Chapter 9
'A just share of the fruits of progress': the role of collective bargaining

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Introduction

One of the most important obligations in the ILO Declaration of Philadelphia is also one of its most neglected. This is the 'solemn obligation' to 'further among the nations of the world programmes which will achieve' ten objectives. These include 'policies in regard to wages and earnings, hours and other conditions of work calculated to ensure a just share of the fruits of progress to all'. Rather curiously, the same paragraph continues with a commitment to policies that will ensure 'a minimum living wage to all employed and in need of such protection'. Curious because the latter is surely implied by the former: how is it possible to have 'a just share of the fruits of progress' that does not guarantee a wage sufficient to sustain life? And what kind of theory of social justice would consider it to be enough that everyone is entitled to no more than a low wage sufficient to sustain the essentials of life? Or that unconstrained inequalities of income, wealth and power are 'just', as a commitment to no more than a minimum living wage would suggest?

These are questions that appear not to have been asked in the ILO literature or scholarship. The idea of a 'just share of the fruits of progress' is obviously contestable, a battleground between competing ideologies. But this seems to be little justification for the lack of progress in advancing what is a constitutional obligation, the importance of which we were reminded by the Covid-19 pandemic (Ewing 2021). The latter exposed the extent to which the work of key members of the community – notably service providers in (i) transport, (ii) food production, distribution and retail, and (iii) health and social care – is greatly undervalued, while the work of others (notably in banking, finance and investment) is greatly overpaid. The problem was compounded by the fact that those who carried the heaviest burden on the front line were also exposed as a result of their selfless commitment to a disproportionate risk of illness and in some cases death. Their experience was all the more unforgivable in view of an international legal obligation which is now almost 80 years old.

It is time we took seriously the obligation in the Declaration of Philadelphia and time we started a debate about what it means to further a programme that will achieve 'policies in regard to wages and earnings, hours and other conditions of work calculated to ensure a just share of the fruits of progress to all'. Doing nothing is not an option, which is not to suggest that there is an easy solution or an easy set of solutions. Building on joint work with Lord Hendy KC (Ewing and Hendy 2020, 2023), however, I suggest in this chapter that a good starting point is that a 'just share' depends on both a 'just process', as well as 'just outcomes' from that process. In terms of a 'just process', it is essential that it should

be participative so that workers have the opportunity effectively to determine the terms under which they are employed. So far as 'just outcomes' are concerned, it is proposed that these should comply with two basic principles: the right to equal pay for work of equal value, and the right to fair pay where work is of different value.

1. A just process: the role of collective bargaining

The starting point is the process by which the pot is to be divided. Obviously this requires deliberative democratic procedures through which the community can make decisions about how private wealth is to be permitted to accumulate and transferred within and between generations. It also enables decisions to be made about the balance between public and private sectors and the extent to which services should be provided to benefit citizens, not shareholders; about what percentage of private sector profit should be allowed to be paid to investors and how much in wages and benefits; about the permitted range between minimum and maximum income; and about the role of taxation and other levers to ensure that income equilibriums are maintained. These deliberative democratic procedures take place within the framework of the political constitution and its representative bodies: legislative, executive and judicial. But they also take place within the framework of the economic constitution, and the intermediate arrangements that bridge the political and the economic (Dukes 2014; Ewing 2020).

1.1 Collective bargaining coverage

Collective bargaining is widely acknowledged as being at the heart of the economic constitution (Novitz 2020). As such, it is recognised in the Declaration of Philadelphia, which refers to the duty of the ILO to promote among the nations of the world policies to promote

> the effective recognition of the right of collective bargaining, the cooperation of management and labour in the continuous improvement of productive efficiency, and the collaboration of workers and employers in the preparation and application of social and economic measures.

This commitment reflects the fact that collective bargaining serves a number of functions. First, it allows workers through their representatives – who should be elected by and accountable to trade union members – to participate in making the rules by which they are governed while at work: the wages, benefits and working conditions. In this sense it performs a democratic function. Secondly, collective bargaining performs a regulatory function in the sense that it determines the rate at which wages will be paid and other conditions of employment will be observed by all employers covered by the agreement.[1] Collective bargaining is not the only method by which relations

1. That regulatory role is reinforced by the legal definition of a trade union in British law, which refers to trade unions as organisations the principal purposes of which include the regulation of relations between workers and employers: Trade Union and Labour Relations (Consolidation) Act 1992, s 1.

are regulated by trade unions, but - together with regulatory legislation - it is the most important.

