

In Cash We Trust?

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ABSTRACT Many individuals have miserable work lives, in which they must toil away at mind-numbing yet exhausting tasks for hours on end, being ordered about by their superiors, perhaps with few guarantees that this source of income will persist for very long. However, this is only half of the story: what is centrally important is that many of those who endure these conditions are denied a fair wage in return for the burdens that they bear. In this article, I reflect on the significance of this fact in order to argue for the evaporation thesis. This thesis holds that individuals' claims to particular employment-related protections from their government disappear as their earnings increase. In the course of defending this position, I explore the moral difference an employee's wage offer makes to the work conditions that we can expect her to accept, including why there are limits to the role that cash can play here.

You see, no labor is really menial unless you're not getting adequate wages. People are always talking about menial labor. But if you're getting a good wage ... that isn't menial labor. What makes it menial is the income, the wages.

Martin Luther King¹

1. Introduction

Many individuals have miserable work lives, in which they must toil away at mind-numbing yet exhausting tasks for hours on end, being ordered about by their superiors, perhaps with few guarantees that this source of income will persist for very long. In diagnosing what is troubling about this, it is common to highlight a plurality of trends in contemporary labour markets: persistently long work hours, such that it is usual for many employees to work in excess of 50 hours each week; high levels of insecurity, as large numbers of individuals sign temporary contracts to provide their services on call; the fact that many workers are condemned to carry out mundane and repetitive work with few opportunities for originality or creative expression; and employees' vulnerability to domination by their employers, whereby staff are routinely and unreciprocally ordered about by superiors, with little recourse to protest these decisions.

In the light of these and other such trends, there is an emerging literature that calls on governments to advance workers' interests by expanding the set of employment-related (legal) rights that they possess.² Among other things, this might include the enhanced use of working-time policies; regulations to ensure individuals' access to stable, long-term employment contracts; and measures to eliminate or reduce workplace domination by

providing staff with meaningful opportunities to participate in the management of the firm for which they work. Part of what unites defences of these regulations is a general commitment to improving the quality of individuals' working lives.

Crucially, though, it is imperative that we consider a further issue, often neglected or at least rarely made explicit: should governments expand the employment-related rights of all workers, or should it operate more selectively, focusing on only a subset of workers, such as low-earners? My main aim in this article is to make progress with answering this question by defending the distinctive thesis that workers' claims to employment-related protections from their government disappear as their earnings increase. The implication of this claim is that low-earners should enjoy a more expansive set of employment-related rights than middle-earners, and that middle-earners should enjoy a more expansive set of employment-related rights than high-earners.

More controversially, what I hope to establish is that there is a defeasible presumption in favour of this view applying to all such rights, thus yielding *prima facie* reasons to maintain that all employment-related legal entitlements should evaporate as employees climb the income distribution. Among other things, this includes employee rights to protection from working-time directives, to holiday pay, to freedom in one's private life (including to retain control of one's social media, for example), to due notice when schedules are changed, and against sudden dismissal. To be clear, I mention this list of rights for purely illustrative purposes, to clarify the kinds of claims that I have in mind. The reason that it is not possible to catalogue these legal entitlements exhaustively is because the full range of protections that workers should enjoy will vary from context to context, depending on the attitudes of the individuals in those societies and background conditions that are in place (including whether there is a national health service that is free to everyone at the point of use, for example).

It bears emphasizing that, being only a presumption, this view is consistent with the result that some legal entitlements should not exhibit the character that I have described, and so we should extend these to the highest-earners as well. Nonetheless, one important consequence of such a presumption is that it places the burden of proof on those who wish to insist that all workers should enjoy some specified legal entitlement, irrespective of their pay. In other words, what I am suggesting is that our starting position should be that low-earners should enjoy more extensive protections against, say, having their work schedules determined at the last minute than high-earners, but that we should remain open to the possibility of revising these verdicts if compelling arguments to the contrary are forthcoming. I say much more about this complication in Section 4.

My claim differs from the more familiar idea that we have merely less reason to care about the fate of high-earners in comparison with that of low-earners. Rather, my view is that, when it comes to the design of labour market regulations and employment law, governments have principled reasons to treat individuals differently depending on where they sit in the income distribution. It is important, I think, for us to pay careful attention to this fact – indeed, for us to pay more careful attention to it than is reflected in existing regulations.

Still, perhaps some readers will find my conclusions unsurprising. Maybe it is obvious that employees' entitlements should diminish as they climb the income distribution. Based on recent discussions of related issues in the media, I doubt that this is obvious.³ But even granting that claim for the sake of argument, my investigation remains important since it is vital that we have a clear-eyed account of when and why employment-related

rights should display this character. To this end, one contribution of this article is to explore the moral difference an employee's wages make to the work conditions that we can expect her to accept, including why there are limits to the role that cash can play here.

This article is structured as follows. In Section 2, I defend the evaporation thesis, according to which workers' claims to particular employment-related protections should disappear as their earnings increase. In Section 3, I explore the foundations of this view by examining different roles that cash can play in employees' lives. In Section 4, I consider and respond to an objection to the evaporation thesis that purports to establish that all workers are entitled to a wide range of employment-related protections, irrespective of their income. In Section 5, I conclude by discussing an implication of my arguments.

2. The Evaporation Thesis

The European Union's Working Time Directive provides all employees with at least four weeks of paid annual leave and, with some industry-specific exceptions, it ensures that no individual can be made to work more than 48 hours per week on average. In the United States, Fair Workweek laws require large firms to provide each member of their staff with two weeks of notice in advance of any change to her work schedule. And in Germany, co-determination laws allow all workers to elect representatives to sit on the supervisory boards of their employer, at least so long as the firm has more than 500 staff on its books. In each of these cases, the regulations that grant employment-related rights operate uniformly – that is, they grant such rights to all workers, without regard for the level of income that they earn. In fact, this kind of uniformity is common not only to these three examples, but to the overwhelming majority of labour market regulations.

