

A Forgotten Right?

The Right to Clothing in International Law

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I. INTRODUCTION: A FORGOTTEN RIGHT?

The right to adequate clothing in international law is part of the more general right to an adequate standard of living guaranteed in the Universal Declaration of Human Rights (1948) (UDHR) and the International Covenant on Economic, Social and Cultural Rights (1966) (ICESCR) (reproduced in Center for the Study of Human Rights 1994: 6–16). Very little has been written about the right to adequate clothing, and the Committee of the Economic, Social and Cultural Rights Covenant (CESCR) seems largely to have neglected it as well (for brief discussions, see Craven 1995: 287–288, 289–291, 349, 351; Hathaway 2005: 503–504; Weissbrodt and de la Vega 2007: 150–156; Icelandic Human Rights Centre 2008: 6; Bailey 1997: 39–40; UNESCO 2008: 2). While the word 'clothing' is inevitably referred to when scholars quote the relevant articles (Article 25, UDHR; Article 11, ICESCR), it is almost as though it vanishes from the page when they come to interpret and evaluate the provisions.

The forgetting of the right to adequate clothing is baffling given its obvious importance for human well-being. The right has clear connections with other human rights provisions, such as the rights to life and health, housing and social security. One thinks, for example, of the circumstances of a homeless person. Without adequate shelter, a homeless person is much more exposed to the elements. Her poverty means that she is unlikely to be able to afford adequate clothing and to maintain it in reasonable condition. Her health, already likely to be compromised, is worsened still further by constant exposure to cold, heat, wind, rain and dirt. The same will be true of the shoes she wears, if she is lucky enough to have any. Inaccessibility to proper washing and sanitation facilities is another aggravating factor. We see this reality on the streets of our cities every day, and on our television screens. And yet the right to adequate clothing, like the people who lack it, seems at times invisible.

There is also a strange dichotomy between the partial recognition of the right at the domestic level and the almost indifferent attitude to it in the domain of international law. Domestically, the right to adequate clothing has been recognized for millennia, for example in many religious traditions. Being 'ill-clothed,' to use President Franklin Delano Roosevelt's term (quoted in Sunstein 2004: 1), is emblematic of acute poverty. We see it in the shivering or sweltering discomfort of 'beggars,' the homeless, the drug dependent and 'derelict,' the elderly, the invalided, the 'street kid'

or the just plain poor. Their plight has provoked condemnation, blame, disgust and derision, but religious, moral and secular creeds have in contrast exhorted us to respond with love, charity, mercy, with empathy and in a spirit of justice. Saints, clergy, social reformers and radicals of various kinds have drawn attention to people in such abject states, whether in cities, suburbs or country towns and rural areas. Among them have been natural law thinkers, utopians, utilitarians, socialists, and Marxists, egalitarian liberals and anti-imperialists and nationalists of the nineteenth and twentieth centuries. Writers, filmmakers and other artists have depicted their plight. Their attention to the physical dimensions of poverty, of which inadequate clothing is one of the most visible markers, has enlivened their critiques of it and has stirred our compassion and sense of justice.

But when we turn our eyes to the international scene, the word ‘clothing’ again dissolves into the paper. If the word remains visible on the surface it has tended to be met with a glance and almost immediate scepticism. What can one say about such a right? Is it really a right at all, or rather a delusion of some international bureaucrat or academic? Is it not better described as a luxury, a privilege? What could such a right mean? What could it possibly require of the state or other bearers of correlative duties? How could it be realized? I am not sure why there has been such a radical disjunction between the place of ill-fitting, dishevelled and frayed clothing as symbolic of poverty and economic injustice domestically, and its invisibility in international law. Is it because the right to adequate clothing has been taken for granted in developed countries? Is it a reflection of the state jealously guarding its economic interests and welfare provision from prying international eyes? Is it because of the old Cold War debates over the credibility of social and economic rights? Is it because of a particular spectrum of plausibility of the right to adequate clothing (with the most plausible notion being that one is responsible for one’s clothing, and the least that the state or an international body owes a duty to provide it)? Is it in part because of various intellectual cleavages, with sociologists, social historians and social workers focusing on the rise and demise of the welfare state and associated social movements, and IR and international law scholars concentrating on the global condition?

I will not explore these large questions here. Certainly it would be a great exaggeration to suggest that IR theorists and international law scholars have been uninterested in global economic injustice, in global economic governance or in economic and social rights. However, most of the relevant literature has been devoted to the rights to food, housing, and health, and not to the right to adequate clothing as part of the human right to an adequate standard of living in the International Bill of Rights. The human right to adequate clothing has great significance for all people, but its non-fulfilment is likely to have a particularly severe impact on a number of categories of vulnerable people (bearing in mind that I only provide a sketch here):

- the poor, including the unemployed, under-employed and working poor;
- pensioners and others dependent on social security;
- the homeless and others in inadequate shelter;
- those in emergency accommodation (for example, women’s refuges), whether of a state or private character (including charitable accommodation);
- the elderly, whether in privately-owned or rented accommodation, or state, commercial or charitable nursing homes, hospitals and hospices;

- persons suffering from serious mental illness or from intellectual or physical disabilities (whether they live at home independently, with family members or others, or in Community Residential Units, half-way houses, public or private hospitals and other institutions);
 - children and adolescents, especially orphans and juvenile offenders in foster care, state institutions or detention centres;
 - the ill or injured in hospitals (or rehabilitation centres), including those being treated for alcoholism and other drug-related dependencies;
 - prisoners, on remand or otherwise;
 - workers in hazardous industries (for instance, chemical manufacturing and mining industries), or working under generally oppressive conditions (for example, sweatshops), whose lives and health depend on protective clothing (including child workers);
 - indigenous persons living in impoverished conditions;
 - refugees, asylum-seekers, and migrant workers (especially those working in the black market as ‘illegal aliens’);
 - the victims of natural disasters, civil unrest, civil and international war (including prisoners of war), genocidal persecutions and other traumatic dislocations.
- Moreover, none of us can be complacent that we will not find ourselves among those on this list, in need of adequate clothing. The right is of great practical importance. It is an essential subsistence right, not an embellishment or a legal absurdity.

In the rest of this paper I survey the literature on the right, explore the origins of the right and analyze some of the international law relevant to it (with a focus on Article 11, ICESCR). The conclusion makes some suggestions for an agenda for further research.

II. A REVIEW OF THE LITERATURE

Despite a vast literature regarding poverty, social welfare, the welfare state, welfare rights, and the ethics of international political economy and globalization from IR and legal scholars, political scientists, philosophers and sociologists, there is very little commentary on the right to adequate clothing in international law.

Matthew Craven, in his thorough and authoritative commentary (1995) on the ICESCR, devotes only a few paragraphs to the issue. This is so, even though he recognized, in discussing Article 11 of the ICESCR, that the right to adequate clothing is part of ‘the right to an adequate standard of living’ that ‘is of paramount importance not least because at minimum levels it represents a question of survival’ (Craven 1995: 287). Further, in his discussion of ‘basic needs’ theory, he cites the International Labour Organization’s (ILO) attention to ‘adequate food, shelter and clothing’ (World Employment Conference of the ILO, 1976: ILO, *Target Setting for Basic Needs* (1982) in Craven 1995: 305). He then acknowledges that the rights recognized in Article 11 of the ICESCR have been widely violated (Craven 1995: 287–8). Despite this acknowledgment, he only provides extensive discussion of the rights to adequate food and housing (Craven 1995: 287–351). To the right to adequate clothing, which he concedes must be enjoyed at least a ‘minimal’ level for one to survive, and thus deserves ‘detailed consideration,’ he devotes only one paragraph, citing no references or authority (Craven 1995: 287, 349, 351). In it he notes that the right, ‘although specifically included in the Covenant, has had little attention either

from the Committee or independent commentators.’ He also comments that ‘reporting guidelines’ for states parties in relation to the CESCR do not mention the right, and only rarely has the Committee questioned a state party on its performance with respect to it. Craven concludes that ‘[t]he impression given is that clothing is not a matter in which the State may exercise a great deal of control, nor one that the Committee feels is of great importance’ (1995: 349).

