

# THE RIGHT TO DISCONNECT AS A FEMINIST DEMAND: LABOR LAW, FLEXIBLE WORK, AND THE GENDERED POLITICS OF LEISURE

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## *Abstract*

This Article explores the right to disconnect as a feminist response to the gendered impacts of digitally-enabled flexible work. While remote and flexible arrangements are often hailed for enhancing work-life balance, especially for women, they frequently result in overwork, time poverty, and the erosion of boundaries between paid and unpaid labor. The pressure to remain constantly reachable, often described as the “technological imperative,” exacerbates these issues, particularly for women who continue to shoulder disproportionate care responsibilities. In this context, disconnection is increasingly proposed as a remedy to the demands of flexible work. Drawing on feminist theories of time and labor, this Article critiques prevailing narratives that frame disconnection as a matter of individual self-care. Such framings obscure the structural pressures driving constant availability and risk reinforcing social inequalities. Instead, this Article advocates for enshrining disconnection as a collective labor right. Through a comparative legal analysis of existing disconnection laws in France, Germany, Portugal, and beyond, it argues that only robust legal protections—especially those imposing obligations on employers—not to intrude outside working hours can effectively safeguard workers’ time. Reframed as a collective right, disconnection emerges as a vital feminist demand for reclaiming free time and resisting the encroachment of work into private life.

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## INTRODUCTION

Work has undeniably and drastically changed in recent years. Generally, work is increasingly done online: remote working, also known as telework or home office,<sup>1</sup> is extremely popular,<sup>2</sup> especially during and after the COVID-19 pandemic.<sup>3</sup> This fits into the broader trend of flexible work, i.e. a “worker’s control over when<sup>4</sup> and where they work.”<sup>5</sup> Once reserved to managerial positions, flexible work arrangements have spread across companies’ hierarchies.<sup>6</sup> They are now common in most occupations, extending to workers whose routine tasks used to be entirely tied to the office desk.<sup>7</sup> Enabling this shift, technologies of work have evolved and now include digital tools such as email, video conference software, shared calendars, clouds, and so on. In a broader sense, technologies ranging from 3D printing to the spread of artificial intelligence (AI) use imply a redefinition of business models and production methods.<sup>8</sup> New communication technologies shape

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1 On telework and its impact on workers and productivity, see Tammy D. Allen et al., *How Effective Is Telecommuting? Assessing the Status of Our Scientific Findings*, 16 PSYCH. SCI. PUB. INT. 40, 42 (2015); Nicholas Bloom et al., *Does Working from Home Work? Evidence from a Chinese Experiment*, 130 Q.J. ECON. 165, 166 (2015); Ellen Ernst Kossek et al., *Telecommuting, Control, and Boundary Management: Correlates of Policy Use and Practice, Job Control, and Work–Family Effectiveness*, 68 J. VOCATIONAL BEHAV. 347, 348 (2006).

2 See generally KARIN FAST & ANDRE JANSSON, *TRANSMEDIA WORK—PRIVILEGE AND PRECARIOUSNESS IN DIGITAL MODERNITY* (2019); MELISSA GREGG, *WORK’S INTIMACY* (2011).

3 Anja-Kristin Abendroth et al., *Has the COVID-19 Pandemic Changed Gender- and Parental-Status-Specific Differences in Working from Home? Panel Evidence from Germany*, 29 GENDER, WORK & ORG. 1992, 1992 (2022).

4 On the distinction between flextime and working time autonomy, see Heejung Chung & Tanja van der Lippe, *Flexible Working, Work-Life Balance, and Gender Equality: Introduction*, 151 SOC. INDICATORS RSCH. 365, 367 (2020).

5 Chung & Van der Lippe, *supra* note 4, at 365; see also Erin Kelly et al., *Changing Workplaces to Reduce Work-Family Conflict: Schedule Control in a White-Collar Organization*, 76 AM. SOCIO. REV. 265, 265 (2011).

6 Paula Rodríguez-Modroño & Purificación López-Igual, *Job Quality and Work-Life Balance of Teleworkers*, 18 INT. J. ENV’T. RSCH. & PUB. HEALTH 3239, 3240 (2021); see also Paula Rodríguez-Modroño & Purificación López-Igual, *Who is Teleworking and Where From? Exploring the Main Determinants of Telework in Europe*, 12 SUSTAINABILITY 8797, at 9 (2020); Sebastian K. Boell et al., *Telework Paradoxes and Practices: The Importance of the Nature of Work*, 31 NEW TECH. WORK & EMP. 114, 114 (2016).

7 Rodríguez-Modroño & López-Igual, *supra* note 6, at 3240.

8 See Johannes Gartner et al., *The Accelerating Disconnection of Work from Time and Place: New Questions for HR*, in RSCH HANDBOOK ON HUM. RES. MGMT. & DISRUPTIVE TECH. 270, 270 (Tanya Bondarouk & Jeroen Meijerink eds., 2024).

the norms and tasks of work<sup>9</sup> and contribute to the creation of boundless and spatially extensible selves,<sup>10</sup> especially for white-collar workers.<sup>11</sup>

The merits of flexible work seem clear: it allows employees to perform work in a setting and at a time that suits them best, thereby enabling them to find a better balance between their jobs and their private lives. Flexible work is often argued to be especially advantageous to women who are employed while having childcare responsibilities. Indeed, it can allow workers to adapt to the demands of both the workplace and the family.<sup>12</sup> Flexible work is therefore often argued to promote gender equality, as it can lead to better work-life balance for women.<sup>13</sup>

But the reality of our current work landscape differs significantly from the ideal of flexible, healthy work arrangements allowing paid employment and private life to happily cohabit. According to Suzanne Franks, the observed trends towards “[i]nsecure and casual work, short-term contracts, antisocial hours or long hours . . . make it more difficult than ever to fulfil the expectations of parenting and community.”<sup>14</sup> The promises of flexible work in particular have not been fulfilled: recent studies show that, rather than enabling balance between work, family obligations, and leisure, flexible arrangements ultimately led to the expansion of paid work onto private life.<sup>15</sup> Research shows that remote work

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9 Judy Wajcman, *The Digital Architecture of Time Management*, 44 SCI. TECH. & HUM. VALUES 315, 315 (2019).

10 Karin Fast, *The Disconnection Turn: Three Facets of Disconnective Work in Post-Digital Capitalism*, 27 CONVERGENCE 1615, 1621 (2021).

11 Gartner et al., *supra* note 8, at 270.

12 Laura Lükemann, *Flexibility Potentials of Digital Work Communication—Mother’s Labour Market Involvement in Comparative Perspective*, 27 CMTY. WORK & FAM. 627, 642 (2024); *see also* Susan G. Singley & Kathryn Hynes, *Transitions to Parenthood: Work-Family Policies, Gender, and the Couple Context*, 19 GENDER & SOC’Y 376, 390–95 (2005).

13 On work/family balance, quality of life, and workplace arrangements, *see generally* MARGARETA BACK-WIKLUND ET AL., *QUALITY OF LIFE AND WORK IN EUROPE—THEORY, PRACTICE AND POLICY* (2011); S. Campbell Clark, *Work/Family Border Theory: A New Theory of Work/Family Balance*, 53 HUM. RELS. 747 (2000).

14 SUZANNE FRANKS, *HAVING NONE OF IT: WOMEN, MEN AND THE FUTURE OF WORK* 212 (1999).

15 Yvonne Lott & Heejun Chung, *Gender Discrepancies in the Outcomes of Schedule Control on Overtime Hours and Income in Germany*, 32 EUR. SOCIO. REV. 752, 762–63 (2016); Clare Kelliher & Deirdre Anderson, *Doing More with Less? Flexible Working Practices and the Intensification of Work*, 63 HUM. RELS. 83, 98 (2010); Scott Schieman & Marisa Young, *Is There a Downside to Schedule Control for the Work-Family Interface?*, 31 J. FAM. ISSUES 1391, 1408–11 (2010).

tends to lead to an increase in work-to-home spillover; in their free time, teleworkers are more likely than in-person workers to think about their job and perform job-related tasks.<sup>16</sup> By allowing work to escape the confines of the physical workplace, new work technologies allow waged labor to be boundless and thus harder to limit or contain.<sup>17</sup> An “always-on” culture develops, where workers feel pressured to constantly be available for work, to demonstrate quick responsiveness at all times,<sup>18</sup> and to remain continuously connected to the organizations employing them.<sup>19</sup> Such pressures have been termed “the mobile imperative”<sup>20</sup> or “the technological imperative.”<sup>21</sup> The negative effects of this shift impact certain groups disproportionately; this is typically the case for women, as I argue in this Article.<sup>22</sup>

In this paper, I seek to underscore that the effects of flexible work on women specifically are more damaging than ordinarily assumed, and I argue that the right to disconnect must be understood as a pressing feminist demand. Due to a profoundly anchored gendered division of labor, flexible work can potentially cement traditional gender roles both in the home and in the labor market.<sup>23</sup> In this regard, Clawson and Gerstel contend that flexible

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16 Alan Felstead & Golo Henseke, *Assessing the Growth of Remote Working and its Consequences for Effort, Well-Being and Work-Life Balance*, 32 *NEW TECH. WORK & EMP.* 195, 207–08 (2017); Philip Badawy & Scott Schieman, *Control and the Health Effects of Work-Family Conflict: A Longitudinal Test of Generalized Versus Specific Stress Buffering*, 61 *J. HEALTH & SOC. BEHAV.* 324, 336 (2020).

17 Ward van Zoonen & Anu E. Sivunen, *The Impact of Remote Work and Mediated Communication Frequency on Isolation and Psychological Distress*, 31 *EUR. J. WORK & ORG. PSYCH.* 610, 617–18 (2021).

18 Diana Gant & Sara Kiesler, *Blurring the Boundaries: Cell Phones, Mobility, and the Line between Work and Personal Life*, in *WIRELESS WORLD—SOCIAL AND INTERACTIONAL ASPECTS OF THE MOBILE AGE* 121, 129–30 (2002); John Sherry & Tony Salvador, *Running and Grimacing: The Struggle for Balance in Mobile Work*, in *WIRELESS WORLD—SOCIAL AND INTERACTIONAL ASPECTS OF THE MOBILE AGE* 108, 113–114 (Barry Brown et al. eds., 2001).

19 Judy Wajcman & Emily Rose, *Constant Connectivity: Rethinking Interruptions at Work*, 32 *ORG. STUD.* 941, 957 (2011).

20 Geoff Cooper, *The Mutable Mobile: Social Theory in the Wireless World*, in *WIRELESS WORLD—SOCIAL AND INTERACTIONAL ASPECTS OF THE MOBILE AGE* 19, 28 (Barry Brown et al. eds., 2001).

21 Sherry & Salvador, *supra* note 18, at 113–14.

22 On the gendered impacts of flexible work arrangements, see DAN CLAWSON & NAOMI GERSTEL, *UNEQUAL TIME: GENDER, CLASS, AND FAMILY IN EMPLOYMENT SCHEDULES* 9–11 (2014).

23 Lott & Chung, *supra* note 15, at 760–63; Cath Sullivan & Suzan Lewis, *Home-Based Telework, Gender, and the Synchronization of Work and Family: Perspectives of Teleworkers and Their Co-Residents*, 8 *GENDER, WORK & ORG.* 123, 141 (2001).

work encourages workers to “do gender” by allowing them to fulfil the social normative roles ascribed to them.<sup>24</sup> Unlike men, women are expected to increase their responsibility within the family when working flexibly.<sup>25</sup> Rather than diminishing work-family conflicts, flexible work might therefore lead to their increase.<sup>26</sup> Given the tendency towards overwork in flexible working arrangements, women may be doubly penalized, ultimately performing more paid and unpaid labor, the limit between the two progressively blurring.<sup>27</sup>

Of course, the impact of the increasing encroachment of the workplace’s pressures into women’s private lives varies greatly. In this Article, I center my analysis on women who perform waged labor outside of the home and who take on most domestic and care responsibilities. This specific position best exemplifies the gendered dynamics at play both in and between the workplace and the home. It is, however, evident that not all women are in such positions. As Valerie Bryson writes:

[A] minority of women are able to opt out of most caring responsibilities and, in effect, to behave as men have traditionally done. Variations in conditions of employment and support for carers mean that the stress of combining paid employment and family responsibilities is much greater in some nations than others, and it is experienced very differently by different groups of women.<sup>28</sup>

This analysis thus does not rely on a reified, universal idea of womanhood; it only describes general trends, centering on an increasingly common pattern in women’s lives, one where they must fulfill the demands of domestic labor while earning some kind of wage. This

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24 CLAWSON & GERSTEL, *supra* note 22, at 9–11.

25 Margo Hilbrecht et al., ‘I’m Home for the Kids’: *Contradictory Implications for Work-Life Balance of Teleworking Mothers*, 15 GENDER, WORK & ORG. 454, 471–73 (2008); Chung & Van der Lippe, *supra* note 4, at 366.

26 Heejung Chung & Tanja van der Lippe, *supra* note 4, at 369; Timothy D. Golden et al., *Telecommuting’s Differential Impact on Work-Family Conflict: Is There No Place Like Home?*, 91 J. APPLIED PSYCH. 1340, 1346–48 (2006); Allen et al., *supra* note 1, at 361.

27 Schieman & Young, *supra* note 15, at 1408.

28 VALERIE BRYSON, GENDER AND THE POLITICS OF TIME—FEMINIST THEORY AND CONTEMPORARY DEBATES 148 (2007).

focus appears especially relevant given that employed mothers are consistently shown to be one of the most time-pressured groups in society.<sup>29</sup>

As a reaction to the pressures of remaining constantly reachable and available for and by work, disconnection, widely understood as a set of strategies to reduce digital media involvement,<sup>30</sup> has been encouraged by human resources departments<sup>31</sup> and self-help authors<sup>32</sup> alike. The message is clear: a healthy life can only be achieved if one takes care to regularly and thoroughly disconnect. In the context of work specifically, disconnecting involves a range of habits such as leaving one's work laptop aside over the weekend, responding to work-related messages only during fixed hours, and avoiding logging into work email accounts outside of work hours. As I argue in this Article, this understanding of disconnection is strikingly limited. When understood as an individual choice one can and should make, disconnection becomes workers' personal responsibility. The search for a solution to a demonstrably damaging societal phenomenon is thereby framed as an individual choice one should make rather than a collective response one could advocate for politically.

The language of rights is perhaps the most appropriate and effective language to express this collective understanding of disconnection. The right to disconnect has thus unsurprisingly emerged in public discourse as a potential solution to this erosion of workers' rights. The right to disconnect has been recognized in some capacity in several countries, including France, Italy, Portugal, and Australia. However, the effectiveness of the right's protections varies greatly. It is therefore crucial to examine the modalities of the right to disconnect in each country when discussing its potential in countering the negative effects of constant availability enabled by new technologies.

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29 See Judy Rose, "Never Enough Hours in a Day": *Employed Mothers' Perceptions of Time Pressure*, 52 *AUSTL. J. SOC. ISSUES* 116, 116 (2017).

30 See Trine Syvertsen & Gunn Enli, *Digital Detox: Media Resistance and the Promise of Authenticity*, 26 *CONVERGENCE* 1269, 1269 (2019).

31 See *Aidez Les Salariés à Mieux Déconnecter*, ORANGE BUS. (June 16, 2016), <https://www.orange-business.com/fr/magazine/aidez-les-salaries-a-mieux-deconnecter> [https://perma.cc/Z8XL-FULL]; *Telefónica's Agreement Regarding Employees Digital Disconnection*, TELEFÓNICA (Nov. 24, 2018), <https://www.telefonica.com/en/communication-room/reports/agreement-employees-digital-disconnection/> [https://perma.cc/D9TM-BSYH].

32 For examples of digital hygiene self-help, see generally CELESTE HEADLEE, *DO NOTHING—HOW TO BREAK AWAY FROM OVERWORKING, OVERDOING, AND UNDERLIVING* (2020); CAL NEWPORT, *DIGITAL MINIMALISM: CHOOSING A FOCUSED LIFE IN A NOISY WORLD* (2019).

In this Article, I understand the right to disconnect as a feminist demand. My analysis focuses on the right to disconnect as one potential solution to the gendered consequences of the technological imperative on women. The kind of work discussed here is flexible but not necessarily remote. Indeed, pressures to remain perpetually reachable take countless and widely differing forms across occupational classes. Exploring the gendered effects of the technological imperative, I argue that women are specifically and disproportionately harmed by the expectation of constant availability, especially due to the excessive share of unpaid work they bear and the resulting lack of free time they face. The term “free time” is used synonymously with leisure time, i.e. time that can be spent doing recreational activities to maintain or enhance one’s satisfaction or well-being. Further, I contend that the common framing of disconnection as an individual choice is a misguided approach to the technological imperative and is especially disadvantageous for women. I then turn my attention to the right to disconnect as a collective and legal-political alternative to the individualistic conception of disconnection-as-lifestyle-choice. Adopting a comparative legal approach, I assess various iterations of the right to disconnect in some of the legal systems where it has been enshrined. In this context, I argue that only a right to disconnect with a wide personal scope and a high normative density, which includes an obligation upon employers not to contact workers outside of office hours, has any chance of being effective. I conclude that the demand for the right to disconnect must be understood as a feminist demand, one that, if met, could protect women from disproportionate harm while benefiting all workers.

