EMPLOYMENT AND WAGE POLICIES IN A POST-NEOLIBERAL WORLD

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Abstract: There is evidence-linking inequality to negative health outcomes and to a loss of trust in public institutions. Causation runs both ways because institutional weakness makes it more difficult to redress persistent inequalities. In the period of dominance of neoliberal policies, the reduction of inequality was not pursued as a goal of public policy in its own right. This can, and should be, reversed by policies aimed explicitly at reducing wage and income inequalities. The legal framework should actively support sectoral collective bargaining, solidaristic forms of social insurance, and progressivity in taxation. Institutional reform is needed to create a virtuous circle of investment in public goods, confidence in the collective realm, and egalitarian outcomes. It remains to be seen whether the COVID-19 crisis can serve as a catalyst for the necessary structural break with neoliberal policies, but since those policies were weakening prior to the crisis, this is a possibility.

Keywords: inequality, labour laws, wage and employment policies, neoliberalism

JEL Classifications: J38, J80, K22, K31, K34

1. Introduction

It has become urgent to reduce inequality. For nearly five decades, income and wealth disparities were condoned by the social sciences and tolerated or promoted by governments. Precisely when and how the tipping point was reached may be debated. The global financial crisis of 2008, and the decade of austerity which then ensued in many countries, played a role. The rise of the authoritarian right in western democracies after 2016, a symptom of austerity, has focused minds. In this fluid environment, research conducted on the fringes of social science disciplines has begun to enter the mainstream, and the previously conventional wisdom is not looking secure. However, it is too soon to speak of any new consensus, either on the origins of inequality, or on what can be done to address it. Modes of thought, which are all too clearly past their peak, still have the power, it seems, to sway debates, in particular when they are invoked to defend the argument that there is little that can be done by way of purposive action to address collective ills.

For progress to be made on these questions, the marshalling of evidence on the causes of rising inequality, and on its consequences for the social and political fabric, is needed. The evidence is substantial but dispersed across different disciplines and paradigms, and not always

straightforward to interpret. To understand the processes at work requires, on the one hand, a close focus on what has been happening within nation states as a consequence of changes in economic policy, public finance and market regulation. And, on the other, an examination of the ways in which international economic law and transnational governance more generally have been reshaping trade, capital and labour flows between states.

Progress on these issues also requires some rethinking of the way institutions and institutional change are theorised in the social sciences. Institutions are not ignored in contemporary social and economic theory – far from it – but they tend to be portrayed as self-organising and so beyond the reach of effective political action. Relatedly, instrumental policy change and its implementation through regulation tend to be seen as external interferences in an otherwise self-adjusting economy. It follows that, if not simply ineffective in the face of indifference or resistance by economic actors, regulation can achieve social policy goals such as the reduction of poverty and inequality only through various trade-offs, that is to say, at the expense of development and growth. These theorisations of the role of institutions turn a blind eye to the essential interdependence of state and market in capitalist economies, and so significantly underplay the scope of politics to reform, reshape and, ultimately, transform capitalism.

With this context in mind, the present paper will attempt firstly to restate the case for seeing capitalism as process which is 'instituted' through particular legal and regulatory mechanisms, and to show that these mechanisms are amenable, within certain constraints, to political influence and hence to conscious and deliberate change (section 2). It will then go on to chart what we know about the institutional causes of the rise in inequality, which has occurred worldwide in recent decades, beginning in Anglo-American systems in the 1970s and then becoming a generalised phenomenon. The focus here will be on the ways in which labour, product and capital markets have been both deregulated and *reregulated*, both nationally and internationally, in line with a neoliberal policy agenda, which, in broad terms, empowered capital at the expense of labour (section 3). Section 4 will look at some specific aspects of regulatory trends including the use of 'offshore' jurisdictions to avoid fiscal and regulatory compliance. This is a result of changes to the transnational coordination of legal and regulatory systems, which are eroding state capacity and the rule of law.

Section 5 will consider possible responses. It will consider specific substantive measures, which could be taken to mitigate and reverse the rise in inequality, such as reviving progressivity in taxation, modernising social insurance, and enhancing collective bargaining over wages and conditions. These measures would be consistent with the restoration of a role for demand management in macroeconomic policy, a key dimension of a post-neoliberal economy, which other chapters in this collection are addressing. Measures of this kind, if taken in a concerted way, would do much to reverse the trend of rising income and wealth disparities, while also rebalancing capitalism away from its current extractive and opportunistic phase. The wider issue to consider concerns the institutional means needed to achieve these policy reforms, as they will not be self-enacting. This last point directs attention to the importance of investment in state capacity. Whatever else it may achieve, the COVID-19 crisis, which began

in the early months of 2020, has thrown into stark relief the need for both national and global public goods.

2. Capitalism as instituted economic process

A very familiar refrain in any debate about reforming or rebalancing capitalism is that not much can be done by way of conscious policy making to change the way things are, have always been, and will always remain. A pertinent, and prominent, example of this is the World Bank's insistence, in its *Doing Business Report 2008*, that 'laws created to protect workers often hurt them' (World Bank, 2007, p. 19). The logic of this position is that labour laws, which, for example, set minimum wages and maximum working time, regulate termination of employment, and provide for workers' freedom of association, distort the workings of the labour market, artificially raising employers' costs and so reducing labour demand. The result is involuntary unemployment and related effects, which 'hurt' the intended beneficiaries of the laws, namely workers. On closer inspection it turns out that a view such as this is not based on evidence, since empirical studies are not clear cut on these issues (see Adams et al., 2019 for a recent review), as much as certain theoretical priors. Above all: the belief that markets are in general self-organising and will arrive at a welfare-maximising equilibrium, as long as supply and demand can operate freely. This belief rests on nothing more or less than a *naturalisation* of the market: the market is a natural order, and regulation an artificial interference with it.

A slightly more nuanced position is that some laws may be needed to facilitate market-based exchange, but only laws of a certain type, namely rules of private law, which protect property rights and enforce contracts freely made. The idea that the specification through law of property rights is sufficient to generate market-based exchange is associated with a particularly influential interpretation of the 'Coase theorem' (Coase, 1960), which, nonetheless, is open to multiple understandings. Coase himself, reflecting on the reception of his work, wrote that 'if self-interest does promote economic welfare, it is because human institutions have been designed to make it so' (Coase, 1988, p. 134), not exactly a naturalistic understanding of law or the market.

The claim that private law enjoys the property of self-organisation in common with the market is associated with F.A. Hayek's concept of 'catallaxy' or 'spontaneous order' (Hayek, 1980). Hayek's (op. cit.) observation that knowledge in society is decentralised, in the sense of being possessed by individual agents, and so unavailable to a centralised legal 'sovereign' (Hayek, 1945), was the basis for his objection to legislative action the field of labour law, among others (Hayek, 1984). Coase's (1960) critique of Pigovian welfare economics can be thought of as making a similar point about the difficulties of the sovereign legal agent setting an optimal tax to deal with environmental externalities (Coase, op. cit. 1960). This argument exaggerates the emergent features of the common law, while neglecting the error-correction role played by legislation, particularly in unblocking the evolutionary 'dead ends' to which judge-made law is prone (Roe, 1995).

In the course of the 1990s there emerged a further, empirically-orientated variant on the theme of the common law's inherent efficiency, in the form of 'legal origins theory'. This approach maintained that national legal systems, which can trace their origin to the English common law, in contrast to the French or German civil law, were, for that reason, more likely to generate legal rules, which are efficient in the sense of wealth- and welfare-maximising (La Porta et al., 1996, 2008). Empirical studies dating from the mid-1990s (and financed at the time partly by the World Bank) appeared to show that cross-country differences in the content of company and insolvency laws were correlated with differences in the ownership structure of firms, with stronger shareholder protection favouring more dispersed ownership. And in the availability of external finance for firms, with higher levels of both shareholder and creditor protection reducing the cost of capital (La Porta et al., 1996). Conversely, stronger labour laws were correlated with distortions of the type predicted by Hayek, including higher unemployment and a larger informal economy (Botero et al., 2004). When it was observed that common-law origin systems (those colonised by the British or otherwise drawing on English law antecedents) tended to have a higher level, on average, of shareholder protection, and a lower average level of worker protection, the final link in the chain was made. Legal origin was a deep-rooted, institutional cause of divergences in levels of economic development across countries.

Claims have been made for the direct influence of legal origins theory on 'structural' reforms in 'dozens' of countries during the 2000s (La Porta et al., 2008). It is hard to disentangle the impact of the idea and the body of research with which it is associated from the more obvious and direct influence of the World Bank and the other global financial institutions, including the IMF and regional development banks, in pressing for 'structural' reforms, which included additional protections for shareholders and creditors. Nonetheless, legal origins theory undoubtedly had an impact beyond the academy, with its novel mode of production of metrics for benchmarking laws and regulations proving highly attractive to policy makers and researchers alike.

