

Subject Index

A

All-China Federation of Trade Unions (ACFTU), 287

C

CBR Labour Regulation Index (CBR-LRI)

algorithms and scales

binary *vs.* graduated coding, 70–71

court decisions, statutes and collective agreements, 72

federal systems, 73

mandatory and default rules, 73

retrieving primary data, 71–72

text-based *vs.* opinion-based coding, 73–75

worker and enterprise types, 73

choice of indicators, 69–70

economic and social actors, 68

empirical approaches, 61–63

leximetrics, 66

neoclassical analyses, 67

OECD and ILO, 60

process of dataset, 66–67

quantitative legal research, 63–65

CETA. *See* Comprehensive Economic and Trade Agreement (CETA)

Charter of Fundamental Rights of the European Union (CFREU), 198, 215, 216, 465, 556

CJEU. *See* Court of Justice of the European Union (CJEU)

Coercion and freedom in labour law

collective bargaining, 490

decision-making rule, 509

democracy and autocracy, 490

freedom and political liberty, 507–508

political liberty, 490

Collective Agreements Law (1957), 491, 493–494

Collective bargaining system in Italy

centralization *vs.* decentralization, 530

company-level bargaining, 543–544

Consolidated Act on Representation, 548

coordination rules, 533–534

economic objectives, 529

fixed-rate

bonus, 544

vs. flexible wages, 536–538

payments, 546

variable pay systems, 543

functions, collective bargaining actors, 547–548

Giugni Commission, 550

Italian industrial relations, 527–528

legal enforceability, 530

methodology, 534–536

multi-employer bargaining, 531–532, 544, 545

social partners, 529

- sociological and legal theory, 531
 - wage bargaining coordination, 528
 - wage increases in company-level bargaining
 - collective extra pay, 541
 - fixed-rate bonuses, 540–541
 - performance-related pay, 542–543
 - una tantum* (one-off payment), 541–542
 - Comprehensive Economic and Trade Agreement (CETA)
 - adverse effects on labour standards, 297
 - exception clauses
 - Art. XX GATT/Art. XIV GATS, 320
 - CETA Chapter on Government Procurement, 319
 - CETA Chapter on Regulatory Cooperation, 319
 - general, 314–317
 - ICS, 318–319
 - policy fields, 318
 - public morals and social protection, 317
 - impact assessments
 - ex post impact review, 323–324
 - human rights and ‘sustainability impact assessments’, 320–323
 - investment agreements, 295, 297
 - joint interpretative instrument, 325–326
 - labour provisions (*see* Labour provisions, CETA)
 - labour standards (*see* Labour standards, CETA)
 - potential risks, 298
 - TPP and TTIP, 295–296
 - worker protection, 326–329
 - Coordinated Market Economies (CMEs), 528
 - Court of Justice of the European Union (CJEU)
 - Belgian *Hof van Cassatie*, 554
 - Boungaoui vs. Achbita*, 554–555
 - direct distinction based on religion, 555–560
 - French *Cour de Cassation*, 554
 - proportionality test in *Achbita*, 567–570
 - Critical legal studies
 - Duncan Kennedy, 152
 - labour law scholarship, 145
 - Local 1330 case* (*see* *Local 1330 case*)
 - Critical Legal Studies (CLS), 46–47
 - Crowdworkers and employee vulnerabilities
 - objectives of labour law
 - child labour, 260
 - collective bargaining, 263–264
 - distribution of wealth/welfare concerns, 257
 - highly variable wages, 261–263
 - imbalance in bargaining power, 257
 - market failures, 256–257
 - maximum working hours, 259–260
 - minimum wages and temporary contracts, 258–259
 - organizational inefficiencies, 260–261
 - payment in kind, 260
 - subordination as an essential element for protection, 254–256
 - Cyberspace, 242–244
- D**
- Direct distinction based on religion
 - Art. 9 and 10, ECHR, 559
 - Directive 2000/78, 556
 - discrimination, 556, 557
 - forum internum*, 556
 - and indirect distinction, 559–560
 - open-ended employment contract, 555
 - religious belief and philosophical/political beliefs, 557
 - religious identity, 559
 - Domination
 - arbitrary power, 375–379
 - concept of, 375
 - definition, 374
 - dependency, 381–383

