

SYMPOSIUM

New Frontiers of the Employment Relationship

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Introduction

Increasingly, contemporary work is no longer carried out within a framework responding to the classical employment relationship between an employee and an employer, but, instead, within new organizational configurations often labelled as atypical or non-traditional (Bernier, Vallée and Jobin, 2003). These new organizational configurations, which transform the social relations of work and employment, are thus part of the dynamic that contributes to the centrifugation of employment towards peripheral labour markets (Durand, 2004), largely based on a strategy of outsourcing tasks outside of the company, the contours of which are becoming increasingly blurred.

To respond to the contemporary demands of financial capitalism, the globalization of productive systems (Plihon, 2006) is deployed using a variety of different corporate strategies: mergers and acquisitions aimed at productivity gains and lower labour costs through a reduction in the workforce; offshoring through networks of subsidiaries and subcontractors of transnational companies to countries where labour is cheap and less protected; the '*re-engineering*' of value chains, and a refocusing on the core businesses of the company. This leads to a move away from activities whose profitability is lower than the international standards required by investors towards the outsourcing of certain products or services that can be manufactured more competitively by subcontracting companies (Weil, 2014).

These new organizational configurations include the use of subcontracting and franchising, temporary work—often obtained through an employment agency—

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or self-employment or employment that is ‘falsely independent’, and even micro-contracts of extremely short duration in what is now called the ‘gig-economy’ (Scholz, 2016). For example, we observe the evolution of the outsourcing of human resource management to employment agencies that, even in certain industrial sectors, may become “the exclusive channel of recruitment for all operator jobs” (our translation) (Gorgeu and Mathieu, 2009: 42; de Tonnancour and Vallée, 2009; Papinot, 2013). In these new configurations, workers, whether they work as employees or as independent contractors, are often subjected to the control of an organization that does not in fact have the legal status or the responsibilities of an employer (Rubery *et al.*, 2002). There is, therefore, a split in the role of the employer: the ‘de facto’ employer, which exercises control over the content and conditions of work, is no longer necessarily the legal employer that is responsible for social protection and carrying out a role, as employer, in the framework of collective bargaining. Thus, these organizational configurations have the effect of modifying the ‘classical’ and bipartite employment relationship that, having been consolidated in the second half of the 20th century, at least in the West, is characterized by an exchange between the acceptance of a predefined and circumscribed subordination and the assurance of a safety net based on the mechanisms of collective solidarity (including social insurance and rules relating to work and employment protection). In this case, the entity that controls the work also assumes the economic risk and the responsibility for protection (Supiot, 2004: 70).

These new organizational configurations are accompanied by transformations in the mobilization of work. The increase in so-called ‘atypical’ jobs—part-time, temporary or occasional jobs, sometimes carried out outside the company’s physical premises and often carried out concurrently—generates disparities in treatment depending on the employment status in the labour market. Such disparities also occur within companies, undermining the solidarity of collective labour and productive cooperation. New communication technologies also promote on-demand, just-in-time labour mobilization, which requires workers to have much more time available than just the time they spend at work, availability that, for most of the time, is unpaid and generates unpredictable schedules and hours of work that affect all forms of employment and a wide range of occupations (Coiquaud, 2016; Boivin, 2016; Vallée and Gesualdi-Fecteau, 2016).

Both the prevalence and deleterious effects associated with these new configurations tend to affect workers differently according to their age, gender and ethnicity (Noiseux, 2014; D’Amours, 2015). Moreover, at the most precarious margins of the labour market, we observe a series of ‘tailor-made’ hiring and working practices for those Guy Standing (2011) calls *denizens*, whose legal status (undocumented, refugees without work permits, etc.) places them in

situations of extreme vulnerability¹. The complete breakdown of the pact linking subordination to the granting of social rights thus reopens new avenues through which labour is subsumed to capital.

These employment relations transformations cause—and form part of—a whole series of interferences that pose particular challenges for theoretical formalization, for the understanding of concrete situations of work, and for the legal and social measures that aim to ensure the social protection and representation of workers and to examine conditions for the deployment of collective action.

Blurring of the boundaries between a salaried and self-employed worker (Supiot, 1999) and the increase in 'hybrid' forms of labour mobilization (Dupuy and Larré, 1998; Morin, 1999; D'Amours, 2013), of 'grey zones of employment' (Bison-Rapp and Coiquaud, 2017), and of situations of 'controlled autonomy', an expression coined by Appay (1993) and taken up by Piotet (2007) and Morin (2005) to describe situations "where subjection is less due to the exclusive economic dependence of a subcontractor on its principal customer than to requirements of quality, time and training etc., which can have very direct consequences on working conditions without the client having to assume any responsibility" (Morin, 2005:12-13) (our translation).

