

Social Rights at Work

Jesse Tomalty

Abstract

This chapter explores connections between social rights and labour rights within a human rights framework. Social human rights tend to be marginalized both in philosophical debates about human rights and in international human rights doctrine and practice. This chapter brings social human rights into focus and argues that they play an important though neglected role in shaping the content of labour human rights, in particular the human right to just and favourable conditions of work. The implications for the content of this right are elaborated, and the chapter concludes with some reflections on the relevance of social human rights in recent struggles for stable and predictable working hours.

Keywords

social rights, social resources, human rights, labour rights, work, free time, fair workweek

C7

Social Rights at Work

Jesse Tomalty

C7.S1

7.1 Introduction

C7.P1

Among the worst harms humans can suffer are those that involve the inhibition of social connections. The grief that we feel at the death of a loved one, the pain caused by a romantic partnership gone sour, and the longing we feel for the company of our friends when they are far away all speak to the importance of interpersonal connections in our lives. It is easy to recognize the value of our intimate and loving relationships, but other kinds of interpersonal connections also form an important part of our social landscape, for example, cooperative associations formed in pursuit of shared goals, as well as ordinary, decent exchanges with acquaintances and strangers. These may not be valued as highly as intimate relationships, but life without them will tend to be impoverished.

C7.P2

Social connections can be inhibited in ways that are unavoidable. People cannot be made to reciprocate the emotions on which intimate relationships are based, and everybody dies at some point. But social connections can also be inhibited in ways that are avoidable, and in some cases unjust. As Kimberley [Brownlee \(2020\)](#) has powerfully argued, our profound need for interpersonal social connections gives rise to human rights to the conditions necessary for engaging in them.¹ These *social* human rights tend to be marginalized both in philosophical

¹ See also [Brownlee \(2013\)](#) and [Brownlee \(2016\)](#) for earlier articulations of some aspects of the account of social rights developed in [Brownlee \(2020\)](#).

debates about human rights and international human rights doctrine and practice. In what follows, I bring social human rights into focus and argue that they play an important though neglected role in shaping the content of labour human rights.

C7.P3

Among the labour rights included in core international human rights documents is the right to just and favourable conditions of work.² The main purpose of this chapter is to argue that in order for conditions of work to count as just and favourable in the context of human rights, they must not undermine or obstruct the fulfilment of other human rights, including social human rights. This serves both as an elaboration of the content of the human right to just and favourable conditions of work, and an illustration of the work done by social human rights in promoting the values that underpin human rights in general.

C7.P4

My argument proceeds as follows: In [Section 7.2, I](#) argue that in order for conditions of work to count as just and favourable in the context of human rights, they must not obstruct or undermine the fulfilment of workers' fundamental interests and other human rights. In [Section 7.3](#), drawing on [Brownlee \(2020\)](#), I argue that humans have fundamental social interests that ground social human rights, and in particular a right to adequate social resources. In order to count as just and favourable in the context of human rights, conditions of work must therefore not obstruct or undermine workers' access to adequate social resources. In [Section 7.4, I](#) consider in more detail the implications of this for the content of the human right to just and favourable conditions of work. Finally, in [Section 7.5, I](#) argue that properly taking into account social human rights in specifying the content of the human right

² This right is included in Article 23 of the [Universal Declaration of Human Rights \(1948\)](#) and Article 7 of the [International Covenant on Economic, Social and Cultural Rights \(1966\)](#).

to just and favourable conditions of work provides support for recent struggles for stable and predictable working hours.³

C7.S2 **7.2 Just and Favourable Conditions of Work as a Human Right**

C7.P5 According to the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), just and favourable conditions of work include fair and adequate remuneration (7.a), safe and healthy working conditions (7.b), equal opportunity for promotion (7.c), and rest, leisure, reasonable limitations of working hours and periodic holidays with pay, as well as remuneration for public holidays (7.d). How each of these conditions should be interpreted, as well as what obligations they impose on states and other agents are specified in greater detail by the Committee on Economic, Social and Cultural Rights (CESCR) in its *General Comment No. 23 on Just and Favourable Conditions of Work*. As with international human rights doctrine more generally, no justification is given for the right itself or the particular interpretation of its content suggested by the Committee. But we can only evaluate the inclusion of this right among human rights as well as the content it is given within a normative framework that provides the justificatory conditions of human rights more generally. In this [section](#), I outline what I take to be the strongest justification for the human right to just and favourable conditions of work.

³ This is intended as one example of how social human rights can ground claims for changes in labour practices. It is likely that social human rights could also provide a useful framework for arguing for more radical changes than those I propose, for example shorter workdays. Thanks to David Jenkins for pointing this out.

