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LABOR LAW FOR A WARMING WORLD? EXPLORING THE INTERSECTIONS OF WORK REGULATION AND ENVIRONMENTAL SUSTAINABILITY: AN INTRODUCTION

Guest edited by Ania Zbyszewska[†]

Responding to climate change is one of the most important challenges of our century in which the transition to “greener” and more sustainable modes of production and consumption will play a crucial role. It is widely recognized that the implications of this shift for the world of work are inevitable. Many jobs are likely to disappear as the industrial transformation necessary to mitigate climate change and meet green house gas reduction targets will lead to eradication of entire industrial sectors and restructuring of others. At the same time, even as the changing climate and related biodiversity loss themselves threaten traditional livelihoods and subsistence economies on which many people in developing countries still rely, the imperative of ecomodernization might act to further destabilize such ways of making a living where policy preferences deem them inefficient, unproductive, and unsustainable.

The question of how to mitigate the impacts of climate change-related industrial and economic transition on jobs, workers, and livelihoods in all types of economies has been a growing policy concern at the international and transnational level. It is most evident perhaps in the International Labour Organization’s (ILO) work over the last decade, especially on “green jobs” and, more recently, “just transition.” To ILO’s credit, both of these imperatives have been integrated into the UN 2030 Agenda for Sustainable Development and the 2015 Paris Agreement on Climate Change, and, importantly, have received buy-in from international labor movements on recognition that “there are no jobs on a dead planet.” The recent launch of the Global Forum on Just Transition, the inaugural meeting that took place at the ILO’s Geneva headquarters in December 2017, signals that there is indeed a commitment on the part of various stakeholders to ensure that workers and communities are not stranded in the process. Of course, the ILO is not the sole policy body to emphasize the need for transitional measures

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and a regulatory response. Most of the key international and transnational institutions have taken up the discourse of “green jobs” and “green skills.” The response to the already present ecological crisis is increasingly cast as an opportunity, which nonetheless requires labor market readjustments.

Despite the fact that work, work processes, and labor markets are central to the discussion on adaptation to climate change, mitigation of its consequences, and ecomodernization of energy and industrial policies, much less emphasis has been placed in existing policies and debates on how these changes might affect regulation of work or on the role that work regulation could (and should) play in the shift towards a more sustainable future. Similarly, very few labor lawyers have commented on this urgent issue,¹ which is notable since both mainstream and heterodox labor law scholarship have been preoccupied for some time with the project of rethinking and challenging the boundaries and normative foundations of labor law to make it more responsive to contemporary social and economic realities and crises. While “the end of work” looms large in current debates on technological change for example, sustainability or climate change-related challenges pose an equally significant and just as immediate threat to work as we know it and to people’s ability to make a living more broadly. Yet these issues have not captured labor law imagination in the same way.

As we hope this special issue highlights, however, reflections on labor law’s potential contribution to the debates on environmental sustainability and transition to a more sustainable world (of work and otherwise), are not only possible but can be very fruitful indeed. First presented at the Labour Law Research Network (LLRN) conference in Toronto in June 2017, the contributions included here evolved from discussions during an exploratory seminar. This seminar took place at the University of Warwick Institute for Advanced Study (UK) in September 2016 and was funded by the Socio-Legal Studies Association (SLSA) Annual Seminar Competition award. Prompted by the general paucity of scholarly engagement in law at the intersection of labor and environmental regulation concerns, the event brought together scholars working in law and other disciplines. Our objective was to consider the possibility of work regulation that is more attuned to contemporary socio-ecological sustainability challenges by seeking out potential synergies, or

1. LA ECOLOGÍA DEL TRABAJO: EL TRABAJO QUE SOSTIENE LA VIDA [THE ECOLOGY OF WORK] (Laura Mora Cabello de Alba & Juan Escribano Gutiérrez eds., 2015); Michele Tiraboschi, *Preventing and Managing Natural and Environmental Disasters: Employment Protection, Welfare and Industrial Relations Systems*, 4 E-JOURNAL OF INT’L & COMP. L. STUDIES (2015) 1-29; DROIT DU TRAVAIL ET DROIT DE L’ENVIRONNEMENT: REGARDS CROISÉS SUR LE DÉVELOPPEMENT DURABLE (Marie-Pierre Blin-Franchomme & Isabelle Desbarats, 2010); Riccardo Del Punta, *Tutela della sicurezza sul lavoro e questione ambientale [Health and safety at work protection and environmental question]*, 2 DIRITTO DELLE RELAZIONI INDUSTRIALI [INDUS. REL. L.] 151-160 (1999).

points of contention, between labor and environmental law—their underlying normative projects, regulatory frameworks, and activism in each area.

