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The "Majestic Equality" of the Law: Why Constitutional Strategies Do Not Produce Equality

Harry Arthurs
Osgoode Hall Law School of York University, harthurs@osgoode.yorku.ca

THE "MAJESTIC EQUALITY" OF THE LAW: WHY CONSTITUTIONAL STRATEGIES DO NOT PRODUCE EQUALITY

Harry Arthurs[1]

The law, in its majestic equality, forbids the rich as well as the poor to sleep under bridges, to beg in the streets, and to steal bread.

Anatole France, *Le lys rouge* (1894)

Introduction

Two epidemiological studies — the Whitehall Studies of 1967 and 1988 — famously demonstrated that socio-economic status is a primary determinant of health outcomes. (Marmot & Smith, 1997) By locating a large cohort of British civil servants on a social-class gradient, researchers were able to show that individuals at successively lower levels on that gradient experienced diminishing prospects of good health and longevity. This conclusion was complemented by subsequent studies that concluded that degrees of inequality in a society — rather than absolute levels of wealth and status — are a very strong predictor of health outcomes. (Wilkinson & Pickett, 2009) Finally, we know from other studies that women, young people, the disabled, the unskilled and uneducated, members of racialized groups and recent immigrants tend to be over-represented in the lower ranges of the class gradient. To the best of my knowledge, no single comprehensive epidemiological study has sought to test empirically the link between economic or social inequality, on the one hand, and the overall quality of citizenship on the other. However, there is little reason to doubt that Anatole France's mordant reflections on the relationship of law and equality would be confirmed by such a study. We already know that inequality correlates with diminished access to education, employment, housing and other social goods, with lower rates of participation in civic and cultural life, and with higher rates of abusive treatment at the hands of public and private bureaucracies. It would hardly be surprising to learn that it also correlates closely with the denigration or denial of legal and political rights.

[1] University Professor Emeritus and President Emeritus, York University, Toronto, Canada. harthurs@osgoode.yorku.ca This paper was originally presented at a workshop on Equality, at the Institute for Advanced Studies, Nantes, France, in June, 2014.

Finally, recent research suggests that advanced economies are becoming more unequal for a variety of reasons, including the growing importance of inherited wealth and the dominance of the "grabbing hand" model of corporate governance, which enables those who control the distribution of profits to claim disproportionate shares for themselves. (Picketty 2014) If this is true, if the gradient I have described is becoming steeper and steeper, we can expect that the distribution of social goods is becoming less and less fair; that the vulnerable populations mentioned above are likely to experience greater and greater deprivation and exclusion; and that the gap between law's promise and its performance is likely to grow at an alarming rate.

What should we do about inequality?

Some believe that nothing can or should be done. Inequality (they maintain) is divinely ordained or the result of bad luck; it stems from the different natural endowments of individuals or racialized and gendered groups; or it is a punishment for sin and sloth. On the other hand, some view inequality as a positive good. The desire to earn more or the fear of earning less motivates individuals to make rational decisions that in turn produce efficient market outcomes which, in the long run, are in the interests of everyone. By contrast (they argue) measures to constrain or correct inequality — progressive taxation, social transfers, minimum wages — impose "job-killing" burdens on market economies, discourage entrepreneurship, dampen productivity and cause capital flight.

Those who favour positive action to reduce inequality similarly do so for a variety of reasons. Some believe that greater equality will produce greater political stability, improve economic performance or reduce crime and other social harms. Others believe that equality is a moral imperative in itself, an indispensable condition for the achievement of true democracy and the full realization of human capacities. Still others believe, more modestly, that equality rests on a logical presumption that needs no normative defence. Moreover, within the egalitarian camp, opinions differ on how best to flatten the gradient I have described so as to achieve greater social inclusion. Some (though not very plausibly) favour revolution; others argue that change must be the product of long-term political, social and cultural mobilization; still others believe that

constitutional entrenchment of social and economic equality rights offers the easiest, fastest and surest route to a just society. Much as I admire their motives and support their aims, I believe that advocates of this last position are mistaken. In this essay, I will offer a brief history of failed projects in constitutional egalitarianism, explain why they are unlikely to succeed in the future, and describe how such projects have sometimes, albeit unintentionally, produced outcomes that inhibit rather than advance the cause of equality. However, I will conclude by acknowledging that law can indeed contribute modestly to the cause of equality.

