Abstract

The Future of the Standard Employment Relationship: Labour Law, New Institutional Economics and Old Power Resource Theory

This article addresses two questions about the standard employment relationship that have become prominent in labour law literature: Does it exacerbate inequality? Is its decline inevitable? The focus is on the second question, and emphasizes the extent to which the standard employment relationship was both embedded in, and the outcome of, an institutional ensemble that was fashioned out of the post-war capital-labour compromise in industrialized democracies. The analysis proceeds in three steps. The first is conceptual and stresses the distinctive nature of labour as a fictive commodity, and the recurring regulatory dilemmas that arise in any attempt to institutionalize a labour market. The second step historicizes and contextualizes the employment relationship, emphasizing politics and conflict (power resource theory) over rational choice and coordination (new institutional economics) as the basis for its institutionalization. The emphasis on politics, power and labour leads to the third step, which focuses on how the broad process of financialization influences three key institutions – the large manufacturing firm, the democratic welfare state, and autonomous trade unions– that have been crucial for the development of the standard employment relationship.

Key words
Standard employment relationship, labour law, financialization

Judy Fudge
Professor
Kent Law School
Eliot College
Canterbury
Kent CT2 7NS
UK
J.A.Fudge@kent.ac.uk

July Fudge is a Professor in Law at the University of Kent. Her research interests are labour and employment law (Canadian, UK, European, and International), immigration and work, precarious work, human rights and citizenship at work, and feminist approaches to labour law.

Accepted 17 January 2017 Journal of Industrial Relations, International article

The Future of the Standard Employment Relationship:
Labour Law, New Institutional Economics and Old Power Resource Theory[1]

Introduction

The standard employment relationship emerged as one of the key institutions of labour markets in industrialised democracies in the first half of the twentieth century, shaping the terms under which labour power is supplied to and utilized within firms. It took the legal/juridical form of the contract of employment, and its function is to link workers' subordination to managerial prerogatives to protections against the abuse of this power (Deakin, 2013a: 136). Moreover, through the contract of employment labour law is also linked to other areas of regulation such as social security, tax, and corporate law, which, in turn, protect workers against a range of social risks through various mechanisms of redistribution. In legal terms the contract of employment is conceptualized as a bilateral relation between the worker and an employing entity, which is almost invariably a corporation, which the law endows with the capacity to contract. With the rise of welfare states in the mid-twentieth century, the standard employment relationship also shaped the pattern of social stratification and associated standards of living of citizens.

While the standard employment relationship varies in its specific characteristics, there was a normative model of employment in industrial capitalist and democratic countries (Bosch, 2004). As the pillars (other institutions and political alliances that support them) upon which this normative model of employment, known as the standard employment relationship, have weakened there has been a proliferation of employment and work relationships that fall outside the norm and, consequently, beyond the scope of labour law and its associated labour standards and techniques of regulation, such as collective bargaining (Broughton et al., 2016; ILO, 2016a; De Stefano 2016). Just as significantly, a gradual hollowing out of the standard employment relationship has begun in many of the most advanced economies. There has been a large decline in the wages' share of the gross domestic product as wage gains have been uncoupled from productivity increases in most OECD countries (Picketty, 2014; Atkinson, 2015), union density has declined, and the drop in industrial action has been even more precipitous (Gumbrell-McCormick and Hyman, 2013; Streeck, 2014a; Thelen, 2014: 35).

Prominent labour law scholars have reacted in very different ways to how the changing world of work has influenced the standard employment relationship. Some, most notably Katherine Stone and Harry Arthurs (2013), have lamented the death of the standard employment relationship at the same time as they have blamed it for increasing inequality. Harry Arthurs (2013: 593-4) has advocated a new 'law of economic subordination and resistance' that is not limited to the labour market, but includes consumers, tenants and other groups, who 'should have the right to be protected from the arbitrary experience of private economic power'. By contrast, other labour law scholars, such as Simon Deakin (2013a; Adams and Deakin, 2014), along with leading industrial relations scholars Gerhard Bosch (2004) and Jill Rubery (2015), have emphasized the standard employment relationship's resilience, and its institutional and normative capacity to adapt to atypical, and more precarious, forms of work, and to continue to provide fairness to workers and coordination for capital.

Instead of regarding the standard employment relationship as either a dodo or as a phoenix, I will attempt to chart a third position, one that emphasizes the institutional ensembles and political compromises that sustained the standard employment relationship. While I argue that a distinctive law of the labour market, what is more traditionally known as labour law, is still crucial if we are to realize decent work or, at the very least, avoid unacceptable forms of work (Fudge and McCann, 2015), I am concerned about the resilience of what has come to be accepted as *the* standard employment relationship in advanced industrialized democracies. The standard employment relationship is simultaneously contractual *and* highly regulated by state norms and/or institutions or collective organizations that are accountable to working people. Contractualization, which facilitated labour's commodification, was followed by trade union and state regulation that limited the extent of labour's commodification. Prognoses about the ubiquity and the robustness of the standard employment relationship depend upon a prior assessment of the resilience the of the institutional ensemble in which it is embedded, which, in turn, depends upon the social mobilization of political constituencies that support an *egalitarian* capitalism.[2] Although social scientists cannot predict the future, they can 'provide plausible interpretations of the past in the form of systematically comparable historical reconstructions of chains of events that at first glance may appear nothing but chaotic' (Streeck, 2013: 281). These historical reconstructions may help us to identify tipping points that lead to change, although not its direction.

