

A structural approach to the human right to just and favourable working conditions

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Introduction

The human right to just and favourable working conditions offers a promising way of articulating the injustice suffered by workers who toil in substandard conditions.

However, if we take seriously the objection that, for many workers living in poor countries, neither their employer nor their government can responsibly fulfil the right at this time, we may be tempted to reject the idea that there can be such a right. This paper argues that even if we accept the claim that in many cases employers and state governments cannot or should not unilaterally fulfil the right, we need not abandon the idea that it is a universal human right. In the sections that follow I propose a *structural* understanding of the right, according to which the human right outlines how *social structure* must be as a matter of fundamental justice. This is in contrast to the standard *claim-based* understanding, which requires that for there to be a human right it must be the case that for every human we can identify an agent whom their claim is against, specify what the claim requires, and show that fulfilment of the claim constitutes the fulfilment of the right and is in fact owed to the right-holder. The paper outlines how the right to just and favourable conditions of work runs into difficulties in fulfilling these conditions when understood as a claim against the individual's employer or government. The paper then suggests that if we instead identify the right as a standard that must be met by the social structure, such obstacles are averted, and

we can recognise a universal moral right held by all people at this time, even those living in places where it would be irresponsible or impossible for employers or national governments to unilaterally and immediately fulfil the right. It is explained that adopting this *structural* understanding of the right requires the rejection of the idea that strict 'claimability' (Tomalty 2014) is an existence condition for a human right.

The paper explains that the seriousness and significance of the threat of poor working conditions makes a right to just and favourable working conditions a strong candidate for recognition as a human right. It proposes an account of human rights as standards of fundamental justice that the social structure must meet for every individual. It explains that agents have a range of moral duties with regard to such demands of fundamental justice, including *collectivization* duties (Collins 2013) that require all persons to act responsively with a view to establishing and maintaining a *social structure* in which these rights are fulfilled for every contemporary human. However, it explains that it is not individual rights that justify the imposition of collectivization duties. Rather, it is the sum total of all demands of fundamental justice that justify the duties to collectivise and secure them.

The paper draws on Iris Marion Young's account of social structure (Young 2011), but it differs from her discussions of labour justice (Young 2010) in using the approach to understand the *human right* to just and favourable working conditions. The resulting account bears similarities to Pogge's discussion of human rights (Pogge 2008, 2010), but focuses not, as Pogge does, on coercively imposed institutional orders (domestic and international), but on the character of social structure more broadly construed.¹ The account of the right articulated in this paper is a form of 'broad political account' according to Valentini's typology (Valentini 2012), and the

analysis here is in keeping with Elizabeth Ashford's recommendation that we move away from requiring negative perfect duties of non-violation to correlate with human rights (Ashford 2006, 2007). The paper interprets the international human rights covenants as recognising requirements of fundamental justice that are justifiable independent of their recognition or enforcement locally, nationally or globally.

Section 1 outlines a claim-based account of human rights. It examines the models of employer and state government as primary duty-bearers and explains how critics could dismiss the right to just and favourable working conditions when it is interpreted in either of these ways. Section 2 proposes that the claim-based account could be dropped in favour of a structural account of the right that recognises it to be a social structural standard required as a matter of fundamental justice. It explains how adopting such an account can allow us to recognise such a right even when employers and governments cannot or should not immediately and unilaterally fulfil the right. Section 3 specifies that according to this approach the right does not have correlative duties the fulfilment of which *constitutes* the fulfilment of the right; thus, the account rejects direct 'claimability' (Tomalty 2014) as an existence condition for human rights. The section then identifies the duties that various agents have with regard to the realisation of human rights understood as structural requirement of fundamental justice. Section 4 defends the account from the objection that what it outlines cannot be a right because it does not offer a normative role distinct from a goal or interest. The conclusion recaps the arguments made.

Scepticism regarding the right to just and favourable working conditions

Article 7 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) states that all people are entitled to enjoy 'just and favourable

conditions of work'. It specifies that this requires: remuneration which provides a decent living for the worker and their family; healthy and safe working conditions; the reasonable limitation of working hours; and periodic holidays with pay (United Nations General Assembly 1966).² A preliminary case for this being a genuine human right will now be made based on the idea that human rights protect contemporary people from standard threats (Shue 1966) to their inherent dignity.³ Working in unhealthy or unsafe conditions threatens the life, health and wellbeing of the worker; excessive hours of work undermines health and wellbeing and prevents the worker from pursuing their interests and associating with their friends and family; if time off is not paid there is a significant risk that the worker will not be able to afford to pursue plans and nurture personal relationships; and low pay prevents the worker from adequately supporting themselves and their dependents and prevents them from pursuing their interests (where work provides the family's sole or main income, as is the case for many people in contemporary societies). Thus it is clear that work that does not meet these conditions in contemporary societies threatens workers' health and wellbeing, prevents them from exercising basic autonomy and undermines their status as social equals. On this basis, a case can be made that such work represents a morally significant threat to workers' fundamental interests and essential dignity. The extent to which people currently toil in conditions that fail to meet these standards is evidence that poor working conditions are a *standard* threat in the contemporary world. In Madagascar, 80 per cent of those engaged in waged or salaried labour live on less than \$2 a day (PPP) and over half of these live on less than \$1.25 a day (International Labour Organization 2013). At the Foxconn mega-factory in China, workers have to do thirty-six hours' overtime a month on top of the average eight hours a day, six to seven days a week, which constitute their regular hours (Fair Labor

