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COMMON LABOUR RIGHTS AND RIGHT TO WORK IN THE COMMONS

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https://scinfolex.com/2017/11/18/droits-communs-du-travail-et-droit-au-travail-dans-les-communs/

Translation: Mathieu O'Neil and Steve Collins

The question of the economic models needed to guarantee the sustainability of the Commons is a perennial one, and a multitude of proposals have been put forward to conceive articulations with the market. But with this essay I want to explore another track—that of the recognition of a 'social right to contribution', by relying in particular on ideas found in a book published by the Économistes Atterrés (Appalled Economists), 'Changer d'avenir : réinventer le travail et le modèle économique' ('Changing the Future: Reinventing Work and the Economic Model').[1]

This book contains several references to the Commons, mobilized for example to revitalise our understanding of public services or the Social and Solidarity Economy (SSE). It also includes original proposals that link the reform of the social protection system and the Commons. Here, the Appalled Economists are inspired by ideas stemming from from legal scholar Alain Supiot (Professor at the College of France and specialist in social law issues) in the late 1990s. It seems to me that these theses have not yet received all the attention they deserve, even though they make it possible to envisage the recognition of a form of 'right to work in the commons'.

A review of Alain Supiot's 'social drawing rights'

To understand the originality of the Economists' proposals, we need to briefly review Alain Supiot's ideas, from which the Economists drew inspiration. While our social protection system—heir to the social compromise that has accompanied the development of Fordism—is still mainly based on employment and waged labour, Supiot proposes to establish a 'common labour law' that would extend the benefits of social rights to all workers, employed or not. Supiot aims to broaden the very concept of 'work', distinguishing it clearly from its accepted common-sense meaning. Thus, social protection should be recast from a 'common core' of fundamental rights that people would enjoy regardless of their professional status (i.e. whether they are an employee, a self-employed worker or unemployed). Better still, he proposes an extension of the concept of work intended to encompass a whole series of non-market activities considered as socially useful: the training of individuals throughout life, the raising of children or caring for the elderly or sick, volunteer work in associations.

Acknowledging the fact that individuals—often by constraint, but sometimes by choice—navigate during their life between these different forms of 'work', Supiot proposes the introduction of new 'rechargeable' social rights, which individuals would be credited with throughout their professional life:

> a system of 'social drawing rights', provisioned

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> by various means (public funding, social security, employer, savings accounts, etc.) that allow employees to exercise their freedom to train, to create a business, to spend time with their family or developing a non-profit activity, while being sure of finding one's place on the job market.

Depending on their needs, people may choose to 'activate' these rights, in order to better cope with forced changes in their work situation or conversely to help them voluntarily change it. Traditional social security, used to cover the risks that individuals passively suffer, would be complemented by an active (in the sense of activability) 'occupational social security'. No longer operating in a hierarchy of values between employment, self-employment and forms of non-market work, the purpose of this system would be to enable individuals to decide which types of activity they wish to carry out during the course of during their lifetime (an approach that is strongly reminiscent of economist Amartya Sen's 'capabilities').

In their book, the Appalled Economists take up the heart of these proposals, but they reformulate the social rights of Alain Supiot as 'Common Labour Rights'. The idea is to enable individuals to cope better with the development of the 'grey zone of employment', which causes accelerated precarity and continues to develop under the influence of phenomena such as uberisation. But the Appalled Economists also deliberately choose to speak of 'Common Labour Rights' to create an explicit link with the question of the Commons. Their purpose is to affirm that if the notion of work must extend to all socially useful activities, then it must also include contributions to the Commons.

Enlargement to 'Common Labour Rights'

Common Labour Rights, as envisioned by the Appalled Economists, include, for example, a reinforced right to training, conceived as a fundamental right that people could periodically activate without their employer being able to oppose it. But they could also include more original rights such as '[…] the right to access income for activities which are non-salaried, but recognized as socially useful, to credit and to cash advances necessary to launch new activities'. This means that an employee or a self-employed person could be credited with this kind of right by working and choosing at a given point to mobilize their social drawing rights to decide to devote themselves to non-market, socially useful forms of work. And symmetrically, the fulfillment of such non-market activities would also credit social rights, which in turn could be mobilized to facilitate a return to employment or entrepreneurship.

