WELL-BEING AND THE STATE

*Cass R. Sunstein**

Some people think that there is a deep opposition between "government intervention" and "free markets." But the opposition is too simple. No one is really opposed to "government intervention." Markets depend for their existence on law, which is necessary to establish property rights and to set out the rules governing contracts and tort. Short of anarchy, a system of legal entitlements, set by the state, is inevitable.[1] If we are asking whether the state is an important part of the solution to current social problems, there can be only one answer: it had better be. But what is the relationship between the state and social well-being?

This question assumes special significance in light of the original aspiration of the American founders — to create a deliberative democracy.[2] Public officials would be accountable to the citizenry at large, but they were also supposed to engage in deliberative tasks, and to profit from and to encourage deliberation among the people as a whole. Both the structure of the national government and the system of individual rights were intended to encourage public deliberation.

Things have not worked out as the Framers envisioned. One of the most serious problems is the public emphasis on issues and events that have little relevance to most people's lives. People lack accurate information about what is most important.[3] In elections, for example, "soundbite politics" often replaces discussion about public issues.[4] The problem affects day-to-day governance too. Instead of focusing on, for example, education and its improvement, public attention is often directed to sensational anecdotes, crude oversimplifications of issues,

---

* Karl N. Llewellyn Professor of Jurisprudence, University of Chicago, Law School and Department of Political Science. B.A. 1975, Harvard College; J.D. 1978, Harvard Law School. I am grateful to Jon Elster, Dan Kahan, Richard Posner, Julie Roin, Geoffrey Stone, and David Strauss for valuable comments, and to Thomas Brown for outstanding research assistance.

[1] "The functioning of . . . competition . . . depends, above all, on the existence of an appropriate legal system . . . . In no system that could be rationally defended would the state just do nothing. An effective competitive system needs an intelligently designed and continuously adjusted legal framework as much as any other." FRIEDRICH A. HAYEK, THE ROAD TO SERFDOM 38–39 (1944).

[2] *See* Joseph M. Bessette, *Deliberative Democracy: The Majority Principle in Republican Government*, *in* HOW DEMOCRATIC IS THE CONSTITUTION? 102, 114 (Robert A. Goldwin & William A. Schambra eds., 1980).

[3] *See* SHANTO IYENGAR, IS ANYONE RESPONSIBLE? HOW TELEVISION FRAMES POLITICAL ISSUES 127–43 (1991) (describing the distorting effects of television news coverage); *cf.* STEPHEN BREYER, BREAKING THE VICIOUS CIRCLE 21, 34 (1993) (showing that public assessment of the riskiness of many activities diverges widely from expert assessments).

[4] *See, e.g.*, KIKU ADATTO, SOUND BITE DEMOCRACY 4 (1990).

or scandals about public officials' private lives. In these circumstances, we are likely to end up with misdirected policies or worse — a form of government by faction, the evil most feared by the American founders.[5] A high priority for those thinking about the role of the state should be to develop methods for focusing attention on things that matter to people's lives.

An important part of this task is to establish criteria by which to measure governmental performance. If broadly debated and well-publicized, such criteria should promote democratic discussion and at the same time help to counteract the very problems to which they draw attention. To develop criteria of this kind, we need a theory of social well-being. To be helpful, the theory must be not only substantively plausible but also practical to apply. This constraint is a demanding one. The best substantive theory might well be abandoned because it is not administrable — because the underlying data cannot be compiled without great cost, because the theory does not allow comparisons among regions or over time, or because it is too unruly and complex.

In the United States, there are many measures of economic performance. But here and abroad, gross domestic product (GDP) is the most influential indicator of social well-being. When GDP is growing, it is often thought that a number of good things will happen — employment will increase, poverty will go down, and people will be able to obtain a wide range of valuable things. Concentration on GDP has important political effects. It focuses media, public, and governmental attention in a distinctive way.

Part of my goal here is to show — what most economists do not deny — that GDP is an inadequate measure of social well-being, and that we lack an adequate alternative. GDP is too crudely connected to things that people should care about. To overcome the limits of GDP, I offer a simple proposal: *Democratic governments should produce an annual "quality of life report," designed to measure their performance in producing good lives for their citizens.* This report should be highly publicized and broadly disseminated. I also propose that the ingredients in the report are plural and diverse. They are not commensurable. Both the fact of incommensurability and the general attack on GDP have some important consequences for law.

I suggest as well that it is important to attend to the relationship between legal provisions and the various ingredients of individual and social well-being. Per capita GDP, for example, becomes more important if money is both necessary and sufficient for the acquisition of valuable things. We might ultimately be able to evaluate legal

---

[5] *See, e.g.*, THE FEDERALIST No. 10, at 77–78 (James Madison) (Clinton Rossiter ed., 1961) (discussing the nature, cause, and effects of faction).

provisions by exploring their relationship to the various components of individual and social well-being. A quality of life report would help in initiating this project.

In the course of the discussion, I offer a great deal of data about social and economic trends within the United States. The failure to identify the empirical dimensions of legal disputes is a continuing weakness in the legal culture.[6] While the facts identified by a "quality of life" report will not dispose of strictly legal debates, they do have implications for many legal controversies, especially those involving the criminal justice system, race and sex equality, and government regulation.

I. GROSS DOMESTIC PRODUCT

A. In General

One of the simplest measures of social and economic well-being, used internationally and by many nations, is gross domestic product (GDP). The term refers to the total quantity of goods and services produced, weighted by their respective prices.[7] Goods and services that are not paid for are not included.

GDP is highly influential in international comparisons. It also plays a large role in the domestic sphere. To take a crude illustration, consider the astonishing fact that the words "gross national product"[8] appeared in 16,055 major news stories in the last two years — and that the words "gross domestic product" appeared in 39,007 stories.[9] It would be an absurd exaggeration to say that ordinary people frequently talk about GDP or GNP.[10] But the numbers for GDP affect legislative deliberations, presidential judgments, media reports on the

---

[6] In the law of free speech, for example, it is crucial to know whether an "actual malice" regime for libel law in fact alters press behavior as compared with a negligence regime — and whether the alterations lead to more or less information about public issues. In administrative law, it is important to know whether stringent judicial review actually improves agency performance.

[7] *See* U.S. DEP'T OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES 437 (113th ed. 1993) [hereinafter STATISTICAL ABSTRACT 1993].

[8] Gross national product (GNP) means GDP adjusted to measure the total income received by the inhabitants of the country. It adds to GDP all interest, profits, dividends, and rents coming into a country from abroad, and then subtracts all interest, profits, dividends, and rents paid to people in other countries. *See* ECONOMIC INDICATORS HANDBOOK 59 (Arsen J. Darnay ed., 1992). In November, 1991, the Department of Commerce's Bureau of Economic Analysis shifted emphasis from GNP to GDP. *See id.*

[9] Search of NEXIS, Curnws library (Feb. 16, 1994).

[10] Media attention is often focused on the "leading economic indicators," including average weekly hours, housing starts, and the money supply. These too are only crudely connected with social and economic welfare, for reasons that will emerge in the course of the discussion.

state of the economy, professional recommendations, and much more. A different measure would focus attention on different things.

