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Introduction to the Human Economy

From the Right to Work to Freedom from Work

Nicolas Bueno*

Abstract

Isn't it paradoxical to celebrate work as a human right in an economic system in which for many work is associated with something 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 fully fulfilled in the contemporary state-centred global economy. Beyond economic discussions which place too much attention on how to provide enough but sometimes unfulfilling work, this contribution looks at the human potential to reduce the necessity to work. It establishes the theoretical and definitional foundations of the 'human economy', where human potential and human creativity are rewarded in order to move from the right to work to the freedom from work. The human economy is a potentialist approach in which the right to freely choose work plays a role.

Keywords

Right to Work, Human Capital, Post-Capitalism, Capabilities, Basic Income, Freedom from Work

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*Postdoctoral Researcher, Université de Lausanne, Switzerland; Visiting Fellow, London School of Economics and Political Science Centre for the Study of Human Rights. Nicolas.Bueno@unil.ch; @NBueno_BHRights. This paper received the 2017 Marco Biagi Award from the International Association of the Labour Law Journals. The assessment committee was composed of Professors Alan Neal (University of Warwick), Frank Hendrickx (University of Leuven), Joaquin Aparicio (University of Castilla-La Mancha), György Kiss (University of Pécs). Thank you to Professors Pascal Bridel (Université de Lausanne), Olivier De Schutter (Université catholique de Louvain) and Diane Elson (University of Essex and co-author of *Rethinking Economic Policy for Social Justice: The Radical Potential of Human Rights)* as well as to Alexander Beck, Claire Tixeire and Geeta Koska for valuable comments on earlier drafts. This research is funded by the Swiss National Science Foundation. All errors are my responsibility.

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1 INTRODUCTION

Work may be regarded as a valuable activity that contributes to human flourishing[1] or as a source of identity,[2] self-realization or fulfilment.[3] Work is also 'instrumentally valuable as a source of income to enable us to live a life'.[4] For most people, it is certainly this income that is demanded above all else through the human right to work. This contribution argues that socialist and capitalist economic systems are not fully equipped to provide the economic security human beings search for through work. This is because both systems focus too much on how to provide enough paid work. As a result, existing systems overlook the human potential to reduce a society's necessity to rely on work that people would prefer not to do where it not paid.

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[1] 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.
[2] *Ibid*. 1890.
[3] Guy Davidov, *A Purposive Approach to Labour Law* 43 (Oxford University Press 2016), not denying the existence, and importance, of *negative* aspects to work.
[4] Bogg, *supra* n. 1, at 150.

Section (2) presents the normative content of the human right to work that many individuals feel ambivalent about[5] despite states' near universal willingness 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, 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 claim in the middle of the nineteenth century, the claim for work has recurred after each unemployment crisis. It is therefore no coincidence that contributions like this one have increased in the past decade.[6]

In the contemporary global economy, workers are increasingly exposed to global competition and they continue to be expose to labour-saving technologies. It is questionable whether this economic system is able to provide enough qualitative work as would be required to satisfy the human right to work. Section (4) presents how to increase a society's freedom from work as an alternative to guaranteeing the right to work. It does not entail a practical legal proposal but presents the new definitional and theoretical framework of the *human economy*, which focuses on human beings and their potential to reduce the necessity to rely on work. Without being 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 instead a potentialist approach in which the human right to choose work plays an increasing role in increasing a society's freedom from work.

2 The Universal Recognition of the Human Right to Work

2.1 A Universal Recognition

The right to work is a human right, at least as a matter of positive international law.[7] At the universal level, the right to work is explicitly defined in Article 23 paragraph 1 of the Universal Declaration of Human Rights (UDHR) and Article 6 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).[8] The United States, Malaysia, Saudi Arabia or 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.[9]

The right to work is also guaranteed in all regions. Chronologically, it was introduced in Article 1 of the European Social Charter, Article 15 of the African Charter on Human and People's

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[5] 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).
[6] *See e.g.*, Virginia Mantouvalou (ed.), *The Right to Work: Legal and Philosophical Perspectives* (Hart 2015), for sixteen contributions on the right to work.
[7] Bogg, *supra* n. 1, at 150.
[8] *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 (Nov. 24, 2005) [hereinafter CESCR General Comment 18].
[9] 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).

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, though not a legally binding international treaty, Article 27 of the Association of Southeast Asian Nations Human Rights Declaration.[10]

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

2.2 The Content of the Human Right to Work

The right to work is sometimes presented as imprecise[14] or as a cluster of complex normative aggregates.[15] It is true that Article 23 paragraph 1 UDHR is confusing because it is a package in one single sentence of four different elements including the rights to work, to free choice of employment, to just and favorable conditions of work, and to protection against unemployment. Article 6 paragraph 1 ICESCR is more specific. It defines the two core elements[16] 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.'[17] This section discusses how human rights bodies and the literature interpret both[18] elements. A critical assessment will follow in section (4).

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[10] *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).

[11] *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).

[12] Nußberger, *supra* n. 10, para. 6.

