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Law and Legalities at Work: HR Practitioners as Quasi-Legal Professionals

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ABSTRACT

Building upon research that explores the managerialisation of law and the production of 'symbolic' and 'cosmetic' compliance, this article explores the way in which HR professionals understand and engage in the (re)production of legality at work. Drawing on interviews, observation and discourse analysis, it presents rich qualitative data on the legal consciousness of HR professionals to argue that the profession has become increasingly lawyer-like, or quasi-legal. Legal expertise confers legitimacy and authority upon a somewhat compromised professional identity, which clambers for status within corporate hierarchies. The mobilisation of law occurs in ways that reflect the familiar contradictions of HRM practitioners' conflicted role as both 'employee champions' and 'business partners'. Labour law is mobilised in ways that lend substance and authoritativeness to organisational policies and procedures, but also help employers to 'sail close to the wind' legally: law is harnessed to protect employers, keeping them out of court and legitimising a managerial paradigm of what is 'right', 'fair' and justifiable. The overall effect is primarily to strengthen the employer's hand to act, whether by stifling disputes, conferring legitimacy upon organisationally defined versions of legality, or justifying core-periphery divides and the necessity for flexibility and organisational 'agility'. The encoding of quasi-law can render labour law itself largely invisible to workers, making it difficult for them to have recourse to it when required.

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1. INTRODUCTION: THE RULE OF LAW AT WORK

Labour law, in Karl Klare's succinct formulation, 'came into its own as a modern discipline by decisively rejecting the liberal assumption that the contract of employment is a product of parties' autonomous choices'.[1] The 'bedrock assumption' of unequal bargaining power forms 'common ground in the disciplinary mainstream that ameliorating and constraining capital-labour domination is a necessary condition of establishing a democratic and tolerably egalitarian society'.[2] For much of the twentieth century, labour law was brought into the workplace primarily by trade unions, which acted as ever-present labour inspectorates ensuring that legal rules (and collectively negotiated terms and conditions) were complied with and taking action when they were not. Increasingly, this role now falls to HR departments. HR practitioners are responsible for drafting and implementing organisational policies and procedures concerning such matters as recruitment, probation, professional development, promotion, redundancies and dismissals. Much of what they do involves putting policies and decisions into writing in the form of letters, emails, contracts and corporate codes, the latter comprising provisions that organisations (typically publicly) declare themselves bound by.

Since the 1970s, the professionalisation of the HR function has been closely bound up with processes of juridification, as a proliferation of new laws—employment laws, equality laws—suggested a new and more assertive purpose for personnel managers as 'compliance professionals',[3] as well as strategic business partners. The HR profession has drawn upon the expanding legal framework as part of their claim to expertise, helping organisations to demonstrate compliance with the law. Compliance may be more symbolic than real, however, securing rather ambivalent outcomes when measured against labour law's worker-protective objectives.

In the USA, important research has been done on the fate of law and legalities within corporations by organisational theorists, beginning with Phillip Selznick in the 1960s. Writing at a point in time when the New Deal and the

[1] K. Klare, 'The Horizons of Transformative Labour and Employment Law' in J. Conaghan, R. M. Fischl and K. Klare (eds.), *Labour Law in an Era of Globalization* (Oxford: OUP, 2004) 13.

[2] Ibid.

[3] F. Dobbin and J. R. Sutton, 'The Strength of a Weak State: the Rights Revolution and the Rise of Human Resources. (1998) 104 *American Journal of Sociology* 441.

Wagner Act might have been assumed to have 'tamed' capitalism for good,[4] Selznick appeared strikingly optimistic about the potential for the rule of law to find expression within employing organisations, instituting a form of 'industrial justice'.[5] By the late 1990s, Lauren Edelman, herself a former student of Selznick's, provided more critical commentary on what she called organisations' 'symbolic structures', used to demonstrate forms of 'cosmetic compliance' with the law. In the course of employers constructing their own 'private codes',[6] law can become 'managerialized',[7] Edelman argued, losing its normative integrity.[8] Whereas Selznick was quick to characterise law as a civilising force, others have been rather more hesitant. Edelman has considered how law is managerialised as it is implemented, and how managerially defined forms of compliance are met, at least in the US context, with considerable 'judicial deference'.[9] In the UK, Lizzie Barmes has explored similar processes of employers demonstrating compliance, finding that judges go to great lengths to adjudicate disputes in the ET fairly, looking beyond managerial rhetoric. Barmes' work underlines that a much more fundamental concern, in the UK, is that so few legal claims are ever raised.

Recognising this fact, the concern of this paper lies not with courts, tribunals or adjudication, but with employing organisations and the HR profession as key actors in the interpretation, selective articulation and dissemination of law at work. While we have an expanding knowledge of how law is implemented within an organisational setting, little research has explored the legal mobilisation and consciousness of the HR profession. Yet, human resource management involves powerful processes in which legal ideology is combined with potent political-economic discourses, communicating new spirits of capitalism,[10] justifying and legitimising various management practices and their place within our economies and societies.[11] Institutions like the Chartered Institute of Personnel and Development

[4] R. Dukes and W. Streeck, *Democracy at Work: Contract, Status and Post-Industrial Justice* (London: Polity Press, forthcoming).

[5] P. Selznick, *Law, Society, and Industrial Justice* (New York: Russell Sage, 1969).

[6] H. Arthurs, 'Private Ordering and Workers' Rights in the Global Economy' in Conaghan et al. (2004), note 1, at p. 471.

[7] L. Edelman, *Working Law* (Chicago, IL: University of Chicago Press, 2016).

[8] L. Barmes, *Bullying and Behavioural Conflict at Work: The Duality of Individual Rights.* (Oxford: OUP, 2015).

[9] Edelman, n.7.

[10] L. Boltanski and E. Chiapello, *The New Spirit of Capitalism* (London: Verso, 2018).

[11] R. Dukes and E. Kirk, 'Law, Economy and Legal Consciousness at Work', *Northern Ireland Legal Quarterly*, forthcoming.

(CIPD), the main body of HR professionals in the UK, with a membership of over 150,000 worldwide,[12] projects professional discourses, which reproduce a very particular version of labour law.[13] As producers and transmitters of legal ideologies, HR practitioners powerfully shape societal notions of legalities at work, influencing workers' ability to mobilise their rights.

