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New constitutions could require governments to keep track of what counts.

INFORMATION, PLEASE

By Cass R. Sunstein

Many Eastern European constitution-makers are exploring intriguing innovations in the theory and practice of constitutionalism. In keeping with this spirit of experimentation, it might well make sense for Eastern Europeans to consider an entirely new constitutional provision, one that would require their governments to compile and publicize an annual Human Development Index (HDI). The HDI might be based on an understanding of what matters most to human lives, including longevity, educational achievement, and average income. An annual HDI could be a substantial step toward promoting greater political accountability, toward improving inadequate information-gathering capacities, and toward concentrating governmental attention on what matters most. If the HDI requirement is not included in the constitution, it should probably be required by another form of law, one that is understood to be both fundamental and enduring.

Thus far, the new Eastern European constitutions have focused on human development through vague aspirations requiring the government to provide medical care, environmental quality, leisure time, just pay, and much more (see "Something Old, Something New," *EECR*, Winter 1993). Aspirations of this kind might well prove unenforceable, and in any case there is reason to doubt whether they will do much good. By contrast, a constitutionally-compelled HDI might well serve as an important spur to public and private efforts—both national and international—to counteract existing social problems in Eastern Europe. Rather than offering an endless catalogue of broad and probably meaningless positive rights, Eastern European nations would do well to impose on their governments a continuing obligation to

inform their citizens, and the international community, of how current policies have actually affected human lives. Such a provision would also fit extremely well with the right, generally recognized in the new constitutions, to receive information.

The idea of a "human development index" comes out of the United Nations Development Program, which has published annual Human Development Reports since 1990. The purpose of the HDI is to furnish a comprehensible measure of the nature of people's lives in different nations and, by allowing comparative assessments, to get a sense of progress over time and of what sorts of government strategies work best. The precise ingredients of the HDI are of course a matter for discussion and debate—itsself a potentially beneficial process—and there is no reason to insist that any nation should limit itself to any specific set of guidelines. The key point is to ensure that nations focus on what matters most, that is, the nature of human lives under the existing political regime.

What is HDI?

The HDI is a simple concept. The current United Nations approach grows out of attention to the (a) longevity, (b) knowledge, and (c) income of individuals. Thus understood, the HDI is superior to many other possible indicators of human welfare, such as gross national product or average income, standing alone. Even if average income is high, a nation is doing poorly when too many of its people are dying young. Similarly, the gross national product—though a popular measure of national performance—is only crudely correlated with things that are important. Even if we wanted to, we could not measure "utility" directly; and such economic notions as "maxi-

mized wealth" seem an inadequate measure of what matters most.

Under the UN approach, "longevity" is calculated on the basis of life expectancy at birth. "Knowledge" is determined by a formula based on adult literacy and mean years of schooling, with literacy counting for two-thirds of the measurement. The "income" ingredient, growing out of per capita gross national product, is calculated from a formula that adjusts this figure to take account of the particular nation's poverty level, purchasing capacities, and distribution of wealth. Unlike long life and literacy, income of course has purely instrumental (rather than intrinsic) importance. Income matters only because of what it allows people to do or to be. Nonetheless, income is undoubtedly connected with a wide range of human capacities, and it is easier to measure directly than are many of those capacities. The UN measurement affords equal weight to each of the three variables.

There is nothing inevitable about the current UN approach, and it is by no means clear that Eastern European nations should do exactly what the UN has done. The creation of an index—a single number—to capture "human development" raises many complexities. For example, it is highly controversial to give equal weight to each variable. Perhaps longevity deserves more weight; perhaps other variables should be considered. Nor is it clear that Eastern European countries should adopt the current formula for measuring "knowledge." Any "index" for assessing these matters is likely to have a degree of arbitrariness. It is especially important to ensure that the disaggregated ingredients of any conclusions are made public.

Interesting variations on HDI can be found in other nations, especially Scandinavia. The Swedish assessment of "standard of living" is more disaggregated and less mathematical than the UN approach. It takes account of health and access to health care; education and skills; housing; security of life and property (including freedom from crime); availability of recreation and cultural resources; employment; income and wealth; and political participation. Of special interest is the Swedish insistence that well-being is not to be measured in purely subjective terms. People sometimes adjust their aspirations to a status quo containing deprivation and injustice, and for this reason it is important to see what goods and opportunities people actually have, not merely what they think about their

situation. Compared to the UN approach, a particular advantage of the Swedish approach is that it is relatively robust; the disadvantage is its complexity.

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

Whatever the particular approach, it is both possible and important to show variations between men and women and among different regions and various ethnic groups. We will learn a great deal if we are able to show that certain well-defined groups come out consistently below others. Information of this kind can improve democratic debate, which too often depends on intuition and anecdote rather than on solid facts. I will return to this point shortly.

