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The Meaning of the Terms Precarious Work and Vulnerable Workers

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Abstract. This paper is a work in progress. We are particularly interested in extending our research by developing an understanding of the relationship between the terms precariousness and vulnerability in the work context. Our research questions include the issue of whether the two terms are inextricably linked. Are those in precarious work more likely to be vulnerable workers? Are vulnerable workers more likely to be in precarious work than others? Are workers made vulnerable by being in precarious work? Our first step is clearly to understand what is meant by these two terms in the work context and perhaps to further refine any definitions.

Keywords: *Precarious work, Vulnerability, Vulnerable Workers, Precarious Workers*

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Introduction

The terms vulnerability and precariousness have entered common usage in the vocabulary when considering those in work, especially those in ‘non-standard’ employment and those who belong to groups who might be considered more open to disadvantage and discrimination than others. The terms are often used interchangeably, so sometimes the term ‘vulnerable workers’ and sometimes ‘precarious workers’ are used but also ‘vulnerable work’ and ‘precarious work’ (TUC, 2010; Standing, 2011)¹. Here, for our purposes, we try to distinguish between the two in order to assist our analysis.

Precariousness

References to precarious working have been used quite regularly for many years and in many jurisdictions, so, for example, in the nineteenth century, there are references in the UK to the precarious nature of the employment of dockworkers who were employed on a casual daily basis and the seasonal nature of work endured by workers in the Australian agricultural sector (Quinlan, 2012)². It can probably be said that precarious forms of work have almost always (if not always) been present in systems of wage employment (Rodgers, 1989: 1)³, during the last few decades, and especially in the wake of global economic crisis, discussion about the vulnerability and precariousness in employment has emerged again with high intensity.

To a large extent, it is explained by increasing concerns over rapid growth of those forms of employment which are deviated from so called ‘standard employment relationship’ generally associated with a full-time, long-term and socially secure job (Bosch, 2004: 618; Bercusson, 2009: 362; Davidov, 2016: 36, et al.)⁴. Developing in the post-World War II

¹ TUC Commission on Vulnerable Employment *Hard Work Hidden Lives* TUC (2009). Standing, G. (2011) *The Precariat: The New Dangerous Class* Bloomsbury Publishing.

² Quinlan, M. (2012) *The Pre-Invention of Precarious Employment: The Changing World of Work in Context* *The Economic and Labour Relations Review* 23(4) 1-22.

³ Rodgers G (1989) *Precarious Work in Western Europe: The State of the Debate*. In: Rodgers G and Rodgers J (eds.) *Precarious Jobs in Labour Market Regulation: The Growth of Atypical Employment in Western Europe*. Geneva: International Institute for Labour Studies; Free University of Brussels.

⁴ Bosch G (2004) *Towards a New Standard Employment Relationship in Western Europe*. *British Journal of Industrial Relations* 42 (4): 617-636.

period, this pattern ‘incorporated a degree of regularity and durability in employment relationships, protected workers from socially unacceptable practices and working conditions, established rights and obligations, and provided a core of social stability to underpin economic growth’ (Rodgers, 1989: 1). Since all other forms of employment were viewed as mainly expressing employer demands and ‘undermining the standards which the law provides for a typical employment relationship’ (Kruppe T, Rogowski R, Schömann, 2013: 10)⁵.

Their growth started at the beginning of the 1970s and was initially seen as a negative process of gradual ‘erosion’ of the standard employment relationship. However, the traditional understanding of that standard employment relationship based on an increasingly unrealistic model of the male breadwinner/female caregiver gender contract (Rogowski, 2013: 91)⁶ was widely replaced by a more pragmatic attitude towards non-standard or atypical forms of employment (Bosch, 1986: 163-176; Mückenberger, 2010: 399-401)⁷ and flexibility associated with them. Thus, on the one hand, economic restructuring, through such forces as technological change and globalization, as well as restructuring of welfare and employment regulation, encourage an increase in ‘labour market flexibility’ where non-standard forms of employment are considered as one of the means to accelerate job creation that is especially important in the wake of crisis. On the other hand, the complex forces related to gendered transformations in paid employment call for ‘worker-centered flexibility’ (Vosko et al., 2009: 12)⁸. In other words, it is suggested, non-standard

