

The Value of Work in Labour Law

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I. Introduction

Economic liberals in the eighteenth century distinguished between serfdom and slavery, on the one hand, and free labour operating in the labour market, on the other hand. The distinction created an entire category of workers who suddenly appeared as free because they had some choice of occupation. In the twentieth century, economic neoliberals reemphasized this liberating potential of labour markets. By focusing on market mechanisms, however, economic liberals and neoliberals also consolidated the idea that productive work on the market (market work) is more valuable than any other occupation. To what extent do wages and incomes reflect the value of work? Is it normal that activities that seem meaningful or even essential, such as a cleaning, taking care of others, or restoring the environment are valued less than jobs in finance, corporate law, and trading firms? Why is this the case and how should labour law address this without reducing free choice of occupation? Building on post-economic growth and post-productive work theories, this chapter discusses how and when labour law should intervene in the valuation of work.

Section II explains the influence of economic ideology on the purpose and value of work. This section describes the evolution of the value of work from classical liberalism and Soviet socialism until neoliberalism. With respect to neoliberalism, it discusses the works of Friedrich Hayek in *The Road to Serfdom*,¹ and Milton Friedman in *Capitalism and Freedom*² and *Free to Choose*.³ Neoliberal views, which resonate today, value work according to its economic value as determined by the market. Section III shows the implication of these ideologies for the function of labour law. It shows that labour law tends

¹ Friedrich Hayek, *The Road to Serfdom* (first published 1944, University of Chicago Press 2007).

² Milton Friedman and Rose Friedman, *Capitalism and Freedom* (first published 1962, 40th anniversary edn, University of Chicago Press 2002).

³ Milton Friedman and Rose Friedman, *Free to Choose: A Personal Statement* (first published 1980, Harvest Book 1990).

to promote the type of work considered as the most useful by the predominant ideology. Currently, that is productive market work under neoliberalism. Identifying what makes an activity useful (for whom) and designing a corresponding system of value has not yet been part of the function of labour law.

Section IV offers a vision of what the value of work and the function of labour law in this respect could be in a post-growth logic, that is, an invitation to think with other goals in mind than increasing material wealth (which is unequally distributed anyway), such as living on an environmentally healthy planet and in a less unequal environment. When the goals change, the purpose and value of work to achieve them necessarily change as well. In a more systematic manner, this section suggests that what makes work valuable should be dictated less by whether there is a market (consumers with purchasing power) for the job and more by its (positive and negative) impact on people's lives. The current market-based valuation of work has great advantages, but also two major shortcomings for labour law to address. It wastes human skills for the realization of non-market objectives and may encourage work that is detrimental to people and the environment through high pay. There is, therefore, a need for labour law to intervene more systematically in the value of work.

II. The Value of Work in Economic Ideologies

A. The Market Value of Work in Liberalism

During the eighteenth and nineteenth centuries, classical liberals had the idea of creating markets for labour which impacted how work is valued today. The establishment of labour markets was a progress and a new source of freedom away from the system of serfdom where people worked for a lord in return for protection.⁴ The liberal logic of labour markets also abolished privileges of regulated trades in order to expand access to work. In *The Wealth of Nations* (1776), Adam Smith dreamed, for example, of a society 'where every man was perfectly free both to choose what occupation he thought proper, and to change it as often as he thought proper'.⁵ As he put it: 'to hinder [a poor man] from employing his strength and dexterity in what manner he thinks proper without injury to his neighbour is a plain violation of this most sacred property'.⁶ This

⁴ Alessandro Stanziani, *Bondage: Labor and Rights in Eurasia from the Sixteenth to the Early Twentieth Centuries* (Berghahn 2018) 31.

⁵ Adam Smith, *The Wealth of Nations* (first published 1776, Penguin Classics 1999) 201.

