### Topic Area Paper: Expanding Rights

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# Introduction

## Background

 A recent issue of the Harvard Law Review begins with a pithy phrase, “at the federal level, Americans have no positive right to anything.” This controversy paper seeks to explore whether that should change.

 This is not a new controversy in American history. Until the 1970s approaching questions of societal importance was often framed or done at the level of rights. To simplify a complex history, without writing a longer tome on the origin of rights in the United States, for generations concepts of relationship with the government were codified not as policies but as a relationship of the inherent rights of residents and citizens as opposed to the rights embodied by the State at both the Federal and lower levels. These rights were either so-called negative rights that endowed groups or people with the power to hold something uninfringed by outside influence (e.g. the right to property, innocence, etc.) or the right to engage in specific acts either at the level of the person (e.g. the right to movement) or state (e.g. the right to tax and to engage in violence.) These rights tended to resolve around citizens and residents having obligations to support the state in a variety of ways while also having absolute protections from the state and its ability to overreach and from the actions of other individuals.

 Starting in the late 19th century, however, a more expansive vision of rights became embraced by reformers and revolutionaries, imagining a fundamentally different relationship between the state and citizens. Under this vision citizens would have what is now termed a ‘positive right’ (first theorized by Isaiah Berlin and formalized by Karel Vasak), giving the state an obligation to provide to its citizens. In the American context this was most publicly and forcefully put forward by President Franklin Delano Roosevelt who in 1941 proposed a vision of the world summed up in four fundamental freedoms including “Freedom from Want” and “Freedom from Fear.” In 1944 he formalized this in the State of the Union by proposing a “Second Bill of Rights” including:

“The right to a useful and remunerative job in the industries or shops or farms or mines of the nation;

The right to earn enough to provide adequate food and clothing and recreation;

The right of every farmer to raise and sell his products at a return which will give him and his family a decent living;

The right of every businessman, large and small, to trade in an atmosphere of freedom from unfair competition and domination by monopolies at home or abroad;

The right of every family to a decent home;

The right to adequate medical care and the opportunity to achieve and enjoy good health;

The right to adequate protection from the economic fears of old age, sickness, accident, and unemployment;

The right to a good education.”

Notably, none of these were negative liberties but each provided an obligation from the State to provide to residents and Citizens.

 With President Roosevelt’s death before the end of World War II this proposal ended up languishing and dying on the vine. Their lasting legacy being their inclusion in the American drafted UN Declaration of Human Rights (chaired and spearheaded by Eleanor Roosevelt.) However, the framework of a guaranteed *right* did survive, and was used by Civil Rights reformers and politicians to create the framework for both a legislative overhaul of rights (notably in the guaranteed rights to service and business in the Civil Rights Amendments) and in the 1950s through ‘70s judicial revolution which saw the recognition of a series of rights that had previously not been respected (e.g. the right to a state provided lawyer, equal access, etc.)

 However, starting at the end of the 70s and taking off in earnest during the Reagan administration a rights-based framework to statecraft and legal operation was replaced by a focus on specific ad hoc policies targeted at specific goals, and this focus on ‘policy’ eventually came to entirely replace rights in both government imagination and discourse. (This history and process of replacement gets discussed at length in the book *The Policy State* by Karen Orren and Stephen Skowronek, which is a enlightening, if very dry, read.)

 This paper proposes that a vision of the state that reverts back to a 70s attitude, and creates a *positive right* to one or more *essential parts* of the human existence. In effect, giving people the ability to demand and coerce support from the state.

## What is a right, and is this a legal topic?

In short, a right is a *legally enforceable action* against the government that guarantees individuals protections or services, and guarantees judicially enforceable penalties against the government should it fail to fulfill those rights.

An example:

The sixth amendment right to an attorney is a guarantee that anyone interacting with the criminal justice arm of the Federal government must always be able to receive legal counsel, and includes the providing of a lawyer in certain circumstances.

If the government hinders that right there are enforceable penalties against the government ranging from exclusion of found evidence and testimony up to complete dismissal of proceedings and punitive actions against agents of the state.

This is, at its core, *a legal framework* and one that does not fit under a more debate traditionalist ‘policy’ framework.

Proof:

#### Rights are enforceable actions against the government, that can take a variety of forms.

Volokh 13 (Eugene Volokh, Law Professor at UCLA “Positive Rights, the Constitution, and Conservatives and Moderate Libertarians” https://volokh.com/2013/05/07/positive-rights-the-constitution-and-conservatives-and-moderate-libertarians/)

Some recent conversations I’ve heard about “positive rights” and American legal traditions made me want to repeat something I’ve written before: While it’s true that the U.S. Constitution lacks some of the “positive rights” that people sometimes discuss under that label (e.g., a right to shelter, to medical care, to a subsistence income, and so on, it does secure other positive rights; and indeed, some positive rights are a longstanding feature of American legal traditions. I think such rights should remain limited, but I think one shouldn’t deny that they exist, and are in some measure secured by the U.S. Constitution (and state constitutions).

First, some definitions. The term “right” is a broad one, which encompasses many different kinds of entitlement.

1. Rights can be against the government (e.g., the freedom of speech or the right to keep and bear arms) or against private entities (e.g., the right to be free from trespass, negligent or intentional injury, or defamation).

2. Rights can be constitutional (e.g., the freedom of speech), statutory (e.g., copyright, which is authorized by the constitution but actually secured by Congressional statute, or freedom from many kinds of private discrimination), common-law (e.g., historically, rights to be free from private trespasses, negligence, defamation, breach of contract, etc.), or contractual, depending on which source of law secures those rights.

3. Rights can belong to individuals, associations of individuals (churches, partnerships, corporations), or governments (especially when the government’s right is a right asserted against other governments). Some people claim that governments can only have “powers,” not “rights,” but that’s not the way American legal usage has operated (see here for sources).

4. Rights are generally judicially enforceable, but they may also be broadly agreed on as entitlements even when the courts don’t step in. For instance, most people would say that everyone has a right to police protection, even though such a right may be unenforceable. We think the government ought to provide that protection (subject to manpower constraints, and possible police and prosecutorial discretion not to enforce certain relatively petty laws). If the government fails to provide such protection, we would think it’s doing something wrong, and the political process would often correct this.

So this is something of a right (especially when the judgment is about the government’s proper role, and not just judicially enforceability). Likewise, the constitutional command that Congress protect each State from invasion is probably not judicially enforceable; but one can characterize this as a right of a state.

5. Rights can be negative rights, which is to say (quoting Black’s Law Dictionary), “entitling a person to have another refrain from doing an act that might harm the person entitled.” Some examples: Free speech is a negative constitutional right against the government. My property rights in my land are a negative constitutional right against the government and a negative common-law/statutory right against private entities.

6. Rights can be positive rights, which is to say “entitling a person to have another do some act for the benefit of the person entitled.” Some examples: The right to demand that the government enforce your contracts is a positive constitutional right against the government). The right to public education under those state constitutions that secure such a right is a positive state constitutional right against the government. The right to get money under an annuity you’ve bought is a positive contractual right against a private entity. A child’s right to support from his parents is a positive common-law and statutory right against a private entity.

7. Rights can be equality rights, which is to say rights to be treated the same way that others who differ only in certain particulars are treated. Some examples: The right not to be discriminated in government hiring is a constitutional and statutory equality right against the government. The right not to be discriminated against in private hiring is a statutory equality right against a private party. Such an equality right may end up being a right to get a certain benefit, but only when the government or the private party is already giving the benefit to others.

8. Rights can also be rights to participation in government functions, such as the right to vote (secured by various state and federal statutory provisions, and in some measure by some state and federal constitutional guarantees). These are in a sense positive rights, but not quite the same as other rights.

9. Rights can also be mixtures, or look like one while actually being the other. The right to have a criminal defense lawyer appointed for you (if you’re too poor to afford one) may look like a constitutional positive right, but I think it’s really a constitutional negative right — it’s really the right not to be deprived of your liberty unless you’ve been convicted through a process in which a lawyer has been appointed for you. Similarly, your rights in your property consist of (1) a negative right against private people who would trespass on it, (2) a more limited negative right against the government, preventing it from trespassing on the property unless it takes the property for a public purpose and pays just compensation, and (3) a positive right against the government to protect your property via the court system and the police.

## Wording

### Stem

#### The core wording imagined by this topic paper is:Resolved: The United States Federal Government should establish a right to one or more of the following: [List follows]

As the Volokh card demonstrates above, there is wiggle room for the stem. Some examples:

**Resolved: The United States Federal Government should establish a federal right to one or more of the following:**

This seems superfluous, as the Federal Government acting in non-federal ways seems… unlikely. That said, this would keep everything squarely at the federal level.

#### Resolved: The United States Federal Government should establish a *statutory* right to one or more of the following:

This would restrict the agent in creating the right to *congress* and exclude judicial or constitutional rights from being included.

#### Resolved: The United States Federal Government should establish a *constitutional* right to one or more of the following:

This would require either amending the constitution or a judicial finding of a latent right inside the constitutional text.

#### Resolved: The United States Federal Government should establish a *civil* right to one or more of the following:

Some authors believe that this would limit the right to legal members (citizens, permanent residents, immigrants, etc.) of the United States. Others see the distinction as functionally meaningless.

#### Establish is used in the context of rights creation

LWV 18 [The Case to Establish a Right to Civics Education Under the U.S. Constitution - Informational Website, https://my.lwv.org/rhode-island/article/case-establish-right-civics-education-under-us-constitution-informational-website]

On November 29, 2018, a class-action lawsuit was filed in federal court on behalf of Rhode Island students to establish civics education as a right under the U.S. Constitution. The case, Cook v. Raimondo, argues that the Constitution entitles all students to an education that prepares them to participate effectively in a democracy. Rhode Island District Court Judge William Smith heard oral arguments on the defendants’ motion to dismiss the case in December 2019. He reluctantly issued his decision on October 13, 2020 to dismiss the case. An appeal was filed January 21. February 1, 2021 the League of Women Voters of the United States and the League of Women Voters of Rhode Island filed an amicus brief in support of the plaintiffs in Cook v. Raimondo. (Now Cook v. McKee) Federal court denies RI students' appeal claiming constitutional right to civics education Linda Borg - The Providence Journal Published 9:13 a.m. ET Jan. 12, 2022|Updated 5:05 p.m. ET Jan. 13, 2022 To help educate and keep the public informed, the plaintiffs' legal team has established a informational website http://www.cookvmckee.info/ with the latest news, background, legal briefs, and summary of legal issues in the case.

#### Establish means to create

McGarity 3 – Chair of trial and appellate advocacy @ UT (Thomas, “SCIENCE IN THE REGULATORY PROCESS: ON THE PROSPECT OF "DAUBERTIZING" JUDICIAL REVIEW OF RISK ASSESSMENT, 66 Law & Contemp. Prob. 155)

The court found that EPA had erred procedurally, however, when, instead of assembling a separate advisory committee under the Radon Act, it had allowed a special committee of its existing Scientific Advisory Board ("SAB") to perform the advisory role the Act envisioned. 413 The court found two problems with EPA's procedural shortcut. First, the Radon Act required EPA to establish a representative advisory committee. The use of the word "establish" suggested that Congress meant for EPA to create a new committee, not borrow an existing standing committee. The second problem was that the Radon Act also provided a role for the existing SAB in reviewing EPA's broad indoor-air research plan. Had Congress intended for a committee of the SAB to double as the statutory advisory committee, it presumably would have said so in the Radon Act. 414 Although perhaps insufficiently deferential to the agency's interpretation of its own statute, the court's statutory analysis was by no means unreasonable.

#### It’s distinct from maintain

Words and Phrases 5(v. 15, p. 180)

Ill. 1937. The word “create” is equivalent to the word “establish.” The words “establish” and “maintain” signify two distinct separate purposes. “Establish” if given the commonly understood meaning of word “create” is not synonymous with “maintain” and the words denote independent purposes.—People ex rel. Gill v. Devine Realty Trust, 9 N.E.2d 251, 366 Ill.418.

#### This is the ordinary meaning of the term

Madigan 4 **–** Lisa, Attorney General for the State of Illinois (Opinion title “GOVERNMENTAL ETHICS AND CONFLICT OF INTEREST”, 3/30, <http://www.ag.state.il.us/opinions/2004/04-002.pdf>)

Ms. Burke's letter notes that section 1A-1 of the Election Code uses the word "established" with respect to the origins of the State Board of Elections and not the term "created." The term "establish" ordinarily means "[t]o originate, to create; to found and set up; to put or fix on a firm basis; to put in a settled or efficient state or condition." Ballentine's Law Dictionary 417 (3rd ed. 1969); see also Webster's Third New International Dictionary of the English Language Unabridged 778 (1993). Applying the commonly understood meaning of the term "establish," it is my opinion that in enacting the language of section 1A-1 of the Election Code, the General Assembly has "created" the State Board of Elections "by State law.”

### List areas:

So, what should be in the list? This should be a series of positive rights that directly affect people living in the United States.

This paper believes the base for consideration by the Topic Committee should be:

#### Healthcare

#### Food

#### Housing

#### Education

#### Employment

We believe a topic of at least FOUR of these areas would produce sufficient Aff and Negative ground for the year.

There are additional areas that have promising aff and neg ground but are not viewed as core:

#### Transportation

#### Clean Environment

If the topic committee finds other areas of interest we believe that *there should be no barrier to including extra rights on the ballot* as long as the core areas are included.

### Elevator Pitch

Here’s the short pitch for why this topic area is goldilocks for a year of debate:

**- Good Affirmative and Negative Ground.**

Affs get the ability to *solve real harms* while negatives get big stick disads and counterplans.

#### Predictability and variation.

A singular core mechanic means that affirmatives will always be predictable, while the lit base for the list areas enables variation and updated affirmatives over the course of the year.

#### Student recruitment

As we transition back to in-person debate programs need the ability to easily pitch undergrads on the interest of the topic. This topic is easy to understand and relevant to every student’s life in ways that other topic papers are not.

#### Macropolitical Relevance

We are in a moment of national flux, where the ‘neoliberal consensus’ that has controlled the public imagination since the collapse of the Soviet Union is now in contention. Debates about the vision and role of the federal government in every day lives are core to this inflection point, and this topic lets us debate that in ways that no topic in recent history has allowed.

#### Critical and Policy overlap

There is not just good ‘policy’ (to use a phrase that is perhaps not apt) but also critical ground here, and this is one of the best areas where these two often parallel fields talk directly to each other in law reviews and philosophical texts. Put differently, this is the closest thing to a ‘grand bargain’ topic we have seen in some time.

# Sample Affirmatives

Sample affirmatives are gathered below. Some of them include examples of neg ground that can be found in the literature.

## Education

### Aff Advocates

#### There is an educational crisis happening among states, only creating a right solves

Black, D. W. (2019). The fundamental right to education. Notre Dame Law Review, 94(3), 1059-1114. (JAF)

Not since 2002 has the federal government made any substantial new investment in education. 4 Most disturbing, some states are currently taking steps to amend their state constitutions to weaken support and protection for public schools. 5 Parents increasingly doubt that the public education system can weather these challenges and are exiting the system altogether. 6 In short, public education stands in the midst of practical and constitutional crises. These crises call for a single solution: a federal fundamental right to education. Yet, for the past half century, that right has proven elusive. 7 In 1973, the Supreme Court in San Antonio Independent School District v. Rodriguez explicitly rejected education as a fundamental right and has since refused to reconsider the issue.8 The Court's most encouraging language merely hints that it is open to recognizing some narrow interest in a minimally adequate education. 9 Yet after four decades, the Court has failed to recognize any such interest or right.

