

## Are the Laws Still Poor? Reflections on the Right to Work Limiting the Right to an Adequate Standard of Living

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### ABSTRACT

*Despite the existence of a comprehensive human rights framework that includes the rights to work, social security, and an adequate standard of living, poverty continues to persist. This article posits that these rights, rather than being complementary, actually undermine one another and detract from discussions about human dignity with an individualistic interpretation. Louis Blanc's original conception of the right to work as a means of enabling the proletariat to shape the market and gain emancipation has been reduced to a focus on individual working conditions. The right to an adequate standard of living, which lacks concrete plans for implementation, is often conflated with the rights to social security and assistance at the national level. Thus, in most constitutions or court rulings, the right to an adequate standard of living is limited by placing the primary responsibility on the individual to work. Moreover, the current prevalent approach to addressing poverty is through the development of the job market. These cumulatively change the structure of the right to work to a duty to work, placing the main responsibility on individuals to alleviate their own poverty and blurring the distinction between state intervention and individual responsibility. This shift in focus from human dignity to work and working conditions also has negative societal consequences, as it tends to stigmatise those in poverty and ignores the root causes of impoverishment. Most importantly, with this human rights structure, the fundamental issue of human dignity is left aside, alongside the right to an adequate standard of living.*

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## INTRODUCTION

At the time of writing, 64,890 households are either homeless or threatened with homelessness in England alone.<sup>1</sup> It is futile to ponder the question of what the future might hold for these households as social mobility is still an unattainable dream for many, given that capital accumulation is becoming more centralised within a small share of the population. As Piketty shows, there is an increasing number of individuals from each generation who inherit wealth larger than what the least well-paid 50% of the population earn in a lifetime.<sup>2</sup> Often, individuals who have acquired wealth despite modest backgrounds are those who are most remembered, contributing to the assumption that this is a common occurrence. This phenomenon, known as ‘survival bias’ in behavioural economics, leads us to overestimate the prevalence of social mobility.<sup>3</sup> The vicious poverty cycle does not release anyone who wants to escape: those in poverty start the ‘race of life’ at a disadvantaged position and face more obstacles than others.<sup>4</sup> However, work has remained the onus of alleviating poverty.

The British Poor Relief Act 1601, known as ‘the Old Poor Laws’ (‘Poor Laws’),<sup>5</sup> has been considered a focal point for the general ‘right to welfare relief’ by some scholars.<sup>6</sup> Those laws were initially enacted as a response to the

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<sup>1</sup> Department of Levelling Up, Housing & Communities ‘Statutory homelessness in England: October to December 2021’ (*Gov.uk*, 2022) <<https://www.gov.uk/government/statistics/statutory-homelessness-in-england-october-to-december-2021>> accessed 01 August 2022.

<sup>2</sup> Thomas Piketty, *Capital in the Twenty-First Century* (Arthur Goldhammer tr, The Belknap Press of Harvard University Press 2017) 420-421.

<sup>3</sup> Lauren A. Rivera, *Pedigree: How Elite Students Get Elite Jobs* (Princeton University Press 2015).

<sup>4</sup> OHCHR, ‘Report of the Special Rapporteur on extreme poverty and human rights’ (27 May 2015) UN Doc A/HRC/29/31, para 13.

<sup>5</sup> British Poor Relief Act of 1601 (43 Elizabeth 1 c 4); The earliest English Poor Laws: the Statute of the Labourers 1350s; the Poor Law Reforms of the 1530s, the statute of Artificers of 1563; and the Elizabeth Poor Law of 1601 when taken together constitute ‘the main foundation of the English poor relief system’.

<sup>6</sup> For example: D King, *Actively Seeking Work* (Chicago UP: London, 1995) 224 referring to the Poor Laws of 1601 including the principle of ‘deserving poor’ were adopted by the American State; William P. Quigley, ‘Backwards into the Future: How Welfare Changes in the Millenium Resemble English Poor Law of the Middle Ages’ (1998) 9 *Stanford Law &*

breakdown of feudalism that left many astray. Moreover, because the Black Plague and famine erased a third of the English population, gaps were created in the working market that needed to be filled. This led to a policy that forced non-workers to work.<sup>7</sup> The Poor Laws ‘established the principle of a legal, compulsory, secular, national system of relief’, and gave England the reputation of a country where ‘compassion had become public policy’, in Himmelfarb’s words.<sup>8</sup> These laws, though reformed from time to time, were retained for centuries until they were finally replaced by the welfare state after the Second World War. During that period, England served as a social laboratory.<sup>9</sup>

The three main pillars of the Poor Laws were: 1) a ‘poor rate’, a compulsory assessment in each parish financing outdoor relief for deserving indigent households; 2) a campaign against vagrants and beggars, in which begging and casual almsgiving were prohibited; and 3) an effort to provide work for the poor in order to reduce their need for relief and prevent them from wandering. These laws aimed to provide public benefits for the deserving poor and impose labour discipline.<sup>10</sup>

It appears that the historical significance of the Poor Laws is found in their spirit, which focuses on the individual’s behaviour and the importance of work as a means to alleviate poverty. The Poor Laws distinguished the ‘impotent’, deserving poor, i.e., victims of ill fate beyond their control, from the ‘able-bodied’, undeserving poor, who were only entitled to welfare under certain behavioural conditions. Hence, circumstances ‘beyond their control’ were the justification behind the assistance of the Poor Laws.<sup>11</sup> The Poor Laws also

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Policy Review 101; Paul Spicier, *The Idea of Poverty* (Bristol University Press, Policy Press 2007) 73.

<sup>7</sup> Quigley (n 6) 101, 103.

<sup>8</sup> Gertrude Himmelfarb, ‘The idea of poverty’ (1984) 34(4) *History Today* 4.

<sup>9</sup> *ibid* 5; In Europe between 1600 and 1900, social support took on the structure of Poor Laws, which attempted to increase work ethic among the poor and alleviate poverty; Jennifer Tooze, ‘The Rights to Social Security and Social Assistance: Towards an Analytical Framework 1’ in Mashood Baderin and Robert McCorquodale (eds), *Economic, Social, and Cultural Rights in Action* (Oxford University Press 2007).

<sup>10</sup> Paul Slack, ‘Poverty in Elizabethan England’ (1984) 34(10) *History Today* 5-6.

<sup>11</sup> Amir Paz-Fuchs, *Welfare to Work: Conditional Rights in Social Policy* (Oxford University Press 2008) 66-73.

stipulated forms of punishment or coercion against the 'idle' poor,<sup>12</sup> such as imprisonment for disobedience.<sup>13</sup> This led to the censuring of idleness, the rooting for production, and the labelling of distress as the individual's demerit.<sup>14</sup> This structure placed the primary burden of alleviating poverty on the individual instead of examining it as a systemic societal problem.

Ideally, the following holistic human rights framework should have alleviated poverty: the right to work and earn a livelihood, the right to social security which protects from risks that prevent individuals from working, and the right to an adequate standard of living. Despite this framework, the impoverished simply continue to live in poverty.

This article aims to examine how the relationship between the right to an adequate standard of living and the right to work aligns with the rationale of the Poor Laws, which define poverty as an individualistic concern, scrutinising the individual's behaviour in relation to the labour market. The article will first introduce the concept of human rights and its legal framework to frame the discussion of rights and duties. Next, it will discuss the origins, the implementation, and the interactions between the aforementioned human rights, and examine how the right to an adequate standard of living is thereby undermined. Ultimately, the right to work is redefined as a duty to work, which places the individual as the primary stakeholder responsible for securing their own human rights. A change in discourse is observed, moving away from the concept of human dignity towards a focus on work and working conditions, which are perceived to be the main route to preserving human dignity and adequate standards of living.<sup>15</sup>

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<sup>12</sup> Marjorie K. McIntosh, 'Poverty, Charity, and Coercion in Elizabethan England' (2005) 35(3) *The Journal of Interdisciplinary History* 457-459.

<sup>13</sup> Quigley (n 6) 103.

<sup>14</sup> Paul A. Fideler, 'Introduction: Impressions of a Century of Historiography' (2000) 32(3) *Albion* 381, 383.

<sup>15</sup> Throughout the article, I will demonstrate the argument with the UDHR and the ICESCR as an example of the international agreement on the rights examined, acknowledging that it is not the whole list.

## I. The concept of human rights and human rights law

The discussion will begin with a short analysis of the framework for human rights. Content-wise, rights can be viewed in two ways: according to the Interest ('Benefit') Theory of Rights or the Theory of Choice ('Will Theory'). In short, 'choice' theorists<sup>16</sup> claim that the purpose of rights is to protect the control and autonomous choice of the individual.<sup>17</sup> A right allows its holder the option of enforcing or waiving the correlative duty (the duty that third parties have with respect to the holder's right), which empowers the holder to be more autonomous in their choices.<sup>18</sup> The 'Interest Theory' proclaims that a right exists if society has a corresponding duty to the right *and* this duty is rooted in the putative interest of the right-holder;<sup>19</sup> that is, if the right benefits the individual. Thus, arguably, according to the Interest Theory, it is logical to restrict one's autonomy (or compel their actions) if it is for one's benefit. Hence, the way to turn a right into a duty is short.

Human rights can be summarised by the following formula: 'A has the right to B against C because of D'. The As are individuals protected by legal instruments, such as those under the jurisdiction of states that are signatories to that law. Most states have ratified the International Covenant on Economic, Social and Cultural Rights ('ICESCR'), and thus bear the duty of guaranteeing the three rights examined in this article. The justification for legal human rights adheres to the belief that being human inherently entails that one is born free and is equal in dignity and rights to others.<sup>20</sup> Hence, human rights are supposed to promote the interest and benefit of all human beings, regardless of socio-economic status, occupational status, or economic interests and without any attached duties or preconditions.

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<sup>16</sup> H.L.A Hart in England and Carl Wellman in the United States.

<sup>17</sup> A. John Simmons, *The Lockean Theory of Rights* (Princeton University Press 2020) 93.

<sup>18</sup> William A. Edmundson, *An Introduction to Rights* (Cambridge University Press 2004) 122.

<sup>19</sup> Paz-Fuchs (n 11) 198; Paz-Fuchs, 'The Right to Work and the Duty to Work', in Virginia Mantouvalou (eds) *The Right to Work : Legal and Philosophical Perspectives*, (Bloomsbury Publishing Plc 2017) at 182.

<sup>20</sup> UNGA Res 217 A(III) (10 December 1948) A/RES/3/217 A.

Accordingly, B stands for the rights to which A is entitled.<sup>21</sup> C is typically the government, as Article 2 of the ICESCR stipulates.<sup>22</sup> Thus, the typical structure would be: one (A) has the right to work (B), against the state (C), because one is a human being (D).

In practice, rights embody three types of state duties: respect, protection, and fulfilment. The state should refrain from interfering with the enjoyment of a right and should protect human rights from breaches by third parties like private actors, and ensure that human rights are realised through the obligation on states to facilitate these rights.<sup>23</sup>

Arguably, as Paz-Fuchs describes, assuming a right to X does not stipulate a duty to do X. Therefore, the right to speak does not impose the duty on one to speak.<sup>24</sup> Yet it appears that the right to work, by being perceived as beneficial to the individual (for example, because it allows one to participate in society and to lift oneself out of poverty) has turned the right into a duty that society expects one to undertake. This, to some extent, corresponds with the failure of the Theory of Interest since it is for the benefit of the individual to work.<sup>25</sup> Yet this precondition of working seems somewhat contradictory to the justification that human rights protect individuals by virtue of being born a human. This article will examine how the initial aim of the right to work corresponds with the Theory of Choice, which aims to expand the proletariat's autonomy. While the policy of poverty eradication aims to open working opportunities and enable the impoverished to seize employment, this however, seems to correspond more with the Theory of Interest. The prevailing policy of

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<sup>21</sup> Dan Seymour and Jonathan Pincus, 'Human Rights and Economics: The Conceptual Basis for Thier Complementarity' (2008) 26 *Development Policy Review* 387, 396-397; Human rights can be summarised by the following formula: 'A has the right to B against C because of D'. The As are individuals covered by legal instruments, for instance, those under the jurisdiction of states that are a signatory of that law.

<sup>22</sup> While this paper acknowledges the perspectives that corporations and other third parties are subject to human rights obligations, this is beyond the scope of this paper.

<sup>23</sup> Walter Kälin and Jörg Künzli, *The Law of International Human Rights Protection* (2nd edn, Oxford University Press 2019), 87-89; International Commission of Jurists (ICJ), 'Maastricht Guidelines on Violations of Economic, Social and Cultural Rights' (*UNHCR*, 26 January 1997) <<https://www.refworld.org/docid/48abd5730.html>> accessed 2 April 2022.

