SANCTITY OF LIFE AND THE RIGHT TO LIFE: 
FORCE FEEDING HUNGER STRIKERS

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ABSTRACT

In a seminal article from 1997 entitled "Unlimited human autonomy: A cultural bias?" Shimon Glick laid out his support for force feeding hunger striking political detainees. [1] Following recent hunger strikes by inmates at US facilities in Guantanamo Bay, Cuba, and in Israel and Turkey the question is again high on the public agenda. The World Medical Association and Israel Medical Association are quite specific and categorically prohibit the force feeding of competent hunger strikers under any conditions and only permit the artificial feeding of incompetent patients who have not expressed clear wishes to refuse treatment. [2, 3] In most cases, the argument that forbids medical personnel from feeding hunger strikers against their express wishes and allowing them to die is anchored in respect for autonomy. The International Committee of the Red Cross expressed the point succinctly: “The ICRC is opposed to forced feeding or forced treatment; it is essential that the detainees' choices be respected and their human dignity preserved.” [4]

Given the preponderance of respect for autonomy in contemporary bioethics, it is not surprising that this principle is rarely questioned. It was, however, Glick’s incisive argument that vigorously confronted what might be called the “tyranny” of autonomy, that excessive obsequiousness to a principle that trumpets human choice and freedom but which just might allow healthy patients to die. Glick is not the first to take on autonomy, but his argument turns on the sanctity of life and, in this sense, differs significantly from those bioethicists who appeal to the right to life and concomitant duty of the state to protect life when they reappraise respect for autonomy. The sections below first describe the recurring phenomenon of hunger striking and the dilemma that it poses for medical care and bioethics. The sections immediately thereafter, take up those arguments that moderate if not refute respect for autonomy.

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HUNGER STRIKING: AN OVERVIEW

Hunger striking is a political act undertaken as a form of nonviolent resistance. Hunger striking is confrontational and coercive. Hunger striking is brinksmanship, not a form of suicide. Hunger strikers hope to use the prospect of their death to force the state to make political concessions. Often these concessions are moderate and reasonable. In this sense, hunger strikers are like any striking worker who hopes for better working conditions, not to lose his job. Workers therefore present their demands in the name of justice, expediency, and feasibility: more pay, better working conditions and fringe benefits. Similarly, hunger strikers usually present moderate demands that they hope the state will accommodate to avoid the local unrest and international condemnation that may come when hunger strikers die.

Hunger striking is not uncommon and, if demands are reasonable, often successful. But this is not always the case. In the most notorious instance of recent years, ten Irish hunger striking inmates starved to death in Northern Ireland in 1981 following unsuccessful negotiations with the British government. Imprisoned Irish Republican Army (IRA) militants did not tender outrageous or unfeasible demands. They sought neither the withdrawal of the British from Northern Ireland nor their own release from prison. Rather, they demanded recognition as political prisoners. In practice this meant the right to organize educational and other leisure activities and the right to refuse prison issue uniforms or do prison work. The British, however, refused to negotiate. “A crime is a crime is a crime” thundered Margaret Thatcher. From the British perspective, the IRA was nothing but a criminal organization and its members deserved no forbearance or special respect. The results were disastrous. As hunger strikers lie dying, Britain was besieged by international outrage that only intensified after the strikers died.

In contrast, recent events in the Israel, Turkey, and the United States have taken a different turn. Imprisoned Palestinian and Kurdish militants struck for demands that authorities could eventually accommodate. In 2012, Palestinians demanded better prison conditions and early release for small numbers of prisoners. Nevertheless, the strikes persisted until some strikers were seriously ill, thereby prompting sustained debate in Israel about the ethics of force feeding. [5] Also in 2012, imprisoned members of the Kurdish Workers Party (PKK) refused food until their long imprisoned leader, Abdullah Öcalan, ordered them to stop their hunger strike. Turkish concessions were not publicized. Rumors about Öcalan’s imminent release were rampant but, as yet, unrealized. Nevertheless, conditions improved significantly between the Turks and the Kurds as the latter agreed to set aside armed conflict and Turkey made political concessions to enhance Kurdish autonomy and culture.

