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Social human rights and capitalism: compatible or not?

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I wrote this alone through fire and fight,
no guiding stars, no borrowed light.
Just me, my grit, a raging storm,
against the dark, against the norm.

To those crushed under greed's hard hand,
the robbed of hearths, the shattered land.
To broken souls denied their voice,
to stolen dreams and lost choice—

this thesis blazes, breaks the chains,
a rebel's fire in scholar's veins.

No peace in footnotes, no quiet ground,
resistance roaring, tightly wound.
Rise up, strike back, reclaim your right—
the time is here, ignite the fight.

Fiat iūstitia ruat cælum.

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Abbreviations

ACHR	American Convention on Human Rights
ACHPR	African Commission on Human and Peoples' Rights
AfCHPR	African Court on Human and Peoples' Rights
CESCR	Committee on Economic, Social and Cultural Rights
ECtHR	European Court of Human Rights
ECSR	European Committee of Social Rights
ESC	European Social Charter
IACtHR	Inter-American Court of Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IMF	International Monetary Fund
ILO	International Labour Organization
OAS	Organization of American States
OECD	Organisation for Economic Co-operation and Development
OP-ICESCR	Optional Protocol to the International Covenant on Economic, Social and Cultural Rights
UDHR	Universal Declaration of Human Rights
WHO	World Health Organization

I. Introduction

Social human rights, also referred to as socio-economic or economic and social rights throughout this thesis, encompass fundamental guarantees such as the rights to housing, healthcare, education, food, and social security. These terms are used interchangeably to denote rights that are indispensable to human dignity and social justice. However, despite being recognised in international and regional legal instruments, effectively enforcing them remains difficult in societies structured by capitalist economic logics. Processes of commodification, austerity and market imperatives continually undermine the universal realisation of these rights.

The central research question guiding this thesis is: To what extent can social human rights be effectively protected and enforced within capitalist political economies? This question arises at the intersection of law, economics, and political theory. Although legal frameworks are designed to provide rights-based protections, economic structures defined by private accumulation, class inequality and global market competition systematically impede the realisation of these protections.

To address this, the thesis is structured around six sub-questions. These include the historical development and codification of social rights; the role of the welfare state; the impact of capitalist property relations and labour markets; the limits and possibilities of housing and healthcare rights; and the consequences of under-enforced social rights for democracy and justice. Each chapter integrates legal analysis with theoretical perspectives to evaluate the limitations and transformative potential of social rights within capitalist contexts.

This thesis puts forward the working hypothesis that social rights in capitalist societies are inherently contradictory: their legal recognition coexists with economic and political conditions that make their enforcement incomplete, unstable and conditional. Rather than merely describing this tension, the thesis posits that these contradictions are structural features of capitalist reproduction rather than incidental shortcomings.

Methodologically, the thesis combines critical legal analysis with political economy. First, it evaluates the treatment of social rights in international and constitutional law. Then, it contrasts these commitments with the empirical record of welfare regimes under capitalism. By placing legal texts in dialogue with material economic structures, the thesis demonstrates how law reflects and legitimises the compromises demanded by capitalist accumulation. This approach is distinctive in that it resists the isolation of legal doctrine from its economic underpinnings, instead situating law within a broader political economy of rights.

The thesis makes two contributions. Firstly, it clarifies how the legal recognition of social rights is undermined by the conditions necessary for capitalist reproduction. Secondly, it outlines an alternative vision of rights based on decommodification, solidarity and democratic control of resources. In doing so, the thesis intervenes in debates about the compatibility of social rights and capitalism and expands the scope of legal scholarship on human rights by highlighting the economic prerequisites for their realisation.

II. Legal Framework for Social Rights and Human Rights

1. Genealogies of Social Rights: From Moral Duty to Legal Obligation

The thesis commences with a historical exposition of the evolution of social rights, preceding their formal codification in modern legal systems. This chapter examines how medieval Christian theology, canon law and customary legal practices constructed obligations towards the poor not as discretionary charity, but as duties with both moral and, in some cases, legal force. The present chapter demonstrates that socio-economic rights have deep roots in both religious and secular traditions by recovering earlier frameworks, ranging from the Charter of the Forest to episcopal courts and poor relief statutes. These genealogies call into question the notion that social rights represent a recent innovation, instead revealing a long-standing, if contested, effort to secure protection for the vulnerable. The chapter establishes the normative and legal foundations that subsequent theorists would draw upon in reinterpreting subsistence and welfare as matters of justice, rather than benevolence.

Although socio-economic rights are often framed as modern “second-generation” rights emerging alongside secularisation and revolutionary movements, their roots extend much further back. Early European concepts of subsistence and labour protection predate formal political enfranchisement, and were deeply embedded in Christian moral and legal frameworks.

The Charter of the Forest (1217) illustrates one early example: freemen were granted access to royal forests, including pastures, farms, and woodlands, both to sustain themselves through grazing and gathering, and to engage in temporary labour. While limited in scope, excluding women and serfs, and more akin to privileges than inherent rights, it offered protection against

falling into feudal servitude, showing that medieval law could constrain property rights to safeguard survival.¹

1.1. Charity, Law, and Obligation: Legal Conceptions of Poverty in Medieval Christian Traditions in Europe

The concept of socio-economic rights is often considered a modern invention associated with secularisation and revolutionary movements in history, such as those in France and the United States (US). These rights are usually considered “second-generation,” emerging after foundational political liberties had been established. However, this view overlooks the deeper historical roots of socio-economic rights, particularly in medieval Europe, where discussions about the right of the poor to subsistence predated political enfranchisement. These early ideas were not secular, but were deeply embedded in Christian moral and theological teachings.²

Christian theology and canon law reinforced these obligations. *Caritas* expressed moral duty toward the poor as service to God, while the concept of *personae miserabilis* granted the poor formal legal recognition and access to ecclesiastical courts. From the fourth century, the *episcopalis audientia* transformed bishops into official protectors of the poor, empowered to arbitrate civil disputes and represent vulnerable litigants when secular authorities failed. By the 13th century, canonists increasingly articulated the rich’s duty to provide for the poor in legal terms: surplus wealth could lawfully be claimed by those in extreme need without constituting theft, and priests could represent the economically disadvantaged in court.³

However, this did not entail a demand for economic egalitarianism. The hierarchical structure of society was accepted, and it was believed that different social ranks required different standards of living. Conversely, any wealth in excess of that necessary for one’s status was regarded as rightfully belonging to the economically disadvantaged. Canonists regarded the withholding of such surplus as tantamount to theft, and posited that an individual in extreme need who took from the affluent was not culpable of a criminal act. While theologians generally regarded almsgiving as a moral duty rather than a legal one, by the 13th century, some canonists

¹ Steven L B Jensen and Charles Walton, ‘Not “Second-Generation Rights”: Rethinking the History of Social Rights’ in Steven L B Jensen and Charles Walton (eds), *Social Rights and the Politics of Obligation in History* (Cambridge University Press 2022), pp 5-6.

² Julia McClure, ‘The Rights of the Poor Taking the Long View’ in Steven L. B. Jensen and Charles Walton (eds), *Social Rights and the Politics of Obligation in History* (Cambridge University Press 2022), p 29.

³ Peter R L Brown, *Poverty and Leadership in the Later Roman Empire* (University Press of New England 2002), p 67; Brian Tierney, *Medieval Poor Law: A Sketch of Canonical Theory and Its Application in England* (University of California Press, 1959), pp 4-5; 11-13;

had begun to formulate the rich's duty to the poor in legal terms, even to the point of enforceability.⁴

1.2. The Right to Subsistence: Legal and Theoretical Foundations in the Early Modern Period and Enlightenment

Building on pre-modern foundations, Enlightenment thinkers and revolutionary movements in France and America transformed moral duties into legally recognised claims. This period marked a shift from subsistence as charity to a claim of citizenship, particularly during the radical phase of the French Revolution and in early American administrative practice. These developments introduced constitutional discussions of the rights to work, education, and basic welfare, though civil liberties and property remained prioritised, reflecting persistent tensions between socio-economic and civil-political rights.

John Locke's principle of extreme necessity illustrates the continuity of earlier Christian thought: in cases of life-threatening need, taking another's property to survive was morally justified. Similarly, Grotius, Pufendorf, Hobbes, and religious thinkers framed property as conditional, limiting its absoluteness in favour of life preservation. While 18th-century secular thinkers increasingly assigned responsibility for subsistence to the state rather than individuals, these debates demonstrate the enduring moral-legal logic underpinning socio-economic claims.⁵ In the 18th century, the focus of constitutional thought shifted from the natural right to subsistence towards more explicitly political rights. Although subsistence rights remained influential in religious theology, they lost ground among secular thinkers who increasingly saw governments, rather than individuals, as responsible for ensuring basic needs.⁶

Immanuel Kant further articulated state responsibility for welfare. Although he did not develop a full theory of social rights, he argued that governments have a duty to protect citizens' well-being, fund institutions like poor relief and orphanages, and impose taxes on the wealthy to uphold social obligations. Kant's framework balances individual rights with collective responsibilities, legitimising early redistributive duties while maintaining social hierarchy.⁷

⁴ Ibid, pp 37-38.

⁵ Ibid, pp 431-434.

⁶ Ibid, p 459.

⁷ Alberto Pirni, 'Heritages of Radical Enlightenment. Kant's Contribution to the Affirmation of Social Rights' (2023) 161 SHS Web of Conferences 06006, pp 2-4.

The French Revolution extended these ideas into constitutional practice. The 1789 Declaration of the Rights of Man and of the Citizen established civil and political rights, while the 1793 Constitution briefly recognised social rights to education, work, and subsistence. Though largely suspended, these provisions indicate that revolutionary debates included social claims from the outset, challenging later interpretations, such as Arendt's, that liberal and social rights were incompatible.⁸

In colonial America, early legislatures and local courts institutionalised administrative solutions to social needs, from poor relief to infrastructure, education, and public health. Local officials were central to enforcing these provisions, highlighting the practical embedding of social obligations in governance. These examples illustrate that the legal recognition of subsistence and welfare emerged alongside, but often subordinate to, civil and property rights, revealing the structural ambivalence of early liberal regimes toward socio-economic justice.⁹

The principle of necessity, rooted in moral and theological traditions, evolved into enforceable rights through statutory and judicial mechanisms governing poor relief in early modern Europe. In England, the Old Poor Law (c. 1750–1834) established a legal entitlement to relief, grounded in the 1662 Settlement Act. Relief was not merely charitable but a recognized right, enforceable through pauper appeals to magistrates. Court records, such as those from Bedfordshire (1810–1814), show that magistrates like Samuel Whitbread upheld a majority of claims, often increasing recipients' incomes by 10–40%, illustrating that legal structures could convert moral obligations into tangible socio-economic entitlements. Clergy and magistrates widely endorsed this system as a safeguard against parish neglect, embedding the idea of relief as an entitlement into customary legal culture. Yet the system remained politically vulnerable and was dismantled by the 1834 Poor Law Amendment Act, which centralised authority and curtailed rights of appeal.¹⁰

⁸ Dan Edelstein, 'Public Welfare and the Natural Order: On the Theological and Free-Market Sources of Socio-economic Rights' in Steven L. B. Jensen and Charles Walton (eds), *Social Rights and the Politics of Obligation in History* (Cambridge University Press 2022), pp 47-48.

⁹ Stephen W. Sawyer and William J. Novak, 'Of Rights and Regulation: Technologies of Socio-economic Governance in a Revolutionary Age' in Steven L. B. Jensen and Charles Walton (eds), *Social Rights and the Politics of Obligation in History* (Cambridge University Press 2022), pp 103-104.

¹⁰ Lorie Charlesworth, *Welfare's Forgotten Past: A Socio-Legal History of the Poor Law* (Routledge 2010), p. 35; Jonathan Healey, 'Social Discipline and the Refusal of Poor Relief under the English Old Poor Law, c. 1650–1730' (2024) 67 *The Historical Journal* 920, pp 923-924; Peter King, 'The Rights of the Poor and the Role of the Law: The Impact of Pauper Appeals to the Summary Courts 1750–1834' in Peter Jones and Steven King (eds), *Obligation, Entitlement and Dispute under the English Poor Laws* (Cambridge Scholars 2015) 236–259, pp 236-238; 244-248; 250-251; 254-256; 257-259.

In the Dutch Republic, decentralisation produced a patchwork of municipal relief systems, varying from unified civic-charitable institutions in Leiden and Delft to fragmented arrangements in Utrecht and 's-Hertogenbosch. Assistance remained largely discretionary, directed at the 'deserving poor,' and provided mostly as outdoor relief (bread, cash, clothing, shelter). Funding relied on a combination of charitable donations, asset returns, and municipal subsidies. Over the 17th and 18th centuries, the balance shifted from voluntary gifts toward investment income and increased, though still limited, public involvement, reflecting the flexibility of local institutions in adapting to economic pressures.¹¹

In Flanders, 18th-century anti-begging decrees explicitly linked the prohibition of begging with the legal obligation of parishes to provide alternative support, either through existing charitable funds or taxation. The Furnes district exemplifies this approach: rural parishes proposed a weekly bread tax on wealthier residents to replace informal almsgiving, recognising that restricting begging imposed a collective responsibility to ensure subsistence for the deserving poor.¹²

Together, these cases demonstrate the gradual institutionalisation of moral obligations into legally recognised socio-economic rights, shaped by local governance, judicial enforcement, and the interplay of charitable, civic, and fiscal mechanisms.

By the late 19th century, expanding state administration and social services were increasingly seen not only as practical governance tools but also as legitimate instruments for securing rights and social justice, particularly in response to working-class demands. This marked a turning point between earlier models in which public authority existed without guaranteeing rights and those where rights were proclaimed but lacked enforcement. Workers had long articulated socio-economic claims through unions, cooperatives, revolts, and appeals to natural law, often locally and decentralised, reflecting a rights-based ethos prior to the modern welfare state. By the 1860s, however, the state was increasingly viewed as the only actor capable of enforcing

¹¹ Elise van Nederveen Meerkerk and Daniëlle Teeuwen, 'The Stability of Voluntarism: Financing Social Care in Early Modern Dutch Towns Compared with the English Poor Law, c. 1600–1800' (2014) 18 *European Review of Economic History* 82, pp 85–88.

¹² Thijs Lambrecht and Anne Winter, 'An Old Poor Law on the Continent? Agrarian Capitalism, Poor Taxes, and Village Conflict in Eighteenth-Century Coastal Flanders' (2017) *Economic History Review* 1, p 10.

obligations and delivering solidarity, paving the way for the 20th-century welfare state, albeit largely within national borders rather than the transnational vision of early labour activists.¹³

While Karl Marx criticised the 1789 *Declaration of the Rights of Man and of the Citizen* for legitimising property ownership and masking class domination, 19th-century labour movements nonetheless used rights discourse strategically to pursue political inclusion and economic justice. In post-1830 France, demands for suffrage and dignity challenged property-based exclusion, with workplace grievances often evolving into broader critiques of elite authority, exemplified by the Chartist movement. By the late 19th century, alliances between radicals and unions weakened, reflecting scepticism toward legal and political authority.¹⁴

Despite Marxist critiques, workers employed legal norms grounded in communal customs and professional traditions to defend their material interests. Institutions such as France's *prud'homes* offered more equitable dispute resolution than formal labour laws, though courts in places like the German Rhineland frequently sided with employers. Workers demonstrated agency by using legal procedures creatively, while trade unions and friendly societies empowered collective action and navigation of the legal system. Early voluntary coordination, however, proved financially fragile and exclusionary, failing to protect women, children, and the unemployed, prompting a shift toward state-backed protections, such as the eight-hour workday.¹⁵

Mass migration further strained voluntary models, as unions often excluded migrant workers to protect wages, highlighting tensions between international solidarity and national interests. By the early 20th century, labour movements increasingly relied on state institutions, including the International Labour Organization (ILO), to secure socio-economic rights. What began as local, worker-led struggles thus evolved into legally institutionalised rights, dependent on the state for inclusivity and enforceability.¹⁶

¹³ Nicolas Delalande, 'Socio-economic Rights before the Welfare State: Labour Movements and Economic Emancipation in Nineteenth-Century Europe' in Steven L B Jensen and Charles Walton (eds), *Social Rights and the Politics of Obligation in History* (Cambridge University Press 2022), pp 123-124.

¹⁴ Ibid, pp 124-129.

¹⁵ Ibid, pp 129-135

¹⁶ Ibid, pp 135-138.

2. Social Rights Since 1945: Codifying Compassion in the Post-War Legal Order

Although the right to subsistence was based on moral principles established by early Christian and Enlightenment thought, it was not until the 20th century that these ideals were systematically codified into binding legal frameworks. The next section explores how these codifications were shaped and constrained by political and economic conditions, particularly during the period following the Second World War.

Since 1945, the development of socio-economic rights has been closely linked to the growth of welfare states and the post-war international order. Although the 1948 Universal Declaration of Human Rights (UDHR) enshrined these rights on paper, their realisation has largely depended on the institutional frameworks of nation states. In the decades following the Second World War, governments expanded protections such as pensions, healthcare, and unemployment insurance, often influenced by transnational exchanges among reformers and experts. However, efforts to universalise social rights beyond the national level, such as those envisaged during decolonisation, largely failed. From the 1970s onwards, globalisation placed increasing constraints on redistributive policies, with capital mobility and international competition being used to justify scaling back state-based social protections. Institutions that once championed global social rights, such as the International Labour Organization (ILO), were gradually overshadowed by organisations like the International Monetary Fund (IMF) and the Organisation for Economic Co-operation and Development (OECD), which promoted labour deregulation and austerity. Attempts to enshrine social rights at a supranational level, particularly within the European Union (EU), have had a limited impact, fuelling public disillusionment and the surge in nationalist populism in the absence of renewed social agendas. This raises ongoing questions about whether socio-economic rights can exist beyond the nation state. Earlier labour and mutual aid movements, which were later replaced by the welfare state, demonstrate that linking social rights to national sovereignty is a historical choice, not a necessity.¹⁷

2.1. The International Covenant on Economic, Social and Cultural Rights: Global Aspirations, Legal Limitations

Adopted by the United Nations (UN) in 1966, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights

¹⁷ Ibid, pp 121-123.

(ICESCR) were intended to enshrine the post-war ideal of universal human rights. Although the ICCPR included robust enforcement mechanisms, the ICESCR lacked comparable institutional support, which delayed its impact. Civil and political rights quickly came to dominate the human rights agenda, while economic and social rights remained marginalised until the late 1980s, when a dedicated monitoring committee was finally set up. Although the ICESCR reflected a vision of global equality, this soon came into conflict with Cold War politics and post-colonial divisions. Countries in the Global South redefined socio-economic rights as the ‘right to development,’ demanding justice in an unequal world. Without effective enforcement, the ICESCR’s commitments remained politically contested and legally weak. Nevertheless, despite institutional neglect, economic and social rights continued to influence debates on human rights, particularly in the context of global inequality and uneven development.¹⁸

After the ICESCR’s adoption, implementation fell largely to individual states. Yet many newly independent countries lacked the resources to fulfil these obligations, and the rise of authoritarian regimes further weakened social and economic rights as tools for justice. Codified in international law, these rights faced major obstacles in enforcement and remained largely ineffective in challenging power, whether from autocratic governments or former colonial rulers. To counter this, the UN worked to elevate the legal and political standing of socio-economic rights. A key moment came in 1969, when the Secretary-General issued a report tracing these rights back to revolutionary declarations and the founding of the ILO, framing them as central to longstanding social justice traditions. The report emphasized the indivisibility of rights and rejected indefinite delays under “progressive realisation,” identifying immediate obligations, such as non-discrimination, gender equality, trade union rights, and protections against child labour, that did not depend on a country’s development level. While acknowledging different economic systems, the report overlooked how post-colonial authoritarian states complicated the balance between development and rights. Despite urging a focus on human welfare over economic growth, it only partially addressed the deeper tensions between development planning and human rights in the Global South.¹⁹

In the late 1970s, the international focus on development shifted towards the ‘basic needs’ approach, which emphasised individual well-being over economic growth metrics. Although

¹⁸ Christian Olaf Christiansen and Steven L B Jensen, ‘The Road from 1966: Social and Economic Rights after the International Covenant’ in Steven L B Jensen and Charles Walton (eds), *Social Rights and the Politics of Obligation in History* (Cambridge University Press 2022), pp 288-292.

¹⁹ Ibid, pp 293-296.

this was considered a step forward, critics argued that it lacked a robust human rights framework and was conceptually imprecise, terms such as ‘basic human rights’ lacked clear legal foundation. This shift coincided with the rise of neoliberal globalisation, which further undermined the UN’s efforts to promote social and economic rights. International financial and regulatory pressures increasingly limited the ability of national governments to invest in essential social services such as health and education. Thus, despite formal commitments to development as a human right, structural global inequalities and restrictive economic policies continued to hinder meaningful progress.²⁰

Between 1986 and 1990, social and economic rights experienced a significant phase of reconstruction, marked by renewed international focus on states’ obligations under the ICESCR. This was driven by earlier failures at the UN to effectively promote these rights and led to the development of key normative tools, most notably the 1986 *Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights*, which clarified treaty interpretations and emphasised that violations of these rights could threaten national and international security. The Principles addressed a key weakness of the Covenant: the lack of implementation mechanisms. This shift coincided with the creation of the UN Committee on Economic, Social and Cultural Rights (CESCR), which began its work in 1987 to compensate for previously inadequate monitoring. Despite political resistance, the Committee advanced authoritative guidance, including its 1990 General Comment clarifying states’ obligations to realise rights progressively using maximum available resources. These developments revived foundational debates on state responsibility and reinforced the centrality of obligations in the human rights discourse during a pivotal post-Cold War transition.²¹

2.1.1. Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (OP-ICESCR) and the Rise of Justiciable Social Rights

Over the past decades, socio-economic rights have evolved. Many new constitutions around the world now recognise and enforce such rights through judicial mechanisms. This global shift is most notably marked by the establishment of the CESCR in 1985, and the adoption of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (OP-

²⁰ Ibid, pp 301-302.

