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Is a Duty to Pay Tax Inherent in Affirmations of Human Rights?

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Is a Duty to Pay Tax Inherent in Affirmations of Human Rights?

Jonathan Barrett*

Abstract

The United Nations' Universal Declaration of Human Rights 1948 (the Universal Declaration), as the preeminent statement of human rights, informs numerous cognate covenants and declarations of rights, and charters of rights included in national constitutions. Unlike the rights declarations of the Enlightenment, the Universal Declaration affirms broad welfare rights, in addition to civil and political rights. No right or set of rights is superior to another; they are indivisible, interdependent and interrelated.

Declarations of rights may also include duties. The Organization of American States' American Declaration of the Rights and Duties of Man 1948 ("the American Declaration"), for example, includes statements about broad civic and social duties, and a specific list of duties that approximately reciprocate the rights affirmed. The American Declaration, which was concluded eight months before, and influenced the drafting of, the Universal Declaration, affirms a duty to pay tax. Article 29(1) of the Universal Declaration includes a general duties provision: "Everyone has duties to the community in which alone the free and full development of his personality is possible." Do the vaguely stated duties recorded in the Universal Declaration incorporate a duty to pay tax in a way comparable to the explicit duty included in the American Declaration?

In answering that question, this Article seeks to link welfare rights and duties, in particular, a duty to pay tax. The Article considers the negotiations that led to the vague formulation of

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article 29(1) of the Universal Declaration in order to understand why, when we may claim numerous, specific human rights that the state has undertaken to uphold and must pay for, in the major Anglophone countries, we do not have an express duty founded in human rights doctrine to pay tax.

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I. Introduction

The United Nations' Universal Declaration of Human Rights 1948 (the Universal Declaration)¹

is a milestone document in the history of human rights. Drafted by representatives with different legal and cultural backgrounds from all regions of the world, the Declaration was proclaimed . . . as a common standard of achievement for all peoples and all nations. It sets out, for the first time, fundamental human rights to be universally protected²

The Universal Declaration informs the principal United Nations conventions, covenants and declarations of rights,³ and underpins numerous regional treaties⁴ and national constitutions.⁵

1. G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 8, 1948).

2. *Universal Declaration of Human Rights*, UNITED NATIONS [perma.cc/4GM7-E2KE].

3. See generally International Covenant on Civil and Political Rights, Dec. 16, 1966 999 U.N.T.S. 171; S. Exec. Doc. E, 95-2 (1978); S. Treaty Doc. 95-20; 6 I.L.M. 368 (1967) (I.C.C.P.R.); International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966 993 U.N.T.S. 3; S. Exec. Doc. D, 95-2 (1978); S. Treaty Doc. No. 95-19; 6 I.L.M. 360 (1967) (I.C.E.S.C.R.); International Convention on the Elimination of All Forms of Racial Discrimination, Dec. 21, 1965 S. Exec. Doc. C, 95-2 (1978); S. Treaty Doc. 95-18; 660 U.N.T.S. 195, 212; Convention on the Elimination of All Forms of Discrimination against Women, Dec. 18, 1979 1249 U.N.T.S. 13; 19 I.L.M. 33 (1980); Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984 1465 U.N.T.S. 85, 113; S. Treaty Doc. No. 100-20 (1988); 23 I.L.M. 1027 (1984); Convention on the Rights of the Child, Nov. 20, 1989 1577 U.N.T.S. 3; 28 I.L.M. 1456 (1989); A/RES/61/106, Convention on the Rights of Persons with Disabilities, Annex I (May 3, 2008); G.A. Res. 61/295, United Nations Declaration on the Rights of Indigenous Peoples, U.N. Doc. A/RES/61/295, 46 I.L.M. 1013 (Sep. 13, 2007).

4. See *Universal Declaration of Human Rights*, *supra* note 2 (“The Universal Declaration is widely recognized as having inspired, and paved the way for, the adoption of more than seventy human rights treaties, applied today on a permanent basis at global and regional levels (all containing references to it in their preambles).”) (internal quotations omitted).

5. See *id.* (acknowledging that the Universal Declaration is known to have influenced the language in national constitutions around the world).

While it is a declaration of rights, the Universal Declaration also includes a broadly-worded duties provision.⁶

Other declarations, notably the Organization of American States' American Declaration of the Rights and Duties of Man (the American Declaration),⁷ include statements on a wide range of civic and social duties,⁸ and a list of specific duties that approximately reciprocate the rights affirmed, including welfare rights.⁹ For example, a right to social security on unemployment is matched by a duty to work.¹⁰ Furthermore, the American Declaration, which was concluded eight months before the Universal Declaration and influenced to some extent the latter instrument,¹¹ asserts a duty to pay tax.¹²

Article 29(1) of the Universal Declaration includes the following general duties provision: "Everyone has duties to the community in which alone the free and full development of his

6. See G.A. Res. 217 (III) A, *supra* note 1, at art. 29 (detailing the duties people have in order to maintain human rights).

7. See Ninth International Conference of American States (Pan American Union) Res. XXX, American Declaration on the Rights and Duties of Man, Bogota, Colombia, at 38 (Mar. 30-May 2, 1948), *reprinted in* Handbook of Existing Rules Pertaining to Human Rights, OEA/Ser.L/V/II.23 Doc. 21 Rev. 6, at 5 (1979); 1 Annals of the O.A.S. 130 (1949); Basic Documents Pertaining to Human Rights in the Inter-American System, OAS/Ser.L/V/I.4 Rev. 9 (2003); 43 AM. J. INT'L L. SUPP. 133 (1949) (outlining the rights and duties that should govern all people).

8. See American Declaration on the Rights and Duties of Man, *supra* note 7, at Preamble

The fulfilment of duty by each individual is a prerequisite to the rights of all. Rights and duties are interrelated in every social and political activity of man. While rights exalt individual liberty, duties express the dignity of that liberty. Duties of a juridical nature presuppose others of a moral nature which support them in principle and constitute their basis.

9. See *id.* at art. XXXV (articulating that persons have a duty to cooperate with the state and community to maintain welfare rights).

10. See *id.* at arts. XVI; XXXVII (establishing the right to social security and its corresponding duty to work).

11. See, e.g., Kathryn Sikkink, *Latin American Countries as Norm Protagonists of the Idea of International Human Rights* 20 GLOB. GOVERNANCE 389, 391 (2014) (exploring how Latin American governments were pioneers of international human rights).

12. See American Declaration on the Rights and Duties of Man, *supra* note 7, art. XXXVI ("It is the duty of every person to pay the taxes established by law for the support of public services.").

personality is possible.”¹³ Do these vaguely expressed duties include a duty to pay tax?

In answering that question, this Article considers the negotiations that led to the vague formulation of article 29(1) of the Universal Declaration in order to understand why, when members of political communities may claim numerous, specific human rights that the state has undertaken to uphold and must ultimately underwrite, but citizens in major Anglophone countries,¹⁴ at least, typically do not owe an express duty, anchored in human rights doctrine, to pay tax.¹⁵ Looking back in this way is not an exercise in originalism;¹⁶ rather it represents an effort to understand why, when we may enjoy welfare rights that most obviously require funding from government revenue,¹⁷ assertions in rights charters of a duty to pay tax is not normal.¹⁸ This Article argues that such a duty may be inferred.

Civil and political rights, having been traditionally characterized as negative in nature, may be assumed to have been satisfied when the State leaves the individual alone.¹⁹ Leaving

13. G.A. Res. 217 (III) A, *supra* note 1, at art. 29(1).

14. This Article uses the phrase “major Anglophone countries” as shorthand for Australia, Canada, New Zealand, the United Kingdom (U.K.), and the United States (U.S.). Despite Ireland’s common law legal system and wide use of English as a second official language, under the Irish Constitution, Irish is the first official language. See CONSTITUTION OF IRELAND 1937, art. 8. (establishing Irish as the “first official language” in Ireland).

15. See discussion *infra* note 41 (discussing the novelty of the duty to pay tax in the Western world’s view of human rights).

16. See Lawrence B. Solum, *Originalism Versus Living Constitutionalism: The Conceptual Structure of the Great Debate*, 113 NW. U. L. REV. 1243, 1245 (2019) (defining originalism in constitutional interpretation debates).

17. In this Article, the phrase “welfare rights” denotes the economic and social rights affirmed in the American Declaration, the Universal Declaration, the I.C.E.S.C.R. and other international human rights instruments and national constitutions.

18. See *infra* Part IV (analyzing the evolution of the view of the duty to pay tax).

19. See Isaiah Berlin, *Two Concepts of Liberty*, LIBERALISM AND ITS CRITICS 15–16 (Michael J. Sandel, ed., 1984). However, ensuring realization of civil and political rights may require considerable state intervention, whereas, in some situations, social and economic expectations are met by leaving people alone. See generally ASBJØRN EIDE, CATARINA KRAUSE, & ALLAN ROSAS, ECONOMIC, SOCIAL AND CULTURAL RIGHTS: A TEXTBOOK (2d ed. 2001).

alone, unlike positively meeting welfare rights, may imply fiscal neutrality.²⁰ However, elections, for example, are expensive, as is ensuring individuals are left alone by others.²¹ Ensuring freedom of expression can also be costly.²² But, as Andrew Byrnes observes, funds for satisfying civil and political rights, “are allocated as a matter of course and in a sense become invisible when analyzing the costs of rights”.²³ Protection and promoting of all rights, therefore, requires government expenditure, but welfare rights present as paradigm expenditure-hungry citizen claims.²⁴ This perception is recognized in the affirmation of these rights: for example, article 2(1) of the International Covenant on Economic, Social and Cultural Rights (I.C.E.S.C.R.) provides “[e]ach State Party to the present Covenant undertakes to take steps . . . to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant”.²⁵ The International Covenant on Civil and Political Rights (I.C.C.P.R.) does not include a similar resources provision.²⁶ Furthermore, in court, governments may claim that they have insufficient funds to meet welfare claims but are unlikely to present similar arguments if they fail to honor civil and political rights.²⁷

20. See *id.* at 66 (explaining the effective impact of neutrality of individual’s rights).

21. See generally STEPHEN HOLMES & CASS R. SUNSTEIN, *THE COST OF RIGHTS: WHY LIBERTY DEPENDS ON TAXES* (1999).

22. See, e.g., Andrew Marantz, *How Social-Media Trolls Turned U.C. Berkeley Into a Free-Speech Circus*, THE NEW YORKER (June 25, 2018) (explaining how provocateurs may seek to use the right to freedom of expression to financially penalize, even bankrupt, liberal public colleges) [perma.cc/9FSM-2N3F].

23. Andrew Byrnes, *Second-Class Rights Yet Again? Economic, Social and Cultural Rights in the Report of the National Human Rights Consultation*, 33 U.N.S.W.L.J. 193, 200 (2010).

24. See *infra* Part II.A (discussing the changing international view of welfare rights).

25. G.A. Res. 2200 (XXI) A, International Covenant on Economic, Social and Cultural Rights (Dec. 16, 1966).

26. See G.A. Res. 2200 (XXI) A, International Covenant on Civil and Political Rights (Dec. 16, 1966) (lacking a similar provision to Art. 2 of the I.C.E.S.C.R.).

27. See John Cantius Mubangizi, *The Constitutional Protection of Socio-Economic Rights in Selected African Countries: A Comparative Evaluation*, 2 AFR. J. LEGAL STUD. 1, 3 (2006) (discussing government arguments presented to the South African Constitution Court in relation to welfare rights claims).

The principal goal of this Article is to link welfare claims, as universal human rights, and a duty to pay tax. The Article is structured as follows:

Part II outlines the origins and development of affirmations of welfare rights as universal human rights.²⁸ Landmarks in the acceptance of welfare rights as a constitutional matter are identified.²⁹ These include the 1917 Mexican Constitution, the 1937 Irish Constitution, and the state-of-the-art 1994 South African Bill of Rights.³⁰ This Part also considers when welfare rights are not explicitly included in a national constitution but may be guaranteed at a sub-national level.³¹ Welfare rights may also be inferred from a country's treaty obligations or from a close reading of the text of the basic law.³²

Part III outlines the development of article 29(1) of the Universal Declaration and includes the American Declaration as a precursor and comparator.³³ The goal here is to understand why, when the American Declaration includes a list of specific duties, including a duty to pay tax, the Universal Declaration incorporates one, broadly worded sub-article on duties in a human rights context.³⁴

Part IV discusses the possibility of a duty to pay tax anchored in human rights doctrine.³⁵ More than 80 countries include an explicit duty to pay tax in their basic laws.³⁶ These duties are presented in tabular form as an Appendix.³⁷ When no such express duty is included, consideration is given to when and how such a duty may be inferred.³⁸

28. See *infra* Part II (discussing the development of welfare rights).

29. See *infra* Part II.B (addressing landmark cases in recognition of welfare rights).

30. See S. AFR. CONST., 1996; Constitución Política de los Estados Unidos Mexicanos, CP, Diario Oficial de la Federación [DOF] 05-02-1917; CONSTITUTION OF IRELAND 1937.

31. See *infra* Part II.C (discussing the role sub-national constitutions play in guaranteeing welfare rights).

32. See *id.*

33. See *id.*

34. See *infra* Part II.

35. See *infra* Part III.

36. See *infra* Table 1.

37. See *infra* Table 1.

38. See *infra* Part III.

Part V draws conclusions.³⁹ In sum, I argue that a duty to pay tax, in accordance with ability to pay and the rule of law, is not only consistent with the affirmation of human rights, in particular welfare rights, it is essential if those rights are to be plausible and realized.⁴⁰

II. Development of Welfare Rights

The Magna Carta of 1215 may have long foreshadowed assertion of some civil and political rights,⁴¹ but coherent statements of rights first emerged during the Enlightenment. Affirmation of welfare rights came much later, and typically after statutory law had already introduced some welfare provision.⁴² In the major Anglophone countries, welfare, to varying degrees, is well-established but not constitutionally guaranteed.⁴³

39. *See infra* Part IV.

40. *See infra* Part IV.

41. It is arguable that the Magna Carta was mostly forgotten but was revitalized or reinvented in the early seventeenth century. *See, e.g.*, JOHN BAKER, *THE REINVENTION OF MAGNA CARTA 1216–1616* (2017). The 1628 Petition of Rights, and the Bill of Rights Act 1689 represent steps on the way to the statements of rights in the Declaration of the Rights of Man and Citizen (1789) and the U.S. Bill of Rights (1791). *See generally* JACK R. MASON & LYNN HUNT, *LIBERTY, EQUALITY, FRATERNITY: EXPLORING THE FRENCH REVOLUTION* (2001).

42. *See* Eric A. Posner, *Human Welfare, Not Human Rights*, 108 COLUM. L. REV. 1758, 1765 (2008) (suggesting that countries take welfare rights, or positive rights, less seriously than other negative human rights).

43. New Zealand, for example, introduced an old age pension scheme in 1898, *see* Old-age Pension Act 1898, but has never guaranteed welfare rights at a constitutional level. Although New Zealand, along with Israel and the United Kingdom, is unusual inasmuch as its constitution is not recorded in a single document, the New Zealand Bill of Rights Act 1990 (N.Z.B.O.R.A.), which expressly affirms civil and political rights, could have included welfare rights but does not. Sir Geoffrey Palmer and Andrew Butler led a private initiative to foment public debate on whether New Zealand should adopt a bill of rights that is superior to ordinary law. Palmer was the architect of N.Z.B.O.R.A. as a government minister in the late 1980s. Then, as now, he preferred a superior bill of civil and political rights in the way of Canada, but without entrenched welfare rights. *See generally* GEOFFREY PALMER & ANDREW BUTLER, *A CONSTITUTION FOR AOTEAROA NEW ZEALAND* (2016).

A. *Origins of Welfare*

The philanthropic impulse may be as old as humankind;⁴⁴ nevertheless, the Poor Relief Act 1601 (43 Eliz 1 c 2) is generally considered to be the first legislation to impose a welfare duty on (local) government, which, in turn, was granted a concomitant tax-raising power.⁴⁵ In 1889, Germany, under the chancellorship of Otto von Bismarck, was the first country to adopt an old-age social insurance scheme.⁴⁶ Since then, the provision of welfare has become one of the most important functions of government.⁴⁷

While taxonomies of this nature tend to be incomplete and porous at the borders, Francis Castles identifies the three main welfare schemes in the economically developed countries as “residual”, “institutional”, and “structural” models.⁴⁸ “The residual model characterizes the provision of relief to those unable for a range of socially legitimated reasons to derive a bare minimum subsistence from the labor market and unable to support themselves from prior savings.”⁴⁹ This is, in essence, the Anglophone liberal model of welfare.⁵⁰ The institutional model,

44. According to Anna Eleanor Roosevelt, “[c]harity has been around since the beginning of time. It is a natural instinct, . . .” See Anna Eleanor Roosevelt, *Charity and Philanthropy: The Big Difference* 28 PUB. LIBR. Q. 1, 2 (2009).

