economic, Social and Cultural Rights* (1997) emphasised that –

4. It is now undisputed that all human rights are indivisible, interdependent, interrelated and of equal importance for human dignity. Therefore, *states are as responsible for violations of economic, social and cultural rights as they are for violations of civil and political rights.* (UNCESCR 1998, article 4; emphasis added.)

The international jurists who wrote the guidelines considered them to be a reflection of the contemporary state of international law, designed to be used by all monitors and judges of violations of ESC rights, at national, regional and international levels. The argument should therefore be closed, but it remains because European governments pick and choose which social rights they will enforce, unlike their observance of civil rights (IHRC 2005 p 5). For instance, "while the UK has signed up to these human rights documents, so far the government has chosen only to incorporate into law the more limited civil and political rights and not to give parity of treatment to social, economic and cultural rights" (Johnson 2004 pp 115-116).

Although the UN Committee suggested reporting guidelines, these suggest indicators that cannot measure income adequacy. But the Maastricht Guidelines on the implementation of the Limburg Principles advised that states must “take appropriate legislative, administrative, budgetary, judicial and other measures towards the full realization of such rights” (paragraph 6); the fact that it takes time to achieve full realisation of rights does not exempt states from doing so progressively (para 8); and budget problems cannot be used as an objection (para 10). Violations would include failing to provide ‘an adequate replacement’ for eliminated social security schemes (para 13) or the “reduction or diversion of specific public expenditure, when such reduction or diversion results in the non-enjoyment of such rights and is not accompanied by adequate measures to ensure minimum subsistence rights for everyone” (para 14.g). The ICESCR does not neglect justiciability – “victims ... should have access to effective judicial or other appropriate remedies at both national and international levels” (para 22) and to restitution (para 23). In short, the ICESCR extends unambiguous rights to social security as generally understood. What remains unclear, apart from the question of adequacy, is how to compel EU governments to observe the rights and test the assertion that –

More specifically, social rights constitute a defined state objective that compels the legislator to adopt all the more advanced (and appropriate) social measures that are in compliance with these rights. ... Legislators are not free to abrogate social rights to which they themselves have given specific substance. In this sense, the defensive aspect of social rights is legally enforceable. (Stergiou 2003 p 196)

But who can sue governments for failing to juridify human rights when, for instance, “the Convention rights that were incorporated into British law by the Human Rights Act [1998] are over 50 years old and were never designed to provide social and economic rights for the citizen” (Johnson 2004 p 113)? Kantsin argued that “in an important sense [states] did not” agree to implement social rights, since there is no effective enforcement mechanism. “The political negotiations that led to this state of affairs are well documented: even the monitoring mechanisms were constructed in an emasculated form. Given that state interests cannot be relied upon to ensure enforcement, this issue is more acute in human rights than elsewhere in international law” (Kantsin 2002). In short, where national juridification fails, justiciability becomes more important.

At the European level, the Court of Human Rights is the institutional location of the Council of Europe’s *European Convention on Human Rights and Fundamental Freedoms* (1950). Welfare rights are not in this convention but appear in the *European Social Charter* (1961, revised 1996). Under the heading of ‘Legal and social protection’, the ESC includes ‘the right to be protected against poverty and social exclusion’. But while the human rights aspects are justiciable in Strasbourg, the welfare rights are not. The Court does refer to various international conventions signed by EU states to determine the precise scope of fundamental rights, but a Court judge commented “there was no sign of any willingness to go beyond that and adopt a legally binding catalogue. Even at present, the political will still appears to be lacking to amend the EC Treaty along the lines indicated by the Court of Justice in order to allow the European Community to adhere to the European Court of Human Rights” (Lenaerts and de Smijter 2001).