B. Criticisms

Certainly GDP is a useful figure, for it bears a relationship to important social goals. If we think of income as an all-purpose means — as something that people want regardless of what else they want — we might well attend to GDP. There are, however, a number of problems with relying on GDP as a measure of well-being. Some of these problems suggest that GDP is imperfect as a measure of purely economic goals. Some of them suggest that important social, rather than purely economic, variables are not reflected in GDP, though of course it is artificial to distinguish the economic and the social.[11]

1. GDP and Economic Well-Being. — GDP's ability to measure economic well-being is doubtful for a number of reasons.

(a) Distributional Issues. — If income is unequally distributed, a high GDP may disguise the fact that many people are living bad or even desperate lives. For example, the United States has the highest per capita real GDP in the world.[12] But it also has a higher rate of children living in poverty — one in five — than does any other wealthy country in the world. The rate of children living in poverty is double that of the industrialized nations taken as a whole and four times that of Western Europe.[13] Nearly half of all black children in the United States live in poverty.[14]

(b) Excluded Goods and Services. — GDP does not include goods and services that are free, including some that are plausibly connected with economic well-being. For example, unpaid domestic labor is not a part of GDP.[15] Many environmental amenities, such as clean air and water, are not reflected in GDP. The GDP figure thus fails adequately to measure either the benefits of a healthy environment or

---

[11] *See* A.C. PIGOU, THE ECONOMICS OF WELFARE 12 (4th ed. 1962) ("[T]here is no guarantee that the effects produced on the part of welfare that can be brought into relation with the measuring-rod of money may not be cancelled by effects of a contrary kind brought about in other parts, or aspects, of welfare; and, if this happens, the practical usefulness of our conclusions is wholly destroyed. . . . The real objection then is, not that economic welfare is a bad *index* of total welfare, but that an economic cause may affect non-economic welfare in ways that cancel its effect on economic welfare.").

[12] *See* UNITED NATIONS DEVELOPMENT PROGRAMME, HUMAN DEVELOPMENT REPORT 1993, at 135 (1993) [hereinafter HUMAN DEVELOPMENT REPORT 1993].

[13] *See* Ray Moseley, *Among Rich Nations, U.S. Has Highest Child-Poverty Rate*, CHI. TRIB., Sept. 23, 1993, § 1, at 4.

[14] *See id.*

[15] *See* Luisella Goldschmidt-Clermont, *Measuring Households' Non-Monetary Production*, *in* REAL-LIFE ECONOMICS 265, 265 (Paul Ekins & Manfred Max-Neef eds., 1992); MARILYN WARING, IF WOMEN COUNTED 2 (1988).

the costs of its degradation.[16] There are other gaps in what GDP measures. It does not, for example, reflect changes in leisure time; but it is clear that any increase in leisure is a gain.[17] Most generally, a serious problem with GDP is that the figure excludes all social costs and benefits that do not have prices.[18]

(c) Unclear Correlations with Other Important Economic Indicators. — GDP sometimes seems to be a general placeholder for a number of indicators of economic well-being. But in fact, it may not be closely correlated with some important indicators. Consider two major social goals: reduction of poverty and of unemployment. Of course GDP growth can be an important factor in counteracting both unemployment and poverty, and nothing I say here is inconsistent with this judgment. But it is also possible for GDP increases to be accompanied by increases in unemployment and hence poverty (which is closely correlated with unemployment); indeed, this phenomenon has often happened.

Economic growth is a function of productivity growth and employment growth, where productivity is understood as GDP divided by total employment.[19] Increases in productivity can contribute to an increase in GDP, possibly without increasing employment levels at all. For example, converting a plant to use industrial robots may

---

[16] GNP needs to be modified to account for:

> any depreciation of natural capital stocks, in the same way that *net* national income is equal to gross national income *less* estimated depreciation on man-made capital. . . [and] any damage losses accruing to human wellbeing from the extraction, processing and disposal of materials and energy to the receiving environments.

DAVID PEARCE, ECONOMIC VALUES AND THE NATURAL WORLD 31 (1993). See also the discussion of adjusted national product — GNP adjusted for depreciation of physical capital — in Øyvind Lone, *Environmental and Resource Accounting*, *in* REAL-LIFE ECONOMICS, cited above in note 15, at 239, 253–54; and the discussion of natural resource accounting in Robert Repetto, *Earth in the Balance Sheet: Incorporating Natural Resources in National Income Accounts*, ENVIRONMENT, Sept. 1992, at 12, 15–17.

In 1993, President Clinton directed the Commerce Department's Bureau of Economic Analysis to develop a new measure of GDP, one that incorporates the cost of pollution and the value of environmental amenities. *See* ROBERT V. PERCIVAL, ALAN S. MILLER, CHRISTOPHER H. SCHROEDER & JAMES P. LEAPE, ENVIRONMENTAL REGULATION 394 (Supp. 1993).

[17] In 1952, Kuznets attempted to redefine GNP to take leisure into account. *See* Simon Kuznets, *Long-Term Changes in the National Income of the United States of America Since 1870*, *in* INCOME & WEALTH OF THE UNITED STATES: TRENDS AND STRUCTURE 29, 63–69 (Simon Kuznets ed., 1952). Note also that a 1968 study showed a spectacular gain in leisure over the last century. *See* A.W. Sametz, *Production of Goods and Services: The Measurement of Economic Growth*, *in* INDICATORS OF SOCIAL CHANGE 77, 83 (Eleanor B. Sheldon & Wilbert E. Moore eds., 1968).

[18] *See, e.g.*, EZRA J. MISHAN, THE COSTS OF ECONOMIC GROWTH 122–66 (1967).

[19] *See* Arthur M. Okun, *Potential GNP: Its Measurement and Significance*, *in* AM. STAT. ASS'N, 1962 PROCEEDINGS BUS. & ECON. STAT. SECTION 98, 103 (1962) ("[T]he reduction of one point in the unemployment rate means perhaps a 1.8 percent increase in total labor input measured in manhours. Then, to get the 3.2 percent increment in output, manhour productivity must rise by about 1.4 percent.").

raise production levels while eliminating the jobs of hundreds of assembly workers. Increases in GDP may therefore fail to produce increases in employment levels. Because poverty *is* well correlated with unemployment, it follows too that when GDP goes up, poverty may not go down.

The following table shows changes in GDP, unemployment, and poverty from 1970 to the present. GDP growth rates are generally correlated with *changes* in unemployment rates, particularly in especially high and especially low GDP growth years. There are, however, years in which the two figures are not correlated. For present purposes, a key point is that GDP rates are far from identical to unemployment and poverty rates. If we know what happens to GDP, we do not necessarily know what happens to unemployment and poverty.

TABLE 1

GDP GROWTH COMPARED TO LEVELS OF UNEMPLOYMENT AND POVERTY[20]

Year	GDP Growth	Unemployment	Poverty
1970	0.0%	4.9%	12.6%
1971	2.9%	5.9%	12.5%
1972	5.1%	5.6%	11.9%
1973	5.2%	4.9%	11.1%
1974	−0.6%	5.6%	11.2%
1975	−0.8%	8.5%	12.3%
1976	4.9%	7.7%	11.8%
1977	4.5%	7.1%	11.6%
1978	4.8%	6.1%	11.4%
1979	2.5%	5.8%	11.7%
1980	−0.5%	7.1%	13.0%
1981	1.8%	7.6%	14.0%
1982	−2.2%	9.7%	15.0%
1983	3.9%	9.6%	15.2%
1984	6.2%	7.5%	14.4%
1985	3.2%	7.2%	14.0%
1986	2.9%	7.0%	13.6%
1987	3.1%	6.2%	13.4%
1988	3.9%	5.5%	13.0%
1989	2.5%	5.3%	12.8%
1990	0.8%	5.5%	13.5%
1991	−1.2%	6.7%	14.2%
1992	2.1%	7.4%	14.5%

[20] *See* ECONOMIC REPORT OF THE PRESIDENT 304 (Poverty 1992) (1994) [hereinafter ECONOMIC REPORT OF THE PRESIDENT 1994]; ECONOMIC REPORT OF THE PRESIDENT 351 (GDP 1970–91), 382 (Unemployment 1970–92), 380 (Poverty 1970–91) (1993) [hereinafter ECONOMIC REPORT OF THE PRESIDENT 1993]; STATISTICAL ABSTRACT 1993, *supra* note 7, at 444 (GDP 1992).

