

# Assessing the Swedish labour law model through a social sustainability lens

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**Abstract:** In this article, we aim to explore the contours of how we might interrogate Swedish labour law and practice from a socially oriented sustainability perspective, drawing on the distinctive findings of our project 'An inclusive and sustainable Swedish labour law – the ways ahead' and on other aspects of the Swedish labour law model that we consider are particularly relevant for a sustainability analysis. In so doing, we have identified potentially five dimensions to the use of a 'sustainability' discourse as a basis for evaluation of regulatory measures suitable for the Swedish labour market. It emerges that the central dominant system of collective bargaining has the potential to promote durability and inter- and intra-generational justice, including just transitions in the labour market. However, its capacity to promote capabilities and equality depends on how inclusive and adaptable collective bargaining systems are, with attention to who is being represented and in what sectors.

**Keywords:** Swedish labour law, sustainability, durability, wage, labour migrants, occupational health and safety, EU social policy, just transitions, collective voice, SDG 8

## Introduction: The project and relevance of sustainability

The Swedish Research Council project, 'An inclusive and sustainable Swedish labour law – the ways ahead', has sought to investigate whether the Swedish model of regulation protects all people selling their labour in a

rapidly transforming labour market.<sup>1</sup> The project has examined the dynamics of individual employment law and collective labour law in Sweden, considering in this context protection of fundamental rights and access justice (Bruun 2017; Herzfeld Olsson et. al. 2020). Further specific analysis has focussed on issues of wage regulation (Sjödin 2021a and 2021b), health and

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safety (Andersson 2021; Andersson and Novitz 2021, 2022), and migrant labour (Herzfeldt Olsson 2019a, 2020a, 2020b, 2022). Inclusivity has been a key focus of our attention, reflecting on the ability of existing regulation, through collective agreements and labour laws, to protect the most vulnerable participants in the labour market. Another vital element of the project (as indicated by its title) is the question whether the model is sustainable, given these labour market transformations, and this is our focus in this article. The discussion here is based both on findings from the project published elsewhere and other aspects of the Swedish labour law model that we consider are particularly relevant for a sustainability analysis.

When considering the issue of ‘sustainability’, we are aware that we are not presenting a clear-cut simple research question. After all, what is meant by the term ‘sustainable’ has been fiercely contested over decades (Pieraccini and Novitz 2020:10). Instead, we aim to explore the contours of how we might interrogate Swedish labour law and practice from a socially oriented sustainability perspective, drawing on the distinctive findings of our project. In so doing, we have identified potentially five dimensions to the use of a ‘sustainability’ discourse as a basis for evaluation of regulatory measures suitable for the Swedish labour market.

The first is an overarching view of ‘sustainability’ as a synonym for ‘durability’, which is perhaps the most common use of the term. In other words, we are asking whether current Swedish labour law and practice can continue in its present forms and what modifications would seem to be acceptable, given what we know about contemporary challenges. This is a vital question, and our starting point, but perhaps does not reflect the normative richness of a ‘sustainability’ discourse as it has emerged on the world stage. A further four dimensions arguably offer an insight into the conditions for sustainability, although we accept that, in

respect of each, this question of durability also remains pertinent.

The second dimension investigated here concerns whether Swedish labour law meets the present and future needs of workers, or (in other words) serves both intra- and inter-generational justice (World Commission on Environment and Development 1986, also known as the ‘Brundtland Report’). This is the other long-established connotation of sustainability that deserves attention as a discrete issue. Linked to this desire to balance the needs of present and future generations is the notion of ‘just transitions’ and the ways in which collective worker representation can play a role in the processes of change and adjustment. Effective trade union representation has, of course, been a distinctive feature of the so-called Swedish model, such that a sustainability-based analysis offers for our project an additional basis for defence of this facet of the Swedish model, although we appreciate the need to adjust and even widen the scope of collective worker representation in various ways to achieve meaningful engagement with debates over such transitions.

A third dimension is the holistic approach prompted by the connections made between the three ‘pillars’ of sustainability: economic, environmental and social. As labour lawyers, in this project our primary concern has been with what might be termed ‘social sustainability’. Nevertheless, we also recognise the global expression of indivisibility of these three pillars in the United Nations (UN) General Assembly Resolution on the 2030 Agenda, which adopted seventeen inter-related Sustainable Development Goals (SDGs) (UN 2030 Agenda 2015). The synergies between SDG 8 which addresses ‘decent work’ and other SDGs (such as health or access to justice) have relevance to our assessment of Swedish labour market regulation in the project. However, we also appreciate that the SDGs offer potential for dilution of concern with labour-related issues and problems, steering preoccupations toward wider economic

frames. In this sense, long-standing preoccupations with the ways in which Swedish collective bargaining and other labour market regulation is economically, as well as socially and environmentally defensible becomes significant. This discussion raises also larger questions about the durability of twenty-first century forms of capitalism, which go beyond the scope of our project, but which we also raise as pertinent to potential future research endeavours in the field of Swedish labour regulation.

A fourth concern lies with the actors and the level at which sustainable policies are pursued. We note in this respect the engagement of the European Union (EU) with sustainable development, previously with reference to the idea of sustainable economic growth (COM(2010)2020). We observe the ways in which the von der Leyen Commission has extended the ambit of sustainability policies, proposing 'A Strong Social Europe for Just Transitions' (COM(2020)14), emerging as part of a new 'European Green Deal', which pursues environmental, technological and ethical changes (COM(2019)640). The connections of EU policymaking to Swedish labour law also need to be examined in this context. We observe the importance of enabling multi-level regulation, such that EU directives do not operate in ways that undermine effective Swedish bargaining which has long set minimum wages, but rather add protections compatible with the Swedish system. Otherwise, a clash of regulatory strategies could undermine the laudable objectives of recent EU social sustainability objectives.

Finally, we may wish, when analysing and critiquing global, regional and national labour market regulation, to refer back to the deeper normative foundations of sustainability. These arguably draw on understandings of capabilities and equality, offering a fifth dimension to understanding our project findings. They prompt us to reflect again on the importance of inclusivity in coverage of labour standards, whether set by the social partners or imple-

mented through overarching Swedish, EU or even international law.

Our project findings are elaborated in greater detail in each part of this article, but at this point may helpfully be briefly articulated here. Crucially, our investigations have exposed the ongoing vulnerability of particular groups of workers who, for various reasons, lie outside the scope of trade union membership or collective bargaining. Despite Swedish legislative initiatives to address the worst forms of exploitation, these tend to concentrate on criminal or administrative penalties, rather than compensation for lost wages or abusive working conditions. Crafting appropriate regulatory strategies is difficult and, without recognition of the particularities of the Swedish model, EU intervention is not always helpful, as recent proposals regarding a directive for an adequate minimum wage have revealed (COM(2020)682). Indeed, some aspects of Swedish collective workplace representation remain an exemplar for other parts of the world, for example, in the context of risk assessment in the field of safety and health (Andersson and Novitz 2022). Further, we challenge assumptions that Swedish legislative reform is desirable to promote greater flexibility, unless this genuinely addresses those most vulnerable in temporary and other forms of employment. We therefore have found that crafting sustainable solutions for labour market transformations in Sweden should not entail abandoning what is valuable in the Swedish model, but rather considering how to ensure these features are enhanced.

### **1. Durability of the Swedish system of industrial relations and labour laws?**

Our project has primarily been concerned with the durability of the Swedish model of industrial relations and labour laws. We are considering whether that model needs to change to endure and, if so, what forms such changes can and should take. This links to the idea of 'sustainability', a term deployed frequently as an

adjective to indicate that a practice is workable in the longer term.

Durable does not mean static, but dynamic, flexible and thereby long-lasting. It follows that a sustainable system of labour law regulation can be expected to involve participatory processes, which can prompt 'social engagement and commitment to the conditions we seek to achieve and the means of their realization' (Novitz 2015:245). Collective bargaining is widely respected as a reflexive process of regulation, which is sensitive to the needs of both workers and employers (Gutierrez 2020; ILO WESO 2021). The dynamism and durability of the Swedish system may then be linked to the participation of trade unions in collective bargaining processes which lie at the heart of the Swedish model of industrial relations (Svensson 2014).

The success of the Swedish labour law model has built on the ability of trade unions and employer federations to organize workers and companies respectively. The high level of organization has provided considerable legitimacy for collective agreements. In collective agreements the social partners can adapt statutory terms and conditions of employment to the needs of a specific sector. The adaptability of collective agreements adds an element of durability (Malmberg 2010). The collective agreement also governs wages and to a large extent provides minimum wage protection.

