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Authors	Payne, Elliott
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ABSTRACT

This thesis examines how from hiring to firing, social media and IT are game changers that have significantly affected all facets of the contract of employment. This work explores how the cyber-vetting of candidates' digital footprints is now an established part of recruitment and explains how many employees consider cyberslacking whilst at work to be an entitlement. This research also evaluates the legal ramifications that flow when workers engage in social media expression and how advances in technology have impinged on the privacy rights of individuals and their ability to engage in free speech. Despite social media misuse being prevalent in the modern workplace, when compared to other more established legal topics there is a relative shortage of academic analysis on the intersection between social media, IT and employment. Thus one of the fundamental objectives behind this study is to contribute to the body of knowledge in this increasingly important area of law.

This research evaluates the protective narrative of labour law, as asserted by Otto Kahn-Freund, through the prism of the modern digital workplace. Kahn-Freund believed that labour law should be used as a countervailing force to mitigate the inequality of power between the respective sides. This study assesses if this historical viewpoint is still relevant and whether the recruitment of workers and the contract of employment remain acts of submission between a bearer of power and a weaker party. This work appraises whether there is a need for doctrinal innovation to reflect technological and societal shifts and focuses on Amartya Sen's human capability concept which is based on maximising capabilities and empowering individuals to lead lives they have reason to value.

Although contemporary employment typically bears no comparison to the workplace of the past, this research concludes that there is no need to abandon labour law's fundamental objective of protecting workers as Kahn-Freund's historical assessment is still relevant. While social media and IT have contributed to more fluid working patterns, they have also enabled employers to wield an increasing amount of digital power over their workforce at every stage of the employment relationship. Due to cyber-vetting and advances in monitoring and surveillance technology, the fundamental rights of individuals (in particular their rights to privacy and freedom of expression) are at significant risk and they are in many respects less free than ever before. To redress the balance, this study advocates that the human capability theory should form part of labour law's doctrinal fabric. This thesis proposes that Sen and

Kahn-Freund's respective theories are conceptually coherent as both have the freedom of individuals at their core. This will drive labour law's narrative towards a proactive maximisation of workers and their capabilities and could reduce inequality. This will help employees to flourish and to lead longer, freer and more worthwhile lives.