Labour Law in Search of a Purpose

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This lecture is based on – and includes some brief excerpts from – my book *A Purposive Approach to Labour Law* (OUP 2016), as well as four recent/forthcoming articles: *Subordination vs Domination: Exploring the Differences*, 33 IJCLLIR 365 (2017); *Distributive Justice and Labour Law*, in Philosophical Foundations of Labour Law (Hugh Collins, Gillian Lester & Virginia Mantouvalou eds.) (forthcoming); *The Capability Approach and Labour Law: Identifying the Areas of Fit*, in The Capability Approach Meets Labour Law (Brian Langille ed.) (forthcoming); *Using Moral and Political Philosophy to Justify Labour Law: Potential and Limits* (unpublished draft, presented at LLRN3). Footnotes and references have been omitted.

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1. Introduction: Why Search for a Purpose?

A major strand in the academic labour law literature in recent years is focused on identifying the purpose, or goals, of labour law. For the most part this scholarship is normative rather than descriptive. That is, it is not concerned with identifying the intentions of the legislature in a particular country when a particular law was adopted. Instead, the focus is on the justifications that can explain and justify the law – whether it is specific labour laws or the project of labour laws as a whole. Obviously, there is some overlap between the intentions of the legislature and these normative justifications. A descriptive account would add an analysis of the political compromises that have led to a particular solution, or the economic situation that triggered it, or perhaps some hidden agenda that some members of the legislature had. A normative account is concerned only with the enduring theories, or values, that can explain why the law is needed.

Why is this important? There are four main reasons for identifying/articulating justifications for labour laws. First, understanding the purpose of a law is necessary when performing purposive interpretation of it (including the filling of lacunas). In this context, in many legal systems (though not all) it is clear that purpose has to be identified at the level of *normative* justifications, rather than merely the legislature's intent at a given historical moment. Second, when a law is challenged as unconstitutional, the examination of its constitutionality requires an assessment of the means chosen in light of the importance of the goal – which again requires lawyers and judges to identify the goal. Third, when a need arises to reform labour laws and adapt them to new realities/challenges, it is necessary to start by asking: what are we trying to achieve with these laws? Fourth, articulating justifications for legal regulations intervening in the 'free market' – such as labour laws – is needed in order to defend them against neo-liberal critiques and calls for deregulation.

The search for a purpose can focus on a specific law (for example, a minimum wage law), or the entire field. Both levels are important. When we need to interpret a minimum wage law, for example, the goals of this specific law must be discussed. At the same time, there are many similarities between different labour laws, that justify also a unified inquiry into the reasons behind all of them. The current lecture will start from the general level and then move to the more specific. At the same time, I start with the more traditional approach to the idea of labour law, and move to newer approaches.

2. The Traditional Approach – and New Variations

Labour law is an exception to contract law. It covers a specific set of contractual relations, where the regular laws of contract do not apply. Instead we have a detailed set of laws that limit the freedom of the parties to agree on terms below a certain minimum. Labour law is also an exception to competition law; unlike other market transactions, here one of the parties – the worker – is allowed to join forces with others and bargain collectively, and even to strike in order to gain better terms through this bargaining. The traditional approach to identifying the idea (or purpose) of labour law has been to point out the unique characteristics of employment relationships: the characteristics that can explain why this special treatment is needed. What is

so different about this specific kind of contract – the contract to perform work in return for wages?

Structural Dependency and Subordination

Answers have traditionally relied on three concepts: inequality of bargaining power, subordination and dependency. Adam Smith was perhaps the first to discuss the inequality of power in employment relations. In *The Wealth of Nations* (1776) he famously noted: 'it is not… difficult to foresee which of the two parties must, upon all ordinary occasions, have the advantage in the dispute, and force the other into a compliance with their terms… The masters can hold out much longer… Many workmen could not subsist a week, few could subsist a month, and scarce any a year without employment'. Smith referred to the previous distribution of resources in society and its crucial impact on the power relations between the parties. His focus is on the terms of the contract; notably the ability of the owners of capital to impose a low wage. This should not happen if there is full employment and perfect competition, so Smith implicitly assumes the existence of market failures and some unemployment, certainly a reasonable assumption with regard to the labour market.

