The Value of Work and Its Rules between Innovation and Tradition

ADAPT LABOUR STUDIES BOOK-SERIES

International School of Higher Education in Labour and Industrial Relations

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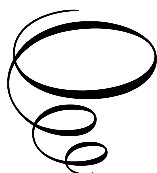
'Labour Is Not a Commodity' Today

Edited by

Anthony Forsyth, Emanuele Dagnino and Margherita Roiatti

Cambridge Scholars Publishing



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INTRODUCTION

EMANUELE DAGNINO, ANTHONY FORSYTH, MARGHERITA ROIATTI*

General Considerations

This volume contains a selection of the papers presented at the 10th edition of the ADAPT International Conference held in Bergamo on 28-30 November 2019. The conference theme was chosen to mark the 100th anniversary of the International Labour Organization: "'Labour is not a Commodity' Today – The Value of Work and its Rules between Innovation and Tradition". It was a truly memorable conference, attended by labour law and industrial relations scholars from all over the world. Little were any of us to know that it would be the last such gathering for some time. Within a few months, the COVID-19 pandemic had swept the globe, having a forceful and devastating impact on Italy – and the wonderful city of Bergamo in particular.

The ILO centenary generated much discussion of the institution's origins and purposes, and whether these have been fulfilled as its standard-setting and enforcement mission has evolved to meet the challenges of globalisation and the transformation of work.[1] The ILO itself began the centenary year with the release of a major new report on the Future of Work, including recommendations for a universal labour guarantee

* Anthony Forsyth authored the paragraph titled 'General Considerations', while Emanuele Dagnino and Margherita Roiatti wrote the section 'Overview of the Papers'.

[1] See for example Paul van der Heijden, 'The ILO Stumbling Towards its Centenary Anniversary' (2018) 15:1 *International Organizations Law Review* 203; Alain Supiot, 'The Tasks Ahead of the ILO at its Centenary' (2020) 159 *International Labour Review* (published online, 28 March 2020); Caroline Kelly et al., *Papers from the Symposium on the Centenary of the ILO: Democracy, Labour Law and Trade Unions*, Centre for Employment and Labour Relations Law, Melbourne Law School, December 2019 (forthcoming publication as *We the Working People: Democracy, Social Justice and the Role of Trade Unions*, Anthem Press, 2021).

(encompassing a living wage and enhanced workplace safety protections) and managing technological change to improve decent work (through, among other measures, an international approach to governance of digital platforms).[2] This was followed in mid-2019 with the adoption of the *ILO Declaration for the Future of Work*. Here, the ILO committed to 'further developing its human-centred approach to the future of work', with an emphasis on skills systems, gender equality at work, sustainable development and social protection.[3]

The 2019 ADAPT Conference sought to contribute to the international discourse triggered by the ILO centenary, exploring themes relating to the major transformations in the world of work in recent years. These include the impact of technology, how and by whom work is performed,[4] and (at an even more fundamental level) what constitutes 'work' in the era of 'platform capitalism'.[5] The Conference themes also focused attention on the regulatory and institutional frameworks inspired by the ILO's founding mantra, 'labour is not a commodity',[6] and the adaptation of norms of regulation in the face of contemporary challenges. In addition, the Conference themes aimed to engage with the uneven evolution of the notion of the 'social contract' in different parts of the globe, and scholarly responses urging the consideration of new work identities based on values (e.g. social justice, sustainability)[7] rather than the traditional dichotomy between capital and labour.

The Conference organisers set out seven specific topics through which its themes could be examined in closer detail by participants. The papers in this volume examine these various topics through studies offering both global and local perspectives (see the editors' overview of the papers at p.

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[2] ILO, *Work for a Brighter Future: Global Commission on the Future of Work*, ILO, Geneva, 2019.

[3] International Labour Conference, *ILO Centenary Declaration for the Future of Work*, adopted by the Conference at its 108th Session, Geneva, 21 June 2019.

[4] See Lydia Medlandet Al., *The 'Future' of Work: A Call for the Recognition of Continuities in Challenges for Conceptualising Work and its Regulation* (University of Bristol, Law Research Paper Series, Paper #001 2019).

[5] Nick Srnicek, *Platform Capitalism* (Polity Press, 2017). See also Edoardo Ales et Al. (eds), *Working in Digital and Smart Organizations: Legal, Economic and Organizational Perspectives on the Digitalization of Labour Relations* (Palgrave Macmillan, 2018).

[6] For earlier consideration, see for example Stein Evju, 'Labour is Not a Commodity: Reappraising the Origins of the Maxim' (2013) 4:3 *European Labour Law Journal* 222.

[7] See for example the various contributions in Hugh Collins et Al. (eds.), *Philosophical Foundations of Labour Law* (Oxford University Press, 2018).

4 below). If these topics reflected the major issues confronting workers, unions, businesses, NGOs and policy-makers in 2019, they have been brought into even sharper relief by the coronavirus pandemic of 2020. In the remainder of this Preface, I wish to consider a number of the Conference topics – and the overarching question of the meaning of 'labour is not a commodity' today – through the lens of the COVID-19 crisis.