Bercusson B (2009) *European Labour Law*. 2nd ed. New York: Cambridge University Press

Davidov G (2016) *A Purposive Approach to Labour Law*. Oxford: Oxford University Press. EHRC Pregnancy and Maternity-Related Discrimination and Disadvantage: Experiences of Mothers (2016).

⁵ Kruppe T, Rogowski R, Schömann K (2013) *Labour Market Efficiency in the European Union: Employment Protection and Fixed Term Contracts*. London, New York: Routledge.

⁶ Rogowski R (2013) *Reflexive Labour Law in the World Society*. Cheltenham, Northampton: Edward Elgar

⁷ Bosch G. (1986) Hat das Normalarbeitsverhältnis eine Zukunft? WSI-Mitteilungen 3(90): 163-176

Mückenberger U (2010) ‘Krise des Normalarbeitsverhältnisses’ - nach 25 Jahren revisited Vorbemerkung. *Zeitschrift für Sozialreform* 56 (4): 399-401.

Ontario Law Commission *Vulnerable Workers and Precarious Work* (2012).

⁸ Vosko L F, McDonald M, Campbell I (2009) Introduction: Gender and the Concept of Precarious Employment. In: Vosko L F, McDonald M, Campbell I (eds.) *Gender and the contours of precarious employment*. London; New York: Routledge.

forms of employment are no longer only seen as being inspired exclusively by employer demands, but rather as an expression of general trends and cultural changes in lifestyles (Rogowski, 2013: 91).

However, taking for granted that in modern conditions non-standard forms of employment and their growth is inevitable, does not undermine the issue of the precariousness in employment. It 'places the discussion and measurement of precarious employment at the very heart of fundamental debates on the future of employment' (Vosko et al., 2009: 12). Quite surprisingly, even the meaning of the term 'precarious employment' is still open to debate. Initially, it originated in France where the term 'precariousness' has been widespread since the late 1970s, often linked to the discussion of social exclusion (Vosko et al., 2009:5; Barbier, 2004: 718, 2005: 351-371)⁹. However, soon it came to be attached most strongly to the sphere of employment and is often directly identified with forms of employment that are outside of the standard employment relationship. At the end of 1980s the concept of 'precarious employment' appeared in the English-speaking literature (Rodgers and Rodgers, 1989; Gore et al., 1995: 15-

16)¹⁰ where it has evolved in relation to a network of allied concepts, such as 'non-standard', 'atypical' and 'contingent'. Thus about one in five workers in the EU are employed on contracts that do not meet this criterion (Mckay et al, 2012).

Researchers have come up with a variety of 'non-standard' contractual relationships which can be described as being included in our understanding of precarious work. Anderson and Rogaly (2005) suggest short-term; temporary or casual contracts; working for an agency or third party rather than being a direct employee; providing a contracted-out service; and working for low wages that prevent the achievement of a decent standard of living are features. Others have suggested that the features of precarious or contingent work are that it is sometimes work for more than one employer and it is often not 'full-time' and is sometimes limited in duration (Feldman, 2006)¹¹. Thus we have

⁹ Barbier, J.-C. (2005) La précarité, une catégorie française à l'épreuve de la comparaison internationale. *Revue française de sociologie* 46-2: 351-371

¹⁰ Gore C, Figueiredo J and Rodgers G (1995) Introduction: Markets, Citizenship and Social Exclusion. In: Rodgers G, Gore C and Figueiredo J (eds.) *Social Exclusion: Rhetoric, Reality, Responses*. Geneva: ILO Publications.

