A Purposive Approach to Labour Law

GUY DAVIDOV
Elias Lieberman Professor of Labour Law, Hebrew University of Jerusalem

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Table of Contents

1
Introduction

Part I—The Crisis of Labour Law

It is almost a cliché to say that labour law is in crisis. It seems that labour law is *always* in crisis.[1] Perhaps this is not surprising; labour laws have clear and direct distributional effects, and as such they invite resistance and evasion, which lead to on-going problems of enforcement, calls for deregulation, and a perpetual need to re-assert the justification of regulations in this field. Moreover, labour markets are dynamic, so the laws regulating them require continuous adaptations; but given the background of resistance and evasion, such adaptations are often not politically feasible. Therefore the ingredients of a crisis are arguably an inherent part of labour law.

There is some debate about the nature of the current crisis. Some prominent labour law scholars believe that the field needs a new 'paradigm', or a new constituting narrative—in other words, that there is crisis at the level of *goals*.[2] According to this view, there is a need to come up with new justifications for labour market regulations—a new way to explain and justify labour law, which could also lead to changes in the regulations themselves. Others argue that the problem lies with the field's boundaries: its limited focus on paid work and employer–employee

[1] On the current crisis see, e.g., various chapters in Guy Davidov and Brian Langille (eds), *The Idea of Labour Law* (OUP 2011), especially by Alan Hyde and Brian Langille; Mark Freedland and Nicola Kountouris, *The Legal Construction of Personal Work Relations* (OUP 2011) 5; Michel Coutu, Martine Le Friant, and Gregor Murray, 'Broken Paradigms: Labor Law in the Wake of Globalization and the Economic Crisis' (2013) 34 CLLPJ 565 (opening a special issue on the topic). For previous discussions see Keith Ewing, 'The Death of Labour Law?' (1988) 8 OJLS 293; Dennis Davies, 'Death of a Labour Lawyer?' in Joanne Conaghan, Richard M Fischl, and Karl Klare (eds), *Labour Law in an Era of Globalization* (OUP 2002) 159; Paul O'Higgins, 'The End of Labour Law as We Have Known It?' in Catherine Barnard, Simon Deakin, and Gillian S Morris (eds), *The Future of Labour Law: Liber Amicorum Bob Hepple* (Hart 2004) 289. A much earlier discussion appeared in Hugo Sinzheimer, *Die Krisis des Arbeitsrechts* [The Crisis of Labour Law], published in 1933, and discussed in Michel Coutu, 'With Hugo Sinzheimer and Max Weber in Mind: The Current Crisis and the Future of Labor Law' (2013) 34 CLLPJ 605.

[2] Brian Langille is the most enthusiastic proponent of this view and has argued it explicitly and strongly in a series of articles; see mainly Brian Langille, 'Labour Law's Back Pages' in Guy Davidov and Brian Langille (eds), *Boundaries and Frontiers of Labour Law: Goals and Means in the Regulation of Work* (Hart 2006) 13; Brian Langille, 'Labour Law's Theory of Justice' in Davidov and Langille (n 1) 101. Others have also expressed similar views; see, e.g., Richard Mitchell, 'Where are We Going in Labour Law? Some Thoughts on a Field of Scholarship and Policy in Process of Change' (2011) 24 AJLL 45; Freedland and Kountouris (n 1) 371–82.

relations.[3] Yet others identify the problem in the realm of *means*: labour law's heavy reliance on substantive standards imposed by 'command-and-control' regulations. 'Reflexive law' and 'new governance' scholars believe that we should encourage self-regulation and focus on setting procedures and boundaries for it.[4]

My own view is that the goals of labour law have not changed; there is a need to clearly articulate them, and new articulations can be useful, but the basic problems that require legal intervention are the same as they have been in the past.[5] Similarly, while it is important to find legal solutions for problems associated with unpaid work and for those working without an employer, these are necessarily distinct from the solutions offered by labour law—so the traditional focus of the field is still justified.[6] As for means, while it is good to experiment with new techniques, it seems that even the strongest supporters of new governance and reflexive law would not argue that 'soft' regulations should replace labour legislation setting *basic* standards.[7] Whether or not we can rely on self-regulation in some contexts (which is a contested issue[8]), these contexts are bound to be relatively limited, not upending the basic structure of the system.

