

Coming to terms with the employment relationship

Main tasks

- **Compare and contrast employment and self-employment**
- **Outline the standard employment relationship's enduring features and identify the main variations**
- **Consider the challenges to the standard employment relationship**
- **Review responses to the challenges**

Summary

The employment relationship involves a special form of exchange bringing benefits to both parties over and above the labour service equivalent. It is best understood as a managerial relationship. As well as receiving tangible and intangible rewards, employees are guaranteed a measure of security of employment, while the employer buys the right to use their labour and/or knowledge power largely at their discretion. This means great uncertainty, fuelling the prospect of divergent goals and interpretation. Complicating matters is that the employment relationship involves a complex 'governance' regime of institutions or rules, with scope for differences over both substance and process. These are grounded in different varieties of capitalism and their associated civil law and common law legal systems. There are nevertheless common trends. Everywhere, the traditional or standard model of the employment relationship faces major challenges arising from technological change and the spread of 'financialisation'. The talk is of a shift in the basis of the 'psychological contract' from the 'relational' to the 'transactional' and the 'fragmentation' or 'fissuring' of the standard employment relationship' resulting from outsourcing and other forms of 'externalisation'. Yet management needs commitment as well as compliance. There are limits to 'fragmentation' - managing an 'extended organisation' is fraught with difficulties - and developments are encouraging 'juridification', i.e. the greater involvement of the law and the courts in the employment relationship.

A changing landscape?

The employment relationship comes first in the 'matters' that the text deals with because it is central to both practice and theory. It has been described as 'the characteristic institution' of capitalism¹; along with limited liability, it is said to be one of the 'two great inventions [that]

¹Ellerman, D. 2007. 'On the role of capital in 'capitalist' and labor-managed forms'. *Review of Radical Political Economics*, Volume 39, No. 1, Winter, 5-26.

lie behind the rise of the modern business enterprise². Perhaps not surprisingly, therefore the employment relationship is far from being a straightforward concept: indeed, it's recently been described as a 'fictive' commodity³. Terms such as 'work' and 'employment', for example, are very often used interchangeably. In discussing the employment relationship, however, they need to be clearly distinguished. Work can be defined as 'purposeful activity directed at producing a valued good or service', whereas employment is a particular form of 'work that is performed under contractual arrangements and that involves material rewards'⁴.

There are also two main types of such arrangements: a contract *of* service and a contract *for* service. In the first, the employer hires employees on an employment contract to undertake a range of tasks largely at their discretion of managers who are their agents; they could be full time or part time, permanent or temporary (casual). In the second, the employer hires a business on a service contract to undertake a specified task or set of tasks - it could be a builder, for example, or an architect or a solicitor.

In most countries the direct or dependent employment contract is by far and away the dominant form of the employment relationship. Indeed, this is so much so that the terms 'employment relationship' and 'employment contract' are used interchangeably as they are in this text.

Since the first edition of this text, the direct or dependent employment contract has come to be categorised as the 'standard employment relationship' (SER). This is helpful in enabling sharper contrasts with developments such as 'zero hours' and 'platform working'. Slightly more problematic is the implication that there is one ideal type, when there are many nuances as later sections will explain.

In the UK, at the end of 2019, according to the Office for National Statistics (ONS)⁵ 32,934 million or something approaching six out of ten of the population above the age of 16 were regarded as being in 'employment'. Of these, 27,726 million or 84.2% were classified as 'employees' and nearly 5,027 million (15.3%) as 'self employed'. In 2009, the comparable figures were 29,102 million, 24,988 million (85.9%) and 3,912 million (13.4%). In other words, there has been a sizable increase in the number of the self employed in the past ten years, in proportionate as well as absolute terms.

Of the 'employees', 20,792 million (75%) were full time and 6,934 million (25%) part time. In 2009, the comparable figures were 18,382 (74%) million and 6,606 million (26%).

The great majority of those in employment (83%) also worked in services, with manufacturing at 3,011 million accounting for less than 10%; construction accounted for 2,310 million, and agriculture 0.34 million. The big battalions in services were in social work (4,515 million), wholesale and retail (4,089 million) and education (3,428 million).

In 2019, the great majority of employees (26,304 million or 94.9%) were also on permanent contracts. Just 1,422 million or 5.1 per cent were on temporary contracts. Also, contrary to what might have been expected, this represents a slight fall proportionately since 2009, when the number was 1,445 million (5.8%).

One very significant change in the past ten years, however, is the number of people in

²Marsden, D. 1999. *A Theory of Employment Systems. Micro-foundations of societal diversity*. Oxford: Oxford University Press.

³Judy Fudge. 2017. 'The Future of the Standard Employment Relationship: Labour Law, New Institutional Economics and Old Power Resource Theory'. *Journal of Industrial Relations*. Vol 59, 3.

⁴Kelloway, E.K., Gallagher, D.G. and Barling, J. 2004. 'Work, employment and the individual', in B. Kaufman (ed. *Theoretical Perspectives on work and the employment relationship*. Ithaca: ILR/Cornell University Press. p.109.

⁵ONS. [Labour Market Overview. UK: April 2020.](#)

employment on 'zero hours' contracts. In 2009, 189,000 (0.7%) were in this category: by 2019 the number had grown more than four-fold to 974,000 (3.0%)⁶.

The second big change is much more difficult to quantify. It is the growth in the externalisation of the employment relationship as the result of outsourcing. There are different types of outsourcing discussed later. In common is that the traditional 'binary divide' between dependent and independent employment becomes blurred, with 'the traditional functions of the employer being split between separate entities'⁷. In the case of 'agency work', for example, the employer who pays is not necessarily the one who coordinates.

Overall, the TUC estimated that in 2018 upwards of six million in the UK worked in supply chains, which was around 20% of the labour force⁸. The bulk (3.3 million) were involved in outsourcing companies; 2 million in intermediaries such as recruitment agencies, 'umbrella companies' and 'personal service companies'; and a further 615,000 in franchised businesses.

The number of workers in supply chains has certainly been growing. The TUC estimate comes from the Business Services Association (BSA), which represents outsourcing companies. At the time of the first edition of this text, the BSA estimated its members in the UK employed around 350,000 and had a turnover of £14.3 billion. In 2020, its website says its members employed 500,000 and had a turnover of £30 billion⁹. 70% of outsourced activity, says the BSA, is for the private sector and 30% for the public.

The employment relationship's enduring features

As the OECD has recently put it, 'non-standard' work is not a marginal phenomenon¹⁰. Yet eight out of ten of those in employment are in a 'standard employment relationship' (SER), albeit the traditional functions of the employer may be split between a number of separate entities. The focus will therefore be on these before considering the nature and extent of the challenges 'non-standard' work poses.

Hi

A special form of exchange

The reason why the SER is the dominant form of employment relationship is that it involves a special form of exchange that brings benefits to both parties over and above those involved in the contract for services. In a phrase, the employment relationship involves a trade-off between employees' need for security and employers' requirements for flexibility¹¹.

Tangible and intangible rewards. In the case of employees, most attention focuses on the tangible rewards that come from employment, i.e. wages and conditions such as holidays and pensions. There are two main reasons. One is practical. Not only are such rewards critical in living standards but, being quantifiable, and thus generalisable across all manner of jobs, they are the common focus of policy makers and practitioners alike¹². The second is their

⁶ ONS. 2020. [Labour Force Survey: People in employment on zero hours](#)

⁷ Deakin, S. 2007. 'Does the 'Personal Employment Contract' Provide a Basis for the Reunification of Employment Law?' *Industrial Law Journal*, Vol. 36, No. 1, 68-83. p.71.

⁸ For further details, see <https://www.tuc.org.uk/sites/default/files/Shiftingtherisk.pdf>.

⁹ Further details available at www.bsa-org.com

¹⁰ OECD. 2018. [Policy Brief on the Future of Work. The Future of Social Protection](#).

¹¹ Crouch, C. 2009. 'British industrial relations: between security and flexibility', in T. Colling and M. Terry (eds) *Industrial Relations Theory and Practice*. Chichester: John Wiley & Sons.

¹² Brown, W. and Walsh, J. 1994. 'Managing pay in Britain', in K. Sisson (ed). *Personnel management*. 2nd edn. Oxford: Blackwell. p.437.

significance to employers as well as employees. For wages and conditions, hours of work, holidays and pension rights are not just what the employee receives. They are also ‘a price which represents the total cost of enjoying its use’¹³

Intangible rewards have both an internal and external dimension. In Edwards' words, ‘what goes on within the employment relationship is crucial, not only in terms of the pay that is earned but also the condition under which it is earned: the degree of autonomy the employee is granted, the safety of the work environment, the opportunity for training and development, and so on’¹⁴. Fairness has also been a major focus of attention. Externally, employment brings the opportunity for social contact and social status as well as a sense of purpose and personal identity.

