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Aspirational Work: A UK Labor Law Analysis

Abstract: This paper introduces the concept of aspirational work to highlight a common trend in the constitution and organization of work in neoliberal capitalism. It argues that aspirational work should be seen both as an example of displaced training and as an example of a form of work from which capital extracts surplus labor, albeit one which is not recognised as work in UK labor law. It goes on to explore the historical and structural factors that explain why aspirational work falls outside legal definitions of work, giving examples from the case law. Through its discussion of aspirational work, the paper highlights the importance of combining these two levels of abstraction in our analysis of contemporary social phenomena, explaining how capitalism gives rise to a particular form of normativity, and that while this varies historically, it nonetheless possesses certain distinctive and persistent features.

Keywords: labor law; Marxism; historical materialism; neoliberalism; human capital

I. Introduction

Like many academics working in the UK higher education system (Eidinger 2019), I frequently agree to perform a large amount of work for the benefit of my university and/or college, without any promise and/or expectation of payment. I do this, in part, because I want to contribute to the social purposes which my institution promotes, and because I find the work enjoyable. However, a core motivating factor behind my agreement to perform such unpaid work is my fear that, if I do not, I will be disadvantaged in the academic labor market and overlooked for the more stable and/or higher-paid jobs, to which I will need access if academia is to be a viable career for me. This appears to be a common experience in the UK university sector (Loveday 2018).

I am just one of the many people performing aspirational work in the context of modern capitalism (Alacovska 2019; Mackenzie and McKinlay 2020; Duffy 2018; Bulut 2014; Davies and Cresci 2017). By "aspirational work," I mean work that is motivated by the same economic compulsions that underpin all work in capitalism, the need to earn money to live, but which is oriented not towards earning that money directly, but towards building the skills, experiences, and/or reputation, which have become preconditions for stable paid employment in many occupations, in the context of neoliberal capitalism. In this sense, then, aspirational work constitutes a form of un- or under-compensated work carried out in the present, often for experience or exposure, in the hope that future employment opportunities may follow (Kuehn and Corrigan 2013, 10). While many forms of aspirational work are performed within the framework of paid employment relations, as with the example of academia above, a far greater number are performed through arrangements which are not recognized as involving work at all. The practices encompassed by this concept are far-reaching. They include various forms of (unpaid) internships, volunteering arrangements (Allan 2019), and/or other schemes oriented around professional development, and, to an increasing extent, activities mediated by online platforms and digital technologies (Davies

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and Cresci 2017; Burgess and Green 2009; Johinke 2020). For example, videogame "modification" (Sotamaa 2007) is undertaken by consumers of videogames who make available to videogame firms the videogame modifications they produce when playing the games. Consider also online reviews, written by budding authors contributing product reviews to review sites, or online fashion bloggers engaging in blogging as a way to establish and promote a profile (Becker 2014), in the hope of securing a sponsorship deal or a writing job in the fashion industry (Duffy 2018).

Many of these examples of aspirational work have already been subjected to extensive scholarly critique. There exist a variety of studies, for example, of online content production of so-called "playbour" or videogame modification (Ferrer-Conill 2018) of on- and off-line blogging and reviewing (Burgess and Green 2009; Cho 2012; Boes et al. 2017). There are myriad studies of unpaid internships as well as extensive studies of unpaid labor in the context of modern-day academia (Rickett and Morris 2021; Loveday 2018). There also exist a number of industry-specific studies, such as studies of the cultural industries, sport, and fashion, which make similar observations about the structure and character of the work on which they depend.

In economic theory, these practices have tended to be approached through the lens of the concept of human capital, framed as examples of investments made by individuals in their own personal development, and which are therefore deemed to be rightly considered "non-work" (Weiskopf and Munro 2012). Critical of this approach and its failure to situate them in the broader context of the capitalist system, certain Marxian-inspired scholars have tended to approach these practices through the lens of unpaid labor, using them as a contemporary example of the sheer scope of activities from which capital benefits, but for which it does not pay (Fuchs 2014; dbfreee 2014). This approach helps us to appreciate not only the relationship between aspirational work and common trends in capitalist societies, but also the particular novelties associated with aspirational work and their relationship with the specific features of the way in which capitalist social relations have come to be institutionalized in the context of neoliberalism.

In this respect, it should not be forgotten that capital has *always* free-ridden on the activities through which individuals cultivate skills and capacities (Bhattacharya 2017; Smith 2013). As Hardt and Negri explain, in addition to formal education systems, individuals cultivate many of the skills and capacities integral to contemporary production through wider processes of capital accumulation, and this is not something for which capital directly pays (Hardt and Negri 2000; Vercellone 2007; Virno 2007; Terranova 2000). While the extent to which this is true today may have increased as a result of the shift from manufacturing to services, and in particular the proliferation of cultural or creative industries, a distinctive feature of aspirational work is the introduction into the equation of firms/organizations which actively create opportunities for the performance of activities that contribute to skill development with a view to appropriating and monetizing the benefit of such activities to make a profit (Kuehn and Corrigan 2013). This situation fundamentally transforms the function of the activities because now there exist firms/organizations that are in a position to influence the terms on which the activities are performed, and thus, the magnitude and character of any benefit produced—quite independently from the benefit of the skills developed through those activities to any firms/organizations that might subsequently employ the persons performing them. In addition, this new mode of extracting surplus labor is facilitated by, and itself facilitates, the widespread disinvestment by other firms/organizations from training and education. (*Employee Benefits* 2019; Evans 2022). By making certain skills and certain forms of work experience a condition for paid employment (Glam Observer 2018; "Don't Listen to Rick Reilly: How Writing for Free Can Launch Your Career"), these firms are able to take advantage of this new industry for "aspirational work," gaining access to a supply of "already skilled" and "experienced' workers in which they no longer need to invest" (Kuehn and Corrigan 2013; Cappelli 2014), while simultaneously supporting that industry by

providing individuals with the "motivation" and "justification" they need to be willing to engage in aspirational work in the first place.

Those Marxian inspired scholars who have engaged with the specificities of these practices have emphasized their relationship with core features of neoliberal capitalism, conceived both in terms of the policies and practices associated with neoliberalism as a particular class project (Harvey 2016) and the particular form of subjectivity which they presuppose and promote (Duffy 2016; 2017; Duffy and Schwartz 2018; Kuehn and Corrigan 2013). Mediated by globalization and the development of digital technologies, these scholars argue that the rise of neoliberalism has led to widespread labor market casualization and a situation of endemic economic precarity. This has created a situation in which every individual is left personally responsible for their own failures and successes, and so is structurally compelled to make strategic investments today, with a view to ensuring for themselves a more secure and fulfilling future (Gershon 2011; Loacker 2013). In this way, neoliberalism has created what Foucault calls subjects that are "entrepreneurs of the self," as neoliberal policies have created a set of behavioral compulsions which force individuals to act *as if* they are preference-maximizing agents responsible for their own experiences and outcomes (Foucault 2004; Christiaens 2020). This trend has gone hand in hand with the active promotion by employers and policymakers of ideals of entrepreneurship and creative autonomy (Jaffe 2021), helping to promote beliefs in one's potential exceptionality. This simply helps to privatize the disappointment experienced by individuals who fail to generate returns *from* such exceptionality, while encouraging them to persist in activities from which they see few immediate or longer-term returns (Christiaens 2020). As a result, "even those at the bottom of the labor market persist . . . fuelled by the euphoria of imagined future success" (Christiaens 2020, 507).