²¹ Ibid, pp 305-306.

ICESCR) in 2008. The latter introduced individual complaint procedures, significantly strengthening the enforcement of these rights at an international level.²²

National experiences with adjudicating social and economic rights played a pivotal role in advancing the push for an Optional Protocol to the ICESCR. As early as 1992, the CESCR advocated for an individual complaints mechanism, arguing it was essential for developing meaningful jurisprudence in this area. Although the Committee submitted a draft Optional Protocol in 1997, initial government responses were limited but generally supportive. However, some states expressed reservations, citing concerns about the justiciability of socio-economic rights.²³

The development of the Optional Protocol began in 1990, when the CESCR started discussing the establishment of a complaints mechanism to address violations of economic, social, and cultural rights. This effort gained momentum after the 1993 Vienna Declaration encouraged further work. By 1997, the CESCR had drafted a proposal, but initial state support was limited, with many governments being sceptical while non-governmental organisations (NGOs) strongly backed it. In 2001, an independent expert was appointed to examine the proposal and produced reports endorsing the mechanism and recommending the establishment of a working group. Between 2004 and 2008, the Open-Ended Working Group held five sessions, focusing on the structure of the mechanism and addressing issues such as admissibility, interim measures, and interaction with existing systems. In June 2008, the draft protocol was adopted by consensus by the Human Rights Council, and later that year, on the 60th anniversary of the Universal Declaration of Human Rights, it was adopted by the UN General Assembly. Opened for signature in 2009, the protocol entered into force following ten ratifications, establishing the first international complaints mechanism for economic, social, and cultural rights, and marking a significant advance in their enforcement.²⁴

Article 8(4) states that the Committee shall assess the reasonableness of the steps taken by states to implement Covenant rights, acknowledging that states may adopt a variety of policy measures to this end. The final version of the Article is the result of careful negotiations about how the CESCR should evaluate state compliance. Significantly, this wording intentionally

²² Rainer Grote, 'The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights – Towards a More Effective Implementation of Social Rights?' in Holger P Hestermeyer et al (eds), *Coexistence, Cooperation and Solidarity: Liber Amicorum Rüdiger Wolfrum* (2 vols, Brill 2012) vol 1, 417, p 420.

²³ Ibid, p 428.

²⁴ Lilian Chenwi, 'Correcting the Historical Asymmetry between Rights: The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights' (2009) 9 African Human Rights Law Journal 23, pp 26-29.

borrowed language from the landmark *Grootboom*²⁵ judgment of the South African Constitutional Court, which also emphasised a ‘reasonableness’ standard when reviewing state action on socio-economic rights. Notably, the Working Group that drafted the Optional Protocol rejected several proposals, primarily from sceptical states, that would have diluted the Committee’s oversight powers. These proposals sought to introduce phrases such as ‘wide margin of appreciation’ or restrict the Committee’s competence to assessing whether measures were ‘unreasonable.’ These were explicitly rejected. Instead, the final wording was designed to affirm that, while states have flexibility in how they implement social and economic rights, the Committee retains the authority to critically assess whether such measures are genuinely reasonable and effective in fulfilling the Covenant. This strikes a balance: it avoids judicial overreach into policymaking, but does not allow states to evade accountability for violations of socio-economic rights under the guise of discretion.²⁶

2.1.2. *Justicing Social Rights: Cases of the UN Committee on Economic, Social and Cultural Rights*

As of April 2021, the CESCR had issued a total of 73 decisions under the Optional Protocol. The vast majority of these decisions (56 cases) concerned alleged violations of the right to adequate housing. Notably, Spain was the respondent state in all of these communications relating to housing, making it by far the most frequent subject of the Committee’s jurisprudence. Several factors explain this dominance. Following the 2008 financial crisis, Spain experienced a severe housing crisis that left many people in vulnerable or precarious living conditions. The Committee’s ability to request interim measures, which are particularly vital in eviction cases, has made it an attractive forum for seeking urgent protection. Furthermore, a landmark ruling by the Spanish Supreme Court in 2018 declared that decisions issued by UN treaty bodies, including the CESCR, are legally binding. This has increased the practical utility and legitimacy of bringing complaints to the Committee from Spain. Despite the high volume of Spanish complaints, the Committee has only found violations in six cases: *IDG*,²⁷ *Ben Djazia et al.*,²⁸ *López Albán et al.*,²⁹ *Gómez-Limón Pardo*,³⁰ *El Goumari and Tidli*,³¹ and *El Ayoubi and El*

²⁵ *Republic of South Africa v Grootboom* (2001) ZACC 19, (2001) 1 SA 46 (CC).

²⁶ Grote (n 22), pp 430-431; Catarina de Albuquerque, ‘Chronicle of an Announced Birth: The Coming into Life of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights—The Missing Piece of the International Bill of Human Rights’ (2010) 32(1) *Human Rights Quarterly* 144, p 175.

²⁷ *IDG v Spain* Communication No 2/2014 UN Doc E/C.12/55/D/2/2014 (13 October 2015).

²⁸ *Ben Djazia and Bellili v Spain* Communication No 5/2015 UN Doc E/C.12/61/D/5/2015 (20 June 2017).

²⁹ *López Albán and Others v Spain* Communication No 37/2018 UN Doc E/C.12/66/D/37/2018 (8 July 2019).

³⁰ *Gómez-Limón Pardo v Spain* Communication No 52/2018 UN Doc E/C.12/67/D/52/2018 (17 March 2020).

³¹ *El Goumari and Others v Spain* Communication No 85/2018 UN Doc E/C.12/69/D/85/2018 (4 March 2021).

Azouan Azouz.³² Many of the remaining cases were discontinued, primarily because complainants found a satisfactory domestic resolution before the Committee could rule. This was particularly evident during the 69th session (2021), when 16 cases were discontinued, primarily at the request of the complainants.³³

Ecuador is the second most frequent respondent after Spain, but with only four cases decided. Italy, Portugal, Luxembourg, and Argentina have each been the subject of just one decision. There have also been complaints against France, Belgium, Argentina, and Uruguay, although these remain few compared to Spain's dominance.³⁴ The Committee has issued 20 decisions declaring communications inadmissible in full. Early inadmissibility decisions often cited a lack of temporal jurisdiction, meaning that the events in question predated the entry into force of the Optional Protocol for the relevant state. This occurred in nine cases, most of which involved Spanish social security disputes. More recently, inadmissibility has commonly been due to a failure to exhaust domestic remedies or insufficient substantiation of the claim.³⁵

As of April 2021, the Committee had considered ten cases on their merits. In eight of these, it found a violation of the Covenant, suggesting that if a case survives the stringent admissibility filters, the chances of success are high. This highlights the importance of meeting the Committee's procedural and evidentiary standards when submitting communications, as it demonstrates that adhering to these standards significantly increases the likelihood of success.³⁶

2.2. European Convention on Human Rights: A Balancing Act Between Civil Liberties and Social Demands

Drafted in the post-World War II era, the European Convention on Human Rights (ECHR) from had a narrow focus on civil and political rights, excluding economic and social rights. The latter are instead protected within the Council of Europe's legal framework through the European Social Charter (ESC). However, the European Court of Human Rights (ECtHR) has frequently interpreted the Convention in ways that extend its scope to include socio-economic concerns. By employing interpretive tools such as the principle of effectiveness, the 'living instrument' doctrine and the imposition of positive obligations, the Court has extended protection to socio-

³² *El Ayoubi and Others v Spain* Communication No 54/2018 UN Doc E/C.12/69/D/54/2018 (4 March 2021).

³³ Global Initiative for Economic, Social and Cultural Rights, 'CESCR Jurisprudence' (26 April 2021) <<https://gi-escr.org/en/cescr/cescr-jurisprudence#analysis>> accessed 13 July 2025.

³⁴ Ibid.

³⁵ Ibid.

³⁶ Ibid.

economic interests despite their absence from the text of the Convention. This interpretative expansion raises questions about the Court's legitimacy, with some arguing that it has overreached, particularly given the lack of a clear definition of socio-economic rights within its jurisprudence. Although the Court reiterates that the Convention does not guarantee rights such as housing, it still considers such issues by interpreting civil and political rights broadly. This tension reflects the indivisibility of human rights, reinforcing the view that civil, political, economic, social, and cultural rights are interdependent and should not be compartmentalised.³⁷

The ECtHR has broadened the scope of Convention rights by interpreting them in the context of social and labour protections set out in the ESC and its revised version. For instance, Article 11 of the ECHR, which safeguards the right to freedom of association, has been construed to encompass the right to refrain from union membership (negative freedom), prohibit closed-shop clauses and safeguard the right to collective bargaining and action. Similarly, Article 8 of the ECHR, which concerns private and family life, has been extended to cover aspects of professional life, such as the right to work in a freely chosen occupation, where such restrictions affect personal identity and social relations. The Court has also recognised that employment bans, dismissals, or discrimination on the basis of health status (e.g. HIV) may violate Articles 8 and 14. Through the doctrine of positive obligations, the Court has applied Convention rights horizontally, holding states responsible for non-state abuses, such as domestic slavery and trafficking, under Article 4. The Court has even recognised a right to housing under Article 8, requiring proportionality in cases of eviction or demolition. Furthermore, the Court has linked Article 14 (non-discrimination) with Article 8 to guarantee equal parental leave rights and work-life balance, as well as linking it with Article 1 of Protocol No. 1 to protect access to social benefits. Under Article 3 (prohibition of torture), the Court has ruled that deporting a seriously ill person to a country lacking adequate medical care constitutes inhuman treatment. Overall, this jurisprudence reflects a trend towards reinforcing social rights through the creative and expansive interpretation of the ECHR.³⁸

In the case of *MSS v Belgium and Greece*,³⁹ the Grand Chamber of the ECtHR considered whether the extreme poverty experienced by an asylum seeker in Greece constituted inhuman or degrading treatment under Article 3 of the Convention. Although the Court reiterated that

³⁷ Maija Dahlberg, 'Should Social Rights Be Included in Interpretations of the Convention by the European Court of Human Rights?' (2014) 16(3) *European Journal of Social Security* 222, pp 252-254.

³⁸ Christina Deliyanni-Dimitrakou, 'The European Social Charter and the European Convention on Human Rights' in *The European Social Charter: A Commentary*, vol 1 (Brill | Nijhoff 2022), pp 363-364.

³⁹ *MSS v Belgium and Greece* App no 30696/09 (ECtHR, 21 January 2011).

Article 3 does not impose a general obligation on states to provide housing or financial aid to everyone, it emphasised that Greece had a duty under EU law, specifically Directive 2003/9, to ensure minimum reception conditions for asylum seekers. The applicant had lived for months without access to food, hygiene facilities or shelter, with no foreseeable improvement. The Court found that this constituted humiliating treatment and held Greece responsible for violating Article 3 due to its failure to consider the applicant's vulnerability. Although Article 3 typically addresses civil and political rights, the Court interpreted it to include certain minimum socio-economic protections grounded in human dignity and the state's positive obligations, citing international consensus on the special protection owed to asylum seekers. This marked a significant development in the scope of Article 3.⁴⁰

2.3. European Social Charter (ESC): Europe's Other Human Rights Treaty

When the Council of Europe sought to give legal force to civil, political, economic, social, and cultural rights at the regional level, it adopted a two-pronged approach. The ECHR, adopted in 1950, focused solely on civil and political rights, while the ESC, adopted in 1961, was intended to complement the ECHR by protecting social and economic rights. Despite the initial intention for the two treaties to complement each other and be structurally aligned, the ESC emerged significantly weaker: its language was vague, its justiciability was limited, and it was supported by a non-judicial monitoring system that relied on state reporting. Consequently, it was long dismissed as the 'poor relation' of the ECHR. This imbalance began to shift in the 1990s through a twofold process. Firstly, the ESC was revitalised by the introduction of new social rights through protocols, the implementation of a collective complaints procedure and a broader revision of its substantive text. Secondly, the ECtHR engaged in judicial activism by interpreting existing ECHR provisions, such as the right to private and family life or the protection of property, to encompass certain social rights. This interpretive expansion gradually closed the normative and institutional gap between the two instruments. Today, while formally distinct, the ECHR and the ESC increasingly operate in parallel and reinforce each other, reflecting the growing recognition that civil and social rights are deeply interconnected dimensions of human rights protection in Europe.⁴¹

The initial monitoring system of the ESC relied solely on periodic reports submitted by states, reviewed by the European Committee of Social Rights (ECSR). This system proved largely

⁴⁰ Dahlberg (n 37), pp 259-260.

⁴¹ Ibid, pp 351-353.

ineffective, contributing to the ESC's marginalisation in the 1970s and 1980s. Reforms in the 1990s, particularly the 1995 Additional Protocol, strengthened oversight by introducing a collective complaints mechanism. This allows trade unions and NGOs to report violations directly, without needing to exhaust domestic remedies. While the ECSR is not a court, the collective complaints process resembles judicial proceedings: it follows strict admissibility rules, respects the adversarial principle, and results in formal decisions. However, these decisions are not legally binding and require action from the Council of Europe's Committee of Ministers to take effect; unlike the ECtHR, which can award binding remedies such as just satisfaction under Article 41 ECHR. Despite this limitation, the ESC's collective complaints mechanism offers an accessible and effective route for addressing social rights violations, particularly for organisations unable to meet the ECtHR's more restrictive requirements.⁴²

2.3.1. The European Court of Human Rights, the European Committee on Social Rights and the Limits of European Social Rights Enforcement

One of the key differences between the ECtHR and the ECSR emerges in their respective approaches to austerity measures adopted during the economic and fiscal crisis, particularly those enacted by the Greek government under international Memoranda. The ECtHR's decisions in cases such as *Koufaki and ADEDY v Greece*⁴³ dismissed challenges to public sector wage cuts and pay ceilings as inadmissible, granting Greece a broad margin of appreciation to address the crisis. The Court accepted the state's justifications and deferred to national institutions' assessments of the measures' constitutionality. What raised concern, however, was the ECtHR's departure from its usual practice of referring to comparative and international law and taking into account the jurisprudence of other international bodies. In *Koufaki*, it failed to acknowledge that both the ILO and the ECSR had recently and sharply criticized the same austerity measures, with the ECSR even finding multiple violations of the ESC in a series of complaints in 2012, including those concerning pension cuts and social security reforms. This divergence became more evident as the ECtHR continued to dismiss similar challenges in other countries, including Romania and Portugal, and again in Greece in *Mamatas and Others v Greece*,⁴⁴ where it found no breach of the right to property in relation to government-enforced bond exchanges. These decisions prompted questions about whether the ECtHR's stance was a

⁴² Ibid, pp 355-356.

⁴³ *Koufaki and ADEDY v Greece* Application nos 62235/12 and 57725/12 (ECtHR, 7 May 2013).

⁴⁴ *Mamatas and Others v Greece* Application nos 63066/14, 64297/14 and 66106/14 (ECtHR, 21 July 2016).

temporary response to the crisis or a sign of a deeper ideological shift away from socially-oriented interpretations of the Convention.⁴⁵

Ultimately, these cases illustrate the limitations of the ECHR in providing comprehensive protection of social rights. The ECtHR's reluctance to take a more expansive view during the crisis, and its prioritisation of procedural or informational rights over substantive socio-economic protections, underscore that more meaningful enforcement of social rights lies within the ESC framework and the mandate of the ECSR.⁴⁶

3. Social Rights Protection in the African and Inter-American Regional Human Rights Systems: The Reimagining of Social Rights

3.1. The African Regional Human Rights System: Ubuntu as Resistance

Adopted in 1981 by the Organisation of African Unity (now the African Union, hereinafter AU), the African Charter on Human and Peoples' Rights (Banjul Charter) established the third major regional human rights system, following the European and Inter-American systems. Its creation was influenced by both external pressure for human rights reform and internal responses to widespread abuses committed by African regimes. Notably, the African Charter aimed to reflect uniquely African values, drawing from both existing human rights instruments and African traditions, as well as the continent's socio-political context. A distinguishing feature of the African Charter is its equal recognition and enforcement of economic, social, and cultural rights, as well as civil and political rights. This integrated approach challenges the conventional dichotomy found in many other human rights systems. While initial litigation under the Charter focused primarily on civil and political rights, more recent jurisprudence from the African Commission on Human and Peoples' Rights (ACHPR) has begun to establish a body of case law on socio-economic rights. The Charter's broader human rights protection framework is supported by additional instruments, such as the 1990 African Charter on the Rights and Welfare of the Child, the 2003 Protocol on the Rights of Women in Africa, and the 1998 Protocol establishing the African Court on Human and Peoples' Rights, all of which reinforce and expand the regional commitment to socio-economic rights. In its preamble, the Charter controversially states that the fulfilment of economic, social, and cultural rights is a guarantee for the enjoyment of civil and political rights, affirming the interdependence and indivisibility of all rights. While this reflects a holistic vision of human rights, some scholars

⁴⁵ Deliyanni-Dimitrakou, (n 38), pp 371-373.

⁴⁶ Ibid, pp 371-373.

have criticised this position, cautioning that it may inadvertently promote the derisively referred to “full-belly thesis” that civil and political rights can be deferred until basic material needs are met. This idea is widely held by post-colonial African leaders and remains a contentious issue in human rights discourse.⁴⁷

The Charter is notable for its unique acknowledgement of the responsibilities of non-state actors within the human rights framework. This African conception of interlinked rights and duties is reflected in several provisions that encourage individuals to respect the rights of others, act in the interest of collective security, and promote the common good. While these obligations are largely symbolic in practice, since the Charter does not permit direct complaints against non-state actors, they have significant implications for economic exploitation and the safeguarding of social rights. Most significantly, the Charter clearly obliges states to protect their populations from economic exploitation, particularly by foreign actors. Article 21(5) requires states to eliminate all forms of foreign economic exploitation, particularly by international monopolies, to ensure that African populations benefit from their natural resources. This clause reflects a strong post-colonial ethos, recognising that Africa’s human and material wealth remains vulnerable to external exploitation. In the landmark *SERAC*⁴⁸ case, the African Commission applied this provision to hold Nigeria responsible for failing to regulate multinational oil companies whose extractive activities in Ogoniland resulted in severe environmental damage and the deprivation of socio-economic rights. The Commission found Nigeria to be in breach of its duty to protect the Ogoni people’s right to dispose of their natural resources as they see fit. Citing jurisprudence from the Inter-American and European human rights systems, the Commission adopted the due diligence standard, whereby states can be held accountable for abuses committed by private actors if they fail to take reasonable steps to prevent or address them. Thus, although the Charter does not yet permit the direct enforcement of human rights obligations against corporations or other private entities, it establishes a robust normative framework linking economic justice to social rights. However, weak enforcement mechanisms and the absence of direct accountability for non-state actors have limited the practical impact

⁴⁷ Danwood Mzikenge Chirwa, ‘African Regional Human Rights System: The Promise of Recent Jurisprudence on Social Rights’ in Malcolm Langford (ed), *Social Rights Jurisprudence: Emerging Trends in International and Comparative Law* (Cambridge University Press 2009) 323, pp 323-324.

⁴⁸ *Social and Economic Rights Action Center (SERAC) and Another v Nigeria* Communication No 155/96 (ACHPR, 27 October 2001).

of this framework, hindering broader protections against economic exploitation and the realisation of socio-economic rights.⁴⁹

3.2. The Inter-American Regional Human Rights System: Enforcing Indivisible Rights

The Inter-American human rights system is notable for its robust protection of economic, social, and cultural rights, which it considers integral to the full spectrum of human rights. This framework starts with the 1948 American Declaration of the Rights and Duties of Man, which despite not being a treaty is considered legally binding on all Organisation of American States (OAS) member states due to its interpretive role under the OAS Charter. The Declaration explicitly enshrines a wide range of socio-economic rights, including the rights to housing, health, education, culture, work, fair remuneration, rest, social security and special protection for mothers, children, and families. These rights are considered essential to human dignity and are applied by the Inter-American Commission on Human Rights in its promotional and contentious roles with regard to states that are not party to the American Convention.⁵⁰

The American Convention on Human Rights (ACHR), a binding treaty adopted in 1969, further strengthens this commitment through Article 26, which affirms a wide range of economic, social and cultural rights. While these rights are not listed exhaustively in the Convention itself, they are said to be ‘derived from’ or ‘implicit in’ the OAS Charter. The Charter refers directly or indirectly to rights such as education, work, collective bargaining, strikes, housing, and material well-being. This open-ended formulation gives the Inter-American Court and Commission interpretative flexibility to enforce socio-economic rights as fundamental state obligations.⁵¹

Additionally, the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador), explicitly enshrines the right to health, food, education, work, fair and equitable employment conditions, freedom of association, social security, participation in cultural life and special protection for vulnerable groups. While the Commission can promote all of these rights, its contentious jurisdiction is limited to the rights to education and to freedom of association. This limited contentious

⁴⁹ Chirwa (n 47), pp 327-329.

⁵⁰ Tara J Melish, ‘The Inter-American Commission on Human Rights: Defending Social Rights Through Case-Based Petitions’ in Malcolm Langford (ed), *Social Rights Jurisprudence: Emerging Trends in International and Comparative Law* (Cambridge University Press 2009) 339, pp 339-344.