Human rights constitute protections of the conditions necessary for living a decent or minimally good human life.⁴ A minimally good human life is one that falls somewhere between a life that is just barely worth living and one that is fully flourishing. Where the threshold of a minimally good life lies is a matter of debate, but this need not be settled for our current purposes. For our current purposes, we need only assume that a minimally good human life is characterized by the fulfilment of fundamental interests, which are highly important interests that are held by all (or most) humans in virtue of features we share and in light of pervasive and persistent natural and social circumstances. We can affirm this without settling on which interests are included in this set, although there is widespread agreement on some. On this account, we can make at least a provisional case for a particular human right by showing that it is necessary to protect one or more fundamental interests.⁵ A complete

⁴ Versions of the account of human rights I am here presupposing have been advanced by James [Nickel \(2007\)](#) and David [Miller \(2007\)](#), among others.

⁵ Note that the kind of necessity here is neither strict nor conceptual, but rather practical or substantive. The justification of a given human right is not undermined by the fact that it is *possible* for a person to have a minimally good life without the interest in question being fulfilled. Rather, it is enough that *for most people*, having the interest in question thwarted will strongly tend to undermine their ability to lead minimally good lives. This is important in the case of the right to just and favourable conditions of work, since it may be possible for some people to live minimally good lives despite being subject to poor working conditions. For example, it might be possible for someone to live a minimally good life despite being paid a wage that is insufficient to meet their basic material needs, so long as they have a partner or family member who earns enough to support them. But for most workers, this is not something they can rely on, and so just and favourable conditions of work reasonably include remuneration that is sufficient for maintaining a decent standard of living.

justification of a particular human right also involves showing that the corresponding duties can reasonably be imposed on the relevant duty-bearers.

C7.P7

The claim to just and favourable conditions of work gains status as a human right in the modern world in light of the prevalence of economic arrangements under which people's access to the material means necessary for a decent life depends on their engaging in work under conditions controlled by another agent. By far the most prevalent arrangement of this sort is that of the labour market, in which workers sell their labour to employers in exchange for wages they can use to purchase the goods and services required to meet their basic needs and those of their dependents. Note, however, that the conditions under which people work can be largely under the control of other agents, including in the contexts of self-employment, unpaid work, and non-market arrangements in which the receipt of necessary income or benefits is conditional on engaging in work under conditions set by another agent (for example the government). It might be objected that conditions of work are at least partly under the control of workers themselves, since they always have the option to reject offers of work under conditions they deem unfavourable. But in practice, employers tend to hold the balance of power, and the only alternative faced by many workers is poverty. It is uncontroversial that meeting one's basic material needs is a fundamental interest. Workers in this situation are therefore not meaningfully free to refuse work, and they are thereby vulnerable to those with the power to set their conditions of work. Where the only work available is under conditions that undermine the workers' fundamental interests, workers face the choice of sacrificing some fundamental interests in order to fulfil others. A right to just and favourable conditions of work is therefore needed to protect workers from this kind of situation.

C7.P8

The human right to just and favourable conditions of work is justified on account of the ways in which conditions of work affect the fulfilment of workers' fundamental interests.⁶ This insight provides guidance in working out the specific content of this right. In particular, it implies that in order for conditions of work to count as just and favourable, they must not undermine or obstruct the fulfilment of workers' fundamental interests. Many of the components of the human right to just and favourable conditions of work included in the ICESCR can indeed be justified in this way; but as I will argue in what follows, the content given to the human right to just and favourable conditions of work in international human rights doctrine does not adequately recognize the ways in which work affects the fulfilment of fundamental *social* interests and rights.

C7.S3

7.3 Fundamental Social Interests and Rights

C7.P9

In this [section](#), I draw on Brownlee's work on social rights in support of my claim that in order for conditions of work to count as just and favourable in the context of human rights, they must not obstruct the fulfilment of fundamental social interests and rights. According to Brownlee, humans have needs for access 'to the connections necessary for our personal security and meaningful prospects for well-being', as well as a need 'to contribute to other people's survival and well-being' (2020: 16). It is on the basis of these needs that Brownlee argues for human rights to the conditions necessary for participating in social connections. Social connections range in intimacy and come in many different varieties, including

⁶ Some defenders of labour human rights also see them as grounded in human dignity. See, for example, Pablo [Gilabert \(2016\)](#). While reference to dignity might be needed in order to account for the full range of labour rights included in international human rights doctrine, the rights at issue in this chapter can be fully justified on the basis of interests.

‘familial, creedal, professional, political, recreational, expressive, athletic, contractual, and fraternal associations as well as decent incidental interactions with strangers; all meeting a minimal standard of decency’ (Brownlee 2020: 21). While people might be able to live minimally good lives where they are unable to form and foster *some* of these kinds of social connections, most will not succeed in living minimally good lives if they are unable to form and foster a range of different kinds of social connections.