Work Status, Work Classification, Organizational Flexibility

The pandemic has wrought destruction on the health, well-being and economic security of citizens across the world. The effects of government lockdown measures to control the virus have been most harshly visited on precarious workers. Those who do not have permanent employment status are the least likely to have sick leave entitlements. Many have been faced with the dilemma of having to continue working, rather than self-isolating when awaiting test results or having tested positive for COVID-19. Then there are the millions working in the gig economy, misclassified as 'self-employed' by platform operators and therefore with little choice but to carry on delivering food or providing rides with next to no protection from infection. Managerial power has been enhanced, as long-standing protections (for those with employment status) come under pressure from recessionary impacts and renewed calls for flexibility to aid job creation.

Economic Value of Work

In many parts of the world, the value of work has increasingly been measured by its status, remuneration and the contribution made to corporate profits. One positive effect of the pandemic has been to call these assumptions into question, and to re-evaluate 'what work really matters?'. Front-line health workers have obtained an exalted status, as communities have applauded their courage and commitment in the most trying of circumstances. More importantly, previously 'invisible' workers – those working in supermarkets, pharmacies, warehouses, transport, cleaning, the care sector – have become visible. Their work suddenly counts, as it always should have. But let us not forget, these workers are usually among the lowest-paid and subject to the most difficult working conditions including job insecurity. The crisis has led to an overdue reckoning: an assessment of the true value of work to *society*, not just the economy. The challenge now is to ensure that the reward for these types of work reflects their worth, as nations rebuild in the wake of the crisis.

Welfare, Work Settings, Health and Safety

Just as COVID-19 has precipitated reconsideration of the very concept of work, so too has it transformed previously fixed notions of 'the workplace' and how much time must be spent 'there'. In many countries, employers who had long resisted demands for flexible work (particularly from women workers) managed to transition to work-from-home arrangements very speedily. When this became a matter of business survival following lockdowns, rather than a debate about diversity or work-life balance, the proposition was suddenly undeniable. In reality, working from home has presented workers with significant challenges: juggling the care and home-schooling of children, the intrusion of work into the private sphere and family life, and elevated levels of employer surveillance. Health and safety concerns have also arisen, although the risks for home-based workers are generally minimal compared with those faced by health-care staff and other essential workers. Some of the major outbreaks of coronavirus globally have occurred in settings where low-paid workers have not been given adequate safety training or protective equipment, such as garment factories, distribution centres, meat works and aged care facilities.

Representation, Participation and Collective Bargaining

While their position has generally declined over the last 30 years or so, trade unions in many parts of the world have become essential partners with governments and business in tackling this unforeseen situation. Policy-makers found that they needed to engage with the representative voice of workers, to effectively implement emergency response measures and economic support programs. Unions, in turn, had to pivot nimbly towards new techniques and strategies of online organising and digital campaigning. They have extended their traditional role as the buttress against arbitrary exercise of managerial power in the new circumstances of the pandemic, calling out unsafe work at multinationals like Amazon. However, unions have been mostly forced into a defensive posture: protecting workers' existing wages and conditions, their jobs, and their health. The project of improving on minimum standards through collective bargaining is greatly constrained in the context of rising unemployment, wage 'freezes' and an emerging impetus for deregulation.

Protection against Poverty and Social Inclusion

Without question, the economic impact of the COVID-19 pandemic has been most detrimental for those who were already vulnerable to begin with: precarious workers (discussed earlier), those working in the informal economy and the unemployed. For these groups, and the vast numbers of people furloughed or retrenched across the world, state systems of support have been created or extended to mitigate the effects of inevitable hardship. Wage subsidies, income supports and enhanced unemployment benefits have been provided in many countries. To pay for these programs, the neoliberal aversion to public spending has been tossed aside. Indeed, after years of austerity in some economies, many adherents of the free market have come to see the vital role of the state –in safeguarding the interests of businesses, and protecting citizens from inequality.

Labour is Not a Commodity … Today

It could not have been envisaged that in its 101st year, the world would need to fundamentally re-imagine the ILO's founding principle. As nations begin to emerge from the crisis brought on by the coronavirus pandemic, it is clear that its adverse economic and social effects are likely to be with us for many years to come. In this setting, the idea that 'labour is not a commodity' must be given a meaning that ensures a vigorous role for the state in promoting social inclusion (especially for the most vulnerable in and outside of the labour market); recognition of the legitimacy of trade unions in national, industry and workplace decision-making; and above all, protection of individual workers from unsafe conditions and a genuine recognition (and reward) of the intrinsic value of all forms of work. In order to help one to review the principle that "labour is not a commodity", the reflections developed at the ADAPT conference and the contributions included in this volume adopt different perspectives, which provide a useful conceptual framework to better examine the world of work in the post-pandemic age. An overview of the papers is supplied below.

Overview of Papers

Part One: Global Issues

Although from different analysis perspectives, the contributions in this section explore the principle that "labour is not a commodity", particularly

in relation to the global challenges faced by the world of work today. In so doing, they investigate a number of issues which, while extremely relevant in labour studies, need to be further investigated in order to be fully appreciated. In an attempt to shed light on these key issues, the contributions present thoughtful insights into the value of work, labour market functioning and regulation, measures to tackle poverty and the notion of 'decent employment'.