The fact that workers in general rely on capital owners for their income – that generally speaking they are dependent on wage-work for subsistence – is best described as *structural dependency*. Karl Marx developed this idea at length a century later, sometimes describing it as the subordination of labour to capital. He explained how the shift from a pre-industrial to an industrial society meant that people no longer produced by themselves, but had to work for others, becoming dependent on the willingness of capitalists to employ them. At the same time, he also offered a striking account of another level of subordination – experienced by *specific* employees vis-à-vis their *specific* employer once the relationship is formed: all combined labour on a large scale requires 'a directing authority, in order to secure the harmonious co-operation of the activities of individuals… A single violin player is his own conductor; an orchestra requires a separate one. The work of directing, superintending and adjusting becomes one of the functions of capital, from the moment that the labour under capital's control becomes co-operative.' Marx, of course, went on to argue that capitalists are using this authority to extract the greatest possible surplus-value from the workers, that is, to exploit the workers as much as possible. But it is not necessary to accept this view in order to understand the unavoidable existence of authority (or control) and the resulting subordination in employment relationships. This, in my view, is what we should properly call *subordination* in employment relations.

Hugo Sinzheimer, the German labour law scholar who is often considered one of the founding fathers of modern labour law, and Otto Kahn-Freund, his student who went on the become the most prominent labour law scholar of the UK in the 20th Century, have both referred to these two crucial characteristics. Sinzheimer described them both as dependency – dual meanings of dependency – while Kahn-Freund used the terms inequality of bargaining power and subordination, often interchangeably. I think it is important to distinguish the two phenomena, and I will refer to them as structural dependency (of workers in general, on wage-work) and

subordination (of an individual employee on a specific employer; subjection to the latter's control).

Kahn-Fruend, rightly in my view, shifted most of his attention to subordination. In 'some reflections on law and power' – published as the introductory chapter of *Labour and the Law* – he famously says: 'the main object of labour law has always been, and we venture to say will always be, to be a countervailing force to counteract the inequality of bargaining power which is inherent and must be inherent in the employment relationship'. Although the term 'inequality of bargaining power' attracted most attention, it is clear from reading the chapter as a whole that Kahn-Freund is concerned with power in the sense of control in the individual employment relationship – which he also repeatedly calls subordination. As he explains, command and subordination are 'necessarily inherent in the employment relationship… Except in a one man undertaking, economic purposes cannot be achieved without a hierarchical order within the economic unit. There can be no employment relationship without a power to command and a duty to obey, that is without this element of subordination in which lawyers rightly see the hallmark of the "contract of employment"'. To be sure, in the background there is an understanding that the worker enters the relationship from a position of weakness, of dependency on wage labour: 'in its inception it is an act of submission'. But the focus for labour law remains on what happens after that: 'in its operation it is a condition of subordination'.

The reference to 'power of command' was not intended to suggest that the employer necessarily controls the day-to-day actions of the employee. Although this is often the case, at other times the employee is given independence to make professional decisions but is still in a position of subordination. The reference to command and subordination is thus broader, in the sense of being subject to the hierarchy and rules of the organization. This point was further developed some years later by Hugh Collins, who distinguished between market power and 'bureaucratic power'. Collins argued that inequality of (market) bargaining power is only one source of subordination; another source is the bureaucratic structure of the organization. This explains why employees with strong market power – whether because they are organized or thanks to special skills – are still in a position of subordination.

Democratic Deficits and Inability to Spread Risks

My own attempt to contribute to this literature started from a purposive approach: as already noted, to understand the purpose of labour law we have to understand what is special (or different) about employment relationships. More specifically, we need to understand what makes employment different from other contractual relations involving work. Employment relationships are characterized by a set of vulnerabilities to which employees are exposed. And it appears that there are two main vulnerabilities: subordination and dependency. Not in the sense of structural dependency, which is more of a background fact rather than a characteristic of the specific relationship, but dependency of the individual employee on a specific employer. In a series of articles I made several arguments with regard to these basic characteristics of employment relationships:

