

INTRODUCTION

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General Considerations

This volume contains a selection of the papers presented at the 10th edition of the ADAPT International Conference held in Bergamo on 28-30 November 2019. The conference theme was chosen to mark the 100th anniversary of the International Labour Organization: “‘Labour is not a Commodity’ Today – The Value of Work and its Rules between Innovation and Tradition”. It was a truly memorable conference, attended by labour law and industrial relations scholars from all over the world. Little were any of us to know that it would be the last such gathering for some time. Within a few months, the COVID-19 pandemic had swept the globe, having a forceful and devastating impact on Italy – and the wonderful city of Bergamo in particular.

The ILO centenary generated much discussion of the institution’s origins and purposes, and whether these have been fulfilled as its standard-setting and enforcement mission has evolved to meet the challenges of globalisation and the transformation of work.¹ The ILO itself began the centenary year with the release of a major new report on the Future of Work, including recommendations for a universal labour guarantee

* Anthony Forsyth authored the paragraph titled ‘General Considerations’, while Emanuele Dagnino and Margherita Roiatti wrote the section ‘Overview of the Papers’.

¹ See for example Paul van der Heijden, ‘The ILO Stumbling Towards its Centenary Anniversary’ (2018) 15:1 *International Organizations Law Review* 203; Alain Supiot, ‘The Tasks Ahead of the ILO at its Centenary’ (2020) 159 *International Labour Review* (published online, 28 March 2020); Caroline Kelly et al., *Papers from the Symposium on the Centenary of the ILO: Democracy, Labour Law and Trade Unions*, Centre for Employment and Labour Relations Law, Melbourne Law School, December 2019 (forthcoming publication as *We the Working People: Democracy, Social Justice and the Role of Trade Unions*, Anthem Press, 2021).

(encompassing a living wage and enhanced workplace safety protections) and managing technological change to improve decent work (through, among other measures, an international approach to governance of digital platforms).² This was followed in mid-2019 with the adoption of the *ILO Declaration for the Future of Work*. Here, the ILO committed to ‘further developing its human-centred approach to the future of work’, with an emphasis on skills systems, gender equality at work, sustainable development and social protection.³

The 2019 ADAPT Conference sought to contribute to the international discourse triggered by the ILO centenary, exploring themes relating to the major transformations in the world of work in recent years. These include the impact of technology, how and by whom work is performed,⁴ and (at an even more fundamental level) what constitutes ‘work’ in the era of ‘platform capitalism’.⁵ The Conference themes also focused attention on the regulatory and institutional frameworks inspired by the ILO’s founding mantra, ‘labour is not a commodity’,⁶ and the adaptation of norms of regulation in the face of contemporary challenges. In addition, the Conference themes aimed to engage with the uneven evolution of the notion of the ‘social contract’ in different parts of the globe, and scholarly responses urging the consideration of new work identities based on values (e.g. social justice, sustainability)⁷ rather than the traditional dichotomy between capital and labour.

The Conference organisers set out seven specific topics through which its themes could be examined in closer detail by participants. The papers in this volume examine these various topics through studies offering both global and local perspectives (see the editors’ overview of the papers at p.

² ILO, *Work for a Brighter Future: Global Commission on the Future of Work*, ILO, Geneva, 2019.

³ International Labour Conference, *ILO Centenary Declaration for the Future of Work*, adopted by the Conference at its 108th Session, Geneva, 21 June 2019.

⁴ See Lydia Medland et al., *The ‘Future’ of Work: A Call for the Recognition of Continuities in Challenges for Conceptualising Work and its Regulation* (University of Bristol, Law Research Paper Series, Paper #001 2019).

⁵ Nick Srnicek, *Platform Capitalism* (Polity Press, 2017). See also Edoardo Ales et al. (eds), *Working in Digital and Smart Organizations: Legal, Economic and Organizational Perspectives on the Digitalization of Labour Relations* (Palgrave Macmillan, 2018).

⁶ For earlier consideration, see for example Stein Evju, ‘Labour is Not a Commodity: Reappraising the Origins of the Maxim’ (2013) 4:3 *European Labour Law Journal* 222.

⁷ See for example the various contributions in Hugh Collins et al. (eds.), *Philosophical Foundations of Labour Law* (Oxford University Press, 2018).

