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The 'future' of work? A call for the recognition of continuities in challenges for conceptualising work and its regulation

Perspectives on Work Faculty Research Group



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Abstract

Discussion of a world without work usually comes accompanied by either fear or fantasy of a workerless world. A hashtag search on twitter for #futureofwork yields many photos of robots, yet very little insight into how such a world will emerge and its relation to the one in which we currently carry out our working lives. In this paper we argue that behind projections of a workerless world, and behind fears of a lack of jobs, are the *continuities* of dynamics already in play, and that these are capitalist working relations. This working paper firstly offers a contextualisation of the ‘future of work’, shaping new understandings of what is meant by the ‘worker’ in the contemporary context. Whilst acknowledging technical changes in the contemporary context of working relations, we argue that it is the continuities and contradictions in current labour market dynamics that more usefully identify the challenges for both conceptualising and regulating contemporary work. Highlighting the spatial challenges to contemporary workplace governance we look at three factors: the mobility of work, the mobility of things as trade, and the ‘new workers’ (hyperflexible workers employed through platforms and other new arrangements of work that are made possible by technological advances) to identify key continuities in the factors and actors of the so called ‘future’ of work. To contextualise these factors as they manifest in particular sectors, we consider the cases of care work and agricultural work, both areas which have been subject to great speculation over projected transformation. The paper then turns to the challenges of law and regulation and demonstrates how work is enmeshed in legal developments which go far beyond labour and employment law. In conclusion, we argue that there is need for a radical new conceptualisation of work, in both social and legal terms, yet this must be grounded in recognition of the continuities of capitalist relations of production and accumulation, rather than the fears and fantasies of a worker-free future.

1. Contextualising the ‘future of work’

The degradation, development and possible disappearance of work is a central preoccupation of contemporary theoretical and policy debates. In the Global North stagnation of labour and consumer markets and slow economic growth have contributed to persistently high un(der)employment, precarity and increasing personal debt. There has been a massive decline in manufacturing and growth in both ‘high’ and ‘low skilled’ service and informal work. European countries have deconstructed their welfare states, demutualising economic and social risk (Crouch, 2014). Further, real rates of pay for both skilled and unskilled work have declined significantly, especially when compared with the elite salaries of managers and capitalist investors (Piketty 2014 and Hayes and Novitz 2014). In the UK, ‘modern working practices’ (Taylor 2017) and the under-enforcement of statutory employment protection provisions (Metcalf 2018) concern politicians and the public alike. In the Global South, now home to 83% of the world’s manufacturing workers, foreign direct investment has generated employment but all too often below international standards for ‘decent work’ (ILO 2017). The globalisation of production may have been successful in producing ‘things’, however, deep concerns are being raised about its potential to support those who produce them, distribute them, and consume them.

Across the world hierarchies of precarity and risk have emerged as ever more relevant: gender, generation, race and nationality interact with social and economic structures to

shape and entrench toxic inequalities (Standing, 2011, Vosko, 2010, Wilkinson and Pickett, 2009). Furthermore, conventional modes of work and its regulation are being put in question in the advent of uses of new forms of technology. All these changes are occurring at a time of deepening concerns about sustainability, not only that of economic durability (see EU Commission 2010, 5-6, 16-18 and 32), but now in terms of both environmental and social concerns. There are also increasing strains on liberal and democratic institutions such as rights-protection for minority groups, an independent judiciary, and the rule of law; institutions that are proving to be fragile in the face of populist and nationalist political movements (Supiot, 2010, Bogg, 2017). Yet, is this really a climate that is best characterised as 'new'? Or is it part of something with which we are already very familiar?

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. The divisions between different types of work and between work and labour is socially and legally constructed, shaping and shaped by prevailing social relations including, but not limited to, class, race and gender relations. As Zatz and Boris 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*' (2014, 96). We argue that this analytical location not only interconnects 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.

