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Socio-economic rights and a Bill of Rights - an overlooked British tradition

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***P.L. 821** It is frequently assumed that socio-economic¹ rights derive only from international and regional human rights instruments² and comparative law sources, principally Commonwealth³ and Latin American⁴ and that the enshrining of socio-economic rights is either alien or new to the United Kingdom and a departure from British legislative traditions. However such assumptions, although asserted, have rarely if ever been rigorously examined.

By ignoring any historical evidence it is assumed by some that socio-economic rights are only appropriate for states which have emerged from oppressive regimes and for poorer developing states. Such a denial, however, also disregards statistical evidence that the popularity of some socio-economic rights with the British people has been consistently high.⁵ An additional hurdle to such historical enquiries is that socio-economic rights are considered by some to be second generation rights, or "red" rights linked to a particular socialist, left or radical ideology,⁶ which, aside ***P.L. 822** from being open to challenge,⁷ has the consequence that those arguing for their inclusion into UK legislation are consistently placed at a disadvantage, as the arguments are principally defensive. An additional layer to this rejectionist argument is that because the United Kingdom has a developed welfare state, which has particular British antecedents, the parliamentary protection of the welfare state, together with a more expanded judicial review, is sufficient for achieving a necessary level of socio-economic entitlement.⁸ Such an argument, however, not only fails to consider the British history of socio-economic rights but also ignores the comments of the United Nations Committee on Economic, Social and Cultural Rights on the United Kingdom's report. According to the UN Committee the United Kingdom has failed to act fully to implement its binding legal obligations under the Covenant on Economic, Social and Cultural Rights 1966 because the Covenant "cannot be directly invoked before the courts" and because of successive government erroneous assertions that economic, social and cultural rights are "mere principles and values".⁹ Finally, the very wording "Human Rights Act", even though it echoes the European Convention on Human Rights, leads to an assumption by

many within the United Kingdom, that the Human Rights Act has enshrined all of the human rights which have been a part of the British rights tradition and required by international human rights law. This enquiry into the British tradition of socio-economic rights examines the possibility that such assertions do not accurately reflect British history. Interestingly such defensiveness echoes the arguments made prior to the partial incorporation of the European Convention on Human Rights, that the United Kingdom had the traditions of Magna Carta 1215, the Bill of Rights 1689 and the common law, and so fully protected human rights by a British cocktail of legislation and case law.¹⁰

According to these accumulated arguments, additional protections such as the incorporation of the socio-economic rights into British legislation would, therefore be alien, unnecessary and superfluous.¹¹ However, such conclusions are rarely challenged by analysing the British historical sources. An analysis of socio-economic entitlement is therefore not only overdue but also urgent in light of a persistent lack of social mobility and the establishment of food programmes in England by charities more accustomed to providing overseas aid. In addition, such an historical enquiry is pertinent in light of the insufficiency of the welfare **P.L. 823* state as being contrary to the United Kingdom's legal obligations, and the debate surrounding a possible new Bill of Rights.¹² Hence it is timely to consider whether there are any British sources, which may assist in rebutting the arguments that socio-economic rights are alien to the British and particularly the English tradition, and are merely transplants from other traditions.

To rebut such claims it is necessary to consider some of the frequently overlooked provisions of the Magna Carta other than its civil and political rights provisions, its sister Carta, the Charter of the Forest, the Welsh Laws of Hwyl Dda, judicial decisions which concern issues of socio-economic entitlement even though the decisions precede the contemporary language of socio-economic rights, and the contribution to the formation of international laws and the French Constitution made by those from Britain.¹³ In seeking to enquire whether there is any justification for arguing that socio-economic rights are also British rights, which in the political vernacular surrounding human rights also ought to be brought "back home", it is not the author's intention to argue that such sources provide an exclusively British rationale for socio-economic rights, but to show that these rights also have historical origins dating back to the medieval English and Welsh cultures.

It is also necessary to distinguish between four concepts: the principle of necessity, distributive justice, the welfare state and socio-economic rights. The right of necessity was developed in medieval canon law and, according to Huguccio, was:

"by natural law all things are common, which means in times of necessity they must be shared with those who need them."¹⁴

The right of necessity, however, was a principle with a very restricted original ambit, applying only to the taking of another's property without consent if it was necessary for the saving of life: in other words, a very limited suspension of property rights.¹⁵ This is clearly different from the concept of socio-economic entitlement as set out below in the Charter of the Forest and developed later in the 18th century. Distributive justice in its modern sense, according to Flieschaker:

"calls on the state to guarantee that property is distributed throughout society so that everyone is supplied with a certain level of material means."¹⁶

Distributive justice in philosophical terms is also a broader term than socio-economic entitlement, and is sometimes used interchangeably with social justice.¹⁷ However, early references to distributive justice in either religious or political philosophies are unsustainable as evidence to substantiate an early **P.L. 824** articulation of socio-economic rights in law, which must rest upon a legal codification or a call for legal codification. The concept of a welfare state includes the movement of funding from the state to both welfare services such as the National Health Service and directly to individuals but is subject to political variation constrained in the United Kingdom by judicial review, the Human Rights Act 1998 and the European Convention on Human Rights 1950.¹⁸ Socio-economic rights is a term used to include all of the economic, social and cultural rights, including the right to an adequate standard of living, the right to food, shelter, clothing, just and favourable conditions of work, to social security, education and to benefit from scientific progress. Their incorporation in domestic bills and charters of rights has generated a variety of methods of protection from their inclusion as legislative goals of the state to full justiciability.¹⁹

The medieval tradition and socio-economic-rights

The earliest source for arguing that socio-economic rights are a part of the English legal heritage are the provisions on socio-economic rights in the Magna Carta 1215. The Magna Carta, in addition to its more widely celebrated provisions on civil and political rights or liberties, incorporated clauses relating to the royal forests seeking to impose limitations upon the King's sole rights as enshrined in forest law.²⁰ The historical concept of forest was different from its contemporary meaning of a heavily wooded area; it was (and is²¹) an area originally designated where forest law applied. The Norman concept of forest, which was introduced into England in the 11th century, protected areas for hunting for the exclusive use of the monarch. At its most extensive, in the late 12th and early 13th century, approximately one third of the land of southern England was created as royal forest, and one quarter of land in all of England,²² and its impact therefore upon basic livelihoods cannot be underestimated. According to Bazeley there was, however, much ambiguity surrounding the concept of forest, because it denoted either the entire area or a particular administrative area within it, and there

was also some evidence of the privatisation of forests, but from "the perspective of the ordinary Englishman the distinction did not seem very important ... as the restrictions were almost as severe."²³ From the royal perspective the aim of forest law was to grant exclusive title to the venison and the vert, i.e. the animals of the chase and the greenery upon which they fed. It also included large areas of heathland, grassland and wetlands, which were also capable of providing food and grazing for animals. ***P.L. 825** Importantly, when an area was designated as forest the villages, towns and fields which lay within the area were also included and subject to forest law. As a consequence local inhabitants were restricted in the use of land which they relied upon to live.²⁴ Hence the increasing desperation faced by those living in afforested areas, as they were no longer able to live off the land, because once afforested it became illegal to hunt for food, firewood and building materials: three essentials for life in medieval England. Viewed from this perspective the importance of Ch.47 of the Magna Carta becomes apparent:

"All forests that have been created in our reign shall at once be disafforested. River-banks that have been enclosed in our reign shall be treated similarly."

