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Summary: New Perspectives on Worker Subordination

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International Symposium

New Perspectives on Worker Subordination

Prof. Cynthia Estlund-

The first speaker at the symposium was Prof. Cynthia Estlund, Catherine A. Rein Professor of Law at NYU. At the outset, she noted that to facilitate the betterment of workplace structures, the domination of managers in the capitalist firm must be reduced. Taking the success of capitalism and the prevalence of the capitalist structure in most societies as a starting point, she stated that is incumbent upon democratic societies to provide safeguards against unchecked managerial prerogatives. In each situation, employment will entail subordination because managers are chiefly accountable to capital, and not to workers. Inevitably, managers will have an oversight over the workers entailing subordination. Furthermore, one could even argue that the workers, to an extent, consent to a degree of subordination. However, what they do not consent to is domination. Therefore, Prof. Estlund relied on neo-republican theory, stating that, as a political philosophy, it seeks the 'promotion of freedom as non-domination on the basis of an equal concern for each citizen'. Taking this into account, she noted that, arguably, even if workers consent to subordination, they never consent to domination from their employers. Her paper tries to answer the question – what can be done to protect workers against domination? She emphasized that labour law in capitalist societies must be strengthened to prevent domination. Chiefly, this can be done in three ways-

1) **Exit Rights**- If the worker has the right to choose work, he should have the realistic ability to exit work as well. Without a realistic ability to leave the workplace, the employer has the power to dominate the worker, to the extent that the same could be tantamount to forced labour. In nearly all situations, most of the exit options land workers in other subordinate paradigms. Therefore, we must consider providing a basic income or post-employment benefits, analyze self-employment options, and, perhaps, pursue non-capitalist worker coordination models.
2) **Legal Boundaries**- With laws pertaining to minimum wage, workerss' compensation, occupational health and safety, prohibition on discrimination, etc. enshrined in employment law, it can be said that there is a legal boundary created. This, of course, works towards curbing managerial prerogatives. A prime example of this is that managers need to have just cause to dismiss workers, which is commonplace in various legal systems with the notable exception of the United States. Just cause, to an extent, curbs the power to fire workers. However, just cause protection often does not limit terminations resulting from technological change, which is continuously developing. Therefore, legal boundaries must be expanded to take these new challenges into account to curb the dominating power of managers.
3) **Contestation rights**- Perhaps the most important right that must be provided to the worker is the right to 'contest' managerial authority, especially on issues of compliance. There is 'individual contestation', where the worker can challenge managerial decisions without the threat of retaliation. For this reason, there must be job security provisions which put a burden on the employer to justify dismissal. This right afforded to the individual will allow

him to be freer from domination. Moreover, worker grievances, at times, are quite individualized, which makes it imperative to provide individual contestation rights. Individual contestation is itself necessary to realize collective contestation rights. Following suit, collective contestation rights are also essential. These can be afforded by providing the freedom to associate, including rights to form unions, bargain collectively, and strike. These rights are essential; however, they are insufficient at times. In most jurisdictions, enterprise bargaining is followed, resulting in the workers always organizing whilst being monitored by the employer. Moreover, the majority rule in enterprise bargaining is inadequate, as it denies collective representation rights to workers in workplaces where there is not majority support, a threshold that is quite often difficult to reach. Although there are systemic problems with enterprise bargaining, sectoral bargaining is not necessarily the answer, since it often does not provide an opportunity to contest workplace domination. Therefore, sectoral bargaining coupled with structures of co-determination with work-councils might be a starting point. Interestingly, in Germany, works councils that provide representation for employees at the workplace have substantial powers, including an effective right of veto on some issues. A change in collective bargaining structure and the inculcation of co-determination systems will make the workplace more accountable to workers. In the end, the workers should have the right to meaningful dispute resolution, the right to meet and confer with the employer, and the right to contest and bargain. Subordination is an inevitable part of the capitalist structure. However, contestation rights and co-determination safeguards can be put in place to curb employer domination.

Prof. Eric Tucker-

The second speaker at the symposium was Prof. Eric Tucker, Emeritus Professor at Osgoode Hall Law School. Prof. Tucker began with sharing his concerns about worker subordination and emphasized that subordination is enhanced due to the structure of the capitalist society. Inevitably, capitalism will lead to worker subordination. Therefore, from a Marxist political economic perspective, worker subordination is a class structural issue and, thus, reforms propounded by Prof. Estlund may not work. In fact, Prof. Tucker noted that even though labour laws throughout the world seem to have provided more safeguards, workers and unions are still losing ground.