Less attention has focused on what is perhaps the greatest intangible of the employment contract: the relative security that comes from a measure of continuity of employment. The point can best be made by contrasting the employment contract with the labour services agreement. Clearly, the labour services contract also brings both tangible and intangible rewards. Indeed, at first sight, it might be thought that they would be superior on both dimensions. Being one’s own boss brings the possibility of higher economic rewards as well as much greater discretion. The tax benefits of being self-employed include being VAT registered, paying low corporation tax rate on earnings, and being able to claim tax relief on office space and employing family members.

The main disadvantage of the labour services contract is that it brings little or no employment continuity - which is fundamentally important if the individual has no other source of income. The self-employed also forgo a number of the practical advantages of the employment contract. Arguably, payments for holidays, sickness and pensions are simply a form of deferred pay and provision for them accommodated in higher fees. Their organisation, however, takes time and effort.

Residual control rights. The benefits that employers receive from the employment relationship very rarely receive the attention they deserve and yet are critically important if the full significance of the employment relationship is to be appreciated. In both the labour services agreement and employment contract, employees sell their labour and/or knowledge power. Whereas the labour services agreement spells out the work that is to be done in return, however, the employment contract is relatively silent; in one well-celebrated phrase, the employee in effect signs a ‘blank cheque’¹⁵. The point is that the employer does not acquire a specific or quantifiable amount of labour from the employment relationship - if they wanted this, they might just as well opt for a labour service agreement. Rather the employer buys the employee's capacity to work (commonly known as ‘labour power’ following Marx’s original formulation), which requires direction. In the language of transaction cost economics, the employment contract gives the employer 'residual control rights' over employees, which are ex post rather than ex ante.

Transaction costs thinking also helps us to understand the benefits. The would-be employer can be seen as being confronted by a choice between different ‘governance’ regimes. Other things being equal, the assumption is that they will seek to organise their

¹³ Edwards, P.K. 2003. ‘The employment relationship and the field of industrial relations’, in Edwards, P.K. (ed) *Industrial relations: theory and practice*. 2nd edition. Oxford: Blackwell. p.8.

¹⁴ Edwards, P.K. 2003. ‘The employment relationship and the field of industrial relations’, in Edwards, P.K. (ed) *Industrial relations: theory and practice*. 2nd edition. Oxford: Blackwell. p.2.

¹⁵ Simon, H. 1951. ‘A formal theory of the employment relation’. *Econometrica*, Vol 19, 293-305.

activities on the basis of market contracts. To do so, however, they have to cope with three main problems: the difficulties of search and information costs incurred in acquiring adequate information about available reliability and price ('bounded rationality'); the costs required to come to an acceptable agreement and draw up an appropriate contract with the other party; and the policing and enforcement costs of making sure the other party does not renege on the terms of the contract ('opportunism'). Also the more specific the skills are to the employer ('asset specificity'), the more acute these problems are likely to be.

In these circumstances, the open-ended employment relationship, coupled with a managerial hierarchy, has traditionally had considerable advantages over the labour service agreement, helping to explain what has been described as the 'historical tendency towards the internalisation of employment relationships'¹⁶. To paraphrase Marsden¹⁷, the employment contract is more flexible – managers do not have to specify everything in advance of the act of hiring, which means, in turn, that it is possible to vary detailed assignments in the light of changing circumstances.

It is more efficient – it cuts down on the three types of costs (information, bargaining and enforcement) that managers would otherwise incur. It means that managers are able both to develop specific skills that cannot be secured on the 'external' labour market and to ensure an adequate return on that investment. It also means that managers are able to exercise greater control over enforcement of the agreement along with issues such as cost and quality, subject only to the constraints imposed by the law or collective agreements or societal norms.

In short, in the case of the labour service agreement 'governance' is contract-based – the assumption is that the agreement is self-enforcing, with the courts adjudicating in the light of any dispute. In the case of the employment relationship, 'governance' is hierarchy-based – it is managers who determine 'how much work is performed in that time, at what specific task or tasks, who has the right to define the tasks and change a particular mix of tasks and what penalties will be deployed for any failure to meet these obligations'¹⁸

A managerial relationship

Each of the traditional disciplines applies its own adjective to describe the employment relationship. Thus, for economists, the employment relationship is essentially a market relationship; for lawyers it is a legal relationship; for politicians it is a power relationship; and so on. For the most part, too, each discipline ploughs its own furrow with little reference to the others. Very often, as Chapter 1 observed, the primary concern is with confirming the theoretical propositions or methods of the discipline rather than helping to understand the employment relationship.

Arguably, although each of these perspectives highlights an important dimension of the employment relationship, helping to explain why its study is multidisciplinary, none of them captures the essence. For the feature that distinguishes the employment relationship from the

¹⁶ Grimshaw, D., Marchington, M., Rubery, J. and Willmott, H. 2005. 'Introduction: Fragmenting Work Across Organisational Boundaries', in Grimshaw, D., Marchington, M., Rubery, J. and Willmott, H. (eds) *Fragmenting Work. Blurring Organisational Boundaries and Disordering Hierarchies*. Oxford: Oxford University Press. p.1.

¹⁷ Marsden, D. 1999. *A Theory of Employment Systems. Micro-foundations of societal diversity*. Oxford: Oxford University Press. p.3.

¹⁸ Edwards, P.K. 2003. 'The employment relationship and the field of industrial relations', in Edwards, P.K. (ed) *Industrial relations: theory and practice*. 2nd edition. Oxford: Blackwell. p.8.

labour services agreement is that it is a managerial relationship¹⁹. This is because, to repeat an earlier argument, in entering into an employment relationship, the employer does not acquire a specific or quantifiable amount of labour. Rather they require the right to direct employees. An important corollary, as Chapter 1 pointed out, is that to talk in terms of a labour market gives a very false impression of what is at stake in the employment relationship. Hiring and firing is not even the half of it.

The employment contract may have advantages over the labour services agreement. But managing the employment relationship is far from straightforward. There are a number of intrinsic features reflecting the trade-off between employees' need for security and employers' requirements for flexibility that complicate matters considerably.

Indeterminate. First of all, the employment relationship is *indeterminate* or *incomplete*. Many of the benefits that employees receive from the exchange can be set. This is particularly true of wages and conditions, helping to explain why they are so often the focus of attention. The residual control rights that employers receive in return are a very different proposition, however. In Collins' words²⁰, contracts of employment are 'incomplete by design', in the sense that the details of the work to be done are largely left to be decided by managerial direction. Consequently, nothing is automatic about the employment relationship. 'The act of hiring ... is not sufficient to ensure that the job gets done in an acceptable way ... The employee has to be motivated – by encouragement, threats, loyalty, discipline, money, competition, pride, promotion, or whatever else is deemed effective to work with the required pace and care'²¹. Managers also need employees to do more than simply comply with instructions. They need their cooperation and commitment to continuously improve performance. The sting in the tail is that the motivation and commitment so critical to performance reflect not just the economic return, but also the job satisfaction and emotional reward that people derive from their work. As Chapters 5 and 6 explain in more detail, the upshot is that negotiation and the exercise of domination or power 'over' are integral to the conduct of the employment relationship, regardless of the presence of trade unions.

Continuous. The employment relationship is not a one-off exchange as in the case of the labour services agreement – it is *continuous* or *open-ended*. This means that it is a relationship that has a history and a future, in which learning and socialisation play important roles. Moreover, the longer the employee is involved, the more experienced and socialised they become, with responses to an immediate situation reflecting this experience and socialisation.

Being *continuous* also means that there are more or less constant pressures on and opportunities for the parties to seek to adjust the exchange in their favour, reinforcing the importance of negotiation and the exercise of power. Most obvious are the occasions of pay reviews. Any increases in pay, be they individual or collective in coverage, are likely to be linked to expectations of improved performance. Yet more or less any change in the environment can generate pressures on and opportunities for the parties to seek to adjust the basis of the exchange. Historically, it was employees and trade unions that were most

¹⁹ Flanders, A. 1970. *Management and Unions: the theory and reform of industrial relations*. London: Faber; Edwards, P.K. 2003. 'The employment relationship and the field of industrial relations', in Edwards, P.K. (ed) *Industrial relations: theory and practice*. 2nd edition. Oxford: Blackwell.

²⁰ Collins, H. 2007. 'Legal Responses to the Standard Form Contract of Employment'. *Industrial Law Journal*, Vol. 36, No. 1, 2-18. pp.11 10.

