



The right to care in the workplace: In favour of open search processes

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Abstract

A sustainable society requires structural changes. A right to care can be an important contribution for this transition. This article analyses how labour law could contribute to recognising and implementing a right to care. It focuses on individual rights to flexibility in the workplace. Examples from German law are used to demonstrate how legal theories of the juridical form help to explain the conceptual problems in aligning these individual rights with collective bargaining. The article discusses how supplementing individual rights with positive duties to establish open search processes could foster open-ended processes involving a variety of stakeholders, putting all existing infrastructures and routines up for a discussion of possible options, modifications, or alternatives. Finally, it defends this utopian approach in view of the realisation that the world we live in makes it hard to imagine that such fundamental steps to emancipation can really be realised.

Key words

Labour law, care work, legal theory

Resumen

Una sociedad sostenible requiere cambios estructurales. El derecho a los cuidados puede contribuir de forma importante a esta transición. Este artículo analiza cómo el derecho laboral podría contribuir a reconocer y aplicar el derecho a los cuidados. Se centra en los derechos individuales a la flexibilidad en el lugar de trabajo. Utilizando ejemplos de la legislación alemana, se demuestra cómo las teorías jurídicas sobre la forma jurídica ayudan a explicar los problemas conceptuales a la hora de armonizar

This article provides an overview of the ideas presented in the forthcoming book "Labour Law and the Gender of Work. Fostering Solidarity by Accommodating Individuals, due to be published by Bristol University Press in early 2027.

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dichos derechos individuales con la negociación colectiva. Además, se examina cómo, al complementar los derechos individuales con obligaciones positivas para establecer procesos de búsqueda abierto, se podrían fomentar procesos de carácter abierto en los que participen diversas partes interesadas, sometiendo todas las infraestructuras y rutinas existentes a un debate sobre posibles opciones, modificaciones o alternativas. Por último, se defiende este enfoque utópico ante la constatación de que el mundo en el que vivimos hace difícil imaginar que en realidad se puedan dar tales pasos fundamentales hacia la emancipación.

Palabras clave

Derecho laboral, derecho a los cuidados, teoría jurídica

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1. Introduction

Some time ago, the German Federal Labour Court (*Bundesarbeitsgericht*, BAG) dealt with the case of an employee (let's call her "E") who worked in the sales department of a DIY store (BAG 16 Dec 2008, case 9 AZR 893/07). The store employed a total of 24 workers and opened from 8:00 am to 8:00 pm, Monday to Saturday. Employees in the sales department worked on a rolling shift system over five working days. Initially, "E" worked full-time, but then had a child and started working part-time while on parental leave. At the time of the dispute, she lived alone with her son, who attended nursery school daily from 8:00 am to 3:00 pm. At the end of her parental leave, "E" therefore wanted to reduce her working hours from 37.5 to 30 hours per week and arrange these as 8:30 am to 2:30 pm, Monday to Friday, with a maximum of two Saturdays per month.

She invoked Sec. 8(1) and (4) of the German Act on Part-Time Work and Fixed-Term Employment (*Teilzeit- und Befristungsgesetz*, TzBfG), which requires employers to agree to a reduction in working hours at the employee's request and determine their distribution in accordance with the employee's wishes, notwithstanding operational reasons to the contrary. However, the employer refused to accommodate her wishes, referring, among other things, to a collective agreement with the Works Council (the legally constituted employee representative body) which distributed the shifts evenly among all employees. The Works Council agreed with the employer; after all, working during the afternoon and evening, as well as on Saturdays, was considered burdensome by all.

As a result, the law left the courts with two options: Either to disregard "E"'s request, which is what the court decided to do, or to accommodate her by disrupting the collective agreements. Rather than taking a position on these two options, this contribution critiques the dynamic of choosing between an individual right (which is how the law constructed "E"'s request) and collective interests (represented by the Works Council and the collective agreement). Instead of arguing that "E" should have won, this contribution explores a third option in which neither "E"'s rigid view of her desired working hours nor the employer's rigid organisation of the workplace are taken for granted – an option based on duties rather than rights, designed to opening up work organisation as a collectively inhabited structure (Sturm 2008).

The article begins by revisiting the approaches of rights and proactive duties that have been developed for the accommodation of private *dare* work in employment (2), and then criticises rights-based approaches, using theories of legal subjectivity and collective labour subjectivity, thereby explaining how individual accommodation rights can clash with collective bargaining and representation (3). It posits that new regulatory approaches could help bring in the societal dimensions of an individual conflict, while at the same time contribute to building sustainable relationships between people. In particular, the article analyses the potential and the pitfalls of "open search processes", which are designed to put existing infrastructures and routines up for a discussion of possible options, modifications, or alternatives, by involving a range of actors in a transformative process (4). Despite the fact that, in the world we live in, this will ultimately not engender fundamental change and emancipation on a broader level, the conclusion defends this approach (5).

2. Legal approaches: Rights and proactive duties

2.1. *Private care work in the economy and in law*

The International Wages for Housework Campaign (IWFHC) in the 1970s prominently called for the recognition of private and unpaid care work. The demand for wages for housework was controversial from the outset. Kathi Weeks (2011, 113–118) concludes that “one would be hard-pressed to find a political vision within feminism that has less credibility today than wages for housework”. However, the demand was not necessarily intended to be taken literally as a policy goal. Silvia Federici (2012, 26), for example, saw it as a revolutionary perspective: a “force of demystification and denaturalisation” (Weeks 2011, 113–118) and a critique of gender roles in capitalist societies. By focussing on valuing unpaid labour, these movements put forward the notion that domestic work is work in the first place (Silbaugh 1996, 24–25).

In some ways, the movement has been successful. It is now widely acknowledged that care work in all its forms, including sex work has to be recognised as work (Kotiswaran 2014, 138, 2022, 861–863). The most significant step in this regard was the inclusion of all “activities and relations involved in meeting the physical, psychological, and emotional needs of adults, children, the elderly, and the disabled” in ILO statistics and policies (ILO 2018, 6, 10; 2019, 34, 40).

Still, there is a long way to go, to achieve equal recognition and redistribution of care work in modern societies. After all, the invisibility and undervaluation of care work is part of a social organisation of work that systematically and unfairly divides labour between women as carers and men as producers.

The concept of a right to care is one way in which the goal of recognising and redistributing care work can be expressed in legal terms. Recognising it at a constitutional and/or human rights level (Gerhard 2018, 335) would provide an overarching framework for various legal and political areas (Busby 2011, 10–11, 33–38). The Inter-American Court of Human Rights’ (IACtHR) Advisory Opinion OC-31/25 of 7 August 2025, which recognised care as a human right within the framework of the American Convention on Human Rights, could provide inspiration.² For example, it shows that the “right to care” partly serves as a metaphor for various regulatory instruments, not all of which are “rights” in the strict sense.

2.2. *Labour law approaches to recognising private care work*

Labour law is just one area in which the right to care would have to be implemented. Out of its many aspects, the one that is most relevant for labour law is “the right of every person to have the time, space, and resources necessary to provide, receive, or procure conditions that ensure their comprehensive well-being and allow them to freely develop their life project, in accordance with their abilities and stage of life” (IACtHR OC 31/25, sec. 113).