¹¹ Feldman, D. C. (2006) Towards a new taxonomy for understanding the nature and consequences of contingent employment *Career Development International* 11(1) 28-47. Fineman, M. *The Autonomy Myth: A Theory of Dependency* The New Press (2005) at

employment relationships that may be part time, fixed-term or temporary in nature (Sargeant and Ori, 2013)¹². The characteristics of precarious work are likely to be ‘job instability, lack of benefits, low wages and degree of control over the process’ (Ontario Law Commission, 2012; 1). Each concept tends to emphasise different features of the work arrangements, and different terms have greater currency in specific institutions and countries and at specific times. Thus, for example in Canada the term ‘nonstandard employment’ was initially a preferred one although then ‘vulnerable workers’ predominated. In the EU, ‘atypical’ or ‘nonstandard’ forms of employment have been the conventional nomenclature, although the term ‘precarious’ is increasingly prominent, whilst in the US the term ‘contingent work’ is preferred (Fudge, McCann, 2015: 16-17)¹³.

Although there is no doubt that there is an overlap between non-standard, atypical, contingent and precarious employment, it is hardly fair to connect all the forms of employment which differ from the standard employment relationship with precarious employment that is generally associated with the uncertainty, insecurity and instability (Kalleberg, 2009: 1-22 and 2012:427-448; Vosko, 2010; Standing, 2011)¹⁴. In earlier research, there was a tendency to regard regular, permanent wage work as secure and, consequently, to consider other forms of work which deviated from this norm as precarious. However, at present a multidimensional approach to precarious work is dominant in the literature. It was initiated at the end of 1980s by Gerry Rodgers who suggested identifying precarious jobs with four characteristics: 1) instability, i.e. short time horizon or when the risk of job loss is high; 2) insecurity, i.e. lack of control (individually or collectively) over working conditions, wage, or the pace of work; 3) lack of protection in employment and social security (stipulated either by law, collective organisation or customary practice); 4) social or economic vulnerability which is associated with low income

18-20. Fineman, M. *The Vulnerable Subject: Anchoring Equality in the Human Condition* Yale Journal of Law and Feminism (2008).

¹² Sargeant, M. and Ori, M. (eds) *Vulnerable Workers and Precarious Working* Cambridge Scholars Publishing (2013).

¹³ Fudge J, McCann D (2015) *Unacceptable Forms of Work: A Global and Comparative Study*. Geneva: ILO

¹⁴ Kalleberg A (2009) *Precarious Work, Insecure Workers: Employment Relations in Transition*. *American Sociological Review* 74 (1): 1-22.

Kalleberg A L (2012) *Job Quality and Precarious Work: Clarifications, Controversies, and Challenges*. *Work and Occupations* November 39 (4): 427-448.

Vosko L F (2010) *Managing the Margins: Gender, Citizenship, and the International Regulation of Precarious Employment*. Oxford: Oxford University Press.

entails poverty and insecure social insertion (Rodgers, 1989: 3). Subsequently, different components of precariousness were added by other researchers, e.g. ‘high risks of ill health’ was added by Leah Vosko (Vosko, 2006: 4)¹⁵. She has also integrated social context and social location into a multidimensional approach to precarious employment which she defines as ‘work for remuneration characterized by uncertainty, low income, and limited social benefits and statutory entitlements. Precarious employment is shaped by the relationship between employment status (i.e. self-employed or paid employment), form of employment (e.g. temporary or permanent, part-time or full-time) and dimensions of labour market insecurity, as well as social context (e.g. occupation, industry, and geography) and social location (or the interaction of social relations, such as gender, and legal and political categories, such as citizenship)’ (Vosko, 2010: 2).

Vulnerability

Vulnerability somehow seems an even more complex concept, both in terms of what it actually means and who it applies to. In answering the question: what is vulnerability, Mackenzie¹⁶ et al (2014; 5) suggested that there are two responses. The first is ‘to be vulnerable is to be fragile, to be susceptible to wounding and to suffering; this susceptibility is an ontological condition of our humanity’; the second is

that rather than understanding vulnerability as ontological it focusses on the contingent susceptibility of particular persons or groups to specific kinds of harm or threats. Vulnerability is essentially relational; one is particularly vulnerable to particular sorts of threats. People are especially vulnerable when they have a reduced capacity to protect themselves’ (2014; 6).