Current results in Eastern Europe and elsewhere

The 1993 United Nations report shows some intriguing results. The report ranks 173 countries. The first six are Japan, Canada, Norway, Switzerland, Sweden, and the United States; the last six are Mali, Niger, Burkina Faso, Afghanistan, Sierra Leone, and Guinea.

Of the Eastern European countries, the highest-ranking is Czechoslovakia, ranked 26th; Hungary is number 28, Lithuania 29, Estonia 34, Latvia 35, Russia 37, Bulgaria 40, Ukraine 45, Poland 48, Georgia 49, Kazakhstan 54, Azerbaijan 62, Moldova 64, Romania 77, and Albania 78. The first fifty-five countries are classified as having "high human development"; thus only Azerbaijan, Moldova, Romania, and Albania fall outside of that category.

Notably, though, some of the trend lines for Eastern Europe show substantially less improvement since 1960 than the parallel trends in other nations. In Eastern Europe, life expectancy has generally stayed constant or improved by about two years in this thirty-year period, whereas there has been an eleven-year increase in Japan and about a six-year leap in Canada, the United States, Germany, and Austria. Also notably, Eastern European

countries have compiled relatively little information about quality of life for their citizens, so comparative data over time are unavailable. On the other hand, the report indicates that previously Communist countries have a good deal of available human capital for the current transition, especially because of significant recent investments in education and health.

There are interesting relationships among the three variables of longevity, knowledge, and income. Some countries with relatively high income ranks (including Algeria, Namibia, and South Africa) have relatively low HDI ranks. Some countries have HDI ranks that are well above their income ranks (including China, Colombia, and Uruguay).

There are also important variations among groups within a single country. In America, for example, whites, standing alone, rank above Japan in HDI, whereas blacks rank around 31st, and Hispanics around 35 (next to Estonia). In addition, and significantly, women fare much worse than men in terms of HDI. Unfortunately, existing information from Eastern Europe appears extremely sketchy, and does not allow full comparisons between men and women, among ethnic groups, or among geographic regions within countries. As we will see, the absence of adequate information from Eastern Europe itself provides an argument in favor of a new constitutional requirement.

The case for constitutionalizing HDI

At the present time, few constitutions require the compilation of reports and information. I think this is an unfortunate gap in the theory and practice of constitutionalism. It would be most valuable to add to Eastern European constitutions a provision of the following sort: *“Each year, the government shall compile and make available a human development index. This index shall be designed to reflect the quality of life in the nation in the previous year. It shall contain information about longevity, educational attainments, per capita income, and other relevant variables.”* The particular wording of the provision is not critical; what is important is the general idea.

An HDI should be a powerful educative force, promoting democratic processes and at the same time counteracting the very problems that the HDI measures, such as premature death, lack of education, and poverty. A special advantage of an HDI is that it focuses attention

on what matters most; it gives a shorthand but informative formula for measuring whether things are getting better or worse. There are several reasons, moreover, for constitutionalizing an HDI requirement.

First, a constitutional requirement of compilation and disclosure of an HDI could do a great deal to promote political accountability. It could do this by ensuring that the public is aware of what governmental policies have done for those subject to them. This awareness might well be a large aid to democratic processes. In this respect, the HDI can be seen as a structural part of the constitution, one that is designed to provide some of the preconditions for a well-functioning democratic system. The point is especially important for Eastern Europe, where the key question for the next generation has to do with the real-world effects of various initiatives, many of which will be highly experimental in character. A constitutional commitment to cataloguing the effects of those initiatives would be an important and salutary step.

Second, the use of an HDI should help focus governmental and public attention on the right questions. Many nations already recognize this general point at the subconstitutional level. Thus they require annual reports about unemployment, poverty, economic trends, and the gross national product. The existence of relatively objective information on these issues helps hold government accountable for what matters. It also helps inform democratic debate, day-to-day policymaking, and the electoral process itself.

Third, an HDI could help counteract the feeling, now apparently widespread among many citizens in Eastern Europe, that the new order is treating free markets as an inherent or independent good, quite apart from what markets are doing for people subject to them. In defending social and economic rights, Wiktor Osiatynski has powerfully invoked this concern about the relationship between political legitimacy and explicit governmental focus, at the constitutional level, on social and economic difficulties. Perhaps the concern is best met through an HDI, putting private and public attention on what markets are accomplishing, rather than by enshrining social and economic rights.