This concept is facing significant barriers. Today’s standard employment relationship is the result of the gendered division of labour, as well as the racialised invisibility and

² English version of the advisory opinion: <https://jurisprudencia.corteidh.or.cr/en/vid/1088056961>.

undervaluation of care work, as it has developed from Fordism through the structural transformations of the past 30 years (fissuring, digitalisation and increased female labour market participation; see Fudge 2017). The standard employment relationship treats workers as individuals without relationships or dependencies outside the workplace. In social policies, it is closely linked to either a family breadwinner model or a supplementary income model. Consequently, care work is treated as a residual factor in the economy. In other words: Standard employment is organised in such a way that those who take on care work experience the “caregiver conundrum” (Porter 2023, 15-32), i.e. problems of “reconciliation” (Busby 2011).

Nevertheless, there have been major legal developments towards recognising the private care work of employees at least partly, ranging from banning women from employment considered incompatible with private care work (a) to granting accommodation rights to parents and carers (b), and obliging employers to change workplaces to integrate private care work (c).

2.2.1. Protecting female workers from employment

The debates and legal developments around the ban on women’s night time employment are testament to important and fundamental debates surrounding women’s private care work and labour market participation. Dagmar Schiek (1996, 312) has retraced these debates in the European context. She illustrates the various reasons behind the prohibition of women’s night work, ranging from health concerns when private care work is combined with employment, to the desire for women to fulfil their so-called familial duties, to the intention of improving men’s position in the labour market or reintegrating them after war. Deborah Dinner (2018, 284–286) tells a similar story for the US. She mentions the disputes within the women’s and labour movements regarding not only night work, but also other restrictions on women’s working hours (see also Conaghan 2006, 110-114, for England).

The beginning of the end for these laws in Europe came with a French case in which the European Court of Justice ruled that bans on women working at night violate European equality law (ECJ 25 July 1991, case C-345/89 (Alfred Stoeckel), ECLI:EU:C:1991:324).

2.2.2. Accommodation rights for employees

Following this discussion, legislators and scholars have considered how labour law could adequately address the fact that the situation of most private carers is not compatible with night work or long hours in employment.

In Germany, the ban on women’s night work was replaced with the right for all night-time workers to request a daytime job if they are caring for children and/or others in need of special care.³ This is an example of how private care work has been integrated into employment regulations through individual accommodation rights (for this framing see Waddington and Hendriks 2002, Wenckebach and Kocher 2013). These rights exist alongside different kinds of leave for parents or other carers and are

³ However, this right can only be invoked if no one else in their family or household can take over the care work (Sec. 6 (4) b) and c) Working Time Act (*Arbeitszeitgesetz*, ArbZG)).

sometimes complemented by allowances or wage replacement benefits (see, for example, Fredman and Fudge 2013, 121).

Some conceptual changes have coincided with a shift in terminology from parental leave to work-life balance. Working time flexibility, or more specifically the right to flexible working arrangements, has increasingly become the predominant legal tool corresponding to work-life balance as a “socio-technical strategy” (Grabham 2016; cf. Fudge 2005, 272–287). The shift in EU law from the Parental Leave Directive (2010/18/EU) to the Work-Life Balance Directive (EU) 2019/1158 is indicative of this development.

2.2.3. Proactive duties for employers

Proactive duties are a different legal instrument altogether. For instance, some European countries have enacted legislation that obliges employers to develop gender equity/gender equality plans.

The focus of most of these laws is on equity in employment and promotion, including equal representation on corporate boards and pay transparency (comparative overview: European Network of Legal Experts in Gender Equality and Non-Discrimination 2025, 21–24). In Germany, there are proactive duties in the public sector at federal and regional levels, providing preferences for women in recruitment and promotion, and granting employees the right to request family-friendly working conditions. They also oblige public employers to design workspaces that enable the conciliation of private care work and employment for all employees.

For example, Sec. 15(1) of the Federal Gender Equity Act (*Bundesgleichstellungsgesetz*, BGleG) (Boll 2025 on the application for third genders) establishes the proactive duty of public employers to “offer working hours and other conditions that make it easier for all employees to balance family or care responsibilities with their professional activities, provided that this does not conflict with compelling official or operational requirements”. These offers can include opportunities for childcare or care for persons in need of care, including appropriate counselling and referral services. Furthermore, according to Sec. 13(1)(2), the inventory on which the gender equity plan must be based has to include “an analysis of how women and men have used measures to improve the compatibility of family, care and work”. The equality plan must then specify “how and by when the compatibility of family or care with work is to be improved, and in particular how men can be encouraged to take advantage of opportunities that facilitate such compatibility” (Sec. 13(2) No. 2). The most important regulation in these laws is perhaps the establishment of equality officers, i.e. persons explicitly tasked with monitoring the implementation of gender equality in the workplace (see Secs. 19–36 BGleG).

Outside of the public sector, there appears to be limited experience with proactive duties to promote the integration of private care work into employment. This is what makes the detailed proposals for gender equity laws brought forward by the German Women Lawyers Association (*Deutscher Juristinnenbund*, DJB) so interesting. The organisation has developed two concepts: a general one, “Gender Equity for the Private Sector”; and a specific one, “Flexitime” or “Working Time by Choice” (*Wahlarbeitszeitgesetz*) (*Deutscher Juristinnenbund* (DJB) 2016, 2021/2025, Hensel 2022; cf. Pfarr 2001). The

flexitime proposal, in particular, is designed to facilitate the integration of private care work with employment. The concept requires employers to conduct an analysis/inventory of working time rules, practices, employee preferences, and organisational constraints within the establishment. Based on this information, employers would have to develop a general model of flexible working hours for their organisation in collaboration with employee representatives (regulated self-regulation, reflexive law).

2.3. Proactive duties vs rights

Proactive duties are geared directly towards structural changes. This is why Fredman (2022, 362 seq.) considers proactive duties to be the most effective and efficient approach to fight discrimination.

However, none of the Acts or concepts mentioned above relies solely on proactive duties, but rather establish or acknowledge the right to adjust working conditions, particularly working hours (e.g. Secs. 15–17 BGlG). With good reason: Anti-discrimination is about empowering individuals whose perspectives have been marginalised by the organisation (and by society) to oppose and resist. Given that anti-discrimination and accommodation is all about enabling those who have been left out and disregarded by corporate and collective actors, individual rights should not be disregarded. This is why this contribution is concerned with the effects and contradictions of individual rights.

The case of “E” provides an excellent example: After all, it was the organisation’s overall working time setup that impeded the adaptation of their working hours. The employer and the Works Council even had a proactive duty to promote the compatibility of family care and employment when designing working time rules: The German Federal Labour Court ruled in the case that the parties to the collective agreement were obliged to consider even the situation of single parents. However, the court also found that they had adequately considered the needs of private carers and not exceeded their margin of discretion.

In such a situation, individual rights are important as “immanent critique” (Wihl 2019), raising questions about organisational and collective structures and challenging social exclusion and exclusive collectivity. But can they also be instruments of change? The following section analyses criticism of rights in relation to accommodation rights and conflicts such as the one experienced by “E” (3), in order to pave the way for a proposal of novel proactive procedural duties (4).

3. Questioning legal subjectivity

3.1. The subjectivity of rights

The inadequacy of rights for feminist liberation has long been a topic of discussion in feminist theory. In recent years, there has also been a renewed interest in theoretical critiques of the law, in particular, German legal theory with a Marxist background (Loick 2017, with a Hegelian approach; Buckel 2016; and Adams 2021, with a view to labour law).