The academic reception of the work is instructive for the tenuous connection it reveals between social science research and its practical application. As replications and extensions of the original studies were attempted, most of the initial findings of the field were rejected (see Deakin and Pistor, 2012). It appeared that common law systems did not enjoy faster growth than countries with a civil law origin (Klerman et al., 2011). And that while there were systematic differences across countries in the content of laws regulating labour and capital, these were not consistently correlated with the economic consequences, which had been claimed for them (on shareholder rights, see Deakin et al., 2016; on labour laws, Adams et al., 2019). Even the foundational legal origin claim that legal rules and institutions were the driving force behind economic development was significantly qualified once time-series evidence became available: laws were just as likely to be endogenous to national industrial and social contexts, or the result of political and economic shocks (Deakin and Sarkar, 2011; Deakin et al., 2018). These modifications to the research programme of legal origins theory were largely accepted, and in some cases actively taken up, by those who were responsible for the field's early development (La Porta et al., 2008; Klerman et al., 2011). Legal origins theory was, after all, a hypothesis awaiting empirical verification or, as it turned out, falsification,

rather than an assumed truth. However, the refinement of the field's core claims had little impact on policy makers who, with World Bank support, largely continued to follow the template of shareholder- and investor-centric structural reforms with which the theory was associated.

If there is an enduring legacy of the legal origins debate it lies in the identification of relatively autonomous, state-centred legal systems as among the factors shaping long-run economic and social development, albeit according to a non-linear, 'co-evolutionary' dynamic, which is not easily modelled or predicted. Whatever the impacts of specific laws might be in particular contexts, law as a generic mode of governance has had a close connection to the rise of market economies (Hodgson, 2015; Deakin et al., 2016). In this respect, Karl Polanyi's observation retains its force: "not human beings and natural resources only but the organisation of capitalistic production itself [has] to be sheltered from the devastating effects of a self-regulating market" (Polanyi, 1944, p. 132).

Polanyi's (1944) idea of the 'double movement' implies that capitalism undergoes cycles of embedding and dis-embedding, with periodic crises triggering a regulatory response. However, even in periods of relative dis-embedding when protective regulations are withdrawn or their scope confined, capitalism remains an 'instituted economic process' (Harvey and Geras, 2018), in which the legal system, along with other manifestations of state power including the fiscal regime, shapes the operation of markets. As Harvey (2018) suggests, Britain's experience of industrialisation was one in which "the historical and political development of legal, fiscal and welfare instruments, along with changes in economic organisation, co-constituted the exchange between labour and capital in a complex process of institutional change" (p. 98). From this point of view, Britain's relatively early industrialisation was due in part to the institution of the Poor Laws, which provided a measure of protection against labour market risks from the time of the late middle ages. While administration of the Poor Law was largely decentralised, its operation was governed by national legislation which gave effect to the policy goals of the central state, which included the development of rural and urban labour markets through a mix of wage regulation, controls over migration and the provision of publicly funded poor relief (Deakin and Wilkinson, 2005). Although coercive for most of its history, the English poor law was also more extensive than similar systems on the European mainland: it had reached a point by the middle of the eighteenth century when per capita expenditure on poor relief targeted at the unemployed and elderly was several times that of other western European states (Solar, 1995). In the twentieth century, it was the fiscal organisation of wage labour through income taxation and social insurance, which made it possible for the centralised state to provide public goods, in the form of education, health and welfare systems, without which the market economy itself "did not and could not have developed" (Harvey, 2018, p. 27).

3. Institutions and inequality

If legal and other formal institutional processes play a central role in constituting and shaping capitalism, what is their connection to inequality? We know from the empirical research conducted over the past decade (see in particular Piketty and Saez, 2003; Atkinson, Piketty and

Saez, 2011; Piketty, 2014, 2019; Atkinson, 2018; Saez and Zucman 2019; Palma, 2011, 2019a, 2019b; Stiglitz, 2012; Milanovic, 2016) that income and wealth inequalities in the industrialised world peaked in the second decade of the twentieth century. And then began to revive from the early 1970s, in the United States, and from the 1980s, in western Europe. Piketty's (2014) explanation for this is that there in an inherent tendency in a capitalist system for the rate of return on capital to exceed the growth rate of the economy. The decline in inequality in the middle decades of the twentieth century was the result of the destruction of rentier wealth brought about by the two world wars. From the final quarter of the twentieth century, returns to capital increased exponentially even as the economy was slowing, as a result of reduced population growth and limited improvements in productivity.

Piketty (2014) does not exactly claim that rising inequality under capitalism is unavoidable. Indeed, any such claim would plainly be inconsistent with the long-term trend from the 1910s to the 1970s. Piketty (op. cit.) ascribes a role to policies when he suggests that "the reduction of inequality that took place in most developed countries between 1910 and 1950 was above all a consequence of war *and of policies adopted to cope with the shocks of war*" (p. 20; emphasis added). He adds, however, "there is no natural spontaneous process to prevent destabilising, inegalitarian forces from prevailing permanently" (Piketty, op. cit., p. 21). In particular he rejects the argument that "ever more fully guaranteed property rights, ever freer markets, and ever 'purer and more perfect' competition are enough to ensure a just, prosperous and harmonious society" (p. 30). This last suggestion is certainly consistent with the historical record: belief in the self-organising properties of the market went hand in hand with rising wealth and income disparities in the 'first globalisation', which ended in 1914, just as it has more recently. However, how exactly was inequality addressed in the intervening period?

Prior to the relatively recent rediscovery of inequality as an issue for the social sciences, it was generally believed that economic development had led to a convergence of wealth and incomes over time since the beginning of the modern industrial era, and would continue to do so. Kuznets (1955) observed in the 1950s that developed economies displayed lower levels of income inequality, whether from the point of view of earnings or household incomes, than developing ones. The dynamics of the transition from a subsistence economy to one based on industrial modes of production were seen as providing the explanation for this empirical result. In Lewis's (1954) 'structural transformation' model, developing economies initially enjoy a comparative advantage in being able to tap into a pool of low-cost labour during the transition period. In this period, income inequality increases as workers lose access to the land and employment is not yet stabilised. As wage labour becomes normalised, however, a 'Lewisian turning point' is reached when labour market institutions such as social insurance and collective bargaining can start to emerge. Similarly, the 'Kuznets curve' describes a process of rising inequality giving way to a more egalitarian distribution of incomes over time.

In the models proposed by Kuznets (1955) and Lewis (1954), the main drivers of economic development are technological change and the spread of knowledge. Nevertheless, they also both acknowledged the role played by politics and ideology as preconditions for the adoption of egalitarian social legislation. One way of understanding structural adjustment theory is that

capitalism creates the conditions for the emergence of extensive labour market institutions, involving risk sharing and income pooling on a national level; but does not guarantee that this will happen. The political process is sufficiently autonomous from the economy for the advanced welfare state of the middle decades of the twentieth century to be only one possible outcome among many. Factors internal to the political system affecting the extent to which working class movements are able to articulate a distinctive set of policies and positions, such as the degree to which, and speed with which, a given country adopts universal suffrage. In addition, democratic representation within the framework of a rule of law state, can be expected to play a role in helping to select in more egalitarian outcomes.

Why exactly should we expect labour market institutions such as collective bargaining and social insurance to lead to the convergence of incomes? In a purely static model in which the labour market was in equilibrium as a result of the interaction of supply and demand, no such effect could be expected: in this world, such institutions would take on the character of the 'distortions' and 'inefficiencies' identified in the World Bank's 2008 *Doing Business Report*. In practice, labour is not priced solely by reference to supply and demand: labour markets are structured both spatially and temporally (Harvey and Geras, 2018). The identification of a labour market as ''national' in character is a function of a given state's capacity to exercise a monopoly of force within a bounded territorial space. Similarly, the inter-temporal aspect of labour contracting takes on a different dimension according to the presence of a legal system, which lends the power of the state to the monitoring and enforcement of agreements: 'private' law is still a law created and enforced by the state. Conventions of quality, which serve to coordinate complex exchange relations, may well operate at a social or inter-personal level but nevertheless find expression in, and derive stability from, formal legal institutions and mechanisms. Suffice to say that in these and numerous other ways, the legal system is an independent variable altering the allocation of power and distribution of risk between labour and capital, and between different groups in the workforce. Within the limits posed by the nature of existing technologies and resource endowments, there is considerable scope for labour to be contracted in ways, which are more or less egalitarian in their results, depending on choices articulated through the political process and embedded in legal rules and mechanisms.

The history of labour law in the United Kingdom is a case in point. From the beginnings of industrialisation in the eighteenth century through to the early decades of the twentieth, the labour market was governed by punitive laws, which criminalised the formation and operation of trade unions (see Deakin and Wilkinson, 2005). Breach of the service contract on the part of the worker was a crime punishable by imprisonment or fine. These restraints were gradually lifted, beginning in the final quarter of the nineteenth century, through legislation, which lagged the extension of the franchise by around a decade. The removal of legal controls permitted trade unions to form on a nationwide basis for most industrial sectors, so that union membership and coverage of collective bargaining rose together. While this process was not uniform, there were reversals in times of high unemployment; it culminated in 1945 in the formation of a national industrial relations system in which the wages and working conditions of over 80% of the labour force were regulated collectively. In addition, in which the principal

mode of delivery of labour market governance were sector-level collective agreements, which achieved a high degree of wage compression along with industry-wide floors to conditions of employment.

The pattern of decriminalisation followed by legal support for collectivisation was the same in other industrialising systems during this period; but, importantly, with variations across countries. In France, for example, the degree to which the employment relationship was standardised through law and then regulated through a single classification system, which tied wage rates to occupational categories exceeded in scale and scope the processes by which wage labour was similarly 'instituted' in Britain during the twentieth century. The effect was that while in the UK 'we have multiple institutions of price, in public and private sectors, firm-specific price systems, spot prices, sector price hierarchies, international labour market prices, and so on'. In France by contrast "within the salariat, we have one national salarial grid across industries, related directly to established criteria of qualification" (Harvey and Geras, 2018. p. 49). The effect is not just to impart a greater degree of institutional stability to the French labour market, but also, through standardisation, to embed common quality standards and professional norms across a single national, territorially bounded labour market. To this day, the French system of industrial relations remains more highly institutionalised than its UK counterpart, more resistant to the disembedding effects of selective deregulatory policies, and more egalitarian in its outcomes.

