

Contents

<i>Table of Cases</i>	xvii
<i>Table of Legislation</i>	xxi

PART I. THE LEGAL ANALYSIS OF PERSONAL WORK RELATIONS

Introduction: Evolution and Reformulation in the Legal Construction of Personal Work Relations	3
1. The Legal Analysis of Personal Work Relations – Boundaries, Paradigms, and Legal Formats	11
Introduction	11
Section 1: The Relational Scope of Labour Law – An Initial Analysis	11
Section 2: The Personal Work Relation as the Domain of Labour Law	19
Section 3: A Functional Definition of the Personal Work Relation	28
A. The Suggested Definition and its Function	29
B. Multiple Interfaces and Contested Areas	34
Section 4: Aligning the Personal Work Relation with Existing Categories	36
A. An Emerging Pattern in European Law?	37
B. The Pattern Instantiated in English Law – and in Other European Legal Systems	42
2. A European Comparative Approach to the Legal Construction of Personal Work Relations	44
Introduction	44
Section 1: Functions and Perspectives	44
Section 2: Methodology	48
Section 3: Sources of Regulation and Hierarchies of Norms	58
A. Introduction	58
B. Hierarchies of Sources as Identifiers of Labour Law Systems	62
C. English Law and its Inherently Non-hierarchical System of Sources	67
Section 4: Programme and Outcome	74

PART II. THE PERSONAL WORK RELATION AS A CONTRACT

3. The Legal Construction of Personal Work Relations as Contracts	83
Introduction	83
Section 1: Contractuality, Individuality, and Layered Regulation	85

A. The Law of Personal Work Contracts as Regulatory Modeling	86
B. Individuality and Contractuality in the Law of Personal Work Contracts	89
C. The Law of Personal Work Contracts as Layered Regulation	96
Section 2: The Personal Work Contract as a Definitional Category and the Place of the Contract of Employment within that Category	104
A. The Problems of the Binary Divide	104
B. A Comparative Assessment of the Binary Divide	112
Section 3: The Contractual Construction of Personal Work Relations – Towards a Multidimensional Analysis	120
4. The Formation and Structure of Contracts of Employment	129
Introduction	129
Section 1: The Conditions of Formation of Contracts of Employment	130
A. The Nature and Functions of Conditions of Formation	130
B. Employment-Specific Contractual Intention	134
I. Apprentices and Trainees	137
II. Public Office-Holders and Appointees	140
III. Volunteers	144
Section 2: Other Factors in the Making of Contracts of Employment	147
A. Illegality and Other Vitiating Factors	147
I. Illegality and Vitiating Factors in General	147
II. Restraint of Trade	152
B. Formality and Information	153
Section 3: The Personal and Organizational Structure of Contracts of Employment	157
A. The Bilaterality, Individuality, and Personality of Contracts of Employment	158
B. Organizational Structure	161
Section 4: The Economic Structure of Contracts of Employment	167
A. A Two-Level Economic Structure?	168
B. Duration, Continuity, and the Provision of Remunerated Work	171
5. The Content and Performance of Contracts of Employment	177
Introduction	177
Section 1: Implied Terms and Guiding Principles	180
A. Implied Terms and the Regulation of Content and Performance	180
B. Fidelity, Obedience, and the Protection of the Interests of the Employer or Employing Enterprise	188
C. Care and the Protection of the Welfare of the Worker	191
D. Towards a Principle of Mutual Trust, Good Faith, and Fair Dealing?	194
Section 2: Performance	199
A. Integrated and Dis-integrated Approaches to the Performance of Contracts of Employment	199
B. Performance and the Wage-Work Bargain	201
C. Performance and the Continuity of Remuneration	203

