

# From the Right to Work to Freedom from Work

## Introduction to the Human Economy

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*It may appear to be paradoxical to celebrate work as a human right in an economic system in which for many work is associated with activities that are rather repetitive or stressful, sometimes meaningless, and seldom freely chosen. After presenting the content and historical origins of the human right to work, as defined in Article 6 of the International Covenant on Economic, Social and Cultural Rights, this article argues that the right to work cannot be universally fulfilled in the contemporary state-centred global economy. Moving beyond economic discussions placing too much attention on how to provide enough but sometimes unfulfilling work, the article examines the human potential to reduce the need to work. It outlines the theoretical and definitional foundations of the 'human economy', where human potential and creativity are rewarded in order to make the transition from the right to work to the freedom from work. The human economy is a potentialist approach in which the right to be free to choose work plays an increasing role*

### 1 INTRODUCTION

Legal scholars refer to a human right to *work*, that may be regarded as a valuable activity contributing to human flourishing<sup>1</sup> or as a source of identity,<sup>2</sup> self-

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<sup>1</sup> Alan Bogg, *Only Fools and Horses: Some Sceptical Reflections on the Right to Work*, in *The Right to Work: Legal and Philosophical Perspectives* 149, 152 (Virginia Mantouvalou ed., Hart 2015), considering work as one valuable activity among others; Vicki Schultz, *Life's Work*, 100 Colum. L. Rev. 1881, 1883 (2000), contributing to human flourishing or devastation.

<sup>2</sup> *Ibid.*, 1890.

realization or fulfilment.<sup>3</sup> Work is also ‘instrumentally valuable as a source of income to enable us to live’.<sup>4</sup> For most people, it is certainly this income that is demanded above all else through the right to work. This article puts forward the view that socialist and capitalist economic systems are not fully equipped to provide the economic security that human beings attempt to find through work. This is because both systems focus too much on how to provide enough work. As a result, existing systems overlook the human potential to reduce a society’s need to rely on work that people would prefer not to do if they had a choice.

Section 2 outlines the content of the human right to work about which many individuals feel ambivalent,<sup>5</sup> despite the near universal willingness of states to recognize it as a human right. The right to work, as defined in Article 6 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), entails the opportunity to earn a living by working and the right to decide freely to choose and accept work. Section 3 provides an historical understanding of the right to work. Since its official birth as a socialist ideal in the middle of the nineteenth century, the claim to work has recurred after each unemployment crisis, and it is significant that articles like this one have increased in the past decade.<sup>6</sup>

In the contemporary global economy, workers are increasingly exposed to global competition and labour-saving technologies. It is doubtful whether this economic system is able to provide the amount of work of good quality that would be required to satisfy the human right to work. Section 4 examines how to increase a society’s freedom from work as an alternative to safeguarding the right to work. It does not put forward a practical legal proposal but discusses the new definitional and theoretical framework of the *human economy*, which focuses on human beings and their potential to reduce the need to rely on work. Without adopting a socialist approach, the human economy challenges the core of capitalism, in which human beings are reduced to a form of productive capital. The human economy is a potentialist approach in which the human right to choose work plays an increasing role in expanding a society’s freedom from work.

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<sup>3</sup> Guy Davidov, *A Purposive Approach to Labour Law* 43 (Oxford University Press 2016), does not deny the existence, and importance, of *negative* aspects to work.

<sup>4</sup> Bogg, *supra* n. 1, at 150.

<sup>5</sup> Guy Mundlak, *Working Out the Right to Work in a Global Labour Market*, in *The Right to Work: Legal and Philosophical Perspectives* 291, 293 (Virginia Mantouvalou ed., Hart 2015).

<sup>6</sup> See e.g. *The Right to Work: Legal and Philosophical Perspectives* (Virginia Mantouvalou ed., Hart 2015), for sixteen contributions on the right to work.

## 2 THE UNIVERSAL RECOGNITION OF THE HUMAN RIGHT TO WORK

### 2.1 UNIVERSAL RECOGNITION

The right to work is a human right, at least as a matter of positive international law.<sup>7</sup> At the universal level, the right to work is explicitly laid down in Article 23 paragraph 1 of the Universal Declaration of Human Rights (UDHR) and Article 6 of the ICESCR.<sup>8</sup> The United States, Malaysia, Saudi Arabia and Singapore are among the few countries that have not ratified the ICESCR, although the United States was an influential promoter of the right to work within the redaction of the UDHR.<sup>9</sup>

The right to work is safeguarded in all regions. Chronologically, it was laid down in Article 1 of the European Social Charter, Article 15 of the African Charter on Human and People's Rights, Article 6 of the Additional Protocol to the American Convention on Human Rights, Article 1 of the Revised European Social Charter, Article 15 of the Charter of Fundamental Rights of the European Union, Article 30 of the Arab Charter on Human Rights, and, albeit not a legally binding international treaty, Article 27 of the Association of Southeast Asian Nations Human Rights Declaration.<sup>10</sup>

Finally, the right to work is included in numerous national constitutions in different political or economic systems. The right to work exists, for example, in the Afghan, Algerian, Chinese,<sup>11</sup> Danish, Dutch, French, Indian, Italian, Japanese, Polish, Romanian, Russian, Slovakian, South Korean, and Spanish constitutions.<sup>12</sup> This article examines, as others have before,<sup>13</sup> why some individuals do not have the economic security that should result from work despite this universal recognition of the right to work.

<sup>7</sup> Bogg, *supra* n. 1, at 150.

<sup>8</sup> See also U.N. Comm. Econ. Soc. Cult. Rts. (CESCR), General Comment 18: The Right to Work, U.N. Doc. E/C.12/GC/18 (24 Nov. 2005) [hereinafter CESCR General Comment 18].

<sup>9</sup> Philip Harvey, *Why Is the Right to Work So Hard to Secure?*, in *The State of Economic and Social Human Rights: A Global Overview* 135, 154–155 (Lanse Minkler ed., Cambridge University Press 2013).

<sup>10</sup> See Ben Saul et al., *Article 6: The Right to Work*, in *The International Covenant on Economic, Social and Cultural Rights: Commentary, Cases, and Materials* 271, 386–391 (Oxford University Press 2014), for differences between regional human rights treaties; see also Angelika Nußberger, *Right to Work, International Protection*, in *Max Planck Encyclopedia of Public International Law* para. 11 (Rüdiger Wolfrum ed., online ed. Oxford University Press 2007).

<sup>11</sup> See generally, Haina Lu, *The Right to Work in China: Chinese Labor Legislation in the Light of the International Covenant on Economic, Social and Cultural Rights* 85 (Intersentia 2015).

<sup>12</sup> Nußberger, *supra* n. 10, para. 6.

<sup>13</sup> James W. Nickel, *Is There a Human Right to Employment?*, 10 *Phil. F.* 149 (1978); Jon Elster, *Is There (or Should There Be) a Right to Work?*, in *Democracy and the Welfare State* 53 (Amy Gutman ed., Princeton University Press 1988); Hugh Collins, *Is There a Human Right to Work?*, in *The Right to Work* 17, *supra* n. 1; Kurt Pärli, *Gibt es ein Recht auf Arbeit?*, *Basler juristische Mitteilungen* 117–139 (2017).

## 2.2 THE CONTENT OF THE HUMAN RIGHT TO WORK

The right to work is sometimes described as imprecise<sup>14</sup> or as a cluster of complex normative values.<sup>15</sup> It may be argued that Article 23 paragraph 1 UDHR is confusing because it is a package in one single sentence consisting of four different elements including the right to work, to free choice of employment, to just and favourable conditions of work, and to protection against unemployment. Article 6 paragraph 1 ICESCR is more specific. It defines the two core elements<sup>16</sup> of the right to work: ‘the right to work [ ... ] includes the right of everyone to the opportunity to gain his [sic] living by work which he [sic] freely chooses or accepts’.<sup>17</sup> This section discusses how human rights bodies and the literature interpret these<sup>18</sup> elements. A critical assessment will follow in section 4.

