

Freedom at, through and from work: Rethinking labour rights

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Abstract. *To what extent do labour rights promote freedom in relation to work? Methodologically, the article defines three freedoms: freedom “at”, “through” and “from” work. Despite freedom-oriented approaches to labour law, it shows that fundamental labour rights have traditionally aimed and continue to aim at protecting workers in the labour market, not at expanding freedoms and in particular freedom “from” work. In this respect, it outlines limits in current proposals, such as the basic income, to liberate from work. It discusses instead new rights in the human economy framework, concluding that, in order to expand freedoms in relation to work, not fewer but more fundamental labour rights are required.*

Keywords: *workers’ rights, freedom, labour law, freedom from work, republican non-domination, exploitation, capability approach, basic income, human economy.*

1. Introduction

Throughout the twentieth century, governments recognized certain labour rights as universal fundamental rights. They first laid down the prohibition of slavery, the right to work, the right to work under just and favourable conditions and trade union rights in the Universal Declaration of Human Rights (UDHR)¹ (Mantouvalou 2012; Swepston 2014). The International Covenant on Economic, Social and Cultural Rights (ICESCR),² adopted in 1966, contains similar labour rights (Saul, Kinley and Mowbray 2014).

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¹ United Nations General Assembly, resolution 217, Universal Declaration of Human Rights, A/RES/3/217 A (1948), arts. 4, 23 and 24.

² United Nations, International Covenant on Economic, Social and Cultural Rights, adopted in New York, NY, 16 December 1966, Treaty Series, Vol. 993:3, Art. 6 (right to work), Art. 7 (right to just and favourable conditions of work), Art. 8 (trade union rights).

The ILO has also adopted a list of fundamental labour rights in the Declaration on Fundamental Principles and Rights at Work and its Follow-up (the ILO Declaration),³ which does not exactly reflect the human rights standards (Alston 2004; Langille 2005). It includes freedom of association and the effective recognition of the right to collective bargaining, the elimination of all forms of forced or compulsory labour, the effective abolition of child labour and the elimination of discrimination in respect of employment and occupation.

The labour rights in the international human rights system and in the ILO Declaration are at the core of labour law and reflect the current foundations of our organization of labour. But to what extent do these rights aim to expand freedoms and how could they expand them more in the future? Methodologically, in its second section, this article defines three dimensions of freedom in relation to work: freedom at work, freedom through work and freedom from work. The third section explores the traditional purpose of fundamental rights, while the fourth evaluates their ability to expand the aforementioned freedoms by applying freedom-based approaches to labour law, namely the non-exploitation approach (Mantouvalou 2018; Wolff 2018), the republican non-domination approach (Bogg 2017; Cabrelli and Zahn 2017 and 2018; Lovett 2010; Pettit 1997, 2008, 2012; Taylor 2017) and the capability approach (Deakin 2019; Del Punta 2019; Langille 2019).

The analysis in this article shows that fundamental labour rights are least well equipped to expand freedom from work. In this respect, the fifth section outlines the limits of current proposals relying on productivity (Gorz 1989; Grosse 2018) and mechanisms of redistribution, such as the basic income (Chamberlain 2018; Lovett 2010; Pettit 2008; Sommer 2016; Standing 2013; Van Parijs and Vanderborght 2017; Veltman 2016), to liberate from work. It then examines an alternative strategy under the human economy framework (Bueno 2017 and 2019a), which discusses how the need to work for economic reasons can be reduced by rethinking the purpose and value of work. In its final section, the article concludes that there is a need to reconsider how and why existing fundamental labour rights protect and promote work in order to expand freedom at and through, but also freedom from, work.

2. Three dimensions of freedom in relation to work

This article distinguishes three dimensions of freedom in relation to work: freedom at work, freedom through work and freedom from work. They build on Veltman's (2016, 77) dimensions of autonomy in relation to work: autonomous agency in work, autonomy as economic autonomy through work and autonomously chosen work.

Freedom at work, to begin with, relates to Veltman's (2016, 84) idea of autonomous agency in work, which includes a worker's autonomous control over working processes and human agency in designing them. Autonomous control also reflects Supiot's idea of *"libertés dans le travail"* (2015, 164). In addition,

³ ILO, Declaration on Fundamental Principles and Rights at Work and its Follow-up, International Labour Conference, 86th Session, 1998 (Annex revised 15 June 2010).

freedom at work entails the ability to exercise agency to shape one's working environment. This reflects the idea of capability for voice, which designates the extent to which people can effectively express their views (Bonvin 2012, 11; see also Bogg and Novitz 2014). Enjoying freedom at work concerning, for example, the place, time or pace at which one's work is performed, is not synonymous with being a flexible worker. In this regard, Chamberlain (2018, 58–59) addresses freedom-based neoliberal narratives that construct the flexible worker. In those narratives, individuals need to be liberated from the rigidities associated with labour regulation in order to stimulate economic productivity in a spirit of self-entrepreneurship. In this article, freedom at work is not a means to increase economic productivity or a reward for economic productivity, but a goal in itself.