First, to explain why being controlled by someone else is problematic and requires regulatory intervention, I relied on the concept of *democratic deficits*. The fact that an employee has to follow the orders of a boss – whether on a daily basis or more generally by being subject to the rules of the organization and being part of its hierarchy – infringes on his/her autonomy and freedom. But this is only problematic – or at least it is only *really* problematic – because the employee is being *governed* by someone else without being able to participate in this government (pre-labour-law). When we buy a product or a service on a one-time basis we do not expect to participate in the government of the company making decisions about this product or service. But employment, unlike a discrete market transaction, is a structure of governance. And the fact that employees (again pre-labour-law) do not take part in this government – whether directly or indirectly (through representatives or elections) – means that they suffer a democratic deficit. The concept of subordination, then, should be used to include every situation in which such democratic deficits are present. This way we capture the essence of the vulnerability justifying protection/intervention, as opposed to just the surface manifestation of this vulnerability.

Second, the vulnerability resulting from dependency is due to *inability to spread risks*: unlike the situation in most other market transactions, employees rely (at least during the term of the relationship) on a specific employer for economic as well as social/psychological needs, and their ability to spread the risks among different employers/clients is very minimal. This is another vulnerability characterizing employment – alongside subordination – that can justify many protections included in labour law.

Finally, we should maintain a distinction between subordination and dependency. These are separate vulnerabilities that sometimes explain and justify separate labour laws. It is also important not to confuse the two with *structural* dependency, which should be seen, in my view, as one of the *causes* for both subordination and dependency on a specific employer, rather than a direct justification for labour law. There are background facts that lead people to accept an employment relationship under terms that they might not otherwise prefer; most notably, the previous allocation of resources in society (which leads to structural dependency) and market failures. These background facts are what most people would call 'inequality of bargaining power'. However, in order to understand and justify labour law, I believe we should focus on the vulnerabilities that are *internal* to the relationship – subordination and dependency on a specific employer in the sense noted above – rather than background facts that led to these relations.

3. New Approaches: Can We Use Philosophy to Justify Labour Law?

The traditional approach discussed so far – and the new variations of this approach – are based on a view of labour law as a solution to a labour 'problem'. The employment relationship is characterized by inherent vulnerabilities, and labour law is explained as a solution to these problems. It is also, however, possible to explain and justify labour law in more 'positive' terms, by focusing on the values and interests that labour laws are aimed to promote. This approach is more relevant when one attempts to justify a specific law or a specific group of

laws, rather than the entire project of labour law. Thus, for example, we can say that some labour laws are designed to advance equality (and the principle of equality justifies them). We can also see various labour laws as advancing democracy, or protecting human dignity, and so on. This method is equally valid and useful and can live side by side with the view of labour law as a solution to a problem.

In recent years there is growing interest in developing a positive account of labour law by relying on moral and political philosophy. More specifically, the Capability Approach, developed especially by Amartya Sen and Martha Nussbaum, and the republican idea of Non-Domination, developed especially by Philip Pettit, have attracted attention from leading labour law scholars. It is sometimes suggested that these theories, invented by philosophers for other purposes, can serve also as grand theories to explain and justify labour law as a whole. It seems to me that labour law is an amalgamation of solutions to various different problems manifested in employment relationships. The one thing that connects *all* of these laws are the vulnerabilities justifying the distinction between employment relations and other contractual relations. Therefore, the only way to explain and justify labour law *as a whole* is by deciphering the unique characteristics of employment relations, as discussed above. It is not possible, in my view, for any single 'positive' philosophical theory to provide a normative basis for the entire field. Nonetheless, these theories can be extremely useful in providing justifications for *specific* labour laws and sometimes groups of laws.

Alongside capabilities and non-domination, I believe that theories of distributive justice are also extremely useful and relevant for labour law. In the remainder of the lecture I would like to offer a brief review of these philosophical works and how they can be employed as justifications for various labour laws.

