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Anti-Authoritarian Employment Relations? Labour Law from an Anarchist Perspective

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I. Introduction

This contribution aims at initiating a discussion about the possibility of conceiving labour law from the perspective of anarchism. The impetus for this endeavour is found in the observation that the two traditional expressions of authority in the labour market, namely the state and the employer, are vanishing due to the ideological stance of the economic orthodoxy that has prevailed in the last 30 years. In the context of extreme flexibilisation of labour markets and the precariousness of employment that neoliberal policies have produced, the authority of state law in protecting employment and social rights has been constrained, and the employer has abdicated from a managing role in running the business. Labour law struggles in understanding this evolution. Therefore, a radical critique of labour law itself is needed to set forth new ideas for discussing radical changes. However, this contribution does *not* aim to list rules and precepts to be applied to any potential work-related situation in an imaginary anarchist society. Rather than present a rulebook on anarchist social organising, the ambition here is to shed new (anarchist) light on the contemporary discussions on work and labour law so as to move it forward.

If it is true that, in the current socio-economic context, the authority of the state and the employer vanishes, the question is: why not look to the ideas of those who sought the abolition

* Postdoctoral fellow, Department of Law, Lund University. I would like to thank the editors of this volume for their accurate comments. The final text has also benefitted from the careful reading and precious feedback provided by César Rosado Marzán and Judy Fudge. Finally, I am grateful to Filip Dorssemont and to the other participants of a seminar that he arranged on 17 April 2018, during my three-month research visit at the Université Catholique de Louvain, which was sponsored by the Louvain Global College of Law. There, I had the opportunity to present this work and receive valuable comments. The usual disclaimer applies.

of authoritarianism from society; ie, the anarchists? Anarchism is a socio-political theory (and praxis) aimed at dismantling and eradicating from society any authoritarian social relations. A basic principle of anarchism concerns the ‘rejection of external authority, whether that of the state, the employer, or the hierarchies of administration and of established institutions like the schools and the church’.¹ Yet anarchism is a very wide social, political, and philosophical spectrum in which several streams, traditions, and movements coexist.² Since the aim of this contribution is not to explore anarchism as a kaleidoscope of political experiences, the analysis is conducted by considering anarchist theory unitarily through the recognition of its recurrent and common features; ie, questioning the legitimacy of any hierarchical organisations and rejecting a society based on authoritarian relationships.³ The ‘principle of authority’ represents the thread of the discussion, observed in its expressions in the labour field; ie, as the grounding principle of the employment relationship and the rationale of the regulatory intervention of the State limiting the authority of the employer.⁴

Eventually, this may respond to what Judy Fudge has defined as the ‘analytical problem’ that ‘plagues the contemporary debate about the role of labour law; a specific form of regulation at a particular moment in time has come to be seen as *the* form, rather than *a* form, of labour law’.⁵ In order to preserve its role of protecting labour, labour law needs to re-invent itself.

The chapter evolves as follows: first, the classical expressions of authority in the labour market (ie, the employer and the state) are discussed as constitutive elements of labour law itself. Second, their evolution is analysed in relation to the emergence of neoliberalist ideology and the ensuing flexibilisation of the labour market. This discussion stresses the metamorphoses that the expressions of authority in labour law have undergone, including the forms that the employer’s authority acquires in the so-called ‘gig economy’. Third, against that evolution, anarchist perspectives are explored. This section presents anarchist arguments on authority, law, and workplace to provide a basis for reflecting upon the nature and function of labour law. Finally, the last section concludes by highlighting the potential relevance of an anarchist perspective in discussing and reflecting upon the possible evolution of labour law towards emancipatory and liberating regulatory forms.

¹ C Ward, *Anarchism: A Very Short Introduction* (Oxford, Oxford University Press, 2004) 3.

² See the global and historical overview outlined in L van der Walt and M Schmidt, *Black Flame: The Revolutionary Class Politics of Anarchism and Syndicalism* (Edinburgh, AK Press, 2009). See also R Kinna, *Anarchism: A Beginner’s Guide* (Oxford, Oneworld, 2005).

³ P Kropotkin, ‘Modern Science and Anarchism’ in RN Baldwin (ed), *Kropotkin’s Revolutionary Pamphlets: A Collection of Writings by Peter Kropotkin* (first published 1927, New York, Dover, 1970) 158.

⁴ The presence of limits to the authority of the employer, including rules set by collective bargaining, distinguishes the understanding of authority within the labour law field from a philosophical take conceptualising ‘authority’ as an absolute power of an agent over a patient not limited by any intermediate rule or compromise, see A Kojève, *The Notion of Authority* (London, Verso, 2014) 8–9.

⁵ J Fudge, ‘Labour as a “Fictive Commodity”’: Radically Reconceptualizing Labour Law’ in G Davidov and B Langille (eds), *The Idea of Labour Law* (Oxford, Oxford University Press, 2013) 121 (emphasis in original).

II. The Principle of Authority in Labour Law

A. The Authority of the Employer in the Employment Relationship

In the classical understanding of labour law, the employer is the ‘legal entity that exercises the entrepreneurial power of control and direction over the working activity’.⁶ The employer is thus the subject of the employment relationship, and has the right to allocate and direct the work within the company; ie, managerial prerogative.⁷ The employment relationship as a socio-economic relationship, which emerged from the Industrial Revolution, is grounded in this form of subordination expressed by the ‘power of control’ of the employer, meaning the ‘exercise of power in which there is control not only over what but also over how and when work must be done’.⁸ Accordingly, Otto Kahn-Freund conceptualised the firm as ‘an absolute monarchy’⁹ in which the power is distributed in favour of the employer.

The application of technology to production has strengthened the employer’s power over the worker. As long as the worker preserved a unique ‘craftsman’ knowledge necessary for the production of certain goods, the authority of the employer was restrained.¹⁰ The employer needed the knowledgeable worker as part of the enterprise. The introduction of Taylorist and Fordist methods of industrial organisation brought about the standardisation of mechanisms in the use of machines.¹¹ The simplification of training made workers interchangeable, while increasing the employer’s power as the only holder of knowledge in industrial organisation.¹² Consequently, the authoritarian nature of the employment relationship was augmented.

The socio-economic relationship of employment has received legal translation through the form of the contract. This implicitly means that the two subjects of the employment contract—the employer and the employed—are equal parties free to negotiate the conditions of the exchange. Yet this scheme reproduces, in the employment realm, the scheme of an exchange between two commodities: money and labour.¹³ This disguises the real and concrete control of

⁶ L Corazza and O Razzolini, ‘Who is an Employer?’ in MW Finkin and G Mundlak (eds), *Comparative Labor Law* (Cheltenham, Edward Elgar, 2015) 135.

⁷ See M Rönmar, ‘The Managerial Prerogative and the Employee’s Obligation to Work: Comparative Perspectives on Functional Flexibility’ (2006) 35 *Industrial Law Journal* 56, 61.

⁸ B Veneziani, ‘The Evolution of the Contract of Employment’ in B Hepple (ed), *The Making of Labour Law in Europe: A Comparative Study of Nine Countries Up to 1945* (London, Mansell Publishing Limited, 1986) 65. See also J Prassl, *The Concept of the Employer* (Oxford, Oxford University Press, 2015) 27.

⁹ O Kahn-Freund, ‘Legal Framework’ in A Flanders and HA Clegg (eds), *The System of Industrial Relations in Great Britain: Its History, Law and Institutions* (Oxford, Basil Blackwell, 1954) 49.

¹⁰ See also KVV Stone, *From Widgets to Digits: Employment Regulation for the Changing Workplace* (Cambridge, Cambridge University Press, 2004) 22.

¹¹ B Settis, *Fordismi: Storia politica della produzione di massa* (Bologna, Il Mulino, 2016).

¹² AD Flanders, ‘The Internal Social Responsibilities of Industry (1966)’ in *Management and Unions: The Theory and Reform of Industrial Relations* (London, Faber and Faber, 1970) 135.

