Work on Demand Online Workshop

Abstracts

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Provincializing Polanyi: The Colonial Roots of Modern Labour Markets and Labour Law

Economic sociology, in particular, a Polanyian critique of political economy, has facilitated an understanding of markets as social and political constructs. To this, economic sociology of law, in undertaking a sociological analysis of the role of law in economic life, enables us to appreciate law's constitutive role in markets and other forms of economic activity. What is missing, however, is an analysis of the role of colonialism, race or racial capitalism in the construction of labour markets of the global North. Drawing on Chakrabarty (2000), Holmwood (2016) and Bhambra & Holmwood (2018) this paper explores the central place of colonialism and colonial legal form in the historic, and ongoing, construction of labour law and liberal welfare states. Its arguments are three-fold. First, the paper posits that the redistributive welfare states of the global North and the ability of these industrialized states to embed the market through social transfers and welfare state regimes, was made possible through the extraction of raw commodities and the commodification of the labour power from the global South. Second, the paper develops the claim that the legal technologies governing work in the context of settler colonialism and classic (extractive or trade) colonialism have contemporary resonances in modern labour regulation, given that labour, even where waged and governed by contract rather than status, is still marked by coercive, hierarchical and racialized social and economic relations. Third, using the example of the UK labour market, the paper explores racial differences in labour market location, in particular, the clustering of ethnic minority workers in informal and precarious work falling outside the scope of employment protection law, to illustrate continuities and contemporary instantiations of the racialized segmentation of the labour market.

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The Law of Immaterial Labour: Exploration at the Workplace Level

Immaterial labour—the intellectual, creative, social interactive and embodied input of workers—is an increasingly important part of the economy. It lies at the heart of the UK Industrial Strategy, which seeks to promote innovation by boosting sectors such as digital technology and the cultural industries. The immaterial labour demands of these jobs require workers to give more of themselves to their work. But it is not just employers who are benefitting from this. The jobs are often associated with worker self-actualisation—notably by allowing worker minds and bodies to have greater input into the productive process and become arbiters of taste and significance. What emerges is a new mix of business goals with the subjective and lifestyle desires of workers. The resulting exchange relations are rife with tension, not least between workers' apparent desire to marketise themselves and their time versus the need for worker protections against the market.

In order to understand the structural role of law in this dynamic, the paper considers the question: what is the law that regulates what workers give of themselves to their job roles and what employers provide in return. The response to this question depends on how law is conceptualised. It is argued that standard conceptualisations of law as the legal rules emerging from common law and statutory instruments will provide limited insight beyond the acceptable broad parameters of exchange. Instead, Eugen Ehrlich's (1936) notion of 'living law' appears to offer greater potential to facilitate a fuller response to the research question. The paper discusses how Ehrlich's apprehension of law might provide substantive detail of the legally structured rules emerging in workplaces as they relate to immaterial labour.

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From Industrial Citizenship to Private Ordering? Status and Contract in the Service Economy

This paper revisits the notions of contract and status found in classical sociology and, to a lesser extent, industrial sociology and the sociology of work. It explores the usefulness of the distinction in analysing current trends in the regulation of working relations, including the emergence and spread of 'gig' or platform-mediated work. Taking guidance from Karl Polanyi's characterisation of the self-regulating market as a utopian ideal, the paper argues that regulation of a working relation by means of a contract of sale, work being exchanged for money, may similarly be understood as a utopian ideal: elements of status must always be present if the work is to be performed and paid for as the parties require it. Claims to the contrary – for example, that the gig economy creates a labour market without search frictions and only minimal transaction costs: contracts without status – assume an undersocialized model of (monadic) social action that has no basis in the reality of social life (Durkheim).

Like Polanyi's notion of the countermovement, status may come in a variety of forms that are more or less desirable from the perspective of workers, businesses, society at large: servitude, industrial citizenship, membership of a particular profession or occupation. At the end of the

twentieth century, sociologists observed the beginnings of trends towards the bifurcation of workers into two groups – core (with relatively well-paid and secure employment) and peripheral (low-paid and insecure) – identifying therein a significant challenge to the status of industrial citizenship (Gorz; Streeck). Twenty years later, gross inequalities of wealth and conceptions of the neo-liberal self as ever-improving, ever-perfectible, are combining to create novel forms of status not anticipated by the literature. For example, well-paid (core) workers now employ (peripheral) others directly, not only to provide 'domestic' services, widely understood, but as a kind of private staff at work, helping to complete duties and tasks, which ostensibly comprise a single job for a single employee. With reference to the contract/status distinction, the paper develops a conceptual framework to assist with understanding such developments and their consequences, including the challenges posed to existing systems of labour law.