As disafforest meant to revert from the legal status of a forest claimed by the monarch to that of ordinary land, it restored rights to people who were accustomed to enjoying such socio-economic rights before King John's seizure of land.

The Magna Carta of 1215 also enshrined one of the earliest state legislative protections of the rights of women, protecting the economic rights of widows, who were guaranteed that they could retain their marriage portion and inheritance after the death of a husband with a right to the family home for 40 days.²⁵ In addition to Holt's assertion that this "was one of the first great stages in the emancipation of women",²⁶ the provision is also significant because of the continuing overrepresentation of women globally amongst the impoverished, hence the number of women, who have either been party to leading socio-economic rights jurisprudence or directly benefitted from it.²⁷ However, in 1217, when the Magna Carta was again promulgated, the provisions relating to the afforested land were removed, expanded upon and incorporated in the Charter of the Forest.²⁸

The Charter of the Forest followed the reissue in 1216 and 1217 of the Magna Carta and, whilst not seeking to minimise the contribution of the Magna Carta, its principal impact was upon the lives of the King and the Barons. In contrast, the Charter of the Forests re-established rights of access to the forest for freemen, and provided entitlements and protections for a greater range of citizens of both genders. Prior to the Charter of the Forest anyone whose animals grazed upon forest land or who hunted in the forest was subject to severe penalties, including dismemberment or death.²⁹ The Charter of the Forest reduced these penalties and reclaimed some of the common land

from the Crown.³⁰ Therefore, although it has **P.L. 826* become traditional to characterise the Magna Carta as a bastion against terror and violence, as Linebaugh comments "[s]ometimes a local tyrant established a veritable reign of terror", from which the Charter of the Forest provided liberation.³¹ Hence within the Charter of the Forest is a linking of socio-economic entitlement and the civil rights protections against arbitrary and cruel punishment. As it is frequently argued that the Magna Carta provides the starting point for the British tradition of protecting civil liberties, which later developed into the protection of civil and political rights, so it is equally arguable that the Magna Carta, together with the Charter of the Forest, provide equally authoritative sources for arguing that these are the starting points for a long and overlooked British tradition of protecting socio-economic rights. This medieval and early British, or more correctly English, tradition ought to be recognised as contributing just as fundamental a role in the formation of the international creation of socio-economic rights as has been claimed for the Magna Carta in relation to the international protection of civil and political rights.

In addition it is arguable that, despite the fact that the Charter of the Forest has been forgotten by many, the nature of the rights enshrined in the Charter of the Forest had a far greater beneficial and practical impact on the daily lives of a greater number of people than did the Magna Carta. This is not to argue that it created a universality of rights, as neither did the Magna Carta, but it did impact beneficially on lower feudal classes and also upon women; the seizure of traditional common land significantly reduced the economic livelihood of women, because rights to estovers, or the gathering of fuel, was principally done by women and children, and the common rights of herbage, or grazing rights, which permitted the keeping of cows, providing both for milk and cheese and manure, was also traditionally the work of all members of the family.³² Such an observation is not to minimise the crucial importance of the legal principles both enshrined in the Magna Carta and developed from it, but to recognise that in medieval England and for the next four centuries, whilst the Magna Carta spoke principally of the rights of Barons,³³ the Charter restored the traditional rights of the people where the land had once been held in common, and restrained landowners from inflicting harsh punishments on them. The Magna Carta concerned for the most part political and juridical entitlement; the Charter of the Forest was concerned with economic and social entitlement.

However, the amnesia clouding the Charter of the Forest³⁴ ought not to minimise its original fundamental importance for socio-economic rights jurisprudence. Both charters were signed by a feudal king acceding to the demands of Barons, but it is arguable that one of the reasons that the Charter of the Forest has been largely overlooked, and this is evidenced by the rare appearance of the Charter of the Forest in public law discourse or indeed in public law teaching, is that the title, the Charter of the Forest, to 20th and 21st century ears is misleading. Another **P.L. 827* reason for being overlooked is the

unfamiliarity of many contemporary scholars with medieval language and consequently medieval legal concepts. Finally, for much of the 20th and all of the 21st century, the focus on wood, honey,³⁵ etc seems trivial and even irrelevant to British contemporary life, and this may have masked the importance of these products for medieval society, in which the structure, hierarchy and life itself depended on wood for both food and shelter and honey for forms of nutrition.³⁶ However, each of these medieval rights has its counterparts in treaties focusing on human rights. The first chapter of the Charter of the Forest protected common pasture for all those "accustomed to it"; which is found in art.11 of the International Covenant on Economic, Social and Cultural Rights protecting the right to an adequate standard of living. The seventh chapter prohibited beadles or foresters from seizing lambs, piglets, sheaves of corn or oats in lieu of scotale³⁷ as established in art.11(1) of the Covenant protecting the right to food. The ninth chapter of the Charter provided for agistement,³⁸ and pannage³⁹ to freemen; and the 13th chapter established all freemen should have their honey, which again is found in art.11(1) of the Covenant. The prohibition on the seizure of livestock and crops and the protection of honey are clear forerunners of the right to adequate nutrition and the right to an adequate standard of living.

Both the Magna Carta and the Charter of the Forest extended only to England. In Wales, the Laws of Hywel Dda, whose approximate date is usually given as 1285, also have provisions, which lay the foundations for socio-economic entitlement. Hence:

"A right of all the officers is to have woollen clothing from the king and linen clothing from the queen three times every year; at Christmas and Easter and Whitsuntide."

This aspect of the right to clothing enshrined in art.11(l) of the International Covenant.⁴⁰ The Laws of Hywel Dda also provide in great detail the rights made for those who serve the King as to food and drink and the means of obtaining them so that, "[i]f the falconer kills his horse in hunting or if it should die by chance, he has another from the king."⁴¹ As with the Magna Carta the focus is on the entitlements of the few, although it extends beyond the nobility to cooks, jesters and page boys and those connected closely to serving royalty and nobility***P.L. 828** ⁴² Although the concept of universality of rights would have undermined the essentially feudal and hierarchical Kingdom, nevertheless, it remains legitimate to compare the duties placed upon monarchs and the entitlements of the few with the rights of everyone to socio-economic rights. Without such a comparison in the sphere of civil and political rights, the Magna Carta would not have achieved its potent legacy.