¹³ J Fudge and E Tucker, *Labour Before the Law: The Regulation of Workers’ Collective Action in Canada, 1900–1948* (Toronto, University of Toronto Press, 2004) chs 6 and 11. See also O Kahn-Freund, ‘Introduction’ in K Renner, *The Institutions of Private Law and their Social Functions* (London, Routledge & Kegan Paul Limited, 1949) 28.

the employer over the worker under the ‘free will’ of the parties.¹⁴ What the liberal state interprets as a contract freely entered into by the two parties is, instead, ‘a command under the guise of an agreement’.¹⁵ The contractual exchange means that ‘the employee surrenders control over a large part of [his/her] life’.¹⁶ Therefore, although deemed as a contractual relationship, the employment contract ‘[i]n its inception it is an act of submission’.¹⁷ The original idea behind the emergence of labour law is hence to achieve a more just social relationship through normative intervention aimed at recovering the freedom of the worker annulled in the action of employment.¹⁸ From an anarchist point of view, however, the outcomes are disappointing.

B. The Authority of the State and the Function of Labour Law

As a ‘technique for the regulation of social power’,¹⁹ labour law constitutes the expression of the authority of the state, whose main purpose is ‘to regulate, to support and to restrain the power of management and the power of organised labour’.²⁰ The ‘invention’ of labour law was a response to the need for a supreme regulatory institution (the state) to regulate the socio-economic relationship that emerged from the Industrial Revolution. Yet the legal regulation of relationships in the sphere of economic production is not just a prerogative of contemporary times. Bruno Veneziani illustrates how certain types of contracts for the commission of *opera* (product or service) were already present in Roman Law, and Medieval Law, to distinguish these activities from serfdom.²¹

The terms of the legal transposition of the socio-economic relationship necessarily changed when the economic system changed. The emergence of the capitalist firm placed the provision of *opera* into the framework of ‘dependency and control’.²² The notion of labour law emerged on this basis, engaging with the worker’s subordination to the employer, which was an integral feature of the industrial mode of production.

Under pressure from workers’ movements, which developed to fight for better working conditions, the state took on the role of remedying the imbalance of the employment relationship.²³ Thus, labour legislation—which regulates the relationship between private parties—is enacted by the state to protect the weaker subjects.²⁴ Accordingly, Hugo Sinzheimer

¹⁴ Lord Wedderburn, ‘Labour Law: From Here to Autonomy?’ (1987) 16 *Industrial Law Journal* 1, 5.

¹⁵ Kahn-Freund, ‘Introduction’ (n 13) 28.

¹⁶ Flanders, ‘Internal Social Responsibilities’ (n 12) 132.

¹⁷ O Kahn-Freund, *Labour and the Law* (2nd edn, London, Stevens, 1977) 18.

¹⁸ B Langille, ‘Labour Law’s Theory of Justice’ in G Davidov and B Langille (eds), *The Idea of Labour Law* (Oxford, Oxford University Press, 2013).

¹⁹ Kahn-Freund, *Labour and the Law* (n 17) 14.

²⁰ *ibid* 15.

²¹ Veneziani, ‘Evolution of the Contract of Employment’ (n 8) 32.

²² *ibid* 64.

²³ Thilo Ramm, ‘Laissez-faire and State Protection of Workers’ in B Hepple (ed), *The Making of Labour Law in Europe: A Comparative Study of Nine Countries Up to 1945* (London, Mansell Publishing Limited, 1986).

²⁴ The original understanding of social rights, which included employment rights, was indeed grounded in the positive action that the State undertakes in order to ensure certain standards of living for its citizens: see TH Marshall, *Citizenship and Social Class* (Cambridge, Cambridge University Press, 1950) 14.

locates labour law at the intersection between private and public law.²⁵ In this respect, the authority of the state is expressed in the task of intervening in the private law dimension of employment and mitigating the ‘freedom of contract’ between the parties through protective labour law legislation.²⁶

Yet labour legislation has also served the purpose of ‘codifying’ the employment relationship, so as to preserve the authority of the employer. Albeit mitigated, the paradigm of subordination in employment is the cornerstone of labour law. Rather than functioning as an emancipatory factor, labour law incorporates a new subject of the capitalist economic system into the legal system—the worker—who is ‘free’ to enter into a voluntary contract to renounce their freedom during the time of work.²⁷ Thus, labour law plays a functional role in the maintenance and reproduction of the capitalist system by ensuring that production is made and carried within the scheme of the subordinated employment relationship.²⁸ Ultimately, labour law does not remedy the asymmetry of the employment relationship, rather it re-states the power and authority of the employer over the employee.²⁹

III. Authority Lost: From Neoliberal Thinking to the ‘Gig Economy’

A. The Neoliberal State and Labour Law

The protective stance of labour law legislation has followed a parabola that ascended in the years after 1945, when the bases for the welfare state were set in many European countries, and which reached its highest point in the 1970s, in conjunction with the widespread global economic crisis.³⁰ In recent decades, this parabola has moved downward, not because of a lack of legislative intervention, but rather because of reforms undertaken globally that have tended to disempower the protective role of labour law.

The descent of that protective tendency corresponds with the ascent of neoliberal ideology. Arising as a philosophical movement that rejected an understanding of individual rights based upon natural law,³¹ the neoliberal movement became political when it started critiquing those

²⁵ O Kahn-Freund, ‘Hugo Sinzheimer’ in R Lewis and J Clark (eds), *Labour Law and Politics in the Weimar Republic* (Oxford, Blackwell, 1981) 75.

²⁶ M Freedland, ‘Otto Kahn-Freund, the Contract of Employment and the Autonomy of Labour Law’ in A Bogg and others (eds), *The Autonomy of Labour Law* (Oxford, Hart Publishing, 2015) 35.

²⁷ A Blackett, ‘Emancipation in the Idea of Labour Law’ in G Davidov and B Langille (eds), *The Idea of Labour Law* (Oxford, Oxford University Press, 2011); J Heyes and I Clark, ‘The State and Employment Relations’ in K Townsend and A Wilkinson (eds), *Research Handbook on the Future of Work and Employment Relations* (Cheltenham, Edward Elgar, 2011) 73.

²⁸ Fudge, ‘Labour as a “Fictive Commodity”’ (n 5) 123.

²⁹ R Hyman, *Industrial Relations: A Marxist Introduction* (London, Macmillan, 1975) 24.

³⁰ This path is well-designed in the historical classification outlined in the contributions included in B Hepple and B Veneziani (eds), *The Transformation of Labour Law in Europe: A Comparative Study of 15 Countries, 1945–2004* (Oxford, Hart Publishing, 2009). See also S Giubboni, ‘The Rise and Fall of EU Labour Law’ (2018) 24 *European Law Journal* 7.

³¹ See A Zimmerman, ‘Jurisprudencia libertaria: Aspectos filosófico-legales del trabajo libertario de Friedrich Hayek y Robert Nozick’ (2013) 10 *Revista de Economía y Derecho* 99.

collectivistic and planned forms of political economy (socialist and social-democratic) which positioned the state in a leading role.³² Instead, in the state's action and in its administrative machine, neoliberal thinking sees a threat to the freedom of individuals that must be constrained. In the economic sphere, neoliberals have called for a drastic marginalisation of the state, which they argue should abstain from any intervention that could alter the free functioning of the market, including in the spheres of employment and welfare.³³

Later, the idea of a 'minimal State'³⁴ became popular amongst the political elites of the Western world as the linchpin of a political project opposed to socialism and social-democracy. The neoliberal vision of a society composed only of single individuals, and of a political economy based exclusively on private enterprise, has been adopted by a number of influential Western states (ie, the Reaganian US and the Thatcherian UK) and by world financial institutions (ie, the International Monetary Fund and the World Bank), which have influenced politics globally and steered the process of development in several countries following decolonisation and the end of the Cold War.³⁵

The adoption of economic reforms based upon a neoliberal agenda has re-shaped the relationship between the state and the market.³⁶ In legal terms, the central position attributed to the market as the driving force of the economy translated into the renewed relevance of freedom of contract and individual legal entities.³⁷ In a neoliberal state, the law operates to enhance the market, in order to boost economic efficiency and rationality which become, in turn, the criteria for assessing law's success. Individual (economic) freedoms, private property, and free enterprise are the top-rank values that the legal framework seeks to protect.³⁸ Paradoxically, the authority of the state is exercised to protect the autonomous functioning of the market from the authority of the state itself.³⁹

The primacy given to private business by neoliberal ideology has meant the privatisation of economic sectors traditionally within the public domain (ie, energy, telecommunication, public transport, etc—but also schools and hospitals). This has limited the direct role of the state in

³² RS Turner, 'The "Rebirth of Liberalism": The Origins of Neo-Liberal Ideology' (2007) 12 *Journal of Political Ideologies* 67.