A contrasting case at the other extreme is the United States of America (Tomlins, 1985). The US enacted national-level laws supporting collective bargaining over wages and conditions later than other industrialised states, in the 1930s. The legislation of this period, however, stopped short of establishing effective mechanisms for sectoral or multi-employer bargaining, leaving unions to organise at plant level. The result was a decentralised collective bargaining system from the beginning, which only became further fragmented over time. Specific legal factors played a role in shaping the limited territorial and sectoral reach of US collective bargaining. The Supreme Court struck down legislation intended to promote sectoral agreements in the 1930s, mobilising to this end provisions of the US Constitution prioritising the protection of private property over social regulation, and not subsequently revived even when more modest legislative initiatives overcame the constitutional block. Then in the post-war period, the US's federal structure allowed regulatory competition to develop between 'right to work' states in the south and west of the country and the more heavily regulated and industrialised states of the north. In time, this led to capital flight and to the erosion of such collective bargaining as remained in the private sector. The US never achieved the degree of wage compression that became the norm in Europe in the post-1945 period, and continues to have one of the most unequal earnings distributions of the first wave of industrialised countries.

If trade union organisation, collective bargaining and collective labour laws together act as significant determinants of the way labour is priced in different ways and at different times, in particular national-territorial and sectoral-industrial contexts, then a further source of variation is the system of social reproduction of labour. Broadly conceived to include social security, education, and health, and correlatively, the organisation of taxation and public finance,

through which these collective goods are supplied. These institutions serve to constitute and reproduce the fundamental commodity of a capitalist system to include social security, education, and health, and correlatively, their organisation (Harvey and Geras, 2018, p. 37). Prior to, or in the absence of, a centralised state, these pre-market functions were performed by households or communities. With the rise of the welfare state, governments undertook the task of providing them as collectively financed public goods. The degree to which the state assumed the responsibility for providing collective goods directly, as opposed to devolving it to private actors, differed across national systems, along with the scope to use the welfare state to achieve redistributive goals. Universalism in social security, eliminating targeting and means testing, coupled with progressive taxation and solidaristic forms of social insurance, helped to bring about highly egalitarian distributions of wealth and income in certain industrialised states, particularly the Nordic systems, in the middle decades of the twentieth century (Esping-Andersen, 1990).

The British variant of the welfare state, while proving to be less stable and enduring than its Nordic counterparts, nevertheless achieved similar results for a period following its high point after 1945. At the end of the nineteenth century, the pioneering social surveys of Booth and Rowntree estimated that anywhere between 10% and 30% of urban households had incomes insufficient to meet their physical subsistence needs. At this point, only 3% of the urban population was in receipt of poor relief, and, for the unemployed, refusing work was effectively criminalised. The poor law, and with it the disciplinary institution of the workhouse, continued in force in some parts of the country until the 1940s. However, its effects were at first mitigated and then circumvented through the institution of a comprehensive, state-organised social security system, which provided universal access to health and education, and organised a single nationwide, cross-sectoral social insurance regime. This included an unemployment compensation system embedding the principle of the right to refuse to work for wages below the 'going rate' set by collective bargaining. In 1950 the Rowntree poverty survey recorded a 'primary poverty' rate of below 2% of households in the city of York; the corresponding figure had been 18% in 1936. At this point, joblessness had been effectively abolished as the cause of poverty, with no single household being recorded as in poverty by virtue of unemployment (Deakin and Wilkinson, 2005).

Just as the implementation of the egalitarian policies of the mid-twentieth century entailed the interlocking of various legal, regulatory and administrative measures, so their reversal from the 1980s onwards was achieved by policies, which delinked these previously related mechanisms and created new complementarities; those fostered the return of inequality. The replacement of universalism with means-testing in social security, the reintroduction and intensification of sanctions for refusing work, and the removal of state support for sectoral collective bargaining together operated to remove the floor of rights to wages and conditions which had previously operated to compress wages and earnings. Deakin and Wilkinson (1991) chart this process as it unfolded during the 1980s. The removal of wage controls in conjunction with various 'activation' policies in the sphere of social security law brought about a widening of the inter-decile range for earnings and an increase in the proportion of low-paid jobs in the economy. In this period, the UK went from having one of the most egalitarian wage and employment

structures in the industrialised world to having one of the most polarised and unequal. Alongside these labour market shifts, the downgrading of the principle of progressivity in taxation left a greater share of post-tax income in the hands of the wealthy. While the encouragement of private provision and market-mimicking mechanisms in the delivery of health and education introduced elements of pricing into the provision of what had previously been public goods, differentially disadvantaging lower income groups. These changes were all initiated by conscious policy choices and were implemented through specific legislative and administrative initiatives.

Much of the originality of Piketty's work lies in his use of tax data to chart changes in wealth distribution over time. While trends in earnings and income inequalities were well understood prior to the appearance of *Capitalism in the Twenty-First Century* in 2014; the evidence it presented on the growing concentration of wealth opened up a new dimension to the debate. According to Piketty, the position of rentier-based wealth within capitalism is crucial to understanding inequality dynamics. While most of the households in the top 10% by wealth owe their position to the earnings of very highly paid professionals and managers, those in the top 1% are there by virtue of access to income from their ownership of capital (Piketty 2014, 2019).

Piketty's (2014, 2019) work demonstrates the need to widen analysis of the institutional causes of inequality beyond a focus on wages and employment. The erosion of collective bargaining and the welfare state in many countries since the late 1970s does not directly account for the hyper-inequalities in the top 1% and even 0.1% that Piketty identifies. Returns to capital have increased for a variety of reasons including changes to the way in which dividends and other capital gains are taxed, and to the pushing back of inheritance taxes and taxes on accumulated wealth more generally. Corporate governance reforms strengthening the claims of shareholders as a class and their ability to exercise control over managers in the context of publicly listed companies have also played a role.

These changes in tax and corporate law are complementary to the changes in the laws governing wages and employment, which have allowed earnings inequalities to rise. The trend towards the strengthening of shareholder protection rights is a global one, affecting countries at all levels of development since the 1990s (Deakin et al., 2018). Table 1 and Figures 1 and 2 explain and illustrate these trends. Figure 1 shows how shareholder rights have been strengthened between 1990 and 2013 in a range of developed and developing countries, using a 'leximetric' coding methodology. It associates a higher score on a 0-1scale with an increased degree of legally mandated shareholder protection (for discussion of the coding method, see Deakin et al., 2018; the indicators are set out in Table 1). As Figure 1 shows, there has been considerable convergence around a significantly higher degree of shareholder protection over this period. Figure 2 presents the same data in a different way, by charting the scale of the increase in particular types of legal rule. This Figure shows that the largest changes were made in two particular variables, those relating to board independence and the 'mandatory bid' rule in hostile takeover bids. These two indicators are strongly associated with changes in corporate governance practice which seek to 'align' managers' interests with those of shareholders, and

which have led to loss of managerial autonomy in deciding how to respond to takeover bids and activist hedge fund interventions of the kind which, in practice, involve the prioritisation of the shareholder interest.

Table 1 and Figures 1 and 2 here

During the same period, laws protecting worker rights, including employment protection laws and those underpinning collective bargaining and the right to strike, did not see overall declines, suggesting that labour law did not cease to be a relevant instrument of labour market regulation in this period. However, labour rights, which were strengthening in many countries and regions during the 1970s, were largely static from the 1990s onwards, so that in a period when shareholder rights were being strengthened, labour protections were weakening in relative terms (for further detail, see Adams et al., 2017, 2019). Table 2 sets out the relevant indicators and coding definitions. The trends can be seen in Figures 3 and 4, which chart time series in employment protection laws in selected regions and countries from the 1970s to 2013. European Union countries generally maintained a high level of employment protection laws throughout the 2000s, with a small decline after the global financial crisis of 2008-9, which nevertheless did not see a wholesale reversal of the gains made in previous decades. Among developing countries, there has been a tendency for employment protection laws to strengthen from a relatively weak base, with China being such a case. These trends in labour laws must be put in the context of significant declines in the coverage and effectiveness of multi-employer collective bargaining over the same period (Visser, 2013).

Table 2 and Figures 3 and 4 here

The strengthening of shareholder rights during a period when worker protections were mostly static (in the case of labour law) or declining (in the case of multi-employer collective bargaining) is connected to increases in the capital share of national income and corresponding declines in the labour share, which became pronounced during the 2000s. In the middle decades of the twentieth century the labour share was stable at around 65% of national income in most industrialised countries; since 1990 it has fallen by 5% in the UK, France, Germany, Canada, and Japan and over 10% in the USA, Korea, Spain and Italy. Sjoberg (2009) demonstrates that

a link exists between shareholder rights and the capital share, while Adams et al. (2019) show that changes in labour laws have an impact on the labour share. Ferguson et al. (2017) identify correlations between the degree of legal protection accorded to shareholders, and health inequalities as evidenced by, among other things, child mortality rates. Palma (2019a, 2019b) discusses the extent to which the widening gap between labour output and wages in OECD countries, in particular the USA, is attributable to changes permitting shareholders to extract higher returns (including the lifting of the legal ban on share buy-backs in the early 1980s) at the same time as institutional protections for wage bargaining were being weakened.