Next, freedom through work is concerned not with the workplace, but with one instrumental function of work, namely to generate an income. Beyond mere economic security through work – “*sécurité par le travail*” in Supiot's words (2015, 74) – freedom through work relates to the economic independence that a worker enjoys from any other individual or from an institution like the State (Veltman 2016, 79–80). In addition, freedom through work is about the choices that a worker can make in life (Levine and Rizvi 2005, 41–52). In this respect, income is an important, but not the only, instrument for expanding human capabilities, which are defined by Sen (1999, 75) as the substantive freedoms that a person enjoys to lead the kind of life that he or she has reason to value. Freedom through work is therefore about what each person can do and be with an income.

Freedom from work requires more attention. In its negative expression, freedom from work is not a mere right to be lazy or idle (Lafargue [1880] 1904; Russell 1935), but the freedom to enjoy a life without being constrained to work for economic, and therefore instrumental, reasons (Bueno 2017). This ideal might not be achievable, but one can still assess one's own degree of freedom in this regard.

The positive counterpart of this is the freedom to conduct personally meaningful work for its intrinsic value. The salient factor in demarcating an autonomous choice of occupation is the alignment of work with a freely chosen personal life goal, rather than acquiescence in working to avoid going hungry (Veltman 2016, 78). However, the “contractualization” of work has progressively reduced it to the mere fact of conducting a task for a wage, leading to the idea that work exists to pay for the life of the worker without being part of that life (Gardner 2018, 35). It ignores the questions of whether people are engaging in worthwhile pursuits, putting their talents to good use, developing their personality or filling their time constructively (Gardner, 44). Bonvin captures the idea through the notion of “capability for work”, which he defines as the real freedom to choose the job one has reason to value (Bonvin 2012, 13). Weidel (2018) is even more explicit by calling for the creation of a new “capability for meaningful labour”.⁴ In its positive expression, freedom from work therefore depends on the extent to which people have the choice to conduct activities, including

⁴ For the notion of “capability”, see subsection 4.3.

work, that are intrinsically valuable to them. Being paid for the activity obviously increases this choice.

Distinguishing between these dimensions of freedom in relation to work is important because they sometimes reinforce each other. For example, expanding freedom at work can increase motivation and productivity. If wages increase as a result of this, workers can enjoy more freedom through work. In the current competitive logic of the market, however, one dimension usually expands at the expense of another. For example, people choosing to spend time on activities that they consider to be intrinsically valuable are likely to experience a reduction in their freedom through work. To what extent do fundamental labour rights promote these three dimensions of freedom in relation to work and how could they guarantee them better in the future? That is the focus of this article.

3. The traditional purpose of fundamental labour rights

Historically, national labour regulations emerged in the context of the industrialization of the nineteenth century as a reaction against the establishment of unregulated labour markets. At first, the aim of labour regulation was to protect the physical integrity of workers; later, it was also to reduce their economic insecurity (Supiot 2015, 68). As Karl Polanyi ([1944] 2001, 186) explains, the purpose of social legislation, factory laws, unemployment insurance and trade unions was to interfere with the laws of supply and demand in respect of human labour, removing it from the orbit of the market.

Interfering with the laws of supply and demand in respect of human labour is still the primary function of labour law and of the fundamental labour rights at its core. It has even become a tradition in legal theory, albeit one that is increasingly subject to criticism, to describe labour law as a countervailing force against the inequality of bargaining power that is inherent in the employment relationship (Davies and Freedland 1983, 18; see also Bogg 2017, 391; Cabrelli and Zahn 2018, 105; Collins 2018, 66; Davidov 2016, 52; Langille 2011, 105). In other words, the aim of labour law, both historically and today, is the protection of workers from the risks they face in the labour market. In this context, fundamental labour rights in international human rights law and in the ILO Declaration are primarily aimed at protecting workers against these risks. They do so by setting minimum labour standards and by modifying the competitive conditions of the labour market in favour of workers. As discussed in the following subsection, these legal mechanisms do not allow much room for a debate about freedom at, through or from work.

3.1. Rights setting minimum labour standards in uncompetitive labour markets

In a market where there are few buyers and many sellers, buyers have more power to drive down prices. This is the definition of an oligopsony. For most workers, and certainly for those who have fewer skills to sell, the labour market is an oligopsony (Boal and Ransom 1997). The number of employers who

are ready to buy a skill is small in comparison with the number of workers who must compete to sell their skills. This is why employers are usually able to set employment terms unilaterally and can decide who works and who remains out of work. Given that a perfectly competitive full employment labour market does not exist for most workers (Kaufman 2007), minimum standards must be in place to ensure that employers do not just set conditions at their whim.