Association 2012). Many garment workers in Indonesia are employed through agencies and do not receive paid annual leave (International Textile and Garment Workers Federation 2011), while in the Savar tragedy in Bangladesh in 2013, 1,000 workers died after their factory collapsed due to a failure to comply with basic safety precautions (Associated Press 2013).

Thus it looks as if there is a strong case for recognising a human right to just and favourable working conditions. However, according to a traditional claim-based account of human rights, in order for working standards to be a matter of human rights they must be capable of being formulated as claims of which every contemporary person could legitimately demand the fulfilment. Unfortunately, it is not clear that the issue of poor working conditions can be formulated as a moral claim that every contemporary person can demand some identifiable agent or set of agents immediately fulfil. This conundrum is the subject of this paper.

Onora O'Neill has argued that it is a mistake to formulate requirements of social justice as a matter of human rights when they do not fit the logic of a moral right (O'Neill 2005). Human rights are usually understood to be Hohfeldian claim rights (O'Neill 2005, Wenar 2005, Ashford 2006, Valentini 2012, Collins 2016). A claim right is a claim (or set of claims) to action or forbearance that is owed by some agent (or set of agents) to the right-holder. Thus valid claim rights must have valid counterpart obligations the fulfilment of which constitutes the fulfilment of the right (O'Neill 2005). Human rights are usually understood to be rights held by every contemporary human. Thus, according to this understanding of human rights, for there to be a human right it must be the case that for every person there is some agent or set of agents who has obligations to act or forbear in a way that constitutes the fulfilment of the right, and it must be the case that compliance with these obligations

is in fact owed to the right-holder (Hohfeld 1913, O'Neill 2005, Wenar 2005, Ashford 2007, Cruft 2012). Thus, according to the claim-right approach, there can only be a human right if the following conditions are met: we can identify duty-bearers for every human; what the duty-bearers are required to do can be adequately specified; the fulfilment of these obligations constitutes the fulfilment of the right; and it is the case that the identified duty-bearers do in fact owe the fulfilment of the duties identified to the right-holders.⁴

As O'Neill has noted (O'Neill 2005), for many of the socio-economic rights identified in the ICESCR it is difficult to identify agents who have specifiable duties to act in order to fulfil the right for every right-holder and who do indeed owe compliance with these duties to the right-holder. For some of these purported rights, the problem is that it is unclear how to fulfil them: it is not obvious which action should be taken because there is not one means to fulfilling the right that is salient. In other cases, the issue is determining who out of a number of potential agents should act or forbear. In a third kind of cases, the problem is that for many contemporary humans there is no existing agent who should act so as to immediately fulfil the right – either because there is simply no agent who is *able* to act so as to fulfil the right, or because there is no agent who *should* do so. Along these lines, Maurice Cranston, an early critic of socio-economic rights, argues that many purported human rights are 'impossible' (Cranston 1983). He explains that poor governments in countries that have not yet industrialised cannot possibly provide goods such as paid holidays to their populations because they lack the required wealth. Thus Cranston argues that those who live in poor countries cannot have such rights, and thus these rights cannot be universal human rights.⁵ In a critique that bears similarities to O'Neill's (2005), Cranston holds that for something to be a right it must be something that can and

should be *respected immediately in the here and now*, and not merely something that is a desirable goal or laudable aspiration (Cranston 1983).

Inspired by Cranston's and O'Neill's scepticism, let us turn to the difficulty in identifying duties and duty-bearers in the case of the purported human right to just and favourable conditions of work. Whether these difficulties really do give us grounds to dismiss the idea that there is a human right to just and favourable working conditions can then be considered.

The 'employer as primary duty-bearer' model

The right to just and favourable working conditions could be understood as a general moral right not to be employed under conditions that are not just and favourable, corresponding to a general moral duty not to employ anyone under conditions that are not just and favourable. According to this account, when an employer hires a person under conditions that are not just and favourable they violate that person's human rights. This approach to the right to just and favourable working conditions is straightforward and appealing. However, it is vulnerable to the following critique.