But Craven provides no argument, evidence or authority for these claims that flatly contradict his emphasis on how basic the right to adequate clothing is to a person’s survival. Nor does he take the framework the CESCR has applied to food, housing and health to try to elucidate what the right to adequate clothing might require of states in terms of laws, policies and action. It is nevertheless possible to argue by analogy from that framework, and thus identify standards that states parties must meet in order to comply with the Covenant’s right to adequate standard of living (the subject for another paper). Using the same methodology, it will be possible to identify a set of ‘core’ (see, further, Chapman and Russell 2002) obligations that can be derived from that right. Craven concludes that the CESCR ‘has failed to give substantial meaning to the right to clothing’ (Craven 1995: 351), but unfortunately he himself did not attempt such an interpretive exercise. Rhetorically the right to adequate clothing has been accepted by commentators and the CESCR as an essential human right, but its specific content has not been elaborated. One commentary (Icelandic Human Rights Centre 2008: 6), for instance, gives ‘the enormous variations in cultural clothing needs and wants’ as the explanation for the fact that the right is ‘probably the least specified of all the components of an adequate standard of living.’ But this explanation is not plausible. Cultural, environmental and economic variations in ‘needs and wants’ are surely as marked with regard to housing, health and food as they are in relation to clothing, but this has not prevented detailed elaboration of those rights in international law. Again, the commentator provides no evidence, references or authority for the claims in its single, short paragraph on the right to clothing (Icelandic Human Rights Centre 2008: 6).

The most extensive analysis of the right to adequate clothing, though amounting only to a couple of pages, comes from James Hathaway in his meticulous account of the rights of refugees in international law (Hathaway 2005: 503–504), and Weissbrodt and de la Vega (2007: 150–156) in their analysis of some of the CESCR’s General Comments. Weissbrodt and de la Vega briefly mention the CESCR’s references to the right to adequate clothing for workers in order to reduce the risk of ‘occupational accidents’ (General Comment No. 14 (2000), with regard to Article 12, ICESCR – ‘the right to the highest attainable standard of health’ – discussed in Weissbrodt and de la Vega 2007: 151), to clothing suitable to the special needs of certain persons with disabilities so they can ‘function fully and effectively in society’ (General Comment No. 5 (1995) in Weissbrodt and de la Vega 2007: 151), and to the right of ‘elderly persons’ to have ‘access to adequate and appropriate clothing’ (General Comment No. 6 (1996) in Weissbrodt and de la Vega 2007: 151). The authors do not, however, provide much clarification or detail respecting what specific obligations thus fall on the state or other parties in these contexts. They also briefly discuss the CESCR’s criticism in 1998 that the poor in Canada, especially poor women and children, were ‘not guaranteed an adequate means of subsistence, including clothing’ (Weissbrodt and de la Vega 2007: 151); and the rebuke in the same year of Sri Lanka for denying

‘access to sufficient clothing’ to persons who had been displaced inside its borders (Weissbrodt and de la Vega 2007: 151).

Helpfully, Weissbrodt and de la Vega (2007: 151) link the ICESCR clothing right with Article 27 of the Convention on the Rights of the Child (Children’s Convention), in accordance with which states parties are obliged, in conjunction with other actors, to provide a

... standard of living adequate for the child’s physical, mental, spiritual moral and social development... [and] States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing. (Article 27(3) reproduced in Brownlie and Goodwin-Gill 2002: 250)

The Committee on the Rights of the Child (CRC) has emphasized in its response to various reports by states parties (Jordan, Haiti, Mozambique, Georgia) that they must ‘provide adequate clothing to street children and orphans living in government institutions’ (Weissbrodt and de la Vega 2007: 151). Usefully, Weissbrodt and de la Vega also identify the relevance of culturally adequate clothing to human rights to freedom of expression, religious and otherwise, and to the enjoyment of culture, since ‘[c]lothing is often a visible expression of cultural, religious and sometimes even political identity’ (Weissbrodt and de la Vega 2007: 152; see also: Articles 18 on freedom of thought, culture and conscience, 19 on freedom of expression and 27 on cultural rights in the ICCPR; Weissbrodt and de la Vega 2007: 151–56; Hathaway 2005: 504; UNESCO 2008: 2).

Hathaway discusses the right to clothing in relation to refugees, noting that to be adequate such clothing needs to be climatically suitable and appropriate for any work they do in the state that is now hosting them. Additionally, refugees must not be made to wear clothes that stigmatize them as foreigners, as this can only be an encouragement to unlawful discrimination against them (Hathaway 2005: 503–4).

III. ORIGINS

Venerable religions have long reminded us of our responsibility to show compassion for the poor, to tend to them and generally to act charitably. Samuel Murumba, a law professor whose work has focused on civilizational contributions to international human rights law, has pointed to Hinduism’s commitment to the freedom of all humans from want. In the third century B.C.E. the Buddhist Emperor Asoka established social welfare provisions. Under Islam there is a right to ‘a means of living,’ and traditionally a ‘welfare tax’ was levied to help fund assistance to the poor and unfortunate (James 2007: 8; Lauren 1998: 5–10; Murumba 1986: ch. 1 and 91–2, 95, 98–99, 100, 105–9, 112, 114, 170, 177, 184, 188, 190; Ishay 2004: Ch 1; Bloom and Proudfoot (1986); Singh 1995 : 824–839).

In Christianity, encyclicals from Rome have long recognized subsistence rights, while Liberation Theology has applied the ethos of a radical Jesus Christ to put the poor first (Steiner, Alston and Gordon: 2008: 269). The Bible has a number of passages

urging compassionate and just treatment of the poor (Ishay 2007: 50–1). Proverbs 14: 31 declares that ‘He that oppresseth the poor reproacheth his Maker: but he that honoureth him hath mercy on the poor’ (The Holy Bible n.d.; and Ishay 2007: 51). There are other passages that underline the importance of clothing to the poor, and that exhort one to act charitably towards the poor in Jesus’ name by not depriving the poor of their garments, or by positively clothing them (see Ishay 2007: 50–51); Steiner, Alston and Gordon 2008: 293). Take, for instance, Exodus 22: 25–7 (The Holy Bible, n.d.; Ishay 2007: 50–51) which condemns exploitation of the poor, and commands creditors and pawnbrokers to allow paupers to have their clothes at sunset:

If thou lend money to any of my people that is poor by thee, thou shalt not be to him as an usurer, neither shalt thou lay upon him usury.

If thou at all take thy neighbour’s raiment to pledge, thou shalt deliver it unto him by that the sun goeth down:

For that is his covering only, it is his raiment for his skin: wherein shall he sleep? and it shall come to pass, when he crieth unto me, that I will hear: for I am gracious.

By aiding the poor, one honours Jesus and thereby God:

For I was ... Naked, and ye clothed me ... Then shall the righteous answer him, saying, Lord, when saw we thee ... naked, and clothed thee? ... And the King shall answer and say unto them, Verily I say unto you, Inasmuch as ye have done it unto one of the least of these my brethren, ye have done it unto me (The Holy Bible, n.d.: Matthew 25: 35–8, 40: Steiner, Alston and Gordon 2008: 293).

Classical liberal philosophers of the seventeenth and eighteenth centuries have often wrongly been regarded as simple libertarians allowing no regulation of the market, nor any state assistance to the poor. Leading liberals such as John Locke espoused no such view (Sunstein 2005: 96). He required, for example, that when resources were used, ‘enough and as good’ was to be left for others. Locke recognized as well that ‘Charity gives every man a Title to so much of another’s plenty, as will keep him from extream want, where he has no means to subsist otherwise’ (Sunstein 2005: 97).