[13] 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. 2; Kurt Pärli, *Gibt es ein Recht auf Arbeit?* Basler juristische Mitteilungen 117-139 (2017).

[14] Collins, *supra* n. 13, at 20.

[15] Krzysztof Drzewicki, The Right to Work and Rights in Work, in *Economic, Social and Cultural Rights* 169, 173 (Asbjørn Eide et al. eds., 2nd rev. ed., Nijhoff 2001).

[16] *See* Colm O'Cinneide, The Right to Work in International Human Rights Law, in *The Right to Work*, *supra* n. 6, at 109.

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

[18] *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 in three elements, separating the guarantee against arbitrary dismissal.

2.2.1 *The Right to the Opportunity to Gain a Living by Work*

The right to the opportunity to gain a living by work means in the first place that states must take measures to guarantee that work is available. In this regard, states parties to the ICESCR 'must adopt, as quickly as possible, measures aiming at achieving full employment.'[19] 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'.[20] Although there is no absolute and unconditional right to obtain employment,[21] states must progressively realize the right by implementing employment policies with the maximum of their available resources.[22]

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

2.2.2 *The Right to Freely Accept or Choose Work*

(i) The Right to Reject Assigned Work

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[19] 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).
[20] CESCR General Comment 18, *supra* n. 8, para. 26. General Comment 18 uses the same wording as Art. 1 of the International Labour Organization (ILO) Employment Policy Convention 1964 (No. 122).
[21] *See* Saul et al., *supra* n. 10, at 282.
[22] CESCR General Comment 18, *supra* n. 8, para. 32; *see also* Saul et al., *supra* n. 10, at 282.
[23] *See* e.g. CESCR, Concluding Observations: Senegal para. 6, U.N. Doc. E/C.12/1993/18 (Jan. 5, 1994); CESCR, Concluding Observations: Republic of Korea, para. 14, U.N. Doc. E/C.12/ KOR/CO/3 (Dec. 17, 2009) or CESCR, Concluding Observations: Italy para. 27, U.N. Doc. E/C.12/ITA/CO/5 (Oct. 28, 2015). *See generally* Saul et al., *supra* n. 10, at 289.
[24] *See* CESCR, Concluding Observations: Viet Nam para. 17, U.N. Doc. E/C.12/VNM/CO/2-4 (Dec. 15, 2014) or CESCR, Italy, *supra* n. 23, para. 24. *See generally* Saul et al. *supra* n. 10, at 302.
[25] *Ibid.* at 289-292.
[26] CESCR General Comment 18, *supra* n. 4, para. 36.
[27] *Id*. para. 25.
[28] Saul et al., *supra* n. 10, at 282.

It is also traditionally recognised under the right to work, that there is a right 'not being forced in any way whatsoever to exercise or engage in employment'.[29] According to the Forced or Compulsory Labour Convention, someone 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 voluntarily.'[30] In General Comment 18, the CESCR also refers to the Abolition of Forced Labour Convention, which emphasizes the aspect of forced labour imposed by governments.[31]

One practical question in that regard is to what extent can a government 'motivate' individuals to accept work that is not wanted? A duty to work exists in many national constitutions, such as Angola, China, Italy, Japan, South Korea, Spain or Vietnam.[32] Generally, however, international human rights instruments do not include a duty to work as an obligation of the individual towards society.[33] A right to refuse assigned work is of practical importance when states 'motivate' unemployed persons to accept *any* job under penalty of cutting unemployment support or other social benefits. So far, the right to work in that respect is limited to the freedom of the individual not to take up employment that is 'unsuitable'.[34]

(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 imposed by force, it is quite another thing to ensure that the quality of the work that must be accepted is also acceptable. Acceptable means that work must be at least decent[35] and respect the right to just and favourable conditions of work as guaranteed 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.[36]

It is important to clarify that within the right to work, the work available must be decent. This is particularly important in times of economic crisis to prevent states reducing labour standards to create more jobs, but which do not meet acceptable standards. Aware of this risk, in General

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[29] CESCR, General Comment 18, *supra* n. 8, para. 6.
[30] *Id*. para. 9. Convention (No. 29) Concerning Forced or Compulsory Labour art. 2, paras 1-2, June 28, 1930, 39 U.N.T.S. 55. *See generally* Saul et al., *supra* n. 10, at 323.
[31] *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).
[32] Nußberger, *supra* n. 10, para. 6.
[33] Olivier De Schutter, *Welfare State Reform and Social Rights* 33 Neth. Q. Hum. Rts 123, 143 (2015). *But see* Article XXX of the American Declaration on the Rights and Duties of Man and Article 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.
[34] In the meaning of Article 20(f) ILO Employment Promotion and Protection against Unemployment Convention (No. 168). *See* De Schutter, *supra* n. 33, at 125.
[35] CESCR, General Comment 18, *supra* n. 8, para. 7.
[36] *See generally* CESCR, General Comment 23: The Right to Just and Favourable Conditions of Work, U.N. Doc. E/C.12/GC/23 (Apr. 27, 2016), with references to all relevant ILO instruments and Saul et al., *supra* n. 6, 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, 567-9 (2017).