<sup>24</sup> Paz-Fuchs (n 11) 193; Paz-Fuchs (n 19).

<sup>25</sup> *ibid.*

eradicating poverty works *mainly* through encouraging participation in the job market and providing social security when one cannot work. This turns work into a duty and a precondition to realising human rights, such as the right to an adequate standard of living.

## II. Rights and Tensions

This section will examine the comprehensive framework of rights intended to address poverty: the right to work, the right to social security, and the right to an adequate standard of living. These rights and their interactions will be examined with a focus on the tension between ensuring that these rights are preserved on a large scale whilst being safeguarded at the individual level. This leads to several common criticisms of human rights, including that main right-holders are individuals.<sup>26</sup> Therefore, the primary objective of human rights is to address individual rights violations rather than their structural causes. Moyn claims that human rights are historically correlated with market fundamentalism since they are ‘unambitious in theory and ineffectual in practice’, reduced to the bare minimum in a capitalist economy that accepts inequality as long as there is a provision for minimum protection.<sup>27</sup> Human rights are supposed to counter trade liberalisation (an investment regime that mainly protects transnational corporations’ interests), spending cuts on welfare state regimes, deregulation, and the creation of ‘flexible’ work practices in favour of profit generation and privatisation.<sup>28</sup> With regard to inequality, Moyn emphasises the absence of a ceiling on the wealth gap between the rich and the poor in the Universal Declaration of Human Rights (‘UDHR’). This highlights the idealist nature of an equal distribution of human rights and challenges the notion that all human beings are born equal in dignity and rights.<sup>29</sup> This inequality is rooted in a power structure that deprives the impoverished of market opportunities and political voice.<sup>30</sup> Despite the fact that they may encounter questions related to

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<sup>26</sup> Samuel Moyn, ‘Human Rights and the Age of Inequality’ in Doukje Lettinga and Lars van Troost (eds), *Can Human Rights Bring Social Justice?: Twelve Essays* (Amnesty International 2015) 17.

<sup>27</sup> *ibid* 16.

<sup>28</sup> John Linarelli, Margot Salomon and Muthucumarawamy Sornarajah, *The Misery of International Law: Confrontations with Injustice in the Global Economy* (Oxford University Press 2018) 226.

<sup>29</sup> *ibid* 13.

<sup>30</sup> Henry J. Steiner, Philip Alston and Ryan Goodman, *Is Poverty a Violation of Human Rights?* (Oxford University Press 2018) 309.

redistribution, human rights<sup>31</sup> do not engage in pre-distribution issues<sup>32</sup> and in the conditions that encourage the persistence of poverty.

The current discussions about providing a protection floor for *everyone* under international law<sup>33</sup> illustrate this point, demonstrating an understanding to settle for preventing or mitigating suffering without changing the terms that enable suffering.<sup>34</sup> The target is the impoverished individual, seen as the weak link in social protection, through intervention at the family-unit level.<sup>35</sup> Most importantly, the centralisation of the right to social security within the social protection floor scheme would support the main contention of this article, i.e., that *eventually* each individual is responsible for alleviating her own poverty. As part of the 2030 Agenda for Sustainable Development (SDGs), Goal 1 is to end poverty through 'social floors'.<sup>36</sup> This idea is elaborated in the International Labour Organisation's (ILO) Recommendation No. 202,<sup>37</sup> which suggests that states should provide for basic income security for persons 'unable to earn sufficient income'.<sup>38</sup> This somewhat contrasts with the idea of social floors 'for all', even theoretically to those 'who opt to spend their life surfing waves'.<sup>39</sup> As Van Parijs explains, 'the extra leisure enjoyed by those unwilling to work would be stipulated as equivalent to the index of primary goods of the least advantaged'.<sup>40</sup>

This tension between targeting the individual or the wider structure of inequality may be rooted in the fact that international law is mainly about rights and the corresponding obligations imposed on the state. Accordingly, states may adopt international law that protects or restricts certain economic activities, and establish a legal regime that corresponds to capitalism. While international law

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<sup>31</sup> This is applicable to International Law in general.

<sup>32</sup> Linarelli, Salomon and Sornarajah (n 28) 35.

<sup>33</sup> *ibid* 251.

<sup>34</sup> *ibid* 36-37.

<sup>35</sup> *ibid* 252-253.

<sup>36</sup> UNGA, 'Transforming our world: the 2030 Agenda for Sustainable Development' (21 October 2015) A/RES/70/1, Goal 1.3.

<sup>37</sup> International Labour Organization Recommendation R202: Social protection floors (14 June 2012) (Geneva, 101st ILC session), part 2.

<sup>38</sup> *ibid* art 5(c); 5(b) for children; and 5(d) for elders.

<sup>39</sup> Philippe van Parijs, 'Why surfers should be fed: the liberal case for an unconditional basic income' (1991) 20(2) *Philosophy & Public Affairs* 101.

<sup>40</sup> *ibid*.



engages with state obligations, the liberal philosophy begins with the individual and their ability to create associations with others.<sup>41</sup>

## 1. The Right to Work

### 1.1. Origins

The discourse on the three rights begins with the most ancient among them, the right to work. In most countries, citizens satisfy their basic needs, such as shelter and food, through work.<sup>42</sup> Inspired by John Locke, the post-revolutionary right to property was established on the idea of a ‘natural right’ to something acquired through labour, undermining corporate and public claims over individual entitlements.<sup>43</sup> In contrast, the French customary law of the Middle Ages allowed property to pass mainly through inheritance or marriage. Property signified the status of a family member, nobleman, or commoner. The main reform of the Revolution saw the right to property as separate and independent from caste affiliation.<sup>44</sup>

Charles Fourier was the first to use the term ‘right to work’ in 1822 as substituting the natural right to hunt or gather food.<sup>45</sup> This term was circulated in French socialist literature and was a well-known maxim during the French Revolution. The right to work is rooted in the ‘right to existence’, as stipulated by Robespierre,<sup>46</sup> who posited that society is obliged to ensure the means of existence for its members - not as charity, but as a ‘duty of justice’. The underlying assumption was that the rights proclaimed in France in 1789 are universal. Additionally, it was also assumed that the enjoyment of some economic relief is necessary to enjoy these rights. Thus, a law that restricts a part of the population from a dignified subsistence (such as a law that perpetuates

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<sup>41</sup> Janet Dine and Andrew Fagan (eds), *Human Rights and Capitalism: A Multidisciplinary Perspective on Globalisation* (Corporations, Globalisation and the Law Series, 2006) 5.

<sup>42</sup> Hugh Collins, ‘Is There a Human Right to Work?’ in Virginia Mantouvalou (eds), *The Right to Work: Legal and Philosophical Perspectives* (Hart Publishing 2015) 18.

<sup>43</sup> Dale K Van Kley (eds), *The French Idea of Freedom: The Old Regime and the Declaration of Rights of 1789* (Stanford University Press 1994) 302.

<sup>44</sup> Hannah Callaway, *‘Revolutionizing Property: The Confiscation of Émigré Wealth in Paris and the Problem of Property in the French Revolution’* (Harvard University 2015) 18-19.

<sup>45</sup> Pablo Scotto, ‘Thinking the Future of Work through the History of Right to Work Claims’ (2020) 46(8) *Philosophy & Social Criticism* 942, 944.

<sup>46</sup> *ibid* 945.

the predominance of property rights with unlimited freedom to trade) is contrary to the rights of man. The post-revolution right to work is a specific case of the right to existence, consisting of society's duty to provide sufficient work to everyone to have their basic needs fulfilled.<sup>47</sup>

Yet, it was the socialist Louis Blanc, the father of the French constitutional right to work, who set the practical vision of the right to work as a part of a social reform rooted in political reform.<sup>48</sup> In Blanc's words, 'without a political reform, a social reform is not possible, for, if the second is the goal, the first is the means'.<sup>49</sup>

The social reform concentrated on distribution and production, rather than integration into the capitalist form of work organisation. The focus was on the right to work as a means to bring about political change that would give power to the working class. The right to work is seen not only as an opportunity of employment, but as an opportunity for workers to take control independent of the private ownership of the means of production. In this regard, the state should ensure that it enables its workers to undergo skill development, associate with others, and participate in initiatives they most desire and are qualified to pursue. It is a right to free and associated work, rather than just minimum-wage labour, in contrast to the capitalist perception that allows the poorest to work for the benefit of the rich.<sup>50</sup>

According to Blanc, the government should establish social workshops that would enable workers to pool their resources to purchase the tools needed for production. The profits generated by these workshops would be shared among the members of the association to support those who are unable to work, to help other industries facing difficulties, or to assist the people who may wish to join the association in the future. Overall, Blanc favoured the moderation of competition and promotion of solidarity:

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<sup>47</sup> *ibid* 948.

<sup>48</sup> In this article I will refer mainly to Blanc's most fundamental work: organization of work (Louis Blanc, *Organisation du travail* (Bureau de la Societe de l'industrie fraternelle 1847)) although he has further relevant works: Louis Blanc, *Le catéchisme des socialistes* (Aux Bureaux du Nouveau Monde 1849a); Louis Blanc, *Le socialisme: Droit au travail* (Aux Bureaux du Nouveau Monde 1849b).

<sup>49</sup> *ibid* 47.

<sup>50</sup> Scotto (n 45) 948.

In the system which we propose, crises would become rare. What causes them most frequently today? The veritable murderous contest between the interests, a contest from which no victor can come forth without leaving conquered ones on the field of battle.<sup>51</sup>

In this spirit of solidarity, Blanc claimed that there is a moral duty on each individual to contribute according to one's abilities:

The distribution of work and the distribution of its fruits would be based on ... the constitutive principle of the family: from each according to his faculties and to each according to his needs.<sup>52</sup>

Thus, the Blancian conception of production entails everyone contributing freely, without hierarchical control, and according to their abilities. It remains a duty, but not one that the ruling class demands.<sup>53</sup>

In terms of distribution, individuals would be equal and truly free if their basic needs were met and they could exercise their faculties.<sup>54</sup> The Blancian conception is about de-commodifying labour power - *not* by removing private property, but by universalising and democratising control of the means necessary to subsist.<sup>55</sup> Although the right to work is also somewhat a moral duty, it aims to liberate and empower workers to shape their own destinies. It promotes a culture of solidarity and acknowledges the inherent value and dignity of every individual, striving to align market conditions with these principles.

## 1.2. International legal instruments

An examination of the mid-20<sup>th</sup> century reveals an international conception of the right to work, where it is referred to more as an extension to

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<sup>51</sup> Blanc 1847 (n 48) 51-52.

<sup>52</sup> Scotto (n 45) 950, referring to Louis Blanc, *Le catéchisme des socialistes* (Aux Bureaux du Nouveau Monde 1849), 28.

<sup>53</sup> *ibid.*

<sup>54</sup> *ibid* 949.

<sup>55</sup> *ibid* 953.

all decent-wage labour,<sup>56</sup> rooted in the experience of economic crises during the interwar period when unemployment was regarded as an important cause of support for the Nazi regime.<sup>57</sup> The right to work is stipulated in two international provisions: Article 23 of the UDHR, which implies mainly free access to the labour market, and Article 6 of the ICESCR, which is aimed at creating a well-functioning labour market to promote full employment.<sup>58</sup> Narrowly construed, the right to work under the UDHR seeks to ensure material survival and dignity as complementary to the right to life.<sup>59</sup> More broadly, it contributes to the self-development of the individual,<sup>60</sup> helping them adopt a social role within society and increase their self-esteem.<sup>61</sup> The UDHR was created under a socialist influence, shaped by the communist bloc. Thus, many standard Latin American socialist constitutional provisions were adopted under the influence of the UDHR, including the right to work, although not according to Blanc's vision.

There are three main interpretations of the right to work. The right to work is firstly interpreted as a right to free choice of employment, referring to the right to choose one's occupation without unjustified discrimination or restrictions, which is a key right under liberal political theories adhering to justice standards based on equal opportunity.<sup>62</sup> Throughout history, restrictions were often placed on refugees and migrants, ethnic minorities, and women.<sup>63</sup>

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<sup>56</sup> *ibid* 952.

<sup>57</sup> Kent Kallstrom and Asbjørn Eide, 'Article 23' in Gudmundur Alfredsson and Asbjørn Eide (eds), *The Universal Declaration of Human Rights: A Common Standard of Achievement* (Martinus Nijhoff Publishers 1999) 491.

<sup>58</sup> *ibid* 495.

<sup>59</sup> Commission on Human Rights Drafting Committee, Second Session, 29th Meeting, E/CN.4/AC.1/SR.29 (20 May 1948) in Ben Saul (ed), *The International Covenant on Economic, Social and Cultural Rights, Travaux Préparatoires 1948-1966* (1st edn, Oxford University Press 2016).

