Toward a Re-Teaching of Labor Law

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I. PROLOGUE

I hardly remember my first encounter with Labor Law in law school — not knowing it would be one of the fields of law to which I would dedicate myself. What I will never forget, however, is the rough sketch of an unbalanced scale — sometimes it crosses my mind as a seesaw — with the letters "ER" and "EE," denoting employers and employees, on opposite sides. Notwithstanding the fact that this mid-class scribble by my professor most certainly cannot approximate the depth and extent of power relations, or the dynamics between them, I took it for what it was worth, especially in what I knew then of *legal education*.

Much has been said about the state of legal education in the Philippines and its critique,[1] but not much is present on the teachings and learnings of

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1. *See* IRENE R. CORTÉS, ESSAYS ON LEGAL EDUCATION (1994). *See also* Merlin M. Magallona, *Comments on Legal Education in the Third World*, 53 PHIL. L.J. 81 (1978)

specific subjects of law.[2] Most commentaries on this matter are confined within textbooks written by renowned experts, which is a natural consequence of their scholarly attempts to bring to light the convoluted text of the law and the jurisprudence that comes with it.[3] Yet, for students and even faculties of law — let us admit — such subject-specific critiques are almost always overlooked and taken for granted as inessential.

We can, of course, have a complex discussion on tracing the roots of this phenomenon, but for the purposes of this Essay, a brief one suffices. It may be the bar examination-centric critique of legal education.[4] It may be the utter lack of breathing room for students to explore what is there to discover beyond the blackletter law. It may even be the pressure on law faculties to produce the most brilliant of students under their care, however "best" is defined, but it most often refers to those who can withstand a departmental exam at the end of a grueling semester. To some extent, and quite sadly, it may even be the apologetic admission that it is simply beyond both the students' and the faculties' control.

Others could argue that this is beyond the mission of law schools.[5] It may be true that law schools are already sufficiently burdened with producing bar exam-ready graduates and, later, practice-ready lawyers.[6] In fact, the Legal

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& Sedfrey M. Candelaria & Maria Cristina T. Mundin, *A Review of Legal Education in the Philippines*, 55 ATENEO L.J. 567 (2010).

2. *But see* Nicholas Felix L. Ty, *A Non-Negotiable Confession: Coming to Terms with the Negotiable Instruments Law's Practical Irrelevance Amidst its Mandatory Instruction*, 91 PHIL. L.J. 707 (2018).

3. *See, e.g.*, CESARIO A. AZUCENA, JR., THE LABOR CODE WITH COMMENTS AND CASES (2021); RUBEN F. BALANE, JOTTINGS AND JURISPRUDENCE IN CIVIL LAW (SUCCESSION) (2016); JOSE CAMPOS, JR., THE CORPORATION CODE (1990); & ARTURO M. TOLENTINO, COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES (1979).

4. Mariano F. Magsalin, Jr., *The State of Philippine Legal Education Revisited*, 4 ARELLANO L. & POL'Y REV. 38, 50 (2003).

5. *Id.* at 49.

6. *See* Marlon Ramos, *No More 'Top 10' Listing in 2021 Bar Exams*, PHIL. DAILY INQ., Aug. 28, 2021, *available at* https://newsinfo.inquirer.net/1480008/no-more-top-10-listing-in-2021-bar-exams (last accessed Apr. 30, 2022) [https://perma.cc/PZG9-VWW7].

Education Board, through its rule-making power,[7] promulgated a revised model curriculum for law schools under its supervision.[8] While still included in the list of mandated core courses, the introductory course "Labor Law and Social Legislation" was reduced from two three-unit courses to one four-unit course.[9] The full course description is as follows —

> A study of social legislation laws with a particular focus on labor rights and welfare. The course also touches on important provisions and jurisprudence on labor standards and relations under the Labor Code and special laws, as well as an introduction in the Rules of Procedure of the National Labor Relations Commission.
>
> The course also surveys social justice legislation to highlight the special protections for vulnerable sectors, key principles of agrarian reform laws, and welfare laws such as SSS and GSIS laws.
>
> The course is an integration of the previous Labor Law I, Labor Law II, [ ] Agrarian Law, and Social Legislation courses.[10]

Without discounting the significance of such a standard, let us open with a question: *Does the traditional teaching of Labor Law enable students and lawyers to effectively face society's emerging legal questions?*

A snapshot of the state of Labor Law, labor rights, and the efficacy of legal mechanisms for their enforcement may be seen in the amount of judgment awards by the Regional Arbitration Branches (RABs) of the National Labor

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7. An Act Providing for Reforms in Legal Education, Creating for the Purpose a Legal Education Board, and for Other Purposes [Legal Education Reform Act of 1993], Republic Act No. 7662, § 7 (f) (1993). *See also* Oscar B. Pimentel, et al. v. Legal Education Board, G.R. No. 230642, Sept. 10, 2019, *available at* https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65751 (last accessed Apr. 30, 2022).

8. Legal Education Board, The Revised Model Curriculum of the Basic Law Program, Memorandum Order No. 24, Series of 2021 [LEB M.O. No. 24, s. 2021] (June 30, 2021).

9. *Id.* § 8.

10. *Id.* § 10. *Contra* Legal Education Board, Policies and Standards of Legal Education and Manual of Regulations for Law Schools, Memorandum Order No. 1, Series of 2011 [LEB M.O. No. 1, s. 2011], at 38 & 40 (Apr. 28, 2011). Check the course descriptions for Labor Law I (3 units) and Labor Law II (3 units).

