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The Historical Evolution of Workers' Representation in Europe

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Employee Representation in the New World of
Work: The Dynamics of rights, Voice,
Performance and Power

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A. Methodological Consideration

- Our work implies diachronous and synchronous comparison:
- - when comparing different historical periods we compare **diachronously**.
- - as against that **synchronous** comparison compares, at a given time, different countries or groups of countries.
- A comparative legal history requires a combination of the two. This efforts starts with a long-term knowledge of the countries in question (=diachronously) and has to identify, analytically, moments, short periods or turning-points which contain criteria for cross-evaluation (sameness / difference) of periods (=synchronous approach).

Methodological Consideration

- This methodological consideration makes it necessary to present in „phases“ or „periods“. The criteria for shaping periods are always issue-specific. For **„phasing“ labour law history** the following criteria play an outstanding role:
 - - political turns and upheaval (e g wars, system changes)
 - - economic up or down turns (e g prosperity / recession; shifts within and between economic sectors)
 - - labour market changes (e g unemployment / full employment)
 - - social upheaval (e g strike movement, class struggle, the 1968 movement)
 - - paradigmatic changes in cultural patterns (e g changes in gender and generational relations, individualisation, ecological concerns, social responsibility of enterprises).

B. Underlying Assumption

- The emergence of Standard Employment Relationship (SER), under conditions of fordist centration, coincides with emergence of institutionalised workers' representation.
- The crisis of SER coincides, in the decentred postfordist world of work, with a crisis of representation.

C. Structures of w. repr. in Europe

□ A. Employees Only

- „single channel systems“: trade union only (UK, DK, It, SWE, Irland)
- „dual channel systems“: trade union and non-trade union representation
 - Either with high t u prerogative (F, Esp, Port, B)
 - Or complementary division of power (D, A, NL, Gr)

□ B. Employees and Employers

- Bipartite system in Swe after 1938 Saltsjöbaden Agreement over a couple of decades
- joint bodies (F, B, D) besides the unitary statutory bodies with ancillary and/or specialised role
- “co-operation committees” (DK, UK), “joint committees” (I), “joint consultation committee” (UK), all on collective agreements basis.

Functions of w. repr. in Europe

- **A. Information and Consultation**
 - Since 2002 EU-wide (Dir. 2002/14/EC)
- **B. Duty to Sharing of Decision-Making**
 - „*Mitbestimmung*“ (D, A)
 - Less formalised equivalents (NL, Gr, F) and
 - - collectively negotiated – Sweden.
- C. Plant level (everywhere) –
Enterprise level (partly).**

D. The Main Periods

- **1 *Reconstruction 1945-1950***
 - a. Trust-building workplace relations
 - b. Corporatist Heritages: Pre-1945 Conditions
- **2 *Economic growth and the welfare state: 1950-69***
 - a. The Golden Age
 - b. Around May 1968
- **3 *Economic crisis: 1970-79***
- **4 *Restructuring and deregulation: 1980-1996***
- **5 *The European 'Third Way' since 1997***
 - a. Community Method
 - b. Works councils: a success story?
 - c. New Methods of European Governance: Progress or nightmare?

1 *Reconstruction 1945-1950*

- **The (non-)existence of a „shared demand“ for reconstruction is paramount**
 - **a. Trust-building workplace relations**

E g: D – Iron & Steel industry (1951) – SWE: Saltsjöbaden Agreement (1938/46/66) – small countries (NL, B)

Counter ex.: UK, F, I.
 - **b. Corporatist Heritages: Pre-1945 Conditions**

Corporatist institutions and practices of the years before 1945 paradoxically help trust building: SWE, NL, D, A („Arbeitskammer“).

Contrary: UK, F.

2 *Economic growth and the welfare state: 1950-69*

- **Expansion of participatory rights go along with industrial peace and a high degree of autonomous economic self-regulation**

- **a. The Golden Age**

- Mitbestimmung* (D)

- Non-involvement of the state (nord. countries)

- or countervailing power-principle (UK, F, I)

- **b. Around May 1968**

- Workers participation as part of industrial democracy: DK 1965 – Norway 1966 – Swe 1966 (lateron statutorily) – UK: only an ID debate

- F: Protocol de Grenelle 1968; I: Statuto dei lavoratori 1970; D: 1972/76 reforms; A: similar 1974; NL: works councils – however, less on enterprise level.

- First international impulses (ILO, OECD, EEC).