### 2.2[a] *The Right to the Opportunity to Earn a Living by Work*

The right to the opportunity to earn a living by work means in the first place that states must take measures to ensure that work is available. In this regard, states parties to the ICESCR ‘must adopt, as quickly as possible, measures aiming at achieving full employment’.<sup>19</sup> More specifically, states parties are required to formulate and implement ‘an employment policy with a view to stimulating economic growth and development, raising levels of living, meeting manpower requirements and overcoming unemployment and underemployment’.<sup>20</sup> Although there is no absolute and unconditional right to obtain employment,<sup>21</sup> states must progressively realize the right by implementing employment policies with the maximum available resources.<sup>22</sup>

<sup>14</sup> Collins, *supra* n. 13, at 20.

<sup>15</sup> Krzysztof Drzewicki, *The Right to Work and Rights in Work*, in *Economic, Social and Cultural Rights* 169, 173 (Asbjørn Eide et al. eds, 2d rev. ed., Nijhoff 2001).

<sup>16</sup> See Colm O’Cinneide, *The Right to Work in International Human Rights Law*, in *The Right to Work*, *supra* n. 6, at 109.

<sup>17</sup> International Covenant on Economic, Social and Cultural Rights Art. 6 para. 1, 16 Dec. 1966, 993 U.N.T.S. 3 [hereinafter ICESCR].

<sup>18</sup> But see Jeremy Sarkin-Hughes & Mark Koenig, *Developing the Right to Work: Intersection and Dialoguing Human Rights and Economic Policy*, 33 *Hum. Rts. Q.* 1, 13 (2011), dividing the right to work into three elements, separating the guarantee against arbitrary dismissal.

<sup>19</sup> CESCR General Comment 18, *supra* n. 8, para. 19. See Sarkin-Hughes & Koenig, *supra* n. 18, at 16, citing Matthew C. R. Craven, *The International Covenant on Economic, Social, and Cultural Rights* 206 (Clarendon 1995).

<sup>20</sup> CESCR General Comment 18, *supra* n. 8, para. 26. General Comment 18 adopts the same wording as Art. 1 of the International Labour Organization (ILO) Employment Policy Convention 1964 (No. 122).

<sup>21</sup> See Saul et al., *supra* n. 10, at 282.

<sup>22</sup> CESCR General Comment 18, *supra* n. 8, para. 32; see also Saul et al., *supra* n. 10, at 282.

In addition to aiming at full employment, states must safeguard the right to equal access to work. To ensure accessibility, states should first promote equality of opportunity to earn a living. In this regard, particular attention should be given to disadvantaged or marginalized groups, such as women,<sup>23</sup> older people, young people,<sup>24</sup> people with disabilities, migrant workers, refugees, minorities, or indigenous peoples.<sup>25</sup> Insufficient expenditure or misallocation of public funds in this regard may amount to a violation of the right to equal access to work.<sup>26</sup> Finally, in addition to equal opportunities to access to work, everyone has the right to access employment without discrimination. States are required to avoid discrimination when employing individuals and adopt measures to protect them from discrimination when employed in the private sector.<sup>27</sup> The prohibition on discrimination extends to all aspects of employment from recruitment to termination.<sup>28</sup>

## 2.2[b] *The Right to Freely Accept or Choose Work*

### 2.2[b][i] The Right to Reject Assigned Work

It is traditionally recognized under the right to work that there is a right not to be ‘forced in any way whatsoever to exercise or engage in employment’.<sup>29</sup> According to the Forced or Compulsory Labour Convention, an individual is forced to work when work is ‘exacted from any person under the menace of any penalty and for which the said person has not offered himself [sic] voluntarily’.<sup>30</sup> In General Comment 18, the CESCR also refers to the Abolition of Forced Labour Convention, emphasizing the question of forced labour imposed by governments.<sup>31</sup>

One practical question in this regard is the extent to which a government can ‘motivate’ individuals to accept work that is not considered desirable. A duty to work exists in many national constitutions, such as Angola, China, Italy, Japan, South Korea, Spain and Vietnam.<sup>32</sup> Generally, however, international human

<sup>23</sup> See e.g. CESCR, Concluding Observations: Senegal para. 6, U.N. Doc. E/C.12/1993/18 (5 Jan. 1994); CESCR, Concluding Observations: Republic of Korea, para. 14, U.N. Doc. E/C.12/KOR/CO/3 (17 Dec. 2009) or CESCR, Concluding Observations: Italy para. 27, U.N. Doc. E/C.12/ITA/CO/5 (28 Oct. 2015). See generally Saul et al., *supra* n. 10, at 289.

<sup>24</sup> See CESCR, Concluding Observations: Viet Nam para. 17, U.N. Doc. E/C.12/VNM/CO/2-4 (15 Dec. 2014) or CESCR, Italy, *supra* n. 23, para. 24. See generally Saul et al. *supra* n. 10, at 302.

<sup>25</sup> *Ibid.*, at 289–292.

<sup>26</sup> CESCR General Comment 18, *supra* n. 4, para. 36.

<sup>27</sup> *Ibid.*, para. 25.

<sup>28</sup> Saul et al., *supra* n. 10, at 282.

<sup>29</sup> CESCR, General Comment 18, *supra* n. 8, para. 6.

<sup>30</sup> *Ibid.*, para. 9. Convention (No. 29) Concerning Forced or Compulsory Labour Art. 2, paras 1–2, 28 June 1930, 39 U.N.T.S. 55. See generally Saul et al., *supra* n. 10, at 323.

<sup>31</sup> See Lee Swepston, *The Development in International Law of Articles 23 and 24 of the Universal Declaration of Human Rights: The Labor Rights Articles 46* (Brill 2014).

<sup>32</sup> Nußberger, *supra* n. 10, para. 6.

rights instruments do not lay down a duty to work as an obligation of the individual towards society.<sup>33</sup> A right to refuse assigned work is of practical importance in the case of states ‘motivating’ unemployed persons to accept *any* job on penalty of reducing or suspending unemployment support or other social benefits. The right to work in this respect is limited to the freedom of the individual not to take up employment that is ‘unsuitable’.<sup>34</sup>

## 2.2[b][ii] The Right Not to Be Forced to Accept Indecent Work?

It is one thing to increase the availability of work and to ensure in practice that such work is accessible and not forcibly imposed, but it is quite another to ensure that the quality of the work made available is acceptable. Acceptable means that work must at least be decent<sup>35</sup> and respect the right to just and favourable conditions of work as safeguarded by Article 7 ICESCR. Article 7 ensures remuneration that provides workers, as a minimum, with fair wages and a decent living for themselves and their families, safe and healthy working conditions, equal opportunities for promotion, rest, leisure and reasonable limitation of working hours, and periodic paid holidays.<sup>36</sup>

It is important to clarify that under the terms of the right to work, the work made available must be decent. This is particularly important in times of economic crisis to prevent states reducing labour standards to create more jobs that do not meet acceptable standards. In an awareness of this risk, General Comment 18 of the CESCR states that ‘specific measures to increase the flexibility of labour markets must not render work less stable or reduce the social protection of the worker’.<sup>37</sup>

Under international law, there is a right to available, accessible, and decent work. As a corollary, there should also be a corresponding *negative* right not to be forced to accept indecent work. If such a right exists in theory, it is questionable whether the contemporary economic system can safeguard it in practice. According to the *World Employment and Social Outlook* report, global

<sup>33</sup> Olivier De Schutter, *Welfare State Reform and Social Rights* 33 Neth. Q. Hum. Rts 123, 143 (2015). But see Art. XXX of the American Declaration on the Rights and Duties of Man and Art. 29 of the African Charter on Human and People’s Right; see also Amir Paz-Fuchs, *The Right to Work and the Duty to Work*, in *The Right to Work* 182–189, *supra* n. 6, for further examples.