Relations Commission (NLRC) in the past five years (2016-2020), which is summarized in Table 1.[11]

	Regular (local) cases			OFW cases			
	Awarded through settlement	Awarded through decision on the merits	Total amount of judgment awards	Awarded through settlement	Awarded through decision on the merits	Total amount of judgment awards	*Overall total*
2020	360	2,875	3,235	1,054	798	1,852	5,087
2019	911	2,903	3,814	2,814	1,133	3,947	7,761
2018	625	2,515	3,140	3,372	881	4,253	7,393
2017	919	1,384	2,303	2,349	609	2,958	5,261
2016	454	3,044	3,498	2,691	986	3,677	7,175

Table 1. Amount of Judgment Awards by the RABs, 2016-2020, *in million Pesos*

It is easy to treat the data as indicators of achievement because an award translates into a victory for workers. This appreciation, however, is

11. National Labor Relations Commission, Performance Report 2016, *available at* https://nlrc.dole.gov.ph/uploads/contents/transparency/2016%20Annual%20Report.pdf (last accessed Apr. 30, 2022) [https://perma.cc/M4RM-3RXU]; National Labor Relations Commission, Performance Report 2017, *available at* https://nlrc.dole.gov.ph/uploads/contents/transparency/2017.NLRC.Annual.Report.pdf (last accessed Apr. 30, 2022) [https://perma.cc/ZF9N-WX65]; National Labor Relations Commission, Performance Report 2018, *available at* https://nlrc.dole.gov.ph/uploads/contents/transparency/ANNUAL%202018.pdf (last accessed Apr. 30, 2022) [https://perma.cc/Z59T-Q99R]; National Labor Relations Commission, Performance Report 2019, *available at* https://nlrc.dole.gov.ph/uploads/content/Annual%202019-Final%201.pdf (last accessed Apr. 30, 2022) [https://perma.cc/P7XM-EV4R]; & National Labor Relations Commission, Performance Report 2020, *available at* https://nlrc.dole.gov.ph/uploads/content/2020%20Annual%20Report.pdf (last accessed Apr. 30, 2022) [https://perma.cc/JZ4W-8Q7C]. The effectiveness, accuracy, or caseload disposition of the NLRC and its RABs in settling labor disputes, whether through settlement or adjudication, are not examined herein.

misinformed by survivorship bias.[12] What is largely missed by such a view are the workers who were not successful during the process, those who failed to initiate their claims, and those who were *excluded* from the process. Each of these broad categories of circumstances is unique in such a way that each is caused by distinct reasons; yet all of them point to the same observation. The awards, averaging more than ₱6.5 billion annually, may be insubstantial compared to the total monetary value of legally mandated rights and benefits involved in the wider array of unsuccessful, unfiled, or excluded claims of workers — certainly, to the workers' loss. This is where we stand.

In addition to the current challenges of enforcing labor rights, when new legal questions on the relationships and nature of labor emerge, such as those involving the gig economy, digital freelance work, transnational work, overseas labor outsourcing, artificial intelligence, automation, and climate change, an inquiry must be made — will students and future lawyers be equipped to find solutions that champion workers through bargaining, litigation, and legal reform?

In writing this Essay, I was brought back to my days as a student and now as a teacher of Labor Law.[13] I ask whether my learnings and my teaching enable me and my students, respectively, to professionally face the ills in Philippine labor. *If not*, we may have failed at our pedagogy, or our pedagogy may have otherwise failed us.

Otherwise stated, when legal education only equips students and future lawyers with an arsenal to address current issues and problems, both they and the greater society are being prepared to lose the long fight. We must seek legal education's "relevance and responsiveness"[14] not only in today's world, but in today's fast-changing world.[15]

As a fitting tribute to the late Professor Cesario A. Azucena, Jr., whom I have had the chance of meeting only through his writings, I draw inspiration

12. *See* Bill Casselman, The Legend of Abraham Wald, *available at* http://www.ams.org/publicoutreach/feature-column/fc-2016-06 (last accessed Apr. 30, 2022) [https://perma.cc/U9SR-V3NF].

13. I started teaching the course Economics of Labor and Employment Law at the Ateneo de Manila University in Intersession S.Y. 2021-2022.

14. Theodore O. Te, *Legal Education in the Philippines: Confronting the Issues of Relevance and Responsiveness*, 63 PHIL. L.J. 198, 199 (1988). *See also* Gwen Grecia-De Vera, *Theodore Te's "Legal Education in the Philippines: Confronting the Issues of Relevance and Responsiveness": A Commentary*, 88 PHIL. L.J. 678 (2014).

15. *Id.*

from his reflection, "Teaching Labor Law to the Elite."[16] In his brief article, he narrates his journey as a teacher of Labor Law in the Ateneo Law School, devising innovative methods in teaching the law, and, of course, shaking the pillars of economics, business, and wealth imbibed by what he calls the *elite* — his very own students.[17] Every time I read it, I am amazed at how frankly and simply Professor Azucena phrases his motivational question: "*How do you teach Labor Law to the rich?*"[18] For me, he was most successful at teaching when his students start asking, unearthing, and de-centering themselves, which lead to exploring new perspectives on labor.

Building on "the role of law as an instrument of ... social engineering[,]"[19] I humbly extend Professor Azucena's original question to include a necessary stepping stone. Yes, we can teach Labor Law to the elite, and consequently learn Labor Law as an elite, but merely teaching the blackletter law has been shown to be maladaptive in remedying the disruptions in society.[20] Perhaps, the next question is how to strip elitism off the law itself, which we collectively learn and teach.

When we flaunt preferential construction for labor, let us not forget to inquire as to what social justice truly means in the Philippine Constitutional order.[21] When we engage in a verbal joust on standards of work and minimum wage, let us not forget to figuratively step outside of the classroom to understand what is truly at stake for the Filipino worker. When we discuss what Labor Law is, let us not forget to open the discourse on the law's economic underpinnings and recognize that students have almost always relied on the very same neoclassical economic perspective by reason of a mono-economic basic education — as if there is an *absolute truth* in this regard.[22]

16. Cesario A. Azucena, Jr., Teaching Labor Law to the Elite, *available at* https://2012.ateneo.edu/aps/law/about-law/teaching-labor-law-elite (last accessed Apr. 30, 2022) [https://perma.cc/QZQ8-5QH4].

17. *Id.*

18. *Id.*

19. *Id. See also* Lynn M. Mather, *Law and Society*, *in* THE OXFORD HANDBOOK OF POLITICAL SCIENCE ch. 39 (Robert E. Goodin ed., 2011).

20. Evalyn G. Ursua, *The Lawyer as Policymaker: A Challenge to Philippine Legal Education*, 63 PHIL L.J. 186, 190 (1988).

21. PHIL. CONST. art. XIII, §§ 1-3.

22. *See* Mark Maca & Paul Morris, *The Philippines, the East Asian 'Developmental States' and Education: A Comparative Analysis of Why the Philippines Failed to Develop*, 42 COMPARE: J. COMP. INT'L EDUC. 461, 471 (2012).