- freedom, 379–380
 - justifications of non-domination, 386–387
 - social relationship, 380–381
 - structural, 383–385
- E**
- Earnings Before Interest, Taxation, Depreciation and Amortization (EBITDA), 543
 - Economic analysis, 117
 - Economic governance on national wage policies, EU
 - austerity measures, 201
 - corrective arm (excessive imbalance procedure), 204
 - decisive policy action and specific monitoring, 206
 - EU's lack of competence on pay, 209
 - financial assistance programmes, 200–201
 - fiscal austerity and cost competitiveness, 204
 - internal devaluation, 200
 - macroeconomic
 - imbalances, 204, 207
 - surveillance, 202
 - minimum wage
 - in Bulgaria, 206–207
 - recommendations, 205
 - 'ordinary' framework, 201
 - preventive arm, 204
 - recommendations in Slovenia, 207–209
 - 'reform programmes', 202
 - scoreboard indicators, 203
 - SGP, 202
 - standard macroeconomic indicators, 203
 - Employment relationship, 356–358
 - Employment representation model
 - arbitrary power, 513
 - on bars to an election, 522–523
 - Charter of Rights and Freedoms, 514–515
 - collective agreement, 510
 - collective bargaining scheme, 514
 - exclusive representation model, 518–519
 - freedom as non-domination, 512
 - Israel's one-third membership requirement, 524–525
 - Lavigne vs. OPSEU* (1991), 514
 - North American model, 510
 - pre-hire agreements, 520–521
 - social community of employment, 516
 - social order, 511
 - subordination, domination and dependency, 512
 - Supreme Court of Canada, 514
 - US Supreme Court decisions, 516–517
 - EU downward pressure on national wage policy
 - EU's lack of competence on pay, 197–198
 - financial and economic crisis, 195
 - implementing equal pay rights, 198–200
 - purchasing power of workers, 196
 - EU internal market law, 171
 - European Committee for Social Rights (ECSR), 217, 218
 - European Convention on Human Rights (ECHR), 556
 - European Court of Human Rights (ECtHR), 561
 - EU's encroachment on national wage policies
 - 'lack of competence' argument
 - Council recommendations, 211, 213
 - individual and direct concerns, 214
 - intermediate measures, 213
 - powers of institution, 213
 - 'preferential plaintiffs', 213
 - recommendations and opinions, 210
 - supportive of competitiveness and job creation, 212
 - third-party rights, 211–212
 - violation (*see* Violation of fundamental rights)

Exclusive representation model
 collective labour law, 500
 right to work legislation, 500–502
 US Supreme Court
Friedrichs, 505–507
Harris, 503–504
Knox, 502–503

F

Feminist labour law scholarship, 94
 Feminist method in labour law
 doctrinal analysis, 95
 feminist scholarship, 94
 gender as a category of analysis, 96–100
 methodological approach, 95
 methodological foregrounding of
 gender
 exposing gender bias, 101–105
 historical perspectives, 109–111
 normative and conceptual infrastructure, 105–109
 scope and nature, 111–113
 ‘orthodox’ legal method, 95
 substance and method, 96
 substantive contribution of feminist
 scholarship, 95
 Feminist scholarship, 94
 Finance Act 2016, 451
 Firms, employment relationship and right
 of exit
 bargaining power, 425
 cost of exit, 429
 domination of workers, 425–426
 economic domination, 424–425
 governance, 425
 job negotiation, 425
 loss of intra-firm capital, 428
 managerial discretion, 426
 neo-republicanism, 428
 protections, 427
 public power and political sphere, 427–428
 residual decision-making rights, 426–427
 substantial costs, 428

unconditional basic income, 429–430
 Forced or Compulsory Labour
 Convention, 467
 Freedom as non-domination
 domination, 421–422
 firms (*see* Firms, employment relationship and right of exit)
 governance of workplaces, 420–421
 ‘neo-republicans’, 419–420
 right of exit, 422–423
 unconditional basic income, 423–424
 worker voice and control (*see* Worker
 voice and control)
 Freedom from work
 contemporary global economy, 475
 enhancing the free use of human
 potential, 481–483
 framework, 476
 human capital, 476–477
 human creativity development, 483–
 484
 labour-saving technology, 485
 motivation, 484–485
 production to human benefits, 477–479
 socialism and capitalism, 475
 wasted human potential, 480–481
Friedrichs, 505–507