#### Public education is in danger, A right to education solves

**Black**, D. W. (**2022**). Freedom, democracy, and the right to education. *Northwestern University Law Review, 116(4),* 1031-1098. (JAF)

Public education has reached a troubling crossroads. Public school funding is in generational decline, while segregation and inequality are steadily increasing. 2 Since the Great Recession, states have substantiallyreduced their fiscal effort for public education, exacting a $600 billion loss on schools nationally. 3 In Michigan, the loss is nearly $5,000 per student annually-the equivalent of more than $2 million a year in an average-sized school.4 At the same time, efforts to privatize education have finally taken hold and are accelerating rapidly.5 Going forward, the paths towards a revitalized public education look increasingly fraught. A fundamental right to education under the U.S. Constitution is one of the few remaining hopes for millions of students.6 While the Court refused to recognize a right to education in San Antonio Independent School District v. Rodriguez in 1973, it left open the possibility that different facts and theories might implicate a right to education.' Advocates, hoping to finally seize on that opening, have filed cases in four different federal circuits.' Scholarship on the topic has, likewise, flourished.9

## Healthcare

### Aff

#### The one thing that connects the moral, political and legal aspects of establishing a just approach to health care is a legally enshrined equitable insurance package

Sandhu 07 (Puneet, A.B. Stanford University, MSc. London School of Economics & Political Science, J.D. 2007 University of California, Berkeley School of Law (Boalt Hall), “A Legal Right to Health Care: What Can the United States Learn from Foreign Models of Health Rights Jurisprudence?” August 2007, <https://pdfs.semanticscholar.org/f747/e17c354b3d194a7197d4ef7b98f2b38ec27c.pdf>, ARO)

Rights discussions can take place on at least three planes: the moral/philosophical, the aspirational, and the legal. On the moral plane, we might discuss Rawlsian justice: society should provide, according to need, the amount of health care that everyone would choose for himself if he could not know what his health needs, or ability to pay for health care, would be in the future. On the aspirational plane, a "right to health" can be thought of as a declarative goal: a government's commitment to achieve a progressively healthier society. On the legal plane, we might invoke international human rights treaties as grounds for a right to health care. 37 Discussions of such a right often focus on the moral/philosophical and the aspirational planes - and avoid the legal realm - because of the difficulty of precise definition. 38 For example, the problem of defining and implementing a right to health is three-fold: indeterminacy (how to characterize it),39 justiciability (how to enforce it), 40 and 41 progressive realization (how to raise the standard over time). A brief look at international declarations of the right to health illustrates these difficulties. International documents dating back to 1946 acknowledge health (and consequently health care) as a human right.42 None of these, however, moves past the aspirational plane to impose concrete obligations. The World Health Organization (WHO) Constitution names "[t]he enjoyment of the highest attainable standard of health" as a "fundamental right[] of every human being."43 The WHO has clarified this definition over time to create a "right to primary health in accordance with the ability of the state and the international community to provide it.'44 Article 25 of the Universal Declaration of Human Rights proclaims, "[e]veryone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care. ''4 5 The International Covenant on Economic, Social, and Cultural Rights (CESCR) outlines affirmative health goals for ratifying states. Specifically, Article 12 calls for parties to "recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.' '46 The Article specifies that ratifying states should take steps to achieve this standard through "the creation of conditions which would assure to all medical service and medical attention in the event of sickness." 47 Unfortunately, these international declarations of rights to health and health care either include mere suggestions for enforcement or have no schemes for domestic enforcement at all, and thus have no "bite."48 While these documents may offer moral direction for policymaking to international organizations like the WHO, they provide no protection for individuals seeking access to health care. 4 9 An American, certainly, would find it absurd to demand the government provide access to health care based on rights enumerated in the Universal Declaration of Human Rights in any forum other than that of public opinion. In other words, an American could in fairness declare, "I have a human right to health care but the law gives me no means of enforcement." Distinguishing between the right to health and a right to health care helps to solve the indeterminacy problem. By guaranteeing health care rather than health, the government binds itself to providing services rather than guaranteeing good health. Defined narrowly, health is the absence of disease. More broadly, the WHO defines health as "the state of complete physical, mental and social well-being.' " 5 Health depends on a number of determinants: nutrition, education, social and economic development, the absence of environmental contaminants, public health services, access to medical care, 52 genetic predisposition, and individual choices. Health care, on the other hand, is an instrument for the generation of health: "any type of services provided by professionals or paraprofessionals with an impact on health status" or, in an economic framework, the "goods and services used as inputs to produce health.",53 In the United States, we tend to think of health care as equivalent to medical care, 54 whether preventive, primary, or specialized. Thus, in the U.S. we could understand the right to health care as a right to particular medical services. Because a right to health care can be defined more narrowly than an aspirational right to health, it is suitable for adjudication. A right to health implies that every person is entitled to perfect health.55 Although perfect health may be achievable at some point in the future, it is not a realistic benchmark against which to adjudicate a right.56 A right to health care, by contrast, entitles right-holders to the "goods and services" that aid in the achievement of health and, consequently, obligates the government to ensure access to these goods and services. A right to health care may be defined as equality of access: whatever health care resources society provides must be provided to everyone on an equal basis. Alternatively, the right could be defined as the right to a basic minimum of health care necessary to function in society, making the right to health care a welfare right. 7 Defining the right to health care is complicated because health care is unlike other goods. Although everyone values health, people do not know how much health care they need to ensure health. 58 In addition, the demarcation of a legally enforceable right to health care inevitably raises the politics of distribution as more health care for one means less health care (or more taxes) for another.59 Even so, there is no reason why elaborating the right to health care should be different from developing jurisprudence of any other right. As Stephen Jamar asserts, the process of infusing a right to health or health care with meaning is no different from the process of infusing freedom of speech with meaning. 60 He explains: [J]ust as the right to free speech is not the same as speech itself, so the right to health is not the same as health itself. Just as 'speech' has been expanded to include non-verbal expression and restricted to exclude from protection some kinds of speech, and just as 'equality' may mean equal opportunity under law, so 'health' may well take on a specialized meaning different from either its common or its public policy usages. 6 1 Though the right to health care might seem vague, it is possible to delineate the characteristics of a health care system that would constitute fulfillment of this right. 62 Daniels, Light, and Caplan use the fair equality of opportunity principle 63 to establish benchmarks for evaluating the fairness of the health care system, including universality of access, comprehensiveness of coverage, equitable financing, value for money in quality and efficacy, financial efficiency, public accountability, comparability, and degree of choice. From these benchmarks, they demonstrate that the task of establishing a valuesdriven health care system based on a right to health care is not insurmountable. 64 For this Comment, it is sufficient to assume that health care is a definable basket of goods and services around which it is possible to construct a right-based jurisprudence. The practical task of designing a health care system based on these principles remains with the legislature. The role of the courts is to enforce the right to health care as they enforce other rights.

#### A right to health care can be established justiciably by statute, leaving it up to state or provincial actors to organize universal and comprehensive systems or face legal challenge

Sandhu 07 (Puneet, A.B. Stanford University, MSc. London School of Economics & Political Science, J.D. 2007 University of California, Berkeley School of Law (Boalt Hall), “A Legal Right to Health Care: What Can the United States Learn from Foreign Models of Health Rights Jurisprudence?” August 2007, <https://pdfs.semanticscholar.org/f747/e17c354b3d194a7197d4ef7b98f2b38ec27c.pdf>, ARO)

A legal right to health care need not be constitutional in nature. It could be created by statute. A statute could declare the broad outlines of a right to health care, setting the stage for the creation of a comprehensive system of universal access to health care. For example, Congress could pass legislation akin to the Canada Health Act, which requires the provinces to provide health care that is universal, accessible, portable, comprehensive and publicly administered, in return for federal funding." 19 Although the Act subsequently has been elaborated by legislation and judicial interpretation, it set the foundation for comprehensive access to health care. In the United States, this approach would have the advantage of capitalizing on the popular consensus that Congress should act on the problem of access to health care 12 without presenting the obstacles of constitutional amendment. In essence, it may be easier to adopt a general statement of a right to health care, either constitutional or statutory, than it has proved to pass legislation to create universal access to health care.' 21 At the federal level, such a declaration of a right to health care could be effective in creating universal access to health care by imposing a concrete, judicially enforceable obligation on the political branches. An explicit, textual right to health care would drive comprehensive and specific governmental action. Part I has reviewed the desire for health care in the U.S. and the moral, practical, and political reasons to guarantee it. It has surveyed nearly a century of abortive attempts to establish comprehensive health care. Finally, it has traced the jurisprudence that seemed to point toward a Fourteenth Amendment protection of minimum needs, as well as the Supreme Court's retreat from that horizon. The next Part addresses fears about a legal right to health care. By examining the experiences of South Africa and Canada this Comment shows that a right to health care can be successfully adjudicated. In addition to the question of how a right to health care ought to be created, the question remains as to how a court might enforce such a right. A frequent refrain in discussions of social rights is that such rights are not justiciable; critics assert that legal adjudication of a seemingly indeterminate right undermines democratic accountability, violates separation of powers, and exceeds the institutional competence of courts. 122 Some commentators express the concern that expanding legal rights to 'include a right to health care, a relative rather than an absolute right, 123 would water down the narrow meaning of legal concepts, increasing confusion by eliminating precision in legal discourse. 124 In this view, social "rights" may not deserve the designation because they are more properly seen as privileges or entitlements. 125 Further, it may be unclear who possesses the right and how and when rights-holders may enforce it. Unlike a private health insurance contract between provider and patient, which yields legally enforceable contractual obligations, health care as a right is bound to raise difficult questions of who has standing to enforce the right, the extent of the right, and the proper remedies. 126 These concerns about the justiciability of a right to health care emerge in part from the fact that the American Constitution is a constitution of negative rights, limited to political and civil rights to be free of government restraint. The Constitution is an early constitution, which defines inherent rights (i.e. rights that antecede government, upon which government may not infringe) 127 unlike later constitutions (e.g. nineteenth century European constitutions), which "granted" citizens positive rights defined and provided by the state. 128 The latest generation of constitutions, emerging from the post-socialist period, includes collective human rights, rights that depend on a shared vision of societal good. 129 Unlike the American Constitution, which aimed to achieve freedom and autonomy through specifically enumerated rights endowed in individuals, more modem constitutions include "positive" social rights aimed at achieving equality without the expectation of individual enforcement via the courts. 130 There are two reasons that the skepticism of an enforceable right to health care is unfounded. First, sharp distinctions between civil and political rights and social rights seem increasingly inapt in the face of modern examples. 131 Health care "is a good example of a human right that falls within the categories of both civil and political rights, on the one hand, and economic, social, and cultural rights, on the other hand." 132 The same action may violate both civil rights and the right to health care. 133 For example, denial of health care to the incarcerated could simultaneously violate the Eighth Amendment's prohibition of cruel and unusual punishment 134 (a civil right) and the prisoners' right to maintain health by obtaining necessary medical care (a social right). A comprehensive vision of the right to health care is simultaneously positive and negative because society must act to promote the health of its members while also avoiding actions that interfere with their ability to maintain good health. The sharp distinction between civil and political rights as judicially enforceable and social rights as unenforceable is thus not accurate, particularly in the context of health care. Second, hostility to a right to health care is unwarranted because U.S. courts already have a substantial policymaking role. Even the American constitutional regime envisions "courts as governors [via] judicial review of legislative action." 135 We are accustomed to the elaboration of legislative policy via judicial holdings interpreting and enforcing legislative enactments. From labor rights to the right to clean water, Americans are untroubled by seeking legal enforcement of legislatively created social rights. 136 As government increasingly makes social and economic objectives its business, the judiciary necessarily has become involved in outlining and interpreting the meaning of these objectives. 137 The U.S. can learn from two nations with a great deal of experience with adjudicating the right to health care: South Africa and Canada. In the sections that follow, I explore the South African and Canadian approaches in giving meaning to the right to health care. Together, the experiences of these two countries demonstrate the feasibility of a legal right to health care notwithstanding the considerable challenges. The burgeoning jurisprudence of social rights in South Africa demonstrates that the traditional distinction between civil and political rights as justiciable and social rights as nonjusticiable does not hold. The South African experience over the last decade illustrates the feasibility of legal adjudication where a society, its judiciary, and its Constitution explicitly accept that the state has affirmative obligations to its citizens. Further, the South African case illustrates that the court must balance some of these rights against the reality of resource limitations, and that the judiciary is competent to ensure both substantive and procedural fairness. The justiciability of social rights depends on the societal acceptance of these rights followed by the judiciary's willingness to find a way to adjudicate them, rather than simply deferring to other branches of government. 38 The Canadian experience also demonstrates how social rights can be successfully adjudicated. However, it shows the significant challenges in effecting a legal right to health care. On one hand, advocates have used the Charter of Rights and Freedoms' equality guarantee with some success to expand access to health care to specific minorities and in prodding the provincial governments to deal with pressing health issues. On the other hand, the right is subordinate to others. Several cases have demonstrated that constitutional civil and political rights can undermine the right to health care where, as in Canada, that right does not possess equal constitutional stature. These cases demonstrate that civil and political rights may trump the right to health care. On balance, the subordination of the fight to health care is a greater challenge than the fear that a legally enforceable right to health care will result in the judiciary improperly usurping the role of the legislature.

#### Establishing a legally valid right to health care specifically is key – incremental gains don’t improve population health outcomes and continue to see health care as a commodity

Christopher and Caruso 15 (Andrea, General Internal Medicine Fellow Department of Medicine, Cambridge Health Alliance, Harvard Medical School, and Dominic, fourth-year medical student at the Mayo Medical School in Rochester, Minnesota. He recently completed work for a master’s of public health degree with a concentration in health policy from the T.H. Chan School of Public Health at Harvard University, “Promoting Health as a Human Right in the Post-ACA United States,” October 2015, AMA Journal of Ethics, Vol. 17 Issue 10, <http://journalofethics.ama-assn.org/2015/10/msoc1-1510.html>, ARO)

The ACA represents the biggest change to the US health care system since the creation of Medicaid and Medicare in 1965 [24]. Evaluations of the ACA five years after its enactment have focused on the increase in numbers of people with health insurance coverage, because it is still too soon to fully evaluate the law’s effects on costs of care or care quality [25]. Most notably, the number of uninsured Americans who have gained health insurance coverage under the ACA is estimated to be between 9.3 and 16.4 million [26-30], a sizeable reduction in the pre-ACA uninsured population of 57 million Americans [31]. The ACA was also intended to reduce the financial burden of health care through measures such as the Patient’s Bill of Rights, which includes coverage of preventive services [32]. With regard to gender parity, the ACA takes important steps with coverage of reproductive health and maternity services as well as banning of the practice of charging women higher premiums than men for health insurance [33]. But these valuable gains do not absolve the ACA of shortcomings regarding the goals of health as a human right. The focus in the US on health care financing and insurance is reflected in the ACA’s silence on a human right to health and health care. Although the ACA makes strides in reducing the number of uninsured people, it was never designed to guarantee access to health care for everyone in the US—thus neglecting a basic premise of the right to health movement. Much of the political debate around health care reform during the greater part of the last century centered on the push for universal [health coverage by political liberals](http://journalofethics.ama-assn.org/2012/11/oped1-1211.html), but the ACA’s individual mandate arose from the Heritage Foundation, a conservative think tank seeking to [preserve the free market](http://journalofethics.ama-assn.org/2015/07/msoc1-1507.html) in health care [34]. Augmenting a complex private health insurance structure to increase coverage rather than approaching health care as a human right [18] preserves the notion of health care as a commodity in the US. Additionally, much of the research evaluating the impact of the ACA highlights a few percentage point improvements in preventive screening rates as evidence of the ACA’s success [27, 35, 36]. These incremental increases, however, fall far short of meaningful improvements in population-level health outcomes. Thus, many opportunities remain for further reforms aimed at improving health and achieving the rights to health and health care. We must acknowledge that the movement promoting the right to health in the United States is actually a movement for universal health care, which is not an unreasonable or even particularly remarkable goal. Nearly all other member nations of the Organization for Economic Cooperation and Development (OECD) provide for the health of all citizens as a fundamental responsibility, not as a condition of employment, income, disability status, or some other criterion [37]. The upcoming UN agreement represents both an opportunity and an imperative for the US to provide health care that is truly universally available to all Americans. What would universal coverage and access to health care services look like in the US? In their seminal 2000 paper, Eisenberg and Power [38] laid out a framework for achieving quality health care, listing seven key tenets: (1) access to health insurance; (2) enrollment in an insurance plan; (3) coverage of services and clinicians; (4) choice of services and clinicians; (5) access to consistent primary care; (6) access to referral services; and (7) delivery of high-quality services. The first four items depend on the availability of comprehensive health insurance. In the US, a patient’s access to any of these benefits is severely limited without such coverage. Evidence from countries with universal health care systems suggests that a universal scheme may lead to enhanced access to care, improved efficiency and equity, and better health outcomes. A recent Commonwealth Fund study of health systems in 11 industrialized nations ranked the US, the only country without universal health care, at the bottom, noting particular deficiencies with regard to cost, efficiency, equity, and healthy lives [39]. A 2013 report completed under the auspices of the National Research Council and the Institute of Medicine looked at mortality and health across the lifespan in 17 affluent nations, including the US. The report consistently found higher rates of mortality and worse health outcomes in the US than in the other 16 nations in the report, all of which have universal systems of health care [40]. Based on these observations, Americans could reasonably expect that adoption of a universal system of health care would be a significant step toward improving health care and health equity.

#### A public policy focus on a right to health is key

Warren-Clem, Southern Illinois University Medical-Legal Partnerships Master of Law Fellow, 16

[Keegan; ““UNNECESSARY, AVOIDABLE, UNFAIR, AND UNJUST”: [EN]GENDERED ACCESS TO CARE IN THE PPACA ERA AND THE CASE FOR A NEW PUBLIC POLICY; Indiana Law Review; 13:1; pg 171-173; <https://journals.iupui.edu/index.php/ihlr/article/view/21141/0>; accessed 9-4-17; PAC]

There is little doubt that a multitude of reasons can be given as to why we as a nation have not chosen to recognize a constitutional right to health. Moreover, there is little likelihood of a move toward recognizing health or health care as a right in the near future. Not only does the debate on the insurance reforms in PPACA suggest that health or health care as a right is politically untenable,269 but also the reality of social resources are such that there must be limits to public sponsorship of medical care. Therefore, in this subsection this paper explores how emphasizing the equity of access to health care would tend to rectify the disparities. It does this by substituting, in the areas of disparity laid out supra, a public policy that puts a thumb on the scale in favor of health. Such a policy contrasts with the current model of balancing that serves merely to reinforce socio-legal gender biases outside of health care. To be clear, the goal is expressly not “Cadillac” access to care for all, nor even mere adequate access for every conceivable infirmity. After all, “public policy ought to maximize a nation’s health, not healthcare.”270 Instead, then, the proposal is a specific and positive valuation of health that does not unnecessarily catalyze gender-based disparities, as does the status quo. As noted in the first section, this formulation is consistent with the conception of a health-related disparity as unnecessary, avoidable, unfair, and unjust.