⁵¹ Ibid.

jurisdiction has drawn criticism, yet the Protocol remains a vital normative foundation for social rights in the region and is frequently referenced in advocacy and state reporting mechanisms.⁵²

These rights are overseen institutionally by two main bodies: the Inter-American Commission on Human Rights (IACHR), which was established in 1959 and is based in Washington, D.C., and the Inter-American Court of Human Rights (IACtHR), which was established in 1979 and is based in San José, Costa Rica. The Commission has both promotional and quasi-judicial powers, enabling it to process petitions, monitor human rights conditions and issue reports. The Court, composed of independent judges, adjudicates cases and issues binding judgements. Together, these bodies have developed a growing body of case law affirming that economic and social rights are enforceable, indivisible, and central to human dignity and democratic governance in the Americas.⁵³

In the case of *Lagos del Campo v Peru*,⁵⁴ the IACtHR ruled on the unfair dismissal of Alfredo Lagos del Campo, a trade union representative, after he publicly criticised his employer's labour practices. The Court found that Peru had violated several rights under the American Convention on Human Rights, including the right to work (Article 26), freedom of expression (Article 13), freedom of association (Article 16), the right to a fair trial (Article 8) and the right to judicial protection (Article 25), all of which were related to Article 1.1 (the obligation to respect rights). The Court emphasised that the right to job security entails protection against arbitrary dismissal and the provision of effective legal mechanisms to challenge such dismissals. In this case, the domestic courts failed to adequately address Mr Lagos del Campo's claims, thereby violating his rights to a fair trial and to judicial protection. This judgment is significant as it marks the first time that the IACtHR has recognised the direct justiciability of economic, social, and cultural rights under Article 26 of the American Convention. The Court affirmed that civil and political rights, and economic, social, and cultural rights, should be understood as an integral whole, without any specific hierarchy, thereby highlighting the interdependence and indivisibility of all human rights. The Court ordered the State to publish the judgment, reinstate Mr Lagos del Campo to his position and pay compensation for pecuniary and non-pecuniary damages. This decision emphasises the Court's dedication to enforcing economic, social and

⁵² Ibid.

⁵³ Ibid; Tara J Melish, 'The Inter-American Court of Human Rights: Beyond Progressivity' in Malcolm Langford (ed), *Social Rights Jurisprudence: Emerging Trends in International and Comparative Law* (Cambridge University Press 2009) 372, p 392.

⁵⁴ *Lagos del Campo v Peru* (Merits, Reparations and Costs) Judgment, Series C No 340, 31 August 2017.

cultural rights, setting a precedent for future cases concerning labour rights and the enforceability of economic, social, and cultural rights within the Inter-American system.⁵⁵

III. When Needs Become Markets: Capitalism and the Limits of Social Rights

Whilst social rights, including the right to health, education and social security, are entrenched in both national constitutions and international treaties, their realisation is impeded by the inherent structural imperatives of capitalism. This chapter provides a concise overview of the ways in which capitalist economic logic, manifesting through wage labour, profit maximisation, and inequality, imposes limitations on the implementation of these rights.

Prior to an examination of the manner in which contemporary welfare states have sought to establish social protections within an institutional framework, this chapter undertakes a broader economic analysis of the system within which such efforts have emerged – capitalism. The argument is posited that the very logic of capitalist political economy presents a structural barrier to the realisation of social rights, even in cases where legal recognition exists. The chapter draws on critical traditions including Marxist, feminist, and anti-colonial thought to explore how capital accumulation depends on the commodification of human needs, the exploitation of labour, and the extraction of value from racialised and gendered bodies. These dynamics have the capacity to engender social inequality, whilst concomitantly constraining the demands and deliveries that can be made through the medium of law. By analysing the systemic roots of dispossession, precarity, and dependency, the chapter establishes the foundation for comprehending the limitations of any rights-based framework that does not challenge the underlying economic order.

1. Money Talks: Property, Markets, and the Mechanics of Exploitation

Capital is money or assets invested with the aim of generating a profit. For capital to be effective, its ownership must be clear, its value must be measurable, and it must be possible to trade it in functioning markets. One of the defining features of capitalist societies is the creation of legal and institutional systems that transform assets into capital, thereby enabling investment across all sectors. In capitalism, production is based on wage labour: workers sell their labour

⁵⁵ Ibid, [88]-[120], [141]-[158], [159]-[181], [182]-[183], [194]-[229].

to capitalists, who own the tools, machines and spaces used to produce goods. This creates a fundamental division between owners and workers, based on structural inequality and the potential for conflict. Although wage labour is nominally ‘free’, unlike slavery or serfdom, workers can choose employers, this freedom is often constrained by economic necessity and limited opportunities. Survival depends on finding paid work, which is often subject to strict discipline, efficiency demands and constant surveillance, what Marx called ‘wage slavery.’ Workers also drive capitalism as consumers since they must purchase all necessities and luxuries, fuelling continuous economic demand. Capitalist markets are abstract and omnipresent, encompassing not just goods and services, but also labour, money, and capital. Capitalism is also characterised by intense competition: firms must innovate, reduce costs and attract consumers in order to survive. While this dynamism drives growth, it also causes instability: firms fail, jobs disappear and industries rise and fall, producing both economic energy and deep insecurity.⁵⁶

1.1. The Invisible Hand, the Visible Barrier: How Capitalism Shapes What Law Can Deliver

It is for this reason that *The Government of South Africa v Grootboom* case marked a pivotal moment in the enforcement of socio-economic rights. The case involved a group of squatters who had been evicted from private land while awaiting the allocation of low-cost housing. The South African Constitutional Court reaffirmed that social rights are enforceable under the Constitution. The Court held that the central issue was not whether these rights could be adjudicated, but how they should be enforced in specific cases. In its ruling, the court evaluated whether the state’s housing programme fulfilled its constitutional duties under Section 26. Using a reasonableness test, the Court found that the programme was inadequate because it failed to provide for those in desperate need of immediate housing. The Court emphasised that a reasonable policy must be coherent, comprehensive, and capable of progressively realising the right to housing. It must also be flexible enough to address short-, medium- and long-term needs, clearly assign responsibilities across levels of government and be properly resourced. Crucially, it must include emergency relief for those in crisis. This approach shifted the focus from abstract debates about the nature of rights to practical questions about the effective implementation of socio-economic rights.⁵⁷

⁵⁶ James Fulcher, ‘Capitalism: A Very Short Introduction’ (Oxford University Press, 2004), pp 13-16.

⁵⁷ Grote (no 22), pp 426-427.

Under a Marxist lens, social rights, such as the right to housing, healthcare, or education, cannot be fully realized within a capitalist system because these rights are constrained by the underlying dynamics of property ownership and market control. Constitutional doctrine may recognise these rights formally, but the market-driven allocation of resources often limits their practical effectiveness. For instance, South Africa's Constitution explicitly guarantees the right to adequate housing but *Grootboom* illustrates this tension: the Constitutional Court acknowledged the state's obligation to provide housing, yet it simultaneously emphasized resource limitations and pragmatic implementation.⁵⁸ South African commentators have noted that the landmark *Grootboom* judgment was never meaningfully realised in practice. Indeed, eight years after the Constitutional Court's ruling in *Grootboom*, Irene Grootboom herself died destitute and without secure housing.⁵⁹ From a Marxist perspective, this outcome reveals how social rights in a capitalist framework are inherently partial: while legal recognition exists, structural inequalities rooted in property and economic relations prevent full realisation. Consequently, doctrine alone cannot dismantle systemic barriers; it requires broader socio-economic transformation to fulfil the promises of social rights. In a similar vein, the case of *Occupiers of 51 Olivia Road v City of Johannesburg*⁶⁰ addressed the issues of eviction and housing rights, emphasising the discord between formal entitlements and systemic economic inequality.⁶¹

The realisation of socio-economic rights, encompassing the rights to housing, healthcare, and education, is impeded under capitalism due to the constraints imposed by ownership structures and market dynamics on the allocation of resources. While constitutional recognition of these rights is necessary, it is not sufficient in itself.

In India, the Supreme Court, in its 1985 ruling in the case of *Olga Tellis v Bombay Municipal Corporation*,⁶² established that the eviction of individuals residing on pavements without providing alternative shelter constitutes a violation of the constitutional right to life. This ruling signified the recognition of socio-economic rights as justiciable, though it was subsequently found to be practically constrained by limited resources.⁶³ Reflecting on the inherent

⁵⁸ *Grootboom* (no 25), [34]-[38]; [46].

⁵⁹ Adam Chilton and Mila Versteeg, 'Rights without Resources: The Impact of Constitutional Social Rights on Social Spending' [2017] 60(4) *Journal of Law and Economics* 713, p 720.

⁶⁰ *Occupiers of 51 Olivia Road, Berea Township and 197 Main Street Johannesburg v City of Johannesburg and Others* [2008] ZACC 1; 2008 (3) SA 208 (CC).

⁶¹ *Ibid*, [14]-[18].

⁶² *Olga Tellis and Ors v Bombay Municipal Corporation and Ors* 1985 SCC (3) 545; 1985 INSC 151.

⁶³ *Ibid*, p 79 [E]-[F]; p 83 [D]-[E].

contradictions of the judgment, in 2003 the petitioner Olga Tellis observed that, paradoxically, the decision has often been invoked to advance the interests of the propertied classes, with lawyers citing it to justify the eviction of tenants and informal settlers. At the same time, however, the ruling affords a measure of protection to slum dwellers, insofar as it prevents the government from carrying out summary evictions. Moreover, the case played a significant role in stimulating discourse around the recognition of housing as a fundamental right, though, as Tellis notes, such recognition remains insufficient in practice for pavement dwellers themselves.⁶⁴

In the Canadian Supreme Court's ruling in *Gosselin v Quebec*,⁶⁵ the majority declined to recognise a positive socio-economic right, such as a guaranteed minimum income, on the record before it, citing insufficient evidence. However, the language left open the theoretical possibility that Section 7 of the Canadian Charter of Rights and Freedoms could impose such an obligation in other, more compelling circumstances.⁶⁶ The dissenting opinion supported a more expansive interpretation of socio-economic rights, asserting that it did impose positive obligations on the state, including the provision of a minimum standard of living.⁶⁷

The cases under consideration collectively illustrate that legal recognition of socio-economic rights does not guarantee substantive realisation, particularly in the context of structural constraints imposed by capitalist property relations.

2. History of Capitalism: From Factory Floors to Global Chains

Britain's emergence as the birthplace of modern capitalism was inextricably linked to the exploitation of labour for profit. Early forms of wage labour, rooted in the 'putting-out' system, enabled merchants to supply raw materials and later rent looms or workspaces, thereby gaining control over workers without owning the entire production process. This system gradually evolved into factory-based capitalism, enabling capitalists to concentrate workers, mechanise production and tightly control labour conditions – all in pursuit of higher productivity and reduced labour costs. By the 18th century, capitalist enterprises in factories had intensified this exploitation: workers performed repetitive, monotonous tasks in harsh environments under strict surveillance. Capital owners extracted profit by paying wages that were far below the

⁶⁴ Ashwani Kumar, 'The Question of the Poor' in Rupert Taylor (ed), *Third Sector Research* (Springer Science & Business Media 2010) 281, p 290.

⁶⁵ *Gosselin v Quebec (AG)* [2002] 4 SCR 429, 2002 SCC 84.

⁶⁶ *Ibid*, [83].

⁶⁷ *Ibid*, [353].

value of production and by suppressing resistance through employer dominance. Even before the formal rise of trade unions, artisans such as wool combers organised against wage cuts and the import of cheaper labour. In an early example of outsourcing, English clothiers sought to import combed wool from Ireland, where labour was cheaper – a strategy that closely resembles today's global search for low-cost labour markets. This provoked organised resistance from English workers, reflecting the fact that wage suppression and profit maximisation through transnational labour exploitation have long been central features of capitalism.⁶⁸ By the 13th century, Flanders' merchants had transformed the cloth production process, transitioning from small-scale, artisanal workshops to capital-intensive, profit-driven enterprises. This transition was characterised by the exploitation of labour through systems such as the putting-out model, where merchants exercised control over workers through contracts rather than direct oversight. It was in this context that Holland and Antwerp refined these practices through financial innovations, culminating in the establishment of the Dutch East India Company's joint-stock system and Amsterdam's stock exchange, which formalised investment, speculation, and profit accumulation. These early capitalist systems enabled investors to accumulate wealth while maintaining a distance from the harsh realities of labour exploitation, both domestically and internationally. The resulting tensions subsequently provoked worker resistance, including strikes in 16th-century France, thus illustrating how a profit-oriented production model generates both wealth and social conflict. The rise of capitalist practices in Flanders and Holland is indicative of the intertwining of sophisticated financial instruments with systematic exploitation aimed at profit maximisation, thereby marking the transition from trade-centred merchant capitalism to production-driven industrial capitalism.⁶⁹

3. From the Trans-Atlantic Slave Trade to Racial Capitalism

While these early European developments laid the foundations of capitalist enterprise, combining labour exploitation with financial innovation, it was the expansion of the Atlantic economy and the trans-Atlantic slave trade that allowed capitalism to evolve on a much larger, more global scale. Nowhere was this more consequential than in England, where the integration of slavery and colonial extraction into the global trade system provided the conditions for industrial capitalism to take hold.

⁶⁸ Fulcher (n 56), pp 19-24.

⁶⁹ Ibid, pp 26-30.

The development of industrial capitalism in 18th-century England was made possible by the expansion of the Atlantic system in the 17th and 18th centuries. This expansion was primarily fuelled by the transatlantic slave trade and the exploitation of enslaved Africans in the Americas. These practices were central to capitalist growth, rather than being incidental to it. Not only did the slave trade and slavery generate wealth, they also created the structural conditions necessary for the reorganisation of production, the expansion of global markets and the transformation of domestic institutions in Europe. From the late medieval period onwards, England's economy had been shaped by long-term structural changes in response to global trade. By the 16th century, it was well positioned to benefit from the opening of Atlantic commerce. In the 17th century, as Western European states simultaneously pursued capitalist development amid limited economic opportunities, the Atlantic system became a critical outlet for continued accumulation. Those states unable to participate effectively, such as the Italian city-states, faced stagnation or decline, whereas England was able to deepen its transformation. England's particular success stemmed from a combination of factors: the scale and profitability of its colonial holdings, the flexibility of its economic institutions, and its capacity to absorb and expand the Atlantic slave-based system. This system not only provided access to commodities such as sugar, cotton, and tobacco, but also enabled the reorganisation of labour on a global scale and the creation of a transnational division of labour that underpinned capitalist development. Thus, the Atlantic economy served as a key mechanism through which England was able to launch the Industrial Revolution. This argument does not rest solely on the private profitability of the slave trade, although this did play a role. More importantly, the Atlantic system based on slavery offered opportunities for the transformation of economic and social structures, developments that were essential for the transition to capitalism. European states were well aware of this. For example, the French government subsidised slave traders to ensure a steady labour supply for its colonies. In Britain, however, private profits were sufficient to expand the system without state support, thus avoiding the political risk of taxation. Thus, the Atlantic system, built on slavery, provided the material foundations and institutional incentives for the rise of European, and especially English, capitalism.⁷⁰

Racial capitalism is the term used to describe the process by which capitalism has developed and been structured historically through racial hierarchies. Rather than being an external feature

⁷⁰ Joseph E Inikori, Barbara Lewis Solow and Stanley L Engerman, 'Slavery and the Development of Industrial Capitalism in England' in *British Capitalism and Caribbean Slavery: The Legacy of Eric Williams* (Cambridge University Press 1988) 79, pp 99-101. See also: Sven Beckert and Seth Rockman (eds), *Slavery's Capitalism: A New History of American Economic Development* (University of Pennsylvania Press 2016); Eric Williams, *Capitalism and Slavery* (University of North Carolina Press 1994).

or a later distortion, racism is intrinsic to the formation and expansion of capitalism. This concept, as articulated by Cedric J. Robinson, challenges the classical Marxist view that capitalism would rationalise social relations and eliminate forms of mystification, such as racial ideology. Instead, Robinson argues that Western capitalism emerged from an existing racial order within feudal Europe and continued to evolve along racial lines. Racial categories were not merely tools for organising interactions between Europeans and non-Europeans, but were also deeply embedded in intra-European social relations and transferred into the logic of capitalist development. Robinson uses the term ‘racial capitalism’ to describe this fusion of racialism and capitalist accumulation as a historical agency that shaped labour organisation, class formation and ideology. This includes the racialisation of the working class in industrialising England, where race and nationalism compromised the emergence of a universal class consciousness, as well as the evolution of socialism itself, which was ideologically undermined by nationalist and racial impulses. According to this perspective, both capitalism and its purported alternatives have been profoundly influenced, and frequently subverted, by racial ideologies, rendering racial capitalism a fundamental lens through which to comprehend historical and contemporary social structures.⁷¹

Racial capitalism recognises that economic exploitation is structured through hierarchies of race, with global and domestic legal regimes historically facilitating expropriation, dispossession, and labour segregation along racial lines. Feminist intersectionality posits that women’s experiences of exploitation are shaped by the intersection of gender, race, class, and other axes of social hierarchy. The application of legal doctrine without an intersectional lens risks obscuring these compounded inequalities.

In the United States, the case of *Johnson v Transportation Agency, Santa Clara County*,⁷² demonstrates that workplace affirmative action policies may fail to address structural disadvantage if they ignore intersecting factors such as race and gender.⁷³

In South Africa, cases under the Employment Equity Act, such as *Minister of Finance v Van Heerden*,⁷⁴ the Constitutional Court held that substantive conception of equality recognises that, in addition to disparities based on race, class, and gender, other forms of social differentiation

⁷¹ Cedric J Robinson, *Black Marxism: The Making of the Black Radical Tradition* (rev edn, University of North Carolina Press 1983), p 2.

⁷² *Johnson v Transportation Agency, Santa Clara County* 480 US 616 (1987).

⁷³ *Ibid*, pp 631-637.

⁷⁴ *Minister of Finance and Other v Van Heerden* [2004] ZACC 3; 2004 (6) SA 121 (CC).

and structural disadvantage continue to exist. The South African Constitution imposes a duty to dismantle these inequalities and to prevent the emergence of new patterns of disadvantage. Accordingly, courts are required to assess each equality claim in its broader context, taking into account the complainants' social position, historical circumstances, and vulnerability, as well as the history, nature, and purpose of the challenged practice, and whether it alleviates or perpetuates disadvantage in practice. Evaluating fairness therefore necessitates a flexible, context-sensitive approach, responsive to changing patterns of discrimination and entrenched stereotypes.⁷⁵

The case of *DH and Others v Czech Republic*⁷⁶ addressed the systemic racial segregation of Roma children in education, which disproportionately affected Roma girls. The ECtHR determined that the Czech Republic's policy of allocating Roma children to special schools for children with mental disabilities, without conducting individual assessments, constituted discriminatory practices based on ethnic origin. This policy resulted in *de facto* racial segregation and discrimination, as evidenced by the operation of two distinct educational systems: one catering to Roma children and another to non-Roma children. The Court emphasised that the systemic nature of this segregation compounded the disadvantages faced by Roma children, including Roma girls, thereby violating the ECHR.⁷⁷

In *R v Gladue*,⁷⁸ the Canadian Supreme Court acknowledged the cumulative effects of colonial dispossession, socio-economic marginalisation, and gendered violence on Indigenous offenders.⁷⁹

4. Invisible Work, Visible Consequences: Feminist Critiques of Capitalism

Feminist scholarship posits that capitalism systematically undervalues and renders invisible labour performed by women, particularly within domestic and care economies. This unpaid or underpaid labour is essential for sustaining both the workforce and the wider economy, yet it is largely excluded from legal and economic recognition. Employment law, social security and welfare statutes frequently fail to address gendered disparities in access to resources and protections. Feminist legal theory posits that socio-economic rights should be interpreted in a manner that reflects gendered labour and dependency. This is due to the recognition that formal

⁷⁵ Ibid, [27].

⁷⁶ *DH and Others v Czech Republic*, App no 57325/00 (ECtHR, 13 November 2007).

⁷⁷ Ibid, [205]-[210].

⁷⁸ *R v Gladue* [1999] 1 SCR 688.

⁷⁹ Ibid, [93]-[96].

legal entitlements frequently fail to encompass unpaid domestic labour, informal economies, and the care economy.⁸⁰

The ECtHR established state responsibility in domestic violence cases in its 2009 *Opuz v Turkey* ruling, thereby emphasising the intersection of gendered social vulnerability and structural inequality.⁸¹

In India, the seminal legal case of *Vishaka v State of Rajasthan*⁸² established legal protections against sexual harassment in the workplace, thereby linking labour rights to broader socio-economic and gendered structures. In the case of *Patan Jamal Vali v the State of Andhra Pradesh*,⁸³ the Supreme Court of India, highlighted that Dalit women encounter intersectional vulnerabilities in relation to labour exploitation, sexual violence and access to land rights, illustrating how caste, gender and economic marginalisation are interconnected and mutually reinforcing.⁸⁴

In Canada, the case of *British Columbia (Public Service Employee Relations Commission) v BCGSEU*⁸⁵ addressed issues of workplace equality and accommodations, highlighting structural disadvantages faced by women in formal employment.⁸⁶

Intersectional analysis demonstrates that formal recognition of socio-economic and civil rights is inadequate in the presence of persistent structural hierarchies of race and gender. It is therefore vital that legal doctrines are interpreted and implemented with sensitivity to intersecting forms of oppression, ensuring that protections are meaningful both in law and in lived economic and social realities.