45. See, e.g., J. E. Hansan, *English Poor Laws: Historical Precedents of Tax-Supported Relief for the Poor*, VA. COMMONWEALTH UNIV. SOC. WELFARE HIST. PROJECT (2011) (explaining how local governments could spend funds raised by taxation under the Poor Relief Act of 1601) [perma.cc/9RZM-W22R]. Under the Poor Law, government assistance was provided as charity, not as a welfare right.

46. See generally Michael Stürmer, *Bismarck in Perspective*, 4 CENT. EUR. HIST. 291 (1971). It is also noteworthy that Prussia was the first state to introduce a progressive income tax. See Joseph A. Hill, *The Prussian Income Tax* 6 Q. J. ECON. 207, 224 (1892) (“[T]his [law] is not an extension of the progressive principle, but its introduction.”).

47. See, e.g., David Garland, *The Welfare State: A Fundamental Dimension of Modern Government*, 55 EUR. J. SOCIO. 327, 360 (2014) (“[T]he welfare state is an essential basis for human flourishing in capitalist society.”).

48. See generally FRANCIS G. CASTLES, *THE WORKING CLASS AND WELFARE: REFLECTIONS ON THE POLITICAL DEVELOPMENT OF THE WELFARE STATE IN AUSTRALIA AND NEW ZEALAND, 1890-1990* (1985).

49. *Id.* at 77.

50. See Colleen Henry, *Children and the Welfare State: The Need for a Child-Centered Analysis*, 47 J. SOCIO. & SOC. WELFARE, 157, 162 (2020) (contrasting liberal regimes like the U.S. and Australia which have strict standards for benefit

seen in continental European countries, such as France, Germany and Italy, guarantees “a national minimum of sufficiency below which no one is allowed to fall”.⁵¹ Under the structural model, in Scandinavia “whole areas of distribution are progressively removed from the influence of the market and which income transfers are designed not so much to alleviate poverty but, as to ensure a satisfactory and dignified level of living for all members of the social collectivity.”⁵² Gøsta Esping-Andersen similarly identifies “the liberal welfare state,” “the Bismarckian welfare state,” and “the social democrat welfare state.”⁵³ These categorizations indicate that welfare can be provided in different ways that are compatible with different cultures, dominant ideologies and appetites for taxation that must fund welfare.⁵⁴

Despite broad welfare provision becoming an engrained citizen expectation, and operative legislation attaining the status of super-statutes,⁵⁵ welfare rights have not generally been considered constitutional matters, in the way of civil and political rights, even in Scandinavian countries which tend to have the most progressive welfare provision.⁵⁶ Nevertheless, during the

qualification to conservative regimes like Germany which provide universal benefits).

51. CASTLES, *supra* note 48, at 77.

52. CASTLES, *supra* note 48, at 79.

53. See GØSTA ESPING-ANDERSEN, *THE THREE WORLDS OF WELFARE CAPITALISM* 21–28 (1990).

54. The Chinese “iron rice bowl,” introduced after the civil war, is an example of a developing country providing comprehensive, if basic, welfare. See WENFANG TANG & WILLIAM L. PARISH, *CHINESE URBAN LIFE UNDER REFORM: THE CHANGING SOCIAL CONTRACT* 3 (2000) (“The socialist social contract promised an egalitarian, redistributive order that provides job security, basic living standards, and special opportunities for those from disadvantaged backgrounds.”).

55. See William N. Eskridge, Jr. & John Ferejohn, *Super-Statutes*, 50 *DUKE L. J.* 1215–16 (2001).

A super-statute is a law or series of laws that (1) seeks to establish a new normative or institutional framework for state policy and (2) over time does “stick” in the public culture such that (3) the super-statute and its institutional or normative principles have a broad effect on the law – including an effect beyond the four corners of the statute.

56. See Maria Green & Titti Mattsson, *Health, Rights and the State*, 62 *SCANDINAVIAN STUD. L.* 177, 187 (2016) (emphasizing that no explicit Constitutional right to health care services exists in Sweden).

twentieth century, as different voices emerged – Latin American, socialist, post-colonial and so forth – welfare claims were increasingly recognized as universal human rights, affirmed in international declarations, and included, in various ways, in national constitutions.⁵⁷

Why does this evolution matter for taxation? In short, if welfare rights are expressly guaranteed in constitutions, they must be funded, invariably through taxation.⁵⁸ As this Article will demonstrate, communitarian, civil law jurisdictions are more likely to affirm welfare rights than common law countries;⁵⁹ they are also more likely to assert a duty to pay taxes.⁶⁰ Nevertheless, common law nations were well-represented in negotiations and strongly influenced the Universal Declaration, including the statement of duties affirmed in article 29(1).⁶¹

B. Landmarks in Recognition of Welfare Rights

This Section highlights landmark affirmations of welfare rights. A Whiggish progression, say, from the Mexican Constitution, through the Irish and Indian Constitutions to the current state-of-the-art South African Constitution is not suggested. Every constitution is determined by its specific context. Nevertheless, the influence of groundbreaking affirmations of rights in one constitution can be detected in later bills of rights of

57. See Posner, *supra* note 43, at 1763–1766 (analyzing the types of rights granted in international treaties).

58. See Susannah Camic Tahk, *The New Welfare Rights*, 83 BROOK. L. REV. 875, 923–24 (2018) (acknowledging the difficulties associated with funding welfare programs and policy).

59. In broad brushstrokes, civil law seeks to establish and record principles of universal validity, whereas the common law attends to problems as and when they arise. Nevertheless, the juriconsults and judges of both legal systems may draw on shared fundamental sources, notably Roman law and natural law. See, e.g., Richard O’Sullivan, *Natural Law and Common Law*, 31 TRANSACTIONS GROTIUS SOC’Y 117, 119 (1945) (suggesting that the natural law was a source of and guiding principle during the development of the common law).

60. See *infra* Part II. Drawing this distinction does not imply either that citizens of civil jurisdictions necessarily enjoy more extensive welfare rights than citizens of common law countries or that the former are more assiduous in paying their taxes than the latter.

61. See discussion *infra* Part III.D.

other countries.⁶² The Universal Declaration became the *fons et origo* of the basic laws of States after the Second World War, but information from numerous constitutions fed into that instrument.⁶³

1. Mexican Constitution (1917)

The Mexican Constitution,⁶⁴ which resulted from the overthrow of the Diaz dictatorship and the establishment of a constitutional republic, appears to be the first national constitution to include welfare rights.⁶⁵ A constituent convention met at Querétaro in December 1916,⁶⁶ and, within two months, the radical amendments to the 1857 constitution were in force.⁶⁷ “Title Six: Of Labour and Social Welfare” provided extensive and detailed

62. See Kim Lane Scheppele, *Aspirational and Aversive Constitutionalism: The Case for Studying Cross-Constitutional Influence through Negative Models*, 1 Int’l J. Const. L. 296, 297 (2003) (highlighting the limits and depth of cross-constitutional influence, copying provisions from one constitution for use in another).

63. The Canadian John Humphrey, as Director of the U.N. Secretariat’s Division for Human Rights, played a key role in drafting the first preliminary draft of the Universal Declaration. The American Law Institute’s Statement of Essential Human Rights, which considered, in addition to U.S. rights precedent, “Arabic, British, Canadian, Chinese, French, pre-Nazi German, Italian, Indian, Latin American, Polish, Soviet Russian, and Spanish” cultures or countries, influenced the Humphrey Draft. See Am. L. Inst., *Statement of Essential Human Rights*, 243 ANNALS AM. ACAD. POL. & SOC. SCI. 18, 18 (1946). “In 1946, as part of the preliminary work of drafting the Declaration, under the auspices of UNESCO, Maritain assembled a ‘Philosophers’ Committee’ to identify key theoretical issues in framing a charter of rights for all peoples and all nations.” GLOB. CITIZENSHIP COMM’N, THE UNIVERSAL DECLARATION OF HUMAN RIGHTS IN THE 21ST CENTURY: A LIVING DOCUMENT IN A CHANGING WORLD, 29, 29 (Gordon Brown ed., 2016).

64. Constitución Política de los Estados Unidos Mexicanos, CPEUM, Diario Oficial de la Federación [DOF] 05-02-1917, últimas reformas DOF 10-02-2014.

65. See Salvador Martínez de Alva, *The Mexican Constitution of 1917*, 11 AM. POL. SCI. REV. 379, 379 (1917) (providing the history of the 1917 Mexican Constitution).

66. See N. Andrew & N. Cleven, *Some Social Aspects of the Mexican Constitution of 1917*, 4 HISP. AM. HIST. REV. 474, 474 (1921).

67. See H. N. BRANCH & L. S. ROWE, THE MEXICAN CONSTITUTION OF 1917 COMPARED WITH THE CONSTITUTION OF 1857 iv (1917) (stating that it is not surprising to find radical changes in the Constitution of 1917).

worker rights, and rights to social security.⁶⁸ The granularity of the guarantees set out in Title Six is, perhaps, unexpected – we may anticipate enshrinement of principles in a constitution, rather than inclusion of detail that is usual for labour legislation.⁶⁹ Nevertheless, the provisions have proved durable.⁷⁰ The Mexican affirmation of welfare rights influenced, in particular, the 1919 Constitution of Germany’s Weimar Republic.⁷¹

2. *International Labour Organization (1919)*

The International Labour Organization (I.L.O.) is probably the most resilient and successful international welfare rights initiative.⁷² The I.L.O. was originally constituted as an agency of the League of Nations (1920-46), which the U.S. boycotted.⁷³ Nevertheless, the U.S. joined the I.L.O. in 1934.⁷⁴ The I.L.O. is now an autonomous body within the U.N. and is principally concerned with “promoting social justice and internationally recognized human and labour rights.”⁷⁵

68. See *Mexican Constitution of 1917*, 1 MEXICAN REV. 1, 12–13 (1917) (providing protections related to worker’s rights and social welfare) [perma.cc/F9BF-TZ6M].

69. See *id.* (detailing the unusual nature of Title Six).

70. Cf. *Mexico’s Constitution of 1917 with Amendments through 2015*, THE CONST. PROJECT (2022) (discussing the longevity of the Mexican Constitution) [perma.cc/6VKH-54DR].

71. See Andrew & Cleven, *supra* note 66, at 474 (noting that the Mexican Constitution also influenced the constitutions of Peru in 1919 and Czechoslovakia in 1920).

72. See Sandrine Kott and Joëlle Droux, *Introduction: A Global History Written from the ILO*, GLOBALIZING SOCIAL RIGHTS: THE INTERNATIONAL LABOUR ORGANIZATION AND BEYOND 1 (Sandrine Kott and Joëlle Droux, eds., 2013) (outlining the successes of the I.L.O.); see *History of the ILO*, I.L.O. (2019) (providing a brief history of the I. L. O.) [perma.cc/HF2L-7LCA].

73. See, e.g., Clarence A. Berdahl, *The United States and the League of Nations*, 27 MICH. L. REV. 607, 608–10 (1929) (explaining the United States’ boycott of the League of Nations).

74. See Christopher C. Joyner, *The United States’ Withdrawal from the ILO: International Politics in the Labor Arena*, 12 INT. LAWYER 721, 726–29 (1978) (discussing the occasionally fraught relationship between the U.S. and the International Labour Organization).

75. See *Mission and Impact of the ILO*, INT’L LAB. ORG. (2022) (“The International Labour Organization (ILO) is devoted to promoting social justice

3. German Constitution (1919)

The tempestuous Weimar Republic (1919-1933) was a cauldron of revolutionary ideas,⁷⁶ including its constitution.⁷⁷ Whereas Bismarck had pioneered rudimentary social security as a bulwark against revolution, the 1919 constitution can be seen as including welfare rights at a supra-statutory level as an outcome of revolution.⁷⁸ Peter Caldwell observes:

The constitution's section on basic rights was extensive, eventually including fifty-seven articles. Among them were individual rights, the rights of family and youth, religious rights, and labour rights. The aim was a 'social catechism' of ethical and social aims that could unite the nation.⁷⁹

As another link in the chain of welfare rights development, the Weimar Constitution influenced the Irish Constitution.⁸⁰

4. U.S.S.R. Constitution (1936)

The inclusion of progressive welfare rights in the 1936 U.S.S.R Constitution can be considered as a key step toward affirmation of welfare rights as human rights.⁸¹ Comparable to Roosevelt's New

and internationally recognized human and labour rights, pursuing its founding mission that social justice is essential to universal and lasting peace.”) [perma.cc/LRH6-3A3N].

76. See, e.g., BARBEL SCHRADER, *THE 'GOLDEN' TWENTIES: ART AND LITERATURE IN THE WEIMAR REPUBLIC* (1988).

77. Reichsgesetzblatt [Constitution of the German Reich] Aug. 11, 1919, art. I (Ger.).

78. See generally PETER C. CALDWELL, *THE OXFORD HANDBOOK OF THE WEIMAR REPUBLIC* (Nadine Rossol & Benjamin Ziemann eds., 2020).

79. *Id.* at 119.

80. See Gerard Hogan, *THE ORIGINS OF THE IRISH CONSTITUTION 1928-1941* 527 (2012) (explaining how the Weimar Constitution influenced the Irish Constitution).

81. See *1936 Constitution of the USSR*, BUCKNELL U. (1996) (providing rights granted to citizens in the USSR) [perma.cc/6QU5-D4R6]; see generally J. Arch Getty, *State and Society Under Stalin: Constitutions and Elections in the 1930s*, 50 *SLAVIC REV.* 18 (1991) (providing a critical discussion of the origins and content of the 1936 U.S.S.R. Constitution).

Deal initiatives,⁸² Stalin's Constitution affirmed a right to work.⁸³ Concomitant with a right (and duty) to work was a right to leisure, which was

ensured by the reduction of the working day to seven hours for the overwhelming majority of the workers, the institution of annual vacations with full pay for workers and employees and the provision of a wide network of sanatoria, rest homes and clubs for the accommodation of the working people.⁸⁴

It is notable the rights are not expressed as abstract principles; rather the instrument explains in detail how the rights will be satisfied, within the socialist system.⁸⁵ The right to education (art. 121), for example:

is ensured by universal, compulsory elementary education; by education, including higher education, being free of charge; by the system of state stipends for the overwhelming majority of students in the universities and colleges; by instruction in schools being conducted in the native language, and by the organization in the factories, state farms, machine and tractor stations and collective farms of free vocational, technical and agronomic training for the working people.⁸⁶

From a contemporary perspective, we may think of Stalin's Constitution as a Potemkin façade behind which the Great Purge was executed,⁸⁷ but Samantha Lomb plausibly demonstrates that the drafting of the 1936 constitution was a remarkable exercise in

82. See, e.g., STEVEN ATTEWELL, *PEOPLE MUST LIVE BY WORK: DIRECT JOB CREATION IN AMERICA FROM FDR TO REAGAN* (2018) 49 (discussing the right to work).

83. See *1936 Constitution of the USSR*, *supra* note 81, at art. 118 (guaranteeing the right to employment and payment for work in accordance with its quantity and quality).

84. *Id.* at art. 119.

85. See *id.* ("The right to rest and leisure is ensured by the reduction of the working day to seven hours . . .").

86. *Id.* at art. 121.

87. See, e.g., ROBERT CONQUEST, *THE GREAT TERROR: STALIN'S PURGE OF THE THIRTIES* (Rev. ed. 1971).

participatory politics.⁸⁸ It may also be seen as a precursory exercise for the drafting of the Universal Declaration, in seeking to understand what rights meant for ordinary people across a union of 16 republics that covered a massive land mass and incorporated a remarkable diversity of humanity.⁸⁹ Enlightenment conceptions of civil and political rights expressed in eighteenth century declarations may have met the expectations of bourgeois men, who were already educated and sufficiently wealthy for civil and political rights to matter in their day to day lives, but the 1936 constitution tells us about the desires and conceptions of rights of heterogenous working people.⁹⁰

5. Irish (1937) and Indian (1949) Constitutions

The Irish and Indian Constitutions are particularly significant because they include the first post-colonial rights charters of the twentieth century.⁹¹ While, like the U.S., these countries retained the fundamentals of the common law tradition of their erstwhile ruler, unlike, the U.S., their constitutions moved beyond civil and political rights to tentatively engage with welfare expectations at the level of a basic law.⁹²

The Irish Constitution (Bunreacht na hÉireann) was developed between 1934 and 1937.⁹³ Despite its crucial

88. See generally SAMANTHA LOMB, *STALIN'S CONSTITUTION: SOVIET PARTICIPATORY POLITICS AND THE DISCUSSION OF THE 1936 DRAFT CONSTITUTION* (2018); see also Getty, *supra* note 81, at 35 (explaining the implementation and implications of Stalin's Constitution); see also Jingyuan Qian, *A Brief Research on 1936 Soviet Constitution Under Joseph Stalin*, 2 MACALESTER REV. 1, 6 (2012) (citing the democratic elements of Stalin's Constitution).

