The International Journal of Human Rights
2012, 1–21, iFirst

Worth what we decide: a defense of the right to leisure

David L. Richards[a*] and Benjamin C. Carbonetti[b]

[a]*Department of Political Science & Human Rights Institute, The University of Connecticut, Storrs, CT, USA;* [b]*Department of Political Science, The University of Connecticut, Storrs, CT, USA*

One of the most routinely philosophically and politically attacked sections of the Universal Declaration of Human Rights (UDHR) is article 24: 'Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.' Defending against these attacks is important. For example, only the USA and Somalia, among UN member states, are not parties to the UN Convention on the Rights of the Child (CRC). One reason for the USA's status is political opposition to CRC article 31, which maintains 'States parties recognize the right of the child to rest and leisure….' Our article defends article 24 from well-known criticisms. We maintain rights are social constructs and, as evidence of social construction, we provide a genealogy of article 24. We also address the social psychology of rest/leisure and trends in actual state practice.

Keywords: Adequate Rest and Leisure; Universal Declaration of Human Rights

Introduction

The post-WWII framework of internationally recognised universal human rights enshrined in the 1948 United Nations Universal Declaration of Human Rights (UDHR) has certainly experienced a range of criticisms. These have varied widely from former Prime Minister of Singapore Lee Kuan Yew's cultural relativist charge that UDHR-based human rights are essentially a political imposition of Western values[1] to philosopher Richard Rorty's critique that the notion of universal human rights is founded on sentimentality and is no-more rationally defensible than the values of those who would seek to pervert the goals of the UDHR.[2]

One of the most routinely attacked sections of the UDHR is article 24, which states 'Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.' Critics such as Cranston[3] famously, among many others, have labelled this right – particularly the component about paid holidays – as derivative rather than fundamental, and 'clearly the least-defensible of the social rights listed in the UDHR'.[4] Indeed these critics seem to hold up this right as an example of what is wrong with current conceptualisations of human rights. We see these philosophical attacks on the right to leisure being of great importance, as their spirit carries over into the political sphere. For example, the United States of America and Somalia are the only two United Nations (UN) member states not to have become a party to the UN Convention on

*Corresponding author. Email: david.l.richards@uconn.edu

ISSN 1364-2987 print/ISSN 1744-053X online

http://dx.doi.org/10.1080/13642987.2012.720976
http://www.tandfonline.com

the Rights of the Child (1989)(CRC). One of the main reasons for the United States' non-party status is conservative political opposition to article 31 of the CRC that maintains 'States parties recognise the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child. . ..' Opponents of this article maintain that it creates a 'legally enforceable right to leisure' for children.[5] A broader opposition to this right may be deduced from opposition to article 31, since we would not assume that any legally enforceable right for the betterment of children's lot in life would be repugnant. Thus, there likely exists an opposition to the larger right to leisure in the UDHR. At the end of the day, whether one supports or opposes this right, it is undeniably of political importance.

Our goals in this article are primarily twofold. The first is to defend UDHR article 24 from some well-known criticisms. The second, is to implicitly suggest a common understanding of the right to leisure as being essentially a workers' right that emerged from the identification of a threat to human dignity – overwork. To these ends, we draw on both communitarian and liberal principles, maintaining that rights are social constructs and, as evidence of this notion of social construction in this particular case, we provide a genealogy of article 24. Our implicit defence of the right to leisure is also informed by both the social psychology of rest and leisure (demonstrating the fundamental importance of the right to both mental and physical health) and trends in actual state practice (demonstrating that state respect for this right in practice is neither impossible, impractical, nor universally undesirable). From our examination, we conclude that not only are the rights in UDHR 24 equal to all others in their contributions towards human dignity, but that their inclusion in the UDHR, and debates around their conclusion, says something much larger about the very nature of the idea of modern human rights itself – that, ultimately, we are worth only as much as we decide we are worth.

Criticisms of UDHR 24

In this section we outline some well-known critiques of the rights to rest, leisure and paid holidays and then address those critiques by arguing that the contribution of these rights to human dignity are equal to that of any others set out in the UDHR. By defending these rights we are also defending the 'universal declaration model', which posits that all rights outlined in the UDHR are part of an 'interdependent and indivisible whole'.[6] However, unlike Donnelly, we do not employ the Rawlsian[7] idea of overlapping consensus as our justification for this model. Rather, we adopt an argument much closer to the work of Walzer,[8] Gewirth,[9] and others who make the case that rights are inherently social creations derived from membership within a particular community.

Conceptualisation

Arriving at a common understanding of a term is essential for further debate about the concept the term represents. And, indeed, such conceptual debates abound in human scholarship, advocacy and practice. For example, the practice of torture is almost universally condemned, in the general sense. Yet arguments exist over the definition of 'torture' in the form of disagreements about whether particular individual practices constitute torture proper.[10] So, United Nations-based entities such as the Committee against Torture exist to help make authoritative conceptual interpretations of treaty language (among other things) (http://www2.ohchr.org/english/bodies/cat/). We find ourselves on somewhat novel ground regarding UDHR article 24, however, as critiques of these rights do not

explicitly make the definitions of the terms 'leisure', 'rest' and 'paid holidays' part of their critique. This is disappointing as doing so would seem helpful since the Committee on Economic, Social, and Cultural Rights has made no general comments on the thematic issue of leisure, rest or paid holidays (http://www2.ohchr.org/english/bodies/cescr/comments.htm). Thus, there is no common conception of these terms that may be formally assumed.[11] To understand critiques, therefore, we assume that critics of the rights to leisure/rest/paid holidays view these rights as either (a) unnecessary for human dignity, (b) too expensive from a cost/benefit perspective, and/or (c) something undeserved by some constituency of humans, regardless of purpose or cost.

Critiques

Arguments against the right to adequate rest and leisure come mostly in two forms. Following Kunneman,[12] we call the first of these the reductionist critique. This critique attacks not only the right to adequate rest and leisure but also economic, social and cultural (ESC) rights as a whole. Reductionists claim that ESC rights are not only impractical and impossible to fulfil as rights, but also that they are of a fundamentally different nature than Civil and political rights (CP), and therefore are not rights at all.[13] The second line of attack is more implicit, involving a different sort of reduction we call essentialism. Scholars have made many attempts to reduce the full list of human rights in the UDHR into shorter lists of 'basic rights'[14] or 'universal rights'.[15] These accounts attempt to 'trim the fat', so to speak, by developing a list of those human rights considered essential, from which all other rights are derived. In this article we first engage reductionist challenges, we then challenge essentialism by maintaining that rights are social constructions and, therefore, cannot be prioritised one over another on any foundational basis.

Reductionist critiques

Arguing against the right to leisure as being impractical to fulfil is most often associated with Maurice Cranston,[16] perhaps the most well-known critic of ESC rights. Although an ardent defender of the idea of human or natural rights, Cranston takes great issue with the entire subset of ESC rights, particularly the right to 'periodic holidays with pay' (included in UDHR article 24). He argues that a right with universal applicability must be made distinct from ideals and that to conflate the two damages the very concept of human rights. Claiming ESC rights make no sense, he proceeds to make the case that these rights fail to satisfy his definition of a human right, 'something that no one, anywhere, may be deprived of without a grave affront to justice'.[17] Unsurprisingly, Cranston defends mainstream civil and political CP rights such as the rights not to be enslaved, extrajudicially killed, or tortured, as well as to vote, engage in free speech, and have fair trials, among others, to be 'true' rights.

For Cranston, CP rights pass a three-pronged test of practicability, universality and paramount importance, whereas ESC rights do not. The first test, practicability, posits that for something to be a right it must correspond to a practical and clearly prescribed duty. This duty must represent a reasonable demand on the duty-bearer. 'Rights bear a close relationship to duties: and the first test of both is that of practicability', Cranston writes, 'It is not my duty to do what it is physically impossible for me to do'.[18] He claims that economic rights, due to their high cost, are largely impossible to fulfil and therefore cannot be considered human rights. To demonstrate that CP rights are more practical than ESC rights he asserts that they have a negative nature, as they 'for the most

part. . .require governments, and other people generally, to leave a man alone'.[19] Thus, they are relatively easy to institute, per Cranston, but the positive actions required for things such as social security and holidays with pay are impossible for most of the countries in the world due to their lack of industrialisation and resources.[20]

Economic rights also fail Cranston's second test of universality because, he argues, they are earned, rather than inherent, and therefore can only belong to a 'class of people'. So, for example, holidays with pay can only be granted to those workers who are, by definition, paid in the first place for their work. For Cranston, this feature of the right to holidays with pay means that the right to holidays with pay is, by definition, not universal.[21] Cranston's third critique of ESC rights is they do not rise to the same level of paramount importance as CP rights. This critique is discussed in the next section of the article.

