A COMPARATIVE STUDY OF SOCIAL AND ECONOMIC RIGHTS OF ASYLUM SEEKERS AND REFUGEES IN THE UNITED STATES AND THE UNITED KINGDOM

Bobana Ugarkovic*

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* J.D. 2004, University of Georgia School of Law; B.A. Political Science 2001, University of Georgia.

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Asylum is commonly understood as “a place where one is safe and secure.” Indeed, it is often true that persons fleeing persecution look to a foreign sanctuary for that very safety and security lacking in their own homelands. Unfortunately, what it means to be “safe” and “secure” upon arrival to a foreign nation is not easily ascertained. One thing is certain—the road to asylum is often a physically and emotionally trying experience. An illustrative story is that of Daniel Rasuli, a sixteen-year-old from Afghanistan, seeking asylum in the United Kingdom. When Daniel was only twelve, the Taliban killed his father, mother, and one of his brothers. Daniel was left alone, requiring injections to calm him from the mental and emotional trauma of losing his family, until he was secretly smuggled into England with nothing but the clothes on his back.

Unfortunately, the road for asylum seekers like Daniel does not end upon arrival to a country of asylum; indeed, the difficulties associated with a new nation and often a new culture present fresh obstacles. A co-founder of one of the many local groups that work with refugees in the United States notes that, “[l]anguage is a major barrier after refugees arrive here . . . Many of them [also] lack education and relevant work experience.” In addition, “[l]ack of transportation, culture shock and depression also pose problems.” The story of Daniel is not only a good illustration of the grueling circumstances that force many asylum seekers to flee their homelands, but it also foreshadows the obstacles they face upon arrival. A person like Daniel will undoubtedly need a place to live, monetary assistance, access to education, medical and psychological services, and, ultimately, a chance to work to support himself.

Persons fleeing persecution in their homelands ought to be entitled to some public benefits that allow for a humane existence in the host nation. The
question remains, however: what is the appropriate extent of social and economic rights afforded asylum seekers and refugees? As long as conflicts continue to grip the world, there will be people fleeing persecution and turning to foreign countries for a chance at a new life. The challenge for these nations will lie in drafting legislation that honors international obligations by insuring the social and economic rights of persons in fear of persecution, and also retains domestic support by making sure that the system deters abuse.

This Note analyzes the laws of two world leaders, the United States and the United Kingdom, to ascertain the extent of social and economic rights afforded by each country to asylum seekers and refugees. In 2002, the United Kingdom received the greatest number of asylum applications among industrialized countries. The 110,700 applications in the United Kingdom were most closely followed by 81,100 asylum applications in the United States in the same year. Moreover, each nation faced arrivals of persons in need of protection from different regions of the world and various ethnic backgrounds. The popularity of the United States and United Kingdom as the top two choices for a new home by so many persecuted persons is one important reason to compare and analyze the two countries’ legal framework for responding to refugees and asylum seekers. In addition, determining the strengths and weaknesses of each system is particularly important because of the added challenge presented by the diversity of applicants each nation must accommodate.

The paramount reason for comparison is to highlight that, while the two nations take a considerably different approach to social and economic rights, neither approach is satisfactory. The aim of this Note is to show that the social and economic benefit schemes of both nations are: (1) insufficient under national law in dealing with the needs of persons requiring protection and (2)

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9 See Susan F. Martin & Andrew I. Schoenholtz, Asylum in Practice: Successes, Failures, and the Challenges Ahead, 14 Geo. IMMIGR. L.J. 589 (2000) (discussing the principal goals that must be accomplished by the asylum system of any country to measure the successes and failures of that nation’s asylum scheme).


11 Id.

12 Id.

13 See infra Parts III.A.1, B.1.
fall short of the international obligations undertaken by each nation. The goal of this comparison is not to suggest that one nation should adopt the other's approach; the ideological differences between the United States and United Kingdom on the role of the government in securing social and economic rights are too vast for such a bold assertion. Rather, this Note seeks to encourage dialogue for change by providing an honest look at each system and its compliance with international law. As the two leading countries of asylum, the United States and United Kingdom must address the inadequacies of their respective systems for providing social and economic rights to refugees and asylum seekers.

Part I of this Note introduced the topic by pointing out the gravity of problems faced by refugees and asylum seekers once they arrive in the country of asylum and the pressure faced by nations in accommodating the rights of persons in need of protection while at the same time providing an asylum system that deters abuse.

Part II provides background information on the topic of social and economic rights in the asylum context. Section A addresses the difference between a refugee and an asylum seeker, both generally and specifically, within each country’s legal definitions of key terms. Understanding the terms is important because the scope of social and economic rights often depends on a person’s status as either a recognized refugee or an asylum applicant. Section B then provides important background for analysis by addressing countries’ obligations to provide for social and economic rights of asylum seekers and refugees first under international refugee law, and second under several human rights instruments.

Part III then provides an overview and analysis of each nation’s laws addressing the social and economic benefits of refugees and asylum seekers. Section A addresses the United States’ system first by analyzing the scope of national laws and pointing out the deficiencies of those provisions, then by examining the extent of United States’ compliance with international instruments that address the social and economic rights of refugees and asylum seekers. Section B similarly first provides an analysis of the United Kingdom’s legislation and points out the resulting complications of the social and economic benefits scheme under national law. Section B then considers the degree of compliance with international instruments that oblige the United Kingdom to provide social and economic rights to refugees and asylum seekers. The Note concludes in Part IV that a comparison of the two systems reveals potential future problems in the United Kingdom and a need to
streamline procedures and pay greater attention to the economic rights of refugees and asylum seeker in the United States.

II. BACKGROUND

A. Understanding the Terms

The government of each nation determines the legal status of persons fleeing persecution that arrive within that country's borders. Generally, however, "[w]hen people flee their own country and seek sanctuary in a second state, they apply for 'asylum'—the right to be recognized as bona fide refugees and receive the legal protection and material assistance that status implies." Therefore, while they are waiting for a determination of their status, persons fleeing persecution by and large are called "asylum seekers." On the other hand, refugee status is determined in general by the 1951 UN Convention relating to the Status of Refugees (Refugee Convention) which provides the international definition of a refugee as a person who:

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable, or owing to such fear, is unwilling to return to it.

16 Id.
18 Id. art. 1(A)(2).
1. United States

In the United States, "[a]ny alien who is physically present in the United States or who arrives in the United States . . . irrespective of such alien's status, may apply for asylum . . . ." 19 In addition, an alien applying for asylum must also meet the definition of "refugee" under United States law. 20 A "refugee" is defined as a person who is "outside any country of such person's nationality" and is "unable or unwilling" to return to that country "because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion." 21 Note the similarity of the U.S. definition to the Refugee Convention definition. 22 Moreover, the president, upon "appropriate consultation" with Congress, may also set a quota of refugees that can be admitted to the United States during the coming fiscal year in response to an "emergency refugee situation." 23 In short, based on the outlined requirements for asylum and refugee status, a person must be physically present in the United States in order to apply for asylum; there is no such requirement for a refugee applicant. However, both types of applicants must satisfy the legal definition of a refugee. Essentially, the two classifications differ only in the place of application—asylum seekers apply from within the United States, while refugees apply from outside the United States (usually at an office of the United Nations High Commissioner for Refugees (UNHCR) or a United States embassy). 24

2. United Kingdom

In the United Kingdom, a "'claim for asylum' means a claim made by a person . . . that it would be contrary to the United Kingdom's obligations under

20 Id. § 1158(b)(1).
21 Id. § 1101(a)(42)(A).
22 See Refugee Convention, supra note 17, art. 1(A)(2) (utilizing similar criteria of "outside the country" of nationality, "race," "religion," "nationality," "social group," and "political opinion" in determination of refugee status).
23 INA, 8 U.S.C. § 1157(b).
the [Refugee Convention] for him to be removed from, or required to leave, the United Kingdom . . . "  

Hence, a grant of asylum is allowed if an applicant can show that:

(i) he is in the United Kingdom or has arrived at a port of entry in the United Kingdom; and  
(ii) he is a refugee, as defined by the Convention and Protocol; and  
(iii) refusing his application would result in his being required to go . . . in breach of the Convention and Protocol, to a country in which his life or freedom would be threatened on account of his race, religion, nationality, political opinion or membership of a particular social group.  

A person who enters the United Kingdom and applies for asylum remains an asylum seeker, until asylum is granted when and if he meets the Refugee Convention definition of "refugee." To that extent, the approach to a grant of asylum is similar to that of the United States. However, unlike the United States, the statutory instruments in the United Kingdom do not seem to provide for an application outside of the U.K., nor do they specify a provision by which the government sets a quota of refugees that can be accepted in a given fiscal year.