89. See, e.g., Curzio Malaparte, *THE VOLGA RISES IN EUROPE* 350 (1957) (explaining the remarkable ethnic and cultural diversity of the U.S.S.R. at the time of the 1941 Nazi invasion).

90. See JOHANNES MORSINK, *THE UNIVERSAL DECLARATION OF HUMAN RIGHTS: ORIGINS, DRAFTING AND INTENT* 245 (1999) (highlighting the differences between enlightenment era thinking and the thinking put forth by the 1936 constitution).

91. See generally Kate O'Malley, *Indo-Irish Radical Connections in the Interwar Period*, 29 SAOTHAR 45 (2004).

92. See *id.* at 50 (discussing the similarities and differences of the Indian and Irish constitutions with the United States constitution).

93. See *The Irish Constitution*, CITIZENS INFO. (2022) (providing notes and annotations on the Irish Constitution) [perma.cc/29ZB-5Z52].

consideration of welfare expectations, these were not cast as justiciable rights.⁹⁴ Article 45 provides:

The principles of social policy set forth in this Article are intended for the general guidance of the Oireachtas [Parliament]. The application of those principles in the making of laws shall be the care of the Oireachtas exclusively and shall not be cognisable by any Court under any of the provisions of this Constitution.⁹⁵

Article 45 further provides: “The State shall endeavour to ensure that the strength and health of workers, men and women, and the tender age of children shall not be abused and that citizens shall not be forced by economic necessity to enter avocations unsuited to their sex, age or strength.”⁹⁶

The directive principles of the Irish constitution on welfare rights were adopted in the Indian constitution.⁹⁷ This includes similar requirements in articles 39, 41 and 43. Cathal O’Normain wrote in the Indian Yearbook of International Affairs in 1963, “perhaps the Irish Constitution’s greatest claim to future fame will depend on the extraordinary influence which its Directive Principles had on the Constitution of India”.⁹⁸ The Indian Supreme Court has also creatively interpreted article 21 (the right to life and personal liberty) to infer certain welfare rights.⁹⁹

94. See Gerard Hogan, *Directive Principles, Socio-Economic Rights and the Constitution*, 36 IR. JUR. 174, 175 (2001) (explaining that welfare rights were non-justiciable in Ireland); see Liam Thornton, *Socio-Economic Rights and Ireland*, INTERNATIONAL HUMAN RIGHTS: PERSPECTIVES FROM IRELAND 179 (Suzanne Egan, ed., 2015) (explaining the difficulties socioeconomic rights face in Ireland).

95. CONSTITUTION OF IRELAND 1937 art. 45.

96. *Id.*

97. More recently, certain African countries, including Namibia, have followed the directive principles approach to satisfying welfare expectations. See Mubangizi, *supra* note 27, at 8–11 (outlining the directive principles approach).

98. See *Celebrating India’s Constitutional Day: November 26, 2018*, PUBLIC LAW BULLETIN 5 (Nov. 26, 2018) (describing the influence of the Irish Constitution’s directive principles on India’s Constitution).

99. See *Tellis v. Bombay Mun. Corp.*, [1985] 3 S.C.R. 545 (Can.) (finding that the right to life and personal liberty includes a right to pursue a livelihood); see also *Unni Krishnan v. State of Andhra Pradesh* [1993] 1 S.C.R. 594 (Can.) (concluding that the right to life and personal liberty includes a right to education).

6. American Declaration (1948) and Universal Declaration (1948)

The American and Universal Declarations are cognate instruments, dizygotic twins, perhaps. They were finalized in the same year, and shared many participating countries, although, with the Cold War brewing, U.S. attention may have lain beyond the Western hemisphere at the time of the Bogotá Conference.¹⁰⁰ Certainly, the Latin American delegates had the opportunity in Bogotá to rehearse their views on rights and, indeed, duties that would be taken to the negotiations for the Universal Declaration.¹⁰¹

The preamble to the American Declaration provides “[a]ll men are born free and equal, in dignity and in rights, and, being endowed by nature with reason and conscience, they should conduct themselves as brothers one to another.”¹⁰² Almost identically, article 1 of the Universal Declaration provides “[a]ll human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.”¹⁰³ The Declarations’ grounding of rights in respect for equal human dignity recognizes that, “[w]ithout minimum claim rights in working life, health protection, and education systems, and without the guarantee of an adequate standard of living, flowing from human dignity, guaranteeing a ‘survival kit’ that sets a minimum existence protection standard, the overall picture of human rights would be incomplete, missing out crucial dimensions of protection for the most needy, in particular marginalized and disadvantaged persons

100. See Sara Lyons, *The Universal Declaration of Human Rights and the American Convention on Human Rights: Comparing Origins, Manifestations and Aspirations* (Sept. 10, 2010) (LLM thesis, University of Gothenburg School of Business, Economics and Law) (on file with the Gothenburg University Library) (comparing the Universal Declaration and the American Declaration).

101. See Liliana Obregón, *The Universal Declaration of Human Rights and Latin America*, 24 MD. J. INT’L L. 94, 96 (2009) (describing how the experience negotiating the American Declaration affected the Latin American delegates’ negotiation approach for the Universal Declaration).

102. Inter-Am. Comm’n on H.R., *American Declaration of the Rights and Duties of Man*, Bogota, Colombia, May 2, 1948.

103. G.A. Res. 217 (III) A, *Universal Declaration of Human Rights* (Dec. 10, 1948).

and groups of persons.”¹⁰⁴ As Eibe Riedel et al. observe, “freedom of opinion alone makes no sense to a starving person.”¹⁰⁵

Notwithstanding the moral force of the American and Universal Declarations, it was assumed that, to be legally-binding, covenants drafted in the language of international law would be needed to transform the essentially moral statements of the Declarations into law.¹⁰⁶ For the Universal Declaration, this was eventually achieved through bifurcated covenants (I.C.C.P.R. and I.C.E.S.C.R.),¹⁰⁷ and, for the American Declaration, via a single instrument, the American Convention.¹⁰⁸ The U.S. has ratified the I.C.C.P.R. but neither the I.C.E.S.C.R. nor the American Convention, both of which affirm welfare rights.¹⁰⁹

104. See EIBE RIEDEL ET AL., *THE DEVELOPMENT OF ECONOMIC, SOCIAL, AND CULTURAL RIGHTS IN INTERNATIONAL LAW: CONTEMPORARY ISSUES AND CHALLENGES* 6 (2014) (describing the connection between human dignity and the protection of particular rights); see also JESSICA WHYTE, *THE MORALS OF THE MARKET: HUMAN RIGHTS AND THE RISE OF NEOLIBERALISM* 75–115 (2019) (discussing the debate that led to the affirmation of the welfare rights set out in articles 22 through 26 of the Universal Declaration).

105. RIEDEL ET AL., *supra* note 104, at 6.

106. In practice, the language of the Declarations and the clarifying Convention and Covenants may not be substantively different. For example, Universal Declaration, *supra* note 1, at art. 29(1) affirms: “Everyone has duties to the community in which alone the free and full development of his personality is possible.” I.C.E.S.C.R. preamble states: “Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant.”

107. It is arguable that, after the textual division of rights between the I.C.C.P.R. and I.C.E.S.C.R., a neoliberal conception of human rights has become dominant. See WHYTE, *supra* note 104, at 238–39.

108. Unlike the American Declaration, the American Convention does not include a list of duties. Article 32, Relationship between Duties and Rights provides:

1. Every person has responsibilities to his family, his community, and mankind.
2. The rights of each person are limited by the rights of others, by the security of all, and by the just demands of the general welfare, in a democratic society.

Organization of American States (OAS), American Convention on Human Rights, “Pact of San Jose, Costa Rica”, O.A.S.T.S. No. 32 (Jan. 22, 1969).

109. The other major Anglophone countries have ratified the I.C.E.S.C.R. but none has signed the UN General Assembly, Optional Protocol to the International Covenant on Economic, Social and Cultural Rights: resolution adopted by the

7. South African Constitution (1994)

The South African bill of rights is arguably the national constitution that is most loyal to the Universal Declaration, inasmuch as it does not distinguish between civil and political, and welfare rights.¹¹⁰ In a series of cases,¹¹¹ the Constitutional Court has demonstrated that the judicial branch of government is capable of ensuring that the executive honours its welfare obligations.¹¹²

C. Constitutional Approaches to Welfare Rights

According to a report produced for the European Parliament in 2000,¹¹³ the approaches of the then members of the European

General Assembly, 5 March 2009, A/RES/63/117 (Optional Protocol). The Optional Protocol provides for citizens to complain to the U.N. Committee on I.C.E.S.C.R. about their country's failure to comply with the covenant.

110. See S. AFR. CONST., Act 108 of 1996, Bill of Rights (enshrining the rights of South Africans and affirming the democratic values of human dignity, equality, and freedom).

111. See *Minister of Health v. Treatment Action Campaign* 2002 (5) SA 721 (CC) at 721 (S. Afr.) (ordering the government to provide free retroviral drugs to pregnant women); see also *South Africa v. Grootboom* 2001 (1) SA 46 (CC) at X (S. Afr.) (declaring the government's housing policy unconstitutional); see also *Khosa v. Minister of Social Development*, 2004 (6) SA 505 (CC) at X (S. Afr.) (requiring the government to pay social benefits to permanent residents and their children, not only citizens).

112. See Mark S. Kende, *The South African Constitutional Court's Embrace of Socio-Economic Rights: A Comparative Perspective*, 6 CHAPMAN L. REV. 137, 142–50 (2003) (outlining how the relatively new South African Constitutional Court has required the implementation of rights laid out in the South African Constitution).

113. See *Fundamental Social Rights in Europe, Social Affairs Series, SOCI 104 EN – 02/2000*, EUROPEAN PARLIAMENT (2000) (categorizing different EU members' welfare approaches at the time of publication) [perma.cc/ER7S-7SE6]. The European Union expanded from 15 to 28 members between 2004 and 2013, so this taxonomy does not include ex-socialist countries. Croatia's Constitution of 1991, for example, includes welfare rights along with civil and political rights. For more recent and comprehensive analyses, see Courtney Jung et al., *Economic and Social Rights in National Constitutions*, 62 AM. J. COMP. L. 1043 (2014); see also *The Right to Social Security in the Constitutions of the World: Broadening the moral and legal space for social justice. ILO Global Study, Volume 1: Europe*, I.L.O. (2016) [perma.cc/E9Z7-5RS7].

Union to welfare rights could be broadly distinguished between liberal, southern European, and moderate models.¹¹⁴ The U.K. is the paradigm example of the liberal approach, preferring market-oriented over State-driven solutions.¹¹⁵ Southern countries, including Italy, Greece, Spain and Portugal tend to include extensive welfare rights that seek

. . . to cover every sphere of life and to provide as comprehensive protection as possible for the citizen in their constitutions . . . [but] such rights are rarely enforceable. In some cases the constitutions do not even provide for complaints to be lodged with a constitutional court. The individual right is ultimately treated as an instruction to the State to initiate measures that enable the citizen to exercise the right concerned.¹¹⁶

“The constitutions of the other countries combine liberal tendencies with the definition of rights, whether as individual rights, as objectives of the State or as policy clauses.”¹¹⁷ As noted, the Irish constitutional drafters, despite being aware of other constitutions that had directly guaranteed welfare rights, relied on directive principles.¹¹⁸

The European Parliament report alerts us to the perils of desktop constitutional comparisons, and the potential differences

114. The category identifiers lack rigor: the first relates to a political ideology, the second to a region, and the third appears to be a value judgment.

115. See, e.g., Colm O’Cinneide, *The European Social Charter and the UK: Why it Matters*, 29 KING L.J. 275, 275 (2018) (discussing the general failure of U.K. courts to enforce the welfare rights which the U.K. has promised to uphold under the European Social Charter (ETS No. 35)).

116. See *Fundamental Social Rights in Europe*, supra note 113 (explaining how the comprehensive protection of welfare rights that is articulated in various constitutions does not mean such rights are actually enforceable).

117. *Id.* (detailing the lack of enforcement mechanisms for a selection of individual rights that have been seemingly codified in certain constitutions).

118. See generally Gerard Hogan, *Directive Principles, Socio-Economic Rights and the Constitution*, 36 IR. JUR. 174 (2001) (emphasizing the intentionality behind the choice of directive principles, as opposed to direct guarantees, in the Irish Constitution’s formulation); see also LIAM THORNTON, *Socio-Economic Rights and Ireland*, in INTERNATIONAL HUMAN RIGHTS: PERSPECTIVES FROM IRELAND 179 (Suzanne Egan, ed., 2015) (describing the Irish approach to the protection of rights).

between rights statements, and citizens being able to claim rights in practice.¹¹⁹ For example, are the rights of a dissident likely to be better respected in the Russian Federation, which formally guarantees freedom of ideas and speech,¹²⁰ or Australia, which has no direct constitutional guarantee of freedom of expression?¹²¹ What matters is not what is written in a constitutional document but what people experience. Ideally, the two coincide.

Reading the texts of national constitutions, particularly those of federations, in search of explicit welfare rights may, as Emily Zackin suggests, represent an exercise in “looking for rights in all the wrong places”.¹²² In Scandinavian countries, for example, “there has always been a cross-party consensus on the need for social safeguards in a market economy system”,¹²³ but also a strong cultural expectation that people will work.¹²⁴ And so, rather than

119. See *Fundamental Social Rights in Europe*, *supra* note 113 (showing that it is difficult to compare different nations when evaluating the protection of rights and the implementation of said rights).

120. See KONSTITUTSIYA ROSSIĬSKOĬ FEDERATSII [KONST. RF] [CONSTITUTION] art. 29.1 (Russ.) [perma.cc/9YCL-7Z84] (outlining Russia’s documented guarantees of freedom of ideas and speech); see, e.g., Sophia Kishkovsky, *Pussy Riot Members Jailed Over Social Media Posts*, ART NEWSPAPER (Dec. 18, 2021) (describing treatment of dissident artists) [perma.cc/67DA-ZFFU].

121. From the constitutional right to vote, Australian courts have developed robust freedom of expression protections. See, e.g., *Lange v. Austl. Broad. Corp.* (1997) 189 C.L.R. 520 (affirming the existence of an implied freedom of political communication outlined by the Australian Constitution).

122. See generally EMILY ZACKIN, *LOOKING FOR RIGHTS IN ALL THE WRONG PLACES: WHY STATE CONSTITUTIONS CONTAIN AMERICA’S POSITIVE RIGHTS* (2013); see also Cass R. Sunstein, *Why Does the American Constitution Lack Social and Economic Guarantees?* 56(1) SYRACUSE L. REV. 1, 11 (2005) (framing the failure of the U.S. Constitution to lay out social and economic rights); see also Gillian MacNaughton & Mariah McGill, *Economic and Social Rights in the United States: Implementation Without Ratification*, 4(2) NE. U. L.J. 365, 369 (2012) (addressing U.S. recognition and implementation of economic and social rights at different levels of government); see also Frank I. Michelman, *Socioeconomic Rights in Constitutional Law: Explaining America away* 6 INT. J. CONST. L. 663, 676 (2008) (discussing the omission of a U.S. constitutional commitment to any specific socioeconomic rights).

123. See *Fundamental Social Rights in Europe*, *supra* note 113 (revealing the general perspective in Scandinavian countries that social protections are both necessary and important).