At the end of the day, when we continue to teach and learn Labor Law unstripped of elitism, no other than the elite once again prevails, which ultimately destroys the very integrity of Labor Law.

In this re-teaching, I am not calling for an overhaul of the Labor Law course syllabus, but only for slight refinement to maximize the adoption rate by law faculties. I do not subscribe to the idea that the re-teaching of any subject, or of Labor Law, in particular, is any less genuine when it avoids offering a totally different path. One way is to continue teaching the blackletter law with all its flaws, but without losing track of Labor Law's integrity — of that which makes it whole. For this Essay, these are *the worker*, *the struggle*, and *the reason*.

The next Section is both a critique and an instructional material, which is designed to be adopted as part of the one-to-one-and-a-half-hour introductory lecture or session of any course on Labor Law, employment law, or more broadly, labor regulation. It is a quick and easy read for students and low-hanging fruit for law faculties.

It is neither an imposition of content nor method upon the great law faculties in more than 120 law schools in the country. After all, the Bar Syllabus issued by the Philippine Supreme Court must still be the proxy for the range of baseline topics that entry-level lawyers should know.[23] Instead, it is a humble attempt to, at the very least, nudge the trajectory of teaching Labor Law for the next generations of law students.

II. RE-TEACHING THE FOUNDATIONS

A. The Worker

Law governs social relations and transactions that abound society.[24] In legalese, actors, or, more accurately, persons, exist under the legal framework of rights and obligations.[25] Both are affirmed through direct consent, an organic act, or

23. *See* Supreme Court, Office of the 2022 Bar Chair, Coverage and Schedule of the 2022 Bar Examinations and the Three-Examiner Rule, Bar Bulletin No. 1, Series of 2022 [SC Bar Bull. No. 1, s. 2022] (Mar. 3, 2022).

24. Janice Nadler, *Expressive Law, Social Norms, and Social Groups*, 42 L. & SOC. INQUIRY 60, 60 (2017).

25. *Id.* at 72.

a statute enacted by a representative democracy.[26] To fully participate in this system, however, *all persons* and not just a select few must benefit from equal protection of the laws.[27]

From the spring of libertarian political philosophy came the notion of individual liberties which include the freedom of contract.[28] In a rather contemporary sense, "contracts are based on mutual agreement and free choice, and thus[,] should not be hampered by external control such as governmental interference."[29] Private citizens acquired considerable control over their own affairs, as well as their economic enterprises.[30] Not only did they gain a say on what goods and services they could access, they also boldly charted their own professions, livelihoods, and crafts.[31] It is self-determination and self-ownership, [32] although still bound by class and ethnic barriers.

To understand it in its barest sense, consider the following illustration of contracting one's labor. An owner of a manufacturing enterprise needs workers to operate the machinery that will eventually create the final goods meant for sale. To do this, an owner offers wages, or the price of labor, in exchange for the worker's completion of a particular task within a designated period. If one would look at the contemporary labor market, it is often the contrary. It is in fact the worker who offers his labor as an applicant for a job opening. Central to this relation is the agreement — neither force, intimidation, bondage, nor slavery.

If not for a separate course on Labor Law, one could easily dismiss such a situation as similar to any other type of contract or obligation recognized under

26. *See generally* Reynato S. Puno, *The Right to Equal Protection of the Laws: Does It Alleviate or Aggravate Inequalities in Philippine Society*, *in* EQUAL DIGNITY & RESPECT: THE SUBSTANCE OF EQUAL PROTECTION AND SOCIAL JUSTICE intro. (Josephine G. Maribojoc ed., 2012).

27. *Id.*

28. Stanford Encyclopedia of Philosophy, Libertarianism, *available at* https://plato.stanford.edu/entries/libertarianism (last accessed Apr. 30, 2022) [https://perma.cc/3U36-J9EY].

29. BLACK'S LAW DICTIONARY 1879 (11th ed. 2019).

30. Stanford Encyclopedia of Philosophy, *supra* note 28.

31. *Id.*

32. *Id.*

the law.[33] *What, then, sets such a contract apart from others?* The worker himself, through his labor, is the object of the contract.[34] This is arguably the most important dogma of Labor Law, yet it is the most overlooked.

The laws, rules, and regulations in Labor Law, unlike in other fields of law that regulate — for instance, transportation, taxation, and corporations — govern the *person* of the worker himself and the capacity of such worker to transact his very *person*, not something he simply owns or keeps.[35] Because of this fundamental distinction, society has witnessed a deluge of government intervention in both labor and the broader labor market, ranging from international treaties and conventions, to the Philippine Constitution itself.[36] Indeed, the fingerprints of the State are all over Labor Law.[37]

The two cases of *Lochner v. New York*[38] by the United States (U.S.) Supreme court and *People v. Pomar*[39] by the Philippine Supreme Court are most illustrative of the factors at odds in every labor regulation: freedom of contract and state interest.

Infamous for the judicial era that it started, *Lochner* declared unconstitutional a New York State law that prohibited any employee from being "required or permitted to work"[40] in bakeries for more than 60 hours per week, or 10 hours per day, for violating the Due Process Clause of the

33. *See* An Act to Ordain and Institute the Civil Code of the Philippines [CIVIL CODE], Republic Act No. 386, art. 1157 (1949).

34. *See* William Brown, et al., *The Employment Contract: From Collective Procedures to Individual Rights*, 38 BRITISH J. IND. RELATIONS 611 (2000).

35. *Id.*

36. *See, e.g.*, International Covenant on Civil and Political Rights art. 8, *opened for signature* Dec. 19, 1966, 999 U.N.T.S. 171; International Covenant on Economic, Social and Cultural Rights arts. 6-8, *opened for signature* Dec. 19, 1966, 993 U.N.T.S. 3; PHIL. CONST. art. II, § 18; & PHIL. CONST. art. XIII, § 3. *But see* PHIL. CONST. art. XIII, § 3, para. 4. The paragraph likewise emphasizes "the right of enterprises to reasonable returns on investments, and to expansion and growth." PHIL. CONST. art. XIII, § 3, para. 4.