The historical legacy of the Magna Carta also owes much to its name; however, it is arguable that the name was a comparative Magna: not because of the inherent greater nature of its substantive provisions, but because it was bigger than the Charter of the Forest. As Holt observes, the Magna Carta was only 17 and a three quarter inches wide

and 18 and one quarter inches long and therefore was not "great" other than in a comparative sense of size.⁴³ Coke, however, referred to both as "Chartae Libertatum Angliae", the great English Charters, and both were considered sufficiently important to be read aloud four times each year.⁴⁴ In 1369, the two were treated as a single statute, and both Charters were printed together, forming the opening of the English Statutes-at-Large.⁴⁵ Hence the Magna Carta and the Charter of the Forest were intended to be complementary: this is evidenced by cl.20 of the Magna Carta, which makes it clear that its drafting occurred after a decision had been made to make a separate provision for matters concerning the forests.⁴⁶ The approach, therefore, of medieval England provides an early source for the complementarity of civil and political and economic, social and cultural rights.⁴⁷

It may, however, be argued that the Charter of the Forest did not enshrine rights but merely incorporated principles; the same argument persisted for decades in the United Kingdom concerning the European Convention on Human Rights and, theoretically, is equally applicable to the Magna Carta, which has not been decried as a charter of principles but rightly heralded as a charter of rights and liberties. However, there is evidence that those living at the time regarded the Charter of the Forest as enshrining rights. In 1290, for example, the "men" of Stoneleigh in Warwickshire petitioned the King because they had lost estovers⁴⁸ and pasturage and could no longer survive.⁴⁹ According to Blackstone, who regarded both Charters as being of equal importance, both enshrined more than principles and set out fundamental liberties. As he observed:

"There is no transaction in the antient part of our English history more interesting and important than The Great Charter and Charter of the Forest; ***P.L. 829** and yet none that has been transmitted down to us with less accuracy and historical precision." ⁵⁰

The Charter of the Forest acknowledged social and economic realities, protected the rights of the commons, and placed on a statutory basis rights which in contemporary terms are the equivalent of the rights of access to food, clothing, and housing. Although there was resistance from Henry III in seeking to reclaim land,⁵¹ the same resistance was displayed by King John, who wrote to the Pope requesting that he condemn the Magna Carta as an abomination.⁵² Nevertheless, constitutionally if the Magna Carta is regarded as the cornerstone of English liberty, then there ought to be a similar acknowledgement of the contribution of the Charter of the Forest to the development of socio-economic rights. The Charter of the Forest provided a legal link between availability and entitlement and, by asserting that the rights fundamental to human life could not be denied by political, private or royal discretion provides the basis for socio-economic entitlement. In addition, the recognition by the Charter that such rights were not only individual but part of the commons demonstrates that the western approach to human rights is not only individualistic but also has been communal from its earliest days. The Charter of the Forest, although sadly ignored,

lays down the foundations of socio-economic rights in the United Kingdom; for it to be overlooked perpetuates the myth, that socio-economic rights are alien and do not have any historical legacy in England.

From the 14th to the 20th century—reconceptualising rights

In the United Kingdom there was a hiatus of over 400 years from the enshrinement of socio-economic rights in the 13th century until their development and expanded articulation in the 18th century.⁵³ The Peasants Revolt in 1381, although calling for the free use of the forests and an end of serfdom, did not formally seek an amendment to the legal rights enshrined in the Charter of the Forest, and the leaders of the Peasants Revolt did not attempt to enshrine their proposed reforms into a new binding legal charter or statute.⁵⁴ This may be partly explained by the many judges who sat in manorial courts who were drawn from the landowning class and by the violence shown towards the legal profession during the Peasants Revolt.⁵⁵ Hence law as a peaceful vehicle for social change had very little cultural appeal.⁵⁶

Although most of the 17th century was concerned with civil and political rights, the Petition of Right in 1628, did, however, incorporate a prohibition on forced ***P.L. 830*** evictions,⁵⁷ an aspect of the right to adequate housing enshrined in art.11 of the International Covenant on Economic, Social and Cultural Rights. There was also a proposal for the right to health from the first Solicitor General of the English Commonwealth, who in 1649 led for the prosecution in the trial of King of Charles I. In 1648, John Cooke set out 12 recommendations for the health of those living in poverty,⁵⁸ which included "that Physicians, Chyrurgeons, and Apothecaries might to be assigned *in forma paperis* as well as Lawyers, Attorneys ..." He also argued for the improved legal regulation of apothecaries. Although his proposal did not result in legislation it is still evidence that there was recognition of a legal right to health with a move towards affordability and therefore universality of access, which in contemporary terms is a part of the minimum core of the right to health found in treaty law.⁵⁹

There were two significant conceptual leaps in socio-economic rights thought in the 18th century from the Charter of the Forest: the first was the concept of universality of rights, and the second was the consequential movement from charity to entitlement. The Charter of the Forest did not apply to everyone and, as is not unexpected from a feudal society, did not place an equal value on every human life; it excluded the poorest. Hence, for example, the draconian measures which were placed on peasants by the Statute of Labourers 1351, undermined contemporary socio-economic rights protection amounting to economic exploitation.⁶⁰ In addition, although the concept of an undeserving poor is often attributed to a later era, the Statute of Cambridge appeared to incorporate the first legal distinction between the concept of a deserving and undeserving poor, distinguishing between "sturdy beggars" who were regarded as

capable of work, and "impotent beggars", who could not work due to age or sickness.⁶¹ However, during the 18th century there was a significant conceptual movement away from the notion of the non-application of undeserving poor, to socio-economic rights for everyone, in other words, universality. Secondly, once it was acknowledged that the poor were no longer divinely and naturally undeserving, there could no longer be a reliance on charity, which relied upon individual patronage and discretion and which could be withdrawn. Such an approach lends substance to ***P.L. 831** Fleischaker's argument that contemporary distributive justice developed in the 18th century,⁶² arguing that:

"[i]t would be closer to the truth to say that the premodern church saw assistance to the poor as an obligation of charity or mercy and not as an act of justice, not as something to which the needy had a right." ⁶³

In addition, in considering the British tradition of socio-economic entitlement consideration ought to be given to whether a part of the British tradition drew from its impact beyond British territory. The drafting of legislative guarantees for the protection of socio-economic rights did not confine itself to United Kingdom territory, but also extended both to the drafting of other countries' legislation and to the expansion of international law. In France, Thomas Paine was a member of the committee which drafted the Constitution of the Republic of France in 1793 or Year 1. The 1793 Constitution included a new and significantly expanded Declaration of the Rights of Man and Citizen, which enshrined socio-economic rights such as the right to be protected against economic exploitation and the right to social security.⁶⁴ Conway argues that the work of drafting the 1793 Constitution was principally entrusted to Paine and Condorcet.⁶⁵ Paine was appointed to the committee, and based his contributions to the legal provisions in the 1793 Declaration of Rights of Man and Citizen on his detailed proposals in the *Rights of Man*, arguably the most expansive articulation of socio-economic entitlement of the 18th century.