Ignatieff,[22] like Cranston, also believes in the primacy of CP rights over ESC rights, and does so primarily on 'pragmatic' grounds. He claims that universal rights are those rights that protect agency and that the most important and universally acceptable rights are a minimal list of CP rights. For Ignatieff, a minimalist approach to rights solves some of the major political problems associated with rights: Western exceptionalism and imperialism.[23] Exceptionalism exists because the West fails to hold itself to the same human rights standards to which it holds others, and imperialism exists because expansive lists of rights do not allow for non-Western societal and cultural variation. Exceptionalism is damaging to rights, according to Ignatieff, because the world lacks clear standards of when it must take action to ensure that rights are protected. This form of hypocrisy has the effect of undermining the legitimacy of rights. Imperialism is a problem for human rights, because rights that seem to be a Western construct, reflecting Western values, are distasteful and unfair to many other cultures, societies and peoples. Thus, a comprehensive list of rights, that includes many ESC rights, makes it extremely difficult for a worldwide consensus, and therefore undermines what Ignatieff sees as the entire project of human rights – protecting human agency. A minimalist standard that embraces mostly negative rights (those requiring only government forbearance for respect), on the other hand, affords different societies the maximum cultural and societal leeway to institute the rights as they see fit, and draws a clear line in the sand about what rights are non-negotiable. Therefore, for Ignatieff, a minimalist standard solves the problems of both exceptionalism and imperialism.

Reductionists see ESC rights as different types of rights, that is, substantively different in value than CP rights. This notion is not held by all critics of the right to leisure and it is explicitly rejected by the essentialists discussed in the following section. Like Cranston, Ignatieff is a classic reductionist because he sees most CP rights as negative, and sees ESC rights, like the right to adequate rest and leisure, as requiring positive and impractical action by states ill-equipped to institute them. Furthermore, he sees CP rights as generating a clear cause of action for the international community when violated, whereas ESC rights, due to the impossibility of immediately realising many of them, are unclear and undermine the whole effort of human rights. Finally, he sees minimalist rights as being the most politically palatable, a pragmatic argument for rights that is not in any way derived (contra-essentialists) from the underlying foundation he supplies – protecting human agency.[24]

Essentialist/foundational critiques

We label as 'essentialists' those who attempt to create shortlists of 'basic' or 'universal' rights that diverge from the comprehensive list in the UDHR. While Cranston's work is reductionist, essentialist scholars nonetheless employ a concept akin to his idea of 'paramount importance'. This is the idea that all rights must satisfy the commonsense criterion

that no other right can be considered more important than the one under consideration. He quips, 'common sense knows that fire engines and ambulances are essential services, whereas parks and holiday camps are not'.[25] He claims the provision of these goods would be a moral virtue, but would not constitute the moral duty necessary for a human right.

Two works of the essentialist school are particularly illustrative: Shue's *Basic Rights* and Talbott's *Which Rights Should be Universal?*. Perhaps the most well-known attempt to develop an essential list of rights is Shue's 'basic rights' to subsistence, security, and some liberty rights.[26] His inclusion of subsistence rights as 'basic' differentiates him from other human rights scholars, particularly reductionists, because it acknowledges that some ESC rights are just as important as some CP rights and that without them CP rights are empty, and vice versa. This basic recognition that someone who is starving is unlikely to care about the right to participate in politics is a long-standing argument against Cranston's position that CP rights are the only rights of paramount importance.[27] Furthermore, Shue takes great pains to deny the principle held by some that CP rights are negative in nature and ESC rights are inherently positive. He claims both positive and negative actions must be taken to ensure both forms of rights, such as paying for police and courts to ensure security rights and refraining from polluting food sources to ensure subsistence rights.

A slightly more comprehensive essentialist account of human rights is offered by Talbott.[28] He attempts to identify a basic and universal list of rights that avoids moral imperialism while also not falling prey to charges of moral relativism. To do this, he adopts what he calls the 'equilibrium model' for justifying universal moral principles. This model strikes a balance between what he calls the 'proof' model, which stems from finding an immutable foundation for moral principles, and the 'inductive' model which takes behaviour and assumes moral principles from it. The top-down proof model approach is the favourite straw man of moral sceptics who challenge moral foundationalists to prove why anyone should behave morally. The bottom-up inductive model regards empirical evidence as the only way to justify morality, and allows relativists to argue that the rampant violation of rights is proof these rights do not exist in various societies. Talbott claims his equilibrium model strikes a balance between these two positions by incorporating the empirical facts from the bottom, while also taking from the top the position that universal principles do exist:

> On the equilibrium model, the goal is to have one's beliefs make the most sense, all things considered. On this standard, moral skepticism is not the default position. It must be justified as making more sense than any of the alternatives. I myself do not see how it could make more sense to believe that nothing (e.g., not even typical cases of genocide or torturing children) is morally wrong than to believe that at least some things are morally wrong.[29]

The equilibrium model then dictates engaging in a combined inductive and deductive approach towards identifying a list of universal rights. The inductive element to this approach makes it epistemically modest because it does not say that morality exists independent of society or exists perfectly, rather it is the best identification of a historically contingent understanding of universal moral principles. Therefore, Talbott requires for the most part that we respect popular sovereignty, which allows for societal variation in implementation and enforcement of rights, while also arriving at a set of rights that exist prior to domestic law. To do this he adopts the standard of 'minimal legitimacy',[30] which is the idea that sovereignty is contingent on the fact that certain rights necessary for a minimally legitimate

government must be protected. This conception of basic human rights holds that they exist primarily against the government[31] and a basic list of nine rights is derived from a consequentialist account of how they are necessary for ensuring human autonomy.[32] Ultimately, Talbott's approach makes it difficult to imagine deeming as legitimate any country that is not a liberal democracy where individuals are largely endowed with the freedoms and capabilities to decide what is best for themselves.[33]

At first glance, Talbott's approach seems similar to Ignatieff's[34] reductionist account of minimalist rights, in that Talbott obviously favours CP rights over ESC rights. However, Talbott does three things Ignatieff does not. First, he does more to justify why his rights stem from his foundation of human autonomy. Second, he does not make an argument that only those rights that are easy or practical to fulfil are actually rights (e.g. negative rights). He includes ESC rights in his list of universal rights. Third, like Shue, he includes rights to subsistence and also children's rights to what is necessary for 'normal development' (which presumably would include nutrition and education, among other things).[35] However, despite Talbott's inclusion of some ESC rights, he makes no mention of rest and leisure in his list of universal rights, although we doubt he would reject them as important. As with Shue, he sees ESC rights as derivative rather than of a universal nature and of equal importance to all others in their contribution to dignity. We find this neglect of rest and leisure endemic to most accounts of rights in general and now move to our attempt to defend the right against both reductionist critique and essentialist neglect.

A response to criticisms of UDHR 24

Our response to the critics of the right to adequate rest and leisure comes in three parts: the social psychological importance of this right, the legality and implementation of this right in practice, and the view of the right as a social construction like all other rights.

Social psychology

A large body of social psychology clearly demonstrates the right to rest and leisure to be of fundamental importance to many other rights, including both CP rights and those labelled as 'primary' by reductionists. Interestingly, not even all reductionist human rights philosophers recoil from the idea of the right to leisure being primary (nonetheless equal). For example, Finnis[36] cites 'play' as an 'essential' right that, once security of life itself is guaranteed, is of fundamental importance towards well-being. It is actually a long-standing view[37] that leisure is not an idle waste of time or a mere absence of, or recovery from, work but, rather, necessary for a life of 'dignity' as commonly defined vis-à-vis 'human rights'. The right to leisure has been tied by a long line of empirical studies to individuals' improved overall 'well-being'.[38] By 'well-being' we refer to both the eudaimonic variant addressing one's ability to actualise his/her own potential[39] as well as Nussbaum's integration of agency and hedonic well-being (e.g., subjective happiness, and/or satisfaction), which includes ESC rights such as health.[40]

Further, the positive effect of leisure has been demonstrated upon cognitive and behavioural capacity linked to general psychological coping mechanisms, including constructive recovery from negative life events,[41] free expression and creative capacity,[42] providing the necessary environment for human development and self-actualisation,[43] happiness,[44] overall life satisfaction.[45]

While our historical analysis later in this article will show the right to rest and leisure being considered a 'worker's right', thought by its framers to be positively correlated

with societal peace, it is wise to keep in mind that the absence of attention to children's right to leisure (e.g., Article 31, UN Convention on the Rights of the Child) has been shown to be associated with an increase in behaviours that threaten constructive satisfaction of basic needs/psychological development.[46] The field of therapeutic recreation has called leisure the 'morally correct purpose of therapeutic recreation' and made claim on its primacy as a human right.[47] We maintain that keeping this in mind is 'wise' because we would argue that deficiencies in exercising the right to leisure as a child might contribute towards aggressiveness and destructive needs fulfilment that could well lead to violence or some other threat to others' human dignity as an adult.