4 below). If these topics reflected the major issues confronting workers, unions, businesses, NGOs and policy-makers in 2019, they have been brought into even sharper relief by the coronavirus pandemic of 2020. In the remainder of this Preface, I wish to consider a number of the Conference topics – and the overarching question of the meaning of ‘labour is not a commodity’ today – through the lens of the COVID-19 crisis.

Work Status, Work Classification, Organizational Flexibility

The pandemic has wrought destruction on the health, well-being and economic security of citizens across the world. The effects of government lockdown measures to control the virus have been most harshly visited on precarious workers. Those who do not have permanent employment status are the least likely to have sick leave entitlements. Many have been faced with the dilemma of having to continue working, rather than self-isolating when awaiting test results or having tested positive for COVID-19. Then there are the millions working in the gig economy, misclassified as ‘self-employed’ by platform operators and therefore with little choice but to carry on delivering food or providing rides with next to no protection from infection. Managerial power has been enhanced, as long-standing protections (for those with employment status) come under pressure from recessionary impacts and renewed calls for flexibility to aid job creation.

Economic Value of Work

In many parts of the world, the value of work has increasingly been measured by its status, remuneration and the contribution made to corporate profits. One positive effect of the pandemic has been to call these assumptions into question, and to re-evaluate ‘what work really matters?’. Front-line health workers have obtained an exalted status, as communities have applauded their courage and commitment in the most trying of circumstances. More importantly, previously ‘invisible’ workers – those working in supermarkets, pharmacies, warehouses, transport, cleaning, the care sector – have become visible. Their work suddenly counts, as it always should have. But let us not forget, these workers are usually among the lowest-paid and subject to the most difficult working conditions including job insecurity. The crisis has led to an overdue reckoning: an assessment of the true value of work to *society*, not just the economy. The challenge now is to ensure that the reward for these types of work reflects their worth, as nations rebuild in the wake of the crisis.

Welfare, Work Settings, Health and Safety

Just as COVID-19 has precipitated reconsideration of the very concept of work, so too has it transformed previously fixed notions of ‘the workplace’ and how much time must be spent ‘there’. In many countries, employers who had long resisted demands for flexible work (particularly from women workers) managed to transition to work-from-home arrangements very speedily. When this became a matter of business survival following lockdowns, rather than a debate about diversity or work-life balance, the proposition was suddenly undeniable. In reality, working from home has presented workers with significant challenges: juggling the care and home-schooling of children, the intrusion of work into the private sphere and family life, and elevated levels of employer surveillance. Health and safety concerns have also arisen, although the risks for home-based workers are generally minimal compared with those faced by health-care staff and other essential workers. Some of the major outbreaks of coronavirus globally have occurred in settings where low-paid workers have not been given adequate safety training or protective equipment, such as garment factories, distribution centres, meat works and aged care facilities.

Representation, Participation and Collective Bargaining

While their position has generally declined over the last 30 years or so, trade unions in many parts of the world have become essential partners with governments and business in tackling this unforeseen situation. Policy-makers found that they needed to engage with the representative voice of workers, to effectively implement emergency response measures and economic support programs. Unions, in turn, had to pivot nimbly towards new techniques and strategies of online organising and digital campaigning. They have extended their traditional role as the buttress against arbitrary exercise of managerial power in the new circumstances of the pandemic, calling out unsafe work at multinationals like Amazon. However, unions have been mostly forced into a defensive posture: protecting workers’ existing wages and conditions, their jobs, and their health. The project of improving on minimum standards through collective bargaining is greatly constrained in the context of rising unemployment, wage ‘freezes’ and an emerging impetus for deregulation.

Protection against Poverty and Social Inclusion

Without question, the economic impact of the COVID-19 pandemic has been most detrimental for those who were already vulnerable to begin with: precarious workers (discussed earlier), those working in the informal economy and the unemployed. For these groups, and the vast numbers of people furloughed or retrenched across the world, state systems of support have been created or extended to mitigate the effects of inevitable hardship. Wage subsidies, income supports and enhanced unemployment benefits have been provided in many countries. To pay for these programs, the neoliberal aversion to public spending has been tossed aside. Indeed, after years of austerity in some economies, many adherents of the free market have come to see the vital role of the state –in safeguarding the interests of businesses, and protecting citizens from inequality.