Paine's writings have long entered the public law discourse.⁶⁶ In the legal field of socio-economic rights Paine's contributions ought to be considered the equivalent of those by his fellow non-lawyer, John Stuart Mill, to the field of civil and political rights.⁶⁷ In the *Rights of Man* Paine argued for pensions for men and women aged 60⁶⁸ and above and also a pension of a lesser rate for those above 50 but below 60,⁶⁹ and he specifically described each of the payments as "a right".⁷⁰ These proposals reflect the right to social security enshrined in art.9 of the International Covenant on Economic, Social and Cultural Rights. Similarly he advocated for a ***P.L. 832** sum to be paid to women in need upon the birth of a child⁷¹ and for child benefit,⁷² linking the latter to the provision of education for both genders,⁷³ regarding child benefit not only as beneficial to the present generation of children but as a tool of poverty prevention for future generations, which predates the identical approach adopted by contemporary

international human rights law. Paine, however, was not exclusively concerned with the poor; he argued that nobody should remain uneducated⁷⁴; an early precursor of the right to education for all enshrined in art.13(1) of the International Covenant on Economic, Social and Cultural Rights. Similarly he adopted the same conclusion as the European Court of Human Rights nearly two centuries later in *Inze v Austria*, that all children should be entitled to inherit family property.⁷⁵ He did, however, depart from contemporary standards of international law in regard to the right to work. In the International Covenant on Economic, Social and Cultural Rights the right to work is expressed as a fundamental right in art.6,⁷⁶ and is conceptualised by contemporary international law as universal, fundamental and an essential component of dignity. Paine, however, conceived the right to work, shelter and food in terms of conditionality, linking the right to work for unemployed young people living in urban areas, to the condition of being in work for which the state is under a duty to provide the employment and for which the state can retain a half of earnings to defray the costs of food and shelter.⁷⁷ Despite the inclusion of such detailed calculations, it would be wrong to conclude that Paine's proposals were read only by the few and ignored by the many: the popularity of Pt II of the *Rights of Man* is evidence of the historical popularity of socio-economic rights in England.⁷⁸

Paine's arguments were not only theoretical but prescient to the recent development of national and international human rights law budgeting,⁷⁹ as he costed each of his socio-economic rights, demonstrating not only that they were affordable but that they were, as with contemporary socio-economic rights, a more efficient use of resources. He also, as with contemporary socio-economic rights, distinguished between the specific entitlements of the rural poor and the urban poor.⁸⁰ It is, however, clear he did not envision a role for the English courts in protecting socio-economic rights, because of his perception of the English courts. Similar to the non-reliance on law by the leaders of the Peasants Revolt, the courts in the eighteenth century, although not dominated by feudal interests, still did not ***P.L. 833** meet contemporary standards of independence,⁸¹ and Paine did not consider English judicial institutions as principal vehicles for social change.

In the 19th century there was also some progress in the implementation of socio-economic entitlement, including the right to health. The Vaccination Acts of 1840 and 1841 established free vaccination under the supervision of the Poor Law Commission and required the poor law guardians to arrange for medical practitioners to offer vaccination to everyone. Significantly vaccinations were not means-tested but universal, despite the link with the Poor Law Commission. The 1841 Act specifically declared that the acceptance of free vaccination was "non-pauperising" and would not be considered "parochial relief".⁸² The report on the sanitary conditions in urban areas by the barrister, Edwin Chadwick,⁸³ directly led to the Public Health Act 1848. Although the 1848 Act diluted Chadwick's proposals, because it was also regarded by some as a

means of reducing the costs of public relief, it did create the right of local inhabitants to form a local board with powers to clean the streets, removing dung and rubbish, to provide sanitation,⁸⁴ regulate slaughter houses, to supply water unless a private company could provide such water, and to provide houses to receive the dead prior to burial.⁸⁵ Therefore the 1848 Act encompassed the rights to a healthy environment, water and sanitation, however, it was not a universal right because the rights were established only for rate-payers.⁸⁶ The consolidating 1875 Public Health Act also required new residences to include water and drainage. In 1874, the Hospital Saturday Fund established a fund into which working men's contributions were collected on Saturday, the day for the payment of wages, and in return they acquired a right to treatment and avoided the "stigmatising effect of Poor Law medical services".⁸⁷ The issue therefore in considering whether there is a British historical heritage for socio-economic rights, is not the advocacy or implementation of socio-economic rights, but the nomenclature.

This narrowness in conceptualisation also applies to one of Britain's acknowledged human rights legal campaigns, which succeeded domestically in the 19th century, the abolition of slavery and slave trading.⁸⁸ In the United Kingdom the abolition of slavery is, however, still perceived as an aspect of the struggle for civil and political rights, and consequently is overlooked when considering whether **P.L. 834* there is a British tradition of socio-economic rights. Admittedly there is a clear arbitrariness, inter alia, rooted in the international diplomacy of the cold war, in the distinction between civil and political rights on the one hand and socio-economic rights on the other, which is evidenced by some human rights sharing characteristics of both civil and political and socio-economic rights, such as the right to education and the right to join trade unions.⁸⁹ However, the separation between the different sets of rights is slowly being eroded as national constitutions and international treaties holistically enshrine both sets of rights in a single document and as some jurists are beginning to characterise human rights more fluidly as negative or positive rights according to the context in which they are implemented.⁹⁰

Slavery under international human rights law is prohibited expressly, both under specific treaties prohibiting slavery, including the UN Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery 1957⁹¹ and in human rights treaties focussing principally on civil and political rights, including art.4 of the European Convention on Human Rights.⁹² It is, however, also prohibited by the international legal provisions focussing on social, sexual and economic exploitation, which are expressly characterised as violations of socio-economic rights, in the International Covenant on Economic, Social and Cultural Rights,⁹³ and also are incorporated in the UN Convention on the Rights of the Child⁹⁴ and the International Labour Organisations Convention Concerning Decent Work for Domestic Workers 2011.⁹⁵ The abolition of slavery and the slave trade, was, therefore, also an example of

the successful implementation of socio-economic rights, albeit socio-economic rights for a specific group of the population.

In 1706, Chief Justice Holt had ruled that there was no more title in property in an African man than in any other man.⁹⁶ In *Somerset's Case*, Somerset, who had been held by Stewart as a slave in Virginia, which was a slave state, and who under Virginia law was the property of Stewart, was freed by Lord Mansfield. In *Somerset's Case*, the point, as Lord Mansfield acknowledged in his brief judgment, was a narrow one, focusing on the writ of *habeas corpus*: however, the Chief Justice was clearly aware of the consequences of his judgment, observing that slavery was: ***P.L. 835**

"so odious that nothing can support it but positive law. Whatever inconveniences may follow from this decision I cannot say this case is allowed or approved by the law of England." ⁹⁷

Mansfield, in freeing Somerset, does not cite any statute or common law precedent. In Scotland, in *Knight v Wedderburn*, the Court of Sessions held that slavery had no existence in Scottish common law. Lord Kames held that "we sit here to enforce right not to enforce wrong", and the court emphatically rejected Wedderburn's appeal, ruling that:

"the dominion assumed over this Negro, under the law of Jamaica, being unjust, could not be supported in this country to any extent."