<i>Contents</i>	xiii
Section 3: Variation	206
A. The Contested Approach to Variation in English Employment Law	207
B. Variation From a Comparative Perspective	208
Section 4: Suspension	213
A. Approaches to the Regulation of Suspension, and the Intersection with Termination	213
B. The Regulation of Suspension in Specific Circumstances	217
6. The Termination and Transformation of Employment Contracts	222
Introduction	222
Section 1: The Role of Contract Law in the Regulation of Termination of Employment	222
A. Integrated and Dis-integrated Systems of Legal Regulation of Termination of Employment	223
B. Regulation and Integration in the Contractual Construction of the Termination of Employment	224
Section 2: The Duration and Termination of Employment Contracts – a European Regulatory Spectrum	231
A. Regulating the Time of Contractual Termination	231
B. Specifying the Grounds and Procedures for Contractual Termination	239
Section 3: English Law as a Case-Study in the Dual Regulation of Termination of Employment	241
A. The Separation Between Contractually Wrongful Dismissal and Unfair Dismissal in English Law	242
B. The Low Protection of Job Security in the English Law of Employment Contracts	245
Section 4: The Construction of Transformations in Contractual Employment Relations	251
A. Transformations in the Identity of the Employer or in the Ownership or Control of the Employing Enterprise	251
B. Other Transformations	259
 PART III. THE PERSONAL WORK RELATION AS A LEGAL NEXUS 	
7. Personal Work Contracts Other Than the Contract of Employment	267
Introduction	267
Section 1: The Legal Categorization of Personal Work Contracts Other Than the Contract of Employment	267
A. The Category Identified	267
B. The Traditional View of Other Personal Work Contracts as Contracts for Services	269
C. Other Personal Work Contracts as a Dual Category	276
D. Other Personal Work Contracts as a Family of Contracts	284

Section 2: Formation and Structure	290
A. Paradigm and Variety in Structure – the Personal Task Contract as a Paradigm for Other Personal Work Contracts?	290
B. Intention, Formality, and Legality in Formation	296
Section 3: Performance and Termination	300
A. Performance and Content	300
B. Termination and Transformation	302
Section 4: The Narrowness of the Contractual Perspective	303
A. The Individual Independent Worker	305
B. Personal Work in a Joint Enterprise	306
8. Contract, Relation, and Nexus in the Legal Construction of Personal Work Relations	309
Introduction	309
Section 1: The Personal Work Relation and the Personal Work Nexus as New Analytical Concepts	310
A. The Shortcomings of the Contractual Analysis of Personal Work Relations	310
B. Concepts for a Different Method of Analysis	313
Section 2: The Personal Work Relation as a Complex Network or Nexus	315
A. The Personal Work Nexus as the Internal Structure of the Personal Work Relation	316
B. Contract and Relationship Within the Personal Work Nexus	322
Section 3: The Legal Connections of Which the Personal Work Nexus is Composed	323
A. The Nature of These Legal Connections	324
B. Primary and Secondary Legal Connections	327
Section 4: The Personal Work Nexus and the Personal Work Relation	330
A. A Theoretical Perspective	330
B. A Comparative Perspective	332
9. The Personal Work Profile and the Idea of Personality in Work	338
Introduction	338
Section 1: The Idea of the Personal Work Profile	340
A. The Personal Work Profile and the Personal Work Situation	340
B. The Personal Work Profile and the Working Life or Career	342
Section 2: A Critical Taxonomy of Personal Work Relations	344
A. A Tri-Polar Starting Point	344
B. A Scheme of Empirical Categories	347
C. The Legal Construction of the Empirical Categories	349
Section 3: The Personal Work Profile in the Taxonomy and Regulation of Personal Work Relations	358
A. The Personal Work Profile and the Idea of Legal Characterization	358
B. The Personal Work Profile as a Regulatory Framework	364
Section 4: The Idea of Personality in Work	369
A. Personality in Work as a Set of Values	370

