The Future of Workers, Work and Governance: developing a research agenda

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Introduction

Work has always been a site of struggle. The struggle is not only over the control of means and relations of production, and what those means and relations of production are, but also over what 'work' is, and work's distinction from and relation to labour. The divisions between different types of work and between work and labour is socially constructed, shaping and shaped by prevailing social relations including, but not limited to, class, race and gender relations. As Zatz and Boris (2014) have argued, when thinking about whether an activity is labelled as work 'immediately at issue is not only *what* is being done, but also *by whom, for whom*, and *why*' (p.96). Work's investigation means its analytical location within the specific context of contemporary capitalism and its social relations, including processes of financialisation, dispossession, the commodification of the commons, privatisation and the restructuring of work and life in the domestic sphere. This analytical location not only imbricates work with other forms of social, economic and political life, but also centralises the regulation and governance of work as a normative rather than descriptive enterprise.

As work has always been politically contested, so too the activity and relations of work are also ever changing. In this sense it can be tempting to over emphasise the new, to analyse contemporary shifts as a *crisis* of work rather than appreciating they have deep roots that reach into our socialities and imaginations as well as into our bank balances and our time. However, they also reflect and shape tensions that are resolving into contradictions.

We can identify several of these contradictions that contemporary capitalism accomplishes around work even as it undermines the latter's reproduction. Foregoing conditions of work and economic life today erode the ability of humans to socially reproduce their capacity to labour even as it creates demand for commodified goods and services. Intense working lifestyles produce time pressure that impinges on the care of self and others. Downwards pressure on wages against the cost of living place many in a struggle to subsist to sell their labour anew. The retreat of the welfare state generates a desperate search for alternative means to both campaign for and satisfy the meeting of needs outside the traditional wage relationship.

Meanwhile, the restructuring of the workplace and the state liquidates the role played by trade unions in driving the demand for better pay and conditions. The low-wage, low-cost economy that results is characterised in the Global North by low-productivity, low-skill production of services, and in the Global South by vast infrastructures of physical and material exploitation to support it. At the same time tendencies towards the automation of production and extensive technological unemployment are pronounced as much in theory as practice, the actual innovativeness and productiveness of developed capitalist economies is increasingly in question.

For some the future has never seemed so close but, contradictorily, for most people so far away for most. The reconfiguration of the work relationship is as much to do with social relations as robots, and has a knock-on impact on the fortunes of institutional structures such as the social democratic and labour parties constructed around it, further inhibiting the development of new forms of governance and oversight in the political and legal arena that could unlock the possibilities many feel are tangible in the affordances of new technology. Where these institutional and organisational alternatives do arise, they often entail compromises around commodifying what is previously non-commodified as a basis for further rights and recognition, exposing the conflict between work as an embodied human activity and the existence it assumes as labour. The novel forms of labour mobilisation that seek to organise and represent non-standard workers who fall outside traditional

employment relationships derive energy from this contradiction, but always teeter on the edge of succumbing to it.

In short, we are at a hinge point in history the endpoint of which is far from certain, contrary to the easy fantasies of a workless automated future. How the future unfolds depends on the hands that help it along and it is to this effort to comprehend its opportunities and limitations that this paper is geared. Drafted by a group of lawyers and social scientists it is intended to open discussion rather than to set an agenda. Its aim is to encourage making new connections and creative thinking about work and its governance. In contradiction lies movement and possibility. Any progress proceeds through the playing out and resolution of contradictions only to produce fresh contradictions anew. By working through them rather than shying away from contradictions, and centring them in our analysis, we can create new dialogues around work that circumvent the certainties all sides seem to force upon it at the current time, and trace the trajectories of alternatives. Ultimately, we consider whether we can create institutions or socialities that do not seek to absolve the world of the problems associated with these contradictions but manage and coordinate them toward useful ends.

We start by foregrounding the constructed nature of work and the worker, emphasising the productive role of law and regulation. We then focus on the challenges that are facing this governance, focussing on globalization, precarity, technological change, reproduction and solidarity. We move to a discussion of the legal and regulatory responses to these challenges, and the limitations and possibilities legal and regulatory responses offer. We end with suggesting the kinds of research questions that are opened by this approach.

What is 'work' and who counts as a 'worker'?

The configuration of work as an *activity* may obscure normative concerns with work as a *relation* (Bogg, 2017). This is illustrated by the fact that not all those who work are 'workers'. A housewife can 'work hard', but while cleaning the family home she is not socially imagined as a 'worker'. People may be engaged in forms of activity recognised as economic but whose inclusion as 'work' is very contested, even if those activities enable livelihood: sex work/prostitution, certain types of selling, domestic labour not performed by kin, and begging, are all cases in point (Anderson and Walker, 2016). For example, begging is an economic activity, but there is clearly tremendous resistance to calling it 'work' even though in practice it can be difficult to distinguish between begging and certain other kinds of livelihood activity such as performance and selling. This is in part because 'worker' is an honorific. 'Worker' does not simply designate participation in certain kinds of activity but signifies that one is a 'working kind of person' (Zatz and Boris 2014).

C20th welfare capitalist states systematically intervened in market exchange processes to provide workers and their families with a degree of protection from total dependence on the labour market for survival, as well as into the 'private' realm of employment to set limits on employers' freedom to treat human labour power as they might treat any other commodity they purchase. The invention of a protected form of 'unemployment' (as contrasted with unprotected sheer idleness) contributed to the normalizing and the regulating of the market in labour (Denning 2010). States set limits on whose labour power could be commodified and on what terms, differentiating according to age, gender, marital status, race, and nationality, for example, thereby producing divisions between public, market life/private, domestic life, workers/dependents, citizens/others etc., which were gendered, aged and raced. Though the nature and extent of social and employment protections have been undermined from the 1980s on, states continue to differentially limit the terms on which people can exchange their labour power as a 'commodity', if at all. Some people in some circumstances are not engaged in the labour market and still merit the honorific as in retired 'worker'. Others can engage in economic activity and nevertheless not merit the honorific, nor its

attendant rights: Interning, volunteering, prison labour, labour market activation programmes are often excluded from employment protections because they are not 'proper work'.