The Court of Sessions clearly held that slavery, if not supported by the slave's home jurisdiction, could not be legally recognised in Scotland.⁹⁸

As Fiddes observed in relation to many of the cases which continued to deprive slaves of liberty, the arguments concerning contract were considered by the courts and in denial of liberty the contractual arguments were often determinant.⁹⁹ The right to work, which includes the right of everyone to choose freely work and the right to fair wages, is a socio-economic right and is protected by arts 6 and 7 of the International Covenant on Economic, Social and Cultural Rights. Slavery is a violation of freedom of contract, hence English and Scottish judgments, which declined to return escaped slaves to slavery, and the Slave Trade Act 1807, which prohibited further trading from Africa, and the Slavery Abolition Act 1833¹⁰⁰ ought to be considered as recognitions that the development of personal liberty in Britain had a socio-economic rights facet as well as a civil and political rights one. Viewing the abolition of slavery only through the lens of civil and political rights denies those arguing for socio-economic rights in a Bill of Rights a British legacy for socio-economic rights

In considering the British tradition of socio-economic entitlement, consideration also ought to be given to the drafting of legislative guarantees for the protection of socio-economic rights, which contributed to the expansion of international law. Although it is

often assumed that the world's first global human rights law charter was the Universal Declaration of Human Rights 1948, 24 years earlier the League of Nations had unanimously adopted a charter of human rights for children, the Declaration of the Rights of the Child 1924.¹⁰¹ The five substantive articles enshrining rights in the Declaration are exclusively socio-economic, including the rights to food, health and shelter,¹⁰² a right to relief in times of distress,¹⁰³ and a right to protection against all forms of exploitation.¹⁰⁴ Although the language of its substantive provisions is closer to child welfare, it does come under the rubric of its title, rights of the child, albeit perceiving children as objects for rights***P.L. 836** protection rather than as participatory rights holders. Its existence and its substantive provisions were due to Eglantyne Jebb, who was responsible for the original draft international legislation, which was adopted unanimously and without amendment by the League of Nations.¹⁰⁵ The Declaration of the Rights of the Child is cited in the Preamble to the United Nations Convention on the Rights of the Child 1989, acknowledging Jebb's legislative contribution as a direct predecessor of what has become the most widely ratified global human rights treaty.

Conclusion

E. P. Thompson's observation that, "[T]oo often, since every account must start somewhere, we see only the things which are new"¹⁰⁶ is particularly apposite when considering whether there is a British tradition of socio-economic rights. The overlooking of the importance of the Charter of the Forests and the enshrinement of health rights in relation to vaccination before the creation of the Nation Health Service help to perpetuate a myth that the British human rights tradition rests solely on civil and political rights.¹⁰⁷ Clearly there has been a far greater emphasis on civil and political rights when compared to socio-economic rights, nevertheless there is an ascertainable British heritage for socio-economic entitlement which renders incorrect perceptions of socio-economic rights as alien, new or a departure from a British legislative tradition. This is not to argue that it is a tradition which has always evolved on an upward trajectory, or to deny that justiciable socio-economic rights will pose new challenges for the executive, parliament and the courts, as the Human Rights Act has done.

Many of the arguments concerning a British tradition of socio-economic rights rest upon legislation or proposals for legislation and the paucity of case law may incorrectly be considered a weakness to the theory that Britain has a tradition of socio-economic rights. Socio-economic rights case law is scarce for a number of reasons—rights drafted in proposals for legislation cannot be adjudicated by courts, and where legislation existed it focused on the poorest sections of society, many of whom were illiterate and lacked the finance to initiate litigation at a time when legal aid was virtually non-existent. This was in contrast to a greater number of cases which established

important principles of civil and political rights, however, many of the points of law in civil and political rights jurisprudence including, for example, *Wilkes Case*,¹⁰⁸ were established as a result of the state initiating prosecution, or concerned the entitlements of individuals who were comparatively literate and affluent.¹⁰⁹

Nations need traditions however distant and mythical,¹¹⁰ and the tradition of England and Magna Carta is an unusual one because it is an exclusionary tradition, ignoring the Charter of the Forests and its legacy. This is partly because the **P.L. 837* promotion of socio-economic rights has become entangled with revolution. One of the clearest and most detailed articulations of the case for socio-economic rights in Britain is set out in Part II of Tom Paine's *Rights of Man*, and so became entangled with his political calls for the ending of the monarchy, aristocracy and his support for the French and American Revolutions, the latter leading some to consider him a traitor. However, Bills of Rights which enshrine socio-economic rights do fit within constitutional settlements which include a monarchy.¹¹¹ Hence when considering a British Bill of Rights and whether socio-economic rights are alien or new to the British tradition of rights, the unacknowledged history of British socio-economic entitlement, both domestically and internationally, ought to be weighed in the balance. There is sufficient evidence that socio-economic rights are neither alien nor new, but an important facet of British rights traditions. Much justifiable pride is taken by the United Kingdom in celebrating the impact of the British civil and political rights heritage, particularly the Magna Carta and Habeas Corpus, on other countries' constitutional provisions and on international human rights law treaties, including the European Convention on Human Rights and the International Covenant on Civil and Political Rights 1966. Similar acknowledgement ought to be made of the British contribution in socio-economic rights.

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 - 1. The term socio-economic rights is used to denote all of the economic, social and cultural rights enshrined in international and regional treaty law.
 - 2. See the United Nations Covenant on Economic, Social and Cultural Rights 1966; Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador) 1988; and the European Social Charter (Revised) 1996.
 - 3. For an analysis of South African jurisprudence see G. Van Bueren, "Alleviating Poverty Through the Constitutional Court" (1999) 15 South African Journal of Human Rights; M. Wesson, "Disagreement and the Constitutionalism of Social Rights" (2012) 12(2) Human Rights Law Review 223. For an analysis of Indian jurisprudence see G. Austin, *Working a Democratic Constitution: The Indian Experience* (New Delhi: Oxford University Press, 2000); S. Muralidhar,