Revolutionary thinkers of eighteenth-century America and France condemned extreme inequality and endorsed subsistence rights, state regulation of the market and public relief for at least the poorest in their societies. This is not of course to suggest that such thinkers were thoroughgoing egalitarians and social democrats. There was obviously a strong pragmatic dimension to prevention of abject poverty, given the resentment, instability and violence that it can breed, especially towards the propertied classes. Even so, American constitutional framer James Madison approved of ‘laws, which, without violating the rights of property, reduce extreme wealth to a state of mediocrity, and raise extreme indigence toward a state of comfort’ (quoted in Sunstein 2004: 2). Similarly, Thomas Jefferson was keenly aware of the ‘misery to the bulk of mankind’ that ‘enormous inequality’ causes (Sunstein 2004: 2). According to Jefferson, one means of addressing this inequality was to implement what we would now call a graduated taxation system:

Another means of silently lessening the inequality of property is to exempt all from taxation below a certain point, and to tax the higher proportions of property in geometrical progression as they rise (quoted in Sunstein 2004: 2–3).

In France, Baron de Montesquieu specifically recognized subsistence rights and correlative duties on the state in relation to clothing:

The alms given to a naked man in the street do not fulfill the obligations of the state, which owes to every citizen a certain subsistence, a proper nourishment, convenient clothing, and a kind of life not incompatible with health (quoted in Sunstein 2005: 90).

These values were reflected in French declarations of rights and constitutional protections of the eighteenth century. Indeed, Harvard human rights scholar Stephen Marks concludes that ‘many representatives of the Third Estate’ thought that ‘human rights began with the rights that today we would call economic’ (quoted in James 2007: 141). This conclusion challenges the conventional classification of the development of human rights norms and laws into neat generations. And it also emphasizes the early recognition of the interdependence and intermingling of civil and political and economic and social rights (James 2007: especially at 140–142). The 1789 Declaration of the Rights of Man and Citizen, a declaration in 1793 and the 1791 Constitution included the right of the poor, the orphaned and those without gainful employment to public assistance under the overarching value of ‘social protection’ (James 2007: 141–142).

In the nineteenth century a number of thinkers and reformers responded to the dehumanizing excesses of the Industrial Revolution with utopian and proto-socialist schemes that included protections for social and economic rights. Among them were those of Louis Blanc, Robert Owen and the Fabians (Steiner, Alston and Gordon 2008: 269; Siegel 1984: 261–263). In 1848 Louis Blanc argued that formal, legal rights alone were insufficient. Their worth depended crucially on power, resources, and what we might call ‘capabilities’ (see, for example, Nussbaum 1999):

Let us say it then once and for all: freedom consists, not only in the RIGHTS that have been accorded, but also in the POWER given to men to develop and exercise their faculties, under the reign of justice and the safeguard of law ... (extracted in Ishay 2007: 217)

After the devastation of the First World War, a number of organizations associated with the League of Nations made headway discussing and responding to various issues regarding health, conditions of work, sanitation, the standard of living and the welfare of women and children (Lauren 1998; James 2007: 35 ff., especially at 47–48; Northedge 1986). In 1919, the ILO was created. It sought to combat ‘injustice, hardship and privation’ (Steiner, Alston and Gordon 2008: 269), and took a particular interest in working conditions, social insurance and security schemes. These schemes might cushion the impact of life’s adversities (for example, illness, injury, old age) on humans (Steiner, Alston and Gordon 2008: 269).

In Europe, Britain and the U.S.A. governments envisioned and built welfare states as pragmatic and humane responses to the turmoil of the Great Depression (Steiner, Alston and Gordon 2008: 269–70). The blueprints for these welfare developments such as the Beveridge Report (1942) in England (James 2007: 81) and the New Deal in the U.S.A. were not without precedent. There had been, for instance, German Chancellor Bismarck’s late nineteenth-century ‘social insurance’ scheme and important economic and social rights in the 1919 Constitution of the German Federation (Steiner, Alston and Gordon 2008: 269; Ganji 1962: 159). Article 119 of that constitution stated that ‘[m]otherhood’ was owed ‘the protection and care of the state.’ Article 191 even appeared to guarantee citizens certain subsistence rights: ‘The organization of economic life must accord with the principles of justice and aim at securing for all, conditions of existence worthy of human beings. Within these limits the individual is to be secured the enjoyment of economic freedom.’ Articles 157 and 163 guaranteed public support for the unemployed. Article 161 outlined a broader social security scheme: ‘The Federation will establish a comprehensive scheme of insurance for the maintenance of health and fitness for work, for the protection of motherhood, and as a provision against the economic consequences of old age, infirmity and the vicissitudes of life’ (quoted and discussed in Ganji 1962: 159–160).

During World War II a wide range of writers and activists, as well as professional, reform-oriented and state bodies developed plans for post-war organization and declarations of rights, sometimes trying to make political leaders accountable for inspiring wartime speeches. Economic and social rights, including the right to clothing, could be found in a number of declarations. H.G. Wells’ ‘A Declaration of the Rights of Man’ (1940) had at least two articles that were directly relevant to a right to adequate clothing:

1. The Right to Live

... He is entitled, within the measure of these resources and without distinction of race, colour or professed beliefs or opinions, to the nourishment, *covering* and medical care needed to realise his full possibilities of physical and mental development from birth to death ...

7. Right in Personal Property

In the enjoyment of his personal property, lawfully possessed, a man is entitled to protection from public or private violence, deprivation, compulsion and intimidation (extracted in Ritchie-Calder 1968 : 16–17, emphasis added; James 2007: 144–145).

On 4 December 1940, the U.K. Foreign Secretary wrote of ‘[t]he right to live without fear, either of injustice or of want’ and of ‘equal opportunity’ and ‘economic security’ (James 2007: 72–3). The National Resources Planning Board, led by FDR’s uncle Frederic, drafted a declaration in January 1943 that recognized the right to ‘adequate food, clothing, shelter and medical care’ (James 2007: 77; Merriam 1946: 14; Kloppenberg 2006: 513). The American Law Institute, whose membership extended well beyond the confines of the U.S.A., completed a Statement of Essential Rights (1944) that spoke of a right to social security, and the Declaration of Philadelphia (1944) agreed upon at an international labour conference did as well. And the Declaration spoke more generally of the securing of human ‘well-being’ (James 2007: 74).

FDR began 1941 with his now famous ‘Four Freedoms’ State of the Union address to Congress. He committed himself to the pursuit of ‘freedom from want’ and from fear ‘everywhere in the world’ (James 2007: 76). The following year the U.S. State Department (Special Committee on Legal Problems) drafted an innovative, even radical, bill of rights. The bill did not survive the subsequent hostility to perceived paternalism and state socialism (though this perception reflected some distorted American understandings of the time) (James 2007: 81, 145). The bill provided in Article II that ‘[a]ll persons ... have the right to enjoy such minimum standards of economic, social and cultural well-being as the resources of the country, effectively used, are capable of sustaining’ (James 2007: 145).

In 1944 FDR went well beyond his earlier reference to ‘freedom from want,’ linking it more explicitly to the conditions for any durable civil and international peace, and recognizing the need for a so-called ‘Second Bill of Rights.’ ‘Security’ meant, said FDR, ‘economic security, social security, moral security’ (Sunstein 2004: 1). It was only if all people across the world had a ‘decent standard of living’ that ‘peace’ was possible. ‘Freedom from fear’ he preached, ‘is eternally linked with freedom from want’ (Sunstein 2004: 1). Alluding to the founding of the U.S. Constitution, FDR identified a new set of ‘self-evident truths’ (Sunstein 2004: 1–2). His country could not ‘be content no matter how high that general standard of living may be, if some fraction of our people – whether it be one-third or one-fifth or one-tenth – is ill-fed, ill-clothed, ill-housed and insecure’ (quoted in Sunstein 2004: 1). He continued (extracted in Steiner, Alston and Gordon 2008: 270):

We have come to a clear realization of the fact that true individual freedom cannot exist without economic security and independence.