#### Commitment to a right to health care is a requirement for a just society

Ram-Tiktin 12 (Efram, Dept. of Philosophy @ Bar-Ilan University, “The Right to Health Care as a Right to Basic Human Functional Capabilities,” Ethical Theory and Moral Practice, Vol 15 Issue 3, <https://search-proquest-com.mutex.gmu.edu/docview/1021337432?accountid=14541>, ARO)

What is the moral basis of the claim that “people have a right to health care”? Health is one of the dominant factors (but not necessarily the most important) influencing the human ability to live a good life, that is, the ability not only to exist as a biological organism but perform various human functions (planning, communicating, creating, etc.). A just society might provide its members with opportunities to acquire education, occupations, and meaningful relationships, among others; however, the potential of human life is limited as long as an individual lacks the basic capabilities to enjoy life opportunities because of some disability or ailment that confines her to bed and limits her access to a good life. According to Aristotle,3 a just social arrangement concerns the entire population and not just a specific group. Furthermore, it concerns a variety of functions that contribute to good human life. It is insufficient to consider only the allocation of goods, such as wealth, education options, and social position. A just social arrangement must consider human functionality as a variable that influences the ability to live a good human life. The proposed account of the right to health care begins from this view of just social arrangement and is informed by Amartya Sen’s and Martha Nussbaum’s capabilities approach.4 Following their extensive writings on the concept of justice, the second presumption of my account is that the currency of justice is human capabilities (not resources or welfare). Capabilities are things a person can do and be, that is, the kind of activities she can perform (including basic activities like eating and walking and complex ones like political participation). An individual’s set of capabilities influences what she will be, the content of her life plan, and whether she can successfully fulfill it. In this sense, the human capabilities of an individual influence her ability to live a good human life. The more human capabilities one has and the more developed they are, the more one is able to perform various functions and have a wider opportunity to fulfill different life plans. For example, a three-month-old baby is able to consume breast milk or formula. As her teeth grow and she is introduced to other kinds of food, she is able to consume the various food groups needed for the human body, although she remains dependent on those who feed her. As she grows and acquires more capabilities and knowledge, she becomes able to prepare her own meals and gains independence in this sense.

### Neg

#### Right to healthcare bad. Laundry list.

Barlow 99 (Philip Barlow, Neurosurgeon. “Health care is not a human right” https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1126951/)//RJG

A human right is a moral right of paramount importance applicable to every human being. There are several reasons why health care should not be considered a human right.

Firstly, health care is difficult to define. It clearly encompasses preventive care (for example, immunisation), public health measures, health promotion, and medical and surgical treatment of established illness. Is the so called human right to health care a right to basic provision of clean water and adequate food, or does everyone in the world have a right to organ transplantation, cosmetic surgery, infertility treatment, and the most expensive medicine? For something to count as a human right the minimum requirement should surely be that the right in question is capable of definition.

Secondly, all rights possessed by an individual imply a duty on the part of others. Thus the right to a fair trial imposes a duty on the prosecuting authority to be fair. On whom does the duty to provide health care to all the world’s citizens fall? Is it a duty on individual doctors, or hospital authorities, or governments, or only rich governments? It is difficult to see how any provision of benefits can be termed a human right (as opposed to a legal entitlement) when to meet such a requirement would impose an intolerable burden on others.

Thirdly, the philosophical basis of all human rights has always been shaky. Liberalism and humanism, the dominant philosophies of Western democracies, require human rights. Religion requires a God, but this is not in itself evidence of God’s existence. Most people can see some advantage in maintaining the concept of civil and political rights, but it is difficult to find any rational or utilitarian basis for viewing health care in the same way.

To propose that health care be considered a human right is not only wrong headed, it is unhelpful. Mature debate on the rationing and sharing of limited resources can hardly take place when citizens start from the premise that health care is their right, like a fair trial or the right to vote. I suspect that the proponents of the notion think that to claim health care as a human right adds some kind of weight or authority to the idea that health care, and by extension healthcare professionals, is important. A more humble approach would achieve more in the long run.

## Right to Food

#### US framework of charitable food aid is a disaster. Legal and justiciable right to food solves.

Montes and Cohen 21 (Denisse Cordova Montes, Law Professor at the University of Miami. Alison Cohen, from WhyHunger. “Freedom From Want: Advocating for the Right to Food in the United States” https://whyhunger.org/category/blog/freedom-from-want-advocating-for-the-right-to-food-in-the-united-states/)

The right to adequate food and nutrition is both a call to action and a global legal framework for coordinated reform in food and agriculture. In the U.S., we often speak of our civil and political rights (such as the right to vote or the right to be free from police harassment), but less often about our economic, social, and cultural rights (such as the right to affordable housing or the right to clean water). Perhaps that is one reason why we are experiencing the worst income inequality and highest concentration of wealth in this country since the Great Depression.

And yet, despite our lack of investment in a rights-based framework, the U.S. had a hand in promoting right to food as a phrase to be included in the Universal Declaration of Human Rights. In his Four Freedoms speech, given as a part of the State of the Union address almost 80 years ago, Franklin Delano Roosevelt called for the freedom of speech, freedom of worship, freedom from want, and freedom from fear. Freedom of speech and worship were already protected in the U.S. Constitution. By including freedom from want and freedom from fear, he was doing something truly radical, endorsing economic security and social rights. He was also acknowledging a tension between the American ideal and the reality; the rights expressed in the Declaration of Independence and the Constitution on the one hand, and a history of slavery and racial discrimination on the other. The Four Freedoms were later incorporated into the Universal Declaration of Human Rights by the First Lady, Eleanor Roosevelt, as chair of the United Nations Human Rights Commission.

The current state of food insecurity and the strategies for addressing hunger in the U.S. are a far cry from the vision the Roosevelts invoked on the eve of the establishment of the United Nations. With the growth of more than 60,000 private charitable organizations distributing food to tens of million of people in need while public social security unravels, Americans are not guaranteed the freedom from want. And so, we continue to advocate.

The United Nation’s Human Rights Council’s 36th session of the Universal Period Review (UPR) included a review of the human rights records of the United States. November 9th, 2020 was an important advocacy moment for those of us who have been organizing around the right to nutritious food in the U.S. For the first time, a group of civil society stakeholders came together to formally submit evidence of violations to the right to food in the U.S.

The UPR is a “State-driven process,” under the purview of the Human Rights Council (HRC), which allows the opportunity for each Member State to provide a written statement of the actions they have taken to improve human rights in their countries. In addition to the State’s review, Civil Society stakeholders are also provided an opportunity to submit reviews based on their perspective and experience of the way in which human rights are upheld or violated by their national government.

WhyHunger and the Human Rights Clinic of the University of Miami School of Law spearheaded a submission to the UPR in October 2019 concerning the state of the right to food in the U.S. as viewed through the lens of civil and political rights. The U.S. is one of only a few countries that has never ratified the International Covenant on Economic, Social, and Cultural Rights (ICESCR), which includes the right to food and adequate nutrition. FIAN International, the Food Studies Program of Syracuse University and the Center for Hunger Free Communities were co-investigators and authors on the official submission.

Our participation in the UPR of the U.S. became all the more relevant with the advent of the COVID-19 pandemic, which is shaking the foundation of our globalized social and economic system to its core. There have been more than 20 million confirmed COVID-19 cases in the U.S., and more than 356,000 deaths due to the virus. Around 57.4 million Americans have filed for unemployment since the start of the pandemic. And with frequent images in the media of long lines of people and cars waiting to receive free food – some for the first time in their lives – the number of food insecure people in the U.S. is expected to climb from 37 million pre-pandemic to more than 50 million this year. In addition, the disproportionate spread of COVID-19 in communities of color has drawn into sharp focus the systemic racism present in the U.S. food system. COVID-19 has exacerbated the inequities in the U.S. food system that communities of color have faced for many years.

Do we continue to accelerate food banking and the charity food aid model, or do we hold our government accountable to ensuring the right to food by taking collective action at the root causes of hunger?

The rising incidence and visibility of hunger in the U.S. due to the pandemic has elevated the question at the core of our participation in the Universal Period Review and our struggle for the right to food and adequate nutrition: Do we continue to accelerate food banking and the charity food aid model, or do we hold our government accountable to ensuring the right to food by taking collective action at the root causes of hunger? Throughout North America and Europe, within the borders of some of the wealthiest countries in the world, the COVID-19 pandemic has led to a massive expansion of food charity. In the U.S., appeals for donations of food and money are a new media constant, and the government is relying heavily upon food banks to redirect agricultural waste due to food chain supply stoppages. These community institutions are doing an essential and life-sustaining job of distributing food despite a massive loss of volunteers and the need to protect themselves and clients from contracting the virus.

Yet, the private charitable emergency feeding system in the U.S.—the largest and most sophisticated in the world—has historically never been able to meet the demand or make a real dent in the rate of food insecurity, which has hovered between 11 – 12% of the population over the past 30 years. Even before the pandemic, tens of millions of Americans were struggling to get enough food on the table, while four out of five workers lived paycheck to paycheck.

COVID-19 is heightening this persistent crisis of poverty and inequity, allowing folks from around the world to see, and many Americans to experience for the first time, the deep contradictions in our food and social welfare systems and the resulting uneven distribution of wealth that hits women, children, and Black, Indigenous and People of Color communities in the U.S. the hardest. Much of this analysis has a long-standing history.

It is time to go beyond business-as-usual. We will not solve this crisis while hunger advocates in the U.S. are left to defend existing (and inadequate) government nutrition assistance and the average American citizen must look to the private charitable sector to meet the “emergency” needs of their hungry family. Rather it is time to recognize citizens, communities and the natural resources we depend on as rights holders and governments as duty bearers. The right to adequate food and nutrition is both a call to action and a global legal framework for coordinated reform in food and agriculture. As the pandemic reshapes public life around the globe, it also offers an opportunity to organize and protect everyone’s basic human right to food in the U.S.

We recognize that framing an end to hunger in terms of the right to food has the power to connect seemingly disparate peoples and struggles across the U.S. and around the world – that includes Black farmers in Georgia and Mississippi, farmworkers in California, fisher people in the Gulf of Mexico, Indigenous communities such as the Wabanaki and Mohican in the Northeast and the Navajo and Tohono O’odham in the Southwest, school children in urban areas, and food chain workers in meat packing plants throughout the Midwest. Struggling for the right to food allows us to amplify the lived experiences of those confronting food insecurity in the U.S. and, as an act of solidarity, contribute to the shared analysis of social movements across the globe about strategies that will actually solve hunger.

In an effort to update our October 2019 submission for the UPR of the U.S. in light of the impact of the COVID-19 pandemic on hunger in the U.S., WhyHunger in coordination with FIAN International, the Geneva Academy of International Humanitarian Law and Human Rights and the University of Miami Human Rights Clinic, held a public event, “Rights Not Charity!”, on October 14, 2020 aimed at offering an analysis of the false and true solutions to hunger, included below.

The official unedited report from the UN Human Rights Council has been made public. The report’s recommendations do not directly address the right to food but they do address access to health care, workers’ rights, housing – among other aspects of the International Convention on Economic, Social and Cultural Rights. The US has until the 46th session of the Human Rights Council (Feb. 22-March 19) to respond. WhyHunger and the Miami Law Human Rights Clinic plan to bring attention to the recommendations at the local, state, and national levels and follow-up on their implementation. Stay tuned!

False Solutions to Hunger: What are we up against?

A Broken System: An agricultural system focused on commodities and food for fuel as opposed to food for people.

Centuries of systemic racism that have dispossessed communities of color of their land, seeds, crops, identity, and stories rendering them dependent on charity for food access.

Political landscape rooted in several decades of neo-liberal policies has led to an intentional shrinking of the government’s role in protecting social welfare.

The Dominant Narrative: Public perception of how to end hunger prioritizes a model of charity and food aid and elevates food insecurity as the problem, rather than a symptom of deeper inequity.

Corporate Capture: A majority of non-profit/third sector food aid organizations (food banks, food pantries, emergency feeding programs) are supported by corporations in the food and agriculture sector.

Proliferation and increasing institutionalization of food access or food aid organizations in the non-profit/third sector, promoted by the corporate-funded Global FoodBanking Network.

Corporations’ unrestrained lobbying influences food and nutrition legislation and programs while impeding the political participation of those most affected by hunger and malnutrition.

True Solutions: What are we advocating for and working towards?

True solutions to hunger include putting the health of people and planet first, localizing or regionalizing food systems, agroecology as a practice and way of life, and strengthening social movements in the struggle for food sovereignty. True solutions include working towards the following:

The right to food enshrined in law, justiciable, and enforced.

Labor policy to mandate livable wages, stable employment, adequate hours, safe working conditions, and the ease of union representation.

## Housing

#### A right to housing has never existed inside the United States, and would be different from existing policy frameworks.

Card and Breidenbach 19 (Kenton Card, PhD student in urban planning at UCLA. Jan Breidenbach, teaches housing policy at Occidental College. “Bernie Should Declare Housing a Human Right” https://www.jacobinmag.com/2019/08/green-new-deal-housing-bernie-sanders)//RJG

The United States is experiencing the worst housing crisis since the Great Depression. The widespread unaffordability of shelter is rooted in stagnating wages, the history of racist lending practices, and a political and economic system rigged against working people.

In many of our cities, gentrification exacerbates the housing crisis for communities of color, often displacing longtime residents, while in other cities and towns we see continuing disinvestment and decline. In both cases, families and individuals face housing markets that don’t provide safe, decent, affordable housing.

In the worst-case scenario, people are without a home. The scourge of homelessness — which has exploded since the late 1980s — is the direct result of low wages, rising housing prices, inadequate health services, and criminalization of the poor (particularly people of color). To our national shame, over 30 percent of our homeless population are families with children.

While a number of Democratic presidential candidates have offered fairly comprehensive proposals on housing, the Sanders campaign unfortunately has not. This is surprising, particularly because Sanders is the only candidate who has proclaimed that “economic rights are human rights,” affirming the beliefs articulated in the 1948 United Nations Declaration of Human Rights. The last article in the Declaration declares housing as a fundamental right. And that’s why Sanders, as a democratic socialist, should come out and say that housing, too, is a human right.

The Right to Housing

Like the right to health care or the right to employment, the right to housing affirms that the government has an obligation to guarantee all people a safe, decent, affordable place to live — if not currently provided by the market, then produced and maintained by local, state, and federal governments. Shelter must be considered a public good, sequestered from the vagaries of the private market.

The United States has never acknowledged housing as a human right. In 1948 the United Nations enshrined the right to adequate housing in its Declaration of Human Rights. But while former–First Lady Eleanor Roosevelt led the committee that drafted the declaration, the United States has never become a signatory. Worse still, in recent years, United Nations special rapporteurs have visited the United States and reviewed the state of poverty and homelessness, resulting in scathing critiques of the country’s housing delivery system.

The year after the 1948 declaration, the United States did pass the Housing Act of 1949, the preamble of which declared a need for “the realization as soon as feasible of the goal of a decent home and a suitable living environment for every American family.” The act established two major programs: public housing and urban renewal. The first committed the government to building 810,000 new homes within six years; the second provided funds to local governments to tear down “slums” and “renew” their neighborhoods.

Seventy years later, we have fulfilled neither the vision laid out in the Declaration of Human Rights nor the promise of the 1949 Housing Act. It took over twenty years to construct the public housing units that were promised in six. And when urban renewal programs tore down so-called slums, they displaced hundreds of thousands of poor, mostly African-American households. Those pushed out were not guaranteed public housing units. The decimation of back communities was so extensive, it led James Baldwin to call “urban renewal” a form of “Negro removal.”

Neoliberalization of Federal Housing Policy

In the 1970s, the US government began to retreat from its already inadequate efforts to carry out the Housing Act. The five decades since have seen political elites defund and demonize public housing while pushing various privatization schemes.

Among the first was President Nixon’s housing vouchers proposal, which he unveiled in 1974. Vouchers were used in some desegregation programs (for example, the Gautreaux program in Chicago’s public housing projects) to move tenants out of majority-black projects to majority-white neighborhoods with better schools and opportunities. Yet vouchers are totally dependent on private landlords’ willingness to accept them. Only in 2019, for instance, did Los Angeles City Council vote to ban Section 8 voucher discrimination. Their overwhelming effect has been to undermine public housing.

