

Freedom at work, freedom through work, freedom from work:

Rethinking fundamental 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 work’, ‘freedom through work’, and ‘freedom from work’. It shows that fundamental labour rights have traditionally aimed at protecting workers in the labour market, not at expanding freedoms and in particular freedom ‘from’ work. In this respect, it outlines some limits of current proposals relying on productivity and redistribution, such as the basic income, to liberate from work. Beyond these proposals, the article develops new rights in the human economy framework. The article concludes that, in order to expand freedoms in relation to work, not fewer but more fundamental labour rights will be required.

Keywords: labour rights, freedom, freedom from work, republican non-domination, exploitation, capability approach, basic income, human economy

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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 Rights¹ (UDHR) (Mantouvalou, 2012; Swepston, 2014). The International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted in 1966, contains similar labour rights (Saul et al., 2014).² Each right contains its own sub-rights. For example, the human right to work contains the right to earn a living by working and to freely accept or choose work, which prohibits forced labour (Bueno, 2017; CESCR, 2005; Dermine, 2017; O’Cinneide, 2015; Sarkin and Koenig, 2011). The right to just conditions of work contains the rights to fair, sufficient and equal remuneration, to safe and healthy working conditions, and to equal opportunity for promotion, and the right to rest, through reasonable hours of work and holidays with pay (CESCR, 2016; Saul et al., 2014). Finally, trade union rights contain the right to form and join trade unions, the right of unions to function freely, and the right to strike under certain circumstances (Saul et al., 2014).

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

¹ United Nations General Assembly, Resolution 217, *Universal Declaration of Human Rights* (10 December 1948), Arts. 4, 23 and 24.

² International Covenant on Economic, Social and Cultural Rights, 1966, Art. 6 (right to work), Art. 7 (right to just and favourable conditions of work), Art. 8 (trade union rights).

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. To what extent do these rights aim to expand freedom, and in what way do they do this?

Methodologically, this article defines three dimensions of freedom in relation to work: freedom at work, freedom through work and freedom from work. It then evaluates the ability of fundamental labour rights to expand these freedoms, by applying freedom-based approaches to labour law: the non-exploitation approach to labour law (Mantouvalou, 2018; Wolff, 2018), the republican non-domination approach to labour law (Bogg, 2017; Cabrelli and Zahn, 2017, 2018; Lovett, 2010; Pettit, 1997, 2008, 2012; Taylor, 2017) and the capability approach to labour law (Deakin, 2019; Del Punta, 2019; Langille, 2019). These approaches offer new normative frameworks for evaluating fundamental labour rights and their ability to expand freedom at work, through work and from work.

The analysis shows that fundamental labour rights are least well equipped to expand freedom from work. In this respect, it 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, 2012; Van Parijs and Vanderborght, 2017; Veltman, 2016), to liberate from work. This article then examines an alternative strategy under the human economy framework (Bueno, 2017, 2019b). This economic framework discusses how the need to work for economic reasons can be reduced by rethinking the purpose and value of work. It concludes that there is a need to rethink 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. These dimensions 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. These dimensions aim to capture Bonvin's (2012) distinction between 'capability for voice' and 'capability for work' and Supiot's (2015: 74 and 164) *libertés dans le travail* and *libertés par le travail*.

Freedom at work, to begin with, relates to Veltman's (2016: 84) idea of autonomous agency in work, which includes the autonomous control of a worker over working processes, and human agency in designing them. Autonomous control also reflects Supiot's *libertés dans le travail* (2015: 164). In addition, freedom at work contains the ability to exercise agency to shape one's working environment. This reflects the idea of capability for voice, which designates, as a key component of job quality, 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, which is 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 from any other individual or an institution like the state that a worker enjoys (Veltman, 2016: 79–80). In addition, freedom through work is about the choices that a paid worker can make outside the workplace (Levine and Rizvi, 2005: 41–52). In this respect, income is an important instrument, and yet not the only instrument, for expanding human capabilities, which are defined by Sen (2001: 75) as the substantive freedoms that a person enjoys to lead the kind of life 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 understanding, freedom from work is not a mere right to be lazy or idle (Lafargue, [1880] 1904; Russell, 1936), 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 freedom from work is the positive freedom to conduct personally meaningful activities, including work, for their intrinsic value. The salient factor in demarcating an autonomous choice of occupation is the alignment of work with a freely chosen personal life goal, not 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, 2015: 35). None of the questions of whether one is engaging in worthwhile pursuits, putting one's talents to good use, developing one's personality, or filling one's time constructively, arise (44). This is why Bonvin outlined the need to expand the capability for work, which he defines as the real freedom to choose the job one has reason to value (Bonvin 2012: 13). Along these lines, Weidel (2018) suggests creating a new capability