Labor lawyers have long been concerned with the distribution of costs and risks between workers and employers and the particular challenges posed to labor regulation by so-called nonstandard, or casualized, forms of working arrangements (Hyde 2006; Adams and Deakin 2014; Prassl 2017; Fudge 2006b). They have not, however, really paid attention to the significance of aspirational work as a distinctive category of such arrangements, nor the particular distributive issues which they pose (Davidov, Freedland, and Contouris 2015; Ewing, Hendy, and Jones 2016; Bogg and Davies 2016; Freedland and Kountouris 2011). Nor, moreover, have they considered how the law's conceptualization of and approach to regulating work might itself contribute to these trends in modern working arrangements. While some scholars have begun to engage with a number of the practices encompassed by aspirational work (Adams and Grosse Ruse-Khan 2020), this has primarily been through the lens of the relationship between law and technology (Ekbia and Nardi 2017; Adams and Countouris 2019), rather than on the wider function, and regulation, of these new working practices, and how this, in turn, relates to the historical development of labor law.

In order to fill this gap in labor law scholarship, this paper develops a materialist conception of work that helps explain the relationship between work in capitalism and the historically evolved function of labor law. It draws on this account to better understand how, and in what ways, the law's conception of work and working relations is inadequate, and how it might itself have played a part in the rise and proliferation of aspirational work, as well as the limitations of its capacity to adapt that conception with a view to regulating it. In order to do this, the paper proceeds at two levels of abstraction: at a historical level, exploring how and why the law conceptualizes work and working relations in particular ways, and at a structural level, explaining how this conceptualization is mediated by the law's inherently abstract and decontextualized mode of conceptualizing socioeconomic relations more generally (Adams 2021b). Integrating these two levels of analysis is extremely important, it suggests, because capitalist social relations give rise to a particular normativity which is both historically varying, at the level of institutionalization, and remarkably persistent when it comes to its general contours. These persistent features place constraints on

what law can achieve when it comes to regulating phenomena such as aspirational work, while the existence of historical variation can help us appreciate some of its immanent potential when thinking about paths to reform.

The rest of this article proceeds as follows. Part II explores the relationship between work, capitalism, and labor law in more depth, embedding this in a materialist account of capitalist social relations. It then explores the relationship between labor law and aspirational work, and how the former has helped provide the conditions of existence and reproduction of the latter. Having done this, Part II concludes by moving to a higher level of abstraction, locating this historical analysis in a broader theory about the structural limits inherent in the law's capacity to recognize and conceptualize the distinctive features of work in the context of capitalism. Section III then illustrates the impact of these limits through an analysis of the UK courts' treatment of various forms of aspirational work in the case law. Section IV draws on the analysis to present certain strategically informed proposals for reform. Section V concludes by teasing out the paper's core contributions.

II. A Materialist Conception of Labor Law and Work

This section presents the paper's materialist conception of labor law, with a view to demonstrating the importance of situating aspirational work, and the law's treatment of it, in an understanding of the general features of law in capitalism and the particular ways in which these features have come to be institutionalized in the context of neoliberalism. It begins with a materialist analysis of the distinctive features of work before exploring the structural and historical factors shaping the way in which work has come to be conceptualized in the context of labor law.

Capitalism's distinctive structures give rise to a particular type of exchange wherein subjects equally capable of selling their property in the market agree to exchange that property—labor power for wages—doing so, moreover, in the guise of legal equals. While, in the context of that exchange, the parties appear to receive goods of a fixed and equal magnitude, in fact they receive goods of *unequal* value. This is because, while workers receive a wage of a fixed magnitude, the purchaser of labor power receives a *potential* labor power, a right to appropriate whatever benefit is produced when workers are put to work in the "hidden abode of production." This potential has the capacity to generate greater value than the wage because of the unequal power relations which animate that "hidden abode." Because workers are dependent on capital to live, they have little choice but to adapt their working practices to the demands, express or implied, of capital, and thus, to work in the manner as long and as hard as it expects/requires. Little choice, in other words, but to adapt their behavior as far as possible to "please" those they hope will provide them with the money they need to live.

This structurally engineered power relation is such that individual firms/organizations do not need contractual rights of control to extract from particular workers in the production process more work than their wage is worth, even if such rights are often *useful* to this end. Rather, this structural power relation *itself* creates conditions in which firms/organizations can depress the pay of workers and/or extract more working time and/or effort from workers in ways that can ensure that they extract a surplus—that they not only appropriate a benefit commensurate with the wage, but a benefit that goes above and beyond that wage as well: unpaid labor. Importantly, through the wage relation, the benefit of another form of unpaid labor is also appropriated, albeit indirectly: the unpaid labor that the worker's family members must expend on the worker, if he/she is to be able to go on participating in paid work in the future. Deeper discussion of this issue is beyond the immediate scope of this article.

While capitalism's class structures create the potential for firms/organizations to extract surplus labor from their workers, a precondition for the extraction of surplus value, they neither guarantee that such will be extracted nor do they guarantee that firms/organizations will not exercise that power in ways that are socially harmful. Not only does the scope for extracting unpaid labor depend on the cooperation of workers, and thus the firms/organization's ability to minimize worker resistance, but so too does it require limits to be placed on the exercise of that power to ensure that such not be exercised in ways that interfere with social reproduction or the supply and productivity of labor power, and/or in ways that undermine consumer demand. It is because this is a perennial risk inherent in capitalism and generated by its class structures that capitalist societies have historically been highly dependent for their sustainability on the existence of mechanisms capable of placing limits on and regulating the exercise and implications of capital's structurally engineered power as it is exercised through the wage relation in order to prevent these unsustainable practices from emerging and being generalized through competition as well as various other techniques—rights and benefits—designed to facilitate the cooperation of workers in the context of the production process.

These mechanisms, where they have developed, have not sprung out of nowhere; rather, they are the contingent product of the class struggle, of the ways in which workers and employers have reacted to the contexts in which they have found themselves, and the challenges they have confronted, in the context of their working practices, and of the way in which they have been responded to at various times by the courts and/or the state. These struggles are themselves profoundly shaped by the wider legal and institutional environment then, including by the particular legal forms adopted to give structure to the wage relations in which these struggles manifest and to which any resulting legal responses are, as a result, directed.