While individual justiciability is lacking, the European Social Charter does, however, have mechanisms for monitoring its operation by the European Committee of Social Rights, which also investigates complaints from organisations recognised for this purpose by the Council of Europe in those countries which ratified the 1996 Charter revision and the complaints procedure. For example, the Committee investigated a complaint that Greece had accepted the article relating to the right to social and medical assistance for those in need but had failed to implement it by establishing a social assistance scheme. The Committee ruled that “a state is obliged to ensure that persons in need are granted adequate assistance, which must be granted as of right, which can be invoked before an independent body of appeal, such as a court” (7.9.93, quoted by Amitsis 2003 p 190), and criticised Greece because “interested persons cannot invoke international provisions before any domestic court in order to claim specific social welfare benefits, due to the lack of direct applicability; ... violation of this right does not produce legal effects, due to the absence of international legally binding sanctions” (Amitsis 2003 p 190). In short, “the formal, rights-oriented approach to citizenship is violated by the lack of mechanisms to enforce the right to a social safety-net”, and this discrepancy discourages agency and calls democratic legitimacy into question (Amitsis 2003 p 193).

The international declarations led to the *Charter of Fundamental Rights of the European Union* (EUCFR), whose Preamble addresses issues above by asserting that “it is necessary to strengthen the protection of fundamental rights ... by making those rights more visible in a Charter”, and it “... reaffirms ... the rights as they result ... from the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Union and by the Council of Europe and the case-law of the Court of Justice of the European Communities and the European Court of Human Rights ...” Further, “enjoyment of these rights entails responsibilities and duties with regard to other persons, to the human community and to future generations” (EU 2000 p 8).

But there is no sign that justiciable rights are conferred. Article 1 is ‘Dignity’, but it states only that ‘Human dignity is inviolable. It must be respected and protected’. Article 24 entitled ‘The Rights of the Child’ refers only to protection, care, views, best interests and personal relationships. In the absence of minimum income standards, courts might be unable to rule on household income levels at which dignity is respected, and there is no mention of adequate household incomes as needed for children’s protection or the implementation of their best interests. Article 34 on ‘Social security and social assistance’ refers in clauses (1) and (2) to the right of entitlement to benefits as legislated and throughout the EU, but clause (3) is the most pertinent –

3. In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as *to ensure a decent existence for all those who lack sufficient resources*, in accordance with the rules laid down by Community law and national laws and practices. (EU 2000 p 16; emphasis added)

UK governments have for many years treated income adequacy or ‘a decent existence’ as, by circular definition, what national laws and practices relating to the social assistance benefits offer. This circularity is not normally treated as requiring *independent* criteria of adequacy tested by evidence and adjudication. But circularity may not make governments immune to contest. In 2005 the Israeli Supreme Court adjudicated an appeal against welfare cuts which claimed they were inconsistent with Israel’s Basic Law on Human Dignity and Freedom. While the Court rejected the appeal, the Chief Justice stated that “our ruling does not bring to an end appeals on citizen’s rights to a dignified existence” and recognised “the constitutional right to live in dignity” (Israel 2005). By contrast, in South Africa –

Articles 26-29 of the Bill of Rights attached to the South African Constitution (1996) entrenches a cluster of socio-economic rights essential for an adequate standard of living – including the human rights to housing, access to health care, sufficient food and water, social security and education. The justiciability and legal enforceability of these human rights has been put beyond question by jurisprudence of the South African Constitutional Court, which has upheld claims for the violation of socio-economic rights in a series of landmark judgements. (Vizard 2005 p 24)

Nevertheless, while the judgements accepted piecemeal implementation rather than immediate fulfilment, this did not relieve the government of the obligation to take positive steps to fulfil the rights in question.

In Europe, the Charter of Fundamental Rights lays down that “everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy ...” (article 47), but “any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms” (article 52 clause 1). Further, clause 3 makes it clear that the meaning and scope of the Convention for the Protection of Human Rights and Fundamental Freedoms must be incorporated and can be extended but not restricted. However, this would seem to be futile in the absence of a right to welfare. The version of the EUCFR incorporated into the draft European Constitution of 29 October 2004 includes a section on ‘Social Policy’ (article III-209) which makes it clear that references to fundamental social rights in the European Social Charter of 1961 and in the Community Charter of the Fundamental Social Rights of Workers of 1989 mean the promotion of economic aims and inclusion in labour market terms. It remains arguable whether or not this would allow adjudication of the adequacy of minimum wage

rates and social security and other forms of social protection under the heading of “the combating of social exclusion” (article III-210 (j) in EU 2004).