Even if trade union density has declined from 85 per cent to about 69 per cent, collective agreement coverage remains very high at 90 per cent (Kjellberg 2020:90). This is explained by the extensive membership of employers in employers' organisations and the 100 per cent coverage of collective agreements in the public sector (Herzfeld Olsson et al 2020, Svensson 2014). In the private sector the coverage of collective agreements is between 83–85 percent (Medlingsinstitutet 2022). Here the size of the companies also plays an important role. Smaller companies are to a much lesser extent covered

by collective agreements (Kjellberg 2020:91 et seq.). It is important to keep in mind that half a million of employees are not covered by collective agreements and that the level of coverage is particularly low, in small companies (1–49 employees) in the service sector (Kjellberg 2020:90 et seq.). It is clear that for workers with a weak position in the labour market, who often work in the private low skilled service sector, the absence of a collective agreement can make it more difficult to negotiate a decent wage and other working conditions (Kjellberg 2020, Sjödin 2021a, Herzfeld Olsson 2020).

However, transformation of the content of collective agreements raises new questions (Calmfors et al 2019; Medlingsinstitutet 2021:240). There is a trend in collective agreements concluded towards decentralisation of terms and conditions for work, with these being more frequently determined at company and enterprise level, and becoming individualized since workers can be treated differently in significant ways due to work performance and similar factors (Medlingsinstitutet 2021; Malmberg 2010). For example, the majority of collective agreements do not indicate any specific wage for a prospective employee (Hellberg and Kjellström 2020). While this is mainly the case within the white collar and professional sectors, specified minimum wages are primarily concluded by LO unions and Unionen (the biggest private sector white-collar employees union) (Hellberg and Kjellström 2020). This trend offers opportunities to treat employees differently, which might result in relatively weakened working conditions for weak groups (elderly persons, female persons with small children, disabled employees, and immigrants). So far it seems that strong trade unions to a large extent have mitigated such negative effects of decentralisation (Svensson 2014:15). But if the trade union movement continues to lose members, the future outcome is uncertain.

Moreover, the legitimacy (and thereby durability) of any participatory process is likely

to depend on a variety of factors, including the protection of fundamental human rights of those who are represented, such as their capacity to exercise free speech and thereby meaningfully engage in processes of deliberation (Habermas 1996). It may also depend on (as protection of human rights requires) inclusivity of representation and the means to enforce legal (and moral) claims.

When taking a closer look at the development of membership in Swedish trade unions, it is clear that trade union membership among foreign born workers has declined to a greater extent than among other workers (Kjellberg 2020:51–54). This may be explained by a number of factors that force us to question whether there is a real possibility for all workers in the Swedish labour market to ‘meaningfully engage in processes of deliberation’. It may be that foreign born workers have experienced other models previously and must learn how the Swedish system works, so that they do not fully grasp the importance of trade union membership in the Swedish system. It may also be that they, to a greater extent than other workers, work in sectors or parts of sectors where employers do not value trade union membership and discourage collective bargaining. It is clear that the role of migration law plays a role in this regard, as tied visas can increase workers’ dependence on employers and work (Herzfeld Olsson 2020a and 2022). But also other factors, such as non-recognition of skills, language deficits, and discrimination, may push foreign born workers into vulnerable employment where trade union membership and collective representation is weak (Herzfeld Olsson 2020a; Government Offices 2021a:67).

Trade unions’ efforts in this regard have been insufficient. One explanation is that it has been difficult to adopt a suitable solidarity and inclusion strategy, as migrant workers are so heterogeneous that the legal conditions for their stay in Sweden differs (Neergaard and Woolfson 2017). Some migrant workers have

temporary residence permits on the basis of work and others on the basis of asylum, others are EU-based migrants not in need of residence permits, and others simply lack the necessary permits to stay and work in Sweden or are asylum seekers (for a description of some of the categories see The Swedish National Audit Office 2020:16–17). The lack of success in this regard has resulted in a suspicious attitude towards migrants among blue collar trade unions as they may ‘suffer detriment organisationally from migration’ (Neergaard and Woolfson 2017:212). At the same time, research indicates that the LO has largely sought the active unionisation of migrant workers and seems set to continue on this path, although this is fairly low in its list of current priorities (Neergaard and Woolfson 2017:214). It may be as a result of this strategy that the relative high decrease of trade union membership among migrant workers seems to have halted (Kjellberg 2022:129). The specific institutional support created by Swedish Municipal Workers’ Union in relation to Thai berry pickers however led to improvement for many with regard to working conditions, but no willingness from the workers to become members of the trade union (Herzfeld Olsson 2018). The latter case illustrates the challenges for the trade union movement with regard to workers on temporary contracts and temporary work permits.

The membership aspect, for both nationals and foreign-born workers, is of course crucial in cases where no collective agreement applies to the workplace, but is also significant when a collective agreement does apply, as membership has implications for access to the rights provided for in the collective agreements, which we have discussed and illustrated within the project. Very important is the fact that the monitoring of compliance and enforcement of labour laws, collective agreements and employment contracts is the responsibility of trade unions. This monitoring has for a long time been deemed to provide sufficient protection from

exploitation of workers. Membership plays a crucial role for such effective monitoring. Swedish trade unions in principle only represent their members (Sjödin 2020a; Herzfeld Olsson 2020a).

Also, even if coverage by collective agreement has remained high, there are increasing reports of non-compliance (Sjödin 2020a). This may be an additional effect of the decline of trade union density. The monitoring of implementation of collective agreements is constructed on the basis of local trade union ombudsmen and local representation. A consequence of the decline in trade union density is the growing number of workplaces without such local representation. This means that the foundation necessary for the model is missing (ETUI Workplace Representation; Kjellberg 2021:111–114). In relation to the largest Swedish trade union Unionen, which organises white collar workers in the private sector, only approximately 52 per cent of the members are represented locally by their trade union (Kjellberg 2021:113). On top of that, the share of trade union members among white collar workers that are active as trade union representatives at workplaces has declined from 13 per cent to eight per cent (Kjellberg 2021:114). This means that the burden on those that do engage may be heavier. Together, this has negative impacts on trade union democracy and may impair recruitment and trade union strength and lead to a negative spiral (Kjellberg 2021:114). It can therefore be assumed that the ombudsmen are missing at workplaces where they are the most needed (Sjödin 2020), which could also have implications for enforcement of health and safety standards under the Swedish Work Environment Act, which is discussed further in Part 2 below.

Further, in our project, we have considered the scope for legal intervention to assist third country national labour migrants and foreign born workers who currently lie outside the established collective bargaining structures (Herzfeld Olsson 2020a). A shortcoming with the measures adopted by the state in this regard

is that they do not address the vulnerability of migrant workers. Instead of protecting the workers, the measures taken tend to protect the principle of regulated migration (Herzfeld Olsson 2020a:669). One unexpected and not much discussed response to this development has occurred in criminal law. A new crime ‘human exploitation’ was introduced in the Swedish penal code in 2018. The crime concerns the very bottom end of the labour market and the prerequisites for criminal liability are set very high. Still, after three years, only one employer has been convicted of the crime of human exploitation in work (Högsta domstolen (The Swedish Supreme Court) judgment delivered 15 February 2022, in case 1771-21).

Whether this crime will deter abusive practices in the labour market is uncertain. At the lower end of the labour market, compliance with rules, also those with criminal sanctions such as tax law, is taken lightly. Criminal sanctions focus on the perpetrator, in this case the employer or a manager. It is however not evident how a criminal sanction will help the situation of the worker. The potential victims of this crime are people that lack other options and will likely often be those without the right to stay in Sweden and with little knowledge of the labour market. As workers, they will at the same time be covered by labour law. Private law claims based on labour law do not have an obvious place within the criminal procedure. Other rules of procedure, as well as other burdens of proof, apply to such claims. That someone is acquitted of the crime of ‘human exploitation’ does not mean that labour law has not been violated. In order for criminal liability to be established, the terms and conditions of employment have to be ‘obviously unreasonable’. Already unreasonable terms include non-compliance with labour law and collective agreements which are in place (Sjödin 2020a and 2021a).

The introduction of this new criminal law element to Swedish model may be perceived as a signal that a particular segment of the la-

bour market, the bottom end, is no longer for the social partners to control. Reports of abuse on the labour market have occurred at workplaces with collective agreements. Within the construction sector organised employers and trade unions have agreed on common efforts to enforce collective agreements and other measures to promote decent work (Byggnads and Bygghöretagen 2021). They have also established a body with the task to find solutions to the problem (Bygghandelskommissionen 2022). Judgments from the Labour Court concerning primarily the construction sector indicate that trade unions have already intensified their efforts to enforce their collective agreements in workplaces where their membership bases is weak (AD 2021 no 42 and AD 2019 no 16). There are however no such cases or reporting from other sectors such as restaurants and cleaning. The HRF (The hotel and restaurant workers' union) however in some instances has also claimed rights for exploited non-members (Castilla 2021). Non-compliance and insufficient enforcement of collective agreement appears to be an evident threat to the durability of the Swedish model for labour market regulation.

It would clearly add to the durability of the model if there had been explicit discussion on the demarcation of responsibility between police and prosecutors on the one hand and that of the social partners on the other. The new crime created could even indicate an abandonment of trust in the social partners' ability to achieve adequate protection of a minimum wage, which has been the main feature of the Swedish model since its formation in the first part of the twentieth century. A new government appointed inquiry suggests further criminal law measures could be adopted to combat exploitation; this time the criminal offence is addressing employers employing foreign workers (SOU 2021:88). That crime and punishment is a solution chosen over social reforms coincides with a gen-

eral trend in Swedish society.<sup>2</sup> In this regard, we have given some alternative suggestions on how to move forward to avoid a permanent segmentation of the Swedish labour market where some workers are left totally unprotected. The key question is which actor must take the first step in this regard: the legislator or the social partners? We will come back to this question.