While sometimes taking up the rhetoric of 'employee champion', and claiming to 'better work and working lives',[14] the HR profession is a dedicated 'business partner', whose allegiance is primarily to management. Having an interest in demonstrating compliance as a central element of their expertise, monitoring and responding to the regulatory environment has become a major source of practitioners' professional legitimacy.[15] To remain credible within corporate hierarchies however, HR practitioners have tended towards celebrating and promoting selective elements of law, in line with the professional paradigm. Reminiscent of the kind of 'progressive neoliberalism' that was characteristic of Clinton's Democrats and Blair's New Labour, HRM filters and interprets law in accordance with an ideology that contains a combination of 'truncated ideals of emancipation and lethal forms of financialization'.[16] Pointing to an ongoing marketisation of law and policy, Kerry Rittich has argued that a place remains here for progressive policies that promote, for example, gender and racial equality, but only on the basis of facilitating workers' fullest participation in economic activity.[17] On that basis, non-discrimination rights may be vigorously promoted while the discourse around, for example, collective rights remains muted if not openly hostile. The selective articulation of some rights and values and legal concepts and hesitation in the face of other proposals, such as the outright banning of zero-hour contracts, or the promotion of independent worker voice, rarely supported by HR professionals, or celebrated within professional bodies, colours how organisational text and talk is formulated.

Remarkably, little research has explored in-depth how these important actors deploy law, the extent to which they understand themselves to be

[12] https://www.cipd.co.uk/membership#gref.

[13] Dukes and Kirk, n.11; D Doorey, 'What Is Human Resources Law?' *LLRN Draft paper*, June 2021.

[14] https://www.cipd.co.uk/about/who-we-are/purpose#gref.

[15] Dobbin and Sutton, n.3.

[16] N. Fraser, 'The End of Progressive Neoliberalism' (2017) *Dissent*, https://www.dissentmagazine.org/online_articles/progressive-neoliberalism-reactionary-populism-nancy-fraser.

[17] K. Rittich, 'Making Natural Markets: Flexibility as Labour Market Truth' (2014) 65(3) *Northern Ireland Legal Quarterly* 323.

legal actors, or how they experience and reconcile their impact on workers and working lives. Seeking to address these gaps, this article is divided into five sections. First, the paper very briefly outlines the literature on laypeople and law as helpful in understanding the growing legal professionalisation of HR. A second section outlines the design of an empirical study, involving 45 interviews with HR and legal professionals, observation and discourse analysis. Findings are presented in the third and main section, exploring the increasingly central role of law to HR professionals, and how they understand the law and justify the ethical and legal grey areas of their work. Organisational rules, policies and procedures are typically shaped by (state) law, they may be presented and treated by HR as law, or law-like, and understood as such by affected workers and others. Critically, however, this is a form of law—if a pluralist lens allows us to badge it as such—or *quasi*-law, without the rule of law. Those who make the rules may also 'bend' them, or even find ways to disapply them, if the situation demands it. The discussion section explores the wider ideological work done to (state) law in the process; the managerialisation of law as well as the use of legal constraints as legitimation of managerial practices.[18] Ultimately, the article illuminates the undertheorised processes through which legal ideology, is 'transmitted from the specialist arenas of legal discourse', installing itself within popular consciousness to varying degrees; and how, in the course of such processes, legal ideology is 'struggled over and recombined with' other—especially economic—ideological elements'.[19] While the HR profession has a genuine, institutionalised interest in promoting particular legal ideas, and compliance as part of their proffered expertise, they are also always bound by organisational priorities: flexibility, profit-making, maximisation of shareholder value. Law is filtered through this prism, and this in turn profoundly shapes our conceptions of legality at work: those taken-for-granted assumptions about what is right, fair, appropriate, egregious and unchangeable.

2. LAYPEOPLE, LAW AND LEGALITIES AT WORK

A large, critical literature debunks the claims of HRM to be a straightforwardly benign force within organisations, promoting fairness and serving employees as well as senior management and shareholders.[20] The profession

[18] Ibid.

[19] A. Hunt, *Explorations in Law and Society* (London: Routledge, 1993) at 149.

[20] For example, K. Legge, *Human Resource Management: Rhetorics and Realities* (Basingstoke: Palgrave, 2004).

is riven by contradictions manifest in its dual identities as 'employee champion', and 'business partner'. While in principle, the profession may share aspects of labour law's normative agenda, little research has explored the work the profession does *with* and *to* law. Aiming to uncover how ostensibly 'non-expert' actors understand, invoke, learn of, reproduce, transform or reject 'law', however, consciously or unconsciously, the present study draws on legal consciousness research (LCR), itself rooted in critical legal studies, to further nuance the picture of how law and law's power is invoked and wielded at work.

The concern of LCR is to understand how 'laypeople'—the non-professional subjects of law[21]—interact with and mobilise law, a significant concern in the context of an increasingly 'law-thick world'.[22] LCR can therefore be used to investigate the relationship between 'laypeople' and labour law, exploring how we understand 'legality' at work, our taken-for-granted assumptions about what is 'legal' or not, and how we seek to invoke 'law', however defined, in our working lives. Juridification—defined as a proliferation of law, or the 'law on the books', an expansion of law's reach into new areas of social relations, or as a more nebulous and questionable notion of increasing 'legal-mindedness'[23]—has been understood as a defining feature of late modernity[24] and *the* key trend in employment relations in recent decades.[25] Certain actors, including corporations and actors within them, such as HR professionals, have become increasingly proficient in the language of the law, and hence powerful mobilisers of law. In the context of trade union decline, 'bridging the law'[26] into the workplace increasingly falls to HR departments. As such, HR professionals have a critical role in (re)producing law as an institution. It becomes important to explore how law is participated in, mobilised, and less

[21] P. Ewick and S. Silbey, *The Common Place of Law: Stories from Everyday Life* (Chicago, IL: Chicago UP, 1998). 1026.

[22] P. Pleasance, N. J. Balmer and C. Denvir, 'Wrong about Rights: Public Knowledge of Key Areas of Consumer, Housing and Employment Law in England and Wales' (2017) 80 *Modern Law Review* 836.

[23] E. Kirk, 'Legal Consciousness and the Sociology of Labour Law' (2021) 53 *ILJ* 405.

[24] Hunt, n.19.

[25] E. Heery 'Debating Employment Law' in P. Blyton, E. Heery and P. Turnbull (eds), *Reassessing the Employment Relationship* (Basingstoke: Palgrave Macmillan, 2010) 71.

[26] L. Dickens, 'Women—A Rediscovered Resource?' (1989) 20(3) *Industrial Relations Journal* 167.

consciously reproduced by them, and the implications of this activity for societal notions of legality.

Within LCR, the relative importance of state law, and its reach or even hegemony is pitted against a secular approach more concerned, it is claimed, to attend to the bottom-up formulation of non-state, customary law and social norms.[27] For present purposes, it suffices to note that is important, from an LCR perspective, to attend to how formal, positive law is articulated and disseminated while being reinterpreted, subverted, resisted or ignored, and the feedback loops involved. 'Every time a person interprets some event in terms of legal concepts or terminology—whether to applaud or to criticize, whether to appropriate or resist—legality is produced. This production may involve innovations as well as faithful replication. Either way, repeated invocation of the law sustains its capacity to comprise social relations'.[28] Law as an institution is robust because of its multifaceted appearance to us as simultaneously a variety of cultural schemas which shape action and inaction. It is at once impartial, transcendent, magisterial and game-like, requiring skill, at times rigged against us, and producing unfair outcomes.[29]

Recognising an uneven distribution of expertise, knowledgeability, and ideological orientations among lay actors including institutions, this article considers how HR professionals may draw upon law's power to legitimise and make authoritative their own decisions and actions. Notably, HR professionals are not subject to the same kind of ethical and professional responsibilities or scrutiny as solicitors and other legal professionals. They deploy quasi-law, which can be bent to fit business needs, rather than upholding the felicity of the law, or acting as 'officers to the court'.[30] It may be expected that HR practitioners encode and enact law in ways that serve the(ir) employer, but the wider significance of this process of translation and encoding is that it may profoundly shape workers' sense of legalities, 'the meanings, source of authority and cultural practices that are commonly recognised as legal, regardless of who employs them or for what ends'.[31] Such legalities may have a more or less close correspondence to positive law in ways that support or hinder its effective mobilisation by workers.