A. *Labor Law's Relationship with Work: A Historical Analysis*

In this respect, it is important to recall that much of the modern UK labor law framework has its origins in the struggles and conflicts that emerged in the mid-twentieth century, during a particular stage of capitalistic development. This was a period characterized by mass production, vertical integration, and the policies of the Keynesian welfare state, all of which helped support, and indeed, were partly facilitated by, the generalization of one particular manifestation of the capitalist work relation: the standard employment relation ("SER"), the legal basis of which was the contract of employment (Fudge 2017). As a result, labor law rules tended to be formulated in a context in which the problems to which it was deemed to respond were problems deemed to be inseparable from this particular contractual form and so came to be adapted to its distinctive structure and features. In so doing, this contractual arrangement came to offer certain advantages to firms and workers which, given the environment in which they were operating, encouraged other firms and workers to adopt that particular contractual structure as well (Deakin and Wilkinson 2005). The result was that labor law helped to generalize and further normalize the contract of employment as the primary mode of contracting labor law and, in time, the standard employment relationship came to be increasingly equated *with* work and capitalist working relations rather than being seen as just one historically specific manifestation and judicial expression (Adams 2021b; 2022b).

While the contract of employment provided a structure for working relationships that offered certain advantages to firms and workers, it also helped to legitimize the power imbalance that inevitably exists between those who purchase and those who provide labor power in the context of capitalism (Adams 2021b). Rather than seeing labor law as responding to the risks that arise in a context of structurally engineered inequality and unfreedom, a response to the power that capitalists inevitably hold over those dependent on accessing their subsistence through the market, the contract of employment allowed that inequality and unfreedom to be framed as a consequence

of the structure of a contract "freely" concluded (Adams 2022b). From this perspective, the power that employers enjoyed over workers was deemed to be a product of contractual rights of control and the worker's subordination to capital conceptualized through the lens of such contractual rights as well (Adams 2021a). At the same time, rather than seeing labor law as something that responds to risks associated with labor's dependence on capital to live, and thus, on accessing their means of subsistence through the market, the relevance of economic dependence to labor law was reconstructed as a dependence that arises from the fact that the particular legal relationship between the parties provides the basis for an individual to earn an income. This is reflected in the UK definition of the worker in s.230(3)(b) Employment Rights Act 1996 and its exclusion of persons who provide services to a client or customer (Countouris, De Stefano, and Lianos 2021). The structural context which explains the dynamics and social function of working arrangements were, in effect, abstracted away.

In law, therefore, the scope of labor law came to be associated with legal arrangements that provided for rights to payment, and in the context of which "work" was provided, where work was seen to be coterminous with time expended under the contractually mediated control of an employer. The performance of work was associated with the existence of inequality, but this was an inequality rooted in a hierarchy established via contract, rather than wider class structures (Adams 2022a). In the framework of this contract, moreover, work came to be seen as that part of a contractual arrangement that benefited a firm/organization, the counterpart to which being the worker's wage or remuneration.

Because this particular legal conception of the wage relation was drawn upon as a means through which to circumscribe the scope of evolving statutory labor legislation, it became increasingly central to juridical conceptions of wage relations as UK labor law developed, further shaping *how* juridical ideas about those relations were to evolve. As a result of this, in the UK, when it became clear that the concept of the contract of employment and the tests evolved to identify it tended to be underinclusive, excluding a number of persons hired under what became known as "non-standard" employment relations, the UK Parliament adapted to this situation by introducing an expanded definition of those entitled to (certain) labor rights. This expanded "worker" concept was linked with the existence of a contract that retained the basic structure of the contract of employment, however, and the same emphasis on contractually mediated control and contractually mediated subordination and dependence (Adams and Deakin 2014).

One of the benefits of the standard employment relationship, and thus, of the contract of employment, was that it had provided employers with contractual powers of control over workers in ways that, at the same time, helped facilitate cooperation and minimize resistance by coupling such rights with various protections against social and economic risk. It did this, moreover, in the context of a social, political, and economic environment in which resistance from workers to capitalistic production was deemed a real possibility (and indeed, was taking place), the bargaining power of organized labor was increasing, and firms were sorely in need of a regular supply of labor in order to flourish in the post-war economy (Fudge 2017). The Standard Employment Relationship ("SER") and contract of employment on which it depended emerged in this context as a "bargain" between capital and labor (Fudge 2017), and therefore, one which encouraged workers to work consistently and obediently for a given firm, investing their time and energy in the production of profits, because they now had a positive reason to do so; through the SER, they were promised a route towards sharing in some of the fruits of economic progress, enjoying a reasonable period of leisure, and possessing material comfort for oneself and one's family.

Since the 1970s, however, the conditions which had made the SER so advantageous in the post-war period and which had helped give rise to this unique "bargain" have fundamentally changed

(Bosch 2004). Exposed to new competitive pressures, the challenges of technological development, and new pressures on profitability, the advantages to employers of this contractually enforceable right of control and legal obligations of loyalty and cooperation began to decline. So did the potential competitive advantages of finding alternative ways to procure and arrange work, given that such helped firms avoid the regulatory costs associated with the contract of employment (Adams and Deakin 2014). The result was a self-perpetuating process wherein the contract of employment became increasingly less attractive to firms at the same time as labor law proved less adaptable to alternative modes of contracting labor power, increasing the potential regulatory and cost-based advantages for employers of contracting labor power via alternative legal mechanisms, of structuring the "wage relation" in different ways, giving it new legal expressions (Bosch 2004).

While contracting labor power outside the framework of the contract of employment model would deprive employers of the advantages of contractually mediated control over workers and the implicit guarantee that that model provided a regular and reliable supply of labor, such had only been necessary in a context in which workers had the capacity and intent to organize collectively, in which resistance to low wages and harsh working conditions was a real possibility, and/or it was difficult for firms to access the sort of labor power they needed to facilitate profit-making. In a context in which globalization, "financialization" automation, and technological developments, combined with the rise of neoliberalism, have undermined these conditions, however, such contractual mechanisms were no longer always necessary or desirable because the (perceived) immediate needs of firms began to change (Fudge 2006a). Rather than a regular supply of loyal workers, many firms were now operating in environments in which "flexibility"—numerical and functional—was more important; this was something to which the stability of the SER was deemed to be inimical, encouraging firms to seek out alternative mechanisms through which to procure work.

In this changed environment, rather than an exchange of contractual control over time for immediate and ongoing rights to payment, many employers have no need to rely on such mechanisms of control. Instead, workers can be relied upon to adapt their activities to the demands of firms, because they have no choice but to do so if they are to retain their jobs and income. In the absence of robust employment protections, therefore, the advantages of the SER could be sacrificed, and employers could experiment with new ways of contracting labor power with a view to avoiding or minimizing regulatory costs. While the UK Parliament has responded to the proliferation of non-standard work arrangements to an extent, it has still done so within a framework which presupposes that the essence of work in capitalism relates to an unequal power relation that has its origin in contract rather than in the structural context in which such contracts come to be (Adams 2022b). Recent decisions of the Supreme Court in relation to gig workers have not changed this overall emphasis (Adams 2021a). This has opened up a regulatory gap which firms/organizations have exploited with a view to increasing opportunities for extracting unpaid work, and it is in this context that we must understand the proliferation of aspirational work: the presenting, to workers, of opportunities to boost their labor market prospects of what are in fact working arrangements that simply lack the reciprocity, security, and mutuality associated in law with paid work.