These analyses are not about uncovering biases in values, policies or priorities. They are also not concerned with the symbolic functions of the law. Rather than examining rules, legal argumentation or their empirical consequences, it is the legal form that is at stake here. The juridical form of rights is critiqued for allowing the law to see social relations only as interpersonal relations between legal subjects who “adopt an attitude of the generalised other towards themselves”, a “detached attitude” (Somek 2017). Daniel Loick (2017) has termed these and related phenomena “pathologies of juridism”.

These critiques of the juridical form tie in with feminist critiques of the autonomous male subject that the law creates and presupposes. They have been reformulated in Foucauldian analyses of subjectivity, that is to say, of the particular manner in which subjects are constituted through their relationships with society, the world, and other people (Rodgers 2024, 39–45). Such analyses of subjectivities ask how people’s self-perceptions and sense of empowerment are shaped by the way in which a particular social structure (in this case, the law) addresses them. Incorporating and performing a legal subject creates legal subjectivity (Kapur 2018).

Lisa Rodgers (2024) has recently revisited these discussions and demonstrated how a relational approach to labour law could offer fresh insights into issues such as employment classification and AI regulation. This contribution shares her concern, by examining the intersection of labour law and private care work.

3.2. The legal subjectivity of individual accommodation rights

The form of individual rights presents a problem in itself. By assigning individual rights, the law conceives of social issues such as discrimination and the compatibility of paid and unpaid work as individual problems. This is reflected in – or rather reflects? – how compatibility issues are often perceived at the workplace. Those who question existing rules that exclude them tend to be seen as outsiders or even as disruptors (Kocher 2016).

3.2.1. The outsider with their individual problem

There were myriad ways in which the shift system at the DIY store in question could have been designed to respond to private care work. However, when “E”, the single mother in case, claimed her (enforceable) right, she could only request an exemption from the shift system that applied to all workers, and she had to suggest specific working hours for herself and herself alone. In other words: She had to position herself as an exception and as an outsider, thereby reinforcing the “special treatment stigma” (Porter 2023, 6-8; 93-102) that private carers experience in the workplace.

These features of rights limit the potential of reasonable accommodation to initiate structural changes (see Fredman 2022, 363). By creating exceptions for the “other”, rights to accommodation maintain the general rule for the normal worker (Schultz 2010, 1214).

After all, legal subjectivity constructs the conflict as being between a worker’s employment and family life rather than viewing it as a political and social construct (Conaghan 2013a, 40). The conflict is perceived as part of the employment relationship between “E” and their employer. The daycare centre’s opening hours or the distribution of private care work in the family are considered external factors that are taken as a given.

3.2.2. Weighing employees' interests with business necessity and the interests of their colleagues

Moreover, compared to other individual rights, accommodation rights exhibit a specific feature: They usually include an option for employers to object.

In German law, for instance, an employee's request to reduce their working hours to care for children or other dependants can be rejected based on "urgent operational/business reasons" (*dringende betriebliche Gründe*) (Sec. 15 (7)(1) No. 4 BEEG; Sec. 12 BGlG; Sec. 3 (4)(2) PflZG; the same standard applies to the request to be transferred from night work to day work (Sec. 6 (4) ArbZG)). Other claims to reduce working hours or arrange them differently can be rejected based on "operational/business reasons" (*betriebliche Gründe*), i.e. reasons that are considered rational and comprehensible.

"Operational reasons" is just one of two possible translations of the German term "*betriebliche Gründe*" (Sec. 8(4) TzBfG); the other possible translation is "business reasons", the formula used in many legal systems for the balancing exercise in the context of accommodation rights. While "business reasons" emphasises the employer's managerial prerogative and economic interests, such as a "disproportionate burden on the employer" (Art. 5 Directive 2000/78/EC), "operational reasons" draws attention to work organisation issues.

These often mask the interests of other employees. In German law, Sec. 9 TzBfG (the right to extend working hours) and Sec. 7(1) of the Federal Paid Leave Act (*Bundesurlaubsgesetz*, BUrlG) (determining the timing of holiday leave) even explicitly mention the wishes of other employees: An employee's request for specific holiday leave timing shall be taken into consideration unless urgent business reasons or "other employees' wishes for leave deserving priority from a social point of view" prevent it (Kocher 2007 provides more detail).

This mechanism engenders a specific subjectivity on the employer's part. The structure of reasonable accommodation invites a weighing of reasons and interests by the employer, rendering the right to accommodation merely one aspect of deliberation among many. As a consequence, the right to "reasonable" accommodation does not constitute an easily enforceable right; rather, it provides individuals with a right to be considered.

3.2.3. The third function of labour law: the individual vs. the collective?

Here, the law explicitly addresses what Guy Mundlak (2011) has termed "the third function" of labour law, i.e. horizontal conflicts. After all, these conflicts often involve prioritisation, which is not at all easy. While it is the employer who has the power and prerogative to decide, and to articulate organisational aspects as part of the business necessity objection, the law acknowledges that work organisation and organisational concepts designed by the employer affect other employees, and that organising work means organising cooperation (cf. Wenckebach 2014, 408–409). In an organisation, choices are always constrained by the actions of others (Schultz 2010, 1214–1215). Workplace practice and culture play a significant role in determining what is and is not possible.

The case of “E” is a good example of what this means for the accommodation of private care work. The main reason why she was denied an adjustment to her working hours was not just the employer’s wish; it also coincided with what the Works Council wanted, as her request conflicted with a collective agreement at the workplace, the task of which was, according to the Federal Labour Court, the “balancing of individual and collective interests”. This is why the parties to the collective agreement were granted a margin of discretion. Thus, the legal structure of accommodation rights gives rise to a conceptual clash between the so-called individual and the so-called collective. The worker’s request to adjust their working hours was outside the remit of the collective agreement, and she could only demand its disruption; the law did not empower her to request a revision of the agreement.

3.3. *The subjectivity of labour collectivity*

This is not an atypical situation. Collective action, workers’ organisation, and trade union representation may be “the only feasible means of transforming our deeply gendered market and family structures” (Crain 1991). Indeed, trade unions have played an important role in achieving social change for gender equality (Morris 2013, 192, Hayes 2014, Hensel 2020, Blackham 2022, 313, Dias-Abey 2022).

However, more often than not, trade unions fail to support private carers. After all, trade unions and other worker representatives are part of society and influenced by its gendered and racialised structures. Collectivity is nothing else than a specific form of subjectivity. This subjectivity can be expressed through class consciousness. Still, the two are not identical. Subjectivity in the Foucauldian sense is less about subjective and psychological factors and more about the social construction of actions and relationships. The latter often reflects the former, but does not necessarily do so.

This prompts us to consider how the Works Council positioned themselves when deciding against “E”. What kind of subjectivity of labour collectivity is reflected in their invocation of peace and harmony among employees (*Betriebsfrieden*)?

3.3.1. Solidarity: Mutuality and reciprocity

Solidarity is the widely discussed concept that forms the basis of labour collectivity. Unlike loyalty and collegiality, it describes how relationships with co-workers are constructed in view of possible collective action against the employer as an adversary, regardless of immediate and direct social contact in the workplace or within a specific organisation.

The idea of solidarity is based on commonality, an assumption of responsibility and cooperation, and the principle of “one for all, all for one” (Gamillscheg 1973, Supiot 2015). Solidarity extends beyond close relationships to include strangers (Rüb 2024, 36). However, when it comes to labour collectivity, solidarity only considers mutuality and reciprocity within a specific group, acquiring an exclusive character (Supiot 2015, Rüb 2024, 39). It addresses workers as part of a collective culture of equality and respect and means acting *with* others who are equals, rather than acting *for* others who are weaker. This marks one of the differences between an NGO advocacy-based approach to equality at work and a collective labour approach based on self-representation (see McCann’s [1994] critical discussion).