2. GDP and Social Well-Being. — Even if GDP has some virtues as an indicator of economic welfare, it fails to capture important aspects of social well-being.

(a) Uncertain Relation to Valuable Things. — It is often thought that GDP serves as a good proxy for valuable things. But the relationship between GDP and important social goals is far from clear.

Consider, for example, the likelihood of subjection to violent crime. Physical security is surely an important ingredient in well-being, but it is at best indirectly reflected in GDP. Consider also the fact that there is no inevitable connection between GDP and life expectancy. Some countries have a relatively low GDP but long life expectancy and low rates of infant mortality.[21] Many countries have a high GDP but do poorly in promoting longevity.[22] Education is an important part of a good life, whether or not educated people accumulate wealth; but the association between education and GDP, while real, is crude.

Certainly we can speculate, with some plausibility, that wealthy people are less likely to commit crimes and better able to pay for education, and that high social wealth can and will be devoted to improving criminal law enforcement, life expectancy, and public health. But what has been said thus far should show that the connection between GDP and these other goods is unclear.

(b) Dependence on Legal and Social Practices. — The most basic point here is conceptual: *The value of money depends on social and*

---

[21] *See* UNITED NATIONS DEVELOPMENT PROGRAMME, HUMAN DEVELOPMENT REPORT 1990 at 9, tbl. 1.1 (1990) [hereinafter HUMAN DEVELOPMENT REPORT 1990] (presenting information on Sri Lanka, Jamaica, and Costa Rica). The level of childhood immunizations puts the United States 21st in the world, tied with Pakistan and below India, Bulgaria, North Korea, Indonesia, and Botswana. *See* Moseley, *supra* note 13, § 1, at 4.

[22] *See* HUMAN DEVELOPMENT REPORT 1990, *supra* note 21, at 9, tbl. 1.1. The points discussed in the text are connected to a broader debate. Emphasizing some of the problems with accounts inspired by utilitarianism, John Rawls proposes that judgments about well-being might be made by reference to "primary goods." In his latest formulation, Rawls points to "a. basic rights and liberties . . . ; b. freedom of movement and free choice of occupation against a background of diverse opportunities; c. powers and prerogatives of offices and positions of responsibility in the political and economic institutions of the basic structure; d. income and wealth; and finally, e. the social bases of self-respect." JOHN RAWLS, POLITICAL LIBERALISM 181 (1993). This approach is in many respects a considerable improvement over utilitarian accounts and those that rely on an aggregated figure representing the private willingness to pay. In place of primary goods, Amartya Sen has suggested that a good measure of well-being should focus on people's "capabilities" and "functionings." *See* AMARTYA SEN, INEQUALITY REEXAMINED 79–84 (1993). The term "capabilities" refers to a person's capacity or opportunity to choose among valuable activities or functionings. We might ask, for example, whether someone is able to get access to food, medical care, shelter, education, political participation, and so forth, or whether that person is able to avoid public and private violence, physical pain, and other forms of suffering. Like the list of primary goods, the list of capabilities and functionings is heterogeneous. Its chief advantage is that it enables us to focus on the question why such things as wealth and income are valuable, that is, what they enable people to have and to be.

legal practices determining what money can be used to buy. If certain exchanges are blocked — if money cannot be used to purchase valuable things — per capita GDP becomes less important. Wealth is less valuable when money cannot be used to buy votes or political power, or education, or marriage, or self-respect. Similarly, the value of money is reduced to the extent that it is unnecessary for someone to have money to obtain important goods. If education, health care, political power, and clean air are free, money is less valuable.[23]

In short, the value of money is largely a function of the legal regime. To understand the relationship between GDP and valuable things, it is necessary to understand the set of legal entitlements through which people are enabled to get, or are disabled from getting, things of importance to their lives. It might then be possible to "map" legal provisions onto the various ingredients of well-being.[24]

(c) Commensurability. — GDP is of course an aggregative measure, and it is aggregative in a distinctive sense.[25] GDP is not simply an index of different values, created to allow ease of understanding and comparison. Instead, it measures diverse items through the same basic dimension of "value," defined by willingness to pay.

This approach assumes commensurability in the sense that it acts as if diverse goods can be assessed according to the same metric. This form of valuation seems wrong because it ignores qualitative differences among diverse social goods.[26] Some things (like education and health) have intrinsic as well as instrumental value; other things (like cash) are simply for use. Intrinsically valuable things are themselves valued in different ways.

The problem with GDP is that because it is aggregative, it effaces qualitative differences. For this reason it is a crude indicator of social welfare and an unpromising foundation for democratic deliberation. Suppose, for example, that we are told that if OSHA issues a certain occupational safety regulation, GDP will be reduced by 0.001%. To

---

[23] Of course there may be harmful social effects from prohibiting the use of money as a basis for exchange, or from providing goods for free. Both of these decisions may mean that there is less wealth upon which to draw. But these are different matters.

[24] This is a generalization of the "entitlement approach" suggested in AMARTYA SEN, POVERTY AND FAMINES 45–51 (1981).

[25] Economists and others critical of GNP have proposed a number of alternative measures. William Nordhaus and James Tobin, two early critics, suggested that it would be better to attempt to generate a "measure of economic welfare" (MEW). *See* William D. Nordhaus & James Tobin, *Is Growth Obsolete?*, *in* THE MEASUREMENT OF ECONOMIC AND SOCIAL PERFORMANCE 509, 512–13 (Conference on Research in Income & Wealth, Studies in Income & Wealth Vol. 38, Milton Moss ed., 1973).

A more recent measure is the Daly & Cobb "index of sustainable economic welfare" (ISEW). *See* HERMAN E. DALY & JOHN B. COBB, JR., FOR THE COMMON GOOD 401–55 (1989).

[26] *See* ELIZABETH ANDERSON, VALUE IN ETHICS AND ECONOMICS 8–16 (1993); Cass R. Sunstein, *Incommensurability and Valuation in Law*, 92 MICH. L. REV. 779, 782–90 (1994).

make a sensible evaluation, we need to know a great deal more. To what does this number refer? Does it include greater unemployment, higher inflation, and the scaled-back production of important goods? Does it mean more poverty? At least in principle, it would be much better to have a highly disaggregated system for assessing the qualitatively different goods at stake. People should be informed about the diverse potential effects and make judgments on the basis of an understanding of the qualitative differences. If all the relevant goods are aligned along a single metric, they become less visible, or perhaps invisible.[27]

II. Existing Measures of Well-Being

A. Current American Approaches

GDP is hardly the only indicator of social welfare. In the United States, over fifty indicators are now in use.[28] The United Nations offers many more.[29] A major problem with the current American approach is that the measures — offered in an endless and barely intelligible succession — lack organization and clarity.[30] In this section, I describe some of the most important indicators.

The *unemployment rate*, announced every month, includes the number of people sixteen years of age or older who are actively seeking employment.[31] It therefore excludes people who are not seeking work, even if they say that they would like a job and that they are not

---

[27] The use of GNP creates other difficulties, but because these seem less fundamental and in some ways more complex, I simply identify them here.