<sup>34</sup> In the meaning of Art. 20(f) ILO Employment Promotion and Protection against Unemployment Convention (No. 168). See De Schutter, *supra* n. 33, at 125.

<sup>35</sup> CESCR, General Comment 18, *supra* n. 8, para. 7.

<sup>36</sup> See generally CESCR, General Comment 23: The Right to Just and Favourable Conditions of Work, U.N. Doc. E/C.12/GC/23 (27 Apr. 2016), with references to all relevant ILO instruments and Saul et al., *supra* n. 10, at 393–483. See also Nicolas Bueno, *Corporate Liability for Violations of the Human Right to Just Conditions of Work in Extraterritorial Operations*, 21(5) Int’l J. Hum. Rts. 565, 567–569 (2017).

<sup>37</sup> CESCR, General Comment 18, *supra* n. 8, para. 25. See e.g. CESCR, Concluding Observations: Japan para. 16, U.N. Doc. E/C.12/JPN/CO/3 (10 June 2013) and CESCR, Concluding Observations: Spain para. 51, U.N. Doc. E/C.12/ESP/CO/5 (6 June 2012).

unemployment is expected to rise by 3.4 million in 2017 reaching 201 million people worldwide. Even among those who have a job, vulnerable forms of employment are expected to remain above 42 per cent of total employment, accounting for 1.4 billion people worldwide.<sup>38</sup>

### 2.2[b][iii] The Right to Freely Choose Work?

Although the right to freely choose work is expressly stated in Article 6 paragraph 1 ICESCR, this right has no content in international human rights law. It is interpreted as a synonym of the right to reject forced labour as presented above.<sup>39</sup> Yet it seems evident that people working in the informal economy, where working conditions are worse than in formal employment, do so because of the need to survive rather than as a matter of choice.<sup>40</sup> Who freely decides to work in a mine or to be a member of the working poor? Are Spanish psychologists, in times of crisis, freely choosing to work in call-centres? How many are working in unfulfilling, meaningless or repetitive occupations for reasons of financial hardship? Under international human rights law, all these jobs are considered to be freely chosen as long as they are not assigned by governments or imposed by private actors with the threat of sanctions. In reality, the right to choose work may be seen as something of a luxury that depends on privileges in accessing education, financial safety, talent and luck.

The right-to-work literature commonly accepts that the right to freely choose work does not mean that the state must provide the exact job that the individual desires.<sup>41</sup> Elster considers it plainly unrealistic to expect everyone to do the job of their choosing, stating that '[n]o individual can have a right to direct epic colour films'.<sup>42</sup> Another question, however, could be whether it is beneficial for society to increase opportunities for individuals to perform activities they really want to do. This contribution argues that expanding choices that allow individuals to spend their time, energy, and skills according to their preferences is a much-overlooked source of individual and societal benefits. Before taking a closer look at this unused potential,<sup>43</sup> the next section presents the economic and historical background of the right to work in order to understand why the elements of the right to work, as summarized in Figure 1, have never and will never be fully realized under socialist or capitalist economic systems. Figure 1 also identifies the right not to be forced to accept indecent work and the right to freely choose work as two under-developed rights within the right to work.

<sup>38</sup> International Labour Organization (ILO), *World Employment and Social Outlook: Trends 2017* (Geneva: ILO 2016), at 1-2.

<sup>39</sup> Collins, *supra* n. 13, at 21.

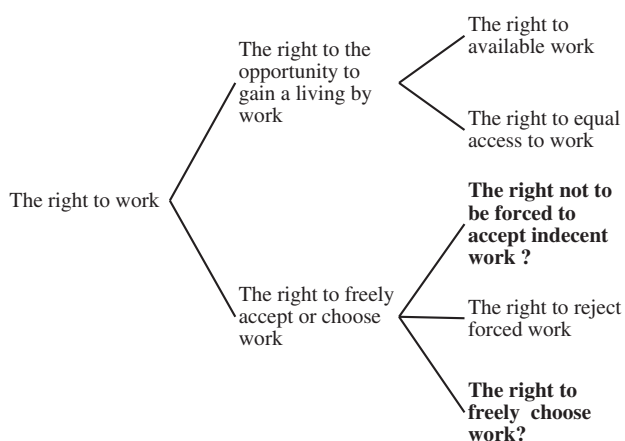
<sup>40</sup> CESCR General Comment 18, *supra* n. 8, para. 10.

<sup>41</sup> Sarkin-Hughes & Koenig, *supra* n. 18, at 10.

<sup>42</sup> Elster, *supra* n. 13, at 77.

<sup>43</sup> See s. 4.3.1 *infra*.

Figure 1 The Core Elements of the Right to Work



### 3 THE BIRTH OF THE RIGHT TO WORK UNDER SOCIALISM AND CAPITALISM

The right to work is a universally recognized human right. Since work has become the means by which to earn a living, it has been a recurring concern and the same claim to work is rehearsed after each unemployment crisis. This section examines the socialist origins of the right to work (3.1) followed by its transformation under capitalism (3.2) and its formulation in international human rights treaties after the Second World War (3.3). It is argued that socialism and capitalism offer different solutions with regard to the supply of work, but that both economic systems overlook the possibility of human potential actually reducing the necessity to work.

#### 3.1 THE SOCIALIST CLAIM AND ITS CRITIQUE

The first expression of the 'right to work' is usually attributed to the nineteenth-century French socialists Charles Fourier<sup>44</sup> and Louis Blanc.<sup>45</sup> Both Fourier and Blanc were among the ideological leaders of the French Revolution of 1848 during which the right to work became a popular demand.<sup>46</sup>

<sup>44</sup> Nußberger, *supra* n. 10, para. 2.

<sup>45</sup> See J. A. R. Marriott, *The Right to Work: An Essay Introductory to the Economic History of the French Revolution of 1848* xlvii (1919).

<sup>46</sup> *Ibid.*, at xviii.



In contrast with 1789, the driving force behind the 1848 Revolution was the ‘demand of the Parisians *ouvriers* for the organization of industry by the State’.<sup>47</sup> As Blanc explained in *Le socialisme: Droit au travail*, the 1848 Revolution originated from the difficulties of French industry maintaining employment levels due to competition with England.<sup>48</sup> To deal with the problem of unemployment, Blanc suggested that the government should progressively play a role in the economy by means of state-aided workshops. These state-aided workshops, according to Blanc, would at first exist side-by-side with and compete against private enterprises until, due to increased competitiveness, the state would progressively become the sole organizer of industry.<sup>49</sup> Instead of Blanc’s proposal, the right to work was implemented for the first time by directing to national workshops all those who were in search of employment.<sup>50</sup> A few months after the Revolution, ‘the Government, unable to fulfil its promise of work, felt constrained to provide pay without work’ and the national workshops experiment ended that same year.<sup>51</sup> At its origin, then, the right to work was a socialist claim resulting from an unemployment crisis due to foreign competition and was meant to guarantee employment.