Comment 18 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'.[37]

Under international law, there is a right to available, accessible, and decent work. Expressed in the alternative, there should therefore also be the corresponding negative right not to be forced to accept indecent work. If such a right exists in theory, it questionable whether the contemporary economic system can guarantee it in practice. According to the United Nations, the number of working poor in 2015 reached 830 million, living on less than $2 a day, and more than 1.5 billion were in vulnerable employment, usually lacking decent working conditions.[38]

(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.[39] Yet it seems evident that people working in an informal economy, where working conditions are worse compared to formal employment, do so because of the need to survive rather than as a matter of choice.[40] Who freely decides to work in a mine or to be a member of the working poor? Are Spanish psychologists, in a time of crisis, freely choosing to work in call-centres? How many do have unfulfilling, meaningless or repetitive occupations for reasons of financial security? Under international human rights law, all those jobs are considered freely chosen as long as they are not assigned by governments or exacted from private actors under the menace of sanctions. In reality, the right to choose work is more a luxury that depends on privileges in accessing education, financial safety, talent and luck.

The literature on the right to work commonly accepts that the right to freely choose work does not mean that the state must provide the exact job that any individual desires.[41] Elster considers it plainly unrealistic to permit everyone to do the job of their choosing, stating that '[n]o individual can have a right to direct epic colour films'[42]. Another question, however, could be whether it is beneficial for society to increase the opportunities for individuals to do activities they really want? This contribution argues that expanding choices that allow individuals to spend their time, energy, and skills as they want is a much-overlooked source of individual and societal benefits. Before having a closer look at this unused potential,[43] the next section presents the economic and historical background of the right to work in order to understand why the

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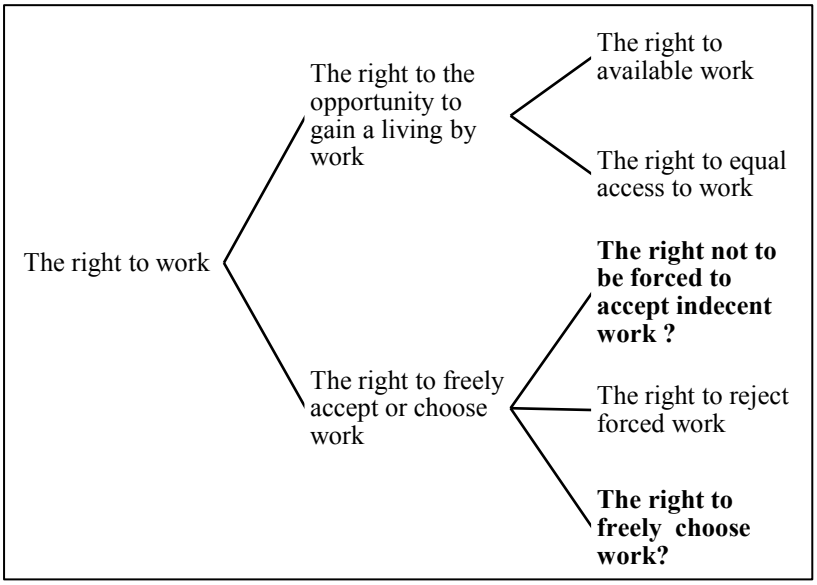
[37] CESCR, General Comment 18, *supra* n. 8, para. 25. *See* e.g. CESCR, Concluding Observations: Japan para. 16, U.N. Doc. E/C.12/JPN/CO/3 (June 10, 2013) and CESCR, Concluding Observations: Spain para. 51, U.N. Doc. E/C.12/ESP/CO/5 (June 6, 2012).
[38] U.N. Development Programme [UNDP], *Human Development Report: Work for Human Development* 5 (2015) [hereinafter UNDP Human Development Report].
[39] Collins, *supra* n. 13, at 21.
[40] CESCR General Comment 18, *supra* n. 8, para. 10.
[41] Sarkin-Hughes & Koenig, *supra* n. 18, at 10.
[42] Elster, *supra* n. 13, at 77.
[43] *See* section 4.3.1 *infra*.

elements of the right to work, as summarized in Figure I, have never and will never be fully realized under socialist or capitalist economic systems. Figure I 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.

[Figure I: 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 gain a living, it has been a recurring concern and the same claim for work is rehearsed after each unemployment crisis. This section goes back to the socialist origin of the right to work (3.1) followed by its transformation under capitalism (3.2) until its formulation in international human rights treaties after World War II (3.3). The section shows that socialism and capitalism offer different solutions in regards 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[44] and Louis Blanc (1848).[45] Both Fourier and Blanc were amongst

[44] Nußberger, *supra* n. 10, para. 2.
[45] *See* J. A. R. Marriott, *The Right to Work: An Essay Introductory to the Economic History of the French Revolution of 1848*, at xlvii (1919).

the ideological leaders of the French Revolution of 1848 during which the right to work became a popular demand.[46]

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'.[47] As Blanc explained in *Le socialisme: droit au travail*, the 1848 Revolution originated from the difficulties of French industry to retain employment due to competition with England.[48] To overcome unemployment, Blanc suggested that the government should progressively enter the competitive arena in the form of state-aided workshops. State-aided workshops, according to Blanc, would at first exist side-by-side with and compete against private enterprises until, because of increased competitiveness, the state would progressively become the sole organizer of industry.[49] Instead of Blanc's proposal, the right to work was implemented for the first time by automatically directing to national workshops all workmen who wished to work.[50] 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.[51] At its origin, therefore, the right to work was a socialist claim resulting from an unemployment crisis due to foreign competition and was meant to be a right to the guarantee to work.

