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978-1-107-04174-5 - Resocialising Europe in a Time of Crisis

Edited by Nicola Countouris and Mark Freedland

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RESOCIALISING EUROPE IN A TIME OF CRISIS

Terms such as ‘Social Europe’ and ‘European Social Model’ have long resided in the political and regulatory lexicon of European integration. But arguably, and in spite of the inclusion of a ‘Solidarity’ chapter in the Charter of Fundamental Rights, the EU social profile has entered a deep period of crisis. The ECJ judgments in *Viking* and *Laval* exemplify the unresolved tension between the EU’s strong market imperatives and its fragile social aspirations, while the ongoing economic crisis and the social conditions attached to a number of ‘bail-out’ packages are further indications of the continuing retrenchment of social rights. The status quo is one in which workers appear to shoulder most of the risks attendant on the making and executing of arrangements for the doing of work. Chapters in this book advocate a reversal of this trend in favour of fair mutualisation, so as to disperse these risks and share them more equitably between employers, the state, and society at large.

NICOLA COUNTOURIS is a Reader in Law at the Faculty of Laws of University College London and the co-ordinator of the UCL Labour Rights Institute. His main research interests are in the areas of Labour Law and European Law.

MARK FREEDLAND is an Emeritus Research Fellow in Law at St John’s College, Oxford and an Honorary Professor at the Faculty of Laws of University College London. His main research interests are in the areas of Labour Law and Public Law.

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For us democracy is a question of human dignity. And human dignity is political freedom . . . the right to health, work, education and social welfare. Human dignity is the right and the practical possibility to shape the future with others.

Olof Palme

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PREFACE

We write this preface in a week in which the BBC reports on ‘Europe’s leaders, rather belatedly, . . . recognising that youth unemployment’ – now at about 25 per cent in the EU as a whole and reaching above 60 per cent in some of its Southern Member States – ‘threatens the entire European project’, on ‘Stockholm riots throw[ing] spotlight on Swedish inequality’ and on ‘the OECD cutting Eurozone growth forecasts’. It is nearly five years since the European economic slump begun and three years since the medieval cure of ‘austerity’ was first administered by the IMF/EC/ECB ‘troika’ to Greece, a country that has effectively turned into a laboratory for testing flawed macroeconomic and social policies that are then exported to other countries and regions of Europe. We now know that these policies are flawed and discredited not just in terms of their economic, social and human impact, but also because they are partly based on academic research that, as noted by Krugman, ‘omitted some data; . . . used unusual and highly questionable statistical procedures; and finally, yes, . . . made an Excel coding error’¹. Anything goes, it seems, to satisfy the fervour of national and supranational policy-makers eager to use the economic crisis as a further opportunity to demolish the frail social pillars of labour and social rights on which the very notion of ‘Social Europe’ rests. What might have initially appeared to be a long and difficult conjuncture, a sort of interregnum between an old and a new way of structuring social market economies, is now increasingly developing systemic features of neo-liberalist entrenchment, to paraphrase the title of one of our contributors, in which fundamental labour and social rights are trivialised and relentlessly downgraded to the role of economic variables and adjustment tools.

A year ago, in May 2012, we ran a two-day conference on *Resocialising Europe and the Mutualisation of Risks to Workers*, held at University College

1 Paul Krugman, ‘The Excel Depression’, 18 April 2013, available at www.nytimes.com/2013/04/19/opinion/krugman-the-excel-depression.html?ref=opinion&.r=2&.

