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Labour Law and Industrial Relations: Toward Renewal?

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Article abstract

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Summary

Industrial relations and labour law both suffered a relative decline during the latter decades of the 20th and the early 21st centuries. Through a comparative historical review of the field of study, this article explores current and past efforts by scholars in industrial relations and labour law to examine their common legacies in order to transcend the overly narrow confines of their fields and identify avenues for renewal. Both industrial relations and labour law have long shared a common object of study—work and employment—and would benefit from more systematic integration of their findings. Such an integration will be explored by broadening both analytical perspectives. Neither jurists nor industrial relations specialists should confine their understanding of law to the formal rules within state law. They should instead turn to analysis of the "living law" through empirical studies of its nature and effectiveness. Industrial relations, whose focus is on the future of work and society, requires a more substantive engagement with the social sciences, while both fields need a normative project to advance citizenship at work and democracy. In line with Arthurs' observations on labour law (2011), such renewal also requires an understanding of how both can be used to challenge hegemonic institutions and initiate alternative approaches.

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Labour Law and Industrial Relations: Toward Renewal?

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Abstract

This article explores paths for the renewal of the study of industrial relations and labour law. Through a comparative historical review of these two fields of study, it examines their common roots and legacies and a range of renewal initiatives. It is argued that both fields need to reappropriate core values: recognition of the fundamental inequality of the parties to the employment relationship; and recognition of the need to compensate for this inequality through collective processes. The seeds of this renewal are identified in both labour law and industrial relations. Their future lies in the emergence of an integrated field of study of work and employment and in the role and future of work as a vector of democracy.

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Keywords:
industrial relations; sociology of labour law; renewal of field of study; future of work; citizenship at work; regulation of work; democracy at work

1. Introduction

As fields of study, industrial relations and labour law share a common history and similar existential challenges. In their efforts to address what was labelled the *labour problem* emerging from 19th century industrial capitalism, they share common roots in sociology and heterodox economics. Both are inextricably bound up with the rise of collective bargaining to deal with the power asymmetries of the labour contract and, on a societal level, with the need to develop institutions to manage conflicts between social classes. As emerging fields of study, both experienced a golden age after World War II, when each could offer an understanding of how a new industrial citizenship was being defined by the prevailing collective arrangements that served to determine the substantive and procedural conditions of work and to secure labour peace.

In the late 20th century, industrial relations and labour law both suffered a relative decline in fortunes. The diminished influence of collective labour relations in globalized and predominantly neoliberal economies led to a hollowing out and shrinking of the perimeters of their respective fields, to the point that their existence as independent fields of study came under threat. Whereas labour law was increasingly confined to a diminished role in faculties of law, industrial relations veered, especially in the U.S. and the U.K., toward the status of a sub-branch of human resource management (HRM) in business schools. In turn, HRM has increasingly deferred to organizational behaviour, where the collective dimensions of the labour relationship and its power asymmetries are largely excluded from investigation (Godard, 2014).

Must we conclude that the golden age of labour law and industrial relations has come and gone? At the risk of being accused of wishful thinking, we believe that the story is more than the rise and fall of industrial relations and labour law. We have much to learn from a deeper dialogue between them. Through a comparative historical overview, this article will explore current and past efforts by industrial relations and labour law scholars to examine their common legacies order to transcend the overly narrow confines of their fields and identify possible paths for renewal. It is beyond the scope of this article to do full justice to the wide variety of insightful contributions on this subject, both by national tradition and by theme; so the evidence used for our argument will necessarily be fragmentary.

This renewal project will require a broader lens of inquiry and a return to the normative roots espoused by the founders of these fields of inquiry. For labour law, it will require starting from a sociological conception of law—its plural manifestations, both state and non-state, its empirical effectiveness and the conditions and impacts of its legitimacy. Labour law's traditional embrace of the sociology of law, critical realism and legal pluralism offers the promise of cogent accounts of the presence and interrelationships between multiple norms in an evolving world of work. For industrial relations, there is a tapestry to be woven anew between different theoretical and methodological traditions and the broader social sciences. For both fields, a *sine qua non* condition is the need to reappropriate the core founding values: recognition of the fundamental inequality of the parties to the work relationship; and recognition of the need to compensate for this inequality through processes that are above all collective. In both labour law and industrial relations, we can discern the seeds of renewal. Such a response to their common fate has much to tell us, not only about their future but also about the emergence of an integrated field of study of work and employment to which we might aspire, and about the role and future of work as a vector of democracy.

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2. Historical Roots and Theoretical Foundations: Twin Fields of Study

Industrial relations. Although the term was not yet in use, industrial relations emerged as a field in the Anglosphere toward the late 19th century. This new science of the economy arose to some degree under the influence of the German Historical School with the development of collective bargaining and, more broadly, with the rise of new employment relationships associated with the "free" labour contract within the framework of industrial capitalism.

The new field critiqued the inability of classical economic theory to explain the emerging world of wage labour, by viewing it through a historical, empirical and normative lens. The landmark studies by Sydney and Beatrice Webb in the United Kingdom explored the history of trade unionism (1894) and the mechanisms underlying a new form of wage determination: collective bargaining (1896). They believed that this new way of negotiating wages through market higgling was a prelude to the emergence of a greater role for the state and also for labour specialists in a new science of work dedicated to a more scientific determination of wages and working conditions. In the United States, John R. Commons (1924; 1934) was a founding figure of institutional economics. Like the Webbs, his foundational works concerned the history of trade unionism, the rise of collective bargaining and a greater role for the state in regulating employment relations.