EU programmes and child poverty.

Whatever the case for the EU Charter, it seems to contain no direct reference to the need for and right to a secure economic foundation for children’s lives in their families such as an adequate income could offer. Other EU statements address the issue more directly. The EU *Social Agenda 2005-2010* says that “European countries have agreed a common framework for tackling social exclusion. Key policy priorities have been defined, calling on Member States to: ... eliminate child poverty ...” (EC 2005 p 13). It declares that the EC will propose that 2010 will be the European Year of combating exclusion and poverty, and that under this agenda the EC will act on the debate on minimum income schemes and will open consultations on ‘why the existing schemes are not effective enough’ in combating poverty (p 26).

It must be clearly understood that this agenda refers only to social assistance and similar minimum income schemes, many of which are not in themselves designed to raise incomes to adequacy levels but simply to contribute towards such income levels. There is no reference to governmental minimum income standards or other empirical evidence of the incomes actually needed to combat exclusion and eliminate child poverty; the wording suggests nothing more than better coverage and take-up, referring only to the social partners involved in implementing inclusion measures but not to benefit levels or income adequacy. If it is to be treated as more than rhetoric, the EC must explicitly insist that when the agenda refers to minimum incomes it means adequacy. The question remains why adequacy is not perceived and treated as being as central to the EU Social Agenda for citizens’ protection and inclusion as are the juridified and justiciable rules on protecting employees’ health and safety.

The problems of child poverty and the needs of children who are at risk of poverty in many countries are emphasised in a report on *Taking Forward the EU Social Inclusion Process* (Atkinson et al 2005). Regrettably, it does not refer to income insufficiency for human dignity and full social participation or the elimination of child poverty. It cites research on the possession or experience of socially defined necessities in different countries, but those studies did not report the income levels at which household members or children could make effective choices to achieve them, even though the ability to exercise market choice is crucial to European conceptions of both dignity and participation. Indeed, instead of seeking such evidence, the report continues to identify children in poverty not by an adequacy measure but as living in households with incomes below 60 per cent of median household incomes, equivalised by various scales which are themselves the subject of considerable technical discussion in the report because differing scales produce variable results which confound comparisons. Ironically, it points up the lack of connection between the EU’s broad and abstract rhetoric about its goals and the national governments’ policies for the achievement of quantitative outcome targets.

While the report is a rich source of data on aspects of child poverty, it offers no guidance on or policy measures for the elimination of poverty understood as inadequate income. Its conclusions address EU governments in broad and abstract terms, since by the principle of subsidiarity implementation remains their prerogative. While it tactfully avoids unwelcome topics, it recommends that, if people in member states are to understand the issues, the national meanings of the terms surrounding exclusion and inclusion and of EU jargon must be clarified. Significantly, it suggests that “contextual information, both quantitative and qualitative, should be provided to help understand the living standard achievable at the risk-of-poverty threshold in each Member State” (that is, on incomes at the 60% of median income measure) (Atkinson et al 2005 p 164). It endorses consultation with the social partners and with people experiencing poverty, perhaps in the unspoken hope that they will raise the question of enforceable income adequacy. But tools for the measurement of *adequate* incomes as an indispensable part of social inclusion and institutions for their enforcement were not discussed, and rights and remedies thus remain ignored.

Although the EC’s *Joint Report on Social Inclusion, Employment and Social Affairs* stated that “the challenge is to ensure that all men, women and children have a sufficient income to lead life with dignity and to participate in society as full members” (EC 2002 p 27), the challenge seems to have been treated by respondents as over-ambitious in their *National Action Plans for Social*

Inclusion. Their reports cover social assistance or other income maintenance schemes for social protection, whose benefit levels are often unrelated to empirical evidence about adequacy-for-dignity-and-inclusion. The challenge seems also to have been overlooked by a major NGO consulted, the European Anti-Poverty Network (EAPN), whose response to question 3 on ‘indicators and targets’ calls only for urgent development of “indicators which measure the depth of poverty to run alongside indicators of relative poverty” (EAPN 2005). EAPN could have added that many of the people it represents experience poverty and exclusion even on incomes above conventional inequality indicators, and that what this constituency most needs are income adequacy-for-inclusion standards specific to each country to act as targets for member NGOs to lobby around.