One justification for this approach appeals to the idea that we should design legislation in ways that supply all workers with robust protections against their employers, who tend to enjoy much more bargaining power. On this view, part of the purpose of labour market regulation is to level the playing field, correcting for the unequal market power that puts employees at an unfair disadvantage in relation to their employers.⁴ This unfairness might be problematic because it is likely to result in contracts that do not appropriately serve workers' interests and/or because it means the workers become subordinates rather than equal partners to the contract.

However, one weakness with this argument is that it homogenizes the very different circumstances in which employees find themselves, relative to both their own employer and employers in general. This makes for a misleading picture, since the reality is that the opportunities available to employees vary enormously. More precisely, many highly skilled employees command considerable market power, on which they draw to negotiate lucrative salaries and other significant benefits from their employers.⁵ Accordingly, improving these individuals' prospects risks exacerbating, rather than ameliorating, problematic social and economic inequalities.

For egalitarians like myself, these results matter because they imply that we may treat these highly advantaged individuals in ways that would wrong them if they were less advantaged. In particular, I believe that we may squeeze them to deliver social benefits in ways that would otherwise be impermissible. As an example, let us consider laws that cap the number of hours that individuals can be required to work. Almost always, these laws reduce economic output and tax revenue, meaning that governments have fewer

resources at their disposal. In the case of disadvantaged workers, this is normally a price well worth paying. But it is far from obvious that we should draw the same conclusion with respect to Wall Street's investment bankers.⁶ Rather than improve their circumstances further, it may be better from an egalitarian perspective for these individuals not to reduce their work hours, thus maintaining economic output and tax revenue that we can use to improve the lives of our society's least advantaged members. Here, it is significant that improvements in working conditions (including free time) are not easily taxable, and so the associated benefits tend to accrue mainly to the worker and those close to them, such as their families.⁷ This is not true for improvements in wages, whose benefits can more straightforwardly be shared with the least advantaged via redistributive taxation.

No doubt, when assessing contemporary labour markets, it is appropriate to worry about the fact that many employees work long hours, enjoy few opportunities for creative expression, are subject to workplace domination, and so on. However, this is only half of the story: what is centrally important is that many of those who endure these conditions are denied a fair wage in return for the burdens that they bear. The distinctive claim that I advancing is that, when this is unjust, the injustice derives in part from the fact that the victim is denied fair remuneration for this fate.

The appeal of this analysis rests on the attractive idea that those who earn high wages lack some complaints that they would possess if they earned less.⁸ Putting this point more provocatively, my suggestion is that, by paying higher wages, firms can effectively purchase the right to treat their staff in some ways that would be wrong if not for those wages. We can state this view as follows:

The Evaporation Thesis: Individuals' claims to particular employment-related protections from their government disappear as their earnings increase.

The name of this thesis is apt since it holds that particular legal entitlements should evaporate as employees climb the income distribution in much the same way that liquids do at higher temperatures. If correct, this thesis implies that governments should grant low-earners a more extensive set of employment-related rights than those higher up the income distribution.⁹ Of course, these rights specify only the minimum legal entitlements of workers, and firms should remain free to improve work conditions beyond this as they see fit.

In Section 4, I will clarify the evaporation thesis by saying something more about which claims disappear as employees' earnings increase. But before getting to that point, let us start by investigating the appeal of this position.

To illustrate the plausibility of this thesis, let us consider the fate of Giannis, whose employer makes exceptional demands on him: he is expected to work in excess of 50 hours each week, he is fined if he ever turns up late, and he enjoys few guarantees that this source of income will persist in the medium-to-long run. Additionally, his employer exercises considerable control over how he may act both during his work hours and outside of these times. For example, his boss vets his social media accounts, regularly tests that he is clean of drugs, monitors his diet, and can penalize him if there are any irregularities on these fronts. But contrary to what you might expect based on the description so far, Giannis is lucky in terms of his employment. Indeed, his position is one to which millions of individuals all over the world aspire. This is because the person to whom I am referring is Giannis Antetokounmpo, who plays in the National Basketball Association (NBA) and whose career earnings are expected comfortably to exceed \$300 million.

There is a clear sense in which many elite sport stars, including Antetokounmpo, are subject to extreme domination by their employers, not only during official work hours, but outside of these too. After all, Antetokounmpo's employer enjoys unreciprocated legal control over the content, intensity, and duration of his labour process, and so his employment contract straightforwardly violates what Nicholas Vrousalis calls the Non-Servitude Proviso.¹⁰ However, I find it hard to accept the implication that this makes Antetokounmpo a victim of wrongful domination at work. Rather, it is powerfully intuitive that, when we assess whether or not these individuals have valid complaints based on the value of their employment opportunities, their huge earnings make a crucial moral difference to these matters.¹¹ This fact provides some intuitive evidence in favour of the evaporation thesis.

I suspect that some readers will be tempted to dismiss my discussion of Antetokounmpo as anomalous. But his case vividly illustrates a point that applies generally to a large proportion of middle- and high-earners. Like Antetokounmpo, these individuals tend to live in enviable material comfort, and, although their work lives may be unpleasant in a number of respects, their generous pay makes a large difference to the force of the complaints that they might voice. While it is true that these individuals are ordered around by their superiors, this is the price that they pay in order to own their homes, eat out at restaurants, and go on holidays. Their work lives may not be perfect, but these individuals are comparatively fortunate in terms of the value of the employment opportunities that they enjoy, and that makes an important moral difference.

Critics might push back against this analysis in at least two ways. First, whereas I have suggested that it is the wages that justify our relaxed attitude towards Antetokounmpo's onerous work conditions, might it not be the fact that the demands to which he is subject advance his interests, in this case, by assisting him in the pursuit of sporting excellence?¹² If this were the case, then we would not be entitled to draw similar conclusions with respect to other high-earners, except insofar as their work lives are governed in ways that enable them to pursue similarly valuable goals. In turn, this would cast doubt on any defence of the evaporation thesis that draws on cases such as Antetokounmpo's.