G

General Theory of Law and State, 507

H

Harris, 503–504

I

Illinois Public Labor Relations Act, 503
 International Covenant on Economic,
 Social and Cultural Rights
 (ICESCR), 464–466, 468, 469, 475,
 486
 International Labour Organization (ILO),
 28, 60, 179, 223, 299, 304, 311, 316,
 322, 405, 408, 431, 474, 576

Investor court system (ICS), 318–319
 Israeli Law on Collective Agreements, 524
 Israeli National Labor Court, 523
 Italian Confederation of Trade Unions (CISL), 539, 540, 549–550
 Italian General Confederation of Labour (CGIL), 539, 549–551
 Italian industrial relations, 527–528
 Italian Institute of Statistics (ISTAT), 535, 541
 Italian Labour Union (UIL), 539, 540, 549–550

J

Justifications of non-domination, 386–387

K

Knox, 502–503

L

Labour law history
 base-superstructure analysis, 46
 class-conflict framework, 53
 CLS, 46–47
 director liability, 52
 economic formation, 54
 health and safety regulation, 56
 industrial relations, 44
 institutional infrastructure, 40–41
 ‘internal’ history, 43
 judicial decisions, 49
 legal processes, 49–50
 margins and intersections, 41–42
 public policy, 48
 shareholder/director liability, 55
 social security and health care, 42
 Wagner Act model, 51
 Labour laws in the EU internal market
 challenges
 accelerated globalization of economy, 176
 choice of comparators, 189
 development of regulatory globalization, 179

 economic integration beyond national borders, 172
 globalization as challenge to comparative law, 175–177
 impact, 177–178
 international economic cooperation, 179
 internet-based services, 175, 176
 relationship, labour law and comparative law, 172–174
 social actor perspectives, 183–193
 social policy and labour rights, 179–180
 Labour market failures
 asymmetric information, 137
 externalities/third-party effects, 136
 internal labour markets, 138–139
 limited information and information-processing heuristics, 137–138
 monopsony power, 135–136
 public goods in the workplace, 136–137
 Labour market subordination
 analysis of capitalism, 369
 capitalist mode of production, 370
 directing authority, 370
 individual level, 371
 inequality of bargaining power, 371–372
 social power, 371
 surplus value, 370
 Labour provisions, CETA
 complaint and dispute settlement mechanisms, 307–309
 cooperative mechanisms, 310, 312
 economic development, 310
 implementation mechanisms, 305–307
 leverage of trade negotiations, 311
 potential to address risks, 312–314
 substantive content, 303–305
 US Congress, 310, 311
 Labour relations in China
 ‘employing units’, 272
 LCL and Labour Law, 273–274
 market-based labour relations, 273