Looking back at the future of work

A history of the future of work reveals a field of interest fuelled by fear. This is unsurprising as work is the principal way through which we secure our livelihoods, as well as the productive regeneration of our societies and the social reproduction of our communities. With each big shift in the nature of work, therefore appears recurring social anxiety over the 'future of work'. It is clear that we are currently experiencing just such a phase of concern. In a paper for the International Labour Organisation (ILO) David Autor and David Dorn remind us that work anxiety has been present alongside every shift in the organisation of work (Autor and Dorn 2013). Reassuringly they argue that work is currently in a phase of reorganisation presenting new opportunities, bifurcating to provide jobs for those at both ends of the skills spectrum (Autor and Dorn 2013). Yet the ILO itself has invested in a major programme called 'The Future of Work' (ILO, 2018c) aimed at answering the same questions all those afraid of the future of work are engaging with: 'What does work mean to us?', 'Where will the jobs come from' and 'How will we manage to find 'decent' jobs'? These panics come in waves, emerging sometimes in ways evocative of Cohen's depiction of *moral panics* that 'threaten societal values and interests' (Cohen, 1972). Over the turn of the millennium, during the last major panic over the future of work, the UK's ESRC invested in a £4 million programme by the same name (ESRC, 2008). While it enjoyed much media attention and success for some years, by 2005 the funding had been unexpectedly discontinued after that particular phase of social concern had eased off. Just like stock market bubbles, the bubbles of anxiety and crises of fear about the future of work come in cycles.

Panics may be structurally embedded or waves reflected in business and the bureaucratic regulatory level (as identified by Kondratiev 1925), leading commentators like Albers and

Albers (2015) to provide rigid predictions for crises. To be meaningful however the sense of panic has to resonate with people who experience technological changes (such as in robotics or artificial intelligence (AI)) in their own workplaces and in troubling ways. The 'gig' economy, where computer apps are being used in ways that are designed managerially and (il)legally to evade employment status and thereby social and legal entitlements, is often the focus of such moral panic, where it exists. However, it is not clear to what extent we see this kind of ground up mobilisation or panic in other areas of the workplace.

Work has always been a site of struggle. What work *is*, in itself, is challenging to define. In looking to open-up how we see work, for present purposes we outline what we will be attentive to in its investigation: the struggle of 'work' 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. In order to investigate work we must locate it within the specific context of contemporary capitalism and its social relations. This includes processes of financialisation, dispossession, the commodification of the commons, privatisation and the restructuring of work and life in the domestic sphere (social reproduction). It also raises fundamental questions regarding 'labour value' and compensation for work. 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. From this starting point of the working object of analysis we shall consider some of the key continuities of the current future of the world of work and how they manifest in examples of particular sectors (care work and agricultural work). Finally, we will consider how this socio-economic reality is enmeshed in regulatory structures where challenges of the 'new world of work' (for example financial pressures to accelerate production vs. social protection for workers) compound those that are currently being navigated in the legislative arena.

The continuity of the commodification of workers

The commodification of human activity, or even potential activity, as *property*, is key to considering what is exchanged when a person 'works'. There is no clearer place to start in examining this *continuity* within the world of work, than in the history of slavery. Although slavery is widely considered to be a uniquely appalling wrong because it treats human beings as commodities or 'things', the history of New World slavery tells us that chattel slaves were not simply reduced to 'things' either in law or in practice (O'Connell Davidson, 2016, Bhandar, 2014). They were indeed legally constructed as objects of property, and a precise specification of their monetary worth could be made for purposes of market exchange, mortgaging, insurance, and the valuation of estates. At those moments of exchange and accounting, they were represented in the manner of 'things'. But unlike the livestock to which they were routinely compared, slaves in the Atlantic world were arrested, tried, and punished for committing outlawed acts – which included any and all forms of refusal to submit to the authority of a master or any white person, as well as any effort to escape. So, at the heart of slavery as a system of domination was a body of law that gave the enslaved a 'double character' as both things *and* persons; there were processes of personification as well as 'thingification' at play in law (Shilliam 2012, O'Connell Davidson 2015). Arguably, even the

master and servant relationship, with its initial constraints on release from service, involved forms of commodification (Hay and Craven 2004).