for meaningful work. In its positive understanding, freedom from work depends on the extent to which a person has the choice to conduct an activity, including work, that is intrinsically valuable. Being paid for the activity obviously increases this choice.

Distinguishing between these dimensions of freedom in relation to work is important, because sometimes they 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, choosing to spend time in an intrinsically valuable activity usually reduces one's 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 subject of this article.

3 The traditional purpose of fundamental labour rights

Historically, labour markets were created to facilitate the supply of labour by making labour available for purchase (Polanyi, [1944] 2001: 78). 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 regulations 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) put it, the purpose of social legislation, factory laws, unemployment insurance and trade unions was to interfere with the laws of supply and demand in respect to human labour, removing it from the orbit of the market.

Removing human labour from the orbit of the market is still the primary function of labour law, and of fundamental labour rights at its core. It has even become a tradition in legal theory,

although 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 comments by Bogg, 2017: 391; Cabrelli and Zahn, 2018: 105; Collins, 2018: 66; Davidov, 2016: 52 and 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, by removing workers from the labour market, as is the case with the abolition of child labour, by setting minimum working standards, and by modifying the competitive conditions of the labour market in favour of workers. The following section discusses the last two of these mechanisms and shows that fundamental labour rights and their original purpose 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 to 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. Because 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 set whatever conditions they want.

In this regard, several 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 guarantees that remuneration provides workers with at least a decent living for themselves and their families (CESCR, 2016; Saul et al., 2014: 393). Minimum wage legislation is a common mechanism at the domestic level to implement the human right to sufficient remuneration. A minimum wage is defined as the minimum amount of remuneration that an employer is required to pay, and it cannot be reduced by collective agreement or an individual contract (CESCR, 2016). With respect to the three dimensions of freedom in relation to work, the fundamental labour right to sufficient remuneration guarantees a minimal level of economic security through work (Supiot, 2015: 74), and therefore it can only guarantee a minimal degree of freedom through work.

The fundamental labour right to rest through a reasonable limitation on hours of work fulfils a similar protective 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 (CESCR, 2016; Saul et al., 2014: 472–3). This fundamental labour 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. Here again, the purpose of the right is not to expand freedom at work or freedom from work, as defined above, 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 that there is perfect competition among workers, but also that there is an 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 in order to enhance the competitiveness of this market.

Trade union rights are fundamental labour 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 fundamental 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; Sarkin and Koenig, 2011; Saul et al., 2014). The goal of the right to work is therefore also to enhance the competitiveness of labour markets. By making labour markets more perfectly competitive, 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. Without minimum working standards or rights enhancing competitiveness in the labour market, the market would not be able to function (Deakin, 2011: 156). There is always a presumption in favour of competition in the labour market (Davidov, 2016: 22). Understanding fundamental labour rights as giving protection to workers from the risks associated with their participation in the labour market, in order to enable this market to function, pushes 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 designing new ones for the purpose of expanding freedoms in relation to work.

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 in which people take unfair advantage of other people's vulnerability. 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 during which the worker reproduces the value of his or her own labour power to the working time during which the worker produces surplus value for the capitalist (see the chapter on the *Degree of Exploitation of Labour-Power*, Marx, [1868] 1990: 320–8; see also Wolff, 2018). This idea demonstrates clearly 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 as that term is used by Marx. 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 with, for example, the prohibition of child and forced labour. More precisely, forced labour is defined as work which is exacted from any person under the threat of a penalty and for which the person has not offered himself or herself voluntarily.³ Freedom from being forced to work under the threat of a penalty, however, does not guarantee freedom in relation to work above any basic level.

