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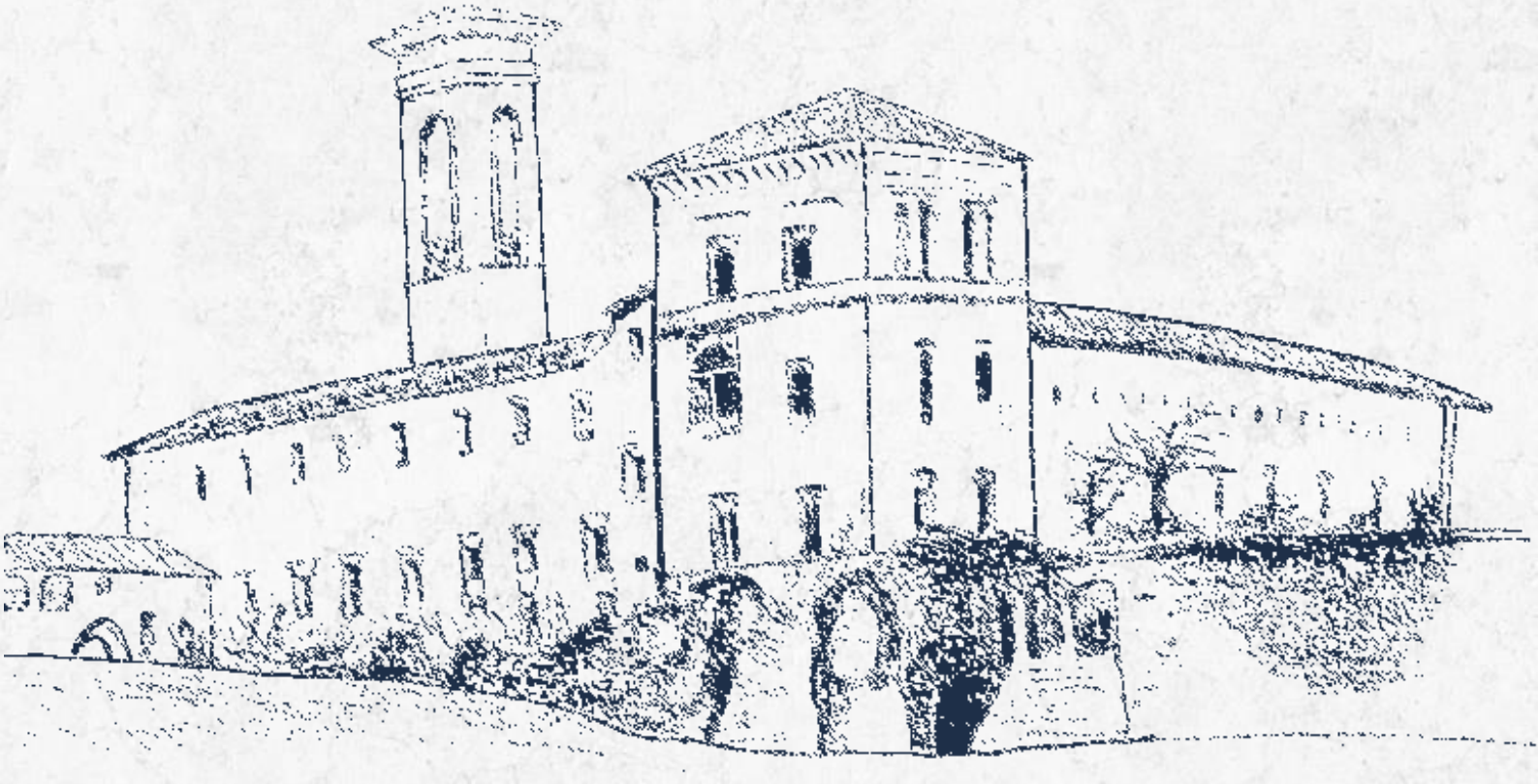

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Beyond Literal Translation: The Role of Culture in Understanding European Industrial Relations

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Abstract

Globalisation does not outshine national features. Through the examination of distinct solutions adopted in the regulation of management-trade union relations, conclusions should be drawn on the pitfalls of a purely word-for-word translation and on the dangers of analysing other countries' legal system without taking intellectual distance from his/her own. From the start, translation was used as the obvious way to compare national legal concepts, institutions, or systems. While research has always acknowledged the complex nature of the translation work, the acceleration of globalisation makes it more urgent to examine further the underlying reasons for these problems. This study draws upon cultural differences reflected in the law to analyse the difficulties to reach a more worldwide vision of the distinct national regulations and, consequently, of the transnational industrial relations resulting from an economic reality that has virtually ignored borders. It identifies the main differences between the approaches to labour-management relations in selected countries or groups of countries as they appeared in their legal systems. To carry out this examination, ILO conventions and recommendations are occasionally used as a reference.

Keywords: translation; comparison; industrial relations; culture; ILO.

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1. Introduction

Translation has long been employed as a tool to compare national legal concepts, institutions, or systems. While research has acknowledged the complex nature of the translation process, increased globalization makes it more urgent to further examine the challenges resulting from comparative analysis. This study draws upon those cultural differences reflected in the law to analyse the difficulties to implement an all-encompassing approach when governing transnational relations.

Globalization does not erase all specifics. Our home constitutes one of the greatest powers of integration for thoughts, memories, and dreams for human beings[2]. The characteristics defining national cultures play a significant role in how human beings behave and work[3]. The ways and means chosen to elaborate and to implement labour provisions are predicated on the historical context, the power of employers' and workers' associations, the experience of their leaders, and the relevance of law and collective agreements in specific industrial relations systems.