The first contribution in Part I – K. Philip et al., *Employment Matters too much to Society to Leave to Markets Alone* – is concerned with the value of work and how to promote full employment in the future world of work and society. To this end, an overview is provided of the debate taking place between techno-optimist and techno-pessimist about the end of work. This is followed by an examination of the measures laid down to promote full employment in the context of the social contract and by an analysis of the role of the government as an employer of last resort, through a re-conceptualization of Public Employment Programmes (PEPs) as policy instruments. PEPs are analyzed with reference to their functions (i.e. ending or reducing involuntary unemployment, creating a floor to support a Universal Labour Guarantee, fostering social protection), and to other policy instruments (such as Universal Basic Income and Active Labour Market Policies) while also evaluating how PEPs can contributed to solving other issues (i.e. climate change, displacement, conflict and peace-building).

The paper by Phillippe Panhaleux et al. (*Job Transition: A Case of Mitigation against Automation?*) explores the effects of new technologies and automation on employment rates, considering different aspects. Panhaleux et al. start from acknowledging the need for the workforce to receive regular retraining, focusing on the effectiveness of these retraining activities. Rather than looking at the most in-demand jobs (e.g. software engineers), it is argued that a more practical approach should be taken. In other words, retraining should consider those jobs that will still be needed in the future, although facing a high risk of automation. Using a regression model, the authors demonstrate that most workers at risk of being replaced can move to jobs similar to their current occupation. Yet this transition often entails some retraining and sometimes demand prospects are not worth the investment.

The contribution by Lisa Rodgers (*Recognising the Person at Work: the Case for a Relational Approach to Autonomy*) addresses the notion of "labour is not a commodity", focusing on the philosophical foundations of labour law through the prism of autonomy and subordination. Reviewing the notion of 'autonomy' as conceived in labour law discourse, Rodgers

highlights the strengths and the weaknesses of the liberal understanding of autonomy, promoting a more encompassing approach when shaping this notion. To this aim, the concept of 'relational autonomy' is put forward, which supplements that of autonomy. Subsequently, Rodgers applies this theoretical framework to the binary divide lying at the basis of labour law itself – e.g. that concerning employment status – which rests on the distinction between autonomy and subordination, in order to stress the positive effects of this new conception of autonomy in labour law.

Olga Chesalina (*'Glass Employees' Vs. Platform Workers: Are There Any Differences?*) examines the principle that "labour is not a commodity" considering aspects such as digital surveillance and employee monitoring. To this end, a legal comparison is carried out, contrasting the German and the Russian legal system. Employee monitoring and digital surveillance are analyzed with reference to traditional (i.e. glass employees) and new business models (i.e. the platform economy). In addition to the legal limitations placed on the employer's prerogative of worker control, Chesalina further looks at the role of employee representatives and trade unions, investigating the current case law on the different forms of employee monitoring. It is noted that legal systems fail to regulate the systems of indirect control used by platforms, making platform workers more vulnerable than glass employees.

Tatsiana Ushakova focuses on protection against poverty and social exclusion. In her contribution (*Protection against Poverty: Lessons from the ESC (Revised)?*), the analysis firstly deals with the conceptualization of the different notions of poverty: extreme poverty, working poverty, and multidimensional poverty. Subsequently, the focus shifts to interdependence as understood in the international strategies laid down by the UN, the ILO and the Council of Europe. An attempt is thus made at understanding what can be learned from the revised version of Article 30 of the European Social Charters, which establishes a new and specific right of protection against poverty and social exclusion. The paper concludes that a specific instrument of protection against poverty is needed at international level and that this instrument should take the form of an ILO convention.

Andrea Sitzia (*Peoples' "Decent Work" and "Capacitation" in the Detention System*) explores to what extent Sen's and Nussbaum's capability approach can be applied to inmates' labour. While the analysis concerns the Italian legal context and its recent penitentiary reform, reference is made to the ILO's principle of decent work, so the considerations made on inmates' labour take on global relevance. Pointing out the implementation difficulties to ensure consistency with this approach, Sitzia stresses the

benefits of applying the capability theory to labour outside the traditional scope of labour law.

Part Two: Local Perspectives

In addition to investigating the principle that "labour is not a commodity", the papers included in Part II have been grouped together since they all adopt a common approach when examining local issues. In 2019, the International Labour Organization celebrated 100 years of advancing social justice and promoting decent work. Adopting a sectoral and national perspective, these papers address the topics expressly referred to in the context of the ILO centenary.

Sarah Palinckx (*Collective Bargaining in the Belgian Public Sector. Stuck on the Road between Tradition and Innovation*) highlights the main consequences of failing to adapt legislation on collective bargaining to the changes that the Belgian public sector has faced in recent years. Firstly, Palinckx describes the current system of collective bargaining in the Belgian public sector. Then, a more detailed analysis is supplied which explores the reasons underpinning Belgium's model, which is followed by an overview of relevant trends. Palinckx concludes by highlighting the supposed inadequacy of the current Belgian system, which should draw inspiration from the Netherlands, where a recent law entered into force, innovating the Dutch system of collective bargaining in the public sector.

