

WILLIAM F. FELICE, THE UN COMMITTEE ON
THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION:
RACE AND ECONOMIC AND SOCIAL HUMAN RIGHTS

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*** Simplified racial categories can be misleading and dangerous, since individuals are not only a race, but also a class, gender, and sexuality. Thus, broad generalizations about race can be deceptive and groundless in individual cases. In the real world, a person does not exist only as a racial category.

According to the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), race encompasses color, descent, and national or ethnic origin. "Descent" suggests social origin, such as heritage, lineage, or parentage. "National or ethnic origin" denotes linguistic, cultural, and historical roots. Thus, this broad concept of race clearly is not limited to objective, mainly physical elements, but also includes subjective and social components. The ingredients considered central to a person's "race" may, in fact, vary from place to place. Some may emphasize linguistic and cultural factors while others emphasize social reasons, but not ethnic reasons. Furthermore, nothing is permanent about all these aspects of race. Anthropologists have shown that environmental influences can profoundly change even the physical appearance of a human being in a relatively short time.

Recent scientific research on the human genome—the aggregate of genetic material encased in the heart of almost every cell of the body—has confirmed that the racial categories recognized by society are not reflected on the genetic level. Most of the scientists studying the human genome are convinced that the standard labels used to distinguish people by race have little or no biological meaning.***

A definition and understanding of race and racial discrimination analysis should, therefore, include more than a mere difference of skin color. Race is also tied to power differentials, social status, and other distinctions. Differences in power give one group the ability to declare the less powerful group "inferior." In fact, those in power may share the same skin color and ethnic characteristics as those they oppress, yet use "race" and "ethnic" differences to consolidate their rule.

Those most vulnerable to economic and social deprivations (hunger, illiteracy, disease, and so on) are those groups without wealth and political power, the majority of whom are women and children. Skin color alone will not tell who will suffer. For example, the majority of US citizens living in poverty are white, the color of most US policy makers.

Yet, most of the people in the world who experience a life of severe destitution are people of color. Suffering clearly continues to be related to the politics of race. According to the administrator of the United Nations Development Programme (UNDP), among the 4.4 billion people in developing countries around the world at the end of the twentieth century, three-fifths lived in communities lacking basic sanitation; one-third went without safe drinking water; one-quarter lacked adequate housing; and one-fifth were undernourished. In addition, nearly one-third of the people in the poorest countries, mostly in sub-Saharan Africa, could expect to die by age forty. According to the World Bank, of the world's 6 billion people, 2.8 live on less than \$1 a day; with

44 percent living in South Asia. Overwhelmingly, these impoverished people are people of color. A glance at a map of global hunger, for example, graphically shows that the preponderance of the chronically undernourished are peoples in Africa, Asia, and parts of Latin America and the Caribbean. In early 2001, the UN World Food Program distributed a map calling attention to "hot spots" where hunger is most severe. The map identifies huge areas in Asia and sub-Saharan Africa, where tens of millions of people of color, most of them women and children, cannot get enough to eat. The UN agency estimates that of the 830 million undernourished people in the world, 791 million live in developing countries.

Racial minorities inside the US also continue to suffer a lack of economic security compared to their white counterparts, despite a "booming" economy at the end of the twentieth century. The following statistics from the 1990s reveal the economic divide between black and white Americans. According to Census Bureau statistics, there was a stark \$14,000-per-household income gap between blacks and whites (\$25,050 a year vs. \$38,970; income stated in 1997 US dollars). The unemployment rate for young black men at all education levels was more than twice that for young white men. In addition, twice the number of young black men between the ages of sixteen and twenty-four were not in school or working. One out of every three black men in their twenties was under the supervision of the criminal justice system, either imprisoned or on probation or parole. Blacks in the US were six times more likely than whites to be held in jail. This vast disparity in economic opportunity between blacks and whites in the US continues in the new century.

The same disparity in economic security exists between white and Hispanic Americans. The National Council of La Raza reports that Hispanic workers were disproportionately concentrated in low-wage jobs that offered few benefits throughout the 1990s. As a result, married Hispanics with children continued to have higher poverty rates compared to black and white families. In 1997, for example, 21 percent of Hispanic married couples with children were poor, compared with 6 percent of white and 9 percent of black families. That same year only 55 percent of Hispanics twenty-five and older had graduated from high school, and 7.4 percent had graduated from college.

Any serious program for the protection of economic and social rights must address this reality. These conditions are the result of history, especially the heritage of four major historical processes: conquest, state building, migration, and economic development. Modern states have been built by powerful groups at the expense of the less powerful, with racial prejudice underlying the entire process. For those concerned with economic justice, the questions to be confronted today include the following: How is it possible to overcome and reverse this historical record of racial bias? What political and economic structures perpetuate racial bias in economic outcomes? What policies can be implemented at the national and international levels to create real economic opportunity for all races?