Instead of engaging an empirical debate about the proportion of employment across the globe that fits within the model of the standard employment relationship, I emphasize the extent to which the standard employment relationship was both embedded in, and the outcome of, an institutional ensemble that was fashioned out of the post-war capital-labour compromise in industrialized democracies. My analysis proceeds in three steps. The first stresses the distinctive nature of labour as a fictive commodity, and the recurring regulatory dilemmas that arise in any attempt to institutionalize a labour market. The second historicizes and contextualizes the employment relationship. Labour law scholars who view the evolution of the employment relationship through the perspective of new institutional economics identify its function as a multifaceted linking device (Deakin, 2013b; Deakin, 2016). But, while I draw upon new institutional economic accounts of the employment relationship, instead of highlighting rational choice and coordination, I stress politics and conflict as driving forces in the institutionalization of the standard employment relationship (Rubery, 2010; Howell, 2015). This emphasis on politics, power and labour leads me to the third step in my argument, where I focus on how the broad process of financialization influences three key institutions – the large manufacturing firm, the democratic welfare state and autonomous trade unions– that have been crucial for the development of the standard employment relationship (van der Zwan, 2015: 114) To conclude, I will consider whether the standard employment relationship causes inequality and whether its decline is a foregone conclusion.

Labour as a Fictive Commodity and the Need for a Law of the Labour Market

The standard employment relationship is conceptualized as involving a bounded relationship: a contract between a single employer and an employee. The legal format for the standard employment, which emerged in the late nineteenth century, first in Britain and then in Europe, is a contract. The standard employment relationship is a normative model akin to an ideal type, rather than an empirical reality. It was simultaneously the outcome of, and the fulcrum for, state regulation and collective bargaining. Traditionally, the standard employment relationship, which was firmly institutionalized after World War II, has been a 'stable, socially protected, dependent, full-time job . . . the basic conditions of which (working time, pay, social transfers) are regulated to a minimum level by collective agreement or by labour and/or social security law' (Bosch, 2004:618-9).[3] The configuration resulted in a partial decommodification of labour as a family wage enabled women to devote their time to child rearing and social protection cushioned working people from the full exigencies of the market. Moreover, the standard employment went hand in hand with limited liability and the rise of the large vertically integrated firm, and social protection was channeled through the limited liability company (Deakin and Wilkinson, 2005). The state used employment as a platform for social insurance, and redistributive income taxes funded social welfare. Industrial unions, both through their political alliances with social democratic parties, and by engaging in collective bargaining, safeguarded the standard employment relationship. In industrialized democratic states, the standard employment relationship was embedded in an institutional assemblage, and the precise features and combination of which depended a host of national features. Keynesian demand-management techniques and social welfare policies supported the standard employment relationship, and wage and productivity increases resulted in a virtuous circle so long as international market forces could be mediated or embedded (Kirschner, 2011; Ruggie, 1982).

It is critical stress to Bosch's insight that 'the SER is a regulated employment relationship. Only by laying down minimum standards can employment relationships in very different firms and industries and among very different groups of employees acquire the common characteristics required for the development of a societal standard' (2004: 631). The shift from industrial to financial capital, the rise of globalization and the liberation of markets from regulation, changes in the capacity and willingness of nation states to regulate employment relations, the reconfiguration of product markets, the demographics of the workforce, and the imbalance of power between capital and labour call the resilience of the standard employment relationship into question.

Katherine Stone and Harry Arthurs (2013: 1) claim that 'around the world, workers are embattled, labour markets are in disarray, and labour laws are in flux'. Their premise is that the decline of the standard employment contract is 'both a cause and an effect' of these developments, and they conclude that it is 'unlikely that the standard employment contract can be revived or that the regulatory regimes once intertwined with it can be resuscitated' (Ibid.).

Instead of addressing the empirical basis for this claim, which has been ably dealt with by others (Adams and Deakin 2014), I want to focus on Harry Arthurs' prescription for how to revitalize labour law (Arthurs, 2013). He uses a counterfactual to consider other forms of regulation that could assist workers. He asks us to 'imagine that labour law had never been invented, or having been invented, that it had become one aspect of the broader field of legal learning and practice entitled 'the law of economic resistance' that addressed not only relations of employment but all economic relations characterized by comparable asymmetries of wealth and power' (Arthurs, 2013: 584.) He asserts that 'labour law's claim to uniqueness has always rested on some version of the proposition that 'labour is not a commodity,' and he argues that this claim has exposed labour law to the criticism that workers were seeking unique privileges. He asks us to consider a different foundational proposition for labour law – that 'the subordination of workers in the employment relationship is but one representative example of the experience of many groups under capitalism, all of which should have the basic right to be protected from the arbitrary exercise of private economic power' (Arthurs 2013: 593-4).[4]

This thought experiment offers a novel unifying normative theme for labour's claims; but, the problem is that it does not capture the conceptual contribution that political economists such as Karl Marx and Karl Polanyi have made in characterizing labour as a 'fictive commodity' (Marx, 1981; Polanyi, 1944).[5] It is labour's distinctive character as a commodity that gives rise to the need for regulation (Offe 1985; Peck 1996). Labour, or more accurately labour power, cannot physically be separated from its owner. Although allocated through the market and institutionally treated as a commodity, labour power is embodied in human beings who are born, cared for, and tended to in a network of social relations that operate outside the direct discipline of the market (Fudge 2011).