Some commentators have hoped that good practice in some EU states might be adopted by others through the EU’s *Open Method of Coordination*. If there were any intention of implementing the recommendation of the Joint Inclusion Report of 2002 on this topic, guidance could have been given on the German and Swedish governmental minimum income standards for consideration as suitable for OMC. However, it seems that the scope is limited to the social agendas on social inclusion (omitting income adequacy), pension coverage (but not adequacy), health and long-term care, and ‘making work pay’ (Atkinson et al 2005 pp 31-34). Because it is mere EU guidance, the OMC is often described as ‘soft law’, and similarly –

In particular, fundamental social rights – together with economic and cultural rights – are often said to be ‘soft’ in that they are not readily justiciable and may even be merely manifestations of a political or social programme, in contrast to civil and political rights which can be invoked in court against State action which fails to respect them. (Smismans 2005 p 6)

Citing the argument that civil and political rights are ‘negative’ in offering protection against the State, while social rights are ‘positive’ in requiring protection from the State, Smismans responds that this is an exaggerated dichotomy since either may require the State to use powers to intervene or not. “Yet, while arguments to place social rights on the same ground as other fundamental rights are increasingly to be found, international documents most often still deal with them separately and provide for different enforcement mechanisms” (Smismans 2005 p 6). The reason is that social rights were conceptualised in the EU as essentially subservient to economic considerations –

EU social rights are not conceived as rights corresponding to social entitlements that EU citizens can claim with regard to the European polity. They are conceived, instead, either as an instrument of undistorted competition or as a guarantee that such competition will not affect the level of social protection afforded by the Member States. (Poiarés Maduro 2003 p 285)

If these views are correct, it is naïve to expect the EU’s grandiose declarations about human dignity and incomes adequate for inclusion to be intended for serious implementation, and consequently there is no point in looking for enforceable remedies for child poverty. Smismans confirms that social rights (defined more broadly than welfare rights focused on adequate income) “have rarely found their way into case law” and “there is no case in which the Court (of Human Rights) has required the Member States or the EU to take ‘positive action’ in order to respect an (unwritten) fundamental social right”. Nevertheless, he questions the justiciability of the OMC guidelines – whether they could be challenged for failing to respect fundamental rights, since if guidance should lead to national hard law, soft fundamental social rights fed into the OMC could eventually become justiciable. Even if guidance “does not lead to European legislation, the cognitive framework provided by OMC procedures may, nevertheless, influence European regulation in those areas where the EU does have legislative competence” (Smismans 2005 pp 7-9), for example in the European Employment Strategy where social rights support its economic policy objectives. The application to the welfare rights of children and their families is unclear, but if there were the ‘progressive realisation’ Smismans suggests, of an OMC on fundamental social rights working in parallel with the economic ones, and a Fundamental Rights Agency conducting research and analysis (Smismans 2005 p 19), this would shift the debate onto a long-term basis, where the scope for gradual entry of ideas of enforceable welfare rights can be considered by one means or another.

What can be done about child poverty?