J. Arrowsmith et al. (*Moving The Minimum Wage Towards A 'Living Wage': Evidence From New Zealand*) look more closely into the concept of 'living wage'. Alongside the qualitative data from employer representatives and other stakeholders, the paper presents some complementary findings from the survey of low-paid employees. This indicates that significant increases to the minimum wage translate into worker wellbeing and reduced stress in managing work and family life, potentially leading to improved work motivation and relations. From a micro-level perspective, the issue is how some employers might respond to increases in wage costs, for example through tighter monitoring and increased workloads, such that short-term pressures subvert the potential longer-term mutual gains from increases to basic pay. So far, the evidence tentatively suggests that there are likely to be more winners than losers. However, J. Arrowsmith et al. conclude that there are wider issues at the macro level that also need tackling for a 'living' wage rate to be truly transformative, particularly in the areas of housing policy, welfare abatement, and supply-side interventions to address training under-provision.

Zeynep Nettekoven (*Drivers of Excessive Labour in Turkey's Coal Mining Sector*) investigates the drivers of excessive labour in Turkey's coal mining sector at the expense of mechanization. This is done drawing from the Soma mine disaster (2014) which is still known as the worst coal mine disaster in the country's history in terms of fatalities, whereby expert reports show that precautions could have prevented it. Nettekoven attributes the failure of Turkey's drivers to mechanization and workers' education and training in coal mining, based on desk research and talks with sectoral experts and stakeholders. Research findings indicate that three forms of drivers can be identified: lack of private investment and deliberate government policies pushing towards adaptation of technological advancements; weak trade unionism and labour law enforcement; subcontracting practices contributing to opaqueness of liability and ambiguity in supervision mechanisms in the sector.

Shreshti Rawat's paper (*Inequality of Opportunity in Informal Employment in India*) calls for a closer inspection of the factor driving earning differences between the workforce hired informally and people employed by formal sector enterprises in India. In this regard, the concept of 'inequality of opportunity' is used and its application enables Rawat to estimate the contribution of each circumstance in explaining total inequality in earnings. It has been observed that between formal and informal employment, 'father's education', 'gender' and 'geographical location' are the variables that explain a significant proportion of inequality of opportunity for the former, while it is 'gender', 'region of residence' and 'geographical location' which are predominant for the latter. The analysis therefore contributes to identifying the sub-population requiring targeted policy interventions for encouraging income generation opportunities for the disadvantaged groups, in order to help close the gap of earnings opportunities among India's informal workers.

PART ONE

GLOBAL ISSUES

Employment Matters too Much to Society to Leave to Markets Alone

Kate Philip, Maikel Lieuw-Kie-Song,
Mito Tsukamoto, Anna Overbeck

1. Introduction

> The changes associated with digital technology… the changes that might yet lie ahead as we wait fretfully for the robot overlords, are continuing to transform society. The benefits are unevenly distributed; the transformation can only be glimpsed through current statistics; the cautious evidence-based policy consensus is palpably inadequate; and the rage against the elite is widespread (Coyle 2018).

It is a turbulent world. The future of work looks set to exacerbate this turbulence, with a range of forces pulling the future in different directions. Technological change is exponential. Emerging technologies are disrupting how value is created, without new systems for its distribution having yet emerged. In some quarters, 'automation anxiety' feeds fears of a dystopian future in which the robots take over the jobs; in which wealth can be created without workers, massively exacerbating inequality.

Yet for others, this is scaremongering. Instead, this same disruption represents potential freedom from the shackles of unfulfilling work. No more drudgery, no more hard physical labour, no more routine tasks. Technological change will create as many if not more jobs as it displaces, on better terms. Working hours will drop, making space for creativity and lifelong learning. Societies will be better places, with more wealth available to meet social needs.

In practice, elements of both versions may hold true: but for different people, in different parts of the world – or different parts of the same city or neighbourhood, with an exponential rise in inequality being a serious risk.

There is, however, nothing inexorable about the outcomes. They will be determined, to a significant extent, by political economy, social agency

and the role of governance in shaping the way technology impacts on societies in a context in which technology is not neutral.

> "…technologies are solutions, products and implementations that are developed through social processes, stand in and for people and institutions, and contain within them a whole set of assumptions, values and principles that in turn can (and do) affect power, structure and status in society" (Schwab 2018).

So, as in the past, the current technological revolution holds new levels of promise along with new levels of risk.

While analysts debate future scenarios, elements of many of these are happening already. In the industrialised world, labour markets are 'hollowing out', with a concentration of high-education, high-wage occupations at one end of the spectrum, and low-education, low-wage manual occupations at the other (Autor, Li & Notowidigdo 2019). Erosion of job quality is common, with increased outsourcing, insecurity, casualization, the rise of the gig economy and the destruction of many key labour standards. In the developing world, informality remains a norm, with serious decent work deficits. The role of collective organisation in asserting rights at work has declined, not least because the jobs and sectors in which labour has traditionally been strongest are often those worst affected by off-shoring and job displacement.

The challenges posed by technology are compounded by other drivers of change. Environmental degradation and climate change are predicted to have widespread job destruction effects, including from natural disasters and desertification. Yet mitigation and adaptation to climate change have the potential to create new jobs at scale, too – not least through technological innovation. This is one of the more hopeful synchronicities to emerge from the noise of sometimes widely divergent projections for the future (Balliester & Elsheikhi 2018).

Demographic trends also differ significantly across the world, creating differing incentives in relation to the scale of automation considered socially desirable. Current trends may, however, be disrupted by mass displacements of people arising from conflict and from climate change – with the latter potentially fuelling the former. These dynamics all interact systemically, with nothing linear about the march of progress into the future.