The main problem of labour law—the reason for the sense of crisis—lies elsewhere in my view: in the mismatch between goals and means.[9] The regulations that we use—the legal instruments and techniques—have lost their harmonization with the goals they are supposed to advance. This mismatch has two manifestations. The first is related to coverage: there is a growing discrepancy between the group of workers that need the protection of labour law and those who actually enjoy such protection.[10] This is sometimes based on deficiencies with the tests for

[3] See notably Marc Linder, *The Employment Relationship in Anglo-American Law: A Historical Perspective* (Greenwood Press 1989) 239–41; Judy Fudge, 'Labour as a "Fictive Commodity": Radically Reconceptualizing Labour Law' in Davidov and Langille (n 1) 120.

[4] On reflexive law see Ralf Rogowski, *Reflexive Labour Law in the World Society* (Edward Elgar 2013). On new governance see, e.g., Orly Lobel, 'The Renew Deal: The Fall of Regulation and the Rise of Governance in Contemporary Legal Thought' (2004) 89 Minn L Rev 342; Cynthia Estlund, *Regoverning the Workplace: From Self-Regulation to Co-Regulation* (Yale 2010).

[5] Guy Davidov, 'Re-Matching Labour Law with Their Purpose' in Davidov and Langille (n 1) 179. For other defences of 'traditional' ideas of labour law see, e.g., Karl Klare, 'Countervailing Workers' Power as a Regulatory Strategy' in Hugh Collins and others (eds), *Legal Regulation of the Employment Relation* (Kluwer 2000) 63; Manfred Weiss, 'Re-Inventing Labour Law?' in Davidov and Langille (n 1) 44; Ruth Dukes, *The Labour Constitution: The Enduring Idea of Labour Law* (OUP 2014).

[6] Guy Davidov, 'Setting Labour Law's Coverage: Between Universalism and Selectivity' (2014) 34 OJLS 543, 563–66.

[7] Proposals based on these theories have mostly focused on employment equality and health and safety. See, e.g., Susan P Sturm, 'Second Generation Employment Discrimination: A Structural Approach' (2001) 101 Colum L Rev 458; Lobel (n 4).

[8] For a recent sceptical evaluation see Diamond Ashiagbor, 'Evaluating the Reflexive Turn in Labour Law' in Alan Bogg and others (eds), *The Autonomy of Labour Law* (Hart 2015) 123.

[9] Davidov (n 5).

[10] See Noah Zatz, 'Working Beyond the Reach or Grasp of Employment Law' in Annette Bernhardt and others (eds), *The Gloves-Off Economy: Problems and Possibilities at the Bottom of America's Labor Market* (Cornell University Press 2008) 31; Mark Freedland, 'The Segmentation of Workers' Rights and the Legal Analysis of Personal Work Relations: Redefining a Problem' (2015) 36 CLLPJ 241.

'who is an employer' and 'who is an employee'—the 'building blocks' setting the scope of labour law. In other cases or contexts, the problem is not with the legal coverage but with the *actual* coverage, i.e. a problem of compliance and enforcement. Altogether there is a noticeable trend away from universal application of labour laws and towards what can be termed 'regressive' selectivity—labour laws do not cover the workers that need them the most.[11]

A second and separate manifestation of the mismatch problem can be termed 'obsoleteness': the fact that labour laws have not been sufficiently updated in light of dramatic changes in the labour market. As a result, the laws are often becoming irrelevant (in terms of their *substance*) to the actual problems faced by workers, or otherwise outdated. Sometimes there are new problems that have not been addressed by the legislature (e.g. privacy in the age of social media). At other times, there is a need to tailor regulations in order to address vulnerabilities specific to some group or sector.[12] Yet other times, labour laws have developed in a formalistic way (by judges) or incremental way (by legislatures) without due consideration to their overarching goals. In such cases as well, there is a need to bring goals and means together.[13]