## 2. Intra- and inter- generational justice and collective voice for just transitions

The 1987 Brundtland Report set out the findings from a UN appointed World Commission on Environment and Development, elaborating on the pre-requisites for sustainability. The Report made the famous statement that policies are 'sustainable' which meet 'the needs of the present without compromising the ability of future generations to meet their own needs', requiring consideration 'of the long term as well as the short- term advantages and disadvantages of alternative actions' (World Commission on Environment and Development 1986:51). This is a view which requires reconciliation of a short and a long term view of the needs of people and how justice is to be done.

This approach to sustainability has spawned understandings of 'intra' and 'inter'- generational justice. *Intra-generational* justice demands fair distribution of resources between countries and people within them, while *inter-generational* justice requires reconciliation of the demands of present and future generations (Maggio 1996; Mattioli 2013).

In this context, considerable attention has been paid to reconciliation of environmental objectives which benefit future generations with the social need to secure jobs and income for

2. In Sweden problems with criminal gangs has increased. The question on how to combat this development has to a large extent been focused on stricter punishments for criminal acts and not on social measures in opposition to what the police and other experts request: See for example (Andersson Åkerblom 2019).

present generations. This is not an easy process, since it requires managing changes gradually and through compromise, including potentially redistribution of wealth.

Trade unions were the original authors of sustainable 'just transitions' schemes. Canadian and United States trade unions in the 1970s devised this strategy to ensure that workers who might lose their jobs for environmental reasons would receive assistance from employers, but also government, to retrain and find other work (Steviss et al 2020:9). The significance of trade union engagement with environmentally motivated changes to the labour market and the significance of collective bargaining in this respect is now reflected in the ILO Guidelines on Just Transitions 2015 (ILO 2015). While there is no mention of 'just transitions' in the UN 2030 Agenda for Sustainable Development, there is explicit reference to 'the imperatives of a just transition of the workforce and the creation of decent work' in the preamble to the Paris Agreement on Climate Change later in 2015. That recognition can be linked to the International Labour Organization (ILO) Guidelines, which stress social dialogue and collective agreement between the social partners as a means by which to achieve change in the workplace (ILO 2015).

Collective bargaining is also a means by which workers can pursue environmental health and safety at work, as well as the environmental effects of work practices outside the workplace (see for example the findings of the Agreement project 2020). This links to the importance of occupational health in our project and the significance of collective representation in this respect. According to the Swedish Work Environment Act, one or more of the employees must be appointed a safety representative at every workplace where five or more employees are regularly employed. Safety representatives must also be appointed at other workplaces if the working conditions so require. Safety representatives are to be appointed by a local employees' organisation that is currently

or customarily bound by a collective agreement with the employer.

In Swedish work environment law, local safety representatives play an active and important role cooperating with and supervising employers' work to prevent accidents and ill-health. In our project, two of the most current and urgent occupational health and safety risks have been studied: stress and the coronavirus pandemic. Our studies highlight the crucial role safety representatives have in occupational health and safety law, through their knowledge of and presence at the workplaces. Small workplaces, with less than five workers, usually lack safety representatives. We appreciate this potentially raises problems for inclusivity of representation and effective enforcement of workplace environment norms. Overall, the number of appointed local safety representatives per employee has decreased somewhat in Sweden over the last few decades, but still the representatives are in a relatively strong position, at least in large private sector companies and in the public sector (Andersson and Novitz 2022:25–26).

Health and safety law in Sweden has also been enhanced to address new issues, such as work-related stress, with significant implications for women's inclusion in the labour market. It has been established that stress is the most common cause of work-related injuries in Sweden. One group that stands out when it comes to stress related ill health is women, who has a more than 40 percent higher risk of becoming ill due to stress compared to men. Women being in the majority in well-known risk professions in social work and the health and care sector is one explanation, another is the way in which women combine professional and domestic work. When a stress related injury arises, it often becomes long-lasting. To meet this problem, new provisions on organisational and social work environment, AFS 2015:4, were introduced in Sweden in 2016, which make the employer responsible to prevent unhealthy

workloads by having a work environment that does not cause long-term imbalance between demands (workload, degree of difficulty, time limits) and resources (good working methods and tools, skills, staffing, reasonable and clear goals, feedback, influence, support and recovery). It is therefore critical that safety representatives are available to assist employees in seeking their rights under the new provisions, so as to ensure gender-inclusive representation.

Moreover, we are aware that it may no longer make sense for trade unions to merely be concerned with the 'work environment' in a narrow sense when, in the context of the coronavirus pandemic, work has come to take place in a variety of locations. For example, the importance of food and parcel delivery has meant that much work takes place on the streets. While for many, even in the absence of formal lockdowns in Sweden, working from home became the norm (Ahmadi et al 2022; Bin et al 2022). Broader environmental issues are of growing interest to workers and their representatives (Tomassetti 2018:63).

Collective agreements have the potential to deliver distributional intra-generational justice not only by establishing workplace environment standards, but by setting fair wages for workers, providing for protection from insecurity of employment and even providing for pensions. All these are realised in the Swedish system. The importance of collective agreements in this regard has grown as the state's commitment has declined. It is a strength that the trade unions and employers' organisations have succeeded in making such deals. To a certain extent, such development also leads to further tensions between the insiders and the outsiders, something that has been explained by Johansson and Julén Votinius (Johansson 2020; Julén Votinius 2020; Herzfeld Olsson and Johansson 2020).

How we assess and define just distributions within and between generations remains a controversial issue. One possibility is to look for guidance from international legal sources, such

as the SDGs set out in the UN 2030 Agenda and the economic, environmental and social norms elaborated there.

### **3. Economic, environmental and social pillars under the Sustainable Development Goals (SDGs), especially SDG 8**

After decades during which the UN adopted discrete instruments relating to sustainable development, largely with a focus on environmental and economic objectives, after some deliberation the 2030 Agenda was adopted (Pieraccini and Novitz 2020). The seventeen SDGs (and 169 targets) were described in the preamble to the 2030 Agenda as 'integrated and indivisible' (Seck 2018:155), recognising links between economic, social, and environmental pillars of sustainability (Purvis, Mao and Robinson 2019). They are devoted to 'people', 'planet', 'prosperity', which can be equated to social, environmental and economic objectives respectively, but also to 'peace' and 'partnership'.

There is evidence of attention in the 2030 Agenda to fundamental rights. The preamble makes clear that all states are to 'respect, protect and promote human rights' recognised under international law (UN Agenda 2030 2015, paras 8 and 19), with particular stress placed on the vulnerability of women and migrants (UN Agenda 2030 2015, paras 20 and 29). Inequalities based on gender (referred to in SDG 5) and inequalities of income within and between states (under SDG 10) are to be reduced. There is recognition of 'the right to development' (paras 10 and 35) and the 'capabilities' of developing countries (para 28 repeated in target 12.1).

Environmental objectives concern agriculture (SDG 2), water (SDG 6), energy (SDG 7), climate change (SDG 13), oceans and seas (SDG 14), as well as ecosystems and biodiversity on land (SDG 15). Goals concerning 'people' and 'prosperity' include preventing poverty (SDG 1); ending hunger (SDG 2); promoting health (SDG 3), education (SDG 4), gender equality (SDG 5), economic growth,

employment and decent work ‘for all’ (SDG 8), industry, innovation and infrastructure (SDG 9); reducing inequalities (SDG 10); as well as working towards sustainable cities and communities (SDG 11), and responsible consumption and production (SDG 12).

SDG 8 notably makes reference to the ILO concept of ‘decent work’ alongside economic growth and employment, while SDG 8 targets refer expressly to elimination of forced labour, child labour and discrimination. Moreover, target 8.7 addresses trafficking and modern slavery and target 8.8 makes provision for protection of migrant workers, being suggestive of the importance of inclusivity of protection in the labour market. Since 2017, SDG indicator 8.8.2 has required attention to any ‘increase in national compliance of labour rights (freedom of association and collective bargaining) based on ILO textual sources and national legislation’, with reference to ‘sex and migrant status’.

There are concerns that insufficient emphasis was placed on trade union representation and collective bargaining in Agenda 2030. However, the UN Special Rapporteur on freedom of association regards trade union rights as implicit in the guarantee of ‘fundamental rights’ in target 16.10 (UN Special Rapporteur 2018). The International Labour Office in *Time to Act for SDG 8* has also asserted that social dialogue and collective agreement are vital to the achievement not only of SDG 8 but also of Agenda 2030 as a whole, being a facet of the ‘synergies’ between the different SDGs (ILO 2019a). Collective bargaining is described as ‘essential to provide coherence between real wage growth and shared productivity growth’ (ILO 2019a:60–61; Jaumotte and Osorio Buitron 2015). Moreover, ‘[t]he full involvement of free, independent, strong and representative employers’ and workers’ organizations in policy-making and implementation is a powerful governance instrument for sustainable development, since it reinforces democratic ownership, inclusiveness and accountability’ (ILO 2019a:74). In this

context the Office has made a strong case for collective representation of precarious workers, which raises broader issues concerning equality and capabilities, which arguably underlie the wider sustainability discourse and which we return to in a later section.