There were also detractors of the right to work amongst socialists of the time. In his famous book *Le Droit à la paresse*, Paul Lafargue presented the right to work as a mental aberration. He reproached the working class for having proclaimed it a revolutionary principle in 1848,[52] which he argued, consolidated the dogma of work preached by Christian ethicists, political economists, and moralists.[53] '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.'[54] He continues: 'the political economists never tire of calling out to laborers: 'Work, work that the national wealth may be increased!''[55] And, 'like parrots they prattle the preaching of political economists: "Let us work to increase the national wealth."'[56]

Inspired by Marx, Lafargue was his son-in-law, *Le droit à la paresse* is not a rejection of work, but a rejection of the capitalist system of production in which crisis succeeds crisis, always at the expense of workers.[57] For Lafargue, however, the proletariat 'must proclaim the Rights of

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[46] *Id*. at xviii.
[47] *Id*. at vii.
[48] *See* Louis Blanc, *Le socialisme: Droit au travail* 8 (3rd ed., Aux Bureaux du Nouveau Monde 1849).
[49] Marriott, *supra* n. 45, at xliii.
[50] *Id*. at lxx.
[51] *Id*. at lxxi.
[52] Paul Lafargue, *The Right to Be Lazy: Being a Refutation of the "Right to Work" of 1848*, at 11 (Harriet E. Lothrop trans., Standard Publishing 1904) (1880).
[53] *See id*. at 5.
[54] *Id*. at 5.
[55] *Id*. at 16.
[56] *Id*. at 34.
[57] *Id*. at 20.

Laziness [and] accustom itself to working but three hours a day, reserving the rest of the day and night for leisure and feasting'[58] 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 to avoid the worst: unemployment.

Later, in *In Praise of Idleness*, published in 1932, Bertrand Russell shared Lafargue's idea that 'far too much work was done in the world'.[59] According to him, 'modern technique made it possible for leisure'[60] by diminishing enormously the amount of labour required to secure the necessaries of life for everyone.[61] Russell deplored how, instead of increasing leisure, both capitalism and socialism lead workers either to produce things that are not wanted or to work on useless projects by regarding the virtue of hard work as an end in itself.[62] He estimated that, assuming a very moderate amount of sensible organization,[63] some four hours' work a day should entitle a man to the necessities and elementary comforts of life, and that the rest of his time should be his to use as he might see fit.[64] 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 presents the right to leisure as being of higher value than the right to work; the latter being only the means to achieve the former.

3.2 Rejection and Transformation under Capitalism

In France, the socialist right to the guarantee to work was strongly opposed by figures like Alexis de Tocqueville, who feared to see the state control the entire economy and become the unique propriety owner of all things.[65] The same fear of communism was shared in England. In *The Right to Work*, published in 1911 in *The Edinburgh Review*, an anonymous author rejected the claim formulated in the United Kingdom Unemployed Workmen Bill of 1908 that every workman not in employment has a right to work.[66] This would constrain the state to enter into contracts with unemployed persons:[67] 'if the work were really wanted the State would naturally offer the work, and so would not require to be constrained.'[68] According to the author, the right to work was thus a claim to money from unemployed persons for unnecessary work that would

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[58] 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).
[59] Bertrand Russel, *In Praise of Idleness: And Other Essay* 9 (3rd impr., Allen & Unwin 1936).
[60] *Id*. at 14.
[61] *Id*. at 15.
[62] *Id*. at 23.
[63] *Id*. at.18.
[64] *Id*. at 25.
[65] 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).
[66] *The Right to Work*, 214 The Edinburgh Rev. 180 (1911).
[67] *Id*. at 185.
[68] *Id*. at 188.

be carried out to the detriment of the general wealth of the country.[69] Although the article does not articulate any solution to counter 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 levels in the United States,[70] the right to work is presented as the means to end the 'evils of unemployment.'[71] Ross suggested that 'more than a minimum wage; [there is a] need also to provide the opportunity of working for such [a] wage'.[72] For the 'self-respecting, capable unemployed',[73] he recommended the provision of better information about available jobs, employment bureaus and a system of compulsory social insurance.[74] In 1917, he already discussed 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.'[75] Addressing the right to freely choose work, he thought that it would be useless to 'attempt giving each man his own special kind of work'.[76] The state should rather have some sort of simple activity to which men could be put to work when they could find nothing else to do.[77] Turning to those 'defective in some way that makes their employment unprofitable',[78] Ross found it useless to urge employers to take them on. Instead, he suggested to create 'special institutions where such persons can be employed up to their full capacity whatever that may be'[79] in order for them not to lose the habit of work.