A 'worker', a 'working kind of person' is an *honourable* person. Although the idea of the human capacity to labour as a market-alienable 'thing', or species of property, is central to liberal market societies, in practice, labour power has also long been, and remains, a contested and 'incomplete' commodity (Radin, 1996). A founding principle of the ILO in the early C20th was the assertion that 'Labour is not a commodity', and, implicitly recognizing labour as a 'fictitious commodity' (Polanyi, 2001). A commodity is 'a thing that has a use value and can be exchanged in a discrete transaction for a counterpart, the very fact of exchange indicating that the counterpart has, in the immediate context, an equivalent value' (Kopytoff, 1986: 68). However, what is regarded as exchangeable for money, and so conceptually marked as 'a commodity', is not determined by the intrinsic qualities or properties of the thing itself, but rather by cultural codes and conventions, and hegemonic assumptions about social and political arrangements. Those who sell across a market what is understood to be integral to personhood and/or community belonging (military loyalty in the case of men, sexuality in the case of women, for instance) are stigmatized as mercenary. However, even within this, the codes, conventions and assumptions change over time (e.g., professional opera singers were once seen as debased by their willingness to prostitute a god-given talent, and moral opprobrium has in some cases transmuted into pity as in the case of global south women's involvement in surrogacy), and are often contested (e.g., in relation to markets in human tissue/organs, sex work).

The boundaries of work and workers are set socially but also legally. While in popular thinking the law tends to be imagined as regulating already-existing relations and tasks, in practice law making and law application is generative and political (Unger 1983). When it comes to work, there is not a labour market or a set of employment relations that the law comes in to regulate, but the law itself is crucial in determining what 'work' is, when a person is an 'employer' and when a 'worker', 'employee', 'self-employed' etc. (Zatz 2008). Normative judgements are also integrated into the 'common sense' and operational logic of employment regulation. Even then, Law tends to function in ameliorative mode. Regulation is generally concerned with the correction of wrongs or the enforcement of rights. These normative categories are relational (i.e. a right-holder and a duty-bearer; an exploiter and the exploited).

Work, employment, worker and employer are not only constructed by employment law: taxation, migration, criminal and welfare law work together in complicated and often contradictory ways to actively produce – as opposed to simply distinguishing between - constellations of 'practices, actors, meanings, and institutional contexts' that will count as 'employment' and those that will not (Zatz 2008). This in turn can end up shifting and reconfiguring labour law (Costello and Freedland). Exploring these tensions, contradictions and re-makings is one of many ways to open up the political possibilities of employment law. These enquiries destabilise the very idea of employment or labour law itself as a coherent legal category, with its existing regulatory goals and techniques.

The persistence of contestation about the boundaries of work and who counts as a worker does not represent a failure of intellectual capacities. The questions persist because the demarcation of these boundaries represent political and normative choices about the balance between autonomy and social protection and between what is imagined as commodifiable and what is not so imagined. This is likely to always be a site of political contestation. There are no natural boundaries of segmentation 'out there' in the world. Legal concepts and divisions are used to distribute rights and entitlements across different work relations. An inflection towards governance and citizenship in contemporary discourse about work is a valuable shift, both re-politicising and de-naturalising work and its regulation, exposing the political basis of legal categories, which in turn can be reshaped through collective democratic agency.

Work and its governance: changes and continuities

The siren calls that a new world of work is upon us centre on the apparently revolutionary consequences of automation, robotics, artificial intelligence and the rise of the 'platform' as the pre-eminent contemporary means of organising labour. Work, in this complex of ideas, loses its centrality as an embodied human activity and everyday object of lived experience. It becomes, variously, a Promethean endeavour or Sisyphean burden all set either to break through from this world to a utopian beyond or teeter precariously on the precipice of an apocalyptic post-work society in which those able to adapt indulge their millenarian ideal and those who cannot perish. But work, for most, is neither of these things, and the apparent novelty of the contemporary conjuncture is less felt than feared and fantasized over according to the pessimism or optimism of the observer. Many labour in forms of work recognisable to past generations; indeed, a return to low-tech service-oriented forms of work and working conditions that bear more relation with feudalism than contemporary capitalism means that this historical resonance is stronger than some might think. Meanwhile, other workers seek for their work to be recognised as work on the same terms as those already working. This continuity indicates that there is not necessarily a need to reinvent the wheel when it comes to organising and regulating labour in response to contemporary challenges. More likely, there will be a need to retrieve old ideas as well as developing new.

Nevertheless, there are changes afoot. Discussions about 'decent work' or 'universal basic income' reflect the increasing strains on the conceptual categories generated in the middle decades of the twentieth century (Deakin and Wilkinson). The salience of work as a political category has been brought about by a series of dynamic and interlinked challenges that have exposed the permeability of the boundaries of work. In turn, this has generated a crisis of legitimacy in the governance and regulation of work. While some of these challenges are continuous with longer-range changes in the structure and composition of labour markets, for example 'casualization' and the 'vertical disintegration' of employing entities, what appears to be novel is the confluence and magnitude of disrupting factors.