‘Necessitous men are not free men.’ ...

In our day these economic truths have become accepted as self-evident. We have accepted so to speak, a second bill of rights, under which a new basis of security and prosperity can be established for all – regardless of station, race or creed.

Among these are: ...

The right to earn enough to provide adequate food and clothing ...

All of these rights spell security. And after this war is won we must be prepared to move forward, in the implementation of these rights, to new goals of human happiness and well-being.

Although FDR specifies in this passage only the right of a person to earn enough to obtain adequate clothing, he made it clear that the ‘Government has the final responsibility for the well-being of its citizenship’ (quoted in Sunstein 2004: 4). Indeed FDR insisted that ‘[i]f private co-operative endeavour fails to provide work for willing hands and relief for the unfortunate, those suffering hardship from no fault of their own have a right to call upon the Government for aid; and a government worthy of its name must make a fitting response’ (Sunstein 2004: 4). Suffering from polio, FDR wanted, concludes American constitutional law scholar Cass Sunstein, to engineer a ‘national insurance’ scheme to protect citizens against being buffeted by ill fortune. By ensuring ‘food, clothing, shelter, and health care for all,’ such a system, comments Sunstein, would provide some protection and compensation if the worst

threats to those goods eventuated (Sunstein 2004: 4; see also Kloppenberg 2006: 512, 514).¹

FDR's speeches echoed the reiteration of 'social security' and 'freedom from fear and want' in The Atlantic Charter (August 1941) (Green 1956: 13–14; James 2007: 77–9; Borgwardt 2005) and anticipated, indeed in a more passionate and detailed fashion, the proposals at Dumbarton Oaks and certain articles in the UN Charter. At the Dumbarton Oaks Conference, the several states agreed that, in order to create 'conditions of stability and well-being,' any post-war organization 'should facilitate solutions of international economic, social, and other humanitarian problems' (quoted in Green 1956: 15–16). The UN Charter contains a number of broad humanitarian articles that can encompass the right to adequate clothing: for example, Articles 1, 55 and 56 (James 2007: 123–25; Green 1956: 17–18).

Two of the most important provisions in the UDHR regarding the right to adequate clothing are Article 22 on social security and Article 25(1). Article 25 reads as follows:

1. Everyone 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 and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
2. Motherhood and childhood are entitled to special care and assistance. All children whether born in or out of wedlock, shall enjoy the same social protection.

Article 28 of the UDHR describes an entitlement 'to a social and international order' in which the UDHR's rights and freedoms 'can be fully realized.' It is particularly relevant to poorer countries who might well depend upon international aid and cooperation (or, more radically, a revolution in the global economy and governance) in order to avoid being in violation of Articles 22 and 25.

Johannes Morsink, in his peerless archival study of the origins of the UDHR (Morsink 1999: 192, 195), pinpoints a number of influences on the development of Articles 22 and 25. In addition to the influence of the spirit of Latin American socialism on the general right to social security (Morsink 1999: 192), a number of other countries gave particular support to a right to adequate clothing. They included the Philippines (Morsink 1999: 195), Cuba (Morsink 1999: 195) ('a right to hygienic living conditions and to clothing suitable for the climate in which he lives'), China, Australia, Chile and France (James 2007: 148). P.C. Chang (China), in response to resistance from the U.S.A. and the U.K., said that he 'did not see what possible objection there could be to that phrase [in the proposed Article 25] when millions of people were deprived of food and clothing' (James 2007: 148). China and Australia were again prominent supporters of the right to adequate clothing when it was included in the draft of what is now Article 11 of the ICESCR. The Chinese representative, Cheng Paonan, explained that the right to clothing, along with food, were crucial for people living in 'under-developed countries,' especially those with predominantly agrarian economies (Craven 1995: 291). Article 11(1), ICESCR reads as follows:

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

IV. THE LAW: AN OVERVIEW OF RELEVANT PROVISIONS

Articles 25 of the UDHR and 11 of the ICESCR can be cross-referenced to quite an array of other relevant international and regional legal provisions and ‘soft law’ (I rely here on the following collections of documents: Brownlie and Goodwin-Gill 2002; Center for the Study of Human Rights 1994; Flynn 2003; Steiner, Alston and Gordon 2008). Among the international and regional instruments that make specific reference to rights to clothing, or at least set standards in relation to the provision of clothing, are the following: the UN Convention on the Rights of the Child (1989) (reproduced in Brownlie and Goodwin-Gill 2002: 241–258), Geneva Protocol II (1977) (extracted in Flynn 2003: 39–40), the UN Standard Minimum Rules for the Treatment of Prisoners (1955) (reproduced in Center for the Study of Human Rights 1994: 106–118), the American Declaration of the Rights and Duties of Man (1948), and The Cairo Declaration on Human Rights in Islam (1990) (reproduced in Center for the Study of Human Rights 1994 (respectively): 190–193; 194–197).

1. Provisions in the UDHR

Article 25, UDHR

Article 25 of the UDHR, as we have noted, provides that everyone has the right to a standard of living adequate for ‘health and well-being.’ Immediately one can see the link between the right and the human right to health. The right to an adequate standard of living includes rights to adequate ‘food, clothing, housing,’ ‘medical care and necessary social services.’ The definition is thus inclusive not exhaustive, indicating the breadth of the provision. The article also guarantees ‘the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.’ Again this is a wide-ranging guarantee of, effectively, social security, not limited to the particular challenging conditions and circumstances identified. Nevertheless, one must note the qualification ‘in circumstances beyond his control.’ This phrase does seem to suggest that the ambit of the right might be circumscribed by notions of who is deserving of social security, harkening back to the notion of the ‘deserving poor’ and the continued importance of an individual being self-reliant and having a real willingness to work.

Article 25(2) states that ‘Motherhood and childhood are entitled to special care and assistance.’ Interestingly, it refers to abstract nouns rather than to the concrete nouns ‘Mothers and children.’ But the second part of the clause guarantees that ‘All children, whether born in or out of wedlock, shall enjoy the same social protection.’ This provision is designed to protect ‘illegitimate’ children from the kind of stigma and discrimination the name suggests, and which they often suffered from in fact. It further emphasizes the case for social paternalism in relation to children as a class of

particularly vulnerable people. This principle is a standard exception even in liberal theories that otherwise insist that people are free to choose poorly in life and cannot complain if they suffer unpleasant or damaging consequences because of it (for example, adults are allowed to smoke cigarettes, but children are not, and children might also be protected against ‘passive’ inhalation of ‘second hand’ smoke from adult smokers putatively acting autonomously). The notion ‘social protection’ is one that one can find in eighteenth-century French declarations of rights and constitutional documents, in the German constitution of 1919 and in the post-World War II French constitution (above: 7–8; James 2007; Palley 1991).