3.1 Republicanism (Non-Domination)

Political philosopher Philip Pettit has been the leading force behind the development of non-domination as a central ideal. Pettit defines domination as the subjection to arbitrary power: 'having to live at the mercy of another, having to live in a manner that leaves you vulnerable to some ill that the other is in a position arbitrarily to impose… being subject to the potentially capricious will or the potentially idiosyncratic judgement of another.' Such domination is seen by Pettit as the opposite of freedom, and curbing it is a normative goal – 'a compelling account of what a decent state and a decent civil society should do for its members'. Other leading political scientists have also championed the cause of non-domination, including Ian Shapiro, Iris Marion Young, Michael Walzer and Elizabeth Anderson.

On the face of it, this concept of domination seems to be a good fit to describe a vulnerability that characterizes employment – being under the 'command' of someone else. Pettit himself considers the employment relationship to be a prime example of domination. But is it simply another name for subordination? No; the usefulness of such a theory – if any – lies not in the title, but in the details. Pettit relies heavily on the idea of 'arbitrary power', which he considers

to be the major component of domination. According to the definition in his seminal book *Republicanism*, someone dominates another to the extent that they have the capacity to interfere, on an arbitrary basis, in certain choices that the other is in a position to make. For Pettit, arbitrary power in this context means having complete (unlimited) discretion regarding a decision, and in particular, it implies that the decision can be made 'without reference to the interests, or the opinions, of those affected'. Pettit makes it clear that the definition is not limited to situations in which the decision was actually taken arbitrarily; it is the *power* (capacity) to take such decisions that matters. This is explained through the example of the benevolent slave-master: even if he considers the interests of the slave before making decisions that affect him, it is still a relationship of domination. The fact that he gets to choose, unilaterally, whether to consider the interests of the slave or not, is enough to put the slave in a position of being dominated by another. A common metaphor employed by Pettit is the ability to 'look power in the eye' – something that those dominated cannot do.

This definition of arbitrary power does not easily fit employment relationships. On the one hand, it is too broad: in capitalistic economies, the most fundamental characteristic of the market is an exchange between parties that act in their own self-interest. Taking into consideration the interests of the other party is not required nor expected. If every market transaction is seen as involving arbitrary power, the definition of domination becomes too broad to be useful. At the same time, in another respect it is too limited. Let's assume that before every decision, an employer would have to ask its employees about their opinion and take their views and interests into consideration. According to Pettit this will not be a relationship of domination. But the vulnerability captured by the concept of subordination would still exist – and so will the need for labour laws.

Notwithstanding these difficulties, the basic idea is useful to explain and justify several labour laws. Take for example the ability of an employer to dismiss employees 'at will'. Pettit rightly points to this power as the key reason for domination in employment relationships; it is because of the constant fear of being dismissed that employees cannot 'look their employer in the eye' and are fearful of voicing their concerns and opinions. The concept of domination as developed by Pettit could thus be helpful as a justification for laws limiting dismissals to situations of 'just cause'. Moreover, although I have argued that arbitrary power is not a good description of employment relationships in general and therefore the republican idea of domination cannot serve as a *general* theory of labour law, we can still point to arbitrary power in specific situations. For example, Virginia Mantouvalou has argued that employers should not be allowed to interfere with the private lives of employees by sanctioning them for private actions unrelated to their employment. If we allow an employer to do so, it amounts to arbitrary power in some sense.

Pettit's ideas are also helpful by making a clear connection between non-domination and democracy. If the problem of domination is epitomized by people with power making decisions without taking into account the views and interests of those affected, this is quite obviously a problem in terms of democracy. For decision-making to become democratic, affected people

should be able to effectively *contest* the decision and 'force an amendment'. This is a good justification for freedom of association and the ability to bargain collectively.

3.2 The Capability Approach

Sen originally developed the capability approach (CA) as a critique of John Rawls's focus on the distribution of resources in his theory of justice. If resources are just a mean to an end ('the successful execution of a rational plan of life', for Rawls) we have to wonder whether the same level of resources will give different people the same opportunities and ability to reach their goals. Surely people with disabilities, or otherwise detrimental conditions, will be able to do much less if given the same resources. Sen argued that we should focus on 'capabilities' instead of resources. What's important for people is *effective*, *real freedom* to pursue their plan of life. Sen called what we need and want 'functionings', and he pointed attention to the importance of capabilities to achieve these functionings. As explained by Nussbaum, capabilities are the appropriate political goal – and not functionings – because 'citizens must be left free to determine their own course after that'.