Globalisation

These processes are occurring within a massive shift in global production. John Smith (2015) has demonstrated that developing countries' share of global manufactured exports rose from around 5% in the 1950s to 30% by the year 2000, to currently some 60%. Eighty three percent of the world's manufacturing workers now live in the Global South[1]. He argues that goods are affordable for impoverished workers (and non-workers) in what he calls the 'Global North' because of a system of resource extraction, outsourcing and arms length super exploitation in the Global South (Smith 2015). However one views the bifurcation of North and South, we are living at a time of the highest level of global inequality in human history, when on some counts the poorest 50% of the world have 6.6% of total global income. In 2011 the World Bank estimated that three quarters of inequality could be attributed to between country differences (Milanovic, 2011).

This has led to major sectoral shifts in the Global North, changes in the demographics of employment (with male manufacturing workers particularly hard hit), and the hollowing out of the labour market, with decline in medium skilled jobs, and increase in low and high skilled jobs). In the Global South flows of FDI have resulted in increased economic activity, but pressure on labour standards: 'The… shift in production from developed to emerging economies essentially turned

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[1] We recognise that the dichotomy Global South and Global North is problematic, and also raises the question of the position of China in particular. This is intended only to give the broadest of contexts.

"good" manufacturing jobs, with comparatively high levels of protection into "bad" or less protected jobs in developing countries' (ILO Future of Work Factsheet 2017). These concerns can be linked with the aspirations of 'sustainable development' and its economic, environmental and social pillars developed as globalisation extended. These pillars are now reflected in the seventeen UN Sustainable Development Goals (SDGs) – alongside the accompanying targets and indicators - adopted by a United Nations (UN) Resolution of 2015, which seek to respect 'prosperity', the 'planet' and 'people' – doing so in order to promote 'peace' through 'partnership'. In this context, the notion of 'decent work' emerges in SDG 8.

Yet our world is shaped by the asymmetrical mobility rights of labour and capital. Capital moves and is facilitated by laws, customs brokerage and expediting companies and (Hattam 2017), those who have capital are also highly mobile, with access to privileged schemes and border queues. In contrast the movement of labour, particularly low waged labour is obstructed, or rendered disposable for just in time production. Of course people do move, they always have, and in the contemporary world this movement is shaped by global inequality, however, mobility serves to make labour vulnerable and controllable in very particular ways and to encourage precarity.

Precarity

In 1992 Ulrich Beck pointed to a shift from a 'uniform system of lifelong full-time work organised in a single industrial location, with the radical alternative of unemployment, to a risk-fraught system of flexible, pluralized, decentralized underemployment' (p. 143). . Some scholars have emphasised that it is premature to pronounce the end of the 'standard employment relationship' and there is also evidence that some states have sought to stabilise the 'standard employment relationship' through the institutions of labour law, migration law and social welfare law. However, there has been a growth in multifaceted forms of 'self-employment' (including 'sham' arrangements); highly casualised forms of work such as 'zero hours' contracts; work occurring in the 'informal economy'; and more conventional forms of 'atypical' contractual arrangements such as part-time, fixed-term and agency work. Precarity may mean no certainty over their time or future continuation in the job, having to accept work that has little structure or regularity. Poor working conditions can be experienced in specifically temporal terms, from long hours, to shift work, multiple jobs or night-time work.

The fluidity of these processes seems to present a distinctive set of challenges to regulators and brings to the fore the importance of the temporalities of work. The time of the clock and the date is critical to the regulation of bureaucracies and the 'iron cage' of techno-rational thought. Thompson and Giddens and others argue that industrial time is a distinct expression of industrial capitalism. It is ruled by 'clock time' which is standardised, homogeneous and divisible into ever small units, and, as Marx pointed out, it is possible to commodify. The governance of time is intrinsic to the functioning of the state (Gross, 1985) and to regulation and law. A person starting a new job even in a well unionised, formal sector, does not acquire all employment rights straight away. The duration of the qualifying period is typically determined in regulations rather than in law and is thereby buffered from political dispute. Control over working time was one of the main struggles of the labour movement in its early years. However, no longer is the struggle over less hours of work, but more secure and predictable hours, and a recognition that there is some of employment relation. For most, precarity and hyperflexibiity have not translated into the possibility of exercising control through 'exit'. Restrictions on free movement, new forms of coercion in 'workfare' schemes', and the tight constraints on migrant worker visa conditions, all operate to limit exit options. In the absence of robust opportunities for 'voice', limiting the effective opportunity to exit creates new forms of domination in labour markets.

In both North and south the employed wage earner has been the normalized subject of work, however, in the past labour markets in Europe have been imagined along a dichotomous distinction

has been unemployment/work, while in the Global South it has been informality/formality. The growth of precarity and consequent efforts to stitch together a working life in the Global North, suggest there is much to be learned from the histories of organising and campaigning in the Global South.

Technological change

There is also a disruption of conventional modes of work and its regulation through new forms of technology, AI, and robotisation. Some of these challenges have been captured in the formula of the 'Gig Economy' and platform-based work in the 'sharing economy'. The growing prevalence of 'atypical work' (platform work, gig economy, zero hours contracts etc) has led to increasing legal disputes about who counts as an employer (Prassl 2017) but while platform technology has facilitated the spread of casualization and precarious work, the underlying social and economic relations in the 'Gig Economy' are probably less novel and innovative than they first appear. The self-employed are increasingly treated as a category engaging protective concerns traditionally associated with labour law. The phenomenon of 'Gig Work' is already attracting regulatory responses from the existing technical armoury of regulators, for example the introduction of intermediate categories of 'worker' status, the development of new judicial tests, or the use of licensing as a form of occupational governance in the transport sectors.