124. See Martin Seeleib-Kaiser, *Welfare State Transformations in Comparative Perspective: Shifting Boundaries of ‘Public’ and ‘Private’ Social*

looking for welfare rights in the constitutional documents of these countries, they need to be sought in deep socio-political structures.¹²⁵

Zackin observes of U.S. arrangements “state constitutions have long mandated active government intervention in social and economic life, and have dedicated a wide array of situations in which government is not only authorized, but actually obligated to intervene.”¹²⁶ Sub-national constitutions include “many different kinds of mandates for interventionist and protective government, not only with respect to care of the poor, aged, and mentally ill, preserve the natural environment, provide free education, and protect debtors’ home and dignity.”¹²⁷

In contrast to the active welfare role of some U.S. states, certain references to welfare rights included in the constitutions of the German Länder “are virtually unenforceable since the Federal Government has assumed almost total responsibility for social matters”.¹²⁸ Paradoxically, the Basic Law of 1949 does not generally refer to fundamental welfare rights.¹²⁹

However, article 20(1) provides, as a fundamental constitutional principle, “[t]he Federal Republic of Germany is a democratic and social federal state.”¹³⁰ This provision is subject to the so-called “eternity clause” contained in article 79(3), which states “[a]mendments to this Basic Law affecting . . . the principles laid down in Articles 1 and 20 shall be inadmissible.”¹³¹ Article 1(1)

Policy?, in WELFARE STATE TRANSFORMATIONS: COMPARATIVE PERSPECTIVES 1, 4 (Martin Seeleib-Kaiser ed. 2008) (highlighting the need for individuals to make efforts to work and broadly contribute).

125. See generally ZACKIN, *supra* note 122 (arguing that positive rights are actually enshrined in the constitutional law of states).

126. See *id.* at 3 (mentioning the United States’ obligations to intervene in certain aspects of social and economic life).

127. *Id.*

128. See *Fundamental Social Rights in Europe*, *supra* note 113.

129. *Id.* (“The main reason for this restraint is that the authors of the constitution wanted to avoid the need for such rights to be constantly adjusted to changing economic and social conditions.”).

130. See Grundgesetz [GG] [Basic Law], translation at [perma.cc/R5QW-HVLA] (citing to a fundamental constitutional principle as provided in article 20(1) of the Basic Law for the Federal Republic of Germany).

131. See *id.* (highlighting the “eternity clause” that protects articles 1 through 20 from future alterations).

provides “[h]uman dignity shall be inviolable. To respect and protect it shall be the duty of all state authority.”¹³²

The concept of the “economic subsistence minimum” (*Existenzminimum*) is well-established in the adjudication of the German Federal Constitutional Court (F.C.C.) on human dignity.¹³³ As Ingrid Leijten advises, *Existenzminimum* “involves the means for living a life in accordance with human dignity. Although the Basic Law does not mention a right to social security, or socioeconomic rights generally, the legislature has an obligation to provide for this minimum.”¹³⁴ In addition to the inviolability of human dignity, the “social” in article 20(1) also implies welfare rights.¹³⁵ According to Luis María Díez-Picazo and Marie-Claire Ponthoreau,

[T]here is a widespread understanding of the Basic Law as the entrenchment of certain fundamental values. On the other hand, the Basic Law operates within the context of an old and deeply-rooted German tradition of charitable public institutions, according to which citizens’ welfare is a state duty So the promotion function of declarations of social rights is less necessary in this case. The protection of social rights is well established and takes place at a statutory level.¹³⁶

132. *Id.*; *Cf.* American Declaration, *supra* note 2, at Preamble and Universal Declaration.

133. See 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*, 12 GER. L. J. 1941, 1942 (2011) (introducing the concept of “economic subsistence minimum”).

134. See Ingrid Leijten, *The German Right to an Existenzminimum, Human Dignity, and the Possibility of Minimum Core Socioeconomic Rights Protection*, 16 GER. L.J. 23, 27 (2015) (describing how the German legislature embraces the concept of “economic subsistence minimum”).

135. See Grundgesetz [GG] [Basic Law], translation at [perma.cc/R5QW-HVLA] (clarifying that the term “social” in article 20(1) also implies welfare rights).

136. See Luis María Díez-Picazo & Marie-Claire Ponthoreau, *The Constitutional Protection of Social Rights: Some Comparative Remarks*, 19 (EUI WORKING PAPER LAW NO. 91/20 1991) (outlining different understandings within the German Basic Law of the concept of fundamental rights).

When neither a federal constitution nor sub-national charters include express welfare rights, the division of powers or the structure of the constitution may yet imply an obligation on government to meet welfare expectations.¹³⁷ For example, the Australian constitution specifies a division of powers, not just between the three branches of government but also between the federal Commonwealth, and the constituent states and territories.¹³⁸ The allocation of certain functions, such as welfare, to a particular branch at a certain level of government may imply that those services ought to be provided.¹³⁹ If Zackin invites us to look downwards to find welfare rights at a sub-national level, we may also usefully look upwards for welfare rights in international agreements that may be legally or morally binding on countries,

137. See Jon D. Michaels, *An Enduring, Evolving Separation of Powers*, 115 COLUM. L. REV. 515, 561 (2015) (“[W]hy the Court allows (and ought to allow) constitutional separation of powers to give way to administrative governance.”).

138. Australia does not have a charter of rights at a federal level. See Commonwealth of Australia Constitution Act 1900. The state of Victoria and the Australian Capital Territory (A.C.T.) have introduced their own charters. Victoria’s Charter of Human Rights and Responsibilities Act 2006 (Vic.) provides that “human rights come with responsibilities and must be exercised in a way that respects the human rights of others”; for example, “Special duties and responsibilities are attached to the right of freedom of expression.” Cf. the Canadian Charter of Rights and Freedoms and the New Zealand Bill of Rights Act 1990. Neither charter expressly mentions citizens’ duties or responsibilities but, since one of the New Zealand Act’s purposes is to affirm the country’s commitment to the I.C.C.P.R., it implicitly incorporates the duties mentioned in that covenant. See I.C.C.P.R., preamble and art. 19(3) (“This Act encourages individuals to see themselves, and each other, as the holders of rights, and as responsible for upholding the human rights of others.”).

139. See Max Spry, *The Executive Power of the Commonwealth: Its Scope and Limits*, PARLIAMENT OF AUSTL. (1995–96) (contemplating how a legislative power may be derived) [perma.cc/N2ZM-NZRL]; see generally Cheryl Saunders, *Protecting Rights in Common Law Constitutional Systems: A Framework for a Comparative Study*, 33 VICTORIA U. WELLINGTON. L. REV. 83 (2002). The Canadian Constitution similarly details functions of central and provincial government, and, thereby, may imply citizen expectations, if not rights. See Constitution Act, 1867, § 94A (Can.) (noting an alternative to expressly informing citizens of their rights).

notwithstanding the omission of an express mention of welfare in national charters.¹⁴⁰

In monist legal systems, international treaties automatically become incorporated into domestic law on ratification, whereas, dualist systems require a treaty to be transformed into domestic law through legislation.¹⁴¹ According to David Sloss, in addition to Nordic States, almost all British Commonwealth States follow the dualist approach for treaties, whereas monist states include France, Germany, Mexico, Russia, and the U.S.¹⁴² Some countries, such as South Africa, have adopted a hybrid approach, while courts in formally dualist systems may be creative in ensuring their governments honor their international promises, even in the absence of incorporating domestic legislation.¹⁴³ Sloss observes “[a]lthough there are significant formal distinctions between monist and dualist States . . . there are few, if any, functional distinctions. In both monist and dualist States, domestic courts . . . routinely apply transnational treaty provisions.”¹⁴⁴

Canada and the U.S. have not ratified the American Convention but, as members of the O.A.S., they may still be subject to international review, and are expected to respect the welfare rights set out in the American Declaration.¹⁴⁵ The American Convention created the Inter-American Commission on Human Rights as the jurisdictional body to supervise States’ compliance

140. See ZACKIN, *supra* note 122, at 21 (indicating how looking at international agreements allows one to understand how legal and moral obligations may apply to nations).

141. For a discussion the incorporation/transformation distinction, see Lord Denning in *Trendtex Trading v. Central Bank of Nigeria* [1977] 1 QB at 529 (Eng.) (providing a comprehensive guide to understanding treaty adoption methods).

142. See David L. Sloss, *Domestic Application of Treaties*, in THE OXFORD GUIDE TO TREATIES 355, 356 (Duncan B. Hollis ed., 2d ed. 2020) (highlighting how different countries approach adopting treaties as binding law).

143. See, e.g., *Project Blue Sky Inc v. Australian Broadcasting Authority* (1998) HCA 28 (Austl.) (noting the High Court of Australia’s rationale in taking the initiative to encourage governments to honor international obligations).

144. See Sloss, *supra* note 142, at 24 (noting that both monist and dualist States may have functional similarities).

145. See American Declaration on the Rights and Duties of Man, Res. XXX, Final Act of the Ninth International Conference of American States (Pan American Union), Bogota, Colombia, Mar. 30 May 2, 1948, at 38 (discussing expectations regarding respecting welfare rights in the American Declaration).

with the convention.¹⁴⁶ Until the American Convention comes into force, article 145 of the O.A.S. charter gives the Inter-American Commission on Human Rights competence in monitoring member states' conduct regarding human rights.¹⁴⁷ The Inter-American Court of Human Rights and the Inter-American Commission on Human Rights consider the American Declaration to be binding on O.A.S. member states, despite its not generally not being recognized as a legally binding treaty.¹⁴⁸ In this regard, the Inter-American Court of Human Rights has held: "That the Declaration is not a treaty does not, then, lead to the conclusion that it does not have legal effect."¹⁴⁹

III. Origins of Article 29(1) of the Universal Declaration

The American Declaration allocates duties to different actors.¹⁵⁰ *The individual* must "conduct himself in relation to others that each and everyone may fully form and develop his personality".¹⁵¹ *Every person* must: "aid, support, educate and protect his minor children, and it is the duty of children to honor their parents always and to aid, support and protect them when

146. See *Introduction*, O.A.S. (providing background on the Inter-American Commission on Human Rights) [perma.cc/TE6N-ELN3].

147. See Organization of American States, Charter of the Organization of American States, at art. 145 (Apr. 30, 1948) (explaining Article 145 of the O.A.S. charter).

148. See generally Robert K. Goldman, *History and Action: The Inter-American Human Rights System and the Role of the Inter-American Commission on Human Rights*, HUM. RTS. Q., 856, 856–87, (2009) (identifying the expectation that the American Declaration is binding on O.A.S. members despite not being a legally binding treaty).

149. See Interpretation of the American Declaration of the Rights and Duties of Man Within the Framework of Article 64 of the American Convention on Human Rights, Advisory Opinion OC-10/89, July 14, 1989, Inter-Am Ct H.R. (ser. A) No. 10 ¶ 47(1989) (stating that it is incorrect to assume that the American Declaration does not have a legal effect on States).

150. See also John H. Knox, *Horizontal Human Rights Law*, 102 AM. J. INT'L L. 1, 3 (2008) ("[T]he American Declaration of the Rights and Duties of Man . . . emphasizes human rights and duties equally, as its title suggests.").

151. See American Declaration, *supra* note 2, at art. 29 (indicating an allocation of various duties to each individual).

they need it”;¹⁵² “acquire at least an elementary education”;¹⁵³ “vote in the popular elections of the country of which he is a national, when he is legally capable of doing so”;¹⁵⁴ “obey the law and other legitimate commands of the authorities of his country and those of the country in which he may be”;¹⁵⁵ “cooperate with the state and the community with respect to social security and welfare, in accordance with his ability and with existing circumstances”;¹⁵⁶ “pay the taxes established by law for the support of public services”;¹⁵⁷ “work, as far as his capacity and possibilities permit, in order to obtain the means of livelihood or to benefit his community”;¹⁵⁸ “refrain from taking part in political activities that, according to law, are reserved exclusively to the citizens of the state in which he is an alien”.¹⁵⁹ *Every able-bodied person* must “render whatever civil and military service his country may require for its defense and preservation, and, in case of public disaster, to render such services as may be in his power.¹⁶⁰ It is likewise his duty to hold any public office to which he may be elected by popular vote in the state of which he is a national.”¹⁶¹ In contrast to the specificity of the American Declaration, article 29(1) of the Universal Declaration economically affirms: “Everyone has duties to the community in which alone the free and full development of his personality is possible.”¹⁶²

This Part of the Article considers why, when the American Declaration and Universal Declaration share recognition of equal human dignity as their fundamental informing value, they appear to differ radically on the issue of reciprocal duties. The original drafting committee for the Universal Declaration comprised Eleanor Roosevelt (U.S.) as chair, Pen-Chun Chang (China), and

152. *See id.* at art. 30.

153. *See id.* at art. 31.

154. *See id.* at art. 32.

155. *See id.* at art. 33.

156. *See id.* at art. 35.

157. *See id.* at art. 36.

158. *See id.* at art. 37.

159. *See id.* at art. 38.

160. *See id.* at art. 34.

161. *See id.*

162. *See* Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217 (III) (Dec. 10, 1948).

Charles Malik (Lebanon).¹⁶³ This group was expanded, with William Hodgson (Australia), Hernán Santa Cruz (Chile), René Cassin (France), Alexander Bogomolov (U.S.S.R.), and Charles Dukeston (U.K.) being added.¹⁶⁴ John Humphrey, the first director of the U.N. Human Rights Division, was charged with producing a first draft declaration.¹⁶⁵ Numerous further drafts were negotiated before the final version was adopted.¹⁶⁶

A. Development of the Duties Statement

Humphrey presented the first duties statement, which provided as article one of the first draft:

Every one owes a duty to his State and to the (international society) United Nations. He must accept his just share of responsibility for the performance of such social duties and his share of such common sacrifices as may contribute to the common good.¹⁶⁷

Understandably, commencing a declaration of rights with the assertion of duty to the State was unpalatable to the delegates of the countries, which had fought a war against totalitarianism.¹⁶⁸ Cassin was charged with producing the second draft. The first four articles of his draft provided:

163. See *Drafters of the Declaration*, UNITED NATIONS, O.H.C.H.R (listing all the drafters of the Declaration of Universal Rights) [perma.cc/H8ZH-8NU7].

164. See *Universal Declaration of Human Rights Drafting History*, DAG HAMMARSKJÖLD LIBRARY (2021) (listing all individuals who contributed to the Declaration of Universal Rights) [perma.cc/PJJ2-795J].

165. *Id.* (stating John Humphrey worked on the initial draft of the Declaration).

166. See MORSINK, *supra* note 90, at 1–35 (explaining the Declaration’s drafting process).

167. *Id.* at 241.

168. The U.S.S.R., although a crucial anti-Axis partner, was itself a totalitarian State. It is commonly believed, albeit without reliable evidence, that GEORGE ORWELL, 1984 (1949) was originally titled 1948. See Robert McCrum, *The Masterpiece that Killed George Orwell*, THE OBSERVER (May 10, 2009) (stating that there can be no doubt that GEORGE ORWELL, ANIMAL FARM (1945) was an allegory for Stalinist totalitarians) [perma.cc/3K8X-S7ZE].

All men are brothers. Being endowed with reason, members of one family, they are free and possess equal dignity and rights.

The object of society is to afford each of its members equal opportunity for the full development of his spirit, mind, and body.

Man is essentially social and has fundamental duties to his fellow-men. The rights of each are therefore limited by the rights of others.

(Alternative) As human beings cannot live and develop themselves without the help and support of society, each one owes to society fundamental duties which are: obedience to law, exercise of a useful activity, willing acceptance of obligations and sacrifices demanded for the common good.

In the exercise of his rights, every one is limited by the rights of others.¹⁶⁹

At Roosevelt's instance, with the support and assistance of Ralph Harry (Australia), the next iteration compressed the last three of Cassin's proposed articles into one:

These rights are limited only by the equal rights of others. Man also owes duties to society, through which he is enabled to develop his spirit, mind and body in wider freedom.¹⁷⁰

The Panamanian and Philippines' delegates proposed a further amendment which was taken through to the next round of negotiations:

In the exercise of his rights everyone is limited by the rights of others and by the just requirements of the democratic State. The individual owes duties to society through which he is enabled to develop his spirit, mind, and body in wider freedom.¹⁷¹

169. MORSINK, *supra* note 90, at 243.

170. *Id.* at 244.

171. *Id.*

After Charles Dukeston (U.K.) objected to the phrase “democratic State”,¹⁷² the Third Session adopted the following compromise:

Everyone has duties to the community which enables him freely to develop his personality.¹⁷³

One further significant amendment was made before the text of article 29(1) was finalized: that was the controversial insertion of the word “alone”.¹⁷⁴ To reiterate, the final version of article 29(1) reads:

Everyone has duties to the community in which alone the free and full development of his personality is possible.¹⁷⁵

B. A General Duties Statement versus a List

Bahgat Badawi Bey, an Egyptian delegate, proposed the inclusion of a list duties in the way of the American Declaration.¹⁷⁶ Despite expectable support from the Latin American bloc, the proposal was not taken up.¹⁷⁷ While recognizing the reciprocal relationship between rights and duty, other delegates recognized “the danger that governments might use such ‘duties’ to limit human rights in unpredictable, unacceptable ways, and declined to accept the concept”.¹⁷⁸ Roosevelt supported “an explicit reference to the duties of the individual to society” but argued that only rights should be listed.¹⁷⁹ Cassin obviously believed his draft was

172. *See id.* (explaining that Morsink does not explain Dukeston’s objection, but presumably it was rooted in the recognition that democratic States may oppress minorities. Delegates would have been acutely aware that the Nazi regime was, at first, democratically elected).