The reasons for this double mismatch are complex. At one level, we can say that the coverage problem is the result of new and increased evasion attempts by employers, which the law failed to keep pace with. However, this begs the question of *why* have employers intensified their evasion attempts, and *why* has it been so difficult for the law to respond (both to the coverage problem and to changes in the labour market sometimes leading to obsoleteness). This surely has to do with globalisation (global competition creating more pressure); technological advancement (again leading to stronger competition, and also, changes are quicker and more frequent, requiring faster response); changing cultural and social norms (more individualism, less solidarity—arguably making evasion less abhorrent in the view of some people); political shift to neo-liberalism (less support among governments for labour law and less interest in responding to new problems); and probably many other reasons.[14] The dramatic changes that labour markets have experienced in recent years/decades have been documented elsewhere;[15] they are

[11] For further elaboration of this argument see Davidov (n 6). See also Freedland (n 10).

[12] On the need to balance between universalism and selectivity see Davidov (n 6). On regulations addressing sector-specific vulnerabilities see Guy Davidov, 'Special Protection for Cleaners: A Case of Justified Selectivity?' (2015) 36 CLLPJ 219.

[13] This is not to suggest that legislatures and courts have been idle. A recent study covering sixty-three countries shows an increase in protections afforded to part-time, fixed-term and agency workers in the last two decades (see Zoe Adams and others, 'Labour Regulation Over Time: New Leximetric Evidence' <http://www.rdw2015.org/uploads/submission/full_paper/382/labour_regulation_over_time_rdw.pdf> accessed 17 October 2015). However, these regulations have not kept pace with the magnitude of the changes.

[14] For a recent and illuminating discussion of the causes of the current crisis see David Weil, *The Fissured Workplace: Why Work Became So Bad for So Many and What Can Be Done to Improve It* (HUP 2014) ch 3.

[15] See, e.g., Katherine VW Stone, 'The Decline in the Standard Employment Contract: A Review of the Evidence' in Katherine VW Stone and Harry Arthurs (eds), *Rethinking Workplace Regulation: Beyond the Standard Contract of Employment* (Russell Sage Foundation 2013) 366.

not the subject of this book. I take the problem just described as a starting point, focusing on what can be done to address it.

Nonetheless, my arguments do not depend on any specific view regarding the nature of the crisis, or even on an agreement about the existence of a crisis. One could plausibly argue that the problems of coverage and obsoleteness have *always* plagued labour law, and there is nothing unique about the current time. This will not affect the arguments of this book. The approach offered here aims to deal with problems inherent in labour relations and thus perpetual for labour law. The methods of analysis, and the solutions offered, are therefore relevant and useful in 'regular' times just as well. Still, it seems that we do experience heightened levels of coverage and obsoleteness problems, creating together a 'mismatch' affecting numerous workers—so I find it useful to use the narrative of a 'crisis' in this introduction.

Part II—A Purposive Approach

The book attempts to address this crisis by taking a purposive approach. It starts from a very simple premise: labour laws (like all other laws) are means to an end; we need them, and use them, to advance societal goals. Given the mismatch just described, we have to restore the connection between labour laws and the goals behind them. To do so, we first have to understand, and articulate, the goals—to explain to ourselves (and to legislatures, courts, employees, and employers) the purpose of labour laws at the deepest possible level. The next step is then to reconsider our means—to ask what we need to change or improve in the laws themselves in order to better advance the goals. The book is accordingly divided into two general parts: the first dedicated to the goals of labour law, the second to the means. Together they aim to rectify the mismatch causing the crisis of labour law. To be sure, I do not purport to offer a *full* solution to the mismatch problem; that would be an impossible mission for one book. My hope is rather to offer several solutions and also provide a structure that can be useful for thinking about additional solutions.