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London under the aegis of the UCL Labour Rights Institute and generously funded by the British Academy, UCL and UCL's European Institute. The conference was a unique opportunity to present and elaborate on a series of papers that, after much discussion, engagement and updating, has now resulted in the present edited volume. Back in May 2012 we were suitably conscious that Europe's social and economic problems were deep-seated ones and that the prognosis for Europe in general and Social Europe in particular was everything but positive. It saddens us that one year later no significant event has taken place that might contrive to alter the inevitable 'pessimism of the intellect' that remains vividly expressed in the contributions to this book. On the other hand we hope that the present work will also be seen as a tangible proof of the 'optimism of the will' that European academia is still capable of producing in these particularly difficult times, both in terms of its critical and analytical rigour and, no less important, in terms of its normative, creative and public engagement with reality. Whether our suspicions about the structural nature of some of the great transformations we are currently witnessing will be validated or – as we sincerely hope – disproved by future events, the present work is a testimony to the fact that, in these crucial times, European academics were neither silent about nor complicit in the demise of the institutions, rights and values that – by and large – assured the social and economic progress of our continent for more than fifty years. We draw a considerable sense of relief from the circumstance that other similar initiatives have flourished in recent times, and among the many valuable contributions produced in a similar vein we would like to draw our readers' attention to the 2013 Manifesto drafted by the members of the Transnational Trade Union Rights Experts Network. It is our hope that all these efforts can contribute, to quote Gramsci, 'to dissipate the dark cloudbanks of heavy pessimism which represent a great danger because of the political passivity, the intellectual torpor and the scepticism towards the future which they produce'.

Our project would have never seen the light of the day without the support and assistance of several institutions, colleagues and friends, to whom we owe an unrepayable debt of gratitude. We would like to acknowledge the support of the British Academy, the UCL Faculty of Laws and the UCL European Institute that, in times of austerity, have generously endowed us with the necessary financial means to organise the original May 2012 Conference. We would also like to thank a number of outstanding colleagues and friends who, at various stages and in various ways and capacities, have supported and – most vividly in the case of Keith Ewing – often inspired the development of this project as a whole

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and of the Conference in particular. Our gratitude goes, in particular, to Diamond Ashiagbor, Richard Bellamy, Liz Carter, Hugh Collins, Keith Ewing, Hazel Genn, John Hendy, Jane Holder, Claire Kilpatrick, Helen Langan, Ioannis Lianos, Virginia Mantouvalou, John Monks, Claude Moraes, Gillian Morris, Lisa Penfold, James Penner, Arad Reisberg, Mia Rönmar, Anna Schüle, Helmut Scholz, Philip Schofield, Uta Staiger, Aurora Vimercati, Bernd Waas and Gabi Zimmer. The Conference benefited from the essential input of two key ETUC and TUC officials, Judith Kirton-Darling and Hannah Reed, whose presentations, while not appearing in this book, have markedly inspired it. We are particularly grateful to Enrico Sartor for his outstanding work on the conference's dedicated website and blog (the no longer operational www.resocialisingeurope.org, hosting two excellent blog-posts by Keith Ewing and John Monks, now available on www.ucl.ac.uk/laws/lri/resocialisingeurope) and to the European Labour Law Network and the Institute of Employment Rights for widely circulating it amongst other British and European colleagues. It goes without saying that this book would literally never have existed without the essential involvement and support of Cambridge University Press, and in particular of Sinead Moloney, the Senior Commissioning Editor for Law, and the Press Syndicate. Our gratitude is also extended to the members of the Cambridge University Press team involved in the production of this volume, Helen Francis, Kate Ollerenshaw, Emma Walker and to the three anonymous reviewers. We are also grateful to Caroline Daly, Jessica Foley and Andrew Moretta, for their invaluable research assistance. Last but not least we would like to express our gratitude to the contributing authors of this volume and pay tribute to their passion, intellectual rigour and unwavering commitment to labour law as a tool for the vindication of dignity, social justice and democracy.

*NC and MRF**London and Oxford, 1 June 2013*

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CONTRIBUTORS

CATHERINE BARNARD is Professor in European Union and Employment Law at the University of Cambridge and a fellow of Trinity College. She specialises in EU law, employment law and discrimination law. She is co-director of the Centre for European Legal Studies at Cambridge.