Right to Work shows the transformation of the right to work from a socialist guarantee of work towards a right for a labour market to extend the opportunity to work. That transformation became increasingly accepted in capitalist societies as shown, for example, in the adoption of the first ILO conventions addressing unemployment.[80] The right to work understood by Ross a century ago is close to what is understood under the contemporary right to work. National socialism added a dark chapter to the history of the right to work, which ultimately led to the inclusion of the right to freely accept and choose work within the Universal Declaration of Human Rights.

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[69] *Id*. at 189.
[70] 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).
[71] John Elliott Ross, *The Right to Work* 9 (1917).
[72] *Id*. at 28.
[73] *Id*. at 73.
[74] *Id*. at 46.
[75] *Id*. at 62; *see* section 2.2.2 (*ii*) *supra*, for the contemporary discussion.
[76] Ross, *supra* n. 71, at 74.
[77] *Id*. at 77; *see* section 2.2.2 (*iii*) *supra*, for the contemporary discussion.
[78] Ross, *supra* n. 71, at 82.
[79] *Id*. at 93.
[80] *See e.g*. Convention (No. 2) Concerning Unemployment, Nov. 28, 1919, 38 U.N.T.S. 585; Convention (No. 8) Concerning Unemployment Indemnity in Case of Loss or Foundering of the Ship, July 9, 1920, U.N.T.S. 591.

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. Writing *The Right to Work* in 1939, Max Ascoli presented 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.[81] 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'.[82] 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.'[83] 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 the right to work is made thoroughly effective.[84]

A compulsory allocation of labour continued in Russia after World War II, 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 least element considered.[85] Workers were not forced to accept the job but normally only had a choice between taking the job or not being employed at all and relying exclusively on family support since a labour market did not exist.[86]

The right to work was discussed during the drafting of the UDHR and the later ICESCR in this post-World War II 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 of work.[87] Those ideas were opposed by socialist governments willing to guarantee work[88] 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 is still about whether and to what extent states should intervene in order to provide enough work. This contribution argues that the debate places too much

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[81] Max Ascoli, *The Right to Work*, 6 Soc. Res. 255, 256 (1939).
[82] *Id*.
[83] *Id*. at 260.
[84] *Id*.
[85] Lu, *supra* n. 11, at 231.
[86] *Id*.
[87] *See* Sarkin-Hughes & Koenig, *supra* n. 18, at 13.
[88] *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 (Oct. 25, 1948); *see also* Sarkin-Hughes & Koenig, *supra* n. 18, at 13.

attention on how to supply work. It overlooks the human potential to reduce the necessity to work.

4 FREEDOM FROM WORK IN THE HUMAN ECONOMY

Section (2) presented the human right to work as a right to the opportunity to make a living through freely accepted work, but not 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. Despite the universally recognised human right to work, global 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.[89]

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.[90] For instance, with regard to technological innovation, the United Nations estimates that by 2025 almost 50 percent of today's occupations could become redundant. New jobs will require creativity, intelligence, social skills and the ability to exploit artificial intelligence.[91] One can also agree with Nickel that the right to work does not have a bright future[92] at least for all those who will not be able to access these new required skills.

It is unlikely that comprehensive solutions will emerge from reusing socialist or capitalist tools that focus only in supplying work. Harvey suggests, for example, reviving the direct job-creation strategy of the United States adopted after the Great Depression.[93] The current section presents an alternative approach under the human economy framework. The human economy follows the idea that it is easier to guarantee the security for which people are searching through work when work becomes less necessary to make a living. This section introduces the definitional and theoretical framework of the human economy, which is not an umbrella concept as it is in Hart's *Human Economy*[94] or Röpke's 1960s *Humane Economy*.[95] Although Röpke was aware that the free market needs an ethical framework with humane values,[96] 'humane'

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[89] International Labour Organization (ILO), *World Employment and Social Outlook: Trends 2017* (Geneva: ILO 2016), at 1-2.
[90] Collins, *supra* n. 13, at 19.
[91] UNDP Human Development Report, *supra* n. 38, at 98.
[92] James W. Nickel, Giving Up on the Right to Work, in *The Right to Work*, *supra* n. 6, at 137.
[93] Harvey, *supra* n. 9, at 167.
[94] Keith Hart, Jean-Louis Laville & Antonio Cattani, Building the Human Economy Together, in *The Human Economy* 2 (Hart et al. eds., Polity Press 2010).
[95] Wilhelm Röpke, *A Humane Economy: The Social Framework of the Free Market* (1960).
[96] *Id*. at 104. *See* Werner Bonefeld*, Human Economy and Social Policy: On Ordoliberalism and Political Authority* 26 (2) Hist. Hum. Sc. 106, 112.

meant for him above all else 'free market' as opposed to the communist 'extreme anti-humane doctrine'.[97]