Intergenerational transmission (cycle of violence) theory, for example, offers an indirect causal path where lack of leisure/recreation as a child could lead to later degradations in human dignity among adults. A child negatively meeting basic needs because of a lack of leisure/recreation may act out aggressively, or even violently, against other children, and in front of other children. This is important because the more one experiences or witnesses aggression/physical punishment as a child, the greater the probability one commits spousal and/or child abuse later on in life[48] – even when controlling for other factors such as socioeconomic status, age, gender and others.[49] Children victimised by such behaviour have an approximately $>30\%$ chance of inflicting violence on a child or partner of their own later on in life, whereas the general population has only a 2%–4% chance of doing so. The possible path from lack of leisure/recreation as a child to degradation of adult dignity may be indirect, but it is clear.

Law and practice

The argument used by reductionists that leisure is not a human right because it cannot be practically implemented is a relatively weak one. First, the idea that only those rights that can be enforced are true rights is subject to several powerful theoretical critiques. Harvey's[50] conception of human rights as being aspirational, contingent, and evolutionary, is a way to reject implementation-based critiques without relying totally on moral naturalism. Harvey argues that law, such as human rights documents and treaties, define goals of particular societies in particular contexts. These goals are then often gradually realised or discarded, but until they are completely rejected they represent real legal claims and obligations for individuals, even if the enforcement mechanisms are imperfect.

For Harvey, the empirical record bears out the real but gradual nature of right implementation. Harvey points out that the famous claim, 'all men are created equal', was not immediately realised, but has been gradually instituted over hundreds of years and continues today.[51] The delay in implementation makes the claim no less legitimate. The right to adequate rest and leisure has endured a similarly circuitous – albeit shorter – path to statutory reality. Currently this right is being incorporated into domestic law at an ever-increasing rate, suggesting that it simply required better institutional circumstances before it could be realised.

Examples of domestic enshrinement and enforcement of the rights outlined in UDHR article 24 abound. Indeed, according to a report by the International Labour Organization nearly all states have statutory limits on weekly work time.[52] First, as will be discussed in depth later, many Latin American constitutions contain explicit references to entitlements to leisure. Additionally, international and domestic courts in Europe have consistently ruled that leisure must be protected as a right, and largely protected in the way that the UDHR prescribes, including a right to periodic holidays with pay. The European example is

illustrative of the power of the declaration model as a driving force behind the domestic implementation of the right to leisure.

In 1993, the European Council and Parliament issued a directive 'concerning certain aspects of the organization of working time'.[53] This directive laid the groundwork for what would ultimately become a set of EU wide minimum standards for adequate rest and leisure. Per agreements associated with joining the EU, countries are required to incorporate these directives through domestic legislation, following parliamentary approval. The core elements of this directive included limits on average hours worked in a week (48 hours), daily rest (11 hours), breaks, limits on night work (8hrs) and four-weeks annual paid holiday. The stated purpose of the directive was to protect the health and safety of employees, and it applied to both part-time and full-time employees, but not those who are self-employed.[54] Exceptions also included those workers in sectors of activity that involved transport, sea-fishing, and 'doctors in training'.[55] In 2003, another directive was issued by the European Council and Parliament that clarified abuses to these exceptions, as well as prohibiting ways that employers were derogating minimum standards for rest, such as classifying workers as temporary, or counting holidays against sick time.[56]

Despite the relatively specific nature of the work time directives, countries are left on their own to determine how the rest requirements are to be implemented domestically. For example, as of 2008, regarding paid time off, countries ranged from Austria's requirement of 43 days off (including holidays) to the UK's and the Netherlands' requirements of only the minimum of 20 days off with no guaranteed holidays.[57] Limitations on the hours worked during a week also varies by country, with France being the most generous (35 hours) and the UK using the maximum allowable under the work time directive (48 hours).[58]

It may be tempting for critics of the right to adequate rest and leisure to call these legal examples the exception that proves the rule. However, accepting this line of reasoning is tantamount to arguing that only those human rights that are legally incorporated in any country are actually universal. As Sen points out, rights are 'ethical demands' rather than legal ones and, while they often 'inspire legislation this is a further fact, rather than a constitutive characteristic of human rights'.[59] For Sen, universal human rights are rather those that would survive 'unobstructed discussion' where information is widely available.[60] Indeed, the United States is the only 'advanced economy in the world that does not guarantee its workers paid vacation'.[61] Yet, it is hard to imagine US citizens agreeing that one should be expected to work around the clock and not enjoy vacation in order to simply keep one's job. Therefore, these examples are not meant to 'prove' that the right to adequate rest and leisure is 'real' or 'right', rather they illustrate that it is both possible and practical to legally implement a right to adequate rest and leisure at both the international and domestic level.

Finally, despite the fact that most countries have statutory limitations on work, there is, as with many human rights, a wide gap between law and practice. While one might expect that the lack of fulfilment of the rights outlined in UDHR article 24 would be much more prevalent in developing countries – due to the exploitation of their comparative advantage of cheap labour and poor regulation – the ILO report on working time indicates this is not necessarily the case. Some developed countries notable in their high rates of hours worked and low rates of guaranteed leisure time include the United States and the United Kingdom, along with many of the developed states in Southeast Asia.[62] Moreover, the report notes that as more states transition to service economies and the international labour market in the service sector increases, there is a risk of downward pressure on laws designed to protect labourers from being overworked.[63] This observation casts extreme doubt on the argument that the fulfilment of the right to adequate rest and leisure automatically

accompanies economic growth and development, and is therefore derivative of a right to development, for example.

Examples of the non-fulfilment of a right to adequate rest and leisure in both developed and developing countries are legion. In the United States, many studies have concluded, the number of hours worked is increasing for many workers, while at the same time workers are losing many of the statutory protections afforded them in acts like the Family Medical Leave Act of 1993. This occurs because many employees are being classified as part-time employees or temporary employees and therefore are not protected by many of the labour laws for limited time worked.[64] Further exacerbating this problem are circumstances like the current economic recession, which puts downward pressure on wages and hours, forcing non-full-time employees to work several jobs to provide for their basic subsistence. In developing countries the problem is often even starker due to the often hazardous and deplorable conditions and long hours associated with some forms of labour. Moreover, fulfilment of the right to adequate rest and leisure is regularly absent in the informal sector due to its existence outside of legal regulation. The informal sector is much larger in developing countries and exposes workers to exploitation including long hours or forced labour, abuse and violence.[65] Even workers in the formal sectors often become targets for abuse and violence when they demand better working conditions and for statutory limits on working hours to be enforced. According to a World Health Organization (WHO) report, long hours, hazardous work and other factors contribute to work-related stress to a much higher degree in developing countries, due to the poor living conditions outside of work, and the lack of infrastructure to deal with the problem itself.[66]

In the end, the necessity of the right to adequate rest and leisure is most conspicuous in its absence. As forces such as globalisation put pressure on much of the global labour force to work harder for longer hours, governments and workers themselves are left to grapple with the costs and benefits of work time. These costs are often initially unclear, but will be discussed at length later in the article.

Rights as social constructs

The right to adequate rest and leisure is a good illustration of the way that human rights theory and practice are united. As shown above, this right is typically either criticised directly as being either damaging to the whole human rights project, or too superfluous to even mention in a serious list of basic or universal human rights. Therefore, we are left with the task of demonstrating how and why it is a universal right, equal to others, and how it fits logically with current conceptions of rights. We argue that all human rights are social constructs, and that the process through which the right to adequate rest and leisure was included in the UDHR is evidence of our case.