<sup>60</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), 'General Comment No.18: The Right to Work (Art. 6 of the Covenant)' E/C.12/GC/18 (OHCHR, 2006) <<https://www.refworld.org/docid/4415453b4.html>> accessed 1 April 2022 para 1.

<sup>61</sup> Preamble to Employment Promotion and Protection against Unemployment Convention (adopted 21 June 1988, entered into force 17 October 1991) C168.

<sup>62</sup> Collins (n 42) 21.

<sup>63</sup> *ibid* 22.

This aspect of the right to work also implies ‘not being forced’ to work.<sup>64</sup> Economic necessity indeed forces people to work, yet it does not interfere with human liberty in the same way enslavement does.<sup>65</sup> This choice to work instrumentalises the value of work while respecting the individual’s dignity and freedom.<sup>66</sup> There was no extensive discussion about this aspect when drafting the UDHR, with the assumption that the individual is the author of their own life.<sup>67</sup> The idea of a ‘social obligation’ to work as a contribution to the general welfare of the state, based on the socialist belief that everyone has a responsibility to do work that is beneficial to society,<sup>68</sup> was rejected mainly due to Eleanor Roosevelt’s claim that it could lead to forced labour. Additionally, it was generally understood that there are times when it can be difficult to find work, such as after the Second World War when soldiers returned to domestic markets.<sup>69</sup> This decision seems wise since the duty to work cannot function without Blanc’s vision of a system of solidarity where everyone contributes but society is also obliged to meet everyone’s needs. The goal of satisfying the needs of all individuals in society will not be achieved by this measure alone as that might lead to forced labour.

The second interpretation focuses on the right to decent work, which is supposed to help one lead a dignified life. This interpretation refers to just and favourable conditions of work.<sup>70</sup> The ILO is responsible for the international labour standard.<sup>71</sup> Currently, the standard entails a procedural method to ensure consent, engaging mainly with the following issues: freedom from forced labour; prohibition of child labour; freedom of association; access to jobs; strengthening social protection; social dialogue;<sup>72</sup> and conditions of

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<sup>64</sup> CESCR (n 60) para 6.

<sup>65</sup> Collins (n 42) 21.

<sup>66</sup> CESCR (n 60) para 4.

<sup>67</sup> Johannes Morsink, *The Universal Declaration of Human Rights: Origins, Drafting, and Intent* (University of Pennsylvania Press 2010).

<sup>68</sup> *ibid* 161-162. Examples include Brazil, Colombia, Costa Rica, Ecuador, Guatemala, Paraguay, and Uruguay, as well as the French constitution and some communist countries’ constitutions.

<sup>69</sup> *ibid*; Kallstrom and Eide (n 57) 493.

<sup>70</sup> Collins (n 42) 22-23.

<sup>71</sup> International Labour Office (ed), *ILO Declaration on Fundamental Principles and Rights at Work* (ILO, 1998). Refer to the ILO’s follow-up reports for more information.

<sup>72</sup> Guy Mundlak, ‘The Right to Work — The Value of Work’ in Daphne Barak-Erez and Aeyal M Gross (eds), *Exploring Social Rights: Between Theory and Practice* (Hart 2007) 348-349.

freedom, equity, security, and dignity.<sup>73</sup> Currently, the decency of work is attained through the SDGs, which tie together decent work and the capitalist aim of economic growth, as well as development-oriented policies.<sup>74</sup> A question arises here regarding the ‘just and favourable’ conditions meant to secure dignity. There seems to be a strong focus on free choice and remuneration in the ILO pillars, indicating a focus on material protection rather than a meaningful and fulfilling life as measured by other metrics. Both this aspect of the right to work, and the former aspect discussed, relate to the relationship between human rights and capitalism, as they are both grounded in the integration into the ‘free’ market, emphasising freedom and signalling the triumph over human enslavement.<sup>75</sup>

Thirdly, the right to work also includes protection from unemployment, which has been criticised as vague. The implementation of social security schemes for the unemployed is redundant since other provisions in the UDHR cover this, such as Articles 22 and 25(1). This could mean restrictions on the basis of justified dismissals or compensation in the case of dismissals.<sup>76</sup>

There is no right to be given work<sup>77</sup> because it forces the government to either act as an employer or to intervene heavily in the market to ensure that everyone is employed, which would likely be costly. Therefore, there is a balance to be struck between the public interest and individual rights. Under the UDHR, it was agreed that the obligation of the state is to reach full employment of its working population,<sup>78</sup> which arguably achieves the same result as directly providing work but without the accompanying costs. Under the ICESCR, the main state obligations are to prohibit compulsory labour, ensure equal access to decent work and training, and provide work for those that are unable to find it

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<sup>73</sup> International Labour Organization, *The Rules of the Game: An Introduction to the Standards-Related Work of the International Labour Organization* (4th edn, International Labour Office 2019) 5.

<sup>74</sup> UNGA Res Transforming our world: the 2030 Agenda for Sustainable Development (25 September 2015) UN Doc A/RES/70/1 goal 8.

<sup>75</sup> Dine and Fagan (n 41) 4.

<sup>76</sup> Collins (n 42) 29-32.

<sup>77</sup> Kallstrom and Eide (n 57) 507; Saul (n 59); Commission on Human Rights Drafting Committee, Second Session, Australia: Draft of Additional Articles for the Draft International Covenant on Human Rights, E/CN.4/AC.1/21 (6 May 1948).

<sup>78</sup> Morsink (n 67) 162.

due to circumstances ‘beyond their control’. States must also implement policies to stimulate economic growth to raise standards of living and provide education and training programs.<sup>79</sup>

Ultimately, the discussion revolves more around whether the individual *can* work and provide for themselves. Given that labour is used mainly for profit-making considerations,<sup>80</sup> the idea of ‘freedom to work’ in the capitalist framework is often used not to enhance the freedom of the worker to gain power, but to delegitimise effective tactics to improve working conditions. This obscures the urgency of collective action, which is another remnant of the socialist right to work stipulated under Article 23 of the UDHR. Arguably, this freedom to organise was also given a capitalist interpretation in order to balance the power dynamic between employers and employees, instead of allowing the workers to own the means of production. ‘Freedom’ is used to advocate for the individual freedom of the employee or employer to exercise their right to work according to their wish.<sup>81</sup>

In conclusion, the right to work changed from Blanc’s envisioned way of participating in the means of production and facilitating a political reform of solidarity, to the right to sell one’s own labour force (or, according to the neo-Marxist critique, the right to be exploited in a capitalist economy). It is an effort to enhance one’s right to control their own destiny at a basic level.<sup>82</sup> Capitalist policy adopted the socialist right to work with an interpretation that corresponds to capitalist perceptions of individualism and liberalism, instead of upholding its original objective of empowering the proletariat to reform the market.

## **2. The Right to an Adequate Standard of Living**

The atrocities committed during the Second World War increased the ubiquity of the term ‘human rights’. In 1944, President Roosevelt reaffirmed the need to codify economic and social rights in his famous speech on the ‘four

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<sup>79</sup> OHCHR (n 4) para 23-26.

<sup>80</sup> Mundlak (n 72) 345-347.

<sup>81</sup> Cedric de Leon, *The Origins of Right to Work: Antilabor Democracy in Nineteenth-Century Chicago* (ILR Press 2015) 2.

<sup>82</sup> Morsink (n 67) 157-158.

freedoms’, including the ‘freedom from want’.<sup>83</sup> The message was that political rights are insufficient to realise true individual freedom, which cannot exist without economic security.<sup>84</sup> Human dignity is protected by this right, as it ensures that one is entitled to enjoy basic needs without being shamed, degraded, or deprived of basic freedoms, and that one is able to live above the poverty line.<sup>85</sup>

## 2.1. The International Right to an Adequate Standard of Living

Roosevelt’s speech led the American Law Institute (‘ALI’) to convene a committee of worldwide experts and draft a proposal for an international bill of rights. Interestingly, this draft contained a similar set of rights discussed in this article: the right to work, food and housing, and social security.<sup>86</sup> The right to an adequate standard of living is stipulated under Article 25 of the UDHR and Article 11 of the ICESCR. The enjoyment of this right minimally requires the enjoyment of necessary subsistence rights, such as the right to own property<sup>87</sup> (which is not available to all and reveals the global inequality in distribution), the right to work, and the right to social security.<sup>88</sup>

In relation to the UDHR, states were reluctant to support this right, agreeing on the general term ‘adequate standard of living’, while claiming that the list of issues (including housing or clothes) was too constricting. The specific

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<sup>83</sup> Asbjørn Eide, Catarina Krause and Allan Rosas (eds), *Economic, Social, and Cultural Rights: A Textbook* (2nd edn, M Nijhoff Publishers 2001) 133-134; see also: United Nations Economic and Social Commission for Western Asia, ‘freedom from want’ (*UNESWA*, 2020)

<[<sup>84</sup> United Nations, Economic and Social Council \(1947\): Commission on Human rights, Drafting Committee, First Session, Summary record of eighth meeting, doc. E/CN.4/A.C.2/SR.8; Germana Aguiar Ribeiro Do Nascimento, ‘The Long Road to the International Recognition of Economic and Social Rights: The Right to an Adequate Standard of Living’ \(2018\) \(11\) \*The Age of Human Rights Journal\* 43, 45-46.](https://archive.uneswa.org/freedom-want#:~:text=In%20an%20address%20known%20as%20the%20Four%20Freedom%20from%20want%2C%204.%20Freedom%20from%20 accessed 5 March 2023.</a></p></div><div data-bbox=)

<sup>85</sup> Eide, Krause and Rosas (n 83) 133-134.

<sup>86</sup> Asbjørn Eide and Wenche Barth Eide, ‘Article 25’ in Gudmundur Alfredsson and Asbjørn Eide (eds), *The Universal Declaration of Human Rights: A Common Standard of Achievement* (Martinus Nijhoff Publishers 1999) 527.

<sup>87</sup> UNGA (n 20) art 17.

<sup>88</sup> Eide and Eide (n 86) 523.



list of issues ultimately prevailed because they were recognised as the most pressing issues globally.<sup>89</sup> Article 11 of the ICESCR has been elaborated on by the Committee on Economic, Social and Cultural Rights through several General Comments, which included the rights to adequate housing,<sup>90</sup> food,<sup>91</sup> and water<sup>92</sup> as its components.

There is no General Comment dedicated to the umbrella right of an adequate standard of living, thus leaving its practical meaning quite ambiguous. Neither the UDHR nor the ICESCR outlines specific methods for implementing this right,<sup>93</sup> perhaps to avoid a delay in its realisation.<sup>94</sup> Implementing this right through social security schemes was rejected,<sup>95</sup> with the acknowledgment that states have some discretion in choosing the means of implementation.<sup>96</sup>

Examining the aforementioned General Comments on Article 11 of the ICESCR reveals two issues. Firstly, despite the fact that the state is encouraged to consider the wider framework of policies, legislation, and market conditions, states are given a wide degree of discretion. Arguably, the practical content of the right to an adequate standard of living is rooted in Article 2 of the ICESCR, which outlines the limits of state obligations to act 'by all appropriate means, including particularly the adoption of legislative measures'.

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<sup>89</sup> Morsink (n 67) 195-198.

<sup>90</sup> OHCHR, 'CESCR General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant)' E/1992/23 (OHCHR, 1991) <<https://www.refworld.org/pdfid/47a7079a1.pdf>> accessed 1 April 2022; OHCHR, 'General Comment 7, The right to adequate housing (art. 11.1 of the Covenant): forced evictions' E/1998/22 (OHCHR, 1997) <<https://www.refworld.org/docid/47a70799d.html>> accessed 1 April 2022.

<sup>91</sup> OHCHR, 'General Comment No. 12: The Right to Adequate Food (Art. 11)' E/C.12/1999/5 (OHCHR, 1999) <<https://www.refworld.org/pdfid/4538838c11.pdf>> accessed 1 April 2022.

<sup>92</sup> OHCHR, 'General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant)' E/C.12/2002/11 (OHCHR, 2003) <<https://www.refworld.org/pdfid/47a7079a1.pdf>> accessed 1 April 2022.

<sup>93</sup> Eide and Eide (n 86) 529.

<sup>94</sup> Saul (n 59); UNGA (11th Session) 'Agenda Item 31, Draft International Covenants on Human Rights, Report of the Third Committee' (9 February 1957) UN Doc A/3525.

<sup>95</sup> UNGA (n 94), UNGA Third Committee (11th Session), 'Draft International Covenant on Human Rights, 739th Meeting' (23 January 1957) UN Doc A/C.3/SR.739.