The link with the Commons becomes obvious, because these Common Labour Rights establish what might be called 'a right to work in the Commons', as appears for example in this passage:

> […] these rights, complementing or reinforcing existing social rights, must cover multiple areas. They must be put at the service of strengthening social bonds through the encouragement of activities recognized as socially useful (crèches, helping people in need, tutoring, constitution of databases of any kind – images, music, text – in open access to supplement or develop local libraries) […] Many of the activities developed as 'commons' and generally provided on a largely free basis could also – under these common labour rights – see their initiators benefit from different types of new rights.

A little further on, a link is also established between these common labour rights and the development of urban commons at the local level:

> […] many 'urban commons' […] covering areas as varied as the building and maintenance of shared gardens or orchards, thermal insulation and collective energy saving schemes in collective housing, the redevelopment of industrial wastelands into sites hosting evening

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> classes and / or literacy classes, concert and exhibition halls, etc., could find here sources of funding from municipal entities deriving from the services provided. In the same vein, these activities whose utility would be socially recognized and validated could give rise to the granting of CLR (Common Labour Rights) for the benefit of the initiators and bearers of these new rights. Many 'commons' and 'hybrid cooperative enterprises', as they associate local and territorial authorities, could thus obtain stable means of long-term existence from the common labour rights attributed to the commoners who animate these activities, or in the form of direct funding by these activities themselves. Social validation in this case must go through a non-market system, a democratic assembly of local actors for example, made up of elected representatives, consumer associations, local inhabitants and promoters of new services on the territory.

We see here the potential that this approach through Common Labour Rights could have at the local level and the possible link with 'Assemblies of the Commons' or 'Factories of the Commons' which have begun to develop informally in several French cities (Lille, Lyon, Toulouse, Grenoble, Rennes, etc.).

From right to contribute to contributory income?

The proposals of the Appalled Economists recall others, which have already been formulated in the past to serve similar purposes, and which are interesting to compare with each another in order to underline the nuances.

In 2014, a report on the 'Digital transformation of the French economy' produced for the government by Philippe Lemoine, for example, called for the creation of an 'Individual Right to Contribution' (IRC) based on the model of the Individual Right to Training (IRT):

> Create the IRC (Individual Right to Contribution), to allow employees to devote time to Open projects, for example by transforming Individual Right to Training (IRT) into IRC.

This proposal somewhat resembles the Common Labour Rights, but it is actually much less ambitious. Indeed, only employees could benefit, since the 'IRC' is attached to this status and people would be forced to tap into their right to training to 'convert' it into a right to contribution, which would severely reduce the impact of the mechanism in terms of individual empowerment. Further, the system would only work 'in one direction'—from employment to contributory activities—and not in the other: performing contributory activities would not, as such, open the benefit of social rights that could be exercised, for example, to facilitate a return to employment. There remains in this proposal a form of hierarchy between different types of work, whereas its erasure constitutes the main merit of Alain Supiot's proposals.

In January 2016, the National Digital Council submitted a report, 'Digital Labour and Employment: New Trajectories', which also contained references to the 'right to make a contribution'. It proposed, in particular, to link it to the Personal Activity Account (CPA) set up by the El-Khomri law.[2]

In the NDC report, the Right to Contribution is conceived as a particular mode of exercising the Right to Training:

> Integrate in the right to contribution, a right to be educated 'out of context', by participating in projects outside daily work which contribute to the development of competencies (participation in a firm project, research project, social innovation project, citizen learning project). The personal training account could be mobilised and this right could be integrated into employers' internal career mobility plans.

Clearly these proposals have the same bias as those in the Lemoine report, since this right to contribution/training is only considered in

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connection with the exercise of waged labour. On the other hand, the NDC has a less 'unidirectional' approach, since it considers that the contributory activities (more exactly the 'activities vector of social, environmental, economic externalities, though they unfold in the non-commercial frame) can open the benefit of 'social rights'.

Imagining mechanisms for these activities to generate social rights (training, or others).

In the end almost nothing was left of these proposals in the El-Khomri law, save a few distant traces, such as the inclusion in the framework of the Personal Activity Account (PCA) of 'citizen engagements (which set up access to – very limited – rights to training).