Taking a constructivist stance on the right to rest and leisure, and indeed all rights, is obviously sympathetic to a communitarian account of the origins of rights being vested in society and community. However, we certainly do not mean to imply that we agree with more extreme communitarian critiques of individual rights and liberalism.[67] Rather, we view individual rights, and the duties they imply, as historically contingent and dynamic reactions to various factors such as new risks to social welfare and human well-being. Such a conception of human rights reflects the relational turn in much of the rights-theory literature. Scholars like Taylor and Gewirth demonstrate that human rights are relational in that they only exist as a function of the human requirement to exist socially.[68] They are required in order to assure human beings can function as 'purposive agents'.[69] Similarly, Hart[70] asserts that even if most moral rights are non-existent, the

right to be free to choose, or act as an agent in a society or community is certainly an existent moral right. Furthermore, Hart argues that a number of rights are necessitated by the freedom to choose, and they are determined by the interaction of members in communities.

The move to conceptualising rights as the result of relational characteristics inherent in humans has pushed some scholars to propose a more malleable list of human rights based on their functional purpose of protecting individuals from harms. The argument for 'emergent rights' as a response to 'emergent risks' is made by Hiskes who claims that 'in a sense and to probably differing degrees, all human rights are emergent in character'.[71] This argument – that rights are socially derived, necessary, and constitutive – leads us to wonder how risks are identified, and by what processes they are turned into human rights that apply to all humans all around the world? We believe that membership is an important concept in answering these questions with respect to a right to leisure, as it is membership in a community that leads us to value leisure as a right equal in construction with all others.

Walzer's[72] understanding of rights is that they are derived from membership in a particular group.[73] Membership is a good, according to Walzer, and its distribution is an important facet of any just society. Yet, because membership can be distributed, it is particularistic, and rights are in place to ensure inclusion in the group – in other words to ensure that membership is distributed justly. In addition, beyond decisions of inclusion or exclusion, a community is required to determine what else it values and the membership rights the community grants should reflect these values. Yet, values are by no means easily discerned. According to Walzer, there can be no abstracted set of pre-existing values which could dictate the fair and equal distribution of an abstracted pre-existing set of goods.[74] Rather, values and goods are contingent on the meaning about them generated in any given culture or society. Goods, Walzer argues, are only important insofar as they are meaningful in society. Thus, he advocates a form of complex egalitarianism – as opposed to simple egalitarianism – that is based on distinct spheres in pluralistic society.[75] Simple egalitarianism posits that the distribution of 'basic goods' should be equal, while complex egalitarianism accepts that as fact, since there are no basic abstracted goods distribution will not be even in any given society. Rather, the point of rights is to prevent the domination of goods in any given sphere of activity – be it political, economic, etc. – by one or a few individuals.

For Walzer, the distribution of the good of free time 'is a central issue of distributive justice'.[76] He argues that the two forms of distributing free time, holidays and vacations, are historically and culturally contingent ways of ensuring the distribution of the important good of free time. In primitive societies there was no need to ensure a right to holidays or vacations, because the various modes of production in which the community was engaging did not require them. Even today, not everyone might require a vacation with pay, as he points out that, 'it is important to note that the ideal is that of a working man all of whose time is free time, who does not need a "vacation with pay" in order to enjoy a moment of leisure'.[77] Yet, after a review of the evolution of holidays, including the Sabbath, and vacations, he finds that due to the inequality of the distribution of other goods, i.e. money, throughout society, enforced free time is necessary to ensure its just distribution. In the end Walzer is emphatic, however, that while the distribution of free time is crucial to a theory of justice, how it is distributed is not. Making reference to the right to adequate rest and leisure in the International Covenant on Economic Social and Cultural Rights he argues that this right 'is not to define human rights; it is simply to advocate a particular set of social arrangements, which isn't the best for every society and culture'.[78] In other words, a 'right' to leisure, particularly 'paid holidays', is a societal construction that is a response to a particular set of circumstances and is derived from membership in the community that values paid holidays.

Not surprisingly, given his self-described 'radically particularistic' understanding of communities and rights, Walzer is extremely dubious as to the presence of global community in which membership can be achieved.[79] This argument has often been taken to justify cultural relativism with respect to human rights. Indeed, it may seem upon first reflection that if one is incapable of demonstrating that humanity as a whole represents a community, and that that community values a right to adequate rest and leisure, relativism may have a point.[80]

However, as the effects of an intensely acquisitive economic system have spread throughout the world, it has become easier to argue that the entirety of humanity truly represents a global community and that the inclusion of a right to leisure in the UDHR represents an expression of the universal value of this particular right. Risse[81] makes this case in his discussion of labour rights, where he argues for an expanded version of membership-derived rights. Following Walzer,[82] Risse argues that rights are justified based on one's membership in a community. Through an examination of the historical record, labour rights (as with all rights in the UDHR) were born out of the historical recognition that they were valued protections against the 'evils that occurred in recent memory'.[83] Unlike Walzer, however, Risse focuses on the rights derived from membership in the global, rather than local, economic and political order.[84] To justify the international nature of the global community he begins by showing how human civilisation is connected by their 'collective ownership of the earth'.[85] This ownership necessitates 'a symmetrical claim to the original resources' of the earth and since the international system has been imposed upon the earth, society has begun to recognise that individuals need rights in order to protect them from the constraints imposed on their ability to access original resources.

For Risse, many of the rights outlined in the UDHR represented the beginning of the recognition that the problems and the solutions for many societal ills are international in nature:

> We can also. . .argue that human rights express membership as the global order itself sees it. The UDHR in the eyes of many fixes human rights discourse. . .The list of rights within the UDHR has received its standing through a process that involved the drafting by a sophisticated and diverse committee, an adoption by the General Assembly, as well as endorsements through subsequent ascendancy of other countries to the UN and the role that the Declaration has played as a reference point in international politics.[86]

Using the combined logic of the collective ownership principle and the fact that an international community has recognised many rights, Risse arrives at a list of rights that is somewhat similar to previous lists of rights, but is even more comprehensive in adhering quite closely to the full UDHR. He argues that labour rights, although often criticised, are important protections since members of a community have a right to participate in the process which that community values, particularly if they will be punished for not being allowed to participate. In other words, people must work to survive so all barriers to working should be removed. Furthermore, he also argues that the aspect of adequate rest is important, because it is unreasonable globally to expect that someone spend all of their time engaging in the production of their basic subsistence. However, he concludes that holidays with pay is going too far as there is no reason that it must be the way a society institutes the right to adequate rest and leisure.

We largely agree with the position that rights are generated though a dialectic process that is both shaped by, and creates, community. We also agree with Risse's interpretation that the current rights regime is produced by, and constitutive of, a global community.

However, we differ from his attempt to establish a foundation for labour rights through his collective ownership principle. Rather, we claim that rights are entirely the result of procedural processes that produced a socially constructed list of rights. Thus, rights that go so far as to be explicitly included in international law reflect the values of the international community, as well as create that community.

Human rights are the creation of the largest community possible, the one and only community that a person cannot voluntarily leave – the human community. The following section is a history that demonstrates the right to rest and leisure outlined in UDHR article 24 to be the product of the same social construction project as all other rights and, consequentially, it survives both the reductionist and essentialist attacks – emerging as deserving of respect as any other right.

Finding meaning in the roots of article 24

The inclusion of article 24 in the UDHR has long roots in many places, including a cycle of mutual influence between Latin America and Europe that stretched for more than a century. It was on the heels of successful (and ongoing) struggles for Latin American independence (from European powers) that, in 1830, Europe experienced several nationalist/liberal popular insurrections – both successful (Greece and France) and failed (Poland, Italy, Hungary). The French 'July Days' rebellion, which led to the deposition of Charles X and the installation of the 'seemingly liberal' monarch, Louis-Phillipe, resonated externally, in particular.[87] The movement was not liberal in a purely anti-royal sense. Workers dissatisfied with how the birth pangs of the industrial revolution were affecting their lives played a 'preponderant part' in the insurrection.[88]

In Great Britain, events in France and elsewhere resulted in a series of liberal reforms that increased the standing of industrialists and workers relative to the traditional landowning class, resulting in the reduction of workday hours for women and children in 1847, followed later by the same for men.[89] That the type of labour associated with the industrial revolution was negatively affecting those commonly employed in industry was clear very early on. In 1833, an English author provided the following observation about the physical condition of textile workers related to the physical and psychological need for rest and reasonable hours, particularly for children:

> Their complexion is sallow and pallid – with a peculiar flatness of feature, caused by the want of a proper quantity of adipose substance to cushion out the cheeks. . .Their limbs slender, and playing badly and ungracefully. . .Great numbers of girls and women walking lamely or awkwardly. . .Nearly all have flat feet. . .A spiritless and dejected air, a sprawling and wide action of the legs, and an appearance, taken as a whole, giving the world but 'little assurance of a man', or if so, 'most sadly cheated of his fair proportions. . .'.[90]

> Factory labour is a species of work, in some respects singularly unfitted for children. Cooped up in a heated atmosphere, debarred the necessary exercise, remaining in one position for a series of hours, one set or system of muscles alone called into activity, it cannot be wondered at – that its effects are injurious to the physical growth of a child.[91]

Such documentation of the labour-related horrors of the industrial revolution reinforced a growing public conscience of its seemingly unalterable effects on individual and societal life. This happened amidst both a growing backdrop of socialist and communist ideology in the late nineteenth and early twentieth centuries, and country-specific changes in labour parameters. Nonetheless, it took linkage with war onset to truly bring the issue onto the larger

international stage. There were those in the days before WWI who thought the exploitation of workers by owners in the form of long hours, inhumane conditions, low pay and little rest would provide worker solidarity across state borders so strong that an interstate war fought by the proletariat on behalf of the bourgeoisie would not happen. Ziegler calls this the 'myth of socialist solidarity'.[92] Obviously that scenario did not come to fruition, but it is representative of an important frame of mind at that point in time.