In this regard, several of the fundamental labour rights listed in the introduction set minimum standards to protect workers from competition in a labour market that is not perfectly competitive. For example, the fundamental labour right to sufficient remuneration included in the right to just conditions of work guarantees that remuneration provides workers with at least a decent living for themselves and their families (United Nations 2016; Saul, Kinley and Mowbray 2014, 393). With respect to our three dimensions of freedom, the fundamental labour right to sufficient remuneration aims to guarantee a minimal level of economic security (Supiot 2015, 74) and can therefore guarantee only a minimal degree of freedom through work.

The fundamental labour right to reasonable hours of work fulfils a similar function. In international human rights law, the general daily limit should be eight hours of work on average and all workers should enjoy weekly rest periods amounting to at least 24 consecutive hours for every seven-day period (United Nations 2016; Saul, Kinley and Mowbray 2014, 472–473). This right is traditionally implemented through working time legislation, which is another way to set a minimum working standard to protect workers in the labour market. The purpose of the right is not to expand freedom but primarily to protect the physical integrity of workers (Supiot 2015, 78).

3.2. Rights enhancing the competitiveness of labour markets

A perfectly competitive labour market means not just perfect competition among workers but also the absence of an oligopsony of employers. To put it differently, a perfectly competitive labour market would, in practice, result in a situation in which employers would have to be interviewed by workers, just as workers are now interviewed by employers. In this respect, some fundamental labour rights, such as trade union rights and the right to work, do not set minimum working standards. They fulfil the function of improving the position of workers in the labour market by enhancing the competitiveness of this market.

Trade union rights are rights that traditionally enhance the competitiveness of labour markets by increasing the bargaining power of workers. Collectively, workers have more power to regulate the supply side of the labour market and can bargain for their working conditions vis-à-vis their employers. By contrast, the labour right to work operates on the demand side of the labour market. Pursuant to this right, States must adopt policies towards full employment (Branco 2019; Bueno 2017; O’Cinneide 2015; Sarkin and Koenig 2011; Saul, Kinley and Mowbray 2014). The goal of the right to work is therefore also to enhance the competitiveness of labour markets. By doing so, trade union rights and the right to work also contribute, to some extent and unconsciously, to the expansion of workers’ freedom at work and through work.

Historically, however, labour rights were the compromise found in market societies between protecting workers and allowing the labour market system to function. The latter would not be possible without minimum working standards or rights enhancing competitiveness in the labour market (Deakin 2011, 156). Understanding fundamental labour rights as giving protection to workers from the risks associated with their participation in that market, in order to enable it to function, pushed discussions on freedom into the background.

4. Freedom-based approaches to labour law

Expanding workers' freedom is not the traditional function of fundamental labour rights. There are, nonetheless, alternative approaches to labour law that highlight the functions of labour rights beyond the protection of workers from competition in the labour market. This section reviews three freedom-based approaches to labour law: the non-exploitation approach, the republican non-domination approach and the capability approach. These approaches are useful normative templates for evaluating existing fundamental labour rights and their ability to expand different ideas of freedom.

4.1. The non-exploitation approach to labour law

In the non-exploitation approach to labour law, freedom is understood as the absence of exploitation. Exploitation is defined as the taking of unfair advantage of someone's vulnerability (Mantouvalou 2018, 189; Wolff 2018, 176). At one extreme, slavery and forced labour reflect obvious situations of such exploitation. At the other extreme, Marx's theory of surplus value considers that workers are exploited as soon as they create surplus value for the capitalist. Marx measured the degree of exploitation of labour power by comparing the working time that a worker spent reproducing the value of his or her own labour power with the working time spent producing surplus value for the capitalist (Marx [1867] 1990, 320–328; see also Wolff 2018). This idea clearly demonstrates that Marx saw no possibility of not being exploited in the capitalist system of production. The non-exploitation approach to labour law aims to establish a legal threshold between illegal exploitative and legal non-exploitative working arrangements (Mantouvalou 2018; Wolff 2018) somewhere between these two views.

Existing fundamental labour rights do not prohibit exploitation in Marx's meaning of the term. On the contrary, they are usually concerned with the exploitation of workers only in situations of oppressive subordination that are more extreme than the typical inequality and subordination characteristic of the employment relationship (Mantouvalou 2018, 189). This is the case of, for example, the prohibition of child and forced labour. More precisely, forced labour is defined as work that is exacted from any person under the threat of a penalty and for which the person has not offered himself or herself voluntarily.⁵ Freedom from such work, however, does not guarantee freedom in relation to work above any basic level.