Many have championed the purposive approach before me; I make no claim for originality when arguing that labour laws should be interpreted purposively. Nevertheless, I am not aware of any systematic and comprehensive attempt to actually perform such an analysis. The first goal of the book is to provide a 'toolbox' for performing purposive interpretation of labour laws in an optimal way, by analysing the goals of labour law and by showing how the goals can be put to work in solving practical interpretive questions. That includes a discussion of the *general* goals of labour law (Chapters 3 and 4), later followed by proposals for how to interpret the terms 'employer' and 'employee' (Chapter 6). It also includes discussions of several *specific* laws, starting by understanding their goals (Chapter 5) and later giving examples for several interpretive questions answered by way of purposive interpretation (Chapter 8). These examples can also provide guidance

on how to perform such an analysis in additional cases and contexts. The second main contribution of the book is to identify legal mechanisms and institutions that have the capacity to advance the goals of labour law, including by way of allowing ongoing development and adaptation. That includes—alongside the 'building blocks' of employer and employee—open-ended standards (Chapter 7). It also includes various solutions that can be employed to address the compliance/enforcement problem which looms large over labour law throughout the world (Chapter 9).

I will use examples from several different countries, attempting to show that the conclusions and proposals are not limited to any specific legal system. Special attention is given to examples from Israeli labour law, not only because this is the system I am most familiar with, but also because it is a mixed jurisdiction[16] and thus has similarities to both common law and civil law systems. But additional examples are brought from other countries, especially Canada, the United Kingdom, and the United States. I am aware, of course, of the risks inherent in doing comparative labour law,[17] and I am not claiming sufficient familiarity with the context of every legal system—so the book is not intended to propose *specific* solutions that are universally applicable. Notwithstanding, most of the book is devoted to relatively general questions—a level of generalization at which the similarities between legal systems are great, and the differences small. The more concrete questions are considered (especially in Chapter 8) as examples, to show how purposive interpretation can be useful for solving concrete questions and how (in my view) it should be performed. I am not arguing that the specific conclusions adopted on such concrete questions are necessarily applicable in every legal system.

Adopting a purposive approach does not mean being naïve about the actual ability to translate goals into action. There are surely economic and political forces pushing in other directions; however they are beyond the scope of this book. There are several reasons for this choice. First, my discussion is normative and designed to aid anyone who is interested in thinking about reforming labour laws, answering interpretive questions about existing laws, or examining the constitutionality of such laws. It is important to have a clear view of what is the best solution normatively before starting to compromise in order to overcome barriers towards this goal. Second, the existing forms of regulations have been with us for more than a century; they are not likely to disappear any time soon. While I do not dispute the usefulness of thinking about additional kinds of regulations (such as 'new governance' ones), we must not neglect the study and further development of the existing labour law, which is for the most part of the 'command and control' type. The book focuses on the best ways to improve and interpret our

[16] Vernon Valentine Palmer, *Mixed Jurisdictions Worldwide: The Third Legal Family* (2nd edn, Cambridge UP 2012).

[17] Otto Kahn-Freund, 'On Uses and Misuses of Comparative Law' (1974) 37 MLR 1; Harry Arthurs, 'Cross-National Legal Learning: The Uses of Comparative Labor Knowledge, Law, and Policy' in Stone and Arthurs (n 15) 353.

existing labour laws. Third, one of the main reasons for the 'reflexive turn'[18] of some scholars is the disbelief in any ability to effect change by way of 'traditional' legislation against the will of employers. But, while the difficulties are surely real, they are not necessarily insurmountable. I discuss various possible solutions in Chapter 9 (including some 'softer' solutions). In any case, the enforcement crisis notwithstanding, most employers still follow the (traditional) laws. These laws *do* have an impact and we should not abandon them so easily.

Part III—The Purpose of What? Framing the Topic of Discussion

Before we articulate the goals of labour law (which is the task of the first part of this book), we have to decide what the term 'labour law' includes for this purpose. If, for example, one adopts the narrow sense of the term, referring only to collective labour laws (as used in North America), the goals are likely to be narrower than the goals of the entire body of employment-related regulations. This book uses the term 'labour law' in the meaning common in most of the world—including employment law and workplace discrimination law. This makes sense because of the shared characteristics of these laws, and particularly the fact that they address the same set of problems (as will become clear in Chapter 3).