Drawing on their historical studies of the emergence of trade unionism and collective bargaining, the Webbs and Commons pursued broader social ideals, assigning a role to collective actors and, notably, to the state in social and market reforms. It is not coincidental that the Webbs were so influential in the creation of the Fabian Society (1884) and the British Labour Party (1900). Similarly, drawing on traditions of Christian social justice, Commons laid the intellectual foundations for a wide range of legislation on labour and social protection, including the New Deal labour legislation.

The term "industrial relations" for this new field of study, which focused on collective labour relations, was confined to English-speaking countries. Continental Europe had no such disciplinary or academic identity, although a similar field of scientific research did emerge in response to the rise of trade unionism and collective bargaining. Its main representatives were economists in Germany (from the Historical School), such as Lujo Brentano, and some members of the positivist school of sociology in France, grouped around Émile Durkheim. Initially considered a specialized branch of economics, this new field of study, encompassing history, statistics, the social sciences and law, came to be more explicitly attached to sociology. In Germany, it is occasionally called the *Soziologie der industriellen Beziehungen* (Müller-Jentsch, 1996). In France, despite efforts in the 1990s to establish a distinct identity (Murray et al, 1996), it has been more typically subsumed under the rubric of *sociologie des relations professionnelles* (Almond, 2004; Lallement, 2022; Bevort and Jobert, 2011).

Labour law. Just as industrial relations came from a critique of classical economics and its inability to account for, indeed its hostility to, the emergence of trade unionism and collective bargaining, so did labour law originate in a response to the *normative science of positive law*. Positive law is distinguished by its "prescriptive voice" (Frazer, 2009: 73). It is the domain of professional jurists (lawyers, magistrates, administrative judges, legal academics, etc.) who seek to understand legal norms (and not social facts) as contained in statutes, regulations and the common law or *ius commune*, and interpreted in the case law of competent courts. Positive law has developed its own methodologies. In common law systems, the methodology is primarily the careful analysis of precedents and the use of analogical reasoning. In civil law systems (*jus commune*), it is the

normative construction of the meaning of legal concepts and the syllogistic deduction of solutions to legal questions. These methodologies are far removed from those of the social sciences.

Labour law was part of a *revolt* against the *ius commune* or *common law* and its formalistic and individualistic logic. Its proponents sought a complete break with traditional approaches to legal problems. From the outset, the emergence of labour law was closely linked to that of *legal realism* and its early 20th century critique of the gap between formal law and social life (e.g., the *Free Law School* in Germany and *Sociological Jurisprudence* in the United States).

A key factor in the emergence of this new legal realism was the inability (or refusal) of private law, which was formalist and individualistic, could not or would not account in any satisfactory way for the phenomenal growth of collective bargaining and the regulation of labour relations by collective agreements. It was in Germany that labour law first appeared through the doctrinal work of academic lawyers, in conjunction with the development of realist theories of law. Philipp Lotmar, a social democratic lawyer, was responsible for the “discovery” of collective agreements within the field of law (Lotmar, 1900). He drew on empirical research by economists and sociologists of labour for his voluminous treatise (some 2,000 pages) on the labour contract (Lotmar, 1908). To study the social facts of law, he invented a methodology that earned praise from both Max Weber and another social democratic jurist, Hugo Sinzheimer (Weber, 1902; Sinzheimer, 1922).

Sinzheimer can be considered the founder of research on the collective dimensions of labour law in continental Europe, and also in the U.K. through the work of his one-time doctoral student Otto Kahn-Freund (Dukes, 2014). To the reciprocal exchange of benefits (work in return for wages), analyzed in detail by Lotmar, Sinzheimer introduced the concept of subordination, placing the worker as the dominated party in a completely unequal relationship (Sinzheimer, 1927; see also 1922, 1932). For Sinzheimer, this relationship of domination could be attenuated or countered only through the social self-determination of workers, via collective bargaining, which in the long run had to be backed by the indispensable intervention of the state towards industrial democracy. From a methodological point of view and following Lotmar, Sinzheimer looked for the social facts of law, adding a realist conception that led him to build the science of labour law. Though not a Marxist, Sinzheimer was heavily influenced by Marx’s writings, notably the recognition of the worker’s humanity: “this peculiar commodity, which has no other repository than human flesh and blood” (Marx, 1849). Hence, there followed the injunction not to treat the worker as a commodity like any other, but rather to shelter her or him from exposure to the brute forces of the market.

The proponents of an emergent labour law were thus informed by a few key insights: labour is human, and not a commodity like any other; conflict between social classes is inherent to capitalism; and the worker is subordinate to the employer, as labour is subordinate to capital. For Sinzheimer, in agreement with the founders of the sociology of law, such as Eugen Ehrlich and Max Weber, law should include not only state law (the only law recognized by professional jurists) but also extra-state law, which flows from social life and its many constituent groups. Another key insight was that state laws do not always take effect as intended by the legislature or the courts; norms can develop during economic and social interactions, without necessarily being recognized by the legal order. Analysis of the law has to consider “the social effect of the norm ... the way in which it appears in society and ... its social function” (Kahn-Freund, 1981). Sinzheimer thus analyzed the "social law" that underlay the law of collective agreements and which had long been completely ignored by state law. This social law would later be recognized as legal pluralism (Gurvitch, 1931).