Some economists and moral theorists argue that we need to accept sweatshop labour as a means of improving the lives of those living in the developing world (Krugman 1999, MacAskill 2015). They argue that where a significant proportion of a country's population is barely scraping by through subsistence farming, or where there is widespread unemployment and few social benefits for the unemployed, those living in poverty have an interest in being offered paid work even if it does not meet the conditions for being just and favourable. Such critics can use the fact that many accept work under substandard conditions as evidence that this is indeed the case. In such conditions, if potential employers really do face a choice between not employing

anyone and employing them on terms that are not just and favourable because they cannot afford to pay good wages and guarantee fair conditions as well as stay in business, then offering work on conditions that are not just and favourable may be better than not offering such work. If this is the case, it is implausible that they have an all things considered duty not to offer such employment. Accordingly, there cannot be a right to not be employed under such conditions that all contemporary people can claim, and thus there cannot be a human right to just and favourable conditions of work according to the strict traditional claim-based account articulated above. This suggests that in spite of the importance of protecting the fundamental interests and essential dignity of those who work for a living, there cannot be a human right to just and favourable working conditions because in some existing conditions employers should not abstain from employing people on terms that fail to meet these standards. If we accept that there are indeed conditions in which putative employers cannot afford to offer just and favourable conditions and continue to employ people, we will either be forced to give up the idea that there can be a human right to just and favourable conditions of work, or adopt a different account of the right.

The ‘state government as primary duty-bearer’ model

According to an alternative account of the right to just and favourable working conditions, the primary duties with regard to this right falls on state governments rather than potential employers. Instead of seeing the state as having secondary duties to impose employers’ primary duties, this approach identifies workers’ rights as primarily moral claims that the *state government* must fulfil. According to this approach, where states fail to secure just and favourable working conditions for a person under their authority they fail to fulfil that person’s human rights.⁶

To this approach it could be objected that in current conditions many state governments actually have good moral reasons not to impose strict labour regulations. If this is correct, then there is not a strict duty on all state governments to fulfil this claim and thus there cannot be a universal human right to just and favourable working conditions.

It is plausible to believe that state governments have stringent moral duties to reduce poverty and not to adopt policy that makes their poorest citizens worse off. Where parts of their population are significantly deprived and lack the resources to fulfil their basic needs these duties should be given urgent priority. It has often been argued that in developing countries imposing stringent labour rights will make the poorest parts of the population worse off (World Bank 1990, Portes 1994). It can be argued, that poorer countries must offer an advantage over industrialised competitors if they are to secure adequate investment to support development and help more of their people out of poverty. This means they often have good reasons to ensure that labour remains significantly cheaper than it is in industrialised countries. In existing conditions this will often mean they should not impose labour standards that meet the conditions outlined in the ICESCR (Busse 2002). Thus it can be argued that poorer countries can only reduce poverty and support development in current global conditions if they refrain from imposing strict labour standards of the kind identified in the ICESCR (Portes 1994, Krugman 1999).⁷

If unilaterally imposing strict working conditions in the short term will undermine a country's industrialisation and thus prevent it from reducing domestic poverty, it is implausible that governments in poor countries have a duty to immediately impose just and favourable working conditions. In fact, they may have a

duty (owed to their poorest residents) not to prevent them from engaging in work that will enable them to improve their lives.

If the above economic analysis is correct and we understand the right to just and favourable working conditions as a direct claim to action or forbearance directed at state governments, we cannot recognise it as universal at this time as not everyone has a valid claim to fulfilment against their government at this time. According to a traditional claim-based approach, this means there cannot be a human right to just and favourable working conditions.

One solution to this problem is to suggest that what is required in poorer, less-developed countries is not immediate fulfilment but ‘progressive realisation’. According to such an account there is not a duty on every state government to impose a regime that secures these rights straightaway; rather, the governments of poor countries should take steps towards achieving the right in the future. This offers a promising route for understanding the duties that governments in poorer countries have with regards to the right to just and favourable working conditions. It is plausible that citizens of a state can demand that their government immediately fulfil a common core of basic rights alongside working towards achieving a full list of rights over time. Furthermore, this approach can allow us to also identify duties that fall on international actors, regional organisations and wealthy states, that require that they help poorer states to achieve the full list of rights in the long term.

However, progressive realisation is not a route that supporters of the strict claim-based conception of human rights can take for identifying correlative duties. The strict claim-based approach is committed to the idea that for there to be a right there must be duty-bearers with specifiable duties the fulfilment of which *constitutes* the fulfilment of the right for every right-holder. Progressive realisation suggests that

many states have a duty to progressively realise the right rather than a duty to fulfil it. According to the traditional claim-based approach described above, this means that, strictly speaking, such a state's citizens do not have a *right* to just and favourable working conditions but only a right to their government working towards bringing about just and favourable working conditions in the long term. This means we can only identify a human right to have efforts made to progressively realise just and favourable working conditions, and not a human right to just and favourable working conditions – a right that, according to this account, is only held by those who are citizens of developed states.⁸

In response to this problem, we could either find a different correlative duty-bearer, give up the notion that there is a human right to just and favourable working conditions, or relinquish the idea that human rights are direct moral claims to action or forbearance that every contemporary person can immediately demand of identifiable existing agents.⁹

It is not clear what other agent could be identified as having duties to fulfil an individual in a developing state's right to just and favourable working conditions: there is no global government that can be held responsible for fulfilling these rights, and the global population is not currently an agent because it lacks both the decision-making mechanism or the 'we-intentions' that are required for group agency (Tuomela and Kaarlo 1988, Isaacs 2011).¹⁰ In the absence of another candidate duty-bearer, we would be wise to consider a move away from a strictly claim-based account that identifies human rights *as* direct claims to action or forbearance owed to every contemporary person by a specified existing agent. Doing so opens up the possibility of a different understanding of human rights. In the next section I propose a *social structural* approach to the right to just and favourable working conditions.