Constitutional egalitarianism in the 20th century: A short history

In *Dark Continent: Europe's Twentieth Century*, Michael Mazower points out that in the aftermath of the Great War, many European countries adopted new constitutions that proclaimed principles of democracy and equality and contained state-of-the-art protections for social, labour and other egalitarian rights. But by 1940, he reminds us, all of those constitutions and their egalitarian projects had been abandoned in the face of economic or political crises, outbreaks of nationalism or xenophobia, revolutions or wars. (Mazower 1998) By contrast, the basic laws adopted after 1945 by many European capitalist democracies and in the Anglosphere largely remain in force today. However, their longevity has exposed a certain contradiction in their architecture and operation. (A different narrative prevails in the global south, and in the former people's republics.)

On the one hand, most post-1945 constitutions promised equal rights for men and women, for people of all races and religions, and in due course for previously stigmatized groups and individuals. (Law & Versteeg 2011) Imperfectly and subject to significant *caveats*, those constitutional promises have come to be honoured most of the time in most of those countries with regard to most legal relations amongst citizens and with the state. In general, men and women enjoy more nearly equal legal rights than they used to; religious and racial minorities less often suffer formal discrimination at the hands of the state; members of historically dis-favoured groups — homosexuals and the disabled, for example — enjoy somewhat increased legal protection and support. And finally, postwar constitutional egalitarianism at the national level has

been buttressed by the intellectual inspiration, the normative legitimacy, and (to a lesser extent) the juridical effect of transnational legal regimes and discursive networks.[2]

These are not inconsiderable achievements, but they do not themselves speak directly to the irony that Anatole France identified. By contrast, for some three decades after 1945 most capitalist democracies also pursued practical strategies to reduce economic and social inequality. These strategies — sometimes mandated by constitutional language, sometimes not — bear a variety of names: the postwar or Fordist compromise, welfare capitalism, social democracy, corporatism or coordinated market economies. But they had a good deal in common. Almost everywhere they included progressive taxation, the generous provision of social goods in cash or kind, the promotion of full employment, the aggregation of countervailing power in trade unions, credit unions or cooperatives and a degree of market regulation or state ownership designed to prevent undue concentrations or abuses of power.(Judt 2005)

These egalitarian strategies were highly successful in reducing inequality or mitigating its effects. However, by the 1980s, the ascendant forces of neo-liberalism had successfully dismissed them on the grounds that they supposedly impeded economic progress, imposed unacceptable and unsustainable burdens of taxation, interfered with individual freedom and —a telling, if hypocritical, criticism — failed in their meliorative ambitions and ultimately injured those they were meant to assist. As postwar egalitarian strategies fell into disrepute and disarray in many countries, social and economic inequality began to rise again (especially in the Anglosphere) returning ultimately to levels not seen for most of the 20th century. This dramatic reversal could hardly have been achieved by stealth; nor was it. Rather, it was explicitly advocated on the premise that "a rising tide lifts all boats", that allowing the rich to get richer will result in benefits for all — more and better jobs, a larger tax base and reduced tax rates, even increased support for necessary public expenditures.[3] What matters,

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[2] See for example *Global Constitutionalism* — a scholarly journal devoted to the examination of "human rights, democracy and the rule of law" (published by Cambridge University Press).

[3] Ironically, the phrase seems to have been first used by President John F Kennedy, to justify the stimulus effect of a public works project. However, latterly it has become associated with Milton

neo-liberals argued, is not inequality *per se* but the absolute standard of living enjoyed by ordinary citizens which (they claimed) would rise as the economy flourishes.