Labour is a distinctive or fictive commodity because of its unique social character, which gives rise to four recurring dilemmas that must be resolved for a market to be established and to function (Peck, 1996: 24). First, there is the problem of incorporating labour into the labour market. The market does not govern the supply of labour; instead families determine the quality and quantity of labour, albeit influenced by state policies, and by the state directly though immigration policies. Second, labour is not allocated exclusively by price, but matched by institutions. Social groups suffer disadvantage on account of ascribed rather than achieved characteristics. Gender and racial ideologies relating to appropriate roles and traits, employer strategies to enhance profits, along with norms and customs give rise to labour institutions such as job labeling, labour market segments, internal labour markets, and glass ceilings that perpetuate discrimination against women and certain racial groups. Third, the problem of labour control is endemic. Labour is only partially commodified; human beings sell their capacity to work, not themselves. Thus, cooperation on the part of workers is essential to the success of any enterprise, and this cooperation is based upon a blend of coercion and consent.

Fourth, there is the fundamental question of the reproduction of labour, which involves its procreation, socialization, and nurturance on a daily and generational basis.

The geographer Jamie Peck (1996: 23) explains how the four social processes involved in making labour a commodity pose recurring and systemic regulatory dilemmas. If the labour market is understood as an instituted process and not a spontaneous order, then regulation is necessary to constitute it, and not simply to adjust it (Picchio, 1992). The specific form that regulation takes depends on the social, political, legal, and cultural context as well as the balance of power between men, women, workers, employers, and different segments in the labour market (Peck, 1996; Tucker, 2010).

Labour law is informed by a normative understanding of the slogan 'labour is not a commodity' as well as an appreciate of labour's distinctive regulatory dilemmas that inevitably arise in constituting and governing a labour market. From this analytic perspective, what is distinctive about labour law is that it is an attempt to deal with these dilemmas. Or as Simon Deakin put it, 'labour law is the law of the labour market, that is, the law that underpins the creation of labour power as a commodity and regulates the resulting social and economic relations' (Deakin, 2013a: 143).

The Rise and Spread of Standard Employment Relationship

Labour markets do not simply emerge, but are constructed through a long process during industrialization that depends upon certain institutional preconditions, and the employment relationship is a specific form of mediation of the recurrent dilemmas that are integral to labour markets (Fudge, 2016). The employment contract predates the standard employment relationship and was the legal platform upon which it was built. Its institutionalization depended upon several other pillars that must be firmly embedded; these are the welfare state, social democratic political parties, industrial trade unions, a sexual division of social reproduction labour and vertically integrated firms. What the standard employment relationship does is link capitalist work relations to the wider risk-sharing role of the welfare or social state, a link that was embodied in the 'compromise' of mid-twentieth century social and economic policy, and coded, juridically, in the contract of employment (Deakin, 2013a). Deakin and Wilkinson (2005) claim that in the final analysis the argument for the contract of employment is one in favour of an integrative mechanism, or set of mechanisms, which makes it possible for a market economy and a social welfare state to co-exist.

The standard employment relationship is functional for capital in that it resolves some of its key dilemmas; it provides a flexible method of co-ordination that is less costly than spot contracting and a basis upon which workers will invest in skills and knowledge (Marsden, 1999). However, an historical as opposed to rational choice perspective regards the standard employment relationship as a contested institution that has evolved to achieve cooperation between capital and labour in productive activities through mediating their conflicting interests with respect both to control and distribution. Conflict was mediated by a political compromise that depended upon a coalition and the institutionalization of forms of representation (Howell, 2015; Silver, 2003).

The standard employment relationship was both the basis for, and outcome of, labour law in general and collective bargaining in particular. Large manufacturing firms, the paradigmatic Fordist enterprises, needed a stable supply of workers disciplined to accept managerial authority, and these workers, in turn, formed industrial unions in order both to limit that authority and obtain employment and income security. State policies, such as protective tariff walls and the regulation of financial markets, also supported the rise of large vertically integrated corporations that were embedded in national territories. As Deakin (2013a: 217) explains, labour law could not very well function to alleviate the consequences of power imbalances in the organization of work or to diffuse the economic risks of wage dependency if workers' legal claims, for example to wage or job protection, were not routed through the corporate asset pool.

During its golden period from the mid-1930s to the end of the 1970s, labour law was concerned with production and protection. By stipulating that employees were legally, not only economically, subordinate to their employers it safeguarded managerial prerogatives. This feature of labour law – its commitment to hierarchy and to the protection of the prerogatives of private property – was always in tension with the protective and redistributive goals of labour. However, this tension was mediated by democratic states by supporting autonomous collective action and participation by workers and redistributive social policies. Thus, the institution of the standard employment relationship is the manifestation of a compromise between competing interests and logics brokered by democratic states (Rubery, 2010). The Keynesian welfare state, the standard employment relationship, and industrial trade unionism are the highest mediation of these tensions (Picchio, 1992: 141).

However, the predominance of the standard employment relationship in advanced industrial democracies has obscured how labour markets institutions have been disrupted, weakened or drifted. This problem arises because of the iterative and dynamic development between regulation and labour markets. Because labour markets need institutions as a condition for their emergence, it is difficult to distinguish the object of regulation (a labour market problem of some kind or other – here termed a regulatory dilemma) from the means of regulation (particular institutional responses) (Peck, 1996: 26). This analytic problem plagues the contemporary debate about the role of the standard employment relationship because a specific form of regulation at a particular moment in time has come to be seen as *the* form, rather than *a* form, of institutionalizing labour markets. While the standard employment relationship predominates in key sectors in advanced capitalist democracies, other forms of labour contracting, ones that are not regulated by protective labour standards or collective bargaining, are compatible with capitalism (Phillips and Mieres 2015; Meagher, Mann and Bolt, 2016).

Disembedding the Market

Is the standard employment relationship *the* reference point for labour market regulation? Deakin adopts a 'systemic-evolutionary model of labour' which argues 'for the long-run compatibility of market-based economic development with the labour market institutions which are characteristic of industrialized economies' (Deakin, 2013b: 6). He stresses the functionality of the standard employment relationship as a response to issues of coordination and risk management in all labour markets, and predicts an alignment of legal systems with more formal employment patterns as a result of the spread of wage labour in emerging economies.