Today, Andy Crane's research indicates that much of modern-day management practice amounts to bonded labour (Crane 2013). While the ILO reports that the scale of 'forced labour', while it cannot be accurately counted, lies in the realm of at least 21 million people (ILO 2012). Within contemporary capitalist labour markets, increasing emphasis is now being placed on workers' property rights in their wages as a means of resistance to the assertion by employers of their own (Albin 2011 and Novitz 2012). The potential of imperialism and then capitalism to transform different elements of human (and ecological) activity into 'things' within the sphere of monetary exchange for profit, is exponential. Yet, on the other hand, there is always also the potential to externalise human activity as 'non-visible' within capitalist exchange which, when submitted to the systems of domination of capitalist production and exchange, are then in effect 'gifted' to the economic system, therefore cheapening both the cost of work and the value of the worker (Patel and Moore, 2018).

This can be little clearer than in the case of care work. Adam Smith, celebrated as the world's father of liberal economics, lived his whole life with his mother (Patel and Moore, 2018). Although without her work, his would not have been possible, it has gone unrecognised. Raising, caring for, feeding and supporting 'workers' has often been overlooked in our dominant histories of work, yet the work of reproducing not only individuals, but also communities is an inherent necessity for work in a capitalist economy. 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 configuration. 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 dual crisis of social reproduction and ecological limits, insofar as they each represent the human metabolism with nature and the rift the intensification of capitalist social relations causes within it. What were previously 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.

Therefore, although the configuration of the relations between people and their labour, and productive and reproductive work, have been organised in different ways through history, under a capitalist system of domination and production, there is a continual process of reorganisation in order to increase profits. It is in the context of this continuity that machines in care homes need not be seen as 'new' but rather as a deepening of already existing practices in which certain humans, certain activities (types of work) are brought into and out from definitions of work in order for their labour to gift new profit streams to capitalist accumulation (Stewart 2011 and Brownsword 2014).

Work within the globalisation of trade and production – South and North

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 socialites and imaginations as well as into our bank balances and our time. However, these shifts also reflect and shape tensions that are resolving into contradictions (Harvey et al 2018). These processes are occurring within an ongoing intensification of global trade and production. John Smith (2016) 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 South¹. 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 arm's length super exploitation in the Global South (Smith 2016). However, when we view the bifurcation of North and South, it is evident that 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). Within country inequalities have also jumped significantly in the period since the intensification of globalisation from the 1970s onwards, contradicting the assumptions of the Washington Consensus that with liberalisation would come greater wealth for all. Instead, income inequality has increased despite increases in national and international growth and trade (Palma, 2011).

The problem of growing inequalities in both the North and South, within and between countries, demonstrates how the problem of the future of work is also a problem of the future of the economic system, which under the current paradigm of neo-liberal growth is favouring patterns of distribution of wealth which are highly uneven (see Piketty 2015). If present day jobs do little to support present day humans, placing robots in those jobs can therefore be seen as a deepening of an already malfunctioning labour market, functioning within a global economy which is producing increased inequality. 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' (Beck 1992, 143). Precarity here may mean no certainty over a worker's time or future continuation in the job, having to accept work that has little structure or regularity.

Underemployment has also been a significant way in which work has changed for working class workers in the UK in particular, adding to increasing inequalities (Warren 2015). 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. Poor working conditions can be experienced in specifically temporal terms, from long hours, to

¹ We recognise that the dichotomy between 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. See for an example of critical analysis of the attempt to draw this divide through the Brandt Line, Trefzer et al (2014).

shift work, multiple jobs or night-time work. 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 of 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.