Reflecting the diversity of our original discussions, the five contributions to this special issue approach the question of a “labor law for a warming world” from a range of vantage points. They also exhibit different levels of enthusiasm about the current policy responses and the existing legal frameworks’ ability to tackle the climate change-related crises of work and sustainable livelihoods. What all the contributions do agree on is that the subject of ecological sustainability should matter for labor law, because although work and work systems lie at the core of current socio-ecological crisis, they are also part of the solution. While the contributions provide evidence that constructive engagements at the intersection of work and environmental sustainability are already taking place both in scholarship and on the ground, we hope that this special issue will inspire or provoke even more sustained consideration of this issue by labor lawyers and scholars interested in regulation of work.

The special issue opens with a contribution by **Ania Zbyszewska**, who notes that the paucity of discussion in contemporary labor law scholarship about the role of work regulation in transition to more sustainable systems of production is not all that surprising given the (much discussed) fact that labor law’s domain and jurisdictional boundaries have been fairly narrowly constructed. Zbyszewska reflects on the possible origins of labor law’s distancing from concerns about work or labor’s place in the human-nature relations or the socio-ecological system. Drawing on Polanyi, she suggests that the modern separation of social (including labor) and ecological concerns into distinct legal fields has its roots in the transformation of the society-nature relations that accompanied (and made possible) the rise of *laissez-faire* capitalism. This period saw the violence of primitive accumulation through enclosures and dispossession, which enacted physical separation of people from land (and means of subsistence), but also a parallel ideational shift towards human mastery over nature. Modern labor law systems emerged out of the political struggles and regulatory responses to the varied crises produced by capitalism’s rise. Yet as Zbyszewska notes, labor law norms also naturalized and reproduced the disconnection of labor from “nature” in a manner similar to their exclusion of unpaid social reproductive work carried out in households. As feminist labor law scholars have shown, this exclusion of unpaid work from labor law’s scope relates to the subordination of social reproduction to productive ends, which was, like domination of nature, a background condition enabling capitalist work systems to develop. Working in parallel with feminist scholarship in labor law and supplementing it with insights from feminist political ecology and materialist ecofeminism, Zbyszewska argues that these two exclusions—of social reproduction and

socio-ecological concerns—are ultimately artificial, and that imagining labor law or work regulation that is more attuned to socio-ecological concerns requires tackling both these exclusions at once. Consequently, she questions whether the current policy focus on “green jobs” and “just transition,” while no doubt important, can provide a fertile ground for such a parallel rethinking.

Supriya Routh also asserts that the current ecological crisis, or the onset of the Anthropocene, prompts the need for a much deeper rethinking of labor law than what has been undertaken up to now. Anthropocene denotes a new geological epoch brought about largely by human exchange with nature, including the transformation of nature’s resources through “work” activities. Since Anthropocene entails the gradual tipping of balance towards the Earth’s inhabitability for living species, a response is necessary and urgent to restore the socio-ecological system. Routh argues that work and regulatory concerns related to work ought to be central to formulating such responses, with the public domain being the appropriate site for such intervention. The main impediment, in his view, lies in our current understanding of work as a human relationship that takes place within the *private* domain of the *market*. While this conceptualization underlies the current legal frameworks, it is neither capable of capturing work’s socio-ecological imbrication, nor encompassing many work activities that are inherent to restoring the socio-ecological balance. Routh argues that much legal scholarship reproduces this narrow framing in one way or another, with even critical scholars seeking to broaden the scope of labor law’s protective ambit to a range of excluded work activities inevitably end up reifying and reinforcing the private, market-based, and *productivist* paradigm in which the current systems of protection are grounded. The alternative that Routh proposes would treat as work, and for purpose of regulation, all nonmarket, public, and obligatory activities that contribute to the sustenance of the socio-ecological system and restoration of the biogeological balance between human species and nonhuman nature. Such a conception would encompass a range of work activities currently excluded from the purview of work regulation—care work, subsistence work, and informal work—on the basis that they are essential and valuable from a socio-ecological perspective, regardless of whether or not they are deemed economically productive. This, Routh claims, is a concept of work that is fit for the epoch of the Anthropocene.

A relational and constitutive conception of work-nature-human relations also underpins **Paolo Tomassetti’s** contribution to this special issue, although unlike Routh, he does not contest the current labor law’s ability to engage socio-ecological concerns. Tomassetti starts from the premise that as much as the construction of nature as labor’s “other” is false, so too is the notion that there is a contradiction between long-term environmental