Alas, that is not quite how things have turned out. The deregulation of markets, cutbacks in the welfare state, reduction in the taxes paid by the wealthy and by corporations, the dismantling of centres of countervailing power and other neo-liberal policies have indeed (as intended) allowed the rich to get much richer. However while the situation differs from country to country, these measures have not only greatly increased economic and social inequality; in many countries they have left large segments of the population worse off in absolute terms than they were 30 or 40 years ago. (Atkinson & Morelli 2014) Young people coming onto the labour market face bleaker prospects than their predecessors; pensions promised to many retired workers and prospective retirees will be paid only in part or not at all; many working class and middle class families that sunk their savings into home ownership have lost them altogether, or are at risk of doing so; local businesses that once functioned as engines of economic growth and social mobility are facing ruin; essential elements of infrastructure — from universities to social housing to public transport — survive on short rations; and the unemployed and unemployable receive much less help from the state than they used to. In short, the "bottom 90%" — those most dependent on state-sponsored egalitarian policies — have borne the brunt of the neo-liberal revolution, rather than the "top 10%"; and the gap between them is growing. In consequence, some argue, the vastly unequal distribution of political power and influence in some countries threatens the very foundations of democratic governance. A rising tide, it seems, may lift a few boats; but it is likely to swamp many more.

Of course, the return of inequality cannot be solely attributed to the ideological triumph of neo-liberalism after 1980. Some contend that the postwar years of steady egalitarian advances were but temporary deviations from capitalism's normal tendency to extreme instability (Streek 2011) and inequality (Picketty 2014). Other observers identify long-term trends that have contributed to the return of inequality. Technology has erased

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Friedman and other supply-side and neo-liberal economists to justify policies that allow the rich to accumulate wealth, whose beneficial effects will then "trickle down" in the form of investments, jobs and consumer expenditures.

many of the well-paid, secure industrial jobs that underpinned the welfare state (Stone & Arthurs 2013, Appendix); working class culture and consciousness have dissipated and with them labour's leverage in industrial and political struggles (Arthurs 2011); and the collateral damage wrought by some failed experiments in social engineering has alienated former supporters and potential beneficiaries of the welfare state. Globalization, of course, has played its part too: it has reduced the willingness of most states to remedy inequality for fear of harming their competitive position and/or credit rating. Moreover, to be fair, it has also reduced their capacity to do so by providing capital with an "exit" option that enables corporations, in effect, to conduct a political strike against policies they deem undesirable. And finally, the global financial crisis of 2008 has enabled neo-liberalism to re-brand itself as "austerity", as a set of extraordinary measures reversing the egalitarian tendencies of the welfare state not (ostensibly) out of ideological conviction but in response to *force majeure*.

Thus we come to the question that animates this essay: After 1945, in most advanced capitalist democracies, the "majestic equality" of the law was not only proclaimed by their constitutions but apparently, for a time, translated into policies that improved the lives of their citizens. Fewer people actually had to sleep under bridges, beg in the streets or steal bread. However, in recent decades, economic and social inequality have grown apace and become more entrenched, with especially deleterious consequences for vulnerable populations in the lower reaches of the socio-economic gradient. Growing inequality, however, has coincided not with a retrenchment in legal guarantees but oddly — in some countries — with their apparent expansion. Respect for the "rule of law" was declared by neo-liberals to be indispensable to the health of national and global economies (Garth & Dezalay 2002); new bills of rights were adopted in Canada, the United Kingdom and South Africa; legislation extended the rights of marginalized groups in many countries; numerous dictatorships in the global south were replaced by rights-respecting democracies; and "social inclusion" became a staple of political discourse across Europe. But significant numbers of people — sometimes even more — still slept under bridges, begged in the streets and stole bread.

In short, there appears to be little correlation between actual-existing social and economic equality and the legal rights and rhetoric that supposedly proclaim and entrench it. In the next section of this essay, I will attempt to explain why this might be so.