Blurring of the boundaries between paid work conducted in the public sphere and work that is carried out for free in the visible private sphere, in particular in the areas of childcare or home care work for vulnerable people (Taylor, 2004), and the increase in hybrid zones constructed through the process of the invisibilization of work (Krinsky et Simonet, 2012), as evidenced notably by *crowdsourcing* practices (Bergvall-Kåreborn, 2014) that, for the time being, escape all forms of state regulation.

Finally, the blurring of the boundaries between formal and informal work (Lesemann, 2015; De la Garza, 2015) becomes more and more tenuous as the focus of analysis, traditionally upon thought emanating from western countries, is decentred to embrace the Latin American, African and Asia continents. Where does informality begin and end when a non-documented worker is performing the same tasks as another whose status is formalized, or when a worker is officially employed by a company for only part of the working week? Or when the work is only partly 'formalized', as is the case, for example, of a large number of care workers for whom part of the work is carried out on the periphery of assigned and remunerated tasks?

In this issue we will explore these 'new' employment relationship boundaries. In response to criticism of research trends that focus too narrowly on so-called atypical jobs, which mask the fact that labour transformations 'destabilize stables' (Castel, 2009) or extend precariousness and risk to typical jobs (Vosko, 2007), it is

necessary to study the characteristics associated with diversity in the employment relationship or, in other words, the effects stemming from the cohabitation of workers having different statuses and/or employers or parties giving the order in concrete work situations. Indeed, if solidarities arise in workplaces based on a common condition and a shared subordination (Castel, 2003), the coexistence of identical positions that have distinct employment statuses in the same work space clearly raises the question of the conditions for the emergence of these solidarities at work. Under the threat of unemployment and the precariousness of jobs, employees are driven to play a game of 'competition between equals', which contributes to the weakening of intra-categorical homogeneities. We see that it is a question of collective representation and class solidarity on the one hand, but on the other, and particularly in America, it is also about access to social protection.

As this blurring of the employment relationship boundaries has been spreading over a period of more than thirty years, the studies presented in this issue are able to: 1- flesh out certain employment relationship features that exist within organizational configurations and identify the type of actors who are involved and can intervene in their regulation; and 2- take stock of the advances and the limitations of collective struggles that have been played out within these new configurations.

New organizational configurations and the employment relationship

The first three texts of this issue put forward an analysis of new organizational configurations and their consequences in terms of the protection of workers. The opening article is a study of employment relations transformations in a context of globalization using the notion of the 'grey zone of employment', forged by the jurist Alain Supiot, to explore convergence between 'the state of subordination' of employees and the self-employed. The notion is taken up and discussed by Christian Azaïs, Patrick Dieuaide and Donna Kesselman in an expanded framework that includes an 'employment relationship with third parties' that suggests that the grey zone of employment can be defined as a 'public space', understood to be a deliberation space where games of interest and power relations are coordinated and confront each other to constitute a hybrid regulation, public and private, formal and informal. It allows the authors to disentangle a stato-centric reading of the employment relationship and to free themselves from a systemic approach, inherited from the 'employer, union, government' triad originally developed by Dunlop (1993 [1958]). Taking the firm Uber as an example, the article goes on to show that the question of the employment of drivers cannot be reduced exclusively to legal arguments that would limit the debate to the choice

between the status of being self-employed or employed. The diversity, but also the fragility of the judgments pronounced by the courts, with their partial and always provisional characteristics, suggest that the socio-professional situation of drivers, if it falls within the 'undecidable' area of law, cannot be understood without taking into account the action of states, territories and civil society, as well as the pre-existing social relations involved in the complex interplay of formal and informal regulation.

The action of states and local actors is also at the heart of Maude Choko's and Bridget Conor's analysis of the situation relating to cultural workers working in the film production industry. Generally working on projects, for short periods and for different producers, these cultural workers can fit into local or regional film production, as well as into production with a global scope that various states try to attract to their territories. In this context of globalized production, can cultural workers access collective representation and protection of their working conditions? To answer this question, the authors compare the situation in Quebec and New Zealand. If, in these two states, the answer to this question was originally based on the legal characterization of cultural workers as employees or self-employed entrepreneurs, according to the classical binary conception, the solutions that have finally been adopted are very different. Based on a legal analysis and research focusing on cultural labour studies that they have applied in two specific cases, the authors identify the factors explaining the different characteristics of collective representation and protection of cultural workers in both systems. The comparison of two similar cases—two films to be shot, one in Quebec, the other in New Zealand, involving American producers—shows that the dynamics of local actors can change the institutional configurations currently applicable to cultural workers working in globalized film production networks.