²¹ Brown, W. and Walsh, J. 1994. 'Managing pay in Britain', in K. Sisson (ed). *Personnel management*. 2nd edn. Oxford: Blackwell. p.440.

associated with such change, the focus being on terms and conditions. More recently, reflecting intensifying competition, managers are to the fore, with the emphasis shifting to reducing costs, 'continuous improvement' and 'smarter working'.

Exploitative. This term is used in both derogatory and literal senses. In the derogatory sense, it is a value judgment about the conduct of the employment relationship in a specific instance. Typically, it is used to describe a situation where the employer pays less than the going rate. In the literal sense, it is a statement of fact about the employment relationship in general. In the words of the Oxford Dictionary, to exploit is to 'utilise (person etc.) for one's own ends'. Employers 'exploit' employees in as much as they deploy their labour and/or knowledge power in order to meet their objectives which, in the case of private sector companies, is to generate a surplus. Unlike the independent worker, moreover, many employees have little or no say in how their labour or knowledge is deployed. As Chapter 6 explains in more detail, this is because the employment relationship is asymmetric or unequal. Superficially, there are two equal parties – the employer and employee. In practice, these parties are very unequal. Domination or power 'over' is a design feature of the employment relationship, being implicit in the basis of the exchange discussed above. Also the employee is a single individual usually with very limited resources who does not have much choice – he/she needs to work in order to secure income. By contrast, the employer is typically a corporate entity very often with substantial resources at its disposal.

Contradictory. Another key feature of the employment relationship is that it is *contradictory*. An underlying assumption is that, in as much as they 'sell' their labour and/or knowledge power to be used at the discretion of the employer's agents, the employment relationship involves employees in an act of submission or subordination, regardless of any job satisfaction or material rewards. Yet, unlike other resources, 'human resources' are embodied in people - labour differs from other commodities in that 'it is enjoyed in use and is embodied in people'²². To carry on in Edwards' words, 'A machine in a factory is also enjoyed in its use and for what it can produce. Yet how it is used is solely up to its owner. The 'owner' of labour, the employer, has to persuade the worker, that is the person in whom the labour is embodied, to work. Managerial relations are the relationships that define how this process takes place ...' As Chapter 1 pointed out, for many employees in democratic societies, the contrast between their organisational and civil lives could hardly be sharper – on the one hand, 'political democracy' and, on the other, 'economic autocracy'²³.

The employment relationship is also contradictory for those managing it. Employees represent both a cost and an investment, which means constantly making compromises. Motivating employees to do what managers want is also nowhere as simple as it is often portrayed. In Edwards' words again, 'managements have to pursue the objectives of control and releasing creativity ... [and] the problem is that these involve very different and conflicting strategies'²⁴. Very tight monitoring is not only costly, but also can reduce the prospects of employees using their initiative. But lax control can mean that different groups and/or individuals may pursue aims and objectives incompatible with one another.

²² Edwards, P.K. 2003. 'The employment relationship and the field of industrial relations', in Edwards, P.K. (ed) *Industrial relations: theory and practice*. 2nd edition. Oxford: Blackwell. p.8.

²³ 'Cooperative Economics: An Interview with Jaroslav Vanek by Albert Perkins. *New Renaissance magazine*, Vol. 5, No. 1.

²⁴ Edwards, P.K. 2003. 'The employment relationship and the field of industrial relations', in Edwards, P.K. (ed) *Industrial relations: theory and practice*. 2nd edition. Oxford: Blackwell.p.16.

Co-operative and antagonistic. It is because of these features that the employment contract locks employers and employees into a relationship that is at one and the same time *cooperative* and *antagonistic*. It is *cooperative* in as much as neither party can secure their goals without the cooperation of the other - employers and employees are mutually dependent on one another. Employers may own the capital, but it is employees who deliver the goods or services. Equally true is that employees cannot secure their means to a livelihood unless they help the employer to make a surplus and/or keep costs to a minimum. Similarly, they risk denying themselves opportunities to develop new skills and abilities as well as fulfil themselves.

At the same time, however, the employment relationship is *antagonistic* because it is exploitative and contradictory – in Edwards' words²⁵, there is an in-built 'structural antagonism'. Importantly, this does not necessarily mean that there is a general conflict of interest - employees have many interests that the employment relationship serves. It does mean, though, that the potential for specific conflicts of interest is ever present and that the expressions of such conflicts, whether over fixing wages or the exercise of the employer's discretionary rights, is not just a matter of faulty procedures, 'bad' management or wilful employees. Employment Tribunal cases in investment banking also confirm that employees at every level of the organisation are affected.

Disputes are the most manifest expression of the conflicts of interest and can be individual or collective, involving a grievance or an appeal to an Employment Tribunal or a strike or collective action short of a strike, such as an overtime ban or 'work to rule'. Other expressions of these conflicts range from the voicing of discontent in attitude surveys, through absence and resignation, which can be regarded as ways of 'exiting' from a relationship regarded as unsatisfactory, to so-called 'organisational misbehaviour' such as theft and sabotage. Chapter 7 deals with the changing pattern of disputes in more detail.

Variations on a theme

So far the discussion has focused on the generic features of the employment relationship. As Chapter 1 emphasised, however, the conduct of the employment relationship depends on the specific social and institutional context. Employees can have very different expectations of their employment relationship as the 'psychological contract' literature discussed later suggests. They can have very different 'orientations to work' as the older sociological studies clearly demonstrated²⁶, with different emphases placed on income, status, identity and social opportunity. The behaviour of managers also reflects the organisations in which they work. For example, the parent company may have a very well-defined philosophical approach to managing people extending across its businesses or it may have very strong affiliations to a particular sector that are influential. Of the main dimensions, two main ones stand. One is the occupation. The other is the national system.

²⁵ Edwards, P.K. 1986. *Conflict at work*. Oxford: Blackwell. See also his 2018. 'Conflict in the workplace: the concept of 'structured antagonism' reconsidered'. *Warwick Papers in Industrial Relations*, No 110. Industrial Relations Research Unit. University of Warwick.

²⁶ Lockwood, D. 1966. 'Sources of variation in working class images of society'. *Sociological Review*, Vol 14, No 3, 249-67; Goldthorpe, J.H., Lockwood, D. Bechofer, E. and Platt, J. 1968. *The affluent worker: Industrial attitudes and behaviour*. Cambridge: Cambridge University Press.

Contract and status

To make sense of the differences between types of occupation, there is a useful distinction to be made between 'contract' and 'status'²⁷. The distinction has both a specific and general meaning. Thus, in Germany, the relationship between career public servants (*Beamte*) and the state is not a private contractual one, but is defined by public law. Disputes are settled by administrative courts rather than labour ones.

More generally, the distinction reflects the differences between the labour services agreement and the employment relationship referred to earlier. A key consideration is the degree of 'asset specificity'. The more general the skills are, the more likely is the tendency towards 'contract'; the more specific the skills, the greater the tendency to see employees as an investment for the longer term with a special 'status'. Employment relationships based on 'contract' are very close to labour services agreements - indeed, the employees involved are very often the ones whose work is subcontracted, the extreme case being the so-called 'spot market' for daily labourers.

'Contract' and 'status', it needs to be emphasised, are not concepts along a single continuum, however. Rather they comprise several dimensions. Some of these involve a continuum - career is an example. Others represent contrasting types such as 'numerical' and 'functional' flexibility. Table 3.1 illustrates.

This framework also does not necessarily mean equating low skill with 'contract' and high skill with 'status'. As already indicated, much depends on the degree of specificity of the skills: a lawyer or financial accountant, for example, may be highly skilled, but their skills are of general rather than specific application. Employees in occupations where the profession offers greater career prospects than the individual organisation - for example, lawyers, financial managers and computer specialists - may incline to the 'contract' model. Some of the trends are also contradictory. Many unskilled groups have only recently been moving towards the 'status' model with the extension of pensions, sick pay and other fringe benefits - indeed, as Jacoby reminds us, many of the features associated with the 'status' model are much more recent than often assumed, with different forms of subcontracting being dominant in many sectors until the end of the 19th century; they also reflect legal pressures and employee demands as much as they do managerial strategy²⁸. Meanwhile, some high 'status' groups, such as senior managers, have experienced the imposition of very tight targets and performance controls considerably reducing their discretion. The situation can also differ significantly between different workplaces. A part-time worker in one of the UK's top supermarket chains such as Tesco or Waitrose may enjoy greater de facto employment security than a high 'status' individual in a less successful organisation.

The 'contract-status' formulation is especially helpful in making sense of many of the changes supposedly taking place in employment relationships. It may be true that employers feel under pressure to make increasing demands on flexibility and greater sharing of the risk²⁹.