⁶ *ibid* 225; see also Pierre Rosanvallon, *Le capitalisme utopique: Histoire de l'idée de marché* (3rd edn, Seuil 1999) 72.

emancipatory narrative of labour markets was echoed by many others at the time. In *Richesse Commerciale* (1803), Sismondi also considered labour markets as a way for everyone to secure liberty, wealth, and happiness by relying on their capacity to achieve, on their own, a level of income favouring economic and social insertion.⁷ In short, labour markets were historically thought to free the poor by reducing the barriers they faced when competing for (paid) work in a world regulated by trades and corporations.⁸ Historically, it was a social and liberating device.⁹

The other side of the coin is that labour markets radically transformed the value of work and its purpose in society. Adam Smith and John Stuart Mill, for example, started to divide workers between *productive* and *unproductive*, according to whether a worker creates value by producing vendible commodities in the market or not. For Smith, productive labour included any activity that adds to the value of a vendible commodity, 'whereas unproductive labour, such as the labour of military officers, churchmen, lawyers, physicians, men of letters of all kinds and musicians, does not fix or realise itself in any particular ... vendible commodity'.¹⁰ Mill tried to depart from this distinction. According to him, unproductive labour could also be useful and, indeed, even more useful than productive labour. As he deplored, a pure productive logic would lead to such conclusion that 'the labour of saving a friend's life is not productive, unless the friend is a productive labourer'.¹¹ However, he was unable to attach a specific and measurable value to unproductive labour and decided not to depart from Smith. He only extended the notion of productive labour to all kinds of labour that directly *and* indirectly contributes to the production of material wealth, such as the labour of teaching a trade or of ensuring public security.¹² This gave some value to public work, but only in relation to its contribution to productive market work.

The purpose of work also changed. From serving the needs of a community (or the personal needs of a lord for protection), market work became a private instrument for receiving an income and a societal instrument for increasing

⁷ Jean Charles de Sismondi, 'De la richesse commerciale ou Principes d'économie politique appliqués à la législation du commerce' in Pascal Bridel and others (eds), *Oeuvres économiques complètes*, vol 2 (Economica 2012).

⁸ See also Rosanvallon, *Le capitalisme utopique* (n 6) 71.

⁹ Pascal Bridel, 'D'un marché libérateur (1803) à un marché despotique (1837): Une note de synthèse sur le concept de marché chez Sismondi' (2020) 9(1) *Revue d'histoire de la pensée économique* 237, 239.

¹⁰ Smith, *The Wealth of Nations* (n 5) 430.

¹¹ John Stuart Mill, *The Principles of Political Economy with Some of Their Applications to Social Philosophy* (first published 1848, 7th edn, Longmans 1909) 31–45; for the chapter 'Of Unproductive Labour', *ibid* 50.

¹² *ibid*.

‘the wealth of the nation.’ Smith’s objective was ultimately to increase the wealth of the nation and to him, there was therefore no other option than to increase the number of productive workers or their productivity. As a result, productive market work became valuable while unproductive work, such as public work or care work,¹³ started to be considered as a cost for society at least when it did not indirectly contribute to increasing material wealth.

B. The Problematic Value of Work in Soviet Socialism

In the first half of the twentieth century, soviet socialists took power in Russia. They abruptly abolished the system of labour markets and experimented with a new system of valuing work.

By the end of the nineteenth century, mechanization increased both in agriculture and industry in most parts of Europe.¹⁴ In England, the pressure on workers increased even more after the repeal of economic safety nets during this period. As presented by Polanyi in *The Great Transformation*, the Poor Law Amendment Act of 1834 in England prohibited existing wage supplementation and it repealed outdoor relief for the able-bodied unemployed in rural areas. According to Polanyi, this made workers feel the consequences of a labour market in which there was no impediment to the free operation of supply and demand.¹⁵

The commodification of labour had gone too far. Even classical liberals changed their minds concerning the liberating power of labour markets. Commenting on the nature of the English industrial system in *Etudes sur les sciences sociales* (1817), Sismondi found that this system of market for labour ‘turns man and his labour into mere market tradable goods.’¹⁶ ‘Since the abolition of slavery, all manual labour is carried out by men who are not motivated by free choice. Pressed as they are by necessity and needs, they are not free in the market to deliver their labour.’¹⁷ It is in this context that the socialist ideology gained influence. French socialists first required a right to guaranteed

¹³ See Chapter 9 by Encinas de Muñagorri in this book.