Capitalism, in its capacity as a legal and economic system, exerts a profound influence on the realisation of socio-economic rights, albeit within certain limits. It is evident that endeavours to mitigate exploitation through the implementation of welfare provisions, regulatory reforms,

⁸⁰ See, e.g.: Naila Kabeer, Shahra Razavi and Yana van der Meulen Rodgers, 'Feminist Economic Perspectives on the COVID-19 Pandemic' (2021) 27 *Feminist Economics* 1-29; Action Coalition on Economic Justice and Rights, *Increase Women's Economic Empowerment by Transforming the Care Economy* (UN Women, 2022) https://forum.generationequality.org/sites/default/files/2022-12/Blueprint%20on%20Care%20Economy_EJR%20Action%20Coalition_2022.pdf; Nancy Folbre, *Developing Care: Recent Research on the Care Economy and Economic Development* (International Development Research Centre, 2018) <https://peri.umass.edu/wp-content/uploads/joomla/images/publication/Folbre-IDL-57142.pdf>.

⁸¹ *Opuz v Turkey* Application no 33401/02 (ECtHR, 9 June 2009), [128]-[130], [134], [159]-[176], [185]-[201].

⁸² *Vishakha and others v State of Rajasthan* AIR 1997 SC 3011.

⁸³ *Patan Jamal Vali v The State of Andhra Pradesh* AIR 2021 SC 2190.

⁸⁴ *Ibid*, [12].

⁸⁵ *British Columbia (Public Service Employee Relations Commission) v BCGSEU* [1999] 3 SCR 3 (SCC).

⁸⁶ *Ibid*, [19]-[54], [58]-[61], [69]-[82].

or corporate social responsibility measures, although efficacious in their immediate effect, are insufficient to effect a transformation of the underlying structural inequalities that prevail. The issue of women's unpaid labour, informal economies and racialised patterns of dispossession remain legally and economically marginalised.

Socio-economic rights should not merely serve to entrench entitlements within the framework of capitalism; rather, they should function as instruments for addressing systemic inequalities, advancing collective well-being, and promoting social and ecological sustainability. In order to address this issue, it is essential to recognise the gendered and racialised dimensions of exploitation when interpreting socio-economic rights. Furthermore, principles of substantive equality and proportionality must be integrated into resource allocation and policy implementation. Finally, it is crucial to understand law as embedded within structural economic systems. This requires creative reasoning to address inequalities that are formally legal but substantively unjust.

5. The Impact of Capitalism and Neoliberalism on Public Spending in the 20th Century: The Economics of Social Retrenchment

Though often presented as neutral and scientific, economic neoliberalism is a deeply ideological project rooted in the belief that society thrives when individuals are free to pursue their self-interest. Gaining dominance in the late 20th century, it portrays the free market as the engine of innovation and prosperity, while framing state intervention, taxes on the wealthy, public ownership, and organised labour as obstacles to economic growth. In this view, inequality reflects personal merit rather than systemic failure, legitimising social hierarchies and wealth concentration. Despite recurring crises, neoliberal policies remain dominant. Paradoxically, these failures are not seen as evidence of structural flaws, but as justification for reinforcing the same market-driven solutions. This reveals a core contradiction: neoliberalism treats its own breakdowns as opportunities to double down rather than rethink its assumptions. Importantly, the rise of neoliberalism has not meant the withdrawal of the state, but rather its transformation. Since the 1970s, states have actively led the dismantling of postwar welfare structures under the ideological banner of market freedom. Public institutions were reoriented to serve corporate interests, while social protections were rolled back in the name of efficiency and competitiveness. This restructuring has also brought a broader cultural shift, promoting self-interest and individual responsibility over collective welfare. Institutions that once counterbalanced market excesses, such as trade unions, public healthcare, and social security,

have been systematically weakened. The ultimate goal has been to eliminate all perceived constraints on capital, enabling corporations and the wealthy to operate with minimal oversight. Neoliberalism thus reshaped not only policy, but also the moral and social fabric of modern life.⁸⁷

Although the intensity of neoliberal reform has varied from country to country, a common pattern has emerged: the systematic dismantling of the welfare state. In the United Kingdom (UK), Margaret Thatcher's government declared public spending to be the root cause of economic decline and launched sweeping cuts to benefits and services – a strategy dubbed 'Thatcherism.' In the US, Ronald Reagan pursued similar policies under 'Reaganomics.' Both administrations spearheaded neoliberal agendas that would later influence Western governments more broadly. By the late 1980s, these reforms had come together to form the Washington Consensus, a term coined by the economist John Williamson to describe a set of economic policies promoted by institutions such as the IMF, the World Bank, and the US Treasury. Although not a formal blueprint, it became a global standard, particularly for developing nations. The Consensus's ten prescriptions included fiscal austerity, cuts to public spending, tax reforms, trade liberalisation, deregulation, privatisation, and strong protections for property rights. In practice, neoliberal reforms involved aggressive deregulation (especially of finance and energy), tax cuts favouring the wealthy, the expansion of consumer credit, increased military spending and the widespread privatisation of public services such as healthcare, education, and transport. Labour unions were weakened and monetarist policies encouraged debt-driven consumption. Following the collapse of the Soviet Union, neoliberal capitalism gained further dominance, with the free market being increasingly viewed as integral to democracy and progress. Since the 1990s, neoliberalism has accelerated globalisation through liberalisation and deregulation, expanding the flow of goods, capital, and labour across borders. Welfare systems continue to be dismantled, with the argument being made that social services are too costly and that cutting them will incentivise work, further entrenching inequality in the name of efficiency and growth.⁸⁸

Western continental Europe soon followed the US and the UK, particularly in the period leading up to the establishment of the EU, as member states were compelled to align their budgets with the Maastricht convergence criteria. These criteria emphasised balanced public finances, price

⁸⁷ Koen Byttebier, *The Principles of Capitalism Questioned* in *Ethics of Socioeconomics*, *Ethics of Socioeconomics: Critical Observations on Capitalism through the Lens of a Lawyer, Economic and Financial Law & Policy – Shifting Insights & Values*, vol 8 (Springer 2024), pp 13-16.

⁸⁸ *Ibid*, pp 16-19.

stability, and sustainable economic policies as prerequisites for adopting the euro. While the EU's fiscal rules were initially flexible, they gradually evolved into stricter mechanisms to monitor and enforce compliance, pressuring governments to impose continual spending cuts across various sectors. However, rather than stabilising economies, these austerity measures often deepened fiscal problems, with debt burdens paradoxically rising, especially in the aftermath of the 2007–2008 financial crisis, when governments bailed out failing banks at great public cost. In response, institutions such as the IMF and the European Monetary Union (EMU) demanded even harsher austerity measures. However, while ordinary citizens endured cuts to social services, the financial sector largely escaped constraints. This dynamic is indicative of the overarching neoliberal project, which aims to reduce the state to its core functions of security and wealth protection. Consequently, the majority of the population is relegated to a subordinate position, characterised by extended working hours and greater labour intensity, in order to maintain the free-market dynamics that are integral to the neoliberal agenda. Furthermore, the implementation of austerity measures has frequently been characterised by a lack of democratic accountability, with key institutions assuming considerable authority despite possessing limited legitimacy, thereby imparting an autocratic quality to their actions. The term 'austerity' has become shorthand for a series of public spending cuts and reforms aimed at dismantling welfare provisions and narrowing the state. Critics argue that this process has curtailed political imagination and stifled debate about alternatives, thereby entrenching neoliberal capitalism as the dominant and seemingly inescapable system.⁸⁹

The consequences of these policies are illustrated in the case of *R (SG and others) v Secretary of State for Work and Pensions*.⁹⁰ In this case, the majority of the UK Supreme Court explained that while the Human Rights Act (implementing the ECHR) requires courts to review legislation and executive action for compliance with Convention rights, it does not erase the constitutional differences between the judiciary and the elected branches. Questions of social and economic policy are often better decided by Parliament or Government, and courts should therefore give weight to those institutional judgments when conducting rights review.⁹¹ The dissenting opinions held that although the ECHR does not guarantee a right to welfare benefits, once such a scheme exists it must be administered in a non-discriminatory manner under Article 14. This requires that the scheme as a whole, including any discriminatory effects, be justified to the court's satisfaction. Moreover, where children's best interests are at stake, Article 3(1)

⁸⁹ Ibid, pp 20–22.

⁹⁰ *R (on the application of SG and others) v Secretary of State for Work and Pensions* [2015] UKSC 16.

⁹¹ Ibid, [92]–[93].

of the UN Convention on the Rights of the Child requires those interests to be treated as a primary consideration in assessing compatibility.⁹² The majority's adoption of the "manifestly without reasonable foundation" standard reflects a high degree of deference to Parliament and Government in the socio-economic sphere. While consistent with the Court's understanding of the institutional limits of judicial review, this approach constrained the ability of the judiciary to intervene where welfare reforms had significant and adverse effects on vulnerable groups. By contrast, the dissenting judgments emphasised that even in matters of social policy, justifications for measures engaging discrimination require careful judicial scrutiny, particularly where the rights of women and children are at stake.

IV. The Welfare State: Promise or Precarity?

Having examined how capitalism structurally constrains the realisation of social rights—through market imperatives, property relations, and systemic inequalities—it becomes evident that legal recognition alone cannot guarantee material protections. The welfare state emerged in response to these limitations: as a political and institutional compromise designed not to overturn capitalism, but to stabilise it by mitigating insecurity, redistributing resources, and embedding social protections within the economy. This chapter explores the rise, constitutionalisation, and subsequent retrenchment of welfare systems, highlighting how social rights have been translated into public policy and law as mechanisms to tame, rather than replace, the underlying logic of capitalist accumulation.

1. The Rise of the Welfare State: Taming Capitalism through Social Protection

The term 'welfare state' is often misunderstood and misleading. Rather than being primarily concerned with providing aid to the poor, it is chiefly about systems of social insurance, rights, public services, and economic regulation, which mainly serve working individuals and the middle classes. Contrary to what the name suggests, these systems do not have to be run directly by the government. In many countries, private organisations, religious groups, and non-profits play a key role in delivering services, even when these are funded and regulated by the state. It's also incorrect to think of the welfare state as encompassing the entire government. Even at its peak in countries such as post-war Britain or Sweden, it was just one part of a broader

⁹² Ibid, [267]-[268].

governmental structure. Nevertheless, every advanced economy today includes some form of welfare provision, albeit with widely differing scopes, designs, and levels of generosity: from Sweden's universalist approach to the more market-based model in the United States. Key figures in welfare reform were sceptical of the term itself, feeling that it implied passive handouts and obscured the emphasis on personal responsibility, collective contributions, and social solidarity. Although terms such as 'social state' or 'welfare capitalism' might be more accurate, the current label has become entrenched.⁹³

The welfare state emerged in the 20th century as the institutional embodiment of socio-economic rights. As earlier chapters demonstrated, it was not a repudiation of capitalism but a political compromise designed to stabilise it: redistributing resources to mitigate insecurity and inequality while preserving the structures of accumulation. The economic crises of the 1930s and the devastation of the Second World War created the political conditions for this compromise, embedding welfare protections within national reconstruction and international financial planning. By the 1960s, welfare institutions had become entrenched features of advanced democracies, encompassing social insurance, public services, and labour regulation.⁹⁴

2. Unmovable Object Meets Unstoppable Force: Capitalism and the Constitutional Protection of Social Rights

In recent decades, there has been a marked expansion in the constitutional protection of social rights, which has overcome traditional ideological, geographic, and legal divides. By 2016, a substantial majority of constitutions guaranteed rights such as education (82%), health care (71%), social security (65%), and housing (42%). It is important to note that these provisions are no longer symbolic. Courts across diverse jurisdictions, including Germany, Colombia, Kenya, South Africa, Indonesia, and India, have actively enforced social rights, compelling governments to provide essential services and regulate social spending. Even in the United States, where libertarian traditions remain strong, state constitutions and courts have played a role in the protection of social rights. The academic debate has undergone a shift in focus, transitioning from the domain of justiciability of social rights to the acknowledgement of judicial enforcement as a valid and operational reality. Increasingly, scholars from diverse disciplines, including legal scholars, political scientists, philosophers, and development economists, have recognised their legitimacy and practical value. The enforcement of social rights is now viewed not only as a legal development but also as a tool for advancing human

⁹³ David Garland, *The Welfare State: A Very Short Introduction* (Oxford University Press 2016), pp 3-5.

⁹⁴ Ibid, pp 9, 11-12, 26-29, 45-46, 56-57.

capabilities, promoting economic growth, and addressing global poverty. Institutions such as the World Bank have expressed support for the constitutionalisation of social rights, particularly as a mechanism for enhancing access to education, health, and other basic services for the world's most disadvantaged populations.⁹⁵

While the history is essential for contextualisation, the decisive development for human rights law was the constitutionalisation of welfare principles. Post-war constitutions, particularly in Europe, elevated social protection from policy choice to structural commitment. Subsequent to 1945, German constitutional thought enshrined in Article 20 the declaration that Germany is a “democratic, federal, social state.” This constitutional commitment elevated the *Sozialstaat* (“social state principle”) to a fundamental organising principle of the post-war order, equivalent in importance to the rule of law. The *Sozialstaat* principle, in its implementation, imposed a structural obligation upon the state to guarantee social rights and maintain an adequate welfare framework. While it did not directly engender subjective rights, it functioned as an objective legal norm requiring state action in pursuit of social justice and the protection of human dignity. Furthermore, the judiciary was empowered to review compliance with this obligation, thereby conferring the principle with practical constitutional significance. In this manner, German legal doctrine transformed the concept of the “social state” into a binding prescriptive norm, thereby influencing both constitutional interpretation and the institutional architecture of the welfare state.⁹⁶

The Federal Constitutional Court of Germany has consistently affirmed that this principle imposes a binding constitutional duty: it requires government to guarantee a minimum subsistence compatible with human dignity, while granting the legislature discretion in how to realise this duty. In its 2010 *Hartz IV*⁹⁷ judgment, the Court invalidated inadequate unemployment benefits on the ground that they violated the right to dignity under Article 1, read in conjunction with the social state principle. This jurisprudence illustrates how welfare commitments, once rooted in political compromise, became enforceable through constitutional adjudication.⁹⁸ In its *Asylum Seekers Benefits* judgment,⁹⁹ the Constitutional Court likewise

⁹⁵ Chilton and Versteeg (n 59), p 714.

⁹⁶ Colm O’Cinneide, ‘Austerity and the Faded Dream of a “Social Europe”’ in Aoife Nolan (ed), *Economic and Social Rights after the Global Financial Crisis* (Cambridge University Press 2014) 169, pp 173-175.

⁹⁷ Bundesverfassungsgericht [BVerfG] [Federal Constitutional Court] 9 Feb. 2010 (Hartz IV), 125 ENTSCHEIDUNGEN DES BUNDESVERFASSUNGSGERICHTS [BVERF GE] 175 (___), 1 B VL 1/09, para 1-220, 2010, available at http://www.bverfg.de/entscheidungen/ls20100209_1bvl000109.html.

⁹⁸ O’Cinneide (n 96), pp 175-176.

⁹⁹ Bundesverfassungsgericht [BVerfG] [Federal Constitutional Court], Judgment of the First Senate of 18 July 2012 - 1 BvL 10/10 -, paras 1-113, https://www.bverfg.de/e/ls20120718_1bvl001010en

held that the level of financial assistance granted to asylum seekers during the processing of their claims was inconsistent with the constitutional requirement to respect human dignity. Taken together, these decisions underscore that the State's function as a social provider is intrinsically connected to its fundamental duty to safeguard and realise the principle of human dignity.¹⁰⁰

Other constitutions adopted similar, if differently structured, commitments. Spain's 1978 Constitution lists social rights in Chapter III, while Portugal's 1976 Constitution embeds them more robustly, and its Constitutional Court has used these provisions to strike down austerity-era pension and wage cuts as violations of equality and proportionality. By contrast, countries such as the United Kingdom, lacking a codified constitution, preserved the welfare state as a matter of parliamentary sovereignty, leaving courts with little role in safeguarding socio-economic rights, as exemplified by the case of *R (SG and others) v Secretary of State for Work and Pensions*. These divergences reveal how the "rise" of the welfare state was not only a political-economic event but also a constitutional moment: the social state principle became part of the legal architecture of post-war democracies, shaping both the possibilities and limits of judicial enforcement of welfare entitlements.

3. The Decline of the Welfare State and the Disassembly of Social Guarantees

From the late 1970s, neoliberal reforms sought to roll back welfare commitments through privatisation, austerity, and conditionality. These measures reframed welfare as a matter of individual responsibility rather than collective obligation, eroding the material basis of socio-economic rights. Yet the most important question for human rights law is how courts have responded to this transformation.¹⁰¹

Austerity policies, characterised by cuts to public spending, regressive taxation, wage suppression and the privatisation of public goods, have become the standard governmental response to periods of fiscal strain. Although they are often presented as neutral, technocratic measures aimed at economic stabilisation, in practice, austerity functions as a political project with profound social consequences. It disproportionately affects welfare provisions such as healthcare, education, housing, and unemployment benefits, thereby reinforcing existing class hierarchies and strengthening the dominance of private capital. Contemporary examples from

¹⁰⁰ Ibid.

¹⁰¹ Garland (n 93), pp 100-114.

around the world reveal the global and persistent nature of these policies. For instance, in the early months of the COVID-19 pandemic, New York State announced drastic cuts to Medicaid despite the looming public health crisis. In Chile, decades of neoliberal reforms culminated in mass protests in 2019, which were met with militarised repression. In 2015, Greece's government overturned a public referendum rejecting austerity in order to secure international bailout funds, leading to the privatisation of national infrastructure and further reductions in public services. These cases exemplify a broader trend: when economic adjustment is deemed necessary, it is the public sphere, not private wealth, that bears the cost. Rather than being unique to neoliberalism, austerity has long been a feature of capitalist crisis management. It is often used not to resolve economic downturns in any demonstrable or sustainable way, but rather to preserve capitalist relations of production at times when they are politically or socially contested. Despite little evidence that they achieve their stated aims of reducing debt or fostering growth, austerity measures have been repeatedly implemented. Instead, they effectively discipline labour, suppress dissent, and restore confidence in markets by shifting resources away from collective welfare and towards private accumulation. In this context, austerity can be seen not as an economic policy failure, but as a successful political containment strategy. It safeguards capitalist institutions by diverting social discontent away from systemic critique and towards individual responsibility and fiscal restraint. By doing so, it reshapes not only the economic landscape, but also the scope of political possibility, foreclosing alternative models of social organisation and economic life.¹⁰²

Following the economic crisis of 2008, many European countries introduced austerity measures involving major reductions in social security benefits and weakened labour protections, as well as significant cuts in public spending. These measures were broader and more far-reaching than previous attempts at retrenchment, affecting a larger proportion of the population and a wider range of social services. This resulted in deeper socioeconomic consequences. Austerity contributed to unprecedented levels of unemployment, exacerbated income inequality and heightened social insecurity. It also had measurable adverse effects on public health and well-being. While some view the post-2008 wave of austerity as a sharp departure from Europe's traditional commitment to social rights, it is more accurately seen as an escalation of long-standing policy trends rather than a novel development. The manner in which these policies were implemented after 2008 reflects pre-existing trends that had already been eroding the

¹⁰² Clara E Mattei, *The Capital Order: How Economists Invented Austerity and Paved the Way to Fascism* (University of Chicago Press 2022), 1-3.

foundations of European welfare systems for years. Governments responded to fiscal pressures by using familiar tools, such as deregulating labour markets, slashing social security budgets and cutting support for vulnerable or marginalised populations. Notably, these austerity measures disproportionately harmed groups that had already been negatively affected by earlier reforms. Additionally, austerity reinforced and intensified the narrative of social division, portraying poorer communities as a burden on national resources during crisis periods and the economically active population as bearing the brunt of fiscal cutbacks unfairly.¹⁰³

Austerity programmes in a number of European states became the subject of constitutional litigation. This recourse to the courts produced landmark rulings that constrained certain austerity measures and operationalised constitutional guarantees such as equality, the rule of law, and the protection of social rights. In Portugal, for instance, the Constitutional Court decided in 2012 that suspending holiday payments for public servants and pensioners was unconstitutional, reasoning that the measure placed the financial burden on a narrow segment of society when less discriminatory alternatives were available.¹⁰⁴ The following year, in April 2013, the Court went further by invalidating additional budgetary provisions, including reductions in public sector wages and the introduction of a flat-rate solidarity tax, on the basis that they conflicted with equality and proportionality principles as well as with constitutionally enshrined social rights.¹⁰⁵ Although the Court stopped short of invalidating austerity wholesale, its jurisprudence illustrates the potential of constitutional law to check the most aggressive forms of retrenchment.

In 2009, the Latvian Constitutional Court struck down pension reductions introduced as part of a deficit-reduction strategy, finding them incompatible with the Constitution's guarantees of social rights. The Court emphasised not only the excessive nature of the cuts but also the absence of adequate transitional arrangements, thereby underscoring that fiscal consolidation cannot override the requirement to respect minimum standards of social protection.¹⁰⁶ The decision illustrates the Court's willingness to subject economic policy choices to constitutional scrutiny, reinforcing the principle that austerity measures must be balanced against fundamental

¹⁰³ O'Cinneide (n 96), pp 184-186.

¹⁰⁴ Constitutional Court of Portugal, Judgment no 353/2012 (5 July 2012).