Robotisation and AI, and the resulting disappearance and/or reconfiguration of work, pose deeper challenges that are only now attracting regulatory attention. The reclamation of democratic control over the forces of production and consumption, has been stymied by a growing tendency to naturalise the 'forces' of technological change and its consequences for work. Public discourse has started to examine the imposition of 'robot taxes' and 'human quotas' to secure human work against AI competition; experimentation in a feasible 'universal basic income' and the reappraisal of leisure and consumption activities; the use of public licensing to mediate between human consumption and human production needs as with the recent TfL – Uber developments; and a linkage between the sustainability of human work and more traditional deregulatory discourses centred on the costs of protective employment laws. The accelerating impact of robotisation and AI may create pressures for the development of new categories and boundaries. In many contexts, the impact of robotization and AI, and the projected growth of unemployment and underemployment, is likely to exacerbate distributive conflicts as the market valuation of skills shifts in response to technological changes. The disappearance of types of work through AI, and the revaluation of skills in the labour market, will position 'non-work' as an increasingly important category in labour market governance. A radically social understanding of work's constitution challenges the neutrality ascribed to technology as the arbiter of widespread and epochal changes in the way we work. It means dispelling the idea that technology determines the forms taken by work and forecloses many of the simple answers automation is taken to offer to the crisis of the society of work.

Reproductive labour

This returns us to the question of construction of the productive/reproductive boundary – since so much of reproductive work is conducted by 'non-workers'. The dependence of the profits of productive labour on the unwaged labour of reproduction and the massive pressures that reproductive labour is being subject to, the commodification of reproductive labour, new subjectivities and ways of producing 'communities', all these both speak to the centrality of this question to the world of work. The labour of sustaining and caring for human life and well-being have never been incidental to the structure and experience of work, but always central to it and its understanding. Furthermore, for all the claims made for 'tradition' the relations under which this work is conducted and how this work is understood have never been fixed. However, social, technological, economic and political changes are all magnified in relations of social reproduction,

not least because the world is facing a growing ecological crisis. This has become a crisis of social reproduction, of how people not only provide for their own subsistence but also reproduce communities and human relations. What were previous viewed as externalities to work and its governance are increasingly falling within its remit. Attention to subsistence, reproduction and associated social relations highlights the urgency of attending to the relation between capitalism, current conceptions of work and environmental degradation.

<u>Whither solidarity?</u>

The contemporary challenges that have disrupted the construction and regulation of work have simultaneously disrupted and fractured conventional sites of worker solidarity. Historically, worker solidarity was imagined as based upon a homogeneous constituency of unionised workers in an oppositional relation with managers and Capital. This imagined solidarity always obscured deep conflicts of interest and heterogeneous social and political identities between workers within and across nation states. These divergences reflected the different needs and experiences of different groups of workers based on gender, race, unionisation, employment status, sector/occupation, and region (global north/south). As inequalities have grown through casualisation and the spread of precarious work arrangements, new hierarchies of precarity have emerged that interact with and entrench toxic patterns of social exclusion and inequality, based around gender, race, class, age and disability. New 'protected characteristics' have become more pertinent. For example age has come to represent distributive conflicts over employment opportunities and economic risks between older and younger workers at a time when youth unemployment is regarded as a serious problem in many global north, as well as south, countries.

Workers and non-workers are situated within national regulatory and distributive frameworks which have consequences for solidarity both within and across borders. Different forms of migration status, created and sustained through coercive criminal legislation, create new forms of tension between 'insiders' and 'outsiders' based around authoritarian or nativist political discourses, internally mobile people remain ineligible for social protection due to registration and/or residency requirements. These circumstances create challenges for the institutionalisation of worker voice in national and transnational contexts.

The current climate around immigration illustrates both the relation between continuity and change in the governance of work and the particularly contemporary challenges to worker solidarity. What comes to the fore in questions of migration is the *national* and *international* framing of these landscapes even as this recedes in other contexts. While the rights of migrant workers remain - formally - human rights, what is telling is the lack of political commitment to their equal protection under international law. So much is evident from the resistance to ratification of the key UN instrument designed for their protection, the UN International Convention on the protection of the Rights of all Migrant Workers and their Families 1990 (ICRMW). Further, in the context of cross-border migration is changing. This can be linked to the ever-increasing short-termism of capital movement (through corporate subsidiaries and supply chain linkages) and also the temporary demand for labour generated, which creates population shifts within countries (internal migration) and externally.

Legal and Regulatory Responses

In 1999 the ILO initiated a new platform of action on Decent Work, recognising that formal labour regulation impacts on a minority of workers:

> Because of its origins, the ILO has paid most attention to the needs of waged workers – the majority of them men – in formal enterprises. But this is only part of its mandate, and only part of the world of work. Almost everyone works, but not everyone is employed. Moreover, the world is full of overworked and unemployed people. The ILO must be concerned with

workers beyond the formal labour market – with unregulated wage workers, the self-employed, and homeworkers (ILO, 1999: 3-4)

It organised its work on the basis of four strategic areas: the promotion of fundamental principles and rights at work; employment, enterprise creation and human resource development; social protection; and social dialogue. This initiative entailed greater recognition of 'people on the periphery of formal systems of labour and social protection as requiring greater attention.'[2] Further, Decent Work as manifested in the 2008 ILO Declaration on Social Justice for a Fair Globalization is to contribute 'to policy coherence for sustainable development in national policies, among international organizations and in development cooperation, bringing together social, economic and environmental objectives' (see the Preface).[3]

Regulation and its discontents

The broader ambit of labour market protections envisaged by the ILO 'decent work' agenda would seem to offer scope to lobby for international labour (and human rights) standards which seek to regulate forms of work previously thought unable to be effectively regulated. The ILO Domestic Workers Convention No. 189 of 2012 could be seen as an example of a significant success for non-conventional trade unions and civil society organisations determined to mobilise through national but also global political action. In this way, regulatory efforts can have solidaristic consequences and freedom of association and collective action in forms of new organising can operate in not only national but transnational ways generating the expanded application of norms. The conclusion by global unions of international (now termed global) framework agreements (that incorporate ILO norms regarding labour standards but also principles concerning sustainability and better corporate governance) and cross-border collective action (which is still continued in the field of dockwork and shipping) gives hope that new forms of negotiation through solidarity can have beneficial local effects.