In response, I acknowledge that it might lessen a worker's complaints against onerous work conditions if those are conducive to her pursuit of valuable goals, such as sporting excellence. But it is hard to believe that this consideration makes all of the relevant moral difference. To see this, let us contrast Antetokounmpo's case with someone whose work conditions and earnings are identical, except that she specializes in a truly worthless activity, such as counting blades of grass. While it is true that the demands to which the grass-counter are subject do not advance her interests in any serious way, this fact alone is far from sufficient to ground any serious complaint, given her life-time earnings of more than \$300 million. This suggests that it is Antetokounmpo's pay, and not his pursuit of sporting excellence, that vitiates the complaints against his onerous work conditions that he would otherwise possess.

A second challenge to my analysis comes from those who deny that Antetokounmpo is subject to extreme domination by his employer. In particular, and contrary to the demands of Vrousalis's Non-Servitude Proviso, we might deny that Antetokounmpo is a victim of domination by pointing to the obvious fact that he can readily exit his relationship with his employer whenever he sees fit.¹³ He can do this by retiring from professional sport and living off his accumulated wealth without ever having to work again. It is true

that Antetokounmpo would be poorer than if he continued to play basketball, but this is simply a reasonable price to pay for exercising his exit option.

Let us suppose that this diagnosis of Antetokounmpo's predicament is correct such that, strictly speaking, it is a mistake to contend that he is subject to workplace domination, given the availability of reasonable exit options. What follows from this? I believe that we should say something similar about many other middle- and high-earners: their apparent domination turns out to be chimeric as well. The most affluent, like Antetokounmpo, could retire immediately and live off their savings in historically unprecedented material comfort. No doubt, this would require a considerable degree of sacrifice, say, because a worker may have to sell her home or go on fewer holidays. But as already noted, this is simply a reasonable price to pay to exercise her exit option.

For other middle- and high-earners, retirement may be unaffordable such that they have no reasonable alternative but to submit to the authority of one employer or another. But while this is true, it obscures the fact that many of these individuals could choose to work in less hierarchical workplaces if they wished, albeit perhaps for lower wages.¹⁴ Of course, these opportunities may be few and far between in most existing labour markets. But significantly, this would not be so in a more just society that assigns low-earners an extensive range of employment-related protections, as recommended by the evaporation thesis. Consequently, even if Antetokounmpo's exit options protect him against extreme domination by his employer, this merely lends further support for my thesis.

Before moving on, it is crucial to emphasize that my claim is not that the labour market would be free of injustice if each of us enjoyed the opportunity to make our living as Antetokounmpo does. That is false. Among other things, it is imperative that individuals are free to pick their occupation from a sufficiently varied menu of options – something arguably denied to Antetokounmpo who grew up in poverty and who probably would have enjoyed few employment opportunities if not for his sporting prowess. My point is only that, when we think about the quality of the employment opportunities available to individuals, we must be appropriately sensitive to the considerable role that wages play. This point is simple, but too often neglected.

3. The Transformative Potential of Cash

At a deeper level, the evaporation thesis draws support from the transformative potential of cash. To appreciate what this means, it is useful to distinguish three ways in which higher wages can make a difference to an individual's circumstances. First, and most obviously, one function of wages is to compensate employees for various burdensome aspects of their employment. Cash can compensate for the domination an employee endures, as well as for her loss of free time, for having to carry out tasks that she would otherwise wish to avoid, and so on. Most of us do not like to spend our time taking orders from others, though we would welcome this if we were paid handsomely. When wages play this role, they do not make the work less onerous; instead, they merely eliminate the complaints that an employee might otherwise possess.

Admittedly, cash is often an imperfect substitute for the burdens of employment, such as less free time or workplace domination.¹⁵ But so long as individuals enjoy freedom of occupational choice and a measure of bargaining power, there is a meaningful sense in which they accept these burdens in return for the wages that they receive. After all, many

bankers who work night and day have the option to do otherwise, by retiring or working in less demanding professions if they wished. Of course, that is not true for society's least advantaged members, who may lack reasonable alternatives, but the evaporation thesis recommends more extensive employment-related protections for these individuals.

It is vital to emphasize that my claim is not that higher wages enable employers merely to buy their way out of having to improve their treatment of their staff. This characterization is inaccurate since it overlooks the fact that offering generous wages *is* one way in which employers can treat their employees well. All else equal, firms that pay their workers a pittance treat their staff differently from firms that pay their workers generously. This is because the nature and value of relations between individuals, including between employers and employees, are a function of distribution of resources between them.¹⁶

A second function of cash is to enhance an individual's capacity to find employment on terms that suit her interests.¹⁷ The most obvious way in which higher wages do this is by increasing an individual's bargaining power, meaning that she can more credibly threaten to resign unless her employer reforms her terms of employment in ways that she values. Even if critics are right to worry that this threat is normally too much of a nuclear option, which is seldom credible, these additional resources remain valuable in more extreme cases by enabling workers to build up a strike fund on which they can rely if necessary.¹⁸

Furthermore, employees who earn higher wages are generally able to accumulate greater savings, which enhance their opportunities to change careers and/or set up their own businesses. In this way, cash can subsidize more enjoyable forms of employment that might otherwise be financially unviable, as well as more risky forms of self-employment.¹⁹ Writing about the fate of low-earning airport staff, Paula Casal nicely illustrates the significance and appeal of these points as follows:

Perhaps if one of the cleaners was not underpaid and overworked, she would have completed her stained-glass evening course, set up a workshop in her garden shed and gradually made a living from this vocation; and a luggage handler might have turned his passion for dancing into a profitable occupation.²⁰

Third, cash can improve an employee's circumstances by lifting her social status, such that she is more likely to enjoy favourable responses from others, including displays of respect, kindness, and assistance. No doubt, an individual's social status is a function of a great many variables, including her gender, ethnicity, sexuality, and so on. However, among the most significant of these is her income, with higher earnings tending to increase social status, at least when the information is revealed to others (including by the way she dresses, etc.). With this in mind, I suspect that, if cleaners were paid much more generously, then their social status might change accordingly. Or at the very least, and in the absence of evidence to the contrary, we should remain open-minded about this possibility.²¹

There are two things going on here. On the one hand, generous wages can shape the character of the work itself. If cleaning were to become more lucrative and, consequently, the competition for this kind of employment were to intensify, then we might expect the social status of cleaning as an occupation to change as a result. In this regard, the high social status of some professions is parasitic on their high wages. That is why wages and social status so often go together. On the other hand, as an individual's earnings increase, she has more resources at her disposal to spend in ways that can drive up her social status. If cleaners were paid much more generously, such that they could more readily afford to

purchase designer clothes and drive sports cars, then the social status of these individuals would rise, even if the social status of their occupation did not.

