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A Review of Zoe Adams’ Labour and the Wage — Maria Tzanakopoulou

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[*This post reviews Zoe Adams' recently published* Labour and the Wage: A Critical Perspective *(Oxford: Oxford University Press, 2020).*]

Exploring the turbulent journey of the legal concept of the wage, as well as the practices associated with it, Zoe Adams' *Labour and the Wage: A Critical Perspective* introduces, at long last, the question of legal form into contemporary UK labour law analysis.

Adams begins her discussion of the wage by drawing inspiration from what she describes as a Marxian and critical realist "ontology". Notwithstanding the debatable added value of this repeated resort to the concept of "ontology", Adams' methodological approach allows her to break loose from a number of chronic misinterpretations. One such misinterpretation is the instrumentalist approach to law, according to which law is a device that intervenes *ex post facto* to bring order into a social reality pre-constituted independent of the law itself. Echoing Evgeny Pashukanis' theory of the legal form and its relation to the commodity form, Adams recalls how "the free and equal subject as a bearer of legal (property) rights" (45) is always already present in capitalist market practices, its identity in need of perpetuation through legal discourse. In this context, Adams acknowledges that (legal) concepts and the way in which they are understood are inseparable from the way a subject comes to conceive both itself and society. What it means to be a worker or employer is therefore shaped by society's collective understanding of the relevant positions and practices. Following this coupling of the "ontological" with the "epistemological" (4–5), labour and the wage are seen as concepts and institutions that are structurally entangled in a web of practices that are co-constitutive with (and reproductive of) the capitalist mode of production.

Necessarily, then, labour law in general and the wage in particular also embody and reflect the contradictions of capitalism. For Adams, the wage constitutes the price of commodified labour power but also takes into account the costs of social reproduction. The contradiction implied in this concurrent dedication to market coordination and social reproduction is partly responsible for the different historical manifestations of the wage in capitalism. Depending on the stage of capitalist development, the balance has tilted either toward the market function or the social reproduction function, something Adams demonstrates with clarity and precision throughout the descriptive/historical part of her book. For instance, Adams shows how the initially distinct concepts of wage, salary, and remuneration have today come to be collapsed into the single term, "wage", connoting the blindness of courts to the broader social function of the right to be paid and their persistent adherence to the mere enforcement of contractual terms. Here Adams examines the general historical context, together with case law and statute law, to track the early twentieth century's conceptual shift from the wage, understood as the market price for labour, to remuneration, a term that carries with it at least the idea of a guaranteed minimum income. Adams reveals how

the formerly distinct characters of these concepts became muddled as Britain entered the neoliberal era.

Equally instructive is Adams' discussion of the historical development of legal concepts related to the wage, which contemporary courts use widely, and often nebulously, to determine the status of labour relations. Among these concepts, mutuality of obligation is used to demonstrate, among other things, the shift from a "constitutive approach", under which courts assumed a more active role in shaping employment relations (often against the dictates of the market), to today's "purposive" approach, under which courts intervene merely to enforce a written contract or at best to bring that contract in line with the reality of a working relationship. Adams here exposes the limited potential of a series of recent labour law cases commonly seen as marking a breakthrough in industrial relations because they acknowledge the existence of "sham contracts", namely contracts that do not reflect the genuine relationship of the parties. Despite their ostensibly positive outcome, Adams argues that these cases leave contractual orthodoxy unchallenged, as they remain faithful to the task of enforcing the apparent intentions of the parties instead of applying public policy considerations that could have a transformative effect on the relationship between worker and employer (e.g. 252–53). This line of argument may estrange some readers, pinning as it does, if only implicitly, more hopes on the courts than they likely merit. It is, however, valuable as it reads today's case law against the background of the structural totality of capitalist relations, as well as the historical development of legal concepts and the contradictions they embody.

Engagement with contradictions and Pashukanis' theory of the legal form permeates Adams' analysis, while quite expectedly it also circumscribes the range of possibilities for structural change that the author ascribes to labour law. On the one hand, Adams recognizes that "it is in the labour law context that the contradictions inherent in the form of law express themselves more clearly", and that "[labour] law is … not only one of the principal sites of class conflict, but also, is one aspect of law whose legitimacy is likely to be most contested" (55). On the other hand, this special function of labour law as a terrain of class conflict finds its limit in "existing structures–the 'purposes' to which [labour law] can be put" (260). This line of reasoning on the prospects and limits of labour law is helpful and certainly in tune with the author's analysis. What is less certain, though, is whether it is a line of reasoning exclusive to a Marxist analysis of law. This much would probably be accepted by any thinker, Marxist or not, who rejects the idea of markets as natural spontaneous orders, understanding them instead as institutions that determine and are determined by–sustain and are sustained by–the law, among other things. Even more so, one need not adopt Pashukanis' approach to the legal form as a reflection of commodity exchange to realize that structural change through the law will always find its limits in the purposes the law serves by design. All it

takes is for one to accept that the law is not superfluous for the capitalist economy, but rather a prerequisite for its existence and survival.