2. The workplace moves: the place of work is locked into tensions and contradictions

Moving workers: spatially mobile labour markets

We live in a hypermobile world where, for both capital and labour, the possibilities of (im)mobility are unevenly distributed (Levi and Ahlquist 2004). The world of work is shaped by the asymmetrical mobility rights of labour and capital. The contingency of hierarchies of mobility and embeddedness are a defining feature of the working world as we move into a new period of anxiety and limited transformation in working relations. Some work has a 'spatial-judicial fix' in which capital is able to utilize geographical expansion of markets or workers available (through guest worker programmes for example), to temporarily solve problems in the accumulation of capital (Lillie 2010, Harvey 2001) and is therefore 'immobile' (to a greater or lesser extent) through time and space. Capital moves and its movement is actively facilitated by laws, customs brokerage and expediting companies (Hattam 2018). Those who have capital are also highly mobile, with access to privileged visa schemes and border queues. In contrast the movement of labour, particularly low waged labour, is obstructed, or rendered disposable for just-in-time production. This can be seen in the example of seasonal workers permitted to remain within the EU only during the market defined period of time in which they are needed for seasonal work such as in horticulture and tourism (Medland 2017). Of course, people do move, and 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.

The deep imbalance between the free mobility and embeddedness of capital, and the nature of mobility for people, creates tensions and contradictions for both the contemporary and future panorama of the working world. 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. Meanwhile, 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 in the Global North, and in particular of the Trump government, and the 'hostile environment' of the May government in the UK, illustrates the oscillation between openness to globalisation and shut downs when the neo-liberal principles on which this is based take their toll. The minimum income requirement in the UK for spouses to join UK nationals (£18,600) is a measure of the open-yet-closed nature of other policies

which aim to navigate this tension. In another contradictory policies in the UK, asylum seekers are allowed to be present, and even to volunteer their services whether inside or outside of detention centres (Bales and Mayblin 2018), yet their access to the labour market is restricted. Likewise, international students' access to the labour market is very limited, and, as analysed by Levantino et al. (2018) in France, Spain and the UK, policies welcoming and deterring them fall within the inter-departmental tensions of government departments which aim to encourage them as students yet deter them from remaining, in order to limit the labour market for nationals. These examples illustrate the continuity of state boundaries as the basic unit of governance in attempting to politically regulate work even as work places are spatially more difficult to identify.

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). What comes to the fore in questions of migration is the *national* and *international* framing of these landscapes even as they recede in other contexts and as global production is increasingly inter- and trans-national. While it is possible that in the new world of work, the state takes on a new role of arbitrating between, not just nationals and non-nationals, but also between workers and robots, the centrality of national and international framings of regulation, regardless of the transnational mobility of capital, shows few signs of being resolved.

Moving things and spatially situated workers

Due to the enormous quantity of goods and services which are the subject of global trade, treatment of worker rights in this context is of vital significance. Novitz has highlighted how trade regimes and their architects struggle to guarantee labour standards for the workers of international trade (2018). Not only have forms of regulating labour standards changed significantly over the last twenty years, so have the ways in which their governance has been framed. As the core international standard setting and supervisory body regarding norms of work, we might expect the International Labour Organisation (ILO) to be at the forefront of this process of change and continuity. Controversially, in the lead up to the millennium, the World Trade Organisation (WTO) said that it would not seek to protect labour standards, delegating this role to the ILO. The ILO response was to promote 'core labour standards (CLS)', a process in which just eight conventions (and 'four principles') were designated as 'core', covering four areas of labour law. In subsequent trade agreements, and broader standard setting contexts, it has been just these *core* labour standards that have 'travelled' alongside international trade and have become embedded in global trade whether through reference to ILO conventions or the principles set out in the Declaration on Fundamental Principles and Rights at Work 1998 (Hepple 2005). As the legal agreements that have facilitated terms and conditions of opening borders, reductions of tariffs and quotas, this reduced focus on only certain areas of labour rights in a context of global trade is concerning and points to the neo-liberal individualist norms upon which globalisation and the new world of work are converging.