B. Protection of Social and Economic Rights Under International Law

Debate over the extent of social and economic rights afforded refugees and asylum seekers is not merely a philosophical question as to what entitlements each state should provide; indeed, states are legally obligated to protect persons fleeing persecution based on crucial principles outlined in key

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25 Asylum and Immigration Appeals Act, 1993, c. 23, § 1 (Eng.).  
27 See id.  
29 While there is no formal quota system for refugees, the United Kingdom does participate in the UNHCR Ten or More Plan, by which the UK admits ten or more disabled refugees who cannot receive adequate care in their current country of refuge, along with the refugee’s family. See Asylum Policy Instructions, Ch. 2, § 4, available at http://194.203.40.90/default.asp?PageId=2643, for details of the Ten or More Plan in the United Kingdom.
international instruments. The difference in terms “asylum seeker” and “refugee” also becomes important here since recognized refugees, unlike other asylum seekers, receive special protection of social and economic rights through the Refugee Convention and its subsequent Protocol. Hence, analysis of international obligations of states to both refugees and asylum seekers incorporates aspects of both international refugee law (specifically protecting refugees through the Refugee Convention and Protocol), and, more broadly, international human rights law, applicable to all persons, regardless of their status. Key international human rights instruments relevant to this analysis include: the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR). An understanding of the rights provided by these various instruments is important in measuring how well the laws of the United States and the United Kingdom meet each country’s international obligations.

1. Refugee Law

The Refugee Convention and the Refusal Protocol define the rights of recognized refugees. The Refusal Protocol retained substantive provisions of the Refugee Convention and broadened its definition of a refugee to apply equally to all persons qualifying as refugees, regardless of the dateline set by the Convention that only recognized those individuals qualifying as refugees

30 See infra notes 31, 33-35.
32 See generally Ryszard Cholewinski, Economic and Social Rights of Refugees and Asylum Seekers in Europe, 14 GEO. IMMIGR. L.J. 709 (2000) (considering the importance of international refugee law and international human rights law in determining the extent of protection for social and economic rights afforded refugees and asylum seekers) (hereinafter Economic and Social Rights).
36 See Refugee Protocol, supra note 31 and accompanying text.
as a result of events that occurred before January 1, 1951.\textsuperscript{37} The United Kingdom is a party to both the Refugee Convention and the Protocol.\textsuperscript{38} In contrast, the United States is a party only to the Protocol;\textsuperscript{39} however, by acceding to the terms of the Protocol, the United States undertook key obligations under the Refugee Convention.\textsuperscript{40}

First among the social and economic rights provided by the Refugee Convention is the right to wage-earning employment.\textsuperscript{41} State parties to the Convention must provide "refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country in the same circumstances."\textsuperscript{42} Likewise, in terms of housing, countries should "accord to refugees lawfully staying in their territory treatment as favourable as possible, and in any event, not less favourable than that accorded to aliens generally in the same circumstances."\textsuperscript{43}

With respect to certain rights, refugees are afforded the same treatment under the Refugee Convention as the nationals of a host country. For example, states "shall accord to refugees lawfully staying in their territory the same treatment with respect to public relief and assistance as is accorded to their nationals."\textsuperscript{44} In addition, states must "accord to refugees the same treatment as is accorded nationals with respect to elementary education,"\textsuperscript{45} and refugees' rights to secondary and higher education are not to be "less favourable than that accorded to aliens generally in the same circumstances."\textsuperscript{46} Finally, states "shall accord to refugees lawfully staying in their territories the same treatment as is accorded to nationals in respect of... [s]ocial security."\textsuperscript{47} Social security includes "legal provisions in respect of employment injury, occupational diseases, maternity, sickness, disability, old age, death, unemployment, family

\textsuperscript{37} Id. art. 1 (stating that state parties to the Protocol will apply substantive provisions of articles 2 through 34 of the Refugee Convention and omitting the dateline of January 1, 1951 from the definition of refugee).

\textsuperscript{38} See Refugee Convention, supra note 17; Refugee Protocol, supra note 31.

\textsuperscript{39} See Refugee Protocol, supra note 31.

\textsuperscript{40} See id.

\textsuperscript{41} See Refugee Convention, supra note 17, art. 17.

\textsuperscript{42} Id. art. 17(1).

\textsuperscript{43} Id. art. 21.

\textsuperscript{44} Id. art. 23.

\textsuperscript{45} Id. art. 22(1).

\textsuperscript{46} Id. art. 22(2).

\textsuperscript{47} Id. art. 24(1)(b).
responsibilities and any other contingency . . . covered by a [nation’s] social security scheme.”

All of the above provisions in the Refugee Convention, with the exception of public education, apply to those “refugees lawfully staying” in a host nation. This requirement effectively bars other categories of asylum seekers who may have entered a host country illegally or who are awaiting a determination of their status. This arguable exclusion of asylum seekers who are not recognized as bona fide refugees from the Refugee Convention framework of social and economic rights invokes the need to turn to international human rights instruments, discussed below.

2. Human Rights Law

Social and economic rights of asylum seekers in general can be viewed in a broader perspective by the application of human rights law. These instruments are important not only in terms of the outlined rights, but also because they use universal wording, such as “everyone,” “all persons,” and “no one.” Therefore, the rights they secure can be generally applicable to nationals and non-nationals alike, without the need to resort to the refugee-specific language of the Refugee Convention.

a. Universal Declaration on Human Rights (UDHR)

Both the United States and the United Kingdom voted in favor of the UDHR, the first of the human rights instruments. The UDHR calls for a “recognition of the inherent dignity and of the equal and inalienable rights of

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48 Id.
49 See id. arts. 17(1), 21, 24(1)(b).
50 But see Refugee Convention, supra note 17, art. 31 (prohibiting a state from imposing any penalties on refugees who enter that state illegally, as long as they are coming “from a territory where their life or freedom was threatened” in the sense of the refugee definition).
51 See Economic and Social Rights, supra note 32, at 711-12 (arguing that the Refugee Convention rights seem only to apply to “established refugees” and that time taken to arrive at a decision for other asylum seekers may be “excessively long”).
52 See, e.g., ICESCR, supra note 35, art. 9 (identifying the right of “everyone” to social security); ICCPR, supra note 34, art. 9 (noting that “[e]veryone has the right to liberty and security of person”).
53 See Economic and Social Rights, supra note 32, at 713 (explaining the universal character of international human rights instruments).
54 See UDHR, supra note 33.
all members of the human family [as] the foundation of freedom, justice and peace in the world." 55 One of these rights is "the right to seek and enjoy in other countries asylum from persecution." 56 In addition to key civil and political rights, the UDHR also addresses economic and social rights, utilizing the universal language of "everyone." 57 Accordingly, "[e]veryone, as a member of society, has the right to social security and is entitled to realization . . . of the economic, social and cultural rights indispensable for his dignity . . . ."58 Moreover, "[e]veryone has the right to work" 59 and "the right to rest and leisure." 60 Importantly:

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.61

Finally, "[e]veryone has the right to education." 62

Although the UDHR makes a bold statement, not only guaranteeing the right to seek asylum, but also classifying social and economic rights as basic human rights, the UDHR is only a declaration, but it is not necessarily a legally binding instrument.63 Treaties were necessary in order to translate the rights outlined in the UDHR into binding obligations.64 The key treaties drafted in response to this need focus separately on the two categories of rights outlined in the UDHR by addressing civil and political rights in the ICCPR, and social, economic, and cultural rights in the ICESCR.65 While both the United States

55 Id. at pmbl.
56 Id. art. 14(1).
57 See id. arts. 22-26.
58 Id. art. 22.
59 Id. art. 23.
60 Id. art. 24.
61 Id. art. 25.
62 Id. art. 26.
63 Id. art. 26.
64 Id. at 237.
65 Id.
and the United Kingdom are parties to the ICCPR,66 the United States conspicuously does not join the United Kingdom as a party to the ICESCR.67

The link between social and economic rights, on one hand, and civil and political rights, on the other, is of key importance in the asylum context. The UDHR itself recognizes this interconnectedness of rights by declaring them together in one human rights instrument.68 Moreover, both the ICCPR and the ICESCR begin by recognizing the principles of the UDHR and the relationship between the two sets of rights.69 The ICCPR acknowledges that "civil and political freedom" can only be attained if "everyone may enjoy his civil and political rights, as well as his economic, social, and cultural rights."70 Similarly, the ICESCR recognizes that realization of "freedom from fear and want" is only possible if "everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights."71 The two treaties, therefore, make clear that the recognition of one set of rights is not complete without the other. In other words, deprivation of social and economic rights may very well deny a person his civil and political rights.

b. International Covenant on Economic, Social and Cultural Rights (ICESCR)

The ICESCR guarantees the right of everyone to work.72 As a means of realizing this right, each state is to "include technical and vocational guidance and training programmes, policies and techniques,"73 as well as provide for the right of everyone to "just and favourable conditions of work."74 Moreover, the ICESCR recognizes "the right of everyone to social security, including social insurance,"75 "the right of everyone to an adequate standard of living . . . including adequate food, clothing and housing,"76 "the right of everyone to the

66 See ICCPR, supra note 34.
67 See ICESCR, supra note 35. Note that the United States is only a signatory to ICESCR.
68 See UDHR, supra note 33, at pmbl. See also STEINER & ALSTON, supra note 63, at 139 (explaining that, for its time, the UDHR appeared to cover most of the field of human rights).
69 See ICCPR, supra note 34, at pmbl., and ICESCR, supra note 35, at pmbl.
70 ICCPR, supra note 34, at pmbl. (emphasis added).
71 ICESCR, supra note 35, at pmbl. (emphasis added).
72 ICESCR, supra note 35, art. 6(1).
73 Id. art. 6(2).
74 Id. art. 7.
75 Id. art. 9.
76 Id. art. 11.
enjoyment of the highest attainable standard of physical and mental health,” and the “right of everyone to education.” The ICESCR also contains a non-discrimination provision whereby it states that the rights embodied in the document “will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” Presumably, based on this provision, refugees and asylum seekers, as well as nationals, can benefit from the rights outlined in the ICESCR, without undue discrimination.