(a) GNP depends on willingness to pay and thus on existing preferences for various social goods. One could do much worse than to make assessments on the basis of existing preferences; people's well-being is certainly connected with satisfaction of consumption choices. Existing preferences are not, however, an adequate guide to social well-being, because they may depend on unjust background conditions or on simple ignorance. *See* AMARTYA SEN, COMMODITIES AND CAPABILITIES 48 (Professor Dr. P. Hennipman Lectures in Economics Vol. 7, 1985).

(b) As noted, GNP is an important method for making cross-national comparisons. But per capita GNP is an inadequate comparative guide if there are large differences in conditions and hence in needs. If distinctive needs are a product of local circumstances, GNP per capita will be an inadequate proxy for well-being.

(c) The existence of *positional goods* poses a problem for GNP. Positional goods are those that are valuable because only a few people have them. Status symbols of various sorts, including luxury automobiles, are examples. *See* Richard H. McAdams, *Relative Preferences*, 102 YALE L.J. 1, 18–19 (1992). If GNP is growing partly because it includes a large number of positional goods, it is not clear that welfare is growing as well.

[28] *See* NORMAN FRUMKIN, GUIDE TO ECONOMIC INDICATORS at xiii (1990).

[29] *See* HUMAN DEVELOPMENT REPORT 1993, *supra* note 12, at 129–34.

[30] A possible exception is the *Statistical Abstract*, cited above in note 7. The abstract is helpful, but it has many failings as well. Above all, it is so detailed that readers cannot easily get a general picture; the latest edition includes 1433 tables.

[31] *See* FRUMKIN, *supra* note 28, at 224.

seeking work because they do not believe that jobs are available for them.

The following tables show differences in employment along lines of race and sex; these are significant because although overall unemployment may be low, it is good to know whether members of identifiable social groups are disproportionately out of work.[32]

TABLE 2

CIVILIAN UNEMPLOYMENT RATE BY DEMOGRAPHIC CHARACTERISTIC[33]

(Percent; monthly data seasonally adjusted)

		White						
			Males			Females		
Year	All Civilian Workers	Total	Total	16–19 Years	20 Years and Over	Total	16–19 Years	20 Years and Over
1975	8.5	7.8	7.2	18.3	6.2	8.6	17.4	7.5
1976	7.7	7.0	6.4	17.3	5.4	7.9	16.4	6.8
1977	7.1	6.2	5.5	15.0	4.7	7.3	15.9	6.2
1978	6.1	5.2	4.6	13.5	3.7	6.2	14.4	5.2
1979	5.8	5.1	4.5	13.9	3.6	5.9	14.0	5.0
1980	7.1	6.3	6.1	16.2	5.3	6.5	14.8	5.6
1981	7.6	6.7	6.5	17.9	5.6	6.9	16.6	5.9
1982	9.7	8.6	8.8	21.7	7.8	8.3	19.0	7.3
1983	9.6	8.4	8.8	20.2	7.9	7.9	18.3	6.9
1984	7.5	6.5	6.4	16.8	5.7	6.5	15.2	5.8
1985	7.2	6.2	6.1	16.5	5.4	6.4	14.8	5.7
1986	7.0	6.0	6.0	16.3	5.3	6.1	14.9	5.4
1987	6.2	5.3	5.4	15.5	4.8	5.2	13.4	4.6
1988	5.5	4.7	4.7	13.9	4.1	4.7	12.3	4.1
1989	5.3	4.5	4.5	13.7	3.9	4.5	11.5	4.0
1990	5.5	4.7	4.8	14.2	4.3	4.6	12.6	4.1
1991	6.7	6.0	6.4	17.5	5.7	5.5	15.2	4.9
1992	7.4	6.5	6.9	18.4	6.3	6.0	15.7	5.4

[32] *See supra* p. 1308 (showing the variation in unemployment rates over time).

[33] *See* ECONOMIC REPORT OF THE PRESIDENT 1993, *supra* note 20, at 391.

TABLE 3

CIVILIAN UNEMPLOYMENT RATE BY DEMOGRAPHIC CHARACTERISTIC[34]
(Percent; monthly data seasonally adjusted)

	Black and Other or Black						
		Males			Females		
Year	Total	Total	16–19 Years	20 Years and Over	Total	16–19 Years	20 Years and Over
1975	14.8	14.8	38.1	12.5	14.8	41.0	12.2
1976	14.0	13.7	37.5	11.4	14.3	41.6	11.7
1977	14.0	13.3	39.2	10.7	14.9	43.4	12.3
1978	12.8	11.8	36.7	9.3	13.8	40.8	11.2
1979	12.3	11.4	34.2	9.3	13.3	39.1	10.9
1980	14.3	14.5	37.5	12.4	14.0	39.8	11.9
1981	15.6	15.7	40.7	13.5	15.6	42.2	13.4
1982	18.9	20.1	48.9	17.8	17.6	47.1	15.4
1983	19.5	20.3	48.8	18.1	18.6	48.2	16.5
1984	15.9	16.4	42.7	14.3	15.4	42.6	13.5
1985	15.1	15.3	41.0	13.2	14.9	39.2	13.1
1986	14.5	14.8	39.3	12.9	14.2	39.2	12.4
1987	13.0	12.7	34.4	11.1	13.2	34.9	11.6
1988	11.7	11.7	32.7	10.1	11.7	32.0	10.4
1989	11.4	11.5	31.9	10.0	11.4	33.0	9.8
1990	11.3	11.8	32.1	10.4	10.8	30.0	9.6
1991	12.4	12.9	36.5	11.5	11.9	36.1	10.5
1992	14.1	15.2	42.0	13.4	13.0	37.2	11.7

The *poverty level* emerged from the 1961 plan of the Department of Agriculture.[35] Like judgments about unemployment, the judgment about who is poor is far from a simple matter of fact.[36] The 1961 estimate measured how much money was necessary to meet nutritional requirements, and this amount was multiplied by three to determine the total income necessary to meet all living expenses.[37] Poverty thresholds have been updated every year by taking into account the consumer price index. Hence, the annual threshold for a family of four was $3169 in 1964, $11,611 in 1987, and $13,924 in 1991.[38]

The official measure of poverty does not include noncash income; it therefore excludes "food stamps, Medicare and Medicaid, school lunches, and subsidized rental housing."[39]

[34] *See id.*

[35] *See* FRUMKIN, *supra* note 28, at 196.

[36] *See* SEN, *supra* note 24, at 9–23 (discussing possible concepts of poverty).

[37] *See* FRUMKIN, *supra* note 28, at 196. The "multiplication by three" is of course quite crude. It was based on a 1955 study showing that food consumes one-third of the average household budget. *See id.*

[38] *See* U.S. DEP'T OF COMMERCE, CURRENT POPULATION REPORTS SERIES P-60, NO. 181, POVERTY IN THE UNITED STATES: 1991, at A-6 (Aug. 1992).

[39] FRUMKIN, *supra* note 28, at 195.