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3. The Golden Age and Its Decline

Industrial Relations. The adoption of the *Wagner Act* in 1935[1] marked the transition in the United States from the industrial relations model of British voluntarism to an institutionalist configuration in which state intervention creates an elaborate framework facilitating collective bargaining under the supervision of a special tribunal, in this case the National Labor Relations Board (NLRB). Collective autonomy as the basis of collective labour relations was thus preserved and strengthened. This transition occurred in the exceptional context of the Great Depression. For Otto Kahn-Freund (1976), it was a real legal revolution in which a radical overhaul of collective labour law formed a key part of the New Deal.[2]

The *Wagner Act* resulted in an unprecedented expansion of industrial unionism and collective bargaining. Already contested within the unlikely coalition of Democrats that had ensured its enactment, its influence diminished with the return to power of pro-business Republicans (1946). The adoption of the *Taft-Hartley Act*,[3] which amended the *Wagner Act* in 1947, introduced strong anti-union measures: restriction of unionization rights by excluding even lower-level managers; expulsion of any member suspected of being a “communist”; exclusion of certain forms of union security from the content of collective agreements (the closed shop and, in some cases, the union shop); and prohibition of sympathy strikes and secondary picketing (Estlund, 2002).

Kaufman (1993) charted the historic tensions and eventual divorce between the contending approaches to the study of industrial relations in the United States, notably between industrial and labour economics (centred on collective bargaining and labour markets) and personnel management (later HRM). The institutional impetus of the New Deal sparked the creation of multiple university programs and centres that focused on the collective determination of wages and working conditions. For example, Cornell University’s industrial relations program was started in 1945, and its academic journal (now known as the *ILR Review*) in 1947; meanwhile, the School of Management and Labor Relations was created at Rutgers University in 1947, as was a national association for industrial relations scholars (the Industrial Relations Research Association, now LERA).

Even though industrial relations programs included personnel management (and labour law), study of industrial relations became increasingly differentiated from study of personnel management. Originating from the early work of the human relations school of sociologists and industrial psychologists, personnel management was typically centred on the identity and dynamics of individuals and their workgroups and on the management of work in large-scale industry. Meanwhile, industrial relations was also diverging increasingly from mainstream economics.

Inspired by the structural functionalism of his Harvard colleague, Talcott Parsons (1951), the economist John T. Dunlop (1958) offered a frame to understand industrial relations as a sub-system of broader economic and societal systems. He viewed this sub-system as one that produces a web of rules about work. Whether formal or informal, substantive or procedural, these rules were theoretically integrated and causally explained as *dependent variables*, that is, as a result of interrelationships between key actors (unions, managers, the state and its agencies), their common ideology, and a series of external economic, technological, political, legal and social factors. Emblematic of the American intellectual optimism of that time, his approach was further extended to theorize labour-management relations. As systems matured, he reasoned that labour conflict would likely diminish in the more advanced industrial societies (Kerr et al., 1960). Dunlop’s quest for disciplinary identity through the frame of systems theory reverberated internationally among those who sought to promote industrial relations as a field of study, notably in the U.K. (Fox and Flanders, 1969), in Canada (Adams, 1983; Boivin, 1987), in Germany (Groser, 1979; Müller-Jentsch, 1996) and in France (Mias, 2012). Critics observed that this functionalist approach was biased

toward social stability and was more often evoked than applied (Hyman, 1978; Giles and Murray, 1988).

The subsequent decline of industrial relations in the U.S is no doubt explained in part because of its focus on collective labour relations at a time when union density was ever decreasing—from a high-water mark of 31.5% in 1950, to 16.1% in 1990 and to 10.1% in 2022. In that last year, union density was only 6.0% in the private sector (Bureau of Labor Statistics, 2023). Union influence was already declining in 1981, when newly elected U.S. President Ronald Reagan fired the striking air traffic controllers, thus marking an end to the use of public policy to promote collective bargaining as a legitimate, and even preferred, method to determine wages and working conditions. The field of industrial relations thus seemed to occupy an increasingly narrow seam, a perception that had consequences for its place in universities. Industrial relations scholars were increasingly likely to be marginalized, have their programs closed or be subsumed into business schools, where students were not primarily research-oriented. From its high point as an innovative field of study in the social sciences, marked by the impact of the New Deal and the *Wagner Act* on economic and social life, and attracting some of the best empirical researchers in the United States, industrial relations fell into decline during the neoliberal and globalizing turn of the Reagan years, thus becoming far less prestigious and less able to attract the most talented students. Kaufman (1993) described this detrimental turn where in an effort to establish their scientific credentials and disciplinary aspirations, industrial relations scholars focused more on positivist science-building, often largely inconsequential, than on the normative and problem-solving approaches that had led to the development of this new field of study. Thus narrowly defined, industrial relations in the U.S. was increasingly disconnected from the more critical traditions in the sociology of work and in labour studies.