There were also critics of the right to work amongst socialists of the time. In his famous book *Le Droit à la paresse*, Paul Lafargue considered the right to work to be a mental aberration. He reproached the working class for proclaiming it a revolutionary principle in 1848,<sup>52</sup> which he argued, consolidated the dogma of work preached by Christian ethicists, political economists, and moralists.<sup>53</sup> ‘A strange mania governs the working classes of all countries in which capitalist civilization rules. This is the love of work, the furious mania for work, extending to the exhaustion of the individual and his descendants.’<sup>54</sup> He continues: ‘the political economists never tire of calling out to labourers: “Work, work that the national wealth may be increased!”’<sup>55</sup> And, ‘like parrots they prattle the preaching of political economists: “Let us work to increase the national wealth”’.<sup>56</sup>

Lafargue was inspired by his father-in-law, Karl Marx. *Le droit à la paresse* is not a rejection of work, but of the capitalist system of production in which crisis

<sup>47</sup> *Ibid.*, at vii.

<sup>48</sup> See Louis Blanc, *Le socialisme: Droit au travail* 8 (3d ed., Aux Bureaux du Nouveau Monde 1849).

<sup>49</sup> Marriott, *supra* n. 45, at xliii.

<sup>50</sup> *Ibid.*, at lxx.

<sup>51</sup> *Ibid.*, at lxxi.

<sup>52</sup> Paul Lafargue, *The Right to Be Lazy: Being a Refutation of the ‘Right to Work’ of 1848*, 11 (Harriet E. Lothrop trans., Standard Publishing 1904) (1880).

<sup>53</sup> See *ibid.*, at 5.

<sup>54</sup> *Ibid.*, at 5.

<sup>55</sup> *Ibid.*, at 16.

<sup>56</sup> *Ibid.*, at 34.

follows crisis, always at the expense of the workers.<sup>57</sup> For Lafargue, however, the proletariat ‘must proclaim the Rights of Laziness [and] accustom itself to working but three hours a day, reserving the rest of the day and night for leisure and feasting’<sup>58</sup> to arrive at the realization of its strength. Although he did not explain how to achieve this goal, his book explains that workers in capitalist societies are ready to give up their right not to be forced to accept indecent work in order to avoid the worst-case scenario: unemployment.

Later, in his collection of essays *In Praise of Idleness*, published in 1932, Bertrand Russell shared Lafargue’s idea that ‘far too much work was done in the world’.<sup>59</sup> According to him, ‘modern technique made it possible for leisure’<sup>60</sup> by diminishing enormously the amount of labour required to secure the necessities of life for everyone.<sup>61</sup> Russell deplored how, by regarding the virtue of hard work as an end in itself, capitalism led workers to produce things that were not wanted and socialism made people work on useless projects instead of increasing leisure.<sup>62</sup> He estimated that, assuming a moderate amount of sensible organization,<sup>63</sup> about four hours’ work a day would provide the worker with the necessities and elementary comforts of life, and that the rest of his time should be his to use as he saw fit.<sup>64</sup> Russell did not elaborate on the kind of ‘organization’ that was required, nor did he define ‘the necessities and elementary comforts of life’. However, his essay argues that the right to leisure is of greater value than the right to work, since work is only the means to achieve leisure. Section 4 will develop this argument in the human economy.

### 3.2 REJECTION AND TRANSFORMATION UNDER CAPITALISM

In France, the socialist right to guaranteed employment was strongly opposed by critics such as Alexis de Tocqueville, who feared state control of the entire economy as the state would thus become the sole owner of all property.<sup>65</sup> The same fear of communism was widespread in England. In *The Right to Work*, published in 1911 in *The Edinburgh Review*, an anonymous author rejected the claim formulated in the Unemployed Workmen Bill of 1908 that every workman

<sup>57</sup> *Ibid.*, at 20.

<sup>58</sup> This passage is missing in Lothrop’s translation, *supra* n. 52. See Paul Lafargue, *The Right to Be Lazy* 29 (Charles H. Kerr transl., Charles Kerr and Co ed. 1907) (1880).

<sup>59</sup> Bertrand Russell, *In Praise of Idleness: And Other Essays* 9 (3rd impr., Allen & Unwin 1936).

<sup>60</sup> *Ibid.*, at 14.

<sup>61</sup> *Ibid.*, at 15.

<sup>62</sup> *Ibid.*, at 23.

<sup>63</sup> *Ibid.*, at 18.

<sup>64</sup> *Ibid.*, at 25.

<sup>65</sup> See Alexis de Tocqueville, *Discours à l’Assemblée nationale*, (Sept. 11, 1848), in *Le droit au travail à l’Assemblée nationale: recueil complet de tous les discours prononcés dans cette mémorable discussion* 101 (Joseph Garnier ed., 1848).

not in employment had the right to work.<sup>66</sup> This would force the state to enter into contracts with unemployed persons<sup>67</sup>: ‘if the work were really wanted, the State would naturally offer the work, and so would not require to be constrained’.<sup>68</sup> According to the author, the right to work was thus a claim to government funding for unemployed persons to do unnecessary work that would be carried out to the detriment of the general wealth of the country.<sup>69</sup> Although the article does not outline any solution to deal with unemployment, it presents unemployed persons in a capitalist system of production as unable to contribute to society, and the right to work as an unnecessary cost for society.

The right to work, however, was quickly accepted under capitalism. In *The Right to Work*, written in 1917 by John Elliot Ross at a time of high unemployment in the United States,<sup>70</sup> the right to work is presented as the means to end the ‘evils of unemployment’.<sup>71</sup> Ross suggested that ‘more than a minimum wage; [there is a] need also to provide the opportunity of working for such [a] wage’.<sup>72</sup> For the ‘self-respecting, capable unemployed’,<sup>73</sup> he recommended the provision of better information about available jobs, employment bureaus and a system of compulsory social insurance.<sup>74</sup> In 1917, he seemed to be describing something similar to the workfare system: ‘If an applicant for insurance refused to work for a private employer when the opportunity was offered him, he should forfeit his right to insurance.’<sup>75</sup> Addressing the right to freely choose work, he argued that it would be useless to ‘attempt giving each man his own special kind of work’.<sup>76</sup> The state should rather have some sort of basic activity to which men could be put to work when they could find nothing else to do.<sup>77</sup> Turning to those ‘defective in some way that makes their employment unprofitable’,<sup>78</sup> Ross found it useless to urge employers to take them on. Instead, he saw the need to set up ‘special institutions where such persons can be employed up to their full capacity whatever that may be’<sup>79</sup> in order for them not to lose the habit of work.

<sup>66</sup> *The Right to Work*, 214 *The Edinburgh Rev.* 180 (1911).

<sup>67</sup> *Ibid.*, at 185.

<sup>68</sup> *Ibid.*, at 188.

<sup>69</sup> *Ibid.*, at 189.

<sup>70</sup> Stanley Lebergott, *Annual Estimates of Unemployment in the United States, 1900–1954*, in *The Measurement and Behavior of Unemployment* 211, 214 (Universities–National Bureau Committee for Economic Research ed., 1957).

<sup>71</sup> John Elliott Ross, *The Right to Work* 9 (1917).

<sup>72</sup> *Ibid.*, at 28.

<sup>73</sup> *Ibid.*, at 73.

<sup>74</sup> *Ibid.*, at 46.

<sup>75</sup> *Ibid.*, at 62; see s. 2.2[b][ii] *supra*, for the contemporary discussion.

<sup>76</sup> Ross, *supra* n. 71, at 74.

<sup>77</sup> *Ibid.*, at 77; see s. 2.2[b][iii] *supra*, for the contemporary discussion.

<sup>78</sup> Ross, *supra* n. 71, at 82.

<sup>79</sup> *Ibid.*, at 93.

*The Right to Work* shows the transformation of the right to work from a socialist guarantee of employment towards a right to a labour market that extends the opportunity to work. That transformation became increasingly accepted in capitalist societies as shown, for example, in the adoption of the first International Labour Organization (ILO) conventions addressing unemployment.<sup>80</sup> The right to work understood by Ross a century ago is close to what is understood as the contemporary right to work. National socialism added a dark chapter to the history of the right to work, ultimately leading to the inclusion of the right to freely accept and choose work in the Universal Declaration of Human Rights.