The human economy framework first challenges the core principle of capitalism according to which human beings are a form of productive capital (4.1). The framework shows that the present economic system overlooks the human potential to create human benefits beyond goods and services by reducing human beings to capital with the single skill of producing economic value (4.2). It also explains how improving the efficient creation of human benefits, which is what most people must work for, reduces a society's necessity to work (4.3). The human economy is 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 established that human labour is a productive capital to be purchased by private employers, something Marx criticized in a systematic manner.[98] The metamorphosis of human beings into human capital was fully completed by the second half of the twentieth century, outlined in Becker's *Human Capital*.[99] 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 and skill: producing an 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 in producing an economic value. Aware that young people will become human capital once school is over, the education system mostly prepares them to gain that particular skill to become employable capital.[100] As Frayne writes 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.'[101] Are those skills that are taught and trained out of fear of not being employed the ones that enable human beings to make the maximum use of their potential for themselves and others

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[97] Röpke, *supra* n. 95, at 16.
[98] *See* Adam Smith, *The Wealth of Nations: Books I-III*, at 429-449 (Penguin Books 1999) (1776), for Book II, Ch. III on the Accumulation of Capital, or of Productive and Unproductive Labour; *See* John Stuart Mill, *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), for the section on The Producing of Surplus-Value.
[99] Gary Becker, *Human Capital* (3rd ed., University of Chicago Press 1993).
[100] 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).
[101] *Ibid*. at 15.

in the society? One can easily agree with Frayne that, for many, paid employment represents less an expression of their creative capacities than an obstacle to the developments of those capacities.[102]

The human economy approach considers that human beings have *human potential* beyond merely the 'skill' to produce an economic value. The next sections show that human beings have the potential to create human benefits beyond producing goods and services and that this potential is either misallocated or non-allocated at all in the contemporary economic system, which impacts a society's necessity to work.

4.2 FROM PRODUCTION TO HUMAN BENEFITS

Once human beings are delivered from being thought of as mere producers of economic value, free time and energy emerges for the creation of something else. But what can people create with their human potential? *Human benefits*.

It is increasingly accepted that production growth, or economic growth, is not the most suitable purpose that economics can offer to human beings. Many economic theories have already attempted to link and measure economic activities in terms of social rather than economic outputs, such as the social economy.[103] It is certainly Amartya Sen who helped transforming an abstract idea of social outputs into more precise benefits that people can individually relate to. As Sen writes 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.'[104] 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.'[105] The United Nations translates Sen's idea of capabilities into the broader notion of human development.[106]

Some capabilities are broadly shared, such as having the choice of living a healthy life, accessing quality food and clean water, education or housing and living a life free from violence. They can, therefore, be translated into already existing universally recognized human rights.[107] 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

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[102] *Id*. at 66. *But see* Davidov, *supra* n. 3, at 43 or Bogg, *supra* n.1, at 150.
[103] *See* Jeremy Rifkin, T*he 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).
[104] Amartya Sen, *Development as Freedom* 14 (Oxford University Press 2001).
[105] *Id*. at 75.
[106] UNDP Human Development Report, *supra* n. 38, at 1.
[107] Marta 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), for a comment on why both notions go well with other, so long as they are not subsumed within the other.

some test of open, informed[108] and deliberative[109] scrutiny. This is certainly true for the right to work. For example, Del Punta recently identified the following capabilities in relation to work: having a job, having working conditions which are compatible with the worker's health and safety, having an adequate occupation training as well as the capabilities of enjoying a sufficient amount of work-free time and joining trade unions.[110] His analysis presupposes, however, that people freely want to work. If one considers that most people are forced to work in order to receive 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.

In *Rethinking Economic Policy for Social Justice: The Radical Potential of Human Rights*, Balakrishnan, Heintz, and Elson applied human rights as a framework for assessing and measuring economic outcomes.[111] 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, which will 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 create human benefits measured in terms of the human right to food. As food is more efficiently produced, people need to work less to secure these benefits and society's freedom from work increases in that regard. That same technological innovation, however, may also cause human costs, such as social instability or violence associated with loss of employment as for other labour-saving technologies.[112] 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 protect 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.

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[108] *Ibid*. at 160.
[109] Balakrishnan, Heintz & Elson, *Rethinking Economic Policy for Social Justice: The Radical Potential of Human Rights* 8 (Routledge 2016).
[110] Riccardo Del Punta, *Labour Law and the Capability Approach,* 32(4) IJCLLIR 383, 390 (2016).
[111] Balakrishnan, Heintz & Elson, *supra* n. 109, at 2 and 142.
[112] *See generally* Rifkin, *supra* n. 103, chapter 14, for the relationship between technological unemployment and social instability. *See also generally* and more recently, Joseph Stiglitz, The Price of Inequality: How Today's Divided Society Endangers Our Future (W. W. Norton 2013).

Economic models that focus on production growth are incomplete. Under the human economy approach, an economic activity is humanly beneficial only under the 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.[113] 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 individual behaviour and orientate public policies accordingly. The last section explains how improving the efficient creation of human benefits increases a society's freedom from work.

