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Center for Law and Health

Measuring Progress in the Realization of the International Human Right to Health The Example of the United States

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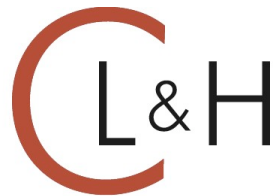
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Hall Render Professor of Law & Co-Director
Hall Center for Law and Health
Indiana University School of Law -- Indianapolis

Objectives

- Briefly describe the legal infrastructure for the realization of the international human right to health at the domestic level.
- Describe how comparing national performance on realization of the international human right to health with statistical indicators is more informative than comparing legal institutions or per capita health spending.
- Describe the current performance of the United States realization of the international human right to health in comparison with other countries.

Briefly describe the legal infrastructure for the realization of

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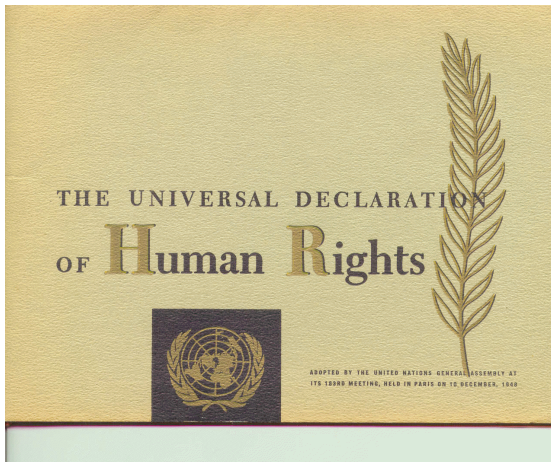
Legal Infrastructure

- International and Regional Treaties
- National (and Provincial) Constitutions
- National Legislation and Regulation
- Provincial Legislation and Regulation
- Local Legislation and Regulation



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MAJOR UN INTERNATIONAL HUMAN RIGHTS INSTRUMENTS



- *UN Universal Declaration of Human Rights (art. 25.1)*
 - 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.

Implementing Treaties

- *International Covenant for Civil and Political Rights (ICCPR)*
- *International Covenant for Economic Social and Cultural Rights (ICESCR)* (art. 12)

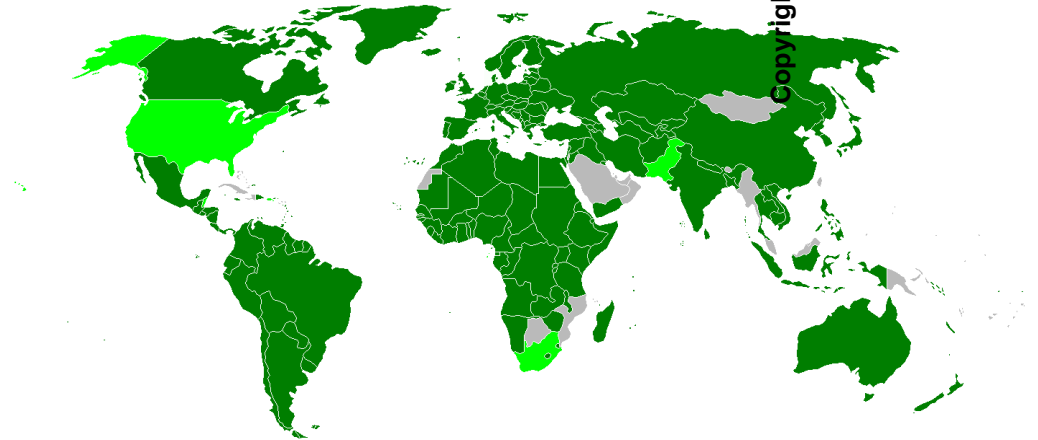
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INTERNATIONAL COVENANT FOR ECONOMIC, SOCIAL AND CULTURAL RIGHTS (ICESCR) ARTICLE 12

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:
 - (a) The provision for the reduction of the stillbirth rate and of infant mortality and for the healthy development of the child;
 - (b) The improvement of all aspects of environmental and industrial hygiene;
 - (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
 - (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