The United States, however, remained intent to force feed striking prisoners within days of commencing their strike. This is, perhaps, the most extreme measure, as able bodied prisoners are strapped to a chair and force fed through a feeding tube that medical personnel snake into their gut. At one time as many as one hundred strikers were being force fed. While detainees complain of pain and humiliation, US authorities maintain that the process is not painful or inhumane. It remains unclear, however, whether US authorities might make a more reasonable attempt at accommodation. Inmate demands turn on improved prison conditions and release for those prisoners already cleared of their crimes.

American behavior at Guantanamo Bay has prompted a flood of criticism. For some authorities, force feeding violates international law and its ban on “violence to life and
person, in particular ... cruel treatment and torture” and “ outrages upon personal dignity, in particular humiliating and degrading treatment.” [6] Such a determination is very difficult to make, however. International law offers no ready criteria to evaluate cruelty, degradation, humiliation, or suffering. Ordinarily, these appellations are reserved for the obvious: physical mutilation, murder, or sexual abuse. Force feeding as practiced at Guantanamo does not obviously fit these categories. Recent international case law, for example, has only noted that the use of restraints that include “hand cuffs, a mouth widener and a special rubber tube forcibly inserted into the food channel” could constitute torture “if there were not medical necessity.” [7] While feeding a dying patient clearly constitutes medical necessity, the situation is far less clear when the patient/inmate remains awake and alert at the beginning of the strike.

For these reasons, authorities are often willing to make room for artificial or medicalized force feeding. In contrast to the feeding procedure at Guantanamo, artificial feeding entails the placement of a feeding tube directly into the abdomen when a patient is delirious or unconscious. Under these conditions, the World Medical Association, for example, is considerably more lenient:

Artificial feeding can be ethically appropriate if competent hunger strikers agree to it. It can also be acceptable if incompetent individuals have left no unpressured advance instructions refusing it. [2]

In this case, force feeding doesn’t look so bad. And, indeed, when inmates in California undertook a sustained hunger strike, state authorities asked the court to permit force feeding. Consistent with the WMA, the court rule it permissible to feed hunger strikers if a) a hunger striker is at risk of near-term death or great bodily injury OR b) a hunger striker is now incompetent to give consent, AND c) the striker has not previously executed a valid “Do Not Resuscitate (DNR)” order OR d) the DNR order was the result of coercion. [8] Strikers, knowing perhaps that they would be fed and not allowed to die, called off their strike after two months without gaining any substantial concessions.

Read closely, the California court ruling is misleading and confusing. While it pays respect to autonomy it leaves a glaring loophole, namely coercion. Although an inmate may leave a witnessed and valid directive instructing the medical staff to refrain from treatment, including artificial feeding, doctors may override these instructions if inmates were coerced to strike. Having in mind imprisoned gang members who were probably taking orders from the leaders inside or outside the prison, doctors could try to argue that strikers’ DNR orders were coerced and invalid. And, if so, they might permissibly feed them artificially to save their lives. According to this logic, one could try to make the same argument regarding Palestinian, Turkish, or Islamic militants. By this logic, no detainee DNR is valid and the authorities might permissibly force feed any political inmate without violating his or her autonomy.

Any attempt to defeat autonomy by arguing that political inmates do not meet the conditions of autonomous decision making should be resisted. First, there seems no way for anyone to know that an inmate received any order to sign a DNR. How might a physician reach into a patient’s state of mind to know if he was acting freely or under coercion? Any such decision is purely subjective. Second, let’s assume a patient was, indeed coerced. If so, then why wait until a patient is dying and susceptible to the less salubrious effects of hunger
striking before force feeding? Why not force feed him as the Americans do, within days of beginning a strike? Thus, if one accepts the impaired autonomy argument, then one must also accept the clear parallel between force feeding and artificial feeding. Both violate autonomy but both might be equally permissible if an inmate’s autonomy was corrupted by coercion.

Finally, consider that coercion in the form of taking orders is probably not coercion at all. While some might construe autonomous decision making as radically individualistic – the lone patient weighing all available information impartially and making a decision free from any interference – consent is, in truth, a social construct, the product of one’s shared political, social and moral environment. Personal decision making is always responsive to norms of fidelity, social cooperation and peer pressure, religious or political duties, mutual responsibility, and personal well-being. While some might be less comfortable attributing consent to those who accept payment for services (e.g., organ donors) or those aware of possible sanctions or punishments (e.g., taxpayers or hunger strikers), such conclusions are overly severe. A person’s motives are often mixed and a taxpayer or hunger striker who agrees to comply may be acting from collective responsibility, political or religious duties, and fear of sanctions. None of this impairs autonomous decision making but is, indeed, part and parcel of the process.