All these effects are likely to be uneven across the globe, with the highest levels of job destruction from both technological change and from climate change projected to take place in the developing world. As a consequence, the traditional trajectory of structural transformation, which

entails a shift from low wage agricultural activity to higher-wage manufacturing jobs in urban areas, may no longer be plausible. As a result, in some contexts and societies, the future of work is likely to share key elements with the present: with large swathes of underemployment, unemployment and working poverty – potentially compounded by displacement and conflict.

Our inability to take decisive action in relation to these challenges in the present may not augur well for our ability to do so in the future.

> “But without decisive action we will be sleepwalking into a world that widens inequality, increases uncertainty and reinforces exclusion, with destructive political, social and economic repercussions.” (Global Commission on the Future of Work 2019).

What form should such decisive action take? This question is already urgent.

2. Full Employment and the Social Contract for the Future of Work

2.1. Global Commitments to Full Employment

The social and economic costs of unemployment and underemployment ripple through households and communities, exacerbating poverty and inequality and impacting on society as a whole. Recognition of these costs have informed repeated commitments to full employment as a goal in global agreements, as part of the social contract.

Article 55 of the Charter of the United Nations defines full employment as a necessary condition for stability and well-being, and commits all members to use their policy powers to ensure it. The 1944 Philadelphia Declaration of the International Labour Organisation (ILO) places an obligation on the ILO to further full employment as one of its core goals, and Convention 122 on Employment Policy (1964) states that each ILO Member ‘should declare and pursue, as a major goal, an active policy designed to promote full, productive and freely chosen employment.’ The commitment to full employment and decent work is also one of the 2030 Social Development Goals (SDGs).

2.2. Shifting Responsibilities: From Society to the Individual

From the post war period up until the mid-1970s, maintaining full employment was an overriding goal of economic policy in the developed

world and unemployment was largely held below two percent. When unemployment threatened to increase, government intervened by stimulating aggregate demand (Mitchell & Muysken 2008). Yet today, commitments to full employment are more likely to be honoured in the breach, with it rarely having primacy as a macro-economic policy goal any longer.

> "This framework [full employment] has been systematically abandoned in most OECD countries over the last 30 years. The overriding priority of macroeconomic policy has shifted towards keeping inflation low and suppressing the stabilisation functions of fiscal policy. As a consequence, the insights gained from the writings of Keynes, Marx and Kalecki into how deficient demand in macroeconomic systems constrains employment opportunities and forces some individuals into involuntary unemployment have been discarded.
>
> "The concept of systemic failure has been replaced by sheeting the responsibility for economic outcomes onto the individual. Accordingly, anyone who is unemployed has chosen to be in that state either because they didn't invest in appropriate skills; haven't searched for available opportunities with sufficient effort or rigour; or have become either 'work shy' or too selective in the jobs they would accept. Governments are seen to have bolstered this individual lethargy through providing excessively generous income support payments and restrictive hiring and firing regulations." (Mitchell & Muysken 2008).

Mitchell and Muysken characterize this as a shift from acceptance of full employment as the responsibility of society and the basis of macro-economic policy, to a focus on full *employability*, with much of the onus for this shifting to the individual, regardless of levels of demand for labour in the wider economy – or of the conditions of work on offer. Alternatively, the poor are expected to self-employ their way out of poverty on market terms. Certainly, entrepreneurship can create jobs; it's just not usually unemployed people who are best placed to take on these risks.

The role of the state shifted to focus on creating an enabling environment for market development, mostly by getting out of the way. Instead of a market-shaping agenda, the focus was on Active Labour Market Policies (ALMPs), to enhance 'employability' at the individual level – as if the constraint on employment was purely a function of the characteristics of the work-seeker rather than of a lack of labour demand.

Certainly, there are contexts in which a skills mismatch between the demand and supply of labour may need to be addressed, or forms of exclusion that affect access to labour markets. But too often, ALMPS simply confer advantages on ALMP participants relative to others in the labour market, allowing them to 'jump the queue', with no increase in the

number of jobs – just a change in who gets them. Yet addressing the more fundamental problem of labour demand remains a limited part of this discourse.

In the process, primacy is given to market processes in determining employment outcomes. Yet labour markets – like all markets – are social constructs, with the rules of the game set by societies. In some, a blind eye is still turned to slavery and child labour. The right to work all too often means the right to be part of the working poor. Even where genuinely decent labour standards have been achieved, these remain contested. While the commodification of labour is decried, people often have no real choice but to compete to sell their labour on the market at the lowest price, even where this represents working poverty. This reality is an outcome of social and political choices, rooted in power relations that determine what societies are willing to tolerate, with this being also a function of power relations between societies, as the history of conquest, colonialism and other forms of extraction illustrates.

2.3. The State as Employer of Last Resort

The state has many instruments with which to influence employment outcomes at a systemic level. These include not only fiscal and macro-economic policy, but also industrial policy, public investment in social and economic infrastructure, incentives to the private sector and forms of demand-side stimulus. They also include direct investment in employment creation, in public employment programmes (also called public works programmes) that operate outside the normal public service, employing people to undertake work that creates public value and contributes to the public good.