Part of the problem is that, in labour markets in which the wage disparities between workers are very large, those at the bottom of the distribution are more likely to be regarded by others as comparative failures.²² This is true of the United States, for example, where the pre-tax income of the bottom 50% of earners is about \$17,000, which compares to a national average of more than \$66,000.²³ We have weighty reasons to change social norms to prevent the emergence of such attitudes if we can.²⁴ However, for reasons of human psychology – and, in particular, the fact that individuals tend to be highly concerned with how their earnings compare with those of others – these attitudes are likely to be a stubborn, and perhaps permanent, feature of any highly unequal society.²⁵ With that in mind, a concern for social status supplies us with special reasons to prefer more egalitarian labour markets in which the dispersion of wages is not so great. We might achieve this by increasing the wages of the lowest-earners, by reducing wages of the highest-earners, or through some combination of both.

These remarks also suggest a response to those who worry about the formative effects of an individual's employment on her psychological capacities.²⁶ One version of this view emphasizes that some forms of work might hinder or erode particular faculties that we have reason to promote and to protect, including a worker's capacities for a sense of justice and for autonomy. No doubt, these factors illuminate the injustice suffered by some of those workers who spend most of their lives performing mind-numbing tasks on the assembly line. However, it is far from obvious that the same concerns arise in the case of high-earning individuals with high social status whose work is similarly rote. Of course, this is little more than empirical speculation, but it is significant that much of the sociological and psychological research on the formative effects of work focuses on low-earning employees in highly inegalitarian labour markets.²⁷

To recap, my aim in this section has been to defend the evaporation thesis, according to which workers' claims to employment-related protections from their government disappear as their earnings increase. I have supported this view by noting three ways in which higher wages can transform a worker's circumstances: by compensating for various burdensome aspects of her employment; by enhancing her capacity to find employment on terms that suit her interests; and by improving her social status. Together, these points reveal why it is a mistake to regard higher wages as a *mere* consolation prize that we might offer as compensation to those whose work is unattractive in other respects. This is because, in addition to the compensation that they provide, higher wages can play the two further roles that I have described. It is with these mechanisms in mind that the evaporation thesis has greater appeal than it may initially appear.

4. The Inalienability Objection

The evaporation thesis holds that individuals' claims to employment-related protections should disappear as their earnings increase. But to precisely which legal entitlements does the thesis apply? So far, I have said only that there is a presumption in favour of it applying to all such claims, but that this presumption is a defeasible one. It is therefore sensible to ask, how are we to determine which legal entitlements survive evaporation, such that we should extend them to all workers, irrespective of pay? Any plausible answer to this

question must be pluralist, in the sense that it recognizes multiple bases on which to defend the conclusion that all workers should enjoy a given employment-related right. Because of this, there is no single, simple test that we can use to distinguish those employee protections that fall within the remit of the evaporation thesis from those that do not. In turn, therefore, it is impossible to say much in general terms about the implications of my arguments for labour-market policymaking. This conclusion may be frustrating, but I believe that it merely reflects the complexity of the moral terrain with which we are dealing.

Some arguments in favour of uniformity are broadly consequentialist in nature. They seek to justify some comparatively generous employment-related protection for middle- and high-earners (in addition to low-earners) on the grounds that doing so is socially beneficial, say, because it maximally enhances the value of the opportunities enjoyed by society's least advantaged members via the incentives that this creates for individuals to use their talents productively. This line of reasoning offers one way in which to make the case for extending a given legal entitlement to all workers, and thus to restrict the scope of the evaporation thesis.

However, in this section, I restrict my attention to a rather different kind of argument in favour of the uniform protection of a given class of legal entitlements, which takes the form of a non-consequentialist objection to the evaporation thesis.²⁸ This objection applies most forcefully to a subset of such rights, namely those whose purpose is to protect staff against workplace domination. As I will explain, though, we might broaden its application to other employment-related protections in a way that renders it more threatening.

One way in which to defend the uniform design and application of labour market regulations is by showing that the relevant legal entitlements are ones that employees may not relinquish in return for more generous pay. This is to say that these rights should not be for sale. This might be either because the rights are *fully inalienable*, meaning that individuals should not be permitted to transfer or give up these rights at all, or because they are *labour market inalienable*, meaning that individuals should not be permitted to transfer or give up these rights within employment contracts in particular, including for greater pay. The inalienability of a right may be required for a variety of reasons. One attractive strategy is to appeal to the idea that relinquishing it might facilitate relations between individuals that betray the demands of social equality.²⁹ On this view, the inalienability of certain legal entitlements protects individuals against putting or finding themselves or others in circumstances in which they are subject to servitude and subordination.

As an example, let us consider the law of coverture, which states that a wife is the property of her husband, such that, on marriage, she loses her independent legal status along with any rights against her husband (including rights against violence and abuse). Many of those who enter marriage under this condition do so involuntarily. Some women are directly threatened or coerced; some enter only because the alternatives are unacceptable; and some are too young to understand the choices that they are making. But this is not all that is wrong with the law of coverture. It would remain a serious injustice to strip a woman of her independent legal status on entering marriage even if she were to do this fully voluntarily – that is, even if she were not threatened or coerced, she enjoyed valuable alternatives, and she fully understood the choices that she were making. The reason for this is that all individuals possess an inalienable right against being treated as if they are the property of someone else. It is this moral fact that explains what is intrinsically odious about the law of coverture.