ALAN BOGG is Professor of Labour Law at the University of Oxford and a fellow and tutor in law at Hertford College. He has written widely on a range of labour law issues from a theoretical and comparative perspective, including union recognition, freedom of association, working time and the contract of employment. His book, *The Democratic Aspects of Trade Union Recognition*, was awarded the 2010 SLS Peter Birks Prize for Outstanding Legal Scholarship.

WILLIAM BROWN is Emeritus Professor of Industrial Relations and Emeritus Master of Darwin College at the University of Cambridge.

GIUSEPPE CASALE is Director of the Labour Administration Programme at the ILO, Geneva. He is the Secretary General of the International Society for Labour and Social Security Law and the author of a number of academic books and articles in the area of labour law and industrial relations. He lectures on international and comparative labour law in several European universities.

CONSUELO CHACARTEGUI is an Associate Professor of Labour Law and Social Protection at University Pompeu Fabra, as well as the Vice-Dean of the Industrial Relations Degree. Her research interests lie in the areas of European Social Law with a special focus on the protection of temporary agency workers, gender equality and work–life balance, equality and non-discrimination on the grounds of sexual orientation and the concepts of decent work and dignity.

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COLIN CROUCH is Professor Emeritus of the University of Warwick and external scientific member of the Max Planck Institute for the Study of Societies, Cologne. He has published within the fields of comparative European sociology and contemporary issues in British and European politics. He has recently completed coordinating a European Union research project on the governance of uncertainty and sustainability in labour markets and social policy in European countries.

ANNE DAVIES is Professor of Law and Public Policy at the University of Oxford and Garrick Fellow and Tutor in Law at Brasenose College, Oxford. She is the author of numerous books and articles on labour law, with a particular focus on the issue of non-standard working arrangements. She also researches in the field of public law with a special interest in government contracts.

SIMON DEAKIN is Professor of Law at the Faculty of Law, Cambridge, a Fellow of Peterhouse, a programme director in the Cambridge Centre for Business Research (CBR) and an associate Faculty Member of the Judge Business School. His areas of research interest and specialism include labour law, private law, company law, corporate governance, EU law, law and economics, law and development and empirical legal studies. In recent years he has worked extensively on the social as well as the corporate governance consequences of the financial and economic crisis.

RUTH DUKES is Senior Lecturer in Law at the University of Glasgow and a member of the Institute of Employment Rights. Her research interests lie in the field of labour law, particularly collective labour law and theories and systems of worker representation. She has published work on trade union law, employee information and consultation, and British and German labour history.

SANDRA FREDMAN is the Rhodes Professor of the Laws of the Commonwealth and the USA, Oxford University; Honorary Professor, University of Cape Town; and Professorial Fellow, Pembroke College, Oxford. She has published widely in the fields of equality, labour law and human rights, including *Human Rights Transformed* (2008); *Discrimination Law* (2nd edn, 2011); and *Women and the Law* (1997).

LYDIA HAYES is a legal researcher at the University of Bristol Law School. Her research interests include the organisation of labour, equality law,

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human rights, low-waged work and low-waged workers. She has written on EU freedom of association rights and the right to strike and practised within a trade union context.

FRANK HENDRICKX is Professor of Law at the University of Leuven, the Director of the Institute for Labour Law and a part-time Jean Monnet Professor at Tilburg University. His research interests include labour law, EU law and sports law. He is the editor in chief of the *European Labour Law Journal* and the author of numerous articles and books on Belgian, European and comparative law, both individual and collective.

ARISTEA KOUKIADAKI is a Lecturer in employment studies at the University of Manchester and a research associate of the Centre for Business Research at the University of Cambridge. Her work is in the area of socio-legal studies, with particular reference to labour.

CATHERINE JACQUÉSON is Associate Professor in EU Law at the law Faculty of Copenhagen, Denmark. She is a member of the Research Centre on Legal Studies in Welfare and the Market (WELMA). She has a French law degree, a PhD degree from Copenhagen University and has worked as a Research Fellow at St John's College, Oxford University from 2003 to 2007.