[27] Kirk, n.23.
[28] Ewick and Silbey, n.21, at p. 45.
[29] Ibid.
[30] https://www.sra.org.uk/solicitors/standards-regulations/.
[31] Ewick and Silbey, n.21, at p. 20.

3. RESEARCH DESIGN

The aim of the research was to explore how HR practitioners engage in and influence processes of contracting for work, conceived as social, economic and legal activity.[32] In line with an LCR framing, the definition of law and its place in participants' working lives was problematised rather than assumed. Invitations to participate in the research necessarily included a broad overview of its aims, but the interviews themselves were loosely structured and discussions wide-ranging. The dataset was compiled from 45 Interviews (39 HR, 6 lawyers) conducted in 2019–21; attendance at various professional events (CIPD conferences/branch networks, CBI, law firm seminars and updates); and secondary analysis of texts (CIPD materials, reports and responses to consultations). Analysis proceeded at two levels, firstly considering the ways in which HR professionals consciously engaged with, invoked, participated in legal processes; in other words, their surface-level attitudes, beliefs and activities. A secondary level of thematic analysis concerned reading between the lines, exploring the ideological structure of discourses regarding legalities and the work this does in relation to either reproducing or transforming law as an institution.

Variation was sought in virtually all relevant possible dimensions, such as seniority and sector. Respondents came from facilities management, finance, fintech, media and broadcasting, pharmaceuticals, utilities, higher education, hospitality, social care, charities and parts of the civil service. Twenty-six of 39 worked in the private sector, 7 in the public sector and 6 in not-for-profits. Twenty-six of 39 were female and 13 male. Positions ranged from HR advisor to director. The sample is likely to overrepresent senior people working in image-conscious organisations, and while the interviewees appear candid in their reflections, there is likely some conscious or unconscious impression management at play, bound up with a wish to project professionalism.[33] As managers with at least some responsibility for how the organisations function, interviewees were likely to present a rosy picture. I gently probed contradictions and sought counter examples of where things went wrong and why that might be. Initially, the only criterion for inclusion was that the

[32] R. Dukes, 'The Economic Sociology of Labour Law' (2019) 46 *Journal of Law and Society* 396.

[33] A similar experience was documented by I. B. Lyabock and G. Mundlak. 'Negotiating Compliance When Employment Law Is Ambitious' (2021) 37 *International Journal of Comparative Labour Law and Industrial Relations* 183.

individual worked in HR. After initial snowball sampling of existing contacts, professionals were approached through various online forums, for example, HR or employment law groups on LinkedIn as well as in-person seminars and professional networking events.

As the research progressed, lawyers were included in the interviews with a view to understanding their experiences of advising HR professionals or observing them on opposite sides of disputes.[34] At some point, the possible importance of comparing the work of lawyers and HR professionals emerged and became a more explicit focus. Also unexpected was the degree of overlap between the two professions. Many HR professionals had undergraduate law degrees and several participants were fully qualified legal professionals working in HR roles or as consultants. Some had switched roles because they preferred to work 'in-house' while others had sought a more desirable pattern of working time and intensity (HR32).

4. FINDINGS

A. Quasi-Lawyers

The growing volume and complexity of law was identified by interviewees as central to—'hand-in-hand' with—the professionalisation of personnel management, a 'key driver for the HR profession' (HR27). Some HR roles are fairly exclusively focused on the 'employment law side of things' (HR6), involving a high level of legal expertise. Self-identifying as lawyer-like, with 'strong synergies' across the professions (HR20), one interviewee felt, 'especially in some roles that I've done, that I am more of an employment lawyer than an HR person' (HR17). This self-identity extended to referring to professional legal advice in terms of a 'second opinion'. Some fully qualified lawyers held hybrid roles, with titles like 'HR manager (Employment Solicitor)' (HR32). Others were not legally qualified but had sought to 'cultivate' legal expertise as their 'USP': 'That was my thing, I'll try and be as expert as I can be' (HR8). Interviewees spoke of significant efforts to keep up to date, refreshing policies and procedures, sometimes feeling 'nervous about whether you're up-to-date' with the changing legal framework (HR11).

[34] 1/6 was female. Two worked exclusively for the employee/worker/union side. One worked exclusively for employers and the two did both.

In the main, HR professionals found their work more legalistic than undergraduate HR degrees had prepared them for. A paralegal qualification, sought once in an HR role, gave one interviewee the 'confidence' to 'be able to just pick up and run with' legal disputes (HR24). She found that 'probably 50% of the stuff' her HR degree included, 'you don't use'. In contrast, 'the paralegal stuff you can apply day in, day out'. More generally, with employment law 'lacking from the educational piece', 'you end up teaching yourself whenever you come out'. While there is no formal requirement to engage in legal training as part of CIPD accredited qualifications, or to update knowledge as part of continuous professional development as lawyers do, a mini industry of employment law updates for HRM has emerged. Sessions are offered, mostly by law firms, on an informal and more formal, paid basis, including the aforementioned breakfast seminars, crammed in before already busy days. Interviewees also brushed up the basics when required, such as revising Acas procedures when a disciplinary hearing looms, 'just to put you in the right frame of mind' (HR12).

HR professionals felt that their organisations expect their legal expertise to be 'up to speed', particularly for senior roles, as 'the professional that your workplace looks to, to have the answers' (HR23). Legal professionalisation is in part driven by cost concerns. Law degrees helped some obtain HR roles where 'what they wanted was a lawyer that was cheap' (HR2), or they were 'looking to move away from the cost of using external legal teams…get the HR team doing a bit more' (HR24). Universities may also have a role in heightening the perception that legal expertise is crucial, as they seek to recruit students.[35]

The burgeoning profession has embraced and promoted elements of law and drawn legitimacy from being informed about it. Interviewees often described the growing 'credibility' of HRM.

> When I first started…personnel was more…paper pushing…you didn't consult employment law back in those days you didn't really care. There wasn't much around it... (HR27)

Expressing trepidation over the implications for workers, wider society and the administration of justice, one lawyer suggested that unlike your average worker, or even small employer, most HR professionals were not fully laypeople, but rather quasi-legal professionals, raising questions about

[35] I am grateful to Noah Zatz for this point.

the equality of arms before the employment tribunal (ET), and rules of procedure.