TABLE 4

PERSONS AND FAMILIES BELOW THE POVERTY INCOME LEVEL[40]

	Families Below Poverty Level		Persons Below Poverty Level	
Year	Number (millions)	Percent of Population	Number (millions)	Percent of Population
1975	5.5	9.7	25.9	12.3
1977	5.3	9.3	24.7	11.6
1978	5.3	9.1	24.5	11.4
1979	5.5	9.2	26.1	11.7
1980	6.2	10.3	29.3	13.0
1981	6.9	11.2	31.8	14.0
1982	7.5	12.2	34.4	15.0
1983	7.6	12.3	35.3	15.2
1984	7.3	11.6	33.7	14.4
1985	7.2	11.4	33.1	14.0
1986	7.0	10.9	32.4	13.6
1987	7.0	10.7	32.2	13.4
1988	6.9	10.4	31.7	13.0
1989	6.8	10.3	31.5	12.8
1990	7.1	10.7	33.6	13.5
1991	7.7	11.5	35.7	14.2

Of course, there are large disparities in terms of race and sex in the percentage of persons and families living in poverty.[41]

The *consumer price index*, the most important indicator of the rate of inflation, is designed to reflect price changes for a set of goods, including housing, clothing, food and drink, medical care, entertainment, education, and tobacco products.[42] Annual percentage changes show striking disparities over time:

[40] *See* ECONOMIC REPORT OF THE PRESIDENT 1993, *supra* note 20, at 380, tbl. B-28.

[41] *See id.* (showing that the percentage of blacks living in poverty is nearly triple that of whites, and that the percentage of black female householders in poverty is nearly double that of white female householders).

[42] *See* FRUMKIN, *supra* note 28, at 63.

TABLE 5
CONSUMER PRICE INDEX[43]
(annual percentage change)

	CPI-U			CPI-W
Year	All Items	All Items Excluding Energy	All Items Excluding Food and Energy	All Items
1975	9.1	8.9	9.1	9.1
1976	5.8	5.6	6.5	5.7
1977	6.5	6.4	6.3	6.5
1978	7.6	7.8	7.4	7.7
1979	11.3	10.0	9.8	11.4
1980	13.5	11.6	12.4	13.4
1981	10.3	10.0	10.4	10.3
1982	6.2	6.7	7.4	6.0
1983	3.2	3.6	4.0	3.0
1984	4.3	4.7	5.0	3.5
1985	3.6	3.9	4.3	3.5
1986	1.9	3.9	4.0	1.6
1987	3.6	4.1	4.1	3.6
1988	4.1	4.4	4.4	4.0
1989	4.8	4.7	4.5	4.8
1990	5.4	5.2	5.0	5.2
1991	4.2	4.6	4.9	4.1
1992	3.0	3.2	3.7	2.9

The *average weekly earnings* of workers in private nonagricultural industries, calculated monthly by the Bureau of Labor Statistics, are provided in current dollars and in constant 1982 dollars.[44]

[43] The information in this table was compiled from several sources. The CPI-U figures for all items were drawn from *Statistical Abstract 1993*, cited above in note 7, at 482, tbl. 756; the CPI-W figures, from *Economic Indicators Handbook*, cited above in note 8, at 227; CPI DETAILED REPORT, March 1993, at 166, tbl. 6A; and CPI DETAILED REPORT, March 1992, at 167, tbl. 6A. The CPI-U figures up to 1990 for all items excluding energy and all items excluding food and energy, are from *Economic Report of the President 1993*, cited above in note 20, at 414, tbl. B-58. The CPI-U figures for 1991 and 1992 are from *Economic Report of the President 1994*, cited above in note 20 at 339, tbl. B-62. CPI-U is the consumer price index for all urban consumers; CPI-W is the CPI for urban wage earners and clerical workers. In 1980, the CPI-U represented 80% of the noninstitutional population, and the CPI-W, 32%. *See* FRUMKIN, *supra* note 28, at 63.

[44] *See* ECONOMIC REPORT OF THE PRESIDENT 1994, *supra* note 20, at 320, tbl. B-45; ECONOMIC REPORT OF THE PRESIDENT 1993, *supra* note 20, at 396, tbl. B-42.

TABLE 6
AVERAGE WEEKLY EARNINGS[45]

	Level		Percent Change from Preceding Year	
Year	Current Dollars	1982 Dollars	Current Dollars	1982 Dollars
1975	$163.53	$293.06	5.7	−3.0
1976	175.45	297.37	7.3	1.5
1977	189.00	300.96	7.7	1.2
1978	203.70	300.89	7.8	0.0
1979	219.91	291.66	8.0	−3.1
1980	235.10	274.65	6.9	−5.8
1981	255.20	270.63	8.5	−1.5
1982	267.26	267.26	4.7	−1.2
1983	280.70	272.52	5.0	2.0
1984	292.86	274.73	4.3	0.8
1985	299.09	271.16	2.1	−1.3
1986	304.85	271.94	1.9	0.3
1987	312.50	269.16	2.5	−1.0
1988	322.02	266.79	3.0	−0.9
1989	334.04	264.22	3.8	−1.0
1990	345.35	259.47	3.3	−1.8
1991	353.98	255.40	2.5	−1.6
1992	363.95	255.22	2.8	−0.1

Income distribution is measured in terms of quintiles. Income taxes have little effect on income distribution. The following table shows changes over time with respect to income, before and after tax, in the United States:

[45] *See id.*

TABLE 7
DISTRIBUTION OF INCOME: HOUSEHOLDS' SHARES[46]
(percent)

Income Before Taxes	1991	1990	1986	1985	1984	1983	1982	1981	1980	1974
	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%
Lowest fifth	3.8	3.9	3.8	3.9	4.0	3.9	4.0	4.0	4.1	4.2
Second fifth	9.5	9.6	9.7	9.7	9.8	9.9	9.9	10.0	10.2	10.6
Third fifth	16.0	16.0	16.4	16.3	16.4	16.4	16.5	16.7	16.8	17.1
Fourth fifth	24.1	24.1	24.0	24.4	24.6	24.6	24.6	24.8	24.8	24.6
Highest fifth	46.5	46.4	46.1	45.7	45.3	45.2	45.0	44.4	44.2	43.5
Income After Taxes	1991	1990	1986	1985	1984	1983	1982	1981	1980	1974
	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%
Lowest fifth	4.5	4.6	4.2	4.6	4.7	4.7	4.7	4.9	4.9	4.9
Second fifth	11.0	10.9	10.4	11.0	11.0	11.1	11.3	11.5	11.6	11.7
Third fifth	16.7	16.6	16.1	17.2	17.2	17.4	17.5	17.8	17.9	17.8
Fourth fifth	24.3	24.0	23.2	24.7	24.8	24.8	24.8	25.0	25.1	24.7
Highest fifth	43.6	43.9	46.1	42.6	42.3	42.1	41.8	40.9	40.6	41.0

No official government statistics reveal *the costs and benefits of government regulation.* Private estimates suggest that economic regulation costs the economy about $46 billion annually, and that social regulation (principally environmental controls) costs between $78 billion and $107 billion.[47] The benefits of economic regulation appear low, but the benefits of social regulation range between $42 billion and $181 billion.[48] No one has fully explored the effects of regulation on GDP. A 1990 study suggested that between 1973 and 1985, the GDP growth rate fell by 0.19 percentage points as a result of environmental controls.[49] This study does not, however, include the health benefits of such controls, which probably lead to productivity gains. There are significant disparities in regulatory policy, especially with respect to expenditures per life saved:

---

[46] The 1986–1991 figures are derived from the *Statistical Abstract of the United States*, which uses a slightly different definition of "after-tax" income than Norman Frumkin's *Guide to Economic Indicators*. *See* FRUMKIN, *supra* note 28, at 75, tbl. 15 (presenting the income before and after taxes for 1974–85); STATISTICAL ABSTRACT 1993, *supra* note 7, at 463, tbl. 722. (presenting the figures for income before and after taxes in 1991); U.S. DEP'T OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES 462, tbl. 731 (112th ed. 1992) (presenting the figures for income before and after taxes in 1990); U.S. DEP'T OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES 449, tbl. 724 (110th ed. 1990) (describing income before and after taxes for 1986).