C7.P10 The seriousness of the harm of lacking the conditions to engage in social connections is supported by empirical evidence of the deleterious effects of social deprivation on both agency and well-being. For example, Brownlee points to empirical evidence that inadequate interpersonal care of children causes irreversible cognitive and physical problems which undermine their agency later in life (2020: 23), and that both social isolation and perceived social isolation are associated with reduced levels of subjective well-being and physical health in adults (2020: 28). This research suggests that we need adequate social contact in order for our lives to be at least minimally good. Furthermore, in addition to being instrumental to the fulfilment of a minimally good life, social connections are partly constitutive of such a life.⁷ Social connections are something that we value intrinsically, and not just for the good

⁷ Brownlee (2020) argues that having minimally adequate *opportunities* for decent or supportive social contact is partly constitutive of a minimally good life. I agree with this, but I think that someone who has such opportunities but nevertheless fails to form positive social connections despite their best efforts cannot be said to have a life that is minimally good. This is not to say that people should be guaranteed actual social connections as a matter of justice or human rights, since this could involve unreasonable or infeasible requirements on others. My point is just that it is the social connections themselves that are intrinsically valuable, not the opportunity to form them. A minimally good life is partly constituted by engaging in social connections, and the opportunity to form them is therefore instrumental for a minimally good life.

outcomes with which they are associated. This is true both of social connections in general, and of the particular social connections we have.⁸

C7.P11

All of this provides support for thinking that the interest in engaging in social connections is fundamental, and for a human right to the conditions necessary to do so. These conditions centrally include having access to adequate social resources.⁹ These include social abilities, social opportunities and actual social connections (Brownlee 2020: 20–1). Social abilities include the cognitive, physical, emotional, and linguistic abilities needed to participate in social connections. People can be undermined as social contributors by being subject to conditions in which they are unable to adequately develop and maintain their social abilities. A paradigm case includes the mistreatment of children in ways that thwart the development of their social abilities. Social abilities can also be eroded in extended periods of involuntary isolation or extended periods spent in hostile social environments.¹⁰ In each sort

⁸ It is important to acknowledge that some social connections are harmful, for example hostile interactions and abusive relationships. It may seem strange to talk about these as being valuable, instrumentally or intrinsically; but social life is complicated. Having the capacity to lead a minimally good life requires being able to engage in non-harmful social connections; but engaging in some harmful social connections might nevertheless be compatible with leading a minimally good life. Furthermore, preventing competent adults from engaging in social connections that are harmful to them might erode their ability to lead a minimally good life by denying them important freedoms.

⁹ According to Brownlee (2016), it also includes social recognition; but I will set this aside because it is not relevant for my main argument concerning just and favourable conditions of work.

¹⁰ For an extended discussion of cases like this, see Brownlee (2016: 31–8) and Brownlee (2020: 185–7).

of case, people will tend to develop cognitive, emotional, or physical coping mechanisms that are likely to hinder their ability to participate fully in social connections in the future.

C7.P12 Social opportunities are opportunities to form and foster social connections. For a person to have real social opportunities, they require access to other people willing to engage in social connections with them. A person's social opportunities can be diminished for lack of physical means, lack of material means, or lack of time. Social opportunities will be particularly relevant in the sections to follow, since they tend to be highly affected by conditions of work. While abilities and opportunities to form new social connections are important, already established social connections are also an important social resource. When already established social connections are broken, the harm done cannot be remedied simply by replacing them with other, similar connections. This is especially true in the case of intimate associations, but applies also to other kinds of positive social connections that people form and maintain over extended periods of time.

C7.P13 Having adequate social resources is necessary for forming and fostering social connections, which is something we have a fundamental interest in doing. This provides grounds for a human right correlating with at least two sets of duties: (1) duties on the part of moral agents in general not to deprive people of adequate social resources, and (2) duties on the part of states to ensure that their members have adequate social resources.¹¹ In what

¹¹ Both sets of duties are limited by considerations of feasibility and what can reasonably be demanded of duty-bearers; and the latter duties are additionally limited by what states can permissibly do in order to promote members' access to social resources. Furthermore, note that questions about the nature of duties correlative to human rights and which agents bear them are hotly debated among philosophers of human rights. An important debate in connection with labour human rights concerns the duties of employers and managers in relation to their special roles. For the purpose of

follows, I highlight the ways in which workers' social resources are affected by their conditions of work, and argue that in order for conditions of work to count as just and favourable in the context of human rights, they must not leave workers with inadequate social resources. This is because in doing so, they undermine workers' social human rights.

7.4 Social Rights at Work

In this [section](#), I will take a closer look at the specification of the human right to just and favourable conditions of work provided by the CESCR. I will argue that this specification is inadequately sensitive to the effect of conditions of work on workers' fundamental social interests, and in particular their access to social resources. First, though, it is worth pointing out that the relationship between work and fundamental interests is complex. This is because work can constitute a threat to fundamental interests, but it can also serve them. Work serves fundamental interests by providing people with the income necessary to satisfy their material needs and desires. Furthermore, work can serve fundamental interests in self-development, self-respect, respect from others, and indeed in forming and fostering certain kinds of social connections.¹² All of these interests can in principle be fulfilled outside of work, but given prevalent economic arrangements, most people are reliant on work to at least some degree for the fulfilment of these interests. This is especially true for the interests served by having an income, but when workers must spend a significant amount of time at work in order to earn an

this chapter, it is not necessary to delve into these issues. I assume only that negative duties correlative to human rights are born by moral agents in general, and that any positive duties with which they correlate are owed *at least* by states towards their members.