³³ TA Knutsen, 'Should Liberals Sometimes Prefer Dictatorships to Democracies? A Closer Look at the Hayek Thesis' (2016) 23 *Democratization* 375.

³⁴ The definition of the 'minimal State', also known as 'the night-watchman state', refers to a State that refrains from any interventions or interferences in the lives of its citizens, including the collection of taxes: see R Patterson, 'The Minimal State v The Welfare State: A Critique of the Argument between Nozick and Rawls' (2005) 9 *Southern Cross University Law Review* 167.

³⁵ D Harvey, *A Brief History of Neoliberalism* (New York, Oxford University Press, 2005) 39. On neoliberal reform in developing countries, see F Wanderley, 'Between Reform and Inertia: Bolivia's Employment and Social Protection Policies Over the Past 20 Years' (2009) 148 *International Labour Review* 253–67.

³⁶ J Peck, *Constructions of Neoliberal Reason* (Oxford, Oxford University Press, 2010) 16.

³⁷ Harvey, *Brief History of Neoliberalism* (n 35) 64.

³⁸ AH Villmoare and PG Stillman, 'The Neoliberal State's Janus Faces of Law' (2014) 65 *Studies in Law, Politics and Society (Special Issue: Law and the Liberal State)* 31.

³⁹ DS Grewal and J Purdy, 'Introduction: Law and Neoliberalism' (2014) 77 *Law and Contemporary Problems* 1–23.

regulating the labour market.⁴⁰ The free market creed has led neoliberals to put the dismantling of the trade union institution on its agenda—deemed a ‘monopoly’ restraining the functioning of the labour market, and responsible for unemployment and economic stagnation.⁴¹ In accordance with the ideals of individualism, freedom of trade union association has to be deemed an individual freedom, namely as freedom *not* to associate.⁴² The coordinated and centralised systems of industrial relations have to be dismantled; collective bargaining must be decentralised to the company level—or eliminated in favour of individual negotiations.⁴³ The labour market shall be flexible, and ready to adjust wages and employment conditions to economic contingencies. Wage flexibility is identified as the factor that fosters competition between companies and, eventually, raises labour productivity.⁴⁴ The narrative of labour market flexibility as the engine of economic development, through competition, has meant the abatement of employment protection. Under neoliberal influence, the grounds for individual dismissals have been widened and employment protection diminished (recent examples in Europe are the 2015 Italian *Jobs Act* and the 2016 French *Loi Travail*). According to a neoliberal perspective, the original idea of labour law is undermined, and the employment contract ‘is but one contract among many, to be governed by common principles of “freedom of contract” and the general law’.⁴⁵

The self-proclaimed anti-statist stance of the neoliberal movement is translated into policies of labour market deregulation and decentralisation that leave workers at the mercy of market forces and employer authority. This pattern has been replicated with authoritarian labour market reforms that have reinforced the authority of the employer in the employment relationship, and in the workplace.⁴⁶

⁴⁰ KVV Stone, ‘Flexibilization, Globalization, and Privatization: Three Challenges to Labour Rights in Our Times’ in B Bercusson and C Estlund (eds), *Regulating Labour in the Wake of Globalisation: New Challenges, New Institutions* (Oxford, Hart Publishing, 2008) 122.

⁴¹ Lord Wedderburn, ‘Freedom of Association and Philosophies of Labour Law’ (1989) 18 *Industrial Law Journal* 8; G Gall, R Hurd and A Wilkinson, ‘Labour Unionism and Neo-Liberalism’ in G Gall, A Wilkinson and R Hurd (eds), *The International Handbook of Labour Unions: Responses to Neo-Liberalism* (Cheltenham, Edward Elgar, 2011); C Crouch, *The Strange Non-Death of Neo-Liberalism* (Cambridge, Polity Press, 2011). For other examples of neoliberal reforms hitting the trade unions, see RL Madrid, ‘Labouring Against Neoliberalism: Unions and Patterns of Reform in Latin America’ (2003) 35 *Journal of Latin American Studies* 53.

⁴² Wedderburn, ‘Freedom of Association’ (n 41) 10.

⁴³ L Baccaro and C Howell, ‘A Common Neoliberal Trajectory: The Transformation of Industrial Relations in Advanced Capitalism’ (2011) 39 *Politics & Society* 521. For further national cases, see, inter alia, R Cooper and B Ellem, ‘The Neoliberal State, Trade Unions and Collective Bargaining in Australia’ (2008) 46 *British Journal of Industrial Relations* 532; B Amable, ‘The Political Economy of the Neoliberal Transformation of French Industrial Relations’ (2016) 69 *ILR Review* 523; CJ Fernández Rodríguez, R Ibáñez Rojo and M Martínez Lucio, ‘Austerity and Collective Bargaining in Spain: The Political and Dysfunctional Nature of Neoliberal Deregulation’ (2016) 22 *European Journal of Industrial Relations* 267.

⁴⁴ See the example of neoliberal reform of the labour market adopted in New Zealand: see PS Morrison, ‘Deregulation of the New Zealand Labour Market’ (2004) 59 *GeoJournal* 127–36.

⁴⁵ Wedderburn, ‘Freedom of Association’ (n 41) 9.

⁴⁶ See also A Bogg, ‘Beyond Neo-Liberalism: The Trade Union Act 2016 and the Authoritarian State’ (2016) 45 *Industrial Law Journal* 299.

B. Labour Market Flexibility and the Invisible Employer

In 1987, Lord Wedderburn observed the progressive shifting from the classical concept of the employment relationship based upon dependent labour, towards new forms of labour relations in which the ‘subordination’ of the worker was masked as ‘autonomy’ by virtue of the type of contract signed between the parties. He noted that the shift was due to ‘a rapid fragmentation of the labour market, especially by the growth of myriad, so-called “a-typical” or “marginal” relationships’, including ‘the worker part-time, casual, temporary, lump labour, homeworker, outworker, or the subcontractor’.⁴⁷ In his view, this undermined the autonomy of labour law in regulating labour relations by blurring the contours of a traditional concept such as the one of the ‘employer’.⁴⁸

Several forms of atypical and flexible contracts have been introduced in the labour market in the last few decades. The variety of contracts differs from country to country; however, no country has been immune. In this regard, it is interesting to compare two articles written by the sociologist Arne Kalleberg, almost 10-years apart. In 2000, he described the world of employment as increasingly consisting of non-standard relations, including part-time and short-term jobs, contract work, temporary agency work, and ‘contingent work’; ie, ‘work arrangements that were conditional on employers’ needs for labor and thus lacked an attachment between employer and worker’.⁴⁹ In 2009, Kalleberg recognised nonstandard employment (named ‘precarious work’⁵⁰) as the ‘dominant feature’ in almost all economic sectors.⁵¹ In his view, the precariousness of employment produced risk-shifting from the employer to the employee.⁵² Precarious jobs, therefore, entail the subversion of traditional roles.