²⁷ Streeck, W. 1987. 'The uncertainties of management in the management of uncertainty'. *Work, Employment and Society*. Vol 1, No 3, 281-308; Edwards, P.K. 2003. 'The employment relationship and the field of industrial relations', in Edwards, P.K. (ed) *Industrial relations: theory and practice*. 2nd edition. Oxford: Blackwell.

²⁸ Jacoby, S. M. 1990. 'The new institutionalism: what can it learn from the old'. *Industrial Relations*, Vol 29, 316-59.

²⁹ See, for example, Schalk, R. 2005. 'Changes in the employment relationship across time', in Coyle-Shapiro, J.A-M., Shore, L.M, Taylor, M.S. and Tetrick, L.E. (eds). *The employment relationship: examining psychological and contextual perspectives*. Oxford: Oxford University Press. p.287.

Yet this does not necessarily mean a coherent shift in approach characterising many interpretations. Rather employment relations emphasises an eclectic mix as employers grapple with the contradictions arising from their need for commitment and control discussed earlier³⁰. Thus the two approaches can co-exist in the same workplace in the form of the so-called 'core-periphery' model – core employees usually fall into the 'status' category, while the periphery are closer to the 'contract' equivalent.

Varieties of capitalism - competing views of the organisation

Although the employment relationship has many common features, there are considerable cross-national differences. In every country, the state has become the 'guarantor of the employment relationship' and yet legal frameworks differ considerably in the nature and extent of the legal protection that is afforded to it in areas such as individual contracts, their relationship to collective agreements and their provision for termination. These, in turn, reflect contrasting views about the nature of the work organisation, which are grounded in the wider legal, political and social context.

On the one hand is the doctrine of the firm as a 'nexus of contracts', which has been described as the 'dominant legal and economic perspective' in the UK and the USA³¹. Largely developed as the result of economists grappling with the need to accommodate the organisation into neoclassical thinking, it starts from the proposition that the firm is a legal fiction to which the term ownership cannot be meaningfully applied - it is a 'contracting site where the parties agree the terms on which they are prepared to supply the firm's inputs and be rewarded for doing so'³². Crucially important for present purposes is that the employment contract is seen as being no different from other contracts – it is purely a market relationship and the parties owe no responsibilities to one another beyond those expected of participants acting in good faith. The mutual advantages of the employment contract over the labour services agreement are effectively ignored as are its implications. Thus, in the words of Alchian and Demsetz³³, who were responsible for much of the initial thinking, the organisation is merely 'the centralised contractual agent in a team productive process – not some superior authoritarian directive or disciplinary process'. Exclusive residual rights are vested in shareholders on efficiency grounds and managers are responsible to them only, the share price representing the best value the market can put on the company. Market competition is the key to governance with the emphasis on 'pay for performance schemes such as stock option grants, an active market for corporate control, and the fiscal discipline of leverage'³⁴. The approach, suggest supporters, avoids potential confusion of objectives

³⁰ Marginson, P. Olsen, L and Tailby, S. 1994. 'The eclecticism of managerial policy towards labour regulation: three case studies'. *Warwick Papers in Industrial Relations*. Number 47. Coventry: Industrial Relations Research Unit, University of Warwick; Grimshaw, D. and Rubery, J. 2003. 'Economics and industrial relations', in Ackers, P. and Wilkinson, A. (eds). 2003 *Understanding work and employment. Industrial relations in transition*. Oxford: Oxford University Press.

³¹ Parkinson, J. 2003. 'Models of the company and the employment relationship'. *British Journal of Industrial relations*. Vol 41, No 3, September, 481-510. p.485.

³² Parkinson, J. 2003. 'Models of the company and the employment relationship'. *British Journal of Industrial relations*. Vol 41, No 3, September, 481-510. p.485.

³³ Alchian, A. and Demsetz, H. 1972. 'Production, information costs, and economic organisation'. *American Economic Review*, Vol. 62. p.778.

³⁴ Khurana, R. 2007. *From higher aims to hired hands. The social transformation of American business schools and the unfulfilled promise of management as a profession*. Princeton: Princeton University Press. p.364.

associated with the alternative stakeholder model that sees managers having responsibilities to multiple interests; it is important in increasing efficiency - in particular it prevents the 'managerial empire-building' associated with the growth of large diversified conglomerates in the 1960s and 1970s; and it helps to ensure that resources are reallocated to new initiatives³⁵.

One other hand is the variously described 'capability approach' or 'resource-based view' that informs the thinking behind HRM, the 'learning/knowledge organisation' and 'high performance working'. It also approximates to the thinking in a number of EU countries and is associated with the EU social model. As Table 3.2 outlines, the starting point is that the firm or business is a social organisation, with success largely depending on the ability to satisfy markets for products and services. Management is a key resource as well as process, with responsibilities for coordinating, developing and enabling the skills and talents of other employees. The employment relationship involves market and managerial relationships and its conduct is critical. The key to governance are institutions in the broad sense of the term. In the words of a summary of the position, work organisations are seen as 'capability structures'³⁶. The focus is on how the organisation, 'an authoritatively structured set of relationships', creates 'distinctive capabilities through establishing routines that coordinate complementary activities and skills for particular strategic purposes'³⁷.

These perspectives are grounded in a recognition that capitalism does not exist in a vacuum. Rather than a single form, there are 'varieties of capitalism' with considerable differences from country to country in the way economic activity is organised. This is above all true of the way in which the organisation of production at firm level is linked to the support provided by the external institutions at many levels of the political economy. 'Markets' and 'hierarchies', it argued, are not the only coordination ('governance') mechanisms for economic behavior: 'social networks', 'association', and 'state intervention' can also be important. Overall, businesses are said to be 'embedded' within social contexts with the relationship being mediated by institutions that shape the collective supply of inputs (e.g., skills, capital) available to firms and other economic actors with significant implications for the various economic outcomes (e.g., growth, efficiency, innovation)³⁸.

A voluminous 'varieties of capitalism' literature has emerged with many different strands. Most attention has focused on the suggestion that there are two main types: the 'liberal market economies' (LMEs) of the Anglo-Saxon countries with their 'shareholder' or 'outsider' systems and the 'coordinated market economies' (CMEs) found in Japan and some continental European countries characterised by their 'stakeholder' or 'insider' systems. 'Outsider' systems are associated with dispersed networks of shareholdings, greater reliance on external sources of finance, highly developed stock markets and an active market for corporate control - companies are largely discrete economic actors - 'islands of planned coordination in a sea of market relations'³⁹ - primarily accountable to shareholders. In

³⁵See, for example, Brittan, S. 2003. 'Shareholders, not stakeholders'. *Samuel Brittan: Contribution to RSA and Economist Debate* 06/02/03; Owen, G. 2003. 'Capitalism works'. *Prospect Magazine*. Issue 93, December.

³⁶Morgan, G. Whitley, R. and Moen, E. 2005. *Changing capitalisms? Internationalisation, institutional change and systems of economic organisation*. Oxford: Oxford University Press. p.5.

³⁷Morgan, G. Whitley, R. and Moen, E. 2005. *Changing capitalisms? Internationalisation, institutional change and systems of economic organisation*. Oxford: Oxford University Press. p.1.

³⁸Hall, P. and Soskice, D. 2001. 'An introduction to varieties of capitalism', in Hall, P and Soskice, D. (eds) *Varieties of Capitalism: the institutional foundations of comparative advantage* Oxford, Oxford University Press.

³⁹Richardson, K. 1972. 'The organisation of industry'. *Economic Journal*, Vol 82, No 4, p.883.

contrast, 'insider' systems, are distinguished by interlinked networks of corporate, institutional or family shareholdings, a financial system based on long-term bank credit, less developed stock markets and constraints on hostile take-over. In this case, companies' ability to act independently is restricted by ties of mutual obligation to and dependence on various stakeholder groups, including employees.

There is a considerable degree of congruence with another binary model that is rooted in differences in legal systems: CLEs tend to be characterised by 'civil law' systems and LMEs by 'common law' ones. To paraphrase Colling, 'civil law' systems are driven by the desire for one common statement that is applied universally and takes precedent over the wishes of the contracting parties⁴⁰. The courts also play important roles in diffusing these general principles through the influence their decisions exert with widespread implications for commercial and inter-firm relations. The result is that both the substantive and procedural content of employment contracts are affected, with deviation from generally applied business conventions generally frowned on. By contrast, in common law systems the courts have a much bigger say in the development and application of legal principles. They also prioritise the freedom of social actors to reach the contracts that they want, with the result that precedent is applied through fragmented case by case processes. Thus, whereas in 'civil law' systems the incorporation of the terms of collective agreements is more or less automatic, in 'common law' ones it is selective depending on the prevailing custom and practice.