Another sign of creeping privatization was the federal government’s increasing use of subsidies to convince private and nonprofit developers to build and manage low-income housing. While this boosted the stock of subsidized housing, it ultimately produced time-limited terms of affordability, linking “affordability” to area median income and creating the paradox of unaffordable “affordable housing.”

The neoliberalization of housing continued in the 1980s, with public agency cuts, increasing marketization, and more stringent means-testing. President Reagan’s 1986 tax reform provided tax credits for private investment that contributed to affordable housing, while simultaneously cutting the Department Housing and Urban Development (HUD) budget by 80 percent. Then in 1987 and 1990, Congress passed legislation that provided funding for homeless shelters and housing (the McKinney-Vento Homeless Assistance Act) and expanded funds for construction that specifically targeted housing the homeless (HOME Investment Partnerships Program).

Almost two decades later — following years of organizing — Congress passed the Housing Trust Fund, which created a federal bank dedicated to funding affordable housing. All but three states also have state trust funds, and every state except Wyoming has city- or county-supported trust funds.

While all these programs provide decent and affordable homes to millions of people, they are woefully inadequate to the task at hand: solving the housing crisis. Reliance on the “free hand” of the market to deliver shelter to millions of Americans has failed. On a deeper level, US housing policy has lost sight of the fact that housing units are homes for people — places to live, love, dream, mourn, heal, express ourselves, and do everything that enables us to be fully human. Housing is treated instead as a commodity, a vehicle for capital accumulation.

#### There is constitutional basis for a right to housing

**Alexander**, L. T**.** (**2015**). Occupying the constitutional right to housing. *Nebraska Law Review, 94(2),* 245-301. (JAF)

Yet, it is not implausible to argue that many elements of the right to housing are consistent with values and norms explicit in the American constitutional order. The core tenets of the human right to housing are that individuals-by virtue of their humanity, not their social or economic status-are entitled to certain minimum forms of shelter, security of tenure, dignity, connection to communities, and opportunities that allow for their human flourishing.1 02 The human prosperity and dignity that the human right to housing protects is consistent with well-accepted and explicit American constitutional norms such as equal dignity, equal opportunity, equal concern, self-determination, privacy, personal autonomy, and life, liberty, and happiness for all. 03 These principles are expressed in the Declaration of Independence;104 the Nobility Clause prohibiting Congress from granting titles of nobility; 1o5 and the Fourteenth and Thirteenth Amendments of the Constitution.106 The First Amendment of the Constitution also protects individuals' rights to privacy, autonomy, freedom of association, and self-determination.107 While the right to housing does not have an explicit textual foundation in the Constitution, it is not implausible to argue that Americans without adequate housing lack equal dignity, equal citizenship, privacy, personal autonomy, or self-determination. The human right to housing, therefore, provides a normative framework to allocate housing entitlements in a manner that is consistent with fundamental norms in a free and democratic society.

#### Rights Framework k2 Housing.

Fallon 21 (Katherine Fallon, senior policy program manager in the Research to Action Lab at the Urban Institute. “Naming Housing as a Human Right Is a First Step to Solving the Housing Crisis” https://housingmatters.urban.org/articles/naming-housing-human-right-first-step-solving-housing-crisis)//RJG

December is Universal and National Human Rights month, which celebrates the universal and inalienable rights that belong to people simply because they exist.

Safe, stable, affordable housing was first recognized as a human right in the 1948 Universal Declaration of Human Rights and has since been reaffirmed in many international treaties, resolutions, and declarations. Housing is critical to many other facets of life, including physical and mental health, quality of life, access to education, economic outcomes among many others. Given this role, safe, stable, and affordable housing is a necessity to achieving many other human rights, including security and safety.

Though the US has signed onto many of these international resolutions, housing is still treated as a commodity rather than a right. No federal laws guarantee a right to housing; rather, Americans are provided a bundle of protections, including freedom from housing discrimination through the Fair Housing Act.

The tension between the critical need for housing and the role of housing as a commodity is reflected in the ongoing affordability crisis that policy has been unable to address. A large and increasing number of American households struggle to find secure, affordable housing. Nationally, there is a shortage of more than 7 million affordable homes, hundreds of thousands of Americans experience homelessness each year, and a growing number of households spend more than half of their income on housing. When viewed as a market-based commodity, there is no mandate or requirement for governing entities to fund, manage, or provide affordable housing.

Can housing as a human right address the affordability crisis?

In some cities, housing advocates are arguing that recognizing housing as a right in the federal or state and local constitutions would be one way to commit the appropriate budgetary and oversight resources to solve the affordability crisis. They say acknowledging housing as a right could provide a way to hold entities like landlords or city governments legally responsible for evictions, a lack of enough affordable housing, and the criminalization of homelessness.

A spate of recent proposals have positioned housing as a human right as a way to justify and encourage sufficient investments in housing construction and affordability. In June 2021, Representatives Pramila Jayapal (WA-07) and Grace Meng (NY-06) introduced the Housing is a Human Right Act, which aimed to commit funds, services, and supports to address gaps in housing and help support people experiencing homelessness.

In Oakland, California, Moms 4 Housing has been working with Assemblyman Rob Bonta to introduce legislation that asserts a right to housing. In Sacramento, Mayor Steinberg is discussing how to establish housing as a legal obligation to provide a roof for people who have nothing. If these bills pass, it would shift the responsibility for housing production from the market to governing bodies, and, in doing so, may compel a large increase in funds for the provision of housing, housing supports, and protections for people living in unstable or precarious housing situations.

International efforts to enforce housing as a human right

However, as advocates build frameworks for housing as a human right, simply naming housing as a human right may not necessarily accomplish desired outcomes. Given the small number of regions and nations that have enacted housing as a human right, there is not a strong set of evidence demonstrating that this approach is the key to solving issues of housing affordability and availability. Examples from across the globe show the complexity of addressing housing crises, even when housing is declared a human right.

Scotland has incorporated this commitment into its legislation and budget in multiple ways, including homelessness prevention legislation and means-tested benefits that help meet housing costs. Between 1987 and 2003, Scotland passed a series of acts that framed housing as a right, which made local governments responsible for the provision of housing (PDF) for people unintentionally experiencing homelessness within 90 days and which allows people to sue if their right to housing is not respected. With this comprehensive set of policies, Scotland has witnessed reductions in the numbers of people identified as homeless, improvements in homelessness services and benefits provision (PDF). Yet, despite the focus on human rights, Scotland has continued to struggle with housing access in the wake of recent economic downturns (PDF).

## Employment

#### A federal right to work would establish a federal jobs guarantee

Paul et al 18 [Mark Paul, Postdoctoral Associate at the Samuel DuBois Cook Center on Social Equity at Duke University. William Darity Jr., Samuel DuBois Cook Professor of Public Policy, African and African-American Studies and Economics and the Director of the Samuel DuBois Cook Center on Social Equity at Duke University. and Darrick Hamilton, Professor of Economics and Urban Policy at the Milano School of International Affairs, Management and Urban Policy and Department of Economics at the New School for Social Research, and Director of the Doctoral Program in Public and Urban Policy at The New School. The Federal Job Guarantee - A Policy to Achieve Permanent Full Employment, March 9, 2018, https://www.cbpp.org/research/full-employment/the-federal-job-guarantee-a-policy-to-achieve-permanent-full-employment]

The idea of a federal job guarantee is not novel. Government intervention in the labor market to ensure full employment has been part of the political and policy debate at the national level at least since President Roosevelt’s final State of the Union address in 1944, wherein Roosevelt introduced what he called an Economic Bill of Rights.[22] The speech was grounded in Roosevelt’s belief that “the American Revolution was incomplete and that a new set of rights – economic rights and rights analogous to Nobel Laureate Amartya Sen’s more recent conception of human capabilities – was necessary to finish it.”[23] The first “article” of his proposed second Bill of Rights was the right to employment. The second was the right to “earn enough” to lead a life of dignity. Roosevelt was convinced that security—“physical security…economic security, social security, moral security”—was central to the success of the American experiment. Roosevelt, a defender of private property and state-sanctioned capitalism, was convinced—and rightly so—that the free market alone could not provide the necessary security to the American people. In the absence of the provision of adequate opportunities for work by the private sector to eliminate involuntary unemployment, Roosevelt envisioned the creation and maintenance of a public-sector jobs option to provide employment for all seeking work. Prior to the 1944 State of the Union address, Harry Hopkins, a trusted advisor to Roosevelt and one of the chief architects of the New Deal, strongly advocated a permanent federal employment program; while Roosevelt supported the idea, the administration was not able to secure it.[24] The country’s pursuit of genuine full employment—meaning the elimination of unemployment—through a job guarantee did not end with Roosevelt; rather it was just beginning. In 1946, two years after Roosevelt’s introduction of an Economic Bill of Rights, Congress passed the Employment Act of 1946. Although this was a markedly weaker version of the failed Full Employment Bill of 1945, it nevertheless helped reshape how the federal government would view its role in the pursuit of full employment.[25] Those seeking a mechanism for permanent full employment knew their work was far from over. It is often forgotten that full employment was a cornerstone of the famed 1963 March on Washington. Civil rights leaders including Bayard Rustin, Dr. Martin Luther King Jr., and Coretta Scott King publicly endorsed the universal right to a job at non-poverty wages for all Americans.[26] Although their work in the 1960s resulted in significant strides with regard to civil rights, economic rights were largely left unrealized. After Dr. King’s assassination, Coretta Scott King doubled down on the pursuit of authentic full employment legislation. Her work was instrumental in shaping an early version of the 1978 Full Employment and Balanced Growth Act, better known as the Humphrey-Hawkins Act, and early versions of the bill established a federal Job Guarantee Office, signaling the government’s direct involvement in ending unemployment through direct employment. [27] While this office was eventually cut from the legislation, the final bill established an interim five-year target of three percent unemployment for individuals 20 years of age and older, and four percent for individuals age 16 and over within five years, with full employment to be achieved ‘‘as soon as practicable’’ thereafter. The proposal, as originally drafted, would have been enforceable; it established a legal right to work where the unemployed would have the right to demand employment from the federal government. The bill, which was passed into law, has been largely ignored in practice, as the final version weakened the full employment mandate from a commitment to a “goal.” The U.S. government has never achieved the reasonable employment targets set in the law, close to 40 years since passing the 1978 Full Employment and Balanced Growth act.[28] Other countries have employed varying forms of a job guarantee program to promote full employment and poverty alleviation. Perhaps the best known examples are India’s National Rural Employment Guarantee Act (NREGA) and Argentina’s Jefes y Jefas. India’s program, the largest direct employment scheme in the world, with over 600 million workers eligible for employment, provides up to 100 days of guaranteed paid employment per year for rural households. Recent research indicates that the program increased earnings for low-income households and increased employment in the private sector. Income for the low-income households increased 13.3 percent, with the vast majority (90 percent) of the increase coming from higher wages in private employment rather than wages earned through program employment.[29] The Argentinian case provides additional insight into large-scale direct employment programs, where the government successfully provided guaranteed employment to a head of household for at least four hours a day to engage largely in community development projects.[30] While both of these programs differ in important ways from what we propose here, the research evaluating them to date provides useful guidance for full employment policy design and implementation.

#### There is an American legal framework towards a right to employment.

**Wright**, R. **(2014).** Toward federal constitutional right to employment. Seattle University Law Review, 38(1), 63-90. (JAF)

The practical value of a constitutional right to employment seems clear based on mainstream social science evidence and moral theory. Given our focus on an individually exercisable constitutional right, the most relevant evidence is of unemployment's consequences to individual persons and their families. But it is impossible to separate those individual- or family-level consequences from the harmful consequences effected on broader communities and the nation. When we turn to evidence of the harms of involuntary long-term unemployment, we inevitably face problems of precise measurement. But some of the basic harms, and their general magnitude, are clear enough for appreciable recognition, even in the basic economic textbooks. Well-respected mainstream economists William J. Baumol and Alan S. Blinder, for example, recognize that the social problem of long-term unemployment is not equally distributed across social and economic groups.29 The importance of that distinctive fact is obvious. But they also recognize what is for our purposes an even more central concern: Even families that are well-protected by unemployment compensation suffer when joblessness strikes. Ours is a work-oriented society. A man's place has always been in the office or shop, and lately this has become true for women as well. A worker forced into idleness by a recession endures a psychological cost that is no less real for our inability to measure it. Martin Luther King, Jr., put it graphically: "In our society, it is murder, psychologically, to deprive a man of a job .... You are in substance saying to that man that he has no right to exist." High unemployment has been linked to Psychological and physical disorders, divorces, suicides, and crime. Further dimensions and details of the general harms of involuntary long-term unemployment are easily added. One recent survey, for example, indicates that [b]eing out of work for six months or more is associated with lower well-being among the long-term unemployed, their families, and their communities.... The long-term unemployed also tend to earn less once they find new jobs. They tend to be in poorer health andhave children with worse academic performance than similar workers who avoided unemployment. 31 Communities with a higher share of long-term unemployed workers also tend to have higher rates of crime and violence.32 A bit more specifically, it has been reported that [b]eyond earnings losses, there is a host of health and social issues associated with unemployment and long-term unemployment in particular that affect families, but also have a larger cost to society. As a result of increased health problems, individuals who lose their jobs during a severe downturn can expect to live [one] to [one-anda-half] years less. Health care costs may also rise with an increased risk of mental illness, domestic violence, and suicide. Family instability associated with job loss leads to higher divorce rates, while children of unemployed parents also perform worse in school and have lower future earnings as adults compared to children without unemployed parents. 33 A number of the most significant effects of involuntary long-term unemployment are well documented 34 and their gravity, persistence breadth, and distinctive constitutional relevance seem equally clear. In fact, much of the necessary crucial understanding of the roles and values of work and employment has long been available to legal and constitutional reformers, as the next Part will indicate.

#### A right to work should not be confused with duty to work

**Wright**, R. **(2014).** Toward federal constitutional right to employment. Seattle University Law Review, 38(1), 63-90. (JAF)

Of course, it is impossible to meaningfully discuss a proposed constitutional right to employment without at least tentative, implicit assumptions of one sort or another. We will assume, therefore, that however one chooses to define or measure unemployment or the rate thereof, unemployment and its rates are not uncontrollable natural phenomena, independent of human decision making. As the economist Gregory Mankiw observes, "A nation's unemployment rate, rather than being immutable, is instead a function [intended, or unintended] of the choices a nation makes."' 6 We might also assume, a bit more controversially, that in a dynamic economy, the optimal level of unemployment may be greater than zero.17 And we shall assume that even if employment or other useful, valued work is considered a moral duty for some persons,' a constitutional right to employment should be treated as an option, rather than a legally enforceable duty to work. 19 The serious arguments for and against a federal constitutional right to employment cannot, beyond some point, be entirely left as matters of mere assumption. But the idea of a constitutional right to employment at the level of the broad concept-conversely cannot be undermined by arguments addressing merely one or more narrow, particularized, concrete conceptions of the proposed right. Developing a sense of the appeal, or lack of appeal, of such a right clearly involves exploring some of the questions raised by the proposed right at the broadest levels of discussion. While we cannot pretend to provide a comprehensive survey of the relevant considerations below, we can certainly provide enough of a sense of the major issues, problems, costs, and possibilities of a constitutional employment right to promote a richer discussion, and to provide some broad policy and jurisprudential guidance

## Transportation

#### Legal gaps allow for clarity of transportation rights

Baldwin, T. (2006). The Constitutional Right to Travel: Are Some Forms of Transportation More Equal than Others. Northwestern Journal of Law and Social Policy, 1, 213-266. (JAF)

The poor person, especially in today's transportation environment, is left in a quandary. In Monarch, the Ninth Circuit justified its rejection of a right to select a travel mode by stating that if a person cannot afford another mode, "[the] poor man may have to walk., 297 But public transportation frequently does not serve areas where new jobs are created, and today's transportation infrastructure makes it difficult or unsafe to walk (or bicycle) on much of the transportation system.298I n interstate travel and freedom of movement jurisprudence, the Supreme Court seems most concerned with removing restrictions on personal liberty.299 In intrastate travel jurisprudence, the Supreme Court has not yet spoken definitively on the issue, and the circuit courts are split. 30 0 But most circuit courts, even in the cryptic Lutz decision, seem to recognize that transportation access for basic services is protected under the Constitution. 301 In future right to travel cases, judges will have to reconcile a poor person's theoretical liberty to move within and across states with the fact that many living in poverty have no access to basic services and jobs because they are unable to afford a car.