If one wants to use the CA as a normative guide regarding which laws (and/or social policies) to adopt, the question arises: what do we (as a society) want people *to be capable of*? There are two main ways to answer this question. One answer is that people should have capabilities to do and be what they themselves value. This puts the emphasis on our freedom to make our own choices. A second option is to identify a list of capabilities that are especially important; this requires an additional normative theory to support the choice of capabilities. Nussbaum developed an influential list of ten basic capabilities, which she argued are necessary for reasons of human dignity. The list includes life (being able to live to the end of a human life of normal length); bodily health; bodily integrity (being able to move freely from place to place, to be secure against violent assault etc.); senses, imagination and thought (being able to use the senses, to imagine, think, and reason); emotions; practical reason (being able to form a conception of the good etc.); affiliation; other species (being able to live with concern for and in relations to them); play (being able to laugh, play, and enjoy recreational activities); and control over one's environment (political and material).

Can we use these theories to support labour laws? Consider first the idea that our goal should be to advance the ability of people to effectively pursue their choices, whatever they are. The question can be reframed this way: can we understand some labour laws as designed to create opportunities/open choices for workers? This is certainly the case with regard to workplace equality laws, which are needed to prevent artificial barriers to labour market opportunities: not only anti-discrimination laws, but also pay equity, sexual harassment laws, parental leave, right to request flexible work etc. Moreover, laws protecting the health and well-being of workers can be seen as a pre-condition to entering the labour market. In this group of laws I would include working time regulations, public holidays and vacation rights, as well as health and safety laws.

Simon Deakin and Frank Wilkinson have tried to use the CA also as a justification for the minimum wage. They argue that minimum wages force employers to invest in new technologies, training, skill development, and health and safety – all strategies enhancing capabilities, which employers have no incentive to pursue when they have the power to lower wages below their market rate. This is certainly logical, but it seems odd to see this as the main goal of minimum wage laws. A more important goal of such a law is distributional: to take resources from one and shift to another, in order to achieve progressive redistribution. It is difficult to see the CA, which is focused on freedom, as justifying redistribution.

Consider next the idea that the CA should be concerned with the advancement of specific capabilities. Nussbaum herself refers to labour laws only indirectly, when discussing two of her ten capabilities. The first is the ability to control one's environment: she specifies that it includes 'the right to seek employment on an equal basis with others' as well as 'being able to work as a human, exercising practical reason and entering into meaningful relationships of mutual recognition with other workers'. The second is 'play': in this context, she notes that 'working at a job and then coming home to do all the domestic labor, including child care and elder care, is a crushing burden, impeding access to many of the other capabilities on the list: employment opportunities, political participation, physical and emotional health, friendship of many kinds'. Arguably, then, labour laws that can be justified based on Nussbaum's list of capabilities include workplace equality laws and health and well-being laws – the same laws mentioned above.

Some scholars have argued that other capabilities from Nussbaum's list can justify labour laws. Kevin Kolben has pointed to 'affiliation' as being very similar to freedom of association, but beyond the general idea of a right to join a union, it is difficult to find a justification for collective bargaining and strikes in the list of capabilities. It can also be questioned whether the CA is really doing any 'work' to support labour laws when the connection is indirect. Given that the list of capabilities developed by Nussbaum is derived from dignity, why not use dignity directly as a justification for those parts of labour law? The question is whether the intermediary concept of capabilities is contributing and making the justification stronger or more specific. It seems to me that the answer is positive only when the connection is more direct, as with workplace equality laws and health and well-being.

3.3 Distributive Justice

Redistribution is considered to be one of the main goals of labour law. When people refer to redistribution as a goal, they usually do so, implicitly, as shorthand for distributive justice. It would therefore be useful to consider the relevance of distributive justice theories for labour law. I will briefly introduce three ideas from the philosophical literature: that distributive justice should be based on 'desert'; that we should aim to achieve distributional equality in a way that eliminates the impact of bad luck; and that redistribution should be used to advance equality as a status. I will then explain how these theories can be used to justify some parts of labour law.