<sup>96</sup> Maastricht Guidelines on Violations of Economic, Social and Cultural Rights (n 23) para 8.

The second issue crucial to this article is the unclear balance between the responsibilities of the state and the individual in realising the right to an adequate standard of living. Where does the responsibility of the state end and the responsibility of the individual begin? There is an important personal responsibility on the individual to take all measures within their capacity to realise their right to an adequate life,<sup>97</sup> and that means realising what they are entitled to. Building on Amartya Sen's list of entitlement relations, this could be achieved by trade, for example, trading a possession with a willing party; production: producing goods using one's resources; work: acquiring through labour, which is similarly trade-based and production-based; and third parties: inheriting third-party entitlements through transfers and wills.<sup>98</sup>

States have 'core obligations' to ensure the satisfaction of at least the minimum essential levels independent of its available resources, and a state in which any significant number of individuals is deprived of essential foodstuffs, basic shelter, and housing is, *prima facie*, failing to meet its obligations.<sup>99</sup> In any case, even if one is living in poverty, is this a *prima facie* claim, or did one simply not realise their entitlement? Uncertainties remain regarding the content of the right to an adequate standard of living, and a lack of discussion may enable states to interpret this right in line with the right to social security, a positive right to help an individual unable to work — emphasising the primary responsibility of the individual.

Even though it is not outlined in international law instruments, the literature provides insight into the duties of states under the right to an adequate standard of living. According to this literature, the level of adequacy under the right depends on the conditions in the society concerned.<sup>100</sup> To respect the right to an adequate standard of living, it is the duty of the state to enact policies that ensure that those entitlements can be realised. Noticeably, those entitlements are somewhat violated when the state itself generates injustice (and ultimately puts

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<sup>97</sup> Eide, Krause and Rosas (n 83) 143.

<sup>98</sup> Amartya Kumar Sen, *Poverty and Famines: An Essay on Entitlement and Deprivation* (Oxford University Press 1992) 1-8.

<sup>99</sup> OHCHR, 'CESCR General Comment No. 3: The Nature of States Parties' Obligations (Art. 2, Para. 1, of the Covenant)' E/1991/23 (OHCHR, 1990)

<<https://www.refworld.org/pdfid/4538838e10.pdf>> accessed 1 April 2022, para 10.

<sup>100</sup> Eide, Krause & Rosas (n 83) 143.

the responsibility for alleviating poverty on the individual). For example, the lack of recognition of collective land rights for indigenous populations is a significant contributor to global poverty, particularly in North America, Australia, and New Zealand.<sup>101</sup> Moreover, policies that prioritise the interests of urban elites (referred to as ‘development racism’) often disadvantage weaker groups and contribute to their economic hardship.<sup>102</sup>

The obligation to protect entails, *inter alia*, the prevention of situations when people on the borderline of poverty cannot overcome crises and would have to sell their means. Under the obligation to fulfil, there is an obligation for the state to assist individuals through various methods such as training and price regulation,<sup>103</sup> and to provide opportunities.<sup>104</sup> This obligation is rooted in the justification that all other measures seem unproductive, especially in a market-oriented industrialisation. This can be done by measures of redistribution, such as progressive taxation.<sup>105</sup>

It was emphasised that the right to work, which was meant to provide a basis for political and social reform, was rejected in this format and became individualistic. This section has argued that the right to an adequate standard of living allows for the same failure of fixation on the individual. The right to an adequate standard of living has the potential to transform market conditions and address the underlying causes of poverty through wide-ranging policies. By stipulating an approach centred around human dignity and addressing structural inequalities, the right to an adequate standard of living could lead to a discussion on how to achieve human dignity, particularly as to which institutions are concerned in promoting this cause, and how property rights might be adjusted to achieve human dignity, just as the right to work led to the right to receive property and income.

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<sup>101</sup> *ibid* 143.

<sup>102</sup> Eide, Krause & Rosas (n 83) 143.

<sup>103</sup> *ibid* 144.

<sup>104</sup> Eide and Eide (n 86) 536.

<sup>105</sup> Eide, Krause and Rosas (n 83) 144.

### 3. Between the Right to Work and the Right to an Adequate Standard of Living: The Right to Social Security

The initial purpose of the right to social security is to support workers who have moved from the oppressive guardian of guilds in the feudal system to working ‘freely’, but with questionable freedoms of choice since their material conditions did not protect them from life risks. It was already understood more than a century ago that ‘a man who has no other source of income than his muscle or brain, if he loses one or the other, will not be saved from destitution by his freedom’.<sup>106</sup>

The transition from an agrarian society to one characterised by wage labour during the industrial revolution brought about economic instability, particularly for those unable to support themselves.<sup>107</sup> The state, imbued with the doctrine of liberalism, individualism, and *laissez-faire*, remained inactive until the community as a whole was threatened in its health and productivity by the suffering of its producers.<sup>108</sup> In 1883-84, Otto von Bismarck established the first social security system, serving as a model for modern social insurance. Here, employers paid contributions to finance workers during the periods when they could not work, later complemented by the introduction of old-age insurance.<sup>109</sup>

The right to social security appears in Articles 22 and 25(1) of the UDHR covering various situations that result in a lack of livelihood, such as unemployment, sickness, or other circumstances ‘beyond one’s control’. Furthermore, Article 9 of the ICESCR provides for the right to social security, while Article 10 of the ICESCR stipulates the right concerning maternity leave. Additionally, the Social Security (Minimum Standards) Convention 1952 (No. 102) is an international treaty that establishes the basis for the development of social security systems worldwide. It covers nine areas of social security, including medical care, unemployment, old age, and invalidity. The Social Protection Floors Recommendation 2012 (No. 202) is a more recent policy document that provides a vision for achieving universal social protection in the 21<sup>st</sup> century. It recommends the establishment of national social protection

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<sup>106</sup> International Labour Office, *General Problems of Social Insurance* (Issue 1 of Studies and Reports, Geneva International Labour Office 1925) 1.

<sup>107</sup> Martin Scheinin, ‘The Right to Social Security’ in Eide, Krause & Rosas (n 83) 211.

<sup>108</sup> International Labour Office (n 106).

<sup>109</sup> Scheinin (n 107).

floors, which are basic social security guarantees that would ensure access to essential healthcare and basic income security. These guarantees would include access to essential healthcare, basic income security for children, basic income security for working-age individuals unable to earn sufficient income, and basic income security for older persons. The ILO recognised nine branches of social security: medical care, sickness, invalidity, unemployment, employment injury, maternity, family, old age, and survivors.<sup>110</sup>

The legislated right to social security appears to be fulfilling its intended purpose (i.e., to support workers against life risks), but it is important to note that this right is limited in scope and serves the role of a fix for the failures in the capitalist market rather than a means of fundamentally transforming society and eliminating the structural issues that create poverty. Additionally, throughout the article, the theme of ‘beyond an individual’s control’ has been prevalent. There is a distinction similar to the one made in the Poor Laws between the ‘morally deserving’ poor and the ‘undeserving’ poor, with assistance being provided only when an individual is unable to provide for themselves due to moral circumstances. Thus, even Recommendation No. 202 which aims to provide *universal* coverage is restricted to the aforementioned categories. However, it would be naïve to believe that the impoverished are in control of their circumstances and are choosing to remain poor.

#### **4. The Relationship between the Right to Social Security and Other Rights**

##### **4.1. The Right to Work**

There is a complementary relationship between the right to work and the right to social security. The right to social security comes after the realisation of the right to work. The former right puts the *individual* as responsible for their standard of living by working, while the right to social security covers occasions of involuntary loss of income or an inability to provide for family necessities,

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<sup>110</sup> The ILO Social Security (Minimum Standards) Convention (adopted 28 June 1952) (No. 102). The European Code of Social Security 1962 enlarges the ILO recognition, requiring satisfying more branches accompanied by an Optional Protocol that provides for a higher level of benefits.

involving correlative duties on the beneficiary.<sup>111</sup> Social security has been a core element of the ILO's mandate, thus tying the two rights together while stressing that the best way to ensure income security is through decent work.<sup>112</sup> The ILO recently published that broader frameworks are needed for true universal protection, referring to taxes and social transfers, and to the Nordic countries that excel in that area with the lowest levels of inequality and the highest levels of happiness.<sup>113</sup>

## 4.2. An Adequate Standard of Living

The relationship between the right to an adequate standard of living and the right to social security is different on theoretical and practical levels, respectively. In theory, the international law instruments<sup>114</sup> indicate a clear separation between the universal right to an adequate standard of living and the selective right to social security. Notably, while drafting the UDHR, this right to an adequate standard of living was merged into the same article as the one on social security, thus predicating one's entitlements upon being a member of a household with a breadwinner who is either employed, or unemployed for 'reasons beyond his control'.<sup>115</sup> There was awareness of this issue among the delegations, as demonstrated by the amendment brought by New Zealand which made 'everyone' the only subject of the article. The right to social security, on the other hand, is selective since one is entitled to assistance only if they are unable to support themselves. The ILO argued that, by not attaching a list of covered cases to the right to social security, the meaning of this right would correlate with the meaning of the right to an adequate standard of living, which targets everyone. Ultimately, the difference was emphasised at the international

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<sup>111</sup> As the Australian delegate explained during the drafting of the ICESCR in Saul (n 59) 1494; Commission on Human Rights (Sixth Session), 'Comments of Governments on the Draft International Covenant on Human Rights and Measures of Implementation' (22 March 1950) E/CN.4/353/Add.10.

<sup>112</sup> 'Social Security for All. Investing in Global Social and Economic Development. A Consultation. Issues in Social Protection; Discussion Paper 16' (*International Labour Organization*, 2006) <[https://www.ilo.org/secsoc/information-resources/publications-and-tools/Discussion papers/WCMS\\_SECSOC\\_8928/lang--en/index.htm](https://www.ilo.org/secsoc/information-resources/publications-and-tools/Discussion%20papers/WCMS_SECSOC_8928/lang--en/index.htm)> accessed 11 February 2023.

<sup>113</sup> International Labour Office, 'World Social Protection Report 2020–22: Social Protection at the Crossroads – in Pursuit of a Better Future' (Geneva ILO, 2021) 31.

<sup>114</sup> Referring to the UDHR and ICESCR.

<sup>115</sup> Morsink (n 67) 198–202.

level, where it was stressed that the two rights have different aims and thus should be implemented differently and separately. However, as we will see, this difference was obscured at the state level.<sup>116</sup>

In the *travaux préparatoires* of the ICESCR, the right to an adequate standard of living was perceived as separate from the right to work. Initially, the USSR's phraseological suggestion of 'the right to work ... creating conditions which will remove the threat of death by hunger' was categorised under the right to an adequate standard of living.<sup>117</sup> Later, it was decided that this right should be widened to protect the working conditions of the mother, *inter alia*, during periods of pregnancy and child rearing.<sup>118</sup> The final article articulates a holistic approach, which includes the general principle of an adequate standard of living and the right to several essential needs,<sup>119</sup> which extends to everyone.<sup>120</sup>

In practice, the relationship between the right to an adequate standard of living and the right to social security appears to be one of a means to an end, where the right to social security is seen as a means to achieving an adequate standard of living. Thus, social security benefits are supposedly the main instrument to enable individuals to achieve an adequate standard of living.<sup>121</sup> This seems somewhat unsuited to the aspired right to an adequate standard of living, which, as mentioned above, should be accomplished by promoting

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<sup>116</sup> *ibid.*

<sup>117</sup> Saul (n 59); Commission on Human Rights (7th Session) 'Agenda Item 3(b), Working Group on Economic, Social and Cultural Rights, Compilation of Proposals Relating to Economic, Social and Cultural Rights' (27 April 1951) E/CN.4/AC.14/2Add.3.

<sup>118</sup> Commission on Human Rights (7th Session) 'Agenda Item 3, Draft International Covenant on Human Rights and Measures of Implementation, 222nd Meeting' (8 June 1951) E/CN.4/SR.222.

<sup>119</sup> Commission on Human Rights (9th Session) 'Draft International Covenants on Human Rights and Measures of Implementation, Economic and Social Council, Memorandum by the Secretary-General' (23 January 1953) E/CN.4/673; General Assembly Third Committee (11th Session), 'Draft International Covenant on Human Rights, 739th Meeting' (23 January 1957) A/C.3/SR.739.

<sup>120</sup> General Assembly Third Committee (11th Session), 'Draft International Covenant on Human Rights, 740th Meeting' (24 January 1957) A/C.3/SR.740.