Contents

xv

B. The Component Values of Personality in Work: Dignity, Capability, and Stability in Work	371
I. Dignity	372
II. Capability	377
III. Stability	379
 PART IV. THE PERSONAL WORK RELATION IN EUROPEAN LAW 	
10. The Legal Construction of Personal Work Relations and the Role of European Law	385
Introduction	385
Section 1: European Law and the Fragmentation of Personal Work Regulation	386
A. The Denormalization of Personal Work Arrangements	386
B. The Fragmentation of EU Employment Law With Regard to Taxonomy	390
C. The Normative Patchiness of EU Employment Law	396
Section 2: A European Legal Framework for Personal Work Relations	399
A. The Objectives and Main Components of a European Legal Framework for Personal Work Relations	400
B. The Methodology of a European Legal Framework for Personal Work Relations	404
C. The Personal Work Relation as the Framing Concept for a European Legal Framework for Personal Work Relations	405
D. Multilayered Regulation and the Idea of EU Regulatory Layers	410
Section 3: EU Regulatory Layers as the Basis of a European Legal Framework for Personal Work Relations	413
A. The Complex Nature of EU Regulatory Layers	414
B. The Relational Aspect of EU Regulatory Layers	417
C. EU Regulatory Layers – Some Key Examples	421
Section 4: A European Legal Framework for Personal Work Relations: Prospects and Problems	428
A. Prospects	428
B. Problems	430
Conclusion: Mutualization and Demutualization in the Legal Construction of Personal Work Relations	433
 <i>Bibliography</i>	447
<i>Index</i>	461

<http://www.pbookshop.com>

Introduction: Evolution and Reformulation in the Legal Construction of Personal Work Relations

This work provides an analysis of the ways in which personal work relations are constructed in English¹ and European² law. The two key notions of ‘personal work relations’ and of the ‘legal construction of personal work relations’ will be expounded in the course of the work; the purpose of this Introduction is to open an account of the objectives and methodology of the work, and to explain how it will be presented in the succeeding chapters.

The objectives of the work could be identified in various different ways, and at various different levels of ambitiousness. As will have been apparent from the Preface, the objective might be stated, in one sense, as the production of a third and expanded version of the first author’s works on *The Contract of Employment*³ and on *The Personal Employment Contract*,⁴ this time placed on a European comparative footing. However, this only really serves to describe the programme of work in which we have engaged, rather than its ultimate goals. We found that the carrying out of that programme of work required us to reflect at length and in depth as to the rationale for the work, and as to the insights which could be derived from European comparative reflection. This was necessary in order to feel confident of the validity or utility of the changes in scope and methodology which have been made as between this work and the previous versions of it.

As the result of those reflections, we have come to identify the objectives of this work in a more ambitious way which is free-standing from the previous versions of the work. Our aim has become that of trying to provide a foundational analysis of the legal construction of personal work relations primarily in English law and secondarily in European law more generally, starting from the English law of personal work contracts, and comparing that with the corresponding bodies of law

¹ We use the term ‘English law’ to refer to the law of England and Wales. The treatment of ‘English law’ in this work is broadly speaking applicable to the laws of the United Kingdom at large, but we do not assert that this is precisely the case in all respects.

² In general in this work, we use the term ‘European law’ to refer to the laws of Member States of the EU. In Chapter 10, at p 385, we expound upon the relationship which we envisage between ‘European law’ in that sense and EU law.

³ M. R. Freedland (1976) *The Contract of Employment*, Oxford: Clarendon Press.

⁴ M. R. Freedland (2003) *The Personal Employment Contract*, Oxford: OUP.

in other European jurisdictions and in the fast developing EU legal order. In essence, then, we can declare from the outset that in the course of this writing project our aim has become that of identifying or re-analysing the basic legal paradigm for English labour or employment law by a method of comparison with the corresponding legal paradigms in other European legal systems, both national and supranational.

Although our objective for the work can be stated in that free-standing way, we nevertheless need to refer to the way in which our project developed from the two earlier works in order to explain the way in which that objective identified itself and the way in which we now seek to achieve that objective. The first author's work on *The Contract of Employment* was written in the conviction that the contract of employment had become the central legal category for British labour law but was underanalysed both in the courts and in the secondary literature, so that there was scope for more extensive analysis of it than was then available. The first author's work on *The Personal Employment Contract* was written in the rather different conviction that this analysis, in order to retain any utility in a greatly transformed practical and juridical environment, needed to be extended into a wider legal category, that of the personal work or employment contract.