⁵ Forced Labour Convention, 1930 (No. 29), Art. 2(1).

Spector (2018) submits that the fundamental labour right to *fair* remuneration could play a growing role in excluding not only the most severe forms of deprivation of freedom but also less exploitative working arrangements. According to the current interpretation of this right, remuneration is fair when it reflects “not only the output of work but also the responsibilities of the worker, the level of skill and education required to perform the work, the impact of the work on the health and safety of the worker, specific hardships related to the work and the impact on the worker’s personal and family life” (United Nations 2016, para. 10; see also Saul, Kinley and Mowbray 2014). This interpretation departs from the neoclassical view of fair remuneration, which focuses only on economic outputs and considers that workers should receive a remuneration that is proportionate to their productivity (Mazzucato 2018). The neoclassical view is problematic because low-skilled workers and workers operating in sectors providing little added economic value would be considered not as being exploited but as receiving what they deserve. Although the fundamental labour right to fair remuneration departs from this view, it must nevertheless be acknowledged that it has not received much attention in practice.

The non-exploitation approach to labour law is an interesting way of evaluating labour rights in terms of freedom. However, its limitation of the understanding of freedom to the absence of exploitation makes it too restrictive to enable a discussion of how labour rights do and could expand freedom at, through and from work beyond a minimum level. The non-domination approach to labour law, to which we now turn, is more accurate in explaining why some people must consent to some level of exploitation, and how the domination to which they are subjected in the context of work can be minimized.

4.2. The non-domination approach to labour law

Republican theories of non-domination are based on an ideal of freedom as the absence of domination. According to Lovett’s *General Theory of Domination and Justice* (2010), the degree of domination to which a person is subject depends on three variables: dependency, power imbalance and arbitrariness. Pettit’s (1997, 2008 and 2012) republican theory of freedom as non-domination is concerned with minimizing the control that one person can exercise over another through arbitrary influence. In his theory, a person escapes domination and is therefore free only to the extent that that person occupies a protected position and is empowered to resist control by others. The non-domination approach to labour law (see Bogg 2017; Cabrelli and Zahn 2017 and 2018) applies this framework to evaluate whether labour rights can minimize the degree of domination exerted by an employer. Following Lovett’s three variables, this subsection evaluates whether fundamental labour rights can expand freedom at, through and from work by minimizing such domination.

First, the degree of dependency of workers, and therefore the domination to which they are subject, is a function of the costs to them of exiting the work relationship (Lovett 2010, 53). A person who knows that ending the work relationship means becoming unemployed or not being able to find a better source of income faces domination (see also Pettit 2008, 5; Taylor 2017, 50–52; Cabrelli

and Zahn 2017 and 2018, 112; Bogg 2017, 396). Freedom from domination therefore depends on the jobs that are available in the market and on alternative ways of receiving an income. By promoting job creation, the right to work is a tool that reduces the costs of ending a job relationship and, therefore, dependency. In the same vein, unemployment benefits are also referred to as a tool to reduce the economic risks of quitting a job, and therefore to reduce dependency (Lovett 2010, 54; Pettit 2012, 112). In practice, however, there is currently no fundamental labour right to receive unemployment benefits.⁶

Second, domination depends on the degree of power imbalance between two parties. The greater the imbalance in social power, the greater the extent of the domination. As demonstrated above, employers are generally in a situation of power vis-à-vis workers as a result of the oligopsonistic condition of the labour market. In this respect, trade union rights in particular can be seen as a tool to reduce the degree of power imbalance between workers and employers, and therefore to reduce the degree of domination.

Third, domination depends on the ability to wield arbitrary power without external legal constraint (see also Cabrelli and Zahn 2018, 112). In Pettit's republican account, basic liberties also mark out a protected zone of freedoms that must be insulated from arbitrary interference by other private actors (Bogg 2017, 402, commenting on Pettit 2012, 110–114). Existing fundamental labour rights that set minimum standards, such as the rights to sufficient remuneration or to reasonable hours of work, have this function of restraining an employer from wielding arbitrary power to set working conditions at whim. The prohibition of arbitrary dismissal, which is an existing fundamental labour right recognized in the right to work (United Nations 2006), is also referred to as a tool that limits such a use of power (Bogg 2017, 403).

Being less dominated has an impact on the dimensions of freedom in relation to work discussed in this article. Workers who are less dominated by an employer enjoy greater agency and voice to shape conditions at work. They are also in a position to require better remuneration, to increase their economic independence and to expand their choices outside work. In short, fundamental labour rights that reduce domination simultaneously expand freedom at work and through work.