While I agree that industrial capitalism goes hand in hand with the commodification of labour and that the standard employment relationship is compatible with industrial capitalism, I am doubtful that the standard employment relationship as it was constructed in the post-war period in industrialized democracies simply accompanies industrial capitalism. The reason for my skepticism is that the emergence and stabilization of the standard employment relationship, as opposed to wage labour and the contractualization of labour power, depended upon the existence of a number of other key institutions that were embedded in industrial capitalism: large manufacturing enterprises, democratic nation states committed to egalitarian capitalism and autonomous trade unions. Although Deakin's (2016) sophisticated new institutional economics approach appreciates that different norms and institutions can construct labour markets that achieve different equilibria and recognizes that capitalism is a particular mode of governance, there is a tendency in this approach to emphasize firms and co-ordination, and to downplay power and conflict and the roles of democratic states and organized labour. This difference in emphasis is important, because power-resource theory, as opposed to new institutional economic analysis, is concerned about offering political explanations of institutional reproduction. The key difference is whether the institutions that constitute labour markets are seen primarily as 'mechanisms for solving the coordination problems of capitalists, or as crystallized forms of social power' (Howell 2015: 400). What is distinctive about the standard employment relationship is that it was the result of a political compromise between labour and capital mediated by the democratic state. It was also a compromise that was economically functional, which contributed to its stability. However, financialization highlights the extent to which the political compromise and institutions upon which the standard employment relationship depends have been eroded.

Financialization

Financialization refers to the shift from industrial to financial capitalism. Natascha van der Zwan identifies three main stands of financialization studies – financialization as a regime of accumulation, financialization of the modern corporation, and financialization of everyday life – each of which interrogates how 'an increasingly autonomous realm of global finance has altered the underlying logics of the industrial economy and the inner workings of democratic society' (van der Zwan, 2014: 100). At the macro level, financialization is regarded as a regime of accumulation that has succeeded the Fordist regime of accumulation, which was institutionalized in advanced industrial states in the post-war period. Focusing on the United States, regulation theorists in particular identified a shift in the 1970s in profit generation from production to interest, dividends and capital gains. Financialization and globalization are interrelated; 'faced with increased international competition and domestic demands for shareholder return, American manufacturers have off-shored production and controlled foreign supply chains to cut down costs' (Van der Zwan, 2014: 104). Neo-liberal policies that deregulated the financial market further facilitated and promoted financialization (Jacoby, 2008; Harvey, 2005). Productivity gains are not reinvested in the corporation, but, instead, are distributed to shareholders or used to purchase financial products. The income of rentiers has come at the expense of wage earners, who take on debt to maintain their standard of living. Increased income inequality and high levels of household debt have simultaneously increased the systemic risk in financialized capitalism (Deakin and Koukiadaki, 2013).

The shareholder value approach to financialization focuses on the corporation and considers how non-financial corporations adopt practices promoting shareholder value and in doing so divert financial market pressure to employees for the benefit of mangers and shareholders. Corporate restructuring to promote shareholder value and, most strikingly, managers' income result in job loss, wage and benefit roll backs, and intensified work. While the US and the UK have been leaders, it is clear that shareholder value has been shaping the institutional practices in European countries, if not changing the institution of the corporation (Van de Zwan, 2014). This process of financialization has 'contributed to a weakening of workers' bargaining power in the direction of erosion/decentralization' and 'a reduction in the level of employment protection' (Darcillon, 2015: 499).

Although the rise of financial elites and the strength of the rentier and managerial classes are critical to understanding the shareholder value strategy (Jacoby 2008), the mechanisms by which it is disseminated and transmitted are complicated, and extend to the state and to wage earners. The switch from pay-as-you go state pension systems to funded pension schemes and the provision of tax benefits for individual investment in mutual funds encourage citizen-earners to invest in financial markets and actively promote the financialization of everyday life. Individuals are responsible for managing their own risk and the approved way of doing so is to seek high rates of return in the equity market. Instead of embedding the market in the social, states increasingly expand the market into the social. Crouch (2009) characterizes this change in the role of the welfare state as the shift from public Keynesianism, in which the state takes on debt, to privatized Keynesianism in which citizens are encouraged to take on debt to stimulate the economy. As a result, wage earners are increasingly capital owners. This dual identity creates problems for creating and maintaining political coalitions that support the decommodification of labour.

By focusing on the Anglo-American institutional context, financialization studies tend to flatten out the significance of institutions and the significance of actors for transmitting shareholder value as the dominant strategy. But, at the same time, they generate insights that call into question some of the key elements in Fordist frameworks of analysis for industrial capitalism that were central to the emergence of a standard employment relationship. Should the large, manufacturing firm remain at the centre of analysis in understanding labour markets? Will the state continue to play a market-embedding role? Can the labour-capital class compromise of the post-war period be maintained as an increasing proportion of wage earners are also capital owners? Are new political coalitions being mobilized in order to defend the institutions of egalitarian capitalism, which is the ground in which the standard employment relationship was embedded?

The Large Manufacturing Enterprise

The institutionalization of the standard employment relationship was dependent upon the rise of the large manufacturing firm with which it evolved. Not only does financialization call into question the centrality of the large manufacturing firm in contemporary capitalism, changes in how the firm is organized and to how work is contracted and deployed tend to undermine the standard employment relationship.

