

Introduction: Gendering Labour Law

Judy Fudge* and Emily Grabham**

This special section of *feminists@law* is the outcome of a workshop, called ‘Gendering Labour Law’, held at Kent Law School on June 20 and 21, 2013. The workshop marked the first collaborative effort of participants in the nascent Gender Labour Law Research Network (GLLRN), which is being launched simultaneously with the publication of this collection. The GLLRN, the workshop and this special section emerge from a collaboration between Emily Grabham and Judy Fudge, supported by the Leverhulme Trust and Kent Law School, which is designed to cultivate feminist and critical labour law scholarship and research.

The aspiration behind the special section and the GLLRN is to help to revitalize scholarship in labour law by infusing it with a robust feminist engagement with core concepts such as work, care, gender and social reproduction.¹ Although the focus is on what feminist theorizing, methodologies and concerns can bring to understanding the role of law in how work is organized and valued, the intellectual and political concerns of the participants of the workshop and of the research network are broader. What unites the participants of the workshop, contributors to this special section and, we hope, the expanding circle of researchers affiliated with the GLLRN, is a commitment to examining the relationship between legal artefacts, norms, forms, discourses, actors and institutions and the organization and valuation of work. We appreciate that gender can only be understood in relation to, and in combination with, other axes of subordination such as class, race, religion, ethnicity and migrant status.² By using the term ‘gendering’ we have tried to emphasize the constructed and interconnected nature of social categories and social relations, and our interest is in exploring how subordination is constructed, cultivated, resisted, challenged and transformed in work relations.

We invited a group of feminist-minded researchers interested in labour and labour law to a workshop to discuss their research. We hoped that the participants would challenge prevailing conceptions of labour law that pushed women’s work to the margins, and we are happy to share some of the participants’ contributions in the workshop in this special

* Professor of Law, Kent Law School, University of Kent, UK, email j.a.fudge@kent.ac.uk.

** Senior Lecturer in Law, Kent Law School, University of Kent, UK, email e.grabham@kent.ac.uk.

¹ A crucial early contribution to this endeavour was the important collection edited by Anne Morris and Therese O’Donnell, *Feminist Perspectives on Employment Law* (London: Cavendish, 1999). See also Sandra Fredman, *Women and the Law* (Oxford: OUP, 1998) and Judy Fudge, ‘From Women and Labour Law to Putting Gender and Law to Work’ in Margaret Davies and Vanessa Munro, eds, *A Research Companion to Feminist Legal Theory* (Farnham: Ashgate, 2013) 321-340.

² At the workshop Diamond Ashiagbor discussed her project ‘Race and Gender in EU Labour Markets – Intersectional Discrimination and Organisational Change’. Ashiagbor made an important, early contribution to developing an ‘intersectional’ analysis of work in ‘The Intersection between Gender and ‘Race’ in the Labour Market: Lessons for Anti-discrimination Law’ in Anne Morris and Therese O’Donnell, eds, *Feminist Perspectives on Employment Law*, *ibid*. In her presentation at the workshop, Anastasia Tataryn focused on migrant workers to argue for a fundamental overhaul of labour law in order to address precarious work.

section of *feminists@law*. Four of the participants provided research notes, another gave us permission to republish a recent chapter in an edited collection, one gave us a version of a forthcoming journal article, and one provided her assessment, as a long-time feminist labour law interlocutor, of a collection of recent musings on the idea of labour law.

By focusing on gender as a crucial feature in the organization and valuation of work, the workshop and the contributions to this special section stretched the contemporary conversation about labour law in three directions. The first is scope, which still remains quite firmly tethered to the contract of employment, despite recent attempts to extend it to a broad range of personal work relations.³ Feminist approaches to the scope of labour law go beyond a demarcation dispute about the boundaries of labour law to question the very act of delineating different legal jurisdictions, such as family or criminal law, for example, to govern different types of work, such as unpaid domestic labour or paid sex work. In her reprinted chapter, Ann Stewart uses the concept ‘body work’ to expose the conceptual limitation of labour law in a consumer-based market economy.⁴ She explores how two examples of body work – the labour involved in caring for the vulnerable elderly and in providing commercial sex – are regulated, and she concludes that labour law as presently constituted cannot tackle relationships constituted on the borders of production and social reproduction, and also struggles to recognize the influence of consumer/clients on work relationships.⁵ In a similar vein, Prabha Kotiswaran in her article focuses on three forms of abject labour in India – sex work, exotic dancing, and commercial surrogacy – both to stretch feminists’ conception of social reproduction beyond care and to question the efficacy of traditional models of labour law to meet the needs of these workers. Through an examination of three generations of labour law, Kotiswaran suggests that labour regulation geared towards the informal economy best addresses the demands made by women reproductive workers for recognition and redistribution. She concludes by suggesting that the traditional model of labour law designed for the formal industrial sector needs to be reconceptualized, especially as the postcolonial Indian state re-engineers labour laws to make regulation more ‘flexible.’ The scope of labour is further challenged by Kate Bedford who, in her research note, explains how volunteer labour figures prominently in certain kinds of ‘mundane’ charitable activity, such as bingo halls, which tend to be highly gendered. She focuses on how charities and government officials try to manage the tension between regulating and incentivizing the unpaid workers whose labour sustains the charitable bingo hall.