173. *See id.* at 245 (supplementing the statement: “In the exercise of his rights, everyone shall be subject only to such limitations as are necessary to secure due recognition and respect for the rights of others and the requirements of general welfare in a democratic society”).

174. *Id.*

175. *Id.*

176. *Id.* (outlining Bahgat Badawi Bey’s ideas for the American Declaration).

177. *See id.* (stating Bahgat Badawi Bey’s ideas for the American Declaration were not implemented).

178. *See Universal Declaration of Human Rights at 70: 30 Articles on 30 Articles – Article 29*, O.H.C.H.R. (Dec. 8, 2018) [perma.cc/8GZ4-2GTR].

179. *See MORSINK, supra* note 90, at 245 (stating Roosevelt supported only the rights listed in the Declaration).

adequate, so that a specific list of duties was unnecessary.¹⁸⁰ Likewise, Christopher Mayhew (U.K.) dismissed the necessity of a list.¹⁸¹ Cassin further observed, if the drafting committee followed Bey's proposal, "it would become necessary to draft a declaration of duties corresponding to the declaration of rights. It was obviously impossible to complete such a task during the current session."¹⁸²

Presuming the American Declaration would have provided a template for a discussion of duties, it would no doubt have been a deeply time-consuming task to craft a list of specific duties that would satisfy the significantly more numerous and heterogenous delegates at the Universal Declaration conferences than those in Bogotá.¹⁸³

Delegates from Western countries were particularly concerned about the duties in the American Declaration "to obey the law and other legitimate commands of the authorities of his country," and "to render whatever civil and military service his country may require for its defence and preservation".¹⁸⁴ According to Morsink, they perceived such rights "as opening a Pandora's Box that might unravel the whole delicately interlaced structure of individual rights and freedoms."¹⁸⁵ Needless to say, many of the countries represented at the negotiations, including their colonies, had fought a long and sanguinary war against the totalitarian Axis powers that had demanded an unquestioning obedience to the State.¹⁸⁶

Rejection of a list of duties, which, if drafted, would almost certainly have been significantly different in certain regards from those of the American Declaration, was, then, less a matter of principle but rather, it seems to have been a more prosaic question

180. *Id.*

181. *See id.* at 240 (stating that Christopher Mayhew did not see the need for a list format, as the Declaration would be effective in protecting human rights without a list of duties).

182. *Id.*

183. *See id.* (noting that a list of specific duties would have been more logistically challenging to achieve because of the conflicts of interests between the increased number of stakeholders).

184. *See American Declaration, supra* note 7, at arts. 33 & 34.

185. *See MORSINK, supra* note 90, at 70.

186. *Id.*

of time and practicability.¹⁸⁷ As Johannes Morsink concludes, quite simply, there “was not enough time at the end to expand upon Article 29”.¹⁸⁸ List or no list, the State and society owe duties to enable the right to the free and full development of one’s personality. The right to welfare “and many other benefits embedded in all the other rights stipulated in the Universal Declaration lies at the foundation of the duties spelled out in Article 29. They are all linked together in a mutuality of reciprocal rights and duties on numerous levels. Article 29 outlines only the bare framework of this system.”¹⁸⁹

It would be a counterfactual exercise to speculate on the shape and content of the specific duties that might have been included, had time allowed, but it is submitted that a duty to pay tax, on the basis of ability to pay, and in accordance with the rule of law would have been one such duty.¹⁹⁰ A duty to pay tax does not challenge any of the rights affirmed by the Universal Declaration; indeed, especially for welfare rights, it makes their satisfaction plausible.

C. Textual Position of the Duties Statement

If, following the American Declaration, duties are inherent in the affirmation of rights, why was this proposition not included in the Preamble or stated earlier, rather than being left to the penultimate article? In Humphrey’s initial draft, his controversial duties statement was, indeed, positioned as the first article.¹⁹¹ But Chang (Nationalist China), whom one may have assumed would have wished to foreground a Confucian conception of duty – and he did, indeed, strongly argue for duties elsewhere – proposed the caudal placing of the duties statement.¹⁹² Abdullahi Ahmed An-

187. *See id.* at 240 (noting that the authors of the Universal Declaration did not assign duties because of a motivation to move quickly).

188. *Id.*

189. *Id.* at 241.

190. *See id.* at 247 (speculating that that paying taxes would have been listed as a duty although Morsink discusses tax just once. L.C. Beaufort Netherlands observed that, even when certain people were denied civil and political rights, they were not absolved of their duty to pay tax).

191. *Id.*

192. *See id.* at 245 (discussing that Chang wanted the duties statement listed last).

Na'im attributes this apparent demotion of a communitarian sensibility, which one might expect in Confucian-heritage culture, to Chang's Western education,¹⁹³ but Chang was one of the few non-Latin delegates to support a list of duties.¹⁹⁴

Rather than cultural capture, it seems that Chang's unexpected proposal may be attributed to human frailty.¹⁹⁵ Drawing on Humphrey's memoirs, Morsink hypothesizes that Chang was dispirited by the success of the Communist insurgency and sought to curry favor with the U.S to promote the Nationalist cause.¹⁹⁶ Immanuel Kant's observation "[f]rom such crooked timber of humankind is made nothing entirely straight can be made" seems relevant here.¹⁹⁷ There is, a poetical aspect to the structure of the Universal Declaration being influenced by something so human as Chang's homesickness.¹⁹⁸ We should not, therefore, assign too much significance to the position of the duties statement in the Declaration.

D. Delegates' Views

The countries represented at the negotiations for the Universal Declaration comprised two independent African

193. See Abdullahi Ahmed An-Na'im, *Problems of Universal Cultural Legitimacy for Human Rights*, in HUMAN RIGHTS IN AFRICA: CROSS-CULTURAL PERSPECTIVES 350 (Abdullahi Ahmed An-Na'im and Francis M. Deng, eds., 1990).

194. See MORSINK, *supra* note 90, at 245.

195. See *id.* at 245.

196. See *id.* (hypothesizing why Chang behaved the way he did during negotiations).

197. PAUL GUYER, *The Crooked Timber of Mankind*, in KANT'S IDEA FOR A UNIVERSAL HISTORY WITH A COSMOPOLITAN AIM 129 (Amélie Oksenberg Rorty & James Schmidt (eds.), 2009).

198. See MORSINK, *supra* note 90, at 245 (explaining Chang's stance during the drafting process).

nations;¹⁹⁹ three East Asian;²⁰⁰ six Soviet bloc;²⁰¹ six Anglo-American;²⁰² six Western European;²⁰³ seven West Asian;²⁰⁴ and 20 Latin American.²⁰⁵ Despite the disproportionate number of Latin

199. See *Social, Humanitarian and Cultural Questions*, in YEARBOOK OF THE UNITED NATIONS 576 (1948–49) (noting the representation of Ethiopia and Liberia).

200. See *id.* at 527; 528; 530 (mentioning the representation of India, Republic of China, and the Philippine Commonwealth). India was included in the original negotiations to form the U.N. even though it was not yet independent. This was done on Churchill's insistence. In turn, he supported Stalin's demand for separate representation for Byelorussia and the Ukraine. (Stalin originally wanted separate representation for all sixteen Soviet republics.) See generally H.G. NICHOLAS, THE UNITED NATIONS AS A POLITICAL INSTITUTION 5 (1959).

201. See *Social, Humanitarian and Cultural Questions*, *supra* note 199, at 525; 528 (stating the representation of Belorussian S.S.R., Czechoslovakia, Ukrainian S.S.R., U.S.S.R., and Yugoslavia). Poland was not represented but was one of the original signatories of the Universal Declaration. In the early years of the U.N., Greece sided with the U.S.S.R. Nicholas. See NICHOLAS, *supra* note 200, at 9.

202. See *Social, Humanitarian and Cultural Questions*, *supra* note 199, at 527–28 (noting the representation of Australia, Canada, New Zealand, United Kingdom, Union of South Africa, and the United States).

203. See *id.* at 527; 530–532; 535 (noting the representation of Belgium, Denmark, France, Luxembourg, Netherlands, and Norway). Needless to say, ex-Axis powers were excluded from negotiations, but pre-Nazi German philosophy was taken into account. See generally HUMAN RIGHTS: COMMENTS AND INTERPRETATION (U.N.E.S.C.O., ed. 1949). The Soviet Union vetoed Ireland's joining the U.N. until 1955, despite the Irish Free State's prominent role in the League of Nations, ostensibly due to the country's neutrality during the Second World War. See Noel Dorr, *Ireland at the United Nations: 40 Years On*, 7 IRISH STUD. INT. AFF. 41, 42 (1996) (describing the Soviet Union's veto of Ireland from joining the U.N.). Conversely, Sweden had much better diplomatic relations with the Soviet Union, and, while the country had collaborated with Germany early in the war, its humanitarian efforts were well-known, and the Soviet Union did not block its admittance to membership in 1946. See generally Norbert Götz, *From Neutrality to Membership: Sweden and the United Nations, 1941–1946*, 25 CONTEMP. EUR. HIST. 75 (2016). Switzerland continued its wartime neutrality and did not join the U.N. until 2002. See Stéphanie Fillion, *The End of Swiss Neutrality*, FOREIGN POLICY (last updated Jan. 15, 2021) (noting that Switzerland joined the U.N. in 2002) [perma.cc/2ET5-HEDD].

204. See *Social, Humanitarian and Cultural Questions*, *supra* note 199, at 527, 528, 532, 546, 552 (stating the representation of Egypt, Iran, Iraq, Lebanon, Saudi Arabia, Syrian Arab Republic, and Turkey).

205. See *id.* at 527; 529; 535; 553; 561 (noting the representation of Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador,

American countries at the conference table, their potential influence on the Universal Declaration should not be overestimated.²⁰⁶ From a practical perspective, only one Latin American delegate was a member of the drafting committee.²⁰⁷ Furthermore, after Humphrey's initial work, it seems that Cassin had a particularly strong grip on the drafter's pen.²⁰⁸

The American Declaration "was a seminal document in the development of international protection of human rights."²⁰⁹ From a contemporary perspective, it may appear unlikely that such an instrument should emerge from a region that has often been beset by civil unrest and repressive regimes.²¹⁰ However, the United Nations Office of the High Commissioner for Human Rights (O.H.C.H.R) argues that, in 1948, "Latin America was largely democratic, and military dictatorships were decades in the future."²¹¹ Certainly, in the mid-1940s, many Latin American countries experienced a surge in democracy, inspired in part by Franklin Roosevelt's Four Freedoms,²¹² but that peak had passed

El Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay, and Venezuela.

206. See, e.g., Mary Ann Glendon, *The Forgotten Crucible: The Latin American Influence on the Universal Human Rights Idea*, 16 HARVARD HUM. RTS. J. 27, 27 (2003) (highlighting the role of Latin American influences on the Universal Declaration of Human Rights). Glendon emphasizes the influence of social Catholic thought on the formulation of the Universal Declaration. This cannot be doubted but she appears to overlook the possible influences of secular socialism.

207. See *Social, Humanitarian and Cultural Questions*, supra note 199, at 525 (noting that Uruguay was a member of the drafting committee).

208. See René Cassin, *How the Charter of Human Rights Was Born*, UNESCO COURIER 4, 6 (Jan. 1968) (detailing Cassin's role in the drafting process) [perma.cc/8YPE-K44V]. See *infra* on the guiding role of John Humphrey.

209. *Universal Declaration of Human Rights* at 70, supra note 178.

210. See, e.g., David Pion-Berlin, *Review: Authoritarian Legacies and Their Impact on Latin America*, 47 LATIN AM. POL. & SOC'Y 159, 159–60 (2005) (evaluating the legacy and impact of authoritarian governments in Latin America).

211. *Universal Declaration of Human Rights* at 70, supra note 178.

212. See generally Franklin D. Roosevelt, *State of the Union Address*, NAT'L ARCHIVES (Jan. 6, 1941) [perma.cc/XXS6-KSZG]; Franklin D. Roosevelt, *State of the Union Address*, FRANKLIN D. ROOSEVELT PRESIDENTIAL LIBRARY (Jan. 11, 1944), [perma.cc/UR78-6FSH]; Cf. the Five Giant Evils of the U.K.'s Beveridge Report—Want, Disease, Ignorance, Squalor and Idleness. See THE BEVERIDGE REPORT: 'THE WAY TO FREEDOM FROM WANT' (1942). The U.K. Labour government,

by 1948.²¹³ David Rock observes that, by the time of the Bogotá conference, “Latin America’s democratic opening of mid-decade was collapsing.”²¹⁴ Democratic regimes in Venezuela and Peru had been overthrown, and Eliécer Gaitán, the popular reformist leader of Colombia had been assassinated.²¹⁵ Argentina, Chile, Brazil, Paraguay, Bolivia, and many of the Caribbean and Central American countries had launched “repressive campaigns against the Communist parties in each country, repressing the labor unions, and silencing the reformers.”²¹⁶

Rock observes “in several Latin American countries the resultant popular movements diverged widely from the pattern of liberal democracy in the United States.”²¹⁷ The right to welfare was, a critical popular demand, as, conversely, was an expectation on the part of increasingly authoritarian governments to require obedience.²¹⁸ Needless to say, affirmation of broad duties to potentially authoritarian regimes did not sit easily with the representatives of the liberal democracies.²¹⁹

led by Clement Atlee (1945-51), influenced Latin American thinking on welfare rights. See David Rock, *War and Postwar Intersections: Latin America and the United States in, LATIN AMERICA IN THE 1940S: WAR AND POSTWAR TRANSITIONS* 21 (David Rock, ed., 1994) (describing the effect of Great Britain’s democratic socialism experiment on Latin American countries).

213. See Rock, *supra* note 212, at 34.

214. See *id.* (addressing the overthrowing of democratic governments in Latin America).

215. See *id.* (noting the different democratic governments in Latin America that were overthrown during the 1950s).

216. See *id.* (outlining the anti-reform efforts taken by some Latin American governments during the 1950s).

217. See *id.* at 21 (indicating that Latin American popular movements did not just demand the right to vote, but also advocated for broader social programs).

218. Cf. Bismarck – “the Iron Chancellor” – and his introduction of welfare rights and progressive taxation, on the one hand, and his exercise of authoritarian powers, on the other hand. See Michael Bernhard, *The Leadership Secrets of Bismarck: Imperial Germany and Competitive Authoritarianism*, by Jonathan Steinberg, 90 FOREIGN AFF. 150, 152–53 (2011) (highlighting how Bismarck both pressured members of the working class while at the same time proposing social welfare legislation to benefit the working class).

219. See Rock, *supra* note 212, at 36 (detailing the changes in Latin America between the 1940s and 1950s).

No delegate is recorded as having put forward a libertarian viewpoint.²²⁰ The approaches to duties ranged from situated liberalism to versions of communitarianism.²²¹ Thus, Roland Lebeau (Belgium) sought “a middle ground between extreme individualism and the Marxist kind of communitarianism espoused by [Vladislav] Ribnikar [Yugoslav delegate] and therefore proposed ‘that the basis of the bill of rights was not the community and the mass but simply the human person, that is to say *the human person participating in social life*’.”²²²

Representing a Confucian communitarian perspective,²²³ Chang argued “the aim of the United Nations was not to ensure the selfish gains of the individual but to try and increase man’s moral stature.²²⁴ It was [therefore] a necessity to proclaim the duties of the individual, for it was a consciousness of his duties which enabled man to reach a high moral standard.”²²⁵

Cassin exhibited communitarian tendencies throughout the negotiations but, perhaps unexpectedly, the insertion of the word “alone” was proposed by William Hodgson (Australia).²²⁶ Consequently, “[e]veryone has duties to the community in which *alone* the free and full development of his personality is possible”.²²⁷ Pavlov (U.S.S.R), who was not concerned that Humphrey’s duty to the State was rejected because the Soviets saw

220. Charles Malik (Lebanon) sought to place the individual over the modern State. However, it seems Malik was most concerned with the vulnerability of minority communities within the modern State. *See* MORSINK, *supra* note 90, at 242 (discussing that Malik worried about the State overpowering the individual).

221. *See id.* at 239–52 (explaining the different viewpoints of representatives from different countries).

222. *See id.* at 368.