Labour is Not a Commodity ... Today

It could not have been envisaged that in its 101st year, the world would need to fundamentally re-imagine the ILO's founding principle. As nations begin to emerge from the crisis brought on by the coronavirus pandemic, it is clear that its adverse economic and social effects are likely to be with us for many years to come. In this setting, the idea that 'labour is not a commodity' must be given a meaning that ensures a vigorous role for the state in promoting social inclusion (especially for the most vulnerable in and outside of the labour market); recognition of the legitimacy of trade unions in national, industry and workplace decision-making; and above all, protection of individual workers from unsafe conditions and a genuine recognition (and reward) of the intrinsic value of all forms of work. In order to help one to review the principle that "labour is not a commodity", the reflections developed at the ADAPT conference and the contributions included in this volume adopt different perspectives, which provide a useful conceptual framework to better examine the world of work in the post-pandemic age. An overview of the papers is supplied below.

Overview of Papers

Part One: Global Issues

Although from different analysis perspectives, the contributions in this section explore the principle that "labour is not a commodity", particularly

in relation to the global challenges faced by the world of work today. In so doing, they investigate a number of issues which, while extremely relevant in labour studies, need to be further investigated in order to be fully appreciated. In an attempt to shed light on these key issues, the contributions present thoughtful insights into the value of work, labour market functioning and regulation, measures to tackle poverty and the notion of ‘decent employment’.

The first contribution in Part I – K. Philip et al., *Employment Matters too much to Society to Leave to Markets Alone* – is concerned with the value of work and how to promote full employment in the future world of work and society. To this end, an overview is provided of the debate taking place between techno-optimist and techno-pessimist about the end of work. This is followed by an examination of the measures laid down to promote full employment in the context of the social contract and by an analysis of the role of the government as an employer of last resort, through a re-conceptualization of Public Employment Programmes (PEPs) as policy instruments. PEPs are analyzed with reference to their functions (i.e. ending or reducing involuntary unemployment, creating a floor to support a Universal Labour Guarantee, fostering social protection), and to other policy instruments (such as Universal Basic Income and Active Labour Market Policies) while also evaluating how PEPs can contribute to solving other issues (i.e. climate change, displacement, conflict and peace-building).

The paper by Phillippe Panhaleux et al. (*Job Transition: A Case of Mitigation against Automation?*) explores the effects of new technologies and automation on employment rates, considering different aspects. Panhaleux et al. start from acknowledging the need for the workforce to receive regular retraining, focusing on the effectiveness of these retraining activities. Rather than looking at the most in-demand jobs (e.g. software engineers), it is argued that a more practical approach should be taken. In other words, retraining should consider those jobs that will still be needed in the future, although facing a high risk of automation. Using a regression model, the authors demonstrate that most workers at risk of being replaced can move to jobs similar to their current occupation. Yet this transition often entails some retraining and sometimes demand prospects are not worth the investment.

The contribution by Lisa Rodgers (*Recognising the Person at Work: the Case for a Relational Approach to Autonomy*) addresses the notion of “labour is not a commodity”, focusing on the philosophical foundations of labour law through the prism of autonomy and subordination. Reviewing the notion of ‘autonomy’ as conceived in labour law discourse, Rodgers

highlights the strengths and the weaknesses of the liberal understanding of autonomy, promoting a more encompassing approach when shaping this notion. To this aim, the concept of ‘relational autonomy’ is put forward, which supplements that of autonomy. Subsequently, Rodgers applies this theoretical framework to the binary divide lying at the basis of labour law itself – e.g. that concerning employment status – which rests on the distinction between autonomy and subordination, in order to stress the positive effects of this new conception of autonomy in labour law.

Olga Chesalina (*‘Glass Employees’ Vs. Platform Workers: Are There Any Differences?*) examines the principle that “labour is not a commodity” considering aspects such as digital surveillance and employee monitoring. To this end, a legal comparison is carried out, contrasting the German and the Russian legal system. Employee monitoring and digital surveillance are analyzed with reference to traditional (i.e. glass employees) and new business models (i.e. the platform economy). In addition to the legal limitations placed on the employer’s prerogative of worker control, Chesalina further looks at the role of employee representatives and trade unions, investigating the current case law on the different forms of employee monitoring. It is noted that legal systems fail to regulate the systems of indirect control used by platforms, making platform workers more vulnerable than glass employees.