# Core Disads

## Econ

Any new positive right to a core suggested area would cause an economic upheaval inside the United States that has not been experienced since the New Deal. An economic right to food, housing, healthcare, or any other suggested area would radically disrupt the market, and guarantee the negative links to disadvantages. This should not need cards, but we have included some cards below:

### Generic

#### Entitlements expand and wreck the economy. Biden puts us on the Brink, anymore wrecks us.

Wall Street Journal 21 (The Wall Street Journal. “It’s the Entitlements, Stupid.” https://www.wsj.com/articles/its-the-entitlements-stupid-11624920486)//RJG

The entitlements are by far the biggest long-term economic threat from the Biden agenda. Tax increases can be repealed by a future Congress. Spending on infrastructure will slow as funding falls. The courts may block his racial preferences. But entitlements that spend automatically based on eligibility are nearly impossible to repeal, or even reform, and they represent a huge tax-and-spend wedge far into the future.

The media won’t talk about this, and Republicans are so far missing in action. But Americans need to understand the stakes.

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Hoover Institution scholars John Cogan and Daniel Heil document nearby the entitlement expansions of the Biden Families Plan. It’s an important piece that lists how far the progressive left wants to go in expanding government’s reach into American family life. Federal child care, government paid family leave, free community college, a $3,600 tax credit per child, a permanent expansion of ObamaCare premium subsidies, universal pre-K, permanent expansion of the earned-income tax credit to workers without children, and more.

We’d highlight two points. First is the dishonesty about costs. Entitlements always start small but then soar. The Biden Families Plan is even more dishonest than usual.

For example, it pretends the child tax credit ends in 2025, so its cost is $449 billion over the 10-year budget window that is used for reconciliation bills that require only 51 votes to pass the Senate. But a future Congress will never repeal the credit. An honest accounting would show how the credit will cause the deficit to explode in year 11 and beyond and thus require 60 Senate votes to pass.

Second, these programs aren’t intended as a “safety net” for the poor or those temporarily down on their luck. They are explicitly designed to make the middle class dependent on government handouts.

Sen. Bernie Sanders and the left understand that “universal” benefits are more politically durable. The only entitlement to be reformed in our lifetimes was Aid to Families with Dependent Children, also known as welfare, in 1996. But cash welfare was never a middle-class program, and the work requirement in that reform is nowhere in the Biden Families Plan.

Mr. Cogan’s 2017 book, “The High Cost of Good Intentions,” is a superb history of American entitlements. It is also harrowing reading for anyone who fears American decline. Entitlements always grow over time, as politicians add benefits and increase eligibility.

Social Security benefits have increased often since the program began, and its formula based on the increase in average wages means benefits rise faster than inflation. Medicaid was once a safety-net program but now covers 37% of Californians. Food stamps and nutrition programs started as help for the poor but now cover tens of millions of Americans. Medicare started as coverage for seniors but now Democrats want it to cover anyone over age 55.

For a while, in the 1990s and 2000s, entitlement reform was in the political air. But it always failed, even when Republicans controlled the government. George W. Bush tried to reform Medicare and Social Security, but his party made him expand the first and fled from the second. A GOP majority failed by a single vote to reform ObamaCare in 2017, as three Senators defected.

The result is that on present trend the U.S. is falling into the same entitlement trap as Western Europe. Entitlement spending requires higher taxes, which grab 40% or more of GDP. Economic growth declines as more money flows to transfer payments instead of investment. The entitlement state becomes too large to afford but also too politically entrenched to reform. Incentives for upward mobility erode as dependency on the state grows.

The Biden Families Plan will greatly accelerate the pace of all this. Other spending priorities—notably defense—will be crowded out by automatic entitlement increases. Taxes on the rich won’t be nearly enough to pay for it all. Tax increases on the middle class are an eventual certainty, probably a value-added or carbon tax, or both.

### Healthcare

#### A comprehensive right to healthcare would cause untold economic destruction.

Michael Cannon, Cato Institute’s director of health policy studies. 2020 [“M4A Would Deliver Authoritarian, Unaffordable, Low-Quality Care” https://www.cato-unbound.org/2020/04/06/michael-f-cannon/m4a-would-deliver-authoritarian-unaffordable-low-quality-care/]

The final fairy tale we will examine here is the notion that expanding Medicare to the entire population would guarantee access to care by making health care “a right, not a privilege.” On the contrary, Medicare for All would trample health care rights. The only right it would guarantee is a right to dangerously low-quality medicine.

President Barack Obama may have been both incorrect and insincere when he endlessly pledged that “if you like your health plan, you can keep your health plan” under the Affordable Care Act. Nevertheless, the reason he made that false promise is that he and other Americans intuitively sense that the most important health care right is the right to make one’s own health care decisions. As Obama put it in an address to Congress, the ACA “would preserve the right of Americans who have insurance to keep their doctor and their plan” (emphasis added).

As noted above, Medicare for All would leave Americans with even less freedom to buy private insurance than Canadians—and Canada’s Supreme Court held that country’s ban on private insurance to be a human rights violation.

Indeed, prohibiting private insurance would be—to coin a phrase—a Medicare for All-sized violation of Americans’ health care rights, quickly throwing nearly 200 million Americans out of their private health insurance plans. The employer-sponsored plans that cover 178 million Americans? Gone. The individual-market plans that cover 14 million Americans? Gone. (The 20 million, or one third, of Medicare enrollees and the 54 million, or two thirds, of Medicaid enrollees in “private” plans don’t exactly have a right to have the government subsidize private insurers on their behalf. Still, those plans? Gone. Good luck selling that to 56 percent of Minnesota seniors.)

Taxes also infringe on the right to make one’s health care decisions. Blahous estimates that even if Congress doubled all federal individual and corporate income taxes, it would not be enough to pay for Medicare for All. The Council of Economic Advisors estimates the necessary tax increase would leave the economy 9 percent smaller than otherwise. (The Great Recession erased just 4.3 percent of GDP.) The CEA projects “free” health care would leave households with $17,000 less to spend on non-health items. Free health care sounds great. But if the taxman leaves you penniless, you’re not really the one calling the shots.

After repealing your health care rights, Medicare for All would replace them with dangerously low-quality health care. Part of the problem is rationing by waiting, a problem that plagues health systems in United Kingdom, Canada, and elsewhere. The Congressional Budget Office projects that the Sanders bill would create “a shortage of providers, longer wait times, and changes in the quality of care.” But there’s a larger problem inherent in any single-payer system, whether it exhibits waiting lists or not.

Health care is so complex that every method of paying health care providers creates perverse incentives. Promoting all dimensions of quality requires open competition among multiple payers with different payment and delivery systems. A single-payer system, no matter what form it takes, cements in place one set of perverse incentives and eliminates the competitive pressures that would otherwise rescue patients from the low-quality care that results.

### Food

#### Governmental borrowing to engage in food distribution wrecks markets, drives prices up, hurts women.

Center for Women’s Global Leadership 2011 (Meeting Report by the Center for Women’s Global Leadership. “The Right to Food, Gender Equality

and Economic Policy” https://www.cwgl.rutgers.edu/docman/economic-and-social-rights-publications/361-righttofood-pdf/file)//RJG

Food Prices, Financialization and Gender Equality

Borrowing to realize human rights amounts to using financial intermediation, i.e., entering into financial markets, to realize human rights. This raises issues about the ways in which the realization of human rights is increasingly being intermediated by financial concerns. For example, during the food crisis from 2005 to 2007, food prices increased astronomically, contributing to increased hunger and poverty. A key contributor to this increase was the entry of investment banks into the commodities futures market. This phenomenon is referred to as the financialization of commodity production.

Increasingly, core human rights are being intermediated by financial interests in ways that the human rights community has not caught up on. The tendency to drive up food prices and contribute to commodity price volatility depend on the kinds of financial regulation in operation. The central role of finance in economies around the world alters the ways in which progress on economic and social rights can be achieved, as well as the policy space available to governments.

Inappropriate monetary responses to inflationary pressures may have long-run consequences on governments by slowing the pace of employment creation and limiting peoples’ ability to buy and distribute food. If one simply focuses on available budgets it is easy to make the assessment that there is no available money for social spending. However and for example, the banking sector in the United States is currently holding 1.6 trillion dollars in foreign exchange reserves, up from 20 billion dollars in 2007.38 Rapidly increasing food prices make it much more difficult for women as food providers to ensure the adequate nutrition of their families. In times of financial crisis and austerity measures to balance the debt to Gross Domestic Product (GDP) ratio, women also end up with more responsibility to provide basic services to their families and communities, and larger numbers of women end up working in the informal sector to make ends meet. At the micro-level, banks are providing women with micro credit and small-scale loans because they are responsible borrowers. Evidence now shows that microcredit programs have had an adverse impact on poor women, putting them into more debt, without substantially reducing poverty and food insecurity.

## Politics

Will link. Republicans will hate most Affirmatives. Joe Manchin would probably go ballistic. You will get your DAs.

## Federalism

Historically positive rights like food, education, housing, etc. have been the purview of states and *not the federal government.* If this topic is selected the affirmative *must undo that balance.* This guarantees the negative a core disadvantage firmly rooted in the legal field.

### Core

#### The States, and not the Federal Government, should recognize and expand rights.

Gardner 16 (James A. Gardner, interim dean at SUNY-Buffalo Law School. “Justice Brennan and the Foundations of Human Rights Federalism” https://digitalcommons.law.buffalo.edu/cgi/viewcontent.cgi?article=1211&context=journal\_articles)//RJG

In a well-known and widely cited 1977 law review article, Justice William J. Brennan called on state courts to “step into the breach” and use their authority as independent interpreters of state constitutions to continue on the state level the expansion of individual liberties begun on the national level by the Warren Court. Justice Brennan was right about the importance of independent state constitutional law, but he was wrong about the reason. The benefits of independent state constitutional law have little to do with expanding human rights and everything to do with federalism. The confusion is understandable; both individual rights and federalism protect liberty, but they do so by very different mechanisms, and those mechanisms can at times operate at cross-purposes. Federalism protects liberty not by offering an opportunity for the continuous expansion of human rights protections, but by creating a system of dual agency in which the people appoint two agents, one state and one federal, to monitor and check the abuses and errors of the other. Nothing in that system inherently requires the expansion of rights on the state level, and it can just as easily support their contraction. The value of independent state constitutional law lies in its availability as a tool by which state agents can protect the people’s interests by staking out and institutionalizing positions opposing those taken by the national government, whatever they may be. In the arena of rights, it is thus to be expected – and it is observed – that the state and national governments will sometimes agree and sometimes disagree about the appropriate scope of protection to be afforded various human rights, and that disagreement may manifest itself in a competitive struggle in which each level attempts to advance its own view at the expense of the other.

#### Federalism is good, and disagreement *good* for the purposes of rights.

Gardner 16 (James A. Gardner, interim dean at SUNY-Buffalo Law School. “Justice Brennan and the Foundations of Human Rights Federalism” https://digitalcommons.law.buffalo.edu/cgi/viewcontent.cgi?article=1211&context=journal\_articles)//RJG

As a result, the proper scope of protection for human rights can be a subject of disagreement and contention among the orders of government. It should by no means be assumed that all fifty states and the national government agree completely on the scope of protection to be accorded to each and every human right receiving the dual protection of the state and national constitutions. In accordance with the federal dynamics of intergovernmental contestation, whenever any such disagreement appears, each order of government can be expected to use the resources at its disposal to advance its own view of the appropriate level of protection, and to resist what it views as misguided decisions about rights protection advanced by its competitor. It was this vision that so excited Brennan's supporters.

What Justice Brennan failed to perceive, however, was that federalism's assignment of responsibility for protecting individual rights to both orders of government says nothing about the likelihood of disagreement among them, much less that the disagreement might run in any particular direction. The federal system of dual agency requires each agent continually to examine and to judge the actions of the other. If such a system is to succeed in its goal of keeping both agents on track in implementing the wishes of their common principal, then each must exercise independent judgment about what fulfillment of those wishes requires in any particular instance. Thus, in the arena of human rights protection, each agent must decide for itself what balance between government empowerment and constraint best conduces to public welfare. There is no a priori outcome of this deliberative task. It is in principle just as possible-and just as permissible-for states to conclude that the national government has done a commendable job in striking the balance between individual rights and government power as it is for states to conclude that the national government has done a poor job, either by according too little protection to human rights or, indeed, too much.

This is where Justice Brennan missed the mark. He assumed that the lack of aggressively independent state judicial deployment of state constitutional rights, and the proliferation of lockstep state supreme court opinions, indicated a lack of appreciation by state judges of the nature of state constitutional independence. But there is another explanation. Although federalism creates the conditions in which disagreement among the orders of government may appear and become an object of active conflict, there is nothing inevitable about the emergence of such disagreement. It is no more inevitable that states disagree with the national government over policies of free speech, freedom of religion, or warrantless searches than it is that they disagree over the details of policies concerning environmental protection, immigration, or economic development. And even when one state disagrees with national policy, there is no reason to assume that other states will share that disagreement, or that disaffection on the state level will spread like a contagion. After all, the very first attempt in American history to build a state-level movement against a controversial national human rights policy-public protests by Virginia and Kentucky of press censorship by the John Adams administration 16°-died on the vine when a disposition to resist remain confined to those two states.

### Education

#### Federal Rights to education fly in the face of American judicial precedent, and usurp authority from the States, upsetting the delicate balance of Federalism.

Boaz 06 (David Boaz, Executive Vice President at the CATO Institute. “Education and the Constitution” https://www.cato.org/blog/education-constitution)

In both cases the Journal seems to have forgotten that the U.S. Constitution grants no authority over education to the federal government. Education is not mentioned in the Constitution of the United States, and for good reason. The Founders wanted most aspects of life managed by those who were closest to them, either by state or local government or by families, businesses, and other elements of civil society. Certainly, they saw no role for the federal government in education.

Once upon a time, not so very many years ago, Congress understood that. The History of the Formation of the Union under the Constitution, published by the United States Constitution Sesquicentennial Commission, under the direction of the president, the vice president, and the Speaker of the House in 1943, contained this exchange in a section titled “Questions and Answers Pertaining to the Constitution”:

Q. Where, in the Constitution, is there mention of education?

A. There is none; education is a matter reserved for the states.

Not only is the Constitution absolutely silent on the subject of education, but the U.S. Supreme Court has also refused to recognize any right to a taxpayer‐​funded education. As Timothy Sandefur, author of Cato’s forthcoming book Cornerstone of Liberty: Property Rights in 21st-Century America, points out, in San Antonio Independent School Distict v. Rodriguez (1973), the Court specifically declared that education, though important, “is not among the rights afforded explicit protection under our Federal Constitution. Nor do we find any basis for saying it is implicitly so protected.” Nine years later, in Plyler v. Doe, the Court held that if a state chooses to give such an education to citizens, it must also offer it to the children of illegal aliens. But it has consistently recognized that taxpayer‐​funded education is a privilege, and not a right.

And as I wrote in the Cato Handbook for Congress a few years ago, the argument against federal involvement in education

is not based simply on a commitment to the original Constitution, as important as that is. It also reflects an understanding of why the Founders were right to reserve most subjects to state, local, or private endeavor. The Founders feared the concentration of power. They believed that the best way to protect individual freedom and civil society was to limit and divide power. Thus it was much better to have decisions made independently by 13–or 50–states, each able to innovate and to observe and copy successful innovations in other states, than to have one decision made for the entire country. As the country gets bigger and more complex, and especially as government amasses more power, the advantages of decentralization and divided power become even greater.

And that’s why it was a mistake to further centralize the control of our local schools in the No Child Left Behind Act. And why our friends at the Wall Street Journal, who are usually committed to the virtues of federalism and decentralization, should be applauding the several states’ resistance to federal intrusion, not calling for a crackdown.

# Counter-Plans

## Rights PiC + Policy or Advantage CP

Core to this topic is the idea of contrasting a right to a policy. While the affirmative should be bound to create and defend a RIGHT inside the list area, the negative should be able to engage in Counter-Plans that solve those harm areas without creating the right. In effect, the Affirmative should be forced to defend a Right as necessary, the negative should be able to defend a non-rights based policy as sufficient.

## States CP

The 50 States CP is an abomination, and the notion of Uniform Fiat should have been banned from debate many many years ago.

*However*, the 50 States CP is the closest thing we have in the modern age of debate to be able to debate the notion of federalism. And here we have good solvency ground for these rights existing on the level of the states.

### Education

See above for the Federalism DA.

### Food

#### Maine created a right to food.

National Law Review 2021 (https://www.natlawreview.com/article/right-to-food-maine-s-new-constitutional-amendment)

Earlier this week Maine voters approved an amendment to the state’s constitution. ‘Right to Food’ is a statewide measure that was placed on the ballot by the Maine Legislature and gives Maine residents an unalienable right to grow, raise, produce, and consume food of their choice. Under this amendment, Maine residents may create their own food supply, whether statewide or in silos. However, it does not impact food assistance programs, and references to food processing and preparation that would have conflicted with state and federal laws regarding the licensing and inspection of food were removed from the measure.

Maine has been at the forefront of the food sovereignty movement, passing its food sovereign laws under the Maine Food Sovereignty Act in 2007, which was amended in 2017. The vision behind Maine’s food laws is to create a food system where producers have control over how their food is grown, sold, and distributed. The latest constitutional amendment allows Maine residents to have more control over their food supply by allowing residents to save and exchange seeds, as well as to produce, consume, and sell their own food.