This approach shares the traditional moral approach's commitment to recognising human rights as moral demands that all contemporary persons can make, yet it envisions them as being *standards* that the social structure must fulfil as a matter of fundamental justice rather than as *direct claims* to action or forbearance directed at some existing *agent*.¹¹

A structural account of the right

We could understand the right to just and favourable working conditions as a standard that the social structure must meet for every human as a matter of fundamental justice. Such an approach responds to the fact that work done under conditions that are not just and favourable undermines the basic interests and essential dignity of workers by suggesting that fundamental justice requires a social structure in which all people are *secure* from such work. Such an approach understands every individual as having a *right* not to be in a *social structural position* in which they are vulnerable to being subjected to conditions at work that are not just and favourable.¹²

This approach builds upon Iris Marion Young's concept of social structure. Drawing on Rawls' concept of 'basic structure' (Rawls 1972), Young identified social structure not as a distinct part of the social world, but as a particular way of looking at the whole of social life (Young 2006, 2011). Young described how social institutions, practices and processes come together to enable and constrain people in particular ways and thus have a pervasive impact on their lives. Social structure understood in this way is a basic sociology that tracks various positions within society and the relationships between them, recognising trends and patterns that persist over time. In a similar vein, A.J. Julius (2003) elaborates on the concept of 'the basic structure', describing it as a sort of crude sociology that tracks how individuals face certain

situations and then reproduce those situations over time through the pattern of actions those situations tend to induce them to take. Julius explains that in this way the basic structure is relatively stable over time.

According to the structural approach to the right to just and favourable conditions of work, an individual's right is only fulfilled when they are in a social structural position where they are *secure from* unfavourable and unjust working conditions, rather than it being fulfilled when they happen to receive just and favourable conditions of work from their employer. According to this approach, human rights primarily concern not the conduct of individuals but the nature of social structure. This account recognises the fact that being *vulnerable* to substandard pay and working conditions is a significant injustice even when this vulnerability does not result in actually working under such terms and conditions.¹³

An agent is in a structural position where they are vulnerable to accepting work under conditions that are not just and favourable when their available options for making a living involve accepting work under conditions that are not guaranteed to be just and favourable or accepting other burdens that they have reason to consider to be even worse. This is the case when the burdens attached to other options are either objectively worse than work that does not meet the conditions for being just and favourable, or when these options undermine or violate the individuals' fundamental commitments or deep preferences (Taylor 1985).¹⁴ In general, those who live from their labour are vulnerable to accepting work under conditions that are not just and favourable when for the jobs for which they are eligible (that is, able to access and perform) there is a 'buyers' market' in employment (labour supply significantly exceeds demand) and poor treatment at work is not effectively prevented by governmental coercion or social sanction.

The right to just and favourable working conditions, understood as a right to be in a social structural position in which one is not vulnerable to accepting work on terms that are not just and favourable, is multiply realisable: many iterations of social structure would fulfil this standard. In order to better understand what the structural interpretation of the right requires, some ways in which the standard could be met will now be outlined.

In a modern globalised economy, all strategies for the fulfilment of the right to just and favourable working conditions are unlikely to work if applied only within one state that is open to global markets, as this is likely to lead to production moving abroad. Thus, in order to avoid a ‘race to the bottom’, securing workers’ rights requires collaboration across borders in order to effectively regulate labour markets. This could be done indirectly by adopting international measures that enable states to effectively enforce standards, or directly by regulating the global labour market using international governance agencies.¹⁵

One way in which a social structure could comply with the human rights standard would be for effective governing agents to impose a regime that reliably prevents workers from being subjected to poor conditions at work. This could be achieved by the coercive imposition of minimum conditions by an effective leviathan (like a state government). Such an approach protects employers from the downward pressure on wages and conditions and thus allows them to pay their workers more while maintaining profitability. In doing so it protects employees from poor treatment. This approach involves coercively imposing legal duties that resemble the duties discussed above in the interactional ‘employer as primary duty-bearer’ approach. Thus, the structural approach identifies the coercive imposition on employers of a

duty to provide decent conditions as one *possible means* to fulfilling the human right to just and favourable working conditions.