ICESCR



Dark Green: Ratified
Light Green: Signed
Gray: No action

OTHER UN TREATIES RECOGNIZING AN INT'L HUMAN RIGHT TO HEALTH

- International Convention on the Elimination of All Forms of Racial Discrimination of 1965 (art 5(e)(iv))
- Convention on the Elimination of All Forms of Discrimination against Women of 1979 (art. 11.1(f) and 12)
- Convention on the Rights of the Child of 1989 (art. 24)
- Constitution of the World Health Organization (1946)



REGIONAL INTERNATIONAL BODIES: Organization of American States (OAS)

- American Declaration of the Rights and Duties of Man (1948).
 - American Convention on Human Rights ("Pact of San Jose, Costa Rica") (1969).
 - Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights ("Protocol of San Salvador") (art. 10) (1988).



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US SIGNATURE AND RATIFICATION OF MAJOR INTERNATIONAL HUMAN RIGHTS INSTRUMENTS

Instrument	Signature	Ratification
United Nations		
UN Declaration of Human Rights (Not a Treaty)	Yes	N/A
Constitution of the World Health Organization	Yes	Yes
International Covenant for Civil and Political Rights (ICCPR)	Yes	Yes
The International Covenant for Economic, Social and Cultural Rights (ICESCR)	Yes	June 8, 1992
International Convention on the Elimination of All Forms of Racial Discrimination of 1965	Yes	Yes
Convention on the Elimination of All Forms of Discrimination against Women of 1979	Yes	Oct. 21, 1994
Convention on the Rights of the Child of 1989	Yes	No
Organization of American States		
American Declaration of the Rights and Duties of Man (Not a Treaty)	Yes	N/A
American Convention on Human Rights ("Pact of San José, Costa Rica") (1969)	Yes	No
Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (AProtocol of San Salvador) (art. 10) (1988)	No	No

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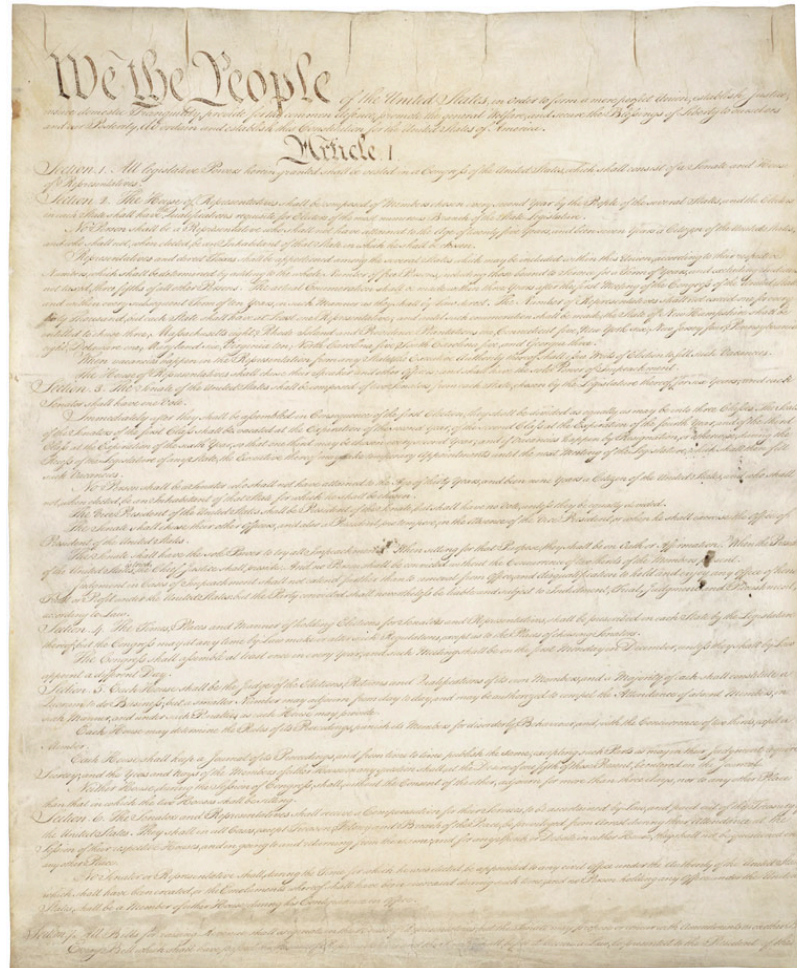
National Constitutions