3.3.2. Universalism in labour collectivity

A second feature of workers' solidarity relates to the bipolarity and conflictuality of labour relationships. Solidarity involves a mutual and reciprocal commitment to fighting against the adversary (the employer, employers' organisations, etc.) (Rüb 2024, 39). In other words: Solidarity addresses workers by invoking the similarity of their situation as the basis for mutual support in the struggle for better working and living conditions (Supiot 2015).

With this focus on commonality, solidarity is often based on a universalism in the workplace that stems from the necessity and practice of cooperation. In the workplace, employees relate to each other as fundamentally indifferent to each other yet equal, regardless of department, team, gender, or other differences. This form of universalism has been analysed as a major driver of collectivity and "raw material for the formation of class consciousness" (Conaghan 2005, 33–37, Schmidt 2024, Mayer-Ahuja 2025, 119–137). As we can see in "E"'s case, it can also be a matter of the subjectivity of collectivity. This at least partly explains the Works Council's attitude in the case. Employee representatives are faced with the enormous challenge of developing counter-power in constant power struggles with the employer, and universalism is often the default solution in such conflicts, resulting in the exclusion of those constructed as "others" (such as private carers).

3.4. *A feminist subjectivity?*

Analysing the law's subjectivity easily draws one into sketching out alternative futures, utopias, and visions of an emancipatory subjectivity. In feminist critiques of the autonomous male legal subject, the female subject position tends to be described in contrast to the impoverished and detached subjectivity of legal rights. For example, the female subject position is characterised as being dependent and interconnected rather than autonomous and separated, with the self being infused by otherness (Conaghan [2013b], referring to Christine Battersby [1998]). In the context of legal theory, the work of Jennifer Nedelsky (2011) on a relational approach to law is relevant here (cf. Rodgers 2024), as is the communitarian approach discussed by Nicole Porter (2023, 108–110). Both analyse legal rules in view of their potential to further contact, communication and relationships among all kinds of persons.

A subjectivity performed on the basis of rights can lead to impossible evaluations, such as discussing who has the more important concern: the mother of twins, the parent of a disabled teenager, the adult son caring for his father with Alzheimer's disease, or the volunteer football coach who cares for younger adolescents in the community in the evenings. Relational law, on the other hand, would not weigh these interests against each other, but rather promote balancing them together. A legal form that supports relational subjectivity would have to enable individuals to recognise their relationships with vulnerable others, reflect on their own position, and discuss the meaning of solidarity.

From this perspective, the potential of the social imaginary of the "commons" becomes apparent. Silvia Federici (2012) describes it as "the production of ourselves as a common subject", as a community that is not an exclusive group, but rather a quality of relations and a principle of cooperation and responsibility towards each other, the earth, forests,

seas and animals. Unlike exclusive solidarity and labour universalism, these approaches are motivated by difference and diversity.

This raises the question of what labour law would look like if it were designed to promote these subjectivities.

4. Law as Procedure

4.1. Procedural rights and duties: The example of BEM

Taking a closer look at the legal structure of accommodation rights, such as the right to adapt working hours, reveals that such rights are usually complemented by legal rules on negotiations at workplace level (Kocher *et al.* 2013). This is how legislators acknowledge the shortcomings of rights to be considered that are embedded in work organisations shaped by a diversity of interests. Porter (2023, 159-160) also advocates the use of “interactive processes” to achieve reasonable accommodation for all. Consequently, “fairness” is often discussed as a new challenge for management and collective bargaining in modern work organisations (Stone 2004).

One of the most interesting examples of this development in German law is the *Betriebliches Eingliederungsmanagement* (BEM), an individual “workplace integration management programme” (WIM), or “occupational integration management” (OIM), as established in Sec. 167(2) of the Ninth Book of the Social Code for the Rehabilitation and Participation of Disabled Persons (SGB IX). The instrument is intended to help employees who have been unable to work for an extended period of time return to work. It applies not only to people who are unable to work due to a disability, but also to those who have frequently been ill or absent for prolonged periods. The idea is to encourage employers to comply with actively supporting workers in returning to work, for example by making adjustments to the workplace, offering flexible working hours, providing technical aids or accompanying assistance. Thus, its primary purpose is to ensure the effective implementation of the right of disabled workers to reasonable adjustments. However, the procedure is not necessarily linked to the right to reasonable accommodation; rather, it is designed to prevent the need for it.

What is interesting about these rules is that they are constructed as an “open search process” (BAG 10 Dec 2009, case 2 AZR 198/09), i.e. they must be approached as an open-ended process intended to restore and maintain the worker’s health (BAG 20 Nov 2014, case 2 AZR 755/13).

Secondly, the procedure involves not only the employer and the worker, but also workers’ representatives, such as the Works Council, as well as public agencies that can provide expertise and funding, such as rehabilitation organisations and the integration office (Nebe 2008, Welte *et al.* 2010, Ramm *et al.* 2012).

Lastly, the procedure is not designed as a right, but rather as a proactive duty of employers to establish open search processes once an employee has been absent from work due to illness for at least six weeks.

Although there is no individual right to a BEM procedure, the process is known and enforced in German companies and work organisations, largely due to its indirect enforcement by the courts. There is an effective incentive in unfair dismissal law:

Employers will only be permitted to dismiss an employee on grounds of illness if the open search process has been adhered to (BAG 20 Nov 2014, case 2 AZR 755/13; BAG 18 Nov 2021, case 2 AZR 138/21; BAG 15 Dec 2022, case 2 AZR 162/22; see Kollmer 2025, 1844). In an unfair dismissal proceeding, an employer who has failed to carry out a BEM must “comprehensively explain and prove why they could not have contributed in any way to preventing further periods of illness and maintaining the employment relationship”; they must also demonstrate that no rehabilitation measures could have prevented future absences (BAG 15 Dec 2022, case 2 AZR 162/22).

4.2. Implementing the right to care through proactive duties to establish open search processes

The BEM instrument is an example of a very specific form of what is known as reflexive or procedural law. It introduces ambivalence and ambiguity, which have been quite alien to the law. It is here that we may find the seeds of relational legal subjectivity. These rules are not primarily concerned with protecting individuals from the collective or setting up legal barriers around the individual. Rather, they consider and accommodate individuals in their social vulnerability, i.e. the way the workplace exposes them to specific risks.

To integrate private care work into employment, open search processes could help establish private care work as a social function and part of the social embeddedness of work, rather than an individual interest. This would involve considering factors such as the social organisation of childcare (Mückenberger *et al.* 2012) and integrating the actors responsible for organising it on a regional level, thereby going beyond the employment relationship. Including the views of friends, partners and children of workers (potential “allies of labour law”), i.e. individuals whose demands for a worker’s time and attention compete with those of the modern world of work (Möhring-Hesse 2007), would also create a radically different perspective.