Canadian institutions followed a similar trajectory, albeit with some important distinctions. A 1944 Order-in-Council (PC 1003) established a model for collective labour relations in Canada, which was largely derived from the core features of the Wagner model. There then arose the need for a new science of labour relations. At English-speaking universities, industrial relations centres or programs were generally established either as interdisciplinary initiatives or as sub-branches of economics, the first one being an industrial relations section at Queen's University in 1937. The institutionalization of the field was different in Quebec's French-speaking Catholic universities. Université Laval (1943)[4] and Université de Montréal (1945) created freestanding independent departments in their social science and arts faculties. This move was no doubt a reflection of the Catholic Church's preoccupation with labour peace and class conflict and the division of continental European union movements into Catholic and secular (often Communist) unions. At the second annual conference of Laval's Département des relations industrielles in 1947, the collective agreement was described as "the peace treaty which binds together labour and capital" (Giles and Murray, 1988: 792). These departments developed their own institutional trajectories, not unlike those of the freestanding units and schools in the U.S., and continued to grow, thus offering some of the few applied interdisciplinary programs in the social sciences. Industrial relations and human resource departments at Quebec business schools, such as HEC Montreal and UQAM, also experienced steady expansion, no doubt reflecting not only the embeddedness of a dynamic labour movement in Quebec society and the importance of this collective dimension of labour in university curricula but also the increasing ascendance of HRM over labour relations.

Industrial relations evolved more unevenly in English Canada. As in the U.K., inflationary pressures in the 1960s ensured that it would become increasingly prominent on the policy agenda. The Canadian Industrial Relations Association, a forum for research and teaching in the field, was established in 1963, as was a centre for the study of industrial relations at the University of Toronto in 1965. Inspired by the work of the Donovan Commission in the United Kingdom, a specialized federal task force on labour relations in the 1960s, led by two of the country's leading industrial relations scholars (H.D. Woods and Gérard Dion), commissioned a wide range of specialized studies

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on industrial relations issues, with a focus on understanding and improving the labour relations climate. Canada was not experiencing the same union decline as was the U.S., and the rapid expansion of its public sector unions led to a major new phase of industrial relations practice and research. While industrial relations was subsumed under the rubric of human resources in many business faculties, it continued to be vibrant in niche programs at Queen's and the University of Toronto. Covering much the same terrain but with a more critical normative focus, labour studies programs began in the 1970s at McMaster and York and were introduced thereafter at several other Canadian universities.

In the postwar U.K., the "Oxford School" at Nuffield College was the most influential centre for the study of industrial relations, being credited by Ackers (2016) with the creation of "a new social-science field." Its powerful impact on public policy can be linked to its pluralist underpinnings, its sympathy for trade unions and its practical, applied public policy solutions, unlike the case with U.S. industrial relations research during its later period. The Oxford School's approach was thus entirely consistent with the zeitgeist of social democratic public policy and the bargained corporatism of the 1960s and 1970s, before the radical break of neoliberal Thatcher governments in the 1980s.

The Oxford School reached its zenith in 1965 with the creation of the Donovan Commission, in which key industrial relations scholars, such as Hugh Clegg, Alan Flanders and Allen Fox, played a critical role, together with the legal scholar Otto Kahn-Freund (Fox and Flanders, 1969; Ackers, 2014). The Commission was particularly concerned with worker representation, wage-push inflation, restrictive practices and the role of unions—issues of such policy significance that the Social Science Research Council established the Industrial Relations Research Unit (IRRU) at the University of Warwick in 1970 to undertake multidisciplinary research, to improve policy-making and to train researchers. Warwick's preferred methodology was sociological or multidisciplinary with a preference for empirical methods and skepticism of "grand theory" (Brown and Wright, 1994). The priority, as Richard Hyman once wrote of Hugh Clegg, was "to get the facts right" (Hyman, 1994). Of particular interest and in contrast to the field in the United States, this pluralist tradition entered into creative dialogue with a new generation of more radical scholars (e.g., Hyman, 1978 and 1994). It was this dialogue that came to characterize a uniquely British and, at least until later decades, widely influential approach to industrial relations scholarship.

In recent decades, the study of industrial relations in the U.K. has largely been subsumed under the rubric of HRM at business schools, sometimes as dynamic centres and sometimes as junior service partners. The last freestanding departments disappeared at LSE in 2006 (integration into a management department) and at Keele in 2008 (closure) (Gall, 2008). Ironically, HRM and industrial relations have often been dynamic elements in the research performance metrics of many business schools at increasingly neoliberal universities.

In contrast to the U.K., where industrial relations was in many respects maintained by its relationship with HRM, the historic scission in the U.S. proved detrimental. There, the field of industrial relations became narrower and did not benefit, at least until recently, from either dialogue with HRM or a more radical critique of the industrial pluralism that had characterized the postwar Golden Age (Godard, 2014).