¹⁴ Stanziani, *Bondage* (n 4) 145.

¹⁵ Karl Polanyi, *The Great Transformation: The Political and Economic Origins of Our Time* (Joseph Stiglitz and Fred L Block trs, 2nd edn, Beacon Press 2001) 81, 89.

¹⁶ J-J Gislain, ‘La conversion de Sismondi’ (2013) 64(1) *Cahiers d’Économie Politique* 111; Bridel, ‘D’un marché libérateur’ (n 9) 239.

¹⁷ Jean Charles de Sismondi, ‘Études sur les sciences sociales’ in Pascal Bridel and others (eds), *Cœuvres économiques complètes* (Economica 2018) 63–64; Bridel, ‘D’un marché libérateur’ (n 9) 239.

work.¹⁸ Karl Marx published *Capital* explaining how companies extract value from workers in a dual market system opposing workers and producers.

Against this ideological backdrop, Soviet Russia abruptly suppressed labour markets in 1918 after the Bolshevik revolution and introduced a new system of value. At first during the Bolshevik period, the central government introduced a rigid system of wage tariffs. For each sector, workers were divided into groups and categories according to the skill or training required.¹⁹ By September 1918, salaries were fixed for the whole of Russia in a more centralized way. Pursuant to the Russian Code of Labour Laws of 1919, tariffs had to be drafted by the trade unions, in agreement with the management (from the state). The standards that had to be taken into consideration when establishing the tariffs were the kind of labour, the danger of the conditions, the complexity of the work, the degree of independence and experience, as well as the standard of education and experience required for the performance of the work.²⁰ Clearly, the criteria were not democratically established. They aimed to favour manual labour, in the name of whom the revolution was made, and sectors, for example construction and agriculture, considered of utmost importance for the state.

By 1922, it became clear that the various experiments regarding the value of work were not delivering their promises. After the New Economic Plan, all wage policies were repudiated. The jobs that were needed were determined by the central government according to its needs, particularly after the five-year plans of the Soviet Union. The Labour Code of 1922 introduced a general system of collective contracts, defined as agreements between a trade union and an employer (usually the state), laying down the remuneration in public undertakings and public institutions.²¹ The use of collective agreements became general in the Soviet Union with 87 per cent of workers covered by 1926, although collective agreements were less widespread in the public institutions and organs of the state.²² The value of work much depended, therefore, on the bargaining power of workers in front of the state and therefore the importance of the sector or the public undertaking for the state.

¹⁸ Louis Blanc, *Le Socialisme: Droit au travail* (3rd edn, Nouveau Monde 1849).

¹⁹ International Labour Office, *Labour Conditions in Soviet Russia: Systematic Questionnaire and Bibliography Prepared for the Mission of Enquiry in Russia* (Harrison 1920) 16.

²⁰ Russian Code of Labour Law, art VI, r 59.

²¹ Code of Labour Law of 1922, art IV, r 15.

²² International Labour Office, *The Trade Union Movement in Soviet Russia* (ILO 1927) 165.

C. The Problematic Value of Work in Neoliberalism

After the Second World War, economists invited by Friedrich Hayek founded the Société du Mont Pelerin, named after a small Swiss village. Their annual meetings aimed to use the momentum to shape a new liberal order after a decade of authoritarian regimes. Neoliberalism was born.²³

During the war, Hayek wrote *Road to Serfdom* (1944) because he was alarmed at seeing societies progressively abandoning the individual and liberal idea of freedom and moving in the direction of socialism.²⁴ He was concerned that by giving the power to the state to plan what must be produced, what socialism promised as a road to freedom from economic necessity was in fact 'a high road to servitude'.²⁵ Like Adam Smith, his goal was to free the individual in the economic sense.²⁶ Concerning work, anybody should be free to make anything that can be produced or sold at all. Trades should be open to all on equal terms, and the law should not tolerate any attempts by individuals or groups to restrict entry to work.²⁷ In return for freedom, people must take individual responsibility to train and compete for paid market work. He also observed that the free exercise of human ingenuity led to the undesigned free growth of economic activities and contributed to reaching a degree of material comfort, security, and personal independence, all of which seemed scarcely possible in the middle of the nineteenth century.²⁸ In short, there was no question of intervening on the value of work. According to this ideology, a free market for work is the best system of selecting and rewarding the most useful work. Its remuneration simply depends on the needs expressed by others in the market.