## I. The New Work Landscape

### A. The Post-Fordist Work Ethic

According to Karin Fast, today’s flexible regime of work<sup>33</sup> is characterized by “a large category of relatively autonomous knowledge workers, whose digitally connected workplace is not necessarily tied to a specific location.”<sup>34</sup> Work is now more flexible than ever, with the rigid structure of a set workplace and clearly defined office hours rapidly fading away.<sup>35</sup> Underlining the tremendous importance of such changes, some scholars

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33 RICHARD SENNETT, *THE CULTURE OF THE NEW CAPITALISM* 47–49 (2007).

34 Fast, *supra* note 10, at 1617; *see also* SENNETT, *supra* note 33, at 1–15.

35 *See* Fast, *supra* note 10, at 1617.

argue that we are undergoing another industrial revolution, one characterized by the increasingly blurred boundary between the physical and digital worlds.<sup>36</sup>

This material shift has been both accompanied and enabled by a conceptual one. In the last decades, work under post-Fordist capitalism has gone hand-in-hand with a shift in the demands placed on workers. As Kathi Weeks explains, “Whereas Fordism demanded from its core workers a lifetime of compliance with work discipline, post-Fordism also demands of many of its workers flexibility, adaptability, and continual reinvention.”<sup>37</sup> The ideal worker must show their devotion to the job through constant availability and long working hours.<sup>38</sup> Emotional states and attitudes—such as enthusiasm and commitment to the job—have significantly increased in importance;<sup>39</sup> “happiness—like resiliency and flexibility—has become a ‘moral imperative.’”<sup>40</sup> Emphasis is now placed on the totality of workers’ behavior, rather than on their productivity in particular.<sup>41</sup> In short, “[a] worker’s devotion to work serves as a sign of his or her capacities.”<sup>42</sup> Work must not only be performed but also identified with.<sup>43</sup> As Weeks points out, “As an ideal of worker subjectivity, this requires not just the performance of a role, but a deeper commitment of the self, an immersion in and identification not just with work, but with work discipline.”<sup>44</sup>

With this shift in work’s expectations of workers came a reciprocal shift in their expectations of it: “With each reconstitution of the work ethic, more is expected of work: from an epistemological reward in the deliverance of certainty, to a socioeconomic reward

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36 KLAUS SCHWAB, *THE FOURTH INDUSTRIAL REVOLUTION* 11–17 (2017); STEPHEN BARLEY ET AL., *THE CHANGING NATURE OF WORK: CAREERS, IDENTITIES, AND WORK LIVES IN THE 21<sup>ST</sup> CENTURY* 111–13 (2017).

37 KATHI WEEKS, *THE PROBLEM WITH WORK: FEMINISM, MARXISM, ANTIWORK POLITICS, AND POSTWORK IMAGINARIES* 70 (2011).

38 MARY BLAIR-LOY, *COMPETING DEVOTIONS: CAREER AND FAMILY AMONG WOMEN EXECUTIVES* 19–50 (2003).

39 WEEKS, *supra* note 37, at 70.

40 Fast, *supra* note 10, at 1617 (quoting EDGAR CABANAS & EVA ILLOUZ, *MANUFACTURING HAPPY CITIZENS: HOW THE SCIENCE AND INDUSTRY OF HAPPINESS CONTROL OUR LIVES* 10 (2017)).

41 Barbara Townley, *Selection and Appraisal: Reconstituting “Social Relations”?*, in *NEW PERSPECTIVES ON HUMAN RESOURCE MANAGEMENT* 92, 106 (John Storey ed., 1989).

42 WEEKS, *supra* note 37, at 71.

43 *Id.* at 74.

44 *Id.*

in the possibility of social mobility, to an ontological reward in the promise of meaning and self-actualization.”<sup>45</sup> Work is now framed—and experienced—as the core of personal identity;<sup>46</sup> it is “expected to be the whole of life, colonizing and eclipsing what remains of the social.”<sup>47</sup>

### B. The Double-Edged Sword of Flexible Work

The spread of remote work has often been understood as a positive shift, one allowing better work-life balance. Some research even suggests that flexible work arrangements contribute to workers’ general physical health, reducing absenteeism and somatic symptoms.<sup>48</sup> Some argue that flexible work is especially beneficial to women.<sup>49</sup> Research shows that flexible working arrangements enabled by digital technologies allow women to work longer hours despite their care and housework responsibilities, thereby facilitating their participation in paid employment.<sup>50</sup> Longer hours in turn have the potential to advance women’s careers.<sup>51</sup> Moreover, flexible work enables women to maintain their working hours even during family-intensive times,<sup>52</sup> including after childbirth.<sup>53</sup> This is especially important given that women’s involvement in the labor market is often limited after childbirth due to caregiving responsibilities.<sup>54</sup>

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45 *Id.*

46 STANLEY ARONOWITZ & WILLIAM DiFAZIO, *THE JOBLESS FUTURE: SCI-TECH AND THE DOGMA OF WORK* 302 (1994).

47 WEEKS, *supra* note 37, at 76.

48 Nicole Shifrin & Jesse S. Michel, *Flexible Work Arrangements and Employee Health: A Meta-Analytic Review*, 36 *WORK & STRESS* 60, 74 (2022).

49 On the benefits of flexible work for women, see generally BACK-WIKLUND ET AL., *supra* note 13; Campbell Clark, *supra* note 13.

50 Ines Entgelmeier & Timothy Rinke, *Work-Related ICT Use and the Dissolution of Boundaries Between Work and Private Life*, 11 *SOCIAL INCLUSION* 211, 215–21 (2023).

51 Lükemann, *supra* note 12, at 629.

52 Sylvia Fuller & C. Elizabeth Hirsh, “Family-Friendly” Jobs and Motherhood Pay Penalties: The Impact of Flexible Work Arrangements Across the Educational Spectrum, 46 *WORK & OCCUPATIONS* 3, 32 (2018).

53 Heejung Chung & Mariska Van der Horst, *Women’s Employment Patterns After Childbirth and the Perceived Access to and Use of Flexitime and Teleworking*, 71 *HUM. RELS.* 47, 66 (2018).

54 Suzanne M. Bianchi et al., *Housework: Who Did, Does or Will Do It, and How Much Does It Matter?*, 91 *SOC. FORCES* 55, 56 (2012); Wilfred Uunk et al., *The Impact of Young Children on Women’s Labour Supply: A*

However, research shows that the promised advantages of flexible work have not been consistently delivered and that such arrangements come with health risks of their own.<sup>55</sup> Heejung Chung notes the existence of a flexibility paradox: though flexible work such as remote working was meant to facilitate a balanced split between work and home life, such arrangements tend to lead to increased work-family conflicts and overwork.<sup>56</sup> Studies show that teleworkers tend to experience frequent work interruptions, longer working hours,<sup>57</sup> and general work intensification characterized by increased pressure to work in one's free time under tight deadlines.<sup>58</sup> Telework tends to result in an increase in unpaid overtime hours,<sup>59</sup> the boundary between work and private life blurs as homes become workspaces, and free time can be interrupted at any point as constant availability comes to be expected.<sup>60</sup> This is unsurprising given that, according to Ashley Parry, "A key trend driving the rise of flexible work arrangements in recent decades is the prioritization of work over other aspects of one's life, particularly in the American context."<sup>61</sup> This prioritization is not strictly voluntary: if, as discussed above, showing commitment to the job is of increasing value to employers, workers have little choice but to self-exploit.<sup>62</sup> Workers increasingly

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*Reassessment of Institutional Effects in Europe*, 48 ACTA SOCIOLOGICA 41, 41–42 (2005); Tanja van Dijk & Liset van der Lippe, *Comparative Research on Women's Employment*, 28 ANN. REV. SOCIO. 221, 221–23 (2002).

55 HEEJUNG CHUNG, *THE FLEXIBILITY PARADOX: WHY FLEXIBILITY LEADS TO (SELF-)EXPLOITATION* 69–79 (2022).

56 *Id.*

57 See Karlene Cousins & Daniel Robey, *Managing Work-Life Boundaries with Mobile Technologies: An Interpretive Study of Mobile Work Practices*, 28 INFO. TECH. & PEOPLE 34, 61 (2015).

58 See Alan Felstead & Golo Henseke, *Assessing the Growth of Remote Working and Its Consequences for Effort, Well-Being and Work-Life Balance*, 32 NEW TECH. WORK. EMP. 195, 208 (2017).

59 See Heejung Chung & Mariska van der Horst, *Flexible Working and Unpaid Overtime in the UK: The Role of Gender, Parental and Occupational Status*, 151 SOC. INDICATORS RSCH. 495, 495 (2018); see Melissa Mazmanian, Wanda J. Orlikowski & JoAnne Yates, *The Autonomy Paradox: The Implications of Mobile Email Devices for Knowledge Professionals*, 24 ORG. SCI. 1337, 1338 (2013).

60 See Kossek et al., *supra* note 1, at 350.

61 Ashley Parry, *The Flexibility Paradox and Spatial-Temporal Dimensions of COVID-19 Remote Work Adaptation Among Dual-Earner Mothers and Fathers*, 32 GENDER, WORK & ORG. 15, 17 (2025).

62 On the topic of self-exploitation, see CHUNG, *supra* note 55, at 69–79; Parry, *supra* note 61, at 16. On other theories explaining the flexibility paradox beyond the phenomenon of self-exploitation, see Kelliher & Anderson, *supra* note 15, at 98; Chung & Van der Horst, *supra* note 53, at 66.

perceive themselves as expected to remain perpetually available to their employer.<sup>63</sup> Such expectations imply efforts to remain quickly responsive and consequently involve constant connectivity.<sup>64</sup> Under these conditions, “[t]urning off one’s phone becomes a virtual act of negligence or insubordination.”<sup>65</sup>

### C. Widening the Scope: A Concern for All Workers

Research on the technological imperative regrettably tends to focus on upper- and middle-class, remote knowledge workers.<sup>66</sup> This phenomenon is undeniably especially relevant to white-collar<sup>67</sup> workers.<sup>68</sup> Yet these pressures are also acutely felt by blue-collar, unsalaried workers—those working on call, under short-term contracts or no contract at all, within what is usually referred to as the gig economy.<sup>69</sup> The imperative to remain constantly available to employers—whether actual or potential—is in fact arguably especially harmful to the kind of precarious worker whose socioeconomic position implies constant fears of being under- or unemployed. Workers whose work schedules are determined by their employers and changed daily have been found to be the most affected by work-life

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63 See Daantje Derks, Heleen van Mierlo & Elisabeth B. Schmitz, *A Diary Study on Work-Related Smartphone Use, Psychological Detachment and Exhaustion: Examining the Role of the Perceived Segmentation Norm*, 19 J. ORG. HEALTH PSYCH. 74, 74 (2014); Nicola Green, *Who’s Watching Whom? Monitoring and Accountability in Mobile Telephone Relations*, in WIRELESS WORLD: SOCIAL AND INTERACTIONAL ASPECTS OF THE MOBILE AGE 32, 41 (Barry Brown, Nicola Green & Richard Harper eds., 2002); Ian Towers et al., *Time Thieves and Space Invaders: Technology, Work and the Organization*, 19 J. ORG. CHANGE MGMT. 593, 615 (2006).

64 See Nadine Büchler, Claartje L. ter Hoeven & Ward van Zoonen, *Understanding Constant Connectivity to Work: How and for Whom is Constant Connectivity Related to Employee Well-Being?*, 30 INFO. & ORG. 1, 2–3 (2020); Daantje Derks et al., *Work-Related Smartphone Use, Work-Family Conflict and Family Role Performance: The Role of Segmentation Preference*, 69 HUM. RELS. 1045, 1063 (2016); Wajcman & Rose, *supra* note 19, at 957.

65 Kaspar Villadsen, *Constantly Online and the Fantasy of ‘Work-Life Balance’: Reinterpreting Work-Connectivity as Cynical Practice and Fetishism*, 23 CULTURE & ORG. 363, 365 (2017).

66 See Fast, *supra* note 10, at 1619.

67 As understood in the context of this Article, this term simply means “relating to office work.”

68 See Fast, *supra* note 10, at 1619.

69 On the gig economy and precarious workers’ experience of (free) time, see generally Rebecca Shein, *From Free Time to Idle Time: Time, Work-Discipline, and the Gig Economy*, in RESEARCH HANDBOOK ON LAW AND MARXISM 407 (Paul O’Connell & Umut Özsu eds., 2021).

spillover, especially when they are women.<sup>70</sup> Indeed, “[w]omen of the lower working class have fewer financial resources in order to cope with unpredictable and unreliable work hours.”<sup>71</sup>

Though its effects and form vary depending on the position, workplace and industry in question, the technological imperative impacts workers across occupational classes. It affects the white-collar remote office worker, employed in a stable position yet constantly logged into his or her emails out of fear of seeming uncommitted to the job and perhaps missing out on career opportunities. It also greatly impacts the precarious, on-demand worker who knows that the employer regularly giving them odd jobs can contact them at any time of the day and that showing quick responsiveness is crucial to being hired again. The pressure to be constantly available impacts in-person workers as well, whenever, for instance, they feel obligated to remain reachable outside of work because their employer regularly contacts them last minute and outside of office hours to fill in for someone else’s shift or to come back to help close shop.

#### **D. The Technological Imperative’s Pervasive Logic**

A staggering number of workers—whether in person or remote, salaried or not—face a common problem, albeit with consequences of varying gravity: they cannot leave their phone or laptop aside, as they might be contacted at any moment by employers or colleagues, and they fear seeming uncommitted or unreliable if they do not respond quickly to this contact. Because of this, they can never truly leave work.<sup>72</sup>

Though its ramifications vary significantly depending on the job, workplace, and industry in question, the *logic* of the technological imperative is always the same: responsiveness is both expected and, at times, rewarded, while unavailability is understood

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70 Yvonne Lott, *Does Flexibility Help Employees Switch Off from Work? Flexible Working-Time Arrangements and Cognitive Work-to-Home Spillover for Women and Men in Germany*, 151 SOC. INDICATORS RSCH. 471, 484–85 (2018).

71 Chung & Van der Lippe, *supra* note 4, at 375.

72 This is especially the case for global workers. See Ward van Zoonen, Jennifer Gibbs & Anu Sivunen, *Constant Connectivity in Global Work: Understanding the Role of Technological, Social and Individual Pressures to Connect*, in PROCEEDINGS OF THE 58TH HAWAII INTERNATIONAL CONFERENCE ON SYSTEM SCIENCES 732, 732 (Tung X. Bui ed., 2025).

as unprofessional, betraying a lack of commitment to the job. This punitive logic<sup>73</sup> leads many workers to fear being excluded from important career opportunities or facing other forms of reprisal for having failed to show responsiveness outside of their usual working hours. Constant demands on workers' attention by necessity erode the quality of their leisure time.

## II. The Gendered Drawbacks of Work Flexibility

### A. Time Poverty and the Gendered Division of Labor

Women are generally more affected than men by time poverty,<sup>74</sup> i.e. a situation in which one enjoys “little to no discretionary time” outside of paid or unpaid labor.<sup>75</sup> Time poverty is understood here as both the reality and “the acute feeling of having too much to do and not enough time to do it.”<sup>76</sup>

The gendered division of labor is generally argued to be the main cause of women's time poverty. Women today still take on most unpaid care<sup>77</sup> work, that is, “non-remunerated work carried out to sustain the well-being, health and maintenance of other individuals in a household or the community.”<sup>78</sup> This is unsurprising given clear and relatively stable gender

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73 See Flavia Cavazotte, Ana Heloisa Lemos & Kaspar Villadsen, *Corporate Smart Phones: Professionals' Conscious Engagement in Escalating Work Connectivity*, 29 NEW TECH., WORK & EMP. 72, 81 (2014).

74 See Elizabeth Hyde, Margaret E. Greene & Gary L. Darmstadt, *Time Poverty: Obstacle to Women's Human Rights, Health, and Sustainable Development*, 10 J. GLOB. HEALTH 1, 1 (2020); Yana van der Meulen Rodgers, *Time Poverty: Conceptualization, Gender Differences, and Policy Solutions*, 40 SOC. PHIL. & POL'Y 79, 97 (2023).

75 Hyde, Greene & Darmstadt, *supra* note 74, at 1.

76 Maria Giulia Trupia, Isabelle Engeler & Cassie Mogilner Holmes, *Time Poverty*, in ELGAR ENCYCLOPEDIA OF CONSUMER BEHAVIOR 301, 301 (Johanna Gollnhofer, Reto Hofstetter & Torsten Tomczak eds., 2024) (emphasis omitted).

77 As the care work discussed in this Article is of the unpaid, domestic kind, the terms “domestic” and “care” will be used interchangeably.