Why constitutions often fail to achieve equality and sometimes reinforce it

My "short history" of constitutional egalitarianism can be read as suggesting that law operates in relative isolation from society and the economy, that the social consequences of law are marginal at best, that there is no point in attempting the mobilization of the legal system in order to advance egalitarianism (and by inference, that law is neither a primary source nor an effective bulwark of inequality). Not quite: law does *something*; but there is often an observable gap between what law promises and what it delivers.(Nelken 1981, Gould & Barclay 2012) Thus, fundamental changes in social relations are more often ratified by law than initiated by it; the principles of law are often trumped by systemic malfunctions; and even apparently clear instances of equality-seeking groups and individuals successfully invoking law turn out, upon closer examination, to have resulted in quite different outcomes. (Rosenberg 2008) All of these are well-known problems for those who seek to remedy inequality by recourse to law. But I want to make several yet more fundamental points.

First, law not only empowers equality-seeking groups; it sometimes disempowers them as well. By offering them the prospect, the hope, of achieving their goals without the psychic and material costs of mobilization and struggle, legal recourse tempts them to abandon struggle or the threat of struggle. In part this is for technical and tactical reasons: courts may deny equality-seekers the legal remedies they would otherwise be entitled to if they are themselves in breach of the law. In part, however, it is a matter of self-perception: equality-seekers who go to law do so because they think of themselves as members of a community with justiciable claims to social justice. By contrast, equality-seekers who mobilize for political, social or economic action are almost by definition more alienated from the system, more prepared to challenge it from the outside, less willing to accept the premises on which the system itself is constructed.

And finally, it has often been observed that law mystifies and obfuscates. It makes appear as normal what ought to be seen as outrageous; it confers an appearance of invincible logic and indisputable virtue on what are at bottom arbitrary value choices. It is difficult to persuade people to mobilize against what is "normal", logical and virtuous. (Kennedy 1997) Much the same could be said about economics.

Second, almost by definition law — especially constitutional law— legitimates the existing order and the social outcomes produced by that order. This is so even if the legal text makes no mention of inequality-generating aspects of that order or mentions them only in an elliptical or allusive fashion. The primacy of markets as the pre-eminent instrument of social ordering, for example, is seldom mentioned —much less guaranteed — by legal or constitutional texts. But if a constitution mandates state regulation of markets in designated economic domains, it is likely to be read as inferentially excluding regulation in others. And by not mentioning markets at all, by treating them as background facts like mountains or monsoons, constitutions are likely to be read as limiting the power of states to replace them with some other form of social ordering. Likely, but not inevitably: of course courts and commentators can find clues in legal texts that support egalitarian, market-mitigating initiatives by the state — if they want to. But they seldom want to: many judges and academics are heavily invested in the status quo, and most of those who are more change-minded are sensitive to their limited mandate to bring about social transformation and to the practical difficulties of doing so by judicial decree. Let me cite Canada's experience as an example. Its constitution protects the equality rights of a number of groups. By judicial interpretation, those rights have been extended to "analogous groups" such as gays and lesbians.[4] But no court has yet held that the poor are "analogous" and should be treated as equal to the rich as regards their access to food, shelter or education. On the contrary, Canadian courts have held that denying sick people the opportunity to purchase privately medical services that the state system cannot provide in timely fashion violates the "security of [their] person"[5] — a clear preference for rich patients

[4] *Vriend v Alberta* [1998] 1 Supreme Court Reports 493

[5] *Chaoulli v Québec* [2005] 1 Supreme Court Reports 791

over poor ones. Alas, no court has yet ruled that "security of the person" entitles everyone to gainful employment in the public or private sector (or generous social assistance in lieu) in order to keep their "person" alive and healthy.