The further project from which the present work has emerged consisted, at its inception, of pursuing the analysis of the personal work or employment contract on a European comparative basis. At quite an early stage in that project, the first author decided that he should invoke and deploy in analytical category which was still larger in that it extended into personal work relations which were not necessarily contractual ones; this was the origin of the plan to use the 'personal work nexus' as the legal category for this comparative analysis. For this enlarged endeavour, it seemed, and has indeed proved, to be important to tap into an emerging genre of writing which took the notion of the 'employment relationship' as its categorical starting point. Most felicitously for the first author of the present work, the second author had engaged in that genre of work on a European comparative basis, producing his treatise on *The Changing Law of the Employment Relationship – Comparative Analyses in the European Context* in 2007.⁵

This suggested and gave rise to our collaboration in and co-authorship of the present work. We initially believed that, by putting together and working from our respective theoretical positions, we had successfully devised an adequate comparative method and working hypotheses for the project of making a journey 'from the contract of employment to the personal work nexus';⁶ and we put that method and those hypotheses on display in a published article.⁷ However, we have since become convinced that there was a larger set of epistemic or foundational issues which we had not sufficiently recognized or confronted, and should seek to resolve, with

⁵ N. Countouris (2007) *The Changing Law of the Employment Relationship: Comparative Analyses in the European Context*, Aldershot: Ashgate.

⁶ M. R. Freedland (2006) 'From the Contract of Employment to the Personal Work Nexus', 35(1), *ILJ*, 1–29.

⁷ M. Freedland and N. Kountouris (2008) 'Towards a Comparative Theory of the Contractual Construction of Personal Work Relations in Europe', 37(1), *ILJ*, 49–74.

the result that we needed to reconsider the methods and the conceptual categories which we should use to develop our comparative study.

When we refer to a set of epistemic or foundational issues, we mean that we perceive there to be a set of problems about the ways in which we describe and understand the very nature and definition of the subject matter of our work. This has occasioned long discussions about how to frame and organize and present this book, and indeed as to what title to put on the front page. Those discussions represent an attempt to engage with a large debate, much pursued in recent years, about the ‘scope’ or ‘personal scope’ of labour or employment law. That debate has come to assume – in our view understandably and necessarily – the proportions of a kind of existential crisis for labour or employment law, in which theorists and practitioners of labour or employment law become agitated about whether and in what sense their subject ‘exists’.⁸

In this situation of epistemic and subject-existential crisis for labour or employment law, the hardest thing about writing a treatise about its foundational analytical concepts is deciding where and how to begin. That difficulty, as we have indicated, becomes all the more severe when one has the project of pursuing the discussion on a comparative basis as between more than one legal system. Should one first try to establish some definitional starting points for a field or topic of study in one legal system or a number of legal systems, and then identify a comparative methodology and some comparative hypotheses as tools of investigation of that particular subject-matter? Or is there a logic of ‘Comparative Law’ as a legal science which dictates that we should proceed in the opposite direction?

We have no perceived ‘right answer’ to that set of questions; it has continued to trouble us. We attempt in the first part of our work somewhat to deconstruct the epistemic or foundational debate about ‘the scope of labour or employment law’ into some component aspects or elements. We seek to use this deconstruction to enable us to take up a starting definitional position and to identify a basis for comparative analysis from within that position. We take a notion of ‘the Personal Work Relation’ as our definitional starting point, and seek to develop and flesh out that notion in the course of our work. Suffice it at this stage for us to offer a simple outline definition of the notion of the personal work relation as we shall use it in this work, alerting our readers to the fact that a more complete working definition is contained in Chapter 1 of the present work; we use that notion to refer to the relation or set of relations which a person has with another person or other persons (whether human or legal-corporate) by reason of arranging to engage personally in the doing of work for another or others.