A more delicate question relates to Adams' decision to describe labour law as not only a terrain of class conflict, *but also* as a terrain for contesting legitimacy (55). Here class conflict and contestation are presented as standing in a relation of coincidence to each other, as opposed to a relation of causality. This may surprise the reader who expects to see class conflict and contestation presented as cause and effect. It is, however, a choice of words not inconsistent with the Adams' tendency to remain doubtful about the significance of class struggle. While class struggle and the balance of powers in the United Kingdom occasionally receive some passing references as factors that have "to some extent" influenced labour regulation and the wage (e.g. 67, 72, 124), they are deliberately left outside the scope of the inquiry. The reason is offered early in the analysis, when Adams distinguishes between "the political/class struggles that influence the law's substantive content" and "the *form of law*, the medium through which power must be exercised in capitalism" (42, original emphasis). In more unequivocal terms, though, this is expressed towards the end of the book:

"[C]ritical labour law scholarship in the United Kingdom has long emphasised the importance of situating labour law in the context of capitalism. However, it has done so largely at the expense of privileging questions of content (the substance of labour market policies) over those of form. *As a result, it has tended to focus almost exclusively on the various conflicts and power struggles that shape labour market policy*, directing its critique (primarily) towards 'the illegitimate domination, inequality, and democratic deficits in social life', rather than the structures and contradictions that frame and condition them. In this book, by contrast, … the focus has been on understanding the contradictions inherent in the dynamics of capitalism's development and the normative expectations and ideals that it, and law, presupposes. This did not mean ignoring questions of content, nor the real, lived social struggles that shape (and have historically shaped) *campaigns for reform*; but it did mean situating these struggles within a broader theory of the objective contradictions that underpin them." (255–56, emphasis mine)

It appears that a distinction is drawn here between content, which is amenable to class struggle, and form, which is not. This distinction at first sight appears to resonate with Pashukanis' own position towards content and the class struggle, expressed, for example, in the following passage:

"In the past, the class struggle has often resulted in a re-allocation of property, the expropriation of usurers and large landowners. Yet these upheavals, extremely unpleasant though they may have been for those groups and classes who were their victims, did not shake the foundations of private property, the economic framework linking economic units through exchange. The same people who had rebelled against

property had no choice but to approve it next day when they met in the market as independent producers. That is the way of all non-proletarian revolutions." [1]

However, this is no different than saying–like Marx–that when, for example, workers' struggles achieved the shortening of the working day, capital reinvented ways of surplus value extraction, throwing itself into the production of relative surplus value. [2] It is one thing to acknowledge that capital will reinvent itself in response to workers' struggles and quite another to dismiss the relevance of class struggle to legal form. The idea, then, may not be so much that the exclusive territory of class struggle is the law's content (or, for that matter, "campaigns for reform"), but rather that transition founded on proletarian struggles will have to do away with law altogether, in the same way that it will have to do away with the state and the institution of labour. If the opposite is true, namely that the legal form is alien to class struggle, then the very foundation of Marxist analysis of law, as "rooted in the material relations of production", inevitably collapses. [3] In fact, if we fail to see that the class struggle is already present in the legal form, there is a risk of sliding from a Marxist understanding of law and relations of production as co-constitutive into a metaphysical explanation of why the law exists in the form that it does. In turn, if we accept that relations of production are the vital realm of class struggle, then it is the latter that will–to recall Althusser–determine law in the final instance.

On the basis of these considerations, it is perhaps worth posing a related question regarding class struggle and its relation to the form of labour law in particular. As Adams persuasively argues, "whatever the content of labour law rules, insofar as that content continues to assume the form of labour law, it will necessarily participate in the reproduction of the very exploitative relations that labour lawyers hope to change" (53, original emphasis). At the same time, it is implicitly recognized that labour law also introduces a slight anomaly into the legal form, without however disrupting the market premises of the legal system. This anomaly is indicated by the author herself, who recognizes labour law as a principal site of class conflict or as a possible "catalyst for more far-reaching structural change" (267). The question that arises is whether there is something in labour law that enables it to act as such a catalyst more than other legal fields do. In attempting to answer this question, we may make the hypothesis that labour law's anomaly is that, unlike other fields, it assumes elements of inequality between the parties, thus interfering with the premise of the equal subject. If we then try to explain that anomaly in the form of labour law, we will come face to face with the class struggle, right in the form's heart. Here, however, one needs to be cautious. Adams explains how UK courts will today go no further than enforcing the "free" agreement between employer and worker, even if they grapple with the inequality of bargaining parties. This would suggest that there is nothing uncommon in the form of labour law. However, this judicial deference to the "free agreement" has not always existed in capitalist Britain. Adams' enlightening review of the early twentieth century

shows that law did "not simply enforce the terms of the parties' agreement" (78). Instead, "the courts could, and should, imply contracts of employment in order to provide both parties with greater stability and protection" (128). Based on the author's own interpretation of the case law, it therefore appears that the basic premises of the form of labour law may not be undergoing radical change, even if elements of the form have nevertheless been adjusted. Central to this adjustment is the class struggle, which far from post-dating the legal form is always present in it.

To summarize, Adams' outstanding account of labour and the wage compels the reader to look at labour law from a different and unconventional but also a courageous perspective–that of Marxism. In this regard, Adams makes a valuable contribution to recent literature on Marxism and law. In addition, the book is highly informative, as it navigates the reader through centuries of labour legislation and case law–from pre-capitalist England to the post-Thatcherite chaos. What is perhaps missing is an appreciation of class struggle, not in the sense of isolated workers' struggles that merit mention from a nostalgic point of view but in the sense of an historical process with vital explanatory power which lies at the centre of the capitalist mode of production and which informs the form and content of law, including our self-understanding as legal subjects. This is an historical process which epitomizes what one may call "Marxian ontology".

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[1] Evgeny Pashukanis, *The General Theory of Law and Marxism*, trans. Barbara Einhorn (New Brunswick, NJ: Transaction Publishers, 2003 [1924]), 123–24.

[2] Karl Marx, *Capital: A Critique of Political Economy*, vol. 1, trans. Ben Fowkes (Harmondsworth: Penguin, 1976 [1867]), 279.

[3] Pashukanis, *General Theory*, 94.

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