¹² For discussions of the ways in which work can promote workers' interests, see [Gheaus and Herzog \(2016\)](#), [Gilabert \(2016\)](#), and [Nickel \(1978\)](#).

adequate income, work becomes what Anca Gheaus and Lisa Herzog refer to as a ‘privileged context’ for the fulfilment of other fundamental interests, including social interests (2016: 70).

C7.P15

The fact that work serves fundamental interests provides support for the human rights to work and to protection against unemployment, which are included in the UDHR and ICESCR. But whether and to what extent an individual’s work does in fact contribute to the satisfaction of their fundamental interests depends on the working conditions to which they are subject. As discussed in [Section 7.2](#), when workers lack the power to set these conditions, they are vulnerable to being put in the position of having to choose between the fulfilment of one or more fundamental interests. In this respect, work can constitute a threat to their ability to lead minimally good lives. This provides support for the human right to just and favourable conditions of work, which, as I argued earlier, should be understood as a right not to be subject to conditions of work that obstruct or undermine the fulfilment of fundamental interests and rights, in particular the right to adequate social resources.¹³

C7.P16

The CESCR’s General Comment on Just and Favourable Conditions of Work sets out in detail the main components of this right as articulated in the ICESCR. Most of these components and their specifications can be justified by the fact that they protect workers against ways in which work might obstruct or undermine the fulfilment of one or more of their fundamental interests. That said, there are some components of this right that cannot so easily be justified in this way. In particular, the right contains a number of provisions regarding equal treatment. For example, according to the ICESCR, just and favourable

¹³ Others set the bar higher. For example, [Gilabert \(2016\)](#) argues that in order for conditions of work to count as just and favourable, they must also *promote* the fundamental interests that can be served by work. I will set aside discussion of this here, other than to note that what I say in what follows is compatible with this more demanding standard.

conditions of work include ‘equal remuneration for work of equal value’ and ‘equal opportunity for everyone to be promoted in his [sic] employment’. It is a matter of debate whether there is a fundamental interest in equal treatment, or whether equality provides a separate ground for human rights in addition to fundamental interests.¹⁴ I will set this matter aside here, however, since it does not bear directly on the main argument I am putting forward.

C7.P17 In what remains of this [section](#), I will look at the three main components of the human right to just and favourable conditions of work that are justified on the basis of the ways in which work affects fundamental interests: 7.4.1 remuneration, 7.4.2 health and safety, and 7.4.3 working hours and holidays. For each one, I will highlight the ways in which fundamental social interests contribute to shaping its content, and imply a need to expand the content as specified in international human rights doctrine.

C7.S5 *7.4.1 Remuneration*

C7.P18 According to the CESCR, ‘remuneration must be sufficient to enable the worker and his or her family to enjoy other rights in the Covenant, such as social security, health care, education and an adequate standard of living, including food, water and sanitation, housing, clothing and additional expenses such as commuting costs’ (5). Because the right to social resources is not included in the Covenant, it is not explicitly covered by the right to adequate remuneration. But for the reasons presented in [Section 7.3](#), access to adequate social resources should be considered a human right. In order for remuneration to be adequate, it must not only be sufficient for the fulfilment of the rights enumerated in international human

¹⁴ For discussions of the relationship between equality and human rights see [Griffin \(2008\)](#), [Buchanan \(2013\)](#), and [Miller \(2016\)](#).

rights doctrine, but for the fulfilment of all human rights. Adequate income must, therefore, also be sufficient for workers to enjoy adequate social resources.

C7.P19

A worker might earn an income that is sufficient for them to obtain subsistence goods, health care, and education, while nevertheless being insufficient to sustain an adequate level of social resources. This is because forming and fostering social connections can cost money. For example, travelling to visit friends and family often requires paying for public or private transportation; and keeping in touch with friends and family from a distance often requires paying for stationery and postage, a telephone and calling fees, or a computer, tablet, or smartphone and internet subscription fees. Forming new intimate connections as well as fostering existing ones requires, among other things, offering hospitality and showing gratitude, which under prevailing social norms often require things like paying for drinks, meals, gifts, entertainment, shared activities, and so on.¹⁵ If a worker does not earn enough to enjoy both adequate social resources and the objects of their Covenant rights, they will be in the position of having to choose between the fulfilment of different fundamental interests. Because human rights are meant to protect people against being in this situation, the human right to just and favourable conditions of work must include a right to remuneration that is adequate for the fulfilment of all rights-grounding fundamental interests, including fundamental social interests.