> [In] the judges training for the employment tribunal, so much focus is put on assisting litigants in person that they seem to extend that to HR consultants as well which I find to be quite mad. (LR3).

Meanwhile, smaller employers without an in-house HR practitioner were described as closer in preparedness to an average non-worker worker (LR6)

Much of the work HR does could be described as lawyer-like 'legal labour', advising managers, drafting letters, contracts, codes and embedding law in organisational practice. Such work was distinguished from more episodic problem-solving work. Like lawyers, HR practitioners provided 'options', 'possibly recommendations'. In some instances, 'we say, we partner in the decision making, which is a bit unusual' (HR32), rather than being 'in the driving seat' of initiatives.[36] There is some variation in the division of legal labour and the configuration of internal and external legal (and HR) expertise. Despite growing legal professionalisation of HR, many large, often public sector, organisations also have their own in-house counsel and, where a dispute looks to be 'heading for a tribunal', involve external counsel 'just to be squeaky clean' (HR3). Inside organisations, the legal labour of drafting policies and advising managers is undertaken by lower-level HR advisors, who research what they can themselves and then seek external assistance. As a cost-effective tool, 'Google is our best mate…at least to have a first check' (HR12). Senior professionals described their legal labour as coordinating local legal expertise across multinational operations. At the same time as HR professionals are becoming more lawyer-like, there are an array of law firms, and HR solutions and 'litigation' consultancy operations, often staffed by lawyers, servicing employers, especially smaller companies with limited resources. 'The offering of the business' is 'we will be your HR department' (LR6).

B. Not Quite Lawyers

HR practitioners are not, like lawyers, officers of the court, servants of the law or indeed held to any specific professional or ethical standards in this respect. HR professionals also firmly distinguished themselves from lawyers

[36] P. Thompson, 'The Trouble with HRM' (2011) 21 *Human Resource Management Journal* 355.

in many ways. Chief among these is the idea that, 'Lawyers are not very commercial, they just look at things in a law way…you need them to be able to look at the business side of things' (HR6).

HR professionals experienced complex loyalties. However much some believed in 'progressive' values, 'You can't just be an employee champion… there are times where you need to make decisions and give employees bad news' (HR19). For some, such rhetoric-reality gaps created disillusionment.

> People at eighteen years old choose to do HR because they think that they are taking care of people, which is a very good reason. But imagine you choose to be a doctor and you find out that actually you have to kill people! (HR16).

These contradictory roles have implications with regard to participation in legal processes, legal mobilisation and the construction of legalities at work.

> I can be judge, jury and executioner on a daily basis… you could be sitting listening to someone and trying to support them with mental health issues…[then] looking to discipline someone upon that and terminate them from the business… You wear many hats. You can be the guidance counsellor, you can be the executioner. (HR24)

> You need to be a chameleon…a psychologist, a teacher, a policeman! (HR4)

HR practitioners primarily protect the(ir) employer; 'there to advise management rather than in the interests of the employee full stop' (HR5), 'an instrument of the company more often than not' (HR14). Given that lawyers most often represent employers, however, those who had shifted to HR found 'going from being a solicitor when you spend all your time telling people how to fairly get rid of someone', refreshingly 'employee friendly' (HR32). Difficulties balancing conflicting aspects of their roles, reflecting a somewhat compromised professional identity nevertheless arose regularly in interviews. Many had 'fallen in' to HR. 'You aren't playing with my trains at six, "I'm going into HR, I'm going to be a human punch bag"' (HR8).

Upon this 'spoiled' or conflicted identity, legal expertise can confer legitimacy and authority. Managers 'respect that I know what I'm talking about rather than I'm just you know Beccy from HR that's trying to make life difficult for everyone' (HR18). One hybrid practitioner noticed, 'a marked difference in the way that people respond to you…they can be really dismissive', until 'someone mentions that you're a lawyer, that's given so much more weight…people just assume that everything that you say is right' (HR32).

HR derive legitimacy, in particular, as intermediaries. Interviewees stressed the limits of HR's quasi-legal role: though they drew legitimacy from being legally informed and conversant, pure law was seen as 'for lawyers'. Quoting law is not generally effective or persuasive. HR act instead as interpreters who filter law and legal ideology and translate for organisational purposes.

> It's quite a tedious, long process. You are dealing with lawyers who talk legal in legal terms. You have to bring down policies that employees can read, understand and you can apply… All of the concepts are so different…there's a lot of toing and froing. (HR6)

The law keeps HR people 'on the right track, and justifies why companies need HR as well' (HR31). Lawyers are not commercial enough, whereas operational managers are aggressively so. HR blend the two. One HR professional noted how 'it takes away the legitimacy of our team' if she allowed managers to directly 'liaise with lawyers' (HR6). Equally, 'dictating what the law is…gives the wrong message'…people think, 'oh well, if I wanted to know that I would write to the employment lawyer. You wouldn't need HR' (HR27). HR take decisions that involve surveying the legal framework, but formulating something else, something 'different to what a pure legal position would be' (HR33), assessing legal risk but also human behaviour.

Importantly, what is formally legal and what is simply organisational policy, strategy or culture becomes difficult to discern. Getting things in writing 'makes what they say more emphatic, more permanent…some say more "legal"'.[37] In this process, what is law, and what is merely managerial prerogative becomes imperceptibly mixed, making organisational versions more authoritative, adding to the informational disadvantage faced by workers within dispute processes. At the same time, law is made invisible, a fine thread woven through the spine of the formal organisational structure. Often it is in the fine print of organisational text, like staff handbooks, which while not formally legal documents are nevertheless scrutinised as potentially implied into contracts, and referred to in disciplinary situations. 'On the face of it' staff handbooks can appear as,

> quirky and fun, you were joining a family, wee pictures… 'We're a cute, quirky little coffee shop, it's artisan...' But the reality of the text of it was quite legalistic… … the wording was absolutely scrutinised for every single line. (HR2)

[37] Ewick and Silbey, as n.21, at p. xxi.

In the public sector, what is employer policy and law are virtually indistinguishable, even to HR.

> Our processes are so tied down in procedure the law is already there it's built in. It's only on rare occasions like constructive dismissal… where you would suddenly think right, switch off here and put your legal head on… You're thinking about the Equality Act all the time. It's so embedded in the procedures that you don't actually even necessarily even realise what it is that you're doing until something comes up. (HR3)

The reproduction of private codes at organisational level involves legal labour as a literary art. 'Textualisation', involving careful drafting, makes text more authoritative, seemingly more legal. Written policies were described as indispensable to compliance. One interviewee was shocked that a previous employer had little in the way of written policies. She thought, 'What do you mean? How do you stay compliant?' (HR10). Such text additionally creates audit trails to justify decisions concerning selection for redundancy, discipline and dismissal, and may be cynically viewed as 'a lot of back covering' (HR5). Once written, the text becomes the authoritative version.