Historically, such direct investment in employment has typically been time-bound and targeted, with participation rates determined by the scale of budgets allocated. Yet, as Hyman Minsky argued in the 1960s, the state can instead act as employer of last resort: guaranteeing employment to all those willing and able to work, in the process ending involuntary unemployment in society and fulfilling commitments to full employment – with government being the only player able to create an infinitely elastic demand for labour (Wray 2007).

Minsky argued that strategies to raise aggregate demand are often a blunt instrument, easily falling foul of the structure of a given economy, reinforcing existing patterns of distribution in ways that may never reach the poorest. Instead, he argued that spending should be targeted directly at the unemployed, taking workers ‘as they are’, providing jobs that fit their

existing skills, and allowing the impacts of such a stimulus to 'bubble up' into the wider economy (Wray 2007).

With the Mahatma Gandhi National Rural Employment Guarantee Act, India became the first country to test an employment guarantee approach at a national scale. While the guarantee is not universal – it guarantees every rural household that registers 100 days of employment per annum, paid at a minimum wage – it is nevertheless the first rights-based employment guarantee, reaching over 70 million participants and 52 million households in 2018/19 (www.nrega.nic.in).

Yet India is still the outlier. All too often, this policy terrain is ceded, with markets left to determine employment outcomes, and people left at the mercy of these markets, even where the social need is dire. In the aftermath of the 2008 financial crisis, for example, many states were quick to act as lenders of last resort to bail out the banks – at huge and enduring social and economic cost – but failed to act as employers of last resort, despite social desperation caused by the jobs crisis. Finding instruments to avoid a repetition of this in the future is an important challenge to policymakers.

2.4. Full Employment and the Social Contract

While few things are certain about the future of work, high levels of job displacement and associated social disruption are certainly anticipated, with unemployment and underemployment likely realities in many parts of the world.

It is in this context that calls for a new social contract to address the social impacts of the future of work are being made, including in the Report of the ILO's Global Commission on the Future of Work, (henceforth ILO FOW), and also by the World Bank's World Development Report 2019, 'The Changing Nature of Work' (henceforth WDR 2019).

While there are of course differences between them, there is an emphasis in both on the need for significant investment in human capital development to enable people to secure the jobs of the future, on the need to support transitions into new opportunities for those whose current forms of work are likely to be destroyed and the need for social protection for those who have no work or are unable to make such transitions.

Of course human capital development matters. Social protection matters too; but while provisions for minimum income are a crucial first line of defence against poverty, few people aspire to live on minimum incomes for long spells of their working-age lives. The question left unanswered is how, in a context of disruption, societies ensure that those

willing and able to work have the opportunity to do so? The issue of full employment is absent as a goal in WDR 2019. While ILO FOW commits to it, the instruments proposed focus on public investment in social and economic infrastructure. Yet the levers available to the state and public policy to shape the scale and composition of labour demand go far further than this, including the scope for an employment guarantee to remove involuntary employment from the equation – or for other forms of public employment to significantly reduce it.

The challenge – and opportunity – is to adjust the design of such programmes to optimise their impacts in the emerging context of the future of work. The next section explores what this could mean.

3. Re-Imagining Public Employment Programmes (PEPs) as Part of the Future of Work

3.1. The Evolution of PEPs as a Policy Instrument

It is true. The track record of public employment programmes is not always a good one. Too often, short-term work opportunities translate into limited poverty impacts. Stipends instead of decent wages devalue the benefits of participation in work. The quality of assets has often been poor. Sometimes the work undertaken is not meaningful. But these outcomes are not intrinsic to public employment programmes; they are an outcome of poor policy and design choices. In the same way that critiques of social welfare in the past have delivered improved forms of social protection, critiques of public employment programmes have performed a challenge function that has driven innovation and improved outcomes – and needs to continue to do so if they are to be relevant to the future of work.

One of the most significant innovations has been the introduction of India's MGNREGA. Certainly, the massive rollout of this programme has not been seamless. Its requirements challenged local state capabilities– as any development programme at this level of scale will do. Yet year by year, evaluation, critique and the development of new capabilities have enabled stronger outcomes. And while MGNREGA is in the forefront in terms of scale and the use of a rights-based approach, large scale programmes are also in place in countries as diverse as Mexico, South Africa, Peru, Ethiopia, Tanzania, Rwanda, Nepal and Indonesia. This is in addition to many smaller scale programmes across the developed and developing world (relevant information can be found on www.social protection.org).

Over the same period, there has also been a stronger emphasis on the role of PEPs in contributing to the climate agenda, through work focused on implementing mitigation and adaptation strategies and augmenting existing government efforts in these regards. In addition, work in the social sector and in services have opened new opportunities for social impact, in ways that enable new forms of participation for women. This has included emphasis on Early Childhood Development (ECD) and on community-based care. These contribute to important social policy priorities, while also providing pathways to recognition for informal, unrecognised and unpaid work, mainly undertaken by women. So, for example, in South Africa, workers involved in such work in PEPs are entitled to a minimum wage, access to unemployment insurance and workplace compensation provisions.

Efforts to target young people have led to the introduction of forms of work involving digital and Internet technologies, in recognition that the notion of ‘public goods and services’ now also extends into these domains.

This section considers some of the ways in which PEPs could contribute to some of the specific challenges anticipated as part of the future of work.