The Versailles Treaty of 28 June 1919, which ended WWI and created the League of Nations, also created the International Labor Organization (ILO). The Preamble to Part XIII illuminates the rationale for addressing the rights of workers in a peace treaty:

> Whereas the League of Nations has for its object the establishment of universal peace, and such a peace can be established only if it is based upon social justice;. . .[W]hereas conditions of labour exist involving such injustice, hardship, and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperilled; and an improvement of those conditions is urgently required. . .
>
> . . .Whereas also the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries. . .

From one point of view, there is a consequentialist flavour to this scenario. Prior to WWI, workers' rights were of interest, but not enough so that, in isolation of other elements of social justice, they merited the special attentions of an international organisation dedicated to their improvement. However, WWI was evidently horrific enough to motivate the establishment of the ILO as a means to establish greater social justice towards the end of reducing war onset. This line of deduction is not far removed from modern social science approaches to understanding mass violence such as those used by social psychologists using a basic-needs framework[93] or political scientists using a frustration-aggression relative deprivation framework.[94]

The ILO met for the first time in 1919, establishing the Hours of Work (Industry) Convention, 1919 (No. 1). Treaties regulating hours of work for commerce and offices followed in 1930 (No. 30).[95] Article 2 of Convention No. 1 limited working hours to 48 per week, with some exceptions. Article 9(e) mandated that 'a weekly rest period of twenty-four consecutive hours shall be allowed to all classes of workers'. Article 4 covers how permitted extensions on the number of working hours affect rest requirements: 'Such [permitted deviations from] regulation of the hours of work shall in no case affect any rest days which may be secured by the national law to the workers in such processes in compensation for the weekly rest day'. It is worth noting here that the principle of the 24-hour rest seemed more sacred than did the number of hours worked during the other six days of the week.

However, per article 10, the aforementioned rights were not considered to be universal, as they would be in article 24 of the UDHR. The guarantees of ILO Convention No. 1 did not extend to 'workers in the industries at present covered by the factory acts administered by the Government of India, in mines, and in such branches of railway work as shall be specified for this purpose by the competent authority'. These persons adhered to 'the principle of a sixty-hour week'. Likewise, per article 11, the convention did not apply to China, Persia and Siam, and, per article 12, Greece received extensions on implementation (set at 1921 by article 19) to 1923 and 1924 – depending upon the type of industry involved.

Meanwhile, in Latin America, the 1917 Mexican constitution, often labelled as socialist in nature, influenced a wave of constitutional changes across that region which, in turn, ultimately ended up influencing the inclusion of article 24 in the UDHR. Indeed, 15 Latin American constitutions were rewritten in the 1930s and 1940s, incorporating economic, social and cultural rights 'via the programs of socialist, social democratic, labor, Christian

Democratic, and Christian social parties'.[96] Akin to the intent of the UDHR's article 24, article 123 of the 1917 Mexican constitution included a maximum duration of work of eight hours (123.A.I), the prohibition of labour by those under 14 and six-hour workdays for those 14–16 years old (123.A.III), one day of rest for every six days of work (123.A.IV), and parameters on exertion by women in the last trimester of pregnancy and guarantees of post-childbirth rest (123.A.V).

The 1917 Mexican constitution itself drew from sources both within and without the Latin American tradition. From within, Latin America's strong historical tradition of Roman Catholicism dictated that serious attention was paid to Pope Leo XIII's 1891 *Rerum Novarum*[97] on 'Capital and Labor', which maintained that 'working men have been surrendered, isolated and helpless, to the hardheartedness of employers and the greed of unchecked competition' (paragraph 3) and, among other things, that:

> the employer is bound to see that the worker has time for his religious duties; that he be not exposed to corrupting influences and dangerous occasions; and that he be not led away to neglect his home and family, or to squander his earnings. Furthermore, the employer must never tax his work people beyond their strength, or employ them in work unsuited to their sex and age (paragraph 20).[98]

From without, José Natividad Macías, a principal drafter of the Mexican constitution, had in 1915 prepared a 'proposed labor code for the Carranza government, based on his travels to the United States to observe working conditions and meet labor leaders, and based on his study of the labor legislation of the United States, England, France and Belgium'.[99] While those responsible for its inclusion in the 1917 constitution were far to the left of Carranza on labour, this proposed code served as a model for article 123 of the constitution, which governed labour parameters.

Enter John P. Humphrey, Canadian legal scholar and lawyer. What a young John Humphrey witnessed during the Great Depression played a great influence in his setting aside personal political ambitions to join the League for Social Reconstruction and becoming a socialist.[100] Travelling through Europe in the mid-1930s on a fellowship to study Roman law, Humphrey the socialist became 'disillusioned with the excesses of Stalin', rejected totalitarian government, and recognised the need for 'an international order that would guarantee peace between nations, while protecting the rights of individuals within those nations'.[101]

In 1946, Humphrey was selected as the first director of the UN's Division of Human Rights, as it was then known, and Eleanor Roosevelt was the driving force in selecting Humphrey to produce a draft 'International Bill of Rights'. Initially, there was a drafting committee comprising three persons (Roosevelt, Chinese professor P.C. Chang, and Lebanese diplomat Charles Malik) assigned by the Commission on Human Rights. Due to numerous and broad substantive disagreements between Malik and Chang, Roosevelt (as head of that group) chose Humphrey to write the first draft alone.[102] The composition of the committee was challenged by the Soviets in the Economic and Social Council soon afterwards, however, and in late March of 1947, Roosevelt unilaterally created a new (and politically acceptable) committee of eight persons. In his memoirs, Humphrey recollects that he was technically asked in March 1947 to prepare a 'documented outline', but went ahead and produced a complete draft declaration, anyway, as this is what Eleanor Roosevelt had initially requested (although this declaration was labelled the 'Secretariat Outline').[103]

It is at this point where the cycles of Latin American and European mutual influence regarding the protection of workers' rights, funnelled through post-WWI (and now

WWII) international institutionalism, were mixed with the conscience of a Canadian socialist who suddenly had the power to mould the international conception of human dignity via his privilege of creating a draft of what would become the UDHR. Humphrey himself maintained that he was the key force in the inclusion of economic rights in the draft:

> Although most of the articles related to civil and political rights, economic, social, and cultural rights were not neglected. I did not need to be told that the former can have little meaning without the latter. *It is by no means certain that economic and social rights would have been included in the final text if I had not included them in mine.* There was considerable opposition in the Drafting Committee to their inclusion. Nor were they included in the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950.[104]

The economic rights Humphrey chose not to neglect had a distinct Latin American flavour. First, Humphrey had a litany of drafts provided by a variety of individuals (including notables such as author H.G. Wells) on which to model his own work. One that he particularly favoured was Gustavo Gutierrez Y Sanchez's draft of the 'Declaration of the International Duties and Rights of the Individual' that Cuba had sponsored in San Francisco in 1945. In his history of the UDHR, Johannes Morsink agrees that 'the rights to rest and leisure time. . .originated in the tradition of Latin American socialism'.[105] As well as working from a stack of others' draft declarations, Humphrey was also working from a stack of 55 of the world's constitutions, and 14 contained the right ultimately enshrined in UDHR article 24.[106] Except for the USSR (speaking for itself, Byelorussia and Ukraine), Yugoslavia and France, the rest of the constitutions bearing this right came from Latin America.[107] Many or most of these had been formed after the 1917 Mexican constitution. For example, Humphrey saw the following[108]:

- Brazil: 'weekly rest with pay' and 'annual leave with pay'
- Costa Rica: 'right to paid annual vacations'
- Cuba: 'one month of vacation with pay' and 'national holidays'
- Ecuador: 'weekly rest of forty-two continuous hours' and 'annual holidays (where) wages shall be paid for these vacations as well as for the weekly days of rest and legal holidays'
- Guatemala: 'one day of rest. . .remunerated' and 'paid annual vacations'
- Honduras: 'for each six days of work there shall be one day of rest'
- Mexico: 'at least one day of rest for each six days of labor'
- Nicaragua: 'a weekly day of rest' and 'month of vacation with pay after a year of continuous work'
- Panama: 'in addition to weekly rest, every worker will have the right to remunerated vacations'.