In Article 25 there are thus many rights that are connected like the spokes of a bicycle wheel, both to the hub of the human right to an adequate standard of living and to each other, which, to continue the analogy, may be understood as the rim. The right to adequate clothing is necessary for good health and well-being. Without sufficiently warm clothing one might well die from hypothermia, especially in the frigid winters of the Northern Hemisphere (see Article 3, UDHR, on the right to life). Presumably, clothing that is inappropriately warm could contribute to heat stroke, dehydration and exhaustion under summer heatwave conditions or in tropical zones. Inadequate clothing could leave a person more exposed to the sun’s ultra violet rays, a known contributor to skin cancer. The extent to which the clothing is sufficiently ventilated (its ability to ‘breathe’) will also be a factor, as will how easily it gets wet and how quickly it dries. Some clothing may aggravate allergies or worsen skin conditions (especially if the clothes are worn constantly). Ill-fitting footwear can cause serious injury, as podiatrists and physiotherapists will attest. Historically, women’s corsets in the nineteenth century could cause permanent skeletal damage and even harm internal organs. I make these assessments as a layperson. That is why, as further research takes place in relation to the right to clothing, it will be necessary to integrate knowledge, expertise and experience from the textile industry, health sciences and professions and social work. Insights from preventive and community medicine will naturally be relevant.

The right to clothing is, moreover, connected to the right to medical care. This is evident in a number of circumstances. It is particularly relevant in institutional care settings in which a person (a patient or, to use newer terminology, a client) might have great difficulty in even dressing herself, or dressing herself appropriately for the conditions. It will also be relevant when a health professional has advised a person to wear therapeutic clothing (for example orthopaedic footwear) as part of the treatment of their condition. Often such specialized clothing is not readily available, especially in poorer countries, or is prohibitively expensive. We can thus see how another spoke joins the hub of the right to an adequate standard of living: of having sufficient resources to purchase medically necessary items.

Well-being is a very expansive concept. It is reasonably straightforward to see how inadequate clothing can affect well-being, conceived in its physical and psychological dimensions. Ill-fitting or inappropriate clothing can cause great discomfort and also affect a person’s sense of self-esteem and even dignity. Again these effects are liable to be exacerbated in relation to people who have diminished control over their own lives. For example, adult persons with serious disabilities may be dressed inappropriately for their age, or dressed for the convenience of a carer, without sufficient respect for the aesthetic and other preferences of the wearer. In this sense,

choosing and wearing clothing is for many people an important part of self-expression (see Article 19, UDHR). And it is not only such persons who can have their self-esteem and dignity diminished by inadequate clothing. We can recall here my introductory reflections on inadequate clothing and the stigma of poverty. Dirty, ripped, ill-fitting and even extremely outdated clothing (I distinguish instances where wearing such clothing is a conscious communication by the wearer of a ‘fashion statement’) can be an invitation to other people to treat the wearer with contempt and ridicule. These incivilities can have dangerous ramifications that erode the respect with which the poor are treated. They can also involve damaging moralistic judgments about the wearer. The more that people are dehumanized in this way the more likely it is that negative stereotypes of them are strengthened, and the more likely it is that they will not be seen as worthy of respectful treatment. To give a concrete example, a school child (or his or her parents) may be ridiculed for inadequate clothing, even causing such shame that the child or parents are reluctant to continue sending the child to school (see, for example, Kornbluh 2007: 39-41, 139; International Children’s Summit 1992; Interagency Network for Education in Emergencies 2002: 1).

To return to my metaphor, there is a strong connection between the spokes of housing and clothing. The paradigmatic example is perhaps homeless persons. Those without adequate housing are more exposed to the weather. Given their poverty (as a general rule), the clothes they are wearing are especially important to their well-being. But they are more likely to get damaged and worn out, as they wander cities, travel in trains and sleep where they can. The condition of their clothing can be worsened still further through the effects of disabling conditions such as serious mental and physical illness and drug and alcohol dependencies (linking again with the rights to adequate health and medical care).

As I complete this internal comparison of rights in Article 25, we come to the rights to ‘necessary social services’ and to the right to ‘security.’ These goods are related to each other and suggest features of welfare provision; for example, by the state in conjunction with other actors. What is certain is that the term encompasses social security systems familiar to many living in modern liberal-capitalist, social-democratic, or socialist welfare states. Thus, everyone has a right to security, including social security, when unemployed, sick, disabled, or bereaved. One also has this right when in old age, the assumption being that increasing age might diminish one’s employment prospects at a time, when, for example, medical costs (including possibly the cost of a nursing home) increase. Dependence and healthcare needs might also increase with the death of a partner (though this may be balanced in strictly financial terms by inheritance, insurance and superannuation provisions). The security component of Article 25 is not limited to the items listed since it refers to ‘other lack of livelihood,’ albeit with the qualifier ‘in circumstances beyond his control.’

Article 25’s connection with other UDHR articles

The right to adequate clothing in Article 25 can be related to many other articles in the UDHR, some of which I have mentioned already. There are the overarching references to all humans being ‘free and equal in dignity and rights’ and to the obligation upon us all to act towards each other in a caring, comradely fashion (Article 1). Furthermore, all of the UDHR rights are to be enjoyed ‘without distinction

of any kind' (Article 2). This non-discrimination provision is illustrated by reference to 'race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status' (including to the territory or country a person belongs to, 'whether it be independent, trust, non-self-governing or under any other limitation of sovereignty'). The provision is very wide-ranging. Since clothing can be an identifier of religion, race, ethnicity, culture (see also Article 27) and national or political identity, Article 2 provides an important protection. Arguably, one could also use the article in relation to those who have very little property, their poverty affecting what clothes they can afford to wear. The signs of their poorer economic status can then be a cause of discrimination and vilification. Additionally, culturally distinctive clothing could also provoke, though it hardly causes, discriminatory conduct against the wearer, denying him or her various social goods. For example, persons may be denied entry to public or private premises because of what they are wearing, and thus miss out on social (for example, educational, sporting and recreational; see also Article 24), economic or political opportunities or resources. Discrimination and obstruction of human flourishing of this kind has been evident in explicitly racially segregated societies (for example, the U.S.A. during segregation – as to which see James 2007; Dudziak 2000; Rosenberg 2006; Von Eschen 1997; Anderson 1996 – and apartheid South Africa) and in societies rent by religion, pathological nationalisms and patriarchal fundamentalism (for example, respectively, Northern Ireland, the former Yugoslavia and Afghanistan under Taliban rule).

It is possible that one's right to 'security of person' (Article 3) and dignity (Article 1) could be affected by a lack of adequate clothing. For example, one's sense of dignity can be violated by another's failure to respect sexual privacy that can depend in part on having adequate undergarments (see also Article 12 on the prohibition of 'arbitrary interference with ... privacy'). If this sounds implausible, one need think only of the potential for abuses of trust, for humiliations and various physical abuses in medical and institutional settings, especially in relation to women and children, the disabled and elderly. Denying people access to adequate clothing, including by taking someone's clothing from them (see Article 17 on property), is one way that one can be rendered vulnerable to 'cruel, inhuman or degrading treatment or punishment' (Article 5). One can literally be left naked in the midst of power, a tragic condition we have seen too often in prisons, in war and in concentration camps. For example, the NGO Physicians for Human Rights cited the case of a detainee at Abu Ghraib who now suffers from post-traumatic stress disorder and sexual dysfunction, as the result of various humiliations and other mistreatment he experienced there (Hess 2008). The humiliations included 'being forced to wear women's underwear,' being 'stripped naked and paraded in front of female guards' and being 'shown pictures of other naked detainees' (Hess 2008; see also UN 1994; *Henderson v. DeRobertis* 940 F.2d 1055 (7th Cir. 1991) (United States Court of Appeals)). Such coercive denials of the right to adequate clothing are radically disempowering and degrading. Moreover, such denials have also often been part of racial and class-based exploitation of slaves (including sexual slaves) and those in 'servitude' (see Article 4; see also Article 23(1) on work conditions).