<sup>121</sup> OHCHR, 'General Comment No. 19 The right to social security (Art. 9 of the Covenant)' E/C.12/GC/19 (OHCHR, 2008)

<<https://www.refworld.org/docid/47b17b5b39c.html>> accessed 2 August 2022, para 22.

policies and legislation or any other method — not necessarily by addressing only those unable to work.

The redistributive character of social security is important for poverty reduction and alleviation, allocating financial assistance according to need and thereby promoting social inclusion.<sup>122</sup> There is, however, a limitation on the scope of this effect due to the complementary relationship between the right to social security and the right to work, which positions the right to social security as an unwelcome intervention in the market. Therefore, rich states strive to demonstrate that they do not discourage individuals from working or undermine free market efficiency, while poor states are encouraged to privatise public services and prioritise free trade.<sup>123</sup> Most importantly, social protection bolsters political support for the same institutions and structures that facilitate poverty, as the state uses profits from capitalist growth economies to fund social security, thus legitimising economic growth efforts.<sup>124</sup>

The next section will aim to demonstrate the symbiotic relationship between the right to an adequate standard of living and the right to social security, before analysing the primacy of the latter.

## 5. The Domestic Right to an Adequate Standard of Living is Limited

Theoretically separate from the right to work and social security is the right to an adequate standard of living. In practice, the following provisions illustrate states' conceptions about what those in poverty should be entitled to, and their constitutional protection of the citizen's wellbeing respectively. These

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<sup>122</sup> *ibid* para 3.

<sup>123</sup> Tooze (n 9) 331: 'Thus, structural reforms that are supported by organisations like the International Monetary Fund IMF and the World Bank to receive aid, generally speaking, intended to improve the efficiency and effectiveness of a country's economy by reducing government intervention in the economy. Some of these reforms may involve making the market more market-oriented, such as by reducing barriers to trade, improving the legal framework for businesses, and promoting competition'. See also: Vinaya Swaroop, 'World Bank's Experience with Structural Reforms for Growth and Development. MFM Discussion Paper; No. 11' (*World Bank*, 2016) <<https://openknowledge.worldbank.org/handle/10986/24360>> accessed 5 March 2023; Kyrgyz Republic, 'ESAF Policy Framework Paper 1998-2000' (*Kyrgyz ESAF*, 1998) <<http://www.imf.org/external/country/KGZ/index.htm>> accessed 5 March 2023.

<sup>124</sup> Linarelli, Salomon and Sornarajah (n 28) 252.



provisions mainly reflect the right to social security, allowing state assistance if one cannot work, rather than a general commitment to improve the standard of living or uphold human dignity.<sup>125</sup> It can therefore be argued that there is an unclear distinction between the right to work and social security, and the right to an adequate standard of living. This is perhaps because the means of implementing the right to an adequate standard of living is still undefined.

The following review of states' domestic law does not purport to be empirically comprehensive, but aims to demonstrate the muffled parameters delineating the right to work and the right to an adequate standard of living through two methods as laid out by Hirschl:

- (1) Contrasting the most different cases: when comparing along the axis of one specific variable, one should look for cases that differ on all other variables, in order to prove the consistency of the trend across the board.<sup>126</sup>

As in our case, the tested variable is the right to an adequate standard of living in each jurisdiction's constitutional law. States were chosen based on their positions along the spectrum of capitalism and the degree of market intervention.<sup>127</sup> Additionally, there was an effort to include states representing a range of legal origins. These included English common law, which is focused on safeguarding citizens from government power; French civil law, which grants more authority to the government in managing citizens' lives and can be divided into French, Scandinavian, and German variants; and Socialist states, which are

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<sup>125</sup> Avi Ben-Bassat and Momi Dahan, 'Social rights in the constitution and in practice' (2008) 36(1) *Journal of Comparative Economics* 103, 106.

<sup>126</sup> Ran Hirschl, 'On the Blurred Methodological Matrix of Comparative Constitutional Law' in Sujit Choudhry (eds), *The Migration of Constitutional Ideas* (1st edn, Cambridge University Press 2007) 51-56.

<sup>127</sup> See for example the following report measuring 'economic freedom' according to rule of law, government size and regulatory efficiency and open market indicators: The Heritage Foundation, '2023 Index of Economic Freedom' (*The Heritage Foundation*, 2023) <<https://www.heritage.org/index/ranking>> accessed 5 March 2023. Out of 177 states measured, the states in this report are in places: 1, 9, 10, 15, 43, 60, 153; The World Bank that measured 190 states, according to indicators that measure how easy it is to conduct business, and the states discussed within this article are in places: 2, 4, 20, 23, 35, 67, 108: World Bank, 'Ease of Doing Business rankings' (*The World Bank Group*, 2023) <<https://archive.doingbusiness.org/en/rankings>> accessed 5 March 2023.

rooted in the centralised regime of the Soviet Union.<sup>128</sup> It is assumed that all selected states aim to enhance the welfare of their citizens, and have therefore incorporated such a relevant provision in their constitutional laws. However, we will investigate whether this provision is constrained by the right to work. The conflicts between states' welfare provisions on one hand, and their enforcement of the right to work on the other, will help interrogate the widespread belief that individuals bear the primary responsibility for alleviating their poverty through working.

- (2) The most difficult cases: in order to verify a hypothesis, one should begin with the cases presenting the greatest difficulty, such that less difficult scenarios are proven *prima facie* by extension.

The assumption is that states addressing poverty via market intervention will not undermine the right to an adequate standard of living by instead placing the responsibility on the individual through the right to work.<sup>129</sup>

Scandinavian countries are the most difficult cases, often characterised as adhering to values of universalism, solidarity (breaking down class division), and decommodification (the ability to live independently from the market since basic needs are provided or subsidised).<sup>130</sup> These countries are characterised by a 'social democratic consensus, facilitating the expansion of the welfare state'.<sup>131</sup> However, Scandinavian social democrats are now making use of the welfare state to remain competitive in the global market, adopting targeted assistance instead of general welfare provisions due to concerns about people's incentive to work or care for each other.<sup>132</sup>

Section 75 of Denmark's Constitution stipulates that:

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<sup>128</sup> Avi Ben-Bassat and Momi Dahan, 'Social Rights in the Constitution and in Practice' (2008) 36 (1) *Journal of Comparative Economics* 11, 12, 103-119; the division method is from Thomas H. Reynolds and Arturo A. Flores, *Foreign Law: Current Sources of Codes and Basic Legislation in Jurisdictions of the World* (Rothman 1989).

<sup>129</sup> Ran Hirschl, 'On the Blurred Methodological Matrix of Comparative Constitutional Law' in Sujit Choudhry (ed), *The Migration of Constitutional Ideas* (1st edn, Cambridge University Press 2007) 51-56.

<sup>130</sup> Robert Cox, 'The Path-Dependency of an Idea: Why Scandinavian Welfare States Remain Distinct' (2004) 38 *Social Policy and Administration* 204, 205.

<sup>131</sup> *ibid* 208.

<sup>132</sup> *ibid* 212.

(1) to advance the public interest, efforts shall be made to guarantee work for every able-bodied citizen on terms that will secure his existence. (2) Any person unable to support himself or his family shall, when no other person is responsible for his or their maintenance, be entitled to receive public assistance ...

This provision is interpreted as stipulating reasonable efforts ensuring that a citizen who can work will be able to do so.<sup>133</sup> This provision does not create the basis to claim individual rights to employment. However, practically, state aid must be provided to those who cannot support themselves. A person must, however, exhaust her alternatives, including work or family support.<sup>134</sup> Ostensibly, the main way to achieve the right to an adequate standard of living in Denmark is tangled with the right to work. Roots of socialism are seen here with the emphasis on work for the benefit of the public interest as seen in many socialist constitutions in the past, consistent with Blanc's principle.<sup>135</sup> However, there is no redistributive element present in the right to work or the right to an adequate standard of living.

Similarly, Finland's Constitution demonstrates the classic structure of achieving human dignity, a structure whereby primary responsibility is placed on the individual:

Those who cannot obtain the means necessary for a life of dignity have the right to receive indispensable subsistence and care ... right to basic subsistence in the event of unemployment, illness.<sup>136</sup>

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<sup>133</sup> Susannah Pedersen, 'My Constitutional Act - My Constitutional Act with Explanations, 12th Edition' 44

<[https://adsdatabase.ohchr.org/IssueLibrary/DENMARK\\_My%20Constitutional%20Act%20with%20explanations.pdf](https://adsdatabase.ohchr.org/IssueLibrary/DENMARK_My%20Constitutional%20Act%20with%20explanations.pdf)> accessed 6 July 2022.

<sup>134</sup> *ibid.*

<sup>135</sup> 'From each according to its faculties' Scotto (n 45) 950, referring to Blanc 1989 (n 50), 28. See also: Morsink (n 67), 161-162.

<sup>136</sup> s.19 Constitution of Finland (1999) (731/1999, amendments to 802/2007 included).

According to Finland's regulation, social assistance guarantees income security only as a last resort when personal or familial incomes are insufficient.<sup>137</sup> The term 'those who cannot obtain' implies defects in individual capabilities, and there is no reference to the state's responsibilities, again blurring the line of responsibility between the individual and the state.

The Colombian Court, with its roots in French civil law, developed the concept of '*minimo vital*', or the right of every individual to 'minimum condition for dignified life'. This right is derived from the right to life, the right to health, the right to work, and the right to social security.<sup>138</sup> It was ruled that in cases of extreme urgency where the basic needs of the individual are jeopardised, human dignity is violated, entitling the individual to sue for protection of her economic and social rights. The court has referred to this right in the context of salary, pension, maternity benefits, or benefits that are the only source of income for the individual.<sup>139</sup> Here, the right to an adequate standard of living is less restricted by the right to work as compared to previous jurisdictions, although it is still restricted to methods of income, and the primary responsibility of the individual is to exhaust them before qualifying for the state's welfare intervention, which is limited to cases of 'extreme urgency'.

Further meriting examination are countries with roots in German civil law, particularly Switzerland and South Korea. In Switzerland's Constitution,<sup>140</sup> reference to the wellbeing of the people can be found in Article 12, stipulating that '[those] *unable to provide* for themselves have the right to assistance and care, and to the financial means required for a decent standard of living'. Interestingly, Switzerland included a clause protecting human dignity under Article 7, yet criminalised begging regardless of this clause. In this regard, the European Court of Human Rights ruled that human dignity deems a person's means of

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<sup>137</sup> European Commission, 'Your Social Security Rights in Finland' (*European Commission*, 2021) <<https://ec.europa.eu/social/BlobServlet?docId=13749&langId=en>> accessed 4 July 2022, 33.

<sup>138</sup> Magdalena Sepúlveda, 'Colombia: The Constitutional Court's Role in Addressing Social Injustice' in Malcolm Langford (ed), *Social Rights Jurisprudence: Emerging Trends in International and Comparative Law* (1st edn, Cambridge University Press 2009) 147-148.

<sup>139</sup> *ibid.*

<sup>140</sup> The Federal Constitution of the Swiss Federation (adopted 18 April 1999).

subsistence as a foundational component,<sup>141</sup> thus positively recognising begging as a means to protect human dignity. The court ruled that human dignity protects the applicant's right to 'express her distress and to try and satisfy her needs by begging'.<sup>142</sup> Still, a harsh position towards the impoverished, similar to the Poor Laws thus presented, prohibits begging but aids the eligible poor (those who are unable to provide for themselves).

The Constitution of South Korea<sup>143</sup> is another relevant example in contrast. On one hand, there is Article 32 which stipulates the right to work, and a relatively 'strong' duty to work on all citizens.<sup>144</sup> On the other hand, there is a 'weaker' duty on the side of the state to '*endeavour* to promote social security and welfare'.<sup>145</sup> Furthermore, this duty does not only sound non-committal, but was criticised in practice as being conceptually interpreted in relation to human dignity — which is an under-articulated concept in the court's jurisprudence — and also *de facto* void.<sup>146</sup> The right to welfare and the duty to work are not in the same article, but measuring the state's commitment to each could provide insight into the nature of the interactions among the individual, his rights, and the state's enforcement.

The case of Israel exemplifies the notion that constitutional law is not merely the written law, but rather a more dynamic phenomenon, formulated through the practice of law such as judicial decisions.<sup>147</sup> In Israel, the right to live with dignity has been recognised by the Supreme Court as a constitutional right. This includes access to basic necessities such as water, food and shelter and the 'duty of the state under the Basic Law: Human Dignity and Liberty ... to

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<sup>141</sup> Daniel Rietiker & Mary Levine, 'Begging the Question: Lacatus v. Switzerland and the European Court of Human Rights' Recognition of Begging as a Human Rights Issue' (2022) Harvard International Law Journal.

<sup>142</sup> *ibid.*

<sup>143</sup> Constitution of the Republic of Korea (adopted July 17 1948, amended October 29 1987).