3.2. Ending – or Reducing – Involuntary Unemployment

Any social contract for the future of work must surely address the needs of those involuntarily excluded from work. This needs to go further than simply a commitment to some form of minimum income, important as this is. In the first instance, this requires the state to use all the means at its disposal to stimulate market-based employment. But where the market response is inadequate, PEPs provide a policy instrument to close the gap.

Desirable as it would be to test a universal employment guarantee, none yet exists. MGNREGA does however illustrate that employment guarantees do not have to be universal to make a significant difference. They can instead target stubborn problems within a labour market. These could be spatial, or seasonal, or relate to a constituency such as the youth, with the concept of a ‘guarantee’ meaning that everyone who qualifies against the criteria has a right to participate, instead of participation being rationed by targeting or a fixed budget.

Even where public employment does not take the form of a guarantee, its effect is still to reduce involuntary unemployment or underemployment. This will continue to make it a vital part of the policy toolbox.

3.3. Creating a Labour Market Floor to Support a Universal Labour Guarantee

While minimum and living wage laws have historically been implemented to place a floor in the labour market, they have proved hard to enforce, especially in contexts of high informality. A job guarantee provides an alternative instrument for achieving this aim, functioning as a de facto floor in the labour market, greatly increasing the bargaining position of workers throughout the economy. By guaranteeing work at what is considered the lowest acceptable level, an employment guarantee scheme or PEP operating at sufficient scale can have systemic effects on the labour standards floor, pushing up wages and working conditions more widely.

The scope for even a partial guarantee to do so has been illustrated by the impact of MGNREGA on labour standards in rural India, where payment of a minimum wage has pushed up local agricultural wages. It has also made significant gains in closing the gender wage gap – by paying equal wages, setting new local norms and expectations in this regard (Breitkreuz, Stanton, Brady & Pattison-Williams 2017).

PEPs can also play a role in limiting precarious forms of work, such as protecting the rights of workers subject to the vagaries of the gig and platform economies. Access to an alternative that offers a minimum level of hours of predictable work could significantly increase the bargaining power of workers to negotiate better terms, minimum hours and greater predictability – also giving them an alternative when such negotiations fail, removing desperation from the power dynamic at the bargaining table.

This potential of course only applies where the PEP itself has decent labour standards. But the scope exists for the deliberate use of a PEP to set a labour standards floor, within a specific sector or more broadly.

3.4. PEPs and Social Protection

PEPs contribute to the income security dimension of the ILO's Social Protection Floor and often, this is part of their purpose. The more universal and rights-based the scheme, the greater this social protection effect is likely to be.

Yet, even in the context of an employment guarantee, there are likely to be coverage gaps that social protection interventions need to address, such as for people who are unable to work. So even where an employment

guarantee exists, its role should be seen as reducing the burden on social protection rather than replacing the need for it.

This is particularly clear where – as is most commonly the case – PEPs do not take the form of a guarantee. Certainly, the larger their scale, the longer the duration of work, and the better the wages and working conditions, the more they will have anti-poverty effects – which will in turn reduce the stress on social protection systems. This is a positive synergy within an integrated anti-poverty strategy.

The main problem that arises in this debate is when PEPs are understood as an *alternative* form of social protection, with a trade-off presented between, for example, resourcing a cash transfer versus a PEP. Where this happens, it is typically framed within a discourse that sees cash transfers as creating dependency, with PEPs as an alternative to 'handouts'. The political economy context often makes PEPs the preferred alternative. Yet all too often, the PEPs that are then designed are on a relatively small scale, with a limited duration of work and often, low wages justified as 'stipends' – on the basis that this is social protection not 'real' employment and hence minimum labour standards do not apply. These factors result in reduced social protection effects, undermine many of the benefits of participation in work and often lead to an inadequate emphasis on the quality of assets and services delivered. In the process, social protection is not delivered – and PEPs are discredited as a development instrument.

When the primary purpose of PEPs is income transfer, then there are arguably more efficient ways of achieving this. PEPs add value where the employment and public goods dimensions of their role add value over and above the aim of income transfers. If their purpose is reduced to the latter, then their ability to deliver these other dimensions tends to be undermined. This risk arises particularly where they are defined as an instrument of social protection, measured solely in relation to income effects.

For these reasons, the approach taken here is that PEPs are primarily an instrument of inclusive employment policy aimed at full employment. As with all forms of decent work, this has positive anti-poverty effects that reduce the pressures on social protection systems. This should enable synergy and policy complementarity rather than creating a binary choice between instruments; yet the latter is often the direction the discourse takes.

3.5. PEPs, UBI and Jobs Guarantees

These issues have come into renewed focus in the context of debate on the future of work. In the public discourse, when big tech innovators from

Silicon Valley like Elon Musk say that the risk of the robots taking our jobs is real, this tends to have more traction than when economists say that the robots won't. It has been against the backdrop of such concerns that the concept of Universal Basic Income (UBI) has re-emerged, capturing some of the public and policy imagination. With strong proponents and critics, the debate can be fierce.

Amongst the divergent rationales for supporting UBI, the most powerful is surely the idea that it offers a simple means of ensuring an end to poverty, that contributes to redistribution of wealth in a world in which inequality is an affront to social justice. By using the fiscus to claw back the payment from the non-poor, it avoids costly and inaccurate means-testing and reaches everyone. In this narrative, UBI is placed at the heart of the new social contract.