Non-vulnerability to indecent conditions could also be secured by improving the bargaining positions of those who have reason to work. This could be done by providing an independent source of income, or guaranteeing a certain level of wealth. A basic income scheme of the kind advocated by Van Parijs could potentially achieve this if provided at a sufficiently high level (Van Parijs 1992, Standing 2005). The growth of a strong trade union movement that improves pay and conditions by increasing the bargaining power of labourers through coordination and collective bargaining could also improve pay and conditions and prevent vulnerability, and in this way secure the right to just and favourable working conditions. A social structure could also meet the standard through governing agents organising production in a way that is not based on wage labour. This would involve imposing a system for governing property and working relations that does not leave a sector of the population non-reciprocally dependent on others.

Duties with regards to requirements of fundamental justice

The structural approach to the right to just and favourable working conditions suggests that people around the world must live in a social structure in which they are secure from poor working conditions. Thus, the right outlines fundamental justice standards that the social structure must meet with regard to every individual. Unlike the traditional claim-based approach, the structural approach does not identify human rights as direct claims to action or omission by some existing agent or set of agents. Thus it rejects claimability as an existence condition for human rights: it suggests that people can have a human right even in the absence of the identification of a duty-

bearer and a duty the fulfilment of which constitutes the fulfilment of the right and is owed to the right-holder.

However, the existence of such a right does affect what individuals, and collectives, have reason to do because these agents have stringent duties per the requirements of fundamental justice (and human rights are a matter of fundamental justice). Below, some of the duties agents have with regard to achieving fundamental justice will be briefly explored. However, I will resist the idea that the right is a direct claim that agents fulfil the duties specified. According to the structural account, it is not individual rights that justify the imposition of individual duties. Rather, it is the sum total of all human rights that justify all the duties to collectivise and secure them. Thus the account proposed states that the right is a standard that the social structure must meet as a matter of fundamental justice and not a claim to action or omission by any particular agent or agents. Thus the articulation of these duties should not be taken as part of the articulation of the right itself.

The duties outlined below are pro-tanto duties. This means they are duties that the named agents should comply with unless there is some special circumstance that can justify their non-compliance. The importance of ensuring fundamental justice means that there will be few other moral concerns that can excuse non-compliance. However, in some cases there will be circumstances that make it unreasonable for agents to comply and thus their non-fulfilment is excused. These will typically be cases where the agent is either unable to fulfil the duty or can only do so by violating some even more stringent requirement of morality.

Individuals

No individual can unilaterally ensure a social structure in which no person is in a social position where they are vulnerable to accepting work under conditions that are not just and favourable. However, individuals can contribute to the realisation of such a right. We can identify all persons as having a pro-tanto ‘collectivization duty’ that require they work towards fulfilling the right alongside fulfilling other demands of fundamental justice.

A ‘collectivization duty’ is defined as ‘a duty to perform responsive actions with a view to there being a collective agent that can reliably address a morally pressing circumstance’ (Collins 2013). According to Collins' (2013) account, once the individuals have established a collective agent, the agent gains a duty to perform a circumstance-addressing action. She explains that, in order to fulfil this duty, the collective must decide on a plan of action and assign duties and responsibilities to members who together will address the circumstance effectively. She proposes that after the collective has been formed, each member of the collective has a duty to perform the role assigned to them by the collective in the collective action to address the circumstance. Collins also suggests that in less complex situations individuals can act responsively to address a morally pressing circumstance without creating a formal collective with a full decision-making mechanism. Instead, they simply react to each other’s actions so as to sensibly address the situation directly. This works best when there is obviously a single best way to respond to the circumstance.¹⁶

In the case of fundamental standards of justice (like the human right to just and favourable working conditions) we can identify every capable human (including those currently vulnerable to work that is not just and favourable) as having a pro-

tanto collectivization duty. This duty requires the individual to act responsively with a view to establishing a collective able and willing to ensure the social structure fulfils standards of fundamental justice. Once formed, such a collective can alter the structure by regulating action, reforming social practices and directly intervening to ensure that requirements of fundamental justice are met. Such a collective gains a duty to fulfil this task upon forming. To discharge the duty the collective will assign duties, roles, obligations and responsibilities. Those who are assigned duties, roles and obligations by the collective will then have a moral duty to fulfil those, so long as the allocation of assigned duties is not grossly unfair, compliance does not violate other moral duties, and the collective's plan offers a potential means of promoting justice, all things considered.¹⁷ It is important to also note that even after such a collective has been formed, individuals retain a duty to take responsive action to ensure that the collective can and does discharge the responsibility fairly and effectively. This means that where there is a collective that can and should ensure a social structure that fulfils human rights, individuals will have duties to ensure that it does so. When a collective agent with a duty to fulfil human rights fails to adequately fulfil standards of fundamental justice, then individuals will have duties to act responsively in order to ensure that the collective agent reforms so as to fulfil the right. This will usually require individuals to form a smaller collective (like a pressure group) and take necessary (and permissible) political action(s) to ensure that in the future the larger collective fulfils its obligations.