Prof. Tucker prefaced his further remarks by noting that although wage labour is the principal mode of worker subordination in capitalism there are others, including unfree labour and self-employment. What makes a mode of subordination capitalist is that it aims to extract surplus value from labour for the purpose of expanding capital and that there is ample evidence that these other modes of subordination have not only played an important role historically but are operative today. While the boundaries between modes of subordination often are not sharply drawn, it is important to be attentive to non-wage labour in order to explore alternative modes of resistance and regulation.

The remainder of Prof. Tucker's paper focused on the dimensions of worker subordination in wage labor. Prof. Tucker then highlighted three dimensions of worker subordination. He started with '*economic subordination*', wherein the workers' economic interests are subordinate to the

employers'. This is because the employer does not operate for the workers but for making a profit. This dimension of subordination is primarily enacted at the level of the market, where the wage bargain is struck, and its depth is variable, depending on a variety of factors, including the relative bargaining power of the parties at a given time. However, what is noticeable is that workers' economic subordination has been worsening over the past 50 years, and the share of productivity increases that goes to labour is substantially declining as is the share of income going to labour. This is particularly true for low wage workers and has resulted in the worsening of income inequality.

The next dimension that Prof. Tucker pointed out was '*time subordination*' which refers to the necessity of workers' time having to conform to employers' requirements, whether in regard to the amount of work or the time it is to be performed. As with economic subordination, time subordination is variable and historically has been contested by workers, beginning with struggles over the length of the working day. However, as with economic subordination, Prof. Tucker argued that in recent decades workers' time subordination has been deepening. While some workers still experience long working days and weeks, others suffer from mass under-employment. As well, with the rise of various forms of precarious employment, many workers have lost control over schedulingEssentially, some workers are now wage hunters, spending large amounts of uncompensated time seeking bits and pieces of work.

Lastly, Prof. Tucker spoke about '*workplace subordination*', which occurs due to employers controlling production processes. As soon as capital obtained technology, workers became subject to authoritarian processes. A prime example after the industrial revolution is that of 'Taylorism' that aimed to deprive workers of any control over the production process. Even when workers fought back and through collective bargaining secured protections against the arbitrary exercise of managerial powers, they still conceded managerial control over the production process, including the design of jobs and the speed of production. However, as with economic and time subordination, workplace subordination has also deepened in recent decades, the result of sharp declines of private sector union density and technological developments that allow for more pervasive managerial surveillance and supervision that have been characterized as 'Digital Taylorism'.

Prof. Tucker noted that securing effective protective labour and employment is always a challenge, it is least likely to reach workplace subordination, perhaps with the exception of occupational health and safety (OHS)regulation. However, even there, the law has faced significant implementation challenges, whether in relation to enforcing protection or securing meaningful worker participation. Prof. Tucker ended his speech by noting that the kinds of protective and participatory measures advocated by Prof. Estlund are faltering because the dimensions of subordination they aim to ameliorate are structural features of the capitalist regime that is taken as the starting point. While history shows that improvements to worker subordination under capitalism are possible, further progress depends in part on recognizing the significance of the structures of subordination we face.

Prof. Valerio De Stefano -

Prof. De Stefano, Canada Research Chair in Innovation Law and Society, was the third speaker at the symposium. At the outset, Prof. De Stefano noted that we have been able to regulate the abuses inflicted by subordination to some extent; however, there is a still a lot that needs to be done. Prof. De Stefano then questioned the foundations of managerial prerogatives and the employee's subordination. He asked, where did the subordination, if at all one can claim it as an employers' right, come from? Perhaps the most common answer is property rights, but that is misleading, he noted. He argued that this phenomenon goes further back to master-servant laws and feudal regulations, which were public statutory law. Therefore, the right to subordination did not emanate from a private law of property or contractual transactions. In fact, the origins of these powers and rights do not align with contract and property law.

He noted that in France, lower tribunals had acknowledged that domestic servants were subject to subordination to their masters; however, barring them and a minority of other labourers, other workers were not subordinate. For them, in accordance with "Revolutionary" principles, workers needed to consent to employer stipulated workplace regulations for them to be legally binding. It was only after the 1860s that all workers were brought under subordination by Courts. The question of the right to subordination being compatible with republican and democratic values and the rule of law, therefore, must arise.