That being said, the non-domination framework also raises an important question about the practical ability of fundamental labour rights, which are legal instruments, to reduce domination and, accordingly, to expand these two freedoms for informal workers (see also Bogg, 407). By definition, informal workers operate outside the formal reach of the law. They may also be covered by the law, but the law is not applied or not enforced.⁷ Given a similar level of dependency and a similar power imbalance with an employer, informal workers therefore experience a higher degree of domination than their formal counterparts,

⁶ Security in the event of unemployment is mentioned in article 25(1) of the UDHR and intended in Article 9 of the International Covenant on Economic, Social and Cultural Rights (see United Nations 2008). In practice, however, they act only as recommendations to adopt unemployment schemes.

⁷ ILO, Resolution and conclusions concerning decent work and the informal economy, International Labour Conference, 90th Session, 2002, para. 3.

because of the absence of, or failure to implement, external legal constraints on the arbitrary power of the employer. In order to reduce domination and expand the freedom at and through work of informal workers, fundamental labour rights should therefore look more carefully at how mechanisms such as minimum working standards, trade union rights and unemployment benefits apply outside formal work relationships.

Lastly, what can the non-domination approach to labour law tell us about whether the existing fundamental labour rights are able to expand freedom *from* work? Not being dominated by an employer does not necessarily amount to such freedom. There is indeed a difference between workers being able to exit a work relationship, being free from the constraint to work for economic reasons, and their ability to conduct an activity that they consider to hold intrinsic value. Multiplying the number of similarly unfulfilling jobs in the labour market reduces exit costs but does not expand freedom from work. Lovett (2010, 53) describes this situation as “decentralized domination”, meaning that workers simply enjoy a choice between dominating agents (see Bogg 2017, 400). Before discussing how to expand freedom from work, in particular, the following subsection discusses the capability approach to labour law, a third freedom-oriented approach.

4.3. The capability approach to labour law

The capability approach to labour law is based on the concept of capability developed by Amartya Sen and Martha Nussbaum. This concept is directly relevant to the discussion on freedom because capabilities are a special kind of freedom. Capabilities are defined as the substantive freedom to achieve alternative “functionings” that the person may value doing or being (Sen 1999, 75). The capability approach focuses on people’s individual freedom to choose what they are able to do and be (Nussbaum 2011, 20) as the main determinant of well-being. It is therefore not just about the negative freedoms of non-interference, as is the case in the non-exploitation and non-domination frameworks, but about the real choices of an individual person to develop freely (Weidel 2018, 71).

In *Creating Capabilities: The Human Development Approach*, Nussbaum (2011, 31) listed ten human capabilities that she considered so central to human beings that their removal makes a life not worthy of human dignity. Examples of central capabilities include being able to have good health; being able to be adequately nourished and to have adequate shelter; being able to move freely from place to place; and being able to receive an education. Directly related to work, Nussbaum listed the “right to seek employment on an equal basis with others” (Nussbaum, 34) as part of the central capability of having control over one’s environment. She also clarified the relationship between work and capabilities by outlining the capability of being able “to work as a human being, exercising practical reason and entering into meaningful relationships of mutual recognition with other workers” (35).

The capability approach to labour law uses this idea of capabilities, or freedoms to choose, to define a new normative framework for the assessment of labour rights. It aims to liberate labour law from a constricting and over-specified narrative of bargaining power on the labour market (Langille 2019, 123).

More concretely, the approach looks at how to develop workers' capabilities and therefore the freedom to lead the kind of life that they have reason to value (Del Punta 2019, 94).

In this respect, it primarily emphasizes the dangers to human choices posed by unemployment and other restrictions, such as discrimination in accessing the labour market (Deakin 2011, 172; Langille 2019, 137; Mantouvalou 2019, 213). This reflects the idea of freedom through work, in the sense that being able to work and receive an income ultimately expands people's choices in other areas of their life (Del Punta 2019, 94; Langille 2018, 95–96). In this context, the importance of the fundamental labour right to work in providing an income and, therefore, choices in life has been highlighted, despite the limits on its implementation (Collins 2015; on its implementation in the global labour market, see Mundlak 2015). Other labour rights dealing with remuneration and collective bargaining are presented as capability-enhancing, since being paid enough is obviously a necessary condition for people to have the capacity to be or to do something that they value (Del Punta 2019, 94).

The capability approach to labour law also discusses the role of labour rights in expanding workers' choices at work, reflecting the idea of freedom at work. Apart from the role of trade union rights in expanding the capability for voice at work (Bonvin 2012), Del Punta (2019, 95) outlines the need for a capability to choose arrangements that make work more flexible, including the choice to work part-time or from home. Generally, the approach shows that choices at work are not usually part of the current fundamental labour rights discourse.