- Ministry's multi-factor criteria, 275
 - peasants and farmers, 274
 - rural migrant workers, 273
 - state, labour, and capital, 272
 - written employment contract, 275
 - Labour standards, CETA
 - economic impact assessment, 302
 - investments, 301
 - policy issues, 299–300
 - political and academic debate, 300
 - protection, 303
 - public procurement, 302
 - trade liberalization, 299
 - Lavigne vs. OPSEU* (1991), 514
 - Lavoro agile*, 451
 - Law and economics of employment law
 - empirical evidence, 143
 - employer and employee valuation of
 - vacation benefits, 122–127
 - market failures (*see* Labour market failures)
 - maximizing social welfare, 130
 - money and commensurability, 132–134
 - overall social welfare and agnosticism, 131–132
 - positive and normative analysis, 130–131
 - rationality assumption, 129–130
 - scepticism of regulation, 134–135
 - terminology and boundaries
 - contrasting labour economics, 121–122
 - economic analysis, 117
 - economic analysis of law, or law and economics, 117–118
 - labour, employment, and workplace law, 116
 - timeline of law and economics of labour and employment law, 118–121
 - unequal bargaining power, 139–142
 - unintended consequences, 131
 - WDVPP, 127–129
 - Law of Wage Protection (1951), 496
 - Local 1330* case
 - critical legal studies
 - analysis, 163–167
 - condition precedent to promissory estoppel liability, 167–169
 - employer's right, 168
 - profitability, 167–168
 - promissory estoppel, 169
 - faith, 159, 162
 - injustice, 160
 - profitability, 161, 162
 - reasonable expectation of reliance, 160
 - reliance-in-fact, 159–160
 - Lovett's theory and abolition of worker-protective labour law
 - employer domination of workers, 393
 - labour standards and fundamental 'basic liberties', 394–395
 - non-domination, 393, 394
 - O'Kelly vs. Trusthouse Forte PLC*, 393–394
 - private domination, 393, 394
 - social relationship (*see* Social relationships and dependence in employment)
- M**
- Migration to cyberspace, 242–244
 - Minimum wages
 - in Bulgaria, 206–207
 - recommendations, 205
 - temporary contracts, crowdworkers, 258–259
- N**
- National Labor Relations Act (NLRA), 145
 - National Labor Relations Board (NLRB), 522
 - National Right to Work Legal Defence Foundation, 500
 - National wage policies, EU. *See* Economic governance on national wage policies, EU
 - Neo-republicanism

- Gourevitch's labour republicanism, 413–415
- Taylor's 'exit-oriented' republicanism, 409–413
- Non-domination theory
 - advantages, 334–336
 - arbitrary discretion, 346
 - civic republican agenda, 341–342
 - effects of casting dependency, 347
 - employer and employee relationship, 346–347
 - employment, 343
 - freedom and social justice, 342, 343
 - Kahn-Freund's classic 'inequality of bargaining power', 344
 - Lovett's framework, 343
 - managerial prerogative, 345–346
 - purposes, 340–341
 - reformulation rules, 347–348
 - sociological and anthropological approach, 341
 - strengths (*see* Strengths of non-domination theory)
 - workplace republicanism, 342–343
- North American and Israeli shared model
 - bargaining agent/exclusive union, 495
 - Canadian labour law, 491
 - Collective Agreements Law (1957), 491, 493–494
 - collective bargaining, 491
 - exclusive bargaining model, 499
 - exclusive representation model, 497–498
 - exclusive representation principle, 492–493
 - Ghent system, 498
 - Law of Wage Protection (1951), 496
 - representative trade union, 494
 - Supreme Court of Canada, 491
- O**
- Occupational welfare in Italy
 - company-level welfare, 441
 - design and implementation of schemes, 441–442
 - employment contract, 447
 - functional elements, 448–449
 - industrial relations and labour law, 441
 - innovative legislation and workplace practices, 442
 - labour law and industrial relations, 442
 - reflexive law, 457–461
 - reforms, labour law
 - collective agreement, 443–444
 - company-level/occupational welfare, 445–446
 - employees and the profitability, 444–445
 - employment relationship, 443
 - Finance Act 2016, 443
 - functional and quantitative flexibility, 443
 - Legislative Decree no. 150/2015, 445
 - OECD, 444
 - policy approach, 444
 - researchers and policy-makers, 446
 - social innovation, 446
 - regulatory challenges, 454–457
 - sociological analysis, 448
 - structural elements
 - instruments, 449–451
 - sources, 451–454
- O'Kelly vs. Trusthouse Forte PLC*, 393–394
- 'On-demand economy'/sharing economy
 - crowdsourcing
 - Amazon Mechanical Turk, 250–252
 - business model, 246
 - graphic design, 247
 - offline, 252–254
 - online, 248–250
 - provision of services, 247
 - social demands, 247
 - tripartite structure, 246
 - Uber, 253–254
 - virtual platform, 247, 268

sharing economy, 245–246
 typological differentiation and terminological confusion, 244–245
 Ontario Labour Relations Board, 521
 Organization for Economic Cooperation and Development (OECD), 444