Two extreme examples of how the employer’s role is shifting are, for instance, ‘zero-hours contracts’ in the UK, and the so-called ‘job-voucher’ (*buoni-lavoro*) in Italy. The zero-hours contract is a well-established reality of the UK labour market. Deakin defines it as ‘essentially a contract or arrangement under which an employer agrees to pay for work done but makes no commitment to provide a set number of hours of work per day, week or month’.⁵³ Minimal contractual obligations arise on the employer’s side, and they are not compelled to integrate the worker into the company by distributing working hours on a regular basis.⁵⁴ In the case of ‘job-vouchers’, no contractual obligations exist at all. The voucher constitutes a hyper-flexible form of payment for occasional labour through a ticket that can be purchased in a tobacco shop. The progressive deregulation of the limits to its operation (originally it provided only for subjects at the margins of the labour market or ‘at risk of social exclusion’, such as students, migrants,

⁴⁷ Wedderburn, ‘Labour Law’ (n 14) 6.

⁴⁸ *ibid* 21–22.

⁴⁹ AL Kalleberg, ‘Nonstandard Employment Relations: Part-Time, Temporary, and Contract Work’ (2000) 26 *Annual Review of Sociology* 341, 354.

⁵⁰ AL Kalleberg, ‘Precarious Work, Insecure Workers: Employment Relations in Transition’ (2009) 74 *American Sociological Review* 1.

⁵¹ *ibid* 17.

⁵² *ibid* 8.

⁵³ S Deakin, ‘New Forms of Employment: Implications for EU Law—The Law as It Stands’ in R Blanpain and others (eds), *New Forms of Employment in Europe* (Alphen aan den Rijn, Wolters Kluwer, 2016) 47.

⁵⁴ *ibid* 48.

and domestic workers) led to a boom in use.⁵⁵ In 2016,⁵⁶ it became the most diffused form of flexible employment in the Italian labour market.⁵⁷

The mutuality of the employment contract disappears in the case of both zero-hours contracts and job-vouchers. Through resort to forms of atypical and hyper-flexible employment, exposure to the labour law (and social security) regime is almost annulled: no obligations for the employer; no protection for the worker. Yet subordination persists, as does the employer's authority, albeit under a different form. The 'employer' of labour is transformed into a 'consumer' of labour. No managerial prerogatives are required to perform this activity. Conversely, the authority of the state, as represented by labour law legislation, vanishes due to the scarce—if not null—protection ensured by the labour law regime to these forms of employment. The employer decides the forms and modalities of work performance, without the obligations of an employment contract.

These features also appear in the so-called 'gig economy'.⁵⁸ In these forms of work, the economic production (usually a service, such as transportation, home-delivery, cleaning, etc) is organised through use of digital platforms as a means of linking the subjects involved in the economic exchange. The client and the service performer are connected through an app on which both are signed up. The company running the app claims that it performs only the role of the 'intermediary', and not of the employer, by connecting the service performer and the client who are the parties in the exchange. Yet this picture has been rejected by the EU Court of Justice which, instead, has recognised the platform Uber as a transport company rather than a digital service.⁵⁹

In other legal disputes, the courts have detected elements of an employment relationship based on the exercise of monitoring and control power by the company. The UK Employment Tribunal acknowledged (and the Employment Appeal Tribunal confirmed)⁶⁰ that drivers are part of the business run by Uber.⁶¹ This conclusion was reached by ascertaining that Uber exercises its power of control over drivers through a set of actions that include discretion in selecting drivers, obligations for drivers to accept rides, the unquestionable decision of the route that the driver has to follow, and the fare that must be charged. Using a similar analysis, the US District Court of North California concluded that drivers are Uber's 'presumptive employees', as they render services to Uber which, in turn, exercises control over them.⁶² The Court explained that Uber prohibits drivers from picking up passengers outside the app, or that it

⁵⁵ See A Zilli, 'L'inclusione sociale attraverso i voucher per prestazioni di lavoro accessorio' in M Brollo, C Cester and L Menghini (eds), *Legalità e rapporti di lavoro: Incentivi e sanzioni* (Trieste, EUT, 2016).

⁵⁶ The job-voucher instrument was cancelled, in 2017, as result of a campaign pursued by the main Italian trade union CGIL, which collected signatures for proposing a referendum to repeal them.

⁵⁷ See M Fana, D Guarascio and V Cirillo, 'La crisi e le riforme del mercato del lavoro in Italia: Un'analisi regionale del Jobs Act' (2016) 5 *Argomenti* 26.

⁵⁸ See V de Stefano, 'The Rise of the "Just-in-Time Workforce": On-Demand Work, Crowdwork, and Labor Protection in the "Gig-Economy"' (2016) 37 *Comparative Labor Law & Policy Journal* 471, 474.

⁵⁹ Case C-434/15 *Asociación Profesional Élite Taxi v Uber Systems Spain, SL* (ECJ, 20 December 2017).

⁶⁰ *Uber BV v Aslam* [2018] ICR 453. This decision was appealed by Uber to the Court of Appeal (Civil Division), which however dismissed the appeal with a 2-1 majority, *Uber BV v Aslam* [2018] EWCA Civ 2748.

⁶¹ *Aslam v Uber BV* [2017] IRLR 4.

⁶² *O'Connor v Uber Technologies, Inc*, 82 F Supp 3d 1133 (ND Cal 2015).

selects drivers and inspects their cars. Moreover, the Court pointed to the fact that the actual profit made by Uber derives from the revenue generated by the rides performed by workers, rather than from the software and its widespread diffusion. *Contra*, a decision of the Fair Work Commission in Australia recognised certain elements of autonomy that would exclude the conditions of Uber’s drivers from the scope of employment subordination, as currently formulated by employment law, such as the ability to log-off from the app at any time and the possession of fundamental tools such as the car and phone.⁶³ The autonomy of workers in deciding when to work was also the element upon which an Italian court (Turin) denied the claim of subordination advanced by six riders providing meal home-delivery services for the platform, Foodora. According to the Court, employment subordination can only exist when the worker is exposed to the managerial powers of the employer expressed through specific orders and supervisory activities.⁶⁴ Thus, the fact that the digital platform does not perform the managerial prerogative of allocating shifts and tasks—which in the ‘gig economy’ tend to be self-decided by the workers—and only monitors whether the delivery is successfully completed, means that such workers are qualified as ‘self-employed’.

In light of the preceding discussion, forms of work such as those apparent in the ‘gig economy’ represent an evolution in the practices of employer authority. Rather than disappearing, workforce management has been elevated to the ‘next level’, and now operates through an algorithm.⁶⁵ The business is firmly organised by platform companies via management strategies that aim at making production as lean as possible. Even the allocation of shifts and hours of work is a task performed by the workers themselves, which they do by logging into the app, and signing up for certain shifts. Yet control over the practices of production and its standardisation persist.⁶⁶ The digital companies style their workers as self-employed individuals who directly contract with the clients, with the platform simply facilitating this act of contracting. However, the reality is that these workers are not in fact free to negotiate the terms of the contract or the service that they provide. They have to accept the conditions unilaterally imposed by the platforms. Ultimately, in the lean business of the ‘gig economy’, the exploitation of labour reaches its extreme: those moments in which workers are unproductive, such as when cars are empty, or food has been delivered, are eliminated from the production process.⁶⁷ Labour can be put on stand-by and used only when it is deemed productive. In this sense, the ‘gig economy’ realises what the anarchist writer Colin Ward foresaw in 1995—that ‘capital has achieved its object which was to eliminate labour’.⁶⁸

⁶³ *Kaseris v Rasier Pacific VOF* (2017) 272 IR 289.

⁶⁴ Tribunale di Torino, sez. V Lavoro, case n. 778/18 (7 May 2018).

⁶⁵ MA Cherry, ‘Beyond Misclassification: The Digital Transformation of Work’ (2016) 37 *Comparative Labor Law & Policy Journal* 577, 597.

⁶⁶ See also de Stefano, ‘Rise of the “Just-in-Time Workforce”’ (n 58) 476.

⁶⁷ J Prassl and M Risak, ‘Uber, Taskrabbit, and Co: Platforms as Employers? Rethinking the Legal Analysis of Crowdwork’ (2016) 37 *Comparative Labor Law & Policy Journal* 619, 625.