Elizabeth Anderson suggests that we can fruitfully apply this line of reasoning to some aspects of contemporary labour markets, and thus we can reach similar conclusions about the fate of those employees who are subject to high levels of workplace domination at the hands of their employers. Writing in a way that highlights the parallels with the law of coverture, she notes that ‘When workers sell their labor to an employer, they have to hand *themselves* over to their boss, who then gets to order them around. The labor contract, instead of leaving the seller as free as before, puts the seller under the authority of their boss’.³⁰ Deepening this, she adds:

workers, in effect, cede *all* of their rights to their employers, except those specifically guaranteed to them by law, for the duration of the employment relationship. Employers’ authority over workers, outside of collective bargaining and a few other contexts [...], is sweeping, arbitrary, and unaccountable – not subject to notice, process, or appeal.³¹

On this view, just as we should condemn coverture because of the morally odious relations of domination between individuals that it embodies and enables, so too we should condemn workplace domination for the very same reasons. This suggests that workplace domination should not be for sale, and therefore that individuals’ protections against workplace domination should not diminish as they climb the income distribution (just as women’s rights against being the property of their husbands should not diminish if they were paid generously). Instead, these considerations seem to count in favour of protecting all workers against workplace domination, irrespective of their income. This is the *inalienability objection* to the evaporation thesis.

Those sympathetic to this objection might look to extend its scope to condemn a wider range of practices than only workplace domination. For example, we might invoke similar reasons to support the conclusion that a certain portion of individuals’ free time should not be for sale. If correct, this might justify legally prohibiting employment contracts that require, or even permit, staff to work for 50 or more hours each week. In this vein, when remarking on the fate of those who are subject to workplace domination, Anderson adds, ‘at least they could try to limit the length of the working day so that they would have some hours during which they could choose for themselves, rather than follow someone else’s orders’.³²

The prospects of this strategy of extension are unclear. This is because, even if there is a case for reducing work hours to limit employees’ exposure to workplace domination, this solution is far from an ideal one. After all, it is akin to reforming the law of coverture so that it applies only some of the time! What is more, while shorter work hours are certainly an improvement for many employees subject to workplace domination, presumably it is sometimes preferable to improve wages instead. For these reasons, although I do not rule out extending the scope of the inalienability objection in this way, it is best to remain focused on the case of workplace domination where the objection is at its strongest.

It seems to me that the inalienability objection supplies us with decisive reasons in favour of the uniform protection of a certain class of protections against workplace domination. And thus, we should recognize that some employment-related legal claims extend even to high-earners. This result stems from the fact that some employment contracts are affronts to social equality in virtue of their overt content alone. Advocates of the inalienability objection are thus correct to maintain that, when this is the case, the appropriate response may be to forbid those contracts since generous wages cannot fully vitiate the

victim's complaint. Most obviously, this includes contracts that allow employers to abuse or to harass their staff. Contracts of this kind remain objectionable even if firms offer their employees a hefty wage premium in return.³³ The same may go for contracts that allow employers to humiliate their staff, say, by denying them bathroom breaks.³⁴ It is with cases such as these in mind that the inalienability objection is at its most forceful.

Importantly, though, these cases have two distinguishing features that mark them out as atypically extreme. First, they involve a particular kind of workplace domination. It is not merely that employers routinely and unreciprocally interfere in their employees' lives. Rather, this interference affects some of our most important and fundamental interests, including those relating to sexual autonomy and to our status as social equals, for example.

Second, these employment contracts take on a special kind of significance given the historical and social context in which they take place. In particular, there is something especially problematic about employment contracts that contractually permit male employers to harass their female staff, given that this reinforces a long history in which women's interests have been subordinated to those of men, often through control over women's bodies. Arguably, although admittedly more controversially, we might say something similar about employment contracts that require women employees to dress in objectifying ways.³⁵ Defending the relevance of historical and social context, Debra Satz asks us to consider the analogous case of paid military service, which 'involves significant invasions into the body of the seller [as] soldiers' bodies are controlled to a large extent by their commanding officers under conditions in which the stakes are often life and death'. The crucial difference between this case and the ones we are considering, Satz plausibly insists, is that 'military service does not directly serve to perpetuate gender inequalities'.³⁶

Since the cases that lend support to the inalienability objection are extreme ones, it is an open question whether we should draw the same conclusion with respect to more commonplace forms of workplace domination. This includes plenty of domination that we find in contemporary labour markets, such as when firms determine their staff's hours at short notice or govern their social media activity. Domination of this kind may remain morally troubling but, to me at least, it does not seem to reach the point at which it is necessary to forbid those contracts, rather than to insist that those who endure it are offered fair remuneration for the burdens that they bear.³⁷ This response trades on the intuitively compelling claim that the fate of high-earners who are subject to sexual harassment at work is very different from the fate of high-earners who might be called on to work shifts at short notice or who have social media clauses in their contracts.

To elaborate on this analysis, let us zero in on one aspect of the inalienability objection that warrants special attention. In focusing on workplace domination, proponents of this objection need not deny that wages matter as well. This is because a concern for the former is consistent with a distinct concern for the latter. However, proponents of the inalienability objection go beyond this. It is not only that issues of domination and of wages raise distinct concerns, it is that the two factors are distinct in a special way, such that the validity of an individual's complaint based on the domination that she suffers is independent of how much she earns. On this view, low-earners who endure workplace domination suffer two distinct injustices, one of which relates to the domination that they endure and the other relates to their low wages.