These binary classifications can be criticised for glossing over the very considerable differences between countries in the same category. This is especially so in the case of the CLEs. The role of the state, for example has been fundamentally different in, say, the Latin countries as opposed to Germany or Sweden: in the first case, descriptions such as 'state-led' are appropriate, whereas 'collaborative' or 'consensus' fits the second better. Similarly, while the banks have been the main source of funding in Germany, investment foundations have played this role in Sweden. Also the LMEs are not as homogenous as they appear: for example, there are considerable differences in the common law systems of the UK and the USA - in the UK collective agreements are binding in honour only, whereas in the USA they are deemed to be legal enforceable contracts.

Much depends on different conceptions of how institutions constrain and relate to actor behaviour, which takes us back to Chapter 1 and the different types of institutional analysis. Those who advocate the binary model tend to come at the issues from a 'rational choice' perspective and favour parsimony. By contrast, those inclined to a broader categorisation tend to come from the 'historical institutionalist' approach and emphasise complexity.

Also relevant is that, since the 2020 edition and the increasing importance of financialisation, the varieties of capitalism approach has been criticised because it assumes institutional stability and does not take into account the influence of cross-national value chains⁴¹. This is true up to a point. It is debatable, however, whether global value chains are that important. Arguably, it is the overall effect of financialisation that is making the difference. And here the jury must remain out on the relative significance of national as opposed to international influences.

Also, it is not so much the typologies that are important for present purposes. Rather it is the dimensions or basic building blocks that different authors draw on that deserve the

⁴⁰ Colling, T. 2010, 'Legal institutions and the regulation of workplaces', in T. Colling and M. Terry (eds) *Industrial Relations Theory and Practice*. Chichester: John Wiley & Sons.

⁴¹ T. Lakhani, T. S. Kuruvilla and A. Avgar. 2013. 'From the Firm to the Network: Global Value Chains and Employment Relations Theory'. *British Journal of Industrial Relations* 51: 440-472.

attention. In bringing this section to a close, therefore, Table 3.3 draws together the main institutional features that enable and constrain different sorts of business systems, which might also be seen as a summary of the influences on the conduct of the employment relationship. In simple terms, the configurations of variables in column 1 are seen as strongly encouraging management to opt for one or other of two main combinations of business strategy/form of work organisation that, in turn, shape the management of the employment relationship.

The standard employment relationship under threat

The statistics may suggest that the SER remains dominant and yet these are not the complete story. There are many developments calling into question the stability and security that have gone with it. The most important of these are considered below, the underlying considerations having been touched on above and in previous chapters: increasing automation and digitalisation - which has been changing the face of manufacturing as well as retail and services; and the spread of 'financialisation' described in Chapter 1 - which, as well as a shift of resources from investment to managers and shareholders, has resulted in considerable organisational restructuring, outsourcing and treatment of labour as a variable cost. The result is a continuing concentration of employment in services and an 'hourglass' economy with a large number of low paid jobs.

Here the implications are discussed under two headings: the 'changing psychological contract' and the 'fragmentation of the employment relationship'.

The psychological contract: from the 'relational' to the 'transactional'?

Table 3.4 outlines what the 'psychological contract' entails. The starting point is the recognition that, for all the talk of managerial hierarchy, employment law and collective agreements, the day-to-day conduct of the employment relationship depends on individual perceptions and expectations, reflecting the enduring features of the employment relationship discussed earlier. Indeed, given the imprecision of the employment relationship, these perceptions and expectations may play a more important role than the formal contract. Overall, the basis of the employment relationship is said to be moving from the 'relational' to the 'transactional', with employers seeking to avoid and/or shift the risk involved in some of the traditional features of the employment relationship⁴².

Historically, the 'old core issues' of pensions and careers have been seen to be critical elements in the 'psychological contract'⁴³. Increasingly, however, employers are said to be finding it difficult to honour these expectations. In terms of pensions, it means a move from schemes with defined benefits to ones involving defined contributions. In terms of careers, it

⁴² See the discussion in Coyle-Shapiro, J.A-M., Shore, L.M, Taylor, M.S. and Tetrick, L.E. (eds). 2004. *The employment relationship: examining psychological and contextual perspectives*. Oxford: Oxford University Press.

⁴³ See, for example, the reviews in Sparrow, P.R and Cooper, G.L. 2003. *The employment relationship: key challenges for HR*. Oxford: Butterworth-Heinemann. pp.6-10; Conway, N. and Briner, R. 2005. *Understanding Psychological Contracts at Work: A Critical Evaluation of Theory and Research*, Oxford University Press, Oxford; Taylor M.S. and Tekleab, A.G. 2005. 'Taking stock of psychological contract research: assessing progress, addressing troublesome issues, and setting research priorities', in Coyle-Shapiro, J.A-M., Shore, L.M, Taylor, M.S. and Tetrick, L.E. (eds). *The employment relationship: examining psychological and contextual perspectives*. Oxford: Oxford University Press.

means an emphasis on 'employability'⁴⁴ (helping employees to become as 'employable' as possible) and 'portfolio careers' (encouraging employees to think in terms of a number of careers with a number of employers rather than a single career with one employer).

There is no disputing the facts so far as pensions are concerned⁴⁵. In the UK, where the proportion of older people's incomes coming from public sources is less than half, there has been a considerable decline in final salary pension or defined benefit schemes in which both parties pay and the employee is guaranteed a pension depending on income and years of employment. In their place have been substituted defined contribution schemes very often accompanied by a reduction in the level of employers' contribution. The result is that many more employees now face the uncertainty of defined contribution schemes with the outcome dependent on stock market performance of the pension fund(s) into which they contribute.

Whether there has been an 'end of careers' is more difficult to chart. In the UK, there has been a decline in the number of companies offering graduate training programmes and the like. But overall job tenure has remained relatively stable with change being relatively small at between 2% and 5%: the proportion in long term employment (ten years or more) also showed little change between, albeit being slightly less than in France, Germany and Italy⁴⁶.

Casualisation

Casual (temporary) working is long standing. Indeed, it was the predominant form until the coming of industrialization. Even though the proportion of temporary workers has stayed about the same as an earlier section pointed out, there has been a considerable growth in the number of 'so-called zero hours', 'if and when', 'on-call' or 'seasonal' contingent contracts, where the employer is not obliged to offer guaranteed hours⁴⁷.

Along with other changes described below, it means that, for many workers, employment is much more precarious than it was⁴⁸. The First Findings from the Skills and Employment Survey 2017 dealing with *Insecurity at work in Britain*. found that, for most employees, fears about the risk of joblessness and anxiety about changes to the job had fallen. But a sizable number (around 7% equating to 1.7 million) were very anxious that their working hours could change unexpectedly – which is considerably more than the official estimate of those on zero hours contracts quoted earlier. 'Those working insecure hours also suffered from other types of insecurity such as greater risk of job loss, greater anxiety of job status downgrading and more worry about unfair treatment ... they reported lower pay, speedier dismissal for poor

⁴⁴ McGovern, P., Hill, S., Mills, C. and White, M. 2007. *Market, class, and employment*. Oxford: Oxford University Press. p.137.

⁴⁵ OECD. 2009. *Pensions at a glance. Current trends and policy topics in retirement-income systems in OECD countries*. Paris: OECD. [Pension Policy Institute. 2019. Approaching the end game: The Future of Defined Benefit pension schemes in the UK.](#)

⁴⁶ McGovern, P., Hill, S., Mills, C. and White, M. 2007. *Market, class, and employment*. Oxford: Oxford University Press. p.56. Katharina Buchholz. 2020 [Where People Stick With Their Jobs](#). Statistica.

⁴⁷ ILO. 2016. *Non-standard Employment Around the World: Understanding challenges, shaping prospects*. Geneva: International Labour Organization. O'Sullivan, M., Lavelle, J., McMahon, J., Ryan, L. Murphy, C., Turner, Th., Gunnigle, P. (Eds). 2019. *Zero Hours and On-call Work in Anglo-Saxon Countries*. Springer Singapore.

⁴⁸ Broughton, A. et al. 2016. *Precarious Employment in Europe: Patterns, Trends and Policy Strategies* European Parliament Brussels. Taylor, M., Marsh, G., Nicol, D. and Broadbent, P. 2017. *Good Work: The Taylor Review of Modern Working Practices*, Department of Business, Energy and Industrial Strategy, London.

work performance and higher work effort⁴⁹.