⁶⁸ C Ward, ‘The Factory We Never Had (1995)’ in C Wilbert and DF White (eds), *Autonomy, Solidarity, Possibility: The Colin Ward Reader* (Oakland, AK Press, 2011) 187.

IV. Anarchism and Labour Law

A. Anarchism and Authority

Despite the nuances distinguishing different approaches, the refusal of authoritarian relationships is an element that all anarchist thinkers and anarchist practices share. Although the view of an anarcho-individualist, such as Max Stirner, differs from the view of an anarcho-communist, such as Pëtr Kropotkin,⁶⁹ they converge on considering autonomy from coercion and the liberation of free individuals as the values of an anarchist society.

The anarchist spectrum can be divided into two macro-approaches: a political anarchism, oriented towards direct actions and mass organising, and a philosophical anarchism, engaged in the intellectual problematisation of political legitimacy. Yet it is common that anarchist thinkers have been directly engaged in social activism. For instance, Pierre-Joseph Proudhon, Mikhail Bakunin, and Errico Malatesta (to recount the most famous examples) divided their activities between intellectual analysis and the organising of social movements amongst the working class and farmers.⁷⁰ However, what best defines anarchism is its ‘scepticism towards authority’.⁷¹ In a nutshell, ‘anarchism is a doctrine that aims at the liberation of peoples from political domination and economic exploitation by the encouragement of direct or non-governmental action’.⁷²

The ultimate value for anarchists is the freedom of the individual, which is expressed by their autonomy, but which conflicts with the authority exercised by social, political, and economic power.⁷³ In philosophical anarchism, ‘authority’ is defined as ‘*a form of domination*’ that ‘involves the capacity of one party to exercise control over another party’.⁷⁴ Further, authority is ‘a dominative social power that is binding and content-independent, necessarily involving recognition and submission by its subjects, which uses coercion even if it is not defined by it’.⁷⁵ Coercion and domination are two constitutive elements of the principle of authority: the power of one party in a social relationship to force the other party to adopt certain behaviour. The employment relationship can be easily conceptualised in these terms.

The anarchist vision of society implies the persistence of certain (non-authoritarian) authorities which, however, are any way put into question and required to demonstrate their legitimacy.⁷⁶ While refusing authoritarian forms of socio-political relationships, anarchism

⁶⁹ Max Stirner rejected any form of political or social organisation and moral obligation that could impose constraints on the freedom of the individual. Instead, Piotr Kropotkin and the anarchist communists (as well as the anarcho-syndicalists) believe in the free association of individuals into collective organisations.

⁷⁰ Kinna, *Anarchism* (n 2) 10–11.

⁷¹ P McLaughlin, *Anarchism and Authority: A Philosophical Introduction to Classical Anarchism* (London, Routledge, 2016) 29.

⁷² Kinna, *Anarchism* (n 2) 3.

⁷³ RP Wolff, *In Defense of Anarchism* (Berkeley, University of California Press, 1998) 18–19.

⁷⁴ McLaughlin, *Anarchism and Authority* (n 71) 54 (emphasis in original).

⁷⁵ M Egoumenides, *Philosophical Anarchism and Political Obligation* (New York, Bloomsbury Academic, 2014) 39.

⁷⁶ For instance, the anarchists do not challenge parental authority as such: see McLaughlin, *Anarchism and Authority* (n 71) 33.

accepts and fosters authority ‘from below’ as legitimised by the free and voluntary collective association of individuals.⁷⁷ A free and voluntary decision that legitimises the authority of a collective of individuals does not curtail the autonomy of the individual, rather it seeks to amplify it.

The basic tenet of anarchism is to question any form of authority and any duties that the individual is subjected to in society. For philosophical anarchism, the rejection of authority is an intellectual exercise that implies seeking moral (and ethical) legitimacy for any individual action imposed by social and legal rules.⁷⁸ But the political stream of anarchism firmly believes that ‘inegalitarian and hierarchical social structures [make] freedom impossible’.⁷⁹ The aim of anarchism is to overthrow artificial hierarchical structures that exploit, coerce, and dominate, which have been created through ideas instilled ‘by minorities of priests, military chiefs and judges, all striving to establish their domination, and of scientists paid to perpetuate it’.⁸⁰ For Bakunin, ‘[t]he freedom of individuals is by no means an individual matter. It is a collective matter, a collective product. No individual can be free outside of human society or without its cooperation’.⁸¹ Therefore, in anarchist thinking, freedom is an individual value, to be achieved, and exercised collectively.

B. Anarchism and the Law

The primary object of the anarchist critique is the state which, through its normative power (ie, the laws that it enacts), claims legitimate authority.⁸² Anarchists believe that the principle of authority is entrenched in the political principle on which the state is built, thus conflicting with the social principle on which an anarchist society must be grounded.⁸³

In anarchism, the state is rejected as an artificial construction and as the expression of the ruler class. Anarchism denies and contests the Hobbesian theory of the social contract entered into by free individuals to remedy their state of nature by creating a supreme authority—the state—to channel the individualistic and violent human nature into forms of political representation.⁸⁴ From an anarchist perspective, the state does not hold legitimacy to rule, since it has been imposed rather than self-imposed by the individuals over which it rules.⁸⁵ Accordingly, anarchists question the obligation to obey the law, whose authority ‘stems from

⁷⁷ RT De George, ‘Anarchism and Authority’ in JR Pennock and JW Chapman (eds), *Anarchism* (New York, New York University Press, 1978).

⁷⁸ See M Huemer, *The Problem of Political Authority: An Examination of the Right to Coerce and the Duty to Obey* (Houndmills, Palgrave Macmillan, 2013). This might sound similar in socialist anarchist and anarcho-capitalist thinking. Yet the tools and solutions are very different.

⁷⁹ van der Walt and Schmidt, *Black Flame* (n 2) 47.

⁸⁰ P Kropotkin, ‘Anarchism: Its Philosophy and Ideal’ in RN Baldwin (ed), *Kropotkin’s Revolutionary Pamphlets: A Collection of Writings by Peter Kropotkin* (first published 1927, New York, Dover, 1970) 123.

⁸¹ M Bakunin, ‘Three Lectures to the Swiss Members of the ‘International’ in RM Cutler (ed), *The Basic Bakunin: Writings, 1869–1871* (New York, Prometheus, 1992) 46.

⁸² McLaughlin, *Anarchism and Authority* (n 71) 82.

⁸³ C Ward, ‘Anarchism as a Theory of Organisation (1966)’ in C Wilbert and DF White (eds), *Autonomy, Solidarity, Possibility: The Colin Ward Reader* (Oakland, AK Press, 2011) 47.

⁸⁴ A Carter, *The Political Theory of Anarchism* (first published 1971, London, Routledge, 2010) 15.