Moreover, some individuals may exercise “second order autonomy” when they freely entrust their decisions to others. [9] This, too, is a form of consent and particularly salient when hunger strikers (particularly those who belong to a military organization) entrust their leaders with the task of pursuing their collective good and keeping demands sufficiently feasible to merit serious attention by the state. There is no reason to think that the decision to participate in a hunger strike is not given freely unless accompanied by overt coercion, that is, by the threat of physical or severe psychological harm. In these circumstances, agents lose their power to decide otherwise and can no longer act freely. Is this true of hunger strikers? We really do not know. In which case, their refusal to accept any treatment is valid regardless of whatever orders they may have received from above. As such, we must look for other reasons to feed them against their will. Shimon Glick’s interpretation of the sanctity of life is a good place to start.

FORCE FEEDING AND THE SANCTITY OF LIFE

Glick offers an elegant argument for force feeding that sets concern for autonomy aside in favor of benevolent paternalism and contrasts with concern for the right to life in very interesting ways. For Glick, the key to force feeding draws on the communitarian flavor that infuses Israel’s patient rights act. This law, passed in 1996, is unique among patient rights laws because not only does it stipulate the right to informed consent but also contains an unusual provision to override informed consent and treat a patient against his or her express wishes if physicians satisfy three conditions: 1) physicians ensure that patients understand the risks of non-treatment, 2) physicians ensure that the treatment physicians propose offers a realistic chance of significant improvement, and 3) physicians reasonably expect that the patient will consent retroactively. In practice, the law is rarely invoked but in principle it is far reaching. [10, 11]
In contrast to American style individualism that often leaves patients alone with massive amounts of information, theoretically empowered but often practically overwhelmed by the task of medical decision making, the Israeli model makes room for noisy and intrusive paternalism. Paternalism, however, does not come at the behest of the physician who thinks he knows his patient’s best interests better than his patient does but at the behest of the collective. This is a communitarian perspective that stems from the interests of the community, either the state, ethnic group, or somewhat amorphously defined “people”, who take an active interest in the welfare of its members. Like a tribe or family, its concern is twofold. First, the community is genuinely concerned about its members, a relation anchored not so much in justice and fairness but in the “associative” duties of friendship and familial bonds. [12] Second, the community’s health is inextricably bound up with that of its members. When members thrive the community thrives and, of course, vice versa. It is into this thick web of interdependence that Glick steps when he tells his hunger striking patient, “You are so valuable to us, beyond what you mean to yourself, that we simply cannot permit you to die. We care so much about you that we are willing even to violate your human rights in order to save your life.” [1] This is a remarkable utterance, and although Glick’s inspiration is the traditional Jewish view, such a perspective is entirely at home with communitarianism. His concern speaks directly to the mutual and interlocking interests of the individual and the community. Left unanswered is why the community cares so much about the individual. The answer lies is a very rich view of the conditions necessary for human beings to flourish. Individual autonomy is insufficient and, indeed, some bioethicists argue (usually to deaf ears) that autonomy is not a paramount value, but is one among many; important but not overriding, necessary but not sufficient for a well-ordered community that requires interdependence, mutual concern, and reverence for the collective good to thrive. [13, 14] Individuals and communities must flourish together as they enhance the intellectual, moral, social, and emotional capabilities of one another.

Apart from this argument, potent in its own right, Glick still finds it necessary to undermine the autonomy argument by suggesting that hunger strikers “may not be fully autonomous”, answering instead to “pressures from politically like-minded colleagues.” [1] This argument is unnecessary (and Glick admits that it is only a sop for only “the strongest advocates of autonomy”). Not only does this appeal to defective autonomy fail for the reasons I cited above (i.e., pressure from colleagues is insufficient to undermine any cogent formulation of autonomy) but it also undermines his strong communitarian argument.

