

Work on Demand Seminars

University of Glasgow, 2-4 June 2021

Participants, Titles and Abstracts

Diamond Ashiagbor (Kent)

‘Embedded Racialisation’: Racial Hierarchies in the Construction of Labour Markets and Precarity

This paper explores the interaction between labour regulation and social welfare law, and their impact on racialised precarious workers in the UK. The broader conceptual framing for this enquiry draws on economic sociology of law, in taking sociological approaches to legal and economic phenomena, in particular, the role of law and social structure (ethnicity and migration status) in the construction of labour markets and insecure work in the UK. The focus will be on teasing out what might be called ‘embedded racialisation’, i.e. how ESL can help us to better understand the gender and racial hierarchies encoded in labour markets and the disproportionate representation of minority ethnic workers in precarious work and low-paid sectors. This will in part entail a historicising of economic sociology of law, to understand the interconnections between racial inequalities in the contemporary labour market, in particular the racialised ‘clustering’ into zero hours contracts, agency work, casual work and low paid self-employment, and the colonial/post-colonial history of economic interactions between the UK and countries of the global South.

Alessio Bertolini (Oxford) and Ruth Dukes (Glasgow)

Worker Representation in the Shadow of the Law: Trade Unions and Platform Workers in the UK

Drawing on a series of interviews with key actors including representatives of the main trade unions, this paper considers the response of unions in the UK to the emergence and growth of platform work. Comparing the partly different strategies adopted by so-called ‘traditional’ and ‘alternative’ unions in respect of the representation of platform workers, it demonstrates that the unions’ choices have been shaped by the characteristics and resources of the unions themselves, by prevailing political conditions and, perhaps above all, by the restrictive legal framework which excludes the majority of platform workers from the scope of employment legislation. Without recourse to either a legally protected freedom to take industrial action or

the statutory recognition procedure, unions have only exceptionally been able to negotiate collective agreements on behalf of platform workers. Instead, traditional unions have focused on broader political strategies to fight precariousness, including wielding an influence on policy-making, predominantly through their relations with the Labour Party. Alternative unions have channelled resources into organising and mobilising gig workers and supporting them in campaigns of strategic litigation.

Manoj Dias-Abey (Bristol)

Migration and labour markets: A labour law appraisal

At the height of the debate over Brexit, the impact of migrants on the labour market, housing, welfare provision, and cultural fabric of this country featured prominently. Whilst an uneasy détente seems to have settled in Britain over the issue of migration, in anticipation of the next flareup of anti-migrant animus, academics can contribute by developing empirically and phenomenologically sound models to understand the impact of migration on host societies. One group of scholars—empirical economists in the main—have responded by analysing labour market data to determine the effect of migration on jobs and wages. Not only do these studies suffer from some of the limitations of positive economics, but they are also based on a set of problematic assumptions about how labour markets operate and end up reifying the ‘national labour market’. This is not to dismiss quantitative data in this area in toto, but to be wary of exactly what it can tell us. The task then for those seeking to provide more comprehensive models of the labour market is to provide a clear picture of causal mechanisms, and to do so in a way that takes our intuitions and experiences of work seriously. In this article, I aim to provide a model of how migration effects labour market in a way that is attentive to three dimensions largely ignored in existing conceptualisations. First, the model proposed in this article considers how the labour market is constructed by institutions, particularly legal institutions. Secondly, the model will actively foreground the agency of actors—both firms and workers—so that the effect of migration is not a foregone conclusion, but rather contingent and contestable. Thirdly, the model will show how the ‘national labour market’ stretches across borders, and how the logics of its construction through multiple regulatory and legal regimes, end up questioning the extent to which the labour market is coterminous with the nation state.

Gregoris Ioannou (Glasgow)

Modalities of Work in the Tourism and Catering Sector in Greece

This paper inquires how employment in the tourism and catering sector in post crisis Greece has been affected by the changed legal context, focusing on the experience of young workers in various settings and locales. Adopting a socio-legal perspective it examines how the tourism and catering labour market is structured and what terms and conditions of employment prevail. Despite the sectoral collective agreement in hotels and the national minimum wage, which was decreased and made statutory during the crisis years, constituting the basic regulatory mechanisms across the board, there is significant variation in how workers are contracted to work in the sector. Across a background of a largely universal national law and a uniform institutional background, the observed diversity in the mode of work cannot be explained merely by reference to market forces and state policy. Several other factors need to be taken into consideration, which when combined with market forces can deregulate as well re-regulate the field of employment and which tend to be informal, locally embedded and socially mediated. By constructing a simple matrix of settings based on locale and seasonality on the one axis and type of establishment and size on the other the paper reflects on the role and significance of national law, the extent of its applicability and avoidance and how this combines with or is constrained by social dynamics within and outwith the market in shaping contracts for work.