Thus, when 'good HR departments…apply our own employment law' (HR4), this version is likely to be inflected by managerial prerogative. HR professionals frequently described themselves providing advice differently to lawyers' 'kind of black letter law advice and ultra-risk adverse' style (HR30). It was also patently aimed at 'the line manager rather than the employees' (HR1). As far as communicating rights and entitlements to employees, interviewees pointed to various texts in which law is buried.

> Maybe that comes back to the question earlier, how do your employees know [the law]? The handbook will help, the culture work we've done on that, our values, our behaviours all of that's in there as well as the policies and procedures so that would help. (HR23)

Beyond this, most 'don't think it is HR's place to explain to everybody the ins and outs' of law, or 'educate and inform everybody about their rights'. Contracts set out expectations, but 'people need to and should do and should take responsibility for their own actions, their own understandings… I wouldn't ever say 'this is all because of da-da-da-da-da legislation'. No, that can come out' (HR17). It is probably 'naive and unrealistic to expect employers to have a session with our employees about', 'this is how you can take us to tribunal' (LR6). However, given that people draw much of their knowledge, and put considerable faith in organisationally defined versions

of legality,[38] the question of what onus should be placed upon employers to communicate authentic accounts of rights and responsibilities lingers. Changes, such as to rules of the ET are not 'greatly publicised but equally the information's there for anybody that wants to look it up…Do you go on a big publicity blitz? Well, no…you don't really want… your employees worrying about industrial tribunals' (HR11). Exceptions included matters like 'letting them know what they shouldn't do so they can lose their job' (HR4).

Mostly, the letter of the law is to be kept in letters and other formal text. In preference to a 'robotic legalistic lawyer way' of talking (HR17), HR engage in 'human' conversations, the subject of which are nevertheless regularly suffused with legal implications.

> When you're letting people go, you do it in a human way…. like the language you use… I've got a letter, I won't sort of hand that over at the beginning, I won't use words like 'termination' and 'dismissal.' You say, 'everything's in the letter'. The legal stuff was there but it was this kind of idea of the parallel process. (HR8)

C. HR Professionals' Mobilisation of Law

Going 'for gold standard' as an HR person 'is always exciting' (HR33). Having a desire to make employers more 'socially progressive' (HR32), practitioners often attempted to steer organisations to go beyond mere compliance. Policies are 'refreshed', procedures are upgraded in line with the law, often via second-hand readings of materials from the CIPD, Acas, the blogs of law firms and formal legal advice.

> When there's new law we're all excited, like, 'yes, something new!'… We look at it, analyse it, try and renew it… have a cyclical review of things. (HR6).

Law can help actors to make difficult decisions, providing an impartial logic or 'rules for decision'.[39] Some interviews described how they 'quite like the law…. I'm quite black and white and I like to know that we're following the procedure' (HR18). Law was a helpful guide, as 'there are very few vagaries that aren't dealt with either by the statutes or case law' (HR14).

[38] E. Kirk and N. Busby, 'Led up the Tribunal Path? Employment Disputes, Legal Consciousness and Trust in the Protection of Law' (2017) 7 *Oñati Socio-Legal Series* 139.

[39] E. Ehrlich, *Fundamental Principles of the Sociology of Law* (Cambridge, MA: Harvard University Press, 1936).

Sometimes a legal basis could be used where 'senior management might need to be reined in slightly' (HR19), preventing them from going 'off at a tangent' (HR28). Doing so involves training HR teams 'to really put their foot down', and being 'hundred percent sure of your employment law to say, "Great idea! However, you need to take into consideration X, Y and Z"' (HR28). In instances like 'ill-health dismissals, where people just want to get rid of people' (HR24), law was wielded to prevent a situation where 'corners would be cut… people wouldn't do proper investigations' (HR7). Some interviewees would make managers who wished to dismiss someone pause to reflect, 'Have you had the right conversations? You have to be fair… taking away someone's job is a really big thing' (HR10). HR professionals were nevertheless loathing to rely on law to persuade managers. Some described it as being 'terrible' of them to 'play the card' of legal risk (HR12). Others felt, 'we hide behind the law too much', and 'throw it in their face', but nonetheless 'need something that will reel [managers] in… employment law gives HR people the framework to do that' (HR6).

While HR professionals understood law largely to improve organisational practices, they also recognised that the regulatory burden had to be minimised. Some also described how they drew on their legal knowledge to, for example, 'created a process called "Modified Dismissal"… to get around the disciplinary process for people that have got under career service just to look to exit them that bit quicker with limited risk' (HR24).

Improving or upgrading in line with the law was understood in terms of protecting the organisation as well as raising standards for workers. HR sometimes have to overrule managers, saying, '"Well, no, sorry you employ me for a reason I'm here to keep you out of court, so this is the decision that has to be made"'. (HR18). But HR also helps organisations 'sail close to the wind', complying minimally with the law, 'finding efficient ways of managing staff, whether that's dismissing them', 'performance management, whichever version… finding ways for the business to do things that… weren't illegal but weren't necessarily ethically what you would want to be doing' (HR2). Interviewees offered comparisons of strategies across sectors. The 'culturally risk averse', public sector unsurprisingly stick to the letter of the law, to avoid 'any sort of public backlash' (HR17). In the private sector,

> You have to be good at sailing as close to the wind as possible when it comes to the law without breaching it. Morally, the law is the law, you shouldn't be breaching it. But at the same time, we're here to help the business. (HR17)

'Sailing close to the wind' included practices related to fissuring that were regressive but lawful:

> I can think of some cases, employee relations issues where we've had to bend things. A TUPE transfer's a great example. The law says if you are on that particular programme and it moves to another supplier then you go with them, fine. Actually, as a business we have won this contract on the basis that we can operate it with less people and do it in a different way. Now, upfront TUPE law says we must take all these people but then being a smart HR person, you can dig into it, you can pick out things like, 'Oh, fragmentation of service',… 'We're operating it in a different way.' You are then bending the law to fit the business and actually I find that I have to do that quite a lot. (HR17).

The word 'no' is not part of the professional lexicon. A 'can-do' attitude is expected, underpinning creative compliance. HR must 'be commercial…the days of, "well, you can't do that, the policy says no, the computer says no", are gone' (HR26). Saying, 'no, we're not allowed to do this', they don't want to hear that. They want to hear, 'we can't do it this way, but here's a way that we can do it' (HR13). Projecting professionalism, interviewees shunned the image of 'finger waggers'. One stressed, 'I don't see it as my job', 'just to sit up on my mound and give a bunch of thou shalt nots' (HR1). They 'would never go into a business meeting quoting the law' as the 'starting point'; 'it's not very commercial' (HR13). 'It can get up people's noses…just a red rag to a bull for most senior folk' (HR23).

