

# **A Reflexive Approach to the Critical Interpretation of Employment Tribunal Judgements**

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## Abstract

This thesis is based on the critical interpretation of a selected series of employment tribunal judgements all of which deal with aspects of standard or burden of proof in sex and race discrimination cases. A reflexive approach is adopted in an attempt to provide a better understanding of discrimination law as an organisational discourse and as a potential force for emancipatory change in the workplace. The research examines the conceptual links between management, employment relations, discrimination law and everyday social processes in an attempt to uncover the influence on employment relationships and professional practice of a more thoughtful interpretation of employment tribunal texts.

My contributions to knowledge in the domains of research methodology and professional practice fall into 3 categories. First, an exploration and synthesis of reflexive approaches, hermeneutic understanding and aspects of legal theory to develop and embed my subjective epistemic stance within a pluralistic conceptual framework. Second, the design and employment of a distinctive interpretative analytical framework for discourse analysis drawing on established perspectives in the fields of management and legal theory. Combining the 2 contributions in an epistemologically consistent way has allowed me to bring a methodologically individual dimension to the examination of employment tribunal narratives under the banner of *discourse analysis with a critical edge*. My third contribution has been to use the analytical framework to detect the storylines of inference drawing, common sense interpretations and legal responses to social issues. By exposing the key role played by the subjective concept of drawing inferences, I have undermined the perception of the employment tribunal as an 'objective industrial court'. Further, I have shown how 2 of our most prevalent informal social and subjective theories - commonsense and reasonableness - feature heavily in the legal arena of the employment tribunal and how legal solutions to social problems may present unintended consequences for the employment relationship. In so doing, I have disturbed the image of discrimination law as a sealed and singular phenomenon operating beyond the social contexts in which it impacts and opened up potential avenues of further multi-discipline research around subjective interpretations in environments framed by legislation and authority.

Finally, I have unearthed some personal dilemmas and opportunities as a senior professional working within a large public sector organisation around how I engage with my professional practice.