223. On Confucian communitarianism, *see, generally*, Sungmoon Kim, *The Anatomy of Confucian Communitarianism: The Confucian Social Self and Its Discontents*, 42(2) PHILOS. FORUM 111 (2011). *See also* Chung-Shu Lo, *Human Rights in the Chinese Tradition*, in HUMAN RIGHTS: COMMENTS AND INTERPRETATION 186 (1948) (providing more information on Confucian natural law and human rights).

224. MORSINK, *supra* note 90, at 245.

225. *See id.*

226. *See id.* at 246 (“Alan Watt, the Australian delegate, proposed the substitute phrase ‘in which alone the full and free development of his personality is possible.’”).

227. G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948).

State, society and community as being synonymous, enthusiastically pursued this proposal.²²⁸

The broad statement captured in article 29, in essence, recognizes that rights and duties are intertwined, in much the same way as all human rights are indivisible, interdependent and interrelated.²²⁹ It is an ostensibly communitarian statement. However, An-Na'im argues that communitarian viewpoints were not sufficiently reflected in article 29(1).²³⁰ He observes:

The only representatives of non-Western countries in [the drafting committee] were Chang Peng-Chung of China and Charles Habib Malik of Lebanon. Both had been educated in American universities and both reflected their “westernization” in the points they took during the debates. For example, Chang and Malik emphasized individual over collective or peoples’ rights, and the need for the protection of the individual from the state. Regardless of one’s agreement or disagreement with their position, it clearly reflects more the Western than the Chinese or Middle Eastern perspectives.²³¹

An-Na'im is undoubtedly correct that, despite efforts by the drafters of the Universal Declaration to consider and incorporate

228. See MORSINK, *supra* note 90, at 247 (explaining the U.S.S.R.’s position at the delegation).

229. See World Conference on Human Rights, *Vienna Declaration and Programme of Action*, U.N. Doc. A/CONF.157/23 3 ¶ 5 (June 25, 1993) (stating that “[a]ll human rights are universal, indivisible and interdependent and interrelated”).

230. See ABDULLAHI AHMED AN-NA’IM & FRANCIS M. DENG, HUMAN RIGHTS IN AFRICA: CROSS-CULTURAL PERSPECTIVES 350 (1990).

231. *Id.* at 350. An-Na'im holds degrees from the Universities of Cambridge and Edinburgh and is a professor at Emory University Law School. Surely such deep exposure to Western education does not exclude the authenticity of either An-Na'im or Chang's thoughts and writings. For an assessment of Chang's contribution to the formulation of the Universal Declaration, see generally Frédéric Krumbein, *P. C. Chang – The Chinese Father of Human Rights*, 14 J. HUM. RTS. 332 (2015); HANS INGVAR ROTH, *P. C. CHANG AND THE UNIVERSAL DECLARATION OF HUMAN RIGHTS* (2018); PINGHUA SUN, *HISTORIC ACHIEVEMENT OF A COMMON STANDARD: PENGCHUN CHANG AND THE UNIVERSAL DECLARATION OF HUMAN RIGHTS* (2018).

as many ethical ideas as practicable,²³² indigenous sub-Saharan African social concepts, which tend to be strongly communitarian, were not taken into account but they are eminently compatible with article 29, and the application of human rights in general.²³³ The South African Constitutional Court has, for example, relied on the indigenous concept of *ubuntu* to develop a jurisprudence that recognizes “the need for human interdependence, respect and concern.”²³⁴

The fundamental purpose of seeking to draw up a *universal* declaration of rights was to include as many ethical conceptions as possible.²³⁵ The extreme poles of political ideology may be incompatible with the Universal Declaration: for example, a strain of libertarianism that fails to recognize the existence of communities²³⁶ or, conversely, a version of communitarianism that holds that individuals have no value in themselves but only as members of a collective.²³⁷ It seems, however, that libertarians would generally accept the pragmatic need for voluntary cooperation in order to achieve individuals’ goals.²³⁸ Conversely,

232. The U.N.E.S.C.O. symposium was a remarkable attempt to capture the foundational values of a wide range of philosophies, religions, and cultures. See Levi-Carneiro, *Human Rights: Comments and Interpretation* 175 (U.N. Econ. & Soc. Council, ed. 1949).

233. See AHMED, *supra* note 230, at 165 (explaining the impact of a communitarian ethic in African countries).

234. See *Port Elizabeth Municipality v. Various Occupiers* 2004 (12) BCLR at 1268 para. 37 (CC) (S. Afr.) (finding that the law in question requires the court to incorporate elements of grace and compassion into its analysis).

235. See *The Long and Influential Life of the Universal Declaration of Human Rights*, in *THE UNIVERSAL DECLARATION OF HUMAN RIGHTS IN THE 21ST CENTURY: A LIVING DOCUMENT IN A CHANGING WORLD*, 29, 30 (Gordon Brown, ed., 2016). For a critical perspective, see generally Mark Goodale, *The Myth of Universality: The UNESCO “Philosophers’ Committee” and the Making of Human Rights*, 43 *LAW & SOC. INQUIRY* 596 (2018).

236. On Ayn Rand’s anti-social version of individualism (objectivism), see generally, LISA DUGGAN, *MEAN GIRL: AYN RAND AND THE CULTURE OF GREED* (2019).

237. For a discussion of extreme value-communitarianism, see Horacio Spector, *Communitarianism and Collective Rights* 17 *ANALYSE & KRITIK* 67, 68 (1995) (analyzing extreme value communitarianism).

238. See generally MURRAY NEWTON ROTHBARD, *FOR A NEW LIBERTY: THE LIBERTARIAN MANIFESTO* (1973) (laying out the foundations of the libertarian ideology).

the preponderance of communitarians would not view people as mere instruments of the political community.²³⁹ Article 29(1) does not require a choice between, say, an Aristotelian narrative of society preceding the individual or a Lockean proposition of individuals contracting to form society.²⁴⁰ But it does recognize that, once a political community has been formed, its members enjoy certain rights and owe their fellows some duties, which are determined within that particular political community.²⁴¹

IV. A Human Rights-Derived Duty to Pay Tax

We owe a statutory, and some would argue moral,²⁴² duty to pay tax but do we also owe a taxpaying obligation grounded in the affirmation of universal human rights?

Paradoxically, *universal* human rights are only realizable within particular and closed political communities.²⁴³ Limited

239. Relative to the major Anglophone countries, France and Germany may be broadly described as communitarian but still robustly protect individual rights. On French communitarianism, see generally DANIEL BELL, COMMUNITARIANISM AND ITS CRITICS (1993); on German communitarianism, see Winfried Brugger, *Communitarianism as the Social and Legal Theory Behind the German Constitution*, 2 INT'L J. CONST. L. 431 (2004). In BVerfG. 1 BvR 357/05 Feb. 15, 2006, for example, the German Constitutional Court (*Bundesverfassungsgericht*) held that section 14.1 of the Air Safety Act (*Luftsicherheitsgesetz*), which purported to permit armed forces to shoot down a passenger plane in extraordinary circumstances, was incompatible with the basic constitutional principle '[t]he dignity of the human being is inviolable'. For a discussion, see Raymond Youngs, *Germany: Shooting Down Aircraft and Analysing Computer Data*, 6 INT'L J. CONST. L. 331 (2008).

240. Fernand Dehousse (Belgium), for example, conceived of duties in contractual terms which involved "a fair exchange of benefits." See MORSINK, *supra* note 90, **Error! Bookmark not defined.** at 241 (describing a reciprocal relationship between a society and its citizens).

241. G.A. Res. 217(III) A, Universal Declaration of Human Rights (Dec. 10, 1948).

242. On political obligations in general, see GEORGE KLOSKO, POLITICAL OBLIGATIONS (2005); see Brookes Brown, *Do You Have a Moral Duty to Pay Taxes?* CONVERSATION (Mar. 28, 2019, 6:40 AM) (debating whether paying taxes is a moral dilemma) [perma.cc/C32D-GPX].

243. See generally HANNAH ARENDT, THE ORIGINS OF TOTALITARIANISM 291–92 (3rd ed., 1967).

rights are accorded to non-citizens, such as refugees,²⁴⁴ but the full range of civil and political, and welfare rights are, in practice, reserved to citizens of discrete political communities.²⁴⁵ Chief Justice Warren observed in *Perez v Brownell* “[c]itizenship is man’s basic right for it is nothing less than the right to have rights”.²⁴⁶ Inclusion in a particular political community through citizenship is also the way in which duties become owed with a moral and legal intensity that does not apply to other members of humanity.²⁴⁷

A. Express Duties to Pay Tax

The Mexican Constitution (1917) required Mexicans to “contribute in the proportional and equitable manner provided by law toward the public expenses of the federation, the State and the municipality in which he resides”.²⁴⁸ Similarly, the 1919 Weimar Constitution provided: “All citizens without distinction contribute to all public burdens in proportion to their means and in accordance with the law.”²⁴⁹ The Weimar Republic is associated with the concept of the *Rechtsstaat* or State under the rule of

244. See Convention relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 150; Protocol Relating to the Status of Refugees, Jan. 31, 1967, 19 U.S.T. 6223; 606 U.N.T.S. 267.

245. See Maria L. Ontiveros, *Immigrant Workers’ Rights in a Post-Hoffman World* 18 GEO. IMMIGR. L.J. 651, 658 (2004) (arguing that a two-tier system exists in United States court systems between a non-citizen and a citizen).

246. *Perez v Brownell*, 356 U.S. 44, 64 (1958) (emphasis removed). Taxpaying is a corollary of citizenship, although the U.S. is the only jurisdiction to tax worldwide income based on citizenship. See generally *Publication 54 Tax Guide for U.S. Citizens and Resident Aliens Abroad*, I.R.S. (2020).

247. See D. Carolina Nunez, *Mapping Citizenship: Status, Membership, and the Path in Between* UTAH L. REV. 477, 478 (2017) (arguing that citizenship and its prescriptive elements assigns values to different members of society).

248. CONSTITUCIÓN POLÍTICA DE LOS ESTADOS UNIDOS MEXICANOS art. 31, IV, Diario Oficial de la Federación [DOF] 05-02-1917, últimas reformas DOF 10-02-2014.

249. Grundgesetz [GG] [Basic Law], at art. 134 (Ger.).

law.²⁵⁰ Specific mention of taxation, based on ability to pay and subject to the rule of law is, therefore, significant.²⁵¹

A search of the Constitute Project database, using the phrase “duty to pay tax”, indicated that 87 current national constitutions include some form of duty to pay tax.²⁵² Being alert to the hazards of a desktop comparison of often translated texts, analysis of the information was conducted at a high level, and considered only whether: the constitution imposes a bare duty; tax is levied in accordance with the rule of law;²⁵³ ability to pay was taken into account;²⁵⁴ and taxation operates within a context of social justice.²⁵⁵ Note was also taken of other stipulations, which are included in footnotes.²⁵⁶

While many ex-British colonies, which have incorporated the common law into their post-independence legal systems, include a constitutional duty to pay tax, none of the major Anglophone countries do.²⁵⁷ This omission is expectable, given how these

250. For a discussion of similarities and differences between the two concepts, see N. W. Barber, *Review: The Rechtsstaat and the Rule of Law*, 53(4) U. TORONTO L. J. 443 (2003).

251. See ARTHUR JACOBSON, WEIMAR: A JURISPRUDENCE OF CRISIS 10 (2000) (discussing the reform of finance undertaken by the Reich).

252. *The World's Constitutions to Read, Search, and Compare*, CONSTITUTE [perma.cc/K2KH-6YUN]. The search indicated that the French constitution includes a duty to pay tax, but this is not correct. France 1958 (Rev. 2008), art. 34 provides “Statutes shall determine the rules concerning . . . the base, rates and methods of collection of all types of taxes; the issuing of currency.”

253. *Id.* The existence of a written constitution may in itself imply loyalty to the rule of law; nevertheless, numerous constitutions additionally state that a duty to pay tax is established by law.

254. *Id.* Ability to pay was indicated by phrases including: “in accordance with their capability”, “share in the burden of public expenditure according to his financial resources”, “according to their income and wealth, in proportion to one’s economic capacity”, “according to his or her capabilities and to his or her participation in the economy”, or “function of their contributive capacity”.

255. *Id.* Social justice was indicated by phrases including: “system of taxation shall be based on the principles of equality and equity”, “fair system of taxation”, “a just distribution of fiscal duties”, “fair tax system based on the principles of equality and progressive taxation”; “solidarity and equality of all before its public financial obligations”.

256. See *supra* notes 252–255.

257. See *The World's Constitutions to Read, Search, and Compare*, *supra* note 252 (searching for the constitutional duty to pay taxes in the constitutions of

jurisdictions have traditionally privileged civil and political rights.²⁵⁸ However, why a significant number of Latin American countries do not include a duty to pay tax in their national constitutions, despite their ratifying the American Declaration is less obvious.²⁵⁹ Each expression of a tax duty has its own particular narrative, informed by numerous factors.²⁶⁰ Excavating these stories lies beyond the scope of this Article. It is also not possible to construct a plausible metanarrative to explain differences. The findings set out in the Appendix to this Article are therefore presented for readers to draw their own conclusions.²⁶¹

B. Implied Tax Duties

The 1789 *Declaration of the Rights of Man and Citizen* proclaimed both ostensibly universal rights and rights of citizens within a political community.²⁶² The preamble to the Declaration affirmed rights *and duties* but the main body of the text specified rights only.²⁶³ Nevertheless, in order to enjoy the constitutional right to vote, a man needed to meet the statutory duty to pay tax.²⁶⁴ In this regard, Simon Schama notes:

Australia, Canada, New Zealand, the United Kingdom, and the United States and finding no relevant results).

258. *But see* U.S. CONST. amend. XVI (allowing the United States government to collect an income tax).

259. *But see* SLOSS, *supra* note 142, at 356 (discussing monist legal systems which are common in Latin America).

260. *See Tax Policy: Factors for Evaluating Expiring Tax Provisions*, U.S. GOV'T ACCOUNTABILITY 1, 1–15 (2012) (analyzing microeconomic and macroeconomic factors to be considered within the United States in order to evaluate tax policy).

261. *See infra* Table 1 (categorizing how countries address, or do not address, the constitutional duty to pay taxes).

262. *See generally Declaration of the Rights of Man – 1789*, THE AVALON PROJECT (2008) [perma.cc/G7UB-L5EV].

263. *See id.* (proclaiming the recognized rights of man).

264. *See* SIMON SCHAMA, *CITIZENS: A CHRONICLE OF THE FRENCH REVOLUTION* 498 (1989) (observing “in 1791 the actress Olympe de Gouges would naturally extend that reasoning in a *Declaration of the Rights of Woman and Citizenesses*, a document sneered at then and since” noting the Constituent Assembly excluded women from the presumptive rights of mankind, as well as slaves in colonies and Jews).

Only French males over twenty-five who had had an established domicile for over a year, who were not domestic servants or dependants of any kind and who paid the equivalent of three days' labor in taxes were entitled to vote in primary electoral assemblies . . . To be a member of an electoral assembly required a tax payment of the equivalent of ten days' labor, and to be eligible as a deputy in the legislation itself required the substantial sum of the silver mark, which was equivalent to fifty days' labor.²⁶⁵

The Declaration also textually embedded public finance within the affirmed rights.²⁶⁶ Article 13 provided “[a] common contribution is essential for the maintenance of the public forces and for the cost of administration. This should be equitably distributed among all the citizens in proportion to their means.”²⁶⁷ An implied duty to pay tax, based on ability to pay, was therefore recognized as integral to the declaration of rights.²⁶⁸

Furthermore, in terms of article 14,

All the citizens have a right to decide, either personally or by their representatives, as to the necessity of the public contribution; to grant this freely; to know to what uses it is put; and to fix the proportion, the mode of assessment and of collection and the duration of the taxes.²⁶⁹

These provisions established the centrality of taxation in the basic laws of rights-based democracies.²⁷⁰

265. *See id.* (explaining the conditional nature of the right to vote).

266. *See Declaration of the Rights of Man – 1789, supra* note 262, at art. 13 (referring to public finance as a “common contribution” to be distributed amongst all citizens).

267. *See id.* (providing a framework in which public finance is to be paid into by the citizens at a rate proportional to their ability to pay).

268. *See id.* (determining the amount paid as being proportional to a citizen's means).

269. *See id.* (continuing the recognition of public finance within the context of affirmed rights).

270. *See id.* at arts. 13–14 (discussing public finance and tax related topics in two of the seventeen affirmed rights of man).