C7.S6

7.4.2 Health and Safety

C7.P20

As discussed earlier, the human right to just and favourable conditions of work must include a right to safe and healthy working conditions so that workers do not face the choice between

¹⁵ For illuminating discussions of some ways in which poverty undermines affiliation thereby contributing to disadvantage, see [Wolff and de-Shalit \(2007\)](#), especially pp. 46–7.

satisfying their fundamental interest in health and their fundamental interest in meeting their basic material needs. According to the CESCR, the right to safe and healthy working conditions is primarily a claim to prevention of occupational accidents and disease. The CESCR's specification of this right focuses heavily on threats to physical health found in the work environment, although it is affirmed that the right is 'closely related to (...) the right to the highest attainable level of physical *and mental* health' (my emphasis, 7). Mental health can be negatively affected by things like being put under excessive pressure to complete job-related tasks, being required to do highly unstimulating tasks for extended periods of time, physically or verbally abusive behaviour on the part of employers or other workers, and more subtle forms of aggression, hostility, or manipulation. Explicit acknowledgement of these and other potential harms to which workers are susceptible in the workplace is almost entirely absent from the CESCR's specification of the right to safe and healthy working conditions, other than a section on freedom from harassment.¹⁶

C7.P21

Another important omission is any mention of the connection between health and social deprivation. As I mentioned earlier, there is strong empirical evidence that social deprivation negatively affects both physical and mental health. As such, in order to count as just and favourable, it is not enough that workers be protected against workplace accidents. Workers must not be subject to conditions that deprive them of adequate social resources. This is closely connected to limitations on working hours, which will be discussed below. For many workers, their work provides them with opportunities to form and foster social connections,

¹⁶ Section II.E.48 affirms that, 'All workers should be free from physical and mental harassment, including sexual harassment.' The section goes on to call for a broad definition of harassment in relevant legislation, and for the adoption of national policy regarding harassment in the workplace across all sectors. Guidelines are provided for the content of this policy, including prohibition of certain acts, specification of duties, and recourse for victims.

especially on the basis of cooperation with co-workers in pursuing shared goals, but also in terms of ordinary collegial interactions. But not all work environments serve workers’ social interests, and some undermine them. For example, hostile treatment of workers can deprive them of respect and recognition, and erode their social abilities; and requiring workers to work in isolation for extended periods or discouraging social interaction among co-workers can also constitute a threat to adequate social opportunities. We might reasonably expect those with solitary jobs like night security officers, office cleaners who work outside of business hours, and employees who work from home to feel socially isolated; but even those who work alongside others often report feelings of loneliness at work. As former Surgeon General of the United States Vivek [Murthy \(2017\)](#) describes,

C7.P22

People sit in an office full of coworkers, even in open-plan workspaces, but everyone is staring at a computer or attending task-oriented meetings where opportunities to connect on a human level are scarce.

C7.P23

To what extent the loneliness and isolation at work constitute a threat to social resources will depend on the extent to which fundamental social interests can be fulfilled outside of work. This brings us to the next component of the right to just and favourable conditions of work, namely reasonable limitations of working hours and periodic holidays.

C7.S7

7.4.3. Reasonable Limitations of Working Hours and Periodic

Holidays

C7.P24

According to the CESCR, ‘limitation of working hours and paid periodic holidays help workers to maintain an appropriate balance between professional, family and personal responsibilities and to avoid work-related stress, accidents and disease’ and ‘promote the

realization of other Covenant rights' (9). This, however, provides an unduly limited account of the basis for including reasonable limitations of working hours and periodic holidays as components of the right to just and favourable conditions of work, and therefore also unduly limits the content of this right. Although I think this account is limited in other ways, I will focus only on its neglect of the connection between working hours and fundamental social interests.

C7.P25

We can start by noting that although the above reference to other Covenant rights suggests a broad basis for the rights to reasonable limitations of working hours and periodic holidays, because the right to social resources is not included in the Covenant, it is neither implicitly nor explicitly included among the considerations for specifying and applying these rights. Because workers' social resources are highly affected by both working hours and holidays, this is an important omission.¹⁷ Although work can serve fundamental social interests, the extent to which it does so varies greatly depending on the nature and conditions of the work in question. But even for workers that are able to form and foster social connections in the context of their work, fundamental social interests cannot be fully satisfied in the workplace. This is because, as noted earlier, we have a fundamental interest in engaging in *a variety* of social connections. Even under optimal circumstances, the scope for social contribution provided by the workplace is limited. In particular, work does not provide a hospitable context for the development of intimate associations and loving relationships. While workplace friendships and romances are not uncommon, the workplace is not the context in which the intimacy in these relationships is usually developed, and in some cases, the development of such relationships is actively discouraged or even prohibited.

¹⁷ Social resources can also be affected by commuting time, although this is at least as much connected to the issue of decent housing as it is to conditions of work. This serves as an illustration of the intimate connections between different human rights, and how they mutually support each other.