Addressing the situation of the top 1% and 0.1% will inevitably require changes to laws governing capital in a broad sense to include both corporate governance and taxation, as Piketty (2014, 2019) has argued for some time. However, if the negative effects of inequality are to be countered, a focus on the very highest reaches of the wealth distribution will be insufficient. Epidemiological evidence links inequality of income and status to measures of social well-being, which include infant mortality, obesity, mental illness, educational performance, teenage motherhood and homicide; it is relative inequalities throughout the income distribution, which matter here (Wilkinson and Pickett, 2008). If this research has one overriding message it is that "everything else being equal, it is better to live in a more equal society", even for "the richer part of society", since "people compare themselves to those who are closer to them – and the more unequal the society, the greater distance between people, even among those with the highest incomes" (Baumard, 2016, p. 1137).

High inequality generating insecurity at every level of society is the result of a combination of measures affecting returns to labour and capital, and thus with the laws which together institute capitalist markets and forms of production in this broad sense. As Harvey and Geras insist (2018), "the laws of the market are just that: politically instituted as much as economic. And what can be done politically can be undone" (p. 139). However, to see why this is such a challenge means understanding how inequality has come to undermine the fabric of the state itself.

4. The 'malign spirit' of contemporary capitalism: regulatory competition, tax avoidance and the erosion of the rule of law

What Gomez (2019) has called the 'malign spirit' of capitalism locates its current dysfunctions in an over-financialised economy, in which speculation overtakes production as the dominant mode of 'rational' behaviour. This phenomenon has an institutional dimension, in which law as a mode of governance is turned against itself, and 'opting out' through regulatory arbitrage and avoidance is normalised.

One particularly striking manifestation of this trend is the exponential increase since the 1980s in the use of tax havens to conceal private and corporate wealth and to shield it from taxation (Shaxson, 2011). Zucman (2015) calculates that the percentage of financial wealth held offshore is 4% of the total in the USA and 10% of the total in Europe. The corresponding figure is 22% in Latin America, 30% in Africa, 52% in Russia and 57% in the Gulf countries. Since

overall inequalities are closely correlated with the relative income shares of the top 10% of earners, it is highly likely that tax evasion is playing a significant role in perpetuating the extreme inequalities associated with Latin America, parts of sub-Saharan Africa (including post-Apartheid South Africa) and the Gulf states (Palma, 2011).

Tax havens can only operate as repositories of capital if capital-exporting states recognise them as such. Specifically, the court of the exporting ('onshore') state must recognise as valid the attribution of profits or income to the importing ('offshore') state if the latter's fiscal advantage is to be legally effective. In the USA and UK, a series of regulatory changes was made in the early 1980s to facilitate this form of 'mutual recognition'. British governments actively encouraged the development of the tax haven status of its dependencies and Crown territories, and US governments condoned the use of third countries, in particular Panama, for the same ends. The Panama Papers leak threw a bright light on the scale and sophistication of legal and financial expertise, which has developed over time to service the growing demand for tax planning. Today, tax haven status is no longer exclusively 'offshore'. Within the European Union, the member states actively pursuing fiscal policies designed to attract and retain inward investments include sizable industrial economies such as the Netherlands and Ireland.

Similar processes affect the operation of labour laws. As laws setting minimum labour standards on such matters as wages, hours of work and termination of employment, were extended in most industrialised countries throughout the course of the twentieth century, they were almost invariably given mandatory territorial effect, meaning that the 'applicable' laws of an employment contract would be those of the state where the work was carried out. However, just as in tax law, it has become increasingly possible over time to attribute income earned in one jurisdiction to another for the purposes of accessing a more favourable tax rate, so in employment law there has been an expansion of the situations in which work done in the territory of one legal system can be understood legally to be governed by the rules of another. This is particularly the case when workers are assigned or 'posted' by their employer to work in a third country. Within the European Union, 'host' states have had limited power to impose local labour laws and collectively agreed terms and conditions on workers posted from another member state following the ruling of the European Court of Justice in the *Laval* case (2007).

The 'deterritorialisation' of rules of labour law and corporate governance is in part the result of competition between states to attract capital by the downgrading of regulatory standards, but is also the result of the growing influence of international economic law as a mode of governance. International economic law has a history going back to the foundation of GATT and the EEC in the immediate post-1945 years. But it has risen in importance in more recent decades as a result of the foundation of the WTO in 1995, the negotiation of a growing number of bilateral free trade agreements (FTAs), and the deepening of the EU's internal market. The default position of international economic law, is that domestic regulations governing trade and business constitute 'non-tariff barriers to trade'. And so, as interferences, they need to be justified as legitimate (in the sense of aiming at a legitimate economic or social policy goals) and proportionate (in the sense of achieving that goal while interfering as little as possible with the cross-border flows of resources). By its structure, then, international economic law

assumes a core feature of neoclassical, general-equilibrium models of the economy: the market is a self-adjusting economic order, which is in a state of equilibrium prior to any regulatory intervention.

A further feature of international economic law is that it does not treat capital and labour symmetrically. This is exhibited, for example, in the widespread practice of inserting procedures for investor-state dispute settlement (ISDS) into FTAs. These allow companies from outside the host state to challenge regulations such as laws on labour and environment, on the grounds that they deter potential investments or harm those already made. Complaints of this kind are generally heard in specialist tribunals outside the regular court system of the host state. They can result in significant liabilities for states. By contrast, few if any legal options are available under the terms of FTAs for workers or governments to challenge instances of firms taking advantage of regulatory divergences, such as relocations to regimes with weak or incompletely enforced labour laws, or the cross-border movement of goods produced in breach of labour standards. These outcomes are not inevitable: it would have been possible, and remains possible for the future, to design an international economic law regime, which treats capital flight and social dumping as true 'distortions' of trade.

Along with the deterritorialisation of law there comes also its commodification: law itself is increasingly seen as a product, to be 'purchased' by corporations and hyper-rich households, whose freedom to move across borders gives them the option choosing from among a number of regulatory and fiscal options for the protection of their wealth (Supiot, 2017). The post-enlightenment concept of equality under the rule of law finds little place in this conception of a stratified legal system. The hollowing out of the legal system and the erosion of the public, private divide has the additional effect of undermining trust in the state as an impartial arbiter. This can be seen in the correlations identified in field experiments between rising inequality and growing distrust of the state (Hermann et al., 2008). As inequality increases, it also undermines the state's ability to respond to it through the provision of collective goods and an impartial rule of law.

5. New wage and employment policies: feasibility and policy delivery

From the analysis so far, it can be seen that the task of new framing wage and employment policies to address inequality is not confined to issues of substance; but it extends to an analysis of the institutions and mechanisms through which these policies could feasibly be delivered. Discussions in the relevant inequality literature along the lines of 'what can we do about it?' have devoted relatively little attention to the issue of policy delivery. Piketty's analysis is a case in point. He concludes in his *Capital in the Twenty-First Century* (2014) with a series of proposals for tax reform, at the core of which is a proposal for a global wealth tax, which, he accepts, is 'utopian'. In *Capital et idéologie* (2019) the focus of his analysis is again on taxation, which would achieve a 'socialisation' of property by breaking up concentrations of wealth and so permitting the more effective circulation of capital, and on the need to address educational inequalities. Addressing the issue of international cooperation, he proposes the creation of 'transnational assemblies', which would be charged with the task of administering

global public goods on the basis of 'global fiscal justice'. The discussion remains somewhat abstract, as he does not explore the features of existing international organisations, beyond noting the tendency for the EU's internal market laws to prioritise the free movement of capital. There is no substantive discussion of the international trade organisation (ILO), which is perhaps a missed opportunity in view of the latter's distinctive tripartite decision-making structure.

Atkinson's *Inequality: What Can Be Done?* (2015) takes a broader view than Piketty in terms of the range of measures needed to inequalities, and in particular has more to say about wages and employment. Atkinson (op. cit.) makes a case for the success of mid-twentieth century institutions of the social state, including statutory minimum wages, sector-level collective bargaining, solidaristic social insurance and progressive taxation, in creating the conditions for the convergence of wealth and incomes in the economies of the global north during this period. His 15 proposals for reform are a mix of targets ("the government should adopt an explicit target for preventing and reducing unemployment"), capital reallocations ("there should be a capital endowment (minimum inheritance) paid to all at adulthood"), fiscal adjustments ("receipts of inheritance and gifts inter vivos should be taxed under a progressive lifetime capital receipts tax") and general aims ("public policy should aim at a proper balance of power among stakeholders, and to this end should… ensure a legal framework that allows trade unions to represent workers on level terms" (Atkinson, 2015, pp. 236-237). Atkinson (op. cit.) points to historical antecedents in arguing for the ability of nation states to enact such changes and to agree between them the basis for international cooperation to prevent defection from common standards, although he proceeds by way of examples rather than any more systematic analysis of the capacity of states to address collective action problems.