'Best practice' was understood to mean something more than simply translating law into lay-terminology, and 'avoiding legalese' (HR1); something more business-driven. Law should be flexibly interpreted to fit the organisation.

> It's there in the background… it's there to be used and manipulated in some ways… What's right for the company? What's right for the person? That's where you should start and then work the law around that. (HR9)

How law is mobilised depends not only on the individual disposition of the professional but on context: the general nature of the organisation and its product or service offer. When dealing with legal disputes, interviewees could feel compromised by management attempts to 'close ranks'.[40] Not infrequently in dismissals or disciplinaries, 'it was made pretty clear', by

[40] A. Pollert, *The Unorganised Worker.* UWE Working Paper. (2006) https://www2.uwe.ac.uk/faculties/BBS/BUS/Research/CESR/CESRWP5.pdf.

managers 'what the outcome of that was going to be and you'd be sitting there going no I didn't hear that!… There's no outcome decided yet! Shush!' (HR2). Saying that 'employment law keeps HR right' (HR4), may be an invocation of the pathway by which law is felicitously represented and upheld as pristine organisational legality. HR also help employers become extremely difficult to challenge, even where a worker has a well-founded legal claim. Law and procedural formality are used to bolster HR, and by extension the employers' legitimacy, making them intimidating adversaries in the context of any dispute. The organisation becomes Teflon, and challenges are easily cleaned up and off.

D. What Is 'Law' at Work?

The LCR literature observes that laypeople can discuss law, often within the same breath, as at once magisterial, game-like, and an oppressive force.[41] In accordance with that observation, HR practitioners understand and mobilise law in multiple ways simultaneously. Interviewees revered law, admiring the legal profession, having wanted to be lawyers, or describing impressive judges or dramatic legal battles. Reverence was combined with respect for the seriousness of breach of the law; practitioners were 'very conscious about being compliant', but also 'very scared of law [laughs]… we should be' (HR10). Law often appeared as having a fundamental logic or rationale. Law 'gets in the way the same way it does with criminals who are trying to launder money or whatever or like the police get in the way it's there for a reason' (HR26). Law's fundamental logic was often described as intuitive, assumedly reflecting shared societal values, or 'common sense' (HR7). Interviewees shared observations of how people understand law. 'Mainly people… don't really look into it too much when they feel like they've been wronged, that's when they start to think', 'then they become the field's experts', taking inspiration from 'a couple of lines, that support their cause, without fully researching the issue' (HR22). 'People have moral standards that they would say, "you absolutely can't do that!" Not realising they absolutely could, if they wanted to, they absolutely could' (ibid.). Addressing the interviewer, one professional expressed the sense of trust in law that she had observed: 'You're probably the same, you get lots of like friends saying', '… they surely can't do that?' And you're like, 'they can. As sad as that is.'… We expect it to be kinder, don't we, than it really is'.

[41] Ewick and Silbey, n.21.

Legal and social norms can blur as 'legalities' whereby they operate as assumedly shared standards. Seasoned professionals suggest that people only latterly 'apply their legal minds', and compare their sense of injustice 'against the legal overlay', having,

> an abstract sense, on both sides, of, 'I am right', or, 'I should be right', and expect that that by consequence of their subjective sense of justice. 'Well, the law, whatever it may be must align itself to my position there', without checking. (LR6)

Upon checking or getting advice, people often learn that employers are given significant leeway to act as they please. 'You do see people who have been treated badly, but not unlawfully…privately you agree with them, they have been dealt with shoddily' (LR6). Judges were seen as practised in the art of conveying that 'in a sense' they accept what the claimant says, but that 'there is no legal recourse open to you here'. That's very much I reality, particularly on that side' (LR6). As causal observers of the law, we tend to have a vague awareness of rights.[42] We hear the headlines but are not necessarily aware of the small print, often where the caveats and qualifications are. A related assumption, reflecting something between law as magisterial and all powerful, and law is a game, is the assumption that magic words can be deployed by the gifted or highly educated, expressing an 'undeserved reverence for the law and what it does, people think it's somehow like sorcery. If you do the magic words, then like it will be there' (LR1). Deploying legal text authoritatively extends to drafting assumedly 'watertight' contracts that protect companies from liability through 'contractual distancing'.[43]

If 'there's a lot of magical thinking around, which lawyers contribute to, portraying themselves as performing this arcane craft that only they can do' (LR1), HR professionals have increasingly sought to draw upon this power, albeit working law, at the same time, in game-like terms of gambling and risk. Referring to the two years' qualifying period for unfair dismissal, before which employers can 'fire willy-nilly', one remarked that employers 'can always get round that if they wanted to', 'with settlement agreements', 'push money at people… You can I suppose if you like, not contravene the law, but you can still work with it' (HR23). Playful but skilful artists can pick and choose a pinch of this and a spoonful of that. 'The law is the recipe book and

[42] See Pleasance et al, n.22.

[43] N. Countouris and V. De Stefano, 'The "Long Covid" of Work relations and the Future of Remote Work' Social Europe, https://www.socialeurope.eu/the-long-covid-of-work-relations-and-the-future-of-remote-work.

the stew is what we make of it' (HR17). HR practitioners figure like coaches in this game, rather than the main players. How 'sporting' managers feel is related to how great a barrier the law is considered. One interviewee recollected advising a manager who 'loved fast cars'.

> He wanted somebody to do something. I said, 'well, the speed limit's seventy. You want me to go at a hundred and twenty. If we get caught in your Maclaren, you're going to lose your licence, are you cool with that? No? OK seventy it is.' (HR17)

Skilful players interpret the rules and how to respond. Law need not get in the way of the experienced, who have an 'understanding and insight… Most things boil down to relative simplicity. There are relatively simple ways of dealing with grievances, misconduct, health and safety' (HR11). Law gets in the way if HR 'overresponds' to regulation. HR must be 'measured and proportionate in what it does', rather than 'rabid' (HR11).

E. The Professional Paradigm

While expressing multiple, overlapping and sometimes contradictory narratives of law simultaneously, the data also contained patterned responses. Quasi-law is constructed collectively among professional networks who define and reinforce shared morality and boundaries, as well as reproduced day-to-day by individuals. Interviewees spoke of the importance of having others 'to bounce ideas off of', as 'a lot of employment law's about what is reasonable… there's a lot of discussion points, there's never a good answer' (HR32). Shared understandings of what is 'reasonable' has some basis in formal law as well as being shaped by wider professional discourses. Professional bodies, like the CIPD, produce as well as transmit legal ideology, combining economic discourses of business and 'the market'.[44] Selective elements of law are polished such as non-discrimination rights as the jewels in the crown of neoliberal legitimacy and respectability, while others such as collective rights are barely acknowledged.

While there was criticism and ambivalence from some, most interviewees cited the CIPD (usually alongside Acas) as highly legally conversant and influential. Some spoke of 'constantly looking on their website, referring to their language… That and employment law, it's a mixture… I do follow a lot of the guidance between CIPD, employment law, HR Grapevine, Personnel

[44] Dukes and Kirk, n.11.