37. PHIL. CONST. art. XIII, § 3.

38. Lochner v. New York, 198 U.S. 45 (1905).

39. People v. Pomar, 46 Phil. 440 (1924).

40. *Lochner*, 198 U.S. at 52 (citing Labor Law of the State of New York, 1897 N.Y. Laws, § 110 (1897) (U.S.) (repealed in 1921)).

U.S. Constitution's Fourteenth Amendment, particularly the individual's right to freedom of contract.[41] The Court framed the tension by asking "which of two powers or rights shall prevail — the power of the State to legislate [or police power] or the right of the individual to liberty of person and freedom of contract."[42] At that moment in legal history, a limitation on the hours of work for an occupation not deemed to be inherently harmful to the workers engaged therein was considered undue State interference.[43]

The Philippine Supreme Court in *Pomar* declared unconstitutional a labor law which required employer-owners to grant female laborers 60 days of paid maternity leave, otherwise face criminal prosecution, for violating the due process clause of the Jones Law[44] — the then-organic act of the Philippines under American colonial rule.[45] The litany of U.S. Supreme court decisions that included *Lochner*, upon which *Pomar* stands, evidence that the latter became a *mestizo* offshoot of the *Lochner* era.[46]

Although *Lochner* and *Pomar* ruled against labor regulation,[47] what these cases highlight is that the foundation of Labor Law is the worker, whom the government recognizes through subsequent regulation as being clothed with public interest.[48]

In Philippine Labor Law, one of the leading legal frameworks that protect workers is the four-fold test in determining the existence of an employment

41. *Id.* at 53.

42. *Id.* at 57.

43. *See id.*

44. An Act to Declare the Purpose of the People of the United States as to the Future Political Status of the People of the Philippine Islands, and to Provide a More Autonomous Government for Those Islands [The Jones Law of 1916], Public Act No. 240 (1916).

45. *Pomar*, 46 Phil. at 456.

46. *See* PACIFICO A. AGABIN, MESTIZO: THE STORY OF THE PHILIPPINE LEGAL SYSTEM (2011).

47. The views expressed in these cases on labor regulation have been superseded by much later cases decided by either Supreme courts. *See, e.g.*, West Coast Hotel Co. v. Parrish, 300 U.S. 379 (1937) & Antamok Goldfields Mining v. Nat'l. Labor Union et al., 70 Phil. 341 (1940).

48. *See Lochner*, 198 U.S. at 45 & *Pomar*, 46 Phil. at 456.

relationship,[49] on which considerable time will certainly be spent in a Labor Law course. Even in the absence of a written contract between the worker and the declared employer, employment and the employee's corollary rights can still be established.[50] This addresses the dreadful situation faced by workers who are forced to immediately start with job onboarding and to incessantly wait for their written contracts, only to later find out that certain legally mandated benefits remain unpaid.[51]

Labor Law also recognizes the doctrine prohibiting parties from stipulating on the nature of their relationship in a manner contrary to the factual circumstances.[52] This is usually done to negate an employment relationship in favor of the more flexible independent contractor arrangement.[53]

Note, however, that these types of labor regulations only pertain to how the employment relationship is established.[54] There is still a gamut of labor regulations that mandate the consequent rights, privileges, and protections required in every employment relationship.[55] This underscores the unparalleled importance of the existence of such relationship in determining rights and obligations.

It is at this point that the perennial challenge of Philippine Labor Law emerges — the informal economy and informal labor sector.[56] As of

49. Maraguinot, Jr. v. NLRC (Second Division), G.R. No. 120969, 284 SCRA 539, 552 (1998).

50. A Decree Instituting a Labor Code Thereby Revising and Consolidating Labor and Social Laws to Afford Protection to Labor, Promote Employment and Human Resources Development and Insure Industrial Peace Based on Social Justice [LABOR CODE], Presidential Decree No. 442, § 97 (f) (1974) (as amended) & Central Azucarera de Tarlac v. Central Azucarera de Tarlac Labor Union-NLU, G.R. No. 188949, 625 SCRA 622, 630 (2010).

51. *Id.*

52. Paguio v. National Labor Relations Commission, G.R. No. 147816, 403 SCRA 190, 198 (2003).

53. Aliviado v. Procter & Gamble Philippines, Inc., G.R. No. 160506, 614 SCRA 563, 577 (2010).

54. PHIL. CONST. art. XIII, § 3.

55. *See, e.g.*, PHIL. CONST. art. XIII, § 3 & LABOR CODE, bk. III.

56. One may acknowledge the informal economy and informal labor sector as challenges to Labor Law's efficacy, or otherwise even dismiss such as beyond Labor Law.

December 2021, 36.4% of the total employed persons in the Philippines, or about 16.8 million of the 46 million employed Filipinos,[57] are engaged in vulnerable employment, with the figure composed of those who are self-employed without any paid employee and unpaid family workers.[58] This statistic — four for every 10 working Filipinos[59] — is a mirror to the efficacy of mainstream Labor Law anchored on the employment relationship.[60]

We do not discount in any way the protections granted to workers in an employment relationship. Instead, we inquire into the formal sector-focused labor regulation in the country, as if those in the informal sector are any less worthy.[61] I invite students to start their journeys into learning Labor Law with an acknowledgment that despite the claims of a heavily regulated Philippine labor market,[62] there is much more to be done in terms of legal reform, not only in Labor Law *per se*, but also with respect to social welfare legislation as the former's complement.

57. *See* Philippine Statistics Authority, Unemployment Rate in December 2021 is Estimated at 6.6 Percent, *available at* https://psa.gov.ph/content/unemployment-rate-december-2021-estimated-66-percent (last accessed Apr. 30, 2022) [https://perma.cc/8MED-3GJM] & World Bank, Vulnerable Employment, Total (Percentage of Total Employment) (Modeled ILO Estimate) - Philippines, *available at* https://data.worldbank.org/indicator/SL.EMP.VULN.ZS?locations=PH (last accessed Apr. 30, 2022) [https://perma.cc/JZN8-VFKE].

58. *Id.*

59. *Id.*

60. *Id.* Another insightful indicator is invisible underemployment, or those employed who have worked for 40 hours or more and want additional hours of work at their present jobs, which reflects the unavailability of quality jobs and decent work for more than two million Filipinos, or 4.9% of 46.27 million employed Filipinos, as of December 2021. *See* Philippine Statistics Authority, *supra* note 57.