This should be enough of an argument if a patient makes serious decisions contrary to his best interests. But hunger strikers are not out to kill themselves, they are out for political gain that, in their opinion, also serves the interests of their community, particularly an oppressed community. Thus it seems that a communitarian argument may actually demand self-sacrifice not rescue. The answer to this conundrum is to augment our understanding of hunger strikes with political considerations. Surely it is true that some communities, like the Irish for example, find hunger strikes advantageous. Hunger strikes are a form of political confrontation wherein the striking group is radically distinct from the group that is force feeding its members. Often, they are two different and adversarial political communities. Thus the communitarian argument for force feeding may fail. While Glick was asked to force feed a fellow Jewish Israeli and could, therefore, invoke communitarian principles, these norms of mutual care and associative duties are considerably weaker, if nonexistent, when disparate groups struggle against one another. He could not force feed a Palestinian by the
same logic. Here, the state must have recourse to different principles to consider force feeding. These principles are political and include the right to life and military necessity.

**THE RIGHT TO LIFE**

The right to life, enshrined in such documents as the US Declaration of Independence and the UN Declaration of Human Rights, is grounded in many principles. Natural rights theorists understand the right to life as an intrinsic element of human nature that humans will entrust to the state when they bargain away their freedom for security. Utilitarians, oriented toward the instrumental value of human life, understand the right to life as a necessary condition for human flourishing and self-development, the real-life goal of every human being. They, too, turn to the liberal state to protect each citizen from assault while providing the basic goods (health, education, employment, income, and fair opportunity) that each person needs to develop his or her capabilities and flourish. The right to life is, therefore, a claim right against the state, often enhanced by a real or implied contract that imposes a duty on the state to protect individuals from harm and facilitate the life a person chooses to live.

In contemporary bioethics, the right to life is often said to contrast with the right to die and with an individual’s right of personal self-determination. Set up in this way, and stripped of any religious doctrine that invests life with some supreme value, it is clear that individuals should have the right to decide their own fate. And, ordinarily, reasonable people prefer to live rather than to die. It is important to note, however, that the right to life embraces no small component of dignity, that is, respect for human worth and the qualities and capabilities that make one a human being. As such, individuals enjoy the right to a **dignified** life and, correlativey, the state has the obligation to ensure its members have a dignified life. Dignity requires the range of capabilities that enable a person to thrive. When these are denied, the right to a dignified life is violated. In bioethics, the right to a dignified life rarely clashes with the right to die. Rather, individuals choose death when their quality of life erodes sufficiently that it is no longer dignified or worthy of the patient’s respect. Under these circumstances, the state’s duty to protect life evaporates and, instead, the state assumes the duty to guarantee a dignified death.

Applying this duty to hunger strikers is complex. On one hand, the hunger striker has not lost the wherewithal to live a dignified life and the state, therefore, must protect inmates’ lives. This is certainly true in prisons where states have a special custodial duty to protect those entrusted to the state’s care when prisoners are sentenced by the courts. Edmund Howe and his colleagues refer to this as “stewardship”. “In taking on the responsibility of caring for detainees,” they write, “we must then provide for detainees the best care possible … [and] preserve their lives.” [15] These responsibilities are enshrined in many states’ codes for penal institutions. In the US, for example, “Correctional authorities should protect prisoners from physical injury, corporal punishment, sexual assault, extortion, harassment, and personal abuse, among other harms.” [16] As a result, prison authorities will face severe criticism if they cannot prevent the deaths of inmates. Deaths of inmates may bring moral condemnation or criminal prosecution while subsequent violence or protests may endanger other prisoners’ welfare.

On the other hand, detainees in Guantanamo Bay, Israel, Turkey, and elsewhere claim that the state denies them a dignified life. Hence, they voice their political demands for independence and freedom from political oppression. Under these circumstances, arguments
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anchored in the sanctity of life or the right to a dignified life are not helpful. While physicians can easily cure the ills of hunger striking by safe and effective feeding techniques, medical care is not really the question. The question of hunger strikers turns on the health of their parochial community, not the health the community physicians and their institutions represent. Nor does the state have an unequivocal duty to protect the life of a hunger striker that he or she views as grossly undignified. On the contrary, the state may have the duty to allow death with dignity. Of course, hunger strikers don’t wish that either. They are not asking to die with dignity but to live with dignity. This, however, is a political demand that very often comes in the context of an armed struggle. For this reason political and security interests, not medical interests, prevail as the state considers its options.