Recently, the regulation of labour rights in international trade regulation has developed in the context of the sustainable development agenda (Novitz 2018). As Novitz highlights, labour

rights are now increasingly being linked to the sustainable development agenda in which labour is conceived as one pillar of 'sustainable development'. There are some concerns about this approach, as in some ways it situates international labour law beneath the concerns of sustainable development more broadly. However, the recognition of a slightly broader conception of labour law as a component of sustainable development, than was set out in the CLS does not remove the possibility to continue to recognise that labour rights are also human rights, where specific labour rights are also recognised as such. What is vital is that there is genuine participatory engagement in the framing and application of norms as advocated by the Sustainable Development Goals UN General Assembly Resolution (SDG16), so as to ensure that labour is genuinely embedded in the 2030 Agenda and not rendered secondary or subservient to this.

The new workers of global production?

Finally, there is 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 can be held accountable as an employer (Prassl and Risak, 2017) but while platform technology has facilitated the spread of casualisation 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 a group for whom protective concerns traditionally associated with labour law are considerations. 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. The rhetorical construction of entrepreneurship is problematic and developing. 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'. It is necessary 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 quasi-professional plumber (regarding which see the successful claim of employment status for protection from discrimination recognised by the Supreme Court in the case of *Pimlico Plumbers* in 2018). Seemingly dissatisfied with the findings of UK courts sympathetic to claims of false self-employment, the recent UK Government commissioned the Taylor Review (2017) which sought to introduce new 'clarity' to the law, reinforcing the narrative of individual choice and the so-called 'entrepreneurship of the self' (Bales et al 2018).

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. Also being looked at is: 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 robotisation 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. But 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.

The world of work in a context of globalisation, in the case of both moving things (trade) and moving workers (migration and mobility), and ‘new workers’ (AI facilitated or robot), still sees workers’ freedoms and rights determined by both legal and social configurations and contradictions around *who* a worker is. It is the threat to this *who*, which may become this *what* (robot), that is triggering a new moral panic around the current transformations in the workplace. Yet even if the *who* (worker) becomes a *what* (robot) it will still be part of the same complex array of capitalist relations, constructed by vested interests operating through systems which only reflect certain persons and business entities under the rubric of ‘individualism’. The institutionalisation of *who* a worker (or robot) is, and the roles they may play are defined through law which is both active and reactionary. How then can we demand legal framings of work to play a more proactive role in the protection of workers rather than capital? In order to consider how these continuities and contradictions manifest in specific contexts we will continue by considering in a little more depth two sectors that have been the subject of much speculation around how transformations in the world of work will affect them in coming years.

3. Following continuities to identify change: two cases for reflection

The boundaries of work, what work is (and what work is not) is not only socially, legally and politically constructed, its construction is an exercise of power. Work and workers are and have been differently imagined and constructed in different cultural and legal contexts. This is captured in the standard employment model which offers a mechanism for the mutualisation and socialisation of risk, providing a linkage between social insurance, employment protection, and productive labour (Bogg and Freedland 2016). However, this has been criticised as inadequate not least because of its difficulty in accommodating labour in private households (e.g. Anderson 2014). While those outside the standard employment model can be legally unprotected and socially marginalised in many countries and sectors, they constitute the majority of workers (ILO 2017). By considering now the cases of domestic and horticultural work, we consider the importance of thinking about *who is* and *is not* considered a worker – and the political and economic issues this raises. We consider that these case studies demonstrate that we need to move away from status to have access to protections and also access to political and workplace participation in the creation and application of norms. For example, it is vital that freedom of association and access to

representation under SDG16 is not dependent on being a member of a trade union or formally being designated a 'worker' (De Stefano 2016).

Care work and the continuity of subordination

For much of the history of capitalism, care work has been denied recognition as 'work'. Patel and Moore therefore describe care (and indeed reproductive labour) as having been 'gifted' to capitalist production (2018). The negotiation of the 'private household' as a workplace is a challenge for both workers who engage in domestic wage labour, as well as for stay-at-home spouses and parents who often go unrecognised within legal and social structures. It is not incidental that care work and domestic work in particular, is still considered 'unskilled labour' even when it may involve complex tasks and the constant diagnosis of which tasks are appropriate at which moments. Domestic workers may be expected to be cooks, cleaners, and educators, simultaneously. The history of the undervaluing, or cheapening (Patel and Moore 2018) of care work is linked to the global history of colonialism, slavery and servitude which has been both heavily racialised and gendered (d'Souza, 2010). Furthermore, this past is not 'history' as such: domestic workers are one of the main groups associated with 'modern slavery' and unfree labour (Anderson 2000, Fudge and Strauss 2013).