¹⁰⁵ Constitutional Court of Portugal, Judgment no 187/2013 (5 April 2013); O'Cinneide (n 96), p 189.

¹⁰⁶ Constitutional Court of Latvia, Case no 2009-43-01 (21 December 2009).

rights obligations. Here too, the judiciary played a mediating role: protecting basic entitlements while recognising the state's limited resources.¹⁰⁷

German legal scholarship has developed a canon around the *Sozialstaat* principle, focusing particularly on its constitutional limitations. The prevailing view is that the legislature enjoys broad discretion in defining the substantive scope of social rights and in determining the means of financing social provision. The *Sozialstaat* principle itself is generally not interpreted as conferring subjective individual entitlements to specific forms of social assistance. Nevertheless, the *Hartz IV* and *Asylum Seeker* decisions demonstrate that the principle acquires substantive force where it intersects with the overarching guarantee of human dignity. Outside of such *Existenzminimum* contexts, however, the circumstances under which German courts are willing to scrutinise socio-economic policy remain uncertain.¹⁰⁸

Beyond Europe, courts have sometimes taken a more expansive stance. In India, the Supreme Court has read socio-economic entitlements into the constitutional “right to life” (Article 21), extending protection to food, education, and livelihood as exemplified by the judgment in *Olga Tellis v Bombay Municipal Corporation*.

In Latin America, the Colombian Constitutional Court has used the *tutela* mechanism to enforce access to social security and pensions, often against austerity-driven reforms. In the landmark judgment of case T-760/08,¹⁰⁹ the Colombian Constitutional Court found in favour of all claimants, ordering *Empresas Promotoras de Salud* (EPS) to provide the requested services. The Court clarified that, although the State's obligations with regard to the right to health are programmatic in nature, they are nonetheless breached when the competent authority fails to implement the programmes or policies necessary for the progressive realisation of this right. However, the Court also acknowledged that the scope of the fundamental right to health must be understood in light of public priorities and the efficient allocation of scarce resources. Accordingly, *tutelas* may be granted where a failure to provide health services would result in irreversible harm to life or personal integrity. Relying on the Colombian Constitution and international standards, including General Comment No. 14 of the Committee on Economic, Social and Cultural Rights, the Court affirmed that the right to health encompasses the following: (i) access to quality, timely and effective health services; (ii) a health system that

¹⁰⁷ O’Cinneide (n 96), p 189.

¹⁰⁸ Ibid, p 191.

¹⁰⁹ Corte Constitucional [CC] [Constitutional Court], Sala Segunda de Revisión julio 31, 2008, MP: Manuel José Cepeda Espinoza, Sentencia T-760/08 (Colom).

guarantees such access; (iii) the right to be affiliated with that system; and (iv) the right to adequate information on how to access health services, which is subject to judicial protection. The Court also ruled that the State has a constitutional duty to implement measures to ensure sustainable and universal health coverage. Consequently, it ordered the Ministry of Social Protection to submit periodic reports to the Second Review Chamber, the Attorney General and the Ombudsman. These reports must detail the number of *tutelas* brought to vindicate the right to health in relation to the issues identified in the judgment. Finally, the Court ruled that the State had failed in its constitutional duties under the right to health by not establishing a clear timetable for unifying benefit plans. To remedy this, the Court instructed the Ministry of Social Protection, the Regulatory Commission on Health and the National Council on Social Security in Health to address the deficiencies in the regulations by ensuring that the benefit plans: (i) clearly defined, (ii) regularly updated, (iii) unified across both contributory and subsidised regimes, and (iv) delivered by the EPS in a timely and effective manner. The Court imposed annual deadlines for the fulfilment of these obligations.¹¹⁰

This judgment illustrates the potential and limitations of social rights within capitalist structures. On the one hand, the Court reaffirmed health as a justiciable right capable of constraining private health insurers and requiring active state coordination. However, its reliance on principles such as 'scarce resources' and fiscal sustainability reflects the ongoing impact of market rationalities on the scope of rights protection. Thus, the case demonstrates how courts can expand socio-economic rights while still embedding them within the broader logic of a capitalist economy.

These cases demonstrate a more interventionist judicial posture, contrasting with the deferential approaches in many European systems. Taken together, these examples reveal a spectrum of judicial responses. Courts may act as bulwarks against neoliberal retrenchment, cautiously mediate between rights and resources, or reinforce fiscal orthodoxy. What unites them is the deployment of doctrines such as proportionality, equality, and dignity as the terms through which austerity is evaluated. These techniques rarely empower courts to dictate redistributive policy, but they can set limits on the erosion of welfare guarantees. In this sense, the decline of the welfare state is not merely a political process: it is also a legal process in which courts negotiate the boundaries of social rights under conditions of economic constraint.

¹¹⁰ Ibid, [3.2.1]-[3.2.2], [3.3.1]-[3.3.2], [4.4.1]-[4.4.2], [4.3.3]-[4.4.5], [6.1.4.1.1], [6.2].

3.1. The Participation Gap: Social Rights and Voter Engagement in Europe and the United States

Research in several European countries has shown that, in more unequal societies, participation in civic and social life becomes increasingly stratified by income. Rather than reducing participation uniformly across the board, higher income inequality tends to widen the gap between participants and non-participants. Civic participation, such as involvement in voluntary organisations and associations, is particularly sensitive to inequality. In contexts where income disparities are more pronounced, individuals with higher incomes are considerably more likely to participate, while those with lower incomes are disproportionately excluded. This pattern suggests that inequality not only lowers participation rates in general, but also systematically limits access to civic life for those with fewer resources while reinforcing the engagement of the affluent. Importantly, this effect persists even after accounting for individual-level factors such as income, education, and broader country-level resources like GDP and welfare expenditure. In more equal societies, differences in civic participation between income groups are relatively modest. People from both high- and low-income backgrounds are more equally integrated into civic life. However, as inequality increases, the link between income and participation grows stronger. The higher a person's income, the more likely they are to participate, and this likelihood increases more sharply in countries with higher levels of inequality. Conversely, in these contexts, those with lower incomes become increasingly disengaged, not due to a lack of interest, but because structural and psychosocial barriers appear to grow stronger where inequality is more pronounced. These patterns suggest that inequality does not merely reduce participation rates across the board, but rather redistributes the likelihood of participation in a manner that favours the wealthy. In unequal societies, affluence is associated not only with greater material security, but also with greater access to the social and civic spaces that underpin democratic life and a sense of collective belonging. On the contrary, those with lower incomes are pushed further to the margins, both economically and socially. Data also shows that the relationship between inequality and stratified participation remains even when the availability of public services and welfare provision is taken into account. While social expenditure can mitigate the effects of inequality, it cannot eliminate them. Differences in participation between income groups are significantly wider in more unequal societies, suggesting that the effects of inequality extend beyond resource availability. Psychosocial dynamics, such as feelings of exclusion, lower perceived status, and heightened stress among the less affluent, likely contribute to these

patterns. In this sense, inequality affects participation through both what individuals have and how they experience their position within society.¹¹¹

Data from the United States shows that low-income individuals participate at similar rates regardless of local inequality levels. However, high-income individuals are substantially more politically active in more unequal communities. This suggests that inequality does not suppress political engagement uniformly; rather, it exacerbates the participation gap between income groups. The affluent are better equipped, both materially and psychologically, to respond to rising inequality through political engagement. Consequently, as inequality grows, their participation increases, while lower-income individuals are less responsive, potentially due to feelings of powerlessness or exclusion. In unequal communities, therefore, the wealthy are more visible and active in political life, while the poor remain comparatively disengaged. The study also notes variation over time and in the forms of participation. While data from 2012 clearly supported the pattern of increased elite participation in unequal areas, data from 2016 were more mixed. The authors speculate that the political climate in 2016, which was marked by prominent discussions of inequality, may also have temporarily encouraged greater engagement from lower-income groups, perhaps by making inequality more visible and salient across the class spectrum. Further analysis distinguishes between the political behaviour of affluent individuals based on their attitudes towards inequality. Among high-income respondents who support government action to reduce inequality, local inequality is positively correlated with increased participation. However, even those who oppose such action tend to participate more in unequal communities, albeit inconsistently. This suggests that rising inequality prompts more political activity among the affluent, regardless of their ideological orientation, raising concerns about who is ultimately being represented politically. Although some affluent individuals participate in order to advocate for reducing inequality, the structural imbalance in participation still favours their interests. Research cited in the study suggests that advocacy groups representing the disadvantaged often disproportionately reflect the concerns of their wealthier members. Furthermore, empirical studies have found that wealthy Americans benefit from greater policy responsiveness than the poor, even when their views differ. Therefore, in practice, greater participation among the affluent in unequal communities is likely to reinforce existing power imbalances, regardless of participants' stated intentions. This dynamic may lead to self-reinforcing 'spirals of inequality.' As wealthier citizens participate

¹¹¹ Bram Lancee and Herman G Van De Verhorst, 'Income inequality and participation: A comparison of 24 European countries' (2012) 41(5) *Social Science Research* 1166, pp 1172-1777.

more, they exert greater influence over policymaking. This shapes policies that preserve or increase their advantage, deepening both economic inequality and the political inequality that stems from it. The result is a feedback loop: inequality fuels unequal participation, which then reinforces unequal outcomes. These findings contrast with research examining inequality at national or state levels, which has tended to show that inequality demobilises lower-income voters. However, the authors argue that these two trends can coexist: inequality at a higher level may make the poor feel politically ineffective, while inequality at a local level may affect daily life more directly and thus provoke stronger responses from the wealthy, who feel more capable of taking action.¹¹²

Together, these findings underscore the indivisibility of social and civil and political rights, especially under conditions of systemic inequality. Legal rights to vote, associate, or petition carry little substantive meaning if individuals lack the material conditions, such as stable housing, healthcare, and income security, necessary to participate fully and equally in public life. As social rights remain under-enforced or commodified within capitalist systems, inequality deepens, and with it, the political marginalization of economically disadvantaged groups. The result is a self-reinforcing cycle: economic inequality leads to political inequality, which in turn preserves or intensifies structural barriers to social rights. In more equal societies, this gap narrows, affirming the mutually reinforcing relationship between material welfare and democratic participation. But in more unequal, profit-driven systems, civil and political rights become effectively hollowed out for those excluded from social protection. This interdependence is not simply normative but structural; social rights are not only complementary to civil and political rights but constitutive of their meaningful exercise. Any legal framework that seeks to protect democratic participation must therefore address the socio-economic inequalities that undermine it at its core.

V. De-commodifying the Home: Social Rights to Property and Housing

This chapter draws parallels between the varied approaches adopted by three regional human rights systems, that of the African, Inter-American, and European regions, in the enforcement of socio-economic rights. The evidence indicates that, despite the provision of diverse legal

¹¹² James Szewczyk and Melody Crowder-Meyer, 'Community Income Inequality and the Economic Gap in Participation' (2022) 44 *Political Behavior* 479, pp 498-501.

instruments and institutional cultures within these systems, significant challenges are faced in addressing entrenched inequality and economic exploitation. The African Charter's integrated vision of rights, the Inter-American system's expansive reading of state obligations, and the European model's cautious judicial activism each offer lessons and limitations. The chapter employs a comprehensive analysis of seminal cases and the existing enforcement gaps to demonstrate that the effective realisation of social rights is contingent not on coherence, but rather on the mobilisation of political will, the capacity of institutional frameworks, and the fostering of transnational solidarity. This approach sheds light on the way the enforcement of social rights, even in the most developed legal systems, can have a detrimental effect on the broader framework of democratic and civil rights.

The right to housing is a fundamental human right rooted in social justice and equality. The right to housing is widely recognised in international human rights law, most notably in Article 11 of the ICESCR, as interpreted by the CESCR in General Comment No. 4. This defines 'adequacy' in terms of security of tenure, affordability, habitability, accessibility, cultural adequacy, and proximity to services. Adequate housing encompasses privacy, security, infrastructure, and proximity to services and work. This protection is also reflected in other instruments that address the needs of vulnerable groups, such as women, children, refugees, people with disabilities and migrants. It must be ensured without discrimination and is closely linked to other rights, including health, dignity, freedom of residence, and protection from forced eviction. These interconnections highlight housing as essential to the fulfilment of broader civil and social rights.¹¹³

The history of drafting the right to property in international human rights law reveals deep ideological tensions between liberal and social visions. While liberal formulations focused on protecting acquired private property, socially oriented proposals such as those put forward by Chile during the drafting of the UDHR envisioned the right as ensuring a minimum standard of property necessary for a dignified life. The 1948 American Declaration of the Rights and Duties of Man was unique in framing property rights as being tied to social function and human dignity rather than wealth accumulation. However, even this more egalitarian conception affirmed private property, which could potentially entrench existing inequalities by providing a floor without addressing the ceiling of wealth concentration. Subsequent human rights instruments, including the European and American Conventions and the African Charter, retained a focus

¹¹³ Charles Majinge, 'Housing, Right to, International Protection' (June 2010) *Max Planck Encyclopedia of Public International Law* (Oxford University Press), [1] – [6].

on protecting existing entitlements rather than on redistribution. Language referencing ‘private’ property was often removed or obscured, though the protections continued to favour legal persons, including corporations. This reinforced a model in which state interference is viewed as a restriction on pre-existing rights rather than a response to unmet needs.¹¹⁴

Despite these limitations, scholars argue that property law remains fluid and open to reinterpretation. Court decisions, particularly those concerning indigenous land rights, demonstrate that human rights frameworks can be employed to recognise communal and untitled land, thereby integrating values such as community, responsibility, and environmental stewardship. The failure to include a right to property in the ICCPR and the exclusion of such a right from the ICESCR reflects ongoing disagreement over whether property rights should be fundamental rights at all. Finally, the CESCR and other critical voices have drawn attention to the moral inconsistency of protecting the property rights of the wealthy when so many people own nothing. They advocate rethinking property rights in the context of structural justice, arguing that the current human rights approach often legitimises gross inequality and fails to fulfil its transformative potential.¹¹⁵

1. Housing Beyond Profit: Reclaiming Shelter as a Human Right

1.1. Housing and Property Under the International Covenant on Economic, Social and Cultural Rights

According to the Committee on Economic, Social and Cultural Rights in General Comment No. 4, the right to adequate housing includes several essential components. Individuals must be legally protected against forced evictions and harassment, with governments responsible for ensuring security of tenure. Housing must be affordable, so that the associated costs do not compromise access to other basic needs and rights. Adequate housing should also be located in areas that provide access to employment, healthcare, education, and other necessary services. It must be habitable, offering protection against environmental hazards and threats to health. Finally, housing must be culturally appropriate, allowing residents to express their identity and live in a way that respects their cultural values and diversity.¹¹⁶

¹¹⁴ Margot E Salomon, ‘Emancipating Human Rights: Capitalism and the Common Good’ (2023) 36 *Leiden Journal of International Law* 857, pp 873-875.

¹¹⁵ *Ibid*, pp 875-876.

¹¹⁶ Majinge (n 113), [4].

In *IDG v Spain*, the Committee examined Spain's mortgage enforcement regime in the aftermath of the 2008 financial crisis. The applicant, who was facing eviction after defaulting on her repayments, argued that domestic procedures had denied her the opportunity to challenge unfair contractual terms or delay enforcement proceedings. The Committee found a violation of Articles 2(1) and 11(1) of the ICESCR, ruling that Spain had failed to establish a legislative and procedural framework capable of safeguarding the right to adequate housing. This decision is significant for two reasons. Firstly, it shifted the focus of the analysis from individual hardship to systemic deficiencies. It was noted that Spain's laws structurally favoured the interests of lending institutions over those of debtors by restricting procedural defences. Secondly, the CESCR framed this imbalance as being incompatible with the Covenant's requirement of 'progressive realisation,' emphasising that the formal legislative reforms (Royal Decree-Law No. 6/2012 and Act No. 4/2013) did not remedy the structural inequality between banks and vulnerable households. By requiring Spain to reform its legal framework to ensure effective remedies and guarantees of non-repetition, the Committee effectively redefined mortgage enforcement as not merely a private contractual dispute, but a matter of state responsibility under international human rights law. In doing so, the CESCR advanced an interpretation of housing rights that challenges the commodification of homes, highlighting the tension between financial capitalism and the social function of property.¹¹⁷

During Spain's debt and austerity crisis following the 2008 financial crisis, the CESCR addressed a landmark complaint brought by Maribel Viviana López Albán, a Spanish national of Ecuadorian origin, on behalf of herself and five of her children under the age of 18. Facing eviction due to an inability to pay the rent, and with no access to alternative housing, Ms. López Albán argued that the Spanish authorities had violated Article 11(1) of the ICESCR, which guarantees the right to adequate housing. The Committee found that a violation had occurred, emphasising that the Spanish authorities had failed to conduct a proportionality assessment before carrying out the eviction. The court had not weighed the property rights of the bank owner against the severe impact on the family's right to housing. Crucially, the Committee introduced a distinction in proportionality analysis between natural persons and financial institutions, suggesting that the latter have a weaker claim when seeking repossession of property, particularly when vulnerable families are at risk. Beyond the case in question, the Committee drew attention to broader structural issues, including Spain's housing crisis, the growing poverty of immigrants and discriminatory regulations that prevented people in

¹¹⁷ Ibid, [6.2], [13.6].

precarious housing situations from accessing public housing. Notably, *López Albán* had been unable to apply for social housing because she was occupying property without legal title – a situation that perpetuated her exclusion. The Committee also criticised Spain for selling public housing to private investment companies during the crisis, such as Madrid authorities selling nearly 3,000 public units in 2013, as this undermines the state’s obligation to realise housing rights. In the related case of *Djazia and Bellili v Spain*, the Committee identified yet another violation of Article 11, again emphasising the failure to justify the reduction in the availability of public housing amid growing demand.¹¹⁸

These cases reflect a transformative shift in the CESCR’s jurisprudence. Rather than treating violations as isolated or accidental events, the Committee considers them to be part of the structural dynamics of financial capitalism, austerity and racialised poverty. Its legal reasoning recognises that systemic inequality, speculation-driven housing markets and the commodification of basic necessities are central to understanding and remedying violations of social rights. Importantly, the Committee’s recommendations go beyond individual reparations. They call on states to prevent repetition, address root causes and use maximum available resources to progressively realise rights. By addressing the structural causes of social harm, such as private property regimes, neoliberal policy frameworks and welfare cuts, the Committee’s approach signals a critical departure from economic neutrality and a willingness to challenge the broader social and economic conditions that undermine the right to adequate housing.¹¹⁹

1.2. Housing and Property in the European Regional Human Rights System

In Europe, the protection of housing primarily derives from Article 8 of the ECHR, which secures respect for private and family life and the home, and from Article 31 of the Revised European Social Charter, which explicitly obliges states to provide adequate housing and combat homelessness. This commitment is reinforced in EU law (Article 34(3) of the Charter of Fundamental Rights) and in specialised instruments protecting migrants, children, women, and persons with disabilities.¹²⁰

¹¹⁸ Salomon (n 114), pp 867-869.

¹¹⁹ Ibid, pp 869-870.

¹²⁰ Majinge (n 113), [8].

In the case of the *European Federation of National Organisations Working with the Homeless (FEANTSA) v France*,¹²¹ the ECSR held that France's housing policies failed to provide effective access to adequate housing for the most vulnerable, thereby breaching Article 31 of the Revised European Social Charter. The decision was significant in shifting the debate from programmatic commitments to enforceable obligations, underscoring that states must adopt concrete measures to reduce homelessness and ensure affordability.¹²²

The ECtHR has increasingly considered social rights when interpreting Article 1 of Protocol No. 1 of the ECHR, which protects the right to property. This has particularly been the case in situations where property rights conflict with the state's efforts to guarantee housing and social protection rights for vulnerable individuals. A notable case in point is *Ghigo v Malta*,¹²³ however, the Court found that requisitioning a private home for over two decades, while paying negligible rent, imposed a disproportionate burden on the landlord. Although the state's housing objectives were legitimate, the lack of adequate compensation and contractual control meant the fair balance between the general interest and individual rights was not maintained.¹²⁴

This case reflects a broader jurisprudence, including *Hutten-Czapska v Poland*,¹²⁵ *Mellacher v Austria*,¹²⁶ and *Spadea and Scalabrino v Italy*,¹²⁷ where the Court acknowledged that social objectives such as preventing homelessness and ensuring dignity for low-income tenants can justify restrictions on landlords' property rights. The Court has moved from framing such cases in terms of "social justice" to more explicitly recognising them as conflicts involving social rights. However, it has consistently maintained that such interference must remain proportionate. In practice, this means landlords must not bear an excessive or unfair burden: they should receive adequate compensation (e.g. rent close to market value) and retain some contractual control. Therefore, while the ECtHR accepts that protecting social rights may necessitate limits on property rights, it insists that the balance struck must be fair. This approach reflects the indivisibility of human rights and affirms that the Convention cannot be applied in

¹²¹ *European Federation of National Organisations working with the Homeless (FEANTSA) v France* Complaint No 39/2006 (ECSR, 5 December 2007).

¹²² Majinge (n 113), [16].

¹²³ *Ghigo v Malta* App no 31122/05 (ECtHR, 26 September 2006).

¹²⁴ Deliyanni-Dimitrakou (n 38), pp 264-266.

¹²⁵ *Hutten-Czapska v Poland* App no 35014/97 (ECtHR [GC], 19 June 2006).

¹²⁶ *Mellacher and Others v Austria* App nos 10522/83, 11011/84 and 11070/84 (ECtHR, 19 December 1989).