In *Capitalism and Freedom* (1962) and *Free to Choose* (1980), Milton Friedman describes the advantages of free markets to expand individual freedom, including that of workers. He aimed to establish what he called 'competitive capitalism', defined as the organization of economic activity through private enterprise operating in a free market.²⁹ In order to establish competitive capitalism, he suggested removing all barriers to competition for productive activities. That included not only legal requirements for jobs, but also labour rights, such as minimum wage or trade unions rights, that may favour

²³ For a discussion on the concept of neoliberalism itself and its critique, Damien Cahill and Martijn Konings, *Neoliberalism* (Polity 2017) or Julie Wilson, *Neoliberalism* (Routledge 2018).

²⁴ Hayek (n 1) 67.

²⁵ *ibid* 78.

²⁶ *ibid* 77.

²⁷ *ibid* 86.

²⁸ *ibid* 70.

²⁹ Friedman and Friedman, *Capitalism and Freedom* (n 2) 4.

workers and exclude others.³⁰ Interestingly, neither the value nor purpose of work is addressed by Friedman. This is due to the fact that neoliberals take for granted that the market perfectly reflects what people want in society since they can express their needs through their consumption in the market.

In the neoliberal ideology, the value of a job therefore depends on the needs that are expressed in the market and the purpose of work is to fulfil these needs. The concept of marginal productivity of labour has also eliminated any possible debate on the value of work beyond the labour market. The marginal productivity of labour states that the value of labour is measured by its economic return in the labour market. In other words, the wage that an employer is ready to pay reflects the value of work. As Mazzucato puts it, 'defining everything that commands a price as valuable led to the marginalists' conclusion that what you receive is what you are worth.'³¹ This is the source of unfairness in the valuation of labour.

III. The Value of Work in Labour Law?

Liberals, socialists, and neoliberals all had their vision about the value of work. But where is the debate on the value of work in labour law? For classical liberals, the goal was to organize work in labour markets and promote productive market work. In this ideology, the main function of labour law should therefore be to remove legal barriers that hindered competition for work.³² This was legally implemented with the abolition of the privileges of corporations and statutes of apprenticeships that protected members of regulated trades.³³ For soviet socialists, the main function of labour was quite different. It consisted in providing economic security for workers through guaranteed work by the state and setting legal minimum working conditions.³⁴ The right to work was a pillar of this ideology.³⁵

For neoliberals, the function of labour law should, by contrast, be to facilitate access to productive market work, not only for the poor. The law should

³⁰ Friedman and Friedman, *Free to Choose* (n 3) ch 8.

³¹ Mariana Mazzucato, *The Value of Everything: Making and Taking in the Global Economy* (Penguin Books 2018) 69. See also Jake Rosenfeld, *You're Paid What You're Worth: And Other Myths of the Modern Economy* (Harvard UP 2021).

³² Elise Dermine, *Droit au travail et politiques d'activation des personnes sans emploi: Étude critique du rôle du droit international des droits humains* (Bruylant 2017) 69, 81.

³³ Stanziani, *Bondage* (n 4) 25.

³⁴ See Blanc (n 18) 9 and *Le droit au travail à l'Assemblée nationale: recueil complet de tous les discours prononcés dans cette mémorable discussion* (Joseph Garnier ed, 1848).