<sup>144</sup> *ibid* art 32: 'All citizens shall have the duty to work. The State shall prescribe by Act the extent and conditions of the duty to work in conformity with democratic principles.'

<sup>145</sup> *ibid* art 34(2).

<sup>146</sup> Chaihark Hahm, 'Constitutional Discourse on Human Dignity in South Korea: A Critical Appraisal' in Jimmy Chia-Shin Hsu (ed), *Human Dignity in Asia* (Cambridge University Press 2022) 62-86.

<sup>147</sup> Katharine G. Young, 'On What Matters in Comparative Constitutional Law: A Comment on Hirschl' (2016) 96 Boston University Law Review 1375.

maintain a system that will ensure a “protective net” for persons in society with limited means’.<sup>148</sup> In contrast, all state allowances are less than the minimum wage (reduced once one starts to earn income above a certain level) and evidence that one is seeking employment or has recently stopped working is required.<sup>149</sup>

Additionally, concentrating on specific rights such as housing can arguably enforce the right to adequate standard of living without the working restriction. Singapore could shed some light here since they have *prima facie* solved the housing problem.<sup>150</sup> The state controls the land, construction, and sale of property. 82% of Singapore’s residents live in housing projects initiated by the state, and grants are provided for purchasing an apartment.<sup>151</sup> However, despite being one of the richest countries in the world, Singapore’s poverty and inequality rates have largely been increasing since the 1970s, in spite of the absence of a formal poverty line.<sup>152</sup> Nevertheless, the state’s main method of welfare assistance is formulated restrictively through the promotion of the right to work by deliberately lowering the quantum of welfare to around 5-8 percent

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<sup>148</sup> HCJ 366/03 Commitment to Peace and Social Justice Society v. Minister of Finance [2005] (2) Israel Law Review 335.

<sup>149</sup> Without considering specific state allowances such as for the elderly or for children, Israel’s most significant allowances are those for the disabled and those for income support. See ‘Rates of income support benefit’ (*National Insurance Institute*, 2023) <<https://www.btl.gov.il/English/%20Homepage/Benefits/Income/%20Support/%20Benefit/Pages/Rates%20of%20Income/%20Support/%20Benefit.aspx>> accessed 12 March 2023; ‘Pension Rates’ (*National Insurance Institute*, 2023) <<https://www.btl.gov.il/English/%20Homepage/Benefits/Disability/%20Insurance/Pages/Rates%20of%20pension.aspx>> accessed 12 March 2023.

<sup>150</sup> See, for example, the UN Settlements Program awarding Singapore’s housing plan an award stating that ‘Singapore’s Housing and Development Board (HDB) will receive the award for providing one of Asia’s greenest, cleanest and most socially conscious housing programmes. For over half a century, HDB has housed a large slice of Singapore’s growing population. Currently, more than eight in 10 Singaporeans live in HDB apartments and more than nine in 10 own the apartment in which they live’: United Nations, ‘Innovative housing programme receives UN awards’ (*United Nations*, 2010) <<https://news.un.org/en/story/2010/09/350142>> accessed 3 January 2023.

<sup>151</sup> Tan Shin Bin and Vignesh Louis Naidu, ‘Public Housing in Singapore: Examining Fundamental Shifts’ (2014) Lee Kuan Yew School of Public Policy, National University of Singapore 1, 4-6.

<sup>152</sup> Mukul G Asher and Amarendu Nandy, ‘Singapore’s Policy Responses to Ageing, Inequality and Poverty: An Assessment’ (2008) 61 *International Social Security Review* 41, 46; Yen Kiat Chong & Irene YH Ng, ‘Constructing Poverty in Anti-Welfare Singapore’ (2017) 23(2) *Social Identities* 146, 147.

of per capita income, with the corresponding additions of income tax exemptions and income support targeting full-time workers.<sup>153</sup> This example illustrates how resolving one issue concerning impoverished people, such as housing, does not guarantee the elimination of poverty as a whole.

Notably, by making assistance schemes proportionate to income levels, as in Israel and Singapore, the principle of the Poor Laws' 'less eligibility' is illustrated. Under the Poor Laws, the criteria for allocating beds to non-working people, sometimes one to three, were significantly stricter in comparison to the allocative criteria for those who were working.<sup>154</sup> This comparison reveals another limitation of the right to an adequate standard of living by the right to work, namely relying on the latter's examination of one's occupational status as a basis for determining eligibility for the former.

The Canadian case of *Gosselin*<sup>155</sup> is another example of this. It concerned a challenge to a social assistance scheme that aids people aged under 30 with one third of the assistance that those above 30 receive, unless they participate in training or work experience employment programs. Interestingly, the court ruled that Section 45 of the Quebec Charter does not impose a sufficiently specific obligation compared to Article 11 of the ICESCR and Articles 22 and 25 of the UDHR, and is ambiguous enough to allow government discretion.<sup>156</sup> In other words, the court established certain limits on welfare assistance to encourage individuals to work. A criticism of Canada's ruling is that, by separating state power from the social and economic inequalities stemming from market forces, the court's rulings in these areas obscure the fact that markets can be directly influenced by government policy.<sup>157</sup> Moreover, the majority held that this restriction of social assistance does not impair the dignity of the young since the genuine objective to incentivise them to enter the working market is justified, irrespective of stereotypes.

It seems that there is a noticeable consensus about the existence of a right to some standard of living as a human right *that should be respected, protected or*

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<sup>153</sup> Asher and Nandy (n 152) 56-58.

<sup>154</sup> Paz-Fuchs (n 11) 74.

<sup>155</sup> *Gosselin v. Quebec (Attorney General)* [2002] 4 S.C.R. 429.

<sup>156</sup> *ibid* [93], [420].

<sup>157</sup> Patrick Macklem, 'Social Rights in Canada' (2006) in Daphne Barak-Erez and Aeyal M Gross (eds), *Exploring Social Rights Between Theory and Practice* (Hart Publishing 2007).

*provided by the state.* Hence, most of the aforementioned jurisdictions include the right to ‘not be impoverished’ which is referred to as ‘life in dignity’ in Finland, ‘*minimo vital*’ in Columbia, the right to live with dignity in Israel, or ensuring the ‘right to existence’ in Denmark. However, these same jurisdictions still use the right to work as a limitation to one’s entitlement to welfare assistance, as enacted through written law, or by courts’ interpretation. While some countries such as Denmark and Finland (known as welfare states) stipulate this limitation explicitly in their constitution, other countries such as Singapore, Canada and Israel, incentivise individuals to work by referring to the right to an adequate standard of living as state assistance, followed by making the level of such assistance proportionate to the extent of individual employment. The significance of this review, however, lies in demonstrating that even tools of social reform built around the right to an adequate standard of living can fall under larger institutional structures perpetuating poverty when interpreted narrowly as a form of state assistance justifying the entitlement to social security.

To conclude briefly, it has been argued that, thus far, the right to work, rather than being a broad tool for social reform to empower the worker at large, has been too narrowly interpreted as mandating decent working conditions. In parallel, the right to an adequate standard of living was not substantially developed in the international realm and was interpreted as a complementary right to the right to work in domestic legislation, aiming to fill in the void when individuals cannot provide for themselves.

### **III. Implications: The Right to Work Turned Into a Duty to Work**

Although the aforementioned jurisdictions do not stipulate the policy of ‘workfare’ per se, the logic behind it is demonstrated: the main route to alleviate poverty is through the employment market. Returning to Sen’s list of entitlements, it seems that an entitlement to property exists in the present context: the entitlement being state assistance when one cannot work. Assuming that impoverished people do not possess the right to an adequate standard of living, working or not being able to work and receive state assistance is the only way to alleviate their struggle. Working might not be a legal duty, but it is a social duty. Workfare can be defined broadly as ‘programmes or schemes that require people to work in return for social assistance benefits’. Thus, workfare entails the risk of a reduction in or loss of aid if an individual fails to comply



with working requirements. This attitude reflects policymakers' assumption that people dependent on assistance are disincentivised to enter the labour market and require a behavioural nudge to work.<sup>158</sup> Yet, at the same time, work itself is a necessary hurdle for the impoverished to overcome before receiving state aid,<sup>159</sup> especially when the former, serving as a prerequisite for the latter, can be inaccessible.

The last decade of the 20<sup>th</sup> century shifted the debate from levels of welfare expenditure to questions about its desirability and usefulness, casting doubt on its success in helping individuals reach self-sufficiency.<sup>160</sup> Since the Lisbon Summit of the European Union expressed its support for 'active labour market measures' which were widely adopted,<sup>161</sup> its efforts primarily focused on training, education and national employment action plans, declaring that 'the best safeguard against social exclusion is a job'.<sup>162</sup> International labour standards are referred to as essential for ensuring that the growth of the global economy provides benefits for all.<sup>163</sup> It is important to note that the SDGs' goal of reducing inequality by income growth of the bottom 40 percent of the population does not solve asymmetric wealth aggregation, leaving the wealth and power of the global 1 percent intact. Per some estimates, this inequality will take 207 years to eliminate at the cost of hastening catastrophic climate change, with our present production and consumption levels needing 3.4 Earths to sustain.<sup>164</sup>

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<sup>158</sup> Ivar Lødemel and Heather Trickey, 'A new contract for social assistance' in Ivar Lødemel (eds), *An Offer You Can't Refuse: Workfare in International Perspective* (Policy Press 2001) 6-8.

<sup>159</sup> Mundlak (n 72) 342.

<sup>160</sup> *ibid.*

<sup>161</sup> Cox (n 130) 213.

<sup>162</sup> Lisbon European Council, '23 and 24 March 2000 Presidency Conclusions' (*European Parliament*, 2000)

<[https://www.europarl.europa.eu/summits/lis1\\_en.htm#:~:text=The%20European%20Council%20held%20a%20special%20meeting%20on,social%20cohesion%20as%20part%20of%20a%20knowledge-based%20economy](https://www.europarl.europa.eu/summits/lis1_en.htm#:~:text=The%20European%20Council%20held%20a%20special%20meeting%20on,social%20cohesion%20as%20part%20of%20a%20knowledge-based%20economy)> accessed 3 July 2023 [24]-[34].

<sup>163</sup> ILO (n 37) 7.

<sup>164</sup> Jason Hickle, 'The Problem with Saving the World' (*Jacobin*, 2015)

<<https://jacobin.com/2015/08/global-poverty-climate-change-sdgs/>> accessed on 31 January 2023.

The proposed UN Resolution to a Declaration on Human Rights Responsibilities is strikingly similar to socialist doctrines<sup>165</sup> in establishing the duty to work<sup>166</sup> and to participate as stipulated. This is important insofar as socialism tends to be conceived of as an ideology that aims to strengthen the working class. When considered independently from other relevant rights, however, the duty to work actually results in the opposite outcome. The working class, on whom duties to work are imposed by socialism without corresponding entitlement to rights such as the ownership of the means of production, become disempowered in practice. Today, this duty is stipulated in Article 29(6) of the 1981 African Charter of Human and People's Rights, and in some countries' constitutions, such as Article 35 of the Constitución Española in Spain, and Article 42 of the Constitution of the People's Republic of China.<sup>167</sup>

There are several shared rationales between the Poor Laws and the idea of workfare: (1) social control: the public, who pay for the state's welfare programs, expect the impoverished to increase productivity as the public defines it (i.e. working); (2) the efficient use of resources, monetary and human: the principle of 'less eligibility' arises from a micro perspective, assuming rational, unemployed individuals would not work if the provision of benefits had remained above a certain level — on a macro level, human resources should be utilised to increase society's productivity and wealth; (3) social contract: *quid pro quo*, and 'something for nothing' is immoral and unjust.<sup>168</sup> The argument that incentives are needed to encourage people to work and become self-sufficient, rather than relying on state assistance, is problematic if this discourse overshadows discussions about social injustice and the actions that the state can take to combat poverty. This discourse can in fact also perpetuate harmful stereotypes about the laziness of impoverished individuals.

To conclude briefly, the right to work, which was initially aimed at being an opportunity for the disaffected to flourish, is now a precondition for gaining access to state assistance. However, it is possible that the ultimate loss for the proletariat is the conceptualisation of the right to work as a tool for

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<sup>165</sup> Paz-Fuchs (n 19) 182-183.

<sup>166</sup> UN Economic and Social Council Official Records (55<sup>th</sup> Session), 'UN Resolution to a Declaration on Human Rights Responsibilities' (1999) UN Doc A/RES/53/144.

<sup>167</sup> Constitution of the People's Republic of China (adopted December 4 1982).