Access to justice is highlighted in SDG 16, which also contains targets concerned with access to representation and participation in institutions. SDG target 16.6 aims to ‘[d]evelop effective, accountable and transparent institutions at all levels’, while target 16.7 seeks to ‘[e]nsure responsive, inclusive, participatory and representative decision-making at all levels’. SDG 16.10 requires protection of fundamental rights. Global partnerships envisaged by SDG 17 are to enable the achievement of the goals.

All countries have a role to play at a national level in implementing the SDGs, assisted by international organisations (like the ILO) to ensure policy coordination and coherence, with particular attention to assisting developing countries (ILO STAT; ILO 2019c: article IV(F)). Further, SDG targets 17.16 and 17.17 recognise that various ‘stakeholders’ could act as partners in this process, including civil society, which must be taken to include trade unions. Sweden can report on its plans for protection of SDGs to the UN High Level Political Forum (HLPF), established in 2013 in anticipation of Agenda 2030, which offers possibilities for ‘orchestration’ of national responses (Abbott and Bernstein 2015). In 2021 Sweden presented to the HLPF its own voluntary national review of various SDGs, including SDG 8 (Government Offices of Sweden 2021a).

In the Swedish report on the implementation of the 2030 Agenda, the importance of the role played by the social partners in Sweden in implementing the SDGs was emphasised and the importance of well-functioning social dialogue between employers and unions for sustainable business made clear (Government Offices of Sweden 2021a:34–35). In the 2019 LO,

TCO and Saco joint policy on the 2030 Agenda, nine of the SDGs were prioritised; SDGs 1, 4, 5, 8, 9, 10, 13, 16 and 17 (LO, TCO and Saco Agenda 2030). Their commitments in this regard addressing the situation in Sweden relate to the promotion of a generous and sustainable unemployment benefit systems, combatting discrimination, precarious employment and an informal employment sector (LO, TCO and Saco Agenda 2030:5). The trade unions highlight the importance of the social partners' autonomy when promoting the targets, such as SDG 8 for example. They argue that the model should be further developed to better meet the remaining challenges in fulfilling the targets in SDG 8.

While the International Labour Office Report of 2019, *Time to Act for SDG 8* stressed the synergies between various social sustainability goals (ILO 2019a:2), there may be dangers which stem from such a holistic approach. For example, would a sustainability approach give economic objectives too much priority in Sweden? After all, SDG 8 is not only concerned with decent work but also economic growth, with targets 8.1 and 8.2 promoting an increase in 'gross domestic product' and 'productivity' respectively, supported by indicator 8.2.1, which requires measurement of the '[a]nnual growth rate of real GDP [gross domestic product] per employed person'. It is arguable that this may encourage changes that risk instrumentalizing and commodifying workers in problematic ways.<sup>3</sup>

When looking at the Swedish direct response to SDG 8.2, it is interesting to note that the government offices claim that the innovativeness and modernisation of Swedish industry is good but has to be further strengthened. The

need for skills in industry is mentioned. In relation to target 8.9, it is reported that 'efforts to promote tourism and the hospitality sector are expected to help strengthen the competitiveness of Swedish companies and create new jobs in all parts of the country and contribute to the integration of foreign-born people.' The gender gap is dealt with in the general overview connected to SDG 8. For the future, social dialogue shall be promoted, and the position of collective agreement strengthened both nationally and internationally. Sweden must also, according to the report, continue to work to ensure that newly arrived and foreign-born women and men have the same opportunities for labour market and social integration (Government Offices of Sweden 2021a:95 et seq).

Arguably, in Sweden, it is possible to identify increased prioritisation of economic objectives related to labour market policies. Indeed, this tendency has already been observed in the sphere of EU employment policy where emphasis has been placed on sustainable economic growth (Novitz 2015:261; Pieraccini and Novitz 2020:20–21). In Sweden this is apparent in two respects. Firstly, regarding treatment of migrant workers and secondly in relation to the new employment protection deal including transitional retraining agreements.

In order to be admitted to permanent residence, asylum seekers nowadays need to be able to support themselves and, if bringing a family, also to support them (Ch 5 secs 3b and 7 Aliens Act (2005:716)). This provision was first adopted as a temporary solution to the migration crisis in 2015 but was made permanent in 2021 (Government Bill 2020/21:191). The income requirements are very low for the support required and it might lead to a push towards precarious employment (Ch 4 sec 4d Aliens Ordinance (2006:97). At the same time, the biggest political party in Sweden, the Social democrats, propose that the general labour migration system which is still general and open, should be changed and skill based (Frisk 2021). The sec-

3. The first ILO Constitution to be found in Part XIII of the 1919 Treaty of Versailles stated in section II(a)(427) that 'labour should not be regarded merely as a commodity or article of commerce'; a requirement repeated in article I(a) of the 1944 ILO Declaration of Philadelphia.

ond largest party argue for including a wage threshold preventing low skilled workers in the service sector from entering Sweden. The argument from both parties is that the low skilled professions should be saved for the newly arrived asylum-based migrants (Frisk 2021). With these arguments, no one gets a right to be in Sweden in a decent manner, if not able to support oneself. The less skilled jobs may continue to deliver poor working conditions as long as the number of newly arrived migrants is high. The asylum seekers tend to work in low skilled jobs and other third country national workers are proposed to only be admitted if they have skills that no one else can contribute nationally. Labour migrants may, if these proposals are adopted, only be admitted if they have something very attractive to offer. The adopted and proposed changes clearly emphasise economic output and decrease purely protective measures. In this case it is the economic outcome for the state that is given centre stage as the main priority. Growth and productivity in line with SDG 8.2 is taken seriously. It is not clear however that a fair balance between these economic interests and protective obligations are achieved.

The 'decent work' agenda can be seen as an invitation to strengthen and enforce the elements of inclusion and social fairness within the Swedish labour market model. It seems however that the flexible labour market and major employment protection labour law reform, on which the most representative Swedish labour market parties have agreed in 2020, contains elements which contradict the decent work agenda. The starting point for this flexible model is that in the digitalized information society employees cannot expect lifelong employment relationships with one employer, but the realistic expectation is that an average employee will have to seek new employment and retrain himself several times during his active period (Government Bill 2021/22:176).

From that perspective, the social partners and government rightly emphasize the need for training and education of the work force. But they also have agreed on lowering the threshold for dismissals, both on individual and economic grounds. For instance, the legally anchored order for dismissals 'last in – first out' has been further undermined by extending exceptions that the employer is allowed to decide upon (Government Bill 2021/22:176). From the perspective of decent work, one could argue that the dismissal protection for vulnerable groups should be enhanced in order to keep up a high rate of employment in the labour market. These groups are in a difficult position when competing for new jobs and there is also a risk that training and education are more likely to be available and effective for the already better qualified employees (Umeå university 2020). Many low educated workers may need more than one year of studies to become employable. One can also argue that the new agreed labour market model allocates the risks for unemployment to society and the individual employee. The responsibility of the employer has been reduced. There is in this respect a clear tension between decent work objectives and the ongoing Swedish labour law and labour market reform.

Growth and productivity, which have always played a crucial part in collective bargaining and Swedish labour law, have been given a more pronounced role in the system that is now developing (Malmberg 2010). Recognition of the employers' need for flexibility to stay competitive is given an ever-stronger weight. In the case explained above, the social partners that anticipated that their members in general would benefit from this solution agreed on the outcome.<sup>4</sup>

4. Initially it was only the private employers, Svenskt Näringsliv and the private sector white collar workers' and professionals' trade union negotiating cartel, PTK that agreed on the Principle agreement. The blue collar

Synergies between SDG 3 regarding health and well-being and SDG 8 on decent work have become readily apparent during the pandemic and may be more generally deserving of attention. The Global Commission on the Future of Work (Global Commission) in its report *Work for a Brighter Future* recommended that ‘safety and health at work ... be recognized as a fundamental principle and right at work’ and be protected under a Universal Labour Guarantee, which would apply to ‘all workers, regardless of their contractual arrangement or employment status’ (ILO 2019b:12). This view was reflected in article III(B) of the 2019 ILO Centenary Declaration, which affirmed the rights of ‘all workers’ to (1) ‘their fundamental rights’; (2) ‘an adequate minimum wage, statutory or negotiated’; (3) ‘maximum limits on working time’; and (4) ‘safety and health at work’ (ILO 2019c). A supplementary resolution on the ILO Centenary Declaration, requested the Governing Body ‘to consider as soon as possible, proposals for including safe and healthy working conditions in the ILO’s framework of fundamental principles and rights at work’ (ILO 2019d). The Governing Body has now adopted ‘a roadmap’ which plans for this issue to be placed before the next International Labour Conference (ILO 2021).