To implement the right to care in the workplace, we should consider positive duties to establish open search processes as part of an effective and comprehensive legal framework.⁴

4.1.1. A novel kind of proactive duty

There is a significant difference between a proactive duty to negotiate gender equity plans and a proactive duty to implement open search processes. The latter would establish a connection between the personal care situation of an individual worker and generalised collective workplace rules. It would invite employers and workers’ representatives to reconsider workplace rules in response to individual requests. This would allow individual accommodation interests to be used to challenge power imbalances and dominant discourses (Day and Brodsky 1996, 468, cf. Schultz 2010, 1216, Fredman 2022, 363), as well as address subtle forms of normalisation and exclusion that

⁴ As the “right to care” is a framework on a constitutional or theoretical level, it has to be implemented not only in the form of rights, but also in other regulatory forms (see IACtHR, OC-31/25, Sections 127-132, explaining the relevance of national care systems as a structural measure to realise the right to care).

occur in the workplace, i.e. “second-generation forms of bias” resulting from “patterns of interaction, informal norms and networking” (Sturm 2001).

These novel forms of handling questions of private care work in employment require a multidimensional approach, which Sturm (2007, 411, 2008) likens to “architectures of inclusion”, i.e. organisational frameworks that “Encourage effective problem solving” and “institutional change processes” (Sturm 2007). Essentially, this architecture must link various actors and procedures into a single system, addressing “cultural conflict” through the development of appropriate human resource practices (Sturm 2001, 462, 543).

In some legal systems, it may even be possible to find a legal basis for such duties. In German law, for example, the duty to prevent discrimination (Sec. 12 AGG) could be invoked (Wenckebach and Kocher 2013). This approach can also be seen as part of a broader shift towards a focus on duties rather than rights, as evidenced by the increasing number of risk assessment laws. Most notably, in the European Union, Art. 5(1) and Art. 6 of the OSH Framework Directive 89/391/EEC set out employers’ obligations to evaluate and prevent all risks to workers’ safety and health. These could already be used today to integrate private care work by considering working hours and private care work as adverse loading factors (Nebe 2024, 173–174); they could also be used as the legal basis for a redesign of processes in the way proposed here.

4.2.2. A proactive duty for moments of risk

Such a duty has to start with a specific case; therein lies its potential. However, it is important that it does not start with a legalised and formal request for a specific adaptation of working conditions, but rather with a worker’s interest, i.e. an explanation of a problem rather than a proposed solution.

By defining a point in time at which intervention is required, the law on BEM also recognises that there are specific transitional periods when the risk of exclusion is greatest. If addressed early on and at the right time, discrimination and exclusion can be prevented.

In the context of private care work, the birth of a child, or returning from maternity or parental leave, for example, are clearly similar risky moments. How these situations are handled can have a decisive impact on a parent’s future in the organisation. These key moments could be defined as the point at which an employer must initiate an open search process out of their own accord (see Kocher *et al.* 2013, 308-309).

4.3. *The problems with procedural duties*

4.3.1. Economic infrastructures

Open search processes engendering structural change are subject to many limitations. They only regulate the relationship between employee and employer. They do not address issues such as cost, economic burden, or labour market disadvantages, nor do they consider the compatibility of private care work with informal work or paid work outside of employment (Fredman and Fudge 2013, 121). They also do not directly address redistributive challenges.

Consequently, the impact of these rules on gender equality is ambivalent (see Fredman and Fudge 2013). Merely making flexible working available will not lead to a less gendered and more equitable division of care work (see, for example, the experiences in the UK analysed by Weldon-Johns 2013, Rose 2017). Even if the processes suggested here involve day-care institutions and similar actors, they cannot address broader societal and economic institutions, nor the lack of social benefits or global competition. After all, a right to care is not implemented solely in the workplace. As a comprehensive concept, it must be reflected consistently in social policies, social security, family policies, care sector regulations, and all societal infrastructures (see the measures proposed by ECLAC *et al.* 2025, 42–43).

Economic funds are needed to frame and enable workers' rights to adapt working arrangements: This could include wage replacement or other forms of covering the cost of living for private care workers, financing professional care services, or covering secondary risks for workers (e.g. illness or age) (Kocher *et al.* 2013). Even a universal basic income — an instrument that has become popular in the post-growth debate (Veltman 2016, 96–104; see Becker and Claus [2024], who retrace its history since the 19th century) — will not be able to resolve all these issues and risks.⁵

Still, the assertion that there are “more pressing concerns” for “many people” than discussions about the “quality of work and family”, and even the suggestion that debates on private care work and employment “may divert attention and resources away from more fundamental issues” (Collier 2013, 180), merely reflects the redistribution/recognition dichotomy narrative (Honneth and Fraser 2003). Most workers have care relationships and want to care for their families and communities. Despite the limitations of the current social and economic structures, the social organisation of care work urgently requires attention.

4.3.2. Social infrastructures

In addition, reducing working hours in employment would obviously be a huge step towards integrating paid and unpaid work. Recently, there have been increasing calls for a “universal basic working time”: a 35-hour week (Schultz and Hoffman 2006, 140); a six-hour day (Weeks 2011, 151–174); a three-day weekend or four-day working week (GNDE 2019, 35–36); a four-day week of 25–30 hours (Mayer-Ahuja 2025, 216); “short full-time” (30 hours per week) for all (Bücker 2022, Haug 2022); and “Part-Time for All” (Nedelsky and Malleson 2021). In other words: “a new set of norms about working time” (Schultz 2010, 1205–1207) and a “feminist time movement” (Weeks 2011, 151–174).

Katherine Silbaugh (2010) has drawn attention to another issue, which she calls the “culture of coordinated rhythms”. Communities, including families, need common time, i.e. “synchronised non-work hours”. This is a multidimensional issue (Silbaugh 2010, 1271–72). It has been discussed in terms of the politics of time, or chronopolitics (*Zeitpolitik*), particularly in Germany and Italy (Mückenberger *et al.* 2012). Time politics is a mainstreaming exercise; it requires labour, education, childcare, urban planning, traffic and tourism policies, and so on, to be reorganised in view of their temporal

⁵ Furthermore, its impact on the distribution of private care work between the genders may not be as significant as some feminist theorists have suggested (Veltman 2016, 96–104).

implications (Memorandum *The Right to Time*, published by Deutsche Gesellschaft für Zeitpolitik *et al.* 2020). Incidentally: The time policy practised in some countries (including Germany) whereby specific days (such as Sunday) are protected from most work activities can be seen as more than just a remnant of religious practices. For most people today, it serves as a means of synchronising rhythms.

4.3.3. Open processes in a capitalist power relationship

When considering possible alternative practices, it is inevitable that one becomes entangled in people's experiences with the hegemonic powers in today's societies. Sandra Fredman (2022) has mentioned that proactive measures, despite their great potential, easily slide into mere bureaucratic compliance in practice. This is particularly true of proactive duties that require employers to establish open search processes. Katja Nebe (2024, fn 76) also refers to this dynamic when discussing a right to negotiate working time adaptations. She describes the expectation that employers will effectively introduce complex procedures in the interest of fundamental societal change, as "lebensfremd" (quixotic, out of touch with reality).

At the very least, to offset the employer's power in the workplace to some extent, these kinds of new structural regimes require intermediaries (Sturm 2001, 522, 544), such as for example equality officers trained in communication (cf. Sturm 2008, 19). These intermediaries would also need to encourage the necessary self-reflection among all parties involved.

4.3.4. Open processes as a governance mechanism

A quite different objection is that open search processes do not address the insecurity most workers face today (Schultz 2010, 1221). In fact, open search processes even create insecurity by requiring everyone involved to re-evaluate their options and relationships.