Hunger Striking: War, Politics, and the Public Interest

In the cases noted – Ireland, Israel, Turkey, and Guantanamo Bay – hunger strikers are imprisoned militants, members of armed groups waging an armed struggle against a sovereign state. Their purpose, simply put, is to continue their struggle by other means and, to this reason, hunger striking accompanies many resistance movements. Whether these hunger strikers are prisoners of war is a question that I will not consider. Regardless, they are entitled to humane treatment. In return, they have are bound to remain hors de combat (out of combat). They cannot arm themselves and attack their guards, for example. Otherwise they would lose their privileged status and find themselves subject to lethal force or restraint. States, however, face a difficult challenge when detainees opt to continue their struggle by nonviolent means. Under these circumstances states have three choices when faced with hunger strikers: let them die, accommodate or accede to their demands, or force feed them. As civilian prison authorities understand, letting prisoners die is the worst possible outcome. And the best example of this brings us back to Ireland.

As the IRA hunger strike progressed, both sides dug in. The British refused to consider the IRA anything but criminals and the IRA refused to soften its demands. Ultimately ten hunger strikers would die before the strike was called off. But the IRA won an impressive public relations victory and its effects on the movement were significant. As the strikers lie dying, world opinion uniformly and vociferously condemned Great Britain, putting the troubles of Northern Ireland squarely on the international agenda. Exploiting the notoriety of the strike, the IRA’s political wing, the Sinn Fein, decided to run one of the strikers, Bobby Sands, for Parliament. Sands was elected but would soon die in the hunger strike and never take his seat. Nevertheless, the electoral success emboldened the Sinn Fein and the following years saw an explosion of political activity and electioneering that the Sinn Fein had previously avoided. While Sand’s death catalyzed the political wing of the IRA, it also brought over 100,000 people to his funeral, an unprecedented outpouring of public support for the IRA. This turn of fortune further convinced the IRA’s military wing to step up its armed struggle and the 1980s marked a particularly violent period of confrontation. In short, the deaths of hunger strikers radicalized and politicized the IRA and shored them up with considerable local and international support, hardly an optimal outcome for the British.

If the deaths of hunger strikers are probably the outcome that states most wish to avoid, what about accommodation? Accommodation is probably the most successful strategy states
can pursue. In Israel, as noted, some Palestinians struck for shorter prison terms. Fearing widespread riots, Israel acceded to these demands. Nevertheless, these were not exceptionally dangerous prisoners, but in fact, prisoners who had been previously released but who violated their parole. Similarly, in Turkey, hundreds of Kurdish prisoners undertook a hunger strike to demand better prison conditions for the long-time imprisoned leader, Abdullah Öcalan, and concessions from the state to allow the Kurds to use Kurdish for educational, business, and legal purposes. After 68 days, on November 18, 2012, Öcalan called off the strike. While the Kurds won the right to speak Kurdish in court, there were perhaps other concessions that were not publicized. The last year has seen growing approachment between the two sides that may be directly related to the hunger strike. By May 2013 Öcalan instructed PPK followers to lay down their arms and pursue their political agenda by peaceful and democratic means. In September 2013, Turkey introduced reforms to allow for educational instruction and electioneering in Kurdish and concessions to allow Kurds greater representation in Parliament.

In each case, hunger strikers played their cards carefully, sure to make only demands that the state might reasonably accommodate. Hunger strikes work best when demands are feasible. States know this, as do savvy strikers. Demands for far-reaching concessions, however, present much harder dilemmas. Here, states may have no choice but to consider force feeding.

**FORCE FEEDING**

States will find it necessary to force feed striking inmates when they cannot accommodate their demands. Force feeding should be rare and as nonviolent as possible. It can take several forms. During the last hunger strike in Israel attending physicians gave hunger strikers injections of Vitamin B without their consent. Their purpose was to revive hunger strikers sufficiently so they might then make an informed decision about continued care. And, indeed, some decided to end their strike. Nevertheless, this must be recognized as a kind of force feeding unless prisoners left explicit instructions to accept vitamin injections. While doctors may justify their intervention by an appeal to a patient’s best interests, a stance that Shimon Glick would most certainly endorse, the only cogent justification to force feed in this case is the state’s interest in avoiding a striker’s death. There is no reason to believe that an Israeli doctor could know or guess at a Palestinian political prisoner’s best interest. This is true particularly if “best interest” also includes the welfare of his community and the importance detainees attach to their struggle against Israel.