Eleanor Kirk (Glasgow)

Law and Legalities at Work: the Role of the HR Profession as Producers and Transmitters of Legal Ideology

In this paper, I present the culmination of close to two years of work on the role of the HR profession in constructing legality at work. Previous conceptual papers have made the case for the need to explore legal consciousness in relation to employment relations, particularly in light of ‘juridification’, and specifically, the under-researched role of HR professionals, and their institutional bodies such as the CIPD in the UK. Dukes and Kirk (2020) explored 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. Dukes and Kirk began to 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. Here, I illustrate these processes with freshly gathered empirical data from ethnographic interviews and analysis of the discourses of HRMism and the CIPD.

Tonia Novitz (Bristol)

Gig work as a manifestation of short termism – the sustainability problem?

There are some interesting studies of gig work which link these intermittent and insecure working practices to a particular manifestation of short termism in contemporary capitalism (e.g. Flanagan, 2019; and Stanford, 2017). This is achieved by a legal framework which appears to prioritise individual contractual notions of consent at the expense of more durable constitutional values. My aim in this paper will be to juxtapose the idea of ‘sustainability’ with current acceptance of short term ‘flexibility’ in work on demand (as evident in the UK Taylor Review <https://www.gov.uk/government/publications/good-work-the-taylor-review-of-modern-working-practices> and on the international stage in the World Bank World

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<https://openknowledge.worldbank.org/handle/10986/30435>). My aim would be to consider the rhetorical commitment to durable protection of the people, planet and prosperity in the 2015 UN Sustainable Development Goals (SDGs), and its potential implications for regulation of work. In this context, the compromises made in drafting the SDG 8 targets and the European Pillar of Social Rights 2018 will be examined.

Brishen Rogers (Temple, Georgetown)

Data analytics, employment laws, and industrial organization

This paper, a chapter from a forthcoming monograph, will discuss the relationship among new data-driven technologies, labor and employment laws, and emerging forms of industrial organization. It argues that under existing laws and institutions, the revolution in data generation and analysis is encouraging major low-wage employers to alter their operations in two somewhat contradictory ways. First, to expand to national or global scale quickly by exploiting network effects, first-mover advantages, and exclusive rights in data on to production strategies and operation, thereby concentrating control over broad swaths of the economy in fewer hands. Second, to utilize a variety of legal strategies including outsourcing, subcontracting, franchising, and independent contracting for nearly all their line-level

employees, thereby subjecting workers to intense labor market competition, and ensuring diffuse responsibility for working conditions. This coexistence of centralized control and diffuse responsibility—or monopsony power at the core but intense market competition in the periphery—is characteristic of major low-wage sectors today including retail, food services, building services, and logistics. These developments are enabled and facilitated by the basic rules governing the employment relationship, privacy laws, and antitrust and corporate law doctrines. Highlighting the deep legal constitution of such production strategies illustrates the potential for alternative forms of industrial organization in these sectors which could have different distributive implications. Doing so also further illustrates that novel forms of industrial organization are jointly determined by law and technological developments.

Noel Whiteside (Warwick)

Before the Gig Economy: UK employment policy and the casual labour problem

In recent decades, jobs on offer in Britain have been transformed as permanent full-time employment has declined and precarious, irregular task-based work increased, trends actively supported by governments of all political stripes. Work is promoted as the sole route out of poverty. Such attitudes present as a volte face to policies promoted in the early twentieth century, when social investigation exposed irregular employment as a cause of poverty, not its cure, and as the main source of rising social dependency. The UK's earliest labour market policies sought to eradicate casual work and to encourage permanent employment – policies promoted assiduously for most of the twentieth century. Using historical evidence to explore proposals under discussion before the first world war, this paper makes three salient points. First, job insecurity and irregular employment exacerbate social inequalities, thereby raising the cost of social support (in spite of official efforts to contain it). Second, such developments undermine public trust – employers evade legal obligations for task-based workers while social security regulations require job-seekers to take such work. Finally, multiple job-holding and unstable employment destroy labour market categories on which policy analysis and the law rely. Thanks to the opposition of both sides of industry, the liberal British state has never been able to exert as much control over employment as governments in continental Europe. However, reverting to late nineteenth century labour markets will revive old problems and not offer any solution to new ones.

Noah Zatz, University of California, Los Angeles

Better Than Jail: Social Policy in the Shadow of Racialized Mass Incarceration

Racialized mass incarceration enables forms of economic exploitation that evade traditional worker protections despite being integrated into conventional labour markets. Such exploitation is legitimated by normalizing incarceration as the baseline against which these practices are judged. In contrast, conventional social policy imagines an “economy” separate from state violence, opposing “free labour” to “involuntary servitude.” The emergent “carceral baseline” re-characterizes labour practices as subjects of criminal justice policy, not economic regulation, especially in “alternatives to incarceration.” Examples of this baseline’s deployment are drawn from regulation of child support work programs, Thirteenth Amendment challenges to community service “working off” criminal legal debts, minimum wage claims by workers in diversion programs, and legislative proposals to exclude formerly incarcerated workers from labour protections. Implications include the need to integrate insights from theories of nonmarket work and of racial capitalism that challenge the dominance of markets as objects of description and critique in law and political economy analysis.