[47] *See* Robert W. Hahn & John A. Hird, *The Costs and Benefits of Regulation: Review and Synthesis*, 8 YALE J. ON REG. 233, 249, 253 (1991).

[48] *See id.* at 253.

[49] *See* Dale W. Jorgensen & Peter J. Wilcoxen, *Environmental Regulation and U.S. Economic Growth*, 21 RAND J. ECON. 314, 315 (1990).

TABLE 8

COST-EFFECTIVENESS OF SELECTED REGULATIONS[50]

(Cost per premature death averted)

Regulation	Agency	($millions 1990)
Unvented Space Heater Ban	CPSC	0.1
Underground Construction Standards	OSHA-S	0.1
Auto Fuel-System Integrity Standard	NHTSA	0.4
Side-Impact Standards for Autos (Dynamic)	NHTSA	0.8
Low-Altitude Windshear Equip. & Training Stds.	FAA	1.3
Hazard Communication Standard	OSHA-S	1.6
Standards for Radionuclides in Uranium Mines	EPA	3.4
Benzene NESHAP (Revised: Coke Byproducts)	EPA	6.1
Electrical Equipment Standards (Coal Mines)	MSHA	9.2
Arsenic/Copper NESHAP	EPA	23.0
Benzene NESHAP (Revised: Transfer Operations)	EPA	32.9
Coke Ovens Occupational Exposure Limit	OSHA-H	63.5
Arsenic Occupational Exposure Limit	OSHA-H	106.9
Asbestos Ban	EPA	110.7
1,2-Dichloropropane Drinking Water Standard	EPA	653.0
Hazardous Waste Land Disposal Ban (1st 3rd)	EPA	4190.4
Formaldehyde Occupational Exposure Limit	OSHA-H	86,201.8
Atrazine/Alachlor Drinking Water Standard	EPA	92,069.7
Hazardous Waste Listing for Wood-Preserving Chemicals	EPA	5,700,000.0

The Federal Bureau of Investigation compiles statistics showing *subjection to violent crime*.[51] The following table reflects changes over time:

[50] *See* BREYER, *supra* note 3, at 24–27, tbl. 5.

[51] *See* STATISTICAL ABSTRACT 1993, *supra* note 7, at 189–90.

TABLE 9
SUBJECTION TO VIOLENT CRIME[52]

	Rate Per 100,000 Inhabitants			
Year	Violent Crime	Murder and Non-Negligent Homicide	Forcible Rape	Aggravated Assault
1975	487.8	9.6	26.3	231.1
1976	467.8	8.8	26.6	233.2
1977	475.9	8.8	29.4	247.0
1978	497.8	9.0	31.0	262.1
1979	548.9	9.7	34.7	286.0
1980	596.6	10.2	36.8	298.5
1981	594.3	9.8	36.0	289.7
1982	571.1	9.1	34.0	289.2
1983	537.7	8.3	33.7	279.2
1984	539.2	7.9	35.7	290.2
1985	556.6	7.9	37.1	302.9
1986	617.7	8.6	37.9	346.1
1987	609.7	8.3	37.4	351.3
1988	637.2	8.4	37.6	370.2
1989	663.1	8.7	38.1	383.4
1990	731.8	9.4	41.2	424.1
1991	758.1	9.8	42.3	433.3

Here, then, are some of the most important indicators of social and economic well-being. It should be clear that the system for reporting and disseminating this information is quite ad hoc. There has been no democratic judgment about the ingredients of such key measures as GDP, poverty, and unemployment. There is no effort to put some or many of the indicators into a composite figure, to provide an indication of general changes over time. Nor does the government furnish reports offering a clearly accessible survey of social and economic indicators.

B. International Measures

The United Nations makes what is probably the most influential international effort to measure well-being, though there have been illuminating efforts elsewhere. I summarize several methods here. A key point is that alternative accounts often place a premium on health and education as well as per capita income.

1. Human Development Index. — The United Nations publishes an annual *Human Development Report* in order to facilitate comparative assessments of government performance.[53]

[52] *See* FEDERAL BUREAU OF INVESTIGATION, U.S. DEP'T OF JUSTICE, UNIFORM CRIME REPORTS FOR THE UNITED STATES 1992, at 58, tbl. 1 (1992).

[53] *See, e.g.*, HUMAN DEVELOPMENT REPORT 1990, *supra* note 21, at 9.

(a) Description. — The report ranks 173 countries and contains comparative information on access to health services and safe water; numbers of radios, telephones, and televisions; levels of child immunization and malnutrition; public expenditures on education; male-female wage gaps; levels of homicide, rape, and drug crimes; population per doctor; numbers of new AIDS cases; population growth; energy consumption; pollution levels; and much more.

The United Nations approach places particular emphasis on a "human development index" (HDI). This figure is calculated on the basis of longevity, knowledge, and income.[54] "Longevity" is determined on the basis of life expectancy at birth.[55] "Knowledge" is calculated by a formula based on adult literacy and mean years of schooling, with literacy weighted twice as heavily as mean years of schooling.[56] To take account of the diminishing value of income, the "income" ingredient is based on an adjustment of per capita GDP.[57] The UN measurement weighs the three variables equally. What follows is the ranking of the first twelve countries in the latest report:

TABLE 10

HUMAN DEVELOPMENT INDEX[58]

Rank	Life Expectancy At Birth (years) 1990	Adult Literacy Rate (%) 1990	Mean Years of Schooling 1990	Educational Attainment 1990	Real GDP Per Capita (PPP$) 1990	Adjusted Real GDP Per Capita	HDI 1990
1. Japan	78.6	99.0	10.7	2.87	17,616	5049	0.983
2. Canada	77.0	99.0	12.1	2.98	19,232	5052	0.982
3. Norway	77.1	99.0	11.6	2.95	16,028	5044	0.979
4. Switzerland	77.4	99.0	11.1	2.90	20,874	5074	0.978
5. Sweden	77.4	99.0	11.1	2.90	17,014	5047	0.977
6. USA	75.9	99.0	12.3	3.00	21,449	5075	0.976
7. Australia	76.5	99.0	11.5	2.94	16,051	5044	0.972
8. France	76.4	99.0	11.6	2.94	17,405	5048	0.971
9. Netherlands	77.2	99.0	10.6	2.86	15,695	5042	0.970
10. United Kingdom	75.7	99.0	11.5	2.94	15,804	5043	0.964
11. Iceland	77.8	99.0	8.9	2.72	16,496	5045	0.960
12. Germany	75.2	99.0	11.1	2.90	18,213	5050	0.957

The HDI compiles much valuable information and presents it in a revealing way. For instance, the United States ranks first in both per capita GDP and adjusted real GDP; it also ranks first in mean years of schooling and in overall educational attainment. But it ranks

---

[54] *See id.* at 11–13.

[55] *See id.* at 12.

[56] *See* UNITED NATIONS DEVELOPMENT PROGRAMME, HUMAN DEVELOPMENT REPORT 1991, at 90 (1991).

[57] *See* HUMAN DEVELOPMENT REPORT 1990, *supra* note 21, at 12.

[58] *See* HUMAN DEVELOPMENT REPORT 1993, *supra* note 12, at 135, tbl. 1.

sixth overall. The reason is that life expectancy at birth stands at 75.9 years, for a ranking along that dimension of sixteenth.