While the ICESCR provides for a broad guarantee of social and economic rights, a state is obligated to take steps in attainment of these rights only “to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant.” Arguably, then, the provisions in the ICESCR are deprived of their importance; governments can get the benefit of claiming that they are signatories to the ICESCR, without specific international constraints and with the ability to set out their policies at their own pace (clearly, an indefinite concept).

c. International Covenant on Civil and Political Rights (ICCPR)

The next relevant human rights instrument is the ICCPR. Although the ICCPR deals primarily with civil and political rights, the instrument contains several provisions arguably important in the analysis of economic and social rights of refugees and asylum seekers. The ICCPR specifically guarantees the “right to life,” the right to be free from “inhuman or degrading treatment,” and the “right to liberty and security of person,” and acknowledges that “no one shall be subjected to arbitrary or unlawful interference with his . . . family,

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77 Id. art. 12.
78 Id. art. 13.
79 Id. art. 2(2) (emphasis added).
80 See Economic and Social Rights, supra note 32, at 716-17 (proposing that, while there is disagreement over the extent of applicability of ICESCR rights to non-nationals, refugees and asylum seekers cannot be discriminated against at will).
81 ICESCR, supra note 35, art. 2(1) (emphasis added).
82 See Steiner & Alston, supra note 63, at 246 (explaining that governments can claim the status of “defenders of economic and social rights” while fulfilling their obligations only “incrementally,” thereby making it impossible to discern if those obligations have indeed been met).
83 ICCPR, supra note 34, art. 6(1).
84 Id. art. 7.
85 Id. art. 9.
home or correspondence." 86 Undoubtedly, without basic social and economic rights, a person may not be able to fully realize these civil and political rights; denial of housing and social assistance, for example, may lead to the exposure of an asylum seeker to inhumane or degrading treatment. 87 Since the ICESCR and ICCPR both recognize the interconnectedness of social and economic rights and civil and political rights, an analysis of a state's legislation must recognize that a country's denial of key social and economic rights to refugees and asylum seekers might very well violate key political or civil rights.

III. SOCIAL AND ECONOMIC RIGHTS IN THE ASYLUM CONTEXT

A. United States

1. Scope of National Laws

In the United States, recognized refugees arriving from abroad, as well as persons granted asylum once in the United States, are entitled to comparable social assistance and benefits available to citizens. 88 Asylum seekers, however, find themselves in a much more precarious position because the United States Code restricts welfare and public benefits only to a "qualified alien," defined as an alien "who is granted asylum" or "a refugee who is admitted to the United States." 89

In terms of the social and economic rights of refugees and asylees (persons granted asylum after entering the country), the general objective behind public benefits set out in legislation is to:

(i) make available sufficient resources for employment training and placement in order to achieve economic self-sufficiency among refugees as quickly as possible,
(ii) provide refugees with the opportunity to acquire sufficient English language training to enable them to become effectively resettled as quickly as possible,

86 Id. art. 17.
87 See Economic and Social Rights, supra note 32, at 730 (explaining that denial of key social and economic rights interferes with civil and political rights).
(iii) insure that cash assistance is made available to refugees in such a manner as not to discourage their economic self-sufficiency . . . and
(iv) insure that women have the same opportunities as men to participate in training and instruction.90

While the objective behind public benefits is generous (at least in theory), actual benefits provided have been restricted since the passage of the 1996 immigration laws.91 Refugees, unlike legal aliens, are eligible for supplemental security income and food stamps, but they are limited to receiving these benefits for only seven years after arrival or grant of asylum.92 Refugees and asylees are similarly entitled to medical assistance through Medicaid93 for a limit of seven years, and other benefits through the Social Services block grant94 and Temporary Assistance for Needy Families grants95 for a period of five years, but only if they meet eligibility criteria set out by the individual states.96 States also determine eligibility for state-run programs, but refugees and asylees must have access to state-run public benefits for five years after arrival or asylum.97 The imposition of time limits to the availability of social services is an obvious characteristic of the United States economic and social rights scheme for refugees; less apparent, but perhaps more important, is the delegation to the individual states of the right to determine eligibility for social services.98 The result is a lack of uniform national standards for determining social and economic rights of refugees, which often results in inconsistency and consequent lack of access to public benefits.99 This lack of uniformity

93 See 42 U.S.C. § 1396.
99 See Fredriksson, supra note 91, at 765 (discussing the impact of welfare reform legislation on immigrants and refugees).
should be embarrassing for an international leader such as the United States; core requirements, such as eligibility for federally-funded programs, should be federally mandated as they were prior to the 1996 reforms.100

No single agency deals alone with refugee policy in the United States.101 Instead, a combination of four departments handles refugee matters: the Department of State, charged with administration of immigration and nationality laws;102 the Department of Health and Human Services through the Office of Refugee Resettlement (ORR), responsible for the implementation of various social services for refugees;103 the Department of Justice, responsible for enforcement of immigration and naturalization laws;104 and the Department of Labor, charged with general labor issues in immigration.105 As the chief department responsible for implementing public benefit programs for refugees and asylees, the Department of Health and Human Services funds the programs later administered by the individual states.106 These services assist refugees

100 See id. at 761 (noting that, since elements of social service framework were federally mandated prior to 1996, states could not deny benefits in a way that contravened federal standards).

101 Editor's Note: This Note was drafted prior to the implementation of the Homeland Security Act of 2002. Pub. L. No. 107-296, 116 Stat. 2135 (2002). The text accompanying and following this footnote describes the situation for refugees and asylum seekers in the United States prior to March 2003.

On March 1, 2003, the Immigration and Naturalization Service within the U.S. Department of Justice was abolished as a matter of law. The agency was divided into three separate bureaus under the umbrella of the U.S. Department of Homeland Security. The law enforcement bureaus of the former "legacy" INS were ultimately renamed Immigration and Customs Enforcement and Customs and Border Protection. The benefits side of the former agency was renamed U.S. Citizenship and Immigration Services.


103 See id. §§ 1521-1522.

104 See id. § 1103.

105 See id. § 1182(a)(5)(A).

and asylees through training programs and employment, monetary and medical assistance, and other support services. For the refugees ineligible for the main cash and medical assistance programs, ORR funds the states for the administration of the Refugee Cash Assistance (RCA) and Refugee Medical Assistance (RMA) programs that provide temporary assistance for the first eight months of a refugee’s residence in the United States.

While ORR is specifically dedicated to implementing social and economic rights of refugees, the work of the organization is inextricably linked to the three other departments responsible for determining policies ranging from admission, to placement and employment, to legal enforcement. This separation and sharing of functions between various departments cannot be efficient; an effective refugee and asylum system depends on coordination and consistency of programs at each stage of an asylum seeker’s, refugee’s, or asylee’s journey through the system. A possible improvement might lie in changing legislation so that a single department is responsible for all facets of asylum policy, including determination and application of social and economic rights. Whether a new department is created, or existing functions are streamlined into one of the four departments currently responsible for refugee matters, a likely result will be a more efficient administration and implementation of social and economic rights for persons in need of international protection.

An interesting facet of the United States system is the role of non-governmental organizations in ensuring the social and economic rights of refugees and asylum seekers. In addition to the myriad of smaller commu-
nity organizations that work with refugees on a daily basis, each refugee case is assigned to a national private voluntary organization that, "working under a cooperative agreement with the Department of State, provides sponsorship and initial resettlement services, including housing, essential furnishings, food and other basic necessities, clothing, and additional orientation." Perhaps the most important feature of the private organizations is their ability to interact with persons in need of protection within the individual community in which they are resettled. While private agencies are an excellent vehicle for efficient administration of benefits, they cannot be a substitute for a clear and comprehensive national legal framework that outlines the social and economic rights on which persons in need of protection can rely and agencies responsible for administration can effectively implement.

Significantly absent from the scheme of social benefits in the United States are asylum seekers who arrive to the United States in search of protection, but are not recognized refugees. Asylum seekers are not allowed to work for the first six months of their adjudication process. Indeed, the only option an asylum seeker has in accessing social benefits is to show that he or she is a victim of torture and thus eligible for the Torture Victims Relief Act of 1998, which provides treatment, counseling, and other social services to the victims of torture. Although certainly an admirable and necessary form of assistance, the torture-victim distinction, as virtually the only means of accessing social assistance for asylum seekers, nonetheless appears somewhat arbitrary; an asylum policy that purports to provide a refuge to persons

115 See id. at 767 (identifying the role of community-based organizations not only in the administration of social benefits, but also in political activism and policy-making).

116 Refugee Admission and Resettlement Fact Sheet, supra note 106.

117 See, e.g., ORR Annual Report, supra note 109, at Appendix C—Church World Service (explaining that Church World Service, an independent organization working with government agencies in providing social services to refugees and other needy persons, is able to provide community-specific assistance through "a national network of twenty-nine affiliates and sixteen sub-offices located in twenty-four states").