This brings me to a third difficulty: the architecture of constitutions often inhibits egalitarian initiatives without meaning to do so. Federalism represents an example of such a constraint. Assuming that a government is determined to end social exclusion or even modestly redistribute wealth and life chances in favour of marginalized communities, it must have the constitutional power to do so. But powers in a federation are by definition divided amongst different levels of government. It is therefore extremely unlikely that any one level would possess all the powers needed to revise the terms of the social contract, whether through taxation, social programs, public ownership or the formation of alternative aggregations of economic power. Or to take another example, most constitutional democracies separate legislative, judicial and executive power. Initiatives to enhance equality by, say, altering labour market outcomes will almost certainly require action by executive agencies. However, to be effective such agencies may have to exercise powers that currently reside with the judiciary, a development that might well be found unconstitutional.[6] A final example: the global economy. Whether globalization and regional economic integration represent an inadvertent constraint on egalitarian policies, or a deliberate strategy to frustrate them, is a moot point. However, it is certainly true that there is asymmetry between the constitutional development of trade-related regimes and those that seek to advance social aims such as greater equality. In general the former are better developed than the latter. Thus, the WTO and the IMF have more extensive legal powers and practical means to shape the lives of citizens of member states than the ILO or the WHO; the development of "social Europe" has notoriously lagged that of the European common market; and while trade amongst the NAFTA partners flourishes, their labour side-agreement is virtually a dead letter.

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[6] *Schechter Poultry v United States* 295 US 475 (1935)

A final difficulty: the inhibiting effect of constitutions on egalitarian policies is not always inadvertent. One example is the relative autonomy of central banks in setting monetary policy, ostensibly so that their crucial interventions in the economy will rest on technocratic, not political, considerations. But secreted in the very idea of bank-led monetary policy is a series of anti-egalitarian assumptions — that voters will favour full employment, that full employment leads to increased wages, increased wages to inflation, inflation to capital flight and capital flight to economic disaster. Hence the use of interest rates to "cool out" the labour market — to frustrate attempts by workers to gain a larger share of national wealth. Another example: constitutional provisions have been proposed or adopted in many countries to constrain the ability of governments to adopt budget deficits or increase taxes. Their obvious purpose is to shrink the state's capacity to support a generous welfare system. And yet another example: fundamental laws that protect property and contractual rights were once used (and could be again) to strike down minimum wage and maximum hours statutes and other protective legislation.[7] Ironically, France's *Conseil Constitutionnel* has held that the constitutional guarantees of "equality in relation to public charges" protected the rich from the imposition of a "confiscatory" tax that would have relieved some of the pressures on the poor[8] (though a revised version of the tax was later accepted as constitutionally valid).[9] And the US Supreme Court has ruled that rich citizens no less than poor ones, powerful corporations no less than community groups, may spend unlimited sums in exercising their right of free speech in the political process.[10]

Why do the wealthy and the powerful appear to benefit more often from constitutional protections than the poor and victims of social exclusion? The answer — I contend — is that the *real* constitution, the operative constitution, of most countries is not the legal document that bears that name. It is rather the normative assumptions inscribed in the

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[7] *Lochner v New York* 198 US 45 (1905)

[8] Decision on the Law of Finances for 2013, http://www.conseil-constitutionnel.fr/conseil-constitutionnel/english/case-law/sample-of-decisions-in-relevant-areas-dc/decision/decision-no-2012-662-dc-of-29-december-2012.135747.html 2014.142240.html

[9] Decision on the Supplementary Law on Finances for 2014, http://www.conseil-constitutionnel.fr/conseil-constitutionnel/english/case-law/sample-of-decisions-in-relevant-areas-dc/decision/decision-no-2014-699-dc-of-6-august-2014.142240.html

[10] *Citizens United v Federal Election Commission* 558 US 310 (2010); *McCutcheon v Federal Election Commission* 572 US – (2014)

deep structures of the economy, which in turn establish the social and economic gradient along which the life chances of citizens are distributed. (Arthurs 2007) Those structures, that gradient, are seldom sanctioned by express language in the formal, legal constitution, but they are more powerful than any of its provisions. One therefore comes reluctantly to the conclusion that the only way to mitigate inequality is to revise the real constitution. Such an approach is known by the name of “politics”.