The 'grey zone': between dependent and independent self-employment

Pressure on workers to become self-employed in order to reduce employers' tax liabilities or responsibilities has long been a feature of sectors such as construction⁵⁰. In recent years *bogus self-employment* has become more widespread⁵¹. It is not just the lower paid who are involved. In 2018, **the National Audit Office**⁵², two House of Commons Committees, the public accounts and the digital, culture, media and sport, lambasted the Corporation for requiring some 800 TV and radio presenters to set up personal service companies. The BBC, it was publicly proclaimed, had damaged its reputation, been muddled and chaotic, and its communication with those affected unacceptably poor. Personal service companies are essentially special tax vehicles allowing the organisation as well as the individual to avoid paying national insurance contributions. The downside from the worker's point of view is they miss out on employment rights such as holiday and sick pay, and pension contributions.

The growth of self-employment does not just affect the individual. It also means a sizeable reduction in Treasury income - the IFS estimates that by 2021/22 the costs of self-employment to the Treasury will be c3.5 billion and that just reflects the disparity in treatment under the tax system⁵³.

The 'fragmentation' of the employment relationship

The substance of the SER has been changing even where there appears to be little change in its form. 'Fragmentation'⁵⁴ and 'fissuring'⁵⁵ are terms increasingly used to characterise what has been happening.

'Individualisation'

Several developments are internal to the organisation. Not only has there been a considerable decline in trade union membership and the coverage of collective bargaining, but also a growth in individual performance pay and the like. Crucially, it means an undermining of a sense of 'occupational community' associated with trade union membership and collective action.

⁴⁹ A. Felstead, D. Gallie, F. Green and G. Henseke. 2018. [Insecurity at work in Britain. The First Findings from the Skills and Employment Survey 2017.](#)

⁵⁰ Behling, F. and Harvey, M. 2015. "The evolution of false self-employment in the British construction industry: A neo-Polanyian account of labour market formation", *Work, Employment and Society*, Vol. 29 No. 6, pp. 969-988.

⁵¹ OECD. 2019. Policy [Responses to new forms of work.](#) Moore, S. and Newsome, K.J. 2018. Paying for free delivery: Dependent self-employment as a measure of precarity in parcel delivery'. *Work, Employment and Society*, 32 (3). pp. 475-492.

⁵² **National Audit Office**. 2018. [Investigation into the BBC's engagement with personal service companies.](#)

⁵³ Stuart Adam, Helen Miller and Thomas Pope. 2017. [Tax, legal form and the gig economy.](#)

⁵⁴ Marchington, M., Grimshaw, D., Rubery, J. and Willmott, H. 2005. *Fragmenting Work: Blurring Organizational Boundaries and Disordering Hierarchies*, Oxford University Press, Oxford.

⁵⁵ Weil, D. 2014. *The Fissured Workplace Why Work Became So Bad for So Many and What Can Be Done to Improve It* Cambridge, MA: Harvard University Press.

Divisionalisation and 'budgetary devolution'. Much of the 'permanent restructuring' mentioned in the previous chapter follows from the widespread adoption of two features: 'divisionalisation' (the break-up of large-scale organisation into semi-autonomous businesses units or Executive agencies); and budgetary devolution (the allocation of responsibility for managing activities within financial resources or targets). 'Marketisation' has also been rife. This is the greater application of market principles to decision making, e.g. in the form of 'competitive tendering' and 'market testing', joint ventures and partnerships.

As the previous chapter emphasised, the practical result is that stability is something few managers can contemplate. Short-term pressures to maximise the share price or, in the case of public services, implement top-down policy changes from governments, mean that day-to-day management of organisations is constantly being disrupted. Adding to the problem in many organisations is the rapid turnover among managers – expectations raised and promises made by one manager can be quickly set aside or disabused by another. The redundancy that was historically associated with economic down-turns has become an accepted or normal way of handling restructuring regardless of overall business performance⁵⁶.

Outsourcing

Important though internal considerations are, 'fragmentation' largely results from the externalisation of the employment relationship. Thus the main reason why so many of those lauded as 'key workers' during the 2020 coronavirus pandemic are poorly paid and their jobs insecure is that they are not directly employed by the organisation responsible for the service provision - they work for sub contractors or agencies. Bluntly put, they are the victims of a tug of war between the 'internalisation' and 'externalisation' of the employment relationship. Throughout most of the last century, the trend was from 'externalisation', involving gang masters and casual or seasonal working, to 'internalisation' in the form of regular or permanent employment - partly because of the pressure from trade unions, but also because businesses came to appreciate the benefits regular employment brings in terms of control and commitment. In recent years, however, the trend has been in reverse, reflecting policies such as compulsory competitive tendering introduced in the 1980s, promotion of the 'flexible firm' and its 'core-periphery' employment model⁵⁷, and increasing pressure to reduce costs and/or risks as 'financialisation' thinking and practice have become dominant.

Agency working is one particular form. The employer effectively transfers responsibility for labour supply to a third party. Amazon and Sports Direct are examples. Complicating matters further is that the employment agency might use an 'umbrella company' for processing timesheets and pay. Or if the worker is self-employed and does not have a personal service company, they might use an 'umbrella company' to process their pay when getting assignments through an agency. In this case the 'umbrella company' acts as the employer and the employment agency is their 'client'.

A second form of outsourcing involves a *supply chain*. In the words of the UK's Director of Labour Market Enforcement (Sir David Metcalf):

⁵⁶ McGovern, P., Hill, S., Mills, C. and White, M. 2007. *Market, class, and employment*. Oxford: Oxford University Press. p.137.

⁵⁷ For further details of the origins and development of the 'flexible firm' and 'core-periphery' models, see Anna Pollert. 1988. 'The 'Flexible Firm: Fixation or fact?' *Work, Employment & Society*. Vol. 2, No. 3, pp. 281-316.

One of the most prominent manifestations of the fissured workplace over recent decades has been the growths of supply chains. Often this is in the context of global business, but increasingly there are examples where there is a return to on-shoring in the UK to benefit from greater within-country proximity throughout supply chains (e.g. fast fashion in the garment industry). However, the driver for this business model remains the same – that is, cost reduction – and this, in turn, risks compromising labour standards⁵⁸.

As Weil explains, because each level of the chain requires a financial return, the lower the level, the slimmer is the profit margin⁵⁹. At the same time, labour typically represents a larger share of overall costs, meaning the incentives to cut corners rise.

Two further considerations are involved: one turns on the nature and extent of vertical integration and the other on the notion of ‘core competencies’. For example, Toyota has for many years focused on the development and assembly of its vehicles, leaving to independent specialist businesses responsibility for manufacturing components. Apple and Dell, which might be described as the original ‘platform companies’, went even further. In both cases, a key element of business strategy from the start was to outsource the entire process of manufacturing to independent suppliers. Only the development and design functions were kept in house.

Although they do not face the same vertical integration dilemma, the *online platform companies* associated with the ‘gig’ economy are similar in that they eschew direct employment. The key difference is that, rather than independent employment as in the case of Toyota, Apple and Dell, the arrangements produce ‘dependent self-employment’⁶⁰.

Perhaps best known in the UK are Uber and Deliveroo. There is little of the management hierarchy used to direct and control workers in traditional companies. Instead, app and algorithm-based systems are used to organise large numbers of seemingly independent owner-operators. But these do not just put customers in touch with operators, as in a quasi franchise of one model, but also fulfil many of the functions of management - crucially, they determine the price for the job and arrange payment for it. Performance management (via app-based customer feedback) also features strongly. There is a great deal of mutual dependence as well: the companies rely on their supposedly owner-operators to fulfil customer expectations so that they can charge and profit; and the owner-operators depend on the company both to supply and pay for work.

Another business strategy that eschews direct employment is *franchising*.

The primary reason most entrepreneurs turn to franchising is that it allows them to expand without the risk of debt or the cost of equity ... By using other people’s money, the franchisor can grow largely unfettered by debt. Moreover, since the franchisee - not the franchisor - signs the lease and commits to various contracts, franchising

⁵⁸ *United Kingdom Labour Market Enforcement Strategy 2018/19*.

⁵⁹ D. Weil. 2011. ‘Enforcing Labor standards in the Fissured Workplace: the US experience.’ *Economic and Labor Relations Review*, Vol 22, no 2, 33-53.p.39.

⁶⁰ Taylor, M., Marsh, G., Nicol, D. and Broadbent, P. 2017. *Good Work: The Taylor Review of Modern Working Practices*, Department of Business, Energy and Industrial Strategy, London. Wright, C.F., Wailes, N., Bamber, G. and Lansbury, R. 2017. ‘Beyond national systems, towards a ‘gig economy’? A research agenda for international and comparative employment relations’, *Employee Responsibilities and Rights Journal*, Vol. 29 No. 4, pp. 247-257. Wood, A.J., Graham, M., Lehdonvirta, V. and Hjorth, I. 2018. ‘Good gig, bad gig: autonomy and algorithmic control in the global gig economy’. *Work, Employment and Society*, 5 (1), 1-16.

allows for expansion with virtually no contingent liability, thus greatly reducing the risk to the franchisor⁶¹.