That being said, fundamental labour rights setting minimum working standards, as presented above, can also prevent an employer from taking unfair advantage of a worker's vulnerability. Spector (2018) submits that the fundamental labour right to *fair* remuneration could play a growing role in excluding exploitative working arrangements. According to the current interpretation of the right to fair remuneration, remuneration is fair when it reflects 'not only the economic output of work but also elements such as the responsibilities, the level of skill and education of the worker and the impact of the work on health and personal and family life' (CESCR, 2016: para 10; see also Saul et al., 2014). It is interesting that this interpretation departs from the neoclassical view of fair remuneration, which focuses on economic outputs. According to the neoclassical view, workers should receive a remuneration that is proportionate to their productivity (Mazzucato, 2018), which is problematic because low-skilled workers and workers operating in sectors providing little added economic value would be considered not to be exploited but to be receiving what they deserve. Although the fundamental labour right to

³ Forced Labour Convention, 1930 (No. 29), Art. 2(1).

fair remuneration departs from this approach, one must nevertheless acknowledge that it has not received much attention in practice.

To summarize, the non-exploitation approach to labour law aims to prohibit situations in which a person takes unfair advantage of a worker's vulnerability. It shows that the existing fundamental labour rights, such as the elimination of forced or child labour, prohibit only the most severe forms of the deprivation of freedom. Beyond setting a minimum standard, the existing fundamental labour right to fair remuneration could prohibit less extreme forms of exploitation, and increase workers' freedom through work. This right, however, is not implemented in practice. What is clear is that there is currently no fundamental labour right not to be forced to accept exploitative working conditions offered on the labour market (Bueno, 2017: 468). The non-domination approach to labour law, to which we now turn, explains more accurately 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 (chapters 2, 3 and 4, respectively, of Lovett's book). Pettit's (1997, 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 (2008: 4).

The non-domination approach to labour law (see Bogg, 2017; Cabrelli and Zahn, 2017, 2018) applies this framework to evaluate whether labour rights can minimize the degree of domination exerted by an employer. Using this method, this section of the article evaluates whether fundamental labour rights can expand freedom at work, through work and from work by minimizing such domination. The section is organized following Lovett's three variables: dependency, power imbalance and arbitrariness.

First, a worker's dependency is a function of the costs to him or her 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 therefore faces domination and a lack of freedom (see also Pettit 2008: 5; Taylor, 2017: 50–52 and comments by Cabrelli and Zahn, 2017, 2018: 112 and Bogg, 2017: 396). Domination therefore depends on the jobs that are available in the market. In this respect, states are required, under the fundamental labour right to work, to formulate and implement an employment policy with a view to stimulating economic growth and overcoming unemployment and underemployment (CESCR, 2005: para 26). By promoting job creation, the right to work is therefore a tool that reduces the costs of ending a job relationship. In the same vein, unemployment benefits is 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 such fundamental labour right to receive unemployment benefits.⁴

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

⁴ Security in the event of unemployment is mentioned in Article 25(1) UDHR and intended in Article 9 ICESCR. In practice, however, there is only a recommendation to adopt unemployment schemes.

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 do not only aim to achieve a perfectly competitive market, as presented above, but are also a tool to reduce the degree of power imbalance between workers and employers, and therefore to reduce the degree of domination.

Finally, domination in Lovett's framework 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: 110–4). Existing fundamental labour rights setting 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. The prohibition on arbitrary dismissal, which is an existing fundamental labour right recognized in the right to work (CESCR, 2005), is also referred to as a tool that limits the arbitrary 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. A worker who is less dominated by an employer enjoys greater agency and voice to shape conditions at work, and therefore greater freedom at work. The worker is also in a position to require better remuneration, to increase his or her economic independence and to expand his or her choices outside work. In short, fundamental labour rights that reduce domination also 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, particularly for informal workers (see also

Bogg, 2017: 407). When the Universal Declaration of Human Rights was being drafted, the Soviet Union wished to protect industrial workers who were formally employed by the state. The primary aim of western states was also to protect workers who had formal contractual arrangements. In the current global economy, however, informal workers account for more than half the workforce (ILO, 2020: 13). 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 (ILO, 2002: para 3). Given a similar level of dependency and a similar power imbalance with an employer, an informal worker therefore experiences a higher degree of domination than a formal worker, because of the absence or absence of implementation of external legal constraints on the arbitrary power of the employer. In order to reduce domination and expand the freedom at work 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.