### 3.3 THE 'RIGHT-WING' SOCIALIST CLAIM

In the period following the Great Depression, the right to work became the perfect claim for nationalism in Europe and Russia. In *The Right to Work* in 1939, Max Ascoli described how the right to work in Soviet Russia and Nazi Germany completely lost the left-wing political character it had since the 1848 French Revolution.<sup>81</sup> He noted that 'in Germany, th[e] right [to work] seems to have actually received its sanction, from the hands of Hitler who, we are told, has abolished unemployment'.<sup>82</sup> As he explained, however, an effective organization of the right to work implies agencies for the distribution of work. 'If the men who are at the head of such agencies centre their will only upon the right to work and nullify all other rights, a situation arises which has a name: slavery.'<sup>83</sup> For Ascoli, slavery was what Germany and Russia were experiencing:

The workers are conscripted; they cannot change their jobs; not even old age seems to create an exemption from the duty of working, as is evident in Germany where men up to seventy years of age are called to do their part in national projects. Needless to say, in Germany and Russia all workers' rights are denied at the same time as the right to work is made thoroughly effective.<sup>84</sup>

The compulsory allocation of labour continued in Russia after the Second World War, which inspired China's allocation system of labour of the 1950s. In China, Lu explains that whilst work assignments might have taken personal skills into account, the free will of the worker would be the last element considered.<sup>85</sup> Workers were not forced to accept the job but normally only had a choice

<sup>80</sup> See e.g. Convention (No. 2) Concerning Unemployment, 28 Nov. 1919, 38 U.N.T.S. 585; Convention (No. 8) Concerning Unemployment Indemnity in Case of Loss or Foundering of the Ship, 9 July 1920, U.N.T.S. 591.

<sup>81</sup> Max Ascoli, *The Right to Work*, 6 Soc. Res. 255, 256 (1939).

<sup>82</sup> *Ibid.*

<sup>83</sup> *Ibid.*, at 260.

<sup>84</sup> *Ibid.*

<sup>85</sup> Lu, *supra* n. 11, at 231.

between taking the job or not being employed at all and relying exclusively on family support since a labour market did not exist.<sup>86</sup>

The right to work was discussed during the drafting of the UDHR and the ICESCR in the post-Second World War context. Some thought that the right to work was a cost for society or, at best, that governments should only promote economic conditions to increase the opportunity to work.<sup>87</sup> Those ideas were opposed by socialist governments willing to guarantee work<sup>88</sup> through a state-allocated labour system under which the right to freely accept or choose work was a secondary or non-existing concern. Today, the clash between socialism and capitalism has mostly vanished but the debate continues about whether and to what extent states should intervene in order to provide enough work. This article argues that the debate places too much attention on how to provide work. It overlooks the human potential to reduce the need to work.

#### 4 FREEDOM FROM WORK IN THE HUMAN ECONOMY

Section 2 above provided an overview of the human right to work as a right to the opportunity to make a living through freely accepted work, but not necessarily freely chosen work. Section 3 showed how the contemporary right to work emerged historically from competing views between socialism and capitalism on how to supply work. As already mentioned above, despite the universally recognized human right to work, global unemployment is expected to reach 201 million and vulnerable forms of employment are expected to account for 1.4 billion people worldwide.<sup>89</sup> In the contemporary global economy, in which workers are increasingly exposed to global competition and continue to be exposed to labour-saving technologies, Collins is perhaps correct when he says that the right to work is impracticable.<sup>90</sup> For instance, with regard to technological innovation, the United Nations reports that some estimate that by 2025 almost 50% of today's occupations could become redundant. New jobs will require creativity, intelligence, social skills and the ability to exploit artificial intelligence.<sup>91</sup> One can also agree with Nickel

<sup>86</sup> *Ibid.*

<sup>87</sup> See Sarkin-Hughes & Koenig, *supra* n. 18, at 13.

<sup>88</sup> See e.g. G. A., Third Comm., *Draft International Declaration on Human Rights: Recapitulation of Amendments to Article 21 of the Draft Declaration*, at 1, U.N. Doc. A/C.3/298 (25 Oct. 1948); see also Sarkin-Hughes & Koenig, *supra* n. 18, at 13.

<sup>89</sup> International Labour Organization (ILO), *World Employment and Social Outlook: Trends 2017 1–2* (Geneva: ILO 2016).

<sup>90</sup> Collins, *supra* n. 13, at 19.

<sup>91</sup> U.N. Development Programme [UNDP], *Human Development Report: Work for Human Development 5* (2015) [hereinafter UNDP Human Development Report], at 98.

that the right to work does not have a bright future<sup>92</sup> at least for all those who are unable to acquire the required new skills.

It is unlikely that comprehensive solutions will emerge from reusing socialist or capitalist instruments that focus only on providing work. Harvey suggests, for example, reviving the direct job-creation strategy of the United States adopted after the Great Depression.<sup>93</sup> This section presents an alternative approach in the human economy framework. This section outlines the definitional and theoretical framework of the human economy, which is a more precise concept than it is in Hart's *Human Economy*.<sup>94</sup> It is also not related to Röpke's 1960s *Humane Economy*.<sup>95</sup> Although Röpke was aware that the free market needs an ethical framework with humane values,<sup>96</sup> 'humane' meant for him above all else 'free market' as opposed to the communist 'extreme anti-humane doctrine'.<sup>97</sup>

The human economy framework first of all challenges the core principle of capitalism according to which human beings constitute a form of productive capital (4.1). The framework shows that the present economic system reduces human beings to capital with the single skill of producing economic value. It therefore overlooks the human potential to create human benefits beyond producing goods and services (4.2). It also explains that improving the efficient creation of human benefits, which is what most people work for, can reduce a society's need to work (4.3). The human economy represents a shift in perspective from fulfilling the traditional right to work to progressively increasing freedom from work.

#### 4.1 FROM HUMAN CAPITAL TO HUMAN BEING

Among influential economists, Smith, Mill, and Marx each analysed the function of human labour in the capitalist system of production. They examined human labour as productive capital to be purchased by private employers, something Marx criticized in a systematic manner.<sup>98</sup> The metamorphosis of human beings into

<sup>92</sup> James W. Nickel, *Giving Up on the Right to Work*, in *The Right to Work*, *supra* n. 6, at 137.

<sup>93</sup> Harvey, *supra* n. 9, at 167.

<sup>94</sup> Keith Hart, Jean-Louis Laville & Antonio Cattani, *Building the Human Economy Together*, in *The Human Economy 2* (Hart et al. eds, Polity Press 2010).

<sup>95</sup> Wilhelm Röpke, *A Humane Economy: The Social Framework of the Free Market* (1960).

<sup>96</sup> *Ibid.*, at 104. See Werner Bonefeld, *Human Economy and Social Policy: On Ordoliberalism and Political Authority*, 26 (2) *Hist. Hum. Sc.* 106, 112(2013).

<sup>97</sup> Röpke, *supra* n. 95, at 16.

<sup>98</sup> See Adam Smith, *The Wealth of Nations: Books I-III* 429–449 (Penguin 1999) (1776), for Book II, Ch. III on the Accumulation of Capital, or of Productive and Unproductive Labour; See John Stuart Mill,

human capital was complete by the second half of the twentieth century, as outlined in Becker's *Human Capital*.<sup>99</sup> Today, the paradoxical term *human capital* is commonly accepted. By oversimplifying human beings in the economic process of production, however, traditional economics reduces human beings to one single function: producing economic value. This explains the disconnect between economics and human realities, which becomes obvious when considering the economic notion of 'skills'.