Article 23 concerns various rights associated with work. The article guarantees a right to work for 'just and favourable remuneration' (including 'equal pay for equal work') under 'just and favourable conditions' without discrimination. There is a right to a kind of social security supplement if the remuneration is inadequate to ensure the

worker ‘an existence worthy of human dignity.’ The article is relevant in three main ways to the right to adequate clothing. First, it guarantees that one will have an adequate income with which to purchase clothing. Second, it guarantees satisfactory work conditions. This raises occupational health and safety (and associated environmental) concerns. Employers should, for example, provide workers, particularly in hazardous occupations, with adequate protective clothing (for instance, boiler suits, gloves, boots, hair nets, hats and helmets). They should also, in conjunction with the state, seek to reduce the hazards to which workers are exposed. The link with health (Article 25(1)) is apparent here. Third, the guarantee of ‘the right to form and to join trade unions’ (Article 23(4)) secures to workers at least one means of protecting their myriad economic and social rights (including the rights to protective clothing and uniforms, to adequate breaks, to adequate sanitation, and to emergency – for example, decontamination – and routine health facilities).

Article 28 declares that ‘Everyone is entitled to a social and international order in which the rights and freedoms’ of the UDHR ‘can be fully realized.’ This article is fundamental to the prospects for the realization of the right to an adequate standard of living and the right to adequate clothing encompassed within it. This is because the fulfilment of these rights is greatly affected by economic resources at the individual, national, regional and international levels. At the individual level, for instance, one might not be able to afford to purchase adequate clothing without the assistance of a welfare state. To what extent a country can itself afford to have a satisfactory welfare state will depend significantly on global economic factors. Clearly, this will be crucial for poorer countries in the face of the realities of the radical economic inequalities in the world. It connects to poorer countries’ claimed rights to economic self-determination and the right to development (including the contending notions of ‘sustainable’ and ‘human development’) (James 2007: 175–213; Rajagopal 2003). More bluntly, developing states may well need to cooperate with and receive international aid and assistance from wealthy countries if they are to fully realize the rights. We know of course that developed countries have in this respect provided only minimal, and often inappropriate, aid; though authoritarian states and their elites in the South have themselves corruptly misused both their own national resources and those derived from international aid (examples in recent years include North Korea, Zimbabwe, Myanmar and Somalia).

2. Provisions in the ICESCR

Unlike the UDHR, over which there is some doubt about which provisions are legally binding on states as part of customary international law, the treaty status of the ICESCR means that it binds all state parties to it. The main provision I will consider in this paper is Article 11 on the right to an adequate standard of living and to clothing. But there are other relevant provisions that are parallel to, but not identical with, those of the UDHR: Article 2 repeats its injunction against discrimination; Article 6 concerns work-related rights (see also Article 8 on trade unions); Article 9 guarantees social security; Article 10 involves protection and assistance for certain deserving vulnerable persons in family and other contexts (mothers, children and young persons); Article 12 concerns the right to health; and Article 15(1) provides a right to participate ‘in cultural life.’

Despite the close similarity of the ICESCR provisions to those in the UDHR, there is some distinctive language in the Covenant. Article 6 links the required work conditions to the ‘fundamental political and economic freedoms’ of individuals. Article 7(a) requires that workers be remunerated with ‘fair wages’ that provide them with ‘[a] decent living.’ Is this a higher standard than the notion of an ‘adequate’ standard of living described in Article 25 of the UDHR? Article 7 also makes an explicit reference (in paragraph b.) to ‘[s]afe and healthy working conditions,’ in comparison with Article 23 of the UDHR that guarantees ‘just and favourable conditions.’ Article 7(b.) enables workers to insist that employers fulfil their obligation to provide clothing that helps to protect them against injury and ill-health. Employers will need, for instance, to ensure that the clothing (including footwear) does not itself cause injury or ill-health. For example, poor footwear might cause chronic injury to a worker’s feet, especially for a worker in a non-sedentary occupation. Additionally, as already noted, clothing and footwear must adequately protect workers against occupational and environmental hazards (for example, the protection of workers whose hands are in regular contact with dangerous materials, and/or are exposed to hazardous fumes from volatile materials, and even carcinogens). The plausibility of these claims is vindicated when one examines the right to health in Article 12. It gives everyone ‘the right ... to the enjoyment of the highest attainable standard of physical and mental health.’ This might entail workers not being made to wear clothing at work that is degrading, humiliating or otherwise offensive, given that this could affect the mental health of a worker. It is unclear what kinds of cases might come within the ambit of this interpretation, but it not impossible to imagine workplace clothing that would unlawfully prevent a worker enjoying ‘the highest possible standard of ... mental health.’ Also relevant to occupational clothing is the article’s note that states must ‘take steps ... necessary for’:

- b. The improvement of all aspects of environmental and industrial hygiene;
- c. The prevention, treatment and control of epidemic, endemic, occupational and other diseases;

Article 10 builds on the paternalistic concerns regarding mothers and children that are the subject of Article 25(2) of the UDHR. Article 10(1) requires that the family be given the ‘widest possible protection and assistance.’ Article 10(2) states that mothers ‘should’ be given ‘[s]pecial protection’ during pregnancy ‘and after childbirth.’ ‘Working mothers’ are to be allowed ‘paid leave or leave with adequate social security’ for ‘a reasonable period before and after childbirth.’ Such leave with pay and social security support enables mothers to provide their infants with adequate clothing so that they may thrive (see also Article 12(1)(a.): ‘infant mortality and the healthy development of the child’). Article 10(3) speaks of ‘[s]pecial ... protection and assistance’ required to be given to ‘all children and young persons’ on a non-discriminatory basis. They are to be ‘protected from economic and social exploitation.’ Any employment that puts them in harm’s way – that threatens their physical health, moral welfare and ‘normal development’ – must be punished by law. States must regulate any paid employment of children and set minimum age limits. Employment outside these limits is to be prohibited and subject to legal sanction. Given that child labourers often work for long hours under oppressive and dangerous conditions, the provision of adequate protective clothing will be important. There is, of course, the more fundamental question of whether any form of child employment

should be allowable. The article seems to be a compromise on the basis of claims of the pressing economic need for child labour in families suffering acute poverty, especially in developing countries.

The nature of the clothing that children and young people are made to wear in various circumstances, including in employment contexts, could conceivably be exploitative, undermine their moral well-being or otherwise disturb their ‘normal development.’ For example, these parts of Article 10(3) could be relied on when children and adolescents are sexualized in employment in the hospitality, entertainment, modelling and retail industries.

Article 11(1) is explicitly concerned with the right to an adequate standard of living and the right to clothing. Going beyond the terms of Article 25 of the UDHR, the article recognizes ‘the right of everyone ... to the continuous improvement of living conditions,’ a feature of it that some commentators have considered extravagant (see, for example, the discussion in Griffin 2000: 22–26). Article 11 does not, like the equivalent UDHR provision, refer to social security or ‘medical care’; they are contained respectively in Article 9 and Article 12 of the ICESCR.

3. Provisions in other international and regional instruments

Latin America

An early instrument with Latin American origins and signatories is the American Declaration of the Rights and Duties of Man (1948). While not originally conceived as binding, certain institutions established under the American Convention on Human Rights (1969) have in the course of their practices given the Declaration some ‘normative effect’ (Brownlie and Goodwin-Gill 2002: 665). Article XI of the Declaration anticipates much of the content of Article 25 of the UDHR and Article 11 of the ICESCR. It states that ‘Every person has the right to the preservation of his health through sanitary and social measures relating to food, clothing, housing and medical care, to the extent permitted by public and community resources’ (Brownlie and Goodwin-Gill 2002: 667). Article XII proclaims ‘the right to an education that will prepare him to attain a decent life, to raise his standard of living.’ Article XIV outlines work-related rights, including satisfactory conditions and pay. Everyone also has rights to ‘social security’ (‘which will protect him from the consequences of unemployment, old age, and any disabilities arising from causes beyond his control that make it physically or mentally impossible for him to earn a living’ – Article XVI) and ‘to own such private property as meets the essential needs of decent living and helps to maintain the dignity of the individual and of the home’ (Article XXIII). (Brownlie and Goodwin-Gill 2002: 667–668). The Declaration guarantees pregnant women and mothers and children ‘the right to special protection, care and aid’ (Article VII). The American Convention on Human Rights (1969) (Brownlie and Goodwin-Gill 2002: 679) contains a chapter on ‘Economic, Social, and Cultural Rights,’ obviously modelled on the ICESCR, which consists of the following single provision:

Article 26—Progressive Development

The States Parties undertake to adopt measures, both internally and through international cooperation, especially those of an economic and technical

nature, with a view to achieving progressively, by legislation or other appropriate means, the full realization of the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States as amended by the Protocol of Buenos Aires.