61. *But see* An Act Instituting Policies for the Protection and Welfare of Domestic Workers [Domestic Workers Act or Batas Kasambahay], Republic Act No. 10361 (2012).

62. *See* Benedicto Ernesto R. Bitonio Jr., Labour Market Governance in the Philippines: Issues and Institutions (ILO Asia-Pacific Working Paper Series, Aug. 2008), *available at* https://www.ilo.org/public/libdoc/ilo/2008/108B09_287_engl.pdf (last accessed Apr. 30, 2022) [https://perma.cc/G8NJ-GVWC].

One may do so successfully only when they remember that the *starting point* of teaching, learning, and practicing Labor Law must always be the worker — both those deemed employed or otherwise, and those in the formal sector or otherwise.

B. The Struggle

Unless one subscribes to the idea that natural law is the theoretical basis of modern society's legal order, it is canon that laws are mere ideas themselves that are only realized through legislative processes recognized under a society's organic act, or that which is called positive law.[63] At the exact moment that laws are enacted, the society is bound to obey them, consistent with the rule of law, or the "doctrine that every person is subject to the ordinary law within the jurisdiction."[64]

However, remove the complexities of legal theory,[65] and we will arrive at an observation that laws are human-made.[66] They are products of human intellect, flaw, and experience.[67] While the study of how laws are made, understood, and enforced is a necessary subject in introductory law courses, in this re-teaching of Labor Law, we ask that which is often unasked — *what drives the enactment of labor laws?*

Of course, the political climate and the opportune time for industry regulation are mainly what allow or act as expressways of any kind of legal reform.[68] However, the core of Labor Law, that which drives it, is no other than the historical and societal — even humanitarian — context within which a particular society finds itself.[69] From a law and society approach, "[l]aw is

63. *But see* ROBERT C. ELLICKSON, ORDER WITHOUT LAW: HOW NEIGHBORS SETTLE DISPUTES (1991).

64. BLACK'S LAW DICTIONARY 18c (11th ed. 2019).

65. *See, e.g.*, H. L. A. HART, THE CONCEPT OF LAW 79-99 (1961). This chapter of the book discusses Hart's concept of primary and secondary rules.

66. *See id.*

67. *Id.*

68. *See* Kenneth Isaiah I. Abante, Minimizing Smuggling and Restoring Public Trust in the Philippine Bureau of Customs (Mar. 11, 2019) (unpublished second-year policy analysis, Harvard University) (on file with the Center for International Development, Harvard University). Abante discusses the three elements of policy design: technical correctness, administrative feasibility, and political supportability.

69. *Id.*

not autonomous, standing outside of the social world, but is deeply embedded within society."[70] These are the circumstances that catapult mere ideas into mandates and self-regulation into government intervention.

While this belief is certainly not restricted to Labor Law, the relevance of historical and social context in teaching and learning Labor Law goes into its very essence. Labor regulation is a product of historical struggle.[71] Neither is it *per se* inherent,[72] nor constant.

The regulations concerning Overseas Filipino Workers (OFWs)[73] are arguably the prime examples of the impossibility of divorcing Philippine Labor Law from social realities. Labor migration did not come as a surprise to the Philippines due to the country's geographical and post-colonial identity.[74] However, the economic and political ruin of the 1980s, which resulted in the fall of real wages to less than half of their level in the 1960s, and the rise of unemployment rate to nearly 25%,[75] has defined the phenomenon in which

70. Lynn Mather, *Law and Society*, *in* THE OXFORD HANDBOOK OF POLITICAL SCIENCE 1 (Robert E. Goodin ed., 2011).

71. *Id.*

72. What is inherent, however, is the person of the worker discussed in the previous subsection, the consideration of which ultimately determines how the State will act.

73. *See* Philippine Overseas Employment Administration, Laws, Rules and Regulations on Overseas Employment, *available at* https://www.poea.gov.ph/laws&rules/laws&rules.html (last accessed Apr. 30, 2022) [https://perma.cc/UMJ6-2GAV].

74. *See* Jill Cowan, *A Leader of Farmworkers, and Filipinos' Place in American History*, N.Y. TIMES, Oct. 21, 2019, *available at* https://www.nytimes.com/2019/10/21/us/larry-itliong-farmworkers.html (last accessed Apr. 30, 2022) [https://perma.cc/PYR8-FX94]. Cowan tells the story of Modesto "Larry" D. Itliong, one of the most notable labor organizers in the 20th century United States.

75. PATRICIO N. ABINALES & DONNA J. AMOROSO, STATE AND SOCIETY IN THE PHILIPPINES 215-16 (2005). *See also* Emmanuel S. de Dios, et al., Martial Law and the Philippine Economy (UP School of Economics Discussion Papers, Nov. 2021), *available at* https://econ.upd.edu.ph/dp/index.php/dp/article/view/1543/1027 (last accessed Apr. 30, 2022) [https://perma.cc/9W4Y-SUAG]. These studies indicate a poverty incidence of around 50-60%. *Id.* at 29-30.

2.2 million Filipinos currently find themselves.[76] What began as a short-term measure eventually transformed into a vehicle for individuals' and families' social mobility, as well as a national economic enterprise — both of which were evasive, owing to corrupt governance and crony capitalism.[77]

Besides the economic downturn, the law itself played a determinative role in the emergence of this phenomenon.[78] During the Marcos regime, laws were weaponized to diminish the labor sector.[79] These particularly targeted the strength that labor organizations and unions held and the threat they posed against dictatorial rule.[80] This, in fact, was made viable through repressive labor laws, some of which persist today in one form or another.[81]

There was nowhere to go but out.[82] With the promise of a brighter future working abroad came the hard truth of sacrifice of blood, sweat, and tears, which this brief re-teaching cannot in all fairness narrate.[83]

This struggle paved the way for the post-Marcos administrations to enact a comprehensive labor regulation for OFWs. Republic Act No. 8042, or the Migrant Workers and Overseas Filipinos Act of 1995, as amended,[84] contains

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76. Philippine Statistics Authority, Total Number of OFWs Estimated at 2.2 Million, *available at* https://psa.gov.ph/content/total-number-ofws-estimated-22-million (last accessed Apr. 30, 2022) [https://perma.cc/T4BF-2MEY].