More contentious is the question of where to put the line in terms of potential expansions of labour law. In recent years there is growing demand from scholars to go 'beyond employment', and one of the meanings of this call has been to broaden the legal 'field', in several ways.[19] First, there is a view that labour law should be understood as including regulations that affect workers even outside of the relationship with a specific employer, such as social security laws, tariff protections, and policies designed to create jobs.[20] Second, some scholars lament the exclusion of unpaid work (specifically unpaid care work) from the ambit of labour law.[21] Finally, there are calls to use labour law to extend protections to small vendors, i.e. workers in a relatively vulnerable situation but without any 'employer'.[22]

[18] Ashiagbor (n 8). [19] This section relies on Davidov (n 6).

[20] Mitchell (n 2); John Howe, 'The Broad Idea of Labour Law: Industrial Policy, Labour Market Regulation, and Decent Work' in Davidov and Langille (n 1) 295.

[21] See, e.g., Sandra Fredman and Judy Fudge, 'The Legal Construction of Personal Work Relations and Gender' (2013) 7 Jerusalem Rev of Leg Stud 112; Brian Langille, 'A Question of Balance in The Legal Construction of Personal Work Relations' (2013) 7 Jerusalem Rev of Leg Stud 99.

[22] See, e.g., Brian Langille, 'Labour Law's Theory of Justice' in Davidov and Langille (n 1) 101; Langille (n 21). For calls to abolish the distinction between 'employee' and independent contractor altogether—and extend protection to all those working for others—see Linder (n 3); Richard R Carlson, 'Why the Law Still Can't Tell an Employee When It Sees One and How It Ought to Stop Trying' (2001) 22 BJELL 295; Judy Fudge and others, 'Employee or Independent Contractor? Charting the Legal Significance of the Distinction in Canada' (2002) 10 CLELJ 193; Judy Fudge, 'Fragmenting Work and Fragmenting Organizations: The Contract of Employment and the Scope of Labour Regulation' (2006) 44 Osgoode Hall LJ 609; Fudge (n 3).

All of these proposals have good reasons behind them, but cannot justify the solution of broadening our understanding of 'what is labour law'. If we are defining the field of research and study, labour law would surely benefit from a closer inspection of other fields of law that indirectly affect workers, or affect workers outside of an employment relationship. Yet it is highly doubtful if a field of study and research has to be 'defined' at all. Scholars generally enjoy the academic freedom to structure their courses and choose their research topics. To the extent that the call to expand labour law is meant as a call for labour law scholars to engage more closely with related fields in their research and teaching, this is an important and useful point;[23] however, it is not related to the boundaries of labour law in the sense relevant to this book.

Admittedly, when we think about reforming welfare state programmes we have to be aware of changes in the labour market and take the rights and benefits secured by labour law (or *not* secured) into account. Thus, for example, if we are interested in achieving economic security, this can be done by a combination of labour laws and social security laws; so the two fields must be coordinated. However, this does not mean that the fields become one. At a high level of generality the goals may be the same, but there are also more specific, separate goals (such as those related to redressing the inequality of power between employer and employee), as well as very different structures and techniques. The same is true with regard to the inclusion of unpaid work and small vendors. Surely these kinds of work require protection, which at some level is similar to the protection required by employees. But absent an employer that can be required to take responsibility, and against which there is vulnerability, there are also important differences in terms of goals as well as techniques used.

At the end of the day, the calls to broaden what we see as labour law—or expand protection to other kinds of work—are not relevant for the current project. We have many different problems in the world and to bring them all together under one heading would hardly be a useful route towards a solution. The question is whether there is sufficient commonality to make such grouping useful. Perhaps for some purposes it is useful to bring the plight of tenants versus landlords (for example) together with the plight of employees versus employers. Such broadening could potentially be useful to forge solidarity between the two groups, and perhaps also draw inspiration from legal solutions used in the other context.[24] But most of the regulations will *have* to be different. Laws mandating minimum wages, maximum hours, parental leave, etc. are not relevant for tenants.