78 LAURA ADDATI ET AL., INT'L LAB. OFF., CARE WORK AND CARE JOBS FOR THE FUTURE OF DECENT WORK 40 (2018), <https://www.ilo.org/sites/default/files/wcmsp5/groups/public/%40dgreports/%40dcomm/%40publ/documents/publication/wcms633135.pdf> [https://perma.cc/V6G7-SXCL]. For more precise examples of what this kind of work entails, see *id.* at 41.

norms.<sup>79</sup> Research, for instance, shows that more than three quarters of unpaid domestic care work worldwide is done by women.<sup>80</sup> In 2016, it was found that women in the UK shouldered 60% more unpaid work than men.<sup>81</sup> Highlighting a similar trend, the European Institute for Gender Equality found in 2021 that women with children spend an average of 2.3 hours daily on housework, whereas men with children spend only 1.6 hours on such tasks.<sup>82</sup> Similarly, the Gender Equity Policy Institute found in 2024 that American working women spend more than twice as much time on housework than their male counterparts,<sup>83</sup> and this discrepancy also continues into retirement.<sup>84</sup> By one 2020 estimate, women in the United States spend on average 37% more time on unpaid household work than men.<sup>85</sup>

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79 See Man Yee Kan, Oriel Sullivan & Jonathan Gershuny, *Gender Convergence in Domestic Work: Discerning the Effects of Interactional and Institutional Barriers from Large-Scale Data*, 45 SOCIO. 234, 246–47 (2011); Evrims Altintas & Oriel Sullivan, *Fifty Years of Change Updated: Cross-National Gender Convergence in Housework*, 35 DEMOGRAPHIC RSCH. 455, 466 (2016); Scott Coltrane, *Research on Household Labor: Modeling and Measuring the Social Embeddedness of Routine Family Work*, J. MARRIAGE & FAM. 1208, 1226 (2000); Joanna Syrda, *Gendered Housework: Spousal Relative Income, Parenthood and Traditional Identity Norms*, 37 WORK, EMP. & SOC'Y 794, 809–10 (2022); Sarah Thébaud, Sabino Kornrich & Leah Ruppanner, *Good Housekeeping, Great Expectations: Gender and Housework Norms*, 50 SOCIO. METHODS & RSCH. 1187, 1206–07 (2021).

80 JACQUES CHARMES, *THE UNPAID CARE WORK AND THE LABOUR MARKET. AN ANALYSIS OF TIME USE DATA BASED ON THE LATEST WORLD COMPILATION OF TIME-USE SURVEYS 3* (2019), [https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@dgreports/@gender/documents/publication/wcms\\_732791.pdf](https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@dgreports/@gender/documents/publication/wcms_732791.pdf) [https://perma.cc/V6G7-SXCL]; ADDATI, *supra* note 78, at 53.

81 *Women Shoulder the Responsibility of 'Unpaid Work'*, OFF. NAT'L STAT. (Nov. 10, 2016), <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/articles/womenshouldtheresponsibilityofunpaidwork/2016-11-10> [https://perma.cc/W4LJ-AEJZ].

82 DAVIDE BARBIERI ET AL., EUR. INST. GENDER EQUAL., *GENDER EQUALITY INDEX 2021: HEALTH*, at 52 (2021), [https://eige.europa.eu/sites/default/files/documents/gender\\_equality\\_index\\_2021\\_health.pdf](https://eige.europa.eu/sites/default/files/documents/gender_equality_index_2021_health.pdf) [https://perma.cc/638Y-MXBH].

83 See NATALIA VEGA VARELA & LEYLY MORIDI, GENDER EQUITY POL'Y INST., *THE FREE TIME GENDER GAP: HOW UNPAID CARE AND HOUSEHOLD LABOR REINFORCES WOMEN'S INEQUALITY 2* (2024), <https://thegpi.org/reports/GEPI-Free-Time-Gender-Gap-Report.pdf> [https://perma.cc/T6R6-QCM3].

84 *Id.* at 3.

85 CYNTHIA HESS ET AL., INST. FOR WOMEN'S POL'Y RSCH., *PROVIDING UNPAID HOUSEHOLD AND CARE WORK IN THE UNITED STATES 2* (2020), <https://iwpr.org/wp-content/uploads/2020/01/IWPR-Providing-Unpaid-Household-and-Care-Work-in-the-United-States-Uncovering-Inequality.pdf> [https://perma.cc/6NRU-34N6].

The idea of a second shift—a shift of unpaid work following women’s shift of paid work<sup>86</sup>—thus remains relevant today. It is worth acknowledging, however, that this second shift can be avoided by some economically privileged women through the employment of migrant women or women from a poorer socioeconomic background as domestic workers, thereby displacing the burden of housework from one class of women to another and transferring gender inequalities from the household to the global care chain.<sup>87</sup> In such scenarios, the issue of the gendered division of labor is displaced rather than solved. The (feminist) task at hand is then to challenge an uneven and gendered division of labor, rather than passing it on from one group of women to another, less privileged one.<sup>88</sup>

Of course, the unevenly distributed burden of unpaid care and domestic work affects the amount of free time at women’s disposal. American women enjoy on average 13% less free time than men.<sup>89</sup> This gap is even larger for women aged 18 to 24, who have 20% less free time than men their age, and those aged 35 to 44, who face the greatest free-time gender gap with 23% less free time than their male counterparts.<sup>90</sup> To put it differently, in the case of women in the United States aged 18 to 24, this means that they will enjoy on average 434 fewer hours of free time than men their age per year.<sup>91</sup> Women’s caring responsibilities often mean that they “have no time available to spend as they wish.”<sup>92</sup> It follows that any further threat to free time can have especially dire consequences on women specifically.

Women’s time poverty is mediated by factors of class and race. It is low-income and single mothers that face the most extreme time poverty. According to Bryson, in the United States, “Because lone parents are disproportionately African American, these double effects

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86 Regarding the second shift overall, see generally ARLIE HOCHSCHILD & ANNE MACHUNG, *THE SECOND SHIFT: WORKING FAMILIES AND THE REVOLUTION AT HOME* (2012).

87 See Arlie Russell Hochschild, *Global Care Chains and Emotional Surplus Value*, in *JUSTICE, POLITICS, AND THE FAMILY* 250 (Daniel Engster & Tamara Metz eds., 2014); Nathalie Morel & Clément Carbonnier, *Taking the Low Road: The Political Economy of Household Services in Europe*, in *THE POLITICAL ECONOMY OF HOUSEHOLD SERVICES IN EUROPE* 1, 16–17 (Nathalie Morel & Clément Carbonnier eds., 2015); Allison Weir, *Global Care Chains: Freedom, Responsibility, and Solidarity*, 46 *S.J. PHIL.* 166, 166 (2008).

88 See Weir, *supra* note 87, at 172–73.

89 VEGA VARELA & MORIDI, *supra* note 83, at 6.

90 *Id.*

91 *Id.*

92 BRYSON, *supra* note 28, at 146.

of income and time poverty are often compounded by those of ethnic disadvantage.”<sup>93</sup> Nationality is also a key factor in determining the extent of women’s time poverty, as the weight of gender roles varies depending on cultural context and some national governments provide more support to parents than others.<sup>94</sup>

### B. Women’s Less Leisurely Leisure

Not only do women generally have less free time than men, but the free time they do have is more constrained and interrupted.<sup>95</sup> Mothers especially will often rely on time-squeezing strategies—“sacrific[ing] leisure and personal care in order to allocate time to children”<sup>96</sup>—that tend to impair the quality of their leisure time, and general welfare.<sup>97</sup> Bryson contends that, for women with caring responsibilities, “leisure time cannot be planned in advance, but can only be snatched in unpredictable fragments . . . and it cannot easily be used to engage in activities outside the home.”<sup>98</sup>

The leisure time of women with childcare responsibilities is hence “more likely to be combined with other activities than that of men, . . . more fragmented and liable to interruption, and . . . less likely to take the form of pure adult leisure without children present.”<sup>99</sup> Women’s leisure time tends to be “less leisurely than men’s”<sup>100</sup>; it is as much a qualitative as a quantitative issue.<sup>101</sup> In short, as Marybeth Mattingly and Suzanne Bianchi

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93 *Id.* at 149.

94 *See id.* at 150; Lyn Craig & Killian Mullan, *Parental Leisure Time: A Gender Comparison in Five Countries*, 20 *SOC. POL.* 329, 345–49 (2013); Mara A. Yerkes, Anne Roeters & Janeen Baxter, *Gender Differences in the Quality of Leisure: A Cross-National Comparison*, 23 *CMTY., WORK & FAM.* 367, 379–80 (2020); *see* Tess Kay, *Leisure, Gender and Family: The Influence of Social Policy*, 19 *LEISURE STUD.* 247, 261–63 (2000) (analyzing the ways in which family-related social policy impacts the leisure time of women in heterosexual couples).

95 *See* Stella Chatzitheochari & Sara Arber, *Class, Gender and Time Poverty: A Time-Use Analysis of British Workers’ Free Time Resource*, 63 *BRIT. J. SOCIO.* 451, 467–68 (2012).

96 LYN CRAIG, *CONTEMPORARY MOTHERHOOD: THE IMPACT OF CHILDREN ON ADULT TIME* 135 (2007).

97 *Id.* at 93.

98 BRYSON, *supra* note 28, at 147.

99 *Id.* at 164.

100 Michael Bittman & Judy Wajcman, *The Rush Hour: The Character of Leisure Time and Gender Equity*, 79 *SOC. FORCES* 165, 168–69 (2000).

101 *See* Rose, *supra* note 29, at 127 (describing the ways in which mothers struggle to find quality free time).

explain, “A triple burden is apparent. Women have less free time. The free time they have is often contaminated by other activities or the presence of children, and their free time is not as beneficial to them as to men in terms of reducing feelings of time pressure.”<sup>102</sup>

### C. The Challenge of Competing Temporalities

Women’s time tends to be split between several activities at once. Because women must often juggle paid and unpaid work, multitasking is an integral part of the way they spend their time. Research suggests that time-management strategies “such as multitasking seemed to increase the feeling of time pressure, rather than reduce it.”<sup>103</sup> Some theorists argue that the domestic work that women predominantly take on involves the assimilation of a “distinctive temporal consciousness,” one where the “assumption that tasks and events can be scheduled in advance as separate items” does not apply.<sup>104</sup> Rather, “polychronic time” takes over in the home, that is, time that is oriented towards people and their needs and where tasks are unpredictable and tend to overlap.<sup>105</sup> The monochronic time of work does not, therefore, fit the way time itself is structured in the home for many women, yet “the time discipline of the workplace is increasingly felt in the home.”<sup>106</sup> To be able to bridge the demands of both waged and unwaged labor, women must increasingly use time management skills and act as if “the emotional and physical needs of partners, family and friends can be organized into a tick list of tasks to be performed in pre-allocated time slots.”<sup>107</sup> Women’s “activities are being forced into an inappropriate temporal straitjacket” that abides by the logic of market capitalism’s cost effectiveness.<sup>108</sup>

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102 Marybeth B. Mattingly & Suzanne M. Bianchi, *Gender Differences in the Quantity and Quality of Free Time: The U.S. Experience*, 81 SOC. FORCES 999, 1022–24 (2003).

103 Rose, *supra* note 29, at 127.

104 BRYSON, *supra* note 28, at 129–30; see E.P. Thompson, *Time, Work-Discipline and Industrial Capitalism*, 38 PAST & PRESENT 56, 60 (1967).

105 BRYSON, *supra* note 28, at 130. On polychronic time and domestic work, see generally EDWARD HALL, *THE DANCE OF LIFE: THE OTHER DIMENSIONS OF TIME* (1989).

106 BRYSON, *supra* note 28, at 132.

107 *Id.*

108 *Id.* at 134. On the imposition of inappropriate temporalities on domestic work, see generally Cristina Carrasco & Maribel Mayordomo, *Beyond Employment*, 14 TIME & SOC’Y 231 (2005); Helga Maria Hernes, *Chronopolitics: A Time to Live and a Time to Work*, in WELFARE STATE AND WOMAN POWER: ESSAYS IN STATE FEMINISM 101 (Helga Maria Hernes ed., 1987); JERRY A. JACOBS & KATHLEEN GERSON, *THE TIME DIVIDE: WORK, FAMILY, AND GENDER INEQUALITY* (2004); Linda McKie, Susan Gregory & Sophia Bowlby, *Shadow*

This is *a fortiori* the case now that work technologies allow paid employment to systematically intrude spatially into workers' private lives. Increasingly, working mothers are less obliged to move between competing temporalities—a task already difficult enough as it is—and must instead continuously “straddle multiple temporalities.”<sup>109</sup> This creates a vicious cycle, one where a lack of time results in a third shift: “the emotional work necessary to repair the damage caused by time pressures at home.”<sup>110</sup> The intrusion of waged labor into the home does not diminish the amount of labor women altogether carry but instead creates more “damage control” labor down the line.<sup>111</sup>

#### D. An Ever-Elusive Work-Life Balance

Remote work and digitally enabled, flexible, on-demand jobs have nonetheless been understood as a potential solution to women's lack of time, as they purportedly allow better work-life balance.<sup>112</sup> Of course, the pressures to reach such a balance mostly fall on women's shoulders, as they are the ones expected to take on most of care labor. Mary Runté and Albert J. Mills argue that the dilemma between the demands of work and those of family life is one that almost exclusively concerns women—the very notion of such a conflict has in fact primarily been developed in relation to women's work.<sup>113</sup> As they point out, “It is women who navigate between parental and employee roles. It is therefore women who pay the ‘toll’ for crossing the boundary between work and family.”<sup>114</sup>

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*Times: The Temporal and Spatial Frameworks and Experiences of Caring and Working*, 36 SOCIO. 897 (2002); HELGA NOWOTNY, *TIME: THE MODERN AND POSTMODERN EXPERIENCE* (1994).

109 Christine Everingham, *Engendering Time: Gender Equity and Discourses of Workplace Flexibility*, 11 TIME & SOC'Y 335, 338 (2002).

110 BRYSON, *supra* note 28, at 146 (quoting ARLIE HOCHSCHILD, *THE TIME BIND: WHEN WORK BECOMES HOME AND HOME BECOMES WORK* 51 (1997)).

111 *Id.* at 146.

112 See Fuller & Hirsh, *supra* note 52, 7–10. On the decrease of gender discrimination in remote work, see generally Laura Doering & András Tilcsik, *Location Matters: Every Day Gender Discrimination in Remote and On-site Work*, 36 ORG. SCI. 547.

113 Mary Runté & Albert J. Mills, *Paying the Toll: A Feminist Post-Structural Critique of the Discourse Bridging Work and Family*, 10 CULTURE & ORG. 237, 240 (2004); see also Janet Smithson & Elizabeth H. Stokoe, *Discourses of Work–Life Balance: Negotiating ‘Genderblind’ Terms in Organizations*, 12 GENDER, WORK & ORG. 147, 164 (2005) (suggesting that work-life balance is strongly associated with women).

114 Runté & Mills, *supra* note 113, at 240.

The blurring of this boundary only implies further encroachment of work into family life. It is always the latter that is shaped by and made to accommodate the former: “the goal may be to achieve balance between work and family, but such balance must never be achieved at the expense of the employer’s profitability.”<sup>115</sup> In almost all mainstream discussions on work-family balance, maintaining—or even increasing—productivity and job commitment is central, tempering negative effects on family life rather than questioning this fundamental prioritization.<sup>116</sup> As waged work takes all hours of a normal working day, unwaged work is done overtime, sped up by time-saving technologies so it can be done while meeting the demands of full-time employment.<sup>117</sup> The balance is already conspicuously tilted in favor of waged work.<sup>118</sup> According to Runté and Mills, the search for work-life balance is thus bound to fail: “[a]ttempts to ‘balance’ work and family commitments within a context that has already shifted the scales so heavily in favor of the work domain is . . . more than a little misleading.”<sup>119</sup> It follows that “far from being distinctly separate spheres, the work domain has thoroughly intruded on and compromised the family domain.”<sup>120</sup> Conversely, any attempt to take time for family life, usually made by women, is understood as an intrusion on work.

The idea of work-family balance, reinforced by the discourse of work flexibility, therefore strikingly disadvantages women. Rather than representing an exceptional opportunity to liberate women from the constraints of work, work flexibility discourse reinforces the very issue it purportedly seeks to address by allowing work to seep into every aspect of life. Although it arguably has concrete organizational advantages for many women, the demands of waged work can never go unmet and “the nature of the interaction remains work-defined.”<sup>121</sup> It is precisely because of this relation remaining unchanged that when the separation between work and private life comes undone, the former inexorably takes over the latter.

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115 *Id.* at 244.

116 *Id.*; see also Abigail Gregory & Susan Milner, *Editorial: Work-Life Balance: A Matter of Choice?*, 16 *GENDER, WORK & ORG.* 1, 3–5 (2009) (providing an overview of the feminist critique of work-life balance).

117 Runté & Mills, *supra* note 113, at 244–45.

118 *See id.*

119 *Id.* at 244.

120 *Id.* at 246.