<sup>168</sup> Paz-Fuchs (n 11) 80-89.

reform, along with the narrow interpretation of an adequate standard of living in forms such as social security, as supplementary to the right to work.

#### IV. Reconsidering the concept of human rights law

##### 1. The individual as the primary responsible actor

Conceptualising the right to work as a duty shifts the individual from being the right holder into being the duty holder. There are practical and social implications for the individual in this regard.

In practical terms, this raises the question of when an individual's duty to work ends and their right to an adequate standard of living begins, as well as the fate of this relationship. It could be argued that these rights occur simultaneously, with individuals required to work while the state protects their right to an adequate standard of living by regulating the market, among other measures, and providing benefits such as state assistance. Thus, state assistance which actively imposes an individual duty to fulfil the right to an adequate standard of living only becomes relevant if people are unable to satisfy their needs on their own,<sup>169</sup> and there is no substantive reference to this right otherwise. Yet, there is also a core obligation that assumes *prima facie* violation of the right to an adequate standard of living that might shift the primary responsibility from the individual to the state. This presupposes the logically prior responsibility of the state to take steps to alleviate poverty without qualification, by requiring the individual to have exhausted her right to work beforehand.<sup>170</sup> The lack of specific CESCR Comments on the general principle of an adequate standard of living makes it difficult to determine what this core obligation is, irrespective of the preliminary assumption that this obligation is violated when people are living in poverty. Assuming the idea that most states violate human rights might be a radical one, but reframing the narrative on poverty and rights in this way nonetheless could lead states to better protect their citizens' rights. This approach challenges the common stereotypes plaguing the impoverished, and emphasises the state's responsibility to ensure human rights. This issue becomes more severe considering the lack of universally-accepted criteria as to what individual entitlement to the right to

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<sup>169</sup> Seymour and Pincus (n 21) 88-89.

<sup>170</sup> Comment No. 3, (n 99) para 10.

work entails, and what specific obligations fall on public authorities.<sup>171</sup> Thus, many impoverished individuals continue to drown in the sea of ambiguity, where they live in poverty despite being theoretically entitled to many rights.

From a social standpoint, the decision to structure the right to work as a duty represents a lapse in the moral discourse about the poor. By recognising the impoverished as rights holders, the discourse shifts to the basic structure of human rights: A is entitled to B by C, with the primary question being – is this right being realised, i.e., has C ensured that A has realised B? Hence, poverty can be perceived as a failure on the part of the state or as a systemic issue rather than an immoral or functional failure of the individual.<sup>172</sup> A rights-based approach allocates entitlements and empowers the eligible to realise their needs. Seemingly, constructing the right to work as a duty stymies this progress. It potentially risks a return to a needs-based approach that problematically construes the delivery of services to the marginalised as dependent on goodwill and charity by the powerful.

Throughout history, there has been discourse over who is responsible for the impoverished. The right to work was absent in the first post-French Revolution constitution, partly because the discussion about allocating jobs was overly interspersed with the right to government assistance.<sup>173</sup> Years later, Mr Shann, the Australian delegate writing the ICESCR, addressed the concern that the state's commitment to promoting welfare would discourage people from working:

There was no reason to fear that such conditions would kill the spirit of initiative, for man was naturally ambitious; yet despite that natural ambition it was essential to protect the less fortunate and the weaker.<sup>174</sup>

Mr Shann presented an important argument that portrays the impoverished in a more uplifting fashion. In essence, 'they' [the impoverished] do not need help since they are lazy, and thus 'we' [society] must activate their

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<sup>171</sup> Katarina Tomafevski, 'Indicators' in Eide, Krause & Rosas (n 83) 536.

<sup>172</sup> Christine Chinkin, 'The United Nations Decade for the Elimination of Poverty: What Role for International Law?' (2001) 54 *Current Legal Problems* 553, 564-565.

<sup>173</sup> Scotto (n 45) 948.

<sup>174</sup> Saul (n 59).

moral agency and encourage them to work. Instead, being socioeconomically disaffected is a matter of being less fortunate than others: sheer luck *beyond an individual's control*. Poverty is inherently random and arbitrary.

This discourse focuses primarily on the idea of the welfare state and the question of who is responsible for the impoverished. However, it seems that this discourse is irrelevant. Firstly, there is a misconception of the welfare state as the benefactor of the impoverished.<sup>175</sup> In contrast, the welfare state prioritises social insurance and social rights, rendering the chief beneficiaries the middle class and the employed.<sup>176</sup> For example, pensions are generally reserved for the more affluent in some countries, unavailable for the poor.<sup>177</sup> Most importantly, this discourse is rooted in the relationship between the capitalist market and the welfare state, which is functionally necessary for capitalism to solve market failures but structurally incompatible. Here, privately determined economic action and publicly determined social protection are 'shackled together' while each structure works to simultaneously sustain but undermine the other. Capitalism assumes that the expansion of *laissez-faire* logic will ultimately result in a greater improvement in welfare,<sup>178</sup> while redistributions that modify the primary distribution based on property rights and market transactions will be inefficient by definition, and lower in priority.<sup>179</sup> Moreover, the idea of welfare did not grow in a void. Instead, it was initially conceived as a means of mitigating the effects of market failures and hardship.<sup>180</sup> By the 1960s, every developed nation had, at their core, elements of a welfare state — even the USA reacted to the Great Depression with the New Deal.<sup>181</sup> This imagined dichotomy between the welfare state and capitalism often overlooks other alternatives that are not based on capitalism, since in practice the welfare state is itself a form of capitalism insofar as its basis lies in improving the market's allocative efficiency through intervention. Additionally, it fails to consider the

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<sup>175</sup> David Garland, 'The emergence of the idea of "the welfare state" in British political discourse' (2021) 35(1) *History of the Human Sciences* 132, 139.

<sup>176</sup> *ibid* 135-136.

<sup>177</sup> Paul Spicker, *The Idea of Poverty* (Bristol University Press 2007) 78.

<sup>178</sup> Paul O'Connell, 'On Reconciling Irreconcilables: Neo-Liberal Globalisation and Human Rights' (2007) 7 *Human Rights Law Review* 483, 487.

<sup>179</sup> David Garland, *The Welfare State a Very Short Introduction* (Oxford University Press 2016) 51-53.

<sup>180</sup> Garland (n 175) 143.

<sup>181</sup> *ibid* 150.

possibility of altering the pre-distribution conditions, as it primarily focuses on redistribution.

The focus on individual failings, when construing the impoverished, emphasises the personal characteristics of those excluded and overshadows the structural issues that have created and perpetuated poverty. This creates a lack of empathy, stigmatisation, and dehumanisation of the unemployed.<sup>182</sup> Establishing the right to work merely demands individual personal responsibility over structural circumstances largely outside their control, and absolves the state of its obligation to the socioeconomically disaffected.<sup>183</sup> Poverty is a complex, multi-sectoral issue that cannot be solved through simple solutions.<sup>184</sup> It is a structural phenomenon that should be tackled as a matter of government priority.<sup>185</sup>

Placing the duty to secure livelihood mainly on the individual seems unproblematic and ‘neutral’, but ignores the bigger picture. The economic literature finds substantial evidence of discrimination and structural pay gaps. For example, in Bangladesh, researchers found that poverty arises from a lack of opportunities as opposed to intrinsic, personal characteristics.<sup>186</sup> Additionally, it was found that the poverty trap creates a mismatch between talent and jobs — this misallocation of labour is rife amongst the impoverished.<sup>187</sup> In Israel, workers are three to four times more likely to find employment where a past co-worker of the parent currently works than in otherwise similar firms.<sup>188</sup> In Canada, 16 percent of resumes sent with English-sounding names, featuring Canadian education and experience, received a call back from an employer,

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<sup>182</sup> Paz-Fuchs (n 11) 189.

<sup>183</sup> Mundlak (n 72) 351.

<sup>184</sup> UN Committee on Economic, Social and Cultural Rights, ‘Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights: Poverty and the International Covenant on Economic, Social and Cultural Rights’ (4 May 2001) UN Doc E/C.12/2001/10 [9].

<sup>185</sup> Tomafevski (n 171) 537.

<sup>186</sup> Clare Balboni and others. ‘Why Do People Stay Poor?’ (2022) 137(2) *The Quarterly Journal of Economics*, 785.

<sup>187</sup> *ibid.*

<sup>188</sup> Shmuel San, ‘The Role of Social Connections in the Labor Market’ (*The Hebrew University of Jerusalem* 2022) <[https://mulysan.github.io/San\\_JMP.pdf](https://mulysan.github.io/San_JMP.pdf)> accessed 5 March 2023.

compared to only 5 per cent for resumes with foreign-sounding names.<sup>189</sup> In the USA, a similar effect was found for African-Americans with Black-sounding names compared to those with Caucasian-sounding names.<sup>190</sup>

Framing the right to work as a duty blurs the line between the individual and state, raising questions about whether the individual has done enough to avoid poverty and when the state should intervene. This becomes especially important when there are no clear legal methods by which to implement the right to an adequate standard of living. As a result, the individual may be stigmatised for not working, and thus further marginalised from society, while the larger social and economic systems that create and maintain poverty are not addressed. This individualistic approach to addressing poverty through human rights may be insufficient in addressing the root causes of poverty.

## **2. The Entitlement: Work and the Disappearance of Human Dignity**

Although the duty to work does not stipulate an entitlement to demand work, it puts ‘working’ at its centre. Any discussion of the right to an adequate standard of living separate from the right to work might be ignored if the impoverished are first asked *if* they can work. This can result in a narrow definition of work as a means to alleviate poverty, and hence as a means of survival, rather than it being a means to develop one’s personality, self-esteem, or social role. Consequently, interpreting human dignity based on working conditions may lead to a narrower interpretation of the concept based on living conditions as a basic matter of survival.

Work-related rights generally only safeguard the ability to work,<sup>191</sup> working conditions, the meaning of decent work, or social coverage when one cannot work. In contrast, the right to an adequate standard of living puts the

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<sup>189</sup> Philip Oreopoulos, ‘Why Do Skilled Immigrants Struggle in the Labor Market? A Field Experiment With Six Thousand Resumes’ (2009) National Bureau of Economic Research working Paper 15036, 24  
<<https://www.nber.org/digest/sep09/why-do-skilled-immigrants-struggle-labor-market>> accessed 30 July 2022.

<sup>190</sup> Roland G. Fryer and Steven D. Levitt, ‘The Causes and Consequences of Distinctively Black Names’ (2004) 119 (3) *The Quarterly Journal of Economics* 767, 771.

<sup>191</sup> Krzysztof Drzewicki, ‘The Right to Work and Rights in Work, in Economic, Social and Cultural Rights’ in Eide, Krause & Rosas (n 83) 223-224.

individual at the centre of analysis and means, *inter alia*, that one can enjoy basic needs under conditions of dignity. Accordingly, human dignity should be achieved without degrading or denying one's freedoms to satisfy one's needs.<sup>192</sup>

The employed and the unemployed are two sides of the same coin in our context. Regarding those that do not work, there is a preliminary question about the definition of working and thus the extent to which non-workers are considered to be workers and the level of protection afforded by international conventions. Domestic workers, volunteers, and unpaid interns, have remained outside the ILO Conventions and are thus not covered by social security schemes for example.<sup>193</sup> Domestic work is excluded from these Conventions on the condition that an obvious condition to 'decent' work is a salary. This disproportionately affects women since they perform most of the domestic work across all cultures, age groups and social classes.<sup>194</sup> Domestic work entails costs, and foregone opportunities to engage in paid work, study, or simple enjoyment of leisure time.<sup>195</sup> There is also uncertainty regarding people who do not work because of circumstances that are not recognised as justified under human rights law or the right to social security, such as those who are unable to work because they suffer from emotional difficulties or are the primary caregiver for a family member. Such portions of the demographic are not covered by international conventions either.

In regard to the employed, employment does not necessarily promise human dignity.<sup>196</sup> Considering work as a means of alleviating poverty may revert the conversation to the narrow view of work as an economic necessity that ensures human dignity. According to this argument, it is more detrimental to one's autonomy or self-esteem to beg for assistance as opposed to work, which may be unpleasant, but most people prefer it so that they can meet their essential needs and be treated with dignity. Nickel talked about the 'humiliating trilemma of starvation, a life of crime, or dependence' when one does not

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<sup>192</sup> Eide, Krause & Rosas (n 83) 133.

<sup>193</sup> UN Committee on Economic, Social and Cultural Rights, 'Right to just and favourable conditions of work (Article 7 of the International Covenant on Economic, Social and Cultural Rights) Draft' (20 January 2015) UN Doc E/C.12/54/R.2.

<sup>194</sup> Shahra Razavi, 'The 2030 Agenda: Challenges of Implementation to Attain Gender Equality and Women's Rights' (2016) 24(1) *Gender & Development* 25, 31.