118 See 8 U.S.C. § 1641(b)(2)-(3) (2000) (including only refugees and persons granted asylum as persons qualified to receive social benefits). See also Fredriksson, supra note 91, at 760 (describing the status of asylum seekers compared to refugees and asylees).


121 See id.
RIGHTS OF ASYLUM SEEKERS AND REFUGEES

suffering persecution must recognize not only the physical effects of torture, but also the psychological impact of violence on persons fleeing persecution.

Perhaps even more puzzling when one considers the lack of a legal scheme to provide benefits to asylum seekers is the stated goal behind public benefits “to promote economic self-sufficiency as quickly as possible, so as to limit the need for public assistance and encourage refugees to contribute to the diversity and enrichment of our country as previous newcomers have done.” Indeed, if the intention is to provide social assistance as a means of helping refugees become self-sufficient, the objective should be similar when it comes to asylum seekers who must meet the same criteria for asylum as refugees and are similarly in need of a head start in a new nation. In light of these concerns, the United States should draft legislation commensurate with the nation’s stated “tradition of being a safe haven for the oppressed.” Achieving this mission means recognizing that asylum-seekers, like refugees, are of special humanitarian concern and should be afforded some measure of social and economic rights, at least comparable to those presently afforded refugees.

In final analysis, one should also consider the constitutional issues implicated by laws dealing with the social and economic rights of refugees and asylum seekers in the United States. The core of the constitutional argument centers around equal protection and federal preemption under the Supremacy Clause. In Graham v. Richardson, the Supreme Court held that states could not condition welfare benefits on citizenship or residency requirements for aliens, without violating the equal protection clause. In the same case, the Court also noted an additional reason for invalidating the law, explaining that “State laws that restrict the eligibility of aliens for welfare benefits merely

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122 See Refugee Admission and Resettlement Fact Sheet, supra note 106 (explaining that American tradition is to grant refuge to persons fearing persecution).
123 See ORR Annual Report, supra note 109, at Victims of Torture (describing the psychosocial and health consequences of violence that prompted programs under the Torture Victims Relief Act).
124 Refugee Admission and Resettlement Fact Sheet, supra note 106.
125 See 8 U.S.C. § 1158(a)(1) for eligibility requirements for the grant of asylum.
127 See generally Rodriguez ex rel. Rodriguez v. United States, 169 F.3d 1342, 1351 (11th Cir. 1999) (explaining that providing Social Security benefits to refugees and asylees “is rationally related to the humanitarian purpose of aiding aliens fleeing such difficult conditions”).
128 U.S. CONST. amend. XIV, § 1.
129 See id. art. VI.
130 403 U.S. 365 (1971).
because of their alienage conflict with ... overriding national policies in an area constitutionally entrusted to the Federal Government. While specific state legislation is beyond the scope of this Note, the ability of the states to set eligibility requirements for social services available to refugees and asylum seekers may come into question if classifications for public benefits are based on alienage or if they are contrary to national immigration policy. Moreover, inconsistent state requirements are therefore arguably a violation of an area delegated to the federal government in regulating immigration.

2. Implications of International Instruments

An analysis of the United States scheme of social and economic rights for refugees and asylum seekers in terms of the country's obligations under international instruments also has interesting implications. The United States satisfies the core Refugee Convention requirement of providing similar public benefits to recognized refugees lawfully admitted to the country as are afforded nationals. However, even asylum seekers may come under the umbrella of the Refugee Convention, and an argument for their social and economic rights may be made under the principle of non-refoulement, which prohibits the return in any manner whatsoever of a refugee to a territory where his or her race, religion, nationality, or political opinions cause fear of his or her life or freedom. Since an asylum seeker in the United States must meet the same elements for refugee status on his or her application for asylum, he or she by definition must fear a return to the home country. Therefore, a result that would cause an asylum seeker in any manner whatsoever to have to return to a country of persecution would violate non-refoulement. Arguably then, by denying asylum seekers social and economic rights, the United States

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131 Id. at 378.
132 See id. at 372, 378; see also 42 U.S.C. §§ 1612(b)(1), 1622(a) (describing the role of the states in setting eligibility requirements for social services).
133 See Graham, 403 U.S. at 378.
135 See Refugee Convention, supra note 17, art. 33 (stating that no state "shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion"). See also Economic and Social Rights, supra note 32, at 712-13 (discussing possible applications of Article 33 to social and economic rights of refugees and asylum seekers).
137 See Refugee Convention, supra note 17, art. 33.
model might have the end result of leaving an asylum seeker with no choice but to return to his or her homeland. The Executive Committee of the UNHCR has reiterated the "fundamental importance of the principle of non-refoulement" in ensuring international protection of persons fleeing persecution. The United States Supreme Court should recognize this importance by adopting a broader understanding of non-refoulement in interpreting the extent of social and economic benefits of refugees and asylum seekers. Unfortunately, the Supreme Court has rejected the opportunity to adopt a broader view of non-refoulement. The Supreme Court interpreted the term to prevent only "domestic procedures by which the Attorney General determines whether deportable and excludable aliens may remain in the United States," and not to have any broader implications to other possible acts by the government, like denial of social and economic rights, that may have the effect of forcing a person to return to a country in which his life and freedom are endangered. Despite this limited interpretation by the majority of the Supreme Court, it is possible that, by denying social and economic rights to asylum seekers, the United States might be running afoul of its obligations under the Refugee Convention.

An interesting, though perhaps more unlikely, examination might be advanced which addresses a possible United States obligation to provide social and economic rights to refugees, as well as asylum seekers, under the civil and political rights framework of the ICCPR. For example, a denial of core public benefits may overall lead to inhuman or degrading treatment in contravention of the ICCPR. Some commentators argue that a broad

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138 See Economic and Social Rights, supra note 32, at 712-13 for an expanded version of this argument.
139 See generally UNHCR Executive Committee, General Conclusion on International Protection No. 81, 48th Sess., ¶ i (explaining the goals of international protection).
140 See Sale v. Haitian Ctr. Council, 509 U.S. 155 (1993) (limiting non-refoulement only to actions by the government that lead to deportation or return to a country to persecution of a refugee who is already present within the United States and not to those possible refugees who are intercepted before arrival to the United States).
141 Id. at 177.
142 See id. at 207-08 (Blackmun, J., dissenting) (arguing that the "resulting ban on refoulement, as broad as the humanitarian purpose that inspired it, is easily applicable" in this case and that the majority's limited interpretation "flies in the face of the international obligations imposed by Article 33 of the [Refugee] Convention").
143 See generally Economic and Social Rights, supra note 32, at 730-38 (arguing that without social and economic rights, refugees and asylum seekers may be deprived of civil and political rights guaranteed under human rights instruments, including the ICCPR).
144 See ICCPR, supra note 34, art. 7.
interpretation of this right means that when a country, like the United States, on the whole denies social and economic benefits to asylum seekers, that nation may in fact violate its obligations against engaging in inhuman or degrading treatment under Article 7. This argument is considerably weakened when one considers the context of Article 7. Indeed, Article 7 includes language more geared toward a physical imposition by the state, warning against "torture," "cruel, inhuman or degrading treatment or punishment," and "medical or scientific experimentation." Denial by the United States of social and economic rights to asylum seekers may have an impact on their civil and political rights; however, it is not likely to reach the severity of physical maltreatment by a nation that is the focus of Article 7. This view is particularly convincing when one considers the "reservations, declarations, and understandings" the United States has announced in adopting the ICCPR. One of these reservations is that the United States considers itself bound to Article 7 only to the extent that it "means the cruel and unusual treatment or punishment prohibited by the Fifth, Eighth and/or Fourteenth Amendments to the Constitution." Such a limitation by the United States on the understanding of inhuman or degrading treatment creates difficulty in proposing that a denial of public benefits will amount to something as severe as cruel or unusual punishment. Nonetheless, the criticism that denial of social and economic rights to asylum seekers is inhuman and degrading treatment under the ICCPR is important because the United States does not address the rights of asylum seekers in the list of reservations to the ICCPR. Therefore, the United States should issue an official response to such criticism and specifically explain how its position, effectively denying social and economic rights to asylum seekers, does not contradict the obligations the government undertook in the ICCPR.

145 See Economic and Social Rights, supra note 32, at 735-36.
146 ICCPR, supra note 34, art. 7.
147 Id.
148 See id.
150 Id. ¶ 1(3).
151 See id.
152 See id.
An argument about a broad reading of the ICCPR can also be made in terms of the country's obligations under Article 6 regarding right to life. Indeed, the Human Rights Committee, responsible for monitoring the implementation of the ICCPR, has noted that the right to life "should not be interpreted narrowly." In avoiding a narrow interpretation of the right to life, "it would be desirable for States parties to take all possible measures to reduce infant mortality and to increase life expectancy, especially in adopting measures to eliminate malnutrition and epidemics." This broader interpretation of the right to life has led some to argue that, if one's right to life encompasses reducing infant mortality and eradicating malnutrition, it might well include providing asylum seekers with basic social and economic benefits. In other words, the key to this argument is that without social and economic rights, key civil and political rights such as the right to life cannot be fully enjoyed. While the argument has interesting implications for the United States scheme that leaves asylum seekers virtually without any social and economic rights, the contention is probably too attenuated to have any real impact on a nation such as the United States. Although the United States has not made any express reservations about the right to life in adopting the ICCPR, an easy counter-argument could simply be that, while the United States is a signatory to the ICCPR, the country chose not to be a party to the ICESCR, and as such, views the right to life in its most basic form as simply the right of a person not to be subject to unlawful killing. Therefore, the argument might have more impact on nations that have embraced both the ICCPR and the ICESCR, such as the United Kingdom.