The current context of global capitalism and care is also increasingly associated with Global Care Chains (Hochschild 2000) as the model of social reproduction is changing and domestic work is reorganised not only within the home as a workplace for unwaged and waged labour, but also as a workplace which increasingly depends upon transnational or mobile workers. Such new configurations of domestic and care work therefore reproduce colonial dynamics in which 'dirty work' is disproportionately performed by migrant women and racialised groups (Anderson 2000). The continuities of divisions in reproductive labour, as work has become organised on a spatially global division of labour are therefore important to note as we consider the current period of the transformation of workplace relations.

There has been significant public outrage and concern about the notion of 'robots' replacing care workers for the sick and elderly in the Global North. Yet, we wish to emphasise that, neither is it likely that robots replace workers completely, nor is the outrage likely to materialise as much as some emphasise. 'Change' is important to problematise. For the inclusion of (more) robots in the work/domestic space is better characterised as a continuation, or extension of practices, machines and algorithms already utilised, normalised or invisible in work/domestic spaces today. Checking into a doctor's surgery through a self-check in system on arrival, is nothing less than a 'robot' at work in the health service. Yet this robot, does not 'work' alone, but rather in *relation* to human workers who supervise the proper functioning of this tool, within the same socio-economic organisation of production. If there is, then to be any tax on robots, it must first be possible to understand what is *meant* by a robot, and what is *meant* by a worker in the contemporary workplace.

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 (or husband) can 'work hard', but while cleaning the family home she (or he) 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, 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).

Food and precarious workers

Self-service tills in supermarkets are perhaps an even clearer example of robots replacing workers in workplaces. Yet these robots also belie a system of automation which is just as well characterised by continuity, as it is by change. The food system is one which is also affected by the moral panic around a replacement of workers by robots. The place of food production has for a long time been subservient to other sectors where, in industrial societies the imperative is for cheap food to feed urban workers (Patel and Moore 2018). The proportion of workers around the world employed in agriculture is steadily decreasing and this is drastically changing the structure of the labour market worldwide. The turn of the millennium coincided with a fundamental change in the structure of global employment. Whilst in 1991 43.3% of the global population were employed in agriculture and just 33% in services, by 2017 the proportions had switched. With an estimated 51% of workers employed in services, the service sector overtook agriculture as the world's largest formal employment sector, with just an estimated 26.4% working in agriculture by 2017 (ILO 2018a, ILO 2018b). This drastic change in the proportion of us who are employed in agricultural work has made more workers available for waged work in urban areas, yet has not raised wages in the sector, and agriculture remains, largely, like domestic work, classed as a sector for mainly (supposedly) 'low-skilled' labour. This also makes it one which is subject to change in a context of the increased use of robots and AI. Or, at least this is the way the social narrative has been formulated.

The idea that agriculture will be entirely manned by robots however, is one that obscures the power dynamics within global food systems. Mechanisation has a cost and while in some production and global production networks this cost is affordable, in others it is cheaper to relocate production in areas of the world with lower wage costs. Furthermore, in some sub-sectors of agricultural production, such as horticulture, there are limits to the degree to which food products (in this case, soft fruit and vegetables) can be harvested and processed via machines (or robots). In the US, labour is by far the most significant expense for farmers in horticultural production, such as for soft fruit like table grapes and tomatoes (Kandel, 2008). However, mechanisation of the production process has only been possible for some types of product, such as tomatoes for the production of ketchup. Likewise, in Italy, mechanical harvests are now common for tomatoes, however only for canned produce which is less sensitive to damaged crops. These variations in processes of mechanisation, even within very specific global production networks, highlight how even despite a possible acceleration of the use of machines and robots, what the overall social trends represent are continuities. Further developments in mechanisation processes which have been occurring since the development of the early machinery such as the loom or the plough, are placed alongside workers in the process of intensifying production in the service of capital accumulation.