The politics of inequality

A basic assumption of democratic politics is that people should have the right to choose their own government and, by doing so, choose also the policies that will govern their lives. Inherent in this assumption is the possibility that the majority will favour policies that disfavour the interests of the minority and, more specifically, that the interests of the poor will prevail over those of the rich. Consequently, some early constitutions contained anti-majoritarian, hence anti-egalitarian, provisions: a property-based electoral franchise, guarantees against “arbitrary” deprivation of property rights, legislative chambers dominated by wealthy conservative elites as a bulwark against democratic excess. But as the force of such provisions gradually dissipated — formal constitutions, remember, are less powerful than is commonly supposed — the rich turned to politics.

Unlike the formal constitution, the “real constitution” gives the rich a significant political advantage. To ensure that their point of view is not only heard, but that it dominates public policy discussions, wealthy individuals and corporations endow professorships and think-tanks, purchase mass media and sponsor publications, finance conferences and disseminate propaganda. Most alarmingly, in some countries they are free to buy as much political influence as they care to afford — to tilt the outcome of referenda or election campaigns, to secure the favourable exercise of executive discretion in the adoption of policies and the drafting of regulations, to win regulatory litigation by hiring the best lawyers to attenuate proceedings to the point where rights-seekers are forced to abandon them, and to secure government contracts, monopolies and subsidies.

But the politics of wealth are not always so crude. Sometimes wealth operates by managing the vernacular of political discourse. For example, economists who believe in the primacy of markets (which is to say most of them) talk about “efficiency” rather than equality; philosophers who espouse free enterprise stress “individual freedom” over social justice; and political scientists talk about “new public management” rather than de-regulation. Sometimes, too, the politics of wealth converge with the politics of resentment. For example, workers who have lost their jobs in the Great Recession, or fear doing so, are urged to vent their frustration on those who are “different”, rather than those who are rich; workers who are lucky enough to retain their jobs are urged to think of themselves as members of an amorphous “home owning” “hard working” “middle class” rather than as members or potential members of the precariat. This convergence has contributed to the shift of support from socialist and social democratic movements to right wing populist and nativist movements (some of which, ironically, describe themselves as anti-capitalist).

Nor, for several reasons, should those concerned about growing inequality within the developed capitalist democracies place too much hope in the political revival of the traditional left. The rich, and the parties of the right that they favour, do not win elections because they are able to persuade the non-rich to vote for inequality. They win because they appeal to the many ordinary citizens who genuinely place a higher value on national or regional identity, race or religion, cultural preferences or social status, than they do on class loyalty or even economic self-interest. Moreover, the rich and the right are aided unintentionally by parties of the left that, when in office, abandon their egalitarian programs under duress, as a result of incompetence or for opportunistic reasons. But most importantly, those who hope for the return of the traditional left must contend with the likelihood that politics will less and less be conducted through the familiar structures of parties, parliaments, policies and programs. The rise during the recent financial crisis of “defiant publics” (Drache 2008) — of spontaneous protest movements and fringe parties of the right and left —testifies to the possibility that politics may never be the same again.

Perhaps the best equality seekers can hope for is that capitalism will somehow reform itself, will somehow abandon its unlimited tolerance for inequality and the consequences of inequality. Optimists believe that this attitudinal change can be achieved by demonstrating that the full engagement of human capacities, and the just distribution of life chances that would make such engagement possible, will make capitalism more successful. Perhaps in the long run, this concept will become embedded in the deep structures of "the real constitution". In the short run, however, I think this is highly unlikely. Rather I believe that, as it did in the 1930s, capitalism will develop an appetite for change because of a well-justified fear that the system itself is at risk of collapse. How to foster that fear? Traditional political activity may help: the risk of losing power at the next election wonderfully concentrates the mind, even of governments beholden to rich supporters and ideologically comfortable with inequality. Popular mobilization may help: markets, after all, depend on a degree of public order and public order is difficult to maintain if the citizenry is impoverished and aroused. Advances in economic theory will help: we need a Keynes for our time, a respected figure from the innermost circles of reputable opinion with the courage to reveal capitalism's fundamental flaws, the credibility to have those revelations taken seriously and the creativity to propose plausible improvements.

And what of law?