The invisibility of the employment relationship in an inter-firm organizational configuration is illustrated in the article by Urwana Coiquaud and Isabelle Martin. The authors examine a contractual relationship that is little studied in the field of industrial relations, but is commonly found in the heart of new organizational configurations: the relationship between a franchisor and franchisee, legally independent entities, that is based around know-how or a concept that the franchisor transmits to the franchisee for financial consideration. The franchisee is legally considered to be an entrepreneur, sometimes even as an employer when he himself hires employees. By analyzing the relationship between the franchisor and the franchisee in the context of the relational contract theory, the authors show that this ongoing relationship establishes, beyond the collaboration that is necessary between them, a legal relationship of control of the franchisor over the franchisee, as well as a relationship marked by an imbalance of power that generates an economic dependence on the part of the franchisee. Many case-

law examples illustrate these control and dependency relationships that are related, in a number of respects, to a relationship between an employer and an employee, which would justify the development of measures to recognize this dependence relationship when it exists outside of the wage-earning system. By making judicious use of the factual circumstances reported in the case-law relating to franchising, this text shows the importance of examining the reality of the relationships between different entities that make up the production networks, going beyond their legal characterization, in order to reveal the new frontiers of the employment relationship.

These three texts illustrate the difficulty of identifying new employment relationships, the impossibility of 'pre-identifying' the actors involved, and the indeterminate character of the regulatory channels to be constructed.

Collective worker representation in new organizational configurations

To what extent can new employment relationship boundaries shape new forms of resistance and collective action capable of bringing about new forms of social protection? The last three texts in this special issue deal with this question. Taking a common theme, they all examine how the 'precariat' working in the interstices of employment relationships established in the 'wage society' can, through collective representation, itself become an agent of change. In doing so, they invite us to go beyond a reading that "presents changes in the morphology of wage-earners—and employment relationships—as a sufficient enough explanation of the obstacles to unionization" (Fribourg, 2003) (our translation).

Do employees working in the outsourced segments of a company benefit from collective representation that enables them to improve their working conditions? Louise Boivin examines the collective representation of employees, mostly women occupying precarious jobs, working for three different categories of private providers integrated into public networks of home help services in Quebec. Studying the relationship between the entities making up these networks by using research in the critical political economy and labour process fields, the author notes that, despite the move towards the outsourcing of public home help services to private providers, it is always the public authorities that have the strategic power to determine the working conditions of these providers' employees, even if they are not the legal employer. Using three case studies from different categories of private providers, the objective of this paper is to determine whether these employees benefit from collective representation that is capable of reaching the holders of strategic power within these networks and establishing solidarity between the employees of the various entities of which these networks

are comprised. Of the three types of collective representation practices observed in the case studies, none corresponds to a reticular representation capable of taking into account the dynamics of power and segmentation at the heart of these networks, even if the author finds some positive, albeit partial effects, of mobilization carried out by the users of these services. This gap alters the ability of employees to counter the precariousness and the gendered devaluation of their work. The author argues for the institutionalization of new forms of collective representation in the home help services sector in Quebec that goes beyond firm-level representation and suggests possible solutions in this regard.

Byoung-Hoon Lee and Sophia Seung-Yoon Lee also seek to contribute to the renewal of trade unionism theorization by highlighting the struggles waged by precarious workers in South Korea. Drawing on the fs/QCA² method, these authors put forward a qualitative comparative analysis of thirty cases involving struggles carried out by 'non-regular' workers between 1998 and 2013, focusing on three principal characteristics: 1- the extent of 'internal' solidarity between regular and non-regular workers; 2- the importance of external solidarity with other players in the trade union movement and civil society; 3- the scope and diversity of the 'repertoire of protest' mobilized in the context of the protest movements. The aim of the text is to identify the combinations of these characteristics that not only enable the negotiation of better working conditions, but also perpetuate the collective organization established by these struggles. It is clear from the paper that the presence of strong internal as well as external solidarity can be positively associated with the success of struggles fought by non-regular workers—and this first observation tends to support the results of other work on the need to create 'bridges' between different groups of workers and the community. The second observation arising from the analysis is more counter-intuitive: the probabilities of success are all the more significant when the first two configurations are combined with a limited repertoire of actions.