Weighing the economic interests of employers and society against the protection of workers’ health, which also of course has economic implications for society as well as for the indi-

workers’ confederation LO and the public employers were not parties. The majority of the LO trade unions now have joined. Four of the LO affiliated trade unions Byggnads, SEKO, Fastighets och Transport keep outside the compromise with the argument that the compromise was unbalanced and benefitted the employers. See for example SEKO’s explanation <https://www.seko.se/press-och-aktuellt/nyheter/2021/seko-sager-nej-till-att-lo-ansluter-sig-till-huvudavtal/> and Fastighets: <https://www.fastighets.se/om-oss/nyheter/2021/fastighets-sager-nej-till-huvudavtalet/>.

vidual, is fundamental to Swedish work environment law. The categorical duty of employer to take all measures necessary to prevent the employee from being exposed to illness or accidents, Chapter 3 Section 2 the Swedish Work Environment Act, is limited by the proportionality principle protecting employers from work environment demands that are unreasonable in the sense that they are expensive and have limited potential to prevent injuries (Andersson 2019). Despite these connections to SDGs 3 and 8, the adoption of the 2030 Agenda has had little impact on the Swedish work environment discussion. Swedish occupational health and safety law is based on supervision by union safety representatives and ultimately by the Work Environment Agency. It is focused more on the collective of workers (the work *environment*) than the individual workers and remains grounded in EU law.

#### 4. EU Sustainability Objectives and Social Policy

The European Pillar of Social Rights proclaimed on 17 November 2017 (EU 2017) refers in its preamble to ‘Article 3 of the Treaty on European Union’ and the statement that ‘the aims of the Union are inter alia to promote the well-being of its peoples and to work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment’. Paragraph 7 of the preamble also states that ‘the establishment of a European Pillar of Social Rights should be part of wider efforts to build a more inclusive and *sustainable* growth model by improving Europe’s competitiveness’ (our emphasis).

A desire for sustainability as inclusivity is incorporated into Chapter 1 of the Pillar, concerned with ‘Equal opportunities and access to the labour market’, while Chapter 2, Principle 5 states that: ‘Regardless of the type and duration

of the employment relationship, workers have the right to fair and equal treatment regarding working conditions, access to social protection and training.’ Principle 8 protects social dialogue, access to information and consultation of collective representatives, as well as collective bargaining and collective action.

The Commission Communication on ‘A Strong Social Europe for Just Transitions’ issued on 14 January 2020 began with recognition of the UN SDGs and a commitment to the European Pillar of Social Rights (COM(2020)14). In this document, the von der Leyen Commission regarded sustainability as not only economic and environmental but as social and linked to the world of work. With an emphasis on inclusive labour markets, there would also be support for: (1) training; (2) professional mobility and ‘economic reconversion’; (3) job creation; (4) fostering equality as part of a Sustainable Europe Investment Plan for Green New Deal (5) fair working conditions; and (6) social protection. Two potential initiatives mentioned in the Communication have since been promoted; one being the exploration of collective bargaining for the self-employed in the platform economy, as part of the wider Digital Services Act Package (COM (2021)761; COM(2021) 762; and C(2021) 8838). The other is the earlier and arguably more concrete and controversial Commission proposal for a directive on adequate minimum wages (COM (2020)682). The 2021 Action plan draws self-consciously on the twenty principles of the Social Pillar which is described as the ‘beacon’ for the new social rulebook (COM Action Plan 2021:6). It begins by stressing that: ‘Competitive sustainability is at the heart of Europe’s social market economy, striving for a sustainable and inclusive growth model that delivers the best for people and the planet.’ (COM Action Plan 2021:5).

There seems to be little doubt that the von der Leyen Commission would approve of the proposed new Swedish employment protection provisions including training package which

promotes retraining and job creation, rather than job preservation (described in the previous section). As regards fair working conditions in Sweden, COVID-19 has arguably exposed both strengths and weaknesses in the legal system of protection of health and safety at work. Although not limited to work, coronavirus can be seen as a stress test of the system, testing how robust work environment law is in an exceptional situation.

Overall, Swedish work environment law has been successful in intercepting the new risk of COVID-19. The open-ended rules in the Swedish Work Environment Act with its holistic work environment concept, combined with active union safety representatives and dynamic government supervision by the Swedish Work Environment Agency, have ensured that the COVID-19 has been identified as a proper work environment risk, covered by employer responsibility. In this project, when comparing English and Swedish occupational health and safety law concerning risk assessment as the most important tool to prevent COVID-19 at work, it was clear that Swedish rules have a more pre-emptive function, preventing employees from being harmed, and English rules a more defensive one, preventing employer liability (Andersson and Novitz 2021 and 2022). Because the virus is not only present at work, being able to prove that someone has got infected at work and not in private life is usually impossible, depending of course on the level of certainty the rules of proof set up. The Swedish focus on pre-emptive employer responsibility *ex ante*, rather than *ex post facto*, has diminished this problem effectively. Instead, problems in the Swedish work environment law system have to a large extent concerned the fundamental lack of knowledge of the virus in the medical sciences and also, on a very practical level, a lack of personal protective equipment in the earlier stages of the pandemic. In certain sectors of working life, such as larger companies and in the public sector,

Swedish work environment law seems to have functioned adequately.

Outside that sector, for more vulnerable workers and self-employed, the situation is quite different, as the pandemic has highlighted. Self-employed are to some extent covered by the protection of the Swedish Work Environment Act, but having no employer they lack a subject of responsibility, other than themselves, concerning their health and safety. This is problematic especially since a significant part of self-employed work is in an environment where they risk exposure to the virus, for example making deliveries, driving taxis or cleaning houses. On the EU level, self-employed are a group at risk and many self-employed are not covered by the Framework Directive 89/391/EEC. Self-employed are often not in focus for government supervision of occupational health and safety, and many times lack in time and resources to invest in their work environment. The European Agency for Safety and Health at Work have extensive guidelines and resources concerning COVID-19 as an occupational health and safety issue, but the focus is on workers, not the self-employed (European Agency for Safety and Health, webpage Healthy Workplaces). This may well be an ongoing problem both at the EU and Swedish level from a sustainability perspective; and we will have to see what form any final Directive on platform workers and provision for collective bargaining for the self-employed will take.

In her guidelines for the European Commission for the years 2019–2024, von der Leyen stated that:

“The dignity of work is sacred. Within the first 100 days of my mandate, I will propose a legal instrument to ensure that every worker in our Union has fair minimum wage.” (von der Leyen Agenda 2019–2024)

A little over 100 days after she took office, on October 28 2020, the Commission presented

a proposal for a directive regarding adequate minimum wages in the European Union, as was also promised in the Commission Communication on ‘A Strong Social Europe for Just Transitions’ (COM(2020)682). There is no predecessor at EU level. The proposal was put forward after it had been established that the European social partners would not be able to reach a solution through negotiations within the scope of the European social dialogue (art. 155 TFEU).

The Commission is clearly of the opinion that the EU has competence to adopt binding rules in a directive concerning minimum wage. It may be contested whether this is true and, if a directive is finally adopted, it is not unlikely that the question of competence will arise and how to interpret the exception regarding pay in article 153.5 TFEU. In the project, we have explained why this measure is inappropriate for Swedish labour regulation (Sjödin 2021b and 2022). The Court of Justice of the European Union has previously undertaken a systemic interpretation and, if this is tested again, there might be reasons for another result (Sjödin 2021b:413).

By means of the proposal in question, the EU is taking a new approach towards collective bargaining and especially towards sectoral collective bargaining. From having undermined and restricted sectoral collective bargaining in several Member States in the aftermath of the financial crises (in for example Greece, Spain, Ireland, Portugal, and Cyprus among others) the EU is now joining the OECD in reassessing sectoral collective bargaining to be an inclusive and sustainable instrument. The Commission initiative has even been labelled as a symbol for the return of social Europe (Schulten and Müller 2021). In this respect the new policy is well aligned with the Swedish collective bargaining system. On the other hand the Directive focuses on wage transparency and access to minimum wages, not on setting any pay levels. From a Swedish point of view the Directive cannot be expected to add any further protection for weak groups. The problem with the Directive from

a Swedish point of view is that it places significant responsibilities related to wage setting on the Member States. Since the labour market parties exclusively bear this responsibility in Sweden, there are problems to design the Directive so that it fit into a Swedish setting. This fact, in combination with little confidence in the Court of justice, especially on the trade union side, has caused both employer organisations and trade unions in Sweden to strongly oppose the proposal for that Directive. This is an instance where the objectives of Swedish and EU regulators coincide but their regulatory methods clash. A sustainable, in the sense of a durable, system of EU governance will require some deference to collective bargaining as the crucial means of wage setting, while Swedish labour market partners will, as our final part demonstrates, have to find ways to make these processes more inclusive.