For collective bargaining to be effective as a participatory and regulatory tool, however, it must have universal coverage: every worker has the right to be protected by a collective agreement. At European level this has been an ambition of many since at least the day when Jacques Delors persuaded British trade unions at the TUC Annual Conference in 1988 to throw off their scepticism and support the European project. As Brian Bercusson always emphasised, there has been longstanding recognition of the importance in EU law of social dialogue, collective bargaining, and collective agreements as democratic processes and regulatory mechanisms (Bercusson 1993, 1994, 2009; Bruun, Lörcher and Schömann 2009). This is to be found now in multiple constitutional instruments, including the TFEU, the EU Charter of Fundamental Rights, as well as several directives including the Posted Workers Directive and the Working Time Directive. Indeed, in the Posted Workers Directive collective agreements are treated with the same respect and as having the same authority as legislation, as should be the case.

The EU's Adequate Minimum Wage Directive takes these developments another step forward, and does so by invoking in Recital 1 the hitherto much overlooked potentially social democratic promise of TEU, article 3. Recital 1 thus emphasises the importance of collective bargaining in promoting the 'well-being' of the 'peoples' of the EU, in a 'competitive social market economy, aiming to ensure full employment and social progress, a high level of protection and improvement of the quality of the environment, while promoting social justice and equality between women and men'. For all its considerable virtues, however, the EU Adequate Minimum Wage Directive appears to view collective bargaining through the lens of the economist and to see the process largely in regulatory rather than also in democratic terms, as reflected for example in Recital 7:

> Better living and working conditions, including through adequate minimum wages, benefit workers and businesses in the Union as well as society and the economy in general and are a prerequisite for achieving fair, inclusive and sustainable growth. Addressing large differences in the coverage and adequacy of minimum wage protection contributes to improving the fairness of the Union's labour market, to preventing and reducing wage and social inequalities, and to promoting economic and social progress and upward convergence. Competition in the internal market should be based on high social standards, including a high level of worker protection and the creation of quality jobs, as well as on innovation and improvements in productivity, while ensuring a level playing field.

But although the focus is on the regulatory rather than the democratic function of collective bargaining, the Directive is nevertheless remarkable: not because it addresses the question of minimum wages throughout the EU, but because it requires Member States to develop an Action Plan with a view to securing collective bargaining coverage of 80 per cent, which is an astonishing ambition in the current political climate. So why 80 per cent? According to the Directive's Recital 25:

> Member States with a high collective bargaining coverage tend to have a small share of low-wage workers and high minimum wages. Member States with a small share of low-wage earners have a collective bargaining coverage rate above 80%. Similarly, the majority of the Member States with high levels of minimum wages relative to the average wage have a collective bargaining coverage above 80%. Therefore, each Member State with a collective bargaining coverage rate below 80% should adopt measures with a view to enhancing such collective bargaining. Each Member State with a collective bargaining coverage below a threshold of 80% should provide a framework of enabling conditions for collective bargaining, and establish an action plan to promote collective bargaining to progressively increase the collective bargaining coverage rate.

That said, it is also to be noted that 'in order to respect the autonomy of the social partners, which includes their right to collective bargaining and excludes any obligation to conclude collective agreements', the threshold of 80 per cent of collective bargaining coverage should be construed only as 'an indicator triggering the obligation to establish an Action Plan'.

Nevertheless, any 'Action Plan should be reviewed on a regular basis, at least every five years, and, if needed, revised'. Moreover, the Action Plan and any update thereof 'should be notified to the Commission and be made public'. But although formally it is left to Member States to determine how the Directive's objectives are to be met, by setting a target of 80 per cent coverage, the Commission is also effectively mandating the means by which it is to be done. This indeed is suggested by Recital 16. According to the latter:

> While strong collective bargaining, in particular at sector or cross-industry level, contributes to ensuring adequate minimum wage protection, traditional collective bargaining structures have been eroding during recent decades, due, inter alia, to structural shifts in the economy towards less unionised sectors and to the decline in trade union membership, in particular as a consequence of union-busting practices and the increase of precarious and non-standard forms of work. In addition, sectoral and cross-industry level collective bargaining came under pressure in some Member States in the aftermath of the 2008 financial crisis. However, sectoral and cross-industry level collective bargaining is an essential factor for achieving adequate minimum wage protection and therefore needs to be promoted and strengthened.