In Europe, industrial relations was not an independent field of study. In Germany, it was not institutionalized in any significant way and tended to remain the domain of sociologists and remained so after the postwar reconstruction. Frege (2008: 45) noted that the German system of professional chairs "enabled a broader research agenda for the individual professors but hindered the institutionalization of interdisciplinary fields." In France, study of industrial relations experienced multiple disciplinary efforts but no distinct institutionalization, despite some efforts in this direction (Morin and Murray, 1996; Almond, 2004; Lallement, 2022). A network of thematic research centres, funded by the CNRS, offered multiple creative takes on issues of work and

employment, but more frequently in dialogue with economics and sociology than as an integrated field of study.

Labour Law. The legal framework provided by the Wagner and Taft-Hartley Acts has typically been analyzed through an "industrial pluralism" paradigm centred on the autonomy of the parties to the collective agreement. Though long dominant in labour law, this paradigm has never been free of certain ambiguities (Stone, 1981). Although industrial pluralism has assumed a certain equality of power, empirical experience has suggested that the employer is more often in a position of power to dictate terms to the union. Moreover, the U.S. Supreme Court has arbitrarily limited the scope of collective bargaining by distinguishing between mandatory, optional and prohibited subjects for negotiation, thereby recognizing the discretionary nature of management rights in decisive matters.

In recent decades, scholars of U.S. labour law have diagnosed a crisis in the field, which Estlund (2002) vividly described as "the ossification of labor law," and for which the courts provide no remedy. With the decline of industrial relations giving way to the dominance of HRM, collective labour law has been displaced by a new, largely individualized "employment law" (Piore and Safford, 2006).

In the U.K., the field of labour law was invented by Kahn-Freund in the 1950s. Drawing heavily on the socio-legal scholarship of Sinzheimer, Kahn-Freund distinguished between "the law" and an identifiably separate "actual state of affairs" or social reality (Kahn-Freund, 1954). Whereas the law could be read from statute books and case reports, "the facts" were to be revealed through observation and empirical investigation. While most legal scholarship remained "positivistic, setting out and analysing the conceptual detail of legal rules, with scant recognition of history or sociology" (Hepple, 2013: 2017), Kahn-Freund's analysis drew on the work of industrial relations scholars, especially the "Oxford School," which shared a pluralist outlook rooted in a traditional liberal distrust of power (Hyman, 1978). Even with the death of Kahn-Freund in 1979, socio-legal analysis continued to dominate labour law scholarship in the U.K., forming a basis for critiques of the anti-collectivist legislation of successive Thatcher governments in the 1980s and 1990s. The aim was to understand the "law in context," and to assess whether particular legal provisions had achieved the policy aims behind their adoption (Weekes et al, 1975; Simpson, 2001). Perhaps due to their location in law departments and their need to adapt their research to specialist law journals and disciplinary conventions of legal analysis, later generations of labour law scholars in the U.K. would not enjoy the close collaboration with colleagues in industrial relations that had characterized the work of Kahn-Freund.

A major comparative labour law research project reflects the extent to which socio-legal approaches have likewise been adopted throughout Western Europe (see Hepple, 1986). For these scholars, labour law must be recognized as part of an historical process, and not as a relatively static and neutral set of rules and institutions intended to regulate employment. Resisting the idea of a universalistic labour law that would develop in capitalist societies along the same lines and for the same reasons, this project sought to address the issue of how particular measures came to be introduced into each country at particular points in time. Paraphrasing Marx, Hepple (1986: 1) noted: "[T]he rules and institutions are shaped by the historically given possibilities within which various sectional groups pursue their often-conflicting objectives. Labour law is made by men and women in a society not of their own making." The crucial element in the making of labour law, according to this analysis, was *power*: labour legislation is best understood as the outcome of a process of struggle between different social groups—monarchy, bureaucracy and middle-class; bourgeoisie and working class; townspeople and country folk—and competing ideologies of conservatives, liberals and socialists, and of religious and secular groups. What any particular group of people gets from the struggle is not just a matter of what they choose or want but also a matter of what they can "force or persuade other groups to let them have" (Hepple, 1986: 1).

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In some European countries, the view of *law as a science* has tended to win out, and the study and analysis of labour law has become confined to interpretation of written texts, i.e., statutes and court judgments (Birk, 2002). In France, some labour law scholars have opened up to the social sciences (Durand, 1960; Supiot, 2002; Jeammaud, 2003), an openness that, to our knowledge, has rarely translated into empirical research. In the wake of work by Claude Didry (1996), a specific field, sociology of labour law, has emerged on the initiative of labour sociologists and has given rise to numerous empirical studies (Chappe and Tonneau, 2022).

In Canada, labour law scholarship developed comparatively late. Laskin (1948: 286) noted that until collective bargaining procedures and legislation took shape in the late 1930s and early 1940s, "there [was] nothing in Canadian law to mark the emergence of a distinct body of labour relations doctrine." He also observed that labour law was "a newcomer to Canadian law school curricula and that Canadian writing on the subject [consisted] of a few articles and an assortment of case notes" where little of the writing could be characterized as an attempt to explore underlying conceptions or to articulate any fundamental approach (Laskin, 1948: 307).