¹²⁷ *Spadea and Scalabrino v Italy* App no 12868/87 (ECtHR, 28 September 1995).

isolation from social realities, especially when it comes to housing, dignity, and protection of vulnerable individuals.¹²⁸

In the case of *Connors v United Kingdom*,¹²⁹ The Court emphasized that the significant interference with the applicant's Article 8 rights demands especially strong justifications in the public interest, which correspondingly narrows the margin of appreciation afforded to the State. It also noted that the case concerns not broad issues of planning or economic policy, but the more specific question of procedural protections for a distinct group of individuals.¹³⁰ The Court held that even allowing for the State's margin of appreciation, the statutory scheme permitting summary eviction was not justified. It found no evidence that evicting without providing reasons subject to independent review served a specific purpose or benefited the Roma community. The regime effectively excluded procedural protection for long-term residents, undermining their housing security and broader socio-economic rights, including stability, family life, and access to education and health. The Court concluded that the eviction was disproportionate, not justified by a pressing social need, and therefore violated Article 8.¹³¹ This judgment underscores that the Court's concern was primarily with the protection of a specific vulnerable group than broader socio-economic or housing policy objectives. The Court repeatedly emphasized that the case did not engage general planning or economic considerations but focused on whether the statutory framework provided adequate procedural safeguards for this group. The violation identified relates to the lack of a mechanism requiring the local authority to justify evictions before an independent tribunal, rather than addressing the substantive merits of the eviction or the underlying social conditions. In other words, the judgment safeguards the procedural dimension of Article 8, ensuring meaningful access to legal review and protection against arbitrary interference with the home, while leaving the State discretion over substantive policy, including site allocation and housing strategy, largely untouched. This emphasis illustrates the Court's approach in cases concerning marginalized communities: Article 8 protects procedural rights as a critical vehicle for preventing disproportionate harm, even where broader socio-economic inequalities persist.

The Court has applied the principle of proportionality to eviction cases, adopting a stance that aligns more closely with the approach outlined in General Comment No. 7 of the CESCR. In

¹²⁸ Deliyanni-Dimitrakou (n 38), pp 266-267.

¹²⁹ *Connors v United Kingdom*, Application No 66746/01, 27 May 2004.

¹³⁰ *Ibid*, [86].

¹³¹ *Ibid*, [94]-[95].

the case of *Winterstein v France*,¹³² which concerned the eviction of Roma families from long-established encampments, the ECtHR ruled that any eviction from one's home requires an individualised proportionality review, weighing up the rights of the occupants against the public interest. The Court emphasised that, even where occupation is unlawful, the authorities cannot issue eviction orders without considering vulnerability, length of residence and availability of alternative accommodation.¹³³ This reasoning is similar to the CESCR's view that forced evictions are only compatible with the ICESCR if adequate procedural safeguards and alternative housing are in place.

However, the Court's interpretation of 'possessions' under Article 1 Protocol 1 has remained tethered to an economic conception of property, favouring exchange value. While it has occasionally extended protection to unregistered family property or communal lands, it has not developed a doctrine that fully embraces the commons as a category of possession tied to social obligations or environmental stewardship. This conservative approach contrasts with the drafting history of the ECHR, which left room for a more socially embedded understanding of property. As French delegate André Philip noted, the original intention was to protect possessions 'personally tied to one's identity', not merely wealth-generating assets.¹³⁴

Taken together, European jurisprudence demonstrates a cautious balancing act: while recognising housing as an essential interest within the Convention system, both the CESCR and the ECtHR stop short of treating it as an autonomous right. Instead, they rely on the expansion of existing provisions through interpretation, ensuring incremental protection without fully dislodging the primacy of private property.

1.3. Housing and Property in the African Regional Human Rights System

While the African Charter does not explicitly protect housing rights, the African Commission has interpreted related provisions, particularly those concerning the rights to life and health (Articles 4 and 16), as encompassing housing rights. This approach was most notably demonstrated in *SERAC v Nigeria*, where the Commission found that the Nigerian government had violated the implicit rights to housing and food by allowing oil companies to destroy Ogoni villages and farmland. The Commission reasoned that housing is inherently tied to property, family life and health, while the right to food derives from the rights to life, health and socio-

¹³² *Winterstein and Others v France* Application no 27013/07 (ECtHR, 17 October 2013).

¹³³ *Ibid*, [149]-[152], [167].

¹³⁴ Salomon (n 114), pp 872-873.

economic development. While this case illustrates the African system's reliance on a broad interpretative approach, it also highlights the limits of enforcement. Although violations were found, the Commission has no direct mechanism to compel state compliance, which raises questions about the practical impact of such decisions.

Subsequent regional instruments, including the Protocol on the Rights of Women and the African Charter on the Rights and Welfare of the Child, have reinforced this interpretation by explicitly recognising the right to housing for vulnerable groups.¹³⁵ By ratifying international human rights treaties, states commit to respecting, protecting, and fulfilling the rights enshrined within them, including the right to housing. This means that the state must create conditions that enable access to adequate housing for all, both by providing housing directly and by empowering other societal actors, including individuals themselves. This was affirmed by the Constitutional Court of South Africa in the case of the Government of the *Republic of South Africa v Grootboom*. Before a state can claim that it is unable to fulfil its housing obligations, it must demonstrate that it has prioritised the right to housing by using all available resources. Economic difficulties alone cannot justify a failure to meet these obligations. The South African Constitutional Court has rejected the idea that socio-economic rights are merely aspirational and not enforceable in courts. The Court has emphasised that budgetary constraints do not preclude judicial enforcement. This was held in *Ex parte Chairperson of the Constitutional Assembly: In re Certification of the Constitution of the Republic of South Africa*.¹³⁶ In the case of *Port Elizabeth Municipality v Various Occupiers*,¹³⁷ the Constitutional Court of South Africa refused to grant an eviction order without first considering the circumstances of the occupation, the length of residence and the availability of alternative land. This decision emphasised the state's duty to consider the rights of vulnerable populations. Regarding vulnerable groups, *Grootboom* clarifies that state measures to fulfil the right to housing must be reasonable and inclusive, particularly prioritising those with the most urgent needs to ensure they are not neglected in housing policies and programmes.¹³⁸

While the African Charter is praised for affirming the indivisibility of all human rights, it has also been criticised for failing to expressly include key socio-economic rights, such as the rights to social security, housing, food, and an adequate standard of living. In response, the African

¹³⁵ Majinge (n 113), [7].

¹³⁶ *Ex parte Chairperson of the Constitutional Assembly: In re Certification of the Constitution of the Republic of South Africa* (1996) ZACC 26, (1996) 4 SA 744 (CC).

¹³⁷ *Port Elizabeth Municipality v Various Occupiers* (2005) ZACC 20, (2005) 1 SA 217 (CC).

¹³⁸ Majinge (n 113), [11]-[12], [19], [21].

Commission has adopted a broad interpretive approach, as seen in the *SERAC* case, where it recognised the rights to housing and food despite their absence from the text of the Charter. The Commission reasoned that the right to housing is implicitly protected through the rights to property, family life, and health; and that the right to food stems from the rights to life, health, and economic and social development. These interpretations align with international human rights standards, such as the UN CESCR's General Comments. The Commission emphasised that housing encompasses more than just shelter; it also entails the right to be free from eviction and harassment. Furthermore, the right to food obligates states to ensure not only access to food, but also to protect food sources from destruction or contamination by third parties. In the *SERAC* case, Nigeria was found to have violated these implied rights by allowing oil companies to destroy Ogoni villages and farmlands, thereby preventing the people from housing, and feeding themselves. This landmark decision established that socio-economic rights can be inferred from the Charter's provisions thanks to interpretative clauses such as Article 60, which permits reference to international human rights law, and Article 7 of the African Court Protocol, which allows the Court to apply other ratified human rights instruments. Ultimately, this approach provides stronger protection against economic exploitation and confirms that states must prevent direct violations and third-party abuses of social rights, even when these rights are not explicitly mentioned in the African Charter.¹³⁹ However, in practice, this creates a tension between the normative promise of housing as a human right and the structural and economic realities of capitalist states, where access to housing is often mediated by market forces. Courts can order reasonable measures, prevent arbitrary evictions, and emphasise protection for vulnerable groups, but they cannot guarantee housing provision in the absence of political will or resources. This underscores a critical challenge in the African system: the recognition of housing rights exists, but translating these rights into tangible outcomes requires sustained state commitment and societal support.

1.4. Housing and Property in The Inter-American Regional Human Rights System

The Inter-American human rights system recognises housing as a fundamental human right,¹⁴⁰ operationalised primarily through the case law of the Inter-American Court of Human Rights (IACtHR) and Commission. While treaties such as the American Convention and Declaration provide the normative basis, it is through judicial interpretation that housing rights are enforced.

¹³⁹ Chirwa (n 47), pp 331-332.

¹⁴⁰ Majinge (n 113), [9].

Courts have consistently linked housing to rights to family life, private life, and protection from arbitrary evictions.

In the case of *Moiwana Village v Suriname*,¹⁴¹ the Inter-American Court of Human Rights (IACtHR) ruled that forced evictions, displacement and the destruction of homes violate the rights to private life, family life, a home and freedom of correspondence. The Court required Suriname to provide remedies, including reparations,¹⁴² thereby demonstrating that housing rights in the Inter-American system are not merely declaratory, but can also mandate concrete state action. Furthermore, courts have occasionally mandated governments to establish transparent legal frameworks and specific indicators to monitor and guarantee that states fulfil their obligations to provide adequate housing. Similarly, in the case of *Yakye Axa v Paraguay*¹⁴³ the Court found that the State had violated the rights of the Yakye Axa Indigenous Community by failing to provide them with their ancestral land. This denied them the possibility of subsistence and a dignified life. The Court ordered the State to identify and provide the community with their traditional territory free of charge and to take measures to ensure they can enjoy their rights effectively. This decision highlights the Court's dedication to enforcing collective property rights and offering tangible solutions to indigenous communities.¹⁴⁴ In *Sawhoyamaxa v Paraguay*,¹⁴⁵ the Court ruled that the state had violated the rights of the Sawhoyamaxa indigenous community by failing to provide them with their ancestral land. The Court ordered the State to demarcate, title, and return the land to the community immediately, emphasising that the restitution of ancestral lands is vital for the survival and cultural identity of indigenous peoples. The Court also mandated the State to provide reparations and guarantees of non-repetition, thereby reinforcing the principle that state obligations extend beyond mere recognition and must include effective measures to restore rights and prevent future violations.¹⁴⁶

However, critically, these decisions also expose a recurring challenge: enforcement relies heavily on state compliance. Despite binding judgements, delays or failures in implementation can significantly undermine the effectiveness of recognised rights. The cases also reveal tension

¹⁴¹ *Moiwana Village v Suriname* (Merits, Reparations and Costs) Judgment, IACHR Series C No 124 (2005).

¹⁴² *Ibid*, [17].

¹⁴³ *Yakye Axa Indigenous Community v Paraguay* (Merits, Reparations and Costs) Judgment, IACHR Series C no 125 (2005).

¹⁴⁴ *Ibid*, [137], [154], [216], operative para 6.

¹⁴⁵ *Sawhoyamaxa Indigenous Community v Paraguay* (Merits, Reparations and Costs) Judgment, IACHR Series C No 146 (2006).

¹⁴⁶ *Ibid*, [6], operative para 6.

between collective rights and economic interests, as states often face pressure from extractive industries or development projects. The IACtHR's jurisprudence views housing as more than just shelter; it considers it to be inextricably linked to cultural identity, economic survival and communal integrity. This provides a counterbalance to market-driven dispossession.

2. Collective Property Rights of Indigenous Peoples

2.1. The Colonial Legacy of Land Property and Ownership

In Western legal traditions, the concept of a deed is central to formalising ownership and the transfer of property rights. A deed is a written legal instrument that affirms an individual's or entity's entitlement to specific assets, and its validity usually depends on the presumed legal authority of the issuing party. The recognition and enforcement of such documents are shaped by domestic legal systems, which establish the criteria and capacities required for individuals to hold and exercise rights associated with deeds. This legal framework was particularly important during the colonial period in the Americas, where European settlers claimed ownership of Indigenous lands through title deeds based on the legal fiction of *terra nullius* – the idea that the land belonged to no one prior to colonial acquisition. This doctrine enabled colonial and later republican legal systems to justify the seizure of Indigenous territories without treaties or compensation, effectively erasing the long-standing presence and territorial rights of Indigenous peoples. Since then, the protection of private property has become a defining attribute of state sovereignty, with many legal systems treating property rights as central to the functions and obligations of the modern nation-state. Consequently, attempts to regulate property through international legal norms are often viewed as encroachments on national autonomy. Notably, neither the ICCPR nor the ICESCR expressly enshrines private property as a universally protected right. However, case law from regional human rights institutions, including the European Court of Human Rights, the Inter-American Court of Human Rights and the African Court on Human and Peoples' Rights, has increasingly influenced national legal reforms, encouraging states to align their property regimes with broader human rights standards.¹⁴⁷

¹⁴⁷ Tania Giovanna Vivas-Barrera, Gabriel Alejandro Quintero-Sánchez and Bernardo Pérez-Salazar, 'From *terra nullius* to Indigenous collective land rights: cases before the Inter-American Court of Human Rights' (2023) 19(1) *AlterNative* 101, p 101.

2.2. *We, Not I: Legal Recognition of Collective Claims*

Group rights are rights held by groups as collectives, as opposed to rights held by individuals independently. Although they are rooted in the inherent nature of humanity, they are also closely tied to the broader social and economic context in which groups exist. These rights are distinct from individual rights in that they acknowledge the group itself as the rights-holder. Recognising these rights enables the legal protection and enforcement of collective interests that cannot be reduced to the sum of individual claims. This recognition has grown alongside increased global efforts to protect minorities, ethnic groups, and Indigenous peoples, most notably through international instruments such as the 1989 ILO Indigenous and Tribal Peoples Convention and the 2007 UN Declaration on the Rights of Indigenous Peoples. These frameworks affirm key collective rights, including self-determination, land ownership, cultural preservation, linguistic heritage and protection against forced assimilation and violence.¹⁴⁸

2.2.1. *Collective Property Rights of Indigenous Peoples in the Inter-American Human Rights Regional System*

In the Inter-American system, the protection of Indigenous rights is closely intertwined with the recognition and enforcement of collective property rights. The IACtHR has consistently treated ancestral lands as essential to the cultural, social, and economic survival of Indigenous communities, making land restitution and protection a central mechanism for safeguarding these rights. Cases such as *Moiwana Village v Suriname*, *Yakye Axa v Paraguay*, and *Sawhoyamaxa v Paraguay* illustrate that the Court links Indigenous rights directly to collective property: without effective control over their traditional territories, communities cannot fully enjoy their social, economic, or cultural rights.

However, the Inter-American human rights system also reveals a troubling pattern whereby economic exploitation, particularly through extractive industries, takes precedence over the rights of Indigenous peoples, often with the active support or acquiescence of states. Governments have repeatedly granted logging, oil, and mineral concessions to private companies on the lands of Indigenous peoples without obtaining their free, prior, and informed consent. Such actions violate not only the property rights of Indigenous peoples, but also their cultural integrity, economic survival and even their physical existence, given the inseparable

¹⁴⁸ Nikolaos Gaitenidis, 'Indigenous Peoples, Cultural Heritage, and Traditional Knowledge: Untying the Gordian Knot of Human Rights and Intellectual Property in International Law' (2025) *International Journal on Minority and Group Rights* 1–45, p 23.

connection between their identity and their ancestral territories. In the case of *the Maya Indigenous Communities of the Toledo District v Belize*,¹⁴⁹ the Inter-American Commission found that the State of Belize had violated the Maya people's rights by issuing resource extraction concessions without consultation or consent, and by failing to define and recognise their communal property rights. The Commission emphasised that economic development could not override the fundamental rights of Indigenous peoples, recommending protective measures including halting any further activity on the land until proper legal recognition was achieved. This principle was further extended in cases such as *Saramaka Clans v Suriname*¹⁵⁰ and *Kichwa Peoples of Sarayaku v Ecuador*.¹⁵¹ In the latter case, despite having already legally recognised the land as Indigenous territory, the State granted an oil exploration concession to a foreign company without consultation. This case highlighted that even legally recognised Indigenous land is not immune to state-facilitated economic intrusion. These cases highlight the ongoing conflict between state-backed economic interests and Indigenous rights, where resource extraction frequently occurs at the expense of dispossession, environmental damage, and cultural erasure. This reflects the broader capitalist logic of treating land as a commodity and prioritising profit over the sovereignty and survival of Indigenous peoples.¹⁵²

The landmark *Awas Tingni v Nicaragua*¹⁵³ case saw the IACtHR recognise the economic and cultural rights of Indigenous peoples. The Nicaraguan government granted a timber exploitation concession to a foreign company for land that had been occupied by the Mayagna (Sumo) Community of Awas Tingni for generations, without consulting them or seeking their consent. Despite the land being neither titled nor demarcated, the company began logging activities. The Court found that Nicaragua had violated the community's rights to property (Article 21) and to judicial protection (Article 25) under the American Convention. It emphasised that Indigenous land rights are collective and inseparable from cultural identity, economic subsistence, and survival. By permitting extractive activities without a clear land title or consultation, the state created a climate of uncertainty that directly undermined the community's ability to maintain their way of life. While the Court did not explicitly rule on the right to free, prior, and informed consent, it implied that such consent is necessary before granting concessions on ancestral

¹⁴⁹ *Maya Indigenous Community of the Toledo District v Belize* Case 12.053, Report No 40/04, Inter-Am Comm HR, OEA/Ser.L/V/II.122 Doc 5 rev 1 at 727 (2004).

¹⁵⁰ *Saramaka People v Suriname* (Preliminary Objections, Merits, Reparations and Costs) Judgment of 28 November 2007, Series C No 172.

¹⁵¹ *Kichwa Indigenous People of Sarayaku v Ecuador* (Merits and Reparations) IACHR Series C No 245.

¹⁵² Melish (n 50), pp 358-359.

¹⁵³ *Mayagna (Sumo) Awas Tingni Community v Nicaragua* (Merits, Reparations and Costs) IACHR Series C No 79.

lands. The judgment also condemned the absence of effective domestic procedures for demarcating and titling Indigenous land, holding that formal legal recognition alone is insufficient without enforceable mechanisms. This has broader implications for the enforcement of social rights. Significantly, the Court ordered the state to halt all further activities by third parties on Awas Tingni land until proper titling had been completed, signalling that economic exploitation cannot override Indigenous territorial rights.¹⁵⁴

2.2.2. Collective Property Rights of Indigenous Peoples in the African Human Rights Regional System

Although the African Charter on Human and Peoples' Rights does not explicitly recognise a right to land, either individually or collectively, the African human rights system has interpreted such a right by deriving it from other protected rights. Specifically, the right to land has been inferred from Articles 14 (right to property), 8 (freedom of religion) and 17 (right to culture). While the African Court has primarily framed indigenous land rights as an extension of the right to property, aspects of land rights have also been considered in relation to religious and cultural rights. In the *Endorois*¹⁵⁵ case, for example, the African Commission ruled that denying the community access to religious sites constituted a violation of their right to freedom of religion.¹⁵⁶ The Commission found that Kenya had violated the Endorois community's rights under Articles 14 and 21 of the African Charter. It held that the trust land system and the restricted access Kenya afforded the Endorois failed to adequately recognize or protect their ownership rights. It recommended that Kenya provide the Endorois with full legal title to their ancestral territory in line with their communal landholding traditions. The Commission also found that forced evictions, restricted access to religious and cultural sites, infrastructure development, mining activities, and land sales to third parties constituted unlawful encroachments. It concluded that the displacement of the Endorois and the denial of their property rights were disproportionate to any public interest served by the establishment of the game reserve. Even if the reserve was a legitimate aim, the Commission maintained it could have been created without excluding the Endorois, who, as ancestral custodians of the land, were well-positioned to support environmental conservation. Furthermore, the Commission

¹⁵⁴ Ibid, 392-395.

¹⁵⁵ *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya*, Communication No 276/03, African Commission on Human and Peoples' Rights (25 November 2009).

¹⁵⁶ Ricarda Rösch, 'Indigenesness and Peoples' Rights in the African Human Rights System: Situating the *Ogiek* Judgement of the African Court on Human and Peoples' Rights' (2017) 3 *Heidelberg Journal of International Law (ZaöRV)* 242, p 251.

rejected Kenya's claim that the reserve's creation and the evictions were lawful under domestic and international law, citing the lack of genuine consultation with the Endorois, the absence of environmental and social impact assessments, and the failure to provide fair compensation or benefits.¹⁵⁷

Cases concerning Indigenous land rights redefine property by asserting ownership of the means of production outside the capitalist logic of surplus and wage labour. These cases highlight alternative, culture-based economic systems that prioritise sustainability over accumulation. They also pave the way for the recognition of the collective property rights of other marginalised groups, such as the poor, by broadening the concept of the commons. Integrating collective ownership into human rights frameworks legitimises diverse, non-capitalist property models in a variety of global contexts.¹⁵⁸

VI. Health Beyond Wealth: Social Rights in Healthcare

The right to the highest attainable standard of health is a fundamental human right recognised under international law. This right is enshrined in several key international treaties, including Article 12 of the ICESCR, which affirms everyone's right to the highest possible standard of physical and mental health. Further affirmations can be found in Article 5(e)(iv) of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), Article 24 of the Convention on the Rights of the Child (CRC) and Articles 28, 43(e) and 45(c) of the International Convention Protecting the Rights of All Migrant Workers and Their Families (ICMW). According to the interpretation of the CESCR, the right to health is inclusive and extends beyond access to healthcare. It encompasses a wide range of underlying factors, including safe water, adequate nutrition, housing, healthy working conditions and health-related education. This includes both freedoms (e.g. freedom from non-consensual medical treatment and degrading treatment) and entitlements (e.g. access to essential medicines and timely healthcare services). Furthermore, states are required to guarantee the availability, accessibility, acceptability, and quality of healthcare goods and services, and to provide them without discrimination. Although the right to health requires progressive realisation based on available

¹⁵⁷ Elizabeth Ashamu, 'Centre for Minority Rights Development (Kenya) and Minority Rights Group International on Behalf of Endorois Welfare Council v Kenya: A Landmark Decision from the African Commission' (2011) 55(2) *Journal of African Law* 300, pp 308-309.