121 *Id.*

### III. The “Personal Choice” of Disconnection

#### A. Self-Exploitation and the Problematization of Choice

Much of the problem underlying flexible work pertains to the notion of choice. Ultimately, the discussion boils down to the question: why don't (women) workers simply stop working once the workday is over? As I argue in the following pages, the act of “simply disconnecting” proves to be much more complicated than its proponents portray it to be. But another factor, self-exploitation, must be mentioned again here—this time through a gendered lens. As highlighted above, flexible work is firmly anchored in a particularly potent post-Fordist ethics demanding flexibility and emotional involvement from all workers, regardless of their work arrangements.<sup>122</sup> As Kathi Weeks puts it, today, “It is not obedience that is prized, but commitment; employees are more often expected to adopt the perspectives of managers rather than simply yield to their authority.”<sup>123</sup> In this context, the difference between workers' skills and their attitudes becomes increasingly thin. Attitudes and emotional states—such as commitment, sociability, enthusiasm, and positivity—all become as much a part of a job's requirements as skills.<sup>124</sup> Thus, “the willingness and capacity of workers to manipulate and project their attitudes in the organization's interest are central to their competence on the job.”<sup>125</sup> It is then unsurprising that many workers are unwilling to stop working when work keeps coming to them; after all, as Doug Henwood argues, “workers are expected to be the architects of their own better exploitation.”<sup>126</sup> They are also expected to subject themselves to “continuous self-scrutiny . . . in the name of accountability.”<sup>127</sup> These pressures are especially heavy for women, who face gendered pressures and discrimination in work contexts<sup>128</sup> and therefore tend to

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122 See WEEKS, *supra* note 37, at 70.

123 *Id.*; see MADELEINE BUNTING, *WILLING SLAVES: HOW THE OVERWORK CULTURE IS RULING OUR LIVES* 110 (2004).

124 See Doug Henwood, *Talking About Work*, 49 MONTHLY REV. 18, 22 (1997).

125 Robin Leidner, *Rethinking Questions of Control: Lessons from McDonald's*, in *WORKING IN THE SERVICE SOCIETY* 29, 46 (Cameron Lynne Macdonald & Carmen Sirianni eds., 1996), *quoted in* WEEKS, *supra* note 37, at 70.

126 Henwood, *supra* note 124, at 22, *quoted in* WEEKS, *supra* note 37, at 70.

127 Bogdan Costea, Norman Crump & Kostas Amiridis, *Managerialism, the Therapeutic Habitus and the Self in Contemporary Organizing*, 61 HUM. RELS. 661, 673–74 (2008).

128 See generally Donna Bobbitt-Zeher, *Gender Discrimination at Work: Connecting Gender Stereotypes, Institutional Policies, and Gender Composition of Workplace*, 25 GENDER & SOC'Y 764, 764 (2011) (describing

fear their employers' and colleagues' judgement more than their male counterparts.<sup>129</sup> In particular, women report fearing that they seem less committed to the job or less capable than their colleagues.<sup>130</sup> Such fears effectively function as a disciplinary mechanism, which leads women to self-regulate their behavior to fit the norms of their workplace.<sup>131</sup> Women are therefore especially prone to self-exploitation in contexts where they might fear they have more to prove than their male colleagues.

Given this array of risks and covert forms of harm, technologically enabled flexible work is far from straightforwardly liberatory for women. Though measures to promote work flexibility are in many ways practical in ensuring that women can attend to their various kinds of waged and unwaged labor, they nonetheless reinforce exploitative dynamics that systematically disadvantage women. Much of the freedom or ease that is gained through teleworking is arguably offset by what Bryson describes as the “counter-pressures to work intensification in the globalized employment market.”<sup>132</sup> Rather than permitting a concrete shift towards a feminist understanding of time, work flexibility has extended capitalistic temporalities to all tasks. Evidently, “[t]he kind of instant, abbreviated messaging that new technology encourages is . . . very different from the grounded, relational time that caring relationships may require.”<sup>133</sup> It is thus unsurprising that widespread telework during the COVID-19 pandemic did not allow more leisure for women. In fact, research shows that childcare and domestic work responsibilities were unevenly distributed between spouses.<sup>134</sup> In general, women who work flexibly are highly likely to expand their care and domestic

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the ways in which gender stereotyping and organizational factors contribute to gender discrimination in the work place); Madeline E. Heilman & Suzette Caleo, *Gender Discrimination in the Workplace*, in THE OXFORD HANDBOOK OF WORKPLACE DISCRIMINATION 73 (Adrienne J. Colella & Eden B. King eds., 2018) (exploring the role of gender stereotypes in the selection, promotion, and evaluation of women in the workplace); Madeline E. Heilman, *Gender Stereotypes and Workplace Bias*, 32 RSCH. ORGANIZATIONAL BEHAV. 113, 113 (2012) (describing the negative impact of gender roles on women's career progress).

129 Isabell C. Loeschner, *Understanding Peripheral Work Connectivity—Power and Contested Spaces in Digital Workplaces* 184–85 (Apr. 2016) (Ph.D. dissertation, London School of Economics) (ProQuest).

130 *See id.* at 185.

131 *Id.*

132 *See* BRYSON, *supra* note 28, at 141.

133 *Id.* at 141–42.

134 *See* Allison Dunatchik et al., *Gender, Parenting, and the Rise of Remote Work During the Pandemic: Implications for Domestic Inequality in the United States*, 35 GENDER & SOC'Y 194, 203 (2021); Daniel L. Carlson & Richard J. Petts, *U.S. Parents' Domestic Labor During the First Year of the COVID-19 Pandemic*, 41 POPULATION RSCH. & POL'Y REV. 2393, 2405–08 (2022).

work.<sup>135</sup> It thus stands to reason that remote work, conceptualized as one of the main solutions to women's constant split between different forms of labor, tends to reinforce the idea that it is up to women to find balance between the countless tasks they take on every day. The proposal of remote work as a solution to women's time pressures implies that women can (and should) remain responsible for both their paid job and most of the necessary unpaid labor their family and community demand. It does not challenge the status quo, nor does it question waged work's primacy in the work-life balance. As Susan Christopherson puts it, "While the problem of work-family balance may be widely recognized, the strategy most popular with employers—the flexible work schedule—neither reduces the hours of work nor challenges the assumption that social reproduction should be a private, and largely female, responsibility."<sup>136</sup>

### B. Digital Self-Care: Disconnection as Distinction

Disconnection was championed by human resources (HR) experts and self-help influencers alike as a remedy to the negative consequences of remote work sketched above. The idea is simple: to maintain a healthy lifestyle, good digital hygiene is necessary.<sup>137</sup> This includes regular complete disconnection from work emails and messages, as well as reducing one's screentime in general. In short, our daily use of technology should not only be diminished but also more mindful.<sup>138</sup> This shift is also taking place in the working world, which Fast calls the "disconnection turn in work": "'always on' workers are now advised to be 'sometimes off' for the sake of their *digital wellbeing* (and/or productivity)".<sup>139</sup> The "disconnection turn" reflects the construction of a new work ideal—one that turns "away from the enduring romanticization of overwork, busyness, and media-induced flexibility."<sup>140</sup>

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135 Hilbrecht et al., *supra* note 25, at 471–73; Sullivan & Lewis, *supra* note 23, at 141.

136 WEEKS, *supra* note 37, at 172 (citing Susan Christopherson, *Trading Time for Consumption: The Failure of Working-Hours Reduction in the United States*, in *WORKING TIME IN TRANSITION: THE POLITICAL ECONOMY OF WORKING HOURS IN INDUSTRIAL NATIONS* 171, 182–83 (Karl Hinrichs et al. eds., 1991)).

137 See Fast, *supra* note 10, at 1618–19; Karin Fast, Johan Lindell & André Jansson, *Disconnection as Distinction: A Bourdieusian Study of Where People Withdraw from Digital Media*, in *DISENTANGLING: THE GEOGRAPHIES OF DIGITAL DISCONNECTION* 61, 62 (André Jansson & Paul C. Adams eds., 2021).

138 Fast, *supra* note 10, at 1616.

139 See *id.* at 1617–18.

140 See *id.* at 1618.

Disconnection is framed therein as an individual choice that one can make to live a healthier life. Such a choice is often positioned as “a form of empowerment or even resistance,”<sup>141</sup> a rebellion showing “commitment to self-determination” and “real-life social relations.”<sup>142</sup> Disconnection is understood as a “set of techniques by which workers can *regain control* over increasingly liquid life domains”.<sup>143</sup> As mentioned in the introduction, such an approach to disconnection must be criticized, however, as it turns the necessary remedy for a societal issue into an individual choice: a commodity that few can afford. Discourses of disconnection-as-individual-choice only reinforce logics of “self-optimization, responsabilization, and commodification.”<sup>144</sup>

Research suggests that disconnection as a self-care practice or a solution to the pressures of constant connectivity is most popular in class-privileged groups.<sup>145</sup> Unsurprisingly, digital detox is mostly marketed to those rich in capital but poor in time.<sup>146</sup> Disconnection has become a matter of good taste<sup>147</sup> and “socially stratifying.”<sup>148</sup> Disconnection-as-individual-choice thus fits into a “grander scheme of non-consumption dispositions that make for social recognition and distinction.”<sup>149</sup> Even when used as a tool for political mobilization, disconnection is more likely to be used by the “tech-savvy elite.”<sup>150</sup>

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141 Pepita Hesselberth, *Discourses on Disconnectivity and the Right to Disconnect*, 20 *NEW MEDIA & SOC'Y* 1994, 1999 (2017); see Fast, Lindell & Jansson, *supra* note 137, at 62.

142 Hesselberth, *supra* note 141, at 1999.

143 Fast, *supra* note 10, at 1618–19.

144 Syvertsen & Enli, *supra* note 30, at 1279–80; see Laura Portwood-Stacer, *Media Refusal and Conspicuous Non-Consumption: The Performative and Political Dimensions of Facebook Abstention*, 15 *NEW MEDIA & SOC'Y* 1041, 1048 (2013).

145 See Miriana Cascone & Tiziano Bonini, ‘Disconnecting from My Smartphone Is a Privilege I Do Not Have’: Mobile Connection and Disconnection Practices Among Migrants and Asylum Seekers in Three Migrant Reception Centres of Sicily, 27 *NEW MEDIA & SOC'Y* 5201, 5205 (2025). See generally Francine M. Deutsch, *Undoing Gender*, 21 *GENDER & SOC'Y* 106 (2007) (discussing the intersection between gender and class in relation to flexible work arrangements).

146 See Alex Beattie & Eilija Cassidy, *Locative Disconnection: The Use of Location-Based Technologies to Make Disconnection Easier, Enforceable and Exclusive*, 27 *CONVERGENCE* 395, 406–07 (2021).

147 *Id.*

148 Fast, *supra* note 10, at 1624.

149 *Id.*

150 *Id.*

Undoubtedly, few members of financially precarious working classes have the material possibility of disconnecting: employees in lower occupational classes face higher risks of underemployment and enjoy both less job security and less bargaining power.<sup>151</sup> Free time is, of course, not only a gendered question, but it is also class-differentiated. Research shows that those employed in lower-paying and lower-status positions tend to enjoy less sleep and free time than more privileged workers.<sup>152</sup> They are also more likely to self-exploit by working longer hours.<sup>153</sup>

When the issue of free time is understood as both gendered and classed, it seems especially regrettable that disconnection tends to be a choice only the most privileged can make; low-income women are the most time-poor and hence most in need of meaningful disconnection. Indeed, “[w]omen’s time poverty is particularly acute in low-income households without private transport or the kind of labour-saving household equipment that many other families take for granted.”<sup>154</sup> In such contexts, women’s financial poverty interacts with their time poverty.<sup>155</sup> Disconnection, when framed in a way that inevitably excludes low-income women, is profoundly ill-equipped to address the gendered and classed impact of constant connectivity.

### C. Consumer Activism: Individualism and Self-Responsibilization

Calls for disconnection, when disconnection is framed as a personal choice or habit, tend to be both individualistic and moralizing, usually relying on the logic of responsibilization.<sup>156</sup> As Pepita Hesselberth writes:

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151 Zhuofei Lu, Senhu Wang & Wendy Olsen, *Revisiting the ‘Flexibility Paradox’: Degree of Work Schedule Flexibility and Time Use Patterns Across Gender and Occupational Groups*, 10 HUMANS. & SOC. SCIS. COMM’NS 1, 4 (2023); see Hande Inanc, *Unemployment, Temporary Work, and Subjective Well-Being: The Gendered Effect of Spousal Labor Market Insecurity*, 83 AM. SOCIO. REV. 536, 537 (2018) (describing temporary workers’ job insecurity).

152 Chatzitheochari & Arber, *supra* note 95, at 452–54.

153 *Id.* at 452–54; Lu, Wang & Olsen, *supra* note 151, at 4.

154 BRYSON, *supra* note 28, at 149–50.

155 RUTH LISTER, *CITIZENSHIP: FEMINIST PERSPECTIVES* 141 (2d ed. 2003).

156 See Rose, *supra* note 29, at 123 (describing the ways in which single mothers tend to blame themselves for their lack of time).

What I find flustering about these accounts is how effortlessly they lend themselves to a narrative of personal responsibility . . . in which individuals are unapologetically held accountable for their own (mis)use of technology, and therewith for their time-waste and burnouts, as if these can be divorced from the newly emerged economy of attention and the technological milieu that sustains it.<sup>157</sup>

This conception of disconnection fits a broader tendency where “problems inherent to present-day capitalism are constructed as individual problems to be solved through self-improvement rather than political intervention.”<sup>158</sup> Rather than a collective and liberatory practice, disconnection is an individual measure that centers on resilience<sup>159</sup> or “bounce-backability.”<sup>160</sup> As Fast remarks, “In order not to break under the weights of flexibilized, neoliberal capitalism, workers are stimulated to take care of themselves.”<sup>161</sup> This serves capitalism in turn by securing continued productivity.<sup>162</sup> Disconnection is not, therefore, in tension with the constant productivity model; on the contrary, it is framed as a means to ensure its sustainability. Disconnection serves the well-being of workers in spite of the pressures of “always-on” work culture, rather than diminishing them.

Furthermore, this individualized understanding of disconnection often inscribes itself within consumer activism, thus inevitably turning disconnection into a commodity. The positioning of disconnection as a healthy lifestyle choice opens new, lucrative markets.<sup>163</sup> From luxury digital detox retreats to apps blocking access to their user’s phone for a limited period, calls to disconnect also serve to advertise a plethora of services that can purportedly help cement good digital habits.<sup>164</sup> In short, the emerging disconnection industry offers solutions to restore the perceived loss of self-control and meaningfulness resulting from

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157 Hesselberth, *supra* note 141, at 1998.

158 Fast, *supra* note 10, at 1624.

159 *Id.* at 1617.

160 Rosalind Gill & Shani Orgad, *The Amazing Bounce-Backable Woman: Resilience and the Psychological Turn in Neoliberalism*, 23 SOC. RSCH. 477, 478 (2018).

161 Fast, *supra* note 10, at 1617.

162 *Id.* at 1618.

163 Lise-Marie Nassen et al., *Opt-Out, Abstain, Unplug. A Systematic Review of the Voluntary Digital Disconnection Literature*, 81 TELEMATICS & INFORMATICS 1, 1 (2023).

164 Fast, *supra* note 10, at 1618.

excessive connectivity.<sup>165</sup> This is of little surprise since, as Hesselberth notes, “[E]very form of (consumer) activism tends to open up new market potential.”<sup>166</sup>

#### D. The Gendered Nature of Disconnection

The conception of disconnection as a lifestyle choice also has significant gendered implications. As women generally tend to be held to high standards with respect to maintaining a healthy, balanced lifestyle, disconnection runs the risk of becoming less a choice than a duty. Against the backdrop of women’s duty to disconnect, Fast explores the tasks of what she calls the “post-digital housewife,” which result from disconnection and, like other forms of housework,<sup>167</sup> “are vital for the management of daily life and to capitalist value creation.”<sup>168</sup> Fast focuses specifically on the ways in which disconnected work forms an integral part of today’s “second shift” and constitutes a form of digital labor.<sup>169</sup> Digital labor is continuous with older forms of domestic, devalued, “quasi voluntary” “women’s work.”<sup>170</sup> It is to emphasize this continuity that the term housewife is mobilized—a post-digital housewife can in fact have a full-time job. The task of the post-digital housewife after the disconnection turn is “to secure the digital health of family members,”<sup>171</sup> in yet another instance of unwaged care work. It includes, for instance, forms of post-digital parenting, such as monitoring a child’s screentime.<sup>172</sup> Ironically, it seems that women must use ever more of their so-called free time to make sure that their loved ones disconnect. This fits a pattern where women’s labor includes the generation of quality free time for others.<sup>173</sup> Such demands are especially present in upper-middle class milieus, where taking care to limit one’s screentime and to let go of work demands outside of office hours has become an important social norm and is increasingly understood as a necessary element

165 Nassen et al., *supra* note 163, at 2.

166 Hesselberth, *supra* note 141, at 1999.

167 Melissa Gregg & Rutvica Andrijasevic, *Virtually Absent: The Gendered Histories and Economies of Digital Labor*, 123 FEMINIST REV. 1, 2 (2019); Kylie Jarret, *The Relevance of “Women’s Work”*: *Social Reproduction and Immaterial Labor in Digital Media*, 14 TELEVISION & NEW MEDIA 15, 22–24 (2014).

168 Fast, *supra* note 10, at 1622.

169 KYLIE JARRETT, FEMINISM, LABOUR AND DIGITAL MEDIA—THE DIGITAL HOUSEWIFE 2–4 (2016).

170 Fast, *supra* note 10, at 1622.

171 *Id.* at 1623.