¹⁵ Vosko L F (2006) Precarious Employment: Towards an Improved Understanding of Labour Market Insecurity. In: Vosko L F (ed.) Precarious Employment: Towards an Improved Understanding of Labour Market Insecurity in Canada. Montreal: McGill-Queen’s University Press

¹⁶ MacKenzie, C. Rogers, W. and Dodds, S. What is Vulnerability, and Why Does it Matter for Moral Theory In Mackenzie, Catriona, Rogers, Wendy and Dodds, Susan (eds) ‘Vulnerability: New Essays in Ethics and Feminist Philosophy’ OUP (2014).

This idea of a reduced capacity to protect oneself appears to be important. It is concerned with the power relationship within the work place. The UK Health and Safety Executive define vulnerable workers as ‘those who are at risk of having their workplace entitlements denied, or who lack the capacity or means to secure them’ (HSE)¹⁷. The TUC Commission on Vulnerable Employment defined vulnerable work as ‘insecure, low-paid and places workers at high risk of employment rights abuse. It holds very little chance of progression and few opportunities for collective action to improve conditions.’(TUC; 2009: 12).

It is not always clear whether the concept of vulnerability applies to individuals or groups, or whether it applies to the vulnerability created by precarious work, or, indeed, whether it is useful to apply the term to all those in employment. There are a number of levels of vulnerability which need to be taken into account.

The first level is that of *group identity* where a group, or individuals within that group, have a particular characteristic which makes them more likely than other groups or individuals to be in precarious work situations and/or increases their vulnerability. Examples of this might include, for example, migrant workers (Sargeant and Tucker 2009)¹⁸ and pregnant workers and those who have recently given birth (BIS 2015)¹⁹. The latter is a good example of an identity group who are discriminated against because they have a particular characteristic, i.e. that of being pregnant or having a young and dependent child. It is compounded by the fact that only women can give birth and the vast majority of care givers are female (Bisom-Rapp and Sargeant 2016)²⁰. Thus there exists sex discrimination and pregnancy discrimination in this respect (EHRC 2016). Many women in this position opt for reduced hours and more flexible forms of working and are more likely to be in a vulnerable position with regard to careers and working. Clearly there are many other identity groups which could be taken as potentially vulnerable such as those with a disability. A person with a disability will have both an individual impairment and a group

¹⁷ HSE: Vulnerable workers <http://www.hse.gov.uk/vulnerable-workers/>

¹⁸ Sargeant, M. and Tucker, E. Health and safety of vulnerable workers: case studies from Canada and the UK *Policy and Practice in Health and Safety* (2009) 7(2) 51-73.

¹⁹ BIS; Department for Business, Innovation and Skills *Pregnancy and Maternity Related Discrimination and Disadvantage First findings: Surveys of Employers and Mothers* (2015).

²⁰ Bisom-Rapp, S. and Sargeant, M. *Lifetime Disadvantage, Discrimination and the Gendered Workforce* Cambridge University Press (2016).

identity with others who have disabilities that result in discrimination and disadvantage (Aiden and McCarthy, 2014)²¹.

A second level of vulnerability might be termed *situational vulnerability*. There seems to be an issue about whether the term vulnerability applies to individuals or groups on the one hand or to the situation in which individuals or groups find themselves in as a result of being in precarious work. These two ideas sometimes merge. The Ontario Law Commission report *on Vulnerable Workers and Precarious Work* (2012; 1), for example, noted the distinction and stated that it was important to note that vulnerability did not refer to the workers themselves but the situation facing them because they were engaged in precarious work, as well as other disadvantages related to gender, racial status and other specific characteristics. This is the vulnerability created by precarious work. This level is context specific and ‘stresses the ways that inequalities of power, dependency, capacity, or need, render some agents vulnerable to harm or exploitation by others’ (Mackenzie et al 2014). This vulnerability is created the development of an increasingly ‘flexible’ work force. One analysis identified 9 different forms of developing flexible working (Mandl et al 2015)²², including employee sharing, job sharing, casual work, mobile working and portfolio work. These types of employment may be long way from the standardised model of the employment relationship with its permanent open ended contractual connection to a single employer. Some of them will create vulnerable situations for those employed. This vulnerability is a result of the precarious nature of some work, especially that which is temporary or cyclical in nature.

