From Social Norms to Legal Norms:
Regulating Work in Post-Neoliberal Political Economies

Ruth Dukes and Wolfgang Streeck

Labour law scholarship is traditionally pluralist in its approach. Aiming to understand the regulation of work and working relations, scholars have recognised the importance of taking into account not only formal law – statutory and judge-made rules – but also the terms of collective agreements, norms originating from the 'custom and practice' of a particular trade, the rulebooks of factories and plants, and the constitutions of trade unions and employers' associations. Used descriptively in relation to labour law, the term 'pluralism' or 'industrial pluralism', has been intended to capture something of the 'complexity, heterogeneity and internal diversity', as Harry Arthurs put it, of the field:

> the inability of overarching normative regimes to penetrate and transform all contexts, such as places of work, and the persistent tendency of such contexts themselves to generate and enforce distinctive norms expressing values which are, at least in some respects, different from those of the encompassing society (Arthurs, 1985).

In industrial sociology, it has long been recognised that an important source of informal norms at work – shared beliefs about how the work ought to be done and by whom – are groups of workers at particular workplaces and with shared occupations: so-called 'occupational communities'. In the literature, occupational communities are defined as 'group[s] of people who consider themselves to be engaged in the same sort of work; whose social and personal identity is drawn from such work; and who, to varying degrees, recognize and share with one another job specific (but, to various degrees, contentious) values, norms and perspectives that apply to but extend beyond work related matters' (Van Maanen and Barley, 1984). The *locus classicus* is a 1956 volume by Seymour Martin Lipset and co-authors, *Union Democracy: The Internal Politics of the International Typographical Union* (Lipset et al, 1956). Undertaking to explain the unique structure and industrial power of the trade union in question, Lipset et al pointed to the labour process in printing, which required printers to work at night. This isolated the workers from others with more conventional time schedules and made them dependent for their social life on each other, which in turn made for

a pattern of deep social integration in a collective culture formed around printing as an occupation. The degree of social integration sustained not only a powerful trade union but also book clubs, choirs and chess tournaments. Over time, it resulted in strong relations of solidarity and in the development of collective ideas of what the printers owed to their employer and what the employer in turn owed them: a sense of occupational or 'industrial justice', of a good day's wage for a good day's work, and of how work should be organized to respect a worker's dignity and his right to a life outside of work, together with friends and family (Selznick, 1969).

The printers of the International Typographical Union were an extreme case, as Lipset et al knew very well. Like other extreme cases, however, their study threw into relief general phenomena present but less easily detectable elsewhere. In a 1967 study of compositors, for example, Isidore Cyril Cannon observed the creation and enforcement of rules and 'moral values' within communities of workers at workplaces and, more formally, within their 'chapels' – the compositors' works councils, or workplace organizations, which existed in parallel with the trade union, organizationally distinct from it (Cannon, 1967). In the case of the compositors, the formation of occupational communities was again facilitated by the nature of the work, which allowed for easy contact between the workers and frequently required them to seek and provide each other with assistance. The compositors' rules regulated working practices within the firm, and relations between the workers, including especially relations of solidarity. If someone got married, or had a baby, or retired, for example, all co-workers were expected to contribute to a 'pass-round'. In addition to the trade union, workers were expected to join various friendly societies and to make periodic contributions to funds out of which pensions might eventually be paid, or assistance in case of injury or illness. Pensions for which eligibility was decided by popular vote provided a particularly strong incentive to win and maintain the approval of the community as a whole. As Cannon observed, transgressions from accepted behaviour were routinely discouraged informally by jokes, practical jokes or less gentle forms of group admonition or censure. Pressures to conform might extend to manners of dress and speaking, and even to leisure activities and choice of reading matter.

Today, in the aftermath of the decline of industrial work and the disappearance of male labour aristocracies, occupational communities might be expected to have disappeared. As even a cursory literature survey reveals, however, the concept of occupational community,