Today'. (HR27). The CIPD purveys reams of information, factsheets, reports, training and responses to consultations from government relating to law, notably appreciated during the COVID pandemic.

As part of their professional project, the CIPD have espoused 'championing better work and working lives', while also being fairly conservative about most aspects of legal change. As 'employee champions, the profession has an interest in promoting a degree of worker-protective measures which they help organisations comply with'. As business partners, this should be 'light-touch'. Interviewees reflected that law is 'probably at about the right level… Would I like less of it? No' (HR17). When HR professionals spoke of law and regulation, they commonly identified areas like shared parental leave as a prime area in which employee protections should develop. Rights to request flexible working also align with ensuring maximum participation in economic activity. This key neoliberal objective in relation to labour market activation, was echoed policy discourses at organisational level. One example is the 'Orwellian shift and in the language' from 'absence' to 'attendance management', aligning practices with discourses of wellness and well-being, underneath which 'the practitioners haven't shifted paradigms so the outcomes will be the same' (HR5).

More broadly, elements of equality featured prominently and approvingly: 'Discrimination is high on my agenda' (HR28); 'virtually every part of' policies 'will refer you back to the Equality Act at some point' (HR3). In places, law becomes virtually synonymous with 'political correctness', and sanitised workplaces[45] in which, 'you need to be careful… not to judge someone or offend someone… it's becoming very, very regulated' (HR4). Recognition of the need for such enculturation was seen as won, 'fifty years ago', back 'when the employment law stuff was necessary' (HR8).

The guiding values, though progressive in some senses are ultimately neoliberal. Chief among them, in addition to equality are flexibility, its close cousin, agility and freedom of movement.

> You're making flexibility your middle name… the unwritten rule is that we will give you freedom, we will give you flexibility, but you will do what you have to do when we ask you to do it… it's an unwritten law. (HR4)

The 'bad bits' of law, such as 'Immigration laws… are completely at odds with what we're trying to do in HR', restricting the talent pool. 'The rest of

[45] Barmes, n.8.

the employment laws and I don't really have any objections to' (HR31). Reiterating the need to be commercial, having experience in financial services was seen as crucial or ambitious professionals who 'didn't want to be pigeonholed as a public sector type person… HR can be quite snobby if you don't come from an "FS" background' (HR17).

Third way non-politics reverberates through professional discourses underscoring the limits of its aspirations. SHRM, a US-based professional body, states in their public policy priorities that it 'believes in the power of policy, not politics'.[46] Apolitical posturing emerged in interviews, and negotiations regarding what could be attributed. Some discussed deeply held 'personal' beliefs about matters like closing loopholes on corporation tax, ensuring living wages and addressing working poverty, but did not wish to be associated with 'political' commentary, suggesting that such views may not fit the expected line of an HR professional. This reflects the same reasoning behind making law invisible, lest it promotes 'an adversarial tribal-type environment' (HR8), invoking 'fear', and 'a sense of combativeness' (HR9), at odds with HRM's central unitarism.[47] Working with unions had helped some 'understand how you should go about' processes 'in the proper way' (HR12), but unions were more commonly seen as being out of step with market realities, and for some, being part of unions would be a patent conflict of interest- 'poacher turned gamekeeper' (HR26).

References to 'the market', both labour and product/business, tended to portray it as what is on offer presently, rather than a human-made political-economic situation. It appeared as an immovable force, negating agency, perhaps in part as a means of absolving responsibility for decision-making. The market decides. One HR professional had herself raised a tribunal claim against a former employer. For her, it 'wasn't about the money', but 'getting justice'. For the organisation, 'it's completely about the money for them…That's the most profitable way to deal with the situation... It's not because they are horrible people' (HR7). Accordingly, organisational insiders may invoke 'impersonal market forces' to ameliorate cognitive dissonance regarding the impact of their own, or organisational acts.

[46] https://advocacy.shrm.org/wp-content/uploads/2021/04/SHRM-2021-Policy-Priorities-Brochure.pdf.

[47] See Barmes, n.8.

F. Justification

HR professionals do feel morally compromised. 'Call it dissonance if you want, I just didn't agree with all the things I was supposed to do. It…made me not very well' (HR5). Whether abhorring the treatment of certain groups, for example, the cleaners of surgical instruments, who are 'paid buttons…but you're still expecting so much professionalism from them' (HR5), or understanding that aggressive absence management is 'low hanging fruit', 'an easy one to get people on, which is awful' (HR2), many were conflicted. They rationalised, 'I had my bills to pay…I was worried I was going to lose my job' (HR9). One interviewee, married to a union representative, had 'blazing arguments' over the elements of her work she found upsetting such as dismissing people. He'd be like, 'Well, why are you doing it?' I'm like, 'that job pays for our mortgage… I don't have a choice… They won't pay me anymore if I stop sacking them'. (HR2).

Acceptance of 'business needs' as trumping all other concerns varied. Some felt that HR are too 'risk averse and have gold-plated everything above and beyond what it needs to be', hindering 'the agility of the business', 'a custom and a practice which needs to be broken down' (HR17). Good organisations can do questionable things, so long as it is not all the time.

> Where we have had to cut certain things people, remuneration, bonuses... there's always been an overriding business need for it, but the stated position is that's not going to be a forever. It's a one-off. (ibid).

The professional paradigm is centrally focused on high-value core employees. Workers and contractors who orbit the outer reaches of the organisations, often at the lower levels of the hierarchy, are often an organisational afterthought. As they are not the main focus of day-to-day HR work, they were often not considered a central responsibility. Interviewees would talk of how they primarily 'dealt with permanent employees, but I've had temporary workers in all my workplaces' (HR10), suggesting that such workers were not the imagined recipient of HR initiatives or services. There is an 'oh, them' mentality.

Organisations, or at least managers within them sometimes seek to bypass their own procedures in the name of agility. Small businesses and public sector businesses 'would quite often hire temps so that they could circumnavigate the bureaucracy of their own HR systems…temp-to-perm trialling people, rather than going through a probation period… A lot of people use temps as a way to get around things' (HR7).

There is a circulatory logic at play in that the justification for using precarious contracts, including for entry into the HR profession, is itself based on the normalisation of hyper-competition for insider roles. Student interns, in the need of experience for example were cited as a justifiable means of giving them a leg-up into employment, clambering out of the hoard of graduate job-seekers (HR31).

HR do question managers saying, 'we need resources', or, 'we're starting a project'.

> OK, how long do you need this for? What do you need it for? …What happens once the project has finished?.. That's when you kind of guide that decision… 'hold on, do we really need to have so many temporary workers? Why don't we have more permanent staff?' (HR10)

The professional paradigm celebrates 'agility', albeit within certain limits, which HR departments remind managers of. In contexts like higher education, having a percentage of people on precarious contracts is seen as inevitable, rooted in marketisation of the sector and a political economy of short-termism for which HR are in 'not in the driving seat'.[48] Several respondents did fret wider political concerns: outreach to deprived communities, supporting better quality jobs beyond their organisations, but ultimately considered this beyond HR's remit.