⁸⁵ Egoumenides, *Philosophical Anarchism* (n 75) 40.

the fact that the sovereign has willed it, not because it corresponds to the laws of nature or principles of natural justice'.⁸⁶

Anarchists reject the metaphysical origin of law implied by social contract theory and, instead, focus on its anthropological and historical origins.⁸⁷ Law is the expression of social relationships established in society, and often the expression of the will of the dominant class, which crystallises its dominant position in society through law.⁸⁸ For Bakunin, the inherently violent nature of law,⁸⁹ which requires coercive enforcement to remedy disobedience, does not fulfil the ideal aim of justice, but rather perpetrates the domination of exploited classes.⁹⁰ Kropotkin affirms that the force of law and the force of capital have evolved hand in hand.⁹¹ The legal system is conceived in a way to support and reproduce the economic system in which it is generated, by creating and protecting those legal institutions that preserve the socio-economic relationships on which such a system is based.⁹²

Rather than hierarchical and centralised forms of socio-political organisation (such as the state or the capitalist company), anarchists believe in horizontal and decentralised forms of collective organisations in which the social principle is expressed through the free, voluntary, and egalitarian association of individuals.⁹³ The rejection of a hierarchical form of political organisation does not automatically renounce any form of organisation. The most important distinction that anarchists make concerns the divide between 'state' and 'society'. For anarchists, the state is *a* form of societal organisation. Accordingly, state and government are different entities: the state is a historically contextualised form of socio-political organisation; whereas government, meant as the entity governing social relationships, can assume different forms—also non-authoritarian—of organising society.⁹⁴

The anarchist vision of the state might sound similar to the critique advanced by neoliberals. Yet anarchists envision a society of collectively organised individuals, rather than the society of atomised individuals promoted by neoliberals. The anarchist vision implies that free individuals shall associate voluntarily with the intention of self-governing aspects of socio-political and economic life. The social contract assumes the form of the voluntary decision to share the common burden of self-government. In the words of Kropotkin:

The anarchists conceive a society in which all the mutual relations of its members are regulated, not by laws, not by authorities, whether self-imposed or elected, but by mutual agreements between the members of that society and by a sum of social customs and habits – not petrified by law, routine, or superstition, but continually developing and continually readjusted in accordance with the ever-

⁸⁶ Carter, *Political Theory of Anarchism* (n 84) 22.

⁸⁷ Kropotkin, 'Modern Science' (n 3) 175.

⁸⁸ P Kropotkin, 'Law and Authority' in RN Baldwin (ed), *Kropotkin's Revolutionary Pamphlets: A Collection of Writings by Peter Kropotkin* (first published 1927, New York, Dover, 1970) 196.

⁸⁹ Carter, *Political Theory of Anarchism* (n 84) 42.

⁹⁰ Bakunin, 'Three Lectures' (n 81) 57–58.

⁹¹ Kropotkin, 'Law and Authority' (n 88) 207.

⁹² See A Pannekoek, *Workers' Councils* (first published 1948, Oakland, AK Press, 2003) 14–15.

⁹³ See C Ward, 'Anarchist Sociology of Federalism (1992)' in C Wilbert and DF White (eds), *Autonomy, Solidarity, Possibility: The Colin Ward Reader* (Oakland, AK Press, 2011).

⁹⁴ On these distinctions, see Carter, *Political Theory of Anarchism* (n 84) 28–29.

growing requirements of a free life stimulated by the progress of science, invention, and the steady growth of higher ideals.⁹⁵

Therefore, the anarchist vision takes the idea of ‘living law’ to the extreme and considers the law as an evolving set of rules that is constantly re-negotiated by members of the polity, and which develops according to societal advancements.

The organisations that anarchists favour are based on the ‘principle of federalism’, which requires freely entered contracts by individuals, and federations between collective organisations.⁹⁶ In legal terms, the contract is the legal lynchpin of an anti-authoritarian society, not based on the vertical and authoritarian relationship between the citizens and the state. The original status of a free and voluntary contract would also imply the absence of any enforcement mechanisms, as the individuals would be aware and respectful of the self-assumed obligations that free choice implies.⁹⁷ In opposing the idea of a society organised vertically on the basis of a (fictitious) contract between rulers and citizens, Proudhon indicates—in the contract between peers—the foundation of an anarchist society grounded in self-government, mutualism, and federalism.⁹⁸ Thus, self-government shall be based on a system of contracts that replace the system of state laws.⁹⁹ Based on a voluntary exchange and reciprocity, rather than on coercion, these contracts would enhance unity and solidarity by providing a structure to the horizontal organisation of production and the collective satisfaction of needs.¹⁰⁰

The employment contract, as we know it, does not fit within this category as it is not concluded between free peers. For Bakunin, the authority of socio-economic power derives from the fact that individuals are not born free in society, but rather in conditions that oblige them to enter into unbalanced contracts, such as the employment one.¹⁰¹ As for labour legislation, in 1913, Kropotkin observed how it—although adopted under the guise of a protective instrument—constituted a tool compelling the worker to perform compulsory working hours, and to keep selling their labour, thus exposing them to the employer’s authority.¹⁰²

C. Anarchism and the Workplace

In light of the above discussion, a question arises: if anarchists refuse to accept an economic system based on the subordinated employment relationship, how do they envisage the socio-

⁹⁵ Kropotkin, ‘Modern Science’ (n 3) 157.

⁹⁶ R Graham, ‘The Role of Contract in Anarchist Ideology’ in D Goodway (ed), *For Anarchism: History, Theory, and Practice* (London, Routledge, 1989) 156–57; WH George, ‘Proudhon and Economic Federalism’ (1922) 30 *Journal of Political Economy* 531, 534.

⁹⁷ See Graham, ‘Role of Contract’ (n 96) 165.

⁹⁸ J Jennings, ‘Rousseau, Social Contract and the Modern Leviathan’ in D Boucher and P Kelly (eds), *The Social Contract from Hobbes to Rawls* (London, Routledge, 2004) 130.

⁹⁹ P-J Proudhon, *General Idea of the Revolution in the Nineteenth Century* (JB Robinson tr, first published 1923, New York, Haskell House Publishers, 1969) 206.

¹⁰⁰ *ibid*, also cited in Graham, ‘Role of Contract’ (n 96) 153.

¹⁰¹ Bakunin, ‘Three Lectures’ (n 81) 46.

¹⁰² Kropotkin, ‘Modern Science’ (n 3) 175–76.

economic dynamics established around production? The anarchist does not aim at eliminating work or abolishing industrial production. The goal of anarchism is rather to replace the vertical and authoritarian organisation of the capitalist company with a horizontal relationship, in which production is managed and directed by a self-organised collective of workers, who share decision-making power on an equal footing.

On the means and strategies to achieve this aim, anarchists have different ideas: Proudhonian mutualism based on workers' cooperatives and small owners differs from the revolutionary road proposed by Bakunin, who advocates the collectivisation of property through a revolutionary overturning of the capitalist system.¹⁰³ Similarly, the anarcho-syndicalists' stance to achieve power through general strikes¹⁰⁴ differs from the scientific approach of Kropotkin, who envisioned a world of labour without distinctions between intellectual and manual work, and free from wage labour.¹⁰⁵

Despite such differences, again, some common features can be found: for anarchists, the spheres of labour and production must be organised around the collective organisation of trade unions (or workers' councils) and guided by the principles of cooperation, direct action, workers' autonomy and control, and the decentralisation of production.¹⁰⁶ Tom Cahill outlines the 'five qualities' on which anarchist economic organisation is grounded: it must be '(1) decentralised, (2) egalitarian, (3) self-managing and empowering, (4) based on local needs and (5) supported by other autonomous units in a non-hierarchical fashion'.¹⁰⁷

The ownership of the means of production is key in this regard. The anarchist opposes private property and considers it 'theft';¹⁰⁸ but the dispossession and accumulation of property by the state would only entail a different form of exploitation. Anarchist economic production would instead be grounded in collective ownership¹⁰⁹ and workers' control.¹¹⁰ Socio-economic organisation would be left to the trade unions and economic production to cooperatives.¹¹¹ These two forms of organisation constitute the cornerstone of the anarchist view on labour and employment based upon mutualism and reciprocity; ie, on solidarity.

¹⁰³ On this distinction, see van der Walt and Schmidt, *Black Flame* (n 2) 84–85.

¹⁰⁴ See R Rocker, *Anarcho-Syndicalism: Theory and Practice* (first published 1938, 6th edn, Oakland, AK Press, 2004); FF Ridley, *Revolutionary Syndicalism in France: The Direct Action of Its Time* (first published 1970, Cambridge, Cambridge University Press, 2008).

¹⁰⁵ See P Kropotkin, *The Conquest of Bread and Other Writings* (Cambridge, Cambridge University Press, 1995); Graham, 'Role of Contract' (n 96) 163–64.

¹⁰⁶ C Ward, 'The State (1988)' in C Wilbert and DF White (eds), *Autonomy, Solidarity, Possibility: The Colin Ward Reader* (Oakland, AK Press, 2011) 17.