Finally, 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 freedom from work. There is indeed a difference between being able to exit a work relationship and being free from the constraint to work for economic reasons and being able to conduct an intrinsically valuable activity. Creating similar unfulfilling jobs in the labour market reduces exit costs but does not expand freedom from work. Lovett describes this situation as ‘decentralized domination’, meaning that workers simply enjoy a choice between dominating agents (Lovett, 2010: 53; see Bogg, 2017: 400). Before discussing how to expand freedom from work, in particular, the next section discusses the capability approach to labour law, a third freedom-oriented approach to labour law.

4.3 The capability approach to labour law

The capability approach to labour law is based on the concept of capability developed by Sen and 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). It focuses on a person's individual freedom to choose what they are able to do and to be (Nussbaum, 2011: 20) as the main determinant of wellbeing. The capability approach is therefore not just about the negative freedoms of non-interference, but also about the real choices of an individual person to develop freely (Weidel, 2018: 71).

In *Creating Capabilities*, Nussbaum (2011: 31) listed ten human capabilities that are 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' (34) as a central capability. She also clarified the relationship between work and capabilities at work by outlining the capability for 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 (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 one's choices in other areas of one's life (Del Punta, 2019: 94; Langille, 2018: 95–96). In this context, the importance of the fundamental labour right to work to provide an income and therefore choices in life has been highlighted, despite the limits on its implementation (Collins, 2015, Mundlak, 2015, focusing on its implementation in the global labour market). Other labour rights dealing with remuneration and collective bargaining are presented as capability-enhancing, since being paid enough is obviously a necessary condition for a person to have the capacity to be or to do what he or she values (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 enjoy arrangements that make the 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.

Finally, the capability approach to labour law triggers new discussions about emotional requirements regarding work that are 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: 34; 2019: 70). Weidel (2018) then suggested adding a capability for meaningful work. 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, 2014: 181). For the capability approach to labour law, it is not sufficient for work to be non-exploitative or even decent. Work has to be conducive to human flourishing, 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 there). It also restates labour rights that already exist as capability-enhancing, which raises the question of its added value. Nevertheless, by focusing on workers' freedoms to choose (Del Punta, 2019: 94), it 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 existing fundamental labour rights aim to expand choices through work and therefore freedom through work, but it also shows that they do not really intend to guarantee choices at work and therefore freedom at work. It also highlights that no fundamental labour right currently exists that aims to increase the choices for meaningful work, which is one aspect of freedom from work. The following section discusses more thoroughly the kind of fundamental labour rights that would be required to expand freedom from work in the future.

5 Towards more freedom from work through labour rights

So far, this article has discussed the ability of fundamental labour rights to expand freedom at work, through work and from work. It has shown that expanding freedom was not their historical purpose and that, among the three dimensions of freedom in relation to work,

fundamental labour rights are least well equipped to expand freedom from work. Freedom from work is defined in this article as both the negative freedom to enjoy a life without the constraint to work for economic reasons and the positive freedom to conduct an intrinsically valuable activity, including work.

Such a demand for freedom from work would have sounded anachronistic in 1948, when socialist and capitalist countries drafted the labour provisions of the Universal Declaration of Human Rights. It also did not play a role, fifty years later, in the adoption of the ILO Declaration on Fundamental Principles and Rights at Work. The predominant view is still that people should enjoy some minimum level of freedom at work and through work, but not freedom from work. Quite the contrary, the duty to 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 that work could be obtained. In today's market societies, work is not guaranteed, while being excluded from the labour market is also not accepted. The duty to work has taken the form of being forced to reintegrate oneself into the workforce 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.