[23] I believe that this indeed was the intention of most of the 'law of the labour market' supporters. For this approach see Simon Deakin and Frank Wilkinson, *The Law of the Labour Market: Industrialization, Employment and Legal Evolution* (OUP 2005); Richard Mitchell and Christopher Arup, 'Labour Law and Labour Market Regulation' in Christopher Arup and others (eds), *Labour Law and Labour Market Regulation* (Federation Press 2006) 3; Harry Arthurs, 'Charting the Boundaries of Labour Law: Innis Christie and the Search for an Integrated Law of Labour Market Regulation' (2011) 34 Dalhousie LJ 1.

[24] Harry Arthurs, 'Labor Law as the Law of Economic Subordination and Resistance: A Thought Experiment' (2013) 34 CLLPJ 585.

Collective bargaining could perhaps be used in other contexts as well, but will need many adaptations. In short, whatever the political gains might be, for *legal* purposes conflating employees with tenants is untenable. The same is true for unpaid care work and for small vendors. Absent an employer, their plight is against the state—and regulations addressing their needs will have somewhat different ends, and certainly different means, compared with laws protecting employees.[25]

It is true that some social security programmes are directed only at employees, while in fact they should be extended in one way or another to others as well (including, notably, those performing unpaid care work and the small vendors). Nevertheless, such programmes are, again, substantially different from collective labour laws, employment standards and workplace discrimination laws (the components of 'labour law'). In some respects it could be convenient to group social security programmes together with labour law—indeed in some European countries the term 'social law' often covers both. It could be useful, for example, for general political discussions, or for delineating the jurisdiction of 'social courts'. Yet for purposes of interpreting, reforming, and adapting labour laws—which is what this book is concerned with—it is better not to lose focus. Accordingly, I will concentrate on employer–employee relations.

Part IV—The Structure of the Book

The first part of this book focuses on the purpose of labour laws. Chapter 2 opens this part by putting forward an explanation of why articulating the purpose (goals) is useful and indeed necessary. Whether we are confronted with the need to update (or reform) labour laws, interpret specific provisions, fill lacunas when new problems emerge without a solution in legislation, or ask whether a law is constitutional—the discussion must start with a clear understanding of what the law is trying to achieve (or *should* try to achieve). The chapter then moves to discuss a series of methodological questions related to the articulation of goals.

The actual exploration into the goals of labour law starts in Chapter 3 with an attempt to pinpoint the unique characteristics of employment relations, as opposed to other relations, and particularly to understand in what sense employer–employee relations can be said to be different from client–independent contractor relations. The identified *vulnerabilities* that characterize employment are then used to explain why labour laws are needed. This is one useful way to articulate the goals of labour law. The chapter proceeds to consider other articulations that share a similar structure, i.e. attempt to solve the 'problems' of labour markets or labour relations: the prevalence of market failures and inequality of bargaining power.

Chapter 4 complements this discussion—and completes the review of the *general* goals of labour law—by shifting to a higher level of abstraction. It includes

[25] See also Noah D Zatz, 'The Impossibility of Work Law' in Davidov and Langille (n 1) 234.

a list of various values and interests that labour laws are said to advance. I discuss many different articulations that can be found in the literature: democracy, redistribution, dignity, social inclusion, stability, efficiency, human freedom, capabilities, emancipation, and social equality. By explaining the meaning and importance of each goal, I hope to contribute to future purposive analyses of labour laws, including of issues not discussed in the current book. The chapter concludes with some words of caution against putting too much emphasis on goals that aim to be 'good for everyone', when this comes with rejection (even if only implicit) of the conflicts and power imbalance inherent in labour relations, and the resulting need for redistribution.