Humphrey's draft of this right condensed these formulations and read 'Everyone has the right to a fair share of rest and leisure' and, after additions and subtractions, this text is what was affirmatively voted out of the Working Group of the Second Session, 4–0 with two abstentions.[109]

It is important to keep in mind that the right to rest and leisure is founded firmly in the protection of workers. It is not the postmodern extravagance reductionists or essentialists label it as being. While Latin America had perhaps the greatest influence in this right appearing in the draft, the USSR delegates had a large hand in keeping the worker-based grounding in the minds of the full drafting committee, which was working from

Humphrey's draft. Vladimir Koretsky of the USSR noted that 'the right to rest and leisure should be treated in relation to working conditions', and his colleague Alexander Bogomolov added 'trade union organizations. . .should be empowered to supervise the protection' of this right.[110] The UK's representative, Lord Dukeston, took cues from the USSR and Yugoslavia and agreed that the language must explicitly state that rest came with pay.[111]

Where there was major dissension among the participants was regarding whether there should exist language explicitly describing how rest and leisure were to be acquired. The UK and India favoured excluding this language and the USSR and Yugoslavia favoured inclusion. A 9–6 vote went in favour of exclusion,[112] and we are left today with a brief article 24 that contains no instructions regarding implementation.

Some concluding thoughts

Critics of the rights found in UDHR 24 have maintained these to be either lesser rights than others, or not rights at all. We have argued that, since all human rights are social constructions, it is a falsehood to argue that any particular one (e.g. the right to leisure) is not a 'true' human right. Our social construction argument also maintains the universality of this right by viewing all rights as coming from membership in the one community humans cannot voluntarily leave – the human race. We offered the history of UDHR article 24's creation to evidence our social constructivist argument also supported an implicit conceptualisation of the rights to leisure, rest and paid holidays as primarily (but not only) workers' rights constructed to face changes brought upon by the industrial revolution, the resulting new global economy, and WWI – not the redistribution of wealth to some class of undeserved persons at the expense of working society.

We would close with the following thoughts. By means of the United Nations' explicit recognition of the UDHR's list of internationally recognised universal human rights in 1948, the establishment of many treaties, and the world community's re-affirmation of these rights in Vienna in 1993, the world community has constructed a working conceptualisation of human dignity. In this way, humankind's conception of human dignity – or what it is to be justly, satisfactorily and fully human – is limited only by its own vision. Thus, foundationalist sceptics and reductionist/essentialist critics of particular rights, or classes of rights, function primarily as blinders to a more dynamic possible view of human dignity which would unfold as the common understanding of who counts as human and what it means to be human expands over time. That is, humans are worth what humankind decides we are worth, and reductionists/essentialists are those that let philosophical purity (among other motives) dictate that we are worth less than we could be. Thus, at the very least, we find no good reason for the rights in UDHR 24 to be excluded, *a priori*, from consideration as rights equal in all manners to others and, thus, deserving of equal merit for respect.

Acknowledgements

The authors wish to thank Philip Harvey, Richard Hiskes, and the participants at the 2011 annual Economic and Social Rights Research Group workshop at University of Connecticut's Human Rights Institute for their insightful commentary on the first draft of this manuscript. Any flaws are, of course, the sole responsibility of the authors.

Notes

1. Fareed, Zakaria, 'A Conversation with Lee Kuan Yew', *Foreign Affairs* 73, no. 2 (1994): 109–126.

2. Richard Rorty, 'Human Rights, Rationality, and Sentimentality', in *On Human Rights: The Oxford Amnesty Lectures 1993*, ed. Stephen Shute and Susan Hurley (New York: Basic Books, 1993), 67–84.
3. Maurice Cranston, *What Are Human Rights?* (London: The Bodley Head, 1973).
4. C. Michael MacMillan, 'Social versus Political Rights', *Canadian Journal of Political Science* 19, no. 2 (1986): 285.
5. See, for example, Bob Unruh, 'Senators Line Up to Tell U.N. to Leave Kids Alone: 31 Already Committed to Oppose Treaty Giving World Body Oversight of Parents', *WorldNetDaily*, August 22, 2010, http://www.wnd.com/index.php?pageId=193361 (accessed July 29, 2011); and Oceanside Republican Women Federated, 'United Nations Convention on the Rights of the Child', *Trunkline*, August 2010, http://oceansiderepublicanwomen.com/Documents/August.pdf (accessed July 29, 2011), 11.
6. Jack Donnelly, *Human Rights in Theory and Practice* (Ithaca, NY: Cornell University Press, 2003), 23.
7. John Rawls, *A Theory of Justice* (Cambridge MA: Harvard University Press, 1971).
8. Michael Walzer, *Spheres of Justice: A Defense of Pluralism and Equality* (New York: Basic Books, 1983).
9. Alan Gewirth, *A Community of Rights* (Chicago, IL: Chicago University Press, 1996).
10. David L. Richards, Mandy M. Morrill, and Mary R. Anderson, 'Some Psycho-Social Correlates of US Citizen Support for Torture', *Nordic Journal of Human Rights* 30, no. 1 (2012): 63–95.
11. Our own understanding of these rights generally follows that of Walzer, *Spheres of Justice*, whose interpretation of leisure/rest is as free time, generally, and time away from work, specifically. We discuss this in greater detail later in the article.
12. Rolf, Kunneman, 'A Coherent Approach to Human Rights', *Human Rights Quarterly* 17, no. 2 (1995): 323–342.
13. Ibid., 333.
14. Henry Shue, *Basic Rights: Subsistence, Affluence, and U.S. Foreign Policy* (Princeton, NJ: Princeton University Press, 1980).
15. William J. Talbott, *Which Rights Are Universal?* (New York: Oxford University Press, 2005).
16. Maurice, Cranston, 'Are There Any Human Rights?', *Daedalus* 112, no. 4 (1983): 1–17; Maurice, Cranston, 'Human Rights, Real and Supposed', in *Political Theory and the Rights of Man*, ed. D. D. Raphael (London: Macmillan, 1967), 43–52.
17. Cranston, *Are There Any Human Rights?,* (1983, 12).
18. Ibid., 13. Cranston uses the example of a child drowning in the Charles River in Cambridge, England. He argues that if one is not in Cambridge then one clearly cannot be held responsible for not saving the child; one does not have a clear duty associated with the child's right to live. He likens this to many economic rights. This point about ESC rights lacking correlative duties is rejected by Pogge's conception of the duty of the world's wealthy to cease violating the rights of the world's poor by participating in a poverty-perpetuating system where the rich derive clear benefits. See Thomas Pogge, 'Cosmopolitanism: A Defense', *Critical Review of International Social and Political Philosophy* 5, no. 3 (2002): 92–7.
19. Cranston, *Are There Any Human Rights?*, (1983), 14.
20. Ibid.
21. Ibid., 13.
22. Michael Ignatieff, 'Human Rights as Politics and Idolatry', in *Human Rights as Politics and Idolatry*, ed. Amy Gutmann (Princeton, NJ: Princeton University Press, 2001), 3–53.
23. See also Michael Ignatieff, 'Introduction: American Exceptionalism and Human Rights', in *American Exceptionalism and Human Rights*, ed. Michael Ignatieff (Princeton, NJ: Princeton University Press, 2005), 1–26.
24. For more on Ignatieff's lack of clear foundations see Amy Gutmann, 'Introduction', in *Human Rights as Politics and Idolatry*, ed. Amy Gutmann (Princeton, NJ: Princeton University Press, 2001), vii–xxviii.
25. Cranston, *Are There Any Human Rights?*, (1983), 14.
26. MacMillan writes that 'While Shue explicitly refuses to suggest that these basic rights are intrinsically more valuable than other rights, nevertheless their status as basic rights asserts their status as highest priority rights' (MacMillan, 'Social versus Political Rights', 286).

