**Workshop Proposal:**

**Working Title:** “Decentred Labour Law and the Future of Workplace Law”

**Participants:**

Harry Arthurs, Professor Emeritus, York University  
David Doorey, Assistant Professor, York University  
Cynthia Estlund, Catherine A. Rein Professor of Law, NYU Law School  
Kerry Rittich, University of Toronto Law School

**Theme of Panel**

A significant stream in legal scholarship over the past twenty years has debated the merits of a so-called ‘decentred’ approach to regulation. While a precise definition of ‘decentred regulation’ remains elusive, certain common themes do emerge in the literature. Firstly, decentred regulation connotes an ‘other’ to command and control style regulation; its proponents argue that some social problems are too complex to ‘solve’ by means of substantive government commands backed by legal sanctions, and therefore, that more ‘indirect’ legal signals that steer or guide actors towards behaviour desired by the state will be more effective. Secondly, a decentred approach to regulation welcomes legal pluralism and recognizes that the law happens ‘in many rooms’. The state is not the only maker of legal norms, and indeed, often the state’s influence over behavioural norms is far less important than that of other sources of norms and rules, such as professional associations, private agreements, personal relationships, and market-based pressures.

Combining these two premises—*limited state capacity to command substantive outcomes* and *the multiple sources of legal norms*—leads decentred regulatory advocates to a reorientation of the role of regulation. A decentred approach to regulation encourages lawmakers to explore how legal commands might be used, not simply to command a substantive outcome, but to alter the environment or context in which behavioural norms emerge in society. For example, we are challenged to think about whether private (non-state) actors can be harnessed or empowered in ways that might provoke changes in those norms that align with the state’s policy objectives.

In this way, decentred regulation remains instrumental law: the state is still using regulation to achieve policy objectives. However, the manner in which it goes about that task is reoriented away from direct commands and towards a more ‘steering’ role that aims to influence the private creation of norms. Much of this discourse sounds familiar to labour lawyers. Collective bargaining law shares many of the features of decentred regulation insofar as it is procedural law that seeks to empower workers to bargain better outcomes, while not commanding specific substantives employment conditions.
Yet labour law academics are still struggling to sort out whether there are any valuable lessons for labour law reform in the decentred regulatory literature. Hugh Collins asked in a recent article, “Is there a Third Way for Labour Law?” This panel will explore that question, and others, such as:

Does the renewed scholarly interest in decentred regulatory theory have anything to teach labour lawyers?

What is the relationship between ‘self-regulation’ and decentred regulation?

Is the Wagner Act model itself decentred?

Are there lessons in decentred regulatory theory for the reform of the Wagner Act model?

A panel of leading labour and regulatory theory scholars will discuss these issues in a structured round table format. At this time, the panel is proceeding as follows: Professor Doorey is preparing an overview paper entitled “Decentred Labour Law”, which will be distributed to the other panellists prior to the Conference. The other three more senior panellists have all written extensively in one form or another on the subject. The panellists will use Professor Doorey’s paper as a basis for a panel discussion that will seek to identify what we mean by “decentred labour law”, how the term may be misunderstood, what are the major critiques of the theory, and what lessons are to be taken from the theory, if any, for the future of labour law in North America.

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