The UN report demonstrates that there is no necessary connection between GDP and employment levels.[59] Moreover, the performance of some countries appears to be quite variable over time. Notably, the literacy rate in the United States increased from a comparatively low 96% in 1985 to a very high 99% in 1990.[60]

An intriguing question concerns the precise relationship among the HDI's three variables of longevity, knowledge, and income. Some countries with relatively high income ranks (including Algeria, Namibia, and South Africa) have relatively low HDI ranks.[61] Other countries have HDI ranks that are well above their income ranks (including China, Colombia, and Uruguay).[62]

A key issue is whether significant variations exist among groups within each country. In the United States, for example, whites, standing alone, rank above Japan in HDI; if American whites lived alone in their own country, it would rank first in the world.[63] By contrast, African-Americans rank 31st, and Hispanics 35th.[64] In addition, no nation's HDI improves after being adjusted for sex inequalities, which indicates that no nation provides as good lives for women as it does for men.[65] But there are important variations. For example, women's wages are 88% of men's in France and 85% in Norway, but only 51% in Japan and 59% in the United States.[66]

Many other questions involve comparative data not directly reflected in the HDI's three principal variables. Between 1980 and 1986, for example, there were only 31 drug crimes per 100,000 people per year in Japan, 25 in Israel, and 38 in the Netherlands, compared with 225 in Canada, 234 in the United States, and 403 in Australia.[67] The reported rape rate in the United States is by far the highest — 118 per 100,000 women between 15 and 59.[68] In Japan, the rate is only 5 per 100,000, and in many countries it is somewhere between 18 and

---

[59] For example, Canada had an unemployment rate in 1990–91 of 10.2% despite a high per capita GNP. *See id.* at 201, tbl. 39. Notwithstanding its considerably lower per capita GNP, Japan's unemployment rate was 2.1%. *See id.* Switzerland's unemployment rate of 1.3% is the lowest among industrialized nations, but its per capita GNP is slightly below that of the United States, which has a 6.6% unemployment rate. *See id.*

[60] *Compare* HUMAN DEVELOPMENT REPORT 1990, *supra* note 21, at 129 (listing adult literacy rate in the U.S. for 1985) *with* HUMAN DEVELOPMENT REPORT 1993, *supra* note 12, at 135, tbl. 1 (listing adult literacy rate in the U.S. for 1990).

[61] *See* HUMAN DEVELOPMENT REPORT 1993, *supra* note 12, at 136, tbl. 1.

[62] *See id.* at 135–36.

[63] *See id.* at 18.

[64] *See id.*

[65] *See id.* at 16.

[66] *See id.* at 196, tbl. 34.

[67] *See id.* at 192, tbl. 30.

[68] *See id.*

35.[69] The United States also has the highest homicide rate, at 8 per 100,000, compared with 1.5 for Japan and Sweden and somewhere between 2 and 3 for Canada, Switzerland, Australia, Finland, Austria, and New Zealand.[70] It should not be surprising that the United States has the highest rate of prisoners, 426 per 100,000, compared with 94 in Canada, 54 in Switzerland, and 77 in the United Kingdom and in Germany.[71]

(b) Difficulties. — The HDI approach has important limitations. Any "index" will be controversial, and the equal weighting of the three variables seems somewhat arbitrary. In any case, the three variables are interrelated. Income can "buy" good educational attainment and also longevity; people who are poor tend to live shorter lives. So too, people who are in good health and who are well-educated have a better chance to make money. The use of the three variables is controversial partly because of these complex interrelations.[72]

The HDI is also insensitive to ethnic, racial, sex and regional differences. If, for example, there are important differences between men and women, people should know about this fact.[73] It is also possible for a country with a high HDI score to have a number of people concentrated toward the bottom of the economic ladder and facing desperate conditions.

2. Alternatives. — Other nations, especially those in Scandinavia, have implemented interesting alternatives to HDI. The Swedish assessment of "standard of living" is more disaggregated and less mathematical than the UN approach. The assessment takes account of health and access to health care; education and skills; housing; security of life and property (including freedom from crime); availability of recreation and cultural resources; employment; income and wealth; and political participation.[74] Of special interest is the Swedish rejection of unitary measures of well-being, and the insistence that well-being is not to be measured in purely subjective terms.[75] A key point

---

[69] *See id.*

[70] *See id.*

[71] *See id.*

[72] In addition, there is a degree of crudeness in the choice of the three indicators. It might make sense to include poverty level, access to food, employment figures, and more. Moreover, educational attainment is not adequately measured by mean years of schooling. Literacy is a form of educational attainment, but it sets a low floor, and in any case it is far from clear that, in assessing educational attainment, we should count literacy for two and mean years for one in some aggregate figure. Perhaps a composite figure could be developed on the basis of a more precise inquiry into relevant factors. *Cf.* PARTHA DASGUPTA, AN INQUIRY INTO WELL-BEING AND DESTITUTION 77–78 (1993) (noting the absence of attention to civil and political liberties in conventional measures of well-being, such as the HDI).

[73] The report does, however, try to take distribution into account by using adjusted tables. *See* HUMAN DEVELOPMENT REPORT 1993, *supra* note 12, at 17, tbl. 1.4.

[74] *See* Robert Erikson, *Descriptions of Inequality: The Swedish Approach to Welfare Research*, *in* THE QUALITY OF LIFE 67, tbl. 1 (Martha C. Nussbaum & Amartya Sen eds., 1992).

[75] It would be possible to have a purely subjective account, but such an account would be

here is that people may adjust their expectations in light of a status quo characterized by deprivation and injustice, and for this reason it is important to see what people can have or become, not merely what they think about their situation.

Another interesting alternative is a comparative survey of Scandinavian countries, initiated by the University of Helsinki.[76] In addition to the Swedish factors, the Finnish approach emphasizes the quality of the biological and physical environment, including air and water pollution; the nature of relations with other people in the local community, in the family, and within the workplace; and opportunities to enjoy nature.[77] The comparative survey is intended to include both objective and subjective indicators of welfare.

In the same vein, UNICEF lists a wide range of basic indicators, without attempting to aggregate them. These include male and female adult literacy rates; life expectancy at birth; income shares of the lowest 40% and the highest 20% of the population; GDP per capita; and infant mortality.[78] The Netherlands identifies sixteen variables involving quality of life: three each involving housing, health, spending power, leisure, and employment, combined with a single variable for education.[79] There is also an effort to combine these statistics into an aggregate number showing changes over time for different groups in the population.[80] An organization in Washington, D.C. attempts to measure human suffering through a scale that takes account of income, inflation, infant mortality, nutrition, access to clean water, literacy, and personal freedom.[81] Similar aggregative and separate statistics might be offered for human rights violations.[82]

III. Politics, Well-Being, and Quality of Life

All this has implications for law and policy. A high priority for both domestic and international agencies should be to compile accurate information about quality of life, to allow comparisons across time

---

subject to distortions. *See* Ian Miles, *Social Indicators for Real-Life Economics*, *in* REAL-LIFE ECONOMICS, *supra* note 15, at 283, 287–88; *see also* SEN, *supra* note 27, at 22 (rejecting as inadequate a measure of well-being based on happiness or desire-fulfillment).

[76] *See* Erik Allardt, *Having, Loving, Being: An Alternative to the Swedish Model of Welfare Research*, *in* THE QUALITY OF LIFE, *supra* note 74, at 88, 88–89.

[77] *See id.* at 89–90.

[78] *See, e.g.*, UNITED NATIONS CHILDREN'S FUND, THE STATE OF THE WORLD'S CHILDREN 1987, at 128–29, tbl. 1 (1987).

[79] *See* Miles, *supra* note 75, at 290.

[80] *See id.*

[81] *See* ROBERT V. HORN, STATISTICAL INDICATORS FOR THE ECONOMIC AND SOCIAL SCIENCES 142–44 (1993).