³⁵ Russian Labour Code of 1919, art I; Soviet Constitution of 1936, art 118.

systematically unleash the productive skills of people by removing legal requirements for a job. Hayek and Friedman were also opposed to minimum wage legislation that would hurt low-skilled workers by excluding them from competition in the market because employers will not hire them above their market value.³⁶ They also identified a monopolistic effect of labour union activities. For Friedman, raising the wage rate of a particular industry would reduce the amount of employment available in that industry.³⁷ He concluded that one main role of governments should be to foster competitive markets by removing legislation that creates or supports labour or industry monopolies.³⁸

Today, labour law in most countries is somewhere in-between, probably closer to the neoliberal view. In market economies, labour law is traditionally described in the legal literature as a countervailing force against the inequality of bargaining power that is inherent in the employment relationship.³⁹ It aims at guaranteeing a functioning labour market, which is too limited. Focusing on processes and minimum standards is essential, but a discussion on the value of work in a market is equally important to maintain some level of fairness. Several scholars in this book discuss the value of work in labour law. Enciñas de Muñagorri discusses the value of care work.⁴⁰ Dermine and Dumont develop the broader notion of eco-socially useful work in labour law.⁴¹ It is along those lines that this chapter offers a more systematic manner to understand the positive and negative value of work in labour law.

IV. Defining the Value of Work for Labour Law

This chapter has so far explained the influence of economic ideology on the value of work. In the current ideology, work is mainly valuable because there is a (private) market for it, and the more a job is paid, the more it seems to be needed. The focus on productive market work is problematic because many activities outside the private market, including public work, non-profit work, and unpaid or unpaid care work, contribute to human flourishing or environment goals and are therefore also valuable. Other highly paid activities by contrast

³⁶ Hayek (n 1) 154; Friedman and Friedman, *Capitalism and Freedom* (n 2) 35, 180.

³⁷ Friedman and Friedman, *Free to Choose* (n 3) 232, 234.

³⁸ Friedman and Friedman, *Capitalism and Freedom* (n 2) 2, 132; Friedman and Friedman, *Free to Choose* (3) 234.

³⁹ Guy Davidov, *A Purposive Approach to Labour Law* (OUP 2016) 52.

⁴⁰ See Chapter 9 by Enciñas de Muñagorri in this book, for an overview.

⁴¹ Elise Dermine and Daniel Dumont, 'A Renewed Critical Perspective on Social Law: Disentangling Its Ambivalent Relationship with Productivism' (2022) 38(3) *International Journal of Comparative Labour Law and Industrial* 237. See also Chapter 13 by Dermine and Dumont in this book.

may be detrimental to them. In order to discuss the value of work in a different, but systematic way, it is important to distinguish first between the private and the social value of work and then between the individual and the societal value of work.

A. The Private and Societal Value of Work

The market logic is very much linked to the economic growth paradigm. The narrative of economic growth is that by producing more, people will have more work, which will generate more income from which they will be able to consume more, which means having more individual choices for products on the market. In this narrative, work has a mainly private value for the worker. It has become a mere instrument to generate an income for the worker in order to buy products and have market choices in life. This reflects the idea of individual freedom through work.⁴²

There are many questions along the way, though. For example, producing more does not necessarily mean more jobs if technology is used to replace workers. More work does not mean more income if the economic outputs of work are not redistributed to the worker but appropriated by employers and investors.⁴³ Finally, it is questionable whether more choice in market products is worth it if one has to live in a polluted environment as a consequence. Finally, neoliberals also overlook the fact that workers are free to choose only market work and that most workers have no choice at all, but must take whatever is available in the market.⁴⁴ As Hayek recognized, most people have, in practice, never enjoyed much choice with respect to work.⁴⁵ Workers are currently ‘free’ to choose work in a limited way and their freedom of choice is limited by the income of their work, its private value.

There is no real discussion about the societal value (positive and negative) of work in a market logic. Currently, the market selects what needs to be produced and people work according to what is consumed. The main societal purpose of work is therefore to serve the interests of consumers with purchasing

⁴² Nicolas Bueno, ‘Freedom at, through, and from Work: Rethinking Labour Rights’ (2021) 160(2) *International Labour Review* 31 doi: 10.1111/ilr.12192.

⁴³ See Tim Jackson, *Post Growth: Life after Capitalism* (Polity 2021) 18. See also Giorgos Kallis, *Degrowth* (Agenda 2018) 87–90 for the limits of economic growth. Kate Raworth, *Doughnut Economics* (Penguin 2017) 177 and 188–89 on stagnant wages.