172 *Id.*

173 BRYSON, *supra* note 28, at 134.

of any good, healthy family life.<sup>174</sup> Hence, as Fast points out, the post-digital housewife's position "seems at the same time privileged (notably in terms of class and ethnicity) and deprived (in terms of gender)."<sup>175</sup>

Thus, from a feminist perspective, disconnection from work becomes disconnection *as work*:<sup>176</sup> it is up to women to make sure that not only they, but also the people they care for, meaningfully disconnect. This task is especially difficult—if not straightforwardly futile—in a world as connected as ours. Indeed, "[t]he more we move towards 24/7 connectivity, the more work it is to permanently or temporarily disconnect, and the more work must be done to find compensatory solutions and alternatives."<sup>177</sup> Disconnection is then another item added to the list of the countless daily habits and unrealistic standards that women must make sure they and their loved ones adhere to and practice. In other words, rather than protecting women from constant work demands, disconnection becomes one more burden to carry, another demand placed on their time. Crucially, then, not only does flexible, digital work fail to fulfill its promises, but so does disconnection when framed as a personal choice. "The disconnection turn in work brings with it promises about increased worker autonomy and self-realization," but so did the forms of flexible work that this very turn seeks to address.<sup>178</sup>

#### IV. The Right to Disconnect

##### A. Turning Away from Choice: The Benefits of a *Right to Disconnect*

The right to disconnect has often been grouped with other measures characteristic of the disconnection turn. According to Fast, the right to disconnect represents just one manifestation of the turn among many, including "workfulness" programs, distraction-blocking apps and digital detox tourism.<sup>179</sup> Though I agree that the right to disconnect inscribes itself within the disconnection turn, I argue that it differs substantially from the other phenomena listed and avoids many of their pitfalls. Legal reforms—unlike

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174 Fast, *supra* note 10, at 1623.

175 *Id.*

176 *Id.* at 1616.

177 TRINE SYVERTSEN, DIGITAL DETOX: THE POLITICS OF DISCONNECTING 10 (2020).

178 Fast, *supra* note 10, at 1624.

179 *Id.* at 1616.

phone-free holidays or self-help apps—represent a kind of collective bargaining that hold the potential to carry radical demands.<sup>180</sup> Although rights typically concern the individual, they are necessarily the result of collective mobilization. The right to disconnect, unlike manifestations of disconnection-as-lifestyle, does not restrict disconnection to the self-optimizing and self-care practices of a well-earning and highly educated elite. Instead, it frames disconnection as a collective guarantee belonging to each and every worker, one that protects them against the encroachment of work into every aspect of life. The right to disconnect, therefore, frames disconnection as a political demand inscribed in a long lineage of workers' rights, rather than as a lifestyle; as a legal guarantee, not as a personal choice; as a necessary condition for the protection of workers' health, not as a productivity-optimizing or pleasure-enhancing privilege; and as a means of limiting work's increasing demands on our time, rather than as an attempt to withstand and embrace these demands better.

As Fast notes, Trine Syvertsen identifies in disconnection a notable change from previous forms of media activism: “a shift in emphasis from improving the media to improving the user.”<sup>181</sup> A similar observation could be made regarding disconnection from work in particular: the emphasis is placed on improving the worker, not the conditions of work. I nonetheless contend that the right to disconnect can break with this logic. As will be argued below, when it includes the prohibition of contacting employees outside of working hours, the right to disconnect seeks to improve the employer, not the employee—the working conditions themselves rather than the worker. The right to disconnect diverges from the logic sketched above by limiting additional encroachment of work on our time rather than urging workers to deal with its encroachment better. The point of the right to disconnect isn't to “‘fix’ workers’ inept self-regulation,”<sup>182</sup> but to shift the responsibility for workers' well-being onto the law and the employers it is meant to regulate.

The right to disconnect not only has the advantage of shedding light on the shortcomings of workers' protection, but it also escapes the predominant disconnection discourse described above, which places the burden of disconnection on individuals. Echoing the old (yet ever-relevant) refrain, “the personal is political,” demands for the recognition of a right to disconnect reframe what is often considered a personal matter—to be solved by making specific individual choices—as a structural workers' issue that can only be

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180 See Marbre Stahly-Butts & Amna A. Akbar, *Reforms for Radicals? An Abolitionist Framework*, 68 UCLA L. REV. 1544, 1548 (2022).

181 SYVERTSEN, *supra* note 177, at 73, *quoted in* Fast, *supra* note 10, at 1618.

182 Fast, *supra* note 10, at 1622.

dealt with collectively. In a pattern characteristic of social movements such as feminism, disconnection should be reconceptualized from a personal, individual choice, facilitated by the purchase of specific products and services, into a collective demand for change in the workplace, one that can be made visible, and at least partially met, through the enshrinement of rights.

## B. A Comparative Legal Analysis

### 1. The French Model

As calls to enshrine a right to disconnect have grown over the last few years, disconnection has made its way into legal discourse. This right has not emerged in a vacuum; the right to disconnect is evidently anchored in the logic of both labor law (specifically working time legislation) and international human rights law (Article 24 of the Universal Declaration of Human Rights protects the right “to rest and leisure”).<sup>183</sup>

The right to disconnect has been introduced into the national legislation of several countries. France was a pioneer in this regard,<sup>184</sup> the right having already been part of political discourse in the early 2000s<sup>185</sup> and having been the subject of a national cross-sectoral agreement as early as 2013.<sup>186</sup> The right to disconnect was made into law in 2016, introduced in the Loi El-Khomri, in the context of significant and controversial reforms in French labor law.<sup>187</sup> These reforms aimed to relax and simplify French labor law,<sup>188</sup> introducing, for instance, the possibility for employers to make company-specific

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183 G.A. RES. 217 (III) A, Universal Declaration of Human Rights art. 24 (Dec. 10, 1948).

184 MARK BELL ET AL., A RIGHT TO DISCONNECT: IRISH AND EUROPEAN LEGAL PERSPECTIVES—A PUBLIC POLICY REPORT OF THE COVID-19 LEGAL OBSERVATORY 20 (2021); Isabel Vieira Borges, *R2D: The Right to Disconnect from Work*, in THE LEGAL CHALLENGES OF THE FOURTH INDUSTRIAL REVOLUTION, LAW, GOVERNANCE AND TECHNOLOGY 249, 262 (Dario Moura Vincente et al. eds., 2023); see also Loïc Lerouge & Francisco Trujillo Pons, *Contribution to the Study on the ‘Right to Disconnect’ from Work. Are France and Spain Examples for Other Countries and EU Law?*, 13 EUR. LAB. L.J. 450, 455 (2022).

185 Matteo Avogaro, *Right to Disconnect: French and Italian Proposals for a Global Issue*, 4 L.J. SOC. & LAB. REL. 110, 113 (2018).

186 Vieira Borges, *supra* note 184, at 262.

187 Avogaro, *supra* note 185, at 115.

188 BELL ET AL., *supra* note 184, at 21.

collective agreements bypassing the maximum weekly working time of thirty-five hours.<sup>189</sup> The right to disconnect was recognized in the law's third chapter, titled *Sécuriser les parcours [des salariés] et construire les bases d'un nouveau modèle social à l'ère du numérique* (securing employees' trajectories and building the basis of a new social model in the digital era), but the other reforms introduced alongside it triggered widespread unrest throughout the country, as they significantly weakened workers' protections.<sup>190</sup> Accordingly, it is important to place the French right to disconnect within its context: this important new form of worker protection in the digital era was recognized while other guarantees were weakened, and the right to disconnect was thereby overshadowed by the loss of protections workers otherwise suffered through the reform.<sup>191</sup>

The right to disconnect was subsequently added in Article L. 2242-8 of the French Labor Code. Paragraph 7 of the norm pertains to the mandatory collective bargaining on professional gender equality and on quality of work. Since paragraph 7 came into force on January 1, 2017,<sup>192</sup> collective bargaining must address the "modalities of the employee's ability to fully exercise his right to disconnection and the implementation by the company of measures to regulate the use of digital tools, with a view to ensuring respect for rest and vacation times, as well as personal and family life."<sup>193</sup> On May 9, 2018, any reference to the right to disconnect was eliminated from Article L. 2242-8, paragraph 7 having been repealed through Law No. 2018-771.<sup>194</sup> Today, the right to disconnect is enshrined in Article L. 2242-17, 7° of the French Labor Code. The Law No. 2021-1018 of August 2, 2021 established its most recent version.<sup>195</sup>

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189 *Id.*

190 Avogaro, *supra* note 185, at 115; BELL ET AL., *supra* note 184, at 20.

191 BELL ET AL., *supra* note 184, at 21.

192 Avogaro, *supra* note 185, at 115.

193 CODE DU TRAVAIL [C. TRAV.] [LABOR CODE] art. L2242-8 ¶ 7 (2017) (author's translation).

194 Vieira Borges, *supra* note 184, at 262.

195 "La négociation annuelle sur l'égalité professionnelle entre les femmes et les hommes et la qualité de vie et des conditions de travail porte sur: . . . 7° Les modalités du plein exercice par le salarié de son droit à la déconnexion et la mise en place par l'entreprise de dispositifs de régulation de l'utilisation des outils numériques, en vue d'assurer le respect des temps de repos et de congé ainsi que de la vie personnelle et familiale. A défaut d'accord, l'employeur élabore une charte, après avis du comité social et économique. Cette charte définit ces modalités de l'exercice du droit à la déconnexion et prévoit en outre la mise en œuvre, à destination des salariés et du

The new regulation on the right to disconnect protects the employees of companies employing a minimum of fifty people, as well as all workers subject to *forfait en heures* (“hourly rate”) or *forfait en jours* (“daily rate”) regimes.<sup>196</sup> Doubts have since arisen about the application of the right to disconnect to companies with fewer than fifty employees.<sup>197</sup> In any case, making the right to disconnect a matter to be addressed within mandatory collective bargaining widens the personal scope of the right, making it applicable to employees in a wide range of sectors. The right to disconnect applies to both remote workers<sup>198</sup> and part-time employees.<sup>199</sup> However, it is worth highlighting that the right to disconnect applies only to salaried employees (*salariés*).<sup>200</sup> The French right to disconnect therefore excludes self-employed workers who provide services to companies as external contractors.<sup>201</sup> It also excludes the public sector, who fall under another legal regime.<sup>202</sup> A right to disconnect for the public sector has been debated in the French Parliament in the context of an intended reform of the civil service but was ultimately rejected in 2019. The reasons stated for this decision were the “specifics of the public sector and the necessity of continuous service.”<sup>203</sup>

As the right to disconnect applies to a variety of contexts, some of which differ starkly from others, the right is formulated in general terms.<sup>204</sup> The French right to disconnect, as anchored in Article L. 2242-17 of the French Labor Code, has indeed been criticized for

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personnel d’encadrement et de direction, d’actions de formation et de sensibilisation à un usage raisonnable des outils numériques.”

CODE DU TRAVAIL [C. TRAV.] [LABOR CODE] art. L2242-17 ¶ 7.

196 Avogaro, *supra* note 185, at 116.

197 Vieira Borges, *supra* note 184, at 262.

198 Assel Kaishatayeva et al., *Right to Disconnect: Complexities of Legalization (in the Context of International Regulatory Experience)*, 12 J.L. & SUSTAINABLE DEV. 11, 11 (2024).

199 BELL ET AL., *supra* note 184, at 23.

200 *Id.*

201 *Id.*

202 *Id.*

203 Confédération Française des Travailleurs Chrétiens, *Droit à la déconnexion pour le salarié: de quoi parle-t-on?*, CFTC (Nov. 13, 2019), <https://www.cftc.fr/actualites/droit-a-la-deconnexion-en-2019-de-quoi-parle-t-on> [<https://perma.cc/T33R-X3JQ>], translated by BELL ET AL., *supra* note 184, at 23.

204 Avogaro, *supra* note 185, at 116.

its vagueness.<sup>205</sup> The French state has left the task of detailing how the right to disconnect should be implemented to “social partners,”<sup>206</sup> i.e., organizations that represent employees and employers, because legislation failed to define the right beyond articulating general aims.<sup>207</sup> In particular, the choice of appropriate (technical) measures to ensure the right is respected and observed is left to the employer.<sup>208</sup> Mandatory collective agreements can implement a range of provisions and sanctions to enshrine the right and deal with any violations of it.<sup>209</sup> They can also contain programmatic norms aimed at the mitigation of health risks linked to “always on” work cultures.<sup>210</sup> In fact, the French framework places great emphasis on prevention.<sup>211</sup>

Crucially, if social partners in a given situation should find themselves unable to come to a collective agreement regulating the right to disconnect, Article L. 2242-17 of the French Labor Code delegates the power to the employer to unilaterally issue a charter in place of it.<sup>212</sup> Although the social and economic committee, a representative body mandatory for companies with at least eleven employees, must be consulted in this process,<sup>213</sup> the employer is not ultimately bound by its position.<sup>214</sup> This charter must guarantee the employee’s right to disconnect and place a particular focus on the reasonable use of digital tools.<sup>215</sup> However, though violations of the obligation to negotiate the charter can be punished by a fine set at a maximum of 1% of the employer’s remuneration and earnings,<sup>216</sup> the absence of a

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205 BELL ET AL., *supra* note 184, at 21.

206 Avogaro, *supra* note 185, at 116; BELL ET AL., *supra* note 184, at 25; Kaishatayeva et al., *supra* note 198, at 11.

207 Laëtitia Morel, *Le droit à la déconnexion en droit français: La question de l’effectivité du droit au repos à l’ère du numérique*, 3 LAB. & L. ISSUES 1, 6 (2017).

208 BELL ET AL., *supra* note 184, at 25.

209 Avogaro, *supra* note 185, at 116.

210 *Id.*

211 Kaishatayeva et al., *supra* note 198, at 11.

212 BELL ET AL., *supra* note 184, at 22.

213 *Id.* at 22–23.

214 Lerouge & Pons, *supra* note 184, at 460.

215 Avogaro, *supra* note 185, at 116; BELL ET AL., *supra* note 184, at 22.

216 CODE DU TRAVAIL [C. TRAV.] [LABOR CODE] art. L2242-8 ¶ 3.

charter is not sanctioned.<sup>217</sup> Ultimately, French law “authorizes the company, without the involvement of employees, to unilaterally delimit this right.”<sup>218</sup>

Because precise formulation of the right to disconnect has been left to social partners, its definition and modalities remain legally unclear. It is, for example, up to social partners to decide whether the right to disconnect is formulated as a right or as an obligation of the employee. That is, depending on the individual formulation of the right to disconnect, employees might be not only entitled but obliged to disconnect outside of working hours. The introduction of such an obligation into law, however, has been rejected.<sup>219</sup> Some commentators have found this rejection especially regrettable, arguing that an obligation to disconnect would have made the norm more effective.<sup>220</sup> Conversely, trade unions argued that the introduction of an obligation to disconnect would have placed the burden of drawing clear boundaries between work and private life on employees rather than on their employers.<sup>221</sup> Expressing a similar sentiment, Mark Bell et al. highlight, “What may be problematic about the above solutions is striking the right balance in order to ensure that the right to disconnect remains a right and does not turn into an obligation.”<sup>222</sup> If an obligation were to be legally enshrined, the failure to comply with this obligation to disconnect could be used to weaken workers’ protections, thus distorting the purpose of the right to disconnect.<sup>223</sup>

In short, the French approach to the right to disconnect is to recognize the right while leaving the specifics of its formulation and implementation to negotiations between employers and employees. As Isabel Vieira Borges argues, “[I]f there is no consensus

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217 Lerouge & Pons, *supra* note 184, at 460.

218 Caterina Timellini, *Disconnection: A Right in a Phase of Progressive Definition*, in *NEW FORMS OF EMPLOYMENT: CURRENT PROBLEMS AND FUTURE CHALLENGES* 118, 122 (Jerzy Wratny & Agata Ludera-Ruszel eds., 2020).

219 Avogaro, *supra* note 185, at 116.

220 *Id.*

221 *Id.*

222 BELL ET AL., *supra* note 184, at 25.

223 *Id.* (discussing a 2016 agreement signed by the Société Générale bank, which specified that employees consulting or replying to any work-related messages outside of working hours of their own initiative would not be considered to be working). Such a clause is for instance in clear violation of French case law that makes clear that workers shall be remunerated for work performed outside of their usual working hours. *See, e.g.*, Cour de cassation [Cass.] [supreme court for judicial matters] soc., July 12, 2018, No. 17-13.029.

over the R2D measures and the internal mechanisms for regulating the use of digital tools, then it is the employer who will establish the rules, without any direct sanctions for non-compliance.”<sup>224</sup> It seems necessary to point out that leaving so much latitude in the implementation of the right to disconnect to employers raises doubts about the effectiveness of the right. Not only can employers significantly shape the right to their advantage, but they also have the option not to respect it at all, especially given the lack of legal sanctions in case of non-compliance.<sup>225</sup> Crucial questions pertaining to working time and workload remain legally unanswered.<sup>226</sup> The French right to disconnect ultimately represents a “great manifestation of confidence in[] private regulation.”<sup>227</sup>

## 2. The German Model

Given the importance of self-regulation in the French model, scholarship surprisingly often contrasts the model to the German approach to the right to disconnect. Germany has adopted a model that entirely relies on self-regulation: efforts to protect employees’ right to disconnect must be made by companies themselves. There is therefore no right to disconnect enshrined in German legislation.<sup>228</sup> Over the last decades, several German companies—including Audi, Volkswagen, BMW and Telekom—have adopted their own codes of conduct, which state that employees should not be contacted outside of their working hours, except in exceptional and urgent cases.<sup>229</sup> These internal codes of conduct have the potential to change work cultures that have normalized constant connectivity and raise awareness of the risks associated with such systems.<sup>230</sup> However, “most of these guidelines only constitute recommendations and the practical implementation heavily depends on the direct superior.”<sup>231</sup>

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224 Vieira Borges, *supra* note 184, at 262–63.