B. Labor Law's Relationship with Work: A Structural Analysis

The previous section explains that the contract of employment was never an adequate theorization of capitalist work relations, but those inadequacies were less problematic in a context in which the institutional environment supported the channelling of work relations through this particular contractual form. However, once this institutional environment had been dismantled, the limitations of this conceptualization revealed itself. This only became more manifest as, rather than

recognizing structures as the common factors uniting these various forms of standard and non-standard work relations, the courts and Parliament continued to conceptualize the similarities in terms of contract, simply expanding their understanding of exactly what those contractual features might look like. Recognizing this helps us to understand why the emergence of aspirational work has proven so problematic; as a form of work organization which lacks many of the contractual features associated in law with standard and non-standard work, aspirational work cannot but appear in law as qualitatively different, justifying its classification as "non-work."

It would be a mistake to conclude from this, however, that the law's failure to comprehend the core features of work, and so, to encompass aspirational work within its scope, is purely historical and contingent. This is because, in fact, there are enduring structural reasons for the law's failure to conceptualize the distinguishing features of capitalist work relations (Adams 2022b). While the precise implications of these reasons will vary depending on the wider institutional context in which they function and will find their expression in a range of different definitions and juridical techniques, these limits will nonetheless endure over time and will constrain the extent to which labor law can ever adequately conceptualize and identify those relations to which its function is relevant—and this is something which the category of aspirational work exemplifies particularly well.

As explained by the Marxist scholar Evgeny Pashukanis (1987), and as elaborated by scholars such as Zoe Adams (2021b) and Robert Knox (2009), law must be seen as a specific form of social regulation that has its origins in the practices of commodity exchange (Miéville 2016; Buckel 2020, 86). As a result, it can be seen to reach its fullest development and to achieve a degree of universality with the generalization of commodity exchange that comes about as the result of the development of capitalist social relations (Pashukanis 1987, 30). Generalized exchange is predicated on the atomization of individuals from each other, and also from objects of which they have need but from which they are excluded. In such a context, therefore, individuals come to see themselves as equals, namely in their capacity to alienate property free from coercion with rights to acquire objects from which they are excluded and rights to enjoy and possess such objects free from interference. As the product of labor assumes the form of commodity, therefore, and as exchange relations thereby become generalized, people acquire the quality of formally equal legal subjects with rights (Beirne et al. 1980, 79). This situation presupposes an inherent isolation and opposition of interests, competing claims *to* objects by independent subjects, and it is this possibility for opposition and contestation that gives rise to the necessity for social regulation (Pashukanis 1987, 93). If this social regulation is to be compatible with the assumptions of equality and freedom that are intrinsic to exchange, however, this social regulation must assume a form which is consistent with its existence and reproduction.

Importantly, generalized commodity exchange is predicated on a situation in which labor power has itself assumed the form of a commodity, and thus, in which the exploitative relationship between capital and labor can be given expression in a form that is itself compatible with this assumed equality and freedom (Miéville 2016, 119). The form of social regulation distinctive to capitalism must not only conform to social beliefs and assumptions generated through commodity exchange; therefore, it must also render the unequal and exploitative production relations presupposed by commodity exchange compatible with those beliefs and assumptions as well. This is imperative if the surplus labor extracted in production will be capable of being realized in the form of surplus value in the market.

It is these features of commodity-producing societies which explains the particular way in which the institutional frameworks governing or regulating society have developed (Pashukanis 1987, 93). It explains the importance to capitalism of the image of the state as monopolizing coercion

outside society, exercising power in the general interest through the medium of a generally applicable and abstract law (Miéville 2016, 96). It also explains how and why the law regulates behavior through the lens of consensual relations between abstract legal subjects, and how and why courts *address* individuals in this capacity as well (Pashukanis 1987, 88). Despite the fact that the law actually played a material role in bringing about the condition for capitalist production, forcefully separating workers from the means of subsistence and reproducing that separation through property and contract (Adams 2020), the law nonetheless projects itself *as if* it exists independently from a market and society which it simply "finds" in existence, ones which are populated, moreover, by individuals who are inherently equal and free.

These basic presuppositions of the law—the status of individuals as equal and free and the law's independence from and neutrality between such individuals—places constraints on the extent to which the law can engage with and conceptualize inequality and exploitation, and thus, the power dynamic that is distinctive to capitalist work relations in capitalism (Adams 2022b). This does not mean that the law does not or cannot acknowledge the existence of inequality or exploitation—indeed, doing so is actually imperative if its image as the guardian of equality and freedom is to be sustained (Supiot 1994). It is to say instead, however, that the law cannot engage with the structural causes of that inequality or exploitation without calling its own legitimacy into question, and so tends to explain such phenomena in abstraction from those structures. In law, then, inequality and exploitation tend to be seen as a consequence of the free actions and decisions of legal subjects, including the types of contractual arrangements entered by them, rather than the wider structural contexts in which those arrangements come to be. Hence the centrality to juridical conceptions of the work relations, the legal structure of the contract of employment, and the tendency for the law to cognize variations in work relations *by reference* to that structure as well (Adams 2022b).

Linking the historical and the structural analyses together, then, we might say that the practices of commodity production and exchange give rise to a particular normativity, and this profoundly shapes social perceptions and beliefs of all those who participate in the practices from which it develops, and so tends to shape the struggles and conflicts that emerge in capitalism as well. These observations elaborate upon the methodological approach presented in Adams' "A Structural Approach to Labor Law" (2022b). As a result of this, the actual laws and institutions introduced tend to be consistent with and express as well this normativity to be oriented towards realizing and advancing the values which it expresses. While capitalism does not pre-determine the rules and institutions in existence, then, it does profoundly shape their form and the assumptions on which they are based. In the context of labor law, this translates into a systematic constraint on the extent to which the existence of the structures which lend work its distinctive features can be recognized, influencing how conceptions of work and working relations develop. While these conceptions are influenced by socioeconomic practices, then, they are always mediated by the lens through which the law interprets reality and conceptualizes social relations. This is a lens in which the structures which explain the distinguishing features of work and which help to explain the similarities between aspirational work and working relationships to which labor law is recognized to apply are systematically obscured.

This observation is particularly important when it comes to understanding why aspirational work has proliferated in the context of neoliberalism, and why this form of work poses such difficulties to labor law, when it comes to the scope for adapting legal definitions. As explained above, neoliberal policies have dismantled many of the institutions historically introduced to mediate the impact on workers of structural pressures, insulating them from socioeconomic risks. Firms/organizations have taken advantage of this situation, relying on primarily economic, rather than contractual, compulsion to encourage workers to perform various tasks without payment and to take on the costs and risks associated with skill development and training. Because the law

conceptualizes working relations in abstraction from the structures which explain this form of compulsion, and how and why it influences worker behavior, the law struggles to recognize the significance of these institutional changes and how they might reshape the power dynamic between workers and employers *independently* from the structure and terms of any contract agreed between them. While it is true that the law's particular understanding of work is profoundly shaped by the historical conditions from which it emerged, therefore, this itself is shaped by the abstract and decontextualized lens through which law *necessarily* conceptualizes socioeconomic relations, a lens of which employers can take advantage when seeking to avoid or evade labor law protections.