“To be of value rights must be enforceable. Within liberal democracies, this means they must be legally enforceable” (Dean 2002 p 186). How can children (and their families) legally enforce their rights to protection against poverty? One necessity is an ideological receptiveness to the unusual principle that there should be no stratification of rights to welfare, as was reflected in Sargent Shriver’s ironical US War on Poverty reference to “We the People and They the Poor”. In Norway, Sweden and Germany, governments accept that the state has a responsibility to ensure that everyone’s income is minimally adequate for some idea of a dignified level of living (as reflected in a governmental minimum income standard), and consequently the application of the principle is justiciable. By contrast, no UK government of any party has ever accepted the principle, at any rate not to the extent of being able to specify what minimal level of living the social assistance system was supposed to support (Veit-Wilson 1999). In the UK, the Rowntree report on ‘human rights obligations and policy supporting children and families’ focuses on whose rights they may be in the context of arguments between state, parents and children, and tacitly acknowledged further unexplored issues –

The laudable achievement of the Government in reducing child poverty offers a further indication of a welfare- rather than a rights-directed political philosophy. A rights formulation would suggest anti-poverty programmes directed across the life cycle, albeit targeted at points of risk. It would suggest the establishment of a minimum income standard and clearly enunciated service entitlements. These have not been established. (Henricson and Bainham 2005 p 105)

In a review of the extensive literature on the connections between poverty and human rights, Lister concluded that whatever the arguable symbolic and mobilising functions of the discourse of human rights, “... the ultimate test of its effectiveness as a *political* tool will be the closing of that gap between promise and reality” (Lister 2004 p 163; original emphasis), where reality means political implementation of demands for the ostensible rights. But the openings for pressure may be limited. Political mobilisation by the holders of the rights may have little effect on policy makers. The same applies to research findings: academics concerned not just to map poverty but to abolish it need to study the modes in social policy, including political and legal action, whereby asserted values and the claims which derive from them can be tested and implemented. Research findings that policies do not achieve their objectives (or poverty would be abolished by now) are not effective when shame is no sanction on politicians, if it ever was. Official social indicators are no better than outward signs of identified political concerns, and when both politicians and administrators resist the inclusion of social indicators for the principal cause of the lived condition of poverty, it is likely that whatever the contrary rhetoric, poverty abolition is not on their agenda.

Many commentators follow Smismans in arguing for long-term top-down activity to change the cognitive frameworks and discourses according to which the potential for implementing rights is blocked or becomes feasible. Others argue for bottom-up campaigning activity to press for enforceable rights, perhaps by shaming the establishments (moral pressures), by political pressures where the campaigning groups have any leverage, or by legal action where there is any scope for it. Top-down approaches from the perspective of the power-holding elites usually assume the acceptability of the institutional frameworks they have themselves established or maintained; bottom-up approaches from the perspectives of those experiencing poverty are more likely to be radical in questioning those institutional arrangements, at any rate if those affected have not been incorporated and domesticated into accepting the dominant maldistribution of power and resources. Writing about exclusion and rights, Spicker cites Drèze and Sen (1989) who –

see the principal form of redress for people without rights as lying, not in economic processes, but in political ones. The effect of giving people political rights is also to give them the ability to address their problems; and they argue, strikingly, that there has never been a famine in a democracy. (Spicker 2003 p 131)

Nevertheless, mature democracies contain striking degrees of deprivation and poverty, of social exclusion and the denial of human dignity, and Sen has acknowledged the role of effective personal purchasing power in combating deprivations of food and other needs and capabilities (Sen 1999 p 87

quoted by Lister 2004 p 18). A US Supreme Court judgement suggested political rights are not enough –

Groups which find themselves unable to achieve their objectives through the ballot frequently turn to the courts. ... And under the conditions of modern government, litigation may be the sole practicable avenue open to a minority to petition for redress of grievances. (NAACP v Button 1963, quoted by Mameli 2003 p 155)

But this may work only if the rights are already acknowledged and enforceable for some, not if they are merely declamatory –

The American civil rights movement ... sought the full implementation of rights which already existed, which most white Americans already enjoyed, and which were enshrined in the American constitution. ... The fact that the reforms have turned out to be neither radical enough nor rapid enough does not detract from their importance as an example of what can be done by insisting on rights being made real. “Give us what you admit we are entitled to” is a demand that is not easily resisted. (Lynes 1969 p 3)

To be consulted, to be listened to, even to make demands, is not enough without power to enforce change; “the ultimate disrespect is seen as ‘being involved in phoney participation, by people who don’t listen, when things don’t change’” (Lister 2005 p 3). But when the ostensible rights are only for the disrespected, not for the mass of the non-poor population, then where can the political power be found to oblige the government to juridify them? What the US welfare rights movement “could not do was to mobilise a current of public opinion ... because the rights on which the movement was based were not generally recognised as such ...” (Lynes 1969 p 4).