When it finally did blossom, however, in the postwar decades, Canadian labour law scholarship was vibrant and has remained so. In English Canada, the work of Paul Weiler (1980), Harry Arthurs (1996), Harry Glasbeek (1987), Judy Fudge and Eric Tucker (2004), Bernard Adell et al. (2001) and Kevin Banks (2004) has drawn heavily on political economy, history and sociology. In Quebec, following the pioneering work of Pierre Verge (Vallée, 2014), legal pluralism has been particularly influential, with many labour law scholars being integrated into industrial relations departments in social science faculties, or working closely with them. It is quite usual for law scholars to draw on contributions from the social sciences in their research, notably legal scholars like Guylaine Vallée, Gilles Trudeau and Katherine Lippel (e.g., Vallée, 2006; Verge et al., 2006).

This is not to suggest that approaches to Canadian labour law scholarship have remained static. For example, when the Canadian Charter of Rights and Freedoms was adopted, some legal scholars saw transformative possibilities in its interpretation in favour of labour rights (e.g., Brunelle et al., 2007). Others, like Arthurs (1996), have pointed to the impact of the conjoined forces of economic globalization and neoliberalism on labour law, emphasizing how these forces have rewritten the rule book independently of the state.

4. Seeds of Renewal

Industrial Relations. Except for some dynamic locations at fully integrated schools of work and employment, industrial relations as a field of study has become an increasingly narrow seam in the business schools of the Anglosphere. There have nonetheless been noteworthy attempts to rethink institutional arrangements and disciplinary boundaries.

First, in emphasizing voice, as opposed to monopoly, as a dimension of collective representation, Freeman and Medoff's *What Do Unions Do?* (1984) sought to rehabilitate the role of trade unionism in firm efficiency and fairness. While their book has remained controversial among neoliberal economists, the contribution of these two heterodox economists has resonated strongly in both industrial relations and labour law scholarship, notably in providing economic justification for pluralist arguments about balancing competing interests (Budd et al., 2004).

Second, *The Second Industrial Divide*, by political economists Piore and Sabel, likewise in 1984, opened up another fruitful line of inquiry about the role of skills and worker voice in the movement, away from a particular model of mass production in the U.S. They argued that, in light of the multiple regulatory crises facing this production regime, there was a need to move to a new model predicated on flexible specialization and a rethinking of past institutional choices. Attempts

were then made to identify the underlying dynamics of a new model (Appelbaum et al., 2000; Bélanger et al., 2002; Appelbaum and Batt, 2004), as well as the import of politics and class compromises at critical societal junctures in understanding how the institutions of work and employment evolve and change (Thelen, 2004).

Third, *The Transformation of American Industrial Relations*, by Kochan, Katz and McKersie (1986), sought to explain the most compelling transformations in U.S. workplaces by shifting the causal focus to employers' *strategic choices*, which, according to the authors, were due to an interplay between *values* and *contingencies*. Their ambition was to repair the historic divorce between HRM and industrial relations (Kaufman, 1993) through a newly integrated field of study. Clearly motivated by the normative pluralism of their field of study, they sought to explain the abandonment of unionized plants in key sectors, the opening of new non-unionized plants and their relocation to the southern U.S. or abroad. Their explanation thus shifted the focus from Dunlop's rules to employer strategies, with a consequent relegation of collective bargaining and industrial relations to a secondary role. While the authors clearly embraced the potential for new high-road approaches, consistent with the voice dimension of collective representation, their reasoning also reflected an empirical recognition of the power of capital and the emergence of neoliberalism. Management was henceforth pre-eminent, a circumscribed labour movement was endowed with some reactive/strategic possibilities and, in this particular American case, the state, not least collective labour law, was largely missing in action.

Fourth, another noteworthy attempt to renew the field of study was made by David Weil in *The Fissured Workplace* (2014). Both financialization (the pressure for short-term shareholder returns) and neoliberal public frameworks have enabled firms to avoid both collective bargaining and a holistic approach to employment relations (see also Appelbaum and Batt, 2014; Lazonick and Shin, 2020; Jacoby, 2021). Drawing on a large body of empirical research on the fragmentation of work (e.g., Marchington et al., 2004, in the U.K.) and echoing the foundational work on labour market segmentation of earlier decades (Doeringer and Piore, 1971), Weil explores the tendency of large companies to concentrate on a few core activities while subcontracting everything else (security, maintenance, payroll, component manufacturing, delivery, after-sales service, etc.) to SMEs, over which they exercise a high degree of control through supply chain management. The large workforce not attached to the core business is thus shifted to subcontractors that offer poor, often precarious working conditions and are not unionized. It is these changes in the structure and governance of big business and in the supply chains they control that explain why U.S. collective labour law has lost much of its relevance. Weil compellingly weaves into a single narrative the disparate threads that characterize contemporary workplaces. He described the fragmentation of work as a fissuring of the employment relationship, be it through temp agency employment, expansive but tightly controlled supply chains, franchises or any other means to minimize headcounts and cut costs. His analysis highlight the need to expand the purview of industrial relations scholarship, as evident in the rethinking of new forms of collective representation and labour strategies to fight precarious work (Fine, 2006; Doellgast et al., 2018) and enforce labour standards (Fine and Bartley, 2019)

Fifth, feminist, critical race and intersectional scholars have made major attempts to renew industrial relations scholarship through a range of studies of work and employment on the connections between productive and reproductive spheres (Rubery and Hebson, 2018) and likewise with structured racism and other social identity-based systems of oppression (Lee and Tapia, 2021). These scholars have further contributed to an understanding of multiple layers of privilege and disadvantage through intersectional analysis including, as in the case of Canada, the impact of settler colonialism on indigenous peoples (Camfield, 2019).