In the economic literature, skills only mean skills that are instrumental to producing economic value. In an awareness that young people will provide human capital upon completion of their schooling, the education system mostly prepares them to acquire the particular skills needed to become employable capital.<sup>100</sup> As Frayne argues in *The Refusal of Work*, 'in the work-centred society, the most readily accepted purpose of education is the socialization of young people for the successful adoption of pre-defined work role'.<sup>101</sup> Are those skills that are taught and trained out of fear of unemployment the ones that enable human beings to make the maximum use of their potential for themselves and others in society? It is easy to agree with Frayne that, for many, paid employment represents less an expression of their creative capacities than an obstacle to the development of those capacities.<sup>102</sup>

The human economy approach considers that human beings have *human potential* beyond merely the 'skill' to produce economic value. The next sections argue that human beings have the potential to create human benefits beyond producing goods and services and that this potential is either misallocated or not allocated at all in the contemporary economic system, which impacts a society's need to work.

#### 4.2 FROM PRODUCTION TO HUMAN BENEFITS

Once human beings are delivered from being thought of as mere producers of economic value, a part of the time and energy that was before only dedicated to producing goods and services can be used in order to create something else. But what can individuals create with their human potential? *Human benefits*.

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*Principles of Political Economy: With Some of Their Applications to Social Philosophy; Books I-II* (1848), reprinted in *Collected works of John Stuart Mill* 2, 31 (John M. Robson ed., 1965), for Book I, Ch. II, Of Labour as an Agent of Production and Ch. III, Of Unproductive Labour. See Karl Marx, *Capital: A Critique of Political Economy* vol. 1 (1st Engl. ed. 1887), reprinted in Karl Marx & Frederick Engels: *Collected Works* 35, at 196–208 (Progress Publ. 1996), in particular the section on The Producing of Surplus-Value.

<sup>99</sup> Gary Becker, *Human Capital* (3d ed., University of Chicago Press 1993).

<sup>100</sup> See Muhammad Yunus, *Building Social Business: The New Kind of Capitalism That Serves Humanity's Most Pressing Needs* xvi (Public Affairs 2010); see also David Frayne, *The Refusal of Work: The Theory and Practice of Resistance to Work* 78–81 (Zed Books 2015).

<sup>101</sup> *Ibid.*, at 15.

<sup>102</sup> *Ibid.*, at 66. But see Davidov, *supra* n. 3, at 43 or Bogg, *supra* n. 1, at 150.

It is increasingly accepted that production growth, or economic growth, is not the most desirable end that economics can offer to human beings. Many economic theories have attempted to link and measure economic activities in terms of *social* rather than *economic* outputs, such as the social economy.<sup>103</sup> In this connection Amartya Sen helped transform an abstract idea of social outputs into more precise benefits to which people can individually relate. As Sen argues in *Development as Freedom*, ‘economic growth cannot be treated as an end in itself. Development has to be more concerned with enhancing the lives we lead and the freedoms we enjoy’.<sup>104</sup> He evaluates an economic system in terms of capabilities. Capabilities are the substantive freedoms a person enjoys to lead the kind of life he or she has reason to value.<sup>105</sup> The United Nations translates Sen’s idea of capabilities into the broader notion of human development.<sup>106</sup>

Some capabilities are broadly shared, such as the freedom to live a healthy life, to have access to quality food, clean water, education and housing or lead a life free from violence. Broadly shared capabilities can be translated into existing universally recognized human rights.<sup>107</sup> As Sen wrote, however, capabilities and human rights should not be subsumed within the other and the acceptability of existing human rights must also continue to be assessed by some test of open, informed<sup>108</sup> and deliberative<sup>109</sup> scrutiny. This is certainly true for the human right to work. For example, Del Punta recently identified the following capabilities in relation to work: having a job, having working conditions compatible with the worker’s health and safety, having adequate occupational training, as well as the capabilities to enjoy a sufficient amount of work-free time and to join trade unions.<sup>110</sup> His analysis presupposes, however, that people freely want to work. Considering that most people are forced to work in order to earn an income, capabilities that are connected to work would be more ambitious and encompass also the capability of freely choosing work or achieving a standard of living by working as little as possible, that is freedom from work, which are not yet recognized human rights.

<sup>103</sup> See Jeremy Rifkin, *The End of Work: The Decline of the Global Labor Force and the Dawn of the Post-Market Era* 242 (Putnam 1995); citing Thierry Jeantet, *La modernisation de la France par l’économie sociale* (Economica 1986).

<sup>104</sup> Amartya Sen, *Development as Freedom* 14 (Oxford University Press 2001).

<sup>105</sup> *Ibid.*, at 75.

<sup>106</sup> UNDP Human Development Report, *supra* n. 91, at 1.

<sup>107</sup> Martha Nussbaum, *Capabilities, Entitlements, Rights: Supplementation and Critique*, 12 J. Hum. Dev. Capabilities 23, 24 (2011); Amartya Sen, *Human Rights and Capabilities*, 6 J. Hum. Dev. 151, 152 (2005).

<sup>108</sup> *Ibid.*, at 160.

<sup>109</sup> Balakrishnan, Heintz & Elson, *Rethinking Economic Policy for Social Justice: The Radical Potential of Human Rights* 8 (Routledge 2016).

<sup>110</sup> Riccardo Del Punta, *Labour Law and the Capability Approach*, 32(4) Intl. J. Comp. Lab. L. & Indus. Rel. 383, 390 (2016).



In *Rethinking Economic Policy for Social Justice: The Radical Potential of Human Rights*, Balakrishnan, Heintz and Elson adopted human rights as a framework for assessing and measuring economic outcomes.<sup>111</sup> The human economy approach presented in this contribution is a continuity of these developments. Regarding terminology in the human economy, economic activities that improve capabilities, measured in terms of human rights, are *creating human benefits*. Conversely, an activity that reduces capabilities expressed in human rights *causes human costs*. Human potential thus means the potential to create human benefits.

The argument behind the human economy, to be developed in the next section, is that activities that create human benefits increase freedom from work while activities causing human costs increase the necessity to work. Developing labour-saving technology for agriculture, for example, may give rise to human benefits measured in terms of the human right to food. As food is more efficiently produced, people need to work less to secure this human benefit and society's freedom from work increases in that regard. That same technological innovation, however, may also give rise to human costs, such as social instability or violence associated with loss of employment as for other labour-saving technologies.<sup>112</sup> While on the one hand freedom from work increases for some, the necessity to work will also increase for all those who must work more to cover the costs of private and public measures to provide protection from social instability. Furthermore, if the labour-saving technology consists of using pesticides, human costs measured in terms of the human right to health or to clean water must also be accounted for. The necessity to work will increase for all those who must work more to cover the cost of remedial measures, such as cleaning water or tackling pesticide-related diseases.

Economic models that focus on production growth are incomplete. Under the human economy approach, an economic activity is humanly beneficial only on condition that it results in the net creation of human benefits and thus increases freedom from work. Internationally recognized human rights can be used as a standard to measure human benefits created by economic activities.<sup>113</sup> More research is needed, however, to quantify the extent to which human benefits and human costs impact the necessity to work. A better understanding of this relationship would help individuals who wish to be less reliant on work to adapt their behaviour and redesign public policies accordingly. The last section casts light on how improving the efficient creation of human benefits increases a society's freedom from work.

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<sup>111</sup> Balakrishnan, Heintz & Elson, *supra* n. 109, at 2 and 142.

<sup>112</sup> See Rifkin, *supra* n. 103, Ch. 14, for the relationship between technological unemployment and social instability. See more recently, Joseph Stiglitz, *The Price of Inequality: How Today's Divided Society Endangers Our Future* (W. W. Norton 2013).

<sup>113</sup> As proposed by Balakrishnan, Heintz & Elson, *supra* n. 109.