Furthermore, most workers have already existing social connections outside their workplace, which they have a strong interest in fostering. This requires having adequate time to communicate with and spend with others. Being subject to excessively long working hours or being denied periodic holidays therefore diminishes workers' social resources. The CESCR's General Comment suggests that limitations on working hours are reasonable insofar as they afford workers adequate time for the exercise and fulfilment of their other Covenant rights and to attend to their family and personal responsibilities. But this is not enough. Workers also require adequate time to engage in a range of social connections outside of work. Crucially, this includes having adequate *shared* time, something to which I will return in

[Section 7.5](#).

C7.P26

A further limitation of the CESCR's interpretation involves its focus on 'family responsibilities', which goes some way to recognizing the importance of a specific sub-set of social connections, but is nevertheless too narrow in at least two respects. First, it suggests that reasonable limitations of working hours are justified on account of what workers owe to their dependents, but not on the ways in which workers' relationships with their family members serve their own fundamental social interests. Of course, some family relationships are fraught and burdensome, but for many people, relationships with family members are among the most important and meaningful ones they have. Second, not all workers have family responsibilities because not all workers have families. Workers without families who wish to start them require adequate time outside of work to devote to this; and those who do not wish to, or cannot, start families of their own nevertheless have a strong interest in forming and fostering close friendships and other forms of intimate, loving, or caring interpersonal connections. Anyone whose work schedule leaves them with inadequate time to devote to forming and fostering a variety of interpersonal social connections, including but

not limited to family relationships, will be severely constrained in their ability to lead a minimally good life.

C7.P27

So far, I have argued that fundamental social interests and the right to adequate social resources must be taken into account in interpreting and specifying the content of various components of the right to just and favourable conditions of work found in international human rights doctrine. In the next [section](#), I argue that taking fundamental social interests and rights adequately into account supports the addition of a further component to this right, namely reasonably stable and predictable working hours. This is not merely a theoretical point. Non-standard employment arrangements characterised by unstable and unpredictable working hours have become widespread in several industries and many countries.¹⁸ These arrangements come in slightly different varieties and go by different names, for example ‘zero hours’, ‘on-call’, ‘on-demand’, and ‘as and when’ work. Movements fighting for regulation to protect workers against unstable and unpredictable working hours have taken shape over the past few years. In the United States, campaigns for stable and predictable working hours go under the banner of the fight for a *fair workweek*.¹⁹ In the following [section](#), I argue that the fight for a fair workweek is a fight for human rights, including notably *social* human rights.

C7.S8

7.5 A Human Right to a Fair Workweek

¹⁸ For example, in the US, it is estimated that 10% of employees have ‘major variability in their weekly working hours’ and 6.4% have ‘variable work hours or timing that they do not control and get one day or less advance notice of work’ ([O’Sullivan 2019](#): 164). Similar figures are reported for the UK, Australia, New Zealand, Ireland, and Canada.

¹⁹ See, for example: <http://www.fairworkweek.org/policy-innovations>.

C7.P28

Stability and predictability are both relevant to how work schedules affect workers' social interests and resources. We can distinguish between two ways in which a worker's schedule can be unstable. One is with respect to the number of hours they are scheduled to work within a given period. The other is with respect to when they are scheduled to work within that period. The two will often overlap, but they do come apart. For example, someone who is always required to work 24 hours a week but who is on a shift rotation such that their hours vary from morning, day, evening, and night shifts every week has stability in the first sense but not in the second. While someone with instability in the number of hours they work from week to week will necessarily have some variation in when they are required to work, they can nevertheless enjoy a fairly high degree of stability in this second sense. This would be the case for a worker whose contract specifies that they will only ever be scheduled for 7-hour shifts that take place from 8:00–15:00, but who is subject to variation in the number of shifts they are required to work on any given week. Instability in both senses comes in degrees. Someone whose contract specifies that they will always be required to work between 24 and 30 hours per week has greater schedule stability than someone who could be required to work anywhere from zero to 40 hours per week. And someone whose contract specifies that their work hours will always fall within the hours of 8:00 and 15:00, as in the case above, has greater schedule stability than someone who can be required to work anytime between the hours of 6:00 and midnight.

C7.P29

Unstable working hours can also be unpredictable. Working hours are more or less predictable depending on how far in advance they are formally communicated to workers and how much notice they are given when changes to their schedule are made. An unstable schedule can be predictable if it is set and communicated to workers well in advance, and if workers cannot be required to accept last-minute changes. Unpredictable scheduling practices include communicating schedules for the week ahead to workers as late as the day before the

start of the week, requiring workers to come in at short-notice (sometimes just a few hours), and cancelling shifts at short notice or even after workers have arrived at work.