We should also remind ourselves that fostering "procedures and processes" feeds into the logic and subjectivity of today's control societies (as opposed to yesterday's disciplinary societies in Foucauldian theory). Societal structures and discourses today are designed to create acceptance through technologies of the self, "thwarting refusal, absorbing resistance and dissipating responsibility". The "nightmare of participation" often only feeds into these technologies (Bude 2019, 74). Sturm's (2001, 565) question of whether procedural architectures in workplaces are a matter of law or management is pertinent here. Against this backdrop, many people have experienced practices of alternative conflict resolution and other arenas of private legal pluralism as well as risk assessment exercises as affirming rather than transforming existing social power relations.

5. Conclusion: Beyond rights?

This text has argued that legal rights encourage all parties involved to view issues as potential legal claims rather than as systemic problems. The structural specificities of rights to reasonable accommodation as rights to be considered do not solve the problem; they guide actors to weigh different interests *against* each other instead of helping them balance the issue *together*.

Rather than focusing on rights, we should consider procedures that could engender reflexive subjectivities, i.e. relationships in which everyone considers the vulnerability of others and is willing to reconsider their own position. Such reflexive forms of law can re-embed individuals in social and collective contexts, while simultaneously confronting collective actors with the social vulnerability of specific individuals and groups.

Duties to establish open search processes to accommodate individuals while implicating a variety of collective and institutional actors can be an interesting form of “embedding the law in society”, whereby the law becomes part of social processes rather than their opponent (Loick 2017, 35, 326 seq.). However, to the extent that society and social processes are shaped by hegemonic powers, this dynamic also takes away some of the law’s power: The more the law dissolves into society, the more it loses its potential as a resource for critique and a safeguard of difference – that is, its potential for resistance (Loick 2017).

Considering the powers that be, dispensing with rights seems a far-fetched proposal. Rights are designed to create transformative situations. They may require resistant and resilient individuals to be mobilised, but they can also inspire hope for change. This is why, despite fundamental criticism, many people stand by the language of rights (Barnes 2016, 258) – “that which we cannot not want” (Brown 2000, 231, 238).

Although the analysis presented here is focused on a duty- and risk-based perspective, it has something to offer rights-based perspectives: Open search processes could be indirectly enforced through requests for adaptation designed as rights. For instance, an employer who fails to comply with procedural obligations could be prohibited from rejecting individual requests for adaptation (cf. Lindbach 2026; see also the considerations of Porter 2023, 160).

Still, this contribution represents an attempt to “articulate a field of justice beyond ‘that which we cannot not want’” (Brown 2000, 240). The neoliberal claim that there is no society (and therefore no community) has been complemented by the resurgence of nationalist (völkisch) and racist ideologies that promote the construction of a “we” against an elite “them” that is deeply exclusionary (Bude 2019, 144, Hark 2021, 37-85, 163-170). Caught between “the contested general and the new common” (Hark *et al.* 2015, Binder and Kocher 2025), it is important to consider experiences that could bring people together in a way that recognises the equal importance and relevance of both paid and unpaid work.

This is the perspective through which the proposals put forward here should be read. They are utopian demands that offer critical perspectives and a “force of provocation” to “incite political desires for, imaginations of, and mobilisations towards different futures” (Weeks 2011; see also Bueno *et al.* 2024) – to “link the intellectual project of reparative criticism with the political project of imagination” (Hark 2021, 105–106).

References

- Adams, Z., 2021. Labour law, capitalism and the juridical form: Taking a critical approach to questions of labour law reform. *Industrial Law Journal* [online], 50(3), 434–467. Available at: <https://doi.org/10.1093/indlaw/dwaa024>

- Barmes, L., 2016. *Bullying and behavioural conflict at work: The duality of individual rights* [online]. Oxford University Press. Available at: <https://doi.org/10.1093/acprof:oso/9780199691371.001.0001>
- Battersby, C., 1998. *The phenomenal woman: Feminist metaphysics and the patterns of identity*. London: Routledge.
- Becker, A., and Claus, F., 2024. Social security and the right to laziness beyond just basic income. In: N. Bueno, B. ter Haar and N. Zekic, eds., *Labour law utopias: Post-growth and post-productive work approaches* [online]. Oxford University Press, 201–220. Available at: <https://doi.org/10.1093/oso/9780198889755.003.0011>
- Binder, B., and Kocher, E., 2025. Recht – Geschlecht – Kollektivität: Das umkämpfte Allgemeine und das neue Gemeinsame. In: Forschungsgruppe „Recht – Geschlecht – Kollektivität“, ed., *Recht umkämpft: Feministische Perspektiven auf ein neues Gemeinsames* [online]. Leverkusen: Verlag Barbara Budrich, 7–11. Available at: <https://doi.org/10.2307/jj.27775874.3>
- Blackham, A., 2022. *Reforming age discrimination law: Beyond individual enforcement* [online]. Oxford University Press. Available at: <https://doi.org/10.1093/oso/9780198859284.001.0001>
- Boll, F., 2025. *Geschlechtervielfalt anerkennen, Gleichstellung gestalten: Rechtliche Grundlagen und Handlungsräume für Geschlechtervielfalt in der Gleichstellungsarbeit*. Bundesstiftung Gleichstellung.
- Brown, W., 2000. Suffering rights as paradoxes. *Constellations* [online], 7(2), 230–241. Available at: <https://doi.org/10.1111/1467-8675.00183>
- Buckel, S., 2016. Rechtskritik. *Kritische Justiz* [online], 49(3), 289–304. Available at: <https://doi.org/10.5771/0023-4834-2016-3-289>
- Bücker, T., 2022. *Alle_Zeit: Eine Frage von Macht und Freiheit*. Ullstein.
- Bude, H., 2019. *Solidarität: Die Zukunft einer großen Idee*. Hanser.
- Bueno, N., Haar, B. ter, and Zekic, N., eds., 2024. *Labour law utopias: Post-growth and post-productive work approaches* [online]. Oxford University Press. Available at: <https://doi.org/10.1093/oso/9780198889755.001.0001>
- Busby, N., 2011. *A right to care? Unpaid work in European employment law* [online]. Oxford University Press. Available at: <https://doi.org/10.1093/acprof:oso/9780199579020.003.0001>
- Collier, R., 2013. “Feminising” the workplace? Law, the “good parent” and the “problem of men”. In: A. Morris and T. O'Donnell, eds., *Feminist perspectives on employment law*. London: Routledge-Cavendish, 161–181.
- Conaghan, J., 2005. Work, family, and the discipline of labour law. In: J. Conaghan and K. Rittich, eds., *Labour law, work, and family: Critical and comparative perspectives* [online]. Oxford University Press, 19–42. Available at: <https://doi.org/10.1093/oso/9780199287031.003.0002>