In other words, an 80 per cent target will be met only by sectoral level bargaining, which will inevitably be *de facto* the default position throughout the 27 Member States of the EU. The bargaining level thus seems to be integral to the collective bargaining commitment.

1.2 Collective bargaining levels and scope

That being the case, there is much work to be done by Member States individually. State intervention will be necessary to create state sponsored machinery to provide a framework within which sectoral bargaining can take place (Ewing, Hendy and Jones 2016). And if the regulatory function of sectoral bargaining is to be met, it will be necessary also to ensure that agreements have binding legal effects not only on parties to the agreements but also all other employers and workers in the sector to which the agreement is to apply. Employers may be free not to participate in the process, but they cannot be permitted to escape its binding effects. That said, if the rationale of collective bargaining is its contribution to participation in the economic constitution, as well as a regulatory economic tool, it may be necessary to revisit the concession in Recital 25 which draws attention to the autonomy of employers and their right not to conclude a collective agreement.

Although crucial, it is also the case that sectoral bargaining is not enough. It needs to be supplemented by enterprise-based activity if the full potential of collective bargaining is to be realised. EU law enterprise-based initiatives, however, hitherto have tended to eschew collective bargaining, no doubt in deference to different forms of workplace representation operating in Member States. But mandatory information and consultation on collective redundancies, business transfers, or contractual changes is no substitute for collective bargaining, even if the consultation has to take place 'with a view to reach an agreement'. And while the idea of transnational works councils is greatly to be applauded, they too fall a long way short of transnational collective bargaining structures at enterprise level, particularly when all that is required is an annual meeting 'to be informed and consulted, on the basis of a report drawn up by the central management, on the progress of the business of the Community-scale undertaking or Community-scale group of undertakings and its prospects'.

There is nothing to stop Member States from promoting enterprise-level bargaining alongside sectoral bargaining in the Action Plans required by the Adequate Minimum Wage Directive, and it is essential that Member States should be encouraged to promote both. This is not to suggest that enterprise-based bargaining could ever be regarded as an adequate substitute for sectoral bargaining. The US, Canadian and UK experiences reveal the perils of the former. But equally, it should not be presumed that sectoral bargaining can carry the collective bargaining burden on its own. A coherent collective bargaining strategy embracing both its regulatory and democratic functions would embrace both: sectoral bargaining setting the minimum terms for the sector as a whole, and enterprise bargaining building on and adapting the sectoral agreement to the conditions of the individual enterprise. This would be subject of course to the favourability principle whereby in the event of conflict between agreements, the one most advantageous to the worker will take priority.

Finally, in addition to the need for the universal coverage of collective bargaining and multi-level bargaining procedures, as will be discussed on page 145, there is a need further for the integration of collective bargaining procedures. For the moment, however, it is necessary to emphasise the question of bargaining scope. To this end,

by Article 4(1) the Adequate Minimum Wage Directive refers to the duty on Member States to take various measures in relation to 'the right to collective bargaining on *wage-setting*', including the duty to 'promote the building and strengthening of the capacity of the social partners to engage in collective bargaining on *wage-setting*, in particular at sector or cross-industry level' (emphasis added). But it is also true that the duty in Article 4(2) to establish an Action Plan 'to promote collective bargaining' is much wider. For this purpose, collective bargaining is defined to mean negotiations for 'determining working conditions and terms of employment'. This goes further than the title of the Directive would suggest.

The potentially very wide scope of the latter obligation reinforces the sense that the Directive is a significant break with the recent past (Countouris and Freedland 2013; Ewing 2015), and a wholly unpredictable political achievement. There should be no restriction on the subject-matter of collective bargaining, in the sense that it should apply to all terms and conditions of employment and all other aspects of the working environment. Any rule, practice or convention in the workplace, and any obligation required of a worker and any service provided by an employer should be the subject of bargaining and agreement. As suggested by Article 4(2), workers have a right not only to be protected by a collective agreement, but through collective bargaining to participate in the making and administration of all the rules by which they are governed. The democratic purpose of collective bargaining means that all power exercised by an employer should be constrained by a deliberative workplace process.