The use of different, non-traditional repertoires of action can be hampered by the institutional framework in which actors find themselves, as the paper by Carole Yerochewski and Diane Gagné shows. Recalling that atypical jobs disproportionately affect women, as well as immigrant and racialized populations, thus reflecting the systemic discrimination that exists in the labour market, the authors ask whether trade unions take this discrimination into account when developing their worker representation strategies. The paper addresses this issue through a longitudinal case study that highlights the range of strategies employed by unions. The case involves employees—mostly black women of Haitian origin—affected by two employment agencies that employed them to work with people with intellectual disabilities housed in residences run by a parapublic health and social services organization. This organization was the sole client of the two

agencies involved. These employees were represented by two accredited trade unions and covered by collective agreements negotiated with the agencies in question. These collective agreements provided for working conditions that were considerably inferior to those of employees directly employed by the parapublic organization to do the same work. Adopting a historical institutionalist approach, the authors discuss the trade union strategies implemented in this case, taking into account the institutional framework that shapes the way trade unions perceive the problem of systemic discrimination. The dominant trade union strategy in this case was to manage collective bargaining with the employer in a bipartite relationship, leaving the notion of tripartite relationships and the gendered and racialized divisions of labour that characterized the employment relationship boundaries for these workers in the shadows.

In sum, the authors' conclusions in the last three articles of this special issue are more mixed in terms of the capacity of collective actors, at least in the current institutional framework, to act as agents of change capable of regulating new employment relationships.

Conclusion

Several of the papers in this thematic issue give an account of working arrangements that bring different categories of workers into contact with companies that, without having the legal status and the responsibilities of an employer, undoubtedly exercise a certain power over the determination of the content and conditions of work, as well as some direct or indirect control over its execution. These workers include self-employed workers such as franchisees (Coiquaud and Martin) and cultural workers (Choko and Conor), as well as salaried workers employed in companies that are integrated into networks (Boivin, Yerochewski and Gagné, Choko and Conor). In some cases, social protection and collective representation were not applicable in the case of the employment relationship studied (Coiquaud and Martin; Azaïs, Dieuaide and Kesselman); in others, they were inadequate because they were not commensurate with the networks in which these workers were involved (Choko and Conor, Boivin, Yerochewski and Gagné) and even had the effect of limiting the extent of representation that the union actor could achieve in relation to the nature of the problem and possible courses of action (Yerochewski and Gagné). Positive effects on working conditions identified in the texts are characterized by the involvement of a wider constellation of actors (Choko and Conor, Boivin, Lee and Lee) and the limitation in the repertoires of union action (Lee and Lee).

The blurring of the boundaries that exists in the employment context undermines the very notion of citizenship at and through work (Fudge, 2010). Such a reading is convergent with the intertwining of the social relations of work and employment,

and of gender and ethnicity, which characterizes new employment relationships (Boivin, Yerochewski and Gagné) and makes them vectors of inequality and social exclusion. The current institutional framework of social protection and collective representation is inadequate in so far as it only captures a portion of these complex social relations, depriving the actors of resources, particularly legal resources, which are necessary to deal with the phenomenon as a whole.

In this sense, the proposal put forward by Azais, Dieuaide and Kesselman, which invites us to understand the 'grey zone of employment' highlighted by the new organizational configurations as a public space in which we observe actors that are usually left at the margins of analysis on work and unionism, seems interesting. Moreover, it allows us to recall that private normativity resulting from collective action is a way in which labour regulation can be renewed, as has historically been the case in the development of labour law (Verge, 2011 : 166). In this sense, a hybrid regulation that is under construction may well provide the foundation of an institutional framework better able to govern new employment relationships and empower actors.

This does not mean, however, that the state must remain passive in the development of a new institutional framework, reacting *a posteriori* to the transformations of work and experiments carried out by other actors. As particularly illustrated by the paper by Choko and Conor, the state can play an active role in developing solutions to the challenges posed by new organizational configurations and new patterns of employment relationships.

As for the union actor, several texts highlight the need for strategies that go beyond the dominant decentralized institutional model, at least in North America. To be effective, these strategies must be commensurate with the new organizational configurations in which workers are now integrated, and not simply confined only to legally recognized employers (Boivin, Yerochewski and Gagné) or to salaried workers (Coiquaud and Martin, Choko and Conor). Furthermore, they must aim to reconstruct solidarities that take into account the heterogeneity of work situations (Lee and Lee, Yerochewski and Gagné). The diversity of work situations and organizational configurations must correspond to a plurality of forms of action so that the needs—both in terms of social protection and representation—of workers pushed to the margins of classical wage labour are not relegated to the shadows.

Notes

- 1 On this matter, see the excellent articles published in *La Presse*. Online: [http://plus.lapresse.ca/screens/3edb2ad1-ce78-4c7e-ac17-99a9e7964e72%7Ck0365WZ8_m7o.html, <http://www.lapresse.ca/actualites/enquetes/201706/09/01-5105982-une-main-doeuvre-jetable.php>], accessed June 14th, 2017.
- 2 "fuzzy-set qualitative comparative analysis (fs/QCA)".

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