77. Neil G. Ruiz, Made for Export: Labor Migration, State Power, and Higher Education in a Developing Philippine Economy, at 92 & 108 (June 2014) (unpublished M. Sc. thesis, Massachusetts Institute of Technology) (on file with Author).

78. *Id.*

79. ABINALES & AMOROSO, *supra* note 75, at 205.

80. *See* Jose Cecilio J. Magadia, *The Philippine Labor Movement and the Law*, 47 ATENEO L.J. 899 (2003).

81. *See* Augusto S. Sanchez, *The Present Labor Laws: Their Importance to the National Interest of the Philippines*, 32 ATENEO L.J. 70 (1988).

82. *See id.*

83. "Blood" refers to death, maltreatment, and harassment; "sweat" refers to harsh working conditions; "tears" refers to the social cost of left-behind families, children, and communities.

84. An Act to Institute the Policies of Overseas Employment and Establish a Higher Standard of Protection and Promotion of the Welfare of Migrant Workers, Their Families and Overseas Filipinos in Distress, and for Other Purposes [Migrant Workers and Overseas Filipinos Act of 1995], Republic Act No. 8042 (1995) (as

key provisions on deployment and bans thereof; criminalization of illegal recruitment; and subsidiary liability of the foreign employer and the local recruitment agency, among others.[85] Even the Judiciary has affirmed such protections to OFWs in numerous court decisions.[86] At the foundation of these laws is the 1987 Constitution, which acknowledges the law as a tool for social change, particularly in addressing the social ills caused by the previous regime, in its social justice provisions.[87]

However, this presents a *paradox of regulation* — as protections for workers increase, the propensity or willingness of workers to engage in this activity also increases, notwithstanding the work's negative externalities. Despite the labor laws in place, the *banality* of sacrifice persists.

The totality of overseas employment will never be adequately discussed in an introductory Labor Law course, but this re-teaching argues, as it demonstrates, that the societal struggle within which a regulation has emerged and evolved should not be left behind in learning. Its recognition is essential both academically and professionally, not only in comprehending the regulations currently enforced, as to their rationale and applicability, but also in seeing what lies ahead.

In recent years, society has experienced another kind of migration, not overseas, but to a digital infrastructure, amplified significantly by the COVID-19 pandemic.[88] With 1.5 million Filipinos already working as online freelancers, digital platform labor, under the broader category of the gig economy, is expected to be more prevalent in the next decade because of the flexibility and accessibility it affords to Filipinos.[89] Another area of emerging digital labor is the sharing economy, which includes short-term rental,

amended).

85. *Id.* pts. I-II.

86. *See, e.g.*, Sto. Tomas v. Salac, G.R. No. 152642, 685 SCRA 245 (2012); Philippine Association of Service Exporters, Inc. v. Drilon, G.R. No. L-81958, 163 SCRA 386 (1988); & Phil. Association of Service Exporters, Inc. v. Torres, G.R. No. 101279, 212 SCRA 298 (1992).

87. PHIL. CONST. art. XIII, § 1.

88. Cheryll Ruth R. Soriano, *Digital Platform Labor in the Philippines: Emerging Configurations and Policy Implications*, 5 JAPAN LAB. ISSUES 56, 63-64 (2021).

89. *Id.* at 56.

transport network vehicle services, and online food and goods delivery services, among others.[90]

The future looks promising for digital labor, as OFWs similarly thought before social costs started piling up.[91] In all fairness, employment and economic opportunity *per se* are never frowned upon. Like in any novel working arrangement, from the Industrial Revolution to Amazon, unfair labor practices, anti-unionism, work-related harassment, and discrimination may emerge.[92]

When disputes arise between the worker, in general, and the principal or the digital platform, one cannot reasonably expect that the use of Philippine Labor Law's current tools in approaching the legal questions that digital labor creates, to which labor law has not yet adapted, would be effective.[93] In thinking beyond the blackletter law, the role and skill of the "lawyer as policymaker" proves to be most essential.[94]

Students of Labor Law must consider that labor laws, as they are currently written, *are* products of struggle and may likewise be changed by struggle in the future — in which lawyers play a central role.[95]

Until we recognize that Labor Law is a product of a dynamic history,[96] politics — and yes, even beliefs and value systems — our efforts in responding to disruptions in society and to its workers will be eclipsed by the idea that any attempt to forward workers' rights through bargaining, litigation, or further government intervention through legal reform shall categorically thwart an imagined economic order.

C. The Reason

We start this Section with the ideal frame of mind in treading the tenuous path of Labor Law and economics in the Philippines, a topic which only few

90. *See* Jayvy R. Gamboa, *Adopting Miller's First Principles for Online Food Delivery Platforms' Labor Regulation in the Philippines*, PHIL. J. PUB. POL'Y 198, 203 (2021).

91. *Id.*

92. Soriano, *supra* note 88, at 63-64.

93. *Id.*

94. Ursua, *supra* note 20, at 194.

95. *See* Te, *supra* note 14, at 199-200.

96. *See* Leo C. Stine, *Philippine Labor Problems and Policies*, 18 FAR EAST SURV. 162, 162 (1949).

lawyers — and more so law faculties — dare disturb. I propose that we skip the entire debate between *laissez faire* and government interference, only because the 1987 Constitution has a clear socio-economic vision with the government at its center.[97]

I do not intend to discuss what a particular labor law or regulation should ideally contain to achieve economic security. More fundamentally, however, we ask, "*What justifies the existence or absence of labor laws?*" This focus is, in part, a recognition of the rippling effect[98] of the underlying economic views of legal actors, including those of students and future lawyers.

Oftentimes, economics is the *reason* invoked for impeding further labor regulation, such as minimum wage and unionism for their deterrent effect on businesses.[99] For example, a study has explored the unintended crowding out effect of imposing or increasing minimum wage against the disadvantaged groups of the labor force, which include female, as well as younger and less educated workers.[100] Owing to the fewer jobs allegedly caused by increased minimum wage, they are more likely to be laid off or less likely to be employed.[101] What is often left unsaid in these types of analysis are the underlying neoclassical economic assumptions of competitiveness and efficiency.[102]

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97. PHIL. CONST. art. XIII, § 1. *But see Lochner*, 198 U.S. at 75 (J. Holmes, dissenting opinion). "[A] constitution is not intended to embody a particular economic theory, whether of paternalism and the organic relation of the citizen to the State or of *laissez faire*." *Lochner*, 198 U.S. at 75 (J. Holmes, dissenting opinion).