¹⁵⁸ Salomon (n 113), p 873.

resources, states nonetheless have immediate obligations, including ensuring non-discriminatory access and taking concrete steps towards full implementation. A state's limited resources do not exempt it from these duties; rather, it must act to the maximum extent of its available resources to progressively fulfil this right.¹⁵⁹

1. India

In *Mohini Jain v State of Karnataka*,¹⁶⁰ the Supreme Court addressed capitation fees charged by private medical colleges. The Court held that commodification of essential services, such as education, and by extension healthcare, violates the right to life under Article 21. The judgment emphasised that essential services should not be subject solely to market dynamics, arguing that human dignity and equality require regulatory intervention. This reasoning challenges the capitalist logic of access determined by ability to pay, asserting that privatisation cannot justify exclusion from essential services. While no formal dissent was recorded, the judgment sets a precedent for judicial oversight of privatised sectors that affect fundamental rights, establishing a link between economic structures and access to social goods.¹⁶¹

*Paschim Banga Khet Mazdoor Samity v State of West Bengal*¹⁶² involved a patient denied emergency treatment due to unavailable hospital beds. The Court held that the right to life includes the right to emergency medical care and that the state has a positive obligation to provide timely medical treatment regardless of financial capacity. The judgment confronts the inequities inherent in a privatised healthcare system, reinforcing that market limitations cannot justify denying life-saving services. The Court's reasoning expands the scope of Article 21 to encompass social rights and frames healthcare as a non-commodifiable component of life and dignity.¹⁶³

These cases collectively demonstrate that unchecked commodification of essential services undermines equity and dignity, and the Indian judiciary's willingness to impose affirmative duties on the state to counteract inequities produced by capitalist models, emphasising the importance of equity in accessing essential services. By compelling the state to provide access

¹⁵⁹ Office of the United Nations High Commissioner for Human Rights and World Health Organization, *The Right to Health: Fact Sheet No. 31* (Geneva, OHCHR/WHO) <<https://www.ohchr.org/sites/default/files/Documents/Publications/Factsheet31.pdf> accessed 29 July 2025>, pp 3-4.

¹⁶⁰ *Mohini Jain v State of Karnataka* (1992) AIR 1858.

¹⁶¹ *Ibid*, [6]-[12].

¹⁶² *Paschim Banga Khet Mazdoor Samity v State of West Bengal* (1996) AIR SC 2426.

¹⁶³ *Ibid*, [9]-[12], [15]-[19].

regardless of ability to pay, the courts counteract market-driven exclusion, signalling that privatisation cannot override fundamental human rights.

2. South Africa

In *Soobramoney v Minister of Health (Kwazulu-Natal)*,¹⁶⁴ the Constitutional Court dealt with the denial of renal dialysis to a terminally ill patient due to limited resources. Justice Mahomed held that the right to health is subject to policy constraints and resource availability, reflecting a proportionality-based approach. Positive rights, while constitutionally guaranteed, must be balanced against practical economic realities. The decision implicitly recognizes the tension between human rights and capitalist allocation of scarce medical resources, illustrating the judiciary's cautious navigation between rights enforcement and budgetary constraints.¹⁶⁵

By contrast, *Minister of Health v Treatment Action Campaign*¹⁶⁶ ordered the state to provide antiretroviral drugs to prevent mother-to-child HIV transmission. The Court stressed that failure to provide life-saving treatment, even in the context of constrained resources, constitutes a constitutional violation. Using a proportionality framework, the Court prioritized interventions that save lives over strict adherence to economic limitations. This decision actively confronts the inequities of market-driven healthcare, demonstrating that judicial enforcement can override economic rationales to ensure equitable access to essential medical services.¹⁶⁷

South African jurisprudence presents a nuanced critique of capitalism in healthcare. In *Soobramoney*, the Constitutional Court acknowledged that scarce resources necessitate prioritisation, reflecting the reality of resource-constrained public systems operating within market-driven economies. However, the *Treatment Action Campaign* case illustrates judicial willingness to intervene when life-saving services are withheld due to economic or bureaucratic considerations, challenging neoliberal policies that limit public healthcare provision in favour of efficiency or cost containment.

3. Colombia

In *Tutela T-760/08*, the Colombian Constitutional Court recognised health as a fundamental right and ordered systemic reforms to guarantee universal access. The Court emphasized that

¹⁶⁴ *Soobramoney v Minister of Health (Kwazulu-Natal)* (CCT32/97) [1997] ZACC 17; 1998 (1) SA 765 (CC).

¹⁶⁵ *Ibid.*, [1]-[2], [11], [19], [21]-[22], [24]-[30], [40], [43], [52]-[54], [57]-[58].

¹⁶⁶ *Minister of Health and Others v Treatment Action Campaign and Others (No 2)* (CCT8/02) [2002] ZACC 15; 2002 (5) SA 721 (CC).

¹⁶⁷ *Ibid.*, [38], [68], [80], [93], [95], [97], [135].

healthcare should not be mediated by market forces and that essential medicines and treatments must be provided irrespective of socioeconomic status. The judgment links health to equality, human dignity, and social justice, explicitly challenging the neoliberal model of healthcare provision. The Court's transformative approach demonstrates that judicial enforcement can counteract the inequities produced by privatization and market-driven healthcare policies, holding the state accountable for systemic reform.

Colombia's *Tutela T-760/08* offers one of the most direct confrontations with market-based healthcare. By mandating systemic reforms and access to essential treatments irrespective of insurance or ability to pay, the Constitutional Court actively resists neoliberal principles that treat health as a commodity. This decision underscores the judiciary's capacity to transform healthcare systems and reduce structural inequalities entrenched by privatisation.

4. European Court of Human Rights

In *Nitecki v Poland*,¹⁶⁸ the applicant, suffering from ALS, argued that the State's refusal to fully reimburse the cost of Rilutek (a life-prolonging drug) violated his rights under Articles 2 and 8 ECHR. Poland reimbursed 70% of the drug cost but left the remaining 30% to the patient. The Court declared the application inadmissible, finding no failure to discharge positive obligations under Article 2. It held that, in light of the extensive healthcare already provided, the refusal to cover the final 30% did not amount to a denial of access to life-saving treatment.

This case illustrates the limits of Article 2 in the socio-economic sphere. While the Court acknowledged that health policy omissions can, in principle, engage state responsibility, it also stressed the wide margin of appreciation states enjoy in determining reimbursement levels and structuring social insurance systems. Importantly, the Court refrained from reviewing the adequacy of Polish health financing, deferring to the government's economic and social policy choices. This reflects judicial caution: Article 2 does not guarantee unfettered entitlement to free provision of medical care irrespective of personal circumstances. The takeaway is that Article 2 safeguards against complete denial of essential care, but does not extend to requiring states to eliminate all economic barriers to access.

However, the case of *Mehmet Şentürk and Bekir Şentürk v Turkey*¹⁶⁹ saw a significant extension of the obligations set out in Article 2 into the area of emergency healthcare. The applicants, a

¹⁶⁸ *Nitecki v Poland* (dec.) App no 65653/01 (ECtHR, 21 March 2002).

¹⁶⁹ *Mehmet Şentürk and Bekir Şentürk v Turkey* App no 13423/09 (ECtHR, 9 April 2013).

pregnant woman and her husband, were denied a life-saving operation because they could not pay a deposit. She died *en route* to another hospital. The Court found a violation of Article 2, emphasising that the state's positive obligations under the right to life include ensuring access to emergency medical treatment, regardless of an individual's financial circumstances. Notably, the Court held that Turkey had failed not only due to individual negligence, but also at a systemic level, as its regulations permitted hospitals to deny urgent care for financial reasons.¹⁷⁰

The *Şentürk* case situates Article 2 at the intersection of healthcare regulation and socio-economic rights. The judgment emphasises that states must organise their health systems to guarantee non-discriminatory access to life-saving treatment. The ruling also clarifies that financial constraints cannot justify the refusal of emergency care. Thus, the Court aligns access to essential treatment with the core minimum content of Article 2, foreshadowing a proportionality test in which the value of human life takes precedence over resource limitations.

In *Pentiacova and Others v Moldova*,¹⁷¹ the applicants, suffering from chronic kidney disease, claimed that Moldova violated Articles 2, 3, and 8 by not fully funding haemodialysis treatment. Public resources only partly covered the costs, leaving patients with significant expenses. The Court declared the complaint inadmissible, stressing that socio-economic rights, including healthcare, are subject to resource constraints and involve delicate balancing of competing priorities.¹⁷²

Pentiacova reinforces the Court's reluctance to transform the ECHR into a vehicle for general socio-economic rights adjudication. The Court held that Article 2 does not impose an obligation on states to fund every treatment necessary to prolong life, particularly in the absence of arbitrary discrimination or outright denial. Instead, the Court emphasised the margin of appreciation in balancing individual needs against collective resource allocation. The decision underscores a key boundary: while the ECHR protects against unreasonable or systemic denials of access to essential care, it does not constitutionalise specific levels of funding. This case thus complements the *Nitecki* reasoning by highlighting the Court's pragmatic deference to states' socio-economic policymaking, even in the face of serious medical hardship.

¹⁷⁰ Ibid, [9]-[83], [88], [90]-[97], [98]-[106].

¹⁷¹ *Pentiacova and Others v Moldova* (dec.), App no 14462/03, 4 January 2005.

¹⁷² Ibid, [61]-[63].

In *Sentges v the Netherlands*,¹⁷³ the applicant, suffering from Duchenne muscular dystrophy, sought public funding for a robotic arm to increase his independence. He argued that refusal to provide this equipment violated Articles 2 and 8, linking the claim to autonomy and dignity. The Court declared the application inadmissible, reasoning that Article 8 does not impose a positive obligation on states to provide expensive medical technology, particularly where complex resource-allocation issues are at stake.¹⁷⁴

The significance in this case lies in clarifying the limits of Article 8 as a basis for positive obligations in healthcare. While the Court recognised that autonomy and personal dignity fall within the ambit of private life, it emphasised that positive obligations must be balanced against competing public interests. The wide margin of appreciation afforded to states in allocating healthcare resources meant that the Court would not interfere with Dutch policy decisions on expensive assistive technologies. This restraint reflects a commitment to preserving the ECHR as a civil and political rights instrument, rather than expanding it into a broad welfare rights charter. Thus, *Sentges* demonstrates that while human dignity considerations are relevant, they do not override the Court's deference to socio-economic policymaking, absent arbitrariness or discrimination.

5. United States

In the United States, healthcare is largely treated as a market commodity, and judicial recognition of healthcare as a fundamental right is minimal. In *National Federation of Independent Business v Sebelius*,¹⁷⁵ the Supreme Court upheld the Affordable Care Act (ACA)'s individual mandate under Congress's taxing power, explicitly avoiding constitutional recognition of healthcare as a fundamental right. The decision frames access as a policy matter subject to legislative discretion rather than a protected entitlement, reflecting the primacy of market structures over human rights considerations.

*California v Texas*¹⁷⁶ further illustrates this approach. The Court dismissed challenges to the ACA on standing grounds, sidestepping substantive questions about healthcare as a right. In *Braidwood Management Inc v Becerra*,¹⁷⁷ the Court upheld preventive care coverage under statutory authority, reinforcing compliance with legislation but not establishing positive rights.

¹⁷³ *Sentges v The Netherlands* (dec.) App no 27677/02 (ECtHR, 8 July 2003).

¹⁷⁴ *Ibid*, [46]-[49].

¹⁷⁵ *National Federation of Independent Business v Sebelius*, 567 US 519 (2012).

¹⁷⁶ *California v Texas*, 593 US 659 (2021).

¹⁷⁷ *Braidwood Management, Inc et al v Xavier Becerra et al*, No 23-10326 (5th Cir, 2025).

Similarly, in *Medina v Planned Parenthood South Atlantic*,¹⁷⁸ the Court ruled that Medicaid recipients do not have enforceable rights to specific providers, allowing states to limit access. These cases collectively demonstrate that in the US, capitalist allocation dominates healthcare provision, with judicial intervention largely confined to regulatory enforcement rather than the recognition of healthcare as a human right.

In stark contrast, the United States exemplifies the commodification of healthcare under capitalism. Cases such as *Sebelius*, *California v Texas*, and *Medina v Planned Parenthood* reveal a system where access is mediated primarily by market forces and statutory regulation rather than recognized as a fundamental human right. Judicial deference to legislative discretion and the absence of constitutional entrenchment allows privatization and market logic to shape healthcare availability, resulting in inequities along socioeconomic lines.

6. Does Health Come Before Wealth?

Comparative jurisprudence on healthcare reveals a fundamental tension between claims to dignity and equality based on rights, and the state's reliance on market allocation and limited resources. This tension has been grappled with by courts in India, South Africa, Colombia, Europe, and the United States, but with markedly different outcomes.

Indian and Colombian courts have adopted the most far-reaching approach, treating healthcare as an inalienable aspect of the right to life and dignity. By doing so, they have framed judicial enforcement as a means of addressing inequities caused by privatisation and capitalist exclusion, thereby imposing direct and sometimes systemic obligations on the state. In contrast, the South African Constitutional Court has adopted a more cautious stance, acknowledging the constitutional status of healthcare while insisting on proportionality and feasibility. *Soobramoney* reflects deference to resource scarcity, whereas the *Treatment Action Campaign* demonstrates that life-saving treatment cannot be withheld on economic grounds. This creates a jurisprudence that is sensitive to fiscal reality yet capable of compelling redistribution when the stakes are existential.

The European Court of Human Rights, however, has drawn a sharper boundary. While recognising in principle that Article 2 can apply to healthcare omissions, the Court has generally invoked the wide margin of appreciation to defer to national choices in resource allocation, as

¹⁷⁸ *Medina v Planned Parenthood South Atlantic*, 606 U.S. ____ (2025).

in *Nitecki*, *Pentiacova*, and *Sentges*. Here, the Court avoids constitutionalising welfare rights by distinguishing between the systemic denial of treatment and limits on funding or technology. Yet, in *Şentürk*, the Court marked a significant departure: it held that the right to life requires states to ensure access to emergency treatment irrespective of financial means, thereby imposing a systemic obligation on states to prevent life-saving care from being conditioned on payment. Taken together, the jurisprudence draws a line between emergency contexts, where human life must prevail over resource constraints, and broader socio-economic claims, where states retain wide discretion. In contrast, the United States represents the opposite extreme: healthcare is not recognised as a constitutional right, and courts confine themselves to enforcing statutory regimes, leaving access to be mediated by markets.

Taken together, these strands demonstrate that the position of the right to health within broader socio-economic policy influences whether courts adopt an activist or restrained approach. A common theme emerges: balancing human dignity and equality against resource constraints. However, the intensity of judicial review varies, reflecting each system's willingness or reluctance to address the structural inequities of capitalist healthcare provision. This divergence highlights a key divide: whether courts view the right to health as an enforceable entitlement that can restructure socio-economic priorities or as a policy aspiration constrained by state resources. Comparative jurisprudence suggests that when courts are willing to challenge market logic, they can transform healthcare systems to reduce inequity. When they defer, however, healthcare remains commodified and unequal. Ultimately, the right to health becomes a battleground where the judiciary either challenges or reproduces the distributive choices of capitalism.

VII. Beyond Reform: Reimagining Social Rights as Transformative Tools

Contemporary political and economic discourse, particularly among proponents of neoliberal capitalism, often rests on the assumption that no viable alternative to the existing system exists. The familiar refrain, '*There Is No Alternative*' (TINA), is deployed to dismiss critiques of capitalism by highlighting the failures of 20th-century communist regimes, most prominently the Soviet Union. Yet this binary framing of capitalism versus communism obscures the historical and theoretical richness of other socio-economic models. Alternative frameworks—from the French solidarist tradition to participatory and ecological economics—have long

challenged the assumption that markets, competition, and commodification constitute the only legitimate foundations for economic organisation. Human societies, for millennia, have functioned according to principles that do not prioritise the accumulation of wealth, individualism, or the concentration of power in private hands. The marginalisation of these alternatives stems less from their impracticality than from the ideological dominance and institutional entrenchment of neoliberal orthodoxy. From McCarthyism to contemporary campaigns that equate dissent with extremism, critiques of capitalism are frequently delegitimised or pathologised. As Paul Krugman has observed, neoliberal policies systematically concentrate wealth while entrenching elite interests and excluding alternative economic perspectives from mainstream policy debates.¹⁷⁹

Within this context, social human rights occupy an ambivalent position. While often lauded as instruments of justice and equality, they have historically served to stabilise capitalism by mitigating its social consequences without challenging its underlying structures. Welfare states provide meaningful protections but frequently act as buffers against the crises generated by capital-labour relations. Inequality is regulated, but the mechanisms that produce it, private property, market competition, and profit-driven allocation, remain largely unchallenged. International human rights law acknowledges economic and social rights, yet these frameworks are ultimately constrained by property regimes and market liberalism. Courts may delay evictions or order limited restitution, but the commodification of housing and the prioritisation of profit often remain unexamined. This tension underscores a central limitation: the transformative potential of social rights is curtailed when they operate within, and in service of, capitalist structures.¹⁸⁰

In order to realise their emancipatory potential, social rights must be redefined as transformative tools. These are legally and socially enforceable entitlements that aim to restructure economic and social relations in alignment with principles of solidarity, sustainability, and democratic oversight, not merely to correct inequality. Unlike conventional social rights, which often protect individuals from market failures, transformative social rights are oriented towards systemic change. They challenge the commodification of essential goods, contest hierarchical property relations and prioritise collective well-being over profit.

¹⁷⁹ Byttembier (n 87), pp 397-400.

¹⁸⁰ Salomon (n 113), pp 867; 876-877.

Implementing this framework requires legal and institutional innovation. Essential goods such as housing, healthcare, and education could be treated as social commons rather than market commodities and be governed collectively by communities or through participatory institutions. Economic governance could be democratised by expanding worker cooperatives, participatory budgeting, and community land trusts, thereby embedding collective decision-making in production and resource allocation. Social and environmental accountability would also be central to this framework, ensuring that property and investment decisions serve collective needs and respect ecological limits rather than prioritising private profit.

Concrete examples demonstrate the practical feasibility of these principles. For instance, participatory budgeting (PB) has emerged globally as an innovative tool for strengthening democratic engagement, enhancing transparency, and increasing public trust in governance. First developed in Porto Alegre, Brazil, in the late 1980s, PB enables citizens to participate directly in decisions about the allocation of public funds, thereby transforming them into active co-producers of policy outcomes rather than passive beneficiaries. PB is characterised by its focus on financial processes, broad public involvement, cyclical implementation, deliberation, and accountability. Not only does PB improve public infrastructure and services, it also fosters political equality, civic responsibility, and democratic education, particularly among younger generations. The practice has since spread to thousands of towns, cities, and regions worldwide, including in Europe, Asia, and the Americas, and has been adapted for use in settings such as schools, community groups and prisons. While PB shows significant potential in addressing democratic malaise and socio-economic inequality, its effectiveness hinges on inclusivity, robust civil society support, political commitment, and integration with other participatory and deliberative practices, ensuring marginalised voices are represented and projects are implemented.¹⁸¹ In Latin America and Africa, indigenous land restitution, combined with protections against extractive exploitation, has challenged entrenched property hierarchies and ensured collective stewardship of resources. In these instances, rights do more than mitigate harm; they fundamentally reshape social, economic, and environmental relations.

By design, transformative social rights go beyond capitalism. They reject the idea that economic growth, capital accumulation and investment protection are compatible with fulfilling human needs. Instead, they prioritise human dignity, ecological sustainability, and social solidarity. In

¹⁸¹ Silvia Kotanidis and Christian Recchia, 'Participatory budgeting: A pathway to inclusive and transparent governance' (European Parliamentary Research Service, Briefing PE 762.412, 26 September 2024) [https://www.europarl.europa.eu/RegData/etudes/BRIE/2024/762412/EPRS_BRI\(2024\)762412_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2024/762412/EPRS_BRI(2024)762412_EN.pdf)

practice, this means rights that are not dependent on market forces, but which form the basis of a post-capitalist political economy. Property and markets are no longer treated as ends in themselves; rather, their legitimacy depends on their ability to promote collective well-being within ecological and social boundaries.

The normative justification for this framework is based on the idea that human rights are instruments of emancipation rather than just instruments of social stabilisation. When genuinely transformative, social rights assert the primacy of human needs over market logic, challenge hierarchies of wealth and power, and provide mechanisms for participatory decision-making in economic and social life. They are not merely corrective measures to address inequality; they are catalysts for systemic transformation.

Reimagining social rights as transformative tools requires a normative, legal, and institutional shift. Rights must be disentangled from the imperatives of capital accumulation and reframed as instruments for building alternative political economies rooted in solidarity, sustainability, and democratic governance. Only through such a framework can social rights fulfil their potential as instruments of emancipation rather than instruments of accommodation, challenging the structural logics of capitalism and laying the groundwork for a more just and equitable society.