The narrative that agricultural workers have or will be replaced by robots, presents a significant problem for workers: visibility. If consumers, buyers and policy makers are under the impression that agricultural production has been mechanised, or harvest workers and slaughterhouse workers have been replaced by robots, it can be extremely difficult for their campaigns for working conditions and labour rights to be seen and heard. With campaigns like ‘freshly clicked’ from supermarket giant Tesco, retailers are giving the impression that there are no workers involved in the production of such foods. Ironically, the precise same foods (tomatoes, strawberries and asparagus) that are being advertised in such a manner greatly depend on manual planting, harvest, and packing both within the UK and in key producer countries for the UK market: Spain and Morocco (Medland, 2016, Helliö, 2014, Moreno Nieto, 2014).

In the case of domestic and agricultural work, both of which are sectors identified in public discourse and in research and development for the increased use of AI and robotisation, we have seen that such transformation processes are primarily marked by continuity rather than change. Whilst the intensification of mechanisation and the intensity of production processes may be driven by advances in technological innovation there are important reasons to pay attention to how existing social relations are more securely embedded. Such social and economic structures place these types of employment and the workers in them in precarious positions on the fringes of industrial society, primarily as part of the social reproduction of a core but diminishing workforce. As such, a focus on robots rather than workers may obfuscate the social and spatial situations in which workers are required to perform their labour both in isolation (in homes/in rural areas) and in relation to machines. Nevertheless, in order to avoid the entrenchment of worker subordination to the organisation of work by capital flows, there is a vital need to reconceptualise the accelerating use of AI and the role of new actors (robots) in the workplace even if these are fundamentally part of a processes which we already know well.

4. Does ‘work’ still work? A call for a radical interrogation of the understanding of work

In the Global North, the relation between working and non-working life was for many years conceived of as the ‘work-life balance’. This suggests people’s lives are neatly divided between their private and emotional life on the one hand, and a job on the other. However, ‘work’ is not simply nested in the wider project of ‘life’. Work is rather a way of understanding living and relating to each other and to our material environment (Zatz and Boris 2014). The increasing precarity of working time, uncertainty about life trajectories as possibilities of ‘jobs for life’ fade into the past, changing social roles for women and men resulting from and shaping changes in labour markets, have profound consequences across the world.

Global mobility, including trade, migration and global financial flows, as well as recent innovations such as the increased use of AI and robotisation present major challenges for policy makers, and in particular for lawyers, who attempt to write the terms and conditions under which the global world of work may (legitimately) materialise. This is another ongoing challenge which emerges from already existing tensions, asymmetries and challenges to the way in which work is conceptualised and regulated in law. As the practical means through which ‘work’ takes its formal configuration, it is to this that we will now turn: how can and

should law regulate and conceptualise the new world of work? Can an overview of current legal developments help identify areas in need of particular attention in order that workers may be supported (not just regulated) through employment law? And what are the structures through which the new world of work can or should be produced?

Politicising law and destabilising definitions of workers

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 2014). 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.

Regulation and its discontents

The scope of labour market protections envisaged by the ILO 'decent work' agenda would seem to offer potential to lobby for international labour (and human rights) standards which seek to regulate forms of work previously thought unable to be effectively regulated. The adoption of the ILO Domestic Workers Convention (ILO, 2011) could be seen as an example of a significant achievement for non-conventional trade unions and civil society organisations determined to mobilise through national but also global political action. Although it should also be noted that the number of ratifications as at 16 September 2018 sits only at 25 and enforcement even by these States remains questionable. What the adoption of the Convention at least demonstrates is that, 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 (GFAs) is also indicative of such regulatory possibilities. These agreements incorporate ILO norms regarding labour standards but also more recently principles concerning sustainability and better corporate governance.² Further, cross-border collective

² A list of GFAs, which may be signed by more than one GUF, is to be found on the 'Global Unions' website which keeps a collated archive. (See <<http://www.global-unions.org/-framework-agreements->

action (which is still continued in the field of dock work and shipping) also gives some hope that new forms of negotiation through solidarity can have beneficial local effects despite current obstructive legal regimes (see De Stefano 2016 and Dorssemont et al 2007).