27. D.D. Raphael (1967) makes this point in an intra-volume exchange with Cranston. David Daiches, Raphael, 'Human Rights, Old and New', in *Political Theory and the Rights of Man*, ed. D. D. Raphael (London: Macmillan, 1967), 54–67.
28. Talbott, *Which Rights Are Universal?*
29. Ibid., 30.
30. Ibid., 10–13.
31. Ibid., 37–8.
32. Ibid., 133–4. The nine rights include: physical security, physical subsistence, children's rights to what is necessary for normal physical, cognitive, emotional and behavioral development, right to education, right to free press, a right to freedom of thought and expression, right to freedom of association, a right to a sphere of personal autonomy free from paternalistic interference (Ibid., 137).
33. For a discussion on how this idea intersects with Rawls' conception of universal rights see David A. Reidy, 'William Talbott's Which Rights Should Be Universal?', *Human Rights Review* 9, no. 2 (2008): 181–91. For a critique and review of Talbott's argument see Carol C. Gould, 'The Theory of Universal Human Rights: A Comment on Talbott', *Human Rights Review* 9, no. 2 (2008): 157–65.
34. Ignatieff, 'Human Rights as Politics and Idolatry'.
35. Talbott, *Which Rights Are Universal?*, 137.
36. John Finnis, *Natural Law and Natural Rights* (New York: Oxford University Press, 1980).
37. Alfred H. Lloyd, 'Ages of Leisure', *The American Journal of Sociology* 28, no. 2 (1922): 160–78.
38. John Haworth and Suzan Lewis, 'Work, Leisure and Well-Being', *British Journal of Guidance & Counselling* 33, no. 1 (2005): 67–79.
39. Robert W. Lent, 'Toward a Unifying Theoretical and Practical Perspective on Well-Being and Psychosocial Adjustment', *Journal of Counseling Psychology* 51, no. 4 (2004): 482–509.
40. Martha C. Nussbaum, *Women and Human Development: The Capabilities Approach* (New York: Cambridge University Press, 2000), 14.
41. Douglas A. Kleiber, *Leisure Experience and Human Development: A Dialectical Interpretation* (New York: Basic Books, 1999); Seppo E. Iso-Ahola, *The Social Psychology of Leisure and Recreation* (Dubuque, IO: Wm. C. Brown Company Publishers, 1980); Seppo E. Iso-Ahola, 'A Psychological Analysis of Leisure and Health', in *Work, Leisure and Well-Being*, ed. John Haworth (London: Routledge, 1997).
42. Jay Griffiths, 'Playing for Time', *The Ecologist* 31, no. 4 (2001): 52–53.
43. Kleiber, *Leisure Experience and Human Development*.
44. Samantha Dockray, Nina Grant, Arthur A. Stone, Daniel Kahneman, Jane Wardle and Andrew Steptoe, 'A Comparison of Affect Ratings Obtained with Ecological Momentary Assessment and the Day Reconstruction Method', *Social Indicators Research* 99, no. 2 (2010): 269–83.
45. Janet D. Neal, M. Joseph Sirgy and Muzaffer Uysal, 'The Role of Satisfaction with Leisure Travel/Tourism Services and Experience in Satisfaction with Leisure Life and Overall Life', *Journal of Business Research* 44, no. 3 (1999): 153–63.
46. Helen, Beckett, 'Adolescents' Experiences of the Right to Play and Leisure in Northern Ireland', *Child Care in Practice* 16, no. 3 (2010): 227–240.
47. Charles Sylvester, 'Therapeutic Recreation and the Right to Leisure', *Therapeutic Recreation Journal* 26, no. 2 (1992): 9–20.
48. Mark Kiselica and Mandy Morrill-Richards, 'Sibling Maltreatment: The Forgotten Abuse', *Journal of Counseling & Development* 85, no. 2 (2007): 148–61; Carlton D. Craig and Ginny Sprang, 'Trauma Exposure and Child Abuse Potential: Investigating the Cycle of Violence', *American Journal of Orthopsychiatry* 77, no. 2 (2007): 296–305; Vernon R. Wiehe, 'Sibling Abuse', in *Domestic violence and child abuse resource sourcebook*, ed. Helene Henderson (Detroit: Omnigraphics, 2000); Renae D. Duncan, 'Peer and Sibling Aggression: An Investigation of Intra- and Extra- Familial Bullying', *Journal of Interpersonal Violence* 14, no. 8 (1999): 871–86; Murray A. Straus and C.L. Yodanis, 'Physical Abuse', in *Beating the Devil Out of Them: Corporal Punishment in American Families and its Effects on Children*, ed. Murray A. Straus (San Francisco: Jossey-Bass/Lexington, 1994), 81–98; Richard J. Gelles, *The Violent Home: A Study of Physical Aggression Between Husbands and Wives* (Beverly Hills: Sage, 1974).
49. Murray A. Straus and G. Kantor Kaufmann, 'Change in Spouse Assault Rates from 1975–1992: A Comparison of three national surveys in the United States', Paper Presented at the 13th World Congress of Sociology, Beilefeld, Germany, July 1994.

50. Phillip Harvey, 'Aspirational Law', 52 (2004): 701–26.
51. Ibid., 719.
52. Sangheon Lee, Deirdre McCann and Jon C. Messenger, *Working Time Around the World* (New York: Routledge, 2007).
53. European Parliament and the Council of the European Union, 'Concerning Certain Aspects of the Organization of Working Time', Directive 1993/104/EC. *Official Journal of the European Union.* L307, 13/12/1993: 18–24.
54. Commission of the European Communities, 'White Paper on Sectors and Activities Excluded from the Working Time Directive', Con: 97 334 final, 1997, 3.
55. Ibid., 4.
56. European Parliament and the Council of the European Union, 'Concerning Certain Aspects of the Organization of Working Time', Directive 2003/88/EC. *Official Journal of the European Union.* 46 L299/9-17, 2003.
57. Rebecca Ray and John Schmitt, 'The Right to Vacation: An International Perspective', *Journal of Health Services* 38, no. 1 (2008): 21. As of 1 April 2009, the UK increased the amount of time off it required by an additional eight days; these are counted as 'bank holidays' (Thompsons Solicitors, 'Summary of the Law on Working Time', 2009, 2).
58. International Labour Office, 'Hours of Work: From Fixed to Flexible?', Report III (Part 1B) General Survey of the Reports Concerning the Hours of Work (Industry) Convention, 1919 (No. 1), and the Hours of Work. (Commerce and Offices) Convention, 1930 (No. 30), 2005, http://www.ilo.org/public/english/standards/relm/ilc/ilc93/pdf/rep-iii-1b.pdf (accessed March 8, 2011). Interestingly, the average actual work week for all employed citizens diverges quite significantly from statutory requirements in OECD and EU (where they overlap) countries. According to OECD data for 2009 the average worker in the UK only works 36.8 hours a week, while a worker in France works 38 hours a week. The reverse of what one would expect based on their labour laws. Of course this could represent irregularities in reporting and counting actual hours worked.
59. Amartya Sen, 'Elements of a Theory of Human Rights', *Philosophy & Public Affairs* 32, no. 4 (2004): 319.
60. Ibid., 320.
61. Ray and Schmitt, 'The Right to Vacation', 20.
62. Lee, McCann and Messenger, *Working Time Around the World*.
63. Ibid., 88–9.
64. Samuel, Rosenburg and June Lapidous, 'Contingent and Non-Standard Work in the United States: Towards a More Poorly Compensated, Insecure Workforce' in *Global Trends in Flexible Labour*, eds. A. Felstead and N. Jewson (London: Macmillan Press, Ltd., 1999), 62–83. Samuel Rosenburg, 'From Segmentation to Flexibility to Segmentation Amidst Flexibility: The Case of the United States', *Economies et Societies* 28, no. 6 (2007): 897–924.
65. Hernando De Soto, 'Dead Capital and the Poor', *SAIS Review* XXI, no. 1 (2001): 13–43.
66. World Health Organization, *Raising Awareness of Stress at Work in Developing Countries* (Geneva, Switzerland: WHO Press, 1997).
67. See Rhoda E. Howard, 'Human Rights and the Search for Community', *Journal of Peace Research.* 32, no. 1 (1995): 1–8, for an overview of different communitarian challenges to the dominant liberal conception of rights. We approach the communitarian critique of the liberal tradition more along the lines of Gutmann (Amy Gutmann, 'Communitarian Critics of Liberalism', *Philosophy & Public Affairs* 14, no. 3 (1985): 308–22) by viewing it as 'constructive', in that it allows for a better understanding of the origins of rights and particularly duties and the dynamic nature of both. Additionally, the argument that communities determine what rights to value is made by well-known liberal theorists such as Raz (Joseph Raz, 'On the Nature of Rights', *Mind* 93, no. 370 (1984): 194–214).
68. Charles Taylor, *Sources of the Self* (Cambridge, MA: Harvard University Press, 1989); Gewirth, *A Community of Rights*.
69. Gewirth, *A Community of Rights*, 18.
70. H.L.A. Hart, 'Are There Any Natural Rights?', *Philosophical Review* 64, no. 2 (1955): 175–91.
71. Richard Hiskes, *The Human Right to a Green Future* (New York: Cambridge University Press, 2009), 29. Hiskes makes this argument in order to justify environmental rights as basic rights.
72. Walzer, *Spheres of Justice*.