This section first outlines the limited potential of rights relying on productivity, such as the fundamental labour right to rest and leisure, to expand freedom from work. It also discusses the ability of mechanisms of redistribution, such as the universal basic income, to achieve this goal. It concludes that, in order to expand freedom from work, labour rights will have to rethink productivity and redistribution beyond the current logic of the market. In this respect, this section introduces the human economy framework, which discusses the value and purpose of productive work in order to reduce the need to work.

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 guarantee the fundamental labour right to rest and leisure, which entails the right to reasonable hours of work and holidays with pay (Saul et al., 2014: 478). Other discussions going beyond this minimum standard are taking place in certain countries with regard to a four-day working week (Grosse, 2018).

However, the right to rest and leisure depends on productivity.⁵ Without an increase in productivity, introducing paid holidays or a paid weekly rest by law may simply lead to a simultaneous reduction in wages. Marx had already described this phenomenon ([1868] 1990: 185) in the context of industrialization. In this respect, the Weekly Rest (Commerce and Offices) Convention of 1957 make it clear that no reduction of income can result from the introduction of weekly rest (see also Saul et al., 2014: 478). Otherwise, freedom from work would only expand at the expense of freedom through work.

The problem of relying on economic productivity to expand 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 in less productive sectors that pay lower wages and work more than would be allowed by the fundamental right to rest. Finally,

⁵ See, for example, Art. 2(1) European Social Charter (Revised) 1996, according to which the parties undertake to reduce the working week progressively ‘to the extent that the increase of productivity and other relevant factors permit’.

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, to which we now turn.

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, 2012: 34) and to liberate those who conduct work that is mainly meaningless to them (Veltman, 2016: 92). Finally, other scholars have discussed how a universal basic income could expand the freedom to choose meaningful activities that enabled greater self-realization (Sommer, 2016; Standing, 2012: 35; Steinworth, 2009: 113) and therefore enhance the positive aspect of freedom from work.

Much has been written on 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 a concern with respect to 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 other workers contributing to it. In the debate on basic income there is therefore a need to reflect about redistribution

mechanisms in terms of freedom through work and from work. The next, and last, section 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 have certain central 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 section 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 prior work introducing the human economy framework (Bueno, 2017), this piece discusses a way in which the value and purpose of productive work can be rethought to reduce 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 focussed on the potential of human beings to produce economic outputs through work. Workers have been reduced to a form of human capital (see Becker, 1994), which overlooks the fact that they are human beings with a potential beyond creating economic value as a form of capital (Bueno, 2017: 476). Through work and other activities, human beings produce goods and services that can expand the central capabilities for which most people have to work. For example, some jobs and other activities expand Nussbaum’s central capabilities, such as the

capabilities of being in good health, being adequately nourished, moving freely from place to place or having access to education and housing. Some people might find it more personally meaningful to expand human capabilities than to do a job that is only or mainly economically productive. However, the current economic model primarily encourages 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 who wish to expand capabilities through personally meaningful work are prevented from doing so. The human potential of these people is wasted, for both individual flourishing and society together (Bueno, 2017: 480).

Secondly, productive work can be meaningless in terms of both personal and social purpose (Veltman, 2016: 137; see also Graeber, 2018; Michaelson, 2019). It can even be detrimental for individuals and society (see e.g. Dermine and Dumont, 2018). In the human economy framework, work is considered detrimental if it reduces the capabilities of others for which they must work (Bueno, 2017: 479). For instance, speculating on food or house prices is an economically productive activity but may reduce people's capabilities to be adequately nourished or to have adequate shelter, which, ultimately, increases their need to work.

Finally, the more efficient creation of goods and services reflecting central capabilities for which we must work would reduce the need to work. In this regard, however, a distinction must be introduced between *economic productivity* and the *human efficiency* with which we create goods and services for which we must work. For instance, the introduction of the tractor has dramatically reduced the need to work for food, a central capability for which we must all work. Spectacular productivity improvements in this sector have been accompanied by declines in the share of household income spent on food (Autor, 2015: 7). In this example, the tractor increases both economic productivity and the efficiency with which we create the capability to have food

for which we must work. However, the logic of the current economic model is not to be more efficient in creating capabilities for which people have to work. The current model relies on increasing economic productivity in general, which does not necessarily expand freedom from work for the two reasons set out below.