 Further, we are seeing some successes in the form of individual litigation. Individual claims based on statutory employment rights, for example of migrant and abused domestic workers in the UK, have also had some recognition. (See *Hounga v Allen* [2014] ICR 847, SC; and more recently *Ajayi v Abu & Anor* [2017] EWHC 1946 (QB) and *Reyes v Al-Malki* [2017] UKSC 61, Judgment of 18 October 2017.) Nevertheless, individual litigation continues to operate within the narrow and constraining paradigm of a personal employment contract, given the structure and design of many statutory employment rights as confined to 'employees' and 'workers'.

Moreover, while the achievement of key provisions in international instruments is deservedly a matter of importance for those who campaign for them, their force often remains largely rhetorical, given the 'soft nature' of supervision of ILO and other human rights standards (Tucker 2014) and the recalcitrance of governments like the UK who continue to refuse to ratify. Nevertheless, 'soft' norms have been reinforced through 'integrated' interpretation in transnational courts, where authoritative courts such as the European Court of Human Rights have used 'soft' norms to develop Convention rights that are binding on signatory states. This indicates a role for smart transnational litigation strategies, identifying opportunities for soft norms to be reinforced through human rights litigation in courts with the legal authority to bind the parties.

Also, a strategy which pursues criminalisation of forms of serious exploitation and other public wrongs (e.g. trafficking and modern slavery), for example often experienced by domestic workers

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[2] Leah Vosko, Confronting the Norm: Gender and International
Regulation of Precarious Work (Law Commission of Canada, Ottawa: 2004) at 18. Available online: http://publications.gc.ca/site/eng/292633/publication.html (Accessed Mar. 2, 2012).
[3] See http://www.ilo.org/wcmsp5/groups/public/---dgreports/---cabinet/documents/genericdocument/wcms_371208.pdf.

such as Hounga, is yet to yield emancipation for the person on the receiving end of immigration laws and the UK courts' prescriptions of what constitutes illegal conduct. Nor does such an approach in any way reflect the complex realities of the ways in which 'victims' of such circumstances are in fact seeking agency in a particular social and cultural context. In the context of union membership decline, merely seeking solidarity, without an active campaign to change the legal rules of engagement in dialogue, bargaining and collective action, will not necessarily achieve the ends sought. In this sense too, the ongoing criminalisation of the sphere of work may generate more problems than it ameliorates. While criminal law is sometimes used as an auxiliary sanction to support the enforcement of worker protective statutes, the enforcement of criminal sanctions is orchestrated by the state. This makes enforcement highly dependent on political choices by public agencies, which may undermine the agency of workers and their representatives. It also opens up new opportunities for criminalisation to be used in repressive ways, to stifle protest or regulate the internal affairs of trade unions.

Other regulatory responses to promotion of 'decent work' and sustainable development can be double edged; and recent initiatives around entrepreneurship are arguably illustrative of this tension. The promotion of women's entrepreneurship through microfinance has had the effect of allowing the scope for previously unpaid custom and practice work centring on social reproduction of selves and others to have economic consequence for women and a recognition of its value in monetary terms. Bringing this work into the waged or paid sphere of formal work renders it contestable individually and collectively, under the legal framework of a buyer and seller or sellers. It also offers forms of control and self-determination as women are enabled to hold property and save money. For these reasons, it is not surprising that Sustainable Development Goal (SDG) 8.3 does not only seek to promote 'development-oriented policies that support productive activities' in the form of 'decent job creation' but also 'entrepreneurship, creativity and innovation', in this way encouraging the emergence, formalization and 'growth of micro-, small- and medium-sized enterprises, including through access to financial services'. Further education is to be designed not just to enable 'employment' and 'decent jobs', but also 'entrepreneurship' (SDG 4.4).

On the other hand, there is a danger that policies which bring non-waged or precarious 'informal' work, specifically that centred on social reproduction, within the formal waged sphere may limit the space for the expansion and radical reconfiguration of those 'informal' activities most essential to the reproduction of the means of living, on which any new relationship with work, economic life and each other must surely rest. This 'informal' work of cooking, cleaning, caring, growing, harvesting, and so on constitutes an ad-hoc array of often gendered and racialized activities, the exploitation of which revolves around their unwaged status. But they simultaneously represent the practical social bedrock for building human resilience both to go on subsisting and surviving in the present and, crucially, to create projects of social change and experiments in provisioning and resourcing real alternatives for the future. What policy and practical options are there that expand the room for alternative ways of organising, distributing and reconfiguring the work of social reproduction without recoding the latter simply as productive activity within the sphere of formal employment?