In this Introduction, we concentrate on beginning to elaborate our idea of the ‘legal construction’ of personal work relations, for the understanding of that idea is at the very heart of the enterprise which we have embarked upon in writing this

⁸ Cf., for instance, A. Hyde (2011) ‘The Idea of the Idea of Labour Law: A Parable’, in G. Davidov and B. Langille (eds), *The Idea of Labour Law*, Oxford: OUP; A. Ojeda Avilés (2010) *La deconstrucción del derecho del trabajo*, Madrid: La Ley – Wolters Kluwer; C. Vigneau (2003) ‘Labor Law Between Changes and Continuity’, 25, *CLLPJ*, 129–41.

book. The idea of the legal construction of personal work relations is, in its essence, that of the shape or analysis, or construct, which a legal system (or a subsystem thereof) assigns to each personal work relation. The relevant archetypal example of the legal construction of personal work relations would be that, to those personal work relations which are regarded as ‘dependent’ ones, the English legal system in general (and the subsystem of it which we think of as labour law) assigns the character of a ‘contract of employment’ and attributes many legal incidents and effects to it as such. However, as we shall show at length, there are many personal work relations to which different legal constructs are assigned, so that they are sometimes construed or constructed as being contracts other than employment contracts and sometimes as being only partly contractual in their nature, or as not being contractual at all.

It might appear from this explanation and this example as if our idea of the legal construction of personal work relations amounts to no more than the legal classification, or taxonomy, of those relations. In other words, it might appear as if this were nothing other than the debate about ‘the personal scope of labour law’ or of particular ‘labour laws’. However, such an impression would mean that we had failed to convey a full and complete idea of what we intend. Crucial to our notion of ‘the legal construction of personal work relations’ is not only the assignment of a certain character to a particular personal work relation but also, as we said almost in passing, the attribution of legal incidents and effects to that personal work relation as such. So we might build on the archetypal example which we gave in the previous paragraph – a piece or act of legal construction of personal work relations might consist of establishing or deciding or holding that a particular personal work relation was to be regarded as taking the legal form of a contract of employment and that as such it was subject to the law of unfair dismissal⁹.

This way of defining the notion of legal construction of personal work relations is not particularly controversial: it may indeed seem to be all too obvious. However, we believe that quite striking conclusions follow from it. Our definition or conception of the legal construction of personal work relations serves to assert and emphasise the way in which the classification of personal work relations is essentially and integrally linked to the attribution of legal incidents or effects or consequences to those relations. The legal construction of personal work relations depends on, indeed consists of, the forging of the link between legal character and legal consequences. We suggest the terminology of ‘normative characterisation’ to express the idea of this integral combination – it is a terminology which seeks to capture the essential connectedness between identifying the legal character of a given personal work relation and making normative propositions about that relation.

We will seek to develop the notion of normative characterization in some perhaps novel directions. We will argue that each act of legal construction or normative characterization of personal work relations involves or consists of the

⁹ As might occur under English law where s 94(1) of the Employment Rights Act 1996 provides that ‘An employee has the right not to be unfairly dismissed by his employer’ and s 230(1) provides that ‘In this Act “employee” means an individual who has entered into or works under [...] a contract of employment.’

creation of its own micro-system in and by which legal character and legal consequences are interconnected. It follows from this that, in our view, each act of legal construction or normative characterization of personal work relations has to be analysed and understood in its own regulatory context. By this we mean two things – the ‘regulatory context’ has two aspects. One aspect consists of the character/consequences link itself. The assignment of character to or the classification of personal work relations takes place in the context of and with reference to a particular kind or piece of legal regulation or a set of such – a piece of legal regulation or a set of such pieces. In the example which we have been using, the classification of a particular personal work relation, as to whether it takes the legal form of a contract of employment, takes place in the regulatory context of the law of unfair dismissal, a body of legal regulation for the application of which the existence of a contract of employment is a precondition.

The second aspect of the regulatory context follows from the first one. The act of legal construction of personal work relations, if understood in the way that we have suggested, consists of or forms part of a process of linking legal character to legal consequences. Each such process has its own in-built principles and rules, and operational dynamics. In the example we have been using, the legal construction of a particular personal work relation as being subject to the law of unfair dismissal involves a law-making part of the process by which it is determined that unfair dismissal law applies to contracts of employment in general, and an adjudication part of the process by which it is determined whether that application takes place in any given instance. (The two parts of the process may merge into each other, as where the adjudicator has some part of the law-making function.) Both the law-making and the adjudicatory parts of the process are subject to rules and principles specific to that process. For example, the law-maker may be subject to specific rules of competence, while the adjudicator may be guided by specific presumptions or rules of procedure which are strongly or conclusively determinative of the outcome of the process.