All people have duties to collectivise in order to achieve the fulfilment of demands of fundamental justice as part of their positive duty to promote and support justice. Individuals also have duties to ensure the social structure fulfils human rights standards, because they contribute to the reproduction of social structure. Where the

social structure reproduced by individuals fails to meet human rights standards, those individuals have contributed to the reproduction of a structure that violates human rights. In such circumstances, individuals could avoid future contributions to this violation of human rights if they form a collective and act together to regulate behaviour or alter practices so as to avoid the future structural violation of these rights. Thus it could be argued that all capable people have duties to collectivise as a way of lowering the risk of their contributing in the future to the structural violation of the right.

Responsive action that aims at establishing and maintaining a collective capable of alleviating the structural violation of human rights increases the chance that a collective will be formed and maintained. If such a collective is formed and maintained it can reliably regulate action and take intervening actions to prevent the structural violation of human rights. Thus, responsive action aimed at establishing and maintaining such a collective is a *reasonable precaution* that those who contribute to social structures that violate human rights must take. If an agent takes such responsive action they will reduce the risk of the structural violation of human rights resulting from the aggregation of their own actions with those of others in the future. The idea of a precautionary duty to avoid future contributions to unjust social structures is something I have discussed at greater length elsewhere (Kahn 2014, 2016).

Employers

Employers and the individuals that are part of employer companies also have the positive and negative collectivization duties outlined above (provided they are the sort of agents that can have moral duties). Furthermore, their close connection to workers may mean they have additional moral reasons to work towards a social structure that

secures workers' access to just and favourable working conditions and ensures their workers are not vulnerable to working under conditions that are not just and favourable.

In additions, such agents could have pro-tanto duties not to employ others on conditions that are not just and favourable. This duty is important and in most circumstances if agents fail to fulfil it they are at fault. However, it is important to recognise that there are circumstances (such as those discussed in the employer as primary duty bearer section above) in which failure to comply with this pro-tanto duty is permissible. In non-ideal conditions of significant injustice, persons and organisations will sometimes face a scenario where they have a choice between employing people on terms that are indecent or leaving them to face an even worse fate. In these conditions it is not clear they should be condemned if they employ individuals on terms that are not just and favourable. In non-ideal conditions this duty will be trumped by the need to improve the prospects of those who are extremely badly off.

Governments

The structural approach recognises that state governments have duties to secure social structures of the kind outlined above within their territories as far as this is possible while fulfilling other urgent claims of fundamental justice, including reducing extreme poverty. Where current conditions make it unwise or impossible to immediately and unilaterally fulfil the right, state governments have duties to progressively realise the right by working with local, regional and global institutions and organisations to take steps to secure the structure required. These are collectivization duties: they require that state governments act responsively with a

view to establishing a broader collective willing and able to reform structure in such a way as to secure individuals from vulnerability to working under conditions that are not just and favourable. In current conditions of globalization this will require their collaborating with governments, international governance agencies and in some cases NGOS and multi-nationals.

Summary of duties

The structural approach understands people as having a legitimate claim not to live within a social structure in which they are vulnerable to accepting work on terms that are not just and favourable. With regard to this right, the account recognises a number of duties falling on different agents at different levels. All capable moral agent have duties to collectivise and secure the right in order to promote or maintain fundamental justice standards and as a precaution against contributing to future fundamental injustice. Governments (as agents formed via collectivization in order to secure justice) have a duty to secure the right immediately if they can responsibly do so, and if not, a duty to progressively realise the right collaborating with other governments and international institutions where necessary. It has been noted that effective collectivization to secure the right to just and favourable working conditions will involve the collective assigning and enforcing duties of various kinds, and that agents will have a moral duty to comply with these duties if doing so is morally permissible and the distribution of burdens and benefits is not grossly unfair. It has also been suggested that all agents have a pro-tanto moral duty not to employ others on conditions that do not meet the standards outlined in the right.

In order to complete this survey of duties that agents have with regard to the right to just and favourable working conditions understood as structural standards, we

should also note that all agents have a duty not to act in such a way as to increase individual's vulnerability to working under conditions that are not just and favourable either individually or as part of a collective. This rules out taking action to undermine governance institutions or norms that protect the right. It also rules out taking individual or collective action that alters policy or norms so as to increase the vulnerability of a sector of the population to working in conditions that are not just and favourable.

Example

I would like to conclude this section by offering a concrete example of individuals, governments, employers Trans-National Corporations and NGOs fulfilling collectivization duties to pursue the fulfilment of the right to just and favourable working conditions (understood structurally). The accord on fire and building safety in Bangladesh is an example of the sort of action recommended by the account of collectivization duties outlined in this paper. The accord is a legally binding agreement, brought about by trade unions in collaboration with the International Labour Organization, the Bangladesh Ministry of Labour and Employment, trans-national retailers, the Bangladesh Garment Manufacturers and Exporters Association and NGOs. It seeks to secure safe working conditions for garment workers in Bangladesh and is a great example of the sort of efforts that the theory here suggests are required (Evans 2014, Bangladesh 2017). The action involves the forming of a collective and the undertaking of coordinated action aimed at making a structural change that effectively improves the security of safe and healthy conditions for garment workers in Bangladesh and thus improves the fulfilment of the right to just and favourable working conditions for the Bangladeshi

working class. The initiative seeks to preserve the garment industry of Bangladesh and the jobs it creates while securing much better conditions in terms of health and safety. Consumers contribute to the structural change by supporting the NGOs that helped bring it about, utilising retailers that signed the agreement and boycotting those companies (Walmart and Gap) that source from Bangladesh but refused to join the accord. Those assigned duties under the accord gain moral duties to comply with its demands. The wider public gain duties to monitor the situation and take responsive action if the accord breaks down or is undermined.