referencing the moral embeddedness of work in life and life in work, remains very useful for the study of labour relations and the regulation of work, even in the new service sector with its small firms, ostensibly low-skilled work, precarious and on-demand employment, and ambiguous work relations between contracting parties. The notion of the moral embeddedness of economic action is of course very usefully elaborated in Chris Hann's Polanyian economic anthropology.[i] Ethnographic studies of the past twenty years, close to and in the spirit of research conducted at the Halle institute, indicate that even workers in low-status occupations tend to develop positive identifications with their work, typically based upon pride in the performance of work tasks perceived to be difficult.[ii] Identification with work and occupation is reinforced and becomes collective identification through workers' interactions with fellow-workers (Adler and Adler, 1999). As in the past, occupational communities straddle the boundary between work and non-work and seek a satisfactory balance between them (Sandiford and Seymour, 2007). They perform important functions for the successful discharge of work duties and may, under favourable conditions, provide a social substructure for the formulation and articulation of the collective interests of workers (Adams et al, 2012). A fascinating recent example concerns app-based ride-hail drivers in Indonesia, a sizable proportion of whom have formed and joined community organisations that operate on a mutual aid logic, characterised by strong bonds of social commitment (Ford and Honan, 2019). Like other gig workers, these drivers rely heavily on social media (in this case WhatsApp) to stay in touch while they perform their spatially isolated work tasks. Online communication facilitates mutual assistance and support 'on the job' and can lead to or supplement face-to-face contact at designated meeting places or social events.[iii]

As Arthurs emphasised in his discussion of pluralism, informal norms of industrial justice are related to formal law in complex ways (Arthurs, 1985). In some cases, legal rules may have their origins in social norms or practices, for example where elements of 'custom and practice' are held by the courts to be legally binding, or where the terms of collective agreements are accorded legal force by reason of a court ruling or statutory provision. In other cases, however, legal rules and social norms may be at odds with each other, so that the former are perceived by those affected to be unfair or unrealistic. As a result, breach of the law may go unchallenged in a manner that undermines, over time, its efficacy and legitimacy. It is also possible that the substance of applicable legal rules may shape workers' perceptions of what is fair in a given situation. The 'knowledgeability' of social and economic action is

invested, we might say, with legal notions and concepts, even if these are apprehended by the actors themselves in the guise of practices, routines, or shared understandings that are only dimly reminiscent of the legal rule from which they originally stem (Knegt, 2017; Weber, 1978).

How might the relation of informal norms to formal law at work (workplaces or occupations) be institutionalized to produce equitable and legitimate labour market regimes? For much of the twentieth century, collective bargaining – the setting of wages and conditions through collective negotiations between unions and employers, or associations of employers – performed this function. Of course the concrete shape of collective bargaining differed between national 'labour constitutions' and over time, depending on the distribution of political and economic power and the structure and fortunes of the national economy (Dukes, 2014). What its different incorporations had in common, nonetheless, was that they instituted a chain from perceptions of industrial justice at the level of work groups and occupational communities to voluntary or semi-voluntary organizations; in particular, trade unions. These organizations then integrated the local sentiments into supra-local collective interests and represented them vis-a-vis employers and in national politics. At each stage, provided that union leaderships did not get too far divorced from their grassroots – provided, in other words, that unions remained democratic organizations – worker interests became more generally defined, ultimately as class interests for a national system of industrial relations, taking account of their prospect of realization and backed by increasingly broad collective solidarity.

Trade unions, in particular, functioned as transmission belts between the life-world of workers in different workplaces and industries, and the general system of formal legal rules designed to provide for order and fairness in markets for labour, by balancing the stark asymmetry inherent in 'contracting for work' among individuals rather than collectives. That is not to say, of course, that there was any kind of straightforward replication within collective agreements of the workers' notions of what was just. Periodically renegotiable, collective agreements are better understood as temporary compromises, signed by both sides in spite of unreconciled values and, often, irreconcilable interests. As such, collective bargaining was an essential part of postwar democracies. Postwar labour constitutions provided legitimacy and stability to parliamentary democracies by integrating the social classes within what was functionally a second tier of government; one which bore primary

responsibility for effecting a redistribution of wealth, and related elements of class compromise.

It is widely known that collective bargaining has been on the decline in recent decades, as have all institutions mediating between the market and the state, the local and the national (Streeck, 2006). Attacks on trade unions by governments and employers cut workers off from upward chains of political integration and representation. Industrial and organisational change compounded the problem, as the emergence of smaller workplaces in the service sector with highly diverse employment systems made it more difficult to link local demands of workers for industrial justice to collective political projects and to support the local enforcement of general rights and regulation. A shift towards contract law pure and simple, private rather than public and individual instead of collective, cut workers and workplaces off from collective labour law, referring them to state-operated and typically overburdened institutions of ex post adjudication of grievances. In the regulation of work and working relations today there is, as a result, much greater variety – and inequality – between and within sectors, companies and workplaces. With the appearance of novel forms of contracting for work, such as zero hours contracts and ostensibly self-employed 'gigging', large holes have opened up in national or sectoral floors of minimum standards, which unions appear powerless and governments disinclined to close up. Previously comprehensive systems of social welfare have in many countries been transformed into a combination of labour market activation devices and, increasingly, only the barest of provision for the otherwise destitute.