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The Changing Context of Employment Relations since the Economic Crisis:

Spain in a Comparative South European Perspective

The aim of this paper is to map the whole spectrum of changes in employment relations that have occurred in Spain since the financial crisis of 2008, examining both economy and law, and to consider Spanish experience in a comparative south European perspective. Due to its size and weight in the European Union, Spain, like Italy, was spared the politically humiliating experience that Ireland and other smaller South European countries endured, being subsumed in the European Support Mechanism. In substantive terms, however, management of the crisis proceeded along analogous lines. The Memoranda of Understanding signed by the Troika and the smaller crisis-stricken EU countries found its equivalent in the famous letter by the European Central Bank Governor addressed to the Spanish Prime Minister, ordering a series of austerity measures and policies of labour market liberalisation. Unemployment, already relatively high, skyrocketed during the crisis, as the country sank into a recessionary spiral. In parallel to cuts in public spending, increases in taxation and fiscal reforms, a series of political and legal measures were undertaken that undermined the Spanish labour relations system. The legislative reforms severely weakened collective bargaining and contributed to extending and intensifying precariousness in the labour market. Addressing the question of the main drivers of the restructuring process, the paper analyses the inter-relation between supranational and national dynamics, conflicts of actors within and between them, and ultimately the power relations that underpin and shape those relationships. It offers insights both about the current state of labour regulation in Spain and concerning the structural and agential aspects which have influenced its course in the last decade and contributes to the discussion on the instrumentalization of labour law and its colonisation by economic policy.

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The Political Economy of the Platform Economy in Italy and the UK

In the past few years, the platform economy has emerged as one of the most disrupting phenomena in the labour market, putting to question older ways of organising work and of managing employment relationships. Policy actors and stakeholders have reacted to the disruptions by initiating a process of adaptation of the labour law framework to the new forms of employment. This process has been far from homogenous across countries, as the existing political-economic framework has contributed to shape the strategies and responses of different policy actors and stakeholders in different ways. Using semi-structured interviews with relevant stakeholders as well as documentary analysis, this paper explores the ongoing process of adaptation in two countries, Italy and the UK, characterised by very different employment law frameworks, industrial relations and policy preferences. It shows, first, how the differences in these institutional variables can explain the strikingly different response in terms of policy adaptation for regulating platform work and, second, how they are likely to influence the unfolding reform process in the years to come.

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Law, Economy and Legal Consciousness at Work

Building on earlier work (Dukes 2019, Kirk 2018), we make the case for an economic sociology of labour law which recognises the co-constitutive nature of law and the economy. Reviewing recent literature which shares this ambition, we argue that an important element of a co-constitutive theory of law and the economy is an understanding of the 'legal consciousness' of economic actors, meaning, in essence, their participation in the construction of legality or legalities defined here as social structures (Ewick and Silbey 1998). The requirement to understand the legal consciousness of actors extends to both workers and human resource managers and is beset with practical difficulties, since (notwithstanding the term 'legal consciousness') laypeople may not reflect upon, or even be fully aware of, the ways in which their behaviour is legal.

In making this argument, we draw on recent and innovative empirical labour law research (e.g. Barmes, 2015; Hayes, 2017) but also highlight significant conceptual and empirical gaps in the literature. An especially important but neglected matter is the pivotal role of the HR profession in constructing legality at work. HR professionals implement, translate, textualize and encode law and legalities into organisational artefacts, routines, contracts, policies, procedures and rules. While there is a longstanding critical HRM literature, the way in which law and legal norms has been intertwined with other discourses, principles and norms, most notably the 'business case' and economic rationalities, has not been closely scrutinized. Here, we are concerned to show how employment protection rights are implemented by HR professionals, while being sublimated by other norms and forces most notably, marketized discourses. Boltanski and Chiapello (2018) have described managerial discourses as the transmitter par excellence of *The New Spirit of Capitalism*, offering justification for, and outmoding critiques of, the existing order. We explore the interstices between HRMism and both discourses of

rights and, more solidly, applicable law in relation to wider societal legal consciousness, i.e. the construction of legality generally, and norms regarding work, employment and justice more specifically. We examine how HR professionals contribute to the construction of legality through the lens of legal consciousness. Mapping out work still to be done, we propose that ethnographic methods can assist in overcoming the difficulties inherent in studying legal consciousness and the co-constitution of law and economy.