Rooting exclusively subordination in property and contract laws conceals the "public" and authoritarian origins of subordination. Among other things, this allows the employer to take any decision without the possibility of courts interfering unless they are authorized by specific limitations in laws or contracts.

Prof. De Stefano noted that strengthening trade union rights would be a good starting point, but it cannot be just that. He noted that we must question the existence of the unilateral power of managers because it is not entirely rooted in the private law regime. This would allow the introduction of more general limits to managerial prerogatives rooted in notions of due process and individual and collective human rights to level up protection against the "public" prerogatives of managers. This can be done when the workers are provided with the right to contest decisions, the right to demand explanations, and the right to ask for unilateral decisions to be revised.

We should strike at the root of the issue and claim due process, as we claim it on public powers. This is ever more imperative as managerial prerogatives have only increased with algorithmic management techniques and technological development, which violate the privacy of workers. We have examples in recent times of unilateral exercise of managerial prerogatives that are not justifiable under the need to direct individual work performance. Prof. De Stefano reiterated that the notion of subordination should be removed as a lynchpin of employment and labour protection.

Discussion - A lively discussion ensued between the panelists and the audience. Prof. De Stefano pointed out that the pandemic has been an interesting case study in some ways. During the pandemic, managers started using several algorithmic techniques to monitor workers remotely, but there was also a discontinuance of a certain way of life which we thought was just about work. Prof. Tucker reiterated his arguments that the employers will always resist regulations and that is

because of the capitalist structure. Prof. Estlund, instead, noted that capitalism has now been domesticated and countries are finding it harder to amass public support for passing additional employment and labour laws. Therefore, curbing managerial domination but accepting subordination is the way forward.

Break

Dáire McCormack-George

Dáire McCormack-George, an employment and labour law scholar and trainee lawyer based in Dublin, Ireland, was the fourth speaker. He stated that at least one version of 'civic republicanism', 'neo-republicanism' or 'non-domination theory' can provide the solution to the problem of subordination in the employment relationship.

Quoting Hugh Collins, he started by noting that there is a subtle distinction between submission and subordination. Submission implies inequality of power in the market, where the worker is required to accept standard contractual terms; subordination, however, concerns the employee's acceptance of the employer's legal power to determine how, why, what and where the employee must work. The primary moral or normative justification of the managerial prerogative is that managers, by virtue of their superior skills and experience, are better able to realise the shared goals of all the members of the organisation. This implies that that the contract of employment establishes a hierarchical relationship, such that the worker is subordinated to the authority of the employer. This authority structure is ostensibly troubling for those of us who live in a 'liberal' society where freedom is valued greatly. McCormack-George proposed to re-evaluate this problem through the lens of Philip Pettit's republicanism.

McCormack-George was of the view that the ultimate justification of employment and labour law is to secure certain aspects of personal well-being and in particular the value of freedom as non-domination at, in and from work. Relying on Philip Pettit's republicanism, he noted that the antithesis of freedom is domination. Accordingly, the first question which one must grapple with in the context of employment and labour law generally and the managerial prerogative specifically, in the light of a commitment to freedom as non-domination, is whether subordination equals domination? If subordination is equivalent to domination, then Pettit's republicanism could go on to justify at least some parts of employment and labour law. For McCormack-George, in the absence of a socially just and politically legitimate system of rules governing the activity of work, workers would be dominated in the employment relationship and the managerial prerogative could be categorised as inherently dominating. To curb domination, then, republicanism demands worker-protective laws. However, it also rejects the rules if the workers are not a risk of domination. Therefore, Philip Pettit's republicanism requires a qualitative analysis of each and every instance of protective labour regulation to determine whether it is necessary to guard against domination. The qualitative analysis McCormack-George conducted concerned the general issue of the subordination of the worker to the managerial prerogative. This analysis had two related parts: first, a consideration of the general categories of subordination to the managerial prerogative; and second, an analysis of the legal test that determines the circumstances in which a

person is subordinated to varying degrees, ie, the legal right to subordination or what is commonly known as the test of employment status.