III. Aspirational Work in the Case Law

The purpose of this section is to illustrate some of the insights from Part II about the constraints that exist on the law's capacity to cognize core features of capitalist social relations and how these constraints manifest in the context of UK labor law's treatment of aspirational work. It is worth noting, however, that precisely because of the way in which aspirational work is framed in the context of neoliberalism and how it relates to prevailing legal definitions, many examples of aspirational work are unlikely to even come before the courts. Indeed, while labor law scholars have recognized the relevance of labor law to various forms of aspirational work, there exist many examples of aspirational work whose exclusion from labor law UK labor law scholars have not even begun to identify as potentially problematic. While recent discussions of the "dependent self-employed" might begin to encapsulate some of these practices, generally speaking the non-work status of certain forms of aspirational work has not been subject to considered juridical or scholarly critique (Daskalova 2017).

While, in many legal systems, labor law distinguishes between just two categories of person—the employed and the self-employed—in the UK, as in a handful of other European countries, there exist three classifications, as defined in the Employment Rights Act s.230, 1996. This section distinguishes between those "employees" hired under a contract of employment or apprenticeship, who have access to the full range of labor rights, and those "limb b workers" who enjoy a more limited set of rights, including minimum wage and working time protection, but not including rights such as sick pay, maternity pay, and protection against unfair dismissal. Those not within either definition are classed as independent contractors and so tend to fall outside the scope of labor law broadly conceived, subject only to specific statutory exceptions. In practice, because of the centrality of common law concepts of contract, employment, and the like, in the context of these definitions, the meaning of both employee and worker is largely left to the courts. While the introduction of the worker concept was a response by the UK Parliament both to developments in EU law and to the proliferation of non-standard work in the 1980s and 1990s, considerable emphasis is placed in both definitions on the requirement for *contractually mediated* control, *contractually mediated* dependence, and reciprocal contractual obligations to provide work personally and to provide remuneration (Adams 2022a). What is missing, therefore, is an analysis of how the parties' relative socioeconomic positions enable one party to extract a benefit from the other parties' activities, and, in turn, to influence the terms on which that benefit is provided, including, whether or not there exists any prospect, or even expectation, as to payment.

A. Voluntary Work

The first form of aspirational work to have been addressed by the UK courts is voluntary work. Generally speaking, a distinction tends to be drawn between workers and volunteers because the latter cannot be seen as providing *work* because any benefit derived from their activities cannot be traced back to any contractually imposed compulsion (Adams 2020, 212–13). Moreover, their lack of dependence on firms/organizations for access to the means of subsistence is deemed to

empower them to make free and informed decisions about whether, when, and how to work.[1] Thus, and in contrast to workers, volunteers seem to provide their labor freely, both in the sense of willingly and without any need or expectation as to remuneration (Tolhurst 2019).

The problem with this analysis, however, is that in neoliberal capitalism these observations are true for only a very small proportion of those providing "voluntary" services. This is because, increasingly, "volunteering" for organizations is often the only way individuals can obtain the work experience they need to obtain paid employment. This dependence by individuals on voluntary work to provide them with the experiences they need to "get ahead in the labor market" thus profoundly colors, or taints, any wider altruistic motives motivating the activities provided while simultaneously also profoundly changing the power dynamic between the parties. Because volunteers are often highly dependent on pleasing the organizations to whom they provide their voluntary services if they are to access paid work in the future, these organizations are placed in a powerful position to influence whether, how, and in what conditions they do so. While many such volunteers must rely temporarily on third-party sources of support in order to support their activities, very often volunteers are providing their labor for free through relationships that possess the distinguishing features of capitalist work.

In law, voluntary arrangements fall outside the scope of labor law, there being no "contract" to which labor law rights and obligations can attach. While it is possible to imply the existence of a contract where there is deemed to be an obligation to work, because the concept of obligation is conceptualized in highly abstract terms, the fact that individuals feel they have no choice but to work as a result of economic pressures, is not deemed to suffice.[2] That there exists a firm/organization benefiting from the activities provided, therefore, or that the individual is dependent on pleasing that firm/organization to obtain future employment/income is treated as irrelevant, as is the effect of that dependence on the scope that exists for the firms/organizations to influence the terms on which individuals provide their labor. This reasoning is clearly articulated in a different context, when excluding the existence of a contract between shifts.[3]

Even where individuals are assumed to be under a contractual obligation to work, however, and to meet the legal definition of worker, they may be excluded from claiming minimum wages in respect of the work provided. This is due to a specific exemption in s.44 of the National Minimum Wage Act, which exempts from the scope of the minimum wage "voluntary workers," persons who provide work to charities, voluntary organizations, or associated fundraising bodies and receive no remuneration from them other than reasonable expenses. This provision expresses the premise that, where organizations pursue a social purpose, the *reason* that the individual agrees to provide work for free must be due to some genuine commitment to advancing that purpose (Adams 2020, 212–13), thereby reducing the likelihood of any antagonism, and thus, abuse, between the parties. This approach effectively conflates a willingness to work for free with economic independence, obscuring the complex reasons for which individuals might be in a position where they have little choice but to engage in unpaid work and the conditions that must exist—such as third-party support—if they are to be able to do so (Jaffe 2021, 183). In a context in which successive UK governments have sought to advocate for the shifting of many public service operations onto "voluntary" organizations (such as the citizens' advice bureau, food banks, and shelters) moreover, allowing charities and social enterprises to compete with private firms to offer public services, the incentive for such organizations to offer opportunities for "unpaid work" to workers in need of work experience, are even greater. This thereby increases the risk of abuse, with charitable organizations simply seeking to undercut public and private sector organizations

[1] A core case in this context is X v. Mid-Sussex Citizens' Advice Bureau [2012] UKSC 59.
[2] O'Kelly v. Trusthouse Forte plc [1983] ICR 728.

by refusing to pay for much of their labor power needs (Acemoglu, Aghion, and Violante 2001; Rochester, Paine, and Howlett 2010, 222–26; Adams 2020, § 8.4.1.).

B. Unpaid Internships

The second category of aspirational work on which we have some juridical pronouncements is unpaid internships (Davies and Cresci 2017; dbfreee 2014). The market for unpaid internships has proliferated since the 1970s as more industries, such as fashion and journalism, have tended to make industry-specific work experience a condition for employment (Glam Observer '2018). As Sarah Jaffe (2021, 176) has explained, however, in practice, what has happened is that many firms have replaced entry-level workers with free intern labor, effectively introducing an entirely new wage floor *below* the minimum wage. Given that obtaining an internship and pleasing the firms in which they are undertaken has become central to the employment prospects of individuals, the latter are under considerable pressure to conform to the former's directions, and desires. This creates a situation in which these firms can treat these interns as they would directly employed workers, extracting surplus labor from them by intensifying and controlling their work without, however, having to pay for the benefit of doing so. This situation is legitimized, moreover, by the tendency for the court to conceptualize such arrangements as qualitatively different to the forms of working arrangements to which labor law, including minimum wage protections, apply. In this situation, they tend to reproduce the assumptions of human capital theory, framing these arrangements as oriented towards the personal development of the intern rather than the provision of work to employers. Thus, while internships differ widely in their terms and orientations, varying from formal training for accredited qualifications to much more informal work experience or work shadowing, they all share the fact that they often involve the performance by the "intern" of services from which the employer is able to benefit, but through legal arrangements that are framed as if they are oriented almost entirely around the provision of training, education, or experience to the intern.