P

Pettit's theory of freedom as non-domination
 basic liberties, 402–403
 domination and contract of employment, 406–409
 domination and right to strike, 404–406
 equal civic status, 402
 neo-republicanism, 403–404
 new normativity, 403, 415
 private domination, 402
 'special insulation' regime, 403
 vulnerability, 401
 Philosophical foundations of labor law
 futility
 freedom of association, 30
 militant empiricism, 31–33
 scientism, 33–37
 labour
 'basic good' approach, 12–14
 contextual legal subject, 11
 inequality of power, 10
 normative importance, 12
 scholarship and policy activism, 7–8
 social/family problems, 9–10
 social and legal theory, 14–16
 work as relation and work activity, 13
 working classes, 9
 private law
 allocation of power and authority, 18
 collective laissez-faire, 18
 employment law, 23–26
 'private wrong' analysis, 26–30
 purposive approach, 16–17
 rights-based theory, 19–20

unfair labor practice, 21–23
 Policy of neutrality
Achbita and Bougnaoui judgments, 561
 Belgian Constitution, 566
 Directive 2000/78, 560, 563–564
 economic freedoms, 561
Eweida and Chaplin case, 561–562
 labour tribunal of Brussels, 566–567
 'legitimate aim' test, 566
 Private wrong analysis
 employment rights, 27–28
 'privatization' of protection, 29
 violation of primary rights, 27
 Promissory estoppel
 critical stories
 'deviant' doctrine, 157
 bargain theory and promissory estoppel, 153
 decisional messiness, 151
 Dorothy's immortal words, 157
 flipping, 155
 framing, 154
 ideological dimension of legal analysis, 152
 indeterminacy 155
 nesting, 153–154
 race, gender/class bias, 156
 social responsibility, 157
 values and assumptions, 156
 legal realist version, story, 150–151
 and *Local 1330* case (see *Local 1330* case)
 mainstream story, 148–149
 Protection for crowdworkers
 independent contractors, 266–267
 lack of control, 265–266
 vulnerabilities and need, 264–265

R

Regulatory challenges of 'Uberization' in China
 Chinese courts
 companies and drivers, 276
 labour law cases, 277–279

- liability for traffic accidents, 279–283
 - Supreme People's Court (SPC), 276
 - types of claims, 283–284
 - contractors, 271
 - digitalization of Chinese economy, 269
 - digital technologies, 270
 - 'Internet Plus,' 269
 - labour relations (*see* Labour relations in China)
 - Lyft and Didi Chuxing, 271
 - policymakers, 294
 - regulatory developments
 - collective consultation, 287
 - interim measures, 284–286
 - labour contracts, 286
 - national and local policymakers, 288
 - platform companies, 286
 - transport authorities, 288
 - sharing economy, 270, 271
 - Uber-dependence (*see* Uber-dependence and Uberpreneurship)
 - Republican non-domination and labour law
 - bargaining power, 391
 - deregulation, 398–401
 - discriminating analysis of power, 392
 - Lovett's theory (*see* Lovett's theory and abolition of worker-protective labour law)
 - neo-republicanism (*see* Neo-republicanism)
 - normative variations, 392, 416
 - Pettit's theory (*see* Pettit's theory of freedom as non-domination)
 - policy-makers risk, 417
 - politics, 416
 - Right to work
 - Art. 7, ICESCR, 468
 - contemporary global economy, 464
 - human economy (*see* Freedom from work)
 - international law, 468
 - rejection and transformation under capitalism, 472–474
 - right to freely choose work, 469–470
 - right to reject assigned work, 467–468
 - right to the opportunity, 466–467
 - 'right-wing' socialist claim, 474–475
 - self-realization or fulfilment, 464
 - socialist and capitalist economic systems, 464
 - socialist claim and critique, 470–472
 - universal recognition, 465–466
 - Right to Work legislation, 501
 - Rules on successive fixed-term contracts
 - clause 5 of the framework agreement
 - flexibility and security, 223
 - implementation, Member States, 225–227
 - measures, 223–224
 - objective reasons, 223–224
 - protection, 225
 - ETUC-UNICE-CEEP framework agreement, 221
 - 'formulaic compromise', 222
 - job protection for employees on open-ended contracts, 227–228
 - legislative approximation, 222
 - modification of the framework agreement, 237–239
 - opinions, 221
 - regulatory models
 - basic approaches, 232
 - choice of, 236–237
 - combination models, 234–236
 - prevention of abuse, 229–232
 - protection, 233, 234, 237
- S**
- Social actor perspectives, comparative
 - labour law and EU integration
 - analytical and normative aims, 190
 - analytical empirical question, 192
 - behalf of self-employed workers, 193
 - CFREU, 190
 - choosing comparator, 189
 - comparative analysis, 190