McCormack-George noted that there are at least two overarching categories or types of subordination with which we are familiar in contemporary industrialised societies: (1) unfree subordination (people who are forced to work and are structurally domination); and (2) free subordination (those who do not need to sell labour power but do so, nonetheless). Considering these categories or circumstances of subordination raises two issues or problems. First, should those who freely choose to work and are not forced to do so benefit from the same types of labour protections as those who are forced to work? If employment and labour law serves human freedom, then the laws providing benefits to unfree and free subordinate workers should be different. From the perspective of Philip Pettit's republicanism, labour rights should be allocated to those who need them the most. Thus, for example, why should company directors or executives have the same labour benefits as an ordinary worker? McCormack-George then provided a comparison of this with progressive taxation. For him, the managerial prerogatives should be regulated in respect of those who are worse off and deregulated in direct proportion to the degree to which those are better off. Such an approach would be better to respect people's freedom by tailoring the regulation of the managerial prerogative to their needs.

The second and related issue which arises when considering the circumstances or categories of subordination concerns the possibility of further tailoring employment and labour rights to the contributions or choices of workers: there cannot be merely two or three watertight categories of employee, worker and independent contractor. McCormack-George noted the vectors across which subordination features to differing degrees, such as the formality, quality, temporality and permanence of work. He argued that there is a need to individuate the rights not only according to their needs but also to their contributions or choices. Those who are worse off need more labour rights and those who are better off need less; but one cannot completely protect people against making bad choices and people's choices must, to some extent, be respected.

Lastly, McCormack-George considered the threshold test for access to and the benefit of employment and labour law. Such a test is embodied in what can be described as a legal right to subordination; in other words, the legal test for employment status. Such a right entails access to the benefits of employment and labour law by determining what category of subordination a person falls into, eg, employee, worker, independent contractor and so forth. The extent to which each person is subject to the managerial prerogative will differ as will the intensity of the exercise of the prerogative power. One must therefore examine the nature of the power which a manager can exercise, the extent or scope of the power, its legal or factual basis and any limitations thereto. He concluded that, by conducting this investigation, one can find out what category of subordination a person is in and what type of labour law rights should be associated therewith.

Prof. Gali Racabi –

Prof. Gali Racabi, an Assistant Professor at the School of Industrial & Labor Relations at Cornell, started by noting that private ordering is dead and that normatively that is a good thing. He pointed to a recent survey which indicated that most of the workforce was adversely affected by the

pandemic, not only in terms of their physical health but also their mental well-being. The survey pointed to the idea that the workplaces should strive to be "engines of well-being" and, therefore, a pitch needs to be made to the management give workers' mental health and physical well-being priority. One can try to pitch as many claims as possible in private ordering, which may or may not be successful. Unfortunately, worse than their lack of success is that the priority of worker well-being is not even asserted.

Prof. Racabi noted that private ordering is a paradigm of US employment and labour law. The descriptive component is that the employer and managers are at the helm of the workplace. The default rule is that the employers govern, and employees are always under the rule of the employer. However, only in certain extreme situations does the state intervene and, therefore, the state rarely redresses the imbalance. The normative justification for rule by managerial prerogative is primarily based on the employers' superior skills and technical expertise. State intervention is minimal, lest it impair the efficacy of the paradigm, which is understood to be organize work.

Prof. Racabi noted that subordination can be found in all paradigms. However, the strong form paradigm is not the best way. He pointed out that there is a shift in the basic unit of analysis in employment contracts and similarly in the power of managerial decision making. There must be a complete reorganization of the governance of firms and the complete abnegation of enforcement by the state. What can replace private ordering? This is a question that is tricky. Maybe a new meta framework could be in order. Having said that, in his previous work, Prof. Racabi alluded to solutions to curb managerial prerogatives through systems like employee prerogative, where decisions are made by employee governance bodies, social prerogatives where the representatives from the community, the workforce, and the management have joint power, etc.

Prof. Sara Slinn-

The final speaker, Prof. Sara Slinn, Professor at Osgoode Hall Law School, opened by observing that her presentation would perhaps offer a different, more practical, take on the subordination question than other speakers. This approach arises from other projects that she is carrying out, also in concert with other writers, about how to reconfigure or craft new structures of collective representation in the Canadian labour legislation. In doing so, she observed, it is crucial to avoid worker subordination being exacerbated or neglected.

Prof. Slinn noted how some critical architects of Canadian labour law identified three distinct sources of worker subordination beyond that of the employer: the union, technology, and the collective bargaining system itself. Her presentation would, thus, focus on these last two potential sources of worker subordination: firstly, the labour relations system (and, primarily, the question of jurisdiction and how that can create subordination); then, technology, in so far as it relates to subordination through jurisdictional rules of the labour relations system for contesting these actions.