David Weil (2014) describes how the large vertically integrated firms that were essential to the Fordist compromise and the consolidation of the standard employment relationship have shed employment and transferred it to a complicated network of smaller business units, with the result that employment has become more precarious. This fissuring of the workplace allows key firms to focus on core competences, discard workers, and reduce costs, and it 'represents a response to pressures from capital markets and is enabled by the falling cost of coordinating business transitions through information and communications technologies' (Weil, 2014: 10). Significantly, new technologies enable lead firms to maintain control over their brand or product through the imposition and monitoring of standards while simultaneously transferring employment and risk outside their corporate boundaries.

The ability to fissure workplaces across national boundaries compounds the difficulty states and unions have in maintaining or expanding the standard employment relationship. A distinctive feature of global capitalism is the increased permeability of national employment and business systems, through trade, production chains and international ownership. The ease with which firms can adopt different organizational forms enables them to disaggregate different components of production and service provision around the globe. The core activities of production, consumption and circulation, as well as their components (capital, labour, raw materials, management, information, technology and markets) are organized on a global scale through a network of linkages between economic agents. Global production and supply chains proliferate, and new technologies have resulted in the expansion of global services. The International Labour Organization (2015: 133) estimates that worldwide one in five jobs are linked to global supply chains where different tasks of a production process are performed in two or more countries.

The expansion of transnational value chains disrupts dominant frameworks for understanding and analyzing employment relations, which focus either on the firm or the implications of different national contexts for firms, such as varieties of capitalism. Lakhani, Kuruvilla and Avgar (2013) argue that globalization, characterized by production and services that are increasingly coordinated across countries and firms, requires an analysis of the different linkages between a variety of firms across a variety of national contexts. Thus, they propose global value chain theory, or configurational analysis, as a way of capturing the diverse employment systems that are likely to arise from these varied linkages and interdependencies inherent in a global context.

Lakhani, Kuruvilla and Avgar claim that varieties of capitalism approaches, which emphasize the importance of national institutional assemblages that result in distinctive national capitalisms and, in turn, structure firm strategies and practices, including those pertaining to employment relations, are limited when it comes to understanding the employment relationship in cross-national value chains. Not only do varieties of capitalism approaches assume institutional stability, which is problematic in light of the changes generated by globalization and market liberalization, they are not particularly useful for understanding how the connections between firms across national boundaries affects employment relations. For these reasons they urge researchers to shift the focus of employment relations analysis away from the individual firm to the interconnected networks in which they belong. Global value chain theory suggests that different value chains create different relationships between firms in the network operating under multiple national systems, and they propose that employment relations will also vary across different value chain configurations. Thus, Lakhani, Kuruvilla and Avgar advocate shifting the level of analysis to the value chain in order to identify the diverse lead firm-supplier configurations that operate across national and firm boundaries.

Transnational value chains provide a particularly potent threat to the integrity of industrial relations systems and to the standard employment relationship. The reconfiguration of value-added activities across national boundaries poses major challenges for trade unions, both undermining organized labour in advanced political economies of the global North and 'exacerbating difficulties for building collective worker organization in the global South' (Taylor et al, 2015, 11). The configurational framework Lakhani, Kuruvilla, and Avgar propose provides an additional lens focusing on the global level that assists in identifying the conditions under which lead firms in transnational supply chains can be persuaded to 'regulate' the employment relations of workers employed by their suppliers. The trick, however, is not to loose sight of the continuing significance of the territorial, or local, level (Coe, 2015).

The Decline of the Democratic State and Autonomous Trade Unions

Breaking both with the idea that there is a convergence towards Anglo-American liberalization and an approach to the varieties of capitalism debate that exclusively emphasized the dimension of coordination, Kathleen Thelen (2014: 195) adds the dimension of solidarity to the analysis and brings both the state and organized labour into the picture in order to explain what is happening to key labour market institutions in capitalist societies. Her empirical analysis of industrial relations institutions, vocational education and training, and labour market policy in the United States, Germany, Denmark, Sweden and the Netherlands, confirms a central tenet of power resources theory – that the weakness and fragmentation of labour is devastating to egalitarian capitalism (Thelen, 2014:204). This insight explains how institutional disruption in the USA has led it to become more liberal and unequal through a process of deregulatory liberalization, whereas Germany became increasingly dualist through a process of institutional drift as the protections provided by the coordinated system were confined to manufacturing workers. By contrast, although Denmark liberalized its economy by breaking down the institutions of coordination, through a process of institutional conversion it targeted labour market policy to the least skilled, thus achieving a form of embedded flexibililization (also known as flexicurity). The Netherlands and Sweden maintained their commitment to egalitarian capitalism through hybrid systems of coordination and solidarity.

Thelen identifies four conditions for egalitarian capitalism: employer coordination, high level of organization and unity of labour, state support for social solidarity (unionization, employer coordination and mediating the impact of market expansion of socially vulnerable groups), and the on-going mobilization of new political coalitions. Most significantly, social mobilization of new coalitions of political interests and the active support of the state are critical if the institutions of egalitarian capitalism are to be reinvigorated to meet the challenges generated by the changing economic and political environments. Since the standard employment relationship is a key institution of egalitarian capitalism, both its resilience and the level of protection it provides against the rigours of commodification depend upon mobilizing political coalitions that promote solidarity and the capacity of the state to cultivate solidaristic policies.