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Percent of Countries Adopting Constitutional Provisions
and/or Ratified International and/or Regional Treaties

Constitutional Provisions	Ratification of ICESCR	Ratification of Regional Treaties
67.6%	54.1%	30.4%

Constitution of the United States



The Constitution as a Framework

- To establish and define legal rights to health and health care.
- To establish government obligations to provide, promote and protect health and health care as policy imperatives.
- To authorize implementing legislation.
- To establish administration.
- To establish legal remedies.
- Ø To be a moral loadstar to guide the state to where it should be.



Domestic Legislation

- Public Health Protections and Disease Prevention
- Social insurance and welfare programs to provide health coverage or services.
- Regulation of Private Health Insurance.
- Regulation of Pharmaceuticals and Medical Devices



Economic and Social Council

Distr.

GENERAL

E/C.12/2000/4, CESCR

General comment 14

4 July 2000

Original: ENGLISH

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The right to the highest attainable standard of health : . 11/08/2000. E/C.12/2000/4, CESCR General comment 14. (General Comments)

COMMITTEE ON ECONOMIC, SOCIAL
AND CULTURAL RIGHTS

Twenty-second session

Geneva, 25 April-12 May 2000

Agenda item 3

SUBSTANTIVE ISSUES ARISING IN THE IMPLEMENTATION OF
THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL
AND CULTURAL RIGHTS

General Comment No. 14 (2000)

The right to the highest attainable standard of health
(article 12 of the International Covenant on Economic, Social and Cultural Rights)

Administration

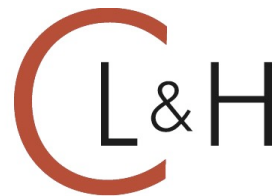
- Technical Assistance
- Policy-making
- Enforcement
- Adjudication of Disputes
- Doing the job on the ground



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Describe how comparing national performance on realization of the international human right to health with statistical indicators is more informative than comparing legal

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The Promise

- Key to realizing the international human right to health throughout the world is how progress is measured.
- Historically, progress has been measured by ratification of treaties, adoption of legal authorities for public health care programs, and comparison of per capita health expenditures as a proxy for resources committed to health care.
- These measures fall short as accurate indicators of true progress.
- Health services research has developed indicators, measures, methods and data for measuring and comparing progress in the realization of the international human right to health.



ROLE OF STATISTIC INDICATORS IN HUMAN RIGHTS IMPLEMENTATION AND ENFORCEMENT

“Statistical indicators are a powerful tool in the struggle for human rights. They make it possible for people and organizations – from grassroots activists and civil society to governments and the United Nations – to identify important actors and hold them accountable for their actions. This is why developing and using indicators for human rights has become a cutting-edge area of advocacy.”

FOUR IMPORTANT CATEGORIES OF INDICATORS

- Population health status and outcomes
- Population access to health care
- Health sector performance on quality and efficiency
- Government competence and commitment to health care.

KEY PUBLIC INTERNATIONAL ORGANIZATIONS

- § United Nations
 - § World Health Organization (WHO)
 - § United Nations Development Programme (UNDP)
- § Organization for Economic Co-operation and Development (OECD)
- § World Bank

These organizations have developed and collected key measures for comparing health systems and in providing technical assistance to nation states to develop the infrastructure in terms of budgetary accounting and data management to develop and report the data on the comparative measures.



WHO

- Health statistics and health information systems
- Country health information systems

- :: [Health System Metrics](#)

There is considerable demand for health system metrics from countries, international organizations, donors and global health partnerships to guide resource allocation, enhance accountability, and monitor progress.