98. Richard B. Freeman, Labor Regulations, Unions, and Social Protection in Developing Countries, *in* HANDBOOKS IN ECONOMICS 4664-65 (Dani Rodrik & Mark Rosenzweig eds., 2010).

99. *Id.*

100. Vicente B. Paqueo, et al., The Impact of Legal Minimum Wages on Employment, Income, and Poverty Incidence in the Philippines (Philippine Institute for Development Studies Discussion Paper Series, Dec. 2016), at 6, *available at* https://think-asia.org/bitstream/handle/11540/9226/pidsdps1654.pdf (last accessed Apr. 30, 2022) [https://perma.cc/AZ74-F3C9].

101. *Id.*

102. Bruce E. Kaufman, Economic Analysis of Labor Markets and Labor Law: An Institutional/Industrial Relations Perspective (Usery Workplace Research Group Working Paper), at 4 & 6, *available at* https://scholarworks.gsu.edu/cgi/viewcontent.cgi?article=1033&context=uwrg

In teaching and learning Labor Law, have we ever seriously considered the alternate reality where economics is the *reason* for instituting labor regulations? Bruce E. Kaufman, in his study, presents the institutional economics/industrial relations approach as a stark alternative.[103] These two pivotal aspects immediately, yet fundamentally, shift the understanding of labor and the labor market.[104] First, this approach recognizes the "good life" as the purpose of an economy, rather than efficiency.[105] Second, related to the previous Section, there is an explicit recognition that labor is *human*.[106] He states that "[w]ithout this broader perspective, the interests of people (including workers) get subordinated by a narrow efficiency [or] materialist welfare objective to doing what is best for the economy, rather than structuring and operating the economy to benefit people."[107]

The key takeaway is that economics may be used either to justify or reject labor regulation.[108] A deeper examination would, however, reveal that this dualism is only made possible — if truly appreciated — through the multiplicity of economic perspectives.

Given that there is no *single* economic theory that perfectly informs labor policy, it is only logical to state that the study of Labor Law must likewise not

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_workingpapers (last accessed Apr. 30, 2022) [https://perma.cc/BK57-KJLA]. *See also* World Bank, Doing Business 2020, at 31-33, *available at* https://documents1.worldbank.org/curated/en/688761571934946384/pdf/Doing-Business-2020-Comparing-Business-Regulation-in-190-Economies.pdf (last accessed May 27, 2022) [https://perma.cc/VWM3-66B2]. See the discussion on labor market regulation.

103. *Id.* at 2.

104. *Id.* at 78.

105. *Id.* at 37.

106. *Id.*

107. *Id. See also* The Royal Swedish Academy of Sciences, Natural Experiments Help Answer Important Questions (The Price in Economic Sciences 2021), *available at* https://www.nobelprize.org/uploads/2021/10/popular-economicsciencesprize2021-3.pdf (last accessed Apr. 30, 2022) [https://perma.cc/3YKF-D23P]. The "empirical contributions to [labor] economics" of Nobel laureate David Edward Card, who worked with Alan B. Krueger, challenged the methods upon which economic analysis of labor regulations are based.

108. Kaufman, *supra* note 102, at 17.

be confined to a *single* story.[109] This present re-teaching does not take the responsibility of normatively arguing for a *proper* economic theory, but it merely opens the discourse — as every Labor Law class should — beyond a *mono-economic*[110] understanding of labor law and regulation.

Briefly de-centering ourselves from the Constitutional imperative of "reduc[ing] social, economic, and political inequalities[,]"[111] it is not the calling of students and future lawyers, as it is not even the business of the law, to be at the forefront of determining what labor law or regulation is economically sound or what economic implication a regulation induces.

However, law and economics — or more precisely, political economy, are not separable. This supports that an interdisciplinary and contextual approach to learning the law is not at all repugnant to this re-teaching's prevailing theme. In fact, this consciousness is essential in learning the core meanings of various laws and why they exist or what the *reason* for their existence is, including as to who benefits, whose interests are protected, and what *economic ordering* is established.[112]

What the preceding paragraphs instead imply is that any attempt to dwell on this more fundamental level of understanding the law is uncalled for, unless the deliberate or inadvertent favoring of a *single* economic theory, especially of one that seems divergent from the ideals of Labor Law, is first addressed and ultimately ended.

This is not only prevalent in policy or academic discourse, but also in the professional setting. Consider subcontracting. For an enterprise, whether to pursue the subcontracting of a particular set of tasks or part of an enterprise's operations is an economic — not a legal — question. *Will this lead to minimization of costs and maximization of profits?* The legal aspect only kicks in

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109. *Id.*

110. The term was used by Benjamin T. Tolosa in his Perspectives on Development lecture for Areté Ateneo, as inspired by Albert O. Hirschman. Areté Ateneo, Video, *Magisterial Lecture Series: Benjamin T. Tolosa, Jr. — Perspectives on Development*, YOUTUBE, Nov. 13, 2020, *available at* https://www.youtube.com/watch?v=fhOlRYX-dPc (last accessed Apr. 30, 2022) [https://perma.cc/8Q4S-V262]. *See also* ALBERT O. HIRSCHMAN, THE RISE AND DECLINE OF DEVELOPMENT ECONOMICS 51 (1981).