Finally, it is difficult not to compare the 'social drawing rights' and 'common labour rights' to the 'contributory income' proposals that Bernard Stiegler has been proposing for several years. We can begin by noting that Alain Supiot and Bernard Stiegler share a relatively similar understanding of work itself, especially in that they make a clear distinction between employment and work; in fact this serves as their starting point. They also both call for useful activities taking place in a non-market setting to be recognized as work, independently of employment and self- employment.

For Stiegler, however, the consequences of these first steps go further, as he aims to completely overhaul the system in order to promote 'contributory activities' related to the acquisition and implementation of knowledge (know-how, savoir-vivre, conceptual knowledge). To this end, Stiegler advocates the introduction of a basic income supplemented by a 'contributory income', designed on the model of casual entertainment industry workers. The idea is to allow individuals to benefit from an income to free up time to develop their knowledge and talents. This right to an income should be periodically 'recharged' by carrying out fixed-term paid activities within the framework of 'contributory projects', which could be set up by firms or by public authorities. This is a formula that Stiegler is testing as part of an experiment conducted on the Plaine Commune territory.[3]

It is sometimes quite difficult to understand how Stiegler's proposals correspond to a generalization of the casual cultural worker regime, because it is inspired only in a 'metaphorical' way by this mechanism. Things become clearer, however, if we consider that he actually advocates the creation of a right to an income akin to a 'social drawing right'. But whereas, in Supiot's proposals, social drawing rights are occasionally activated by individuals during periods of professional reorientation, Stiegler reverses the paradigm whereby it is employment which is 'reactivated' on occasion to reload a right to an income deriving from mainly non-market activities. The specific return to employment, via firms or local government, ultimately serves to 'socially validate' individuals' knowledge acquisition and development processes, while gathering the necessary means for their mobilization within the framework of projects.

Stiegler's contributory income does appears compatible with the 'Common Labour Rights' of the Appalled Economists, since the latter admit, as stated above, that these rights may include 'the right of access to income for activities which are non-salaried, but recognized as social useful' or that local governments can participate in the financing of contributory activities 'based on endowments from municipalities […] commensurate to services rendered'.

Escaping the contradictions of an 'Economy of the Commons' without social rights

The immense merit of the proposals discussed above is that they broaden and renew reflections around the economic model of the Commons, showing the need to complement this model by taking into account the issue of social rights and social welfare. An 'Economy of the Commons'

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already exists, but several voices have pointed to its very imperfect nature. For example, Michel Bauwens uses Free Software to demonstrate the paradox in which we find ourselves today. This is the sector where the Commons economy is probably most developed, but if individuals sustain the Commons through their contributions, those that are in turn supported by the Commons are few and far between:

> […] people who contribute to the commons cannot in the current state of affairs ensure their livelihood through this practice, to 'live in the commons'. They must remain the employee of a firm, such as IBM for example or another company whose purpose is profit. Value is therefore 'sucked' out of the common towards the sphere of capital accumulation.
>
> […] certainly we have common, but it is not possible to 'live in the Commons'. The only way to ensure one's livelihood is to also participate in the accumulation of capital […] People who contribute to the commons should be able to live from them and the value they produce should remain in this sphere. In this way we could reinvest in the commons, through dedicated infrastructure. This accumulation in the commons would ultimately allow independent self-reproduction, which is not the case today.[4]

In the case of Free Software, individual-contributors find themselves 'torn' between two equally uncomfortable situations. They are either volunteers who use their free time to participate to projects, or employees paid by large companies to develop free resources reused then in the course of their activities (this is the case for more 75% today for Linux).

In these two cases, the situation can be considered unsatisfactory from the point of view of social justice. Free time is one of the most unequally distributed goods in our societies, which creates a real 'invisible barrier' for the exercise of contributory activities, according to people's social status. Asking individuals to contribute to the Commons in addition to their day job places a heavy burden on them, even though the shared resources produce positive externalities that benefit society as a whole. On the other hand, contributors paid by firms clearly receive a remuneration connected to their activity, but there is a price to pay in return – developers lose their autonomy – as Sébastien Broca (2013) very clearly showed in his book 'Utopia of free software'.

We must not lose sight of the fact that the Commons also convey an emancipatory ideal linked to new forms of organization of productive activities. There are real Commons only where communities can 'self-organize' among peers to support the production of shared resources, based on democratic governance. When Commons become so dependent on waged labour—as is the case for Linux today—one wonders what kind of real emancipation contributors experience. The contributory activity is then 're-embedded' in the relationship of subordination that characterises salaried work and its profound meaning has been altered.