Lastly, the capability approach to labour law triggers new discussions about the meaning of work that is not considered by existing fundamental labour rights. As mentioned above, Nussbaum included being able to work "as a human being, exercising practical reason and entering into meaningful relationships of mutual recognition with other workers" in her list of central capabilities (Nussbaum 2011, 35; see also 2019, 70). Weidel (2018) then suggested adding a capability for "meaningful labour". The capability approach therefore lends support to the development of personal relations at work and the meaningfulness of work, which is an aspect of freedom from work. It is true that a fundamental labour right to freely choose work exists within the right to work (Dermine 2014, 144). However, this right does not currently go beyond protecting an individual from forced labour (Bueno 2017, 469; see also Bonvin and Moachon 2014, 181). For the capability approach to labour law, it is not sufficient for work to be non-exploitative or even decent. Work should be conducive to human fulfilment and development, which is a duty that is not found in existing fundamental labour rights (Mantouvalou 2019, 217).

The capability approach to labour law is sometimes criticized for articulating goals that do not lead to any concrete programmes (Davidov 2016, 66 and the references cited therein). Nevertheless, by focusing on workers' freedom to choose (Del Punta 2019, 94), the capability approach stands in contrast with narratives of labour law that present workers as vulnerable, exploited or dominated and in need of protection or liberation. It shows that some fundamental labour rights aim to expand choices at work and through work, and therefore freedom at work and through work. It also highlights the fact that there is cur-

rently no fundamental labour right that aims to increase choices for meaningful work, which is the positive aspect of freedom from work. The following section discusses more thoroughly the kind of fundamental labour rights that would be required in the future to expand freedom from work – the most overlooked dimension of freedom in relation to work in labour law.

5. Towards more freedom from work through labour rights

Calling for freedom from work as it is defined in this article, in both its positive and negative expressions, would have sounded anachronistic in 1948, when socialist and capitalist countries drafted the labour provisions of the UDHR. Neither did such a demand play a role, 50 years later, in the adoption of the ILO Declaration of 1998. The predominant view is still that people should enjoy some minimum level of freedom at and through work, but not freedom from work. Quite to the contrary, work has sometimes been considered as a condition of citizenship (Paz-Fuchs 2015, 182–188). In this respect, the Soviet Union established a duty to work as a counterpart to the guarantee of work availability. In today's market societies, work is not guaranteed, while being excluded from the labour market is not acceptable either. The duty to work has taken the form of forcing people to reintegrate into the workforce in order to survive or as a condition for public support. The negative and the positive aspects of freedom from work have not yet played a dominant role.

5.1. Freedom from work and the limits of productivity and redistribution

Although labour rights have not generally been aimed at expanding freedom from work, international human rights law guarantees the fundamental labour right to rest and leisure,⁸ which entails the right to reasonable hours of work and holidays with pay (Saul, Kinley and Mowbray 2014, 478). Going beyond this universal human rights standard, discussions are taking place in certain countries with regard to a four-day working week (Grosse 2018). Such a legal mechanism could expand freedom from work, at least in its negative meaning.

However, the right to rest and leisure currently relies on productivity. Without an increase in productivity, introducing paid holidays or a paid weekly rest by law may simply lead to a simultaneous reduction in wages. This reliance is clearly expressed in the Revised European Social Charter, according to which States parties undertake to reduce the working week progressively “to the extent that the increase of productivity and other relevant factors permit”.⁹ The ILO Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106), also makes it clear that no reduction of income can result from the introduction of weekly rest (see also Saul, Kinley and Mowbray 2014, 478). Otherwise, freedom from work would only expand at the expense of freedom through work.

⁸ As found at the universal level in Article 24 of the UDHR and Article 7(d) of the ICESCR.

⁹ Council of Europe, European Social Charter (Revised), *European Treaty Series* No. 163 (1996), Art. 2(1).

The problem of relying on economic productivity to expand the negative aspect of freedom from work is that freedom induced by productivity is unequally distributed (Gorz 1989, 322). Indeed, those who can increase their economic productivity will be able to expand their freedom from work without reducing their freedom through work. By contrast, those who cannot, maybe because they lack the skills to adapt to technological change, are at risk of being replaced by technology or other more productive workers. As a result, they are forced to work more in less productive sectors that pay lower wages. Lastly, the income of many workers, such as teachers or nurses, who must rely on the productivity of others, simply does not follow the logic of economic productivity. In the current economic model, expanding freedom from work by relying on productivity therefore necessarily requires rights that lead to redistribution.