To make sense of this result, we must suppose that questions of domination and of wages belong to different moral arenas – for example, whereas one concerns the legitimacy of

workplace authority, the other concerns distributive justice – and that what we say about one moral arena has little or no bearing on what we should say about the other.³⁸ In other words, we might say that our analysis of domination and of wages should be atomistic rather than holistic.³⁹

In some cases, such as those that involve employment contracts that allow employers to abuse or to harass their staff, this kind of atomism is appealing. This is because, in these cases, the victim's wages make no difference to the validity of her complaint, and so there is a compelling justification for extending legal entitlements against this treatment to even the highest-earners. However, I believe that it is less plausible – indeed, distinctly implausible – to insist on atomism in much less extreme cases, where wages are much more obviously relevant to whether an individual possesses a valid complaint based on her employment prospects. On this view, many low-earners who are subject to workplace domination suffer only one injustice (not two), which consists in the fact that these employees fail to receive the offer of a fair wage for the employment-related burdens that they bear. The evaporation thesis enables us to make sense of this fact.

Some supporters of the inalienability objection might respond by contending that their concern is only with extreme forms of workplace domination, rather than with all forms of workplace domination, or with the more garden-variety forms that are most common in contemporary labour markets. If this is the case, then the complaint is not about any essential features of employment as such. Rather, it is about something much narrower in scope, namely some property of particular kinds of employment relations. Though it is a little difficult to decipher, this seems to be the view held by Anderson who calls 'not for abolishing but for taming workplace hierarchy', using a bill of inalienable worker rights.⁴⁰ If so, then the distance between the various views that we are considering is not so great after all: there is agreement both that we should use legislation to stamp out employment contracts that embody and enable extreme forms of workplace domination, such as those that permit sexual harassment, even in return for more generous pay, but also that we might allow moderate forms of workplace domination to persist so long as staff receive the offer of fair remuneration.

None the less, I believe that the evaporation thesis remains distinctive and illuminating. This is because it straightforwardly holds that, when an employee is subject to more moderate forms of workplace domination, it is imperative that she is offered appropriate financial reward for the burdens that she suffers. By contrast, it is less clear how to reach this conclusion if one is committed to treating questions of domination and of wages as belonging to separate moral arenas, such that what we say about one realm has little or no bearing on what we should say about the other.

5. Conclusion

In this final section, I conclude by reflecting on one implication of my analysis. To start, let us consider the fact that there are some forms of work that (i) are enormously socially beneficial, but (ii) they unavoidably involve bearing considerable burdens. Examples may include maintaining sewers and cleaning the streets. Influenced by the work of Karl Marx, one response to the existence of such work is to maintain that everyone (who is able to do so) should share in this burden.⁴¹ Clarifying this view, Jan Kandiyali writes:

This would not be a society where people hunt in the morning, fish in the afternoon and criticize after dinner, but one in which people spend some time away from their specialization doing something that has to be done, but that no one wants to do (at least exclusively). With regards to these forms of drudgery, abolishing specialization may indeed be an appropriate response.⁴²

This passage trades on the intuition that it is unfair, perhaps even cruel, to arrange our society in such a way that effectively condemns some individuals to a life of drudgery.

However, my suspicion is that, to the extent that this recommendation resonates with us, it does so because we are comparing it with the status quo, in which most of those who spend their lives maintaining sewers must do this to scrape together enough funds to put food on their table. But this phrasing suggests an alternative response, in line with the evaporation thesis: rather than demand that everyone share in this work, we might ensure that those who carry it out receive the offer of fair remuneration for the burdens that they bear. The crucial thought is, when the overt content of the work involves drudgery, why not improve the overall bundle of benefits and burdens by offering to pay individuals more generously? Of course, even if we do this, we might still worry about whether those workers enjoy any meaningful freedom of occupational choice; and if not, addressing this complaint may require further interventions. But still, the offer of greater wages may vitiate one serious complaint that those workers would otherwise possess.⁴³

To bolster the appeal of this move, it is worth reiterating a lesson from Section 3, namely that it is a mistake to regard higher wages as a mere consolation prize. Instead, cash has considerable transformative potential: not only can it compensate a worker for various burdensome aspects of her employment, it can enhance her capacity to find employment on terms that suit her interests, as well as improve her social status. These points provide a provisional case for rejecting labour-sharing proposals in favour of simply ensuring that the workers performing these tasks are offered fair wages for the burdens that they bear. Of course, there is much more to say here about the pros and cons of these competing proposals. My point is only that the evaporation thesis has the potential to shed new light on this terrain.

Throughout this article, I have been keen to emphasize that, when we study the value of individuals' employment prospects, we must keep a keen eye on the associated pay. More specifically, I have sought to defend the evaporation thesis, according to which workers' claims to employment-related protections from their government disappear as their earnings increase. This thesis is justifiable in the light of the considerable difference that higher wages can make to a worker's life. And most importantly, it takes seriously the fact that, in many cases, the appropriate response to work that is especially burdensome is neither to forbid it nor to share it out, but to ensure that those who carry it out are offered fair remuneration for the burdens that they bear.⁴⁴