### **5. Reflection on the theoretical foundations of sustainability**

In theoretical terms, the worker can be understood as 'embedded' or inevitably connected to their 'family, community, and environment' (Seck 2019:158). Indeed, the 'needs' identified in the Brundtland Report can be understood as being capable of being delivered through better regulation of work. For example, Erich Griefler and Beate Littig, writing on social sustainability in 2005 (Griefler and Littig 2005), on this basis proposed measures addressing discrimination and state support for workers. They expressly linked their analysis to the capabilities' framework advocated by Amartya Sen and Martha Nussbaum (Griefler and Littig 2005:75).

Sen's idea of *Development as Freedom* centres on human 'capabilities', including those of 'workers' (Sen 1999). He has argued for 'processes' that allow freedom of actions and decisions, and the actual *opportunities* that people have...' (Sen 1999). The value of 'functionings', 'the various things a person may value doing or being', cannot in his view be predetermined,

but can be enabled (Sen 1999:75 and 112–119). Simon Deakin has identified, as enabling factors for workers, 'their society (such as social norms, legal rules and legal political institutions) and their environment (which could include climate, physical surroundings and technological infrastructure)' (Deakin 2005:56).

Nussbaum has argued that government and public policy must urgently address 'entrenched social injustice and inequality' which hinders the realisation of capabilities (Nussbaum 2011:18–19). In so doing, she has offered a more prescriptive list of 'central capabilities', of which 'affiliation' and 'practical reason' are 'architectonic' – 'they organize and pervade the others' (Nussbaum 2011:33–39). It can be argued that affiliative thought and action can be linked to freedom of association and collective voice (Novitz 2019; Bogg 2019), which she concedes may be an important aspect of addressing systemic inequality (such as women's informal work in India), although she also insists that a wider holistic approach is required (Nussbaum 2019:80). Certainly, systemic inequality of the kinds identified by Nussbaum are inconsistent with sustainability, which poses questions as to how regulation of the labour market can and should best address this problem.

Taking a closer look at the ten basic capabilities that according to Nussbaum must be upheld in a decent political order, it is clear that freedom of association and collective voice in the Swedish setting can be linked to capabilities no. 7 'affiliation' (which expressly mentions freedom of assembly and speech) and no. 10 'control of one's environment' (which also expressly in its 'A' aspect includes political participation in the form of free speech and association) (Nussbaum 2011:33). Keeping in mind that a threshold level of these ten basic capabilities must be guaranteed to all and that all capabilities are interrelated, we have demonstrated in our project that freedom of association plays a very strong role in Swedish labour regulation. It is clear that if this right is not possible to re-

alise, it is difficult to claim that other capabilities are achieved such as, under no. 10(B), 'being able to work as a human being, exercising practical reason and entering into meaningful relationships of mutual recognition with others workers' (Nussbaum 2011:34). It can also be questioned whether those workers in reality can reach the minimum threshold of capabilities no. 9 which talks about recreational activities, or even no. 6 on practical reason (to 'engage in critical reflection about planning of one's life'), no. 2 on bodily health and no. 1 on life. This may also have implications for the children of these workers making it difficult for their children to reach the threshold of no. 4 on 'senses, imagination, and thought' which includes adequate education (Nussbaum 2011:33–34). In a Swedish context the 'architectonic' function of freedom of association is very clear.

Here, it may be relevant to observe that the 2021 Swedish report on the implementation of the 2030 Agenda claims that 'the level of basic social protection is 100 per cent on most areas' when reporting on SDG 1 (Government Offices 2021a:74), but also recognizes that Sweden faces 'great challenges in terms of inequality in education, health, segregation, and vulnerability in the labour market'. The report also recognises that the number of 'people with an income below 60 per cent of median income has increased, meaning that economic gaps have widened' (Government Offices 2021a:53). Women and people born outside Sweden are reported to be the hardest hit (Government Offices 2021a:75). Still, we must keep in mind that Sweden has 'the lowest rates of severe material poverty in the EU', except in the areas with socio-economic challenges, where the rate was on par with the EU average of just under 7 per cent (Government Offices 2021a:74).

The rare measures taken to prevent labour exploitation in a very few cases (through for example criminal sanctions) can enhance the probability that those outsiders identified here access the central capabilities identified

by Nussbaum (Herzfeld Olsson 2019a; Sjödin 2021a). Those legislative measures are however in many aspects punitive and not focussed on enhancing capabilities thresholds for victims. They do not contribute to what a life worthy of human dignity requires, which is what Nussbaum asserts capabilities is about (Nussbaum 2011:32). We must keep in mind that the capabilities approach is about what each person is 'able to do and to be'.....'the approach takes each person as an end, asking not just about the total or average well-being but about the opportunities available to each person' (Nussbaum 2011:18). A good society according to Nussbaum should promote 'a set of opportunities, or substantial freedoms, which people may or may not exercise in action: their choice is theirs' (Nussbaum 2011:20). Our argument is that in the Swedish context such choice is not available to everyone. It is questionable whether the central capabilities have reached a threshold which make life 'worthy of human dignity' for those workers.

For those that can exercise the freedom of association, the Swedish labour law system, both through measures taken by the legislator and the social partners, develops from a rights-based system towards one prioritising capabilities, which leads to a wider diversity. But here we must keep in mind that the capability approach accepts diversity – 'treating people as equals may not entail equalizing the living conditions for all' (Nussbaum 2011:31). This is particularly clear when we look at how most collective agreements have developed. For many workers, their individual capacity to perform at work and negotiate their terms will be crucial for the outcome with regard to the remuneration they will get. To a much larger extent than previously, the individual worker him- or her-self will influence the outcome in this regard. The diversity between workers within the same professional group increases (Herzfeld Olsson 2019b:30 et seq). But we could argue that the individual worker who is an in-

sider and a trade union member is provided with the sufficient substantial freedoms in accordance with the thresholds required, since the trade union and trade union membership is a safeguard that the lowest level will not deprive the workers of decency.

Also, when analysing the new proposals on employment protection we can see similar effects. It is however here perhaps less clear whether the thresholds will be upheld for everyone affected. The idea is that it will be easier for employers to dismiss workers on the basis of both personal and redundancy causes. The background is the recognition of the employer's need to safeguard appropriate qualifications within the workforce to stay competitive. This, in its turn, will benefit growth. In order to help workers to stay qualified, very generous transition systems will be adopted, where the workers can get subsidised up to a year to educate themselves. The idea behind this exercise is very much in line with the idea of capabilities. We could say that this system supports internal capabilities (Nussbaum 2011:21). The question however is whether, in reality, the training and education necessary to become employable again or remain employable is available for everyone or if this system will strengthen those with already greater skills and bargaining power, while pushing more vulnerable workers out of the workforce or into ever more insecure work. A risk is that those ejected will become part of the outside workforce for which it is questionable whether the threshold is upheld. We must keep in mind that a capability is a 'combination of personal abilities and the political, social and economic environment'.... combined capabilities (Nussbaum 2011:20–21).

### **Concluding thoughts**

This paper has sought to interrogate certain aspects of the Swedish system with reference to different understandings of 'sustainability'. It emerges that the central dominant system of collective bargaining has the potential to pro-

mote durability and inter- and intra-generational justice, including just transitions in the labour market. However, its capacity to promote capabilities and equality depends on how inclusive and adaptable collective bargaining systems are, with attention to who is being represented and in what sectors.

While the UN SDGs adopted in the 2030 Agenda offer an opportunity for Sweden and the social partners to reflect on the content of sustainable policies and how they are to be implemented, there are problematic issues raised by the terms of SDG 8, especially as regards its treatment of economic growth. There is already a tendency to prioritise economic objectives in Swedish labour policies in relation to migration and the recent employment/skills package, which may further partition the labour market into insiders and outsiders. More positive is the emerging recognition of how aspects of health intersect with the representation of those at work and pre-emption of harm.

There is a role here for the EU and the Swedish legislature, and aspects of policies directed to addressing labour exploitation are emerging, but at the same time there are dangers that criminal penalties and introduction of a minimum wage may be less helpful than they seem. There needs to be sensitivity to the strengths as well as the weaknesses of the current Swedish system in any attempt to craft new regulatory measures and one of those strengths must be extensive collective bargaining coverage. Moreover, we suspect that the gradual recognition by Swedish trade unions of the various dimensions of sustainability, including underlying concerns with equality and capabilities, may enable the Swedish model to endure. Taking on environmental as well as economic and social objectives, may be crucial to trade unions' relevance, as will ensuring that the Swedish system becomes ever more inclusive of different forms of work and those who do that work.