2. A just outcome

Collective bargaining in general has 'just' tendencies in the sense that it raises wages and improves working conditions overall, and thereby contributes to the equalisation of incomes. In the words of the TEU, Article 3, it promotes the 'well-being' of 'peoples'. Indeed, high levels of collective bargaining density are associated with lower levels of inequality, as most vividly illustrated by the United Kingdom, where the 1970s – much maligned in right-wing culture – are best remembered not for industrial conflict, coal shortages, petrol rationing, and the three-day week, but for the lowest levels of inequality in British history at a time when collective bargaining density exceeded 80 per cent. Fuelled by ideologically driven change, collective bargaining density has sharply declined since then, to levels somewhere in the region of 25 per cent. It is not a coincidence that inequality has increased in the same period to staggering levels.

2.1 Collective bargaining practice

The restoration of collective bargaining will go some way to arresting and reversing this trend. But as already suggested, collective bargaining has to be more than a deliberative process and/or a market mechanism. It was pointed out above that regulation (probably in the form of legislation) is required to create the machinery within which collective bargaining is to take place in the absence of voluntary initiatives by the social partners. Regulation also needs to address the accountability

of bargaining representatives (if its democratic purposes are to be realised) and the legal effects of collective agreements (if its regulatory effects are to be achieved). But – as was recognised by at least some government ministers in the very different and difficult circumstances faced by the post-war Labour administration – regulation is necessary further to address bargaining outcomes to ensure that they are 'just', and not simply the replacement of individual market power with collective market power.[2]

Thus in one notable Cabinet intervention in 1947, Ministry of Labour support for unregulated collective bargaining ('collective laissez faire') was denounced by the Deputy Prime Minister (Herbert Morrison) as the economics of the 'Manchester School', and as representing the 'mentality of nineteenth century capitalism'.[3] The concern of ministers at the time was with the impact of collective bargaining in the context of a planned economy in which there would be full employment (a major contemporary concern), with Morrison urging that steps be taken to persuade workers 'to recognise that in our fairly advanced stage of transition to a new social order, the first economic duty of each man and woman is to the nation as a whole'.[4] There were, however, more specific concerns explored in a fascinating Memorandum by the Minister for Fuel and Power (Emanuel Shinwell), who argued that:

> The defects of the current method of wage-fixing seem to me to be very serious, and especially so in the present economic situation and that which lies immediately ahead. A satisfactory system of wage-fixing should, in my view, give the following results:
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> (a) All wages should be at least sufficient to provide the wage-earner with a minimum standard of living, covering all the essential needs of life.
> (b) This minimum should broadly apply to men and women alike; to meet the greater needs of workers with families to support, the existing system of family allowances should be augmented, by increasing the weekly payments and providing for their further increase if conditions warrant.
> (c) Above this minimum, actual wages in different occupations should not vary one from another erratically on account of factors like the bargaining strength of different negotiating parties. They should bear a consistent relationship, depending on the different degrees of skill required in different occupations, and—especially important in our current man-power situation—the comparative reluctance or readiness of workers to engage in particular occupations; we must, in short, be able to use wage relations towards solving the problem of the vital but undermanned industries.[5]

In terms of normative standards, paragraph (c) is clearly the most important and is to be emphasised as a result. According to Shinwell, it was apparent that the positive effects he identified were 'not consistently achieved by the prevailing methods of wage-

2. I am drawing here on work currently ongoing with my colleague Dr Andrew Moretta.
3. TNA, CAB 129/20/202 (National Wages Policy, Memorandum by Herbert Morrison, President of the Board of Trade, 14 July 1947, para 4).
4. Ibid.
5. TNA, CAB 129/19/189 (A National Wages Policy, 30 June 1947, para 4).

fixing', pointing out that 'wages vary from industry to industry, and even within a single industry, for reasons quite unrelated to differences of skill and to relative shortages of labour in different occupations'.[6] Notably, 'one main cause of variation is the strength or weakness of the trade unions concerned'.[7] These concerns are of continuing relevance to the operation of collective bargaining machinery, albeit in different social, economic and political circumstances. There should be no 'erratic' variation of wages on irrational grounds between different groups of workers. But – as will be argued below – nor should wages depend *only* 'on the different degrees of skill required in different occupations' or 'the comparative reluctance or readiness of workers to engage in particular occupations'.