225 *Id.* at 262.

226 Morel, *supra* note 207, at 7.

227 Reinhard Singer & Stephan Klawitter, *The Protection of Crowdworkers Under German Law*, in *NEW FORMS OF EMPLOYMENT—CURRENT PROBLEMS AND FUTURE CHALLENGES* 95, 102 (Jerzy Wratny & Agata Ludera-Ruszel eds., 2020).

228 Vieira Borges, *supra* note 184, at 272.

229 BELL ET AL., *supra* note 184, at 27; Nathalie Maier & Verena Ossoinig, *Freizeit und Beruf—Rechtliche und technische Unterstützung der Work-Life-Balance*, 41 *DER BETRIEB* 2391, 2393 (2015).

230 BELL ET AL., *supra* note 184, at 27.

231 *Id.*; Maier & Ossoinig, *supra* note 229, at 2393.

Nevertheless, the German state has deemed the self-regulatory approach sufficient, not recognizing the need to introduce a right to disconnect into its legislation.<sup>232</sup> The labor legislation defining workers' availability and protecting them against disproportionate workloads—the Working Time Act (ArbZG) of June 6, 1994<sup>233</sup> and the OSH Act (ArbSchG) of August 7, 1996,<sup>234</sup> as well as the European Union Directive 2003/88/EC<sup>235</sup>—are argued to adequately protect workers' health.<sup>236</sup> This position is shared by the German Trade Union Confederation (*Deutscher Gewerkschaftsbund*), which has argued that the issue of workers' being presumed to be constantly available is a problem resulting from failures to enforce current labor law rather than one requiring the recognition of a new right.<sup>237</sup> Bell et al., however, argue that this position is unconvincing, as “the narrative that there is no need for a right to disconnect because the current legal framework is cohesive and exhaustive is contradicted by the plethora of academic contributions on the matter.”<sup>238</sup> There certainly remain significant grey areas within German labor law, one of which being the unclear definition of the kind of action that constitutes a disruption of a worker's rest period.<sup>239</sup> This is hugely significant as an interruption of a worker's rest should technically restart the count of the mandatory daily rest period of eleven hours under § 5(1) of the ArbZG.

The recent shift in the way work is organized and conceived poses a more fundamental problem that is not limited to German law. The protection of workers' health through mandatory rest periods and a limit on work hours is only effective if working hours are clearly defined and delimited. However, remote working, flexible working time models, or trust-based working hours do not allow for a strict schedule with clear differentiation

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232 Vieira Borges, *supra* note 184, at 272.

233 Arbeitszeitgesetz [ArbZG] [Working Time Act], June 6, 1994, BUNDESGESETZBLATT [BGBl] I at 1170–71, as amended by art. 52 of the Law of October 23, 2024, BGBl I at 323.

234 Arbeitsschutzgesetz [ArbSchG] [OSH Act], August 7, 1996, BUNDESGESETZBLATT [BGBl] I at 1246, as amended by art. 7 of the Law of December 22, 2025, BGBl I at 369.

235 2003 O.J. (L 299) 9.

236 *Id.*

237 Bell et al., *supra* note 184, at 27–28; Deutscher Gewerkschaftsbund, Schriftliche Stellungnahme des Deutschen Gewerkschaftsbundes Ausschuss für Arbeit und Soziales, 19. Wahlperiode, Rahmenbedingungen für orts- und zeitflexibles Arbeiten, Homeoffice und mobile Arbeit, at 9 (Apr. 9, 2021).

238 BELL ET AL., *supra* note 184, at 29.

239 *Id.* at 28; Thomas UW Baeck, *Aktuelle Herausforderungen des Arbeitszeitrechts—betriebsnahe Vereinbarungen als Lösungsansatz, Ein Plädoyer für die Stärkung der Betriebsparteien in Arbeitszeitfragen*, 2020 NEUE ZEITSCHRIFT FÜR ARBEITSRECHT 96, 99 (2020).

between work and rest. This is where the flexibility gained by many professionals feeds into trends that ultimately lead to their exhaustion. Ultimately, when discussing the right to disconnect, “the crux of the legislative matter at hand lies within a balancing act of desirable flexibility and necessary protection of health and leisure.”<sup>240</sup> In short, not only is it unclear what constitutes an interruption of a worker’s rest period but also when a rest period starts and ends.<sup>241</sup> This leads to clear shortcomings in terms of workers’ protection which cannot be addressed within Germany’s current legislative framework, necessitating the explicit recognition and enforcement of a right to disconnect. In this regard, the German self-regulatory model provides too much leeway for companies to offer a right to disconnect that is weakened and ineffective at best, and non-existent at worst. Crucial decision-making power is left in the hands of employers who have clear interests in implementing the mildest right to disconnect possible.<sup>242</sup> With this in mind, and in light of the above presentation of the French approach, it seems that Germany’s self-regulatory model is not as starkly different from France’s as one might think. Both approaches ultimately leave much of the implementation and enforcement of the right to disconnect to the discretion of the employer, without introducing meaningful safeguards or sanctions to regulate employers’ behavior.

### 3. The Portuguese Model

It therefore is particularly important to focus analysis on models of the right to disconnect that place more explicit constraints upon employers. Portugal’s approach is noteworthy in this regard. The Portuguese right to disconnect was introduced by Law 83/2021, in force as of January 1, 2022.<sup>243</sup> The right is now enshrined in Article 199A of the Portuguese Labor Code. The introduction of the right was prompted by the COVID-19 pandemic, after many legislative proposals on the topic had been rejected on the grounds that Portuguese labor law already provided sufficient protection of workers’ rest period.<sup>244</sup> Article 199A of the Portuguese Labor Code now dictates that:

240 BELL ET AL., *supra* note 184, at 29.

241 Vieira Borges, *supra* note 184, at 274.

242 This is the case although it has been proven that fewer working hours and consequently more rest are in fact to the advantage of employers, as it increases productivity. But a R2D still implies important efforts on the shoulders of employers that must ensure its respect. It also impedes on employers’ flexibility, as it takes away their prerogative to contact employees at their convenience, even outside of working hours.

243 Lei n.º 7/2009 de 12 de fevereiro [Act no. 7/2009 of 12 February], <https://diariodarepublica.pt/dr/legislacao-consolidada/lei/2009-34546475> [<https://perma.cc/2U96-GLSU>].

244 Vieira Borges, *supra* note 184, at 267–68.

1 – The employer has the duty to refrain from contacting the worker during the rest period, except in situations of force majeure. 2 – For the purposes of Article 25, any less favourable treatment given to a worker, namely in terms of working conditions and career progression, is a discriminatory action, for exercising the right to a rest period, under the terms of the previous number. 3 – It is a serious offense to violate the provisions of number 1.<sup>245</sup>

Crucially, rather than conceptualizing the right to disconnect as a right that can be exercised by the employee, the Portuguese approach imposes it as an obligation for the employer to abstain from contacting their employees outside of their working hours.<sup>246</sup> This choice is profoundly important. Firstly, it places the responsibility to protect the right to disconnect on the employer: employers must refrain from any contact, so that employees are not forced to systematically defend and assert their right to disconnect. Secondly and relatedly, choosing the employer's duty model over the worker's right model has the practical consequence of reversing the burden of proof: "the onus is on the employer to prove that the duty to ensure employee rest entitlement has been fulfilled" and that no contact was initiated outside of working hours.<sup>247</sup> This model clearly grants additional protections to workers compared to approaches that enshrine the right to disconnect solely as a worker's right and that leave significant leeway to employers in its implementation. Additionally, the Portuguese model has the advantage of conferring protection against discrimination.<sup>248</sup> It explicitly takes into account the very real possibility that under a laxer right to disconnect regime, employees striving to exercise their right could be disadvantaged in their career progression or even suffer disciplinary measures as a result. The Portuguese approach, however, does have critical flaws, the most notable being that the duty not to contact employees outside of their working hours only falls on employers.<sup>249</sup> This means that coworkers do not have to refrain from contacting their colleagues, leaving them free to potentially encroach on their colleagues' rest period and thereby jeopardize the right to disconnect.

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245 CÓDIGO DO TRABALHO [LABOR CODE], art. 199-A.

246 Vieira Borges, *supra* note 184, at 268.

247 *Id.*

248 *Id.*

249 *Id.*

#### 4. The Right to Disconnect in the EU

The above-cited examples are not the only interesting case studies available today. By now, many EU member states have joined the movement towards the recognition of the right to disconnect, including Spain, Belgium, Italy, Slovakia, and Ireland. It is then unsurprising that the EU Parliament has also taken up the issue. The EU legislation does not include an explicit right to disconnect but does provide protection to workers by requiring that employers ensure that their employees enjoy enough rest.<sup>250</sup> The protection of sufficient rest implies that workers should not be pressured to be constantly available and that they should have meaningful, uninterrupted breaks from work's demands. In fact, the right to disconnect can arguably already be derived from EU legislation,<sup>251</sup> and is implied in numerous EU instruments.<sup>252</sup> Still, enshrining a right to disconnect in EU legislation would protect workers' right to rest more emphatically and provide an opportunity to regulate the matter with more precision and clarity.<sup>253</sup> The European Parliament recognized this reality, passing a resolution containing a recommendation of the right to disconnect in 2021.<sup>254</sup> The resolution also recommended that the European Commission draft a Directive on the right.<sup>255</sup> The necessity of a European right to disconnect is clearly stated in the resolution, describing the right as "a fundamental right which is an inseparable part of the new working patterns in the new digital era," and which is "of particular importance to the most vulnerable workers and those with caring responsibilities."<sup>256</sup> The 2021

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250 BELL ET AL., *supra* note 184, at 13; Vieira Borges, *supra* note 184, at 254.

251 Vieira Borges, *supra* note 184, at 254.

252 See, e.g., Consolidated Version of the Treaty on the Functioning of the European Union art. 153(1) (a), (b), (i), Oct. 16, 2012, 2012 O.J. (C 326) 47; Charter of Fundamental Rights of the European Union art. 31, 20, 21, 23, Dec. 12, 2007, 2012 O.J. (C 326) 391; *The European Pillar of Social Rights Action Plan*, at 44–46, COM (2021) 102 final (Mar. 4, 2021); Council Directive 89/391, 1989 O.J. (L 183) 29; Council Directive 91/383, 1991 O.J. (L 206) 19; Council Directive 2019/1152, 2019 O.J. (L 186) 105; Council Directive 2019/1158, 2019 O.J. (L 188) 79; Council Directive 2002/14, 2002 O.J. (L 80) 29; Council Directive 2002/58, 2002 O.J. (L 201) 37; Council Directive 2003/88, 2003 O.J. (L 299) 9.

253 BELL ET AL., *supra* note 184, at 13.

254 See European Parliament Resolution of 21 January 2021 with Recommendations to the Commission on the Right to Disconnect, EUR. PARL. DOC. P9\_TA(2021)0021 (2021), [https://www.europarl.europa.eu/doceo/document/TA-9-2021-0021\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2021-0021_EN.html) [<https://perma.cc/LD33-BZ4J>]; Report with Recommendations to the Commission on the Right to Disconnect, EUR. PARL. DOC. A9-0246/2020 (2020), [https://www.europarl.europa.eu/doceo/document/A-9-2020-0246\\_EN.html](https://www.europarl.europa.eu/doceo/document/A-9-2020-0246_EN.html) [<https://perma.cc/2LHG-DMY6>].

255 See EUR. PARL. DOC. P9\_TA(2021)0021; EUR. PARL. DOC. A9-0246/2020.

256 EUR. PARL. DOC. P9\_TA(2021)0021, at pmb1. H; see Vieira Borges, *supra* note 184, at 257.

European Parliament resolution provides information regarding the model that the EU is most inclined to follow. Article 1(1) indeed provides minimum requirements both to allow workers to exercise their right to disconnect and to ensure that employers respect the right.<sup>257</sup> The right is thereby conceived as both a worker's right to disconnect and an employer's obligation not to disrupt periods of rest. This approach seems to provide a more extensive and effective protection of the right to disconnect than other models do, similar to the Portuguese model presented above.

### 5. Non-European Models

It is worth highlighting here that the recognition of a right to disconnect is not solely a European phenomenon. In fact, several Latin American countries have enshrined the right in their legislation. Chile implemented a right to disconnect in March 2020,<sup>258</sup> followed by Argentina in July 2020<sup>259</sup> and Colombia in January 2022.<sup>260</sup> Both Chile and Argentina recognize the right to disconnect in the context of remote work. Argentina has further protected the right to disconnect by adopting a worker's right/employer's obligation model. As Article 5 of the Law 27.555/2020 states, on the one hand "the person who works under the telecommuting modality will have the right not to be contacted and to disconnect from digital devices and/or information and communication technologies, outside of their working day and during leave periods"; on the other hand, the employer "may not require [their employees] to perform tasks," "nor send communications, by any means, outside the working day."<sup>261</sup> Colombia's right to disconnect goes further: it applies to *all* workers, including those working in the public sector, and protects the worker's right "to have no contact, by any means or tool, whether technological or not, for issues related to their field or work activity, at times outside the ordinary or maximum legal working day, or agreed, or in their vacations or breaks."<sup>262</sup> The employer is obliged to refrain from contacting employees outside of their working hours; non-compliance "may constitute workplace harassment,

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257 EUR. PARL. DOC. P9\_TA(2021)0021, at art. 1(1).

258 *Id.* at 271.

259 *Id.*

260 *Id.*

261 Law No. 27555, art. 5, Aug. 14, 2020, [34.450] B.O. 3, <https://www.boletinoficial.gob.ar/detalleAviso/primera/233626/20200814> [<https://perma.cc/7UUH-S4KD>] (author's translation).

262 Law 2191/2022, art. 3, enero 6, 2022, DIARIO OFICIAL [D.O.], <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=177586> [<https://perma.cc/RDQ7-WGNY>] (author's translation).

under the terms and in accordance with the provisions of Law 1010 of 2006.”<sup>263</sup> The use of anti-harassment legislation to supplement the right to disconnect legislation is a unique addition that might facilitate the realization of such a right as an effective and enforceable right.

Outside of Europe and Latin America, Australia recently enshrined the right to disconnect in its labor legislation through the Fair Work Legislation Amendment (Closing Loopholes) Act 2024.<sup>264</sup> The Australian right to disconnect allows employees to “refuse to monitor, read or respond to contact, or attempted contact”—both from their employer and from third parties—“if the contact or attempted contact relates to their work and is outside of the employee’s working hours.”<sup>265</sup> There is an exception to this right: an employee may refuse contact except where “the refusal is unreasonable.”<sup>266</sup> The law further details what factors should be taken into account in judging whether a refusal was reasonable or not.<sup>267</sup>

## 6. The (Non-Existent) U.S. Right to Disconnect

Despite this wave of recognition around the world, the right to disconnect is not popular everywhere. For instance, the United States, a country notorious for its intense work culture,<sup>268</sup> is nowhere near recognizing the right. As Paul M. Secunda highlights in his Article on the right to disconnect, “Overworking seems like the quintessential American ideal—only through hard work is one able to achieve the elusive American dream of upward social mobility.”<sup>269</sup> In this context, it is unsurprising that a right to be truly disconnected

263 L. 2191/2022, art. 4, enero 6, 2022, DIARIO OFICIAL [D.O.], <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=177586> [<https://perma.cc/9AQR-MYES>] (author’s translation).

264 See generally AUSTL. CHAMBER OF COM. & INDUS., THE RIGHT TO DISCONNECT (2024), [https://acci.com.au/Common/Uploaded%20files/Smart%20Suite/Smart%20Library/a28a3645-1adf-496c-b0e5-ca00de6c893e/4531-ACCI-guides\\_The-Right-to-Disconnect-WEB.pdf](https://acci.com.au/Common/Uploaded%20files/Smart%20Suite/Smart%20Library/a28a3645-1adf-496c-b0e5-ca00de6c893e/4531-ACCI-guides_The-Right-to-Disconnect-WEB.pdf) [<https://perma.cc/M9CS-SA5P>] (providing an overview of the Australian right to disconnect).

265 *Fair Work Legislation Amendment (Closing Loophole No. 2) Act 2024* (Cth) s 333M(1)-(2), [https://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/num\\_act/fwlaln2a2024513/sch1.html](https://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/num_act/fwlaln2a2024513/sch1.html) [<https://perma.cc/XTV2-VSPB>].