Milanovic's *Global Inequality* (2015) assumes that globalisation will continue in more or less its current form and that it will, as a result, constrain the scope for policy to address inequalities. Broadly following Piketty in arguing that declines in inequality in the middle decades of the twentieth century were brought about by "increased taxation and social transfers, hyperinflation, nationalisation of property, and wars", he doubts that these conditions can be repeated, since "globalisation makes increased taxation of the most significant contributor to inequality – namely capital income – very difficult, and without a fully concerted action from most countries, which does not seem even remotely possible today, highly improbable" (Milanovic, 2016, p. 217). He argues instead for governments to take steps to equalise endowments by making capital ownership and access to education more generally available. In relation to labour, his principal suggestion is that the promotion of "orderly migration" would lower global poverty and inequality. He proposes the "redefinition of citizenship" to allow for migrant workers to be granted "in intermediate level of citizenship that would be less valuable (because, for example, it might involve higher taxation, lower access to social services, or an obligation to return to work in one's country of origin at periodic intervals)" (p. 231). He seems unaware that this already describes the situation of many migrants working in the countries of the global north under the terms of restricted visa schemes, or of posted workers inside the EU. He at least mentions the ILO, albeit as an entity with "little power"

which “deals mostly with national labour rules” (p. 230), overlooking the coordinating role played by ILO conventions on, among other things, the rights of migrant workers.

Milanovic (2016) effectively closes down the discussion by taking the current nature of globalisation more or less for granted. Atkinson (2015), by contrast, sets out a detailed programme of reform and appeals to history to justify its feasibility, but in doing so neglects the argument that the middle decades of the twentieth century were a one-off. The proposals he makes also speak, for the most part, to the condition of economies in the global north. Piketty’s (2019) latest work situates the current debates not just in a global context, but in a much longer historical span than Atkinson’s (2015); thereby enabling him to make the case that it is capitalism itself which is exceptional, and will pass. His call for a participative socialism, which can be constructed through the coordination of national and transnational modes of governance, is perhaps no less utopian than his earlier proposals for global fiscal reform.

Much of the discussion of policy reforms in the literature on inequality has a programmatic quality, which neglects the issue of how feasible major structural breaks in policymaking are likely to be in practice. Less noticed are policy developments actually underway, which in various ways have sought to renew or modernise labour market institutions. They include measures to stabilise the coverage of employment and tax laws in the face of new forms of casual labour associated with the ‘gig economy’, equalise the treatment of different so-called ‘flexible’ forms of work, reinforce minimum wage floors, strengthen public enforcement of labour standards, and integrate labour rights into the rules governing international trade and capital flows. Each of these will now be briefly considered.

5.1 Stabilising the employment relationship

The ‘end of work’ or, in a variation on this theme, the demise of the ‘standard employment relationship’, has been regularly predicted since at least the early 1980s, without showing any evidence of coming to pass. Most recently, the claim has been revived in the context of the rise of the ‘gig economy’. The literature on this issue is by now very extensive, but not entirely productive as it mostly proceeds on the basis that the form in which labour is contracted, is technologically determined. In practice, wage labour is at least partially constituted through social norms and practices, and has historically been stabilised by legal interventions of various kinds (Harvey and Geras, 2018). In some countries, policy makers have condoned the proliferation of casual and informal forms of work as part of an effort to promote ‘flexibility’ or even on occasion ‘innovation’ (to which any real link seems tenuous). However, states also have an interest in maintaining the employment relationship as the predominant mode of labour contracting for reasons of fiscal stability, given the importance of income tax and social insurance contributions for public finances. Stable employment is associated with other positive externalities including investment in education and training and the maintenance of demand for locally produced goods and services. For these various reasons, while technological change might be expected to put pressure on the employment model by opening up new possibilities for disintermediation in supply chains and the associated offloading of

risks, there are countervailing pressures on states to preserve the employment model. The rise of the platform economy does not, in itself, close off all policy options (Prassl, 2018).

Conflicting pressures are evident, for example, in the US context, where technology companies have successfully lobbied for state laws establishing a presumption that platform workers, in particular drivers working for Uber and similar ride-hailing apps, are self-employed. However, they have met resistance from unions and civil society organisations, leading to the adoption in some states of the 'ABC' test of employment status (Deakin, 2020). This effectively establishes the reverse presumption, namely that there is an employment relationship between the platform and the driver, where elements of control are present. A law to this effect was adopted in California in 2019 and has since been the focus of concerted efforts by technology companies to have the measure reversed through a state wide ballot. The issue is commercially sensitive for Uber as, according to documents accompanying its US stock market listing in 2018, its business model would come under pressure if it had to assume the normal responsibilities of an employer, such as paying the minimum wage. In Europe, a parallel process is taking place, mostly in the context of litigation. The tendency so far is for courts to rule that platform work can give rise to an employment contract or a close equivalent, although there is some variability of approach.

5.2 Trends in the regulation of precarious and informal work

As with the 'end of work' debate, the rise of precarious work is often presented as an inevitability, but the evidence on this point is equivocal; trends in self-employment appear to be largely cyclical. The incidence of so-called 'non-standard' forms of work, such as part-time work, fixed-term employment and temporary agency work, is linked to, and largely determined by, the regulatory framework in place, in a given country. There is considerable cross-country variation in the extent of such 'non-standard' work and in the degree to which it is inherently 'precarious' or low-paid.

Policy with respect to the non-standard forms of work has also fluctuated over time. From the 1980s through to the early 2000s, the promotion of fixed-term and agency work was seen as an appropriate response to concerns over flexibility of labour in a number of countries, particularly in Western Europe. Sentiment began to shift when it became clear that removing protective controls over these forms of work was not having a positive impact on employment growth, and might instead be creating new 'rigidities' by embedding a 'dualist' approach to regulation. In recognition of this problem, the OECD, whose 1994 *Jobs Report* had done much to initiate the earlier trend towards selective deregulation, shifted its position and began to argue for the alignment of the legal treatment of the 'non-standard' forms of employment with the rules governing the 'standard' contract.

The OECD's change of heart was consistent with the policy adopted by the EU in social policy directives adopted from the late 1990s, and as these were implemented in the member states over the course of the 2000s, there was a discernible augmentation of labour law protections relating to part-time, fixed-term and agency work. Again, conflicting pressures were in play

as some member states took the opportunity presented by the Eurozone area financial crisis after 2009 to implement reductions in the protections accorded to 'core' workers, for example by replacing reinstatement with compensation as the principal remedy for unjustified dismissal. However, the impact of these 'structural' reforms on employment protection law proved, in the end, to be relatively marginal (see Adams et al., 2019).

The message for policy makers is that the employment contract, as an evolved practice and legally recognised institution in the economies of the global north, is probably more stable than has been thought. This is important since many policies, which are in principle capable of mitigating or reversing inequality trends, such as minimum wages and the delivery of public goods financed from income taxation and social security contributions, depend for their operation on the continuing economic and technological relevance of the employment model. Conversely policies, which either actively undermine the employment model or implicitly condone its decline, pose problems for these types of response to inequality.

In developing and emerging markets, the issues are somewhat distinct, in the sense that the employment contract has yet to achieve there the level of normalisation, which can be observed in the case of the global north; rather, the persistence of informality in labour markets appears to constrain the adoption of egalitarian wage and employment policies. Labour market informality, however, is a complex phenomenon and takes a number of forms, some of which are themselves amenable to policy interventions. There appears to have been a significant reduction in the extent of the informal labour market in Brazil in the early and mid-2000s, as a result of a combination of circumstances. On one hand, a sustained period of economic growth, ending only with the onset of the global crisis in 2008. On the other, targeted institutional reforms including the promotion of sectoral collective bargaining and a social assistance programme, the *bolsa familia* (Fraile, 2009). China has also seen a fall in informality rates at the same time as its employment laws were being strengthened, in particular following the passage of the Labour Contracts Act in 2007 (Cooney et al., 2013). The much slower trend in the reduction of informal work in India is attributable at least in part to institutional factors (Deakin et al., 2019).

5.3 Minimum wages and sectoral collective bargaining

The minimum wage is another area in which there have been significant policy reversals. Consistently with the neoclassical economic critique of wage regulation, the federal minimum wage was allowed to stagnate in the USA during the 1980s and 1990s, and state laws did little to compensate. In Britain, wage fixing in selected sectors was removed in the mid-1990s, leaving no floor of any kind in place for a number of years. However, a national minimum wage was reintroduced with effect from 1999, and was subsequently raised above general wage inflation with no observed disemployment effect. Beginning in the early 2000s, community-based campaigns for a 'living wage' became widespread in both the US and Britain, and these were reflected in a proliferation of legislative initiatives in US states and cities, and in the adoption in the UK of a statutory version of the living wage in 2016.

The revival of the minimum wage as an instrument of labour market regulation in the US and Britain reflects, in part, the weakness of sectoral collective bargaining in those countries. As well as the perceived need to raise the wage floor in order to reduce public expenditure on tax credits targeted on the low paid (the US earned income tax credit, and its UK equivalents, family credits of various kinds and, latterly, universal credit). In Germany it was, similarly, concern over the decline in effectiveness of sectoral collective bargaining which prompted the introduction of a statutory minimum wage in 2016, although sectoral collective agreements remain in force to a greater extent than in the US or UK. In Germany, as in France since the 1950s, the statutory minimum wage takes effect below legally binding sectoral collective agreements, creating strong pressure for wage compression. In the Nordic systems, while there is no statutory minimum wage, sectoral agreements set a relatively high wage floor, to the point where the introduction of statutory wage fixing is generally seen as unnecessary.

Nor is the minimum wage by any means confined to Europe and North America. Minimum wages are set at state level in Brazil and in most Chinese cities. South Africa has a system of legally enforceable minimum wage rates based on sectoral collective bargaining. India, with no national minimum and incomplete coverage at state and city level, is something of an outlier in this respect.