Notes and Questions

1. *Race in the Global Economy*. How would you respond to the questions raised at the end of the Felice article? The linkage between global economic and social violations and racism is rarely discussed in the literature on international economic and social rights. For some exceptions, see, e.g., Jeffrey M. Brown, *Black Internationalism: Embracing an Economic Paradigm*, 23 MICH. J. INT'L L. 807 (2002); Lennox S. Hinds, *The Cross*

Violation of Human Rights of the Apartheid Regime Under International Law, 1 RUTGERS RACE & L. REV. 231 (1999); Ibrahim J. Gassama, *Transnational Critical Race Scholarship: Transcending Ethnic and National Chauvinism in the Era of Globalization*, 5 MICH. J. RACE & L. 133 (1999); Gil Gott, *Critical Race Globalism?: Global Political Economy, And The Intersections Of Race, Nation, and Class*, 33 U.C. DAVIS L. REV. 1503 (2000); Hope Lewis, *Reflections on "BlackCrit Theory": Human Rights*, 45 VILL. L. REV. 1075 (2000); Gay McDougall, *The Durban Racism Conference Revisited: The World Conference Through a Wider Lens*, 26 FLETCHER F. WORLD AFF. 135 (2002); Natsu Taylor Saito, *Critical Race Theory as International Human Rights Law*, 93 AM. SOC'Y INT'L L. PROC. 228 (Mar. 24-27, 1999).

2. *Defining Race.* Felice argues that "race" is largely a social construction. Do you agree? What physical, cultural or social characteristics do you associate with race? For example, the Race Convention defines racial discrimination more broadly than discrimination associated with skin color. Are you comfortable with that approach? How might people from the United States, Canada, England, China, Japan, Denmark, Brazil, the Dominican Republic or Mexico construe "race" differently? What roles do relative differences in economic, social, or political power play in your analysis?
3. What are the legal and practical implications of the statements in the initial report of the United States to the CERD Committee describing the nature and extent of racial discrimination in the United States? How might the report be used by lawyers representing individual clients? NGOs? Civil rights groups? Will U.S. ratification of CERD have a significant impact on racial discrimination in that country? For a critique of the United States initial report, see Human Rights Watch, United States of America, in *WORLD REPORT 2001*, available at <http://hrw.org/wr2k1/usa/>.
4. Under traditional international law doctrine, customary norms can be evidenced by widespread and persistent state practice coupled with evidence that the states engage in the practice from a sense of legal obligation (*opinio juris*). Can President Bush's Goree Island statements about the criminality and brutality of slavery be read as an acknowledgement of U.S. responsibility under international law? Why, or why not? (For a discussion of the elements of international customary law, see, e.g., MARK W. JANIS, *AN INTRODUCTION TO INTERNATIONAL LAW*, at 41-55 (4th ed. 2003).
5. For further readings on reparations for U.S. slavery, abuses against Native Americans, and colonial abuses, see, e.g., William Bradford, "With a Very Great Blame on Our Hearts": *Reparations, Reconciliation, and an American Indian Plea for Peace with Justice*, 27 AM. INDIAN L. REV. 1 (2002/2003); Robert Westley, *Many Billions Gone: Is It Time to Reconsider the Case for Black Reparations?*, 40 B.C. L. REV. 429, 450 (1998); John Donnelly, *Wounds of Colonialism Reopen in Namibia: German Apology for Massacres Poses Questions*, BOSTON GLOBE, Feb. 8, 2004, at A10.
6. How does racial discrimination intersect with other forms of discrimination? Does CERD address multiple forms of identity-based discrimination? See, e.g., WILD for Human Rights, Gender, Race, Ethnicity and Human Rights: Putting Gender on the Agenda, Statement to the Preparatory Committee of The World Conference Against Racism, Racial Discrimination, Xenophobia, and Related Intolerance: September 2001, available at http://www.wildforhumanrights.org/WILD_statement.html (last visited June 6, 2004). See also GLOBAL CRITICAL RACE FEMINISM: AN INTERNATIONAL READER (Adrien K. Wing ed., 2000); SHERENE RAZACK, *LOOKING WHITE PEOPLE IN THE EYE: GENDER, RACE, AND CULTURE IN COURTROOMS AND CLASSROOMS* (1998); Penelope E. Andrews,

Human Rights and the Global Marketplace:

Economic, Social,
and Cultural Dimensions

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