<sup>195</sup> *ibid* 31.

<sup>196</sup> Collins (n 42) 29-32.



work.<sup>197</sup> However, the worth of life extends beyond the liberty to work.<sup>198</sup> More broadly, the pursuit of work is not simply economic in nature — ‘all human beings ... have the right to pursue ... spiritual development in conditions of freedom and dignity’.<sup>199</sup> Work engenders the development of human competencies, enhancing self-confidence. Conversely, a perceived lack of meaning in one’s employment diminishes cognitive capabilities and self-worth.<sup>200</sup> As the sociologist E. Perry explains:

When a garbage-man feels stigmatised by the work he does ... the stigma shows in his eyes ... to avoid contaminating us with his lowly self. He looks away; and we do too. Our eyes do not meet. He becomes a non-person.<sup>201</sup>

It is questionable whether those workers possess an adequate standard of living.

Though beyond the scope of this article, it is questionable if labour rights tackle economic insecurity and effectively respond to the deficiencies of the global labour market.<sup>202</sup> This question is more relevant considering that labour rights are influenced by the IMF and the World Bank, whose liberalisation measures have reduced the ability of states to secure work-related rights,<sup>203</sup> and most of the world's poor are employed but have low earnings.<sup>204</sup>

Therefore, to genuinely affirm human dignity, it should be considered separately from the right to work, which could enforce accountability on the part of the state. The German Federal Constitutional Court (*Bundesverfassungsgericht*) ruling on the case of ‘Hartz IV Legislation’<sup>205</sup>

<sup>197</sup> *ibid* 18-19.

<sup>198</sup> Mundlak (n 72) 344.

<sup>199</sup> Article 1(a), 2(a) ILO Declaration of Philadelphia.

<sup>200</sup> Andrea Veltman, ‘Is Meaningful Work Available to All People?’ (2015) 41(7) *Philosophy & Social Criticism* 725, 726-727.

<sup>201</sup> Stewart E Perry, *San Francisco Scavengers: Dirty Work and the Pride of Ownership* (University of California Press 1978) 7.

<sup>202</sup> OHCHR (n 4) para 13.

<sup>203</sup> Kallstrom and Eide (n 57) 508.

<sup>204</sup> Balboni and others (n 186) 786.

<sup>205</sup> Bundesverfassungsgericht [BVerfG] [Federal Constitutional Court] Feb. 9, 2010, 175 *Entscheidungen Des Bundesverfassungsgerichts [BVERFGE]* (Hartz IV) 1, 125 (Ger).

demonstrates this point by establishing a constitutional right to a 'subsistence minimum' based on the declaration of human dignity in Article 1(1) of the Basic Law in conjunction with the Social Welfare State Principle in Article 20(1).<sup>206</sup> The court found that the provisions relating to standard benefits are unconstitutional due to the lack of underlying statistical research by the legislature that proves their adequacy to human dignity,<sup>207</sup> and that the legislator should respect and positively protect human dignity.<sup>208</sup> The new right cannot provide quantifiable requirements, but it does require a review of the basis, calculations, and method of the assessment of benefits to ensure that they do justice to the fundamental right to dignity.<sup>209</sup> The court found that the procedure used to determine the benefits violated the constitution.<sup>210</sup> Notably, the court found that the minimum standard is not as minimal as one would expect. It includes physical survival (food and water), minimum participation in human interaction (covering phone bills for example), and participation in cultural and social life (subsidising sports clubs and going to the cinema), although as we get further from the core right more discretion is afforded to the state.<sup>211</sup> The court even ruled that every expense that is reduced should be justified by data.<sup>212</sup> Furthermore, benefits are calculated not only by reference to net income, like the principle of 'less eligibility', but rather according to 'consumption and the cost of living'.<sup>213</sup> Consequently, it does not matter whether one is employed, and indeed the question does not arise; neither does the link between dignity and employment. A simple objective of the inquiry is to determine what one needs to live a dignified life.

The court used the so-called 'Object Theory' (*Objektformel*), which stipulates that human dignity prohibits treating human beings as mere objects.

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<sup>206</sup> Grundgesetz für die Bundesrepublik Deutschland (adopted 23 May 1949).

<sup>207</sup> *ibid* [137]-[146], [220].

<sup>208</sup> *ibid* [133]-[134].

<sup>209</sup> *ibid* [142].

<sup>210</sup> Stefanie Egidy, 'Casenote — The Fundamental Right to the Guarantee of a Subsistence Minimum in the Hartz IV Decision of the German Federal Constitutional Court' (2011) 12(11) *German Law Journal* 1961, 1962.

<sup>211</sup> Claudia Bittner, 'Casenote — Human Dignity as a Matter of Legislative Consistency in an Ideal World: The Fundamental Right to Guarantee a Subsistence Minimum in the German Federal Constitutional Court's Judgment of 9 February 2010' (2011) 12 *German Law Journal*, 1941, 1952; Hartz IV (n 205) [135], [138].

<sup>212</sup> Hartz IV (n 205) [175].

<sup>213</sup> *ibid*, [183]-[187].

There is no need to examine one's achievements or social status to guarantee entitlement to human dignity.<sup>214</sup> According to this principle, individuals who do not follow certain societal norms or expectations are not stigmatised and are seen as equal to others. The ruling focuses on societal conduct affirming individual dignity by virtue of being human instead of providing resources to support individual participation in the workforce, although the latter is not redundant.

Generally, the court frames 'human dignity' as distinct from social status. Through this, the state does not 'give human dignity to the poor', but instead merely enables 'every individual to lead a life of self-determination and autonomy'.<sup>215</sup> The court ruling was labelled as an example of the 'Communitive Theory': the idea that human dignity is a relational and communicative concept derived from social recognition, which promotes intersubjectivity and is closely tied to one's sense of belonging within a national community.<sup>216</sup> The right to work was similarly conceptualised by Blanc as active participation in a society that was intersubjective. Moreover, it was ruled that benefits cannot be denied, even if the person in need is responsible for creating that need.<sup>217</sup> It is interesting to note that throughout this article, the right to work was seen as a right that enables one to participate in society, attain a social role, and promote self-development. In this ruling, the court demonstrated that one does not have to earn their place in society, but rather that the right to an adequate standard of living opens the gates to society simply by virtue of one's human dignity. The state does not allocate charity, but rather allows all to live dignified and autonomous lives. Human dignity is not earned; it is axiomatic.

The court thus turned human dignity into a socio-economic right belonging to every person.<sup>218</sup> Resolving the issue of socio-economic rights, as well as the accountability concerns that arise alongside them, is important to the right to an adequate standard of living. For example, it was already recommended in general to use the term 'violation' of socio-economic rights only when a legal obligation exists and failure to uphold it can be proven. There are many bleak economic situations, and there is a reluctance to undermine the

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<sup>214</sup> Egidy (n 210) 1969.

<sup>215</sup> *ibid* 1970.

<sup>216</sup> Bittner (n 211).

<sup>217</sup> Egidy (n 210), 1972.

<sup>218</sup> *ibid*, 1951.

seriousness of allegations about rights violations.<sup>219</sup> However, the right to an adequate standard of living remains a vague obligation in international law, while poverty is a multi-sectoral issue without a singular cause and solution.<sup>220</sup> Socio-economic rights are already conceived of as secondary to civil and political rights, since they place a financial burden on the state.<sup>221</sup> However, this separation between socio-economic rights on the one hand and civil and political rights on the other is artificial, since it was also recognized that infringement of socio-economic rights affects the civil and political rights of, for example, the homeless that suffer from a lack of privacy arising from no shelter.<sup>222</sup>

However, the German court's judgment is a prime example of providing government assistance and safeguarding the right to an adequate standard of living, instead of targeting the underlying causes of poverty. This reveals the prevalence of redistributive measures as opposed to addressing pre-distribution conditions. Encouraging fruitful discussions about human dignity and the eradication of poverty is a challenge within the current framework. States must prioritise allocating resources to tackle poverty but not feel pressured to forgo their other aims.<sup>223</sup> Additionally, property protection is accorded axiomatic value.<sup>224</sup> Thus, it is imperative to restructure either the nature of discussion, the nature of property rights or institutional priorities.

The first stage would be to disentangle the meaning of human dignity from working conditions. This suggestion is presented briefly and is not intended to be a comprehensive policy solution. At this stage, this article seeks to focus more on examining the problem instead of providing a solution. This is aimed at catalysing future discussion.

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<sup>219</sup> Scott Leckie and Anne Gallagher (ed), *Economic, Social, and Cultural Rights: A Legal Resource Guide* (University of Pennsylvania Press 2006) xvii.

<sup>220</sup> UN Economic and Social Council (25th Session), 'Statement on Poverty and the ICESCR' (4 May 2001) UN Doc. E/C.12/2001/10 para 9.

<sup>221</sup> Kallstrom and Eide (n 57), 495.

<sup>222</sup> Chinkin (n 172), 574-575.

<sup>223</sup> Peter Uvin, *Human Rights and Development* (Kumarian Press 2004), 184-194.

<sup>224</sup> John Linarelli, Margot E Salomon, and Muthucumaraswamy Sornarajah, *The End of Empire and the Search for Justice – NIEO and Beyond* (Oxford University Press 2018), 99.

There is a significant relevance to Nussbaum's discussion regarding the Capabilities approach and Sen's subsequent contribution thereto.<sup>225</sup> Human capabilities are interpreted as the inquiry about what people *can do and be*, constructing intuitively a life worthy of the dignity of a human being.<sup>226</sup> There is a separation between capabilities, which are political goals that governments ought to promote, and the precise functioning of those capabilities, which entails the choice of citizens on whether and how they ought to pursue those capabilities.<sup>227</sup> A just society should shape public policy in order to secure the actual capabilities, and the ability to exercise them. For example, securing the right to political participation will not only involve giving people the right to vote, but also asking if the people are in a position to exercise this right. When, for example, a woman is violently threatened to not leave her home, even if she is conceptually accorded the right to vote she is practically incapable of exercising such a right.<sup>228</sup> In view of this logic, recognising a right to an adequate standard of living is insufficient if people lack the necessary material and emotional resources to exercise it.

This approach might make us reconsider our perceptions regarding property rights. The nature of property rights changed following the right to work, allowing one to accumulate property in exchange for labour. It changed when slavery was abolished and when human beings were no longer considered property. Therefore, we should consider new ways of consuming, or new ways of organising society, so that everyone is able to meet their needs and live in dignity.

## CONCLUSION

Any class system theoretically allows mobility. However, the odds are stacked against it. Children are likely to end up in the same economic quintile as

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<sup>225</sup> The capabilities approach was first mentioned in Amartya Sen, *Development as Freedom* (Oxford University Press 1999).

<sup>226</sup> Nussbaum provides an elaborated list of capabilities that is beyond the scope of this paper, but to complete the argument those are their titles: Life, Bodily Health, Bodily integrity, Sense, Imagination and Thought, Emotions, Practical Reason, Affiliation, Other Species, Play, Control Over One's Environment: Martha C. Nussbaum, 'Capabilities as fundamental entitlements: Sen and social justice' (2003) 9(2-3) *Feminist Economics* 33, 40-43; Martha C. Nussbaum, *Women and Human Development: The Capabilities Approach* (Cambridge University Press 2000), 5.

<sup>227</sup> Nussbaum 2000 (n 224), 12.

<sup>228</sup> Nussbaum (n 224), 37-40.

their parents.<sup>229</sup> In terms of substantial methods of poverty eradication, the main responsibility, according to human rights law, is on individuals to pull themselves out of poverty and overcome structural obstacles. This article does not claim that we are in the era of the Poor Laws. Impoverished people today are not placed in a workhouse, but rather, they are on the streets, working indecent jobs, neglected by social security, or trapped in the poverty cycle, despite being conceptually entitled to a holistic human rights framework. Originally conceived of as a right to allow the little man to shape the market, the socialist right to work was interpreted within a capitalist view of individualism as a right to waged work and decent working conditions. In the event of job insecurity, the right to social security does not protect all and is limited in its influence. At the national level, the right to an adequate standard of living, without substantially agreeable methods of implementation, is being interpreted as the right to social security. This creates ambiguity regarding when the state should intervene, and places the primary responsibility on the individual to act and work to alleviate poverty. Most importantly, it centres on the question of whether someone is employed and what their working conditions are, rather than the question of facilitating human dignity by virtue of their humanity.

Therefore, we should consider whether the right to an adequate standard of living, if it even exists, fits in with our overall narrative, or, in the absence of a clear answer, whether the narrative ought to be modified instead.

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<sup>229</sup> Rivera (n 3).