The prevalence of the minimum wage as an instrument of labour market regulation in countries at various different stages of development, along with the growing body evidence, based on practical experience, that it does not entail the negative effects presupposed by equilibrium-based economic models, together suggest that it should be at the core of measures to address inequality. However, for the full potential of minimum wage laws to be captured they should be combined with higher-level, sectoral wage floors, supported by legal extension mechanisms, thereby taking wages and employment conditions more generally out of competition at an industry level.

5.4 Public enforcement of labour laws

In principle, a variety of means exist to enforce labour laws, including inspection, civil actions, criminal fines and the selective use of public procurement systems. As labour laws came under pressure from statutory deregulatory initiatives in many countries from the early 1980s, enforcement regimes were also weakened. The US is one of the clearest cases of this trend, with even those employment rights supposedly guaranteed by federal legislation being removed from the remit of the general courts and subsumed within employer-led private arbitration. The power of the agencies designed to promote labour standards and collective bargaining, most notably the National Labor Relations Board, have been whittled away over several decades by hostile judicial interpretations and by the politicisation of the appointments process.

For labour laws to operate in such a way in order to rebalance the distribution of power in the employment relationship, effective public enforcement is essential; but such enforcement itself is a collective good, which depends on adequate resourcing of dispute resolution processes and

on the maintenance of low-cost access to justice. In Britain, the imposition of employment tribunal fees in 2013 was struck down in a UK Supreme Court ruling in 2017 on precisely this ground; a striking contrast to the active support shown by its US counterpart to the privatisation of labour dispute resolution.

The issue of access to justice is a major one in middle-income countries. South Africa adopted a public labour arbitration system based on low-cost access for claimants in the 1990s and China followed suit at the time of the passage of the Labour Contracts Act in 2008. Each of these two national systems now processes hundreds of thousands of claims every year, and so by volume alone outrank their counterparts in the global north.

5.5 Labour rights and international trade: the evolving role of the ILO

The ILO was a product of, and reaction to, the 'first globalisation', which was abruptly ended with the outbreak of the first World War. In the middle decades of the twentieth century, the ILO was one of the institutions to give practical effect to the idea that for international trade to be sustainable; there had to be common agreement between states on social and labour standards. In the period of the 'second globalisation', which began with the fall of the Berlin Wall, that idea came under pressure, with international labour standards increasingly described as an impediment to competition and trade. However, recent developments in the interaction of trade law and ILO standard setting indicate ways in which the Organization's role is changing in conjunction with an increasing focus on labour issues in trade agreements. Partly as a result of EU pressure to make a new FTA conditional upon compliance with ILO standards, Vietnam has recently agreed to align its domestic labour laws with the ILO's freedom of association conventions. This is a potentially significant development in the context of former state-socialist countries, which, until now, have rejected the relevance of free trade unions and autonomous collective bargaining for their developmental model.

FTAs between developed nations regularly contain clauses stipulating compliance with ILO conventions. Until recently this has appeared to be little more than a façade, but the newly agreed US-Mexico-Canada Trade Agreement, which will replace NAFTA, goes further towards recognising a degree of conditionality between collective bargaining rights and trade, by requiring Mexico to enact new freedom of association laws as a condition of retaining access to US markets. Compliance with the EU's social acquis is also a condition of trade access for neighbouring states under recent FTAs and, such as the association agreement with Ukraine in which entered into force in 2017.

5.6 Labour market measures during the COVID-19 crisis

If there were signs prior to the COVID-19 crisis of a push back against neoliberal wage and employment policies in a number of countries and regions, as well as globally, the crisis has propelled labour market measures to the forefront of attention. Within days of lock-downs beginning to counter the spread of virus, states in certain regions, with Western Europe leading the way, announced wage subsidy and short time working schemes aimed at mitigating the

impact of the crisis on employment and consumption. Such schemes are not entirely new. In the UK, government paid wages directly to employers to avoid large-scale redundancies in manufacturing and heavy industry in the crisis of the late 1970s and early 1980s. The last of these measures, the Temporary Short-Time Working Compensation Scheme, closed only in 1984, and legal powers to reopen it, which were retained until 1990, throughout the period in office of the supposedly anti-interventionist Thatcher administration. The German *Kurzarbeit* scheme, revived in 2020, had previously been tried out in the recession following the global financial crisis of 2008-9. These precedents notwithstanding, the response of western governments, including the UK through its emergency Job Retention Scheme, potentially dwarfs what came before in terms of the scale of the financing involved, although whether current schemes will turn out to have this effect depends on the length of time for which they have to be maintained. It needs to be remembered that such measures are designed, by their nature, to be temporary, and can be unwound almost as quickly as they are set up. The same point applies to the suspension of the Eurozone's balanced budget rules, announced at the end of March 2020: it is possible that these norms will return, conceivably in an even stricter form, if the crisis abates within a few months.

A more long lasting break with neoliberal policies is only like to come about if the medium term effect of the COVID crisis requires a more sustained policy response. This will be the case, for example, if policy makers perceive a need to reintroduce a variant of demand management in order to avert a slump. Fiscal and macroeconomic policies of the kind, which sought to maintain effective consumption during the middle decades of the twentieth century, made a good fit with the extension of multi-employer collective bargaining and solidaristic forms of social insurance in the same period (Deakin and Wilkinson, 1990: chapter 4). Indeed, there is a case for regarding labour market regulations of these kinds, which stabilise the employment relationship and put a floor under wages, as essential, if demand-orientated macroeconomic and fiscal measures are to have their desired effect of supporting consumption. If policies of labour market 'flexibilisation' remain in place, it is likely that fiscal interventions will disproportionately benefit rentier interests. Not only would such an outcome reinforce existing wealth and income inequalities; it would also under-deliver on the goal of maintaining consumption, given the higher marginal propensity to consumer of lower income, non-rentier groups.

To say that a policy of continuing to prioritise shareholder and creditor rights over those of labour would be self-defeating in the circumstances of the COVID crisis does not mean that it will not be adopted. However, from the point of view of the practical feasibility of bringing about a policy shift, COVID-19 provides states with the kind of opportunity to reregulate capital to which generally only happens during wartime. During the two World Wars of the twentieth century, the normal working of financial markets was essentially in abeyance, and governments assumed powers of direct management over most of the industrial economy. The COVID crisis has not yet reached that stage, but within a few weeks of it beginning, it has become practically infeasible for dividend payments and share buy-backs to continue as before. Financial speculation has by no means ceased, and it will be interesting to see whether regulators have the appetite to restrict the trading strategies of hedge funds. This will be a good

test of whether theories of the informational efficiency of capital markets continue to have the sway they held even at the height of the 2008-9 crisis.

For those who have been critical of the neoliberal policy turn of recent decades, the COVID crisis is ample justification for renewed investment in public goods and for a redrawing of the public-private divide, which is better able to protect the sphere of the state from that of the market. Without effective international cooperation to build social standards into the structure of global trade, however, little will be achieved. It follows that wage and employment policies will have to address not just the substance of regulation, but also modes of governance in a wider sense: setting limits on capital mobility and the scope of the 'mutual recognition' principle in so far as it is simply an open door to tax avoidance and regulatory arbitrage. This will require thinking the role of law as a mode of transnational governance, in ways that address its tendency to reinforce the power of capital at the expense of social interests and public goods (Pistor, 2019).

6. Summary and Conclusions

This chapter has sought to review and synthesise the literature linking trends in inequality to the way that labour and capital markets are constituted and governed. It has sought to show that widening disparities of wealth and income since the 1980s can be attributed at least in part to institutional changes which have, broadly speaking, weakened labour, while strengthening capital. The removal of legal support for sectoral wage setting and for collective bargaining more generally is one such factor; another is the strengthening of shareholder rights through reforms to company law and corporate governance. These legal and institutional changes are behind some of the more significant indicators of growing inequality in developed countries, such as the widening gap between wages and labour output in the United States, and the rise in the capital share, and corresponding fall in the labour share, which has been experienced across the OECD since the 1990s. The chapter has also reviewed the contribution of legal and institutional factors to the growing use of tax havens to conceal financial wealth, and specifically has highlighted changes in the legal and fiscal regimes of 'onshore' states as a critical factor in the success of their 'offshore' counterparts.

The argument that 'institutions matter' opens up a space for policy reforms that might otherwise be closed off by an over-naturalised understanding of inequality, that is, one which understands inequality as inherent in capitalism to the point of being irremediable. This is not to say that institutions are entirely malleable. There are path-dependent aspects to legal and other institutions, which make them difficult to reform, and obstacles to constructing coalitions of the kind needed to overcome collective action problem. A closer look at recent trends in institutional reform suggests, however, that there are many contexts in which egalitarian and solidaristic policies are currently being implemented. The revival of the minimum wage as an instrument of labour market policy is a case in point. Once the need for a statutory wage floor is accepted, it becomes more straightforward to argue for the revival of sectoral collective bargaining. Similarly, the negative experience of 'dualism' in employment protection has led to a reappraisal of the importance of dismissal laws in promoting investment in human capital.

The promotion of wage and employment stability is also becoming integral to efforts to push back against the erosion of the tax base. It is possible then to envisage scenarios in which complementary policy changes in labour, company and fiscal law interact to promote egalitarian wage and employment policies, a re-embedding to match the dis-embedding, which began in the early 1980s.