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NOTES

1 King, Martin Luther. 2011 [1968]. *All Labor Has Dignity*. Boston: Beacon Press, pp. 158–9.

- 2 Recent examples include Anderson, Elizabeth. 2017. *Private Government: How Employers Rule Our Lives (And Why We Don't Talk About It)*. Princeton, NJ: Princeton University Press; Arnold, Samuel. 2012. "The Difference Principle at Work." *Journal of Political Philosophy* 20(1): 94–118; Jauch, Malte. 2020. "The Rat Race and Working Time Regulation." *Politics, Philosophy, and Economics* 19(3): 293–314; Lister, Matthew. Forthcoming. "That's None of Your Business! On the Limits of Employer Control of Employee Behavior Outside of Working Hours." *Canadian Journal of Law and Jurisprudence*; Rose, Julie L. 2016. *Free Time*. Princeton, NJ: Princeton University Press; Standing, Guy. 2014. *The Precariat: The New Dangerous Class*. London: Bloomsbury Academic; and Veltman, Andrea. 2016. *Meaningful Work*. Oxford: Oxford University Press.
- 3 For example, in March 2021, several news outlets ran stories about the 'inhumane' and 'abusive' working conditions at the investment bank, Goldman Sachs, without mentioning the generous salaries earned by the vast majority of the firm's employees. For example, see Makortoff, Kalyeena. 2021. "Group of Junior Bankers at Goldman Sachs Claim 'Inhumane' Work Conditions." *Guardian*, March 18, 2021. <https://www.theguardian.com/business/2021/mar/18/group-of-junior-bankers-at-goldman-sachs-claim-inhumane-work-conditions>. Accessed 13 April 2022.
- 4 Collins, Hugh, Gillian Lester, and Virginia Mantouvalou, eds. 2018. *Philosophical Foundations of Labour Law*. Oxford: Oxford University Press.
- 5 Halliday, Daniel. Forthcoming. "The Future of Work and the Liberal Foundations of Employment Justice." In *Challenges, Opportunity and Dignity in the Future of Work*, edited by Stefanie Haeffle and Jessica Carges. London: Palgrave Macmillan.
- 6 Stanczyk, Lucas. 2017. "Free Time and Economic Class." *Law, Ethics and Philosophy* 5: 62–73, pp. 71–73.
- 7 One creative response to this problem is to tax hourly wages, rather than total earnings, as proposed in Olson, Kristi A. 2020. *The Solidarity Solution: Principles for a Fair Income Distribution*. Oxford: Oxford University Press, p. 172. However, one worry with this suggestion is that it may be difficult to implement in practice.
- 8 Throughout, my analysis relies on the claim that low earnings are a reliable proxy for low bargaining power. I believe that it is generally safe to make such an assumption, even though I acknowledge that the proxy is imperfect (since, to varying degrees, workers typically care about more than maximizing their income).
- 9 Two further points warrant mention. First, it bears noting that the evaporation thesis applies only to employment-related legal rights, rather than to legal rights in general. Whether there are compelling grounds on which to extend my conclusions to the latter is an interesting question, and one that lies at the heart of debates about the justifiability of means-tested welfare regimes. Second, there is a further question about whether the evaporation thesis should be sensitive to life-time earnings, rather than current earnings, such that claims to employment-related protections might disappear with the prospect of being paid generously later in their career. Unfortunately, I must set aside both of these matters as they raise important and interesting complications that I lack space to address here.
- 10 Vrousalis, Nicholas. 2020. "Socialism Unrevised: A Reply to Roemer on Marx, Exploitation, Solidarity, Worker Control." *Philosophy & Public Affairs* 49(1): 78–109, p. 86.
- 11 My point is not that, if wages are high enough, then anything goes. After all, we may have sound reasons for legally regulating sports, even if participants are paid very generously. I return to this claim in Section 4.
- 12 A version of this argument is suggested in Hughes, Robert C. 2019. "Paying People to Risk Life or Limb." *Business Ethics Quarterly* 29(3): 295–316, pp. 307–08.
- 13 For discussion, see Arneson, Richard. 2021. "What's Wrong with Having a Boss?" (unpublished manuscript).
- 14 For a similar claim with respect to free time, see Stanczyk 2017 op. cit., pp. 67–71.
- 15 Schmode, Frauke. 2021. "All Is Well That Is Paid Well?" (unpublished manuscript).
- 16 Dobos, Ned. 2019. "Exploitation, Working Poverty, and the Expressive Power of Wages." *Journal of Applied Philosophy* 36(2): 333–47. See also Moles, Andres, and Tom Parr. 2019. "Distributions and Relations: A Hybrid Account." *Political Studies* 67(1): 132–48.
- 17 Van Parijs, Philippe, and Yannick Vanderborght. 2017. *Basic Income: A Radical Proposal for a Free Society and Sane Economy*. Cambridge, MA: Harvard University Press, pp. 22–23 and p. 103.
- 18 For discussion of this criticism, see Gourevitch, Alex. 2013. "Labor Republicanism and the Transformation of Work." *Political Theory* 41(4): 591–617, p. 608.
- 19 In some, rare cases, the effect of high wages is even more profound: it can eradicate the structural domination that occurs when some individuals are effectively forced to sell their labour to others in order to make ends meet. See Gourevitch, Alex. 2018. "The Right to Strike: A Radical View." *American Political Science Review* 112(4): 905–17, p. 907.
- 20 Casal, Paula. 2017. "Mill, Rawls and Cohen on Incentives and Occupational Freedom." *Utilitas* 29(4): 375–97, p. 384.