Furthermore, the rhetorical construction of entrepreneurship is not unproblematic. While such work is recorded as entrepreneurship in developing country contexts, in the UK self-employment, no matter how precarious, is recorded as having a 'job'. But, to the crisis of false self-employment, the recent UK Government commissioned Taylor Review[4] gave individual prescriptions rather than collective solutions, reinforcing the narrative of individual choice and the so-called 'entrepreneurship of the self'. It is necessary instead to get to grips with how 'self-employment' carries within it all kinds of work, locally, nationally and globally: precarious, freelance, migrant, informal, and the on the surface, the seemingly more secure self-made 'white van man' or even

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[4] Available at: https://www.thersa.org/globalassets/pdfs/reports/good-work-taylor-review-into-modern-working-practices.pdf.

quasi-professional plumber (see the case of *Pimlico Plumbers*[5] - soon to be heard on appeal by the Supreme Court).

The spatial regulation of labour: national, international, local?

There are considerable obstacles to national level innovation and even implementation of agreed social policy changes in response to these challenges. In developing countries, but also in the high-income North, the ability to promote jobs, regulate to raise incomes, change forms of corporate governance and promote anti-discrimination are all constrained by the terms of investment agreements. These include prohibitions of direct and indirect expropriation, which limit the costs to investors when policy initiatives of this kind are pursued by governments. Even the failure to prevent protest from private actors, such as strikes, can lead to costly forms of arbitration.[6] A determination to provide state subsidies (which a universal basic income could be) might also violate terms relating to national treatment and legitimate expectations (to the extent that such an income might lead to a hike in wages). Hard international economic law, alongside the rules of trade established by the World Trade Organisation (WTO), in this way sets parameters in which states regulate investment and cross-border corporate activity in the form of subsidiary activities and supply chains.

Similarly, the operation of private commercial law is facilitated by conflicts of laws agreements, which tend to give precedence to the law explicitly said to govern the contract rather than necessarily where work was carried out. In this context, we witness the ever-increasing frequency of mobility of capital and labour (see Novitz 2014 and Howe and Owens 2016), but at the same time forms of control devised under international economic law which seem to cut off scope for the discretion of nation states in the regulation of such developments.

By way of contrast with the widespread acceptance of 'hard' transnational economic law, the more limited regulatory capacities of international organisations (including human rights courts) have been challenged by nation-states and multinational corporates. Legitimacy challenges have also placed unprecedented social pressures on the organisational integrity of transnational blocs such as the EU.

States have sought to exercise more coercive control over migration flows. The curtailment of free movement of persons has not been coupled with parallel restrictions on capital mobility. This generates further deregulatory pressures at the international level, even as nation-states assert more authoritarian forms of sovereignty and control at the national level.

There is an option to seek to reform systems of international governance, institutions and the laws promulgated at that level, but the trend is still towards deregulation where such reform is contemplated. For example, the International Labour Organisation (ILO) seems determined to look self-critically at its own activities and methods so as to achieve the 'objectives of the 2008 ILO Declaration. There is a growing emphasis on 'soft' pressures, such as that exercised by the UN Guiding Principles on Business and Human Rights (often known as 'the Ruggie Principles'), although

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[5] [2017] EWCA Civ 51, Court of Appeal (CA).
[6] Noble Ventures v Romania (in 2005 – concerning the alleged failure of the Romanian state to adequately prevent or police unlawful strikes) and *Veolia v Egypt* (raised in 2012 and still ongoing at the time of writing – concerning a rise of the monthly minimum wage). Documents regarding both are available at: http://www.italaw.com. Note however that the *Veolia* litigation has been conducted mostly in secret and we may not even learn the outcome. Even where the objectives are laudable, there may still be forms of 'proportionate' compensation to be made. See Foresti v South Africa (in 2010 concerning a positive discrimination measures) –final award available at: https://www.italaw.com/sites/default/files/case-documents/ita0337.pdf.

this is now supplemented by a more rigorous framework for reporting than was originally envisaged.[7]

The SDGs and their 'follow up' and 'review' by the UN High Level Political Forum (HLPF) would seem to go against these deregulatory pressures, indicating a determination to offer a governance framework at the international level which places concerns regarding work alongside economic demands in dealings between states and between multinational enterprises and cross-border financial institutions. However, in the two years since the SDGs were adopted, there is little evidence of significant improvements in the welfare of those at work, whether narrowly or broadly defined. SDG8 comes before the HLPF in 2019 (seemingly designed with the centenary of establishment of the ILO, which could be of assistance but also a distraction from crucial controversial issues). Further, one wonders whether this review process will be sufficient to enable and enliven domestic policy responses, given the obstructions posed by trade and investment law.

Hardening international labour law (including human rights law) might seem to be desirable in the sense of making processes scrutinising their application more rigorous, but may also have unintended consequences. What may be needed more is reform (and softening) of international economic law. This is recognised to only a limited extent in the 2015 SDGs. SDG10.b observes that investment should be encouraged insofar as this is 'in accordance with their [developing states'] national plans and programmes'; in other words, states' should have extensive forms of policy discretion and one would hope this could apply to the Global North as well as the South. Similarly, investment is to be targeted at girls and women, which fits with a micro-finance entrepreneurship agenda,[8] but there is no explicit discussion of how investment law and arbitration might need to be redesigned to achieve such aims. Under SDG 17 – promoting a partnership for sustainable development, there is acknowledgment of a need to change trade rules (especially around special and differential treatment for developing countries), build capabilities, mobilise provision of finance, and in so doing promote 'policy coherence'. What will matter is how the specifications for change are debated and detailed, especially around work. It is to this extent that our identification of what has been going wrong at the international level may be of assistance to reform of the world of work. Reforming work will also require a consideration of different bodies of law beyond labour or employment law, recognising that the 'legal autonomy' of work regulation tends to obscure the impact of trade and economic law on the governance of work.