[82] Note especially the attempt to integrate liberties and economic variables in DASGUPTA, cited above in note 72, at 108–16. Two efforts at tabulating human rights records in numerical form are FREEDOM HOUSE, FREEDOM IN THE WORLD 572–75, 578–79 (1992); and CHARLES HUMANA, WORLD HUMAN RIGHTS GUIDE *passim* (3d ed. 1992).

and space, and to ensure that the relevant reports are widely disseminated.

The American government should compile an annual "quality of life" report. I cannot give a full account of the appropriate ingredients of such a report. But it seems clear that the report should include, among other things, per capita income, poverty, housing, unemployment, average weekly earnings, inflation, child mortality, longevity, subjection to violent crime, literacy, and educational attainment. The report should also specify minimum standards for such things as income, education, health, and housing. The report should allow for comparison across regions, between men and women, and among different racial and ethnic groups.

These comparisons may spur healthy competition to do well along dimensions that count. If a state knows that it ranks forty-second in, say, unemployment, there will be both local and national pressure to make things better. If a state has an especially high level of violent crime, perhaps priorities can be changed to redress the problem. And if women are doing much worse than men, or blacks much worse than whites, the public can see this fact and perhaps take corrective action.

The quality of life report should be widely disseminated to the public and, in particular, to the news media. Strong evidence indicates that the media can play a large role in counteracting social problems by focusing public and private attention and by giving government the incentives to respond.[83] Instead of attending to anecdotes and sensational scandals — or offering statements about supposed trends — the news media should focus on the quality of life report and thus allow debate to be based on actual evidence. The report may well have an especially important role during elections, but it could affect deliberation and policymaking more broadly as well.

A quality of life report of the kind proposed here could produce two distinct benefits. First, the report may well have desirable social consequences by facilitating priority-setting, imposing appropriate incentives on governmental officials, and fueling public interest in redressing serious problems. Accurate and widely disseminated information can be an important check on governmental failure to redress such problems.[84] Consider the striking fact that in modern times, no

---

[83] *See* AMARTYA SEN, RESOURCES, VALUES AND DEVELOPMENT 500–03 (1984) (discussing the important role of news media in combatting famines).

[84] *See id.*; *see also* Amartya Sen, *Freedoms and Needs*, THE NEW REPUBLIC, Jan. 10 & 17, 1994, at 31, 33–34 (emphasizing the importance of free expression and the press to a government's willingness to address human suffering).

country with an active, free, and democratic press appears to have suffered from famine.[85]

Second, the very process of compiling a quality of life report would have advantages. We have seen that any conception of what matters is a product of judgments that may be controversial. Human needs have a great deal to do with the facts — do people have jobs? do they have food or housing? — but they are not simply facts. Any conception of needs is a product of human judgments about what matters. Consider, for example, the very definitions of poverty and unemployment, or the decision whether to include comparative data about groups defined in racial, ethnic, and religious terms. The public understanding of social problems should itself be a product, at least in part, of a good process of social deliberation about how needs are best characterized.[86] By using GDP as the central indicator of social welfare while publishing a wide array of unorganized and somewhat random indicators, the current system offers no such educational benefits.

To say all this is not to suggest that such a report would be simple, or that it would not create risks. But most of the information is now compiled and available somewhere; its systematic presentation and dissemination should not be costly. There is of course a risk of error and bias, especially in view of the fact that the fortunes of an incumbent administration may depend on what emerges. Government manipulation of official statistics is hardly foreign to American experience. At the same time, many government agencies have established a reputation for objectivity, and there is no reason to believe that (for example) the statistics relating to literacy, infant mortality, and poverty levels reflect substantial bias.

To be sure, people have limited information-processing capacities, and these can lead to systematic errors through the use of bad heuristics. Some release of information can actually make things worse. But to some extent the confusion is a result of what has been made public, and careful presentation of the data should help overcome some of the faulty heuristics. One of the most common heuristics, for example, is that of "availability."[87] People seem to think that events are more probable if an occurrence can easily be brought to mind.

---

[85] *See* Sen, *supra* note 84, at 34.

[86] *See id.* at 32. Sen writes:

> Political rights can have a major role in providing incentives and information toward the solution of economic privation. But the connections between rights and needs are not merely instrumental; they are also constitutive. For our conceptualization of economic needs depends on open public debates and discussions, and the guaranteeing of those debates and those discussions requires an insistence on political rights.

Id.

[87] *See* Cass R. Sunstein, *Endogenous Preferences, Environmental Law*, 22 J. LEGAL STUD. 217, 241–42 (1993).

Some of this effect might be counteracted by a report that catalogues a range of events, that allows comparisons, and that shows changes over time. The very need to compile the data would also give desirable incentives to government officials.[88]

I have suggested that both personal and social well-being are in important respects a product of law; that is, they are a function of the things to which the law gives people access. The law can give such access in many ways. It may provide guarantees of certain goods (such as housing, food, medical care); it may allow people to sell their labor; it may permit people to own certain things that they produce or inherit; and it may say that people can freely exchange some, but not all, of what they own. People's entitlements are a function of law, and it is their entitlements that enable them to obtain much of what provides for their well-being. We lack a systematic account of the relationship between legal entitlements and the components of well-being.

These points have general implications. A homeless person, for example, is deprived of shelter in important part through the law; if he tries to sleep in a place with a roof, the law will call him a trespasser and subject him to civil and criminal penalties.[89] Whether someone has access to medical care depends on the bundle of legal rights that have been conferred. Property rights as we know them are not brute or natural facts, but a product of laws granting and conditioning entitlements of different kinds.[90] It should ultimately be possible to link various components of well-being to different legal permissions and requirements. We could begin to connect deprivations and benefits of various sorts with a range of legal provisions. A quality of life report would help initiate this endeavor.

Of course, no report can substitute for actual reform. What matters is what is done, not what is said. But in some contexts, what is done is a function of what is said. In the area of risk regulation, for example, there is evidence that disclosure of information can be an important regulatory tool, prompting corrective action by employers, employees, and governments generally.[91] In any case, both citizens

---

[88] A similar report should be compiled in other nations and be made available for international comparison and review. *See* Cass R. Sunstein, *Information, Please*, 2 E. EUR. CONST. REV. 54, 54 (1993).

[89] *See* Jeremy Waldron, *Homelessness and the Issue of Freedom*, 39 UCLA L. REV. 295, 304 (1991).

[90] Amartya Sen writes:

> Finally, the focus on entitlement has the effect of emphasizing legal rights. Other relevant factors, for example market forces, can be seen as operating *through* a system of legal relations (ownership rights, contractual obligations, legal exchanges, etc.). The law stands between food availability and food entitlement. Starvation deaths can reflect legality with a vengeance.

SEN, *supra* note 24, at 165–66.

[91] *See* WESLEY A. MAGAT & W. KIP VISCUSI, INFORMATIONAL APPROACHES TO REGULA-

and public officials are unlikely to know what to do unless they have good information about existing problems and trends. These points have general and complex consequences for the study of law, but I end with a simple claim: Democratic governments could take few more important steps than to initiate a process by which the components of well-being would become a substantial part of political debate.

TION 186–88 (1992); Cass R. Sunstein, *Informing America: Risk, Disclosure, and the First Amendment*, 20 FLA. ST. U. L. REV. 653, 662 (1993); W. Kip Viscusi, Wesley A. Magat & Joel Huber, *Informational Regulation of Consumer Health Risks: an Empirical Evaluation of Hazard Warnings*, 17 RAND J. ECON. 351, 362 (1986) (concluding, based on empirical study, that warning labels affect consumer behavior).