- 21 It is worth emphasizing that, given the range of factors that bear on social status, its relationship to income is inevitably complex. As an example, let us consider the case of those high-end sex workers who endure low social status even though their work is paid comparatively well. Presumably, part of what explains their low social status is widespread sexist attitudes towards the control of women's bodies, as well as towards women's empowerment more broadly.
- 22 Rawls, John. 2001. *Justice as Fairness: A Restatement*. Cambridge, MA: Harvard University Press, p. 131. See also Rousseau, Jean-Jacques. 1997. "Second Discourse." In *Rousseau: The Discourses and Other Early Political Writings*, edited by Victor Gourevitch. Cambridge: Cambridge University Press.
- 23 Alvaredo, Facundo, Lucas Chancel, Thomas Piketty, Emmanuel Saez, and Gabriel Zucman. 2017. *World Inequality Report 2018*. World Inequality Lab, p. 80.
- 24 Arneson, Richard. 1990. "Is Work Special? Justice and the Distribution of Employment." *American Political Science Review* 84(4): 1127–47. Although his concern is with attitudes towards the unemployed, much of the analysis in this piece applies to low-earners as well.
- 25 Frank, Robert. 2010. *Luxury Fever: Weighing the Cost of Excess*. Princeton, NJ: Princeton University Press, Chapters 8–9; Scitovsky, Tibor. 1992. *The Joyless Economy: The Psychology of Human Satisfaction*. Oxford: Oxford University Press, Chapter 7.
- 26 See Smith, Adam. 1999. *The Wealth of Nations, Books IV–V*. New York: Penguin Classics, pp. 366–70. See also Arnold op. cit. and Satz, Debra. 2010. *Why Some Things Should Not be for Sale: The Moral Limits of the Market*. Oxford: Oxford University Press, pp. 185–86.
- 27 For example, see Kohn, Melvin, and Carmi Schooler. 1983. *Work and Personality: An Inquiry into the Impact of Social Stratification*. Norwood: Ablex.
- 28 I do not mean to imply that the objection that I consider in this section is the *only* non-consequentialist objection to the evaporation thesis. Other objections are available, and I remain agnostic about whether these provide compelling grounds on which to modify the claims, scope, or application of my thesis. For related discussion, whose details I lack the space to discuss here, see Hughes op. cit.; Bailey, Adam D. 2020. "Dangerous Work, Intention, and the Ethics of Hazard Pay." *Business Ethics Quarterly* 30(4): 591–602; Tsuruda, Sabine. 2020. "Working as Equal Moral Agents." *Legal Theory* 26(4): 305–37.
- 29 Satz op. cit., p. 105 and pp. 184–86; Muirhead, Russell. 2007. *Just Work*. Cambridge, MA: Harvard University Press, Chapter 4.
- 30 Anderson 2017 op. cit., p. xx [emphasis in original]. See also Gourevitch 2013 op. cit., pp. 594–96.
- 31 Anderson 2017 op. cit., pp. 53–54 [emphasis in original]. See also Anderson, Elizabeth. 2015. "Equality and Freedom in the Workplace: Recovering Republican Insights." *Social Philosophy and Policy* 31(2): 48–69.
- 32 Anderson 2017 op. cit., p. 59.
- 33 Satz op. cit., pp. 186–87. For related discussion, see Basu, Kaushik. 2003. "Economics and the Law of Sexual Harassment in the Workplace." *Journal of Economic Perspectives* 37(3): 141–57; Wolff, Jonathan, and Avner De-Shalit. 2007. *Disadvantage*. Oxford: Oxford University Press, pp. 24–31.
- 34 Anderson 2017 op. cit., p. 135 and Gourevitch, Alex. 2014. "Quitting Work but Not the Job: Liberty and the Right to Strike." *Perspectives on Politics* 16: 307–23, p. 316.
- 35 For discussion, see Mason, Andrew. 2021. "What's Wrong with Everyday Lookism?" *Politics, Philosophy & Economics* 20(3): 1–21, pp. 5–6; Mason, Andrew. Forthcoming. "Appearance as a Reaction Qualification." In *What's Wrong with Lookism? Appearance, Discrimination, and Disadvantage*. Oxford: Oxford University Press. For a further example, not involving gender, we can consider the controversial practice of dwarf tossing, in which individuals with dwarfism are hired to be used as projectiles for entertainment. It may be that the alienability objection provides us with compelling grounds on which to outlaw this practice, given the history of prejudice against individuals with such disabilities. For discussion, see Moreau, Sophia. 2020. *Faces of Inequality: A Theory of Wrongful Discrimination*. Oxford: Oxford University Press, pp. 144–46.
- 36 Satz op. cit., p. 129.
- 37 Similarly, Richard Arneson writes: 'But contracting, for example, with a construction company to work laying down a sewer pipe at a new housing development, or with a university to work providing academic instruction to undergraduate students, would not be doing anything that sufficiently resembles selling oneself into slavery to raise moral alarm bells'. See Arneson op. cit. (unpublished manuscript).
- 38 In this vein, Anderson notes that her concern 'is not on issues of wages or distributive justice. It is on workers' freedom'. See Anderson 2015 op. cit., p. 59. See also Gourevitch 2013 op. cit., p. 592; Weeks, Kathi. 2011. *The Problem with Work: Feminism, Marxism, Antwork Politics, and Postwork Imaginaries*. Durham, NC: Duke University Press, pp. 21–23.

- 39 I take these terms from Caney, Simon. 2012. "Just Emissions." *Philosophy & Public Affairs* 40: 255–300, pp. 258–59.
- 40 Anderson 2015 op. cit., p. 66.
- 41 For example, Marx claims that, under communism, labour will be 'more and more evenly divided among all the able-bodied members of society ... [as the bourgeoisie are] deprived of the power to shift the natural burden of labor from its own shoulders to those of another layer of society'. See Marx, Karl. 1995. *Capital vol. 1 in Marx Engels Collected Works vol. 35*. London: Lawrence and Wishart, p. 530.
- 42 Kandiyali, Jan. 2020. "The Importance of Others: Marx on Unalienated Production." *Ethics* 130: 555–87. See also Gomberg, Paul. 2007. *How to Make Opportunity Equal: Race and Contributive Justice*. Oxford: Blackwell Publishing, pp. 75–91; Kandiyali, Jan. "Sharing Burdensome Work" (unpublished manuscript); Walzer, Michael. 1983. *Spheres of Justice: A Defence of Pluralism and Equality*. New York: Basic Books, pp. 165–84.
- 43 For discussion, see Stanczyk, Lucas. "The Right to Free Choice of Occupation" (unpublished manuscript).
- 44 Work on this article received funding from the European Union's Horizon 2020 research and innovation program under Marie Skłodowska-Curie grant agreement 890434. For helpful comments, I thank Richard Arneson, David Axelsen, Brian Berkey, Clare Burgum, Simon Caney, Matthew Clayton, Jamie Draper, Anca Gheaus, Siba Harb, Dan Halliday, Lisa Herzog, Jan Kandiyali, Hwa Young Kim, Barry Maguire, Holly Lawford-Smith, Serena Olsaretti, Lucas Stanczyk, Areti Theofilopoulou, Dick Timmer, Andy Walton, Katy Wells, Andrew Williams, and Peter Wilson. Additionally, I am very grateful to the audience at the workshop on Egalitarianism and the Future of Work, organized by Huub Brouwer, Willem van der Deijl, and Markus Furendal, and especially to Karim Jebari, who served as my discussant on that occasion.