Currently, the Canadian labour relation system provides a patchwork of access to grievance arbitration courts and statutory tribunals to pursue worker rights which arise from various sources. This produces gaps in access in the sense of providing no recourse for certain workers for certain

types of claims or providing different access for different workers due to their bargaining unit status or whether they are in the private or public sector.

For instance, civil claims are one of the three key sources of rights and claims in the workplace. Under our current regime, Prof. Slinn recalled, there is exclusive jurisdiction before the labour arbitrator if a particular test is met, and, roughly speaking, that test is whether the issue arises inferentially from the collective agreement. If that is the case, there is exclusive jurisdiction before the arbitrator, and there is no option to seek a different forum. Furthermore, the way this jurisdiction has been interpreted in Canada is that arbitrators in that forum do not have jurisdiction over third parties such as co-workers of certain categories, even managers of certain categories and other parties such as insurers: there is simply no claim that can be brought against these subjects in the only available forum, which is labour arbitration.

The second category of claims and rights is statutory, where a specialized statutory tribunal exists. Prof. Slinn observed that, generally, albeit not in all cases, these tribunals have concurrent jurisdiction with labour arbitration. However, many have pointed out that even where concurrent jurisdiction exists in theory, in practice, it is as if labour arbitrators had exclusive jurisdiction. This is because of practical hurdles to accessing other forums and, most prominently, significant delays. Even when, on paper, human rights tribunals have jurisdiction, for most unionized workers, the only feasible route to bringing a claim would be through arbitration. Human rights tribunals are so overwhelmed and so slow that they do not offer, in practice, a realistic recourse.

The third category is Charter rights. For these rights, too, if the same test of other civil claims is met, i.e., the matter arises inferentially from the collective agreement, the exclusive jurisdiction is with the arbitrator. Another issue with these claims is that the Charter only directly applies to public sector workers. Therefore, private sector workers never have direct access to Charter claims. Moreover, arbitrators have limited access to remedies where it is a claimed Charter violation.

In most cases, therefore, Prof. Slinn commented, an arbitrator will have exclusive jurisdiction over civil and Charter claims for unionised workers. Accordingly, the union is a gatekeeper for these claims. If the union does not facilitate the claims, those workers will have no recourse at all. Moreover, as mentioned, looking at case law, these arbitrators do not have jurisdiction over third parties such as co-workers, specific categories of managers, and insurance companies. Finally, in the case of the Charter, workers have only access to limited remedies, and not the full panoply of remedies, through labour arbitration and, again, no recourse to a different forum for Charter claims.

So, as others have pointed out, there are significant gaps in access to claims, and, in this respect, this labour relation system arguably provides no ability to contest subordination. Thus, it arguably even facilitates or imposes certain types of subordination arising from the structure of the labour relations system. In addition, there is evidence, including empirical evidence, that arbitrators might apply different analytical tests than other decision-makers, including when interpreting and applying the same legislation or the same law. Moreover, remedies sought and awarded under arbitration differ from those in other forums, even when there is no difference in remedial jurisdiction between the arbitral and the other forum. One can thus talk about a very different type

of Justice and, arguably, in some cases, even maybe a lesser Justice available in arbitration, namely the only accessible forum for certain workers.

These are significant problems, according to Prof. Slinn, and as many other observers have also stressed out.

Considering how all these issues intersect with technology, moreover, subordination might be an increasing problem due to technological changes and the introduction of more and different types of technology in the workplace. The future will most likely bring more non-standard work arrangements and more technology of a different sort in the workplace. Artificial intelligence, algorithms, and robots will operate in different roles and functions than previously; as many have pointed out, they will take on some of the employer and managerial control roles. This new technology is fundamentally changing the nature of control in the workplace. Monitoring prompts workers' self-regulation due to constant surveillance, resulting in a new form of control. Algorithms allow for a type of employer control that is different and that some have labelled as "rational" control as opposed to "technical" or "bureaucratic" control. Moreover, the effects of AI in the workplace have resulted in a concentration of control and diffusion of responsibility. Both are important to the jurisdictional question, particularly where there is a limitation on the ability to bring claims and seek recourse against third parties in the arbitral forum. Therefore, while control is changing and becoming more concentrated due to technology, the relevant responsibility is becoming harder to locate.