Is this really a matter of human rights?

Understanding the right to just and favourable working conditions in structural terms involves rejecting the traditional account of human rights that specifies that they must be direct claims to action or omission made of identifiable agents. To such an approach it could be objected that since the 'right' identified is not a direct demand for action or omission by an identified agent it should not be identified as a *right* but should instead be acknowledged to be a goal for social policy (Cranston 1983, O'Neill 2005).¹⁸ Critics could argue that the account of the human right to just and favourable working conditions articulated here does not fulfil the distinct normative role that the term 'right' plays in moral analysis. They could insist that we reserve the term 'right' for direct claims to action or forbearance owed to a particular individual and thus reserve the term 'human right' for identifying valid and urgent claims to action or omission that all contemporary persons can make of identifiable agents.

So long as it is acknowledged that not all of the urgent priorities of justice owed to every individual are human rights then there is nothing internally inconsistent with this way of understanding the situation. However, I would argue against such an

approach as follows. At present the concept of a ‘human right’ is often used to identify the most important demands of fundamental justice that are urgently owed to every contemporary individual. These rights are widely understood to take priority over demands of justice that are not human rights issues. In such a context, restricting the list of human rights to those that can be formulated as valid claims to direct action of forbearance from identifiable agents for all contemporary individuals is problematic. Doing so forces us to identify only concerns that can be achieved for all through unilateral action or omission by existing agents as being fundamental and taking priority. It would be a mistake to assume that only that which can be achieved by unilateral action by existing agents can be an urgent requirement of fundamental justice owed to every contemporary individual. To do so would be to arbitrarily relegate to a lower level any claims that in current circumstances require collectivization to be achieved. This creates a status-quo bias and condemns those living under governing institutions that lack power due to internal or external constraints to having lesser rights.

To avoid the arbitrary prioritisation of those requirements of justice that do not require collectivization to be achieved, we must either expand the understanding of a human right to go beyond direct claims on existing agents to action or forbearance, or admit that human rights should not trump all other concerns of justice – and thus accept that human rights do not cover all the urgent requirements of fundamental justice owed to individuals. Given the prevalent use of the term ‘human rights’ in current public discourse and existing human rights practice, it seems to me preferable to embrace a broader understanding of what can be a human right in order to allow the inclusion of primarily structural claims that require collectivization to be met for all agents in current conditions.

Conclusion

The structural approach to the right to just and favourable working conditions identifies the right as requiring that no agents be in a social position in which they are vulnerable to working in conditions that are not just and favourable. Thus, it recognises the right as identifying minimum conditions that the social structure must meet for every person as a matter of fundamental justice. It takes the question of what duties agents have to promote the fulfilment of requirements of fundamental justice as a secondary question. However, it does recognise that identifying something as a requirement of fundamental justice affects the moral duties of persons, governments and organisations.

The account outlined above is controversial in its disconnection of rights from duties. According to the structural account, it is not individual rights that justify the imposition of individual duties. Rather, it is the sum total of all human rights that justify all the duties to collectivise and secure them. This is a radical departure from traditional accounts of human rights. However, this approach is in keeping with the contemporary use of the term ‘human rights’ to identify a series of internationally recognised demands of justice owed to individuals.

The structural account is also controversial in that it does not identify the primary role of human rights as being to protect individuals from collectives. It suggests that human rights are just as much about protecting individuals from social forces as they are about protecting individuals from powerful collectives. It recognises that essential dignity and fundamental interests need to be secure not just from the intentional actions of powerful collectives but also from aggregative harms that emerge from individuals’ actions (Kahn 2014). By acknowledging this fact, the

account avoids a bias towards only protecting individuals' fundamental interests and essential dignity from powerful collective agents.

The key advantage of the structural approach over the traditional claim-based approach to the right to just and favourable working conditions is that it outlines a right that can exist even in non-ideal conditions where there are sectors of the population that could benefit from employment under conditions that do not meet basic standards. In these conditions there can still be a right to a social structure in which low-skilled workers are no longer in such a position. By understanding the right in this structural way we formulate a fundamental claim of justice that all contemporary individuals can make that is not vulnerable to the economic objections outlined in this paper.

Furthermore, the validity of this demand is not dependent on the abilities of existing governing arrangements. In fact the right can be used to criticise these arrangements and demand change. The right is limited not by existing governance arrangements but by what existing agents can reasonably be expected to achieve through collectivization. This means that workers across the world can be identified as having a right to just and favourable working conditions in contemporary times. This right is neither impossible nor unreasonable when understood as primarily outlining a standard that the social structure must meet as a matter of fundamental justice.