5. DISCUSSION

It is perhaps worth clarifying that the intended object of critique in this article is the institution of law as it is deployed within an organisational setting, rather than the person(s) doing the deploying—not least because people anyway deploy multiple legalities at the same time, in often contradictory ways.[49] Law is multifaceted, appearing as a set of transcendent rules and institutions to be complied with more or less strictly, soaked up at breakfast briefings and webinars. It is a game to be played, with risks attached, something that can be 'worked', the behaviour of other players gambled upon. It can also 'get in the way', figuring as 'red tape' constraining agile organisations.

[48] Thompson, n.36.
[49] Ewick and Silbey, n.21.

Within organisations, law is mobilised by a contradictory profession, in contradictory ways. Law is invoked in ways that confer legitimacy on the profession and bolster organisational practices, including those that delineate valued core from disposable periphery. This is law understood through a prism of progressive neoliberalism, which refracts a narrow spectrum of aspirations and ideas of justice. Labour law's objectives are rehearsed and promoted within strict limits, always constrained by market realities. Mostly, the ideological work is unconscious. HR professionals believe in making workplaces better, albeit within the limits of a particular imaginary of what 'better work and working lives' could include, to borrow the CIPD tagline. They seek to prevent breaches of rights and to promote full compliance, often aiming for a 'gold standard'. At the same time, however, they see themselves as ultimately protecting the employer, and are ready to close ranks in the course of disputes. The primary impact of HRM is to strength the employer's hand to act as it sees fit, within the law, or bending the law, not always justly, but with an appearance of legitimacy, keeping out of court. If HR have replaced trade unions as guardians of procedure, the normalisation of their switching hats in the event of disputes is especially concerning.

Quasi-professionals draft employer codes which project an 'aura of legitimacy'.[50] Having an impact beyond employing organisations, such codes can shape societal conceptions of legality, what we generally expect and accept at work. Blending managerial prerogative with aspects of law, employers' quasi-law becomes indistinguishable, to many, from formal law 'on the books'. HR upgrades organisational practices in the main but also builds power and legitimacy that can be used to thwart attempts by workers in disputes, strengthening the employers' hand, and encouraging workers to believe that they do not need a union since they enjoy a suite of rights, and most employers are upstanding corporate citizens.[51] Nonetheless a sample of HR practitioners, likely to be skewed towards the most professional, attests to participating in the sport of 'sailing close to the wind', in ways related to the fissuring of the workplace, the disappearance of jobs and dismissal of workers. They see this as demanded by their roles, by management and markets.

As Harry Arthurs has emphasised, employer codes are not new but date back to at least the 17th century.[52] Over time, they have grown more

[50] Edelman, n.7.
[51] Kirk and Busby, n.38.
[52] Arthurs, n.6.

sophisticated, more widespread and more attendant to proliferating state law. Such codes include rules, manuals, staff handbooks and collective agreements as well as more explicit 'book of laws', such as found at the Crowley steelworks of centuries past. As Marx put it, 'In the factory code, the capitalist formulates his autocratic power like a private legislator'.[53] Following a brief high point of union power, codes are now drafted quite freely by management in line with its own priorities, albeit in increasing closely documented compliance with externally defined legal norms and statutory minima. These codes of various kinds share two key characteristics.[54] First, they provide rules to regulate internally. Second, they also project an external image of the employers as socially responsible, progressive and so on, partly out of concern for reputational damage and also so as to attract customers, valuable employees and business partners. To Arthurs' points, we can add that they are central to the reproduction of societal notions of legality, shared beyond specific workplaces. There is a lot of rhetoric surrounding rights, much of it proffered by HR departments and the CIPD. We may be well aware of the rhetoric-reality gaps in employing organisations, but less aware of how those gaps 'feed back' into formal law. Many who have attempted to enforce rights realise too late how qualified unfair dismissal is, for example, or hard it can be to sustain an ET case.[55] In the course of industrial disputes, striking workers receive emails from HR about what they can or cannot do, in which it is hard to discern law from organisational policy.

Carefully worded text holds a cultural place as a legitimising force. That which is set down is encoded as the employer's law. An extreme and well-publicised version of such private rule- or law-making is offered by online platforms, which engage in creative non-compliance through very careful drafting of contracts for work.[56] Invoking the 'law as a game' metaphor, HR professionals referred to the flexible interpretation of rules that can be bent by smart players, invoking imagery of gambling as well as sport, an apt extension of business ideas of Darwinian survival of the fittest, with the latest fashion being for 'agility' and even 'creative destruction'—move fast and break things.

The growth of the HR profession has been bound up with juridification. Such practices as creative non-compliance or the production of symbolic

[53] K. Marx, *Capital, Volume 1* (Harmondsworth: Penguin, 1976), at p. 549.
[54] Arthurs, n.6.
[55] Kirk and Busby, n.38.
[56] A. Bogg and M. Ford, 'The Death of Contract in Determining Employment Status' (2021) 137 *Law Quarterly Review* 392.

structures of compliance may help to explain the lack of social progress associated with legal proliferation. The UK in particular has a peculiar history of labour law, involving a simultaneous expansion of rights and successive efforts to prevent their enforcement.[57] This peculiar history is replicated at workplace level. At the same time, as the HR profession draws upon law's power to bolster its legitimacy, it takes steps to lighten the legal burdens on business. Both critiques of the HR profession as not always acting in workers interests, or entirely in the spirit of the law, and the concerns of HR professionals themselves to be taken seriously, and guided effectively, raise the question of greater regulation of the profession. Both lawyers and HR practitioners were interested in the idea of upholding good, ethical practice and the rule of law. Holding HR professionals to higher professional standards could potentially steer them more firmly in the direction of employee champion, rather than business partner. It could empower them, at the same time as it conferred upon them greater responsibilities. The possibility remains, however, that such reforms might only lead to more skilful symbolic compliance and empowerment of the HR profession rather than workers.

6. CONCLUSION

Drawing on LCR, the aim of this article was to understand how an ostensibly lay actor interacts with and reproduces law. Research findings suggested that HR practitioners be defined, rather, as quasi-legal professionals, engaged in upgrading organisational policies and processes in line with the law and, at the same time, using the law to facilitate and legitimise managerial decisions and practices. In the course of HR's interactions with the law, and their encoding of organisational policies, procedures and decisions, what is law, and what is merely managerial prerogative becomes imperceptibly mixed; organisational texts appear authoritative, adding to the informational disadvantage faced by workers. Ultimately, this raises the question of how HR-infused legalities shape wider societal consciousness, bolstering the legitimacy of contemporary capitalism and contributing to our vague imaginaries of labour law, which combined with weak enforcement procedures leaves us unprepared to realise our rights.

[57] Barmes, n.8.