3 *Economic crisis: 1970-79*

- ❑ **Participation on shop floor level undergoes a paradigmatic change: from an instrument to promoting the economy to an obstacle (Eichengreen).**
- ❑ However, paradoxically, increased social movements and progress in labour law (UK, P, Esp, Swe, NL, and the ex.s from phase 2, bottom)
- ❑ Transition to a service economy (UK, G, F, Benelux, Scand, alpine countries - delayed I, D, Esp, Irland).
- ❑ Bifurcation of workers representation between
 - ❑ - Co-Management
 - ❑ - and Counter power and class struggle.

4 *Restructuring and deregulation: 1980-1996*

- ❑ **Individualisation and individual rights (F 1982 – D 1972 – UK 1971), crisis of the standard („normal“) employment relationship and of systems of representation based on it.**
- ❑ Deregulation (UK and elsewhere) – however limited and in diverse manner.
- ❑ Diversity starts to enter into the law of workers representation. A new diversity of types of representation (D) and a (corresponding? paradoxically connected?) new start of equality and equal opportunity-oriented claims (D, Spain, EEC).

5 *The European 'Third Way' since 1997*

- In the field of workers representation the E(E)C brings about significant harmonising impulses

- **a. Community Method**

- Mass redundancies (Dir. 75/127/EEC) – take-over (Dir. 77/87/EEC) – Societas Europaea (Dir. 2002/14/EC).

- Tensions with German Mitbestimmung

- **b. Works councils: a success story?**

- Social policy Agreement (1991) – 1994 EWC Dir. – I & C Dir. (2002/14/EC)

- Stark changes in UK (Juridific.) and Sweden (employee-only representation)

- **c. New Methods of European Governance: Progress or nightmare?**

- Social Dialogue and Open Method of Coordination – Steps towards „informalisation“ of European affairs?

Again: Underlying Assumption

- The emergence of Standard Employment Relationship (SER), under conditions of fordist centration, coincides with emergence of institutionalised workers' representation.
- The crisis of SER coincides, in the decentred postfordist world of work, with a crisis of representation.

E. Further Reading

- ❑ Mückenberger, U. 2009: „Workers’ Representation on Plant and on Enterprise Level“, in B. Hepple/B. Veneziani (eds.), Transformation of Labour Law in Europe since 1945, London: Hart Publ., pp 233-62.
- ❑ Further:
- ❑ Arthurs, H., 2006: Who’s afraid of globalisation? Reflections on the future of labour law, in: Craig/Lynk, Globalization and the Future of Labor Law, Cambridge: CUP, pp. 51 – 76.
- ❑ Biagi, M., 1990: Forms of Employee Representation at the Workplace, in: Blanpain, R. (ed.), Comparative Labour Law and Industrial Relations in Industrialised Market Economies, 4th ed., vol. 1, pp. 197 – 240, Kluwer: Deventer.
- ❑ Blanpain, R. (ed.), untersch. Jahre: International Encyclopaedia for Labour Law and Industrial Relations. Monographs and Legislation, Deventer: Kluwer.
- ❑ Summers, C. W., 1998: Exclusive Representation: A Comparative Inquiry into a ‘unique’ American principle, in: 20 Comparative Labor Law & Policy Journal 47.

Further Reading

- ❑ Mückenberger, U., 2008: Alternative Mechanisms of Voice Representation. In: Bercusson, B., Estlund, C. (eds.), *Regulating Labour in the Wake of Globalisation: New Challenges, New Institutions*. London: Hart Publishing, pp. 227 – 252.
- ❑ Mückenberger, U. 2008: *Civiling Globalism: Transnational Norm-Building Networks – A Research Programme*, GIGA working papers No. 90 www.giga-hamburg.de/workingspapers
- ❑ Eichengreen, Barry, 2007: *The European Economy since 1945. Coordinated Capitalism and Beyond*, Princeton and Oxford: Princeton University Press.
- ❑ Hepple, B. (ed.), 1986: *The Making of Labour Law in Europe. A Comparative Study of Nine Countries up to 1945*, London: Mansell.
- ❑ Judt, T., 2007: *Postwar. A History of Europe since 1945*, London: Pimlico.
- ❑ Kaelble, H., 2007: *Sozialgeschichte Europas. 1945 bis zur Gegenwart*, München: C. H. Beck.
- ❑ Mückenberger, U./Deakin, S. (1989): From Deregulation to a European Floor of Rights: Labour Law, Flexibilisation and the European Single Market, *Zeitschrift für ausländische und internationales Arbeits- und Sozialrecht* (Jg. 3) S. 153-207.