¹⁰⁷ T Cahill, 'Co-Operatives and Anarchism' in D Goodway (ed), *For Anarchism: History, Theory, and Practice* (London, Routledge, 1989) 244.

¹⁰⁸ The obvious reference is to Proudhon's classical work, *What is Property?* (1840).

¹⁰⁹ On this point, Bakunin opposed Proudhon. Whereas the latter claimed the maintenance of small ownership, Bakunin claimed the complete and total collectivisation of land and property: see M Bakunin, 'On Cooperation' in RM Cutler (ed), *The Basic Bakunin: Writings, 1869–1871* (New York, Prometheus, 1992) 153.

¹¹⁰ Cahill, 'Co-Operatives and Anarchism' (n 107) 242.

¹¹¹ Yet some anarchist movements question the role of trade unions as the product of a capitalist system, created in order to collaborate with the employers: see van der Walt and Schmidt, *Black Flame* (n 2) 138; Rocker, *Anarcho-Syndicalism* (n 104) 59.

In order to combat the accumulation of capital and the ensuing authoritarian forms of employment, Kropotkin proposed to decentralise production, which would be carried out in small workshops, and to reject the theory of division of labour, which is at the basis of an authoritarian organisation of the company.¹¹² In his view, (Kropotkin talks about the ‘integration of labour’) by blurring the distinctions between workers—between the tasks that they perform, and between the knowledge that they possess—production and labour can be re-organised on non-authoritarian bases.¹¹³ For Proudhon, the cooperative and the union represent instruments that workers have for self-organising their labour, even in complex industries, or in factories where a certain kind of ‘managerial organisation’ would be required.¹¹⁴ On a macro-scale, trade unions would constitute the supreme form of anarchist organisation in the economy, acting as ‘labour cartels’ on different scales: a union (or workers’ councils) in the workplace tasked with organising production within the factory or workshop; a federation of unions responsible for organising the total production of a country; and a confederation of federations positioned to build cooperation between countries.¹¹⁵

This anarchist vision of workplace organisation might surely sound utopian. However, it provides a basis for exploring alternatives to the dominant neoliberal logic. In this sense, researchers in critical management studies seek, in the anarchist alternative, new perspectives for managing and organising complex structures for the benefit of individual freedom.¹¹⁶ As for concrete anarchist experiences of re-organising production and the economy at large, history only provides us with ephemeral attempts. Examples are the dramatic experience of the Paris Commune in 1871, and the anarchist insurrection that occurred in some regions of Spain, in particular, Catalonia and Aragon, during the 1936–1939 civil war.¹¹⁷

Yet, in the maze of the capitalist system, several non-authoritarian experiences have emerged in the attempt to democratise the economy and to carry out production outside the authoritarian structure of the company. For instance, workers’ cooperatives constitute the backbone of social movements that have arisen to achieve more democratic control over economic production and business organisation.¹¹⁸ An illustrative example is the movement of cooperatives (*empresas recuperadas*) that emerged in Argentina in the aftermath of the 2001 economic crisis, through which workers at risk of losing their jobs occupied factories, and recovered the business by re-

¹¹² M de Geus, ‘Peter Kropotkin’s Anarchist Vision of Organization’ (2014) 14 *Ephemera: Theory & Politics in Organization* 859, 868–69.

¹¹³ P Kropotkin, *Fields, Factories and Workshops* (first published 1899, London, Swan Sonnenschein & Co, 1901) 5–6.

¹¹⁴ Proudhon, *General Idea of the Revolution* (n 99) 216.

¹¹⁵ Rocker, *Anarcho-Syndicalism* (n 104) 63.

¹¹⁶ For an overview, see T Swann and K Stoborod, ‘Did You Hear the One About the Anarchist Manager?’ (2014) 14 *Ephemera: Theory & Politics in Organization* 591; see also P Reedy, ‘Impossible Organisations: Anarchism and Organisational Praxis’ (2014) 14 *Ephemera: Theory & Politics in Organization* 639, 652.

¹¹⁷ For the Paris Commune experience, see D Gluckstein, ‘Workers’ Councils in Europe: A Century of Experience’ in I Ness and D Azzellini (eds), *Ours to Master and to Own: Workers’ Councils from the Commune to the Present* (Chicago, Haymarket Books, 2011). For the Spanish experience, see A Souchy, ‘Workers’ Self-Management in Industry’ in S Dolgoff (ed), *The Anarchist Collectives: Workers’ Self-Management in the Spanish Revolution, 1936–1939* (New York, Free Life Editions, 1974).

¹¹⁸ M Vieta, ‘The Stream of Self-Determination and *Autogestión*: Prefiguring Alternatives Economic Realities’ (2014) 14 *Ephemera: Theory & Politics in Organization* 781, 795.

organising production on anti-authoritarian and horizontal bases.¹¹⁹ Empirical studies on these experiences illustrate how these cooperatives work through collective decision-making. The workers' cooperatives have put in place a horizontal management system based on a general assembly, in which all workers participate and have the right to vote. The general assembly then elects a more restricted directive council that runs the operations of the business, but which is constantly accountable to the general assembly.¹²⁰ The inevitable tendency towards the reproduction of authoritarian forms of management is offset by a wide prerogative granted to each worker to demand information about business decisions, and to contest them on behalf of the collective of workers.¹²¹ The need to maintain certain standards of productivity has, however, pushed the workers' cooperatives to adopt internal rules that include discipline sanctions. Here, managerial authority is substituted with *self-discipline*, which is *self-imposed* by a collective of workers, and which is the ultimate decision-maker as well as beneficiary.¹²² Collective organising and solidarity are thus the principles upon which non-authoritarian forms of employment are based

Collective self-organising, and solidarity between peer workers, represent the core of attempts 'from below' where workers in the 'gig economy' have engaged to achieve recognition and better working conditions. For instance, in the Italian city of Bologna, a collective of riders working for food delivery digital platforms established the Riders' Union; an autonomous rank-and-file union that organises campaigns to create awareness around the poor working conditions and precarity of gig workers.¹²³ In May 2018, the Riders' Union succeeded in signing a 'Charter of the fundamental rights of digital work in the urban context' (*Carta dei diritti fondamentali del lavoro digitale nel contesto urbano*) with the municipality, the major trade unions, and two local digital platforms for food delivery.¹²⁴ The Charter sets, inter alia, the right of workers to be properly and correctly informed about the terms of their contract; the right to a fair and decent hourly wage; the right to receive compensation for night work, work during holidays,

¹¹⁹ See International Labour Office, *Job Preservation Through Worker Cooperatives: An Overview of International Experiences and Strategies* (2014) <http://www.ilo.org/actrav/info/pubs/WCMS_312039/lang-en/index.htm> accessed 29 December 2018.

¹²⁰ See, for instance, M Atzeni and P Ghigliani, 'Labour Process and Decision-Making in Factories under Workers' Self-Management: Empirical Evidence from Argentina' (2007) 21 *Work, Employment and Society* 653. See also the documentary written by Naomi Klein: *The Take* (Avi Lewis dir, Barna-Alper Productions & National Film Board of Canada, 2004) <<https://www.youtube.com/watch?v=3-DSu8RPJt8>> accessed 29 December 2018.

¹²¹ Atzeni and Ghigliani, 'Labour Process and Decision-Making' (n 120) 663.

¹²² *ibid* 667. However, the authors stress that the disappearance of managerial authority would expose the workers to the discipline imposed by market forces.

¹²³ R Ciccarelli, 'Avanti Riders! Oggi la prima assemblea nazionale dei ciclo-fattorini a Bologna' *Il Manifesto* (15 April 2018) <<https://ilmanifesto.it/avanti-riders-oggi-prima-assemblea-nazionale-dei-ciclo-fattorini-a-bologna/>> accessed 29 December 2018.