- :: [Service Availability Mapping \(SAM\)](#)

- :: [Health Metrics Network](#)

An innovative global partnership founded on the premise that better health information means better decision making is launched at the World Health Assembly

- :: [World Health Survey](#)

WHO has developed and implemented a Survey Programme and a World Health Survey to compile comprehensive baseline information on the health of populations and on the outcomes associated with the investment in health systems; baseline evidence on the way health systems are currently functioning; and, ability to monitor inputs, functions, and outcomes.

- :: [Study on Global Ageing and Adult Health](#)

WORLD HEALTH STATISTICS



[Online database](#)

Select and compare health statistics for multiple indicators, countries and years



WHO

:: Health System Metrics

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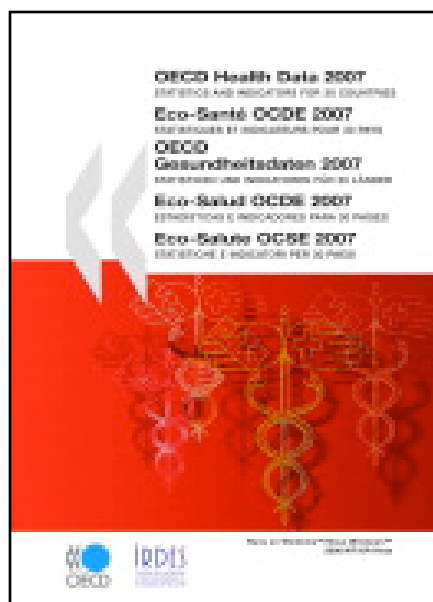
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Organization for Economic & Cultural Development



- OECD Health Data 2007 offers the most comprehensive source of comparable statistics on health and health systems across OECD countries. Available online and on CD-ROM in Single-user and Network versions.
- [OECD Health Data 2007: Statistics and Indicators for 30 Countries](#)

OECD Regions at a Glance 2007 highlights healthcare

30/05/2007 - OECD's biennial **Regions at a Glance** gives comparative statistics for OECD countries, and regions within each country, related to economic indicators such as concentration of population, GDP and employment rates as well as indicators of well-being such as the distance to a major centre, reported crimes, rate of homeownership and educational attainment.

These statistics will inform politicians, policy makers and citizens working to enhance regional competitiveness and attractiveness. The data also indicates regional disparities that can be a drain on national economies and cause the kind of social unrest seen in recent years in France and Mexico, as 'have not' regions cope with higher unemployment and crime rates and lower access to healthcare and education than other parts of the country.

Ø [Regions at a Glance 2007](#)

The World Bank

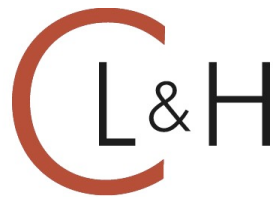
IBRD & IDA: Working for a World Free of Poverty

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The World Bank is deeply involved in the generation of data and methodologies for comparing population health status and also assisting countries in improving health care and health status directly.

- Ø Its Health Systems Development (HSD) group of its Human Development Network's Health, Nutrition & Population Unit works on a variety of comparative health issues and provides technical assistance to developing nations on the improvement of their health care sectors.
- Ø A set of indicators for the quality of a state's governance that addresses six dimensions of governance: voice and accountability, political stability and absence of violence, government effectiveness, regulatory quality, rule of law, and control of corruption. See World Bank, *Worldwide Governance Indicators: 1996-2005*,

Describe the current performance of
the United States realization of the



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How the US Compares?

More recent analyses comparing the US health care sector with that of other countries suggest that the United States is behind its peer industrialized nations in terms of health sector performance.

- Tom Daschle, *Paying More but Getting Less: Myths and the Global Case for U.S. Health Reform* (Center for American Progress, Nov. 2005).
- OECD, “How Does the United States Compare,” in *OECD Health Data 2005: Statistics and Indicators for 30 Countries*.