111. PHIL. CONST. art. XIII, § 1.

112. *See generally* Jedediah Britton-Purdy, et al., *Building a Law-and-Political-Economy Framework: Beyond the Twentieth-Century Synthesis*, 129 YALE L.J. 1784 (2020).

when the validity of subcontracting and its consequences are at issue. *Given the circumstances, is there valid subcontracting or labor-only contracting? If there is labor-only contracting, what are its legal consequences and what are the available remedies?*[113]

Also consider the emerging market trend of shifting to renewable energy sources, instead of the more environmentally harmful fossil fuels.[114] For a fossil fuel-dependent enterprise, an economic question would look like this: *which of the following options would minimize costs and maximize profits: voluntary closure, transition to a new enterprise, or business-as-usual until regulatory mechanisms ease out the current enterprise?* On the other hand, a legal question, from a labor perspective, would entail inquiry into the authorized causes of termination, their legal consequences, and their due process requirements, among others.[115]

For legal professionals, it is borderline irresponsible to acquiesce and to meddle in economic questions,[116] especially if there are alternative economic standpoints present. For instance, subcontracting may be economically detrimental from a human capital development and social mobility perspective, and a business-as-usual approach in the fossil fuel industry may result in negative externalities by worsening workers' health and safety.[117]

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113. *See generally* LABOR CODE, arts. 106-09 & Department of Labor and Employment, Rules Implementing Articles 106 to 109 of the Labor Code, as Amended, Department Order No. 174, Series of 2017 [DOLE D.O. No. 174, s. 2017] (Mar. 16, 2017).

114. Just Energy, Renewable Energy Sources: Energy Trends Shaping the Future, *available at* https://justenergy.com/blog/renewable-energy-sources-energy-trends-future (last accessed Apr. 30, 2022) [https://perma.cc/3KGN-K3SC].

115. *See generally* LABOR CODE, art. 198 & Department of Labor and Employment, Amending the Implementing Rules and Regulations of Book VI of the Labor Code of the Philippines, as Amended, Department Order No. 147-15, Series of 2015 [DOLE D.O. No. 147-15, s. 2015] (Sept. 7, 2015). *See also* Ann M. Eisenberg, *Just Transitions*, 92 S. CAL. L. REV. 273 (2019).

116. If lawyers truly want to showcase their economic prowess and impress their clients, then they should instead advise their clients to reduce transactional costs by renegotiating any dispute in light of the Coase theorem, by not leaving workers out to dry, and eventually avoiding litigation, except in cases that are deemed to be deeply injurious (e.g., discrimination, harassment, violation of Safe Spaces Act, etc.) or those that collectively benefit a particular sector of labor (e.g., film production crew, jeepney drivers, etc.).

117. *Not asking the right question*, or *not spotting the key issue*, is a pitfall that students should avoid not only in this re-teaching, but also in their professional lives.

Consequently, this implies that a teaching of Labor Law that merely reinforces a *mono-economic* understanding, rather than presenting a pathway towards the students' independent inquiry, is equally dangerous, which this re-teaching hopes to prevent.

In ending this re-teaching, we marginally reframe the original question — *what ought to justify the existence or absence of labor law?*

As with any normative question in legal scholarship, the fundamental law or the Constitution serves as the oasis of any legal issue, the north star of any society, and the social contract from which all subsequent societal rights and obligations arise.[118] As Justice Cecilia A. Muñoz-Palma said, social justice is the heart of the 1987 Constitution,[119] which must be understood as meaning that "those who have less in life should have more in law[.]"[120]

On the other hand, one could very well conveniently cite what the Constitution envisions for the Philippine national economy — "a more equitable distribution of opportunities, income, and wealth; a sustained increase in the amount of goods and services[;] and an expanding productivity as the key to raising the quality of life for all, especially the underprivileged."[121] These, however, must be tempered by the social justice provisions that aim to "equitably diffus[e] wealth and political power for the common good" [122] and recognize the State's power to "regulate the acquisition, ownership, use, and disposition of property[.]"[123]

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118. *See* Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain (GRP), G.R. No. 183591, 568 SCRA 402, 583 (2008) (J. Puno, concurring opinion).

119. *See also* Sedfrey M. Candelaria & Jason L. Sy, *Social Justice: Strengthening the Heart of the 1987 Constitution for Those at the Margins of Philippine Society*, 64 ATENEO L.J. 1412 (2020) (citing 5 RECORD OF THE CONSTITUTIONAL COMMISSION, NO. 109, at 1010 (1986)).

120. Christian S. Monsod, *Social Justice*, 59 ATENEO L.J. 691, 709 (2014) (citing Del Rosario v. De los Santos, G.R. Nos. L-20589-90, 22 SCRA 1196 (1968)). *But see* Calalang v. Williams et al., 70 Phil. 726, 728 (1940). "[T]he greatest good to the greatest number." *Id.*

121. PHIL. CONST. art. XII, § 1.

122. PHIL. CONST. art. XIII, § 1.

123. *Id. See* Raul C. Pangalangan, *Property as a Bundle of Rights: Redistributive Takings and the Social Justice Clause*, 71 PHIL. L.J. 141 (1996).

More specifically to labor, however, there likewise exists a constitutional balancing act between "labor as a primary social economic force"[124] and the "indispensable role of the private sector[,]"[125] both of which stand as legal bases in protecting the rights of labor and enterprises, as the case may present.

While the efficacy of the social justice provisions themselves as a source of enforceable rights has been doubted,[126] the Court has compensated for this gap by employing judicial restraint in cases that challenge the State's exercise of police power through legislation and subordinate legislation in relation to the protection of labor, a recent example of which is the case of *Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*.[127]

Despite the constitutional imperative, society's reluctance to enact more progressive labor laws may be attributed to a misguided *reason* — one that prioritizes the capitalist perspective rather than that of social justice and equity.[128] When further labor regulation, particularly on the changing relationships and nature of labor, is *almost always* regarded as a disincentive for business and innovation, rather than as State intervention to supplement then-functional-but-now-inadequate regulation, a re-teaching that reminds us of the essence of Labor Law is called for.

When teaching does not attempt to de-center Labor Law from a *mono-economic* understanding and to alternatively underscore the legal mandate of social justice, students and future lawyers are ill-equipped to face emerging legal questions. The greater society is consequently at a disadvantage, and ultimately the workers — the *starting point* of teaching, learning, and practicing Labor Law — stand to lose the most.

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124. PHIL. CONST. art. II, § 18.

125. PHIL. CONST. art. II, § 20.

126. Candelaria & Sy, *supra* note 119. *See also* AGABIN, *supra* note 46, at 240.

127. Provincial Bus Operators Association of the Philippines (PBOAP) v. Department of Labor and Employment (DOLE), G.R. No. 202275, 872 SCRA 50 (2018).

128. *See* Zoe Adams, *Labour Law, Capitalism and the Juridical Form: Taking a Critical Approach to Questions of Labour Law Reform*, 50 INDUS. L.J. 434, 438 (2021).