Against this background of the dismantling and fracturing of postwar labour constitutions, a stark comparison emerges between the industrial occupational communities of the past and their contemporary counterparts. The former, as we have seen, were often mainsprings of trade unionism. Especially where the nature of the labour process lent itself to frequent contact and relations of mutual assistance at work, and for socializing with coworkers at the end of the working day (or night), the workforce could become socially integrated with a collective culture that sustained relations of solidarity and effective trade unionism. Today, occupational communities continue to exist, performing important functions for the successful discharge of work duties, however, their capacity to form a social substructure for the formulation and articulation of workers' collective interests is hindered in a variety of ways; not least, by a lack of contact and increased competition between workers, due either to the nature of the work or the way that it is organized by the employer.

A review of the literature on contemporary occupational communities suggests that service workers tend to have high levels of job satisfaction and deep commitment and involvement, even in low wage, low status jobs and precarious and casual employment (Korczynski, 2003). A possible explanation is the presence of clients or customers in the work situation, taking the place of material objects in manufacturing and joining the employer as another patron demanding good work. Low morale – refusing to do one's best in protest at low wages and poor conditions – would in such circumstances hurt not just the employer but also real people asking for help face-to-face. As a result, solidarity among co-workers tends to centre first and foremost around mutual assistance with the job, as colleagues become an indispensable source of job-related knowledge (Adams et al, 2012). This seems to be especially true in occupations and sectors without codified training, where most learning is on the job, due to client needs being highly diverse so as to defy standardization, or because employers wish to save on investment in training programmes. This may make occupational communities above all communities of practice, which may or may not be conducive to their transformation into communities of adversarial interest formation. Where jobs with customers or clients are concerned, there also seems to be a high degree of self-selection by workers who are particularly eager to help others and who excel at it, even under adverse conditions (Korczynski, 2003; Adams et al, 2012). One upshot might be that if something goes wrong, workers may tend to blame themselves rather than the demands of the job. Apparently this adds to the tendency for workers to rely on occupational communities for mental and motivational 'repair work', even though this may be viewed with suspicion by employers, because informal communication among workers is considered either a waste of time or as incipient insurrection. All of this may make it difficult to use the occupational communities of the new service sector as springboards of worker interest representation or trade unionism: the personal and social gratifications – the low 'alienation' – and the sense of duty that come with working with people; the individualized nature of job tasks and performance; the experience of solidarity as task-centred support; and the mastery of difficult assignments.

While workers' understandings and beliefs no longer routinely shape the rules governing the organisation of work and the terms and conditions of employment as directly as they once did, however, they remain nonetheless highly relevant to the legitimacy of statutory and contractual rules, and of management policies, and to the efficacy and enforcement thereof. In new sectors and occupations in particular, legal rules made without the participation of

workers on the ground may be rejected as impractical or useless, not just by employers bent on minimizing the influence and the range of worker-protective regulation, but also by the providers of labour power themselves. Focusing exclusively on formal legal norms (statutory rules, common law rules, contractual rules) and human resource management practices to the neglect of informal social norms, cannot deliver a full understanding of the normativity of working life. Nothing less is required than in-depth empirical study of work and employment: a social anthropology of work that understands the embeddedness of occupational communities within the larger institutional contexts provided by the labour constitutions of the sectors and jurisdictions in question. As Chris Hann has untiringly pointed out, these in turn must be considered in their historical, political and cultural context, and in their complex relationship with the old and the new, and with traditional and capitalist ways of life.