⁴⁴ Timothy Weidel, ‘Moving Towards a Capability for Meaningful Labour’ (2018) 19(1) *Journal of Human Development and Capabilities* 70–88; see also Francesco Laruffa, ‘Re-thinking Work and Welfare for the Social-Ecological Transformation’ (2022) 16 *Sociologica* 143.

⁴⁵ Friedman and Friedman, *Capitalism and Freedom* (n 2) 12.

power who can reflect their needs on the market. This is a very narrow way of understanding the societal value of work. Jobs produce certain outcomes that obviously have an impact on the life of others. Some of these impacts can be negative or positive regardless of the remuneration of a job. In fact, the exact same job can have very different societal impacts. One can think of a farmer producing either exotic fruits for foreign markets or local food for the community; a lawyer working *pro bono* to defend a poor community affected by water pollution or for the company responsible for the pollution. The societal impact of architects and construction workers is also different depending on whether they construct chalets for holidays or homes for people who need one.

In all these examples, the remuneration of the work depends on the existence of a market for the good or the service. The problem is that there is usually no market value attributed, and no market, to serve the needs of people without purchasing power or the environment. As a result, the market-based model of valuing work forces people to train for and take productive market work. The fact that the societal value of work is not recognized and rewarded deters people from training and using their skills. The system becomes clearly inefficient when people have the skills and would find it personally meaningful to use them for positive societal outcomes, but lack of opportunities hinders them from doing so. This is the example of the farmer who would prefer to produce locally for the community or the engineers at Airbus and Boeing who could, and would like to, develop a CO₂ neutral airplane but are kept busy by their employers to compete for market shares. This results in a waste of human potential, and it is questionable if humanity can afford to waste such valuable resources.⁴⁶ There is, therefore, a need to better define and measure the societal value of work, which requires thinking about the potential societal goals.

B. The Positive and Negative Societal Value of Work

In previous research, I discussed the societal value of work based on its impact on basic needs by referring to the concept of central human capabilities.⁴⁷ Human capabilities, as defined by Amartya Sen in *Development as Freedom*,⁴⁸

⁴⁶ Nicolas Bueno, 'From the Right to Work to Freedom from Work: Introduction to the Human Economy' 33(4) *International Journal of Comparative Labour Law and Industrial Relations* (2017) 480; Bueno, 'Rethinking Labour Rights' (n 42) 323.

⁴⁷ Nicolas Bueno, 'From Productive Work to Capability-Enhancing Work: Implications for Labour Law and Policy' (2022) 23(3) *Journal of Human Development and Capabilities* 354.

⁴⁸ Amartya Sen, *Development as Freedom* (OUP 1999) 14, 75.

are the positive freedom of a person to achieve what she or he may value doing or being. In *Creating Capabilities*,⁴⁹ Martha Nussbaum suggested starting with a list of ten central human capabilities that people could all agree on. She included, for instance, being able to have good health, adequate nourishment, shelter, and education; to move freely and live in relation to the world of nature, and to play and enjoy recreational activities.⁵⁰ I discussed the direct impact (positive and negative) of work on these central human capabilities and argued that on moral grounds, it would be fairer to value work by taking into account the impact of a specific job on these central human capabilities rather than its market value.

Taking the central capability of being in good health as a new objective of the economy, for example, would lead us to reconsider the value of care work beyond the market. Elsewhere, I considered the impact of jobs on our capability to play and enjoy recreational activities. I made the argument that if people became more efficient in realizing basic needs (for which most people must currently work), they would also become freer from the need to work (freedom from work) and could enjoy more time to live outside work.⁵¹

The International Labour Organization (ILO) applied a similar minimum approach to discuss the positive value of work beyond its market value in *The Value of Essential Work*.⁵² In this post-pandemic report, the ILO listed all workers defined as essential in the domestic pandemic legislation. Most countries included activities safeguarding essential needs, such as access to food, water, electricity, sanitation and healthcare, and ensuring public order. More concretely, the report identifies eight specific groups of occupations that were essential in the pandemic context: food system workers, health workers, retail workers, security workers, manual workers, cleaning and sanitation workers, transport workers, and technician and clerical workers.⁵³ It shows that essential workers earn, on average, 26 per cent less than other workers.⁵⁴ This gap shows that the market is not a good indicator of the positive societal value of work.