C7.P30

Fair workweek campaigns make demands regarding both the stability and predictability of working hours. These campaigns tend to emphasize the economic challenges experienced by workers subject to unstable and unpredictable working hours.²⁰ Notably, workers that are subject to significant variation in the number of hours they are scheduled to work from one period to the next experience corresponding fluctuations in income. While income fluctuations are not inherently problematic, for many, especially those paid low hourly wages, the difference between a few hours more or less can mean the difference between being able and unable to meet their basic material needs and those of their economic dependents. The negative effects of this instability are compounded by unpredictability which not only makes it difficult for workers to plan for the weeks when they have fewer hours, but it also impedes their ability to take up a second job in order to supplement their income. While this provides strong grounds for regulation, note that it only supports demands for stability and predictability in the *number* of hours workers are scheduled to work. In order to support demands for stability and predictability in the particular hours or shifts workers are scheduled to work, we must appeal to interests other than those served by income stability.

C7.P31

In addition to economic concerns, fair workweek campaigns also tend to emphasize workers' family responsibilities. For example, it is often pointed out that having unstable and unpredictable work hours makes it difficult to arrange child care.²¹ While this is true for workers subject to instability and unpredictability in the number or hours they are scheduled to work *or* the particular times they are scheduled to work, it still provides too narrow a basis

²⁰ See, for example, [Covert \(2014\)](#), [White \(2015\)](#), and [Golden and Dickson \(2017\)](#).

²¹ See, for example, [Ben-Ishai, et al \(2014\)](#), and [Miller \(2019\)](#).

for the demands being made. This is for the same reason I pointed to earlier in arguing that the CESCR's emphasis on family responsibilities in the context of the right to reasonable limitations of working hours is too narrow: not everyone has family responsibilities. Can we, then, conclude that stability and predictability of the particular times employees are scheduled to work is not important for those without family responsibilities? Surely not. This is because being subject to instability and unpredictability in the particular times one is required to work constitutes a threat to the fulfilment of other fundamental interests, including fundamental social interests beyond the fulfilment of family responsibilities, such as forming and fostering friendships, casual connections, and collective associations, engaging in cooperative activities, participation in community, and so on.

C7.P32

As I argued earlier, how much workers are required to work has a significant impact on their social resources, but their social resources are also highly affected by when they are required to work, and how much notice they are given of their schedule. This is because in order to form and foster social connections, we don't just require adequate free time, but adequate *shared* free time. As Julie Rose has persuasively argued, shared free time is necessary in order to have effective freedom of association, where freedom of association is interpreted broadly, as including 'the freedoms of intimate, religious, social, and civic association' (2016: 93).²² Having a realistic possibility of engaging in these sorts of

²² Rose's understanding of freedom of association has more in common with the kinds of social rights Brownlee defends than with the freedom of association that is protected by existing human rights practice. For example, the *Guide on Article 11 of European Convention of Human Rights: Freedom of assembly and association* on the right to freedom of assembly and association specifies that 'The concept of freedom of association is concerned with the right to form or be affiliated with a group or organisation pursuing particular aims. It does not concern the right to share the company of others or to mix socially with other individuals.' (II.C.1.120)

associations, as well as forming and fostering social connections of other kinds, is not something we can do alone. Although some of our interpersonal interactions are asynchronous (for example, text messages, emails, and good old fashioned letters), forming and fostering social connections normally requires synchronous communication (for example, phone calls or video chats) and in-person contact, both of which require us to be available at the same time as those with whom we wish to engage in social connections. The need to synchronize our schedules with others in order to realize shared free time is what Rose refers to as the *temporal coordination problem* (2016: 94). In order to avoid undermining or obstructing workers' fundamental social interests, their conditions of work must therefore allow them to solve this problem.

C7.P33 Instability of working hours tends to exacerbate the temporal coordination problem, especially when combined with unpredictability. That being said, instability on its own does not necessarily reduce workers' shared free time. In fact, it can increase it relative to a stable schedule that largely conflicts with the availability of those with whom one wishes to engage in social connections (for example, working a steady evening shift when one's friends and family go to work or school during the day). But having highly unstable working hours that are also highly unpredictable can severely restrict shared free time. This is because to have shared free time is not merely to have time available at the same time as someone else; but to actually be able to share that time with them, i.e. to interact with them at that time. This, in turn, often requires advanced planning. This is not to deny the possibility (and pleasure) of impromptu social interactions; but we cannot rely on these in order to maintain an adequate level of social engagement, especially with regards to those we are unlikely to 'run into' in our daily lives, such as friends or family members who live far away or are physically limited.

C7.P34 Increasing stability and predictability in work schedules is something that can help solve the temporal coordination problem, but it might be objected that it is not necessary for this.

Another way that we might solve the problem is, as Rose suggests, to radically reduce the number of hours people need to work in order to support themselves and their dependents, for example through the institution of a sufficiently generous universal basic income (2016: 99). If everyone had vast amounts of free time, shared free time would be easy to find. But whatever the merits of this proposal, it seems an awfully long way from where we are. Given prevailing economic arrangements, working towards greater stability and predictability in working hours is more likely to improve workers' access to social resources in the near future.