153 See ICCPR, supra note 34, art. 6(1).
155 Id. ¶ 5.
156 See Economic and Social Rights, supra note 32, at 731 (arguing that a broad reasoning may be applied to requiring the adoption of positive measures in other areas, such as social and economic rights).
157 See ICCPR, supra note 34, at pmbl. (discussing the interconnectedness of social/economic rights and civil/political rights).
158 See Reservations, supra note 149, at pts. I-III.
159 See generally ICESCR, supra note 35.
160 See, e.g., General Comment 16(6), supra note 154, ¶ 3 (explaining that the right to life imposes on a state the obligation to take steps "to prevent and punish deprivation of life by criminal acts," and "also to prevent arbitrary killing by their own security forces").
161 See generally ICCPR, supra note 34; ICESCR, supra note 35.
The fact that the United States is not a party to the ICESCR, however, does not mean it should not acknowledge the importance of social and economic rights as key human rights. First, clearly the two sets of rights are linked to one another, having been so enumerated in the UDHR. Moreover, the UDHR is part of customary international law and as such ought to oblige the United States to recognize social and economic rights. The UDHR provides for the right of everyone to seek asylum and for every person to be able to enjoy an adequate standard of living. Indeed, it is difficult to imagine how one could take advantage of the right to seek asylum in the United States without being assured at least an adequate standard of living and the right to work while awaiting a decision on whether a grant of asylum has been approved. While neither specific obligations in the ICCPR nor the customary obligations in the UDHR explicitly bind the United States to provide social and economic benefits to asylum seekers, the fact that the country's commitment to this vulnerable group can be questioned under both sets of instruments makes it all the more important that the government issue a clear response explaining how its asylum scheme complies with its international obligations.

B. United Kingdom

1. Scope of National Laws

At first glance, the most noticeable aspect of the United Kingdom scheme of social and economic rights compared to the United States framework is the focus on the appropriate extent of benefits to be afforded asylum seekers until they are recognized as refugees, instead of a focus on benefits of a recognized refugee. Refugees in the United Kingdom are afforded the same “social and economic rights as UK citizens and have full access to medical treatment, education, housing and employment.” Therefore, the brunt of debate over

162 See UDHR, supra note 33, at pmbl.; see also STEINER & ALSTON, supra note 63, at 139.
163 See STEINER & ALSTON, supra note 63, at 71.
164 See UDHR, supra note 33, art. 14(1).
165 See id. art. 25.
166 See 8 U.S.C.A. § 1641(b)(2)-(3); see also Fredriksson, supra note 91, at 760.
social and economic rights in the asylum context has been focused on creating rules of law that provide a certain level of these rights to asylum seekers, but at the same time prevent abuse of the system.\textsuperscript{169}

In keeping with the goal of a fairer and firmer asylum policy, Parliament passed the Nationality, Immigration and Asylum Act\textsuperscript{170} (NIA), which gained Royal Assent on November 8, 2002 and included tough new measures affecting asylum seekers which came into force on January 8, 2003.\textsuperscript{171} The NIA reiterates the general forms of support available to asylum seekers\textsuperscript{172} and introduces measures to curb abuse.\textsuperscript{173}

The NIA includes a provision by which the Secretary of State can establish accommodation centers for a person who can show that he or she is an asylum seeker or a dependent of an asylum seeker and who is determined by the Secretary of State to become destitute or likely to become destitute.\textsuperscript{174} A person is considered destitute if he or she cannot obtain "adequate accommodation" and "food and other essential items."\textsuperscript{175} At the accommodation center, the Secretary of State can provide that the asylum seeker have access to "food and other essential items," "money," "assistance with transport for the purpose of proceedings under the Immigration Acts or in connection with a claim for asylum," "transport to and from the centre," "assistance with expenses incurred in connection with carrying out voluntary work or other activities," "education and training," "facilities relating to health," "facilities for religious observance," and "anything which the Secretary of State thinks ought to be provided" for a resident to obtain a proper occupation or for his or her exceptional circumstances.\textsuperscript{176} Moreover, the "Secretary of State shall take

\textsuperscript{169} See White Paper: "Fairer, Faster and Firmer—A Modern Approach to Immigration and Asylum," July 27, 1998 (cm 4018), ¶ 1.8, 1.14, available at http://www.archive.official-documents.co.uk/document/cm40/4018/chap-1.htm (stating the government's goal to establish an efficient asylum system that provides aid to genuine asylum seekers and deters abusive claimants such as economic migrants using the asylum system to prolong their stay in the United Kingdom) [hereinafter White Paper: Fairer, Faster and Firmer].

\textsuperscript{170} See Nationality, Immigration and Asylum Act, 2002, c. 41 (Eng.) [hereinafter NIA].


\textsuperscript{172} See NIA, pts. 2-3 (stating legal provisions regarding the use and operation of accommodation centers and other support and assistance).

\textsuperscript{173} See id. §§ 43, 54, 55, 57.

\textsuperscript{174} See id. § 17(1).

\textsuperscript{175} Id. § 19(1)-(2).

\textsuperscript{176} Id. § 29(1).
reasonable steps to ensure that a resident of an accommodation centre has an opportunity to obtain legal advice." In addition, the Secretary of State must appoint an advisory group to visit the center and hear complaints, and designate a "Monitor of Accommodation Centers" to ensure quality and enforcement of accommodation centers, treatment of residents, and the impact of the location of the center on the needs of asylum seekers residing there. The Home Office now receives funding for the administration of support to asylum seekers and is authorized to set up new national machinery to coordinate that process. In response to the new scheme, the National Asylum Support Service (NASS) was established to consider the claims for asylum and provide support and accommodation to asylum seekers. NASS provides eligible asylum seekers with accommodation at a no-choice basis (in order to alleviate the concentration of asylum seekers in London) and/or financial cash support based on circumstances.

At the outset, the provisions for accommodation services in the United Kingdom are in stark contrast to the lack of a legal framework to ensure the social and economic rights of asylum seekers in the United States. Moreover, the criteria for accommodation are set by the Secretary of State and not by the distinct regions of the country, as in the United States where the individual states set the eligibility requirements for key public benefits. National administration of the asylum support scheme that replaced local support was set up in order to "plan strategically... and to do so in consultation with local authorities, voluntary organisations and other concerned parties" in order to meet the important goal of increased efficiency.

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177 Id. § 29(4).
178 Id. § 33(3).
179 Id. § 34(1), (2).
180 See White Paper: Fairer, Faster and Firmer, supra note 169, ¶ 8.22 (explaining the government's position on how the new scheme of support for asylum seekers will operate).
182 See id.
183 See supra notes 118-21 and accompanying text.
184 See NIA, §§ 17(1), 29(1), 33(3), 34(1), (2) (providing that the "Secretary of State" shall or may make available the outlined services or benefits).
While NASS serves a similar function as the ORR in the United States, unlike its U.S. counterpart, NASS actually determines eligibility for benefits. This national directive outlining the qualifications necessary to secure an asylum seeker's social and economic rights is a key step in developing a uniform legal framework that ensures an efficient administration of those rights for asylum seekers and refugees. However, efficient administration of social and economic rights is not likely to be achieved without effective local administration of the national directives. The United Kingdom government recognized this need by acknowledging the "highly centralised" role of NASS and the necessity of improved local delivery of benefits. Unfortunately, the NIA did not adequately address the need for regionalization of NASS. A priority of the United Kingdom government in clarifying its asylum legislation should thus be in establishing a system that will not only take advantage of the national criteria and requirements through regional structures for administration, but also include a scheme like the United States model, with a closer working relationship with voluntary organizations that assist refugees and asylum seekers.