Africa

The Preamble of the African Charter on the Rights and Welfare of the Child (1990) (the Charter is reproduced in Brownlie and Goodwin-Gill 2002: 748–762) records that signatory member states of the Organization of African Unity recognize that attending to the needs of children ‘requires particular care’ with regard to their mental and physical health and ‘moral and social development.’ Children must, the preamble continues, be legally protected ‘in conditions of freedom, dignity and security.’ Articles relevant to these purposes include Article 5 (‘right to life’ and ensuring ‘to the maximum extent possible, the survival, protection and development of the child’), the quite detailed Article 14 on health, and articles on child labour (15) and child abuse (16). Article 16 is worth quoting from at length, given its potential application to the neglect and abuse of children involving parents or responsible guardians in private and public institutional settings failing to provide them with adequate clothing:

Article 16—Protection Against Child Abuse and Torture

States Parties to the present Charter shall take specific legislative, administrative, social and educational measures to protect the child from all forms of torture, inhuman or degrading treatment and especially physical or mental injury or abuse, neglect or maltreatment including sexual abuse, while in the care of the child.

Protective measures under this Article shall include effective procedures for the establishment of special monitoring units to provide necessary support for the child and for those who have care of the child, as well as other forms of prevention and for identification, reporting referral investigation (sic), treatment, and follow-up of instances of child abuse and neglect.

Article 16(1) uses the unusual phrase ‘while in the care of the child,’ giving the impression that the child is the one doing the caring. However, it is clear that what is meant is that a child will be protected from the various ills the clause identifies while in the care of another, presumably an adult person. The Charter recognizes the obligations of parents to provide ‘care and protection’ (Article 19(1)) and ‘to secure, within their abilities and financial capacities, conditions of living necessary to the child’s development’ (Article 20(1)(b)). Parents and institutions responsible for the care of children are entitled to the state’s assistance (Article 20(2)). The Charter also refers to international humanitarian obligations in relation to children during ‘armed conflicts’ (Article 22), as refugees (Article 23), and when separated from their parents (Article 25).

Europe

The European Social Charter (1961) (reproduced in Center for the Study of Human Rights 1994: 171–189) contains a number of provisions germane to the right to

adequate clothing, though there is no specific mention of clothing in it. Part I, and Articles 1–4, refer to workers’ rights to a ‘just,’ ‘safe’ and ‘healthy’ workplace and to ‘a fair remuneration sufficient for a decent standard of living for themselves and their families.’ It also secures to children and ‘young persons’ ‘the right to special protection against the physical and moral hazards to which they are exposed’ (see also Article 7). The Charter includes rights to health (Article 11), and to social security in accordance with ILO standards (Article 12) – including rights to medical care (Article 13) and social welfare (Article 14). Particular protection is required to be accorded to mothers and children (Article 17), migrant workers and their families (Article 19), and the elderly (Part II, Article 4). The article on the elderly mandates that they be given ‘social protection’ by means of ‘adequate resources enabling them to lead a decent life’ ((1)(a)) and, when in care institutions, by means of ‘appropriate support’ that respects their privacy ((2)).

The Middle East

Though many of the rights provisions in The Cairo Declaration on Human Rights in Islam (1990) (Organization of the Islamic Conference) are subordinate to Islamic doctrine and the Shari’ah law, those pertinent to the right to adequate clothing seem not to be distorted (see Mayer 1991) in this way. This is probably due to the Islamic precepts that require just treatment of the poor. Gender equality rights, rights to democratic participation, rights concerning marriage, religion and the family, and civil rights (including the freedom of expression) have been much more of a challenge to traditional and fundamentalist incarnations of Islam, as they have been in Christianity as well. Article 3 of the Declaration says that ‘prisoners of war shall have the right to be fed, sheltered and clothed.’ Social security (‘social guarantees’) is protected under Article 13. Article 17(c) obliges states to ‘Ensure the right of the individual to a decent living which will enable him to meet all his requirements and those of his dependents, including food, clothing, housing, education, medical care and all other basic needs.’

The Arab Charter on Human Rights (1994) (Council of the League of Arab States) (reproduced in Brownlie and Goodwin-Gill 2002: 774–780) contains rights to work (Articles 30, 31), to fair wages and equal pay (Article 32), to ‘a standard of living that meets the basic requirements of life’ and to ‘comprehensive social security’ (Article 30). These rights are conferred on citizens of states signatories, so prima facie they would not seem to apply to everyone living within those states.

Selected specialized instruments

The Geneva Protocol II (extracted in Flynn 2003: 39–41) reflects the general principle of international humanitarian law that all civilians (and POWs under the Fourth Geneva Convention (1949)) (Flynn 2003: 34–41) are required to be treated humanely. With respect to the right to clothing, the most pertinent clause is Article 5 of Protocol II which concerns ‘persons deprived of their liberty for reasons related to the armed conflict, whether they are interned or detained.’ Article 5(b) says that such persons ‘shall, to the same extent as the local civilian population ... be afforded safeguards as regards health and hygiene and protection against the rigours of the climate ...’ Article 5 (c) mandates that they ‘be allowed to receive individual or collective relief,’

relief which could include the provision of warm clothing, blankets and other materials.

The Convention Relating to the Status of Refugees (1951) (the Geneva Convention on Refugees) (reproduced in Flynn 2003: 43–50) includes qualified protections in relation to rationing (Article 20), ‘public relief and assistance’ (Article 23), labour conditions (Article 24) and ‘social security’ (Article 24). Article 4 ensures refugees ‘treatment at least at favourable’ as that of nationals with regard to ‘freedom to practise their religion.’ As a number of scholars (Hathaway 2005: 503–504; Weissbrodt and de la Vega 2007: 152–156) has noted, clothing is often an important part of religious observance.

The Convention on the Rights of the Child (1989) requires through Article 6 (2) that states ‘ensure to the maximum extent possible the survival and development of the child.’ Clearly, being ill-clothed in an inhospitable environment can threaten a child’s very life (Article 6(1)) or at least her development. The Convention is wide-ranging and covers matters such as: the promotion of the health and development of children (Article 24); their protection against various forms of exploitation (including ‘all forms of sexual exploitation’: Article 34), neglect, abuse (see Articles 9, 19), and endangerment (for example, in the workplace: Article 32). The child is guaranteed a right ‘to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development’ (Article 27). While parents have the primary responsibility for rearing their children, the Convention recognizes that the parents will often need, and be entitled to, assistance of various kinds (Article 18(2)), including the conferral of ‘benefits’ through state ‘social security’ systems (Article 26). Dedicated provisions also address the rights of children under international humanitarian and refugee law (Articles 38 and 22 respectively) and of children with intellectual (‘mental’) and physical disabilities (Article 23).

As I have argued earlier in this paper, the right to adequate clothing is especially important for people with significant disabilities. The importance of the right increases as the autonomy of the person with a disability decreases. Apart from the risk of professional and other carers abusing their practical power over such a person, there is the fact that even humane carers often lack the resources (time, money, training, and expertise) to provide the necessary care.