C7.P35 Having adequate social opportunities both to form new social connections and foster existing connections requires adequate shared time. Against the backdrop of prevalent economic arrangements under which workers must work substantial hours in order to support themselves and their dependents, workers' access to shared time is eroded by unstable and unpredictable working hours. For this reason, in order for conditions of work to count as just and favourable in the context of human rights, working hours must be reasonably stable and predictable. I have argued that the demands of fair workweek campaigns can only be fully supported with reference to the ways in which unstable and unpredictable working hours limit access to adequate social resources. Once we recognize this, we can see that the struggle for a fair workweek is a struggle for social human rights.

C7.S9 **7.6 Conclusion**

C7.P36 Human rights work together to ensure that everyone enjoys the conditions for a minimally good life. In this chapter, I have argued that the neglect of social human rights has led to important omissions in specifying the content of the human right to just and favourable conditions of work. My purpose has been to contribute to filling in some of the gaps in this right by highlighting the ways in which workers' access to adequate social resources is vulnerable to their conditions of work.

Bibliography

- Ben-Ishai, L., Matthews, H., and Levin-Epstein, J. (2014), ‘Scrambling for Stability: The Challenges of Job Schedule Volatility and Child Care’, *The Center for Law and Social Policy (CLASP)*.
- Brownlee, K. (2013), ‘A Human Right against Social Deprivation’, *The Philosophical Quarterly* 63/251: 199–222.
- Brownlee, K. (2016), ‘The Lonely Heart Breaks: On the Right to Be a Social Contributor’, *Aristotelian Society Supplementary Volume* 90/1: 27–48.
- Brownlee, K. (2020), *Being Sure of Each Other* (Oxford University Press).
- Buchanan, A. (2013), *The Heart of Human Rights* (Oxford University Press).
- Council of Europe (2021), *Guide on Article 11 of European Convention of Human Rights: Freedom of Assembly and Association*. European Court of Human Rights:
https://www.echr.coe.int/Documents/Guide_Art_11_ENG.pdf.
- Covert, B. (2014), ‘How Unpredictable Hours Are Screwing Up People’s Lives’, *Think Progress* (11 September).
- Gheaus, A. and Herzog, L. (2016), ‘The Goods of Work (Other than Money!)’, *Journal of Social Philosophy* 47/1: 70–89.
- Gilabert, P. (2016), ‘Labor Rights and Human Dignity’, *Philosophy and Social Criticism* 42/2: 171–99.
- Golden, L. and Dickson A. (2017), ‘It’s High Time to Address Fluctuating Work Schedules for Low-Wage Jobs’, *The Hill* (31 July).
- Griffin, J. (2008), *On Human Rights*. (Oxford University Press).
- Hope, S. (2020), ‘Normative Disorientation and a Limitation of Human Rights’, in K. Brownlee, D. Jenkins, and A. Neal (eds), *Being Social* (Oxford University Press).

- Kymlicka, W. (2018), 'Human Rights without Human Supremacism', *Canadian Journal of Philosophy* 48/6: 763–92.
- Miller, C. (2019), 'How Unpredictable Hours Turn Families Upside Down', *New York Times* (16 October).
- Miller, D. (2007), *National Responsibility and Global Justice* (Oxford University Press).
- Miller, D. (2016), 'Human Rights and Status Egalitarianism', in *Ethics & International Affairs* 30/4: 461–9.
- Murthy, Vivek. (2017), 'Work and the Loneliness Epidemic', *Harvard Business Review*, <https://hbr.org/2017/09/work-and-the-loneliness-epidemic>, accessed 22.06.21.
- Nickel, J. (1978), 'Is There a Human Right to Employment?', *The Philosophical Forum* 10/2: 149–70.
- Nickel, J. (2007), *Making Sense of Human Rights* (2nd ed.) (Blackwell Publishing).
- O'Sullivan, M. (2019), 'Zero Hours and On-call Work in Anglo-Saxon Countries: A Comparative Overview', in M. O'Sullivan et al. (eds), *Zero Hours and On-call Work in Anglo-Saxon Countries*. Springer. 159–78.
- Rose, J. (2016), *Free Time* (Princeton University Press).
- United Nations. (1948), *Universal Declaration of Human Rights*. Available at: <https://www.un.org/en/universal-declaration-human-rights/>.
- United Nations. (1966), *International Covenant on Economic, Social and Cultural Rights*. Available at: <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>
- United Nations Committee on Economic, Social and Cultural Rights. (2016), General Comment No. 23 on Just and Favourable Conditions of Work. Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fGC%2f23&Lang=en.

Wolff, J. and de-Shalit A. (2007), *Disadvantage* (Oxford University Press).

White, G., 'The Very Real Hardship of Unpredictable Work Schedules', *The Atlantic* (15 April 2015)