## References

- ABBOTT, K. W. & BERNSTEIN, S. (2015) The High-level Political Forum on Sustainable Development: Orchestration by default and design. *Global Policy*, 6(3): 222–233.
- AD 2021 nr 42.
- AD 2019 nr 16.
- 'AGREEMENT' PROJECT (2020) European Commission funded and available at: <http://agreement.adapt.it/>.
- AHMADI, F., ZANDI, S., CETREZ, Ö. A. & AKHAVAN, S. (2022) Job Satisfaction and Challenges of Working from Home during the COVID-19 Pandemic: A study in a Swedish academic setting. *Work: A Journal of Prevention, Assessment and Rehabilitation*, 71(2): 357–370.
- ANDERSSON, P. (2021) Krav och resurser i balans: Analys av arbetsmiljörättens nya regel mot stress, *Förvaltningsrättslig tidskrift*, 5: 831–854.
- ANDERSSON, P. (2019) *Lagom krav på arbetsmiljön*, Stockholm, Jure.
- ANDERSSON, P. & NOVITZ, T. (2021) Risk Assessment and Covid-19: Systems at work (or not) in England and Sweden. *Comparative Labour and Social Security Law Journal*, 2021(4): 66–79.
- ANDERSSON, P. & NOVITZ, T. (2022) *COVID-19 at Work: Exposing how risk is assessed and its consequences in England and Sweden*. University of Bristol Research Paper Series 01/22 <https://www.bristol.ac.uk/law/research/legal-research-papers/>, 1–30.
- ANDERSSON ÅKERBLOM, T. (2019) 14 polischefer: Hårdare straff löser inte gängkriminaliteten. *GP.se*, 21-10-2019.
- BIN, E., RUETTO, C., SUSILO, Y. & PERNESTÅL, A. (2021) The trade-off behaviours between virtual and physical activities during the first wave of the COVID-19 pandemic period. *European Transport Review* 13(14), forthcoming: <https://link.springer.com/content/pdf/10.1186/s12544-021-00473-7.pdf>.
- BOGG, A. (2019) The Constitution of Capabilities: The Case of Freedom of Association. II LANGILLE, B. (Ed.) *The Capability Approach to Labour Law*, 241–267. Oxford: Oxford University Press.
- BRUUN, N. (2017) The Old and New Foundations of Labour Law. IN AHLBERG, K. & BRUUN, N. (Eds.) *The New Foundations of Labour Law*, 1–36. Frankfurt am Main, Peter Lang.
- BYGGMARKNADSKOMMISSIONEN (2022) Report: Från svart till vitt: vänd den osunda utvecklingen i byggbranschen. Byggmarknadscommissionen. <https://www.byggmarknadscommissionen.se/>.
- BYGGNADS OCH BYGGFÖRETAGEN (2021) Avsiktsförklaring, 31 oktober 2021. <https://byggforetagen.se/app/uploads/2021/11/Avsiktsfo%C3%88rklaring-Atgardskommission.pdf>.
- CALMFORS, L., EK, S., KOLM, A-S., & SKEDINGER, P. (2019) *Kollektivaöval och lönebildning i en ny tid*, Stockholm, Dialogos.
- CASTILLA, L. (2021) HRF: Reglerna måste ändras, *hotellrevyn.se* 17-02-2021 <https://www.hotellrevyn.se/hrf-reglerna-maste-andras/>.
- COMMISSION Communication, Europe 2020: A strategy for smart, sustainable and inclusive growth COM(2010) 2020 final 3.3.10.
- COMMISSION Communication, A strong social Europe for Just Transitions, COM(2020) 14 final 14.1.20.
- COMMISSION Communication, The European Green Deal COM(2019)640 final.
- COMMISSION Proposal for a Directive of the European Parliament and of the Council on adequate minimum wages in the European Union COM(2020) 682 final, 28.10.20.
- COMMISSION Proposal for a Directive of the European Parliament and of the Council on improving working conditions in platform work COM(2021) 762 final, 9.12.20.
- DEAKIN, S. (2005) Social Rights in a Globalized Economy. IN PHILIP ALSTON (ed.) *Labour Rights as Human Rights*, 25–60. Oxford: OUP.
- ETUI, Workplace representation, Sweden, Worker-participation.eu. <https://www.worker-participation.eu/National-Industrial-Relations/Countries/Sweden/Workplace-Representation>, last visited 2022.04.06.
- EU (2017) Interinstitutional Proclamation on the European Pillar of Social Rights 2017/C 428/09, 13.12.2017.
- EUROPEAN AGENCY FOR SAFETY AND HEALTH, webpage: Healthy Workplaces Stop the Pandemic, Healthy Workplaces Stop the Pandemic | Safety and health at work EU-OSHA (europa.eu), Last visited 2022-04-06.

- EUROPEAN SOCIAL PILLAR ACTION PLAN (2021) available at: <https://op.europa.eu/webpub/empl/european-pillar-of-social-rights/downloads/KE0921008ENN.pdf>.
- FRISK, M. (2021) Arbetskraftsinvandring: Det här vill partierna efter moderaternas vändning, *arbetet.se*, 28-10-2021.
- GOVERNMENT BILL 2021/22:176 Flexibilitet, trygghet och omställningsförmåga på arbetsmarknaden.
- GOVERNMENT BILL 2020/21:191 Ändrade regler i utlänningslagen.
- GOVERNMENT OFFICES OF SWEDEN, (2021a), *Voluntary National Review 2021, Sweden, Report on the implementation of the 2030 Agenda for Sustainable Development*.
- GRIEßLER, E. & LITTIG, B. (2005) Social Sustainability: A catchword between political pragmatism and social theory. *International Journal of Sustainable Development*, 8(1-2):65–79.
- GUTIERREZ, J. E. (2020) Labour and Environmental Sustainability: Summary of Literature Reviews, 1 [http://agreement.adapt.it/wp-content/uploads/2020/11/comparative\\_report\\_agreement\\_final.pdf](http://agreement.adapt.it/wp-content/uploads/2020/11/comparative_report_agreement_final.pdf).
- HABERMAS, J. (1996) *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*, trans. Rehg, W. Cambridge: MIT.
- HELLBERG, P. & KJELLSTRÖM, C. (2020). *Collective Agreements and Minimum Wages – A report from the Swedish Mediation Office*. Medlingsinstitutet.
- HERZFELD OLSSON, P. (2018) Towards protection of Vulnerable Labour Migrants in Sweden: The Case of the Thai Berry Pickers. IN RIJKEN, C. & DE LANG, T (Eds.) *Towards a Decent Labour Market for Low Waged Migrant Workers*. 149–167, Amsterdam, Amsterdam University Press.
- HERZFELD OLSSON, P. (2019a) Något om betydelsen av anställningsvillkor i utlänningslagens mening. IN INGEMANSSON, S., ULANDER-WÄNMAN, C. & MANNELQVIST, R. (Eds.) *Rätten, välfärden och arbetsmarknaden: festskrift till Örjan Edström*, 149–164, Umeå, Umeå universitet.
- HERZFELD OLSSON, P. (2019b). *Equal Treatment of Highly Qualified Labour Migrants*, Working Paper 2019:14, Uppsala, IFAU.
- HERZFELD OLSSON, P., AHLBERG, K., BRUUN, N. & SJÖDIN, E. (2020) Aktuella utmaningar för svensk arbetsrätt. *Juridisk Tidskrift*, 2019–20(3): 619–623.
- HERZFELD OLSSON, P. (2020a) Konsten att inkludera arbetskraftsmigranter i den svenska arbetsrättsliga modellen. *Juridisk Tidskrift*, 2019–2020(3): 638–670.
- HERZFELD OLSSON, P. (2020b) The Role of Effective Enforcement in International Law on Labour Migration, *International Organizations Law Review*, 20(1): 206–232.
- HERZFELD OLSSON, P. & JOHANSSON, C. (2020) Introduction of the Special Issue on the Role of the Social Partners in the Welfare State, *International Journal of Comparative Labour Law and Industrial Relations* 36(3): 271–280.
- HERZFELD OLSSON, P. (2022) To encourage or not to encourage state intervention, that is the question or How to prevent increasing inequality on the Swedish labour market? IN PALI, B. & GEA, F. (Eds) *The future of Labour law*. (Larcier/ Bruylant) ...forthcoming.
- HÖGSTA DOMSTOLEN dom 15 februari 2022 i mål B 1770-21.
- ILO (2015) Guidelines for a just transition towards environmentally sustainable economies and societies for all. Geneva: ILO.
- ILO (2019a) International Labour Office, *Time to Act for SDG 8, Integrating Decent Work, Sustained Growth and Environmental Integrity*.
- ILO (2019b) Global Commission on the Future of Work (Global Commission), *Work for a Brighter Future*, Geneva: ILO. available at: [www.ilo.org/global/publications/books/WCMS\\_662410/lang-en/index.htm](http://www.ilo.org/global/publications/books/WCMS_662410/lang-en/index.htm).
- ILO (2019c) Centenary Declaration for the Future of Work.
- ILO (2019d) Resolution on the ILO Centenary Declaration for the Future of Work, 21 June 2019, available at: [www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meeting-document/wcms\\_711659.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meeting-document/wcms_711659.pdf).
- ILO WESO (2021) World Employment and Social Outlook (WESO) Report, The Role of Digital Labour Platforms in Transforming the World of Work (Geneva: ILO, 2021), available at: [https://www.ilo.org/global/research/global-reports/weso/2021/WCMS\\_771749/-ng-en/index.htm](https://www.ilo.org/global/research/global-reports/weso/2021/WCMS_771749/-ng-en/index.htm).