Tatsiana Ushakova focuses on protection against poverty and social exclusion. In her contribution (*Protection against Poverty: Lessons from the ESC (Revised)?*), the analysis firstly deals with the conceptualization of the different notions of poverty: extreme poverty, working poverty, and multidimensional poverty. Subsequently, the focus shifts to interdependence as understood in the international strategies laid down by the UN, the ILO and the Council of Europe. An attempt is thus made at understanding what can be learned from the revised version of Article 30 of the European Social Charters, which establishes a new and specific right of protection against poverty and social exclusion. The paper concludes that a specific instrument of protection against poverty is needed at international level and that this instrument should take the form of an ILO convention.

Andrea Sitzia (*Peoples’ “Decent Work” and “Capacitation” in the Detention System*) explores to what extent Sen’s and Nussbaum’s capability approach can be applied to inmates’ labour. While the analysis concerns the Italian legal context and its recent penitentiary reform, reference is made to the ILO’s principle of decent work, so the considerations made on inmates’ labour take on global relevance. Pointing out the implementation difficulties to ensure consistency with this approach, Sitzia stresses the

benefits of applying the capability theory to labour outside the traditional scope of labour law.

Part Two: Local Perspectives

In addition to investigating the principle that “labour is not a commodity”, the papers included in Part II have been grouped together since they all adopt a common approach when examining local issues. In 2019, the International Labour Organization celebrated 100 years of advancing social justice and promoting decent work. Adopting a sectoral and national perspective, these papers address the topics expressly referred to in the context of the ILO centenary.

Sarah Palinckx (*Collective Bargaining in the Belgian Public Sector. Stuck on the Road between Tradition and Innovation*) highlights the main consequences of failing to adapt legislation on collective bargaining to the changes that the Belgian public sector has faced in recent years. Firstly, Palinckx describes the current system of collective bargaining in the Belgian public sector. Then, a more detailed analysis is supplied which explores the reasons underpinning Belgium’s model, which is followed by an overview of relevant trends. Palinckx concludes by highlighting the supposed inadequacy of the current Belgian system, which should draw inspiration from the Netherlands, where a recent law entered into force, innovating the Dutch system of collective bargaining in the public sector.

J. Arrowsmith et al. (*Moving The Minimum Wage Towards A ‘Living Wage’: Evidence From New Zealand*) look more closely into the concept of ‘living wage’. Alongside the qualitative data from employer representatives and other stakeholders, the paper presents some complementary findings from the survey of low-paid employees. This indicates that significant increases to the minimum wage translate into worker wellbeing and reduced stress in managing work and family life, potentially leading to improved work motivation and relations. From a micro-level perspective, the issue is how some employers might respond to increases in wage costs, for example through tighter monitoring and increased workloads, such that short-term pressures subvert the potential longer-term mutual gains from increases to basic pay. So far, the evidence tentatively suggests that there are likely to be more winners than losers. However, J. Arrowsmith et al. conclude that there are wider issues at the macro level that also need tackling for a ‘living’ wage rate to be truly transformative, particularly in the areas of housing policy, welfare abatement, and supply-side interventions to address training under-provision.

Zeynep Nettekoven (*Drivers of Excessive Labour in Turkey's Coal Mining Sector*) investigates the drivers of excessive labour in Turkey's coal mining sector at the expense of mechanization. This is done drawing from the Soma mine disaster (2014) which is still known as the worst coal mine disaster in the country's history in terms of fatalities, whereby expert reports show that precautions could have prevented it. Nettekoven attributes the failure of Turkey's drivers to mechanization and workers' education and training in coal mining, based on desk research and talks with sectoral experts and stakeholders. Research findings indicate that three forms of drivers can be identified: lack of private investment and deliberate government policies pushing towards adaptation of technological advancements; weak trade unionism and labour law enforcement; subcontracting practices contributing to opaqueness of liability and ambiguity in supervision mechanisms in the sector.

Shreshti Rawat's paper (*Inequality of Opportunity in Informal Employment in India*) calls for a closer inspection of the factor driving earning differences between the workforce hired informally and people employed by formal sector enterprises in India. In this regard, the concept of 'inequality of opportunity' is used and its application enables Rawat to estimate the contribution of each circumstance in explaining total inequality in earnings. It has been observed that between formal and informal employment, 'father's education', 'gender' and 'geographical location' are the variables that explain a significant proportion of inequality of opportunity for the former, while it is 'gender', 'region of residence' and 'geographical location' which are predominant for the latter. The analysis therefore contributes to identifying the sub-population requiring targeted policy interventions for encouraging income generation opportunities for the disadvantaged groups, in order to help close the gap of earnings opportunities among India's informal workers.