

# Special Issue, Work on Demand: Editorial Introduction

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The *Work on Demand* project addresses the question of how scholars of labour law might adjust their approaches and methods so as to explain recent trends in the field including, in particular, the increased use of forms of contract that have been designed to shift the burden of risk from the employer to the worker. When it comes to the study of labour law today, a shortcoming of traditional, socio-legal approaches is their focus on the regulatory function of collective bargaining and their treatment of the individual contractual and market aspects of working relations as having been largely supplanted or suppressed by collective institutions and class relations. In comparison to the working relations of unionised, Fordist workers, deeply embedded in welfare states, trade union representation and collective bargaining, working relations today are more obviously (dis-embedded) market relations. Throughout the developed world, there has been a significant rise in the proportion of workers hired through agencies, or as part-time, or casual, or zero-hours workers, or as formally self-employed ‘entrepreneurs’, paid by ‘clients’ for the performance of discrete tasks or ‘gigs’. From the point of view of workers, this has been experienced as a loss of security in employment; the substitution of ‘jobs for life’ with a new reality of short-term or fixed-term hires, weak or no legal protections against redundancy or dismissal, and the prospect of participating several or many times throughout their lives in external labour markets. For scholars, it has created the need for an approach or set of approaches to the study of labour law that can allow for consideration of the individual and the market, as well as the social and legal, aspects of working relations.

With this challenge in mind, Ruth Dukes argued in 2018 for what she called an *economic sociology of labour law*, or ESLL.<sup>1</sup> Building on the work

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<sup>1</sup>R. Dukes, ‘The Economic Sociology of Labour Law’ (2019) 46(3) *Journal of Law and Society* 396–422.

of Max Weber, and of Wolfgang Streeck and Jens Beckert, she conceived of ESLL as comprising an economic sociological analysis of contracting for work at the micro level, with a kind of historical-institutionalist political economy.<sup>2</sup> The political economy approach allows for analysis from a macro perspective of how collective interests and collective actions shape the operation of the economy in concrete historical conditions; of the role of the state and state law in shaping the economy and society, and the power relations that configure the capacity of different individuals and groups to do the same. Adapting and using Weber's notion of the *labour constitution* facilitates the mapping of the various 'contexts' within which contracting for work takes place and the understanding of these contexts in their legal, economic and social dimensions.

Each of the contributions to this special issue addresses these themes in one way or another.

The first deals with questions of race and the legal construction of labour markets. Diamond Ashiagbor adopts a long view to explore interconnections and continuities between, on the one hand, racial inequalities in contemporary labour markets and, on the other, the legacies of colonialism and racial distinctions in the evolution of the market economy. She argues highly persuasively that race, racism and the legacies of colonialism are central elements of the political economy of labour markets and, as such, deserving of labour law scholars' attention. Using a case study of the British labour market since 1945, Manoj Dias-Abey investigates the various ways in which migration can shape labour markets and vice versa, adding unfamiliar and important material to an otherwise well-known story. In doing so, he adopts a 'legal institutionalist' approach to the subject matter, well-suited he suggests to a place-sensitive study of particular labour markets and their regulation.

The third and fourth articles in this issue both investigate particular labour constitutions, seeking explanations of the legal, economic and social construction of the working relations governed by those constitutions. Gregoris Ioannou analyses the labour constitution of the tourism and catering sector in Greece. Since labour laws are universally applicable across the sector, how might we account for very significant variation in workers' terms and conditions? Not only labour market conditions and labour law

<sup>2</sup>See especially, M. Weber, *Economy and Society* in G. Roth and C. Wittig (eds) (Berkeley, CA: University of California Press, 1978); J. Beckert and W. Streeck, 'Economic Sociology and Political Economy: A Programmatic Perspective' (2008) *MPIfG Working Paper* 08/4.

reforms are relevant here, Ioannou demonstrates, but also location, seasonality, taxation and, finally, community and cultural factors that affect the reputation of workers and employers and structure the playing out of social power dynamics. Eleanor Kirk's focus lies with the workings of employment law inside employing organisations and specifically with the human resource (HR) profession and their role as 'quasi-legal' actors, reproducing and deploying 'quasi-law'. The main objective for Kirk is to understand how HR professionals understand, react to and use employment law in their working lives, and how their legal action is shaped by their ambivalent position as the champion of employees' interests within the organisation and the partners, or aides, of management.

In the first of three articles to focus on gig or platform work, the historian Noel Whiteside examines the approach taken by social reformers and government in the early twentieth century to the problem of casual work — understood, at the time, as a *cause* of poverty, rather than its cure, and as the major factor explaining a rising incidence of social dependency. Whiteside's focus is with public policy, legislation and the socio-political factors that can constrain legal interventions in the field of employment relations. Tonia Novitz assesses the case for legal reform of gig work today, arguing that the notion or goal of sustainability could aid the construction of a political case for new legal measures to address the most exploitative and 'indecent' elements of such work. Bertolini and Dukes consider the role of trade unions in achieving a similar goal. Focusing on the UK, they explore the markedly different approaches taken by so-called 'traditional' and 'alternative' unions to the representation of platform workers' interests. Law figures here as an objective of the unions, seeking law reform through lobbying, campaigning and strategic litigation, and as an important part of the context shaping the unions' strategic choices.

While Ashiagbor is the only author explicitly to adopt the language of ESLL in describing her approach to her topic, all seven articles share the ambition of *Work on Demand* to understand the economic, as well as the social and legal aspects of working relations today. Taken together, they provide important examples and indications of how to achieve that goal.