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Coverage by Type of Health Insurance: 2004 and 2005

Source and Type of Health Plan	2004 (Percent)	2005 (Percent)
Private Insurance		
Any Private Plan	68.2	67.0*
Employment-Based	59.8	59.1*
Direct Purchase	9.3	9.1*
Government insurance		
Any Government Plan	27.3	27.3
Medicare	13.7	13.6
Medicaid	13.0	13.0
Military Health Care ¹	3.7	3.8*
No Insurance		
Not Covered	15.6	15.9*

Source: U.S. Census Bureau, Current Population Survey, 2005 and 2006 Annual Social and Economic Supplements

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Deficiencies In Us Health Care

- WHO ranked the performance of the US health care system 37th among all nations due to disparities by race and income.
- The infant mortality rate in the US was higher than all ODEC countries except Hungary, Korea, Mexico, Poland and Turkey.
- The US ranked 18th in female life expectancy and 22nd in male life expectancy.
- In 1998, 15.5% of the US population (42.5 million) was uninsured.
- In 1998, 32.4% of the poor in the US (10.4 million) were uninsured.

Comparative Analysis of Patient-Centered Quality Measures The Commonwealth Fund, 2001-2002

Patient Safety: U.S. Ranked Last

- Highest reports of medication errors (receiving the wrong medication or dose over the past two years).
- Most likely to say a medical mistake was made in their treatment.

Patient-Centered Care: U.S. Ranked Second-to-Last

- Ranked last (tied with the U.K.) on physicians spending enough time with patients. Last on physicians listening carefully to patients' health concerns.

Timeliness: U.S. Ranked Third

- Best on hospital admission waiting times.
- Next to last on waiting five days or more for physician appointment when last needed medical attention.

Efficiency: U.S. Ranked Last

- Last on being sent for duplicate tests by different health care professionals.
- Worst on not having medical records or test results reach doctor's office in time for appointment.

Effectiveness: U.S. Tied for Last

- Last in patients not getting a recommended test, treatment, or follow-up due to cost.
- Last in patients not filling a prescription due to cost.

Equity: U.S. Ranked Last for Lower-Income Patients

- Worst on patients having problems paying medical bills.
- Worst on patients being unable to get care where they live.

*The Commonwealth Fund, *Mirror, Mirror on the Wall: Looking at the Quality of American Health Care through the Patient's Lens*, Briefing Note, at http://www.cmwf.org/publications/publications_show.htm?doc_id=221458 (visited Jan. 14, 2006).

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Government Performance

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World Bank Governance Indicators for the United States, 1998 & 2005		
Governance Indicator	Year	Percentile Rank
Voice and Accountability	2005	88.9
	1998	94.2
Political Stability	2005	48.6
	1998	80.7
Government Effectiveness	2005	91.9
	1998	91.9
Regulatory Quality	2005	93.1
	1998	94.6
Rule of Law	2005	91.8
	1998	92.3
Control of Corruption	2005	91.6
	1998	92.2

Source: Daniel Kaufmann et al., *Governance Matters V: Governance Indicators for 1996–2005* (2006), at http://info.worldbank.org/governance/KKZ2005/sc_chart.asp (last visited Oct. 6, 2005)

Two Realities In Comparing US Performance

- The tremendous per capita cost of the health care sector compared to other countries.
- The high degree of inequity in American society leading to disparate health outcomes.



Comparative Per Capita Costs

- These comparisons are especially instructive because the US spends by far the amount per capita expenditures on health care of all the countries of the world.
- However, compared to other developed, democratic nations, the record of the US with respect to the recognition and implementation of the international human right to health has been deficient.

Comparative Health Care Expenditures & Public Health Care Expenditures of GDP, 2003

Country	% Public Funding for Health Coverage	% Public Funding of GDP
Sweden	85	
Norway	84	
United Kingdom	86	
Germany	78	
France	76	8
Italy	75	6
Canada	70	7
Switzerland	59	7
United States	45	7

Source: International Bank for Reconstruction and Development/The World Bank, *2005 World Development Indicators*, at <http://devdata.worldbank.org/hnpstats/query/default.html> (last visited Oct. 11, 2006).