So far, this section has discussed the positive societal value of certain activities on certain societal goals. In reality, not all jobs have such positive societal value. High-value market work can have a negative impact on basic needs or central human capabilities. I define these activities as ‘capability-reducing

⁴⁹ Martha Nussbaum, *Creating Capabilities: The Human Development Approach* (Harvard UP 2011)

⁵⁰ *ibid* 33–34.

⁵¹ Bueno, ‘Introduction to the Human Economy’ (n 46).

⁵² ILO, *The Value of Essential Work: World Employment and Social Outlook 2023* (ILO 2023).

⁵³ The report only reported essential frontline occupations, which means that they could not be teleworkable, such as educational work.

⁵⁴ ILO, *The Value of Essential Work* (n52) 84.

work.⁵⁵ Take the example of speculation on food or housing prices. The activity consists in buying cheap and selling at a high price on the market. There are big markets for these activities that are highly remunerated, yet they may increase living costs and reduce access to food and housing for most people. Access to food and housing are essential needs, and in fact international human rights. Here again, market mechanisms are not a good indicator for the negative social value of work.

There is a question of what standards to use for measuring the societal value of work. Impact on basic needs, central human capabilities, or freedom from work are some examples. Other goals could be more specific or relate more specifically to the environment. Another question is how these goals should be determined. At least two conditions must be met. First, the value of work should relate to existing needs in a community, a country, or the international community. It cannot relate only to the needs expressed on the market by those who have purchasing power. It also cannot relate only to the national interest of a state. Second, it should be the result of public deliberation. All systems of work valuation thus far did not respect these two conditions. These needs and the value of work should not be identified externally by the government, *à la* Soviet socialism, nor by the market itself, *à la* neoliberalism.

Pragmatically, I suggest starting with a minimum approach and identifying first, and after public deliberation, the needs that can be defined as essential for people and the environment. Prioritizing needs is nothing new. For example, governments already set societal targets for education, health, or environment and climate protection.⁵⁶ The Sustainable Development Goals are an example of such basic societal goals. This first step requires thinking more in terms of missions than in economic growth, as recommended by Mariana Mazzucato,⁵⁷ such as reducing climate emissions, reducing poverty or inequality, or guaranteeing essential needs. The second step should consist in identifying jobs and activities that can be qualified as essential or detrimental to achieve them. The ILO report on the value of *essential work* is also a good example of an international body prioritizing needs around essential needs for people. The same task could be done for identifying the value of green jobs. Finally, it is necessary to determine when labour law should intervene to promote or discourage certain jobs, which is the subject of the following section.

⁵⁵ Bueno, 'From Productive Work to Capability-Enhancing Work' (n 47) 361.

⁵⁶ See Chapter 3 by Beryl ter Haar in this book, for policies prioritizing values other than economic growth.

⁵⁷ Mariana Mazzucato, *Mission Economy: A Moonshot Guide to Changing Capitalism* (Allen Lane 2021).

C. When Should Labour Law Intervene?

Governments usually strike some balance between individual freedom and societal needs. Currently, the main strategy consists in regulating labour markets through minimum working standards, creating (any kind of) jobs by stimulating investment and consumption,⁵⁸ and providing unemployment benefits when necessary.⁵⁹ In this logic, typical labour rights mainly aim to regulate the labour market and labour law allows questions of value to be answered by the market alone. Labour law itself is sometimes presented as the law of the labour market⁶⁰ despite some discussions about its role on expanding human capabilities.⁶¹ But generally, there is not much debate about the purpose of labour law beyond regulating the labour market.⁶²

The suggestion of this chapter is that labour law should play some role in shaping the societal value of work beyond the market. A post-growth approach to labour law should lead to expanding opportunities and individual free choice for work with positive societal impacts at the same time, but also reducing individual free choice for detrimental work offered in the market. No system can function without a conciliation of individual and societal interests. Very few people would feel free with a personally meaningful essential job from which they cannot survive. Conversely, very few would also feel free if they were forced to conduct essential work if they did not want to do it. In order to reconcile these interests, labour law must move beyond its mere labour market regulatory function.