At present an unsteady balance is struck between proposals that extend established forms of state regulation over ever newer work relations and those that create the space for the self-regulation of new relationships with work and social reproduction. What is clear is that the ability to build capacity for the creation of alternatives (or even a reformed macro-economic legal base) is a key requirement facing the formulation of effective national and local policy responses to the reconstitution of work in a crisis of social reproduction characterised by widespread insecurity and precariousness.

Towards a research agenda

Contemporary debates about work centre on two competing aspirations: to escape work or to create more of it. But each approach tends to reify work as something separate from wider sets of social relations of subsistence and social reproduction and the social forms of commodified goods and services through which these relations proceed. Many popular approaches delimit work by establishing positive or negative associations with work independent on how work is imbricated in and related to activities and areas such as finance, commodification, trade, family life, the domestic

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[7] See https://www.ungpreporting.org/. See also explicit reference to the ILO and Ruggie Principles in para. 67 of the UN Resolution: 'Transforming our world: the 2030 Agenda for Sustainable Development' (2015) A/RES/70/1.

[8] Ibid., at para. 20.

sphere and identity. For example, in relation to trade and finance, the flow of capital is seen to be separate from the labour which enables the system to function. Similarly, in relation to the family, a line is drawn between paid and unpaid/reproductive labour. The conceptual boundaries this implies wield an impact upon the social construction of work and how policies address it once constituted.

Popular imaginations suggest that automation promises to challenge any sense of work as an embodied and experienced human activity. The apparently epochal character of the changes work is undergoing invite the ascription of large, unrealisable policy solutions that address the issue only on the absis that work is not long for this world. Exemplified in the oft-cited panacea of a basic income, this elides the extent to which things may remain the same, old challenges left unconfronted. In practice policymakers often seek to avoid the contradictions new conditions raise, mustering only the slightest and most feeble of regulatory attempts to get to grips with the same complex of factors.

The fundamental challenges to social solidarity highlight the deep interconnections between work, democratic equality, social and political stability, and global inequalities. Established forms of governance and worker representation have been outflanked by the new demands placed on them. New kinds of solidarity and collective articulation of conflicts and grievances arise to facilitate mobilisation around common aims and themes among these diverse groups. These potentiate the overcoming of political tensions playing out in the rise of populisms worldwide, which centre on a sense of precariousness and the divergent social values of different class fractions within the self-employed workforce. Connecting those doing all these kinds of work is a prerequisite to the creation of new institutions that can allow the articulation of common conflicts and grievances around work, specifically by creating an infrastructure through which new forms of bargaining and representation can hold employers or clients to account. This may never happen, but there is an imperative to act despite the fact that it may not. The question is what kinds of institutions could be created and what forms of state (and private) permission and support do they need to be effective.

Deliberative processes must be designed to ensure that the pluralism of needs, identities and interests is respected. This might be through the implementation of social rights to mitigate disparities of power and exclusionary biases in existing political channels. It may also require political institutions to move beyond traditional tripartism, and to experiment with a variety of associational forms such as self-employed workers' cooperatives, human rights NGOs, and identity-based organisations. Traditional forms of union representation may need to be supplemented with new forms of social mobilisation, based around identities other than class or occupational status. Technology may provide new opportunities for new forms of mobilisation. Global and transnational forms of worker solidarity, through networks of associations, provide an alternative to the reassertion of exclusionary forms of nationalism at the level of the nation-state. It is also necessary to re-imagine sites of solidarity through new forms of civic engagement. Experimentation in new forms of universal social welfare, such as a basic income, might provide new opportunities to reassert equal democratic citizenship. The rediscovery of new forms of political activism, as witnessed in the reinvigoration of grass roots political mobilisation, might also provide templates for promoting active democratic citizenship. Broad-based political deliberation provides democratic spaces where differently situated citizens can articulate their needs, deliberate across difference, and reassert democratic control over material forces. However, the powerful linkages between nation, citizenship, and rights – both real and imagined – continue to represent an obstacle to such control and to solidarities more generally.

Strategies may need to be re-examined by returning to a fundamental dignity-based set of concerns around individual and collective human agency, which are inevitably intertwined. Moreover, a human rights approach may make sense when all political avenues have been exhausted and where the judiciary is showing itself liberal and sympathetic. In other contexts, it can and has been merely an opportunity for closing down assistance to the vulnerable. Further, we may need to think less

about strategies that involve reforming labour laws and more about other legal and political structures, for example in the realm of trade and private law, which obstruct agency for those engaged in many and various forms of work.

To build these legal and political structures, regulators and policymakers can reach back into history and learn from cooperatives, guilds and early trade unions established to represent precarious workers locked in struggle with technological advances, for instance, or the infrastructures of mutualism and cooperation that were a precursor to the development of the welfare state. There seem few modern instruments either in existence or in the pipeline for doing tackling present and future challenges, and, in light of the foreshortened attempts of the Taylor Review to respond to the present, laboratories for policies fit to meet the future are badly needed.

Research questions

This agenda produces a series of research questions we group under five themes or programmes of research: (1) the politics of work, past, present and future; (2) institutional, organisational and regulatory alternatives; (3) technology, social relations and governance; (4) work and citizenship in an age of populism; and (5) labour and regulation in the international sphere. The thread holding them together is a commitment to the interrogation of possible strategies with reference to the guiding inquistions: For who? With what resources? And in what political context? Posed along these axes, these questions are intended as provocations for further thought.