The NIA also enacted provisions limiting the rights of asylum seekers. Section 55 of the NIA provides for the removal of all support for an in-country applicant unless the "claim was made as soon as reasonably practicable after the person's arrival in the United Kingdom." Moreover, section 57 provides that an application for support might not be considered "where the Secretary of State is not satisfied that the information provided is complete or accurate or that the applicant is co-operating with enquiries." In addition, there are concerns that section 43 of the NIA will remove the ability of asylum

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187 See Home Office Immigration and Nationality Directorate, supra note 181.
190 See supra notes 114-17 (describing the role of private organizations in the United States).
191 NIA, § 55(1)(b) (emphasis added).
192 Id. § 57.
193 See id. § 43(1) (providing that restrictions may be made to the application of support for essential living needs of an asylum seeker).
seekers to access only the needed subsistence support, for those asylum seekers in need to public benefits, but who do not require public accommodation.\textsuperscript{194}

These limitations on asylum seekers' ability to access public benefits may seriously impinge upon the social and economic rights of asylum seekers in the United Kingdom. Allowing only those persons who seek asylum at a port of entry or immediately after entering the United Kingdom to apply for public assistance may leave thousands with no help with living costs or access to housing.\textsuperscript{195} This result is inconsistent with one of the government's stated objectives for support arrangements for asylum seekers, that "genuine asylum seekers cannot be left destitute."\textsuperscript{196} Although this objective embodies a legitimate aim of the government to curb false asylum claims, it seems to arbitrarily exclude persons who do not immediately file for asylum, without objective guidelines to determine what filing asylum "as soon as reasonably practicable"\textsuperscript{197} really means. Instead, the provision should have outlined specific guidelines to inform asylum seekers exactly when they would no longer be eligible for support, thereby allowing persons in genuine need of protection with feasible means of proving a claim of need for asylum.\textsuperscript{198}

A similar criticism can be offered against denying public assistance if a claim for asylum is incomplete or inaccurate.\textsuperscript{199} Expecting complete and accurate information from persons fleeing persecution is surprising in light of the special condition of asylum seekers, recognized by the government that asylum seekers "[risk] life and limb to reach the UK."\textsuperscript{200} It seems unrealistic to expect persons fleeing persecution to provide clear and coherent information about their condition. While the government is justified in wanting to assure accuracy of asylum claims, a blanket requirement of complete and coherent information is arguably too stringent considering the unique circumstances that bring genuine asylum seekers to the United Kingdom.\textsuperscript{201}

\textsuperscript{194} See British Refugee Council Briefing, supra note 189, § 5.1(3) (addressing concerns about the power of government to remove the subsistence-only option for asylum seekers).

\textsuperscript{195} See id. § 5.1.

\textsuperscript{196} White Paper: Fairer, Faster and Firmer, supra note 169, ¶ 8.17.

\textsuperscript{197} See NIA, § 55.

\textsuperscript{198} See British Refugee Council Briefing, supra note 189, § 5.1 (arguing that under the present system the burden of proof will be on the asylum seeker to prove that he or she made the attempt to apply for asylum as soon as possible after entry and that this burden will be virtually impossible to overcome).

\textsuperscript{199} See NIA § 57.

\textsuperscript{200} White Paper: Secure Borders, Safe Haven, supra note 188, ¶ 4.1.

\textsuperscript{201} See, e.g., Mel Pickett, On The Asylum Frontline, OBSERVER (London), Feb. 2, 2003, at Observer Comment Extra, available at http://www.observer.co.uk/Print/0,3858,4596294,00.html
The NIA contains additional problematic provisions. Conditions can now be imposed on residents of accommodation centers that "require a person not to be absent from the centre during specified hours without the permission of the Secretary of State or the manager" and may "require a person to report to an immigration officer or the Secretary of State." Some express concern that the residence and reporting requirements might interfere with effective integration if they prevent asylum seekers from interacting with the society they are expected to join as productive members once they are recognized as refugees.

In addition, a new education scheme proposed for children of asylum seekers provides that a "child who is a resident of an accommodation centre may not be admitted to a [government] maintained school or a maintained nursery." While the children of asylum seekers may have special language and other needs, the requirement of on-site schooling in an accommodation center is only appropriate if every child is ensured a quality educational experience. Further, attending school on a regular basis can also be an essential part of the future integration experience. The government should therefore create a legal framework for the present on-site schooling system, with clear guidelines for educational requirements that will ensure that children in accommodation centers will receive a quality education allowing for a smooth transition into mainstream schools once refugee status is granted.

In terms of employment for asylum seekers, the United Kingdom scheme mirrors its United States counterpart in that asylum seekers are not allowed to work for the first six months of their stay in the United Kingdom. This (explaining that many asylum seekers are literally fleeing for their lives, with many traumatized and confused when they apply for asylum).

202 NIA, § 30(3).

203 See British Refugee Council Briefing, supra note 189, § 5.3 (expressing concern that residents of accommodation centers will be prevented from leaving without good reason and may, as a result, risk becoming bored and institutionalized).

204 NIA § 36(2).

205 See British Refugee Council Briefing, supra note 189, § 5.3 (expressing concerns over a denial of mainstream schooling to asylum seekers' children). See also AsylumSupport, "Major new report, Asylum City, says accommodation centres will create an unworkable parallel universe for asylum seekers," at http://www.asylumsupport.info/publications/tgwd/unworkable.htm (last visited Jan. 9, 2003) (pointing out the unanswered questions about the administration of schooling for asylum seekers' children under the new system).

206 See id.

207 See Asylum Policy Instructions, Chapter 8.3 Employment, § 2.2, available at http://www.workpermits.gov.uk (registration required) (stating that asylum seekers otherwise unable to work can acquire a concession from the Home Office whereby they can obtain permission to work if
provision stands in contrast to the government's goal of creating legal guidelines for an employment system "aimed at reducing the time it takes from entering the country to the point [recognized refugees] are ready to move into work and hence reducing the pressure on recruitment difficulties and illegal working." It is difficult to imagine how disallowing an asylum seeker the right to work for at least the first six months of his or her residence will either prevent illegal employment, or aid in the eventual integration of recognized refugees. The government should amend the Asylum Policy Instructions to allow for a more rapid recognition of an asylum seeker's right to work.

In contrast to asylum seekers, refugees in the United Kingdom are allowed the same social and economic benefits available to citizens. Since the United Kingdom offers refugees similar opportunities as citizens, the challenge for the government has been ensuring that refugees have a chance to "rebuild successful, safe and happy lives for themselves and their families." The aims of this government initiative are to "include refugees as full members of society," "help refugees develop their potential and contribute to the cultural and economic life of the country," "set out a clear framework to support the integration process," and "to facilitate access to the support necessary for the integration of refugees nationally and regionally." The proposals envision helping refugees with housing, education, training, and language skills, employment, access to healthcare, and working with refugee and community organizations on community development. In reaching the goal of effective integration, the government should remain committed to providing adequate funding for these proposals, especially to private organizations that administer services to refugees at the community level.

no decision has been made on the application for asylum within six months of the filing) [hereinafter Employment Instructions]. See also Illegal Immigration Reform and Immigrant Responsibility Act § 1158(d)(2) (1996) (describing the restrictions on employment of asylum seekers in the United States).

White Paper: Secure Borders, Safe Haven, supra note 188, ¶ 3.3.

See Employment Instructions, supra note 207, § 2.2 (describing the government's instructions on employment of asylum seekers).

See Home Office Immigration and Nationality Directorate, supra note 168.


Id. at 2.

Id. at 4-13 (detailing the government's proposals for better integration of refugees).

See Fredriksson, supra note 91, at 766-68 (detailing the role and function of private organizations in the United States and their work in conjunction with the government in refugee
2. Implications of International Instruments

Like the United States,\(^{215}\) the United Kingdom satisfies the core Refugee Convention requirement of providing similar public benefits to recognized refugees as are afforded nationals.\(^{216}\) Moreover, just as analysis of the United States' obligations under the Refugee Convention might be extended to asylum seekers as well as refugees, so in the United Kingdom the more limited access to public benefits of asylum seekers compared to refugees may be reviewed under the principle of non-refoulement.\(^{217}\) In the United Kingdom, an asylum seeker must meet the Refugee Convention definition of refugee in order to be granted asylum.\(^{218}\) As such, new measures that deny benefits to asylum seekers who cannot prove that they have applied for asylum as soon as possible upon arrival\(^{219}\) or who cannot provide complete and accurate information\(^{220}\) might have the effect of forcing persons in need of protection to return to a country of persecution in contravention of non-refoulement.\(^{221}\) Unfortunately, the United Kingdom Court of Appeal rejected the invitation to adopt a broad understanding that withdrawal of social and economic rights from asylum seekers amounts to constructive refoulement by giving the asylum seeker no choice but to return to his or her home-country.\(^{222}\) Nevertheless, the government should be aware that while some limitation of social and economic benefits available to asylum seekers might not amount to a violation of non-


\(^{216}\) See Home Office Immigration and Nationality Directorate, supra note 168 (explaining that refugees in the United Kingdom are afforded the same social and economic rights as citizens).

\(^{217}\) See Economic and Social Rights, supra note 32, at 712-13 (detailing the argument that denying social and economic rights to asylum seekers who must meet the definition of refugee in order to lodge an application for asylum in the United States amounts to non-refoulement if an asylum seeker is forced in to return to a territory in which his or her life or freedom is threatened).

\(^{218}\) See Immigration Rules, supra note 26, pt. 11, § 334 (specifying the requirements for grant of asylum in the United Kingdom).

\(^{219}\) See NIA § 55(1).

\(^{220}\) See id. § 57.

\(^{221}\) See Refugee Convention, supra note 17, art. 33.