266 *Fair Work Legislation Amendment (Closing Loophole No. 2) Act 2024* (Cth) s 333M(3), [https://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/num\\_act/fwlaln2a2024513/sch1.html](https://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/num_act/fwlaln2a2024513/sch1.html) [<https://perma.cc/XTV2-VSPB>].

267 *Id.*

268 Paul M. Secunda, *The Employee Right to Disconnect*, 9 NOTRE DAME J. INT’L & COMP. L. 3, 5 (2019).

269 *Id.*

from work, aiming to protect workers' rest, is not receiving much attention. Besides U.S. work culture, another central factor explaining the lack of momentum behind the right to disconnect in the United States is the thinness of workers' protections in U.S. law. Most U.S. workers are employed-at-will,<sup>270</sup> meaning that there is no formal contract between an employee and their employer. The work relationship can be terminated by either party at will, for any (legal) reason and at any moment.<sup>271</sup> Given the inherent power an employer has over their employees, most U.S. workers "work scared,"<sup>272</sup> fearing that they might lose their job. This has evident consequences on workers' relationship to free time: a worker scared of losing his or her job will answer any message and accept any request made by their employer, even outside of working hours.<sup>273</sup> It seems clear that U.S. law insufficiently protects workers, a majority of whom feel overworked and overwhelmed.<sup>274</sup> The right to disconnect is seemingly therefore the most important and urgent of all in a country like the United States. Given this pressing need, Secunda proposes a right to disconnect model that could fit the United States' legal framework: a right provided under the Occupational Safety and Health Act, which "allow[s] the implementation of enforceable default rules through its General Duty Clause, when there is no existing safety and health permanent regulation."<sup>275</sup> This model would include anti-retaliation features<sup>276</sup> and use regulations against workplace violence as a template.<sup>277</sup> Secunda's proposal is promising and shows that the recognition of a right to disconnect in the United States is far from impossible under U.S. law.

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270 Jesse Rudy, *What They Don't Know Won't Hurt Them: Defending Employment-at-Will in Light of Findings That Employees Believe They Possess Just Cause Protection*, 23 BERKELEY J. EMP. & LAB. L. 307, 330–31 (2002); see Secunda, *supra* note 268, at 25.

271 See Secunda, *supra* note 268, at 25.

272 See *id.* at 26.; see also David De Cremer et al., *Can Employees Really Speak Up Without Retribution?*, HARV. BUS. REV. (Oct. 18, 2016), <https://hbr.org/2016/10/can-employees-really-speak-up-without-retribution> [<https://perma.cc/94AW-Y7R3>].

273 See Secunda, *supra* note 268, at 26.

274 See *id.* at 27.

275 See *id.* at 32.

276 See *id.*; 29 U.S.C. § 660(c).

277 Secunda, *supra* note 268, at 32.

## 7. Comparative Insights

In light of the above, it is clear that the right to disconnect, like any right, is not monolithic. Its definition, scope, modalities and enforcement mechanisms can vary greatly. The right to disconnect can be explicitly legally enshrined, as is the case in France, or left to the discretion of employers and their companies' internal regulation, as in Germany. When legally enshrined, the right to disconnect can be provided under a state's labor law, as is most often the case, or under broader legislation pertaining to the economy or digital rights, as is the case in Belgium<sup>278</sup> and Spain.<sup>279</sup>

The personal scope of the right to disconnect also varies greatly. The question of whether the right should encompass all workers or only salaried employees is crucial. The term employee—as used, for example, in French legislation (*le salarié*)—implies a specific and codified work relation between the employer and the worker that is by no means universal. Many workers in dire need of a right to disconnect are not technically their employer's employee, as they are hired as on-demand external contractors. To exclude this kind of worker from the right to disconnect is especially regrettable given the rapid growth of the gig economy,<sup>280</sup> where workers enjoy little protection against health risks and economic exploitation.<sup>281</sup> When the right to disconnect only applies to employees, the question regularly arises of whether it should apply to only specific subcategories. For instance, as mentioned above, the French right to disconnect only applies to employees working in the

278 Loi du 26 mars 2018 relative au renforcement de la croissance économique et de la cohésion sociale [Law on Strengthening Economic Growth and Social Cohesion], M.B., Mar. 30, 2018, arts. 16–17, [https://www.ejustice.just.fgov.be/cgi/article.pl?language=fr&sum\\_date=2026-02-19&pd\\_search=2018-03-30&numac\\_search=2018011490&page=1&lg\\_txt=F&caller=list&2018011490=0&view\\_numac=2018011490fx2018011490fx2018011490d%26%2365533%3B2018011490fx2018011490d&view\\_numac=2018011490fx2018011490fx2018011490d%26%2365533%3B2018011490fx2018011490d&htit=au+renforcement+de+la+croissance+%E9conomique+et+de+la+coh%E9sion+sociale&choix1=And&choix2=And&fr=f&nl=n&du=d&trier=promulgation](https://www.ejustice.just.fgov.be/cgi/article.pl?language=fr&sum_date=2026-02-19&pd_search=2018-03-30&numac_search=2018011490&page=1&lg_txt=F&caller=list&2018011490=0&view_numac=2018011490fx2018011490fx2018011490d%26%2365533%3B2018011490fx2018011490d&view_numac=2018011490fx2018011490fx2018011490d%26%2365533%3B2018011490fx2018011490d&htit=au+renforcement+de+la+croissance+%E9conomique+et+de+la+coh%E9sion+sociale&choix1=And&choix2=And&fr=f&nl=n&du=d&trier=promulgation) [https://perma.cc/PC2G-HD6R].

279 Protección de Datos Personales y garantía de los derechos digitales art. 88 (B.O.E. 2018, 294), <https://www.boe.es/buscar/act.php?id=BOE-A-2018-16673> [https://perma.cc/2UA3-RH68].

280 On the growth of the gig economy, see generally Gerald Friedman, *Workers Without Employers: Shadow Corporations and the Rise of the Gig Economy*, 2 REV. KEYNESIAN ECON. 171 (2014).

281 The gig economy is characterized by an on-demand labor model “that is compensated on a piece-rate basis.” Paul Glavin et al., *Über-Alienated: Powerless and Alone in the Gig Economy*, 48 WORK & OCCUPATIONS 399, 403 (2021). Crucially, gig work represents an arrangement “outside standard employment contracts.” NAMITA DATTA ET AL., WORLD BANK, WORKING WITHOUT BORDERS: THE PROMISE AND PERIL OF ONLINE GIG WORK 10 (2023), <https://thedocs.worldbank.org/en/doc/75ec866c182238e087167ce03244c8da-0460012023/original/Reading-Deck-Working-without-borders-updated.pdf> [https://perma.cc/59VG-SZPB].

private sector. Another relevant example is the Italian right to disconnect, which has been explicitly recognized in Article 19 of Law No. 81/2017.<sup>282</sup> The provision, however, only applies to “smart” or “agile workers” (*lavoro agile*),<sup>283</sup> that is, employees working partially or completely remotely. This is criticized by Reinhard Singer and Stephan Klawitter, since “anchoring the right to disconnect to the only typology of agile work recalls the behavior of the person who throws the stone and hides the hand, as it is absolutely evident that this problem is not (and cannot be) limited only to this working method, representing a problem shared by most employees today.”<sup>284</sup>

Furthermore, the right to disconnect can be defined in various ways. It can be conceptualized as a worker’s guarantee,<sup>285</sup> as a right or obligation to disconnect, or as the employer’s obligation to abstain from contact. In other words, there remains the question of whether workers are entitled to disconnect outside of working hours or whether they must. The right to disconnect can also include a variety of obligations on the side of the employer, ranging from raising awareness about the health risks linked to “always-on” work cultures to an obligation to refrain from contacting employees outside of their working hours. The latter obligation could also apply to workers themselves, so as to prevent coworkers from exerting pressure on each other to remain constantly connected.

### C. Proposal for an Effective Right to Disconnect

It is clear that many different models for the right to disconnect can be adopted to fit the needs of a particular legal regime or the specific working culture of a country. However, the choices made in defining and recognizing the right are not only shaped by circumstances. They are political decisions pertaining to a sensitive and fundamental issue: the protection of workers’ health and well-being in a changing professional landscape marked by the

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282 Art. 19, *Misure per la tutela del lavoro autonomo non imprenditoriale e misure volte a favorire l’articolazione flessibile nei tempi e nei luoghi del lavoro subordinato* [Measures to protect non-entrepreneurial self-employment and to promote flexible working time and place arrangements], n. 81, 22 May 2017, <https://def.finanze.it/DocTribFrontend/getAttoNormativoDetail.do?ACTION=getSommaro&id=%7B9872E708-F077-4699-AB74-F9DAECD29C24%7D#:~:text=81%20%2D,nei%20luoghi%20del%20lavoro%20subordinato> [<https://perma.cc/8D5J-YPZJ>].

283 Avogaro, *supra* note 185, at 120–23.

284 Singer & Klawitter, *supra* note 227, at 124.

285 Whereas most states recognize a right to disconnect, Colombia for instance strengthens the protection of the right to disconnect by enshrining it as a statutory guarantee. *Garantía del derecho a la desconexión laboral* [Guarantee of the right to disconnect from work], L. 2191/22 art. 4, enero 6, 2022, DIARIO OFICIAL [D.O.].

digital turn of recent years. The specific definition, scope, and modalities of the right to disconnect chosen in a given context will have an enormous impact on the effectiveness of the right's implementation. It is thus paramount to specifically address them when arguing in favor of a right to disconnect from a feminist perspective. Advocating for a right to disconnect in vague, general terms runs the risk of obtaining a recognized yet ineffective right. This would be deeply unfortunate given the right to disconnect's potential in mitigating the gendered consequences of changing work conditions in the post-digital era. It is thus necessary to draw meaningful insights from comparative law. The European Law Institute, for instance, has provided a set of ten guiding principles for European regulation of the right to disconnect.<sup>286</sup>

An obligation to refrain from contacting employees or co-workers outside of working hours is, I argue, necessary for the right to disconnect to be effective. The case of Australia illustrates this well. Although the right to disconnect is perhaps too new for definite conclusions to be drawn, 79% of Australian employees surveyed were afraid to exercise their right to disconnect, although 80% of respondents were regularly contacted outside of working hours.<sup>287</sup> It therefore seems clear that fears of retaliation are too great for the right to disconnect to be truly effective when conceived solely as a worker's right. When understood as an employer's obligation, the right can be enforced without the need for workers to be put in the thorny situation of asserting their right against their employer.

The obligation to refrain from contacting employees or coworkers outside of working hours for work-related purposes raises the further question of whether exceptions should be allowed in exceptional cases. Though some countries that have implemented the right foresee such exceptions in their legislation, I am of the opinion that such clauses distort the right to disconnect to the point that they risk defeating its very purpose. Ultimately, workers will not be able to truly disconnect—and therefore properly rest—if they know that they might be contacted at any point for a work emergency. The knowledge that a work emergency might arise and that an urgent call might be received forces workers to keep their phones close, check them regularly, and to keep, in a sense, a part of their minds constantly at work. This is antithetical to meaningful rest and the fulfilling use of free time. To risk stating the obvious, the right to disconnect must imply the possibility of disconnecting

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286 EUR. L. INST., GUIDING PRINCIPLES ON IMPLEMENTING WORKERS' RIGHT TO DISCONNECT 10–12 (2023), [https://europeanlawinstitute.eu/fileadmin/user\\_upload/p\\_eli/Publications/Guiding\\_Principles\\_Workers\\_Right\\_to\\_Disconnect.pdf](https://europeanlawinstitute.eu/fileadmin/user_upload/p_eli/Publications/Guiding_Principles_Workers_Right_to_Disconnect.pdf) [<https://perma.cc/7J5U-XECQ>].

287 Mia Lockett, *The 'Right to Disconnect' Not Improving Work-Life Balance*, INSIDE SMALL BUS. (Nov. 28, 2024), <https://insidesmallbusiness.com.au/people-hr/the-right-to-disconnect-not-improving-work-life-balance> [<https://perma.cc/ZN34-HD7H>].

completely for the full duration of a worker's rest period. Most "urgent" matters can realistically be foreseen in advance (e.g., when a significant deadline must be met). In such cases, workers can be asked to work extra hours and be financially compensated for them. Additionally, what qualifies as "urgent" is, in most professional fields, relative: most work emergencies can indeed be addressed the following workday. However, if a field of work involves recurrent and objective emergencies, clearly defined on-call periods should be put in place, during which workers who must remain available are therefore paid.

In my view, it is clear that the right to disconnect should have a personal scope that is as broad as possible, encompassing all employees at the very least, but arguably—within the limits that enforceability imposes—all workers, including gig-economy workers, who are among the most marginalized and least protected of workers but do not count as salaried employees. The protection of this category of workers remains too peripheral in discussions of the right to disconnect. The right is usually understood in connection with white-collar remote workers; it is their needs and concerns that take center stage in legislative efforts to enshrine the right to disconnect. Yet, as I argue in this paper, the right to disconnect is necessary for a range of workers across occupational classes, economic sectors, and organizational structures. As stated above, it is in fact the most precarious workers who would benefit most from the right to disconnect. Of course, the inclusion of on-demand, unsalaried workers in the scope of the right to disconnect poses important challenges: whereas white-collar knowledge workers' problem tends to be overwork, "many precarious workers are underemployed, in the sense that they are not able to work as many hours as they would like, or find that their hours fluctuate vary considerably from week to week."<sup>288</sup> Nonetheless, they should not be excluded from the scope of the right to disconnect. As Anne Davies points out:

"[A] zero-hours" worker who is liable to be called in to work a shift at short notice will typically need to be capable of being contacted by the employer and able to get to the workplace reasonably quickly. Rather like "on call" time, this "available" time cannot be regarded as genuine rest time, nor is it remunerated.<sup>289</sup>

Penalties to discourage workers from turning down such shifts are well-documented: "there is a long-standing tradition that casual workers who turn down a shift may either be

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288 Anne Davies, *Working Time*, in *THE OXFORD HANDBOOK OF THE LAW OF WORK* 349, 359 (Guy Davidov et al. eds., 2024).

289 *Id.*

removed from the employer's list altogether or not asked again for a period of time."<sup>290</sup> Such situations are especially dire for precarious women workers, who are often more likely to have to turn down such last-minute jobs due to their caring responsibilities, thereby facing consequences that they quite literally cannot afford. This constellation is one that should evidently fall under the right to disconnect's protection. Several proposals exist to ensure that workers are protected in such scenarios. For instance, the EU Directive on Transparent and Predictable Working Conditions requires that workers with unpredictable schedules be required to work only within "predetermined reference hours and days" and that they must be given reasonable notice ahead of shifts.<sup>291</sup> If one or both of these conditions are not met, workers cannot be penalized for turning down shifts.<sup>292</sup> As Davies points out, such norms are of great importance, as they give workers "a clear indication of when they cannot be called in to work at all" and provide them with "the opportunity to turn down last-minute shifts without suffering adverse consequences."<sup>293</sup> This kind of provision should be an integral and central part of the right to disconnect.

Furthermore, any approach to the right to disconnect that gives significant decision-making or rights-shaping power to employers is inadequate. Indeed, "where the law commands employers and employees to reach an agreement about the latter's 'right to disconnect,' this right appears to be neither mandatory nor binding."<sup>294</sup> Relying on self-regulation runs the risk that "employers will create rules that seem to favor employees on the surface, but in fact fail to provide substantive protections."<sup>295</sup> The specific rights and obligations that the right to disconnect implies must be enshrined as precisely and clearly as possible within legislation, leaving only the purely technical aspects of its implementation to employers. These precise obligations should mandate that both employers and coworkers abstain from work-related contact outside of working hours. Penalties for non-compliance should be put in place and clearly legally defined. Enforcement mechanisms must be

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290 *Id.*

291 *Id.*

292 *Id.*

293 *Id.*

294 Hesselberth, *supra* note 141, at 2006–07.

295 Secunda, *supra* note 268, at 31. On the shortcomings of industry self-regulation, see generally Martha Lagace, *Industry Self-Regulation: What's Working (and What's Not)?*, HARV. BUS. SCH. (Apr. 9, 2007), <https://www.library.hbs.edu/working-knowledge/industry-self-regulation-whats-working-and-whats-not> [<https://perma.cc/WA49-QVYZ>].

modelled after other forms of worker protections enshrined within labor law or, as in the case of the United States, rely on contract law, tort law, and good faith protections.