### 4.3 FROM THE EFFICIENT CREATION OF HUMAN BENEFITS TO FREEDOM FROM WORK

Economics is about making the best use of resources. Capitalism is about making the best use of capital, including human capital, so as to maximize production. A correlation may exist between producing some goods and services and the resulting human benefits or improvements in human rights. It is also the case that the number of hours that people need to work has decreased in the last few decades, at least for most individuals in wealthier countries.<sup>114</sup> However, the correlation between capitalism, improvement of rights and freedom from work is poorly measured. It is also not accurate to say that the contemporary economic system is the most efficient economic system for expanding freedom from work for the simple reason that capitalism does not recognize freedom from work as an indicator.

The human economy, to the contrary, is about making the best use of human potential, the new input of the economic system, to maximize human benefits, the new output, with the view to reducing a society's necessity to rely on work. This section identifies the waste of human potential (4.3[a]) and explains how enhancing the free use of human potential (4.3[b]) and increasing human creativity (4.3 [c]) reduces the necessity to work (4.3[d]).

#### 4.3[a] *Wasted Human Potential*

To date, those who freely choose to make use of their human potential to create human benefits, as defined above,<sup>115</sup> are generally rewarded less or not at all. The contemporary system of employment mostly rewards the skill of producing economic value.<sup>116</sup> This system creates an incentive to improve that economic skill over time without regard to whether the use of that skill gives rise to human benefits or human costs. As a result, the human potential of creating human benefits is wasted.

In the present economic system, the same skill can be rewarded very differently. Take the example of legal skills. If individual economic rewards and the social status that is associated with this reward were irrelevant, most lawyers would, hypothetically, prefer to defend the rights of people affected by water pollution rather than defending the company causing the pollution. This may be all the more so when the company produces goods that generate limited human benefits. In practice,

<sup>114</sup> See e.g. OECD Statistics, Average annual hours actually worked per workers 2000–2016, from 1829 hours in 2000 to 1763 in 2016, <https://stats.oecd.org/Index.aspx?DataSetCode=ANHRS> (last accessed 31 July 2017).

<sup>115</sup> See s. 4.2, *supra*.

<sup>116</sup> See also Yunus, *supra* n. 100, at xv.

however, economic opportunities lead a majority of lawyers to use their skill to defend the polluting company rather than those affected in their human right to water. At the same time, lawyers justify themselves: ‘What can I do? I have to earn a living!’ They also take comfort in the fact that if they do not provide their services, someone else will. Comments of this kind are common for many kinds of activities. Each of them represents a typical case of human potential being misallocated.

Unemployment is another example of wasted potential. Those who are not productive enough to be hired are considered unnecessary in capitalist societies.<sup>117</sup> However, being unemployed does not mean that people have no human potential. The loss of human potential when young people spend time in employment agencies in the hope of finding a job they do not want is surely regrettable. As the United Nations stated in its last Human Development Report, focusing on work for human development, a great deal of human potential remains unused and the world is deprived of their contribution, creativity and innovation.<sup>118</sup> In both situations, there is a waste of human potential due to a lack of opportunities for those who wish to create human benefits.

#### 4.3[b] *Enhancing the Free Use of Human Potential*

Enhancing the free use of human potential means creating individual opportunities for those who wish to improve and use their potential. In connection with this point, the literature on the right to work discusses a universal basic income.<sup>119</sup> Another approach aims to empower the voluntary sector. These two approaches will now be assessed in light of the human economy framework.

With regard to basic income, Standing argues that such an income would help to enable people to gain control of the pace and intensity of their work, and to escape from the remorseless dictates of labourism.<sup>120</sup> In his view, the economic rationale behind basic income is that most countries already provide a vast array of subsidies designed to maintain or generate unproductive jobs.<sup>121</sup> Others identify costly bureaucratic welfare programmes as an additional economic reason to replace them with such an income.<sup>122</sup> Beyond these questions, which will have

<sup>117</sup> See Marx, Vol. 1, *supra* n. 98, at 624.

<sup>118</sup> UNDP Human Development Report, *supra* n. 91, at 46.

<sup>119</sup> See Guy Standing, *Why a Basic Income Is Necessary for a Right to Work*, 7 *Basic Income Stud.* (2013); see also Yannick Vanderborght, *The Tensions of Welfare State Reform and the Potential of a Universal Basic Income*, in *Activation Policies for the Unemployed: The Right to Work and the Duty to Work* 209, 209–222 (Elise Dermine ed., Lang 2014); Sarkin-Hughes & Koenig, *supra* n. 18, at 4; De Schutter, *supra* n. 33, at 175.

<sup>120</sup> Standing, *supra* n. 119, at 34.

<sup>121</sup> *Ibid.*, at 32.

<sup>122</sup> Rifkin, *supra* n. 103 at 261, citing Friedman; see also Standing, *supra* n. 119, at 34.

to be examined, it seems clear that people working eight to ten hours a day dedicated to the production of goods and services cannot find the time to think creatively in terms of human benefits and their human potential may be lost. It is also probable that ensuring a basic income will liberate those badly remunerated and who work out of necessity to refocus on other preferred occupations. It is also correct to assume that a basic income will allow people already providing unpaid care to continue to do so. It is incorrect, however, to assume that the new occupations will automatically generate more human benefits.<sup>123</sup> A basic income may also divert human potential away from economically unattractive but creative activities in terms of human benefits. One can easily think of nurses, for instance, creating human benefits in terms of the right to health under hard working conditions. Although the idea of a basic income and the human economy do not exclude each other, the literature on the basic income should address the issue of human potential more carefully.

The literature also discusses how to encourage participation in the third sector<sup>124</sup> with reference to voluntary work alongside the private and public sectors.<sup>125</sup> Rifkin suggests that governments could provide a tax deduction for every hour of voluntary work for certified tax-exempt organizations.<sup>126</sup> In the human economy, taxation could also be used to encourage work that creates human benefits. Such incentives would directly reward individuals who use their human potential to create human benefits, maybe in addition to the basic income, which applies universally. There is no reason, however, to assume that only the third sector is worth encouraging. Identified and collectively agreed-upon human benefits can be created through work in the private or public sectors just as in the third sector. Furthermore, it is not only state-driven public policies that can provide economic incentives. Economic incentives can also be created through individual choices and collective action, for example, by investing in social businesses as defined by Yunus<sup>127</sup> or putting savings into social banking, provided the *social* can be translated into specific human benefits. Finally, individual rewards other than economic incentives may also enhance the free use of human potential. More room should be given to those who want to use their human potential to define their own form of incentive.

The remaining question is what can motivate individuals, beyond what is already achieved through a shared understanding of respect for others, to create opportunities for those who want to create human benefits. Before showing how the perspective of

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<sup>123</sup> See Frayne, *supra* n. 100, at 66, for comments on the potential for people's capacities to flourish when work is reduced.

<sup>124</sup> Rifkin, *supra* n. 103 at 249–274.

<sup>125</sup> *Ibid.*, at 239.

<sup>126</sup> *Ibid.*, at 256.

<sup>127</sup> Yunus, *supra* n. 100, at 12; see UNDP Human Development Report, *supra* n. 91, at 8 and 97.

increasing one's own freedom from work may work as a motivating force, the notion of human creativity in the human economy needs to be examined.

#### 4.3[c] *Increasing Human Creativity*

In addition to expanding opportunities for work in sectors that create human benefits, the human economy approach focuses on increasing human creativity. In the human economy framework, *human creativity* means the potential to create human benefits with a given amount of resources. It aims to replace the existing economic concept of productivity.<sup>128</sup> For example, a Swedish university hospital undertook an experiment whereby they paid nurses a full salary to work six hours a day instead of the usual eight hours.<sup>129</sup> The 18-months experiment showed that providing individual rewards to nurses by reducing the working day improved the attractiveness of the work as well as the quantity and quality of health services provided. The nurses increased their productivity by organizing 85% more activities for their patients. In this example, productivity can also be measured in specific human benefits in terms of the human right to health. Human labour productivity is therefore a synonym of human creativity in this particular case.