The problem is that in an age in which governments are committed to austerity, they have little capacity to mediate between the rights of citizens and the requirements of capital accumulation (Streeck, 2013: 282). More broadly, neo-liberal pressures to reduce direct taxation and the role of credit-rating agencies in relation to sovereign debt have systematically constrained the capacity of states to implement policies that promote social solidarity. In order to prevent a banking crisis, states have socialized losses, translating private debt into public and/or sovereign debt, and embarked on austerity policies that alienate and immiserate their citizens. Not only have democratic states 'lost their grip on key issues of fiscal and budgetary policy', with neo-liberal policies of privatization and deregulation they have ceded their ability to control 'the quality, price and distribution of public services' (Offe, 2013: 214). The upshot is that citizens are increasingly disaffected from democratic politics (Offe, 2013; Streeck, 2013, 2014c). In this context, it is difficult to mobilize political coalitions that support solidaristic policies let along to persuade states to support such policies in the face of opposition by economic elites.

In industrialized democracies, the key social actors supporting the standard employment relation, labour unions, are on the defensive. Even in Western Europe, where they have historically been strongest, unions have lost membership, their collective bargaining power has declined and their influence on government is much diminished (Gumbrell-McCormick and Hyman 2013). Moreover, 'their underrepresentation among the young, in the new service sectors and among the growing numbers of those in non-standard employment' undermines their social legitimacy (Visser, 2006). Developing coalitions with other groups has been a challenge for unions. The decline of trade unions is particularly ominous when it comes to assessing resilience of the standard employment relationship because it was through collective organization that the compromise between labour and capital that resulted in the standard employment relationship was realized (Rubery, 2010).

Conclusion: The Fate of the Standard Employment Relationship

Does the standard employment relationship exacerbate inequality? The standard employment relationship does not itself cause labour market dualism or segmentation. Labour market segmentation is the result of the interaction of employer strategies, trade union responses, social norms (for example, those pertaining to the household division of labour and ideas of value and reward that are linked to social status and ascriptive characteristics) and social and fiscal policies (Deakin, 2013b; Adams and Deakin, 2014; Rubery, 2015; Crouch 2015). In some contexts, such at the German system of coordination, the standard employment relationship has produced increasing inequality in the form of dualism. However, this dualism was not inevitable, but the result of strategic decisions by unions. Instead of organizing women and the service sector, unions focused on manufacturing workers. Bosch (2004) has outlined the contours of a new more flexible standard employment relationship, which would provide equal access for men and women to the employment system, and increase internal flexibility in the workplace. This flexible standard employment relationship is designed to attract the constituencies, such as white collared salaried employees, low-skill atypical workers, and working parents, who want different norms and experience different risks than the male manufacturing workers for whom the standard employment relationship was designed (Thelen, 2014: 194). However, the real challenge is to develop a political coalition capable of institutionalizing a flexible standard employment relationship. This kind of embedded flexibilization or flexicurity already exists, and Denmark and the Netherlands are the two most prominent examples (Deakin 2013b; Thelen 2014). Yet, before celebrating this policy as the 'solution' to the exclusionary tendencies of the standard employment relationship, it is important to recognize that at the same time as embedded flexibilization in Denmark and the Netherlands has sustained egalitarian capitalism, both countries exhibit a form of dualism, albeit one that excludes immigrants, and not their own citizens (Thelen, 2014: 200). Such xenophobic tendencies have the potential to destroy the social consensus that currently exists for this model.

Is the decline of the standard employment relationship inevitable? I agree with Bosh, Deakin and Rubery that it is possible revitalize to revitalize it. However, the harsh liberalization policies that the Troika administers in Southern Europe gives cause for concern; cuts in minimum wages, pensions and various other social provisions as well as decentralization of collective bargaining weaken the standard employment relationship to such an extent that it cannot fulfill its risk dispersing function (Deakin and Koukiadaki, 2013). While today's turbulent variety of global capitalism is unlikely to signify the end of employment and a return to pre-capitalist forms of supplying labour, digital platforms like Uber tend to operate as rentier classes providing access to petty service/commodity producers (Tucker, 2016) The rise of the 'gig' economy has fueled the shift to self-employment, particularly in countries in the UK that combine light-touch regulation with individualized, complaint-based enforcement. Self–employed workers tend to be paid less than employees and it easier for them to avoid paying tax, which leads to a revenue drain for the state and puts pressure on governments to reclassify these self-employed workers as employees (UK Parliament, 2015). However, although employment contracts are likely to prevail even under financial capitalism, the commodification of labour power does not necessarily lead to collective and protective regulation – these forms of regulation are not granted by the state but won from it. What is distinctive about the standard employment relationship, which is a regulated contract, is that it also partially decommodified labour power.

The standard employment relationship is the outcome of labour law and collective representation. The argument that trade unions and employment protection legislation lead to dualism or retard growth are over stated, and there is an increasing body of evidence that attests to labour law's efficiency-enhancing dimension (Deakin and Sarkar, 2008; Deakin, Malmberg and Sarkar, 2014; Deakin, 2016). Labour law is also deeply political; it is about the redistribution of power and wealth, and the outcome of conflicts that are successfully mediated through institutions. In the Fordist period, the key actors were industrial unions, social democratic parties, sovereign nation states and large manufacturing firms, which were motivated to support autonomous collective action and protective and redistributive labour standards by mass mobilization that was expressed in the workplace and the ballot box. Tariff walls and embedded liberalism created protective enclaves in which a virtuous circle of mass production and mass consumption in advanced economies could be forged.

The conditions today are profoundly different. The role of transnational value chains in shaping employment relations reveals how unstable some of the pillars supporting the standard employment relationship. Democratic nation states have, because of the power, instability and interconnectedness of finance capital, much less room to maneuver than they did in the past. Many private sector trade unions in the advanced economies appear to be in terminal, albeit slow, decline, and mass political and workplace mobilization against capital is in most democratic advanced capitalist states increasingly rare because it has been so ineffective. Post democratic political apathy combines with populism and nationalism to create a toxic politics that is not conducive to creating a political coalition that can sustain egalitarian capitalism (Crouch, 2004).