Structural breaks in policy making generally require a crisis to trigger them. The 2008-9 financial crisis failed to catalyse the necessary changes, and whether the COVID-19 crisis will prove to be any more transformational remain to be seen. The early weeks of the crisis saw far-reaching developments in wage and employment policy, as states put in place economy-wide wage subsidy and short-time working schemes to short up employment, while suspending the operation of balanced budget rules. Far-reaching as these developments were, they were not exactly unprecedented. Similar wage and employment subsidy schemes had operated, if not quite on the same scale, in the 1970s and 1980s, and during the global financial crisis. Moreover, it is in the nature of such measures that they can be quickly unwound. Having said that, such is the shock administered by the COVID-19 crisis that there is likely to be a continuing need for fiscal measures to underpin demand. Under those circumstances there will be a pressing need for solidaristic wage and social security policies, and a much strengthened role of the state in putting a floor of rights under the operation of the labour market.

Yet if the COVID-19 crisis is to be the catalyst for lasting change, it will be necessary to address not simply the substance of economic governance, but its mode. In the long period of neoliberal policy hegemony, the legal system became an instrument of regulatory arbitrage and avoidance, amplifying shifts in the balance of power between capital and labour, and undermining state capacity. A recalibration of the role of law, aimed at promoting investment in national and global public goods, is long overdue.

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Tables

Table 1. Variables on Shareholder Protection: Definition and Coding Algorithms

Definition	*Algorithm*
1. Powers of the general meeting for de facto changes	If the sale of more than 50 % of the company's assets requires approval of the general meeting it equals 1; if the sale of more than 80 % of the assets requires approval it equals 0.5; otherwise 0.
2. Agenda setting power	Equals 1 if shareholders who hold 1 % or less of the capital can put an item on the agenda; equals 0.75 if there is a hurdle of more than 1 % but not more than 3%; equals 0.5 if there is a hurdle of more than 3 % but not more than 5%; equals 0.25 if there is a hurdle of more than 5% but not more than 10 %; equals 0 otherwise.
3. Anticipation of shareholder decision facilitated	Equals 1 if (1) postal voting is possible or (2) proxy solicitation with two-way voting proxy form has to be provided by the company (i.e. the directors or managers); equals 0.5 if (1) postal voting is possible if provided in the articles or allowed by the directors, or (2) the company has to provide a two-way proxy form but not proxy solicitation; equals 0 otherwise.
4. Prohibition of multiple voting rights (super voting rights)	Equals 1 if there is a prohibition of multiple voting rights; equals 2/3 if only companies which already have multiple voting rights can keep them; equals 1/3 if state approval is necessary; equals 0 otherwise.
5. Independent board members	Equals 1 if at least half of the board members must be independent; equals 0.5 if 25 % of them must be independent; equals 0 otherwise
6. Feasibility of director's dismissal	Equals 0 if good reason is required for the dismissal of directors; equals 0.25 if directors can always be dismissed but are always compensated for dismissal without good reason; equals 0.5 if directors are not always compensated for dismissal without good reason but they could have concluded a non-fixed-term contract with the company; equals 0.75 if in cases of dismissal without good reason directors are only compensated if compensation is specifically contractually agreed; equals 1 if there are no special requirements for dismissal and no compensation has to be paid. Note: If there is a statutory limit on the amount of compensation, this can lead to a higher score.
7. Private enforcement of directors duties (derivative suit)	Equals 0 if this is typically excluded (e.g., because of strict subsidiarity requirement, hurdle which is at least 20 %); equals 0.5 if there are some restrictions (e.g., certain percentage of share capital; demand requirement); equals 1 if private enforcement of directors duties is readily possible.
8. Shareholder action against resolutions of the general meeting	Equals 1 if every shareholder can file a claim against a resolution by the general meeting; equals 0.5 if there is a threshold of 10 % voting rights; equals 0 if this kind of shareholder action does not exist.
9. Mandatory bid	Equals 1 if there is a mandatory public bid for the entirety of shares in case of purchase of 30% or 1/3 of the shares; equals 0.5 if the mandatory bid is triggered at a higher percentage (such as 40 or 50 %); further, it equals 0.5 if there is a mandatory bid but the bidder is only required to buy part of the shares; equals 0 if there is no mandatory bid at all.

10. Disclosure of major share ownership	Equals 1 if shareholders who acquire at least 3 % of the company's capital have to disclose it; equals 0.75 if this concerns 5 % of the capital; equals 0.5 if this concerns 10 %; equals 0.25 if this concerns 25 %; equals 0 otherwise

Source: Deakin, S., Armour, J., & Siems, M. (2017). CBR Leximetric Datasets [updated] [Dataset]. https://doi.org/10.17863/CAM.9130.

Table 2. Variables on Employment Protection: Definition and Coding Algorithms

Definition	*Algorithm*
1. The law, as opposed to the contracting parties, determines the legal status of the worker	Equals 0 if the parties are free to stipulate that the relationship is one of self-employment as opposed to employee status; 0.5 if the law allows the issue of status to be determined by the nature of the contract made by the parties (as in the case of the English common law 'mutuality of obligation' test); and 1 if the law mandates employee status on the parties if certain specified criteria are met (such as form of payment, duration of hiring, etc.).
2. The cost of dismissing part-time workers is equal in proportionate terms to the cost of dismissing full-time workers	Equals 1 if as a matter of law part-time workers enjoy proportionate rights to full-time workers in respect of dismissal protection (notice periods, severance pay and unjust dismissal protection). Equals 0 otherwise. Scope for gradation between 0 and 1 to reflect changes in the strength of the law.
3. Fixed-term contracts are allowed only for work of limited duration	Equals 1 if the law imposes a substantive constraint on the conclusion of a fixed-term contract, by, for example, allowing temporary hirings only for jobs which are temporary by nature, training, seasonal work, replacement of workers on maternity or sick leave, or other specified reasons. Equals 0 otherwise. Scope for gradation between 0 and 1 to reflect changes in the strength of the law.
4. Maximum duration of fixed-term contracts	Measures the maximum cumulative duration of fixed-term contracts permitted by law before the employment is deemed to be permanent. The score is normalised from 0 to 1, with higher values indicating a lower permitted duration. The score equals 1 if the maximum limit is less than 1 year and 0 if it is 10 years or more or if there is no legal limit.
5. Legally mandated notice period	Measures the length of notice, in weeks, that has to be given to a worker with 3 years' employment. Normalise the score so that 0 weeks = 0 and 12 weeks = 1.
6. Legally mandated redundancy compensation	Measures the amount of redundancy compensation payable to a worker made redundant after 3 years of employment, measured in weeks of pay. Normalise the score so that 0 weeks = 0 and 12 weeks = 1.
7. Minimum qualifying period of service for normal case of unjust dismissal	Measures the period of service required before a worker qualifies for general protection against unjust dismissal. Normalise the score so that 3 years or more = 0, 0 months = 1
8. Law imposes procedural constraints on dismissal	Equals 1 if a dismissal is necessarily unjust if the employer fails to follow procedural requirements prior to dismissal. Equals 0.67 if failure to follow procedural requirements will normally lead to a finding of unjust dismissal. Equals 0.33 if failure to follow procedural requirement is just one factor taken into account in unjust dismissal cases. Equals 0 if there are no procedural requirements for dismissal. Scope for gradations between 0 and 1 to reflect changes in the strength of the law.
9. Law imposes substantive constraints on dismissal	Equals 1 if dismissal is only permissible for serious misconduct or fault of the employee. Equals 0.67 if dismissal is lawful according to a wider range of legitimate reasons (misconduct, lack of capability, redundancy, etc.). Equals 0.33 if dismissal is permissible if it is 'just' or 'fair' as defined by case law. Equals 0 if employment is at will (i.e., no cause dismissal is normally permissible). Scope for gradations between 0 and 1 to reflect changes in the strength of the law.

10. Reinstatement normal remedy for unfair dismissal	Equals 1 if reinstatement is the normal remedy for unjust dismissal and is regularly enforced. Equals 0.67 if reinstatement and compensation are, de iure and de facto, alternative remedies. Equals 0.33 if compensation is the normal remedy. Equals 0 if no remedy is available as of right. Scope for further gradations between 0 and 1 to reflect changes in the strength of the law.
11. Notification of dismissal	Equals 1 if by law or binding collective agreement the employer has to obtain the permission of a state body or third party prior to an individual or collective dismissal. Equals 0.67 if a state body or third party has to be notified prior to the dismissal. Equals 0.33 if the employer has to give the worker written reasons for the dismissal. Equals 0 if an oral statement of dismissal to the worker suffices. Scope for further gradations between 0 and 1 to reflect changes in the strength of the law.
12. Redundancy selection	Equals 1 if by law or binding collective agreement the employer must follow priority rules based on seniority, marital status, number or dependants, etc., prior to dismissing for redundancy. Equals 0 otherwise. Scope for further gradations between 0 and 1 to reflect changes in the strength of the law.
13. Priority in re-employment	Equals 1 if by law or binding collective agreement the employer must follow priority rules relating to the re-employment of former workers. Equals 0 otherwise. Scope for further gradations between 0 and 1 to reflect changes in the strength of the law.
14. Codetermination: board membership	Equals 1 if the law gives unions and/or workers to right to nominate board-level directors in companies of a certain size. Equals 0 otherwise. Scope for further gradations between 0 and 1 to reflect changes in the strength of the law.
15. Codetermination and information/consultation of workers	Equals 1 if the works councils or enterprise committees have legal powers of co-decision making. Equals 0.67 if works councils or enterprise committees must be provided by law under certain conditions but do not have the power of co-decision making. Equals 0.5 if works councils or enterprise committees may be required by law unless the employer can point to alternative or pre-existing alternative arrangements. Equals 0.33 if the law provides for information and consultation of workers or worker representatives on certain matters but where there is no obligaton to maintain a works council or enterprise committee as a standing body. Equals 0 otherwise. Scope for further gradations between 0 and 1 to reflect changes in the strength of the law.