The third and final level is that of *universal vulnerability* (Fineman 2008). Professor Fineman criticises the identity approach to equality because ‘it narrowly focuses equality claims and takes only a limited view of what should constitute governmental responsibility in regard to social justice issues’ (Fineman, 2010; 7)²³. It is this emphasis on the role of the ‘responsive’ state and institutions and their responsibilities in relation to

²¹ Aiden, H. and McCarthy, A. (2014) Current Attitudes towards Disabled People Scope (2014). Anderson B. and Rogaly B. Forced Labour and Migration to the UK TUC (2005). Barbier J (2004) A Comparative Analysis of ‘Employment Precariousness’ in Europe. In: Latablier M (ed.) Learning from Employment and Welfare Policies in Europe, Cross-National Research Papers (7) 3: 7-18.

²² Mandl, I. Curtarelli, M. Riso, S. Vargas, O and Gerogiannis, W. New Forms of Employment Eurofound Publications Office of the European Union, Luxembourg (2015).

²³ Fineman, M. (2010) The Vulnerable Subject and the Responsive State Emory Public Law Research Paper No. 10-130, Emory Law Journal, Vol. 60.

peoples' vulnerabilities that distinguish the approach. Fineman is concerned with the limitations of an equality approach which focus on individual identities rather than considering the responsibilities of the state in protecting all citizens from a universal vulnerability. Her concern is that 'vulnerability' should be seen as a positive concept rather than its current association with negative characteristics. The analysis is useful in that it focuses on inequality as a universal detriment, but it is difficult to comprehend how it can replace a focus on individual groups who suffer both disadvantage and discrimination because of a personal characteristic. It is helpful in focussing on the state and its institutions as both the cause and the cure for vulnerability in populations. Here we propose to include it as the third source of vulnerability. This is a level at which we all share vulnerability just because we are human beings and have a level of dependence upon the state for our well-being. Its universality brings into focus the idea of the responsive state.

Thus we have three clear and distinct sources of vulnerability, all of which can require an answer from a 'responsive state'. Firstly, there is individual and group vulnerability which requires the state to take action to tackle discrimination and disadvantage at an individual level or at a group level. Secondly, there is situational vulnerability which requires the responsive state to take actions to provide security and limit exploitation in the work environment. Finally, we can adopt the idea of universal vulnerability which requires a national approach to protecting and providing resilience, through asset accumulation, for individuals and groups.

All these levels of vulnerability are not, of course, exclusive and perhaps a full analysis requires all these levels to be taken into account. They do, however, imply a denial of the traditional view that an employee is an independent competent person able to negotiate with an employer on equal terms or able to navigate independently their position in the labour market. It is the idea of what Professor Martha Fineman (2005; 18-20) calls the 'universal human subject defined in the liberal tradition'. This universal human subject is someone who is free and independent and able to make decisions about which relationships to enter into. Moves by the state to regulate these relationships are seen as limiting that freedom and the individual's resilience (Coyle 2013)²⁴. Those that support this idea are likely to oppose much legislation designed to protect individuals because

²⁴ Coyle, Sean. Vulnerability and the Liberal Order in Martha Albertson Fineman and Anna Grear (eds) 'Vulnerability: reflections on a new ethical foundation for law and politics' Ashgate Farnham Surrey (2013) ch4.

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it limits the opportunities that the individual has to create their own situation.

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