As suggested above, questions about the 'justness' of erratic pay differentials were again brought into sharp focus by the Covid-19 pandemic. It is a problem that needs multiple responses. Wage determination is one of these responses, and the problem needs to be addressed as we take steps to promote collective bargaining. Shinwell proposed a statutory machinery within which his concerns could be met, including the creation of a Central Advisory Wages Council with wide discretionary powers to 'investigate and report on claims for higher wages, taking into account the wider economic and social issues raised'. These important ideas were never adopted and have since been lost. Acknowledging their importance, however, an alternative way by which they could be endorsed and developed would be by underpinning collective bargaining at both sectoral and enterprise level with two related principles. I refer to these as the principle of 'equal pay for work of equal value', on one hand, and the principle of 'fair pay for work of different value', on the other.[8]

This means embedding by law both of these principles as binding considerations that must guide collective bargaining. The first is already recognised by the ILO Constitution, the preamble to which refers to the 'principle of equal remuneration for work of equal value', as an example of the type of 'improvement' that is 'urgently required'. That was in 1919. The principle is repeated in the ICESCR 1966, which provides under Article 7 that State parties must ensure remuneration which provides all workers as a minimum not only with 'fair wages', but also 'equal remuneration for work of equal value without distinction whatsoever'. ICESCR, Article 7 corresponds to the two principles referred to in the previous paragraph. So far as I am aware however no steps have been taken

6. Ibid, para 5.
7. Ibid.
8. A rare example of the right to equal pay for work of equal value being formally acknowledged in pay determination is to be seen in the terms of reference for the National Health Service Pay Review Body in the United Kingdom. The latter is a body established by government to recommend annually on pay and working conditions, which the government is free to accept or reject. It has to be emphasised that this is not the same as collective bargaining: trade unions make representations to the Pay Review Body; they do not negotiate with it. Moreover, its deliberations do not lead to binding outcomes. That said, it is not clear what is meant by equal pay for equal value in this context, whether it is being used in the sense deployed in the ILO Constitution, or in the sense subsequently deployed in the ILO Equal Remuneration Convention No. 1951? But for present purposes it does not matter. What does matter is that it is possible to charge them with the task of setting or recommending how pay should be set with the responsibility that everyone should be entitled to be paid the same for work of equal value. In this case of course it may be that any recommendations would apply only to those employed by the National Health Service, but not necessarily to those who are employed in health services. See NHS Pay Review Body, Thirty Fifth Report 2022, CP 717, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1092270/NHSPRB_2022_Accessible.pdf

to give full legal recognition to either. The principle of equal pay for work of value has been implemented widely but only to a limited extent. There appears otherwise to be no effective legal recognition of the right to fair pay for work of different value.

2.2 Collective bargaining principles

As suggested above, the principle of equal pay for work of equal value has been made operational by international, European and domestic law, albeit in the limited – but obviously hugely important – context of gender pay. But apart from the need to generalise the principle to make it apply more widely, there is a need also to broaden our understanding of value for the purposes of the principle. In terms of the role of equal pay for work of equal value in the specific context of gender pay differences, the OECD has drawn attention to the use of 'measurable, objective standards' and emphasised the importance of 'identifying the relative worth of jobs using objective criteria of work-related characteristics, not worker-related characteristics' (OECD 2021). Under the British Equality Act 2010 (based substantially on EU law), a job performed by a female claimant is defined to be of equal value to that of a male comparator if the job in question is equal in terms of the demands made by reference to 'factors such as skill, effort and decision-making'.

The problem here, however, is that these factors intentionally focus on matters internal to the job, taking no account of external factors such as the social value of the work. That would be more difficult to measure objectively. Nevertheless, just as Shinwell was preoccupied in part by the need to adjust wages to fill vacancies that no one wanted to fill, so the pandemic has taught us that work should be rewarded and valued not only for the skill, effort or decision-making required but also for its benefit to others or for the community as a whole: the care worker providing intimate care to someone at the end of life; those engaged at various points in the production and distribution of food; or all those engaged in public transport. A 'just share' for these essential workers depends not only on their limited bargaining power, or the 'relative worth of [their] jobs [to the employer]', but also the value of the work to the community. That needs to be assessed and factored into judgements about wages and benefits.

What applies here to equal pay for work of equal value applies *mutatis mutandis* to pay differentials when work is not of equal value. The fact that work is not of equal value in the expanded sense proposed in this chapter does not mean that great differentials in pay between two groups of workers can be justified. Although different pay rates might be justified for work of unequal value, the differences should be proportionate, having regard to relative differences in the work in question. This is the principle of fair differentials, which should also inform collective bargaining outcomes. Like the principle of equal pay for work of equal value, the principle of fair differentials should be one of general application. It is not a principle exclusively of gender pay equity, though obviously it could be used very productively for that purpose as well. Any differentials would have to be justified, as being proportionate, with due regard to the different value of the work and also perhaps to considerations such as higher wages where recruitment is difficult.