Among the mechanisms of redistribution, the basic income has probably attracted the most attention when it comes to liberation from work. In the republican accounts of non-domination, a basic income reduces domination by reducing the costs of exiting a work relationship (Taylor 2017, 48–50; see also Pettit 1997, 5; Lovett 2010, 199–200). Outside republican non-domination theories, a universal basic income is presented as a tool to enable people to gain control of the pace and intensity of their work (Standing 2013, 34) and to liberate those who conduct work that is mainly meaningless to them (Veltman 2016, 92). Lastly, other scholars have discussed how a universal basic income could expand the freedom to choose meaningful activities that enable greater self-fulfilment (Sommer 2016; Standing 2013, 35; Steinvorth 2009, 113) and therefore enhance the positive aspect of freedom from work.

Much has been written about the practical feasibility of a basic income (see, in particular, Van Parijs and Vanderborght 2017) and this article does not intend to review this literature. Instead, it raises concerns regarding the ability of redistribution mechanisms in general, and the basic income in particular, to expand freedom from work. Do redistribution mechanisms, including the basic income, really liberate people from work if work must be performed by other members of society in order to finance them? If a basic income is financed by those who work, the freedom from work enjoyed by those who receive a basic income might increase at the expense of the freedom through work and even from work of the workers contributing to it. The debate on basic income therefore needs to consider redistribution mechanisms in terms of freedom through and from work. Do we really want to be more dependent on productive work in order to be able to redistribute a basic income? The next subsection invites us to look beyond productivity and redistribution to expand freedom from work. It introduces the human economy framework, which adds a new dimension to the debate by discussing the value and purpose of work and its ability or inability to reduce the need to work.

5.2. Freedom from work and rights in the human economy framework

Empirically, most people have to work primarily in order to access certain essential goods and services. Some of these reflect the central capabilities presented above, such as food, health, housing, transportation and education. Some

workers, particularly low-income workers, have to work exclusively for these reasons. Could we be freer from the need to work if some of these goods and services were created more efficiently? As this subsection shows, it is not the purpose of the current economic model to produce specific goods and services more efficiently in order to expand freedom from work. Based on a previous contribution introducing the human economy framework (Bueno 2017), this article discusses a way of rethinking the purpose of work with a view to reducing the need to work, before designing new rights that would be required by this change of paradigm. The human economy framework can be summarized in three observations.

First, the current organization of labour wastes some human potential. Since the time of classical economists (Mill [1848] 1909, 31–45; Smith [1776] 1999, 151), economics has mostly focused on the potential of human beings to produce economic outputs through work. Workers have been reduced to a form of human capital (see Becker 1993), overlooking the fact that they are human beings with a potential beyond creating economic value (Bueno 2017, 476). Through work and other activities, human beings produce goods and services that can expand the capabilities for which most people have to work. For example, some jobs and activities expand capabilities such as being in good health, being adequately nourished, moving freely from place to place or having access to education and housing – listed among Nussbaum’s (2011) central capabilities. Some people might find it more personally meaningful to do a job that expands others’ capabilities or freedom of choice, rather than doing a job that is only or mainly economically productive. For example, a lawyer might find it more meaningful to advise poor communities affected by water pollution rather than a company responsible for such pollution; or it might be more meaningful for an architect or a construction worker to build homes for people who need them rather than work on holiday homes. However, the current organization of labour markets primarily encourages economically productive work. The first observation of the human economy framework is therefore that, because of a lack of opportunities in the current labour market, some people wishing to expand capabilities through personally meaningful work are prevented from doing so. The human potential of these people is wasted, both for their individual fulfilment and development and for society as a whole (Bueno 2017, 480).

Second, productive work can be meaningless in terms of both personal and social purpose (Veltman 2016, 137; see also Graeber 2018; Michaelson 2021). Beyond the idea of “bullshit jobs” popularized by Graeber (2018), work can even be detrimental for individuals and society (see, for example, Dermine and Dumont 2018). In the human economy framework, work is considered detrimental if it reduces others’ freedom of choice, that is, the capabilities for which they must work (Bueno 2017, 479). For instance, speculating on food or house prices is an economically productive activity but may reduce other people’s capabilities to be adequately nourished or to have adequate shelter, ultimately increasing their need to work.

Lastly, the question is how to expand individual choices with less work. In this regard, the human economy framework establishes a distinction between *economic productivity* and *human efficiency*. The goal of the human economy

model is not to produce more goods and services with less resources, but to create more freedom of choice with less work. For instance, the introduction of the tractor has dramatically reduced the need to work for food (Autor 2015, 7). The tractor increases economic productivity, as fewer resources are required to produce food. And, by making food more accessible, it also improves people's choices with regard to food, while requiring less work from them. Through the tractor, the economy has become not only more *economically productive* but, more importantly, more *humanly efficient*. However, the logic of the current economic model is not to be more efficient in creating such capabilities but to increase economic productivity in general.