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Sixth, the new critical labour studies have increasingly come to broaden and challenge traditional industrial relations scholarship. In the U.K., both Hyman (1978) and Edwards (1986) laid the foundations for a critical political economy of the power asymmetries in the work relationship, due to the twin forces of subordination and consent inherent in that relationship. Piore and Safford (2006: 321-322) in the U.S. specifically made a link with the earliest industrial relations scholarship. They argued that what distinguishes industrial relations from most other scholarly endeavours is a defining commitment "to those actors and institutions that struggle to find a voice and provide a vehicle for the less powerful, the oppressed, the under-represented, and the socially stigmatized in industrial society" (2006: 321-322). Whereas trade unions and collective bargaining once provided this vehicle, as organized around economic identities, industrial relations must henceforth recognize new institutions, new forms and new tools. Recently, seeking to infuse industrial relations scholarship with a long tradition of labour studies, Schulze-Cleven and Vachon (2022) identified its defining features: normative focus on people's struggles; importance of interdisciplinarity; and upholding of workers' rights with a view to helping reassert the value of both work and workers. This approach is also echoed by the CRIMT Partnership Project *Institutional Experimentation for Better Work*, which focuses on organizational and institutional experimentation and actor resilience and which aims to develop new institutional solutions to the problems and uncertainties actors in the world of work face (Ferreras et al., 2020; Murray et al., 2020; Gesualdi-Fecteau et al., 2023).

From these diverse contributions, the seeds of renewal would appear to lie in an expansion of the boundaries of the field to encompass all aspects of work, by rethinking institutional transformations, by reaffirming their original normative values and by committing to interdisciplinary empirical research.

Labour Law. The paradox of labour law is illustrated by Weil's (2014) analysis of the fissuring of employment in large firms. Work arrangements are now so variegated that neither classic collectivist solutions nor new iterations of individual employment law can adequately ensure some of the classic protective functions of labour law. While trends toward globalization and deindustrialization have certainly played out differently in different national contexts, they have everywhere brought markets and market rationalities into spheres that were previously organized in other ways. Although labour law scholars have criticized governments for political use of the idea that "there is no alternative" to globalization and have shown that nation states are themselves the authors of that narrative, they have not, for the most part, challenged the essentials of the globalist project. In some jurisdictions, there has been a fairly widespread and discernable change in approach, from the study of labour law as the law of work to the study of those laws that regulate labour markets, including laws on social welfare and immigration (Lamarche, 2021). Some scholars have used a "market" framing of their field of study to highlight the importance of political economy to developments in work relations and labour law (Tucker, 2019). Citing political economy and legal scholarship, they have called into question matters that tended in the past to be taken as read; for example, the treatment in law of some work as paid employment and other work (domestic and reproductive labour) as an unpaid and untaxed contribution to the household (Fudge, 2011; Blackett, 2019).

More generally, there has been a reassessment of the creation of labour markets by law and other social norms—not only labour law but also social welfare, immigration and, of course, private law (Deakin and Wilkinson, 2005). In contrast to their postwar counterparts, at least some scholars have now placed a rather clearer emphasis on the contingency of private law and labour law rules, treating the former not as a pre-existing field in which labour law has then intervened, but rather as a field embodying in itself contestable political judgments on how to define and assign privileges, powers and entitlements (Klare, 1977; 2002). An important task for scholars is then to identify the distributive consequences of all market-constituting rules—private law, labour law,

social welfare law—and to consider how they vary between jurisdictions in order to identify potential paths to achieving particular goals (Klare, 1982).

As trade unions become progressively weaker, and as the scope of collective bargaining shrinks, labour law reforms have sought, in several jurisdictions, to expand the realm of individual labour rights. The normative twist to the virtues of labour market flexibility used to be that labour law had long been a bulwark against market forces and the asymmetries of the employment relationship (Deakin and Wilkinson, 2005). With neoliberalism, its normative power has become aligned with such market asymmetries. Arthurs' (1996) thunderous injunctions that labour law could henceforth proceed without the state was not an ode to legal pluralism but rather a trenchant reading of the impact of neoliberalism's corrosive effect on the protective functions of labour law. As labour law becomes narrower in scope, its emancipatory role has been paralyzed. Indeed, as argued by Arthurs (2013), its functions have even been transformed into their antitheses —instruments for the subordination of workers to an individualistic (capitalistic) labour order.

In their studies of the law, some scholars still adopt sociological and anthropological framings and methods, in addition to what we might call "law and political economy" lines of enquiry (see Dukes, 2019; Dukes and Kirk, 2022; Coutu and Kirat, 2011). Like Sinzheimer and others a century or so ago, these scholars recognize that laws do not always take effect as intended by the legislature or the courts. They also understand that norms can develop through economic and social interactions (as "social law"). Such norms are not always recognized by the state's legal order. It follows, they believe, that analysis of the law has to look beyond the law books at "concrete" legal forms and arrangements, from a pluralist legal perspective, with a view to analyzing such forms and arrangements and their relationships to formal state law. The aim is thus to consider "the social effect of the norm ... the way in which it appears in society and ... its social function" (Kahn-Freund, 1981).