Chapter 5, the last chapter in the first part of the book, moves from the general to the more specific. As explained in Chapter 2, the purposive approach requires that we understand and articulate the goals of labour law as a whole, but also the more concrete goals of the specific law under discussion (the law that requires reform, or interpretation, or is being constitutionally challenged). It is not possible to perform this kind of analysis for every labour law here, but Chapter 5 does so for three key labour regulations, as examples: minimum wage laws, collective bargaining laws, and unjust dismissal laws. Obviously the specific arrangements vary from one legal system to another, so some additional country-specific discussion might be required before making concrete proposals. The chapter can nonetheless show how this kind of analysis can (and should) be performed, and also provides some useful starting points—at the very least—for further (more concrete) discussions.

After setting forth the goals of labour law, the second part of the book moves to put this discussion to practical use: analysing the means (legal techniques) of labour law—both existing and proposed—and examining how they can be used to better advance our goals. Chapter 6 begins this task in the most familiar setting—the concepts of 'employee' and 'employer' which are used around the world to set the scope/boundaries of labour laws. The chapter includes three separate discussions: one dealing with the age-old (and widely discussed) employee–independent contractor distinction; another considering the addition of a third (intermediate) category in-between them; the final concerning the question of who is the legal 'employer', especially in cases of triangular relations involving a temporary employment agency or a subcontractor. In all of these contexts, I offer purposive interpretations (based on the analyses of the previous part) that tie the scope of labour law to the identification of those who need the protection of labour law and those who should take responsibility for them. Along the way some concrete proposals are also made for legislative amendments that can aid in this task.

Chapter 7 suggests another legal technique for advancing the goals of labour law: using open-ended standards. In recent years the use of such standards—mostly 'good faith' and proportionality—has become widespread and important in many legal systems. Courts are using these legal tools to develop labour law and adapt it to new needs and new circumstances. Focusing on three standards—good faith, proportionality, and the managerial prerogative—I justify the new

trend and support its further expansion by relying on the literature concerning rules versus standards and by showing how these standards have been applied in practice. The general idea is that standards allow ongoing adaptation and response to new problems in line with the goals of the law. Among other advantages, standards can be used to compensate for adaptations that were previously achieved through collective bargaining, a route which is surely preferred in theory but is much less available today for workers in practice.

Chapter 8 is dedicated to specific examples of purposive interpretation. I address a variety of timely legal questions that courts in several different countries have struggled with in recent years: whether tips should be seen as part of the minimum wage; which deductions can be made from the minimum wage for accommodation and related expenses; what are the rights of apprentices, trainees, interns, and volunteers; what are the rights for time spent being 'on call'; whether minimum wage obligations apply for activities done before and after the actual 'work'; whether cleaners working through contractors are entitled to severance pay when contractors change; what is the effective date of dismissals; whether freedom of association means that employers should be prohibited from voicing objection to unionization; and whether compulsory union agency fees are justified. The various examples show how purpose directs us to the optimal solution. They also show why context is crucial (as part of the purposive analysis), and that the same approach is needed in every legal question, from lofty constitutional interpretation to mundane procedural questions (and everything in between).

Chapter 9 addresses one of the main components of labour law's crisis—the compliance/enforcement problem. This is a crucial element of any attempt to advance the goals of the field. The chapter starts by explaining the reasons for enforcement problems and their intensification, then turns to consider several possible solutions that have been discussed or experimented with in recent years. Some of these techniques are designed to improve compliance: creating positive incentives for employers to comply; inducing compliance through pressure on 'lead companies' (that have power over contractors); and promoting unions because of their proven record in ensuring compliance. The other group of means that will be considered is focused on the enforcement stage: 'responsive' enforcement, based on a multitude of possible sanctions and gradual escalation; withholding privileges (licences and doing business with the government); and finally, different modalities of independent monitoring.

To a large extent the different chapters can be read independently from each other: every chapter has its own beginning and end, advancing some independent arguments. Hopefully it will become clear for the readers how the chapters are all woven into one coherent story, advancing the same idea of the purposive approach. In Chapter 10 which concludes the book, I summarize the main arguments and very briefly situate this work in relation to other contemporary labour law discourses.