HEALTH CARE REFORM



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Inequality

- The most recent UN development report, reported really shocking examples of inequality in the health outcomes in the US population.
- The unfavorable ranking of the performance of the US health sector in the 2000 WHO World Health Report at 37th among all nations in the world was due primarily to disparities by race and income in American society.

Inequality matters.

The Challenge of Inequality

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Measures of Household Income Inequality

No statistical change in shares of aggregate income from 1999 to 2000

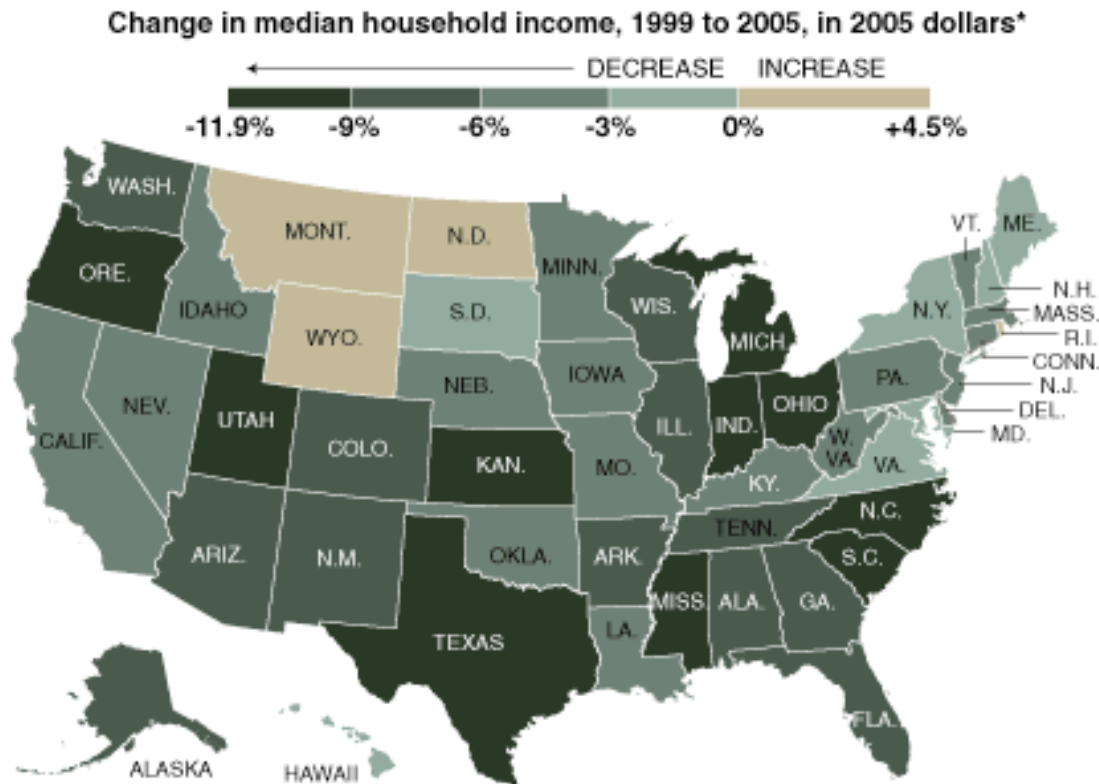


No statistical change in Gini Index from 1999 to 2000

Inequality in the US

Still Behind '99

According to census data released yesterday, incomes are generally still down from their 1999 levels.



*Comparison of 2000 decennial census to 2005 American Community Survey. Surveys differed in methodology, making the precision of a comparison lower.

Source: Andrew A. Beveridge, Queens College Department of Sociology

The New York Times

What happens when the richest Americans don't care?

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The Dimensions of Social Equality

- The extraordinary concentration of wealth in the hands of a few.
- This concentration of wealth may be a resource for implementing the international human right to health through fair taxation and reformed labor laws.

JUSTICE



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