Further, we are seeing some success 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’s that 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 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.

The ‘informal’ work of cooking, cleaning, caring, growing, harvesting, and other tasks constitutes a spectrum of often gendered and racialized activities, and the exploitation of workers in these roles often revolves around their unwaged, informal or little visible 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. Examining the policy and practical options possible to expand the room for alternative ways of organising, distributing and reconfiguring the work of social reproduction is an area of inquiry as relevant and pertinent for the current and evolving world of work as that of AI and robotisation, even if these areas, which capture futuristic imaginaries, capture more attention and financial support.

Work enmeshed in regulation: at which levels is reform necessary?

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. 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 WTO, in this way

<http://ec.europa.eu/social/main.jsp?catId=978&langId=en>). The European Commission also keeps a list of international and European framework agreements accurate up until 2015 (<<http://ec.europa.eu/social/main.jsp?catId=978&langId=en>>).

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) At the same time, forms of control are 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.

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 ILO seems determined to look self-critically at its own activities and methods so as to achieve the objectives of the 2008 ILO Declaration on Social Justice (ILO, 2008). 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') (UN, 2011). The Sustainable Development Goals (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, despite the advocacy of participatory engagement (in SDG 16) and (in SDG 17) global regulatory cooperation between trade and other institutions.

What may be needed more is reform (and softening) of international economic law as is indicated in SDG 17. However, there is limited guidance in the SDGs as to how this can and should be achieved. For example, 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, but there is no explicit discussion of how investment law and arbitration might need to be redesigned to achieve such aims. What will matter is how the specifications for change are debated and detailed, especially around work. Reforming work will also require a consideration of different bodies of law beyond labour or employment law, as focus on these specific areas of 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. We need to be open to a fuller definition of work and greater participatory engagement in determining the terms of engagement and protection.

Conclusion

Work, as a category, is being destabilised by both recognition of ever-present forms of already existing labour, such as unpaid care work, and through the advent of increased forms of mechanisation (or even the use of 'robots'). However, as we have reviewed in this paper, the manifestations of 'new' work, represent continuities from already existing relations of production. As part of these working relations, some work is hidden and gifted to capitalist accumulation, while other work involves technological components which may be used to innovate and apparently change working relations. However, as seen in the case of care work and agricultural work, such change is incomplete and while some tasks may be suitable for automation, others are not. Therefore, we are more likely to see the advent of more technologically automated production *mediated* and *overseen* by workers, than by a fully transformed labour market. Crucially, in such processes of change and deepening of labour relations, already existing gendered, racialised and otherwise unequal social hierarchies are remarkably contingent on historical power relations.

The legal enmeshment of working relations demonstrates the complexity and entrenchment of global power as manifested through the governance of work. We have shown how the law is both active and responsive to social norms in producing the categories and conditions in which contemporary working practices take place. Furthermore, the laws, regulations and other legal or quasi-legal instruments that go far beyond the discrete arenas of labour and employment regulation as international economic law, contracts and trade agreements have determining impacts for the hierarchies in which workers and types of work are situated. The renewed interest in the pertinent questions of worker recognition and conceptualisation in the context of the fears and fantasies in social discourse over a 'new' world of work present an opportunity. The possibility to seriously enquire into the meaning of work, and the ways through which its regulation and governance is positioned in relation to global finance and production is important to uptake. This present attention to core continuities from which that opportunity arises is aimed at supporting and informing these inquiries. The new world of work may not be new, but it requires new thinking in order to grasp the opportunities that it holds for workers. In particular, we look forward to further debate regarding legal and political efforts to avert the further degradation of work but rather enable recognition of a broader span of work, enhanced remuneration for those selling their labour and empowerment for those who do so.

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