If labour law aspires to be relevant, as originally intended, to the post-industrial workplaces of today – and, even more so, of the future – it must undergo a fundamental reconstruction. In particular, it must resist attempts to reduce it to a set of substantive legal rules designed to entitle individual workers or employers to bring individual grievances before the courts or tribunals. While such a reduction may lend itself to dogmatic consistency in the field of labour law, guaranteeing a dominant role for judges and jurists, it at the same time overlooks the collective nature of working life and of the interests arising in it: the ongoing everyday struggle between workers and employers over a proper balance between wage and effort, work and life. To create and preserve that balance, much more is needed than the possibility of raising a claim against an employer before the court. Rather than appeal to a third party, be it a judge or the legislature, workers should be empowered by a proper instructional framework to participate directly in both the setting of the rules applicable to their workplace and the enforcement of such rules. This is just another way of saying that labour law, in addition to state law, must also and again be *popular* law, law from below, created by workers and employers for workers and employers exercising a fundamental right to industrial self-government (Selznick, 1969).

The task of reconstructing labour law so as to make it fit for a post-industrial, post-neoliberal social order involves recourse to two logics of collective-political action: the logic of informal norm-setting and the logic of formal institution-building. Social anthropologists can help with the former, since they are well-equipped to explore how different perceptions of work-in-life and life-in-work may turn into collective worldviews associated with distinct

ideas of social justice. Sociologists and political scientists, in turn, can contribute insights into the channelling of collective action by formal institutions, so as to make it compatible with the cultural values of an encompassing society, and thereby provide it with legitimacy. It is here that the notion of the labour constitution is central, not least because – analogous to the constitution of a state – it both guarantees and limits spheres of freedom to define, articulate and pursue collective interests. In this way, it on the one hand relieves the state of the need to get involved in the minute details of workplace governance — a need it anyway cannot fill — and on the other hand opens up a space for the democratic participation of the many, and not just the few.

In the aftermath of the wave of neoliberal institutional destruction — or neoliberal statism, which is the same thing — the re-building of viable societies requires an effective norms-to-institutions-to-interests-to-politics-to-regulation chain, responsive to the diversification of contemporary worlds of work. An institutional setting that satisfies the requirements of a legitimate translation of social norms into binding regulations must allow for discovery and expression of, potentially widely divergent, collective ideas of justice at the base of a society's political and economic system. Here a reconstructed labour law must see to it that there are spaces for free communication between workers that are protected from being narrowed or closed or penetrated, in whatever way, by the employers. Broader social institutions, in particular properly institutionalized trade unions, are then required to aggregate the specific concepts of justice forming among their constituents into a more general ideology; to transform them into 'realistic' collective interests, taking into account here not least the likelihood of their successful pursuit in the industrial and political arena.[iv] In the political arena, the aggregated interests sustained by a variety of related concepts of justice enter into policy packages that reflect the intensity and the breadth of the support that can be mobilized on their behalf. In the administrative practice of government, they may then give rise to binding regulations enforceable before the courts, with the support of industrial citizens in the workplace. It is here that extant regulations have to prove their relevance to or *fit* with the social relations of production lest they are neglected or overturned in practice, restarting the process of involvement of local communities, occupational or otherwise, in the making and remaking of a society's labour law.

For labour law to recover its capacity to regulate working relations across the board, correcting the inherent asymmetries of contracting for work under contemporary, post-

industrial conditions, it should take advantage of the insights that social anthropology can offer into the dynamics of norm formation within the small groups that make up a society. Similarly, the design of effective chains of communication and delegation between the different levels of a complex society could benefit from what sociologists and political scientists know about the interplay between the 'logic of membership' and the 'logic of influence' (Schmitter and Streeck, 1999 [1982]). Social scientists in general – those concerned with the micro-milieus of work communities as well as those exploring institution-building and institutional change at the level of entire societies – should recognize how much they can learn if they extend their perspective to include the legal system, and in particular the extraordinary nature of labour law as, potentially, a participatory political regime. Exploring the peculiarities of small groups is exciting; the excitement can only be heightened if our gaze is widened to include the relationship of those groups to, and their interaction with, society at large and its political and legal institutions.

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[i] See the introduction of the editors and the contributions to Hann and Parry 2018.

[ii] cf the hotel workers in Lee-Ross 2004, where a 'strong sense of worker identity with the job' is found, based on a perceived need for special 'skills and competences', in spite of transient employment. See also Sandiford and Seymour 2007, who in their study of barmen find (p. 217) find that jobs considered low status from the outside, because of no formal training and low pay, may be seen quiet differently from inside the respective occupational community.

[iii] See also Rothstein 2019.

[iv] For a perceptive discussion of trade unionism in the service sector see Cobble 1996.