Article 3 of the Declaration on the Rights of Disabled Persons (1975) (reproduced in Brownlie and Goodwin-Gill 2002: 30–32) provides that ‘[d]isabled persons have the inherent right to respect for their human dignity.’ Article 7 relates to ‘the right to economic and social security and to a decent level of living,’ including by means of gainful employment. Crucially, given the fact that there is often a power disparity between carers and persons with disabilities, Article 10 insists that persons with disabilities ‘be protected against all exploitation, all regulations and all treatment of a discriminatory, abusive or degrading nature.’

One of the more detailed documents concerning the right to adequate clothing, though that phrase is not explicitly used in it, is the UN Standard Minimum Rules for the Treatment of Prisoners (1955) that were approved by the Economic and Social Council in 1977 (Center for the Study of Human Rights 1994: 106). The rules are to be applied without discrimination, but with respect for ‘the religious beliefs and moral

precepts of the group to which the prisoner belongs' (Rule 6). These considerations are relevant to what might be termed the 'cultural adequacy' of clothing worn by a prisoner. Clauses regarding prison accommodation are significant as they make clear the impact of housing and environmental factors on the cleanliness, durability and comfort of prisoners' clothing. In this connexion, Rule 10 is worth quoting in its entirety:

All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation.

Perhaps showing the age of the instrument, Rule 11 says that 'fresh air' must be allowed to enter the prison via windows, 'whether or not there is artificial ventilation.' There must also be adequate toilet and bathing facilities so that prisoners can maintain their personal hygiene at an adequate level (Rules 12, 13, 15).

Rule 17 is dedicated to 'Clothing and Bedding.' Prison clothing must be '[s]uitable for the climate and adequate to keep him in good health. Such clothing shall in no manner be degrading and humiliating.' The prison authority must ensure that clothing, and especially '[u]nder-clothing,' is able to be regularly cleaned and kept in a 'fit' and hygienic condition (Rules 17 (2), 18). Rule 26(1) authorizes and requires relevant medical professionals to regularly inspect prisons. 'The medical officer shall regularly inspect and advise the [prison] director upon':

- ... b. The hygiene and cleanliness of the institution and the prisoners;
- c. The sanitation, heating, lighting and ventilation of the institution;
- d. The suitability and cleanliness of the prisoners' clothing and bedding ...

The American constitutional case of *Henderson v. DeRobertis* 940 F.2d 1055 (7th Cir. 1991) illustrates just how crucial the right to adequate clothing can be for the welfare of prisoners. During an extreme cold snap from 8 January–11 January 1982, the temperature outside the Illinois Stateville Correctional Center fell as low as 22 degrees below zero (with a wind chill reading of 80 degrees below zero). The heating system in Cellhouse B–West failed during this period. The plaintiff prisoners had been moved to B–West because they had broken prison rules, and remained there during the cold snap and heating breakdown (1056–1058).

We can get some idea of the extreme cold in Cellhouse B–West from the Court's account (1057–1058):

During these abnormally cold days, many areas in the Stateville Correctional Center experienced colder than usual temperatures. But in Cellhouse B–West, the heating system malfunctioned and the inside temperatures there fell and remained below freezing. Broken windows in the cell block permitted frigid outside air to flow in, ice formed in the cells, and 'it was cold enough to see your breath.' ... Correctional officers, cellhouse workers and the warden wore winter coats, hats and gloves while in B–West during this four-day period. An

inmate plumber while doing work in B–West on January 10th wore an overcoat with fur inside, a jumpsuit, pants, shirt, sweatpants, longjohns, three pairs of socks, workboots with rubber boots over them, gloves and a skullcap and still was not warm.

None of the prisoners who had been moved to B–West had been allowed take with them ‘any of their extra clothes such as winter coats or additional shirts.’ Three of the plaintiff inmates (Henderson, Jefferson and Harris) were denied extra blankets (1058). The Stateville Correctional Center’s defence was that it was not practicable to move the B–West inmates because of ‘security concerns’ (1058), and because of a shortage of staff at the time, and that, in any case, it was using its best efforts to repair the heating system as quickly as it could (1058). The Court rejected this defence and reinstated an earlier jury verdict in favour of the plaintiff inmates. The jury had awarded the plaintiff prisoners Jefferson and Henderson \$5000 each in damages, on the basis ‘that prison officials violated their eighth amendment rights by subjecting them to freezing temperatures which constituted unusual punishment’ (1056–1057). The Court did not accept the defence claim that the prison officials were protected from liability by the doctrine of governmental immunity. It was not prepared to disturb the jury’s finding that because the officials had conducted themselves with ‘deliberate indifference’ in the circumstances of the known climatic hazard they could not receive protection against liability under any immunity doctrine (1058–1060, and *passim*).

The Court found that ‘in 1982 it was clearly established that prison inmates had a right under the eighth amendment of the Constitution to adequate heat and shelter’ (1060). It accepted the jury’s right to make the assessment that ‘due to the defendants’ deliberate indifference, plaintiffs did not receive adequate clothing or protection from or relief from the cold’ (1060, quoting the lower court’s explanation). The extreme cold and the malfunctioning of the heater did not relieve officials of their constitutional duty. As the Court admonished (1059):

Contrary to defendants’ assertion, constitutional rights don’t come and go with the weather. The right of prisoners to adequate heat and shelter was known in 1982 and that right is constant. What is not constant is the level of effort and the course of conduct by prison officials necessary to provide protection from extremely cold weather.

V. CONCLUSION

We must remember the right to adequate clothing when examining the right to an adequate standard of living in international law. The health, dignity and very lives of a range of vulnerable people (including the poor, the mentally and physically ill, the elderly, the disabled, the drug-dependent, and those in detention or otherwise institutionalized) can be at risk when they are not adequately clothed. Next, we must undertake a thorough analysis of the relevant international, regional, national and local laws and policies that affect the realization of the right. In particular, it will be useful to explore the possibilities that lie in reasoning by analogy from CESCJ jurisprudence on other rights within Article 11 of the ICESCR. After all, the CESCJ has begun to develop criteria, in some cases quite detailed, regarding required

standards in relation to ‘adequate’ housing, health, food, water, and so on. There is no reason why a similar approach might not be undertaken in relation to the right to adequate clothing. Finally, we can examine the myriad ways in which civil society might, in conjunction with a humane state, ensure that all persons are clothed with dignity.²

¹Notes

Kloppenber (2006: 514) has explained FDR's view of the role of government in this respect as follows: 'Make no mistake: FDR was committed to capitalism rather than socialism. He believed that full employment and the achievement of purchasing power sufficient to secure a minimum standard of living should be achieved as much as possible through the private sector. But he saw no incompatibility between a robust market economy and an active, interventionist state responsible for taking the steps necessary to address imbalances of income at both extremes, through minimum wages for those who work and steep tax rates on unearned income.' More generally, Kloppenberg (512), like Sunstein (2004), argues that libertarianism and unregulated markets are better seen as departures from the American credo and economic management than as exemplars of orthodoxy. As Kloppenberg (512) puts it, 'from the operation of the poor laws to the exercise of police power to regulate economic activity in antebellum America to the ratification of the New Deal by the Supreme Court ... there is a long history of government intervention from which the few moments of genuine laissez faire are striking deviations'. Nevertheless, compared with the U.K., Europe and Australasia, at least for much of their history in the second half of the twentieth century, the U.S.A. has been far less receptive to centralized, comprehensive state welfare schemes.

² Here I rely on James 2008: 6. Useful discussions of CESCR jurisprudence can be found in the following works: Craven 1995; Weissbrodt and de la Vega 2007; Bailey 1997; Chapman and Russell 2002; Felice 2003; Icelandic Human Rights Centre 2008; Otto 2002; Otto and Wiseman 2001; Squires, Langford and Thiele 2005.

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