- "The Expectations and Challenges of Judicial Enforcement of Social Rights", in M. Langford (ed), Social Rights Jurisprudence: Emerging Trends in International and Comparative Law (Cambridge: Cambridge University Press, 2009), p.102.*
4. For Brazilian jurisprudence see O. L. M. Ferraz, "Harming the poor through social rights litigation: lessons from Brazil" (2011) 89 South Texas Law Review (7) 1643–1668; for Colombian jurisprudence see M. Sepulveda "The Constitutional Court's Role in Addressing Social Injustice" in M. Langford (ed), *Social Rights Jurisprudence: Emerging Trends in International and Comparative Law (Cambridge: Cambridge University Press, 2009), p.144.*
 5. In 2010, e.g. 87% were in favour of a right to hospital treatment within a reasonable time and 60% in favour of a right to housing for the homeless to be included in a Bill of Rights. The figures were consistently high from 2000, see P. Vizzard, *What do the public think about economic and social rights? Research Report to Inform the Debate about a Bill of Rights and a Written Constitution, Case Research Report 61 (Centre for Analysis of Social Exclusion: 2010), p.51.*
 6. M. Cranston, *Human Rights Today*, (London: Ampersand, 1962), pp.38–39.
 7. See V. Mantouvalou, "Common Foundations" in C. Gearty and V. Mantouvalou (eds) *Debating Social Rights*, (Oxford: Hart, 2011), pp.98–107; and Van Bueren, "Including the Excluded: The Case for an Economic, Social and Cultural Human Rights Act" [2002] P.L. 456.
 8. See C. Gearty and V. Mantouvalou, *Debating Social Rights (Hart, 2011), p.83.* This has also been the approach of successive governments in the UK regardless of political party, although the Liberal Democrats included in their election manifesto a call for the incorporation of the United Nations Convention on the Rights of the Child 1989, which includes incorporating socio-economic rights for all children. For a comprehensive analysis of judicial review see E. Palmer, *Judicial Review: Socio-Economic Rights and the Human Rights Act (Oxford: Hart, 2009).*
 9. UN Document E/C.12/GBR/CO/5, June 12, 2009, para.13.
 10. Typical of such objections was dicta by Denning M.R. that, "The Convention is drafted in a style very different from the way in which we are used to in legislation. It contains wide general statements of principle. They are apt to lead to much difficulty in application: because they give rise to much uncertainty. They are not the sort of thing that we can easily digest ... So it is much better for us to stick to our own statutes and principles, and only look to the Convention for guidance in case of doubt." *R. v Chief Immigration Officer, Heathrow Airport Ex p. Bibi (Salamat) [1976] 1 W.L.R. 979 at 985B.*
 11. This is not to contradict Fredman's argument that there is a "need to develop a theory of human rights adjudication which can apply to all human rights, including positive duties, but which addresses the charge of undemocratic unaccountability and incompetence head on." S. Fredman, "New horizons: incorporating socio-economic rights in a British Bill of Rights" [2010] P.L. 297, 303. However, an historical analysis may also shed further light on the theoretical requirements.
 12. The Commission on a Bill of Rights has issued a second consultation, which specifically highlights socio-economic rights as one of the areas in which it has requested further responses. Available at Justice.gov, <http://www.justice.gov.uk/about/cbr/second-consultation> [Accessed July 15, 2013].
 13. See further below.
 14. Cited in S. Van Duffel and D. Yap. "Distributive Justice before the Eighteenth Century: The Right of Necessity" (2011) 32.3 History of Political Thought 449, 452. They disagree with Fleischaker, arguing that its antecedents lie in medieval canon law and provided for a suspension of property rights. See also *Decretum Gratianii*, issued in the 12th century as a compilation of canon law, which included detailed discussions of theoretical and practical aspects of charity including the moral and legal obligation under canon law to provide for the impoverished.
 15. Van Duffel and Yap. "Distributive Justice before the Eighteenth Century: The Right of Necessity" (2011) 32.3 History of Political Thought 449, 452.
 16. S. Fleischaker, *A Short History of Distributive Justice (Cambridge, MA: Harvard University Press, 2004), 4.*
 17. As Fleischaker does, cf. D. Miller, *Principles of Social Justice*, (Cambridge, Mass, Harvard University Press, 1999).
 18. See, e.g. *R. (on the application of Limbuela) v Secretary of State for the Home Department [2005] UKHL 66; [2006] 1 A.C. 396.* This is part of the approach described by King as "multi-layered"; see further J. King, "Asserting Social Rights in a Multi-Layered System" in M. Langford (ed), *Social Rights Jurisprudence: Emerging Trends in International and Comparative Law (Cambridge: Cambridge University Press, 2009).*
 19. See D. Gauri and V. Brinks (eds), *Courting Social Justice: Judicial Enforcement of Social and Economic Rights in the Developing World (Cambridge: Cambridge University Press, 2008);* Langford, *Social Rights Jurisprudence (2008);* G. Van Bueren (ed), *Freedom from Poverty as a Human Right: Fulfilling Law's Duty to the Poor (UNESCO, 2010), vol.4.*
 20. See Chs 47 and 48 of the Magna Carta 1215.

21. e.g. the New Forest.
22. In 1215 there were 143 forests in England, see *P. Linebaugh, The Magna Carta Manifesto (University of California Press, 2008), 34.*
23. "It is probable that many of the royal rights abandoned in disafforested districts fell into private hands in a less legitimate way. Thus the Abbot of Newminster, Northumberland, put 'in defense' parts of the district disafforested in 1280, excluding others who had rights to it." M. Bazeley, "The Extent of the English Forest in the Thirteenth Century" (1921) 140 *Transactions of the Royal Historical Society* 142, citing *Plac War.de Quo*, 59.
24. Bazeley, "The Extent of the English Forest in the Thirteenth Century" (1921) 140 *Transactions of the Royal Historical Society* 142, citing *Plac War.de Quo*, p.59.
25. Magna Carta Ch.7.
26. *J. Holt, Magna Carta, 2nd edn (Cambridge: Cambridge University Press, 1992), p.46.*
27. In South Africa alone these include *Government of the Republic of South Africa the Premier of the Province of the Western Cape Cape Metropolitan Council Oostenberg Municipality v Irene Grootboom [2000] Z.A.C.C. 19; 2000 (1) S.A. 46(CC); 2000 (11) B.C.L.R. 1169 (CC); Minister of Health v Treatment Action Campaign (No.2) (CCT8/02) [2002] Z.A.C.C. 15; 2002 (5) S.A. 721 (CC); 2002 (10) B.C.L.R. 1033 (CC).*
28. Charter of the Forests, November 6, 1217, *Statutes of the Realm, vol.I, (London: George Eyre and Andrew Strahan for the Record Commission, 1810)*. A translation of the Charter of the Forest as issued in 1217 is available in *H. Rothwell (ed), English Historical Documents, vol.3, 1189-1327 (London: Eyre and Spottiswood, 1975) No.24, pp.337-340.*
29. The Charter of the Forest prohibited dismemberment and loss of life for offences against the venison and replaced these penalties with amercement and imprisonment until the pledges were paid. If a person was unable to pay after a year and a day then the person would be exiled. *C. Young, The Royal Forests of Medieval England (Philadelphia: University of Pennsylvania Press, 1979), p.324.*
30. Hence the importance of "And if he made his own wood forest it shall remain forest saving common of pasture and other things in that forest to those who were accustomed to have them previously."
31. *Linebaugh, The Magna Carta Manifesto (2008), p.41.*
32. *J. M. Neeson, Commoners, Common Rights, Enclosure and Social Change in England 1700-1820 (New York: Cambridge University Press 1993), p.163.*
33. In relation to the Magna Carta, see *G. Robertson QC, Crimes Against Humanity: The Struggle for Global Justice (New York: New Press, 1993), p.3.*
34. The Charter of the Forest was in force for 754 years. It ceased to have legal effect in 1971 with the passage of the Wild Creatures and Forest Laws Act 1971. The Act annulled forest law except where it related to the appointments and the functioning of the verders.
35. See Ch.13, "Every freeman shall have the eyries of hawks, sparrow hawks, falcons, eagles, and herons in his woods, and likewise honey found in his woods."
36. See also McKechnie's observation that although the wealthy suffered injury to their property, the poor "suffered in a more pungent way: stern laws prevented them from supplying three of their primary needs, food, firewood and building materials." *W. McKechnie, A Commentary on the Great Charter of King John (Macklehose and Sons, 1914), p.426.*
37. A feudal tax.
38. The proceeds of pasture in the royal forest.
39. The right granted on common land or in the forest to allow pigs to forage for acorns etc.
40. Harleian MS 4353 (V) with emendations from Cleopatra A XIV (W), ca. 1285. Howel was the son of Cadell, King of Cymru; the provisions are unnumbered in the original and in the translations. The laws also set out detailed codes on the duties of judges, evidence, punishment and compensation for murder or where women were raped, as well as detailed codification concerning the compensatory value of bruises, bees etc. The Laws also provided much codification of the law of personal status including protections for the rights of widows and compensation for women who were raped. See further *A. Wade-Evans, Welsh Medieval Law: Being a Text of the Laws of Howel the Good (Oxford: Clarendon Press, 1909)*.
41. A translation is found at the Celtic Literature Collective at www.maryjones.us/ctexts/laws_hywel_dda.html [Accessed July 15, 2013].
42. "A page of the chamber owns all the old clothes of the king except his vesture in Lent. He has his bed clothes and his mantle and his coat and his shirt and his trowsers and his shoes and his stockings." However, as he is given land free this means that ... the entitlements extend to cooks. "A cook has the skins of the sheep and the goats and the lambs and the kids and the calves, and