³ See Mark Freedland and Nicola Kountouris, *The Legal Construction of Personal Work Relations* (Oxford: OUP, 2011) and for a feminist reading of this approach see Sandra Fredman and Judy Fudge, ‘The Legal Construction of Personal Work Relations and Gender’ (2013) 7 *Jerusalem Review of Legal Studies* 112.

⁴ Similarly, at the workshop, Prabha Kotiswaran used the legal regulation of sex work, exotic dance and commercial surrogacy in India to reveal how social relations influence the value and organization of reproductive labour. See her book *Dangerous Sex, Invisible Labor: Sex Work and the Law in India* (Princeton: Princeton UP, 2011).

⁵ Ann Stewart, ‘The Socio-Economic and Legal Context of Body/Care Work’ in Carol Wolkowitz, Rachel Lara Cohen, Teela Sanders and Kate Hardy, eds, *Body/Sex/Work: Intimate, Embodied and Sexualized Labour* (Basingstoke: Palgrave, Macmillan, 2013) 61-76, 74.

The second way in which the workshop and GLLRN stretches labour law is across disciplinary boundaries. A socio-legal approach is a strong current within feminism, which tends towards multi- and inter-disciplinarity. In her contribution to this issue, Donatella Alessandrini contrasts the feminist autonomists' critique of the wage society, their refusal to place reformist demands on the state, and their emphasis on the collectivization of social reproduction with post-Keynesian policies aimed at the socialization of investment, in particular the proposal for the government to act at once as the Employer of Last Resort (ELR) and a social provider. She offers a feminist political economy approach to social provision and the wage.⁶ Moving from theory to politics, Nicole Busby's research note explores how the UK's Coalition Government has used the 'need' for austerity to justify labour market deregulation alongside reductions in welfare and cuts to public services. She shows how 'such reforms have resulted in reduced protection for those (women) engaged in low paid, precarious work and the loss of public sector jobs and also run the risk of upsetting the finely-tuned arrangements on which those who provide unpaid care alongside paid work depend'.⁷

A feminist approach to labour law also stretches the range of theoretical frames and methods used to study the relationship between law and work, as feminists tend to embrace a catholic approach to methodology and theory. Emily Grabham's research note introduces us to her project on law and time, which studies the time-related concepts and assumptions that structure some of the key initiatives in the area of equalities regulation in the UK over the past two decades. Drawing on the work of Bruno Latour and Michel Serres, she goes beyond 'merely tracing how legal concepts and communities symbolize time, or how they use temporal concepts in their world-making features', to explore 'the materialization of time and interconnections between time, matter, form and objects in the making of law' pertaining to 'work-life balance'.⁸ Other participants in the workshop discussed their research, which engages in empirical methods to understand the complex interactions of labour law and the 'resolution' of conflicts at work.⁹

In the final contribution to the special section, Joanne Conaghan uses a recent collection of essays entitled *The Idea of Labour Law*¹⁰ to reflect upon the extent to which labour law has taken up the feminist challenge to 'confront the implications - for labour regulation - of acknowledging the interdependence of work and family life and the constituting significance of gender in relation to the social (and legal) organization of work'.¹¹

⁶ Bedford also adopts a political economy approach in her examination of bingo as an instance of gambling.

⁷ Busby, this issue.

⁸ Grabham, this issue.

⁹ For example, Lizzie Barmes' research on the law regulating individual employment disputes and Grace James' study of the impact of ideologies of motherhood, fatherhood and the 'unencumbered worker' in workplace conflicts involving pregnancy, parenting and caregiving are concerned with seeing how employment rights and legal institutions actually influence working life. For examples of their work see Lizzie Barmes, 'Learning from Case Law: The Accounts of Marginalised Working' in Judy Fudge, Shae McCrystal and Kamala Sankaran, eds, *Challenging the Legal Boundaries of Work Regulation* (Oxford: Hart Publishing, 2012) and Grace James, *The Legal Regulation of Pregnancy and Parenting in the Labour Market* (London: Routledge-Cavendish, 2008).

¹⁰ Edited by Guy Davidov and Brian Langille (Oxford: OUP, 2011).

¹¹ Conaghan, this issue.

We hope that this special section both inspires and provokes research that uses a feminist lens to examine labour law and we encourage researchers to join the GLLRN list-serve: <https://www.jiscmail.ac.uk/cgi-bin/webadmin?SUBED1=Gendering-Labour-Law&A=1>.

The GLLRN email list-serve is hosted by the UK's academic IT system, JISC. We intend it to be a means of communicating about scholarship on gender, labour law and labour regulation that challenges received wisdom about the discipline's assumptions, norms and practices in a range of social, historical and spatial contexts. We are interested in promoting and showcasing scholarship that explores the boundaries between legal jurisdictions that have been seen as separate (migration/labour, welfare/labour, commercial/labour, human rights/labour, trafficking/labour, family/labour) and that considers how labour law constructs, reinforces, or challenges social relations of subordination: gender, race, and class, for example. We are keen to foster interdisciplinary approaches to labour law and we are interested in labour law at a range of different scales. We would appreciate it if you could publicize the new list with your colleagues across disciplines.

The email list is one facet of what we hope will be a new scholarly network, fostering intellectual exchange on topics relating, for example, to gender, race, migration, and labour law, sharing ideas for collaboration, and (hopefully) organizing workshops and streams at relevant conferences. Please do use this list to share new research, developments in your area, and other relevant news.