4.3 From an 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. It is true that a correlation may exist between producing goods and services and the resulting human benefits or improvements in human rights. It is also true 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.[114] 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 a wasted human potential (4.3.1) and explains how enhancing the free use of human potential (4.3.2) and increasing human creativity (4.3.3) reduces the necessity to work (4.3.4).

4.3.1 *The Wasted Human Potential*

To date, those who freely decide to make use of their human potential to create human benefits, as defined above,[115] are generally not or less rewarded. The contemporary employment system mostly rewards the skill of producing an economic value.[116] This system creates an incentive to improve that economic skill over time without regard to whether the use of that skill creates human benefits or causes human costs. As a result, the human potential of creating human benefits is either misallocated or not allocated at all.

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[113] As done by Balakrishnan, Heintz & Elson, *supra* n. 109
[114] *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 31.07.2017).
[115] *See* section 4.2, *supra*.
[116] *See also* Yunus, *supra* n. 100, at xv.

In the present economic system, one skill can be very differently rewarded. Take the example of legal skills. If individual economic rewards and the social status that is associated with it were irrelevant, most lawyers would, hypothetically, prefer to defend the rights of people affected by water pollution rather than defend the polluting company. This may be all the more so when the company produces goods that generate very limited human benefits. In practice, however, individual economic opportunities encourage most lawyers to use their skill to defend the company. At the same time, lawyers justify themselves: 'What can I do? I have to earn a living!' and they feel comforted that if they do not provide their skill someone else will. Comments of this kind are common for all kinds of activities. Each of them represents a typical case of human potential being *misallocated*.

Unemployment does not represent a misallocation but a *non-allocation* of human potential. Those who are not productive enough to be hired are considered unnecessary and a burden to capitalist societies.[117] Being unemployed does however not necessarily imply that people would not be willing to use their human potential in order to create human benefits. The loss of human potential when young people spend time in employment agencies in the hope of finding an unwanted job is surely regrettable. As the United Nations states in its last Human Development Report, which focuses precisely on work for human development, a large amount of human potential remains unused and the world is deprived of their contribution, creativity and innovation.[118] In both situations, misallocation and non-allocation, there is a waste of human potential due to a lack of opportunities for those who want to create human benefits.

4.3.2 *Enhancing the Free Use of Human Potential*

Enhancing the free use of human potential means creating individual opportunities for those who want to use their human potential. To this point, the literature on the right to work discusses a universal basic income.[119] Another approach aims to empower the volunteer sector. Both approaches are presented and assessed in light of the human economy framework.

With regard to basic income, Standing advocates 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.[120] According to him, the economic rationale behind basic income is that most countries already provide a vast array of subsidies designed to maintain or generate unproductive jobs.[121] Others identify costly bureaucratic welfare programs as an additional economic reason to replace them with such an income.[122] Beyond these questions, which will

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[117] *See* Marx, Vol. 1, *supra* n. 98, at 624.
[118] UNDP Human Development Report, *supra* n. 38, at 46.
[119] *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.
[120] Standing, *supra* n. 119, at 34.
[121] *Id*. at 32.
[122] Rifkin, *supra* n. 103 at 261, citing Friedman ; *see also* Standing, *supra* n. 119, at 34.

have to be answered, it is certain that people working eight to ten hours a day dedicated to production 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 doing so. It is incorrect, however, to assume that the new occupations will automatically generate more human benefits.[123] 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. The promising literature on the basic income should address that issue more carefully.

The literature also discusses how to encourage participation in the 'third sector'[124] by reference to volunteer work next to the private and public sectors.[125] Rifkin suggests that governments could provide a tax deduction for every hour of volunteer time given to certified tax-exempt organizations.[126] In the human economy, public policies, such as taxation, could also be used to encourage work that creates human benefits. Such an incentive would directly reward individuals who use their human potential to create human benefits more than 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 as in the third sector. Furthermore, not only state-driven public policies can promote economic incentives. Economic incentives can also be created through individual choices and collective action by, for example, investing in social businesses as defined by Yunus[127] or putting savings in 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 use their human potential to define their own form of incentive.

The remaining question is what may motivate individuals, beyond what is to date already achieved through a common sense of respect for others, to create opportunities for those who want to create human benefits? Before showing how the perspective of increasing one's own freedom from work may work as such an additional motivating force, the notion of human creativity in the human economy remain to be presented.

4.3.3 *Increasing Human Creativity*

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[123] *See* Frayne, *supra* n. 100, at 66, for comments on the potential for people's capacities to flourish when work is reduced.
[124] Rifkin, *supra* n. 103 at 249-274.
[125] *Id*. at 239
[126] *Id*. at 256.
[127] Yunus, *supra* n. 100, at 12; *see* UNDP Human Development Report, *supra* n. 38, at 8 and 97.