Batt also points out that franchisees often go into debt to set up a franchise. This pushes franchisees to manage for cash and focus on operating costs, the majority of which are labour costs⁶².

In public services, where a range of mostly discrete services are involved, vertical integration has not been so much of an issue. Here government pressure in the form of the compulsory competitive initiative has been the main driver of outsourcing, with ‘core competencies’ also playing a role. In some cases, this has involved adoption of an explicit ‘virtual’ or ‘enabling’ authority model. According to the [*The Financial Dictionary*](#),

In this model of public service provision the public authority no longer provides services itself. Instead it contracts with other organizations to deliver them. The philosophy underlying this model is that private sector organizations can provide public services more effectively and efficiently than public sector organizations.

The effects of ‘externalisation’ can be considerable. Many people find themselves working for very different organisations from the ones they joined, with significant implications for their pay, career prospects and pensions, not to mention their health and well-being. Some who were in permanent jobs are now in temporary ones, with the employer who pays often being different from the one who directs. Morale and commitment are also affected with implications for productivity and performance - collective or organised conflict in the form of strikes may have declined, but individual expressions such as absenteeism show no signs of abating.

Inasmuch as most ‘externalisation’ boils down to minimising costs, it raises major concerns not just about employment rights and the erosion of the tax base, but also customer protection and public safety. In the UK, the Grenfell fire of 2018 is a tragic example of the poor governance of many supply chains. In a post on the Chartered Institute of Purchasing and Supply’s website in 2018, Francis Churchill precises Dame Judith Hackitt’s *Building a Safer Future* review:

There was a “systemic problem” in the sector ... The current system is far too complex, it lacks clarity as to who is responsible for what, and there is inadequate regulatory oversight and enforcement. The report highlighted how bad contract requirements can encourage poor behaviour. For example low margins for large contractors may lead them to push technical risks onto their subcontractors, who may be less able to mitigate them appropriately. Payment terms, late payments and retentions – where payment is withheld as a form of guarantee for good work – can also put strain on the supply chain⁶³.

⁶¹ Leapfrog Consulting. 2020. [*10 Reasons to franchise your business*](#).

⁶² R. Batt. 2018. ‘When Wall Street manages Main Street: Managerial dilemmas, sustainability and inequality’. *Journal of British Academy*, 6, 65-96.

⁶³ Francis Churchill.2018. [*Poor procurement kick-starts bad practices*](#).

Limits to externalisation?

In its 2019 *Employment Outlook*, the OECD asks if the end is nigh for the SER⁶⁴. Much of the recent literature implies it is. Yet there are grounds for being cautious about reaching such a conclusion.

Managing the extended organisation

The argument that managers need to focus their energies on the ‘core’ business is difficult to gain say. Leaving matters such as catering, cleaning or maintenance to ‘specialist’ businesses seems to make sense: the ‘market’ will ensure that these businesses operate as effectively and efficiently as possible. It also means that pay and conditions will reflect those prevailing in the sector rather than those of employees in the ‘core’ business. Furthermore, it is understandable to assume that outsourcing managing the employment relationships becomes someone else’s problem - out of sight becomes out of mind.

But there are limits to ‘fragmentation’ that take us back to the earlier discussion of the employment relationship’ enduring features. The problem is that, while outsourcing might be fine in theory, managing the ‘extended organisation’ is far from straightforward – which is why companies included many ancillary activities in-house in the first place. A significant shift in the ‘psychological contract’ might be expected resulting in a lack of commitment. Compounding the problem, especially where the outsourcing of public services is involved is that managers as well as employees are likely to be affected: it is difficult to build commitment when multiple contracts have uncertain futures. The belief that private sector organizations can provide public services more effectively and efficiently than public sector organizations has also come under close scrutiny during the coronavirus pandemic.

Like the employment relationship, outsourcing is not automatic in effect – the contracting process can be time consuming and complex, while ensuring adherence to the contract requires skills in managing supplier relations. In reminding us that procurement departments, not middle managers, typically control supply chains, Batt quotes the example of the Boeing 787 Dreamliner project:

After the MacDonald Douglas-Boeing merger, the leadership increased its focus on short-term returns and decided to outsource over 60 per cent of component production for the new plane-based on consultant estimates that this would save \$4 billion and reduce development time by two years. It contracted with 50 tier-one suppliers, who would oversee two tiers of additional suppliers. But Boeing’s top managers grossly miscalculated costs and underestimated supply chain complexity and the critical link between engineering and manufacturing. Boeing engineers, managers, and workers were inundated with poor-quality parts that had to be reworked; faced serious safety problems, for example, with lithium batteries; and confronted massive coordination problems - leading to a 3.5-year delay in production and \$10 billion in cost overruns⁶⁵.

Also, unless the main contractor is involved in managing the employment relationship throughout the supply chain, the danger is that they will experience many of the problems that

⁶⁴ OECD. 2019. [The Future of Work. Employment Outlook 2019 Highlights](#).

⁶⁵ R. Batt. 2018. When Wall Street manages Main Street: Managerial dilemmas, sustainability and inequality’. *Journal of British Academy*, 6, 65-96. p.73

can be incurred, but not have the capability to deal with them. Indeed, if their relationship with their subcontractors is based simply on low cost, the problems are likely to be exaggerated – for the avoidance and shifting of risk affects employer-employer as well as employer-employee relationships. Organisations that fail to ensure that their supply chains maintain decent standards are likely to find themselves the increasing focus of ‘naming and shaming’ campaigns.

An example is the very successful online fashion retailer Boohoo, which has many suppliers in Leicester. At the end of June 2020 the city was required to lockdown due to an exceptionally high level of Covid-19 cases. In July 2020 Boohoo had almost half of its stock market value wiped off following undercover reports that not only were workers in some suppliers being paid as little as £3.50 an hour, but their working conditions were also encouraging the spread of the virus. Adding to its woes, Boohoo was forced to admit that it was not sure who was producing its garments, the supplier initially named saying it had not traded from the premises for two years.

An intensifying legislative response

There has been a strong reaction to these developments from trade unions in the form of campaigns and collective agreements; there have also been international framework agreements. Workers have also been taking matters into their own hands, setting up Worker centres, community unions and labour cooperatives as well as making the most of social media⁶⁶.

There has also been an increase in employment protection legislation as the previous chapter noted. Many countries have sought to deal with what the OECD calls the 'grey zone' issue⁶⁷ of worker classification between dependent and independent self-employment, including empowering workers to negotiate and organise collectively. Some countries have effectively banned zero hours e.g. France and New Zealand; others have heavily regulated the practices (Germany) or introduced 'pay loadings' (Australia). There have also been developments in the licensing and registration of agencies. In France, a legal provision encouraging platforms to publish 'social responsibility charters' online and as appendixes to workers' contracts is currently being discussed.

Major changes also look set to take place in the regulation of supply chains⁶⁸. In the UK, where workers can normally only bring claims against their direct employer, the government has been consulting on the recommendations of the Director of Labour Market Enforcement. He advised that businesses should be held 'jointly responsible' in the first instance. Many of the responses, however, have made strong cases for 'joint liability'.

For example, CORE, the UK umbrella civil society coalition, has said 'joint liability' would allow workers to bring a claim for unpaid wages, holiday pay and sick pay against any contractor in the supply chain. Which would encourage contractors to be 'more careful' in

⁶⁶ OECD. 2019. *Employment Outlook. The Future of Work*. Holgate, J. 2015. "Community organising in the UK: A 'new' approach for trade unions?" *Economic and Industrial Democracy*, Vol. 36 No. 3, pp. 431-455. Prowse, P., Lopes, A. and Fells, R. 2017. "Community and union-led living wage campaigns", *Employee Relations*, Vol. 39 No. 6, pp. 825-839. C. Wight and colleagues. 2019. 'Towards a new web of rules: An international review of institutional experimentation to strengthen employment protections'. *Employee Relations*, volume 41, issue 1.

⁶⁷ OECD. 2019. *Employment Outlook. The Future of Work*, 190.

⁶⁸ Keith Sisson. 2020. '*Making Britain the best place in the world to work: how to protect and enhance worker's right after Brexit...and coronavirus*'. *Warwick Papers in Industrial Relations*, No 111. Industrial Relations Research Unit, University of Warwick.

choosing subcontractors and ensure they took 'real responsibility' for the people working for them. 'Currently', they say, 'poor purchasing practices by companies, such as ever shorter lead times and lower prices for suppliers, lead to work being subcontracted to unsafe and/or unregulated production sites, subsequently leading to forced overtime, avoidance of paying maternity, sick pay and other entitlements and injury'⁶⁹.