- Conaghan, J., 2006. Time to dream? Flexibility, families, and the regulation of working time. In: J. Fudge and R. J. Owens, eds., *Precarious work, women and the new economy: The challenge to legal norms*. Oxford: Hart, 101–129.
- Conaghan, J., 2013a. Feminism and labour law: Contesting the domain. In: A. Morris and T. O'Donnell, eds., *Feminist Perspectives on Employment Law*. London: Routledge-Cavendish, 13–41.
- Conaghan, J., 2013b. *Law and gender* [online]. Oxford University Press. Available at: <https://doi.org/10.1093/acprof:oso/9780199592920.001.0001>
- Crain, M. G., 1991. Feminizing unions: Challenging the gendered structure of wage labour. *Michigan Law Review* [online], 89, 1155–1221. Available at: <https://doi.org/10.2307/1289551>
- Day, S., and Brodsky, G., 1996. The duty to accommodate: Who will benefit? *The Canadian Bar Review*, 75, 433–473.
- Deutsche Gesellschaft für Zeitpolitik, et al., 2020. Memorandum “The right to time, an urgent topic on the European Agenda”.
- Deutscher Juristinnenbund (DJB), 2016. *Konzeption für ein Wahlarbeitszeitgesetz*. Berlin.
- Deutscher Juristinnenbund (DJB), 2021/2025. *Wege zur Diskriminierungsfreiheit in Unternehmen: Konzeption für ein Gleichstellungsgesetz in der Privatwirtschaft und Handlungshinweise für Unternehmen*. Berlin.
- Dias-Abey, M., 2022. Mobilizing for recognition: Indie unions, migrant workers, and strategic equality act litigation. *International Journal of Comparative Labour Law and Industrial Relations* [online], 38(2), 137–156. Available at: <https://doi.org/10.54648/IJCL2022007>
- Dinner, D., 2018. Equal by what measure? The lost struggle for universal state protective labor standards. In: M. A. Fineman and J. W. Fineman, eds., *Gender in law, culture, and society. Vulnerability and the legal organization of work* [online]. London: Routledge, 283–304. Available at: <https://doi.org/10.4324/9781315518572-20>
- European Network of Legal Experts in Gender Equality and Non-Discrimination, 2025. *A comparative analysis of gender equality law in Europe 2024: The 27 EU Member States, Iceland, Liechtenstein, Norway, and the United Kingdom compared*. Brussels: EU Commission.
- Federici, S., 2012. Wages against housework. In: S. Federici, ed., *Revolution at point zero: Housework, reproduction, and feminist struggle*. Common Notions, 26–33.
- Fredman, S., 2022. *Discrimination law*. 3rd ed. Oxford University Press.
- Fredman, S., and Fudge, J., 2013. The legal construction of personal work relations and gender. *Jerusalem Review of Legal Studies* [online], 7(1), 112–122. Available at: <https://doi.org/10.1093/jrls/jlt019>
- Fudge, J., 2005. A new gender contract? Work/life balance and working-time flexibility. In: J. Conaghan and K. Rittich, eds., *Labour law, work, and family: Critical and*

- comparative perspectives* [online]. Oxford University Press, 261–287. Available at: <https://doi.org/10.1093/oso/9780199287031.003.0012>
- Fudge, J., 2017. The future of the standard employment relationship: Labour law, new institutional economics and old power resource theory. *Journal of Industrial Relations* [online], 59(3), 374–392. Available at: <https://doi.org/10.1177/0022185617693877>
- Gamillscheg, F., 1973. Die Solidarität als Rechtsbegriff. In: G. Wannagat and W. Gitter, eds., *Festschrift für Erich Fechner*. Mohr Siebeck, 135–153.
- Gerhard, U., 2018. *Für eine andere Gerechtigkeit: Dimensionen feministischer Rechtskritik*. Campus.
- Grabham, E., 2016. *Brewing legal times: Things, form, and the enactment of law* [online]. University of Toronto Press. Available at: <https://utppublishing.com/doi/book/10.3138/9781442646056>
- Hark, S., 2021. *Gemeinschaft der Ungewählten. Umriss eines politischen Ethos der Kohabitation. Ein Essay*. Berlin: Suhrkamp.
- Hark, S., et al., 2015. Das umkämpfte Allgemeine und das neue Solidarität ohne Identität. *Feministische Studien* [online], 33(1), 99–103. Available at: <https://doi.org/10.1515/fs-2015-0111>
- Haug, F., 2022. *Die Vier-in-einem-Perspektive: Politik von Frauen für eine neue Linke*. 4th ed. Argument.
- Hayes, L., 2014. “Women’s voice” and equal pay: Judicial regard for the gendering of collective bargaining. In: A. Bogg and T. Novitz, eds., *Voices at work: Continuity and change in the common law world* [online]. Oxford University Press, 35–54. Available at: <https://doi.org/10.1093/acprof:oso/9780199683130.003.0002>
- Hensel, I., 2020. *Recht und Geschlecht als gewerkschaftliche Strategien: Mit Hilfe der Geschlechterkategorie in der mittelbaren Diskriminierung zu einer Höherbesoldung von Grundschullehrer*innen? Arbeit | Grenze | Fluss - Work in Progress Interdisziplinärer Arbeitsforschung No. 4*. Frankfurt (Oder): Europa-Universität Viadrina.
- Hensel, I., 2022. Recht gegen Diskriminierung: Die djb-Konzeption für ein Gleichstellungsgesetz in der Privatwirtschaft. *Arbeit und Recht*, 70(11), 465–469.
- Honneth, A., and Fraser, N., 2003. *Redistribution or recognition / Umverteilung oder Anerkennung? A political-philosophical controversy*. Berlin: Suhrkamp.
- International Labour Organization (ILO), 2018. *Care work and care jobs for the future of decent work*. International Labour Organization.
- International Labour Organization (ILO), 2019. *Work for a brighter future: Global commission on the future of work*. International Labour Office.
- Kapur, R., 2018. *Gender, alterity and human rights: Freedom in a fishbowl* [online]. Cheltenham: Edward Elgar. Available at: <https://doi.org/10.4337/9781788112536>

- Kocher, E., 2007. Gestaltungs- und Verhandlungsrechte von Beschäftigten. *WSI-Mitteilungen* [online], 60(8), 434–440. Available at: <https://doi.org/10.5771/0342-300X-2007-8-434>
- Kocher, E., 2016. Das andere des Arbeitsrechts. *Arbeit und Recht*(8-9), 334–338.
- Kocher, E., et al., 2013. *Das Recht auf eine selbstbestimmte Erwerbsbiographie: Arbeits- und sozialrechtliche Regulierung für Übergänge im Lebenslauf* [online]. Baden-Baden: Nomos. Available at: <https://doi.org/10.5771/9783845248639>
- Kollmer, N., 2025. Betriebliches Eingliederungsmanagement: Aktuelle Rechtsprobleme in der Praxis. *Neue Juristische Wochenschrift*, 1841–1848.
- Kotiswaran, P., 2014. Abject labors, informal markets: Revisiting the law's (re)production boundary. *Employee Rights and Employment Journal*, 18, 111–140.
- Kotiswaran, P., 2022. Toward a model of universal care, one manifesto at a time. *Social Politics: International Studies in Gender, State & Society* [online], 28(4), 854–864. Available at: <https://doi.org/10.1093/sp/jxab040>
- Lindbach, R., 2025. Die Erörterungspflicht des Arbeitgebers gem. § 7 Abs. 2 S. 1 TzBfG und die EU-Vereinbarkeitsrichtlinie. *Arbeit und Recht*, 73(12), 462–467.
- Loick, D., 2017. *Juridismus: Konturen einer kritischen Theorie des Rechts*. Berlin: Suhrkamp.
- Mayer-Ahuja, N., 2025. *Klassengesellschaft akut: Warum Lohnarbeit spaltet - und wie es anders gehen kann* [online]. Munich: C.H. Beck. Available at: <https://doi.org/10.17104/9783406840326>
- McCann, M., 1994. *Rights at work: Pay equity reform and the politics of legal mobilization*. University of Chicago Press.
- Möhring-Hesse, M., 2007. Wie Rechtsbrechern zu ihrem Recht verhelfen? Arbeitsrecht unter den Bedingungen subjektivierter Arbeit. *Kritische Justiz* [online], 40(4), 347–357. Available at: <https://doi.org/10.5771/0023-4834-2007-4-347>
- Morris, A., 2013. Workers first, women second? Trade unions and the equality agenda. In: A. Morris and T. O'Donnell, eds., *Feminist perspectives on employment law* [online]. London: Routledge-Cavendish, 183–201. Available at: <https://doi.org/10.4324/9781843142713>
- Mückenberger, U., et al., 2012. *Lebensqualität durch Zeitpolitik: Wie Zeitkonflikte gelöst werden können*. Baden-Baden: Nomos.
- Mundlak, G., 2011. The third function of labour law: Distributing labour market opportunities among workers. In: G. Davidov and B. Langille, eds., *The idea of labour law* [online]. Oxford University Press, 315–328. Available at: <https://doi.org/10.1093/acprof:oso/9780199693610.003.0020>
- Nebe, K., 2008. (Re-) Integration von Arbeitnehmer: Stufenweise Wiedereingliederung und Betriebliches Eingliederungsmanagement - ein neues Kooperationsverhältnis. *Der Betrieb*(33), 1801–1805.
- Nebe, K., 2024. Familiengerechte Arbeitsorganisation: Lückenhafter Rechtsrahmen und Herausforderungen fairer (kollektiver) Verteilung. *Soziales Recht*, 14(5), 161–181.