It is possible that strengthening national borders by imposing restrictive immigration controls may reconstitute the social consensus around strong national and ethnic identities that forms the basis for egalitarian capitalism within nation states.[6] There is, however, no simple trade-off between ethnic and multicultural diversity, on the one hand, and the common identity needed to sustain 'the capacity to pursue collective projects and social solidarity' on the other (Banting, 2010: 797). This relationship depends upon the ensemble of immigration, integration and social policies designed to integrate new comers (Banting, 2010: 805). It is also possible that denigrating migrants as foreigners and denying them access to social entitlements is part of a broader policy of restricting the social rights available to citizens and undermining the standard employment relationship (Morris, 2016).

The standard employment relationship was an important achievement, embedded in an institutional ensemble that depended upon the mobilization of political coalitions to support egalitarian capitalism. It may well be that the wealthy and stable (for advanced industrialized nations) post-war period was an historical anomaly in the longer history of capitalism, bracketed by laissez-faire at one end and neoliberalism at the other (Streeck 2014b). Only time will tell.

---

[1] This article is based upon a plenary paper delivered at the RDW conference in 2014.

[2] Colin Crouch (2004: 4, 19) argues contemporary democratic capitalist states politics is shaped by interaction between elected governments and self-serving elites, which overwhelmingly represent business interests. Thus, I prefer to use Kathleen Thelen's (2014) idea of egalitarian capitalism, in which redistribution, social welfare, and significant policy support for the economically marginalized are key components.

[3] Significantly, the standard employment relationship was fashioned in the first decade of the twentieth century in Australia (Issac and McIntrye, 2004).

[4] I do not dispute Arthurs' claim of the need for unions and workers to establish political coalitions. What I dispute is that an overarching law of economic subordination can achieve such a coalition.

[5] Land and money are also fictive commodities, but each of these fictive commodities is distinctive with its own set of regulatory dilemmas. The next paragraphs draw upon Fudge, 2011.

[6] I would like to thank an anonymous reviewer for this observation.

Arthurs H. (2012-2013) Labor Law as the Law of Economic Subordination and Resistance: A Thought Experiment. *Comparative Labour Law and Policy Journal* 34: 585-604.

Atkinson A (2015) *Inequality What Can Be Done?* Cambridge MA: Harvard.

Banting K (2010). Is There Progressive's Dilemma In Canada: Immigration, Multiculturalism and the Welfare State. *Canadian Journal of Political Science.* 43: 797-820.

Broughton A et al. (2016). *Precarious Employment in Europe: Patterns, Trends and Policy Strategies* IP/A/EMPL/2014-14 July 2016 PE 587.285 European Parliament Brussels.

Coe N (2015) Labour and Global Production Networks: Mapping Variegated Landscapes of Agency. In: Newsome K et al (eds) *Putting Labour in its Place: Labour Process Analysis and Global Value Chains*. London: Palgrave, pp. 171-194.

Crouch C (2015) Labour Market Governance and the Creation of Outsiders. *British Journal of Industrial Relations* 53: 27–48

Crouch C (2013) From Markets versus States to Corporations versus Civil Society? In: Schafer A and Streeck W (eds) *Politics in the Age of Austerity*. Cambridge: Polity, pp. 219-238.

Crouch C. (2009) Privatised Keynesianism: an unacknowledged policy regime. *British Journal of Politics and International Relations.*11: 382–399.

Crouch C (2004) *Post-Democracy*. Cambridge, UK: Polity.

Deakin S (2016) The Contribution of Labour Law to Economic Development and Growth. In: DuToit D (ed) *Labour Law and Social Progress Holding the Line or Shifting the Boundaries? Bulletin for Comparative Labour Relations*. Alphen an den Rijn: Kluwer, pp. 19-39.

Deakin S (2013a) What Exactly is Happening to the Contract of Employment? Reflections on Mark Freedland and Nicola Kountouris's Legal Construction of Personal Work Relations *Jerusalem Review of Legal Studies* 7: 135–144

Deakin S (2013b) *Addressing labour market segmentation: The role of labour law*. Governance and Tripartism Department, International Labour Office: Geneva October 2013

Deakin S (2006) The comparative evolution of the employment relationship. In Davidov G and Langille B (eds) *Boundaries and Frontiers of Labour Law*. Oxford: Hart, pp. 89-108.

Adams Z and Deakin S (2014) Institutional solutions to inequality and precariousness in labour markets *British Journal of Industrial Relations* 52: 779-809.

Deakin S, Malmberg J and Sarkar P (2014) How do labour laws affect unemployment and the labour share of national income? The experience of six OECD countries, 1970–2010 *International Labour Review* 153: 1-27.

Deakin S and Sarkar P (2008) Assessing the long-run economic impact of labour law systems: a theoretical reappraisal and analysis of new time series data *Industrial Relations Journal* 39: 453–87.

Deakin S and Koukiadaki A. (2013) *Resocialising Europe in a Time of Crisis.* In: Countouris N and Freedland M (eds.). Cambridge: Cambridge University Press, pp. 163-188.

Deakin S and Wilkinson F (2005) *The Law of the Labour Market: Industrialization, Employment and Legal Evolution.* Oxford: Oxford University Press.

De Stefano V. (2016) Non-Standard Work and Limits on Freedom of Association: A Human Rights-Based Approach. Industrial *Law Journal. first published online October 19, 2016 doi:10.1093/indlaw/dww034*

Fudge J (2016) Challenging the Borders of Labour Rights. In: Tarcy DuToit (ed) Labour Law and Social Progress Holding the Line or Shifting the Boundaries? Bulletin for Comparative Labour Relations. Alphen an den Rijn. pp. 73-88.