So far, labour law only intervenes in the market, through minimum wage for example, when the value of work set by the market is considered too low to be decent. In the future, labour law should continue to do so, but it should also valorize low paid or unpaid work that positively contributes to societal and environmental goals. In his recent report to the UN General Assembly, UN Special Rapporteur on extreme poverty and human rights Olivier de Schutter suggested to include this element of societal value in the universal right to fair remuneration.⁶³

⁵⁸ Kerry Rittich, 'The Right to Work and Labour Market Flexibility: Labour Market Governance Norms in the International Order' in Virginia Mantouvalou (ed), *The Right to Work: Legal and Philosophical Perspectives* (Hart Publishing 2015).

⁵⁹ Dermine, *Droit au travail et politiques d'activation des personnes sans emploi* (36) 97.

⁶⁰ S Deakin and F Wilkinson, *The Law of the Labour Market* (OUP 2005).

⁶¹ See generally Brian Langille (ed), *The Capability Approach to Labour Law* (OUP 2019) and Bueno, 'From Productive Work to Capability-Enhancing Work' (n 47) 336, for an overview of the capability approach to labour law.

⁶² See generally Davidov, *A Purposive Approach to Labour Law* (n 39).

⁶³ Special Rapporteur on extreme poverty and human rights, Olivier De Schutter, 'The Working Poor: A Human Rights Approach to Wages', UN Doc A/78, paras 49–54.

Expanding individual opportunities for such work is crucial to avoid the waste of human skills referred to above when people have to take any job in the market although they would personally prefer to use their skills more meaningfully. Should the farmer have a real choice and opportunity to produce food for a local community; the lawyer to advise poor communities affected by the water pollution; the engineer to design carbon neutral planes; the psychologist to help the poor; the architect and construction worker to build homes for people who really need one? It is commonly accepted that the right to freely choose work does not mean that everyone should have the exact job they desire.⁶⁴ This would be unrealistic and impracticable.⁶⁵ Nevertheless, I believe that in the cases listed above, the answer should be yes and that there is a role for labour law to make sure that these activities can be done even if the market does not allow them.

On the other hand, not everyone should support the costs of creating individual opportunities for meaningful work. This would be particularly unfair considering the many high-paying jobs with a negative societal and environmental impact. Labour law should also intervene to discourage highly paid market work that has a negative impact on people and the planet, at least when the market value of a job cannot be justified in light of its negative societal value. Should labour law discourage highly paid market activities, such as food or housing price speculation when they impact essential needs of most people? I believe that labour law should ensure that this is the case by taxing these activities in order to create opportunities for more meaningful jobs for society and the environment.

V. Conclusion

Economic liberals praised labour markets for their liberating potential. Historically, one goal was to reduce barriers to compete for paid work, particularly for the poor. Friedman and Hayek championed this liberating narrative of labour markets for workers during the second half of the twentieth century. The introduction of markets for work, however, has radically transformed the purpose and value of work. The purpose of work has been reduced to receiving an income and its value has become determined by the market regardless of

⁶⁴ Jeremy Sarkin-Hughes and Mark Koenig, 'Developing the Right to Work: Intersection and Dialoguing Human Rights and Economic Policy' (2011) 33 Human Rights Quarterly 1, 10.

⁶⁵ Weidel, 'Moving Towards a Capability for Meaningful Labour' (n 44).

its impact on people's lives. This system ignores the fact that work has a societal value. It ignores the fact that work can positively or negatively impact lives and the environment. It also overlooks the fact that valuable human skills and resources are wasted when people cannot carry out activities which would be valuable for people or the environment, but have to take whatever job is offered in the market.

Labour law should, therefore, introduce a debate on the societal value of work by discussing concepts of essential work and detrimental work. This chapter suggests new ways for labour law to intervene more systematically in market mechanisms when the gap between the societal and the market value of work becomes too wide.

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