Given the pervasiveness of fissuring and the consequent casualization and commercialization of work relations, one central concern today is to demonstrate how labour and employment laws are failing to protect the most vulnerable and lowest paid workers and are thus contributing to rising inequality. This is happening because such workers are deemed to fall outside the scope of the law (Dubal, 2017; Hayes, 2017), or because the law is routinely breached by employing organizations, with little reason to fear any significant consequences for their breaches (Kocher, 2009; Vosko, 2020). These concerns have been exacerbated by globalization (Hepple, 2005), by new technologies (Supiot et al., 2001), by the COVID-19 pandemic (Ewing and Hendy, 2020) and by climate change (Doorey, 2015). For scholars concerned about how particular laws and social arrangements affect workers, and society as a whole, these are crucial lines of enquiry that provide new empirical and normative openings for labour law to dialogue with the social sciences. Like early scholars working in the field, researchers who employ empirical methods today tend to be pluralist in their definition of law, which includes not only formal legal rules but also how such rules are interpreted, applied or otherwise utilized in concrete situations (Edelman, 2016; Kirk, 2021) and supplemented with workplace and sector-specific organizational and social norms (Ioannou, 2001).

5. Conclusion

This analysis has sought to document the intertwined stories of industrial relations and labour law as fields of study. Although such an analysis could certainly be more comprehensive and extended beyond a limited number of "most developed" economies, what might we learn from these comparable trajectories?

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First, these two fields have been following parallel but most often distinct trajectories, each with its respective methodology and sets of concerns. From common origins related to the emergence of "the labour problem", both came to enjoy a period of relative ascendancy when collective bargaining was seen as the pillar of a new era of industrial citizenship and labour stability. When the fields of study first emerged during the 20th century, labour law was inspired by findings from the social sciences, and it thus encouraged research into the social facts of law; concomitantly, industrial relations paid central attention both to state law and to "social" or extra-state law, as key institutions that shape collective conflict, collective bargaining and dispute resolution. Recently, in the face of disruptive forces, these collective arrangements have lost some importance, and the two fields have existed in splendid isolation from each other. However, the same disruptive forces have led to a common desire for renewal through a search for better work, as defined by less risk and more equality and greater autonomy, voice and democracy (Gesualdi-Fecteau et al., 2023).

Second, both industrial relations and labour law have long shared a common object of study: work and employment. Both would therefore benefit from more systematic integration of their findings. Drawing on broader social science traditions, such integration could be facilitated by a reciprocal broadening of analytical perspectives. For the jurist, this broadening must encompass not only the formal rules of state law but also the "living law", requiring empirical studies of its nature and effectiveness. For both legal and industrial relations scholars, it must also include a more substantive engagement with the social sciences. This research effort should draw on empirical traditions of pluralism and problem-solving to co-construct knowledge from both fields and, more generally, from the social sciences. By its very nature, labour law cannot be permitted to retreat into a self-absorbed technicity at a time when industrial relations is integrating a broader set of societal concerns and methodologies to understand transformations in the world of work. Such a commitment to interdisciplinarity resonates with many of the foundational works in labour law and industrial relations. Work and employment are at the epicentre of current social transformations. As argued by Edwards (2005), studies in industrial relations and labour law are well placed to inform broader social science understandings.

Third, both can benefit from a return to the kind of self-affirmed normativity that characterized the emergence and evolution of their respective fields of study. A *sine qua non* condition is the need to reappropriate their founding values: recognition of the fundamental inequality of the parties to the work relationship; and recognition of the need to compensate for this inequality through processes that are above all collective. What distinguishes these fields, from their earliest scholarship, is a "defining commitment" to actors and institutions "that struggle to find a voice and provide a vehicle for the less powerful, the oppressed, the under-represented, and the socially stigmatized in industrial society" (Piore and Safford, 2006: 321-322). This entails a reassertion of the role of the institutions of work in the pursuit of democracy and citizenship at work (Coutu and Murray, 2010; Dukes and Streeck, 2023). These fields must also do more to heal old and new fractures and erasures in a search for greater emancipation and democracy, whether these divisions and erasures be gendered (Rubery and Hebson, 2018), racial (Lee and Tapia, 2021) or linked to migrant status (Blackett, 2019).

Finally, there is undoubtedly a need to come up with new forms of regulation, new institutions and new actor strategies through experimentation. Such renewal should be a central focus of a more integrated study of work and employment. In line with Arthurs' observations on labour law (2011), we need to understand how these fields of study can be used to challenge hegemonic institutions and initiate alternative approaches. We especially need to understand how organizations, institutions and other actors can experiment and show resilience in the search for new solutions to resolve the many challenges in the world of work – a process that lies at the heart of this renewal (Ferreras et al., 2020; Murray et al., 2020).

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Notes

[1] *National Labor Relations Act*, Ch. 372, § 1, 49 Stat. 449 (1935).

[2] *NLRB v. Jones & Laughlin Steel Corp*., 301 U.S. 1 (1937).

[3] *Labor Management Relations Act*, 29 U.S.C. Sec. 141-197 (1947).

[4] Laval's academic journal, later known as *Relations Industrielles/ Industrial Relations*, was founded in 1945.

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