Like with volunteering arrangements, internships might occasionally be recognized as involving work, especially if there is no clear arrangement for education and/or training and/or the firm at which the internship takes place exercises considerable control over the intern's time.[4] This will be so, however, only if any obligation to provide work can be seen to have its origins in the parties' agreement, rather than simply in wider structural pressures. In many cases, however, the courts conclude that the fact that the benefit obtained under the contract by the putative worker is not remuneration, and derives instead from the activities performed, that the arrangement is not one[5] that involves work to which labor law will apply. The courts have tended to justify this position, moreover, by relying on the inexperienced nature of the intern to negate the economic value of any benefit derived by the firm/organization.[6]

The courts' framing of internships as if they do not involve work is profoundly shaped by historical assumptions about the nature and orientation of the apprenticeship, to which internships are very similar (Frenette 2015). Historically, the apprentice master's provision of training and education would go hand in hand with implied obligations to maintain the apprentice, often allowing him to live within his household as a member of the family (Adams 2020). In such a context, the apprenticeship did not need to provide the apprentice with a monetary income (although many did involve a modest wage) because the apprentice's reproduction was already guaranteed by the social conventions associated with the institution. In a context in which firms do not house or maintain their interns, however, the assumption that a lack of a promise to pay can be equated

[4] Revenue and Customs Commissioners v. Jones [2014] I.C.R. D43.
[5] Edmonds v. Lawton [2000] I.C.R. 567.
[6] Edmonds v. Lawton [2000] QB 501.

with a lack of need by the intern for payment is misplaced. Many individuals are forced to take on considerable amounts of debt to fund their internships, and/or certain occupations are closed off to them *entirely* simply because they cannot access the funding they need to obtain the "work experience" that is now a condition for obtaining a paid job (Wachman 2010). While from 2010, those undertaking a formal apprenticeship will at least be able to claim the apprenticeship rate under the NMWR, not only does this reinforce the idea that the benefit provided by those engaged in training is inherently less than that of ordinary workers and the needs of those individuals as well, but for informal interns even this right is not available (Winterbotham 2017). [7]

C. *Professional Development*

The third example of aspirational work discussed in the literature concerns contractual arrangements oriented around an individual's professional development, a core example being the arrangements between sporting federations and athletes in the context of professional sport (Connor 2009). In sport, earning money is something that is often only possible after years of training, and participation, in lower-level competitions (Alacovska 2018). This effectively requires aspiring athletes (and their families) to make considerable investments of time, and money, in the present, in the hope that such will pay off in the future—that is, that the athlete will eventually be selected for and successfully compete in the high-end competitions through which they will then have the opportunity to gain exposure, prize money, and potentially, lucrative sponsorship deals. In this way, professional sport shares many similarities with the creative industries, where individuals are expected to develop a professional portfolio prior to obtaining any form of commercial representation (Christiaens 2020). In sport, however, because few athletes have access to the equipment and training services that they need to practice their skills, they are often highly dependent on large organizations and associations (such as the British Cycling Federation, the Lawn Tennis Federation, or other local gyms and sports clubs) when it comes to the ability to cultivate and pursue their sporting careers—organizations which seek to profit from those athletes through lucrative sponsorship deals and/or by claiming a share of their winnings in the event of competitive success (Connor 2009).

As in many of the industries that are today presented as offering "opportunities" for fulfilling work, whether it be the creative industries, fashion, videogaming, or even academia, professional sport is characterized by a chronic supply of overqualified "labor" such that each individual worker, or athlete, is ultimately expendable and interchangeable: There is always a line of athletes ready to take their place at the top. In reality, few athletes make it to the pinnacle of their sport and receive large, or any, monetary payoffs (Bourke 2003). The fact that a lucky few do, however, nonetheless acts as a powerful incentive to individuals to persist. The rarity of success in this industry also makes athletes highly dependent on the advice of their superiors—coaches and advisors employed by the sporting federations with which they train—when it comes to navigating this highly cutthroat marketplace. This simply further increases the influence that federations have over their athletes, and thus, their ability to influence how they approach their professional development, to secure for themselves maximum benefit.

In some jurisdictions, such as the US, there exist specific common law, statutory, and administrative rules concerning the status of professional sportspersons. In the UK, however, the relationship between athletes and sporting federations is assessed in accordance with ordinary principles of labor law. In this context, the UK courts have refused to recognize relationships between sporting federations and aspiring athletes outside the framework of team sports as involving work. Conceptualized as an arrangement designed to facilitate the athlete's professional

[7] National Minimum Wage Regulations 2015, Regulations 4 & 5 (as amended).

development, any benefit derived by the federation is not deemed to be *work* over which that federation enjoyed (contractual) control, and so not something for which they ought to be required to pay. This is illustrated particularly well by the case of *Varnish v. British Cycling Federation T/A British Cycling.*[8]

In this case, the association with which the athlete agreed to train did not pay her. Rather, to take up the arrangement, Varnish had to secure third-party funding, and so was reliant on a maintenance grant provided by an external funding body to support the arrangement she concluded with the Federation. While previously the courts have recognized that professional footballers are sometimes employed as employees by the football clubs for which they play, these cases have usually involved express obligations as to payment and service on each side.[9] They have, moreover, been largely confined to the context of team sports, and so, the athlete in question has often already performed years of aspirational work before securing a more stable position. [10] Here, by contrast, there were no such mutual promises: the federation agreed to develop a performance plan for the athlete and to provide her with various services, including coaching support, team clothing and equipment, medical services, and the like, to help her "achieve her potential," in exchange for which the athlete agreed to train hard for the purposes of winning medals for the British Cycling team with which the Federation was associated.

In finding that the athlete was not an employee because there was no wage-work bargain, the court stressed that while there were benefits on both sides of the arrangement, the Federation did not provide the athlete "with work," and what she received from the federation did not amount to "remuneration."[11] The court rejected the premise that providing opportunities for professional development and an opportunity to train hard for competitions constituted work—even if the Federation might derive benefits from the athletes taking up these opportunities. Not only was the athlete not contractually compelled to take up those opportunities; [12] the Federation had no contractual rights to control the nature and magnitude of any benefit it did derive, or hoped to derive, from the athlete's potential "successes."[13] The conclusion that any benefit derived by the Federation could not be conceptualized as work was reinforced, moreover, by the fact that the Federation made no undertaking to pay the athlete, such that she had had to secure a maintenance grant from a third party.[14] In effect, because someone else was funding her training, she was deemed to be economically independent, and this situation effectively obscured the way in which the individual's dependence on the sports industry to advance in her profession gave the association considerable power over her, power which could be exercised to ensure she approached her training in a way that secured its commercial objectives.