sustainability and fundamental principles and objectives of labor law. On the contrary, according to Tomassetti, the environmental dimension of sustainability, which (following Bosselmann) he deems to be an overarching norm akin to a fundamental principle of law, can be quite comfortably embedded in labor law. Indeed, such embedding, in Tomassetti's view, would reinvigorate the broader ideals of justice, equality, and democracy that underpin the traditional and selective goals of the discipline. Beginning with the universal goals of efficiency, capability, and equality, Tomassetti shows that they are not only fully reconcilable with the commitment to environmental sustainability, the latter's long-term synthetic perspective can actually reinforce them. In this view, sustainability emerges as a powerful ally for labor (and labor law), whether it is through positive effects on labor productivity, human capital, and competitiveness; enhancement of individual workers' capabilities to flourish, lead dignified lives, and partake in more solidaristic employment and community relations; or through bolstering labor law's long-standing commitment to countervailing social hierarchies and commodification of labor. In moving to consider the possible synergies between labor and sustainability in relation to labor law's redistributionist goals, Tomassetti draws on a range of examples, primarily from his home jurisdiction of Italy. These examples highlight how aspects of labor law already address sustainability concerns, and how workers, especially through collective bargaining and other participatory mechanisms, are actively taking on the sustainability agenda even if it means trading off income for other benefits that might be more ecologically friendly (in so far as they contribute to curbing consumption). However, as some of his examples relate to health and safety, public health, and slow environmental disasters powerfully illustrate, there is much more scope for labor law to intervene, especially by facilitating collective representation and voice to balance out power inequalities between labor and capital. This is crucial to ensure that workers are on equal footing to address sustainability issues, both to hold employers to account and to ensure that vulnerability and economic dependency never place workers and communities in the position of making the impossible choice between rights to work and health.

The centrality of worker participation to the success of the sustainability transition is also at the heart of **Consuelo Chacartegui's** contribution. Like most of the other authors in this special issue, Chacartegui is a convert to the idea that labor rights need to play a role in this shift. Beginning with the traditional methods, she reflects on what a "green labor law" might entail, pointing out that it must go beyond the current policy focus on "green jobs" to encompass classic labor and employment rights and occupational health and safety to be bolstered by policies on social protection, skills development, and labor market transitions. She notes, for example, that jobs

in new green sectors may not necessarily be healthier or safer; nor are they necessarily accessible to workers who lack skills and access to adequate training. From this more holistic perspective, she deems the ILO's integration of the "green jobs" and decent work agendas a positive step since the focus on sustainability in relation to the former pushes labor regulation to the fore of environmental policy making, while the language of decent work expands the scope for thinking about green jobs beyond simple instrumentality. A green decent job could simply be one characterized by reduced and flexible working time that contributes to work-family reconciliation and redistribution of work, all while reducing carbon footprints. Indeed, as Chacartegui points out, researchers are increasingly making proposals for reduced work hours on the basis of their social and environmental sustainability benefits. Overall, however, echoing also Zbyszewska's conclusions (in this special issue), the author locates most of her hope for the convergence of labor and ecological sustainability objectives in cooperative and participatory ways of organizing work and workplaces. Drawing on a number of examples, including Spain's Mondragón and smaller-scale but longstanding cooperatives from Canada, Argentina, and Columbia, she illustrates how cooperative and solidarity economy models are the best testing grounds for green labor law and governance principles, and are most likely contexts to advance social and environmental sustainability objectives in a way that is consistent with the principles of intergenerational solidarity.

In the final contribution of this special issue, **Miriam Kullmann** tackles the question of the relationship between labor and environmental sustainability from the regulatory context of European Union (EU) public procurement rules, wherein these objectives are already placed alongside each other, and together with economic ones. Noting that such an integrative approach appears to promote (among public authorities using the rules) an awareness of the interrelationship between social, environmental, and economic interests, Kullmann asks nonetheless whether the rules have the potential to facilitate such joined up thinking and practice in reality. Kullmann tests the EU public procurement rules against a notion of sustainability that she conceptualizes, following a sophisticated synthesis of existing definitions as an integrative approach or process that is long-term, open ended, goes beyond simple legal compliance, and requires continuous reflection. Her answer on the potential of procurement rules to advance in parallel the labor and environmental sustainability agenda is a theoretical yes, but as she explains by drawing on a range of examples, public authorities may face significant challenges in defining what their social and environmental sustainability vision may be, and in translating that vision into substantive and procedural conditions likely to promote these dual objectives alongside economic ones. Part of the problem, it seems, is the fact that despite

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numerous references to sustainability in both EU procurement rules themselves and EU development strategies more broadly, the notion of sustainability—at least its social and environmental dimensions—remain subordinate to economic concerns. Kullmann remains cautiously optimistic as she points out that the expansive conception of social sustainability offered by the proposed European Pillar of Social Rights could elevate it to the status of a legal principle, and as such, render sustainability an important yardstick for evaluation of tender decisions adopted by public authorities as well as their enforcement of rules. However, the exclusion of the goals of environmental sustainability from the Social Pillar signals that these various dimensions of sustainability are ultimately deemed separate, and as such their synergistic integration is going to face challenges.

Intended to be a start of a conversation, I hope these contributions inspire labor lawyers to reflect on and join the discussion about the role for work regulation in the transition to more sustainable and socio-ecologically attuned ways of working and living.