Source: Deakin, S., Armour, J., & Siems, M. (2017). CBR Leximetric Datasets [updated] [Dataset]. https://doi.org/10.17863/CAM.9130.

Figures

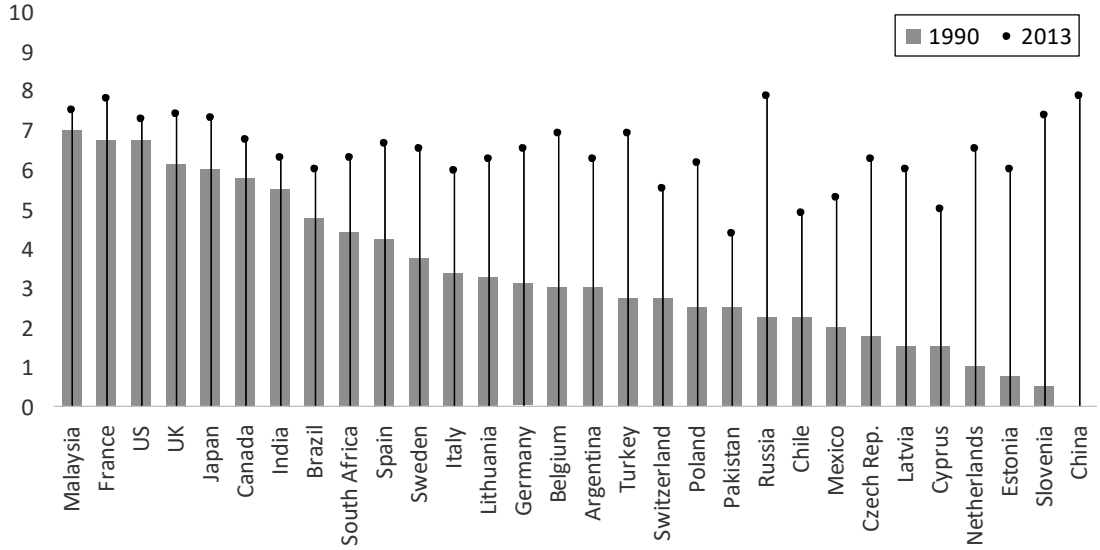

Figure 1: Shareholder Protection in 30 countries, 1990 and 2013. Source: Katelouzou and Siems (2015).

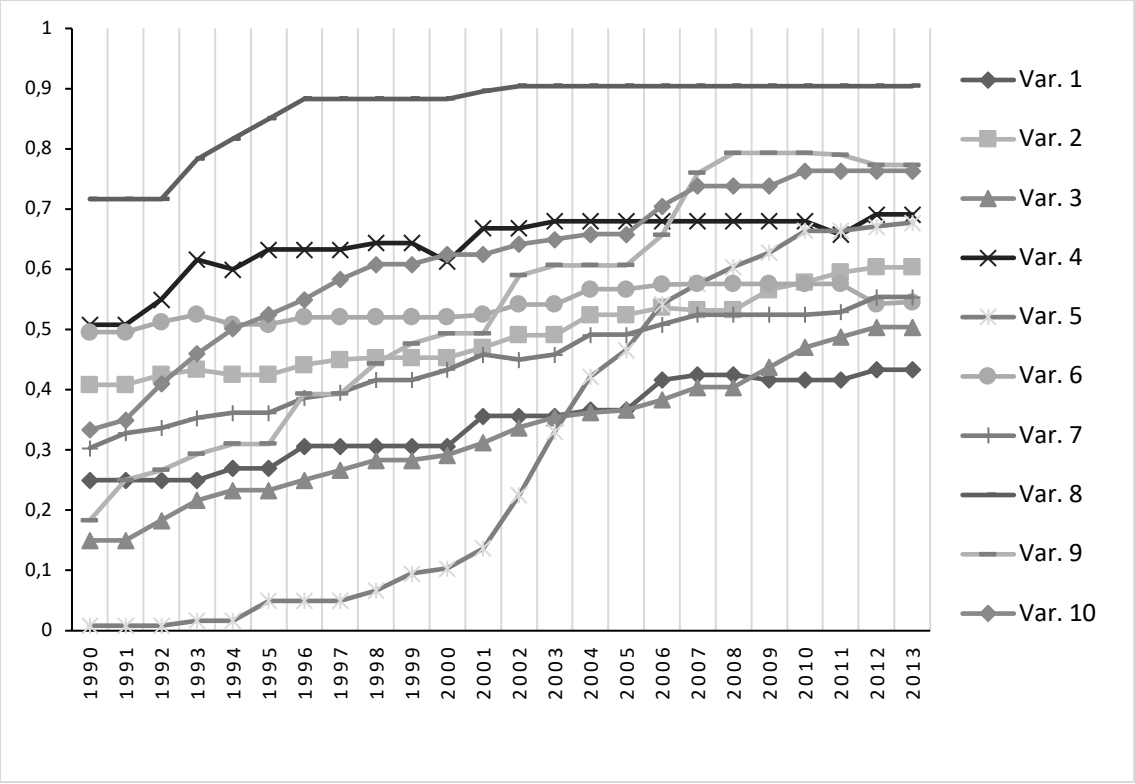

Figure 2: Shareholder Protection in 30 Countries, 1990-2013, Scores for Individual Variables (see Table 1). Source: Katelouzou and Siems (2015).

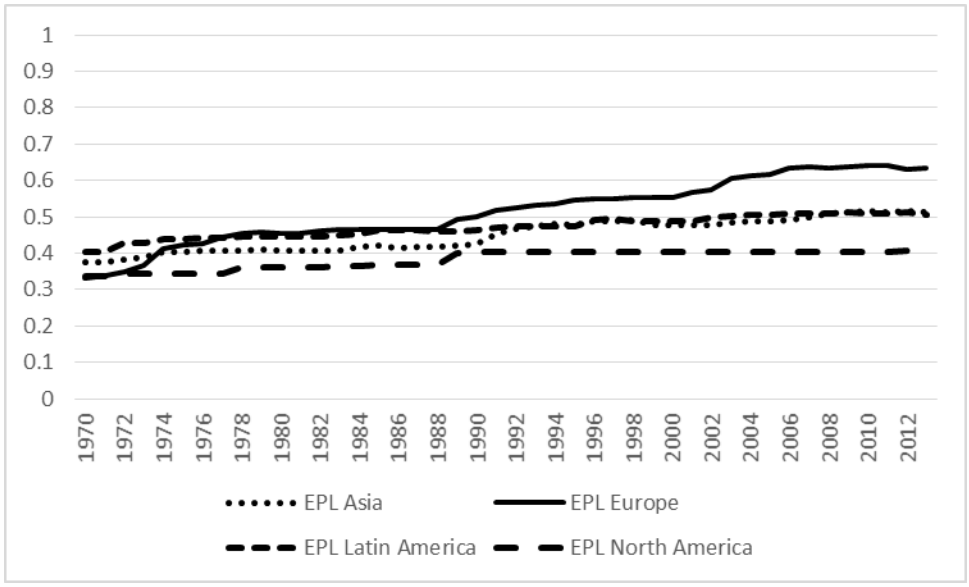

Figure 3: Employment Protection Trends in Selected Regions,1970-2013. Source: Adams et al., 2019.

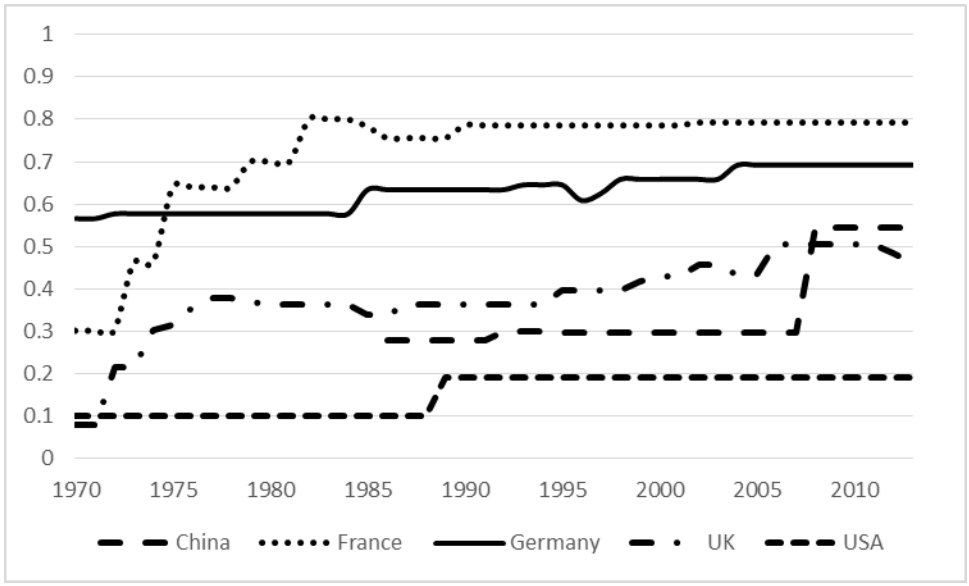

Figure 4: Employment Protection Trends in Selected Countries,1970-2013 (China from 1986). Source: Adams et al., 2019.