

When Was 'Labour Law'?

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I Introduction

A year or so ago, Ruth Dukes published a book entitled *The Labour Constitution: The Enduring Idea of Labour Law*.¹ It was an important contribution to what has become a transnational debate on the focus and concerns of labour law. That is a debate to which scholars associated with the Centre for Employment and Labour Relations Law (CELRL) have contributed since the CELRL's inception.² I will use Dukes' intervention as a spur to reflect on the distinctive nature of the Australian contribution and to suggest a framework that might both organise existing scholarship in this field and guide further inquiry. In particular, such a framework recognises the historically and nationally contingent forms that labour law and labour market regulation can take.³

The main title of Dukes' book may baffle Australian readers. It refers to the idea of labour law promulgated by Hugo Sinzheimer, a labour law scholar in Weimar Germany. For Sinzheimer, the 'labour constitution' was a legal framework that would limit managerial power and guarantee the right of workers to participate in the exercise of power. In practical terms, in the context of the time and place in which Sinzheimer was writing, this meant the law relating to collective bargaining, industrial action, workplace agreements, works councils, worker representation on company boards and arbitration.⁴ It was 'in substance a body of procedural rules – "state law" – which allowed for the participation of collectivised labour in economic decision-making and

- 1 R Dukes, *The Labour Constitution: The Enduring Idea of Labour Law* (Oxford University Press, 2014).
- 2 The key Australian texts here are R Mitchell (ed), *Redefining Labour Law: New Perspectives on the Future of Teaching and Research* (Centre for Employment and Labour Relations Law, University of Melbourne, 1995); C Arup et al (eds), *Labour Law and Labour Market Regulation* (Federation Press, 2006). For a fuller review of the Australian literature, see A Frazer, 'Reconceiving Labour Law: The Labour Market Regulation Project' (2008) 8 *Macquarie Law Journal* 21.
- 3 My title owes its inspiration to Gwyn Williams' history of Wales, *When Was Wales?* (Penguin, 1985), and so draws attention to the issue of historical contingency. Equally, I suppose, I could have called this chapter 'Where Was "Labour Law"?', thereby highlighting national contingencies in modes of labour market regulation.
- 4 Dukes, above n 1, 31, 33.

This is a preview. Not all pages are shown.