There is one final important matter. This is the question of enforcement. When the Equal Pay Act 1970 was first introduced in the United Kingdom, provision was made whereby either party to a collective agreement could make a reference to what was then the Industrial Court (which despite its name was an arbitral body) to seek the removal of a discriminatory term in a collective agreement. Under the proposals sketched above, it ought to be possible for either a party to a collective agreement or a person to whom a collective agreement applies to make a reference to an arbitral or judicial body to challenge the subject matter of the agreement because it fails to implement either the principle of equal value, or the principle of fair pay for work of different value. If the complaint is upheld, it would be the duty of the body to whom the complaint is made to require the parties to alter the agreement to give effect to the relevant principle or principles, with an obligation also to remedy any injustice that has arisen as a result.

Of even greater importance, however, is the need to facilitate complaints made on an inter-sectoral basis so that wage levels in one sector can be compared with wages in another sector. To borrow from Shinwell again, 'the desired relative wage structure cannot possibly be arrived at by any method of fixing wages in one industry alone'.[9] If a 'just share of the fruits of progress' is to be delivered through the medium of collective bargaining (together with other instruments), it is essential that provision should be made whereby the terms of a collective agreement in one sector can be compared with the terms of a collective agreement in another sector. This would be with a view to an uplift of terms and conditions of employment in the former where there is work of equal value between the two, or where there are unfair differentials between the two. Just as it is necessary to integrate sectoral and enterprise collective bargaining, so it is necessary to facilitate both inter-sectoral comparisons intra-sectoral comparisons.

Conclusion

A just share of the fruits of progress thus begins with just procedures producing just outcomes. But, as suggested, just procedures will not necessarily produce 'a just share of the fruits of progress'. The Covid-19 pandemic brought into even sharper focus the aphorism that the greatest burden is often carried by those with the narrowest shoulders. It was perhaps ever thus. Yet the Declaration of Philadelphia mandates us to do something about it (Ewing 2021), and to produce a more sophisticated solution than the promotion of collective bargaining or a statutory minimum wage can secure. Collective bargaining can be only one piece of a progressive jigsaw puzzle. It is not enough that collective bargaining replaces individual bargaining as a source of market power, with the spoils going to those with the greatest leverage regardless of the contribution they make. The Declaration of Philadelphia invites us to consider the need for a regulated framework within which collective bargaining is conducted if it is to ensure not generalised improvements, but 'just outcomes' for everyone.

9. TNA, CAB 129/13/255 (A Proposed Wages Policy, 22 October 1946, para 8), annexed to the document referred to in footnote above.

So, what would other pieces of the jigsaw look like? So far as process is concerned, it would include not only participation through collective bargaining in determining terms and conditions of employment, but also the democratisation of the enterprise, beyond measures such as information and consultation procedures or European Works Councils. This takes us into territory staked by scholars such as Isabelle Ferreras (2017) (who emphasises the role of the firm as a political entity) and Ewan McGaughey (2018, 2019, 2021) (who emphasises democratic participation in the firm through the right to vote). In McGaughey's case that would mean the right of workers to vote on matters such as the directors of the company (or their equivalent in public enterprises); the allocation of surplus (investors, investment, or wages);[10] and in the key decisions of pension fund trustees (on the board of which workers ought also to be represented). So far as outcomes are concerned, the issue is not a guaranteed minimum but a permitted maximum.

The immediate concern, however, is collective bargaining, the first step of a progressive journey. Having regard to the proposals in Section 2, the key points are first, the generalisation of the existing principle of equal pay for work of equal value, thereby enabling it to fulfil its full unconditional potential, as expressed in the preamble to the ILO Constitution. Secondly, there is the need to recognise and make operational the need for fair differentials where work is agreed to be of different value, a principle which, to my knowledge, is not legally recognised at all. Finally and critically, there is a need to enable comparisons to be made on a cross-sectoral basis if workers are genuinely to be rewarded for their effort and contribution. It makes no sense to confine a principle of equal pay for work of equal value or a principle of fair pay for work of different value to individual sectors. To do so may help address internal anomalies, but it would do nothing for those whose work is undervalued in sectors where low pay and poor conditions are deeply embedded.

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10. See also Collins (2020).

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