Fudge J (2011) Labour as a 'Fictive Commodity": Radically Reconceptualizing Labour Law. In: Davidov G and Brian Langille D (2011) *The Idea of Labour Law.* Oxford: Oxford University Press, pp. 120-135.

Fudge J and McCann D (2015) *Unacceptable Forms of Work*. International Labour Organization: Geneva.

Gumbrell-McCormick R and Hyman R (2013) *Trade Unions in Western Europe: Hard Times, Hard Choices*. Oxford: Oxford University Press.

Harvey D (2005) *A Brief History of Neo-liberalism.* Oxford: Oxford University Press.

Howell C (2015) Review Symposium On Kathleen Thelen, Varieties of Liberalization and the New Politics of Social Solidarity. *Socio-Economic Review* 13: 399–409

ILO (2016) *Non-standard Employment Around the World: Understanding challenges, shaping prospects*. Geneva: International Labour Organization.

ILO (2015) *Work Employment and Social Outlook: Trends 2015*. Geneva: International Labour Organization:

Isaac J and MacIntyre S (Eds), 2004, The New Province for Law and Order: 100 Years of Australian Industrial Conciliation and Arbitration. Melbourne: Cambridge University Press

Kirshner J (1999) Keynes, capital mobility and the crisis of embedded liberalism. *Review of International Political Economy* 6: 313-337

Lakhani T Kuruvilla S and Avgar A (2013) From the Firm to the Network: Global Value Chains and Employment Relations Theory. *British Journal of Industrial Relations* 51: 440-472.

Marsden D. (1999). *A Theory of Employment Systems.* Oxford: Oxford University Press.

Marx, K (1981) *Capital*. (trans Fernbach D) Harmondsworth: Penguin.

Morris L (2016) Squaring the circle: domestic welfare, migrants rights, and human rights. *Citizenship Studies* 20: 693-709

Peck J (1996) *Workplace: The Social Regulation of Labour Markets*. New York: The Guilford Press.

Phillips N and Mieres F (2015) The Governance of Forced Labour in the Global Economy. *Globalizations* 12: 244-260

Picchio A (1992) *The Political Economy of the Labour Market*. Cambridge: Cambridge University Press.

Picketty T (2014) *Capital in the Twenty-First Century.* Cambridge MA: Harvard University Press.

Polyani K (1957). *The Great Transformation*. Boston: Beacon Press.

Offe C (2013) participatory Inequality in the Austerity State: A Supply-Side Approach. In: Schafer A and Streeck W (eds) *Politics in the Age of Austerity*. Cambridge: Polity, pp. 196-218.

Offe C (1985) *Disorganized Capitalism*. Cambridge: Polity Press.

Rubery J (2015) *Re-regulating for inclusive labour markets*. Conditions of Work and Employment Series No. 65, International Labour Organization: Geneva.

Rubery, J (2010) Institutionalizing the Employment Relationship. In: Whitely T et al *The Oxford Handbook of Comparative Institutional Analysi*s. Oxford; Oxford University Press, pp. 497-526.

Ruggie G (1982) International regimes, transactions, and change: embedded liberalism in the post-war economic order. *International Organization* 36: 379–415.

Silver B (2003) *Forces of Labour: Workers' Movements and Globalization since 1870* Cambridge: Cambridge University Press.

Stone K and Arthurs H (2013) The transformation of employment régimes: a worldwide challenge. In: Stone K and Arthurs H (eds) *Rethinking Workplace Regulation: Beyond the Standard Contract of Employment.* New York: Russell Sage Foundation, pp 1-20.

Streeck, W (2014a) The Politics of Public Debt: Neoliberalism, Capitalist Development and the Restructuring of the State. *German Economic Review* 15: 143–165.

Streeck W (2014b) How will capitalism End*? New Left Review* 87: 35-64.

Streeck W (2014c) *Buying Time: The Delayed Crisis of Democratic Capitalism.* London: Verso.

Streeck, W (2013) The Crisis in Context: Democratic Capitalism and its Contradiction. In: Schafer A and Streeck W (eds) *Politics in the Age of Austerity*. Cambridge: Polity, pp. 262-286.

Taylor P et al. (2015) Putting Labour in its Place: Labour Process Analysis and Global Value Chain*s.* In: Newsome K et al. (eds) *Putting Labour in its Place: Labour Process Analysis and Global Value Chains*. London: Palgrave, pp.1-28

Thelen K (2014) *Varieties of Liberalization and the New Politics of Social Solidarity* New York: Cambridge University Press.

Tucker, E (2016) Uber and the Unmaking and Remaking of Taxi Capitalism: Technology, Law and Resistance in Historical Perspective (on file with the author).

Tucker E (2010) Renorming Labour Law: Can We Escape Labour Law's Recurring Regulatory Dilemmas' (2010) *Industrial Law Journal* 39: 99 -138.

UK Parliament, UK Parliamentary Business, The self-employment boom: Key issues for the 2015 Parliament. Available: https://www.parliament.uk/business/publications/research/key-issues-parliament-2015/work/self-employment/ [13 January 2017]

Van der Zwan N (2014) Making sense of financialization. *Socio-Economic Review* 12: 99-129.

Visser J (2006) Holes in the Bucket: Twenty Years of European Integration and Organized *Labour Comparative Labour Law and Policy Journal* 26: 477-521.

Weil D (2014) *The Fissured Workplace Why Work Became So Bad for So Many and What Can Be Done to Improve It* Cambridge, MA: Harvard University Press.