

The Labour Constitution

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Outline

The Labour Constitution

- The research project: aims and method
- The monograph

Hugo Sinzheimer and the *Arbeitsverfassung*

Otto Kahn-Freund and Collective *Laissez-Faire*

An Enduring Idea of Labour Law?

ERC-Funded Project: Work on Demand

Research Project: *The Labour Constitution*

- Context: A Crisis in Labour Law?
- Research Aims
 - To investigate the claim that 'old ways' were outdated
 - Either to refute or better to substantiate that claim
- Method:
 - Historical: situating and analysing theories of labour law in the social, economic and political context in which they were first elaborated
 - Seeking to abstract those theories from that context and to apply them to current labour laws and industrial relations

OXFORD

THE LABOUR CONSTITUTION

THE ENDURING IDEA
OF LABOUR LAW

Ruth Dukes

OXFORD MONOGRAPHS ON LABOUR LAW

Oxford University Press 2014

Focuses on two 'old ways':

- Sinzheimer's labour constitution
- Kahn-Freund's collective *laissez-faire*

Compares these with the 'law of the labour market' (eg Simon Deakin)

Argues that the idea of the labour constitution is of enduring significance to the study of labour law today



Hugo Sinzheimer (1875-1945) and the *Arbeitsverfassung*

- Context: November Revolution and the birth of a new social democracy
- Scholar, court room lawyer, politician
- Article 165 Weimar Constitution:

Workers are called to participate, in community with employers and with equal rights, in the regulation of terms and conditions of employment as well as in the overall economic development of the productive forces...
- *Wirtschafts- or Arbeitsverfassung?*



Otto Kahn-Freund (1900-1979) and collective *laissez-faire*

- Weimar Republic: doctoral student, labour court judge, scholar
- 1933 flight to the UK: second career as legal academic at the LSE and Oxford
- ‘collective laissez-faire’ intended to emphasise particularities of English labour law and industrial relations
 - very wide measure of autonomy enjoyed by trade unions and employers’ associations
 - comparative insignificance of state’s role in industrial relations

An Enduring Idea of Labour Law?

- Collective *laissez-faire* unhelpful today because of its (over-) emphasis of wide measure of autonomy for trade unions and under-emphasis of significance of state support
- Labour constitution still useful as framework for scholarly analysis:
 - Invocation of idea of industrial or economic democracy
 - Encourages historical analysis, understanding labour laws as outcomes of political struggle, shining spotlight squarely on questions of power
 - Seeks to analyse labour laws as integral element of political economy: laws can be shaped by the wider political economy and they can give form to the context within which economic activity and political struggles proceed

Work on Demand: Contracting for Work in a Changing Economy

Defines contracting for work as an instance of economic, social and legal behaviour

- Economic nature of contracting for work
- Fundamentally social nature of the economy
- Special significance of applicable legal norms

Aims to synthesise economic sociology, political economy, sociology of law

WORKOD

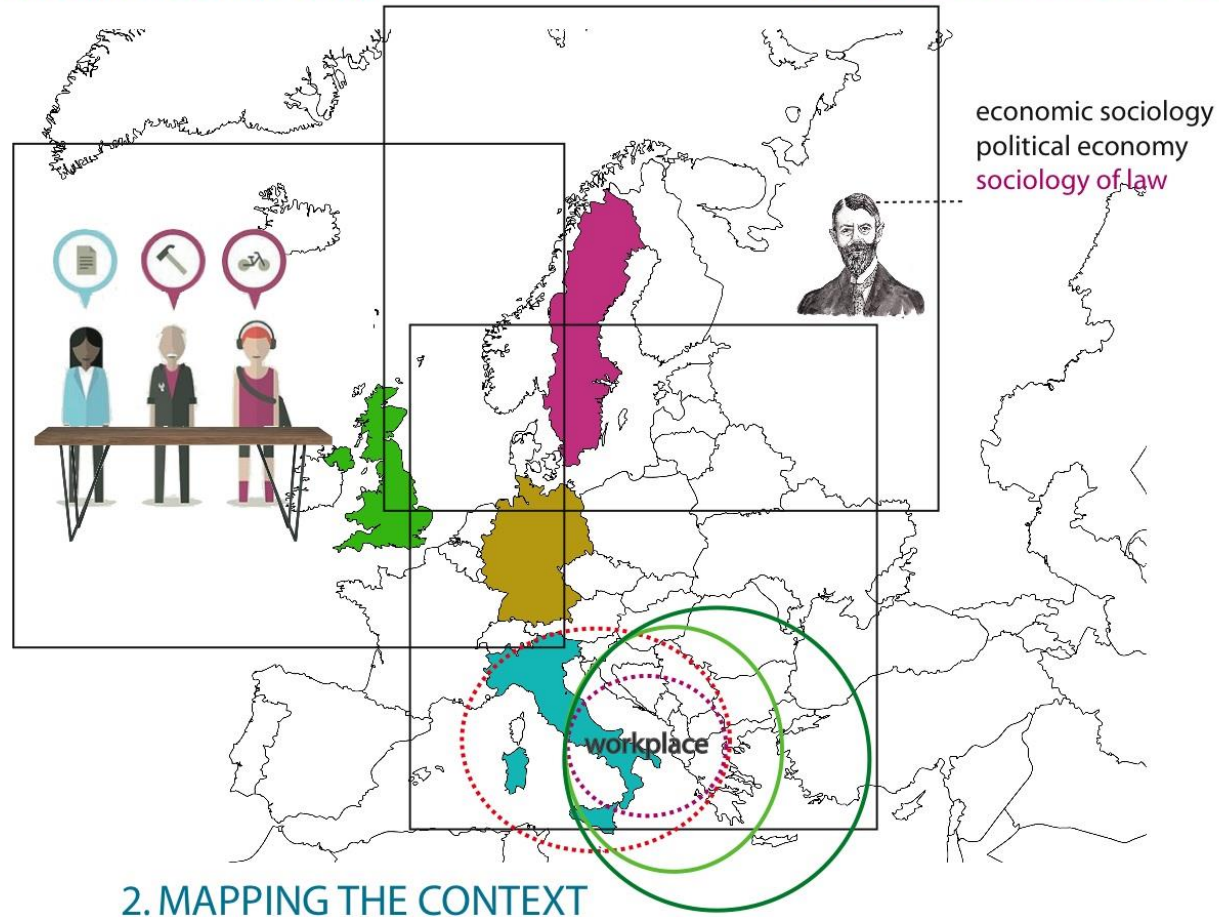


European
Research
Council

THREE 'WORK PACKAGES'

1. CONTRACTING BEHAVIOUR

3. SYNTHESISING ES/PE/SL:



Work
completed
to date

- Recruitment of team of doctoral students and postdoctoral researchers
- Organization of launch event, 18-19 October 2018, with participation of advisory board: Diamond Ashiagbor, Fred Block, Simon Deakin, Sabine Frerichs, Karl Klare, Kerry Rittich
- Draft paper: *Towards an Economic Sociology of Labour Law*