1. **Politics, governance and the shifting boundaries of work, the worker and the employer:** What politics emerge when we compare the shifting boundaries of work globally, historically, and by type of 'non-worker' (the prison labourer, the intern, the beggar)? What are key sites of struggle over the nature of work and what does this reveal about anxieties over commodification, globalisation, embodiment and honour? What are the disjunctures, tensions and commonalities between social and legal conceptions of 'work' in different contexts? How can we use the same lens to analyse labour and capital mobility? How are 'labour laws' (constructed at the local, national, regional and international levels) being applied and modified to address contemporary shifts in our understandings of 'work'? How else is work governed and regulated? Could transformations of e.g. trade, corporation and competition laws and/or regulatory forms such as finance opportunities and procurement procedures offer alternatives? How can the 'capabilities' of workers in the informal economy be supported without destabilising existing systems of social protection for workers in non-informal sectors of work? What is the best mix of legal techniques (criminal law and prosecuting agencies; labour inspectorates; collective bargaining and strikes; individual civil litigation) in securing decent work for all through law? What new kinds of solidarity and collective articulation of conflicts and grievances can be created to facilitate mobilisation around common aims and themes among these diverse groups?

2. **Institutional, organisational and regulatory alternatives in an era of globalisation:** To what extent do popular imaginaries of the future of work imply or elide the role of developing countries, the new international division of labour and transnational flows of migrant labour? What are the regulatory measures necessary to manage and distribute the effects and gains of technological impacts on work across borders? What are the implications of the return to the nation state and the political salience of demands for 'sovereignty'? How can international regulation maintain its suppleness to accommodate rapidly evolving work relations and new normative challenges, while being effective in securing its goals? Are we entering a post-'labour rights as human rights' phase as transnational courts encounter more intense political pressures from states asserting their sovereignty in more muscular terms? How can we integrate the domains of trade law, international economic law and international labour law through new forms of work governance at the international level?

3. **Work and workers in an age of precarity**

Can the current shocks to the system of employment- automation, precariousness, the movement of jobs and workers between countries- best be managed by the creation of new collective institutions that can deliberate over and articulate between conflicts over the distribution of resources and the means of reproduction in changing world? What forms of governance and control at the national or regional political levels (for example, licensing regimes or the use of fiscal mechanisms like a 'robot tax') are viable and which are not? What new solidarities and political possibilities emerge if we foreground temporality in our analyses of work, its governance and contemporary labour struggles? What can be learned from histories of labour struggles, particularly histories and contemporary struggles i the Global South?

4. Technology, social relations and governance

How much is new in the magnitude and momentum of technological change ascribed to work today? Are we living in a new world of work precipitated by technological advances or is, as Adorno put it, 'the ever-new also the old lying close at hand?' Do the novel conditions that confront us conceal their true status as 'the old in distress'? (Adorno, 2003: 94-5)? What are the social relations that circumscribe how technological impacts on the future of work are felt across lines of global, cultural and economic difference, and how can governance address them? What can be done to meet the challenges of automation whilst retaining a sense of work as an embodied and experienced human activity? Will automation create a more alienated relationship with work by abstracting from embodied purposive activity even more than work already does, or liberate us to create new ways of relating to it and each other? How can technology be repurposed not only to restructure work itself, but how workers organise and collectivise for better pay and conditions, and what forms of regulatory support are required to sustain and reproduce these struggles? Against portrayals of technological progress as imminent and inevitable, how can governance help restructure workplace relations to overcome the productivity gap and skills shortage? What limits and opportunities confront the importance of transnational governance in these respects? How far, for instance, has the ILO effectively got to grips with the interactions between work and automation?

5. Reproduction and ecological crisis:

What can be learned centralising the labour of social reproduction – i.e. de-normalizing the male, wage earning subject of the labour contract? How do we 'green' jobs and keep jobs? Indeed, should this be our aspiration or does the idea of a universal basic income present other viable possibilities? How do we keep in balance ecological constraints and worker claims, including all the elements of sustainable development. Is this about 'just transitions' to be negotiated by worker representatives and civil society organisations or will those whose work and lives are affected ultimately have to defer to expert led visions of what is possible? Are new technologies likely to serve environmental or worker objectives or rather merely corporate and commercial objectives in the foreseeable futures? How do we keep such developments responsible? How could workplace governance, national and global collective bargaining, corporate codes and international governance assist? And what do we make of alternative forms of work and entrepreneurship which may have as much ecological impact as more monolithic corporate practices?

6. Solidarity and the boundaries of belonging:

What is the relationship between 'work' and 'citizenship'? Can citizenship be realised without work, in an era of contracting opportunities to engage in paid work? If so, might this

be realised through universal solidaristic practices such as a 'universal basic income'? Can governance institutions mediate between production and consumption using citizenship as a frame? How might theories of the 'labour constitution' revitalise politics as a mode of engagement? How can the civic risks of an empowered political space be managed through governance, especially the threats posed by new forms of populism in the public sphere? What are the risks and possibilities associated with the mobility of labour and people within and across state borders? Is it possible to re-imagine citizenship as a cosmopolitan ideal based on universal entitlements in the face of resurgent attachment to nativist values and practices?

Conclusion

Exploring these kinds of questions demands interdisciplinarity and the engagement of scholars from history, law, social science, humanities, engineering, design among others, but also the capacity to draw on the imagination. They demand new and creative methodologies, and an iterative dialogue between theory, in its broadest sense, and practice. Work continues to be relational, even as those relations have become more complex, diffuse and obscured. This suggests the continuing relevance of normative goals such as the amelioration of exploitation, the enforcement of fundamental rights against duty-bearers, and the promise of equal democratic citizenship. Abundance and scarcity, work and worklessness, are political and legally constituted categories. The future of work is bound up with its governance. It cannot simply be understood based on changes in the content and quantity of labour, but also the specific social relations of subsistence and reproduction on which it is based and the specific commodified forms its results assume in the market. To understand work, we must look beyond it.