The process of linking legal character to legal consequences in the construction of personal work relations will, moreover, have its own particular political and forensic dynamics (in the broadest senses of those terms), which form part of the regulatory context in question. Important political-contextual questions include issues about the extent to which the legal consequences are in reality determined or affected by the presence or absence of collective bargaining or collective representation of the worker in the personal work relation. Equally important forensic-contextual questions are those concerned with the difference between mandatory linkings of legal character with legal consequences, and linkings which are derogable or in the nature of default positions. Such questions will be explored at length in the course of our work.

A further step follows from this way of understanding the legal construction of personal work relations as consisting of one or more acts of normative characterization each taking place in its own regulatory context. It follows from this that, in a legal system where personal work relations in general or at least some kinds of personal work relations have, over time, been the subject of extensive and multi-faceted regulation, there will have been many different acts of legal construction of those relations – many exercises in linking legal character with legal consequences – each taking place in its own regulatory context and constituting its own micro-system.

Where that situation of extensive and multi-faceted regulation of personal work relations has arisen over time – a condition which is abundantly fulfilled in European legal systems – it therefore further follows that the legal construction of personal work relations will have resulted in the formation of a great multiplicity of micro-systems existing in a great multiplicity of regulatory contexts.

It may be that, even if our preliminary steps in this argument seemed to be uncontroversial, the regulatory-contextual conclusion which we have reached seems to be very controversial indeed. We might be regarded as saying that each and every act of legal construction of personal work relations had to be regarded as being instrumental to its own regulatory context, and confined to its own regulatory context, so that a truly common discourse between the regulatory contexts could not really exist. That is not our view; we think that the legal construction of personal work relations takes place in a way which is highly interactive as between different regulatory contexts, so that a common discourse of and about the legal construction of personal work relations can exist between regulatory contexts.

However, although we disclaim such radical consequences for our argument, we do accept and indeed assert that it nevertheless has highly significant ones. Our argument means that, if we envisage the existence of a body of law which represents 'the legal construction of personal work relations', that body of law is an enormously contextually elaborate one in any given national legal system or national labour law system. This elaboration is multiplied so that it assumes quite frightening proportions if we consider 'the legal construction of personal work relations' on a European comparative basis, and if we focus – even cursorily – our attention on the influence of European Union social regulation. There is, both among theorists, designers, and practitioners of labour law, an understandable tendency to recoil from the prospect of such elaboration, and to assume or assert that a simple and rationalised vision of the legal construction of personal work relations must be possible and attainable. From that perspective, the path of analysis which we intend to pursue in this work may be perceived as an unduly tortuous and winding one. That is a risk which we take not without trepidation, but in the conviction that a simple vision of the legal construction of personal work relations is quickly found to be a mirage, an imagined clearing of theoretical lucidity in a real jungle of luxuriantly tangled conceptual vegetation.

Although, therefore, we have to expect that our analysis of the legal construction of personal work relations on a European comparative basis will present itself as an intensely complex one, we may on the other hand hope that the starting points which we have established – in particular the idea of normative characterization and the idea of the multiplicity of regulatory contexts – will help to provide a way of understanding the complexities which we have identified. For that purpose, we shall suggest that there is one further explanatory step which we can usefully take at this introductory stage of the argument of our book. Thus far, we have shown various senses in which the legal construction of personal work relations is in its nature system-specific – it consists of a great diversity of acts of legal construction producing outcomes which are specific not only to their own respective legal systems but also to their own regulatory contexts within those legal systems and

which moreover themselves constitute micro-systems of their own. We proceed to argue that the legal construction of personal work relations is not only *system-specific* in those various senses but also that it is heavily *path-dependent* in ways that follow from our previous arguments and which we shall now sketch out.