As well as emphasising the importance of 'joint liability' in *obliging* the top of supply chains to take active roles in tackling abuses, FLEX, another charity⁷⁰, suggests limiting the number of tiers as in some sectors in Norway. 'Limiting supply chain tiers is a powerful tool for re-consolidating responsibility, ensuring that companies view workplace practices as their own concern, rather than that of another entity separate to them'.

In the EU, the regulation of supply chains is likely to be tackled in a wider programme introducing mandatory due diligence. In April 2020, the European Commissioner for Justice, Didier Reynders, announced that he would be introducing legislation as part of the Commission's 2021 work plan and the European Green Deal modelled on the French 'duty of vigilance' law requiring companies to show a 'duty of care' in their operations⁷¹. The new law, he said, would require companies to carry out checks on their supply chains and the risks that their activities may be harming human rights. He also gave assurances that the law would offer access to remedy for victims and strong enforcement mechanisms. As Chapter 10 will confirm, the plan had the strong support of the German government, which was holding the EU presidency from July 2020.

Governments, local as well as national, have also been using public procurement to bring pressure to bear on supply chain management. In the UK, for example, the devolved governments in Scotland and Wales have insisted on payment of the Real Living Wage instead of the National Living Wage⁷². Social licensing is also gaining support⁷³. Businesses benefiting from national and local government contracts delivering life's everyday necessities, proponents argue, should be required to fulfil a number of social obligations in return. It therefore has the potential to make a very significant difference to the terms and conditions of many low paid workers as well.

In conclusion, there is a paradox about developments in the employment relationship to which later chapters will return. Along with the decline of collective bargaining, many of those described here are a major cause of 'juridification'⁷⁴, i.e. the greater involvement of the law and the courts in employment relations matters. 'Law's allure' is especially strong, it seems, in areas such as employment where risks and uncertainties might otherwise result in conflict if actors were left to their own devices⁷⁵. It means that any notion of the employment relationship being just a private matter no longer holds true if it ever did.

⁶⁹ CORE. 2019. [Good Work Plan: Establishing a single enforcement plan for employment rights](#).

⁷⁰ Focus on Labour Exploitation. 2019. [FLEX response to the BEIS enforcement body consultation](#).

⁷¹ Business and Human Rights Resource Centre. 2020. [EU Commissioner for Justice commits to legislation on mandatory due diligence for companies](#).

⁷² E. Heery, D. Hann and D. Nash. 2020. 'Political devolution and employment relations: the case of the Living Wage'. *Industrial Relations Journal*, <https://doi.org/10.1111/irj.12306>.

⁷³ The Foundational Economy Collective. 2020. [What comes after the pandemic. A ten-point plan for foundational renewal](#). For a more detailed exposition, see the Foundational Economy Collective. 2020. *Foundational Economy: The infrastructure of everyday life*. Manchester University Press: Manchester.

⁷⁴ Majone, G. (ed). 1996. *Regulating Europe*. London: Routledge.

⁷⁵ Silverstein, G. 2009. *Law's allure: how law shapes, constrains, saves and kills politics*. New York: Cambridge University Press.

Table 3.1 'Contract' and 'status'

	<i>Contract</i>	<i>Status</i>
tasks/ work organization	highly prescribed	some discretion
security of employment	low	relatively high
type of flexibility	mainly 'numerical'	mainly 'functional'
skill specificity	relatively low	relatively high
training and development	very little	some
career prospects	very limited	fairly extensive
'voice'	very little	some

Table 3.2 Competing views of the work organisation⁷⁶

	Nexus of contracts	Resource-based
Role of the organisation	vehicle for contracting	providing goods and services
Role of managers	coordinate contacts	direct and support
Responsibilities	shareholders only	multiple stakeholders
Main focus	capital market	product market
Main form of competition	external/merger and takeover	internal growth/process and product development
Performance measures	share price	market share
Scope for coordinated action	limited	significant
Horizons	short term	medium/long term
Relationship between management and employees	purely market	market and managerial
View of labour	commodity whose cost is to be minimised	resource to be developed
Methods of securing commitment	financial/use of market type devices such as stock options maximisation	financial plus training and development/voice/consultation

⁷⁶ Sisson, K. and Purcell, J. 2009. 'Management – caught between competing views of the organisation?', in T. Colling and M. Terry (eds) *Industrial Relations Theory and Practice*. Chichester: John Wiley & Sons. p.98.

Table 3.3 Varieties of capitalism: building blocks and links⁷⁷

<p>1 Role of the state</p> <ul style="list-style-type: none"> ▪ degree to which state relies on market regulation ▪ degree to which state encourages intermediary organisations <p>2 Financial systems</p> <ul style="list-style-type: none"> ▪ ‘capital-market-based’ v ‘bank-based’ ▪ ‘blockholder’ v ‘dispersed’ share ownership <p>3 Corporate governance arrangements (‘insider’ v ‘outsider’ control)</p> <p>4 Nature & extent of vocational training provision (balance between state, market, individual cos, co associations & co networks)</p> <p>5 structure of collective bargaining/ social dialogue</p> <ul style="list-style-type: none"> ▪ levels of bargaining/ social dialogue ▪ scope of collective agreements ▪ nature and extent of coordination <p>6 Nature & extent of employment protection legislation</p> <p>7 Nature & extent of employee ‘voice’ provisions</p> <p>8 Social security provisions</p> <ul style="list-style-type: none"> ● level of benefits ● balance of public–private pension provision ● administration (government v ‘Ghent-type’ v company) 	<p>Balance between coordination mechanisms, ie</p> <ul style="list-style-type: none"> ▪ markets ▪ hierarchies, ▪ state intervention ▪ associations ▪ social networks 	<p>Nature of business strategy, ie extent to which</p> <ul style="list-style-type: none"> ▪ products/ services are standardised or customised ▪ competition is primarily via price or quality ▪ product/ service volume is high or low <p>Nature of work organisation, ie</p> <ul style="list-style-type: none"> ▪ ‘traditional’ ▪ ‘Taylorist’ ▪ ‘lean’ ▪ ‘learning’ 	<p>Governance of employment relationship</p>
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⁷⁷ Based on Jackson, G. and Deeg, R. 2006. ‘How Many Varieties of Capitalism? Comparing the Comparative Institutional Analyses of Capitalist Diversity’. *MPIfG Discussion Paper* No. 06/2.

Table 3.4 The psychological contract

To paraphrase the Chartered Institute of Personnel Development (CIPD)⁷⁸, the psychological contract is a concept developed by the likes of Argyris, Levinson and Schein in the early 1960s. It has been defined as 'the perceptions of the two parties, employee and employer, of what their mutual obligations are towards each other'. These obligations will often be informal and imprecise: they may be inferred from actions or from what has happened in the past, as well as from statements made by the employer, for example during the recruitment process or in performance appraisals. Some obligations may be seen as 'promises' and others as 'expectations'. The important thing is that they are believed by the employee to be part of the relationship with the employer.

The psychological contract looks at the situation as perceived by the parties, and may be more influential than the formal contract in affecting how employees behave from day to day. It is the psychological contract that effectively tells employees what they are required to do in order to meet their side of the bargain, and what they can expect from their job. It may not - indeed in general it will not - be strictly enforceable, though courts may be influenced by a view of the underlying relationship between employer and employee, for example in interpreting the common law duty to show mutual trust and confidence.

The CIPD draws on Guest and Conway⁷⁹ to outline below the kinds of commitments employers and employees might make to one another:

Employees promise to:	Employers promise to provide:
Work hard	Pay commensurate with performance
Uphold company reputation	Opportunities for training and development
Maintain high levels of attendance and punctuality	Opportunities for promotion
Show loyalty to the organisation	Recognition for innovation or new idea
Work extra hours when required	Feedback on performance
Develop new skills and update old ones	Interesting tasks
Be flexible, for example, by taking on a colleague's work	An attractive benefits package
Be courteous to clients and	Respectful treatment

⁷⁸Based on Chartered Institute of Personnel Development. 2010. 'The psychological contract'. *Fact Sheet*. Latest version available at www.cipd.co.uk

⁷⁹ Guest, D.E. and Conway, N. 2002. *Pressure at work and the psychological contract*. London: CIPD.

EMPLOYMENT RELATIONS MATTERS

colleagues

Be honest

Come up with new ideas

Reasonable job security

A pleasant and safe working
environment