If there is a 'tragedy of the Commons' today, it is less linked to the exhaustion of resources than to the exhaustion of the individuals themselves, because of the lack of social recognition of the value of their contributions. Even in the Free Software sector, the contribution from firms is actually insufficient in relation to infrastructural costs and people often devote their time and energy in destitute conditions to the production of these digital commons. A social rights approach could help to overcome these limitations inherent to thinking that has focused on the question of economic models (finding an interface with the market), without having the necessary complementary discussion about a social protection system that integrates the question of the Commons.

Reconnecting with the original meaning of

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the Commons

There is increasingly talk of a 'return' or a 'rebirth' of the Commons. This is a real phenomenon, but it is by no means a return to the identical, because the social significance of the Commons has changed profoundly compared to what they represented in the past for people.

In medieval times and under the Old Regime, the Commons existed primarily for the subsistence of members of peasant communities. The 'Communaux' corresponded to land management methods (pastures, fields, forests, etc.) over which individuals exercised access and use rights in order to obtain the necessary resources to meet their needs. basic needs (wood for heating and building their homes; fruits, mushrooms, small game, honey for food, etc.). Collective usage rights ensured that even the poorest members of the community who did not own land were able to graze a few animals. Further, it is also in the name of the 'right to live' that rights such as gleaning limited private property by ensuring that the poorest could find something to live on. Ancient Commons can therefore be considered as a form of 'social protection' for members of village communities, and they were not so far removed from a living income paid in kind. These customary rights also guaranteed a certain independence for people, because with their subsistence ensured in this way, they were not obliged to sell their labour power to live.

When Elinor Ostrom rediscovered the question of the Commons from the 1960s, she mainly studied 'subsistence commons' (irrigation systems, fisheries, forests, etc.) ensuring the satisfaction of vital needs for the communities caring for them and located mainly in the Global South. However, a sort of 'cut' was then made in relation to this long history and it is manifest today in the way we conceive the Commons in Northern countries. The link that had always connected the Commons to the maintenance of living conditions was in a sense broken and this is not a trivial occurrence.

The main reason for this loss of meaning is to be found in the faulty articulation between work and the Commons. For ideological and social control reasons, it is in the interest of the dominant political-economic system to 'invisibilise' non-market forms of contribution, by doing everything to ensure that those who devote themselves to them do not consider them as work. If, on the other hand, contributory activities were reimagined as forms of work, it would become possible to claim the benefit of a new form of reciprocity for commoners. We would not only look for economic models, implying a financial return from the market, but we would ask for the introduction of new social rights, 'validating' collectively the accomplishment of these useful activities in the name of the solidarity principle. We would allow ourselves to think of social reciprocity for the Commons, beyond mere economic reciprocity.

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The Commons are beginning to have an economic doctrine, but they are still far from having fully understood the challenge of having a social doctrine. To begin to craft it, it is important to follow in the footsteps of those who, like Alain Supiot or Bernard Stiegler, start by distinguishing between work and employment to draw the logical consequences for the overhaul of the welfare system. This is a prerequisite for considering, as do the Appalled Economists, new 'social drawing rights' extended to 'common labour rights' that integrate the issue of contributing to the Commons.

We can 'live from the Commons' the day a 'right to work in the Commons' is instituted.

Endnotes

[1] The Appalled Economists comprise approximately 50 French economists who since 2011 have formulated alternatives to neoliberal economic policies. Their most famous member is Frederic Lordon.

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[2] The El-Khomri law came into force in 2016. It changed the regulation of employment in France, making it easier for companies to lay off workers, and reducing overtime and severance payments. It caused wide social protest, including the 'Nuit Debout' movement.

[3] Plaine Commune is a development initiative in the Greater Paris area encompassing the economically deprived Seine-Saint-Denis département to the North of the capital. Stiegler is proposing to set it up as an area in which the economy of contribution might take precedence, a bit like 'free trade zones', but with a very different ethics/politics.]

[4] https://scinfolex.com/2014/09/22/comprendre-le-principe-des-licences-a-reciprocite-en-5-minutes/

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