\(^{222}\) See R. v. Secretary of State for Soc. Sec., ex parte Joint Council for the Welfare of Immigrants and ex parte B., 4 All ER 385 (C.A. 1996). See also Ryszard Cholewinski, Enforced Destitution of Asylum Seekers in the United Kingdom: The Denial of Fundamental Human Rights, 10 Int'l J. Refugee L. 462, 475 (1998) (characterizing the Court of Appeal's decision as a setback to the efforts to announce constructive refoulement as an obligation owed by the United Kingdom government) [hereinafter Enforced Destitution].
refoulement, more extreme measures, such as the ones that recently became
effective, may come closer to forcing an asylum seeker to return to the country
of persecution because they virtually leave him or her with no other option for
public assistance.\footnote{223}{See NIA § 55(1) (limiting public benefits to asylum seekers who apply for asylum as soon as possible upon arrival into the United Kingdom); id. § 57 (limiting benefits of asylum seekers who cannot provide complete and accurate information regarding their claim for asylum); id. § 43 (eliminating subsistence-only support).}

In addition, similar arguments advanced regarding the United States can be
made about the United Kingdom's obligations under the ICCPR.\footnote{224}{See supra notes 144-45, 153-57 and accompanying text (explaining the extent of United States' obligations under the ICCPR).} The new provisions making it more difficult to qualify for assistance during the application for asylum might interfere with an asylum seeker's right to life,\footnote{225}{See ICCPR, supra note 34, art. 6.} at least a meaningful life, by depriving him or her of the only means of public support and perhaps having the effect of causing that person to return to a country of persecution.\footnote{226}{See Economic and Social Rights, supra note 32, at 731 (elaborating on the implications of legislation denying social and economic rights to asylum seekers under the ICCPR right to life).} More likely, the new provisions may expose the asylum seeker to "inhuman or degrading treatment."\footnote{227}{See ICCPR, supra note 34, art. 7.} Unlike the United States, the United Kingdom has not adopted any reservations to the meaning of this provision in the ICCPR;\footnote{228}{See Reservations, supra note 149, ¶ 1(3) (describing limitations placed by the United States on the understanding of inhuman and degrading treatment).} hence, a more convincing argument may be made that the new laws create a situation that exposes an asylum seeker to degrading treatment by forcing him or her into enforced destitution.\footnote{229}{See Enforced Destitution, supra note 222, at 484-87 (discussing the implications of inhuman or degrading treatment to laws that deprive asylum seekers of social and economic benefits in the United Kingdom).}

Claims of inhuman or degrading treatment may, however, have an even more compelling impact in the United Kingdom. In addition to the ICCPR, the United Kingdom is also a signatory to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)\footnote{230}{See European Convention on Human Rights and Fundamental Freedoms, Nov. 4, 1950, 213 U.N.T.S. 221 (entered into force Sept. 3, 1953) [hereinafter ECHR], available at http://conventions.coe.int/treaty/en/Treaties/Html/005.htm.} which provides a similar set of protections to those found in the ICCPR.\footnote{231}{See id.} Unlike the
United States, which is also a party to a regional human rights instrument (although not having ratified it), the United Kingdom has incorporated the ECHR into enforceable law in the Human Rights Act of 1998. Under Article 3 of the ECHR, no one is to be exposed to "inhuman or degrading treatment or punishment." Moreover, under Article 8, "[e]veryone has the right to respect for his private and family life, his home and his correspondence." These provisions of the ECHR are important because the new changes to the U.K.'s asylum law appear to contradict both Article 3 and Article 8.

The current scheme, which requires an asylum seeker to file for asylum as soon as practicable upon arrival to the United Kingdom or forego public assistance, lacks the necessary mechanism by which an asylum seeker could readily show that his or her application was in fact lodged "as soon as reasonably practicable." Without such a mechanism, the impoverished asylum seeker is likely left with no other option with which to access public benefits and must accept the degrading status of enforced poverty, possibly in contravention of Article 3. In its defense, the United Kingdom could point to the fact that while the only way for an asylum seeker to access public benefits is to file for asylum as soon as possible after entry into the country, the Secretary of State may act to avoid a breach of a person's ECHR rights under the Human Rights Act of 1998. However, this safeguard, while important, is insufficient in light of the fact that the government could instead amend the provision by adding specific criteria for access to public benefits by asylum seekers.

In addition, the provision denying public benefits to an asylum seeker who cannot produce complete and accurate information about his or her claim for

234 ECHR, supra note 230, art. 3.
235 Id. art. 8(1).
236 See infra text accompanying notes 238, 242, and 248.
237 See NIA § 55.
238 See Enforced Destitution, supra note 222, at 484-85 (referring to earlier United Kingdom legislation that limited the social and economic rights of asylum seekers, but noting that any changes that essentially withdraw all benefits from asylum seekers would amount to degrading treatment by effectively enforcing destitution of this vulnerable group).
239 NIA § 55(5)(a).
asylum\(^{240}\) is perhaps even more troubling. Once again, the provision lacks any mechanism defining what is meant by "complete and accurate" information.\(^{241}\) The requirement would therefore probably violate Article 3 by leaving asylum seekers who may not have the requisite knowledge about the procedures or may be fearful about recounting the specific details of their ordeal to a degrading life, without access to shelter, healthcare, or income.\(^{242}\) This provision is perhaps even more in need of specific clarification by the government in order to avoid an Article 3 violation; it is difficult enough to impose upon an asylum seeker the unclear requirement of filing as soon as practicable upon arrival, without the added confusion resulting from requiring him or her to provide thorough and complete information about a journey fleeing from persecution.\(^{243}\) The story of Daniel, recounted in the opening of this Note, illustrates just how much difficulty the new provisions would cause in ensuring the human rights of asylum seekers.\(^{244}\) Indeed, it is difficult to imagine that a youngster like Daniel, having undergone the ordeal of losing his family and being transported in secret to safety in the United Kingdom, would be able to provide a documented, complete, and accurate account of what happened to him, nor realize the importance of filing for asylum as soon as he illegally arrived in the country.\(^{245}\) However, without such specificity, Daniel, a person without any means to support himself, arguably would not have qualified for any of the public benefits that allowed him to live a dignified existence as a well adjusted member of society.\(^{246}\)

While the above provisions may constitute a violation of Article 3, an additional new provision may be incompatible with Article 8 of the ECHR. The provision preventing asylum seekers from leaving the accommodation center at certain times and imposing reporting requirements\(^{247}\) may violate the right of the asylum seeker to be granted respect for his private and family life.\(^{248}\) Indeed, it appears contrary to a respect for one's personal and family

\(^{240}\) See NIA § 57.

\(^{241}\) Id.

\(^{242}\) See id. (providing that a request for any public benefit will not be entertained without complete and accurate information provided by the asylum seeker).

\(^{243}\) See White Paper: Secure Borders, Safe Haven, supra note 188, ¶ 4.1.

\(^{244}\) See Cohen, supra note 2, at 16.

\(^{245}\) See id.

\(^{246}\) See id.

\(^{247}\) See NIA § 30(3).

\(^{248}\) See ECHR, supra note 230, art. 8.
life to impose timing and reporting restrictions on asylum seekers who have not been found to be a security threat to themselves or others.

Unlike the United States government, which has yet to issue a definitive statement addressing human rights concerns about its asylum scheme, the United Kingdom has appointed the Joint Committee on Human Rights (Committee) to issue comments on matters impacting human rights in the United Kingdom. The Committee "find[s] it hard to envisage circumstances in which a person could be destitute within the meaning of the Bill yet not suffer a violation of rights under ECHR Articles 3 [inhuman or degrading treatment] and/or 8 [respect for private and family life]." The European Court of Human Rights, responsible for hearing cases concerning the ECHR, has also shed some light on the meaning of "degrading treatment." The Court has stated that Article 3 "prohibits in absolute terms torture or inhuman or degrading treatment or punishment and that its guarantees apply irrespective of the reprehensible nature of the conduct of the person in question." Although the Court in this case dealt with the expulsion of an alien, its interpretation of degrading treatment as providing protection regardless of the conduct of an individual may be applied more broadly to the new provisions affecting asylum seekers in the United Kingdom. Indeed, an argument could be made that depriving an asylum seeker of public benefits if he or she does not provide complete and accurate information amounts to exposing that asylum seeker to degrading treatment based on his or her conduct in reporting on the circumstances surrounding the asylum application. Moreover, in another case, the Court noted that "expulsion of an alien may give rise to an issue under this provision where substantial grounds have been shown for believing that the person in question, if expelled, would face a real risk of being subjected to treatment contrary to Article 3 in the receiving country." The new provisions may well amount to a violation of Article 3 by leaving the destitute asylum seeker with no other option but to eventually return to a

249 See supra Part III.A.2.
251 Id. ¶ 26.
252 See ECHR, supra note 230, art. 19.
254 See id.
country of persecution, where he may well be exposed to the very inhuman or degrading treatment that caused the asylum seeker to flee his or her homeland in the first place.\textsuperscript{256}

Moreover, the United Kingdom is bound to prevent more than just degrading or inhuman treatment. As a party to the ICESCR the country is obliged to "recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions."\textsuperscript{257} Note that the provision uses the inclusive language of "everyone" and as such would arguably guarantee food, housing, and clothing through basic public benefits, even to asylum seekers who under the new provisions do not file for asylum as soon as possible or do not provide complete and accurate information about their asylum claim.\textsuperscript{258} In addition to an adequate standard of living, the ICESCR also guarantees the "right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts."\textsuperscript{259} The provisions preventing asylum seekers from working in the United Kingdom for the first six months of residence contradict this guaranteed right to work, and are especially troublesome in light of the new provisions limiting access to public benefits; the asylum seeker can neither work nor draw public benefits for his or her support.\textsuperscript{260}