JULIA LÓPEZ LÓPEZ is Professor of Labour Law at the Pompeu Fabra University, Barcelona. Her research interests involve the judicialisation of labour rights and international norms; equality and gender policies; labour law and the social function of labour law the notion of worker and the segmentation of labour rights.

SONIA MCKAY is Professor of European Socio-Legal Studies at the Working Lives Research Institute London Metropolitan University. She is the author of two recent books on migration and has led on a number of EU-funded projects on migration and on precarious work.

WANJIRU NJOYA is a Lecturer in Law at the London School of Economics and a Research Associate of the Centre for Business Research at the University of Cambridge. Her research interests lie in employee participation in corporate governance, on which she has published widely in the fields of both labour law and corporate law.

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TONIA NOVITZ is Professor of Labour Law at the University of Bristol. She has been a visiting fellow at the International Institute for Labour Studies (Geneva), a Jean Monnet Fellow and a Marie Curie Fellow at the European University Institute (Florence) and a visiting professor at the University of Melbourne. She has written on UK labour law, international labour standards, EU social policy, EU external relations and mechanisms for the protection of human rights. She is currently leading a 'Voices at Work' project (with Alan Bogg) funded by the Leverhulme Trust, which involves comparative research in Australia, Canada, NZ, the UK and the US.

COLM O'CONNOR is a Reader in Law at University College London. He has published extensively in the field of human rights and anti-discrimination law and is currently the General Rapporteur of the European Committee on Social Rights of the Council of Europe. He has also acted as specialist legal adviser to the Joint Committee on Human Rights of the UK Parliament on equality law.

SILVANA SCIARRA is Professor of Labour Law and European Social Law, University of Florence; former Professor at the European University Institute and Visiting Professor at Columbia Law School, the Universities of Cambridge, Stockholm and Lund. She specialises in comparative and European labour law and is currently working on issues related to the economic and financial crisis. She has recently published a book in Italian *L'Europa e il lavoro* in which some issues related to the consequences of the crisis on labour law are examined.

PETRA HERZFELD OLSSON is currently working at the Law Department at Uppsala University. Her research deals with the position of different human rights in labour law and lately also with the emerging body of EU law on labour migration. She has also been working on international and national labour law issues at the Swedish Ministry of Employment.

MONIKA SCHLACHTER is Professor in Employment Law and Labour Law at the University of Trier. She specialises in European Labour Law, Human Rights and Antidiscrimination Law. She is co-director of the Institute for Labour Law and Labour Relations in the EU (IAAEU) at Trier and currently Vice President of the European Committee of Social Rights (Council of Europe).

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KENDRA STRAUSS is a University Lecturer in the Department of Geography at the University of Cambridge and a Fellow of Robinson College. She is an economic and labour geographer with research interests in the areas of occupational welfare, labour market change and feminist political economy.

ALAIN SUPIOT is currently Professor at the College de France and permanent fellow of the Nantes Institute for Advanced Studies. His research focuses on labor law and social security and on the analysis of the dogmatic foundations of social ties.

ANDRZEJ MARIAN ŚWIĄTKOWSKI is a Jean Monnet Professor of European labour law and social security Faculty of Law & Administration, Jagiellonian University, Krakow, Poland, where he is also the Head of the Chair of Labour Law and Social Policy. He has also been a Member and the Vice-president of the European Committee of Social Rights (2002–2012).

MANFRED WEISS is Professor Emeritus at the Goethe-University in Frankfurt, Germany. He is the former President of the International Labour and Employment Association (ILERA) and the former Vice-President of the German Law Association. He has published widely on the subject of comparative and international labour law and has a long-standing cooperation with the ILO.

CHRIS F. WRIGHT is a Postdoctoral Research Fellow at the Centre for Workforce Futures, Macquarie University, Australia. Prior to this, he completed doctoral studies and worked as a research fellow at the University of Cambridge. Chris's research interests cover various aspects of labour market regulation and the strategies developed by governments, employers and trade unions in response to structural economic change.