In the absence of juridification and justiciability, at least the recognised NGOs representing people in poverty could lodge complaints with the Council of Europe that the signatory governments of the Social Charter have failed to ensure that their populations enjoy “the right to be protected against poverty and social exclusion”, for the European Committee of Social Rights to investigate. While the outcomes cannot be predicted, the action would help to expose and demystify the rhetoric.

Conclusion.

The abolition of child poverty in Europe will remain no more than a benevolent aspiration until political action is taken to compel national governments to observe the requirements of the international conventions they have signed, to juridify the rights to adequate resources for children and their families, to establish what those adequate resources are in credible governmental minimum income standards, and to make the failure to implement them justiciable in a real sense. These are not sufficient conditions but they are absolutely essential.

Without this indispensable prerequisite, the rights remain declamatory but have no means of enforcement, and therefore they cannot be treated as rights in any serious sense. This is not a mere matter of semantics but a serious error, a fault on the part of all those who compose or endorse such declarations. Against the frequently made claims that asserting such rights has symbolic value in putting them on an agenda for future gradual implementation, a counter argument is that reiterated symbolic assertion is *in practice* treated by European political systems as a sufficient substitute if not tantamount to implementation. It is arguable that the unrealisable symbolic assertions of rights to human dignity and social inclusion are deliberate displacements, because they divert attention from the political failure to introduce remedies which are essential for either to be achieved. The declamations about social rights resemble what Murray Edelman identified in the title of his book *Political Language: words that succeed and policies that fail* (Edelman 1977).

In the meantime, ‘when nothing works and you don’t know what to do, do something’ is an old adage widely observed by campaigners and politicians who want to maintain the high profile appearance of purposive activity while tacitly recognising that its intended objectives are currently unachievable. It is also apparent in the EU mountains of plans and reports and academic commentaries on them, even though no further evidence is needed that children’s rights imply the necessity of adequate incomes for the households they live in. The present situation is dysfunctional –

The neglected use of legal instruments to impose obligations on states for the development of welfare rights policies has negative consequences for needy persons and intermediaries who are interested in applying international social rights instruments in the struggle against poverty and social exclusion. Likewise, the lack of any judicial control over respect for international obligations concerning welfare rights is a vital shortcoming of the monitoring system adopted by international organisations. This shortcoming cannot be adequately addressed through internal monitoring mechanisms (like the periodic evaluation of national reports or the submission of individual recommendations to member states that do not fulfil their obligations). (Amitsis 2003 p 189)

Perhaps, as Herbert Gans and others comment, power holders maintain poverty for its 'positive functions' (Gans 1972), symbolised by the contrast between the constant repetition of unenforceable rights to welfare and the enforcement of detailed employment regulations throughout the EU. Not only is this insulting to people whose human dignity is already damaged by disrespect and poverty, but politicians force changes in behaviour on them in the guise of combating their social exclusion, especially in the labour market, instead of recognising that behaviour follows changes in material conditions, adequate incomes and labour market demand.

Can the EU intend that the contradictions inherent in unenforceable rights should expose the hollowness of its rhetoric? This is not a matter for well-meaning academics alone. At a time when the foremost thinkers in poverty policy are stressing the importance of recognising the agency of those affected, and when one administrative form this is taking is the EU requirement that people experiencing poverty and exclusion be involved in the 'mobilisation of all actors' such as in formulating the NAPs, then the most urgent research agenda is not only to discover 'how much is enough' to overcome child poverty, but how to enable and support the millions of people in poverty, who have a right to money and respect they do not get, to mobilise and overcome the resistance of European power holders to guaranteeing achievable social rights to everyone, now. That would offer social protection not only to children but to democracy.

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