The ICESCR guarantees the "right of everyone to education."\textsuperscript{261} Perhaps more importantly, the ICESCR provides that "education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups."\textsuperscript{262} It is difficult to see how a system that segregates asylum seekers' children from mainstream schools either allows persons to effectively participate in society or promotes tolerance and understanding. Children who must attend school at an accommodation center risk a lower quality of education and are deprived of the benefit of interacting with the society they will eventually join once asylum is granted.\textsuperscript{263}

\textsuperscript{256} See supra notes 217-21 and accompanying text (exploring the possibility that the new provisions may lead to constructive refoulement).
\textsuperscript{257} ICESCR, supra note 35, art. 11(1).
\textsuperscript{258} See id.
\textsuperscript{259} Id. art. 6(1).
\textsuperscript{260} See Employment Instructions, supra note 207, § 2.2.
\textsuperscript{261} ICESC, supra note 35, art. 13(1).
\textsuperscript{262} Id.
\textsuperscript{263} See NIA § 36(2).
In sum, the United Kingdom’s present asylum scheme runs the risk of violating several key provisions of the ICESCR. However, the government can point to the fact that the ICESCR only requires the government to act “to the maximum of its available resources” and “with a view to achieving progressively the full realization of the rights.”\(^\text{264}\) Therefore, the United Kingdom may claim that, as the country is more generous than other nations, such as the United States,\(^\text{265}\) any conceivable concerns about its asylum scheme are being addressed over time to the best of the government’s ability. However, the Committee on Economic, Social and Cultural Rights that oversees the implementation of the ICESCR has explained that a state “must demonstrate that every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations” owed under the ICESCR.\(^\text{266}\) Even “where the available resources are demonstrably inadequate, the obligation remains for a State party to strive to ensure the widest possible enjoyment of the relevant rights.”\(^\text{267}\) Arguably, in light of this interpretation, the United Kingdom will need to clearly set out how the new changes to its asylum system comply with the government’s obligation to use all available resources to enact rules of law guaranteeing social and economic rights to all persons, including asylum seekers.

IV. CONCLUSION

Refugees and asylum seekers share the unfortunate distinction as persons fleeing persecution at home in search of international protection from a foreign nation. One of the chief concerns for countries that receive refugees and asylum seekers is establishing a social and economic benefit system that adequately provides for the special needs of these persons, while at the same time ensures that only genuine applicants qualify for benefits. As the two leading countries of asylum, the United States and United Kingdom must face these concerns by establishing a system that not only guarantees social and economic rights to refugees and asylum seekers through an efficient national law framework, but also meets each country’s obligations under international law. Unfortunately, the overall social and economic benefit systems of both

\(^\text{264}\) ICESCR, \textit{supra} note 35, art. 2(1).

\(^\text{265}\) \textit{See supra} Part III.A.1.


\(^\text{267}\) \textit{Id.} ¶ 11.
the United States and the United Kingdom are insufficient under international law in dealing with the needs of refugees and asylum seekers and fall short of the international obligations undertaken by each nation.

Perhaps the most important benefit of refugee status is that the Refugee Convention binds the United States and United Kingdom to provide public assistance to refugees similar to that accorded nationals. However, asylum seekers may also receive protection under international human rights instruments that specify social and economic rights as human rights and apply inclusively to all persons, regardless of formal status.

The most noticeable feature of the United States' framework is the virtual absence of asylum seekers from the social and economic benefit scheme. The exclusion of asylum seekers from welfare and public benefits is particularly problematic since asylum seekers are not permitted to work during the first six months of their residence. The system hence neglects the special humanitarian concern posed by genuine asylum seekers and leaves them without any option for support. The United States' system does, however, recognize the similar humanitarian concern posed by refugees by providing recognized refugees with a national law framework for social and economic benefits. Unfortunately, the refugee public benefit scheme suffers from a lack of uniformity and inefficiency, since four separate departments are responsible for refugee matters and fifty individual states determine the core eligibility requirements for services. The system does, however, benefit from the role of non-governmental organizations in ensuring the social and economic rights of persons in need of protection within the individual communities in which they are resettled. Nevertheless, while private agencies are an excellent vehicle for efficient administration of benefits, they are not a substitute for a clear and comprehensive national directive that outlines the social and economic rights on which persons in need of protection can rely and agencies responsible for administration can effectively implement. The key to improving the United States' system lies in the recognition of the social and economic rights of asylum seekers, as well as in streamlining the system of refugee benefits with a clear and comprehensive national legal framework.

The United States' social and economic benefits scheme satisfies the core Refugee Convention requirement of providing similar public benefits to recognized refugees as are accorded nationals. However, the extent of United States compliance with international obligations to asylum seekers is questionable. By excluding asylum seekers from public benefits and the right to work for the first six months of residence, the United States may be in violation of the Refugee Convention principle of non-refoulement by leaving
asylum seekers, who must meet the same criteria for asylum as refugees, with no other option except to return to a country of persecution. Moreover, a virtual denial of social and economic rights may result in a violation by the United States of the ICCPR by exposing an asylum seeker to inhuman or degrading treatment or even depriving him or her of a meaningful right to life.

Unlike the United States, the United Kingdom system provides destitute asylum seekers with basic social and economic benefits through accommodation centers operated by the government. Once asylum is granted, asylum seekers gain the same status as recognized refugees and qualify for the same social and economic rights as citizens. Regrettably, new legislation limits the rights of asylum seekers in ambiguous terms, by disallowing benefits to a person who does not apply for asylum as soon as practicable upon arrival or does not provide complete and accurate information about his or her claim. The new system also contains provisions that prevent asylum seekers from leaving the accommodation center at specified hours and imposes reporting requirements. Moreover, the United Kingdom’s system provides that children of asylum seekers must attend school at an accommodation center, thereby segregating asylum seekers’ children from mainstream schools. Additionally, like the United States, the United Kingdom also prevents asylum seekers from working for the first six months after arrival. In terms of refugees who are granted similar benefits as United Kingdom citizens, the government’s chief concern has been how best to integrate recognized refugees into mainstream society. The key to improving this national law framework of social and economic rights in the United Kingdom lies in amending legislation in a way that recognizes the special circumstances that force asylum seekers to flee their homelands and unambiguously outlines how provisions of law will be applied in practice. Moreover, in keeping with a successful refugee integration program, the government must at the very least insure that children receive education of comparable quality as is available at mainstream schools, in order that they may make a smooth transition into society once asylum is granted.

The new provisions of law dealing with social and economic rights of persons in need of protection are also problematic with regard to United Kingdom’s international obligations. Like the United States, the United Kingdom satisfies the core requirements of the Refugee Convention in providing similar public benefits to refugees as are accorded nationals. However, the new provisions limiting access to benefits for asylum seekers who do not apply as soon as practicable upon arrival or cannot provide complete and accurate information about their claim may have the result of forcing persons in genuine need of international protection to return to a
country of persecution in contravention of non-refoulement. In addition, these provisions are arguably contrary to the ICCPR prohibition against inhuman or degrading treatment and a guarantee of a meaningful right to life. More importantly, the new provisions may run afoul of the United Kingdom’s obligation to ensure respect for a person’s private and family life, as well as prevent inhuman or degrading treatment under the ECHR, which is now part of United Kingdom’s national law. The interpretation by the European Court of Human Rights of inhuman or degrading treatment might suggest that a system that leaves an asylum seeker without access to any public benefits may itself amount to degrading treatment, or in the alternative, expose an asylum seeker to inhuman or degrading treatment by forcing him or her to return to a country of persecution. Additionally, restrictions on the hours an asylum seeker can be absent from an accommodation center and the imposition of reporting requirements arguably contradict the obligation by the government to respect private and family life under the ECHR. New provisions limiting access to benefits for asylum seekers who wait too long to file for asylum or cannot provide complete and accurate information about their claim may also run counter to the ICESCR requirement that the United Kingdom provide everyone with an adequate standard of living. Finally, provisions that prevent asylum seekers from working for the first six months after arrival and segregate asylum seekers’ children from mainstream schools may respectively amount guarantees to a violation of ICESCR of the right of everyone to work and the right of everyone to education.

In conclusion, refugees and asylum seekers present a unique challenge for countries of asylum; unlike other migrants, refugees and asylum seekers do not choose to immigrate to a new country, but are instead forced to flee persecution in search of a foreign sanctuary. In recognition of this fact, the United States and United Kingdom acknowledged the special circumstances faced by refugees and asylum seekers and undertook international obligations that provide for the social and economic rights of this vulnerable group of migrants. If the two nations are to continue to honor their commitment to persons in need of international protection, they must also acknowledge the interconnectedness of civil and political and social and economic rights in providing true protection to refugees and asylum seekers.

While not all persons in need of protection make a conscious choice to migrate to the United States or the United Kingdom, the distinction of these nations as the top two countries of asylum pays a compliment to the rights and liberties they offer. Unfortunately, although the governments of the United States and United Kingdom have made a considerable effort in recognizing the
spectrum of rights necessary to address the needs of refugees and asylum seekers, the laws of both nations continue to fall short of achieving this important goal. However, if any solution is to be had, it does not lie in continued censure for inadequacies, but rather in honest dialogue for improvement and reform.