Fourth, the HDI should help private and public forces to redress the very problems that it catalogues. By drawing national and international attention to such issues as longevity, education, and incomes—and to variations be-

tween men and women and among relevant groups and regions—the relevant information can spur valuable initiatives. We already have a good deal of empirical knowledge about the potential effects of such techniques. Public disclosure of information about hunger and famines is a principal motivating force for remedial and preventive action by government, as Jean Dreze and Amartya Sen showed in their 1989 book *Hunger and Public Action*. So too, exposure of environmentally degrading activity within the United States has been a powerful catalyst to public and private remedies. Competition can of course provide incentives for improvement. International competition over maximizing the current HDI—together with the prospect for national and international embarrassment—may well yield improvements in many nations.

There is a final point. The HDI could help counteract two mutually reinforcing problems in Eastern Europe. These are (a) inadequate information-gathering capacities and (b) a conspicuous pathology of many democracies, which is to direct public and governmental attention toward issues that are often only indirectly connected with real improvements in human lives. In the aftermath of Communism, it is clear that many East European countries need to assemble much more objective information on how people are actually doing. Ironically, a democratic system can be an obstacle to this goal insofar as it tends to direct attention to alleged scandals in the high levels of government, or gossip about their activities, rather than the question whether policy initiatives are having beneficial effects for the citizenry. A large advantage of the HDI—especially if it receives media attention—is that it tends to place public attention in the right place. There is evidence that this beneficial result has already occurred from the publication of the annual UN reports.

Pitfalls and enforcement issues

To say all this is hardly to claim that a constitutionally mandated HDI would be a panacea, or to deny that it brings potential problems. By themselves, compilation and publication of information are only that. The effect of information depends on what people do with it. Moreover, reasonable people disagree about what ought to be counted in an HDI, and here there is room for errors. It is surely possible that many HDI's will be based on unreasonable judgments about what matters, or on

large mistakes about the facts.

An HDI would, no doubt, raise significant administrative issues. For one thing, the proposal presupposes a significant degree of administrative competence and capacities. It is possible that a full-scale program of information-gathering will take some time to develop. Despite Western images of the omniscient Big Brother, it seems clear that Communist regimes have had, on many important matters, highly undeveloped capacities for gathering information. An HDI requirement might well stimulate improvements on this score, but we should not underestimate the difficulties of successfully performing the relevant information-gathering tasks.

There is also a risk that governmental or private corruption or self-interest might well infect the HDI in any given year. The result would be inaccurate and inflated numbers. This is an especially important concern in Eastern Europe, where citizens are accustomed to reports by the government showing that everything is getting better. Past practice has made citizens extremely skeptical of such proclamations; extreme cynicism about governmental reports is an unfortunate legacy of Communist regimes. For this reason it is important to ensure that the compilation of the relevant information is as objective and professional as possible.

Two remedies suggest themselves. First, legal steps should be taken domestically to ensure that those who are compiling the data are independent of politics. Building on an analogy to the central bank, the ombudsman, and the public broadcasting system, legal and even constitutional guarantees could create the necessary independence—by, for example, calling for term appointments and forbidding politically-motivated discharge of the relevant officials. Second, there should be international monitoring of the HDI. Something of this sort goes on in the UN in any event, and might well provide some protection against the risks of bias and error.

If the HDI is to appear in the constitution, other issues arise. Will the HDI be subject to judicial review? If the government prepares no HDI, or a deeply flawed one, can the Constitutional Court respond? These are complex issues, and I have only tentative suggestions to offer. I propose that the Court ought to have the authority to compel issuance of the HDI, and that every citizen should have an enforceable right to the document itself. (As noted above, this idea might fit well with the right,

now popular in Eastern Europe, to receive information from government.) I also suggest that there should be judicial review to ensure minimal adequacy of the HDI, including professional objectivity. The Court should defer to reasonable judgments on what is to be included. But it should be available as a backstop.

Not incidentally, there could be large democratic benefits from the very complexity of the question of what belongs in the HDI. This is a subject on which public discussion may be highly beneficial. It is important for citizens to think about what sorts of things count in judgments about quality of life—decent health care, long lives, recreation, education, environmental quality, and so forth.

Many constitutional provisions amount to window-dressing, offering broad promises but doing little good. No constitution—no set of words on paper—can guaran-

tee good results for citizens. The danger of creating unhelpful “paper rights” is especially severe when constitutions require positive governmental action, by such means as the ever-popular rights to free medical care, environmental quality, and recreation and leisure time. By contrast, constitutionally mandating the HDI—an objective statistical report that raises implications for, but places no overt obligations on, policymakers—might well count as a substantial step toward improved democracy and better lives for the people of Eastern Europe. Not incidentally, it could also count as an important development in the theory and practice of constitutionalism.

Cass R. Sunstein is the author, most recently, of The Partial Constitution (Harvard University Press, 1993.)