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Notes

1. Pogge's prioritisation of 'official disrespect' and concern for what is *coercively imposed* moves his final account away from seeing rights as outlining conditions that social structure (broadly construed) must fulfil.
2. This paper focuses on aspects of the ICESCR that concern securing adequate conditions of work rather than ensuring fairness in treatment relative to others (equal pay for equal work and equality of opportunity for promotion). The choice is not made because the demands concerning non-discrimination are less important; rather it is because it is rights to a decent standards that can be criticised on the basis that a duty to provide such things cannot reasonably be claimed at this time in all places. The argument against fairness requirements being fulfilled at this time is less plausible.
3. The use of the term 'favourable' in the ICESCR implies that the required working conditions go beyond the minimal standards required in order to avoid undermining the fundamental interests or essential dignity of those who work for a living. However this is misleading, as the conditions outlined in the convention can plausibly be understood as being required in order to avoid undermining workers' fundamental interests or essential dignity in contemporary societies.
4. O'Neill (2005) suggests that for there to be a human right it must be the case that for each human every other person is a duty-bearer. However, there is no need for the duties must be universal. What really matters is that the claims are universal: that every contemporary human can make them. My interpretation of the claimability requirement is more demanding than that suggested by Jesse Tomalty (2014) who only requires that rights have a direction and an object.
5. He also objects that workers' rights cannot be human rights because not all humans are workers. However, as this paper outlines, we can formulate the rights to just and

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- favourable working conditions in such a way that avoids this issue by identifying it as a right not to be employed under conditions that are not just and favourable.
6. Cranston (1983) appears to adopt this understanding in his critique of many purported human rights as 'impossible', as discussed above.
 7. This understanding of the economics of the situation can be disputed. There is research that suggests that labour regulation and union activity have positive outcomes for the poor even in industrialising countries (Freeman 2009). Some suggest that, in fact, developing countries can adopt higher wages without undermining development or lessening investment. Rather than engaging with this empirical dispute I will assume that the economists who warn against the immediate imposition of strict labour standards by governments in poorer states are correct, and explore whether this gives us reason to dismiss the idea that there can be a human right to just and favourable working conditions. I explore whether a philosophical account of the right can survive such a critique.
 8. In keeping with this way of dealing with difficulties regarding claimability, Collins (2016) has suggested that there is a human right to socio-economic *consideration* rather than a human right to subsistence.
 9. Alternatively, we could reject the economic analysis offered above and insist that state governments can fulfil the right to just and favourable working conditions in current conditions while developing their economies and reducing poverty. We can then retain an account of the right as a direct claim on state governments.
 10. For a rejection of the agency condition for duty-bearers and an account of the global population as duty-bearer in spite of its lack of agency, see Wringer (2010).
 11. One response for those wishing to rescue human rights from the traditional claim-based approach is to recognise rights as interests that are sufficient to ground moral duties. This approach weakens the traditional account of the logic of rights by not requiring that rights always result in a duty compliance with which cannot be excused and the fulfilment of which constitutes the fulfilment of the right. According to such an account, the duties that result from a right can change depending on the circumstances. This approach must defend itself from the worry that it reduces human rights to significant human interests and thus makes the term 'right' redundant. For further discussion see Cruft (2012) and Tomalty (2014).
 12. Henry Shue's (1996) proposal that a right provides a rational basis for a justified demand that the actual enjoyment of the substance of a right be socially guaranteed against standard threats shares some elements in common with the structural interpretation outlined here. The structural approach suggests that the right primarily requires that the substance (just and favourable working conditions) should be socially guaranteed from standard threats.
 13. This is in keeping with the idea that domination is unjust even when the dominated do not suffer interference because a dominus chooses not to exercise their power in ways that harm or restricts them (Pettit 1997, Young 2011).
 14. By a fundamental commitment I mean a core part of an individual's motivational set that they hold as key to living a good life. According to this definition an individual can still be vulnerable to accepting work under conditions that are not just and favourable when work is available under just and favourable conditions if that work requires engaging in practices to which they are fundamentally opposed.
 15. For further discussion see Ronzoni (2016).
 16. Collins' account shares some of the features of Virginia Held's account (1970) of responsibilities that can fall on a random collective. Held expresses a similar idea to Collins, but instead of distinguishing collectivization duties she identifies the aggregate as having a responsibility. This approach is more controversial than Collins' because it involves assigning responsibility to a non-agent.
 17. This to some extent reflects Ronald Dworkin's complex account of associative duties (1986). Dworkin lays out how individuals gain specific duties based on their non-voluntary membership of associations so long as those associations meet certain standards. This section also draws to some extent on the work of Collins and Lawford-Smith (2016) regarding the transfer of duties to states but differs from their account in some respects.
 18. An anonymous reviewer helpfully brought this worry to my attention.

Notes on contributor

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