### Healthcare

#### States are valid agents to recognize right to Healthcare.

Matsuura 15 (Hiroaki Matsuura, ScD '12, is currently Provost and Vice President for Academic Affairs and Professor of Health Economics and Demography at Shoin University in Japan. “State Constitutional Commitment to Health and Health Care and Population Health Outcomes: Evidence From Historical US Data” https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4455512/)//RJG

One reason for this lack of recognition is that the US Constitution does not include an explicit statement regarding health and health care or other socioeconomic rights, such as education, social welfare, or the environment. The US constitutional system has enjoyed a unique division of labor between federal and state constitutions regarding the provision of constitutional rights.4–6 State constitutions contain a number of socioeconomic rights for which there is no acknowledged national consensus and that are not included in the federal constitution. As of April 2014, 15 state constitutions specifically mention health and health care—either in the form of a programmatic statement, public concern, individual right, or government duty beyond the federal minimum, that is, no constitutional right.

## I-Law

Not only are most of these rights recognized internationally, but there are slews of treaties that establish these rights that the United States is not a part of. Embracing one of these treaties would serve to establish this right, avoid congress as a necessary actor, and empower I-Law in the United States.

### Food

#### UN Declaration of Human Rights and the ICESCR both solve for right to food.

UN Office of the High Commissioner No Date (https://www.ohchr.org/sites/default/files/Documents/Publications/FactSheet34en.pdf)

The right to food is recognized in the 1948 Universal Declaration of Human Rights as part of the right to an adequate standard of living, and is enshrined in the 1966 International Covenant on Economic, Social and Cultural Rights. It is also protected by regional treaties and national constitutions. Furthermore, the right to food of specific groups has been recognized in several international conventions. All human beings, regardless of their race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status have the right to adequate food and the right to be free from hunger.

### Health

#### Multiple agents, solve right to Health.

World Medical Association 2022 (<https://www.wma.net/what-we-do/human-rights/right-to-health/>)

The right to health was first articulated in the WHO Constitution (1946) which states that: “the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being…”. The preamble of the Constitution defines health as: “.. a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity”.

The 1948 Universal Declaration of Human Rights mentioned health as part of the right to an adequate standard of living (article 25). It was again recognised as a human right in 1966 in the International Covenant on Economic, Social and Cultural Rights, 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.”

The Committee on Economic, Social and Cultural Rights, a body composed of independent experts in charge of monitoring the implementation of the Covenant, provided a broad interpretation of article 12 of the Covenant (General Comments No.2014):

The right to health is an inclusive right, extending not only to timely and appropriate health care, but also to the underlying determinants of health, such as access to safe and potable water and adequate sanitation, healthy occupational and environmental conditions, and access to health-related education and information, including on sexual and reproductive health (Paragraph 11).

The right to health is relevant to all States: every State has ratified at least one international human rights treaty that recognises the right to health.

Special Rapporteur on the Right to Health

In 2002, the Human Rights Council created the mandate of the Special Rapporteur on the right of everyone to the highest attainable standard of physical and mental health. Special Rapporteurs are independent experts appointed by the Human Rights Council to examine and report back on a country situation or a specific human rights theme. The Council appointed Dr. Tlaleng Mofokeng as Special Rapporteur on the right to health in July 2020. Ms. Mofokeng is a medical doctor with expertise advocating for universal health access, HIV care, youth friendly services and family planning..

There are other UN Special Procedures that have a direct or indirect link to health. The rights covered include (without being exhaustive): the right to education, the right to water and sanitation, the right to food or the right to adequate housing. Similarly, for populations particularly exposed to human rights abuses, a special rapporteur is appointed. This is the case for women, children, migrants, persons with disabilities and LGBT people.

### Housing

#### The U.N. Declaration of Human Rights would empower the right to housing, among other rights.

**Alexander**, L. T. (**2015**). Occupying the constitutional right to housing. *Nebraska Law Review, 94(2),* 245-301. (JAF)

The human right to housing, embodied in several international treaties, declarations, and constitutions, establishes that every person has a right to adequate housing and to the continuous improvement of living conditions.33 The right is not a binding international legal obligation in America and the right is not explicit in the U.S. Constitution.34 Article 25 of the 1948 Universal Declaration of Human Rights (the Declaration) first identified the right to housing as part of the broader right to an adequate standard of living.3 5 The United Nations (UN) formalized and codified the principles outlined in the Universal Declaration through Article 11(1) of the International Covenant on Economic, Social and Cultural Rights (the Covenant). The Covenant explicitly defines the right to housing as "the right of everyone to an adequate standard of living for himself and his family, including adequate . . . housing . . . ."36 It also makes the protection of social and economic rights a legally binding obligation in the form of a treaty.3 7 Participating countries must "take appropriate steps to ensure the realization of [the right to housing]."38 While countries are not obligated to provide housing for their entire populations, they must "progressively realize"3 9 the right to housing by adopting legislative, administrative, judicial, budgetary, and other measures to advance the right to housing for all.4 0 The right to housing is also broader than a given country's property law regime, as it protects the rights of owners and non-owners. 4 1 Participating countries must balance the rights of each group when implementing the right to housing. Thus, the right to housing includes both positive and negative rights because it requires participating countries to take affirmative steps, rather than to merely refrain from impairing freedoms The human right to housing is not binding law in the U.S., since the U.S. never ratified the Covenant.4 3 However, the right to housing still inspires American activists because it emphasizes that humans cannot achieve full freedom, equality, dignity, self-determination, and community without adequate housing. The Covenant also affirms that access to adequate housing is a universal and natural right, rather than a privilege based upon an individual's economic, racial, gendered, or social status.4 4 The right to housing also vitiates against arguments that housing is merely a commodity, and that an unfettered market always optimally and equitably allocates housing entitlements.45 Thus, the right to housing operates as an important set of values for housing rights groups pressing for a more equitable distribution of housing entitlements in America.46 The right to housing also holds promise for U.S. activists because it encompasses more dimensions than simply the provision of shelter.47 The UN Committee on Social and Economic and Cultural rights (the Committee) interprets the right to housing to embody, at the least, seven broad principles, namely: (1) security of tenure; (2) availability of services, materials, facilities, and infrastructure; (3) affordability; (4) habitability; (5) accessibility; (6) location; and (7) cultural adequacy.

# Critical Ground

### Aff Ground – Education for LGBTQ+ Bodies

#### Bullying of LGBTQ+ Students infringes on their right to education

Lian et al 22. Qiguo Lian, Ruili Li, Zhihao Liu, Xiaona Li, Qiru Su & Dongpeng Zheng. “Associations of nonconforming gender expression and gender identity with bullying victimization: an analysis of the 2017 youth risk behavior survey,” BMC Public Health Journal, 4/5/22. https://bmcpublichealth.biomedcentral.com/articles/10.1186/s12889-022-13071-6//n\*x

Bullying victimization negatively affects the health of about 20% of American high school students [1], including suicidal thoughts and behaviors [2], making it a serious public health concern for adolescents in the United States and a high priority in Healthy People 2020 [3]. Adolescents with gender nonconformity (GNC) report elevated rates of negative health outcomes, including bullying victimization [4,5,6,7]. Preventing school bullying is a fundamental human rights issue, and any form of bullying infringes the fundamental right to education. Sexual and gender minority adolescents are more likely to experience school bullying [8]. Although many studies consider lesbian, gay, bisexual (LGB), and transgender(T) as an umbrella term LGBT, “LGB” and “T” are different in nature: the former refers to sexual orientation while the latter refers to gender identity. A growing body of research suggests that transgender adolescents experience substantial disparities in bullying victimization [7, 9,10,11,12]. For example, in 2012, a New Zealand nationally representative survey found that transgender students and those unsure about their gender identity were more prone to be bullied than their cisgender peers [12].

#### The basic right to education must be granted to queer people through policy changes

Hoyo 21. Sam Hoyo. “Don’t Ignore My Voice: A Call to Action by and for Gender- Expansive Youth,” 5/21. https://scholarworks.umb.edu/cgi/viewcontent.cgi?article=1645&context=doctoral\_dissertations//n\*x

Historically, social environments have been too homophobic and too violent for people to come out and identify openly as gender expansive. However, as gender-expansive people of all ages talk more openly about their opposition to and identities against gender binaries, policies must be instituted to provide safe and equitable experiences, especially in schools, even if they push boundaries and lead to discomfort in those who identify as cisgender. While gender and sexuality are complex and are often the subjects of difficult conversations, they cannot be ignored or avoided because of the potential discomfort they may cause. The basic right to education cannot be denied to gender-expansive individuals simply because they do not conform to society’s views on gender. It is necessary to change the very structures that lead to the push out and/or fall out of gender-conforming students and instead allow them to participate in all aspects of the educational process.

#### Policy must be reconstructed to ensure that LGBTQ+ Students have full access to college campuses nationwide

Phariss 15 Tracy Phariss is a high school educator for Jefferson County Public Schools in Golden, Colorado. As a teacher and educational counselor, he is deeply involved in LGBT educational issues. Editor, Wallace Swan. “Gay, Lesbian, Bisexual, and Transgender Civil Rights: A Public Policy Agenda for Uniting a Divided America,” CRC Press, 2015. pp. 293-294//n\*x

Policies, facilities, curricula, and support structures should be reconstructed to provide full access for LGBTQIA students, staff, and faculty members. Making campuses more welcoming, inclusive, and safe for LGBTQIA students must be an inherent priority of an institution’s strategic plan. The structure and layout of residence halls, restroom facilities, locker rooms, intramural and varsity sports, and other gendered systems must be scrutinized and redesigned with an emphasis toward complete gender equity. The curriculum must reflect the lived experiences and realities of LGBTQIA individuals, as well as critically analyzing the ways that oppression against gender and sexual minorities hurt not only those communities but also society as a whole. Simply accommodating and reacting as LGBTQIA individuals request services and then demanding change does not eliminate the inherent heterosexism and “genderism” from a campus’ policies and organizational systems. Despite these challenges, the Great Divide between various campuses can be bridged. The Minnesota GLBTA Campus Alliance is an example demonstrating that despite differences in geography, institution size, funding, philosophy, and identity, students, staff, faculty, alumni, and community members can come together and make meaningful, positive, and sustainable change. Working together, those within higher education can ensure that all lesbian, gay, bisexual, transgender, queer, intersex, and asexual individuals are welcomed, affirmed, and supported on every college and university campus across the United States.

### Aff Ground – Housing for LGBTQ+ Bodies

#### There must be a robust federal policy in place to protect LGBT housing

Armstrong 13. Charlie Armstrong is currently pursuing a joint degree at American University’s School of International Service and the Washington College of Law. While at American University, she is pursuing studies relating to human rights and gender. “Slow Progress: New Federal Laws Only Begin To Address Housing Discrimination Based on Sexual Orientation and Gender Identity,” Published in The Modern American, Summer 2013. https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1156&context=tma//n\*x

Discrimination based on sexual orientation and gender identity is an affront to the American values of equality and liberty. As domestic and international norms move decidedly toward full acceptance of LGBT rights,73 the federal government must adapt. Unless the federal government takes decisive action in the form of amending the Fair Housing Act, LGBT individuals and couples will continue to experience unchecked discrimination in the housing context in the thirty states that currently have no laws on the books to prevent it.74 The new HUD rule is an excellent first step in this process; however, it does not go far enough to address the struggle many LGBT individuals and couples face when they try to exercise their right to safe, affordable housing. As evidenced by the number of homeless LGBT youth, discrimination has lasting, damaging effects. The federal government must assume a stronger leadership role in advocating on behalf of these individuals and refuse to tolerate the discrimination against them. Without a robust federal role, states will continue forward with the piecemeal approaches currently taken, which lack the needed enforcement and support to ensure housing equality.

#### Better serving the homeless LGBTQ+ population happens when we create right to housing laws that include anti-discrimination language

Kimble 15 Stephanie Kimble earned a bachelor’s of science in broadcast journalism from the University of Wisconsin–River Falls. Editor, Wallace Swan. “Gay, Lesbian, Bisexual, and Transgender Civil Rights: A Public Policy Agenda for Uniting a Divided America,” CRC Press, 2015. pp. 243-244//n\*x

As the barriers to regaining a foothold in the general population continue to be issues of concern for homeless persons and more specifically LGBTQ persons suffering from or on the verge of homelessness, it is important that social service providers are given the tools needed to better serve the LGBTQ homeless population. Greene (2005) notes: Identity represents an interaction between the social and internal world … when the external, social world distorts one’s identity and imposes barriers to opportunities based on that identity, the groundwork has been laid for a distorted image of one’s self, sense of self-worth, and a distorted perception of others. (p. 296) In part, better serving this population begins by removing the heterosexism that may exist in institutions that have not yet adopted or enforced an inclusion policy that specifically cites the concerns of LGBTQ persons. As noted earlier, although the vast majority of Americans agree that bullying in the United States is an issue that must be immediately dealt with, some anti-bullying policies and procedures in many states make no mention of acts perpetrated against LGBTQ youths. “Continued advocacy is needed to change oppressive social norms … that support violence against GLB people, including homophobia and the use of violence to control others” (Rothman, Exner, and Baughman 2011, 63).

#### One of the easiest ways to discriminate against LGBTQ+ persons is via housing – and anti-discrimination laws do not fully exist at the federal level

Graves 18. Logan Graves. “Issue at a Glance: LGBTQ Housing Discrimination,” Published in Victory Institute Online, 5/9/18. https://victoryinstitute.org/lgbtq-housing-discrimination//n\*x

One of the earliest and easiest ways society discriminated against LGBTQ people is via housing. The emerging gay liberation movement in the 1970s famously fought against the evangelical anti-gay crusader Anita Bryant, as she succeeded in organizing a campaign to repeal Miami’s recently-passed anti-discrimination ordinance, one which expanded the list of protected classes to include sexual orientation. That fight galvanized and electrified the movement for liberation and equality. This fight continues in many places today, as twenty-two states protect on the basis of sexual orientation and twenty states protect on the basis of both sexual orientation and gender identity. There have been gains recently, as a federal court in Colorado ruled in 2017 that a lesbian couple (one of whom was trans) could not be denied the right to housing, and this was the first time a federal court issued such as ruling. According to the Department of Housing and Urban Development, sexual orientation and gender identity are not protected classes under the federal Fair Housing Act. However, they claim that there are many individual circumstances that could be included under the act, such as disability discrimination if a landlord claims a gay man will infect other tenants with HIV/AIDS. Any gender-nonconforming behavior is covered under the protected class of sex, thus transgender individuals are able to claim discrimination if someone discriminates against them due to not performing gender roles to their liking. Today, there are more states than not where there is no protection for LGBT people in housing. There are 28 states where one is legally allowed to be denied. Most LGBT people are concerned about discrimination, with a survey in 2015 reporting 73 percent of LGBT Americans are strongly concerned about housing discrimination from agents, landlords, and neighbors.

#### Putting protections in place for rights to housing would ensure less discrimination and violence

HRW 21. Human Rights Watch. “I Just Try to Make It Home Safe:” Violence and the Human Rights of Transgender People in the United States,” Pp. 19 <https://www.hrw.org/sites/default/files/media_2021/11/us_> lgbt1121\_web\_0.pdf//n\*x

Discrimination and a lack of access to basic social and economic goods leave transgender people vulnerable to violence in the United States. Nell Gaither, president of the Trans Pride Initiative in Dallas, Texas, told Human Rights Watch that “Black trans people face more discrimination and violence because they have less access to education, employment, housing, and health care and services.”100 Similarly, Zakia McKensey, executive director of the Nationz Foundation, noted: If there were protections in place for housing, employment, some of these things wouldn’t be happening, or not happening at such great levels. And these ladies wouldn’t have to put themselves out on the street engaging in survival sex work because they could keep a job and get safe housing.101

### Aff Ground – Health Care for LGBTQ+ Bodies

#### The time to act is now – Transgender people uniquely suffer from an exclusion medical care in the status quo

Currah & Spade 07. Paisley Currah, Dean Spade. “The State We’re In: Locations of Coercion and Resistance in Trans Policy, Part I” Sexuality Research & Social Policy Journal of NSRC, December 2007 Vol. 4, No. 4. DOI:10.1525/srsp.2007.4.4.1//n\*x Edited for Ableist Language – n\*x

Medicaid programs are not the only ones that exclude coverage for gender-affirming surgeries and hormone therapies. In “Transgender Health Benefits: Collateral Damage in the Resolution of the National Health Care Financing Dilemma,” R. Nick Gorton (2007) turns our attention to questions of private health insurance. The vast majority of private health insurers explicitly exclude transgender care; Gorton, a practicing physician, ~~sees~~ challenging those exclusions now as essential to ensuring that transgender health care is included in the universal health insurance system the United States seems to be moving toward. Gorton reminds us that lawmakers explicitly targeted trans people for exclusion from health care coverage when the Americans With Disabilities Act was passed in 1990. At that time, Senator Jesse Helms ensured that transvestism, transsexualism, and most gender identity disorders were listed as exclusions to the definition of disability. Anticipating the “pitched political battle” (p. 83) that will surround the implementation of universal health insurance, Gorton warns that transgender people may again be used as scapegoats—this time, by opponents of universal health insurance. These forces will, Gorton suggests, be likely to cast any plan that includes coverage for gender-affirming health care as too liberal. Because even “scientific evidence of safety and efficacy are often trumped by political unpopularity” (p. 85), Gorton argues that trans advocates need to work now to ensure that the general public, medical providers, and private insurers all understand that transgender health care is medically necessary. Gorton argues against those who suggest that to fight for trans inclusion in private insurance plans is to participate in an oppressive system that excludes the uninsured. Instead, he maintains, when debates about what should be covered in future universal health insurance plans do take place, this advocacy will demonstrate that transgender health care is “reasonable, economical, and medically necessary” (p. 86).