With its many possible implementations, it is clear that the legal enshrinement of the right to disconnect is far from straightforward. This is especially true because the right reveals countless shortcomings and grey areas within labor law. More specifically, since the right to disconnect relies on the distinction between working hours (during which workers may be contacted) and free time (during which they may not), it sheds a harsh light on our growing inability to define what counts as a working hour. As mentioned in the context of Germany's approach to the right to disconnect, the increasing flexibility of work poses significant problems to our ability to measure and define working hours. As stated above, the fact that work has become untethered from any single physical place blurs the distinction between working and private life. For many people, work is where their laptop or their phone is—but so is their home, family life, and intimacy. The blurring of this distinction profoundly disrupts labor regulations that were made at a time when the definition of work was straightforward and easy to maintain: work was performed in a fixed place during predefined, specific and often unchanging hours. The right to disconnect relies upon a work/private life distinction that should be legally uncomplicated but, due to far-reaching changes in work organization and conditions, is no longer clear. However, this uncertainty cannot be used as an argument to reject the recognition of the right to disconnect. On the contrary, the gaps it exposes only highlight the right's potential. The right to disconnect forces us to recognize the flaws in current work legislation and creates a clear incentive to remedy them. The reasons why the right seems unrealizable or unenforceable are the same reasons why workers' protection in general is immensely weakened. In short, the difficulties in enshrining an effective right to disconnect are due to labor law's shortcomings rather than the right's inherent unfeasibility. Rather than giving up on a new, necessary right, significant focus should be placed on updating labor law. These efforts must include the codification of a right to disconnect and a rethinking of the ways in which work hours are defined and counted that enables the right's effective exercise.

#### **D. The Right to Disconnect as a Feminist Demand**

The right to disconnect—if conceived as described above—could play a role in resolving an issue that disproportionately impacts women. Though the right to disconnect does not remedy the gendered division of (unpaid) labor and its unfairness, it does protect women from the exacerbation of time poverty—and resulting exhaustion—they suffer by preventing waged work's demands to cumulate with those of unwaged labor in the home.

Could the right to disconnect then be understood as a feminist demand? Work—whether waged or unwaged—has often been at the center of feminist concerns. Feminist demands regarding work have tended to be articulated on two axes: either as a demand for women to gain better access to waged work as a “ticket out of culturally mandated domesticity,”<sup>296</sup> or as a demand for the unwaged labor they perform to be revalued and recognized as work.<sup>297</sup> That is, feminists have traditionally asked for more or better work, or for their unwaged labor to be recognized as work. As Weeks points out, although such demands are important, they leave the ethics of work intact.<sup>298</sup> Indeed, both kinds of demand treat waged work as the standard against which all labor must be measured. Feminists have thereby tended to maintain work’s centrality and sanctification, rather than challenge them. Weeks underscores the necessity for women to mobilize around anti-work politics: the demand for more and better work can be a feminist demand, but so can the call for less work.<sup>299</sup> Of course, “the point is not to deny the present necessity of work or to dismiss its many potential utilities and gratifications, but rather to create some space for subjecting its present ideals and realities to more critical scrutiny.”<sup>300</sup>

In a sense, the right to disconnect is a step in the direction Weeks preconizes. It can inscribe itself not only as a way to protect women from the disproportionate and specific impact constant work-availability has on their lives, but also as a way to resist work’s slow encroachment upon every space. The right to disconnect is consequently a feminist demand in at least two ways. Not only does the right help to mitigate the negative gendered effects of constant connectivity pressures, but it also participates in the crucial feminist fight against the intrusion of waged work’s demands, logic, and ethics into all aspects of our lives.

This statement must, however, be nuanced. The right to disconnect only demands less work insofar as work currently violates existing labor legislation. Since workers are pressured to remain constantly available to employers, they enjoy less free time and perform more work than existing labor legislation intended them to. To put it differently, demands for the recognition of the right to disconnect only call for proper adherence to the legal status quo. Rather than expanding workers’ rights, the right to disconnection only

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296 WEEKS, *supra* note 37, at 12.

297 *Id.* at 13.

298 *Id.*

299 *Id.*

300 *Id.* at 17.

protects workers from the erosion of the rights they already have, and above all, the right to meaningful, uninterrupted rest. Although the right to disconnect is a step in the direction of feminist anti-work engagement, it remains only that: a first step. It is a defensive maneuver, meant to resist the crumbling of workers' rights rather than to demand more extensive protections or more free time. The right to disconnect nevertheless has the advantage of questioning what role and room waged work should be given in our lives. It prompts us to politicize free time anew and to see waged work as disproportionately central to our lives. This kind of reframing of work as a threat to our collective well-being, rather than a vector for it, is especially important in an era where work is understood as a privileged site of self-actualization.

It is also worth highlighting that, for the right to disconnect to constitute a feminist demand, gender must be an integral part of its formulation. This inclusion has not been present in the legal orders examined: the norms enshrining the right to disconnect discussed in this paper are all formulated in gender-neutral ways. This formulation is problematic from a feminist perspective, as gender-neutral laws tend to reinforce male norms.<sup>301</sup> Gender must be taken into account during legislative processes and explicitly included in laws enshrining the right to disconnect to ensure women's interests have genuine legal protection. The feminist potential of rights will otherwise remain limited.

## CONCLUSION

Work is increasingly flexible, remote, on-demand, and in many ways more precarious. Some of these changes have been welcomed, as salaried work in a bounded space during specific, unchanging hours is a rigid framework that can prove stifling. But the newfound flexibility of work has also come at great social costs, including sinking standards of worker protection. Office hours—and the limits they set to protect workers from overwork—have become increasingly meaningless as work is performed remotely, according to flexible and changing schedules.<sup>302</sup> The lack of clear delineation between waged work and free time is only worsened as workers—whether they perform their tasks at a designated workplace or remotely from a place of their choice—are increasingly expected to remain available at all times for work. They can not only be contacted at any time by colleagues and employers alike, which already represents an intrusion of work into their private life, but can also be

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301 See generally Abigail C. Saguy, Juliet A. Williams & Mallory Rees, *Reassessing Gender Neutrality*, 54 L. & SOC'Y REV. 7 (2020) (critiquing 'gender-neutrality' in law).

302 Davies, *supra* note 288, at 350.

encouraged to answer to work-related inquiries in their free time. This definitionally strips free time of its restful potential.

In this Article, I have argued that the increasing intrusion of work into employees' free time has significant gendered consequences, focusing my analysis on the gendered politics of free time. Women have much less genuinely free time than men: not only does their disproportionate shouldering of unpaid work leave less time for leisure, but their leisure is itself often interrupted by the people they are the primary carers for and fragmented between the countless tasks they take on each day. The intrusion of work into women's private lives is therefore of particular importance, as it risks nibbling away the already scarce time they can dedicate to leisure. In short, according to Bryson, recent research seems to show that "many people are indeed highly time stressed and that in general the pressures are particularly acute for women, whose time remains disproportionately constrained by domestic responsibilities."<sup>303</sup>

In this context, I turn to disconnection as a potential solution to counter the expectation that workers must always be reachable and available for work. Although disconnecting from professional emails and private social media alike may be a healthy habit to adopt, this option is simply not available to most. Many people fear reprisal if they are unreachable by work outside of office hours. Disconnection, when understood as an individual choice, is strikingly ill-equipped to face the challenges contemporary forms of work entail. Not only does this conception of disconnection depoliticize the issue by treating it as a form of self-care, but it also proposes a solution only available to the most privileged. Few people can meaningfully disconnect from work without potentially facing consequences. When framed as an individual choice, disconnecting is only possible for those who do not risk their livelihood by doing so. Moreover, disconnection-as-lifestyle-choice is especially unfit to protect women from overwork, as the burden of ensuring that they and their loved ones make the healthy, socially-valORIZED choice to disconnect each day inevitably falls disproportionately on their shoulders. Disconnection thus becomes one more issue that women must think about, one more habit they must adopt, and one more value that they must uphold for themselves and their family. Disconnection *from* work becomes disconnection *as* work. This shift is evidently profoundly problematic, as the solution to technologically enabled and managerially encouraged overwork cannot be exclusionary. It is only if disconnection is framed as a collective demand that the most precarious workers—those that work's growing omnipresence most direly affects—will be able to fight against the expectation of constant availability.

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303 BRYSON, *supra* note 28, at 177.

In order to move away from an individualistic, depoliticized conception of disconnection, the language and framework of rights is immensely useful. In fact, the right to disconnect has already been enshrined in several legal orders across the world, from France and Portugal to Chile and Australia. The modalities of the right vary greatly from one country to another. It can be framed as a worker's right to disconnect, but also as an employer's obligation to refrain from contacting employees outside of working hours; its personal scope can include different segments of the population, including or excluding non-salaried or public sector workers. In this Article, I have argued that the right to disconnect offers weak protection when too many of its modalities are left legally undefined or when it fails to include an employer's obligation to abstain from contacting employees outside of working hours. Therefore, I contend that the right to disconnect must be conceived both as a worker's right and an employer's obligation; that it must be defined in detail in legislation and accompanied by clear penalties in case of noncompliance; and that it must include precarious, non-salaried workers in its personal scope.

The right to disconnect, thus conceived, can and must be understood as a feminist demand in at least two ways: first, because it seeks to resolve an issue that disproportionately affects women, and second, because it meaningfully participates in feminist anti-work politics. The right to disconnect can and should therefore be mobilized by feminists as a feminist demand embedded in workers' struggle, so that it can take into account women's experiences, interests, and needs.

However, there are broader issues underlying the negative effects of flexible work that the right to disconnect cannot remedy by itself. For this reason, the right to disconnect should not be addressed without highlighting certain fundamental problems relating to labor under contemporary capitalism. First, the right to disconnect cannot solve the fundamental problems entailed by the rise of the gig economy, forcing workers into highly precarious employment strung together from individual "gigs" where they still work yet legally do not have a job.<sup>304</sup> Labor law in general must be thought over and its concepts redefined to better fit work's contemporary forms if it is to avoid the rapid further erosion of workers' protection. What an employer, an employee, and, crucially, working time *is* must be reevaluated, as their current legal definitions leave such enormous loopholes in workers' protection that labor law's very purpose is undermined.<sup>305</sup> Precarity in general must be fought against if the right to disconnect is to be truly effective, as many workers are currently "so in need of work and pay that they will make themselves available without

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304 See, e.g., Friedman, *supra* note 280, at 171–73.

305 Davies, *supra* note 288, at 361.

getting paid to do so.”<sup>306</sup> In this context, it is imperative to steer away from narratives that frame flexibility as a win-win situation for employers and workers, because “[t]he flexibility offered by precarious forms of work is almost always much more beneficial to employers than it is to workers.”<sup>307</sup>

Furthermore, any broader discussion of the right to disconnect in relation to the gender politics of free time must include discussions of unwaged work. Without this consideration, only one part of the average woman’s working day is accounted for, while an entire shift is ignored.<sup>308</sup> It is only by simultaneously advocating for workers’ rights (accounting for waged work) and challenging the gendered division of labor (by considering unwaged work) that free time can be both created and protected. This approach also ensures that the specter of the “work-life balance” discourse is kept at bay. Indeed, arguments in favor of the right to disconnect often mention its potential to improve work-life balance.<sup>309</sup> Ironically, this same argument was used to promote flexible work arrangements. Work-life balance remains an ever-present and vague promise, always on the horizon but never quite reachable; it will remain so as long as it ignores the underlying problem of the exploitation of women’s unpaid labor. The right to disconnect—just like flexible work—will not realize the promise of work-life balance. Women will both feel and be exploited as long as waged labor’s demands and logic keeps expanding into every aspect of life, and as long as unwaged labor remains undervalued and unfairly distributed. Whereas the right to disconnect seeks to mitigate the former phenomenon, the latter remains unaddressed by it. A feminist demand for less work must then “link this critical analysis of waged work to an interrogation of the organization of both waged and unwaged reproductive work.”<sup>310</sup> The broader issue underlying this Article is the undervaluing of care amid the erosion of welfare states.<sup>311</sup> Although my analysis focuses on a specific aspect of the relation between gender and work, many other research foci and political demands are necessary to ensure

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306 *Id.* at 359.

307 *Id.*

308 Meg Luxton, *Time for Myself: Women’s Work and the ‘Fight for Shorter Hours’*, in *FEMINISM AND POLITICAL ECONOMY: WOMEN’S WORK, WOMEN’S STRUGGLES* 167, 176 (Heather Jon Maroney & Meg Luxton eds., 1987); see WEEKS, *supra* note 37, at 211.

309 See, e.g., EUR. L. INST., *supra* note 286, at 15 (“[T]he R2D will contribute to achieving a better work-life balance, by guaranteeing resting time and improving the predictability of working schedules.”).

310 WEEKS, *supra* note 37, at 172.

311 Trudie Knijn, *Marketization and the Struggling Logics of (Home) Care in the Netherlands*, in *CARE WORK, GENDER, LABOR AND THE WELFARE STATE* 232, 235 (Madonna Harrington Meyer ed., 2000).

that leisure becomes and remains a possibility for women. These include better public service delivery and provision of welfare, as well as accessible child and elderly care.<sup>312</sup> The fight for free time comes hand in hand with the fight against the gendered division of labor, as Weeks puts it:

To the extent that the present organization of domestic labor is not contested and employers can continue to make distinctions between workers on the basis of their assumed responsibility or lack of responsibility for the work of social reproduction, we are more likely to be offered what are alleged to be solutions for the problem of long working hours—more part-time, flextime, and overtime work, and multiple jobs—than we are to win shorter hours for all workers.<sup>313</sup>

Of course, the gendered impact of flexible work is complex; flexibility is by no means an unadulterated evil. However, as Chung and van der Lippe counsel, “[F]lexible working can be useful in enabling a better work–life balance and family functioning, yet we need to be aware of the potential gendered ways in which it is being/and is expected to be used.”<sup>314</sup> Many women might genuinely find their quality of life improved by flexible work arrangements and do feel like work can be left aside at the end of the day. Research also shows that many skilled professionals of all genders value flexible work arrangements while being aware of the accompanying risks.<sup>315</sup> Though it is tempting to rely on such cases to frame boundaryless work as a neutral phenomenon impacting individuals differently, it is necessary to draw attention to the demonstrable negative consequences of flexible work on women as a whole. Indeed, “[e]ven though workers may not all want the same things, there is still an important role for collective solidarity in creating conditions in which workers may effectively express their personal needs.”<sup>316</sup> Accordingly, it is not my intention to claim that flexible work is inherently damaging to gender equality or to women’s well-being. Rather, I wish to highlight the need to mitigate the negative gendered effects of it. Such efforts, I argue, can be helped by the recognition and implementation of a binding and well-defined right to disconnect as sketched in this Article. They will never, however,

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312 WEEKS, *supra* note 37, at 172; see van der Meulen Rodgers, *supra* note 74, at 97–101 (proposing similar policies).

313 WEEKS, *supra* note 37, at 162.

314 Chung & van der Lippe, *supra* note 4, at 375.

315 Mazmanian, Orlikowski & Yates, *supra* note 59, at 16.

316 Davies, *supra* note 288, at 361.

be fully successful without broader changes in the way gender is constructed and enforced. As Chung and van der Lippe argue, “[F]lexible working is not used in a vacuum and as long as our gender normative views about mothers and fathers roles do not change, the way people perceive flexible working will be used by men and women is unlikely to change and will feed into how they will in fact be used.”<sup>317</sup>

The right to disconnect, then, is only a first step—an essential damage control measure to limit waged work’s expansionist logic. It is a necessary condition for preserving what William Morris identifies as a definitional element of the kind of work worth doing: “rest enough and good enough to be worth having.”<sup>318</sup> Genuinely free time is worth being fought for. Far from being a fixed resource at our disposal, it “must first be made before it can be spent.”<sup>319</sup> Like any resource, it is the terrain of competing claims and political antagonism; it must be fought for, won, and distributed justly. Based on the analysis above, it is evident that women’s access to their fair share of it is long overdue. Not only do women already suffer from a lack of leisure time due to the unwaged labor they take on, they are now also overwhelmed by potentially never-ending waged labor demands creeping in through contemporary communication technologies.

In an important sense, women have never enjoyed a work-free home. The household has always had unrecognized, undervalued, and unpaid labor. It has always been a place of work. However, this is no reason to allow the demands, temporality, ethics, and logic of waged work to encroach upon the home. On the contrary, it is ever more critical to demand work-free spaces and time frames. Not only are such work-free moments necessary for women’s mental and physical health, but they also leave room to create meaning and enhance life’s pleasures. Weeks underlines the radical potential of demanding time “for what we will,” that is, not just more family time but also time to spend outside of and beyond the family. As Weeks writes:

The demand would be for more time not only to inhabit the spaces where we now find a life outside of waged work, but also to create spaces in which to constitute new subjectivities, new work and nonwork ethics, and new practices of care and sociality.<sup>320</sup>

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317 Chung & van der Lippe, *supra* note 4, at 376.

318 WILLIAM MORRIS, *USEFUL WORK VERSUS USELESS TOIL* 99 (Cambridge Univ. Press 2013) (1884).

319 Everingham, *supra* note 109, at 340.

320 WEEKS, *supra* note 37, at 174.

The demand for the right to disconnect must inscribe itself within “a movement for the time to imagine, experiment with, and participate in the kinds of practices and relationships—private and public, intimate and social—that ‘we will.’”<sup>321</sup> Only with genuinely free time can women wonder about what they want and need, find new desires out, and, in turn, organize around and make claims based on these recovered or newly-created wants. In other words, demanding free time means claiming time both for what we will and for finding out what precisely that means. The right to disconnect, therefore, constitutes a feminist demand in the face of the encroachment of waged work upon the time necessary not only to rest but also to wonder, question, revolt, and create—the time necessary to become otherwise and to take the world along with us in that change.

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321 *Id.* at 171.