Despite Karl Marx and Friedrich Engels proposing progressive taxes both on capital and income,²⁷¹ and expressing a preference for direct over indirect taxation, and supporting taxes on inheritances, land-value, and, direct taxes were not a significant concern in the U.S.S.R. and so taxpaying might not have merited specific constitutional mention.²⁷² Other than during wartime, between 1930 and 1958, individual income tax raised less than 10% of government revenue.²⁷³ For workers, wages, as the primary distribution were presumptively final.²⁷⁴ According to Franklyn Holzman, the Soviet government relied “primarily on a turnover tax on consumers’ goods for removing excess funds from the hands of the population.”²⁷⁵ However, tax evaders no doubt ran the risk of being declared “enemies of the people”.²⁷⁶

With regard to the duties of citizens, the Irish Constitution provides: “Fidelity to the nation and loyalty to the State are fundamental political duties of all citizens.”²⁷⁷ Without justiciability of social and welfare rights, specific corresponding duties may not have been considered necessary, although a duty to pay tax may perhaps be inferred.²⁷⁸ India’s constitution did not

271. See KARL MARX & FRIEDRICH ENGELS, MANIFESTO OF THE COMMUNIST PARTY 91 (1847, 2012) (favoring a tax system in which the average tax burden increased based on the person’s capital and income).

272. *But see* KONSTITUTSIA SSSR (1977) [Konst. SSSR] [USSR CONSTITUTION] Ch.1 Art. 1(k) (specifically mentioning and granting the Union the ability to authorize duties and taxes).

273. See Franklyn D. Holzman, *Income Taxation in the Soviet Union: A Comparative View* 11 NATL. TAX J. 99, 99 (1958) (noting that even during war years, when additional direct levies were added, the proportion of revenue raised by taxes never exceeded 20%).

274. See *id.* at 102 (stating that there were both full and partial exemptions from the income tax in the Soviet Union).

275. *Id.* at 99.

276. See KONSTITUTSIA SSSR (1936) [Konst. SSSR] [USSR CONSTITUTION] art. 131 (providing that “[p]ersons committing offenses against public, socialist property are enemies of the people”).

277. See CONSTITUTION OF IRELAND 1937 art. 9 (expressing the explicit duties of all citizens).

278. See CONSTITUTION OF IRELAND 1937 (neglecting to explicitly impose a duty to pay taxes).

include express duties before 1976.²⁷⁹ The concept of Fundamental Duties was apparently taken from the USSR.²⁸⁰ There is no express duty to pay tax.²⁸¹ Like Ireland, the South African Constitution broadly affirms that, just as citizens are “equally entitled to the rights, privileges and benefits of citizenship”, so they are “equally subject to the duties and responsibilities of citizenship”.²⁸² Taxpaying, in accordance with ability to pay and in terms of the law, presents as an obvious duty of citizenship.²⁸³

Akin to inferring welfare rights, an implicit duty to pay tax may be uncovered in constitutional arrangements or social norms.²⁸⁴ If a constitution allocates taxing rights to a particular level of government, it seems that people who enjoy the benefits of that level of government must pay taxes to enable it to perform its

279. See V.S. Deshpande, *Rights and Duties under the Constitution*, 15 J. IND. L. INST. 94, 95 (1973) (noting how the preamble to the Constitution of India outlines certain rights and duties to citizens).

280. See *Constitution Day*, DEPARTMENT OF JUSTICE [perma.cc/3S8H-MSV9]. It presents as odd for India to overtly link to Stalin’s constitution. Perhaps, in 1949 it would have been understandable for India to follow the U.S.S.R. Constitution but, in 1976, the murderous excesses of Stalin had long been renounced. Nevertheless, at the time of the so-called Emergency (1975–1977) many rights for Indians were as nugatory as they were for people in Stalin’s U.S.S.R. See e.g., William Border, *Civil Rights in India Severely Limited Under Emergency Powers*, N.Y. TIMES (Feb. 18, 1976) [perma.cc/2ZP2-CDJD]. See Rudra Chaudhuri, *Re-reading the Indian Emergency: Britain, the United States and India’s Constitutional Autocracy, 1975–1977*, 29 DIPL. & STATECRAFT 477, 477 (2018) (“Effectively, the Emergency turned India into a constitutional autocracy whereby Gandhi used provisions in the Indian constitution – under Article 352 – to suspend temporarily fundamental rights, censor the press, and make mass arrests without judicial oversight.”). For a review of the literature on the Emergency, see Patrick Clibbens, *The Destiny of This City Is to Be the Spiritual Workshop of the Nation: Clearing Cities and Making Citizens during the Indian Emergency 1975–1977*, 22 CONTEMP. S. ASIA 51 (2014).

281. See India Const. art. 51A (listing the eleven fundamental duties of citizens, of which paying taxes is not one).

282. See S. AFR. CONST., 1996 § 3(2).

283. See *African Charter on Human and Peoples’ Rights Article 29* (June 27, 1981) (providing “[t]he individual shall also have the duty . . . To work to the best of his abilities and competence, and to pay taxes imposed by law in the interest of the society”) [perma.cc/E5YD-9HCH].

284. See Henrik Jacobson Kleven, *How Can Scandinavians Tax So Much?* 28 J. ECON. PERSP. 77, 77 (2014) (explaining how Scandinavian countries, despite the absence of constitutional guarantees, tend to have high levels of welfare provision, and taxpaying).

functions. As we may look to international promises to find welfare rights, in the case of the American Declaration, a duty to pay tax may be inferred.²⁸⁵ While Canada was not a party to the negotiations that led to the American Declaration, having only joined the O.A.S. in 1990,²⁸⁶ it may be argued that citizens of Canada and the U.S. owe at least a moral duty to pay tax by virtue of their countries' embrace of the duties affirmed in the American Convention.²⁸⁷

V. Conclusion

Modern national constitutions invariably incorporate a charter of rights, mostly derived from the Universal Declaration.²⁸⁸ The 1789 Declaration of the Rights of Man and the Citizen demonstrated that rights assertions and tax paying duties are intertwined; State guarantee of any right requires funds, which are invariably derived from taxes.²⁸⁹ Satisfaction of welfare rights necessitates significant tax revenues. Unlike, earlier constitutional instruments, such as those of Mexico and the Weimar Republic, and the American Declaration, a nexus between welfare rights and a duty to pay tax is not always explicit in contemporary constitutions.²⁹⁰ The South African Constitution, for

285. See generally American Declaration of the Rights and Duties of Man, *supra* note 7 (adopting the recognition of the essential rights of man, which are not based on national origin of the man but rather attributes of his human personality).

286. See Bernard Duhaime, *Canada and the Inter-American Human Rights System: Time to Become a Full Player*, 67 INT'L J. 639, 639–40 (2012) (discussing Canada's relationship with the Organization of American States).

287. See Charter of the Organization of American States, at art. 34(c) (June 10, 1993) (requiring member states to devote efforts to accomplishing goals including adequate and equitable systems of taxation).

288. See *The Universal Declaration of Human Rights in the 21st Century: A Living Document in a Changing World*, GLOB. CITIZENSHIP COMM'N, 29, 34–35 (Gordon Brown ed., 2016) (noting that many national constitutions “have been cast in the image of the International Bill of Human Rights”).

289. See *Declaration of the Rights of Man – 1789*, *supra* note 262, at art. 14 (stating that “[a]ll the citizens have a right to decide. . . as to the necessity of the public contribution” the logistics of the taxes).

290. See Mubangizi, *supra* note 27, at 18 (comparing South Africa's “advanced constitutional provision for socio-economic rights” with the less certain protections in the constitutions of Namibia and Uganda).

example, despite its justiciable guarantee of welfare rights, follows the Universal Declaration in affirming reciprocity of rights and duties in the broadest of terms.²⁹¹ However, consideration of the negotiations, which led to the Universal Declaration, demonstrate that, notwithstanding rejection of listed duties through fears of authoritarian governments invoking them to nullify rights, human rights and duties are interrelated and reciprocal, if asymmetric.²⁹²

A duty to pay taxes in accordance with ability to pay and the rule of law, is an essential component of affirmation of all rights but especially welfare rights. Drawing on the South African Constitutional Court's decision in *Treatment Action Campaign*²⁹³ as an example: if a pregnant woman has a human right to retroviral drugs to obviate her baby contracting H.I.V, then a member of the South African political community, who can afford to do so, and, in accordance with statutes governed by the rule of law, owes a duty to pay tax to enable government to meet its obligations.²⁹⁴ This duty is not simply statutory in nature, it is inherent in the country's constitutional arrangements; indeed, it is implied by recognition of equal human dignity, the fundamental ethic that informs the Universal Declaration and charters of rights derived from it.²⁹⁵

Whereas South Africa made welfare rights justiciable in a way precisely consonant with the Universal Declaration, the earlier Irish Constitution, followed by India and other post-colonial countries, conceived of welfare ultimately as a political matter but nevertheless provided indicative principles in their basic laws that

291. See *id.* at 4 (“Although the South African Constitution provides for both [civil and political] rights. . .and [socio-economic and cultural rights . . . it does not make any differentiation between these rights . . .”).

292. See MORSINK, *supra* note 90, at 245 (noting how and why the Universal Declaration ended up not having a list of declared duties).

293. See generally *Minister of Health v. Treatment Action Campaign* 2002 (2) SA 5 721 (S. Afr.).

294. See GOVERT DEN HARTOGH, GEORGE KLOSKO, POLITICAL OBLIGATIONS: POLITICAL OBLIGATIONS 792–96 (2006) (describing how tax funds benefit the common good).

295. See WHYTE, *supra* note 104, at 115 (providing a discussion of the debate that led to the affirmation of the welfare rights set out in articles 22 through 26 of the Universal Declaration).

the government of the day should follow.²⁹⁶ Since welfare was expressly identified as a fundamental concern of government, funding welfare through taxation should also be considered a constitutional matter.²⁹⁷

A close reading of the texts of constitutions, such as those of Australia and Germany, admits the possibility of welfare provision, necessarily funded through taxation, being a right that government must satisfy.²⁹⁸ In federal states, notably the U.S., welfare rights may be guaranteed by sub-national constitutions.²⁹⁹ This fact may imply that taxpaying duties are principally owed at a sub-national level but, in practice, lower levels of government may only be able to meet their obligations through grants from the federal government.³⁰⁰ And so, just as expression of welfare rights might not be obvious in the text of a national constitution, the duty to pay taxes to the federal government, as part of an overall scheme of human rights and duties, may be found.³⁰¹

Other major Anglophone countries – Canada, New Zealand and the U.K. – which have adopted charters of rights based on the I.C.C.P.R. alone, are, nevertheless, bound by numerous international obligations, the most obvious of which are the Universal Declaration and the I.C.E.S.C.R.³⁰² These human rights

296. See *Celebrating India's Constitutional Day: November 26, 2018*, *supra* note 98, at 89 (“[P]erhaps the Irish Constitution’s greatest claim to future fame will depend on the extraordinary influence which its Directive Principles had on the Constitution of India . . .”).

297. See *id.* at 13–15 (outlining points in the Constitution of India where welfare is described as a priority of the State).

298. See generally *Australian Constitution*; see also GRUNDGESETZ [GG] [BASIC LAW], translation at [perma.cc/X5ZK-TTRV] art. 8 (“The Reich shall legislate for . . . public welfare.”).

299. See *Federal Grants to State and Local Governments: A Historical Perspective on Contemporary Issues*, CONGRESSIONAL RSCH. SERV. 1, 13–14 (May 22, 2019) (explaining how rights are not articulated at the national level in the United States Constitution those rights are reserved to the states) [perma.cc/DYZ8-CUHL].

300. See *id.* (summarizing the necessity of federal grants in state budgets in the United States).

301. See *id.* at 24 (providing an example where taxes fund governmental services that benefit the local community).

302. See generally David L. Sloss, *Domestic Application of Treaties*, *supra* note 142 (describing how Canada’s implementation and incorporation of international

states must comply with their international promises on welfare; their citizens are equally obliged to fund these obligations in accordance with their ability to pay, in terms of legislation governed by the rule of law.³⁰³

obligations into its Charter of Rights and Freedoms achieves compliance with other vertical treaty provisions).

303. *See id.* (explaining that when considering international treaty obligations, State officials will be guided by national policy interests).

Appendix	
Table 1: Constitutional Obligations to Pay Tax	
Nature of Duty	Countries
Bare duty	Belarus; ³⁰⁴ Benin; ³⁰⁵ Costa Rica; ³⁰⁶ Egypt; ³⁰⁷ Ghana; ³⁰⁸ Haiti; ³⁰⁹ Moldova; ³¹⁰ Montenegro; ³¹¹ Mozambique; ³¹² Niger; ³¹³ Nigeria; ³¹⁴ Senegal; ³¹⁵ Tonga; ³¹⁶ Uganda. ³¹⁷
Rule of law	Armenia; ³¹⁸ Azerbaijan; ³¹⁹ Bhutan; ³²⁰ Cape Verde; ³²¹ Chile; ³²² China (Peoples' Republic); ³²³ Côte d'Ivoire; ³²⁴ Cuba; ³²⁵ Equatorial Guinea; ³²⁶ Georgia; ³²⁷ Guatemala; ³²⁸ Japan; ³²⁹ Jordan; ³³⁰ Kazakhstan; ³³¹ Korea (Republic of); ³³² Kosovo; ³³³ Kuwait; ³³⁴ Kyrgyzstan; ³³⁵ Lao People's Democratic Republic; ³³⁶ Luxembourg; ³³⁷ Mongolia; ³³⁸ Myanmar; ³³⁹ North Macedonia; ³⁴⁰ Oman; ³⁴¹ Poland; ³⁴² Russian Federation; ³⁴³ Sao Tome and Principe; ³⁴⁴ Syrian Arab Republic; ³⁴⁵ Tajikistan; ³⁴⁶ Thailand; ³⁴⁷ Timor-Leste; ³⁴⁸ Togo; ³⁴⁹ Turkmenistan; ³⁵⁰ Ukraine; ³⁵¹ United Arab Emirates; ³⁵² Uzbekistan; ³⁵³ Venezuela; ³⁵⁴ Viet Nam; ³⁵⁵ Yemen; ³⁵⁶ Zambia. ³⁵⁷
Ability to pay	Cameroon; ³⁵⁸ Chad; ³⁵⁹ Congo (Democratic Republic of the); ³⁶⁰ Hungary; ³⁶¹ Italy; ³⁶² Madagascar; ³⁶³ Turkey. ³⁶⁴
Social justice	Colombia; ³⁶⁵ Tunisia. ³⁶⁶
Rule of law; ability to pay	Algeria; ³⁶⁷ Bolivia; ³⁶⁸ Bulgaria; ³⁶⁹ Cyprus; ³⁷⁰ Mauritania; ³⁷¹ Mexico; ³⁷² Morocco; ³⁷³ Papua New Guinea; ³⁷⁴ Serbia; ³⁷⁵ Somalia; ³⁷⁶ Vanuatu. ³⁷⁷
Rule of law; social justice	Afghanistan; ³⁷⁸ Bahrain. ³⁷⁹
Ability to pay; social justice	Croatia; ³⁸⁰ Gabon; ³⁸¹ Spain. ³⁸²
Rule of law; ability to pay; social justice	Andorra; ³⁸³ Angola; ³⁸⁴ Romania. ³⁸⁵

³⁰⁴ See CONSTITUTION OF BELARUS (1994), art. 56.1 (“Citizens of the Republic of Belarus shall contribute towards the funding of public expenditure through the payment of state taxes, dues and other payments.”).