- Nedelsky, J., 2011. *Law's relations: A relational theory of self, autonomy, and law* [online]. Oxford University Press. Available at: <https://doi.org/10.1093/acprof:oso/9780195147964.001.0001>
- Nedelsky, J., and Malleson, T., 2021. *Part-time for all: A care manifesto*. Oxford University Press.
- Pfarr, H. M., 2001. *Ein Gesetz zur Gleichstellung der Geschlechter in der Privatwirtschaft*. Düsseldorf: Hans-Böckler-Stiftung.
- Porter, N. B., 2023. *The workplace reimaged: Accommodating our bodies and our lives*. Cambridge University Press.
- Ramm, D., et al., 2012. Betriebliches Eingliederungsmanagement in Klein- und Mittelbetrieben. *Die Rehabilitation* [online], 51(01), 10–17. Available at: <https://doi.org/10.1055/s-0031-1299690>
- Rodgers, L., 2024. *Labour law and the person: An agenda for social justice*. Bristol University.
- Rose, E., 2017. Workplace temporalities: A time-based critique of the flexible working provisions. *Industrial Law Journal* [online], 46(2), 245–267. Available at: <https://doi.org/10.1093/indlaw/dww039>
- Rüb, S., 2024. Kollegialität, Solidarität und Loyalität: Konzeptionelle Überlegungen zum Zusammenhalt in der Arbeitswelt. In: B. Vogel and H. Wolf, eds., *Gesellschaftlicher Zusammenhalt*. Weinheim: Campus Verlag, 27–48.
- Schiek, D., 1996. Lifting the ban on women's night work in Europe: A straight road to equality in employment? *Cardozo Women's Law Journal*, 3(2), 309–333.
- Schmidt, W., 2024. Betrieblicher Universalismus: Sozialintegration und Unterschichtung. In: A. L. Carstensen et al., eds., *Geteilte Arbeitswelten: Konflikte um Migration und Arbeit*. Juventa Verlag, 288–303.
- Schultz, V., 2010. Feminism and workplace flexibility. *Connecticut Law Review*, 42(4), 1203–1222.
- Schultz, V., and Hoffman, A., 2006. The need for a reduced workweek in the United States. In: J. Fudge and R. J. Owens, eds., *Precarious work, women and the new economy: The challenge to legal norms*. Oxford: Hart, 131–151.
- Silbaugh, K. B., 2010. Sprawl, family rhythms, and the four-day work week. *Connecticut Law Review*, 42(4), 1267–1284.
- Silbaugh, K., 1996. Turning labor into love: Housework and the law. *Northwestern University Law Review*, 91(1), 1–86.
- Somek, A., 2017. *The legal relation: Legal theory after legal positivism*. Cambridge University Press.
- Stone, K. V., 2004. *From widgets to digits: Employment regulation for the changing workplace* [online]. Cambridge University Press. Available at: <https://doi.org/10.1017/CBO9780511617089>

- Sturm, S., 2001. Second generation employment discrimination: A structural approach. *Columbia Law Review* [online], 101(3), 458–568. Available at: <https://doi.org/10.2307/1123737>
- Sturm, S., 2007. Conclusion to responses: The architecture of inclusion: Interdisciplinary insights on pursuing institutional citizenship. *Harvard Journal of Law & Gender*, 30, 409–424.
- Sturm, S., 2008. Designing the architecture for integrating accommodation: An institutionalist commentary. *University of Pennsylvania Law Review*, 157, 11–20.
- Supiot, A., 2015. Der Rechtsgrundsatz der Solidarität. *Soziales Recht*, 133–140.
- The Green New Deal for Europe (GNDE), 2019. *A blueprint for Europe's just transition: Edition II* [online]. Available at: <https://report.gndforeurope.com/cms/wp-content/uploads/2020/01/Blueprint-for-Europes-Just-Transition-2nd-Ed.pdf>
- UN Economic Commission for Latin America and the Caribbean (ECLAC), UN Women and ILO, 2025. *The right to care in Latin America and the Caribbean: Progress on the regulatory front*. Santiago. Gender Equality Observatory for Latin America and the Caribbean.
- Veltman, A., 2016. *Meaningful work* [online]. Oxford University Press. Available at: <https://doi.org/10.1093/acprof:oso/9780190618179.001.0001>
- Waddington, L., and Hendriks, A., 2002. The expanding concept of employment discrimination in Europe: From direct and indirect discrimination to reasonable accommodation discrimination. *International Journal of Comparative Labour Law and Industrial Relations* [online], 18(4), 403–428. Available at: <https://doi.org/10.54648/5113464>
- Weeks, K., 2011. *The problem with work: Feminism, marxism, antiwork politics and postwork imaginaries* [online]. Durham: Duke University Press. Available at: <https://doi.org/10.1215/9780822394723>
- Weldon-Johns, M., 2013. EU work-family policies: Challenging parental roles or reinforcing gendered stereotypes? *European Law Journal* [online], 19(5), 662–681. Available at: <https://doi.org/10.1111/eulj.12022>
- Welti, F., et al., 2010. *Betriebliches Eingliederungsmanagement in Klein- und Mittelbetrieben: Rechtliche Anforderungen und Voraussetzungen ihrer erfolgreichen Umsetzung*. Schriftenreihe der Hochschule Neubrandenburg.
- Wenckebach, J., 2014. Individuelle Arbeitszeitgestaltung und kollektive Interessen: Alle für Eine oder alle gegen Einen? *Kritische Justiz* [online], 47(4), 405–413. Available at: <https://doi.org/10.5771/0023-4834-2014-4-405>
- Wenckebach, J., and Kocher, E., 2013. § 12 AGG als Grundlage für Ansprüche auf angemessene Vorkehrungen. *Soziales Recht*, 17–28.
- Wihl, T., 2019. *Aufhebungsrechte: Form, Zeitlichkeit und Gleichheit der Grund- und Menschenrechte* [online]. Velbrück Wissenschaft. Available at: <https://doi.org/10.5771/9783748920571>