In addition to expanding opportunities for work in sectors that create of human benefits, the human economy approach also 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 contemporary economic concept of productivity.[128] For example, a Swedish university hospital is undertaking an experiment whereby they pay nurses a full salary to work six hours a day instead of the usual eight hours.[129] The hospital expects to show that providing individual rewards to nurses in the form of reducing the working day will improve the quantity and quality of health services provided and therefore increase the nurse's *productivity*. In this example, productivity can also be measured in terms of specific benefits to 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 economic productive skills. In the contemporary economic system, those who want 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.[130] 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 all technological innovations and their consequence on human benefits that would emerge from that human creativity. With human benefits becoming more efficiently created, freedom from work would expand.

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

[Figure II: Definitional framework of the human economy in comparison to capitalism

	Capitalism	**Human Economy**
Agent	Human Capital, Labor	Human Beings, Human Potential
Function of agents	Producers of goods and services	Creators of Human Benefits
Rewarded skill	Economic Productivity	Human Creativity
Output	Goods and Services	Human Benefits, Human Costs
Purpose of the economic system	Economic Growth, Material Security, Full-Employment	Securing Human Benefits, Increasing Freedom from Work

[128] *See* section 4.2, *supra*.
[129] Mady Savage, The Truth About Sweden's Short Working Hours, BBC News, (Nov. 2, 2015) http://www.bbc.co.uk/news/business-34677949 (accessed 26 June 2017).
[130] *See* section 4.3.1, *supra*.

4.3.4 *Towards Freedom from Work*

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

People rely on work from which they receive an income enabling them to secure choices. Some of those choices can be expressed in capabilities and measured in human rights, such as the right to access adequate food, water, housing or health.[131] These choices represent human benefits and they are why most people must work. When those benefits are more efficiently created, the necessity to work to access them reduces. An increase of 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 in the form of reducing the amount of necessary work to access that human benefit. This is true for all improvements in human creativity and to all technological inventions that improve the efficient creation of human benefits. When human creativity increases, freedom from work increases because less work is necessary to access human benefits.

Introducing the idea of human benefits also brings a 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.[132] This is a manifestation of Russell's idea of modern technologies diminishing the amount of labour required to secure the necessaries of life for everyone[133] and making leisure time possible.[134] Presently, however, when an economic activity, which includes technological innovation, contributes to human costs more work is also necessary to secure human benefits.

Coming back to an example presented above,[135] pesticides are considered as a labour-saving technology that improves economic productivity and possibly reduces the reliance on work to secure the right to food. At the same time, however, pesticides are also an example of a technology that also increases a society's need to work to fund measures that protect against social instability resulting from a loss of employment, as well as 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, individually or collectively as taxpayers, will pay the for the costs of these measures.

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[131] *See* section 4.2 *supra*, for the relationship between human rights and human benefits.
[132] *See* Frayne, *supra* n. 100, at 33; *see generally* Rifkin, *supra* n. 103, at 3-13, for a critic of the argument.
[133] Russell, *supra* n. 59, at 14.
[134] *Id*. at 15.
[135] *See* section 4.2, *supra*.

The question regarding technologies is, as Frayne asks, to what and whose ends are new technologies being applied?[136] Is improvement to economic productivity through technologies necessarily reducing a society's necessity to work? Human creativity, not economic productivity reduces the necessity to rely on work. Only work and technology that result in a net creation of human benefits reduce the necessity to work. Only then do 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 want to be less reliant on work to adapt their individual behaviour and influence the policies of their governments accordingly.

5 CONCLUSION

Work is a human right. At least most governments formally recognize it as such. At the universal level, the right to work is about increasing the opportunity for individuals 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. According to the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights, work should also be freely chosen. That work is freely chosen is for many 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, industry workers or bankers and even members of the working poor are considered to have freely chosen their job. In this contribution, 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 claimed 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 contemporary 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 presented the human economy approach as an alternative to the traditional challenging task of supplying enough decent work under the right to work. It follows the idea that it is easier to guarantee the security for which people are searching through work when work becomes increasingly less necessary to make a living. In the human economy, workers are not a form of productive human capital but human beings with human potential. They create human benefits, for which most people must work currently. The human economy creates 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

[136] Frayne, *supra* n. 100, at 34.

these human benefits, not increasing economic productivity, reduces the reliance on work to access benefits people must work for and thus increases a society's freedom from work.

Such a system is the only way I see a move from the right to work to the freedom from work to be possible or to achieve Lafargue's goal for work to last no longer than three hours a day,[137] something Keynes also predicted by 2030,[138]or Marx's more general aim towards freedom from exploitation.[139] The human economy is not about securing only 'elementary comforts of life'.[140] Focusing on overlooked human potential as well as the neglected impact of human costs on the necessity 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 do create and destroy through work and understand better why people work.

[137] Lafargue, *supra* n. 52, at 25.
[138] John Manyard Keynes, *Economic Possibilites for our Grandchildren* (1930), reprinted in The Collected Writings of John Manyard Keynes 9, 329 (Macmillan 1972).
[139] *See* Karl Marx, *Capital: A Critique of Political Economy*, Vol. 3, at 958-959 (Frederick Engels ed., David Fenrbach, transl., Penguin Books 1991) (1894).
[140] Russell, *supra* n. 59, at 25.