Desert-based Redistribution

The idea that people should 'get what they deserve' seems to accord with common-sense conceptions of justice. We would probably all agree, for example, that research grants should be allocated based on merit, or that an opening in our Faculty should be filled by offering the job to the most deserved. In the context of the labour market, shouldn't we reward people for their contribution, or their effort? A strong critique would be that people's contribution is often based on factors beyond their control, such as inborn talents. If a smaller contribution is the result of bad luck, is it justified to give the unlucky ones less? The basic idea behind this critique is important: it is difficult to accept the claim that the lucky ones should be able to enjoy *all* the rewards of their luck; and more importantly, that the *unlucky* should suffer all the consequences themselves. At the same time, the idea of desert did not entirely lose its validity. Rewarding contribution and effort that enlarge the pie or otherwise increase welfare seems just (subject of course to taxation and other conflicting considerations).

This approach arguably conforms to the theory of Ronald Dworkin, who imagined a hypothetical system of insurance against bad luck. Starting from the premise that people should be responsible for their choices, including the management of risks, he asked what kinds of bad luck 'average people' would have insured themselves against if they could. If we do not know which set of talents and abilities we might get (or what would be the implications of these talents and abilities in the market), what kind of insurance would we buy? It is safe to assume that no reasonable person would buy insurance against the bad luck of not getting the talents of Lebron James as a basketball player, for example; both in the sense of not being able to afford it and in the sense of not finding it necessary. In contrast, we can certainly expect rational people to insure themselves against the risk of having no marketable talents or abilities, thus ending up unemployed or stuck at minimum wage jobs. This thought-experiment suggests that people are happy to allow others to enjoy the rewards of their good fortune, and would only require redistribution to protect against cases of (relatively extreme) bad luck. Otherwise put, although supporting redistribution to correct for bad luck, Dworkin's view appears to leave room for desert-based distribution.

Distributional Equality

Rawls has argued convincingly that our talents and handicaps are 'morally arbitrary'. If this is the case, how can we neutralize their impact? Or to what extent? Rawls himself was concerned with the unequal distribution of *income and wealth* created by these endowments (among other things). Accordingly, he viewed social and economic inequalities as presumptively unjust. As part of the well-known 'difference principle' he maintained that such inequalities can be justified only if they are 'to the greatest benefit of the least advantaged'. Simply put, if the least advantaged members of society benefit from an unequal situation – for example thanks to the creation of improved work opportunities, or progressive taxation – the situation is justified. This formulation is based on the assumption that the more talented need an incentive (in the form of higher salaries) to work hard or otherwise to put their talents to use, and society benefits

from that. This part of Rawls's theory of justice is thus an attempt to balance considerations of distributive justice with considerations of efficiency.

Income and wealth are obviously not important in themselves. Rawls defined a person's good as 'the successful execution of a rational plan of life', and this requires liberty and opportunity, as well as income and wealth as means to achieve one's ends (Rawls considered all four, together with the social bases of self-respect, 'primary goods'). The question of what exactly we should equalize became central in following contributions. Dworkin distinguished between 'brute luck' which people should not be penalized for, and 'option luck' – the risks and choices people are taking voluntarily, for which they should enjoy the rewards but also pay the costs. To this end he proposed *equality of resources*. The goal is not to eliminate all uncertainties, but 'to make people equal, as far as this is possible, in the resources with which they face uncertainty.' Dworkin accordingly supported a tax-and-redistribution system that would mimic the results of the hypothetical insurance scheme mentioned above. People with disabilities, or less talented, would have to get more to reach the same level of resources; but only to the extent an average person would have insured herself against this kind of bad lack.

A group of philosophers known as luck egalitarians, such as Gerald Cohen, Richard Arneson and John Roemer, object to the focus on equalizing resources. These scholars accept the premise that people should be responsible for their choices and it would not be justified to equalize welfare in a way that ignores these choices. However, they argue that what Dworkin considers 'option luck' is not truly optional: our laziness (or in contrast ability to work hard), our propensity to take risks, our expensive tastes – these are all (to some extent) the result of inborn character and early childhood education/socialization. Because these factors are somewhat beyond our control, they too are morally arbitrary, and a just distribution should aim to eliminate their impact. This brings us closer to requiring equality of final outcomes, i.e. ultimately of welfare. However, in an attempt to separate the implications of bad luck (even if indirectly) from the results of voluntary choices, it has been suggested to equalize *opportunity for welfare* or alternatively *access to advantage*; or to ask whether people who exercised a 'comparable degree of responsibility' have equal opportunities, regardless of their circumstances.