In the human economy framework, increasing human creativity requires improving the skill of creating human benefits, not productive skills in the economic sense. In the contemporary economic system, those who wish to learn how to improve their skill of creating human benefits – their human creativity – face higher risks in investing in their human potential because the use of human potential is generally less rewarded, if it is rewarded at all.<sup>130</sup> Creating opportunities for the allocation of human potential would reduce that risk. Education could then move progressively from learning how to produce economic value to focusing instead on how to create human benefits more efficiently. As individuals become increasingly creative in terms of human benefits, one can easily imagine technological innovations and their consequence in terms of human benefits that would emerge from that human creativity. With human benefits becoming more efficiently created, freedom from work would expand.

Table 1 summarizes the definitional framework of the human economy as presented so far and compares it with terminology commonly employed in the capitalist system. Then the last section examines how and why society's freedom from work increases when human benefits are more efficiently created.

<sup>128</sup> See s. 4.2, *supra*.

<sup>129</sup> Mady Savage, What really happened when Swedes tried six-hour days? BBC News (Feb. 8, 2017) <http://www.bbc.com/news/business-38843341> (accessed 24 Oct. 2017).

<sup>130</sup> See s. 4.3.1, *supra*.

*Table 1 Definitional Framework of the Human Economy in Comparison to Capitalism*

	<i>Capitalism</i>	<i>Human Economy</i>
<b>Agents and its power</b>	Human Capital, Labour	Human Beings, Human Potential
<b>Function of agents</b>	Producers of goods and services	Creators of Human Benefits
<b>Rewarded skill</b>	Economic Productivity	Human Creativity
<b>Output</b>	Goods and Services	Human Benefits, Human Costs
<b>Purpose of the economic system</b>	Economic Growth, Material Security, Full Employment	Securing Human Benefits, Increasing Freedom from Work

4.3[d] *Towards Freedom from Work*

Why would governments redirect public policies and why would individuals modify their behaviour to enhance the free use of human potential and increase human creativity? Because this could potentially reduce everyone's need to work. In the human economy, freedom from work becomes a new motivating force.

Individuals rely on work from which they earn an income enabling them to secure choices. Some of those choices can be expressed in terms of capabilities and measured in human rights, such as the right to adequate food, water, housing or health.<sup>131</sup> These choices represent human benefits and they are why most people need to work. When those benefits are more efficiently created, the need to work to access them reduces. An increase in human creativity in the health sector, for example, reduces the cost of accessing human benefits in terms of the right to health, a human benefit for which most people must work. Most people therefore benefit from such an increase in human creativity by reducing the amount of necessary work to access that human benefit. This is true for all improvements in human creativity and for all technological inventions that improve the efficient creation of human

<sup>131</sup> See s. 4.2 *supra*, for the relationship between human rights and human benefits.

benefits. When human creativity increases, freedom from work increases because less work is needed to access human benefits.

Introducing the idea of human benefits and human costs brings clarification to the 'end of work' argument, which is based on the assumption that advances in production technologies are gradually eliminating the need for human labour.<sup>132</sup> This is a manifestation of Russell's idea of modern technologies diminishing the amount of labour required to secure the necessities of life for everyone<sup>133</sup> and making leisure time possible.<sup>134</sup> At present, however, technological innovation can also contribute to human costs and thus increase a society's need to work.

Coming back to an example presented above,<sup>135</sup> pesticides are considered as a labour-saving technology that improves economic productivity and potentially reduces the reliance on work to secure the right to food. At the same time, pesticides are an example of a technology that constrains a society to work in order to fund measures that protect against social instability resulting from a loss of employment, as well as to ensure access to clean water and treat pesticide-related diseases. Traditional economics has a reason to celebrate this technology as additional work is created at the expense of those who will pay for these measures, either individually or collectively as taxpayers.

The question regarding technologies is, as Frayne asks, to what and whose ends are new technologies being applied?<sup>136</sup> Is improvement in economic productivity through technologies necessarily reducing a society's necessity to work? Human creativity, not economic productivity, reduces the need to rely on work. Only work and technology resulting in a net creation of human benefits will reduce the need to work. Then choices expand as freedom from work grows. There is a need to clarify the relationship between economic productivity, human creativity and freedom from work in order to motivate those who wish to be less reliant on work to adapt their individual behaviour and influence public policies accordingly.

## 5 CONCLUSION

Work is a human right and most governments formally recognize it as such. At the universal level, the right to work is about increasing the opportunity for individuals

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<sup>132</sup> See Frayne, *supra* n. 100, at 33; see generally Rifkin, *supra* n. 103, at 3–13, for a critique of the argument.

<sup>133</sup> Russell, *supra* n. 59, at 14.

<sup>134</sup> *Ibid.*, at 15.

<sup>135</sup> See s. 4.2, *supra*.

<sup>136</sup> Frayne, *supra* n. 100, at 34.

to access decent work without discrimination. Furthermore, under the human right to work, work cannot be assigned by force, which means that it must be freely accepted. Work should also be freely chosen. The idea that work is freely chosen is for many workers no more than a bad joke. Considering economic realities, the right to freely choose work has no practical content in human rights law. Street cleaners, call-centre agents, industrial workers or bankers and even members of the working poor are considered to have freely chosen their jobs. In this article, the right to choose work is part of a solution to reduce the reliance on work.

Historically, the right to work originates from the competing views of socialism and capitalism. The official birth of the right to work goes back to the 1848 French Revolution, when unemployed workers argued that the state should guarantee work. This right to the guarantee to work was progressively transformed in capitalist societies into a right to the opportunity to work. Past and present solutions, however, have invariably focused on who – the state or private employers – is the most suitable and efficient supplier of work. Both economic systems place insufficient attention on how to reduce a society's necessity to work.

This article presents the human economy approach as an alternative to the traditional challenging task of supplying enough decent work to implement the right to work. It follows the idea that it is easier to guarantee the security which people seek through work when work becomes less and less necessary to make a living. In the human economy, workers are not a form of human capital, but human beings with human potential. They can create human benefits, for which most people must work at present. The human economy puts in place individual incentives to enhance the free use of human potential and increase human creativity in order to improve the efficient creation of human benefits. Improving the efficient creation of these human benefits, rather than increasing economic productivity, reduces the reliance on work to access benefits that people work for, thus increasing a society's freedom from work.

The human economy is one possible way towards Lafargue's goal for work to last no longer than three hours a day,<sup>137</sup> something that Keynes also predicted by 2030,<sup>138</sup> or to achieve Marx's more general aim of freedom from exploitation.<sup>139</sup> The human economy is also not about securing only 'elementary comforts of life'

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<sup>137</sup> Lafargue, *supra* n. 52, at 25.

<sup>138</sup> John Maynard Keynes, *Economic Possibilities for Our Grandchildren* (1930), reprinted in *The Collected Writings of John Maynard Keynes* 9, 329 (Macmillan 1972).

<sup>139</sup> See Karl Marx, *Capital: A Critique of Political Economy* vol. 3, 958–959 (Frederick Engels ed., David Fernbach, transl., Penguin 1991) (1894).



as in Russell's essay *In Praise of Idleness*.<sup>140</sup> Focusing on overlooked human potential as well as the neglected impact of human costs on the need to work may render it possible to increase freedom from work and simultaneously to secure a wider range of human benefits. To increase freedom from work, there is no way out but to analyse more carefully what people create and destroy through work and understand better why people work.

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<sup>140</sup> Russell, *supra* n. 59, at 25.