While *Varnish* was decided in the context of professional sport, it is a particularly powerful precedent for aspirational work. This is because professional sport has long been characterized by labor market conditions that are similar to those which explain and underpin the rise and proliferation of aspirational work more generally: an over-supply of labor, intense competition, and conditions which make the qualities of the specific worker relatively immaterial to the particular firm, reducing the incentive to make personalized investments.[15] As explained in section two, in many industries today, the superficial attractiveness of an industry that glorifies the few

[8] [2020] UKEAT/0022/20/LA [V].
[9] *Walker v. Crystal Palace Football Club Ltd* [1910] 1 KN 87, *CA and Eastham v. Newcastle United FC* [1964] Ch 413.
[10] See, for example, *Hall v. London Lions Basketball Club (UK) Ltd.* [2021] I.R.L.R. 17.
[11] *Varnish* [2020] UKEAT/0022/20/LA [V] at [42].
[12] *Varnish* [2020] UKEAT/0022/20/LA [V] at [57].
[13] See *Varnish* [2020] UKEAT/0022/20/LA [V] at [44]-[45] and [52].
[14] *Varnish* [2020] UKEAT/0022/20/LA [V] at [57] and [11], citing the Employment Tribunal at [515].
[15] *Walker v Crystal Palace Football Club Ltd* [1910] 1 KN 87, CA and Eastham v Newcastle United FC [1964] Ch 413.

"stars" (Duffy 2018, 106; Kay 2007) that achieve commercial success is such that "aspirational" individuals can be relied upon to "invest" considerable time and money in ongoing training and development in order to improve their opportunities for achieving potentially highly lucrative "success" in what is a highly competitive environment, but one which promises to be more rewarding, or more fulfilling, than available alternatives. Because, however, these conditions create a context in which every worker is "as qualified" as every other, in which *every* "aspiring" worker has spent considerable time and effort in "cultivating" their skills and reputation, the incentive for firms/organizations to invest in a particular worker is decreased, rendering them effectively expendable. This expendability is such that firms/organizations can mobilize the constant threat of dismissal or disengagement in order to influence what individuals do and how, regardless of the absence of any contractual right to do so.

D. The Opportunity to Earn Income from Third Parties

A fourth example of a form of aspirational work indirectly considered by the courts concerns apparently economically independent workers who are offered "opportunities" by firms monopolizing access to consumer markets, to earn income from their consumers. This situation was discussed in the context of the case of *Quashie v. Stringfellow Restaurants, Ltd.*,[16] itself cited in *Varnish*, in support of the courts' findings that the arrangement did not involve the provision of work.

The case involved a lap dancer who had concluded an arrangement with a nightclub under which the latter agreed to allow her to dance on its premises, for its customers, on certain terms dictated by the club. While the club did not offer to pay the dancer, it nonetheless expected that she conform to the company dress code and that she accept payment from its customers in the club's currency, which she would then exchange with management for real money. At this point, various deductions would be made, including a commission reflecting the "price" charged to the dancer for dancing in the club, and any fines imposed for misbehavior, such as lateness. While the dancer was not required to perform on particular nights, she was expected to perform a minimum amount of weekend shifts and to sign up to and subsequently check a rota on a regular basis. There was, however, no express contractual obligation to dance beyond these limited requirements, and the dancer was also not expressly prevented by her contract from finding work in other clubs.

In *Quashie,* like in *Varnish,* the court rejected the dancer's claim that she was an employee for the purposes of employment law on the basis that there was no wage-work bargain.[17] Important factors underpinning this conclusion included the absence of an obligation to work because the dancer was required to be available for certain shifts[18] but was relatively free when it came to structuring her schedule; there was no right to payment from the club itself, she was only to be paid by its customers; and the club did not reserve for itself contractual rights to control when, where, and how the dancer danced, even if the structure of the club did practically constrain her appearance and how she danced through the location and the scale and nature of payment. As in *Varnish,* moreover, the court was content not to imply a right to remuneration because the agreement presupposed the receipt by her of "third party" sources of income in the form of payments by the club's customers. In effect, because the activities appeared to provide opportunities independent from rights to payment from the firm in question, it was deemed perfectly legitimate to characterize the arrangement as one not relevant to the world of work.

[16] [2013] IRLR 99.
[17] [2013] IRLR at [19], [45-6].
[18] [2013] IRLR at [54].

The court did not doubt that the club derived considerable benefit from having dancers dance in the club. For example, customers coming to the club attracted by the dancers would buy more drinks, and the dancing might encourage repeat business, boosting profits. However, because the business could not be reduced to the provision of lap dancing—the firm was not in the "business" of providing lap-dancing services—and because the scope and nature of that benefit was not the product of contractual rights of control enjoyed by the club but was a mere side-effect of an arrangement that primarily benefitted the dancer, this benefit did not constitute "work." This was a conclusion which the absence of any promise by the club to pay remuneration directly to the dancer simply reinforced.[19] In coming to this conclusion, the court placed considerable emphasis on the fact that the dancer assumed much of the commercial risk.[20] That is, the court saw a lack of guaranteed payment as evidence the dancer *voluntarily* took the risk that she might not earn anything on some nights, because she might earn considerably more on others. The courts' focus on the structure of the legal relationship between the parties, rather than the power dynamics that arose from their respective socioeconomic position, thus, led them to conclude that the features of dependence and subordination characteristic of working relations in capitalism were absent, thereby leaving the dancer without access to labor law protections. Albin (2013) offers a similar critique.

E. *Aspirational Work Within Employment*

The final category of aspirational work indirectly addressed by the courts relates to aspirational work performed within the framework of paid employment relations, as with the example of academia given in the introduction.

This form of aspirational work takes the form of requests, by employers, for workers to undertake additional tasks where such are explicitly framed as "opportunities to gain experience and/or to demonstrate one's value to an organization" and where this framing is used as an explicit justification not to offer additional payment. It can also often take the form of corporate or organizational "social" events, which employees are "invited," but not "required," to attend but which, nonetheless, are taken into account in job evaluations and promotion decisions such that individuals rarely have a choice but to attend if they are to remain competitive within the organization, in practice (Gregg 2011; Adams 2022a). In this context, it is the awareness of one's replaceability, of the state or the market outside the firm/organization, that allows the organization to pressure individuals to voluntarily agree to perform tasks, and participate in activities, which contribute to the profitmaking activities of the firm/organization, but which will not tend to be considered within the scope of the work for which they are paid. This is because the legal definition of work as provided in working time and wage regulation associates work with express contractual duties or express employer directions rather than activities which employers "freely undertake" in a context in which their socioeconomic position makes them feel unable to refuse (Adams 2022a; Rose 2018).

IV. Proposals

The above discussion of the limits of labor law's approach to aspirational work can now be combined with our analysis of the historical and structural factors constraining the law's approach to the regulation of work to develop certain strategically informed proposals for reform. As a preliminary step, this section will suggest that we can take advantage of our analysis of some of the historically contingent features of the law's conception of work to suggest some minor

[19] [2013] IRLR at [54] and [50].
[20] [2013] IRLR at [51].

modifications to prevailing legal definitions which might overcome some of the limits of prevailing conceptions. It will suggest, however, that we ought not overrely on such reforms, and ought to think about reform in broader terms from the perspective of how to further struggles for structural change. In light of this, it suggests that we should be thinking about how to mobilize the law in ways that might help undermine aspirational work's conditions of possibility, doing so, moreover, in ways that might actually help build working-class power and foster collective capacities for self-organization and resistance.