- ILO (2021) Proposals for including safe and healthy working conditions in the ILO's framework of fundamental principles and rights at work' considered by the ILO Governing Body 343rd Session, Geneva, November 2021 available at: [https://www.ilo.org/gb/GBSessions/GB343/ins/WCMS\\_823038/lang--en/index.htm](https://www.ilo.org/gb/GBSessions/GB343/ins/WCMS_823038/lang--en/index.htm).
- ILO, ILOSTAT <https://ilostat.ilo.org/topics/sdg/#:~:text=%20As%20custodian%20for%2014%20SDG%20indicators%2C%20the,producing%20high-quality%20data%20on%20SDG%20labour...%20More%20>. last visited 2022-04-06.
- JAUMOTTE, F. & OSORIO BUITRON, C. (2015) *Inequality and Labor Market Institutions*, International Monetary Fund (IMF) Staff Discussion Note (IMF, 2015).
- JOHANSSON, C. (2020) Occupational pensions and Unemployment benefits in Sweden. *International Journal of Comparative Labour Law and Industrial Relations*, 36(3): 339–366.
- JULÉN VOTINIUS, J. (2020) Collective Bargaining for working parents in Sweden and its interaction with the statutory benefit system. *International Journal of Comparative Labour Law and Industrial Relations* 36(3): 367–386.
- KJELLBERG, A. (2020) Den svenska modellen i en oviss tid, FACK, ARBETSGIVARE OCH KOLLEKTIVAVTAL PÅ EN FÖRÄNDERLIG ARBETSMARKNAD, Statistik och analyser: facklig medlemsutveckling, organisationsgrad och kollektivavtalsäckning 2000-2029.
- KJELLBERG, A. (2021) *Den svenska modellen 2020: pandemi och nytt huvudavtal*, Stockholm, Arena Idé.
- KJELLBERG, A. (2022) *Den svenska modellen i en föränderlig värld*, Stockholm, Arena Idé.
- LO, TCO, Saco, *Agenda 2030, LOs, TCO:s och Sacos bidrag till att uppnå de globala hållbarhetsmålen i Sverige och internationellt*: [https://www.unionen.se/sites/default/files/files/LO\\_TCO\\_Saco%20Agenda%202030-policy.pdf](https://www.unionen.se/sites/default/files/files/LO_TCO_Saco%20Agenda%202030-policy.pdf).
- MAGGIO, G. F. (1996) Inter/intra-generational equity: current applications under international law for promoting the sustainable development of natural resources. *Buff. Envtl. LJ*, 4:161–223.
- MALMBERG, J. (2010) *Vad handlar arbetsrättslig reglering om? En essä om arbetsrättens uppgifter*. Working paper 2010:9, Uppsala Faculty of Law.
- MATTIOLI, G. (2013) Car dependence, sustainability and the transport policy stalemate: the potential trade-offs between intra-and inter-generational equity. *The International Journal of Sustainability Policy and Practice*, 8(1): 45–57.
- MEDLINGSINSTITUTET (2021) *Avtalsrörelsen och lönebildningen 2020*, Medlingsinstitutets årsrapport. Medlingsinstitutet.
- MEDLINGSINSTITUTET (2022) *Avtalsrörelsen och lönebildningen 2021*, Medlingsinstitutets årsrapport, Medlingsinstitutet.
- NEERGAARD, A. & WOOLFSON, C. (2017) Trade unions and migrant workers – Sweden. IN Marino, S. Roosblad, J. & Penninx, R.(Eds.) *Trade Unions and Migrant Workers – New Contexts and Challenges in Europe*, 200–223. Cheltenham: Edward Elgar.
- NOVITZ, T. (2015) The Paradigm of Sustainability in a European Social Context: Collective Participation in Protection of Future Interests? *International Journal of Comparative Labour Law and Industrial Relations*, 31: 243–262.
- NOVITZ, T. (2019) Supply Chains and Temporary Migrant Labour: The Relevance of Trade and Sustainability Frameworks? In *Re-Imagining Labour Law for Development: Informal Work in the Global North and South*, ed. Diamond Ashiagbor, 191–211. Oxford: Hart.
- NUSSBAUM, M. & SEN A. (Eds.) (2002) *The Quality of Life*, 2<sup>nd</sup> ed. Oxford: Clarendon Press.
- NUSSBAUM, M. (2011) *Creating Capabilities: The Human Development Approach*. Cambridge, Harvard UP.
- NUSSBAUM, M. (2019) Labour Law and the Capabilities Approach, IN LANGILLE, B. (Ed.) *The Capability Approach to Labour Law*, 62–81. Oxford: Oxford University Press.
- PIERACCINI, M. & NOVITZ, T. (2020) Agenda 2030 and the Sustainable Development Goals: 'Responsive, Inclusive, Participatory and Representative Decision-Making'? IN Pieraccini, M. & Novitz, T. (Ed.) *Legal Perspectives on Sustainability*, 39–66. Bristol: Bristol University Press.
- PURVIS, B., MAO, Y. & ROBINSON, D. (2019) Three Pillars of Sustainability: In search of conceptual origins. *Sustainability Science*, 14(3): 681–695.
- SECK, S. (2018) Transnational Labour Law and the Environment: Beyond the bounded autonomous worker. *Canadian Journal of Law and Society*, 33(2): 137–157.

- SECK, S. (2019) Relational Law and the Reimagining of Tools for Environmental and Climate Justice. *Canadian Journal of Women and Law*, 31(1): 151–177.
- SCHULTEN, M. & MÜLLER, T. (2021) A paradigm shift towards Social Europe? The proposed Directive on adequate minimum wages in the European Union, *Italian Labour Law e-journal*, Issue 1, vol 14.: 1–19.
- SEN, A. (1999) *Development as Freedom*, Oxford: Oxford University Press.
- SJÖDIN, E. (2020a) Arbetsmarknadens skuggsida: Rättsföljder vid för låga löner. *Juridisk Tidskrift* 2019/20:3: 671–695.
- SJÖDIN, E. (2021a) Criminalisation as a response to low wages and labour market exploitation in Sweden. *European Labour Law Journal*, vol. 12(4), 529–546.
- SJÖDIN, E. (2021b) Europeisk minimilön: Tankar om överlåten befogenhet med anledning av ett direktivförslag. *Europarättslig tidskrift*, no 3: 401–421.
- SJÖDIN, E. (2022) European Minimum Wage: A Swedish perspective on EU's competence in social policy in the wake of the proposed Directive on minimum wage in the EU. *European Labour Law Journal*, 2022: 1–19.
- SOU 2021:88, Ett förbättrat system för arbetskraftsinvandring, Government Inquiry.
- SPECIAL RAPPORTEUR (2018) Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and Association, Doc. A/73/279, 7 August 2018.
- STEVIS, D., MORENA, E. & KRAUSE, D. (2020) Introduction: The genealogy and contemporary politics of just transitions. IN MORENA, E. KRAUSE, D. & STEVIS, D. (Eds.) *Just Transitions: Social justice in the shift towards a low-carbon world*, eds.), 1–32. London: Pluto Press.
- SVENSKT NÄRINGSLIV, PTK, LO Förhandlingssprotokoll, ärende: Huvudavtal om trygghet, omställning och anställningsskydd. Bilaga 2. Principöverenskommelse om Parternas gemensamma krav på staten.
- SVENSSON, T. (2014) The Swedish Model of Industrial Relations. IN PIERRE P. (Ed.) *The Oxford Handbook of Swedish Politics*, Oxford, OUP. 1–19.
- THE SWEDISH NATIONAL AUDIT OFFICE (2020) *Government Initiatives to Combat Labour Exploitation – Regulations, inspections, information and support to victims*, RIR 2020:27.
- TOMASSETTI, P. (2018) Labor Law and Environmental Sustainability. *Comparative Labour Law and Policy Journal*, 40:61–88.
- UMEÅ UNIVERSITET (2020) opinion on SOU 2020:30 En reformerad arbetsrätt, 2020.10.15. <https://www.regeringen.se/4a9b2c/contentassets/3e7e793beb4d4c358ccb7f53812c382c/umea-universitet-juridiska-fakulteten.pdf>.
- UN Agenda 2030 (2015) General Assembly Resolution Transforming our world: the 2030 Agenda for Sustainable Development, 25 September 2015 A/Res/70/1. <https://sustainabledevelopment.un.org/post2015/transformingourworld/publication>.
- VON DER LEYEN AGENDA (2019–2024) *A Union that Strives for More: My agenda for Europe: political guidelines for the next European Commission 2019–2024*, [https://ec.europa.eu/info/sites/default/files/political-guidelines-next-commission\\_en\\_0.pdf](https://ec.europa.eu/info/sites/default/files/political-guidelines-next-commission_en_0.pdf), last visited September 2 2021.
- WORLD COMMISSION ON ENVIRONMENT AND DEVELOPMENT (1986) Report. UN General Assembly 42nd Session, A/42/427. New York, 1986/ World Commission on Environment and Development, *Our Common Future*. Oxford: Oxford University Press. 1987.