Every element of that rationale is, however, disputed. Concerns have, for example, been raised that in some contexts, UBI risks eroding hard-won gains in other areas of social protection, leaving some of the poor in society poorer as a result (Ortiz, Behrendt, Acuña-Ulate & AnhNhuyen, 2018).

This applies also to the proposed funding mechanism. In much of the developing world, high levels of informality mean there is little or no scope to claw back transfers made to the non-poor through the tax system. This can make the UBI approach a highly regressive and expensive approach to achieving a minimum income unless it is accompanied by a radical restructuring of the tax code and collection system. UBI's quest for a simple solution overlooks a reality of complexity.

In the context of the discussion of UBI, debate has contrasted the relative merits of UBI versus guaranteed employment. It is largely an unhelpful debate often based on false premises. So, for example, the possible weaknesses of a UBI do not in themselves invalidate the importance of other forms of minimum income policies in societies. At the same time, dismissing employment guarantees for making workfare a condition of social support, as Guy Standing does, is simply inaccurate (Standing 2013). Arguments for workfare come out of a very different tradition:

> "What distinguishes this tradition [workfare] is its grounding in the belief that jobless individuals are at fault for their own joblessness. Advocacy of the right to work is and always has been premised on the opposite assumption – that the reason jobless individuals lack work is because the economy has failed to make work available to them. Rather than supporting the use of labour as a disciplinary measure to put pressure on the poor to cure their own joblessness by reforming their attitudes and

> behaviour, right-to-work advocates have argued that job creation initiatives are needed to remedy the failure of the market to create enough jobs to eliminate involuntary employment." (Harvey 2005).

The goal of an employment guarantee is to ensure that everyone who wants paid employment is able to obtain it; there is no necessary imposition of a duty to work. That said, it is also true that in the absence of minimum income support, people may have little choice. There is therefore an inherent danger in seeing these two instruments as representing a binary choice, rather than looking at how they may be synergistically designed as part of an integrated anti-poverty strategy that recognises the multi-dimensional nature of poverty and that does indeed enhance choices.

Ensuring income security is a vital starting point. But few people aspire to satisfy only their basic needs. If market opportunities for economic participation and advancement are limited, if the returns from self-employment are poor and if access to labour markets is highly constrained, then societies need alternatives that allow people to improve their conditions of life as well as benefit from the non-income impacts of economic participation.

Rather than being stuck in a paradigm of binary, competing models, there is a need therefore to look at how the right to income and the right to work can be addressed in synergistic and complementary ways, that allow people to combine these options as their needs change, in ways that enhance and diversify their pathways into social and economic inclusion.

3.6. PEPs, ALMPS and Support to Transitions

In the future, assuming that the kinds of jobs that are displaced are indeed replaced with new ones, the most desirable transition cycle is one in which workers move straight from job-loss into relevant training, from where they transition directly into a new work opportunity. Under these circumstances, there is no role for PEPs. Yet the track record of re-training programmes is not always good and even where transitions are achieved, it is likely that in many instances, there will be a time-gap between job loss and the start of appropriate training, and between the conclusion of such training and securing a new job. PEPs can provide a transitional form of activation in such contexts that keeps people in the labour market during these gaps. This can pre-empt the onset of the negative social impacts and societal costs of unemployment. It also maintains work habits and capabilities, off-setting the erosion of these associated with long-term unemployment and means that people are work-ready when work opportunities arise. For

those who have never worked before, it builds these capabilities in a context in which work experience is often an important factor influencing employer hiring strategies.

The scale at which PEP participants can transition out of the PEP into other opportunities largely depends on the scale of labour demand in the wider economy. But it also depends on targeting strategy in the PEP. If priority is given to the most vulnerable or the long-term unemployed, then these participants are likely to find it harder to exit the programme than someone unemployed for a short time. And while this is often the policy, this is rarely taken into consideration when the success of PEPs in graduating participants is compared to ALMPs, which may have been targeting people closer to the labour market in the first place.

The role of a PEP is also likely to change over the life-cycle of a crisis. If PEPs can go to scale quickly, they provide a form of activation that can limit the decline of work skills and of productivity in the economy. They can provide a transition from social assistance into more regular work, enabling labour market re-integration. As recovery begins, the interface with other ALMPS becomes increasingly relevant. If, however, long-term unemployment sets in before the PEP begins, then their focus is on *rebuilding* work readiness.

It should also be noted that in contexts of deep structural unemployment or underemployment, there may be no crisis-related cycle. The role of PEPs may be to make an ongoing contribution to livelihoods that complements other activities, potentially also de-risking engagement in income generating activity.

3.7. PEPs and the Climate Agenda

The transition to a lower carbon economy and also the impacts of climate change are expected to destroy jobs, but there is also an expectation of significant job creation from ‘green jobs’ associated with both. While most jobs in relation to adaptation are expected to be in the private sector, many aspects of mitigation require public investment in the environment as a public good, with the mobilisation of different forms of delivery. While some lend themselves to national programmes, others would form part of locally-driven environmental action and adaptation plans. Some of these would be mainstreamed into the public service; others lend themselves to delivery through PEPs, which already play this role. The need is, however, only likely to grow.

This includes a wide range of activities, including fire prevention, land restoration, removal of invasive alien species, reforestation, river catchment