Insofar as legislative definitions are concerned, while the article explained how the law necessarily conceptualizes social relations in abstraction from the structures which explain their distinctive features, it also pointed out how the law's conception of work has adapted itself to the historical context from which it developed and how this has embedded in the legal definitions of concepts such as worker, employee, and work, certain assumptions about how and where work is performed, which are not necessarily true in all contexts today. In relation to the definition of the "worker" or "employee" to whom labor law is deemed to apply, for example, we can see how a statutory definition of the scope of labor law that takes the emphasis away from the parties' agreement and places it more firmly on the question of the parties' relative socioeconomic position might help overcome some of the limits that currently exist in the law's approach to aspirational work. Just one possible example of how this might be done can be found in John Hendy QC's Status of Workers Bill, Parliamentary Bills, UK Parliament 2022, which places emphasis on a person's being engaged to provide labor rather than the nature of the contract under which they work. Another possible approach would be to make explicit reference to economic dependence in the definition of the persons to whom labor law applies while providing a statutory list of criteria by reference to which to assess when such dependence might be deemed to exist in practice. These ideas are elaborated in more detail in *The Legal Concept of Work* (Adams forthcoming).

In relation to definitions of "work" more specifically, such as in the context of working time regulation, introducing a statement to the effect that working time *includes* "time spent furthering aims and tasks set by the employer and in accordance with an overall schedule set by the employer, regardless of where and when that time is expended, *and regardless of whether or not those aims and tasks form part of a workers 'contractual duties'*" might be one way to overcome some of the historical assumptions embedded in the law's conception of work that pose particular challenges in the context of aspirational work, given the way in which employers are able to extract work without the boundaries of any formal contract (Adams 2022c). A similar definition of working time is used in the Finnish Working Hours Act of 2020.

While these modifications might be useful for bringing within the scope of labor law certain examples of aspirational work, we ought not overrely on such reforms when it comes to thinking about how to respond to the problems posed by aspirational work. As explained throughout this article, the structural pressures which encourage and provide opportunities for capital to introduce and seek to profit from practices like aspirational work are inherent in capitalism, and they can never be completely circumvented or overcome through legal regulation. Capital will always seek to circumvent prevailing definitions and to structure work in ways that conceal its existence. This means that focusing on adapting legal definitions to changing socioeconomic realities may often prove counterproductive even if certain definitions might do a better or worse job in certain contexts of capturing the essence of work in its varied manifestations. This is particularly so, moreover, given that labor law's inherent tendency to obscure and legitimize the structures that lend work its distinctive features can often undermine momentum for broader structural change (Knox 2009; Adams 2021b). In addition to tinkering with statutory definitions, then, we might also think about how to mobilize the law to undermine aspirational work's conditions of possibility and help, in the process, to build working class power.

In this respect, given that aspirational work depends on precarious labor market conditions and the effects of this on workers' bargaining power, insulating workers from socioeconomic risk and thus, reducing the impact, if not entirely eliminating the existence, of structural pressures on them will be vital. This means mobilizing behind the introduction of various socioeconomic rights to social housing, universal public services, generous social security, and the like along with legislative support for compulsory sectoral-level collective bargaining. These measures can help undermine the conditions that make aspirational work possible by reducing the dependence by workers on pleasing a particular employer to secure a stable and reasonable income while also empowering workers to bargain collectively to limit employers' use of casualized working arrangements, and thereby decrease competition for stable and secure employment.

In addition, and consistent with this premise, given that part of what sustains aspirational work is the withdrawal by employers of investment in training and education provision and their attempts to make the obtaining of work experience and/or certain forms of skills/training conditions of paid employment, new prohibitions should be introduced on making work experience a condition of employment unless the firm/organization itself provides paid opportunities to individuals to help them secure that experience.

While these approaches will not overcome the challenges inherent in work in capitalism nor prevent capital from seeking out new ways to extract and conceal its existence, it will at least go some way towards empowering workers to resist such attempts while at the same time temporarily constraining some of the more socially harmful strategies deployed by capital to shift risks and costs onto workers. By focusing not merely on legal regulation for its own sake, moreover, but on how that regulation might help build working class power, such approaches can be seen as part of a strategy oriented towards longer-term structural change, and thus, overcoming the root causes of the problems associated with practices such as aspirational work.

V. Conclusion

This article introduced the concept of aspirational work with a view to conceptualizing a number of labor practices in contemporary capitalism. In exploring aspirational work and the practices encapsulated by this concept, this article has helped to illuminate labor law debates about labor law's underinclusivity, identifying common features of a set of practices systematically excluded from its scope and/or the full scope of which tends to be underestimated; it has helped to better conceptualize some of the trends in work that are endemic in neoliberal capitalism and better understand how these trends have been sustained and legitimized through law; and it has also helped to shed light on the limits and potential, as well as the desirability, of labor law when it comes to responding to some of the harmful effects of these trends in practice.

At the same time, this article built on the observations of a number of scholars who have stressed the interdependence between a range of business practices associated with aspirational work, showing how a disinvestment in training and skill development has gone hand in hand with, supported, and been supported by the emergence of an entire industry oriented towards extracting unpaid labor from workers outside dominant legal and economic frameworks. It has also located these practices historically and structurally, showing the similarities between these practices and range of labor from which capital seeks to benefit but for which it does not pay, while nonetheless stressing the novelty of such practices, emphasizing how they come to function as work. In this respect, the article has shown that what is distinctive about the concept of aspirational work is that it identifies an entire category of practices from which capital can extract surplus labor through a wage relation, but the nonpayment of which is systematically obscured and legitimized in the

context of neoliberal capitalism. This has not only increased the labor from which capital in general can benefit indirectly for free by encouraging individuals to engage in more and more activities oriented towards skill development and training; it has also brought into being a huge array of practices that contribute directly to capital accumulation and firm/organization profits through a relationship in which the risks of abuse and exploitation inherent in work relations are endemic. This is a relationship to which labor law's function is relevant, therefore, but to which, in practice, labor law tends not to be applied.

In its discussion of the legal treatment of aspirational work, the article has also helped shed new light on the relationship between the historical, and structural, factors shaping the development of the law's conception of work, and how these, in turn, relate to developments in wider society. The practices integral to capitalist society, the article has argued, give rise to a particular form of normativity, and it is this normativity which comes to be expressed in the ever-changing legal rules and institutions through which capitalist social relations are institutionalized at a given time. While this normativity might, thus, vary in its precise historical manifestations and its implications for particular groups, it nonetheless possesses certain enduring or persistent features which must be taken into account when explaining the impact of law on certain social phenomena, its role in its evolution, and the risks and benefits associated with its regulation. While these insights were used in this article to develop certain proposals for how to respond to aspirational work, they can also be drawn upon in the future to orient analyses of the law's relationship with various other phenomena occurring in contemporary capitalism.

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