#### Gender-Affirming care MUST be addressed in terms of general universal care- otherwise, the epistemic depth of trans\* disruption to biomedicine will be unethically limited. Practical guidelines are a PREREQUISITE to changing standards of care.

Daphna Stroumsa 14 (MD, “The State of Transgender Health Care: Policy, Law, and Medical Frameworks,” Am J Public Health. 2014 March; 104(3): e31–e38. doi: 10.2105/AJPH.2013.301789 ejb)

As work to enhance access to medical care progresses, the need for appropriate care will also increase. Models of care for marginalized minority populations with particular health needs can be based on existing general health care systems or implemented through specialized clinics and health care centers. Spurred by the AIDS epidemic and its toll on the gay community, dedicated LGBT health centers have been active in the United States since the 1980s. Although only a handful of centers are, at present, dedicated explicitly and exclusively to transgender patients, LGBT community health centers have provided care and often been active participants in and drivers of knowledge accumulation and dissemination regarding transgender health and treatment. These centers include the Fenway Center in Boston, Massachusetts; the Callen Lorde Community Health Clinic in New York City; and the Lyon-Martin Health Services in San Francisco. Achieving widespread access to acceptable, competent, appropriate, and affordable care, while promoting centers of clinical and research excellence in transgender health care, will require a combination of creating and strengthening dedicated centers as well as addressing transgender people’s health needs within the general health system. Bias against transgender people takes an enormous toll on their health throughdirect harm, lack of appropriate care, and a hostile environment and through transgender people’s avoidance of the medical system as a result of discrimination and lack of respect. The medical establishment has a duty, and an ability, to protect transgender patients from such harms. Transgender-sensitive care must be incorporated into medical, nursing, and paramedical curricula, as has been done with other cultural competencies. Clear guidelines for all federally funded health centers, in line with the WPATH standards of care, need to bedrafted and adopted by leading medical societies, including guidelines related to appropriate language, adoption of gender-neutral bathrooms, health records respectful of names and gender pronouns, and other safe environment measures. Federal grants should be offered for programs teachingpostgraduate-level care of transgender patients, including SRS. The ACA has taken a first positive step in that direction by providing funding for LGBT cultural competency trainings, which have already been implemented in big-city health departments, with training underway for staff of the National Health Service Corps. Such measures are not only essential for the creation of an equitable health system, but will also likely result in improved health outcomes for the transgender population as barriers to access are removed and knowledge is enhanced.

### Aff Ground – Employment for LGBTQ+ bodies

#### Putting protections in place for rights to employment would ensure less discrimination and violence

HRW 21. Human Rights Watch. “I Just Try to Make It Home Safe:” Violence and the Human Rights of Transgender People in the United States,” Pp. 19 <https://www.hrw.org/sites/default/files/media_2021/11/us_> lgbt1121\_web\_0.pdf//n\*x

Discrimination and a lack of access to basic social and economic goods leave transgender people vulnerable to violence in the United States. Nell Gaither, president of the Trans Pride Initiative in Dallas, Texas, told Human Rights Watch that “Black trans people face more discrimination and violence because they have less access to education, employment, housing, and health care and services.”100 Similarly, Zakia McKensey, executive director of the Nationz Foundation, noted: If there were protections in place for housing, employment, some of these things wouldn’t be happening, or not happening at such great levels. And these ladies wouldn’t have to put themselves out on the street engaging in survival sex work because they could keep a job and get safe housing.101

#### The lack of laws against transgender discrimination threatens their right to work

**HRW 21**. Human Rights Watch. “I Just Try to Make It Home Safe:” Violence and the Human Rights of Transgender People in the United States,” Pp. 63-64. <https://www.hrw.org/sites/default/files/media_2021/11/us_> lgbt1121\_web\_0.pdf//n\*x

Widespread discrimination against transgender people in employment threatens their right to work. The lack of legislative protections against discrimination based on gender identity at the federal level and in many US states jeopardizes the right to work for transgender workers. The denial of the right to work can also drive transgender people into situations of economic precarity and lead them to engage in work that is unstable or unsafe, putting them at greater risk of violence.

### Aff Ground – Food for LGBTQ+ Bodies

#### There must be framework laws put in place to ensure food rights for the most vulnerable – this is just a start to ensure bigger societal changes

USAID 13. U.S. Agency for International Development. “Integrating Rule of Law and Global Development: Food Security, Climate Change, and Public Health,” pp. 16 <https://www.usaid.gov/sites/default/files/documents/> 1866/IntegratingRuleofLawandGlobalDevelopment.pdf//n\*x

Framework laws: Framework laws provide an institutional framework for cross-sectoral rights protection, judicial recourse, implementation and monitoring: it is the umbrella beneath which institutions can be built, systems created and relevant secondary legislation implemented.83 Framework laws should expressly situate the right to food at the center of policies and programs.84 Key provisions might include: definitions of the right to food and corresponding obligations for public authorities;85 guarantees of non-discrimination and substantive equality, including special measures for vulnerable groups;86 institutional apparatus for implementation of the right, including mechanisms for civil society participation; procedures for monitoring institutions;87 procedures and remedies for right to food violations.88

#### Legislation must be passed to ensure a right to food for vulnerable populations – especially LGBTQ+ persons

Powers 15 Jessica Powers is WhyHunger’s Director of the Nourish Network for the Right to Food. “Food is a Right, Not an Act of Charity,” published in WhyHunger Online, 10/13/15. https://whyhunger.org/category/blog/the-right-to-food//n\*x

Is the State of New York fulfilling its obligation to care for poor people when there is increasing income inequality and privatization of charity? When elected officials are increasingly part of an economic elite that overestimates how much money average people have, how can they make realistic decisions affecting the budgets of low and middle income people? In fact, New York county and Westchester county rank third and twenty first in the nation on the Gini index, a measure for income inequality. As a legal framework, the right to food does not claim that government is responsible to feed everyone, but rather, it asserts that government must put the structures in place that insure that everyone, particularly those most vulnerable—women, people of color, the elderly, children, the working poor, LGBT folks, people with disabilities, and precarious workers—have the resources to be able to acquire sufficient food with dignity. What does the implementation of the right to food look like? In Brazil, through the Zero Hunger program, the government sought to address structural issues underlying hunger. The Zero Hunger program has provisions to create better income through job and income policies, agrarian reform, universal social security, school grants and minimum income, and microcredit. It also works to increase supply of basic food products through support to family farming, incentives and production for self-consumption, and agricultural policy. It creates cheaper, but healthy, food products through subsidized restaurants, agreements with supermarkets and grocery stores, alternative marketing channels, public facilities, a worker’s food program, anti-concentration laws, and cooperatives of consumers. And finally, through specific actions such as food stamps, disaster assistance, school meals, food security stockpiles, and actions against mother-child malnutrition. The Zero Hunger program attempts to address the host of structural issues that create food insecurity in the first place, like low wages and lack of income generation, high interest rates and agricultural crises. The Zero Hunger program came about because of the mobilization of people and civil society, including businesses interested in corporate social responsibility. The right to food means that we should have access to food, that it is adequate, or nutritious and safe, available during disasters, and sourced and produced in sustainable ways. The role of government is to regulate the activities of corporations, to strengthen access to resources, and to implement effective social programs. Just like civil rights, gay rights, disability rights, prisoner rights, and others, the right to food is not solely about laws. It is about a broader vision of community self-determination and liberation. Our role is to organize. That is how we can change the story from one of hunger to one of rights.

### Neg Ground – Transgender Critiques

#### When Transgender advocacy is grounded in a human rights framework, it forces advocates to cite data based around research and “measurable truths” which creates a new hegemon separate from the actual experiences and needs of transgender bodies.

Currah & Spade 07. Paisley Currah, Dean Spade. “The State We’re In: Locations of Coercion and Resistance in Trans Policy, Part I” Sexuality Research & Social Policy Journal of NSRC, December 2007 Vol. 4, No. 4. DOI:10.1525/srsp.2007.4.4.1//n\*x Edited for Ableist Language – n\*x

Transgender rights advocacy is almost always grounded in a human rights framework. This framework might be articulated differently depending on the particular viewpoints of the advocates or on the particular social and historical context in which such advocacy takes place but, in any case, its general gist is that (a) individuals Sexuality Research whose gender identity or gender expression is not traditionally associated with their birth sex should not be denied any rights or resources because of that difference, and (b) one’s gender identity (not one’s birth sex) determines one’s legal gender. These principles were first enunciated in early versions of the International Bill of Gender Rights in 1991 (Frye, 2006) and have since been included in the Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity (2007), the new international standard for discourse on sexual orientation and gender identity rights. From the perspective of transgender rights advocates who are challenging unjust laws or policies—in meetings with legislators; in litigation before the courts; in policy discussions with government officials; in negotiations with insurers, employers, and social service providers—merely enunciating these principles should be sufficient. Ideally, regarding transgender issues, meetings should be no more than 5 minutes long, lawyers’ briefs should be limited to two or three pages, and the validation of experts should never be called for. But, of course, we do not find ourselves in this world of shoulds: Simply articulating a human rights claim based on gender identity or gender expression will have little, if any, short-term impact. In challenging the commonsense knowledge and social and legal systems that currently structure gender arrangements, transgender rights advocates are in desperate need of expert knowledge to back up trans people’s demands. The transgender community needs valid, reliable social science research to provide evidence, as well as experts who will testify, legitimate advocates’ claims, or submit affidavits. Without these supports, it becomes impossible to topple the existing supposed expertise of bureaucrats who can ~~stand~~ [hold to] beside the fact that discriminatory policies must be right simply because of their ubiquity. The fundamental goal of researchers distanced from their subjects, however, is not to advance the rights claims of any particular group but to determine observable, measurable truths about what they are studying—in this case, the sexed body; gender identity, expression, and role; and the (inter)relationships of these factors. Moreover, always lurking in the background is the distinct possibility that the research will generate results that undermine claims for transgender rights. In fact, a real incommensurability exists between the normative human rights framework that is the foundation of transgender rights advocacy and the descriptive social science paradigm that plays such an important role in transgender rights advocacy. It is vital for us as researchers, as advocates, and as researcher-advocates to understand this conflict between expert discourses and human rights claims. For advocates, research is absolutely essential, but only for the pragmatic necessity of narrating trans identities and practices in the most intelligible and legitimating discourse possible. For example, advocates have reached the point where they are invoking the authority of medical experts to demedicalize regulations governing trans identities (Currah & Moore, 2007)—but in the process, for strategic effect, litigators and policy advocates often cite data and research based on assumptions with which they fundamentally disagree (Levi, 2006; Spade, 2003). Perhaps the most basic difference between the goals of advocates and researchers centers on disagreements over theories of gender. In a system governed by the logic of universality (with repeatable, verifiable results), researchers in the natural and social sciences seek to discover a unified totalizing truth, one that fits all the many pieces—body parts, normalizing ideologies, medical technologies, the role of socialization, and biological etymologies— into the grand jigsaw puzzle that will ultimately reveal the answer to the riddle of gender. The aggregate approach of trans activists, however, centers on the idea of an agnostic gender pluralism and does not seek to discover the perfect theory (Currah, 2003). In fact, any unified theory purporting to describe the so-called right relationship between body parts, gender identities, and gender expressions would entail the imposition of a new hegemonic norm—one that would not be true to many people’s experience of gender and that would exclude many from the opportunities that legal gender recognition brings. For the trans movement in the United States, there is no overarching desire to make the many communities, practices, and identities fit under any unified theory: All of the constituent (and often discordant) elements of this movement add up to nothing greater than the sum of the parts.

#### Even when rights are given to transgender people, structural discrimination prevents their access to multiple rights, including employment, housing and health care.

HRW 21. Human Rights Watch. “I Just Try to Make It Home Safe:” Violence and the Human Rights of Transgender People in the United States,” Pp. 59 <https://www.hrw.org/sites/default/files/media_2021/11/us_> lgbt1121\_web\_0.pdf//n\*x

In 1948, the United States voted at the UN General Assembly to adopt the Universal Declaration of Human Rights (UDHR), which remains the most prominent articulation of international human rights principles.274 The UDHR and human rights treaties that the United States has ratified or signed identify a range of rights to which transgender people, like other people, are entitled under international law.275 The rights to life, liberty and security of the person, nondiscrimination, effective remedy, work, and an adequate standard of living, among others, are all undermined by structural conditions that expose transgender people to violence.276 Subsequent agreements have reiterated that “[a]ll human rights are universal, indivisible and interdependent and interrelated.”277 Discrimination based on gender identity prevents many transgender people from enjoying a range of internationally recognized human rights. When transgender people are denied the right to work, right to housing, or right to health, it puts them at risk of violence that can deprive them of their physical security or even their life. And when transgender people experience violence, it can make it more difficult for them to obtain work, housing, and health care.

#### Even with law changes, the discrimination that exists actively keeps LGBT people from housing will continue

Reed 18. Dan Reed (he/they) is a writer, urban planner, and community advocate. “Housing and transportation are LGBTQ issues, and politicians need to recognize that,” Published by Greater Greater Washington Online, 1/26/18. https://ggwash.org/view/66308/queer-dems-must-prioritize-housing-transportation-urban-issues//n\*x

Yet there’s a tremendous amount of pressure in Montgomery County to not do these things, which comes from residents who fight change in their communities. The Purple Line is finally getting built after years of opposition from wealthy neighbors, as is bus rapid transit. Meanwhile, neighbors continue to fight new development in their communities, from townhomes to affordable housing to allowing a homeless family to occupy a vacant house. The language that many opponents use echoes the arguments made against gay marriage in recent years: that their “way of life” is being attacked, that they'll be coerced to do things against their will, or that a person's desire to live differently than someone else is somehow invalid or fraudulent. Take the claim that Montgomery County was waging “war on suburbia” by allowing the construction of apartments and townhouses in Bethesda's Westbard neighborhood, or that it would “destroy” the local culture and endanger the ability of people to raise children. Or the argument made by one neighbor in Silver Spring that plans to build a town center in White Oak was part of a plot to force people to quit their jobs and become a barista. Ironically, some of these people may identify as progressives, support progressive causes, and may even support LGBTQ causes. Yet the impulse to keep change out of their backyard ultimately harms disadvantaged people. After all, people who can afford to drive will continue to drive for lack of other options, and people who can afford to pay top-dollar for a home won’t really be affected by a dearth of housing. However, a lot of people will lose out in this situation, especially anyone with a history of facing prejudice or economic disadvantage. Like I said, this isn't an exclusively queer problem, but it's one that queer people and allies should pay attention to.

#### Stronger anti-discrimination laws must lead the way for a right to employment for transgender persons – laws that ensure a right to employment do not do enough.