It follows from our previous arguments that acts of legal construction of personal work relations, which forge links between the legal character and the legal consequences of a particular personal work relation or set of personal work relations, will therefore not only *classify* personal work relations but also *form or transform* them at the same time. This creates a kind of constructive circle which reinforces the system-specific nature of the legal construction in question. Let us take as an example the act of legal construction which takes place when a court comes to the conclusion that because a given personal work relation has the legal form of a contract of employment, it is to be deemed to give rise to an obligation of mutual trust and confidence between the parties. Where that conclusion is imposed generically upon contracts of employment,¹⁰ it amounts to an act of legal construction which itself forms or transforms (perhaps in the sense of concretising, or perhaps in some more radical sense) the legal incidents of that whole set of personal work relations – it is now clear that this set of personal work relations does give rise to an obligation of mutual trust and confidence, in a way that was not previously clear, so contracts of employment have become distinctive in a new way.

We now go on to make the further point that where these self-formative or self-transformative acts of legal construction take place in a context of extensive and multi-faceted regulation of personal work relations – a condition which, as we have said, is abundantly fulfilled in European legal systems – it follows that each act of legal construction will build upon the ones that have preceded it or are contemporary with it within the legal system in question. To pursue our example, the legal construction of contracts of employment as giving rise to a mutual obligation of trust and confidence, under English law, took place in a regulatory context which did not impose obligations of mutual good faith upon the parties to contracts in general. In that regulatory context, the imputing of a mutual obligation of trust and confidence to contracts of employment at once identified and significantly transformed that set of personal work relations.

So, to put the same point in a different way, it follows that formative or transformative acts of legal construction of personal work relations are highly *path-dependent* upon the particular path of evolution which has been followed within the regulatory context in question. Furthermore, that path-dependency may be an elaborate one, reflecting historical effects from various intersecting regulatory contexts. To pursue our example further, the legal construction of contracts of employment as giving rise to obligations of mutual trust and confidence was also path-dependent upon a certain set of developments in the concept of ‘constructive dismissal’ which were occurring in the context of the law of unfair dismissal – so this crucial development in the sub-system of labour law which we think of as ‘the law of the contract of employment’ was heavily dependent on the contemporaneous

¹⁰ As occurs under English law in a way which is explained in full in later chapters.

emergence of a new subsystem of ‘the law of unfair dismissal’, those two subsystems being considerably but far from completely intersecting ones.

The four ideas or insights which we have briefly outlined, those of *normative characterization*, *multiplicity of regulatory contexts*, *system-specificity*, and *path-dependency* in the legal construction of personal work relations, will pervade the work which follows. They are closely bound up with the nature and objectives of the work as an exercise in European comparative law. These ideas or insights can be seen as both deriving from and contributing to the comparative nature and objectives of our study. They are insights which derive from comparison between European national labour law systems: that comparison, by revealing both commonalities and differences between the normative characterizations which are made in those national systems, throws into sharp relief the system-specificity and path-dependency of the legal construction of personal work relations in any one national system. They are also insights which in turn take the process of comparison further and deeper: the ideas of multiplicity of regulatory contexts, path-dependency and system-specificity enable us to understand more fully why normative characterizations take place in particular ways in the legal construction of personal work relations as between national legal systems and within each such system.

These efforts to show how we will address the intricacy of the legal construction of personal work relations may only serve to increase the sense of a mystifying complexity. Our ambitions for this work have become those of, firstly, establishing a large domain within which to develop the relational and structural analysis of labour law, and, secondly, that of confronting and trying to unravel the complexities of legal construction of the relations within that domain, and, thirdly, that of subjecting that legal construction to a functional critique which we have devised for the purpose. That functional critique comes from a particular critical standpoint which we have designated by invoking an overarching notion of ‘personality in work’. As we will explain later, that overarching notion of personality in work is concerned with the protection or vindication of the values of dignity, capability, and stability in the legal handling of personal work relations. The initial chapters of this work develop in more detail our design for carrying out that task.