- the entrails of the cattle which shall be killed in the kitchen, except the rectum and the milt which go to the porter, The cook has the tallow and the skimming from the kitchen, except the tallow of the steer which shall be three nights with the cattle of the maerhouse. His land he gets free, and his horse always in attendance from the king." A translation is found at the Celtic Literature Collective at www.maryjones.us/ctexts/laws_hywel_dda.html [Accessed July 15, 2013].
43. *Holt, Magna Carta (1992), p.275.*
 44. St Michael's, Christmas, Easter and St John's Day. *Holt, Magna Carta (1992), p.18.*
 45. *Linebaugh, The Magna Carta Manifesto (2008), p.3.*
 46. *Rothwell, English Historical Documents (1975) No.24, p.337.* The Charter of the Forest was proclaimed again in 1225, together with the Magna Carta with minor amendments.
 47. C. Scott, "The Interdependence and Permeability of Human Rights Norms: Towards A Partial Fusion of the International Covenants on Human Rights" (1989) 27 *Osgoode Hall Law Journal*; V. Mantouvalou, "Work and Private Life: Sidabras and Dziautas v Lithuania" (2005) 30 *E. L. Rev.* 573-585.
 48. Wood which is necessary for basic sustenance, i.e. for the repairing of shelter and for firewood.
 49. J..Birrell, "Common Rights in the Medieval Forest: Disputes and Conflict in the Thirteenth Century" (1987) 17 *Past and Present* 48.
 50. *W. Blackstone, The Great Charter and Charter of the Forest (Oxford: Clarendon Press, 1759), p.lxxvi.*
 51. Bazeley, "The Extent of the English Forest in the Thirteenth Century" (1921) 140 *Transactions of the Royal Historical Society* 153, citing as an example land in Nottingham.
 52. The papal opposition to the Magna Carta was included in the lecture of C. Cheney, "The Eve of Magna Carta", Lecture delivered in the John Rylands Library, University of Manchester, on May 11, 1995.
 53. The right to form and join trade unions is a socio-economic right as well as a civil right, see art.8 International Covenant on Economic Social and Cultural Rights and art.11 of the European Convention on Human Rights, and its history evolved from medieval times, however, it has been excluded from this paper because its British tradition is widely acknowledged. See *S. Webb and B. Webb, The History of Trade Unionism, revised edn extended to 1920 (London: Longmans, Green & Co, 1920).*
 54. *A. Musson, Medieval Law in Context: The Growth of Legal Consciousness From Magna Carta to the Peasants' Revolt, (New York: Manchester University Press, 2001), p.1.*
 55. *Musson, Medieval Law in Context (2001), p.69*
 56. *Musson, Medieval Law in Context (2001), p.69.*
 57. See Ch.IV. "And in the eight-and-twentieth year of the reign of King Edward III, it was declared and enacted by authority of parliament, that no man, of what estate or condition that he be, should be put out of his land or tenements ..."
 58. *J. Cooke, Unum Necessarium, or, The Poor Man's Case, being an expedient to make provision for all poor people in the Kingdom (London, 1648).* *G. Robertson, Tyrannicide (Pantheon, 2006)* also refers to this document, although his argument that John Cooke was an overlooked hero is made principally in relation to Cooke's civil and political rights. It is not clear whether Cooke was influenced by the establishment of the first national health service in Europe, which was in the Venetian Republic in c1330; see further *M. Warren, A Chronology of State Medicine, Public Health, Welfare and Related Services in Britain, 1066-1999 (Faculty of Public Health Medicine, Royal College of Physicians of the United Kingdom, 2000), p.15.*
 59. K. G. Young, "The Minimum Core of Economic and Social Rights: A Concept in Search of Content" (2008) 33 *Yale J. Int'l L.* 113.
 60. It curtailed the freedom of movement of peasants prohibiting them from moving from their village of origin and prohibited an increase in peasant wages above that paid in 1346 and even prohibited lords and masters offering more than was paid in 1346.
 61. Statute of Cambridge 1388 (12 Rich 11 c7). The Statute of Cambridge is sometimes referred to as the first Poor Law, *E. M. Leonard, The Early History of English Poor Relief, (Cambridge: Cambridge University Press, 1900), 5.* The Poor Laws did not incorporate socio-economic rights, inter alia, because of their distinction between worthy and unworthy and their non-recognition of the right to dignity.
 62. Fleischaker argues that it developed in the eighteenth century, citing Baboeuf, Rousseau, Kant, and Smith. *Fleischaker, A Short History of Distributive Justice (2004)* Jones agrees as to its later development but places a greater reliance on Condorcet and Paine; see *G. S. Jones, An End to Poverty?: A Historical Debate (London: Profile Books, 2004).*
 63. *Fleischaker, A Short History of Distributive Justice (2004), p.49.*