Relational Equality

In contrast to luck egalitarians, so-called 'relational egalitarians' refuse to accept the idea that society has to redistributive in order to offset the cost of bad luck. Philosophers such as Elizabeth Anderson and Samuel Scheffler argue that our focus should be *social* or *relational* equality: to ensure that people have equal status, are treated as equals and have the ability to function in society on 'equal terms'. The idea of equality, they argue, is to fight oppression, castes, hierarchies between classes etc. and not bad luck. What kind of redistribution is needed to achieve equality of status? Obviously, the social status and political power enjoyed by a billionaire are dramatically higher than those held by poor people. In principle, the idea of equal status could therefore be taken to require equality of resources. However, relational egalitarians prefer a 'sufficientarian' approach: each individual must have a *basic* level of

resources, not less than the minimal level needed to ensure one's ability to function in society as equal.

The Implications for Labour Law

To what extent can these three distributive justice theories be used to support and justify labour laws? The idea of desert appears to offer direct justification for anti-discrimination and pay equity laws, which aim to prevent situations in which people do not get what they deserve because of discrimination. Luck egalitarian theories similarly support anti-discrimination laws, because they can prevent differences in distribution on the basis of 'luck' in terms of being born male or female, with a certain skin colour, ethnicity etc. Affirmative action programs are also justified in order to counteract the disadvantage resulting from those inborn traits. For similar reasons, distributional equality supports pay equity laws and could support their further expansion to ensure equal pay for equal value not only between men and women but between other groups in society as well. Moreover, relying on the general idea that distribution based on natural endowments (including talent) is unjust, or at least problematic, we can minimize the impact of these factors by reducing wage differentials. This can be achieved by supporting labour unions and collective bargaining (which are known to flatten wage differentials), and/or through direct intervention in the maximum ratio between high and low salaries within the firm (which can be called 'maximum wage laws'). Arguably minimum wage can also be justified to prevent extremely low wage which is likely to result from lack of talent or lacking childhood education etc. – although admittedly this would be quite indirect. More generally, in terms of the distribution of wealth between employers and employees, which at least to some extent can be presumed to result from luck, unions and the minimum wage are once again instruments for reducing disparities.

Finally, with regard to the possible implications of relational equality for labour law, Anderson points to the minimum wage as one mechanism that can help ensure that people are not 'deprived of the social conditions of their freedom'. She also supports the right of people with disabilities to accommodation, to the extent this is needed to allow them to participate in society. Labour law scholar Samuel Bagenstos has argued that relational equality can similarly be used to justify laws concerning workplace discrimination, unjust dismissal, workers' privacy, workers' political speech, whistleblowing, child labour and maximum hours. The idea, for him, is 'to ensure that individuals have the time, space, and ability to participate in democratic citizenship'. This is quite indirect, but the goal of relational equality can certainly be used as a justification for at least some of these labour laws.

4. Conclusion

This lecture has led me to deep waters of philosophical theory, but hopefully it was clear that the discussion in not merely an intellectual exercise. Rather, it has direct relevant for law and its day-to-day application. Judges need to interpret labour laws all the time. Lawyers need to argue before them about the best way to interpret the law. Legislatures continuously need to revise labour law in light of new realities. In all of these practical tasks, it is crucial to ask:

what exactly are we trying to achieve, with a specific piece of legislation or more generally with labour law as a whole? The goal of this lecture was to offer answers, some 'old' (but with new variations) and some entirely new, from the most recent discussions in the literature. Specifically, I have argued that philosophy can be very helpful to provide normative justifications for labour law. It is not possible, in my view, to find in philosophy a grand theory that can explain and justify the entire field; but different theories such as non-domination, capabilities and distributive justice theories can provide strong support for various specific labour laws.