Artificial feeding through a stomach tube constitutes more aggressive force feeding than vitamin injections. Here, too, the only cogent justification for such forced feeding is the state’s material and political interests. Attempts in California to cast artificial feeding in medical terms are not convincing. As I argued above, there is no reason to think that an inmate’s decision to refuse food made at the behest of his political or religious leader reflects impaired autonomy. On the contrary, it may embrace a very deliberate and well-reasoned decision. It is also crucial to understand that medical intervention that waits until a patient is close to death may not be entirely effective and leave recovering patients with irreversible physiological harm. With this in mind, it might be healthier to force feed patients before
they are critically ill. This returns the discussion to the American practice of force feeding just
days after an inmate refuses to eat.

Force feeding American style is the most aggressive of all feeding methods. While
physicians point to studies that document mortality and morbidity following the forcible
insertion of feeding tubes, [22] the US authorities have reported no deaths or serious injuries.
Nevertheless, the procedure represents a violent intrusion into a person’s body that can
amount to torture in the absence of medical necessity. As such, one must ask whether force
feeding two or three days after a strike has begun is medically necessary. Prior to this
question, however, is the political question: Is force feeding politically necessary or are other
alternatives to defuse a strike available? Force feeding has costs that are not trivial. First, it
brings discomfort and humiliation when hunger strikers are strapped down and fed against
their will. Second, force feeding, as evidenced in the US, evokes moral outrage among human
rights activists and medical organizations. As these costs accrue, the political gains of ending
the strike immediately are generally insignificant. There is no reason, in other words, that the
strike cannot continue as the sides clarify and refine their negotiating positions. In the US
case, in fact, there was little reason not to meet many of the demands right away, particularly
as many of the strikers were prisoners slated for repatriation but whose release was delayed
for bureaucratic reasons. Surely these prisoners might have been accommodated more
comfortably until repatriation proceedings could be completed.

Necessity, then, demands that force feeding serve as a last resort when no political
accommodation is possible. This means that states offer strikers a reasonable period of time to
negotiate and air their demands and that states carefully weigh the competing political costs
and benefits of ending a strike or allowing it to continue. Depending on the method hunger
striking detainees adopt, strikes might continue for many weeks until adverse medical
conditions set in and patients begin to die. Only at some point before reaching this stage,
might states consider force feeding. I hasten to add, however, that this stage is reached well
before “the risk of near-term death or great bodily injury” (as the California court put it) so
that force feeding assures a full recovery. Waiting too long may seriously harm strikers. With
these thoughts in mind, guidelines for force feeding should be modified accordingly.

CONCLUSION

Shimon Glick has offered us considerable insight into the controversy surrounding force
feeding. Often construed as a conflict pitting the right to life against respect for autonomy and
the right to die, Glick has reintroduced the importance of the sanctity of life. And although he
draws inspiration from Jewish sources, his view is not, as I see it, grounded in a religious or
divinely revealed principle. Rather, his stance embraces the communitarian and collective
interests that characterize his Jewish community. Such associational duties require members
to care deeply for one another and, when necessary, violate an individual’s right of self-
determination if necessary to preserve his or her welfare and, by extension, the welfare of the
community. This argument goes a long way to justify some instances of hunger striking,
particularly when strikers are members of one’s community. Although here, too, I wonder
whether Glick would agree to force feed someone like Martin Luther King had he spent his
time in the Birmingham jail hunger striking instead of writing provocative letters to his fellow clergy.

This case aside, however, the communitarian argument does not work well when faced with hunger strikers engaged in armed struggles against one’s community. Under these circumstances, the state has no choice but to seek political resolution. And, if successful, the crisis will pass. But this is not always the case, compelling the authorities to weigh the costs and benefits of force feeding. Force feeding should be rare and as nonviolent as possible. Determining the optimum medical stage and procedure for intervention is a decision that many physicians will be loath to make. Such a medical decision is, nonetheless crucial, if the state is to fulfill its larger obligation of protecting the public’s welfare.

REFERENCES