HRW 21. Human Rights Watch. “I Just Try to Make It Home Safe:” Violence and the Human Rights of Transgender People in the United States,” Pp. 22 <https://www.hrw.org/sites/default/files/media_2021/11/us_> lgbt1121\_web\_0.pdf//n\*x

Stronger antidiscrimination laws are needed. A survey of 1,528 LGBTQ adults commissioned by the Center for American Progress in 2020 found that 62 percent of transgender respondents had experienced discrimination in the year preceding the survey.112 Approximately half of transgender respondents reported that they had experienced discrimination in public spaces and more than a quarter reported discrimination in the workplace in the previous year.113 More than a third said that discrimination had “a moderate or significant impact” on their ability to rent or buy housing,114 and more than half of transgender respondents said it would be impossible or very difficult to find an alternative if they were denied access to a homeless shelter.115 Nearly a quarter had experienced recent discrimination by law enforcement.116 This discrimination had material consequences; 54 percent of transgender respondents said that discrimination had “moderately or significantly affected their financial wellbeing.” 117 About half of transgender respondents also said that discrimination affected their ability to secure or retain employment.118

#### Discrimination is more of a cause of lack of healthcare than simple access issues – healthcare was postponed EVEN IF they had access due to discrimination

HRW 21. Human Rights Watch. “I Just Try to Make It Home Safe:” Violence and the Human Rights of Transgender People in the United States,” Pp. 49 <https://www.hrw.org/sites/default/files/media_2021/11/us_> lgbt1121\_web\_0.pdf//n\*x

Discrimination is also a barrier to accessing care. The Center for American Progress survey in 2020 found that 28 percent of transgender respondents had postponed or forgone medical care they needed in the year preceding the survey because of disrespect or discrimination.230 The 2015 US Transgender Survey similarly found that 23 percent of respondents had forgone care they needed in the past year because they worried about discrimination and mistreatment from providers.231 Transgender respondents had experienced a range of negative experiences in healthcare settings. In the Center for American Progress survey, 38 percent of respondents saw providers who were visibly uncomfortable with them because they were transgender, 33 percent had to teach a healthcare provider about their needs to receive care, 32 percent had a provider intentionally misgender them or use an incorrect name, 20 percent reported that providers were physically rough or abusive, and 19 percent reported that providers were verbally harsh or abusive.232 All of these experiences were more widely reported by transgender people of color than by transgender people generally.233 As a result, some were unable to obtain the care they needed at all; 25 percent were refused transition related care, and 18 percent were refused care because of their real or perceived gender identity.234

#### Lack of knowledge about queer issues and access to insurance hinders the right to care

Guthrie 15. Sid Guthrie, MSN, CNS, RN-C, is a clinical nurse specialist in adult health and holds an American Nurses Credentialing Center (ANCC) certification in pain management. Editor, Wallace Swan. “Gay, Lesbian, Bisexual, and Transgender Civil Rights: A Public Policy Agenda for Uniting a Divided America,” CRC Press, 2015. pp. 205//n\*x Edited to fix old terminology for transgender people. – n\*x

Access to care has remained a problem for transgender persons, lesbians, and bisexual women. Lesbian and bisexual women have a higher rate of being uninsured or underinsured (Diamont, Wold, Spritzer, and Gelberg 2000). Also, findings show that many of these women are reluctant to share their sexual orientation with physicians especially if they do not see a regular provider. Due to increased unemployment rates, transgender~~ed~~ persons also run into difficulties maintaining consistent medical care due to lack of insurance (Kenagy 2005). Additionally, they have difficulty finding a provider that has the knowledge and comfort level to treat them. Adequate transgender care involves being familiar with the stages and transitions transgender clients go through. This takes an expertise that is usually not part of the educational experience for most providers. Often what might appear to be refusal of care to a client may in actuality be a concern that the provider is not feeling fully confident in determining the care of this person.

#### Health care policy discourse is a bureaucratic expression of the brutal violence inflicted to secure normative ‘humanity’.

O’Brien 13. Michelle Esther O’Brien is a doctoral candidate in the Department of Sociology at New York University. “Tracing This Body”. Published in “The Transgender Studies Reader 2”. Edited by by Susan Stryker & Aren Aizura. Published by Routledge; 1st edition, February 14, 2013. Pp. 57-58//n\*x

Despite having one of the best medical health insurance plans my city has to offer, I pay for both of my medications out of pocket. This isn't uncommon. Mostinsurance plans, including my own, have an explicit exclusion of transgender healthcare**.** I end up spending about a third of my income on paying for my basic prescriptions. I manage to get my health insurance to cover my meetings with my hormone doctor, but only because he cites my condition as an "unspecified endocrine disorder," carefully excluding the mention of transsexuality. For poor trans people who are uninsured or on State-funded medical assistance, the exclusion of transgender care in health plans can easily make the costs of transitioning under a doctor's care inaccessibly expensive. About two thirds of trans women in Philadelphia, according to one 1997 needs assessment, end up getting their hormones off the street. The lack of supervised medical care can have many consequences, including severe liver damage. Many women have become HIV+ through sharing streethormone needles. Many trans people have begun talking about taking on the health insurance companies in demanding access to basic medical care**.** This will not be an easy task. Health insurance companies are incredibly powerful; they are massive, profitable industries. The third largest skyscraper in downtown Philadelphia is entirely dedicated to the office of the health insurance company Independence Blue Cross, making them one of the primary employers in Center City. According to their annual report, they cover about four million people in the region, having a net income of about $120 million in 2002. One trans woman in Philly has already successfully got Keystone Mercy, her medical assistance HMO, to pay for her hormones. She argued they constituted basic medical care, and medical assistance HMOs were legally required by Pennsylvania State law to cover all basic medical care. Its an exciting and positive sign, and one we will no doubt organize around in the coming years. These health insurance corporations are defining what medical care they consider to be appropriate, and which they do not. The basic medical needs of trans people are systematically, explicitly, and actively excluded from their plans. This reflects and reproduces the overall transphobia of the medical industry. The lack of coverage drastically reduces the number of trans people who can affordably access care. It discourages doctors and drug companies from taking seriously the needs of trans people. Ultimately, this lack of coverage fuels a widespread institutionalized perception that the bodies and needs of trans simply do not matter. These line-item exclusions from insurance plans are the bureaucratic expression of the brutal violence trans people often face out in the streets--the devaluation of our bodies as worthless.

### Neg Ground – Afropessimism Critique

#### Rights frames are called into question with Afro-pessimist critiques and scholarship from other black studies fields. Social death as an impact frame further complicates legal rights frames, on a link and impact level.

Sexton 11 (Jared, UC Irvine-Humanities, “The Social Life of Social Death: On Afro-Pessimism and Black Optimism”, InTensions, http://www.yorku.ca/intent/issue5/articles/pdfs/jaredsextonarticle.pdf)

Looking back with a scrutinizing eye toward Bergson’s 1907 Creative Evolution and the milieu of philosophical debate against which it inveighed, we see with Jones how the sustained effort that garnered the 1927 Nobel Prize in Literature added to this convolution of thought a certain confabulation about life, a life force set against the machine, the mechanical and the mechanistic. What is, in part, so valuable about Jones’ research is that it allows us to track the subtle and often muddled distinctions at work on this score in Darwin and his critics and defenders, in Marx and his interlocutors, in Nietzsche, in Bergson—in the whole field of inquiry established by vitalism and its lasting impact on contemporary thought. And shot through this theoretical tangle is the vexed and vexing question: What is freedom? This is more than a notion, of course, depending on your vantage. “My mouth shall be the mouth of those calamities that have no mouth,” Aimé Césaire writes famously; “my voice the freedom of those who break down in the solitary confinement of despair.” [14] To interrogate “the racial discourses of life philosophy” is to demonstrate that the question of life cannot be pried apart from that thorniest of problems: “the problem of the Negro as a problem for thought,” that dubious and doubtless “fact of blackness,” or what I will call, in yet another register, the social life of social death. vi This is as much an inquiry about the nature of nature as it is about the politics of nature and the nature of politics; in other words, it is metapolitical no less than it is metaphysical. In charting the intellectual prehistory of the theorization of biopolitics, Jones also forecasts—and reframes—the biotechnological anxiety or euphoria provoked by the prospect of engineered life in our own time and the way that prospect is powerfully associated with notions of social, economic, and political possibility. Reading Deleuze and Guattari, Foucault or Agamben cannot remain the same, nor should it, to the degree that we have engaged the tragic-comic complexities of existence in black. Moten might follow, at another pace, the long qualification of vitalism that Jones accomplishes in her text, just as he might read skeptically the implications of an affirmative biopolitics. The question that remains, beyond the immediate negotiation even as it continues to loop back to it, is whether a politics, which is also to say an aesthetics, that affirms (social) life can avoid the thanatological dead end if it does not will its own (social) death. Marriott might call this, with Fanon, “the need to affirm affirmation through negation…not as a moral imperative…but as a psychopolitical necessity” (Marriott 2007: 273 fn. 9). In this article, I am only attempting to preface the exploration of a tension emergent in the field of black studies, not unrelated to the strife that occupies Moten’s own writing, regarding the theoretical status of the concept of social death. It goes without saying that this sort of prefatory note implicates how we might formulate notions of social life as well and, in a fundamental way, the tension regards the emphasis on or orientation toward life or death, or the thought of the relation between the two, as it plays out within a global history of slavery and freedom. In fact, social death might be thought of as another name for slavery and an attempt to think about what it comprises, and social life, then, another name for freedom and an attempt to think about what it entails. Though slavery is an ancient institution with provenance in nearly every major form of human society, we are concerned here with the more specific emergence of freedom—as economic value, political category, legal right, cultural practice, lived experience—from the modern transformation of slavery into what Robin Blackburn terms the “Great Captivity” of the New World: the convergence of the private property regime and the invention of racial blackness (which is to say the invention of antiblackness in the invention of whiteness, which cannot but become immediately a more generalized nonblackness).viii The meditation is at once structural and historical and seeks to displace a binary understanding of structure and history in any case, asking what the most robust understanding of slavery might consist in and, on that basis, how the practice of writing history and of inhabiting or being inhabited by that writing might proceed. We want to think about what makes New World slavery what it is in order to pursue that future anteriority which, being both within it and irreducible to it, will have unmade it, and that anterior futurity which always already unmakes it.

### Neg Ground – Capitalism Critique

**Human rights are a strategic tool of governance used in the production of homo juridicus – a sovereign, self-governing subject produced in order to facilitate the expansion of neoliberal governmentality**

**Odysseos 2010** [Odysseos, Louiza. Senior Lecturer in International Relations. (2010). Human Rights, Liberal Ontogenesis and Freedom: Producing a Subject for Neoliberalism? Millennium - Journal of International Studies, 38(3), 747-772. doi:10.1177/0305829810364876] - AN

This article offers a contribution to critical examinations of human rights within contemporary liberalism. Human rights today attempt to concretise liberalism’s commitment to individual freedom and to act as a counterweight against charges that it is the ideology of the market and of the economic status quo, marginalising the poor and disadvantaged.1 The article is chiefly interested in examining human rights’ largely under-explored role in subjectification, which is important for understanding liberalism’s complex (global) politics. Specifically, the article uses Michel Foucault’s recently translated discussions of liberalism and neoliberalism2 to interrogate the ways in which human rights produce a distinct subjectivity, which it calls homo juridicus: this is a subject amenable to self-government and, as such, acts as a partner, indeed a predicate, to neoliberal governmentality. To do so, the article eschews the commonplace understandings of liberalism as a theory of individual freedom or as an ideology of the socio-economic status quo. Rather, it reads liberalism as a historically distinct ‘technology of government’ characterised by its signature impulse, what Foucault called ‘the internal rule of maximum economy’.3 The liberal technology of government best embodies the rule of maximum economy – which refers to the attempt to achieve maximum ends with minimal, cost-effective action – by evolving away from extensive and direct state involvement towards the more minimalist directing of the ‘possible fields of action of others’.4 A contracting state is accompanied, however, by an expansion of ‘government’. ‘Government’ here refers to the regulative but often indirect activities by state, para- or sub-state agents, and civil society actors and institutions: government becomes ‘the conduct of conduct’.5 However, this is no straightforward retreat of the state;6 rather, it marks the state’s ‘governmentalisation’, which refers to its involvement in the pastoral care and welfare of the population, that is, in ‘biopolitical’ and ‘governmental’ ends. Given the costly and intensive nature of such an expansion in the biopolitical goals of government, it has to increasingly promote and encourage ‘self-government’ and, in particular, the calling into being of types of subjects able to take up freedom in radically new ways and govern themselves.7 Understanding liberalism as a technology of government, therefore, demands closer examination of its ‘relations of subjectivation’ to ‘manufacture’ the free, self-governing subject.8 Taking inspiration from Foucault’s specific discussion of homo oeconomicus, 9 a type of selfinterested and rational self-governing subject which makes possible the limitation of neoliberal governmental practice, the article illustrates how human rights’ production of homo juridicus also predicates liberalism and neoliberal governmentality and the evolving global liberal order.10 In doing so, the discussion acts as an immanent critique of Foucault’s relative neglect of human rights11 and his cursory dismissal of the juridical subject’s subjectification as enabling of neoliberalism.12 The article identifies human rights’ relations of subjectification as ‘liberal ontogenesis’, the latter being a term retrieved from its origins in developmental biology where it usually denotes the development of organisms from embryonic origin to maturation. 13 Critically applying the term ‘ontogenesis’ to the engendering of a mature moral and legal subject of human rights, the article illustrates this complex process in its distinct but related forms. These are rhetorical, epistemic, performative and structural ontogeneses. Exploring each form of liberal ontogenesis confirms that liberalism does have an intimate relationship with freedom but not because it is predicated upon the pre-given, free and sovereign individual, which is the core ontological premise or ground of liberal thought.14 Rather, liberal governmental practice requires – and indeed must produce, and produce globally, through its discourses, knowledge production, law-making and restructuring of the ‘conditions of freedom’15 – the free and sovereign (here understood as self-governing) subject, whose behaviour can then be directed according to the ‘right’ (here understood as minimal) ‘disposition of things’.16 In other words, the liberal ontogenesis by human rights now becomes an integral part of governmental practice, while recasting irrevocably the very meaning of freedom itself.

**The subject of human rights is a necessary predicate for liberal governmentality and the rule of “maximum economy.” Self-governing subjects are produced alongside the decline of direct state involvement, and resistance becomes redirected through channels of contestation that were already pre-determined in advance – the framework of human rights.**

**Odysseos 2010** [Odysseos, Louiza. Senior Lecturer in International Relations. (2010). Human Rights, Liberal Ontogenesis and Freedom: Producing a Subject for Neoliberalism? Millennium - Journal of International Studies, 38(3), 747-772. doi:10.1177/0305829810364876] - AN

The Unbearable Lightness of Freedom Homo juridicus, it was suggested above, is a free (self-governing) subject whose freedom is marked by the minimal (critics would say ‘empty’) gesture of claiming, possessing and exercising rights. The four forms of ontogenesis of homo juridicus examined in the preceding section educate, generate knowledge about, enshrine and manage freedom in the form of rights. Its subjectification enables the minimisation of the (initial and largely mythological ‘contractarian’) commitment of the state, in as far as it is restricted to the cost-effective juridical endowment and protection of rights. In other words, this subject enables governmental practice to uphold the rule of maximum economy, achieving maximum ends with minimal juridical or constitutional action, whose broader and deeper societal and international effects are diffused and postponed. As such, homo juridicus forms a distinct, yet in its effects related, subjectivity to homo oeconomicus. Where homo oeconomicus manifests its freedom in the expression of its self-interest and its choices in consumption, lifestyle and opportunity,99 homo juridicus is free to express claims for social discontent and change and to utilise distinct forms of political activism within a human rights framework. Such an acknowledgement does not deny that liberal ontogenesis, and its establishment and management of human rights’ frameworks, amounts to social transformation. One need only consider the necessary and, often, substantial constitutional changes involved to accept that human rights have extensive effects on the legal and political landscape. However, as argued above, human rights are imbued with the liberal rule of maximum economy. The social transformation that they entail, therefore, assists in the governmentalisation of the state. Within human rights frameworks, freedom is exercised within already structured fields of expression and action: in the examples given above individual and collective claims become increasingly restricted to demands for the granting of rights and/or their enforcement. Correspondingly, the state is able to channel its responses to claims by subjects to codification and rights observance. While empowering citizens as rights holders and enabling their expression of claims for change, such human rights-related responses allow for the cost-effective delimitation of state action. As a result, liberal ontogenesis gives freedom new meanings and contexts, ‘restricting’ it to the human rights framework. As homo juridicus, individuals are ‘governmentalisable’:100 they are free to be ‘directed’ along specific expressions of freedom within structured fields of action. In this way, they assist a technology of government striving for the ‘least’ or ‘frugal’ state, that is, the self-limiting of direct state involvement.101 Liberalism as a technology of government, therefore, ‘formulates simply the following: I am going to produce what you need to be free’ requiring not ‘so much the imperative of freedom as the management and organization of the conditions in which one can be free’.102 Neoliberalism, in particular, requires the reinterpretation of freedom as self-government and self-sufficiency. The neoliberal art of government becomes in this way a ‘consumer of freedom’ because ‘it can only function insofar as a number of freedoms actually exist: freedom of the market, freedom to buy and sell, the free exercise of property rights, the possible freedom of expression’.103 Should the examination of homo juridicus, alongside Foucault’s own discussions of homo oeconomicus and the governmentalisation of the state more generally, leave us with a negative view of freedom and of the pastoral power involved in the ontogenesis of the self-governing subject? Put plainly, is the ontogenesis of the subject of human rights a pernicious or detrimental endeavour? One is definitely tempted to answer in the affirmative, especially when it becomes increasingly apparent that the appearance of (greater) individual freedom that comes with selfgovernment, even if this is restricted to choices about consumption (homo oeconomicus) or the endowment of rights (homo juridicus), ‘is one that is extremely difficult to resist’.104 And even more so, when one considers the ways in which neoliberalism co-opts contestation by claiming that its incidence marks precisely the ascendancy of rational subjects making use of their rights and freedom to run their own lives, that is, self-governing subjects. As Bondi and Laurie have argued, ‘neoliberalism “recognises” political resistance’ by subjects free to resist, complain, seek to change their own lives according to their rights and choices ‘as the performance of neoliberal subjectivity’.105