The problem with this view is that increasing economic productivity in sectors that produce goods and services that only a few people can afford (luxury goods or financial services, for example) does not expand the freedom from work of those who cannot afford them. Besides this, increasing productivity can be achieved by making people work unnecessarily. For example, using pesticides, like using a tractor, increases economic productivity and reduces the need to work for food. However, if this is achieved by polluting water and damaging health, some people will have to work more to remedy these impacts via medical treatment or environmental measures (Bueno 2019a). This supplementary work is paid for by those affected, or collectively by taxpayers, which reduces their freedom from work. In terms of human efficiency, a distinction must therefore be introduced between the tractor and the pesticides, which is something that the current economic model cannot grasp.

The human economy framework raises many questions. Which goods and services should be created more efficiently and how should these be selected? Letting everything else operate as usual, this question would require an agreement among the members of a given society to create certain goods and services (such as food, housing and health) more efficiently based on the fact that each member must already work for them. Despite the questions it raises, this framework introduces a debate on the value and purpose of work and, paradoxically, on the impact of work on the need to work. As a result, the role of fundamental labour rights would also assume an additional function: encouraging the efficient creation of goods and services for which people primarily have to work and creating disincentives for work that makes people work unnecessarily.

From this perspective, the human economy framework shows that existing fundamental labour rights are "neutral" regarding work. They protect work regardless of whether or not it is socially useful (Dermine and Dumont 2018, 60) or creates capabilities for others. With a view to expanding freedom from work in the future, fundamental labour rights should therefore be more concerned with the impact that work has on the human choices for which people have to work. They could do this in two ways.

First, as explained above through the examples of food and house-price speculation, some people's work can reduce the capabilities of other members of society, and make them work unnecessarily. In this regard, a large body of literature already exists in the field of business and human rights, looking at the responsibility of businesses to respect fundamental rights (see, for example, Bernaz 2017). With respect to labour rights in particular, this responsibility aims

only to ensure that businesses conduct due diligence in order to identify, prevent and mitigate any negative impacts on fundamental labour rights (Bueno 2019b). The approach could be extended to ensure that the work conducted by some does not diminish the central capabilities of others and cause them to work unnecessarily. Formulated as a fundamental labour right, this would become a new right not to be forced to work unnecessarily because of others.

Such a right would contribute to the negative aspect of freedom from work, in that it would reduce the constraint to work for economic reasons. But what about the positive aspect of freedom from work? As shown above, the market limits opportunities for work by primarily selecting activities that are economically productive. The situation is suboptimal when, owing to a lack of opportunities for such work on the labour market, individuals cannot freely choose personally meaningful work that could expand the freedoms of others. Clearly, it would be impracticable to guarantee personally meaningful work for everyone (Weidel 2018, Veltman 2016, 197). Ideally, however, there should be a new right to freely choose personally meaningful work, at least when the work has the potential to expand freedoms. Such a right would go beyond the current fundamental right to choose freely to work, which is equivalent to the right not to be forced to accept a job and goes beyond a right to choose a good quality job (Bonvin and Moachon 2014, 181).

Second, implementing this new right would require rethinking redistribution. The latter must increasingly operate between work that reduces capabilities for which most people must currently work, such as speculating on food or house prices, and activities that create those capabilities more efficiently. This kind of redistribution would create opportunities to conduct activities beyond the labour market (see also Chamberlain 2018, 136; Dermine and Dumont 2018; Rifkin 1995, 256) that expand the freedoms of others. However, out of a lack of choice, some people are currently forced to work in sectors that reduce such freedoms. Accordingly, mechanisms of redistribution are needed to ensure that workers do not pay the price of having no choice but to work in such sectors.

6. Conclusion

This article has evaluated the ability of existing fundamental labour rights to expand three dimensions of freedom in relation to work: freedom at work, freedom through and freedom from work. Historically, fundamental labour rights emerged to protect workers from the physical and economic risks inherent in their competition on the labour market. In the current market economy, fundamental labour rights primarily continue to fulfil this function, which does not give much room for a debate on freedom. By applying freedom-based approaches to labour law, this article aims to demonstrate that fundamental labour rights can and should increasingly be evaluated in terms of freedom.

When evaluated in terms of the specific freedoms at, through and from work, labour rights are currently least well equipped to expand freedom from work. I have defined this freedom as both the negative freedom to enjoy a life without being constrained to work for economic reasons and the positive freedom to conduct personally meaningful work for its intrinsic value. Beyond

traditional productivity-based and redistribution mechanisms, this article has outlined the human economy framework, which reconsiders the purpose of work. It suggests that, if labour rights wish to expand freedom from work, they will have to discourage work that reduces freedoms and create opportunities for work that expands freedoms beyond the market.

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