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- ³⁰⁵ See CONSTITUTION OF THE PEOPLE'S REPUBLIC OF BENIN (1990), art. 33. (requiring taxpayer-citizens to “[w]ork for the common good”).
- ³⁰⁶ See *CONSTITUCIÓN POLITICA DE LA REPÚBLICA DE COSTA RICA* (1949), art. 121 (providing authority to establish taxes).
- ³⁰⁷ See CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, art. 38 18 Jan. 2014 (making tax evasion a crime).
- ³⁰⁸ See CONSTITUTION OF GHANA (1992), art. 41 (declaring that “exercise and enjoyment of rights and freedoms is inseparable from the performance of duties and obligations” and that a taxpayer must “declare his income honestly to the appropriate and lawful agencies”).
- ³⁰⁹ See CONSTITUTION OF HAITI (1987), art. 52-1 (d) (stating that payment of taxes is a civic duty. Which is defined as “the citizen’s moral, political, social, and economic obligations. . .to the State and the country”).
- ³¹⁰ See CONSTITUTIA REPUBLICII MOLDOVA [CONSTITUTION] July 29, 1994, art. 58 (obligating citizens to contribute duties and taxes “to public expenditures”).
- ³¹¹ See USTAV CRBE GORE [CONSTITUTION] Oct. 19, 2007, art. 142 (Montenegro) (stating that the state will be financed through taxes that everyone must pay taxes).
- ³¹² See *Constituição da República de Mozambique* [Constitution] 2004, art. 45 (requiring individuals to “pay contributions and taxes”).
- ³¹³ See *Constitution de la VIIème République*, 25 Nov. 2010, art. 40 (Niger) (requiring citizen taxpayers to “work selflessly for the common good”).
- ³¹⁴ See CONSTITUTION OF NIGERIA (1999), art. 24 (requiring a taxpayer to “declare his income honestly and pay tax promptly”).
- ³¹⁵ See *Constitution de la République du Sénégal* 2001, art. 25-3 (requiring taxpayer citizens to “participate in the work of economic and social development of the Nation”).
- ³¹⁶ See CONSTITUTION OF TONGA 1875, part 1-18 (“All the people have the right to expect that the Government will protect their life liberty and property and therefore it is right for all the people to support and contribute to the Government according to law.”).
- ³¹⁷ See CONSTITUTION OF THE REPUBLIC OF UGANDA 1995, art. 17(g) (listing the payment of taxes as a duty of citizenship).
- ³¹⁸ See CONSTITUTION OF THE REPUBLIC OF ARMENIA July 5, 1995, art. 60 (obliging “everyone . . . to pay taxes and duties stipulated in accordance with law and make other compulsory payments to the state or community budget”).
- ³¹⁹ See *AZƏRBAYCAN KONSTITUSIYASI* [CONSTITUTION] Nov. 12, 1995, art. 73 (Azer.) (requiring payment of taxes and other state dues “in full without delay”).
- ³²⁰ See *DRUK-GI CHA-THRIMS-CHEN-MO* [CONSTITUTION] July 18, 2008, art. 8 (Bhutan) (“A person shall have the responsibility to pay taxes in accordance with the law.”).
- ³²¹ See *CONSTITUIÇÃO DA REPÚBLICA DE CABO VERDE* Sept. 5, 1980, art. 82 (Cape Verde) (mandating that all individuals have the duty “[t]o pay the taxes and levies established by law”).
- ³²² See *CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE CHILE* [C.P.] 17 Sept. 2005, art. 19 (requiring compulsory contributions to social security and

stipulating that “the law can set forth . . . the limitations and obligations that derive from [the] social function” of property ownership in tangible or intangible goods”).

³²³ See XIANFA art. 56, § 1 (1982) (China) (“It is the duty of citizens of the People’s Republic of China to pay taxes in accordance with law.”).

³²⁴ See CONSTITUTION DE LA REPUBLIQUE DE CÔTE D’IVOIRE Nov. 1, 2016, art. 43 (“It is the duty of every resident to fulfil their tax obligations in accordance with the law.”).

³²⁵ See CONSTITUCIÓN DE LA REPUBLICA DE CUBA Apr. 10, 2019, art. 90 (stating that it is the duty of Cuban citizens to “contribute to the public expenditures in the form established by the law”).

³²⁶ See LEY FUNDAMENTAL DE GUINEA ECUATORIAL [CONSTITUTION] Nov. 17, 1991, art. 19 (“All legal and physical persons, national or foreign, residents of the Republic of Equatorial Guinea have the obligation to pay taxes [imposed] by law.”).

³²⁷ See SAKARTVELOVS K’ONSTITUTSIA [CONSTITUTION] Aug. 24, 1995, art. 67 (Geor.) (“The payment of taxes and fees shall be mandatory in the amount and in accordance with the procedures established by law.”).

³²⁸ See CONSTITUCIÓN DE GUATEMALA May 31, 1985, art. 135 (stating that it is the duty of Guatemalans to “contribute to [the] public expenditures, in the form prescribed by the law”).

³²⁹ See NIHONKOKU KENPŌ [KENPŌ] [CONSTITUTION] art. 30, para. 1 (Japan) (“The people shall be liable to taxation as provided by law.”).

³³⁰ See CONSTITUTION OF THE HASHEMITE KINGDOM OF JORDAN Jan. 11, 1952, art. 118 (“No person shall be exempt from the payment of taxes and duties in other than the circumstances prescribed by the law.”).

³³¹ See QAZAQSTAN RESPUBLIKASYNYŇ KONSTITUTSIASY [CONSTITUTION] Aug. 30, 1995, art. 35 (Kaz.) (“Payment of legally established taxes, fees, and other obligatory payments shall be a duty and responsibility of everyone.”).

³³² See DAEHANMINKUK HUNBEOB [HUNBEOB] [CONSTITUTION] art. 38 (S. Kor.) (“All citizens shall have the duty to pay taxes as prescribed by law.”).

³³³ See KUSHTETUTA E KOSOVËS [CONSTITUTION] June 15, 2008, art. 119 (Kos.) (“Every person is required to pay taxes and other contributions as provided by law.”).

³³⁴ See AD-DISTŪR AL-KUWAYTI [CONSTITUTION] Nov. 11, 1962, art. 48 (Kuwait) (“Payment of taxes and contribution to public expenditure are a duty in conformity with the Law.”).

³³⁵ See CONSTITUTION OF KYRGYZSTAN Apr. 11, 2021, art. 55 (“Citizens should pay taxes and dues in cases and pursuant the procedures envisaged by the law.”).

³³⁶ See CONSTITUTION OF THE LAO PEOPLE’S DEMOCRATIC REPUBLIC Aug. 14, 1991, art.48 (“Lao citizens have the obligation to pay duties and taxes in accordance with the laws.”).

³³⁷ See CONSTITUTION DU GRAND-DUCHÉ DE LUXEMBOURG Oct. 17, 1868, art. 102 (“Save in the cases formally excepted by the law, payment may be required of citizens or of public establishments, [and] only under the title of taxes for the benefit of the State or of the commune.”).

³³⁸ See MONGOL ULSYN ÜNDSÉN KHUULI [CONSTITUTION] Jan. 13, 1992, art. 17 (Mong.) (stating that Mongolian citizens have the duty to pay “official taxation levied by law”).

³³⁹ See CONSTITUTION OF THE REPUBLIC OF THE UNION OF MYANMAR Jan. 31, 2011, art. 389 (“Every citizen has the duty to pay taxes to be levied according to the law.”).

³⁴⁰ See CONSTITUTION OF THE REPUBLIC OF NORTH MACEDONIA Nov. 17, 1991, art. 33 (“Everyone is obliged to pay tax and other public contributions . . .”).

³⁴¹ See BASIC STATUTE OF THE STATE [CONSTITUTION] Nov. 6, 1996, art. 39 (Oman) (“Paying taxes and public dues is a duty according to the Law.”).

³⁴² See KONSTITUCJA RZECZYPOSPOLITEJ POLSKIEJ [CONSTITUTION] Apr. 2, 1997, art. 84 (Pol.) (“Everyone shall comply with his responsibilities and public duties, including the payment of taxes, as specified by statute.”).

³⁴³ See KONSTITUTSIIA ROSSIĬSKOĬ FEDERATSII [KONST. RF] [CONSTITUTION] art. 57 (Russ.) (“Everyone shall be obliged to pay the legally established taxes and dues. Laws introducing new taxes or deteriorating the position of taxpayers may not have retroactive effect.”).

³⁴⁴ See CONSTITUIÇÃO DA REPÚBLICA DEMOCRÁTICA DE SÃO TOMÉ E PRÍNCIPE Nov. 5, 1975, art. 65 (“All citizens have a duty to contribute to public expenditure, under the law.”).

³⁴⁵ See CONSTITUTION OF THE SYRIAN ARAB REPUBLIC Feb. 26, 2012, art. 41 (“Payment of taxes, fees and public costs shall be a duty in accordance with the law.”).

³⁴⁶ See CONSTITUTION OF THE REPUBLIC OF TAJIKISTAN Nov. 6, 1994, art. 45 (“Payment of taxes and duties determined by law is an obligation of everyone.”).

³⁴⁷ See RATTHATHAMMANUN HAENG RATCHA-ANACHAK THAI [CONSTITUTION] Apr. 6, 2017, sec. 50 (Thai.) (stating that “a person” has the duty “to pay taxes and duties as prescribed by law”).

³⁴⁸ See CONSTITUIÇÃO DA REPÚBLICA DEMOCRÁTICA DE TIMOR-LESTE May 20, 2002, art. 55 (“Every citizen with a certified income has the duty to pay tax in order to contribute to public revenues, in accordance with the law.”).

³⁴⁹ See LA CONSTITUTION DE LA IVE RÉPUBLIQUE TOGOLAISE Oct. 14, 1992, art. 47 (Togo) (“Every citizen has the duty to contribute to the public expenses within the conditions defined by the law.”).

³⁵⁰ See TURKMENISTANYN KONSTITUSIYASY [CONSTITUTION] May 18, 1992, art. 59 (“Everyone shall be required to pay taxes and other payments in the manner and extent established by law.”).

³⁵¹ See VERKHOVNA RADA OF UKRAINE [CONSTITUTION] Jun. 28, 1996, art. 72 (“Every obliged to pay taxes and collections all right and the sizes set by a law.”).

³⁵² See DASTŪR DAWLAT AL-IMARĀT AL-‘ARABIYA AL-MUTTAHIDA [CONSTITUTION] Dec. 2, 1971, art. 42 (“A person has the duty to pay such taxes and public levies as may be provided in law.”).

³⁵³ See O‘ZBEKISTON RESPUBLIKASINING KONSTITUTSIYASIGA [CONSTITUTION] Dec. 8, 1992, art. 51 (“Citizens shall be obliged to pay taxes and local fees prescribed by law.”) (Uzb. 1992).

³⁵⁴ See CONSTITUCION DE LA REPUBLICA BOLIVARIANA DE VENEZUELA Dec. 30, 1999, art. 133 (“Everyone has the duty to contribute toward public expenditures by paying such taxes, assessments and contribution as may be established by law.”).

³⁵⁵ See HIẾN PHÁP NƯỚC CỘNG HÒA XÃ HỘI CHỦ NGHĨA VIỆT NAM [CONSTITUTION] Nov. 28, 2013, art. 47 (“The citizen has the duty to pay taxes according to the provisions of the statute.”).

³⁵⁶ See DUSTWR ALYMN ALSADR EAM [CONSTITUTION] May 16, 1991, art. 59 (“Taxes should be assessed with regard to the public interest in order to achieve social justice among citizens.”).

³⁵⁷ See CONST. OF ZAMBIA Aug. 29, 1991, art. 43 (“A citizen shall . . . pay taxes and duties lawfully due and owing to the State . . .”).

³⁵⁸ See CONST. OF CAMEROON May 20, 1972, art. 22 (“[E]very person shall share in the burden of public expenditure according to his financial resources.”).

³⁵⁹ See CONSTITUTION DE LA RÉPUBLIQUE DU TCHAD May 4, 2018, art. 58 (“Every citizen contributes to public expenses according to their income and wealth.”).

³⁶⁰ See CONSTITUTION DE LA RÉPUBLIQUE DÉMOCRATIQUE DU CONGO Feb. 18, 2006, art. 174 (“The contribution to the public expenses constitutes a duty for every person living in the Democratic Republic of the Congo.”).

³⁶¹ See MAGYAR ALKOTMÁNY [Constitution] Aug. 18, 1949 (Hung.) (providing that “contribution to covering common needs shall be determined by taking into consideration the costs of raising children”).

³⁶² See COSTITUZIONE DELLA REPUBBLICA ITALIANA [CONSTITUTION] Dec. 22, 1947, art. 53 (requiring the tax system to be progressive).

³⁶³ See CONST. OF MADAGASCAR Nov. 14, 2020, art. 36 (providing that “participation must be progressive”).

³⁶⁴ See TÜRKİYE CUMHURİYETİ ANAYASASI [CONSTITUTION] Nov. 7, 1982, art.73 (Turk.) (requiring “[a]n equitable and balanced distribution of the tax burden is the social objective of fiscal policy”).

³⁶⁵ See CONSTITUCIÓN POLÍTICA DE COLOMBIA Jul. 4, 1991, art. 95 (requiring the contribution to be “within the principles of justice and equity”).

³⁶⁶ See DUSTAR TUNIS [CONSTITUTION] Feb. 10, 2014, art. 10 (Tunis.) (requiring the payment of taxes to be “through a fair and equitable system”).

³⁶⁷ See DUSTAR ALJAZAYIR [CONSTITUTION] Nov. 1, 2020, art. 86 (Alg.) (requiring “equality of taxpayers”; “punishment of tax evasion, tax fraud, and capital flight”, and prohibits retroactive taxation).

³⁶⁸ See CONSTITUCIÓN POLÍTICA DEL ESTADO Feb. 7, 2009, art. 108 (Bol.) (“To pay taxes in proportion to one’s economic capacity, according to the law.”).

³⁶⁹ See CONSTITUTION OF THE REPUBLIC OF BULGARIA July 13, 1991, art. 60 (Bulg.) (“Citizens shall pay taxes and duties established by law proportionately to their income and property.”).

³⁷⁰ See ΤΟ ΣΥΝΤΑΓΜΑ ΤΗΣ ΚΥΠΡΙΑΚΗΣ ΔΗΜΟΚΡΑΤΙΑΣ [CONSTITUTION] Aug. 16, 1860, art. 24. (Cyprus) (prohibiting retroactive taxation and taxes off a “destructive or prohibitive nature”).

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- ³⁷¹ See DUSTUR MURITANIA [CONSTITUTION] Jul. 12, 1991, art. 20 (Mauritania) (requiring equality of citizens “concerning the taxes”).
- ³⁷² See Constitución Política de los Estados Unidos Mexicanos, CP, art 31, DIARIO OFICIAL DE LA FEDERACIÓN [DOF] 05-02-1917, últimas reformas DOF 10-02-2014 (requiring contribution to public expenditures to be “in the proportional and equity manners that the law has established”).
- ³⁷³ See ALDUSTUR ALMAGHRIBU [CONSTITUTION] Jul. 30, 2011, art. 39 (Morocco) (requiring taxes to be “in proportion to their contributive faculties”).
- ³⁷⁴ See PAPUA NEW GUINEA CONSTITUTION Aug. 15, 1975, pmbl. (requiring that taxpayer-citizens owe “obligations to themselves and their descendants”).
- ³⁷⁵ See УСТАВ РЕПУБЛИКЕ СРБИЈЕ [CONSTITUTION] 2006, art. 91 (Serb.) (“Obligation of paying taxes and other dues shall be general and based on economic power of taxpayers.”).
- ³⁷⁶ See DUSTUR ALSUWMAL [CONSTITUTION] Aug. 1, 2012, art. 42 (Som.) (requiring a citizen “[t]o become a good taxpayer”).
- ³⁷⁷ See CONSTITUTION OF VENUATU Jul. 30, 1980, pt. II, § 7(g) (requiring a citizen to “contribute, as required by law, according to his means . . .”).
- ³⁷⁸ See DUSTUR 'AFGHANISTAN [CONSTITUTION] Jan. 4, 2004, art. 42 (providing that “[t]ax rates and duties as well as the method of payment shall be determined, with due respect to social justice, by law”).
- ³⁷⁹ See DUSTUR ALBAHRAIN [CONSTITUTION] Feb. 14, 2002, art. 15 (Bahr.) (providing that “[t]axes and public costs are based on social justice . . .”).
- ³⁸⁰ See USTAV REPUBLIKE HRVATSKE [CONSTITUTION] Dec. 22, 1990, art. 51 (Croat.) (providing that “[t]he system of taxation shall be based on the principles of equality and equity.”).
- ³⁸¹ See CONSTITUTION DE LA REPUBLIQUE GABONAISE 1961, art. 1, 20 ° (Gabon) (“The Nation proclaims the solidarity and equality of all before its public financial obligations.”).
- ³⁸² See CONSTITUCIÓN ESPAÑOLA., B.O.E. art. 31, Dec. 29, 1978 (Spain) (providing that “no case shall be of a confiscatory scope”).
- ³⁸³ See CONSTITUCIÓ D'ANDORRA Feb. 2, 1993, art. 37 (providing that “persons shall contribute to the public expenditure dependent on their economic capacity”).
- ³⁸⁴ See CONSTITUICAO DE ANGOLA Jan. 21, 2010, art. 88 (providing that people should “contribute to public expenditure and society in proportion to their economic means”).
- ³⁸⁵ See REPUBLICARI CONSTITUTIA ROMANIEI Dec. 8, 1991, art. 56 (Rom.) (providing that the “legal tax system must ensure a just distribution of fiscal duties”).