Conclusion

To disregard France's critique of law would be unforgivable. But to imagine that that critique justifies dismissal of law's potential contribution to alleviating the consequences of inequality would be foolish. I have tried to show why we should not over-estimate that potential, and why we should not assign judges to do the heavy lifting of social transformation. But there is a role for law and good reasons to favour the rule of law.

The first is that those in the lower reaches of the social gradient — in addition to their other travails — are also the prime victims of quotidian abuse by public authorities (the police and welfare agencies) and private bureaucracies (banks and landlords). The rule of law can do much to protect them from such abuse, even if it cannot protect them

from the most egregious consequences of inequality. The second is that if, for the foreseeable future, the best prospects for reforming capitalism involve creating a sense of fear about its future, then it is essential that optimal conditions should exist for such activity. If we ensure respect for freedom of association, belief and expression — core principles of the rule of law — we create a safe space within which critics and protesters can do their work. The third is that we want future governments and business leaders with a greater commitment to social justice to come to office with a clean conscience and a commitment to legality. By insisting on their own rights, they will hopefully internalize the need to respect the rights of others.

EP Thompson, the Marxian social historian, memorably (and controversially) reminded us that “the rule of law is an unqualified human good”. (Thompson 1975 at 266) To acknowledge its limits, to accept that it is incapable of revising the “real constitution” that is the source of inequality and injustice, is not to deny its practical value.

Bibliography

Arthurs H (2007) *Labour and the 'Real' Constitution* 48 Cahiers du droit 43

Arthurs H (2011) *Labour Law After Labour* in Davidov G & Langille B (eds.) WHAT IS LABOUR LAW FOR? (Oxford: Oxford University Press)

Atkinson AB & Morelli S (2014) *CHARTBOOK OF ECONOMIC INEQUALITY* http://www.chartbookofeconomicinequality.com/ (viewed 22 September 2014)

Drache D (2008) DEFIANT PUBLICS: THE UNPRECEDENTED REACH OF THE GLOBAL CITIZEN (Cambridge: Polity Press)

Garth B & Dezalay Y (2002) *Global Prescriptions The Production, Exportation, and Importation of a New Legal Orthodoxy* (Ann Arbor, University of Michigan Press)

Gould JB & Barclay S (2012) *Mind the Gap: The Place of Gap Studies in the Sociology of Law* 8 Annual Review of Law and Social Science 323

Judt T (2005) POSTWAR: A HISTORY OF EUROPE SINCE 1945 (London: Vintage)

Kennedy D (1997) A CRITIQUE OF ADJUDICATION [FIN DE SIÈCLE] (Cambridge: Harvard University Press)

Law DS & Versteeg M (2011) *The evolution of global constitutionalism* 99 California Law Review 1163

Marmot MG & Smith GD (1997) *Socio-economic Differentials in Health* 2 Journal of Health Psychology 283

Mazower M (1998) DARK CONTINENT: EUROPE'S TWENTIETH CENTURY (London: Allen Lane / Penguin Press)

Nelken D (1981) *The "Gap" Problem in the Sociology of Law: A Theoretical Review* 1 Windsor Yearbook of Access to Justice 35

Piketty T (2014) CAPITAL IN THE TWENTY-FIRST CENTURY (Cambridge: Belknap, 2014)

Rosenberg G (2008) THE HOLLOW HOPE: CAN COURTS BRING ABOUT SOCIAL CHANGE? (Chicago: University of Chicago Press, 2d ed,)

Stone K & Arthurs H (2013) RE-THINKING EMPLOYMENT REGULATION: BEYOND THE STANDARD CONTRACT OF EMPLOYMENT (New York: Russell Sage)

Streek W (2011) *The Crises of Democratic Capitalism* 71 New Left Review 5

Thompson EP (1975) WHIGS AND HUNTERS: THE ORIGIN OF THE BLACK ACT (New York: Pantheon Books)

Wilkinson R & Pickett K (2009) THE SPIRIT LEVEL: WHY GREATER EQUALITY MAKES SOCIETIES STRONGER (London: Allen Lane)