VIII. Conclusion

This thesis asks whether social human rights can be realised effectively within capitalist political economies. The analysis provides an unequivocal answer: social rights, as robust and universal guarantees, are incompatible with capitalism. The partial recognition of these rights in welfare states, international treaties and constitutional frameworks has not overcome the structural contradiction between their universal, non-market nature and the fact that capitalism relies on commodification and profit maximisation.

Investigating the historical development of social rights revealed that their roots extend deep into moral, religious, and early modern legal traditions, predating their codification in international law. However, this genealogy also revealed a recurring pattern: obligations towards the vulnerable have always been conditional and contested, and have been subject to reversal when economic or political priorities have shifted. Similarly, analysis of post-1945 codifications, such as the International Covenant on Economic, Social and Cultural Rights, and regional human rights systems, demonstrated that the formal inscription of social rights in law

has been consistently undermined by weak enforcement mechanisms and the dominance of market imperatives in global governance.

Examining capitalist property relations, labour markets and welfare regimes confirmed that the limits of social rights are structural, not incidental. Although welfare states temporarily mitigated insecurity and inequality, their protections were designed to stabilise capitalism rather than transcend it. The reduction of welfare provisions in the late twentieth century shows that such rights depend on economic growth and are vulnerable to austerity measures in times of crisis. Case studies of housing and healthcare emphasise this precariousness: while rights have been recognised in principle by courts and constitutions, their implementation has been systematically curtailed by the logics of property, scarcity, and profit.

Taken together, these findings confirm the working hypothesis that under capitalism, social rights can only ever be realised in incomplete, unstable, and contingent forms. They may serve as safety nets, but they cannot fulfil their emancipatory potential as universal guarantees. Securing that promise requires reimagining social rights as decommodified, collectively provided guarantees of human dignity, rather than as entitlements contingent on markets. This would require legal and institutional frameworks based on solidarity, equality, and democratic control over resources – frameworks that move beyond the primacy of accumulation.

The contribution of this thesis to legal scholarship is therefore threefold. Firstly, it shows that the fragility of social rights stems from capitalism's structural logic, not just weak enforcement or political will. Secondly, it shows that law cannot be understood in isolation from political economy and that doctrinal analysis must consider broader dynamics of accumulation and exploitation. Thirdly, it outlines the parameters of an alternative vision of rights, in which law supports decommodification, collective provision and democratic participation.

In short, the central question can be answered conclusively: social rights and capitalism are fundamentally incompatible. For social human rights to be realised in their full, universal sense, legal scholarship and political practice must look beyond the compromises of capitalist welfare states and towards transformative frameworks that prioritise human dignity over profit.

Bibliography

International Treaties

- International Covenant on Civil and Political Rights (ICCPR) (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171
- International Covenant on Economic, Social and Cultural Rights (ICESCR) (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3
- Universal Declaration of Human Rights (UDHR) GA Res 217A (III), UNGAOR, 3rd Sess, 183rd plen mtg, UN Doc A/810 (10 December 1948)
- United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) GA Res 61/295, UNGAOR, 61st Sess, 107th plen mtg, UN Doc A/RES/61/295 (13 September 2007)
- European Convention on Human Rights (ECHR) (entered into force 3 September 1953) ETS 5
- European Social Charter (ESC) (revised) (entered into force 1 July 1999) ETS No 163
- American Convention on Human Rights (ACHR) (entered into force 18 July 1978) OAS Treaty Series No 36
- African Charter on Human and Peoples' Rights (AfCHPR) (adopted 27 June 1981, entered into force 21 October 1986) OAU Doc CAB/LEG/67/3 rev 5

Books and Book Chapters

- Beckert S and Rockman S (eds), *Slavery's Capitalism: A New History of American Economic Development* (University of Pennsylvania Press 2016)
- Brown PRL, *Poverty and Leadership in the Later Roman Empire* (University Press of New England 2002)
- Byttebier K, *Ethics of Socioeconomics: Critical Observations on Capitalism through the Lens of a Lawyer* (Economic and Financial Law & Policy – Shifting Insights & Values, Springer Cham 2024)
- Charlesworth L, *Welfare's Forgotten Past: A Socio-Legal History of the Poor Law* (1st edn, Routledge 2010)
- Chirwa DM, 'African Regional Human Rights System: The Promise of Recent Jurisprudence on Social Rights' in Malcolm Langford (ed), *Social Rights Jurisprudence:*

Emerging Trends in International and Comparative Law (Cambridge University Press 2009) 323

- Christiansen CO and Jensen SLB, ‘The Road from 1966: Social and Economic Rights after the International Covenant’ in Jensen SLB and Walton C (eds), *Social Rights and the Politics of Obligation in History* (Cambridge University Press 2022)
- Delalande N, ‘Socio-economic Rights before the Welfare State: Labour Movements and Economic Emancipation in Nineteenth-Century Europe’ in Jensen SLB and Walton C (eds), *Social Rights and the Politics of Obligation in History* (Cambridge University Press 2022)
- Deliyanni-Dimitrakou C, ‘The European Social Charter and the European Convention on Human Rights’ in *The European Social Charter: A Commentary*, vol 1 (Brill | Nijhoff 2022)
- Edelstein D, ‘Public Welfare and the Natural Order: On the Theological and Free-Market Sources of Socio-economic Rights’ in Jensen SLB and Walton C (eds), *Social Rights and the Politics of Obligation in History* (Cambridge University Press 2022)
- Fulcher J, *Capitalism: A Very Short Introduction* (Oxford University Press 2004)
- Garland D, *The Welfare State: A Very Short Introduction* (Oxford University Press 2016)
- Grote R, ‘The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights – Towards a More Effective Implementation of Social Rights?’ in Holger P Hestermeyer et al (eds), *Coexistence, Cooperation and Solidarity: Liber Amicorum Rüdiger Wolfrum* (2 vols, Brill 2012) vol 1, 417
- Inikori JE, Solow BL and Engerman SL, ‘Slavery and the Development of Industrial Capitalism in England’ in *British Capitalism and Caribbean Slavery: The Legacy of Eric Williams* (Cambridge University Press 1988)
- Jensen SLB and Walton C (eds), *Social Rights and the Politics of Obligation in History* (Cambridge University Press 2022)
- King P, ‘The Rights of the Poor and the Role of the Law: The Impact of Pauper Appeals to the Summary Courts 1750–1834’ in Jones P and King S (eds), *Obligation, Entitlement and Dispute under the English Poor Laws* (Cambridge Scholars 2015)
- Mattei CE, *The Capital Order: How Economists Invented Austerity and Paved the Way to Fascism* (University of Chicago Press 2022)
- Melish TJ, ‘The Inter-American Commission on Human Rights: Defending Social Rights Through Case-Based Petitions’ in Langford M (ed), *Social Rights Jurisprudence: Emerging Trends in International and Comparative Law* (Cambridge University Press 2009)

- ——— ‘The Inter-American Court of Human Rights: Beyond Progressivity’ in Langford M (ed), *Social Rights Jurisprudence: Emerging Trends in International and Comparative Law* (Cambridge University Press 2009)
- McClure J, ‘The Rights of the Poor Taking the Long View’ in Jensen SLB and Walton C (eds), *Social Rights and the Politics of Obligation in History* (Cambridge University Press 2022)
- O’Cinneide C, ‘Austerity and the Faded Dream of a “Social Europe”’ in Aoife Nolan (ed), *Economic and Social Rights after the Global Financial Crisis* (Cambridge University Press 2014) 169
- Robinson CJ, *Black Marxism: The Making of the Black Radical Tradition* (rev edn, University of North Carolina Press 1983)
- Sawyer SW and Novak WJ, ‘Of Rights and Regulation: Technologies of Socio-economic Governance in a Revolutionary Age’ in Jensen SLB and Walton C (eds), *Social Rights and the Politics of Obligation in History* (Cambridge University Press 2022)
- Tierney B, *Medieval Poor Law: A Sketch of Canonical Theory and Its Application in England* (University of California Press 1959)
- Walton C, ‘Who Pays? Social Rights and the French Revolution’ in Jensen SLB and Walton C (eds), *Social Rights and the Politics of Obligation in History* (Cambridge University Press 2022)
- Williams E, *Capitalism and Slavery* (University of North Carolina Press 1994)

Journal Articles

- Ashamu E, ‘Centre for Minority Rights Development (Kenya) and Minority Rights Group International on Behalf of Endorois Welfare Council v Kenya: A Landmark Decision from the African Commission’ (2011) 55(2) *Journal of African Law* 300
- Chenwi L, ‘Correcting the Historical Asymmetry between Rights: The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights’ (2009) 9 *African Human Rights Law Journal* 23
- Chilton A and Versteeg M, ‘Rights without Resources: The Impact of Constitutional Social Rights on Social Spending’ [2017] 60(4) *Journal of Law and Economics* 713
- Dahlberg M, ‘Should Social Rights Be Included in Interpretations of the Convention by the European Court of Human Rights?’ (2014) 16(3) *European Journal of Social Security* 222

- Davis AJ, ‘The Social and Religious Meanings of Charity in Medieval Europe’ (2014) 12(12) *History Compass* 935
- de Albuquerque C, ‘Chronicle of an Announced Birth: The Coming into Life of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights—The Missing Piece of the International Bill of Human Rights’ (2010) 32(1) *Human Rights Quarterly* 144
- Gaitenidis N, ‘Indigenous Peoples, Cultural Heritage, and Traditional Knowledge: Untying the Gordian Knot of Human Rights and Intellectual Property in International Law’ (2025) *International Journal on Minority and Group Rights* 1
- Healey J, ‘Social Discipline and the Refusal of Poor Relief under the English Old Poor Law, c. 1650–1730’ (2024) 67 *The Historical Journal* 920
- Kabeer N, Razavi s and van der Meulen Rodgers Y, ‘Feminist Economic Perspectives on the COVID-19 Pandemic’ (2021) 27 *Feminist Economics* 1-29
- Lambrecht T and Winter A, ‘An Old Poor Law on the Continent? Agrarian Capitalism, Poor Taxes, and Village Conflict in Eighteenth-Century Coastal Flanders’ (2017) *Economic History Review* 1
- Lancee B and Van De Verhorst HG, ‘Income inequality and participation: A comparison of 24 European countries’ (2012) 41(5) *Social Science Research* 1166
- Rösch R, ‘Indigenusness and Peoples’ Rights in the African Human Rights System: Situating the Ogiek Judgement of the African Court on Human and Peoples’ Rights’ (2017) 3 *Heidelberg Journal of International Law (ZaöRV)* 242
- Salomon ME, ‘Emancipating Human Rights: Capitalism and the Common Good’ (2023) 36 *Leiden Journal of International Law* 857
- Szewczyk J and Crowder Meyer M, ‘Community Income Inequality and the Economic Gap in Participation’ (2022) 44 *Political Behavior* 479
- van Nederveen Meerkerk E and Teeuwen D, ‘The Stability of Voluntarism: Financing Social Care in Early Modern Dutch Towns Compared with the English Poor Law, c. 1600–1800’ (2014) 18 *European Review of Economic History* 82
- Vivas-Barrera TG, Quintero-Sánchez GA and Pérez-Salazar B, ‘From terra nullius to Indigenous collective land rights: cases before the Inter-American Court of Human Rights’ (2023) 19(1) *AlterNative* 101

Conference Papers

- Pirni A, 'Heritages of Radical Enlightenment. Kant's Contribution to the Affirmation of Social Rights' (2023) 161 *SHS Web of Conferences* 06006

Cases

- *Ben Djazia and Bellili v Spain*, Communication No 5/2015, UN Doc E/C.12/61/D/5/2015 (20 June 2017)
- *Braidwood Management, Inc et al v Xavier Becerra et al*, No 23-10326 (5th Cir, 2025)
- *British Columbia (Public Service Employee Relations Commission) v BCGSEU* [1999] 3 SCR 3 (SCC)
- Bundesverfassungsgericht [BVerfG] [Federal Constitutional Court] 9 Feb. 2010 (Hartz IV), 125 ENTSCHEIDUNGEN DES BUNDESVERFASSUNGSGERICHTS [BVERF GE] 175 (___), 1 B VL 1/09, para 1-220, 2010
- Bundesverfassungsgericht [BVerfG] [Federal Constitutional Court], Judgment of the First Senate of 18 July 2012 - 1 BvL 10/10 -, paras 1-113
- *California v Texas*, 593 US 659 (2021)
- *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya*, Communication No 276/03, African Commission on Human and Peoples' Rights (25 November 2009)
- *Connors v United Kingdom* Application No 66746/01 (ECtHR, 27 May 2004)
- Constitutional Court of Latvia, Case no 2009-43-01 (21 December 2009)
- Constitutional Court of Portugal, Judgment no 187/2013 (5 April 2013)
- Constitutional Court of Portugal, Judgment no 353/2012 (5 July 2012)
- Corte Constitucional [CC] [Constitutional Court], Sala Segunda de Revisión julio 31, 2008, MP: Manuel José Cepeda Espinoza, Sentencia T-760/08 (Colom)
- *DH and Others v Czech Republic*, App no 57325/00 (ECtHR, 13 November 2007)
- *El Ayoubi and Others v Spain*, Communication No 54/2018, UN Doc E/C.12/69/D/54/2018 (4 March 2021)
- *El Goumari and Others v Spain*, Communication No 85/2018, UN Doc E/C.12/69/D/85/2018 (4 March 2021)

- *European Federation of National Organisations working with the Homeless (FEANTSA) v France* Complaint No 39/2006 (ECSR, 5 December 2007)
- *Ex parte Chairperson of the Constitutional Assembly: In re Certification of the Constitution of the Republic of South Africa* (1996) ZACC 26, (1996) 4 SA 744 (CC)
- *Ghigo v Malta* App no 31122/05 (ECtHR, 26 September 2006)
- *Gómez-Limón Pardo v Spain*, Communication No 52/2018, UN Doc E/C.12/67/D/52/2018 (17 March 2020)
- *Hutten-Czapska v Poland* App no 35014/97 (ECtHR [GC], 19 June 2006)
- *IDG v Spain* Communication No 2/2014 UN Doc E/C.12/55/D/2/2014 (13 October 2015)
- *Johnson v Transportation Agency, Santa Clara County* 480 US 616 (1987)
- *Kichwa Indigenous People of Sarayaku v Ecuador (Merits and Reparations)*, IACtHR Series C No 245 (27 June 2012)
- *Koufaki and ADEDY v Greece* Application nos 62235/12 and 57725/12 (ECtHR, 7 May 2013)
- *Lagos del Campo v Peru* (Merits, Reparations and Costs) Judgment, Series C No 340, 31 August 2017
- *López Albán and Others v Spain*, Communication No 37/2018, UN Doc E/C.12/66/D/37/2018 (8 July 2019)
- *Mamatas and Others v Greece* Application nos 63066/14, 64297/14 and 66106/14 (ECtHR, 21 July 2016)
- *Maya Indigenous Community of the Toledo District v Belize*, Case 12.053, Report No 40/04, IACHR, OEA/Ser.L/V/II.122 Doc 5 rev 1, 727 (2004)
- *Mayagna (Sumo) Awas Tingni Community v Nicaragua (Merits, Reparations and Costs)*, IACtHR Series C No 79 (31 August 2001)
- *Medina v Planned Parenthood South Atlantic*, 606 U.S. ____ (2025)
- *Mehmet Şentürk and Bekir Şentürk v Turkey* App no 13423/09 (ECtHR, 9 April 2013)
- *Mellacher and Others v Austria* App nos 10522/83, 11011/84 and 11070/84 (ECtHR, 19 December 1989)
- *Minister of Finance and Other v Van Heerden* [2004] ZACC 3; 2004 (6) SA 121 (CC)
- *Minister of Health and Others v Treatment Action Campaign and Others (No 2)* (CCT8/02) [2002] ZACC 15; 2002 (5) SA 721 (CC)
- *Moiwana Village v Suriname* (Merits, Reparations and Costs) Judgment, IACHR Series C No 124 (2005)

- *MSS v Belgium and Greece* App no 30696/09 (ECtHR, 21 January 2011)
- *National Federation of Independent Business v Sebelius*, 567 US 519 (2012)
- *Nitecki v Poland* (dec.) App no 65653/01 (ECtHR, 21 March 2002)
- *Occupiers of 51 Olivia Road, Berea Township and 197 Main Street Johannesburg v City of Johannesburg and Others* [2008] ZACC 1; 2008 (3) SA 208 (CC)
- *Opuz v Turkey* Application no 33401/02 (ECtHR, 9 June 2009)
- *Paschim Banga Khet Mazdoor Samity v State of West Bengal* (1996) AIR SC 2426
- *Patan Jamal Vali v The State of Andhra Pradesh* AIR 2021 SC 2190
- *Pentiacova and Others v Moldova* (dec.), App no 14462/03, 4 January 2005
- *Port Elizabeth Municipality v Various Occupiers* (2005) ZACC 20, (2005) 1 SA 217 (CC)
- *R v Gladue* [1999] 1 SCR 688
- *R (on the application of SG and others) v Secretary of State for Work and Pensions* [2015] UKSC 16
- *Republic of South Africa v Grootboom* (2001) ZACC 19, (2001) 1 SA 46 (CC)
- *Saramaka People v Suriname* (Preliminary Objections, Merits, Reparations and Costs), IACtHR Series C No 172 (28 November 2007)
- *Sawhoyamaxa Indigenous Community v Paraguay* (Merits, Reparations and Costs) Judgment, IACHR Series C No 146 (2006)
- *Sentges v The Netherlands* (dec.) App no 27677/02 (ECtHR, 8 July 2003)
- *Social and Economic Rights Action Center (SERAC) and Another v Nigeria* Communication No 155/96 (ACHPR, 27 October 2001)
- *Soobramoney v Minister of Health (Kwazulu-Natal)* (CCT32/97) [1997] ZACC 17; 1998 (1) SA 765 (CC)
- *Spadea and Scalabrino v Italy* App no 12868/87 (ECtHR, 28 September 1995)
- *Vishakha and others v State of Rajasthan* AIR 1997 SC 3011
- *Winterstein and Others v France* Application no 27013/07 (ECtHR, 17 October 2013)
- *Yakye Axa Indigenous Community v Paraguay* (Merits, Reparations and Costs) Judgment, IACHR Series C no 125 (2005)

Encyclopaedias, Fact Sheets, and Reports

- Action Coalition on Economic Justice and Rights, *Increase Women's Economic Empowerment by Transforming the Care Economy* (UN Women, 2022)
- Folbre N, *Developing Care: Recent Research on the Care Economy and Economic Development* (International Development Research Centre, 2018)
- Global Initiative for Economic, Social and Cultural Rights, 'CESCR Jurisprudence' (26 April 2021) <https://gi-escr.org/en/cescr/cescr-jurisprudence#analysis> accessed 13 July 2025
- Kotanidis S and Recchia C, 'Participatory budgeting: A pathway to inclusive and transparent governance' (European Parliamentary Research Service, Briefing PE 762.412, 26 September 2024)
- Majinge C, 'Housing, Right to, International Protection' (June 2010) *Max Planck Encyclopedia of Public International Law* (Oxford University Press)
- Office of the United Nations High Commissioner for Human Rights and World Health Organization, *The Right to Health: Fact Sheet No. 31* (Geneva, OHCHR/WHO)

Abstract

This thesis examines the feasibility of realising social human rights, such as the rights to housing, healthcare, education, food, and social security, within capitalist political economies. It traces the historical development, legal codification, and implementation of these rights through welfare regimes, and highlights the ways in which property relations, market imperatives and austerity can constrain their enforcement. By combining legal analysis with political economy, the thesis argues that the recognition of social rights is fragile: while welfare states and human rights instruments offer some protection, they primarily serve to stabilise capitalism. Case studies of housing and healthcare demonstrate how the commodification of these rights and the resulting inequality undermine them, leaving them partial and contingent. Ultimately, the thesis concludes that capitalism and social human rights are structurally incompatible and that their genuine realisation requires these rights to be reimagined as tools of decommodification, solidarity and democratic control.

Zusammenfassung

Diese Masterarbeit untersucht die Realisierbarkeit sozialer Menschenrechte sowie das Recht auf Wohnen, Gesundheitsversorgung, Bildung, Ernährung und soziale Sicherheit innerhalb kapitalistischer politischer Volkswirtschaften. Sie zeichnet die historische Entwicklung, die gesetzliche Kodifizierung und die Umsetzung dieser Rechte durch Sozialsysteme nach und zeigt auf, wie Eigentumsverhältnisse, Marktanforderungen und Sparmaßnahmen deren Durchsetzung einschränken können. Durch die Verbindung von rechtlicher Analyse und politischer Ökonomie argumentiert die Arbeit, dass die Anerkennung sozialer Rechte fragil ist: Wohlfahrtsstaaten und Menschenrechtsinstrumente bieten zwar einen gewissen Schutz, dienen aber in erster Linie der Stabilisierung des Kapitalismus. Fallstudien zu Wohnraum und Gesundheitsversorgung zeigen, wie die Kommodifizierung dieser Rechte und die daraus resultierende Ungleichheit sie untergraben und sie unvollständig und bedingt machen. Letztendlich kommt die vorliegende Arbeit zu dem Schluss, dass Kapitalismus und soziale Menschenrechte strukturell unvereinbar sind und dass ihre echte Verwirklichung erfordert, dass diese Rechte als Instrumente der Entkommodifizierung, Solidarität und demokratischen Kontrolle neu gedacht werden.