73. See also, Carl Wellman, *Welfare Rights* (New York: Rowan and Littlefield, 1982).
74. Perhaps the only universal good, according to Walzer, is membership: 'The community is itself a good – conceivably the most important good – that gets distributed. But it is a good that can only be distributed by taking people in, where all the senses of that latter phrase are relevant: they must be physically admitted and politically received. Hence membership cannot be handed out by some external agency; its value depends upon an internal decision. Were there no communities capable of making such decisions, there would in this case be no good worth distributing' (Walzer, *Spheres of Justice*, 29).
75. He attributes the idea of simple egalitarianism to the work of John Rawls, who in *Theories of Justice* argues that we must assume an original condition and then equally distribute a basic set of goods.
76. Walzer, *Spheres of Justice*, 185.
77. Ibid. Walzer identifies two ways of thinking about leisure. One is simply the cessation of work. The other is: 'time at one's own command. . ..We might say, then, that work the opposite of leisure isn't work simply but necessary work, work under the constraint of nature or the market or, most important, the foremen or the boss. So there is a leisurely way of working (at one's own pace), and there are forms of work compatible with a life of leisure. . .. Professionals once eagerly claimed this freedom; it made them gentlemen, for though they earned their living working, they worked in a leisurely way. It's not difficult to imagine a setting in which this same freedom would make, not for gentility, but for citizenship' (Ibid., 198, 185).
78. Ibid., 198.
79. Ibid., 314.
80. See Joshua Cohen, 'Untitled Review', *Journal of Philosophy* 83, no. 8 (1986): 457–68, for a critique of Walzer's argument and a description of its relativistic implications.
81. Mathias Risse, 'A Right to Work? A Right to Leisure? Labor Rights as Human Rights', *Law & Ethics of Human Rights* 3, no. 1 (2009): 1–39.
82. Walzer, *Spheres of Justice*.
83. Risse, 'A Right to Work?, 7.
84. This argument also diverges from the work of Carl Wellman on welfare rights since he claims that welfare rights are better served when their justifications encourage the assignment of correlative duties to specific individuals or groups. Therefore, Wellman sees rights as not being universally possessed but rather as 'civic' rights that are derived from membership in a group or society (Wellman, *Welfare Rights*, 101–10).
85. Risse, 'A Right to Work?, 24.
86. Ibid., 29. Risse does concede that the global landscape has changed since the founding of the UDHR. The so-called new 'we' resulting from decolonisation and the break-up of the USSR had the opportunity to challenge the UDHR during the Vienna Conference in 1993. The resulting three documents, particularly the Bangkok Declaration (Bangkok Declaration, Report of the Regional Meeting for Asia of the World Conference on Human Rights (Bangkok, 29 March–2 April 1993), UN Doc. A/Conf.157/ASRM/) have been held up as an example of the rejection of universal human rights and the birth of the 'Asian Values' thesis. However, even that document re-affirms the 'universal nature' of all human rights no fewer than 10 times throughout.
87. Micheline, Ishay, *The History of Human Rights: From Ancient Times to the Globalization Era* (Berkeley, California: University of California Press, 2004).
88. John M.S. Allison, 'Paris after the July Days', *The Sewanee Review* 31, no. 1 (1923): 66.
89. Ishay (2004), 123.
90. P. Gaskell, *The Manufacturing Population of England: It's Moral, Social, and Physical Conditions, and the Changes Which Have Arisen From the Use of Steam Machinery* (London: Baldwin and Cradock, 1833), 161–2.
91. Ibid., 202–3.
92. Ziegler (2000), 17.
93. See Ervin Staub, *The Psychology of Good and Evil: Why Children, Adults, and Groups Help and Harm Others* (New York: Cambridge University Press, 2003).
94. See Ted Robert Gurr, *Why Men Rebel* (Princeton, NJ: Princeton University Press, 1971).
95. International Labour Office, 'Hours of Work', 1.

96. Mary Ann Glendon, 'The Forgotten Crucible: The Latin American Influence on the Universal Human Rights Idea', *The Harvard Human Rights Journal* 16, no. 1 (2003): 35.
97. Leo XIII, *Rerum Novarum: Encyclical of Pope Leo XIII on Capital and Labor*, 1891, http://www.vatican.va/holy_father/leo_xiii/encyclicals/documents/hf_l-xiii_enc_15051891_rerum-novarum_en.html (accessed March 8, 2011).
98. It should be noted that, to the extent Pope Leo XIII's *Encyclical* influenced constitutional changes, Latin America's newly enshrined workers' rights protections could be considered non-socialist in origin. Much of the *Encyclical* is spent denying the legitimacy of socialism via the argument that the possession of property is 'in accordance with the law of nature' (paragraph 9).
99. Paolo Wright-Carozza, 'From Conquest to Constitutions: Retrieving a Latin American Tradition of the Idea of Human Rights', *Human Rights Quarterly* 25, no. 2 (2003): 307–8.
100. A.J. Hobbins, 'John Humphrey's Early Life and Its Influence on the First Draft of the Universal Declaration of Human Rights', in *Human Coexistence and Sustainable Development: Proceedings of the World Congress, Montreal 2000* (Montreal: Editions Montmorency, 2001), 200–205.
101. Ibid., 204.
102. John P. Humphrey, 'Memoirs of John P. Humphrey, the First Director of the United Nations Division of Human Rights', *Human Rights Quarterly* 5, no. 4 (1983): 387–439.
103. Ibid., 404.
104. Ibid., 407, emphasis added.
105. Johannes, Morsink *The Universal Declaration of Human Rights Origins*, *Drafting, and Intent* (Philadelphia: University of Pennsylvania Press, 1999).
106. Drafting Committee, 'International Bill of Human Rights: Documented Outline', Commission on Human Rights, United Nations Economic and Social Council, June 11, 1947, E/CN.4/AC.1/3/Add.1, 1–4, 352–4.
107. Ibid., 343, 352–4.
108. Morsink, *The Universal Declaration of Human Rights*, 185.
109. Ibid., 186.
110. Ibid., 186.
111. Ibid., 186.
112. Ibid., 187.

References

Helen, Beckett, 'Adolescents' Experiences of the Right to Play and Leisure in Northern Ireland'. *Child Care in Practice* 16, no. 3 (2010): 227–40.

Joshua, Cohen, 'Minimalism About Human Rights: The Most We Can Hope For', *The Journal of Political Philosophy* 12, no. 2 (2004): 190–213.

C. Carol, Gould,'Group Rights and Social Ontology'. In *Groups and Group Rights*, ed. Christine Sistare, Larry May and Leslie Francis (Lawrence: University of Kansas Press, 2001), 43–57.

Notes on contributors

David L. Richards is Associate Professor of Political Science and Human Rights at the University of Connecticut, Co-Director of the Cingranelli–Richards (CIRI) Human Rights Data Project (http://www.humanrightsdata.org), and Co-Director of the Economic and Social Rights Research Group at the Human Rights Institute at the University of Connecticut (http://web2.uconn.edu/hri/research/economics/). He is the author of numerous publications on human rights, especially on the topics of measurement, economic globalization, and democratic institutions. His two most recent works are a comparative examination of domestic legal guarantees against gender-based violence and a study of the psychological roots of citizen attitudes towards torture.

Benjamin Carbonetti is a Ph.D. candidate at the University of Connecticut. In addition to working as a research assistant on the CIRI human rights data project, he has published previously on both democratization and the contributions of the Committee on Economic, Social, and Cultural Rights.