To begin with, 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. Beside 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. At the same time, however, if productivity 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, 2019b). 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, and the concept of economic productivity cannot grasp this.

The human economy framework raises many questions. Which goods and services should be created more efficiently, and how should these be selected? Who would win and who would lose from this change, and to what extent? Letting everything else operate as usual, the first question would require an agreement among the members of a given society to create certain capabilities, food, housing and health, for example, 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 receive 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 the output of work. They protect work regardless of whether or not it is socially useful (Derminé and Dumont, 2018: 60) or creates capabilities for others. For example, the fundamental labour right to just conditions of work covers all kinds of waged labour. By contrast, the fundamental labour right to fair remuneration would encourage economically productive work if it were interpreted in accordance with the neoclassical view of the right to receive one’s economic due, as presented above.

From the viewpoint of expanding freedom from work in the future, fundamental labour rights should be more concerned about the impact that work has on people’s capabilities for which they have to work. They could do this in two ways. First, as explained above, the work of some people can reduce the capabilities of other members of society, and make them work unnecessarily. In this regard, there is already a large body of literature in the business and human rights fields looking at the responsibility of businesses to respect fundamental rights (e.g. Bernaz, 2017). With respect to labour rights in particular, this responsibility only aims to ensure that businesses conduct due diligence in order to identify, prevent, and mitigate any negative impacts on fundamental labour rights (Bueno, 2019a). 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 right not to be forced to work unnecessarily because of others.

The right not to be forced to work unnecessarily because of others would contribute to the negative aspect of freedom from work, in that it would reduce the constraint to work for economic reasons. However, it would not expand the choice to be paid to conduct an activity for its intrinsic value, which is the positive aspect of freedom from work. In this regard, a fundamental labour right should exist, at least to some extent, to make a free choice of an intrinsically valuable activity. This right cannot amount to a guarantee to everyone of personally meaningful work (Weidel, 2018), as this would be impracticable (Veltman, 2016: 197). Currently, however, the market limits opportunities for work by selecting activities that are economically productive. For example, some people would prefer to produce food in a sustainable manner, to create drugs that cure and do not only reduce symptoms, or to spend more time caring for others. However, some people cannot choose to conduct these activities, not because of a lack of potential and willingness but because these activities are not productive or are not productive enough to be rewarded in the market. People who find it intrinsically valuable to create capabilities and expand others' freedom from work should have a right to do so. 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, 2014: 181).

Finally, this is also where redistribution can be rethought. Redistribution must increasingly operate between activities that reduce 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 would increase opportunities to conduct activities beyond the labour market (see also Chamberlain, 2018: 136; Dermine and Dumont, 2018; Rifkin, 1995: 256). However, some people, because they have no choice, are currently forced to work in sectors that reduce the capabilities of others. In that case, mechanisms of redistribution must also be in place to

ensure that workers do not pay the price for having no choice but to work in capability-diminishing work.

6 Conclusion

This article evaluates the ability of existing fundamental labour rights to expand three dimensions of freedom in relation to work: freedom at work, freedom through work and freedom from work. Historically, fundamental labour rights emerged to protect workers from the physical and economic risks inherent in their competition in 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 some fundamental labour rights nonetheless do expand freedom. However, in order to expand freedom in relation to work, not fewer but more fundamental labour rights will be required. The article shows, in particular, that among the three dimensions of freedom in relation to work, fundamental labour rights are least well equipped to expand freedom from work. Freedom from work is defined in this article as both the negative freedom to enjoy a life without being constrained to work for economic reasons and the positive freedom to conduct an activity, including work that is personally intrinsically valuable. Beyond traditional productivity-based and redistribution mechanisms, this article outlines the human economy framework, which rethinks the value and purpose of work. It suggests that fundamental labour rights would have a new function in the future if they wished to expand freedom from work: to promote the efficient creation of capabilities for which people have to work, and to discourage work that reduces those capabilities and makes people work unnecessarily.

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