64. Although the language of the specific provisions does not expressly use the word right, the provisions are enshrined in the Declaration of Rights and were accorded an equal status with the civil and political rights. The articles included: art.8. "Every man can contract his services and his time, but he cannot sell himself nor be sold: his person is not an alienable property ..." art.21. "Public relief is a sacred debt. Society owes maintenance to unfortunate citizens, either procuring work for them or in providing the means of existence for those who are unable to labour." Although the 1793 Constitution and Declaration was approved in a referendum, it was never brought into law. The 1793 Constitution was suspended throughout the war and replaced by the 1795 Constitution.
65. *M. Conway (ed), The Writings of Thomas Paine, Volume 2, 1779–1792, XIII. The Rights of Man (London, 1895; reprint London: Routledge/Thoemmes, 1996), p.128.*
66. P. Eleftheriadis, "On Rights and Responsibilities" [2010] P.L. 33, 34; M. Gordon "The Conceptual Foundations of Parliamentary Sovereignty: reconsidering Jennings and Wade" [2009] P.L. 519, 535; and F. Klug "A Bill of Rights: do we need one or do we already have one?" [2007] P.L. 701, 703.
67. See, e.g. A. Geddis, "Free Speech Martyrs or Unreasonable Threats to Social Peace?—'Insulting' expression and section 5 of the Public Order Act 1986" [2004] P. L 853; *M. Arden, "On Liberty and the European Convention on Human Rights", in Tom Bingham and the Transformation of the Law (Oxford University Press, 2009)* in which Arden L.J. discusses the relationship between Mills and the Human Rights Act; and D. Feldman "Human Rights, Terrorism and Risk: the roles of politicians and judges" [2006] P.L. 364, 365.
68. *Conway (ed), The Writings of Thomas Paine, Volume 2 (1996), p.488.*
69. *Conway (ed), The Writings of Thomas Paine, Volume 2 (1996), p.488.*
70. *Conway (ed), The Writings of Thomas Paine, Volume 2 (1996), pp.488–491.*
71. *Conway (ed), The Writings of Thomas Paine, Volume 2 (1996), p.490.*
72. *Conway (ed), The Writings of Thomas Paine, Volume 2 (1996), p.490.*
73. *Conway (ed), The Writings of Thomas Paine, Volume 2 (1996).*
74. *Conway (ed), The Writings of Thomas Paine, Volume 2 (1996), p.490.*
75. Although Paine is making a much broader political point in relation to hereditary estates and primogeniture than the judgment by the European Court of Human Rights in *Inze v Austria (A/126) (1988) 10 E.H.R.R. 394*, which successfully challenged the prohibition on inheritance for children born outside of marriage.
76. UN Document C.12/GC/18 06/02/2006 General Comment No.18: art.6 of the International Covenant on Economic, Social and Cultural Rights.
77. *Conway (ed), The Writings of Thomas Paine, Volume 2 (1996), p.492.*
78. *E. Burke's Reflections on the Revolution in France (New York: Dover Publications, 1790)*, to which the *Rights of Man* was originally written as a reply, sold 30,000 copies in the first 2 years. Part One of the *Rights of Man*, priced at the same 3s, sold 50,000 copies in the first year, and both parts, it is estimated, sold 200,000 copies between 1791–93 in a population of 10 million. See *E. P. Thompson, The Making of the English Working Class (Penguin, 1963), p.117*. Thompson's figure is a conservative one in light of Paine's claim to have sold 1,500,000 by 1809.
79. A. Nolan and M. Dutschke, "Article 2(1) ICESCR and States Parties' Obligations: whither the budget?" (2010) 3 E.H.R.L.R. 280.
80. *Conway (ed), The Writings of Thomas Paine, Volume 2 (1996), p.491.*
81. Paine's low opinion of the courts was proven to be correct, as in 1792 he was convicted in absentia of seditious libel and the prosecution had chosen not to rebut the arguments of the defence counsel, Thomas Erskine, because the jury had already found Paine guilty. *J. Barrell and J. Mee (eds) Trials for Treason and Sedition, 1792 —1794 (Pickering and Chatto: London 2006), p.xix.*
82. Act 7 May 1841–4 Vict. A Bill to Amend an Act to Extend the Practice of Vaccination. See R. J. Lambert, "A Victorian National Health Service: State Vaccination, 1855–71" [1962] 5(1) The Historical Journal, 1.
83. *E. Chadwick, Report on the sanitary condition of the labouring population of Great Britain. A supplementary report on the results of a special inquiry into the practice of interment in towns. Made at the request of Her Majesty's principal secretary of state for the Home Department (London: Printed by R. Clowes & Sons, for Her Majesty's Stationery Office, 1843).*
84. The Act delicately calls them "public necessities".
85. *C. Reynolds, Public Health: Law and Regulation (New South Wales: Federation Press, 2004), pp.70–72*; I. Sram and J. Ashton, "Millennium Report to Sir Edwin Chadwick" (1998) 317 B.M.J. 592. The objections to the Public Health Act 1848 included the impact on property rights created

- by rights of entry.
86. The local boards could be established by 2 methods one of which was by a petition of one tenth of the inhabitants rated to relieve the poor in a city, town, borough (municipal or parliamentary), parish or place with a defined boundary, which had not less than 30 qualified ratepayers.
 87. S. Cherry, "Hospital Saturday, Work Place Collections and Issues in Late Nineteenth Century Hospital Funding"[2000] 44 Medical History 464.
 88. For a conceptualisation of the campaign as rights, see the Quaker Petition to Parliament 1783, "Under the countenance of the laws of this country, many thousands of these our fellow-creatures, entitled to natural rights of mankind, are held, as personal property, in cruel bondage."
 89. The right to education is enshrined in arts 13 and 14 of the International Covenant on Economic, Social and Cultural Rights and in art.2 of Protocol 1 of the European Convention on Human Rights and the right to join trade unions is incorporated in art.8 of the International Covenant on Economic, Social and Cultural Rights and in art.11(1) of the European Convention on Human Rights.
 90. S. Fredman, "Human Rights Transformed: Positive Duties and Positive Rights" [2006] P.L. 498
 91. UN Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery 1957, which focuses on slavery and slavery-like practices including debt bondage, see further art.1; Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, Supplementing the United Nations Convention Against Organised Transnational Organised Crime 2000.
 92. *G. Van Bueren, Child Rights in Europe. Convergence and Divergence in Judicial Protection (Council of Europe, 2008), p.195.*
 93. See the International Covenant on Economic, Social and Cultural Rights art.10(3).
 94. See UN Convention on the Rights of the Child arts 32–35; see also Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography 2000.
 95. See in particular, International Labour Organisations Convention Concerning Decent Work for Domestic Workers 2011 art.3.
 96. *Smith v Gould 91 E.R. 567; (1705) 2 Salk. 666.*
 97. *Somerset v Stewart 98 E.R. 499; (1772) Lofft 1.* The spelling of Somersett varies according to the report, as does the precise wording of the Mansfield judgment, however, the same point is made in the different reports.
 98. *Knight v Wedderburn (1778) 8 Fac. Dec. 5, Mor.14545* (Scotland Court of Session).
 99. E. Fiddes, "Lord Mansfield and the Sommersett Case" (1934) 50 L. Q. Rev. 499.
 100. Repealed by Statute Law (Repeals) Act 1998.
 101. League of Nations Doc. Records of the Fifth Assembly, 177. For an analysis of the Declaration and its significance in terms of the generation of rights debates see *G. Van Bueren, The International Law on the Rights of the Child (The Hague: Martinus Nijhoff, 1998), p.6.*
 102. Declaration of the Rights of the Child 1924 art.2.
 103. Declaration of the Rights of the Child 1924 art.3.
 104. Declaration of the Rights of the Child 1924 art.4.
 105. "Personal Letters of Eglantyne Jebb", in *K. Freeman, If Any Man Build: The History of Save the Children Fund (Hodder and Stoughton, 1965), p. 43.*
 106. *Thompson, The Making of the English Working Class (1963), p.27.*
 107. Although the previous Government's Green Paper on Rights and Responsibilities conceded that socio-economic rights "could merit constitutional recognition in a Bill of Rights and Responsibilities to signal their enduring place in the life of nation". *Ministry of Justice, Rights and Responsibilities: Developing Our Constitutional Framework, Cm.7577 (London: TSO, 2009), para.3.47.*
 108. *Wilkes v Wood 98 E.R. 489; (1763) Lofft 1.*
 109. *Entinck v Carrington [1765] EWHC KB J98; (1765) 19 St. Tr. 1029.*
 110. *D. Gilmour, The Pursuit of Italy (Allen Lane, 2011), p.258.*
 111. See, e.g. the Constitution of Spain, adopted December 29, 1978.

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