The question of responsibility concerning new technologies is a work in progress, observed Professor Slinn. Different areas of law are grappling with issues related to responsibility and liability – for instance, whether the liability is individual or collective, whether to introduce strict forms of liability and where responsibility would be located precisely, particularly when AI is deployed as a decision maker. Another issue still uncertain is what primary areas of law and what analytical frameworks will be used to answer these questions (e.g., consumer protection, contracts, torts or something else). These areas, of course, also engage questions of privacy and data protection. It is most likely, therefore, that issues of third-party responsibility in workplace matters will become more common than they are to date, and the location of that responsibility will be somewhat different. This is all the more serious, given the existing jurisdictional gaps. If there is less responsibility for control with employer decision-making, there is less scope for recourse and more incontestable subordination of workers with respect to these issues. Regarding privacy, which is a crucial question related to technology in the workplace, other complications will arise. This is because privacy is protected by myriad sources and areas of law that differ even among Canadian jurisdictions. It pertains to the common law, statutory laws, including statutory torts, criminal law, and the Charter, with significant differences in coverage and protection between public sector and private sector workers. Privacy law in Canada is in a relatively formative state, particularly when it deals with questions of technology, and Canada is lagging in that respect compared to many other countries. Moreover, new technology in the workplace is producing new challenges for conceptualising privacy and regulating it. This will also implicate human rights questions since technology and privacy give rise to new and different human rights concerns

intersecting with existing concerns about jurisdiction and practical access to protecting those rights and contesting subordination.

Privacy and human rights are thus going to be increasingly important to workers. Moreover, the intensity of technological control as well as the diffusion and relocation of responsibilities away from the traditional employer and, therefore, access to claims against third parties for issues arising from the workplace that are currently likely to be barred from court jurisdiction with, at the same time, no arbitral jurisdiction over third parties are significant and growing problems.

Returning to the practical and concrete approach to these phenomena, Professor Slinn observed that when thinking about recalibrating regimes or to new regimes of protection, there are some ongoing older issues within the existing system that will remain in place, such as the role of the union as a gatekeeper, particularly for fundamental rights, access, and justice as well as the question of whether different analyses and different remedies ought to apply to different fora. In addition, the capacity of arbitrators and, for that matter, collective representative bodies concerning certain matters, the private regulation of public or fundamental rights and third-party claims, in general, will also be relevant. Some new considerations will also include where these "privacy and technology "protections will be located and what that will mean for access and jurisdiction. Moreover, she asked: if arbitral jurisdiction remains the key source of workers contesting rights and violations, will third-party claims remain outside of it even in the wake of the technological diffusion of responsibility for even more intrusive and concentrated managerial control?

According to Prof. Slinn, a crucial issue to address all these matters concretely will concern the capacity and the roles of worker organizations in developing definitions and standards as well as statutory and common law instruments that will grapple with these phenomena often outside of the realm of labour and employment law. The old question of the appropriate fora and whether to opt for a multiplicity of fora or a single forum and across what dimensions that single forum exists will have to be posed again. Many observers call for a single forum; for example, many writers in privacy are calling for a single forum for determining privacy questions; many others advocate a single forum to deal with all workplace issues. How to solve these conflicts of "jurisdiction" must then be sorted out too, she noted.

Of course, she observed, this also raises challenges for collective representative organizations and their capacity to deal with these issues, especially when they are just at their outset. One must also consider whether some of the existing mechanisms, both in collective agreements and in legislation, such as technological change provisions, can grapple with the nature and the current speed of societal and technological change and the implications it has for the basic protection of worker rights. The duty of fair representation, too, should be reviewed to assess if it is a mechanism that can deal with these problems adequately. For instance, should the duty be of a variable intensity depending on the fundamental nature of the rights in question, as others have asked in the human rights context? This is essential also because some of the new regime proposals discussed today would, in fact, shed the duty of fair representation, sometimes opening up the choice of representative. Whether protection under these proposals will be adequate is doubtful, according to Prof. Slinn. This also intersects with discussions of various third categories of workers with a thinner body of rights, which often does not include any duty of fair representation. When

reflecting on jurisdictional bars to any recourse for workers, one should also consider how restrictive that solution would be.

In reconfiguring workplace regulation, therefore, it is essential to refrain from fostering additional worker subordination through the system's mechanisms and architecture. Jurisdiction, fora and access mechanisms will be key, and many of these decisions will likely be outside the labour and employment law sphere. Therefore, worker representatives and labour and employment law academics must pay attention and participate in these developments actively, she concluded.