competition law exemption for collective agreement, 191
 doctrinal analysis, 193
 European studies beyond law, 187–188
 EU social and labour rights, 190
 FORMULA project, 185–186
 industrial relations, 186–187
 internal market law, 185, 190
 interviews, 192
 legal doctrinal research, 191
 legal research, 184
 relevance of EU, 180–183
 secondary sources, 185
 thematic analysis, 184
 Social justice and domination, 333
 Social relationships and dependence in
 employment
 costs, 396–397
 definition, 395
 domination-reducing strategy, 397, 398
 economic power, employer's, 396
 fair mutualization, 397
 self-respect of weaker parties, 395
 stability, 397–398
 'strategic' and 'parametric', 395–396
 Stability and Growth Pact (SGP), 202
 Statistical properties of the dataset, CBR-LRI
 covariance and latent structure of data,
 78–80
 econometric analysis, 89–90
 tends in labour regulation
 cross-sectional dataset, 81
 heterogeneity across system, 85–89
 level of protection, 81–84
 weighting and aggregation, 75–78
 Strengths of non-domination theory
 benefits of promoting political foundation,
 355–356
 employment relationship, 356–358
 modern liberal/liberal-contractualist-
 based justifications, 352–355
 normative scope and relational cover-
 age, 350–352

promotion of substantive and proce-
 dural fairness, 348–350

Subordination

concept, 366, 367
 and dependency, 373
 different uses of subordination, 368–369
 and domination (*see* Domination)
 labour market, 369–372
 protection/intervention, 373
 reduction, domination, 366
 regulation of work relations, 365
 structural dependency, 374
 structure, 366–367
 vulnerability, 373–374

T

Teaching Law as a vocation

classroom experience, 147
 first-generation critical studies, 146
Local 1330, 147

Theories of domination and labour law

employment relationship, 331
 framework, 340
 inequalities in bargaining power, 332–
 333
 non-domination theory (*see* Non-dom-
 ination theory)
 objections
 free consent, 362–363
 too individualistic and relational,
 358–361
 too selective as a general justification,
 361–362
 transplantability, 363–364
 political theory, 340
 social justice and domination, 333
 traditional approach, 331
 Trade liberalization, 299
 Transatlantic Trade and Investment
 Partnership (TTIP), 295–296
 Trans-Pacific Partnership (TPP), 295–296,
 311

Transplantability of non-domination,
363–364

U

Uber-dependence and Uberpreneurship
control/subordination tests, 290
degree of ‘freedom’ and flexibility, 290
economic dependency, 291
employee/independent contractor distinction, 289, 293
employment classification, 289, 292, 293
interim measures, 293
labour relationship, 292
platform-based businesses and proponents, 293–294
ride-hailing companies, 291–292
rural migrant workers, 290
Universal Declaration of Human Rights (UDHR), 465

V

Violation-of-fundamental-rights
economic and financial assistance programme, 215
ECSR, 217, 218
fair working conditions, 215
principle of proportionality, 216
proportionality test, 217
restrictions, 216
right to human dignity, 216

W

Wage coordination system. *see* Collective Bargaining System in Italy
Wage policies in EU. *See* Economic governance on national wage policies, EU
Wagner Act model, 51
Worker voice and control
authority, 437
constitutional framework, regulation, 432
‘fair share’, 436
implications of republicanism, 432–433
institutional mechanisms, 433–434
joint influence and control, 435, 436
Pettit’s republican theory, 433
political interference, 431
political relationships, 435–436
protection, workers’ freedom, 431
responsibility and discretion, 436
right of contestation, 434
self-governing enterprises, 437–438
workplace
democracy, 434–435
governance, 433
regulation, 431
Wrongful discharge in violation of public policy (WDVPP), 115, 121, 122, 127, 128, 136