¹²⁴ 'Bologna, il 31 maggio la firma della carta sui rider: "E' il primo accord europeo sul delivery food"' *La Repubblica.it* (Bologna, 25 May 2018) <https://bologna.repubblica.it/cronaca/2018/05/25/news/bologna_carta_rider-197310179/> accessed 29 December 2018.

and work in adverse atmospheric conditions; and the right to collective action in the form of collectively withdrawing from work.¹²⁵

Further examples reflecting the anti-authoritarian experience of workplace organisation include the movement of so-called ‘Platform cooperativism’, which proposes an alternative economic model based upon a different use of technology to oppose the narrative and practices of ‘platform capitalism’; ie, the business model operated by the digital companies of the ‘gig economy’.¹²⁶ Platform cooperativism includes a wide array of different experiences that range from taxi driver cooperatives owned by unions, to media service cooperatives owned by workers, to other experiences in which the figures of producer and user blend in an attempt to use the available technology to organise the production of digital services horizontally.¹²⁷ The minimum common denominator of these experiences is an ideological view proposing a solidaristic model, based upon collective ownership, small-business, decent pay and fair working conditions, income security and workers’ involvement in business-related decisions¹²⁸—all principles ascribable to the anarchist tradition.

V. Anti-Authoritarian Employment Relations?

What contribution to labour law and labour law scholarship can be derived from anarchism? Primarily, the anarchist view permits a radical critique of the foundations and function of labour law. Labour law, rather than being praised as a protective tool, is questioned as the means through which labour exploitation is perpetrated. From an anarchist perspective, the idea of protecting the worker *within* the subordination of employment simply fails. For anarchism, there is no liberation in this—rather, it is the codification of the authority of the employer. Second, an anarchist perspective challenges the bilateral conception of the employment relationship. Following anarchist principles, workplaces can be organised horizontally, by and through a collective of workers (thus *self-organised*). This questions the capitalist company as the only possible mechanism for economic organisation, and necessarily involves discussion of questions related to private property, political organisation, and socio-economic inequalities. Third, the anarchist perspective argues against the assumption that the worker must work to produce profit for the benefit of the employer. Horizontal and self-managed economic organisations, such as cooperatives, would instead redistribute earnings amongst the workers themselves.¹²⁹

¹²⁵ The Charter text (in Italian) is available at Comune di Bologna, ‘Firmata a Bologna la “Carta dei diritti fondamentali dei lavoratori digitali nel contest urbano”’ (*Iperbole*, 31 May 2018) <<http://www.comune.bologna.it/news/firmata-bologna-la-carta-dei-diritti-fondamentali-dei-lavoratori-digitali-nel-contesto-urbano>> accessed 29 December 2018.

¹²⁶ F Pasquale, ‘Two Narratives of Platform Capitalism’ (2016) 35 *Yale Law & Policy Review* 309.

¹²⁷ T Scholz, *Platform Cooperativism: Challenging the Corporate Sharing Economy* (New York, Rosa Luxembourg Stiftung, 2016) <<http://www.rosalux-nyc.org/platform-cooperativism-2/>> accessed 29 December 2018.

¹²⁸ *ibid* 18–19.

¹²⁹ See B Jossa, *L’impresa democratica: Un sistema di imprese cooperative come nuovo modo di produzione* (Roma, Carocci, 2008).

Overall, anarchism offers a radical perspective to counter the radical changes that the realm of labour, work, and employment have undergone with the contemporary neoliberal socio-economic dynamic. The economic power accumulated by multinational companies has become political power, and therefore requires a political response. As advocated by Ruth Dukes, the globalisation of the economy does not modify the foundations of labour law.¹³⁰ Examining past experiences, ideas, and concepts to understand the contemporary dynamics of labour markets is not a nostalgic exercise, nor does it imply an antiquated or conservative view. Dukes provides an example of how this approach can be used effectively with her conceptualisation of the ‘labour constitution’; an approach based upon the work of Kahn-Freund and Sinzheimer. However, in looking to the past, one must remain focused on the present socio-economic reality.

The dynamics of economic globalisation marginalise the state from its role as the protective authority of employment. The transnational scope of capital allows multinational companies to escape the strictures of national labour laws.¹³¹ Labour market flexibility subverts the traditional elements of the employment relationship, without eradicating the subjugation of workers to the authority of the employer, but instead by producing new forms of authority and dependency,¹³² and atomising the workforce into ‘micro-labour’.¹³³ The forms of work produced by the ‘gig economy’ demolish the foundations of labour law as we know it, and highlight the shortcomings and contradictions of a legal understanding of work grounded on the contract of employment. Given this, we ought to reflect upon whether the current form of labour law still manages to effectively capture the socio-economic reality of work in Western societies. The socio-economic conditions in which the contract of employment emerged are fundamentally altered. Technological change renders the legal protection of work, channelled through the contract of employment, at risk of disappearing.

Consequently, labour law needs to be reinvented and disentangled from the subordinated employment relationship, and from its constitutionalised expression. The image of the worker as a wage-earner is obsolete. The protection of workers’ dignity must transcend the distinction between employed and unemployed, as it is within the contradictions of this distinction that exploitation takes place.¹³⁴ If legal subordination fades away, the reality of the economic dependence of workers emerges and demands renewed attention towards addressing the socio-economic nature of subordination in the realm of work.¹³⁵ New forms of labour law need to

¹³⁰ R Dukes, *The Labour Constitution: The Enduring Idea of Labour Law* (Oxford, Oxford University Press, 2014). See also A Iossa, ‘Collective Autonomy in the European Union: Theoretical, Comparative and Cross-Border Perspectives on the Legal Regulation of Collective Bargaining’ (Doctoral thesis, Lund University, 2017).

¹³¹ Inter alia, J Fudge and G Mundlak, ‘Justice in a Globalizing World: Resolving Conflicts Involving Workers’ Rights Beyond the Nation State’ in Y Dahan, H Lerner and F Milman-Sivan (eds), *Global Justice and International Labour Rights* (Cambridge, Cambridge University Press, 2016).

¹³² See also G Davidov, *A Purposive Approach to Labour Law* (Oxford, Oxford University Press, 2016) 116.

¹³³ Cherry, ‘Beyond Misclassification’ (n 65) 598.

¹³⁴ See M Denning, ‘Wageless Life’ (2010) 66 *New Left Review* 79–97. See also R Ciccarelli, *Forza lavoro: Il lato oscuro della rivoluzione digitale* (Roma, DeriveApprodi, 2018), who suggests grounding worker protection in the right to existence, thus moving beyond protection ensured only via employment.

¹³⁵ See H Arthurs, ‘Labor Law as the Law of Economic Subordination and Resistance: A Thought Experiment’ (2013) 34 *Comparative Labor Law & Policy Journal* 585. See generally, N Countouris, *The Changing Law of the Employment Relationship: Comparative Analyses in the European Context* (first published 2007, Abingdon,

emerge ‘from below’ with the aim of democratising the economy by democratising workplaces. Although utopian, the anarchist perspective challenges us to re-think labour law and the entire economic system in which it was conceived. The success of certain cooperative experiences, such as the Mondragon Cooperatives, relies upon the relationship that horizontal forms of economic organisation build with the surrounding community.¹³⁶ Whilst not explicitly informed by anarchism, those experiences tell us that anti-authoritarian employment relations can emerge from the downfalls and pitfalls of capitalism to revolutionise the basis of the economic system. Emancipatory labour policies must be as radical as neoliberal policies of labour market flexibilisation; however, instead, they ought to be directed at empowering workers by challenging the authority of the subjects that exploits labour. Ultimately, the socio-economic evolution requires labour law to evolve as well, with a call for labour lawyers to move beyond the current parameters of labour law to imagine innovative solutions that keep its role and struggle alive.

Routledge, 2016) 62. A spark for reflecting upon the socio-economic, rather than legal, nature of subordination is evident in the case law of the European Court of Justice: see, eg, Case C-413/13 *FNV Kunsten Informatie en Media v Staat der Nederlanden* (ECJ, 4 December 2014).

¹³⁶ See A Latinne, *The Mondragon Cooperatives: Workplace Democracy and Globalisation* (Cambridge, Intersentia, 2014).