More fundamentally, how a rule is drafted and implemented depends on the ideas, customs, skills, arts, of a people or a group, which are transferred, communicated, or passed along, within and to succeeding generations. Simply put, this process depends on culture[4].

Scholars in comparative law are keenly aware of the extent to which current laws can vary in terms of content, wording, and implementation

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[2] G. Bachelard, *La poétique de l'espace*, Quadrige/PUF, Paris, 2004, p. 26 (English version: *The Poetics of Space*, London, Penguin Books, 2014).

[3] L. Vandermeersch, Ce que la Chine nous apprend sur le langage, la société, l'existence, Gallimard, Paris, 2019; S. Austen, *Culture and the labour market*, Edward Elgar, Cheltenham, 2003; S. Roche, *Pobreza no Brasil. A final de que se trata ?*, Editorial FGV, Rio de Janeiro, 2003, especially p. 18; G. Hofstede, *Culture's consequences*, Londres, Sage, 2d ed., 2001; I. Harpaz, B. Honig, P. Coetsier, *A cross-cultural longitudinal analysis of the meaning of work and the socialization process of career starters* , *Journal of World Business*, 2002, vol. 37(4), pp. 230-244; C. Frege, *The discourse of industrial democracy: Germany and the U.S. revisited*, *Economic and Industrial Democracy,* 2005, vol. 26 (1), pp. 151-175; M. Pagell, Jeffrey P. Katz, Chwen Sheu, *The importance of national culture in operations management research* , *International Journal of Operations & Production Management*, 2005, Vol. 25 vol. (4), pp.371-394; S. C. Schneider et J.L. Barsoux, *Managing across cultures, London,* Prentice Hall (F.T.),Upper Saddle River (New Jersey), 2d ed., 2003.

[4] This is how culture is defined in Webster's *New world Dictionary*. See for example, with regard to the USA: S. McCune Lindsay: «The problem of American cooperation», in J. T. Shotwell (ed.), *The Origins of the International Labor Organization*, Columbia University Press, New York, vol. 1, 1934; See also J. Bauer et D.A. Bell (eds.), *The East Asian challenge for human rights*, Cambridge University Press, 1999.

processes. Psychologists and sociologists have long pointed to the extent to which interpersonal relationships[5], in particular between men and women, are marked by national traditions. International labour standards, as the conventions and recommendations of the International Labour Organisation (ILO), must constantly deal with this tension between the local and the global, because their effectiveness depends largely on how the two elements are combined when it comes to labour protection and employee behaviour regulation.

Based on the above considerations, this paper underlines the need to go beyond word-by-word translation. It aims to cast light on the pitfalls of a purely textual comparison and on the dangers of analysing other countries' legal systems without taking into account the cultural dimension. This paper intends to point out the obstacles to a mutual understanding of distinct labour law systems, putting forward a methodology to overcome them. The final conclusions could allow for a better comprehension of other countries' strengths and weaknesses, stimulating the necessary dialogue between the social partners at the transnational level and between experts from different states or groups of states.

The paper starts with an analysis of the rules and regulations adopted in Continental Europe with regard to labour-management relations (Section I). The existence of a European social model and the relationship between unions, political parties, and the state structures are investigated considering that they reflect the visions of most European countries in relation to their industrial relations systems.

Next comes a summary of the methodological problems the labour law comparatist faces in the attempt to understand other legal systems (Section II). A theoretical framework aims at analysing the linguistic, legal, and socio-cultural obstacles to understanding the distinctive characters of the national industrial relations system and social policy.

In doing so, this research will be referred to when dealing with related issues[6]. This work is mainly based on data collected by the ILO with regard to the industrial relations systems in the United States, European

[5] L. Hantrais, *Vers une mixité méthodologique en comparaisons internationales*, in J.C. Barbier and M.Th. Letablier, *Social Policies. Epistemological and Methodological Issues in Cross-National Comparison*, Peter Lang, Berlin, 2006, pp. 271-289.

[6] See in particular: *Droits en synergie sur le travail. Eléments de droits international et comparé du travail* Bruylant, Brussels, 1997, chapter 1; J.M. Servais (ed.), *Industrial Relations, democracy and social stability*, *World Labour Report 1997-98,* Geneva, 1997; *Droit social de l'Union européenne,* 3rd edition, Bruylant, Brussels, 2017, concluding chapter.

countries, and Japan. Terminology like 'the social question' – which considers a historical perspective – 'equality', 'trade-unions', 'collective bargaining', 'collective labour agreement' will be scrutinized. For the purposes of this study, a number of conventions and recommendations from the International Labour Organisation (ILO) – either in English, French or Spanish – will be taken into consideration.

2. The Specific Characteristic of European Industrial Relations

The idea that labour and employment laws reflect social models – though far from new – has been given new momentum in current discussions on the future of the European Union. It is based on a certain political vision of the European community, which supposedly is shared by nearly all European countries. Yet, what does the expression 'European social model' mean? Is it a specifically European way of viewing and addressing social issues? Or, is it a set of common institutions and practices established among European countries, a sort of common heritage? Section I will try to answer those questions (A).
Section II will scrutinise the situation in Continental Europe by analysing links between trade unions and political parties that are regularly elected. This way, workers' organizations are more or less integrated with the state's structure, often on a permanent basis. Reference will also be made to similar situations in other regions of the world while emphasizing the differences among them (B).

A) A European Social Model

The concept of a 'model' has been used in France and Germany to refer to a simplified representation of a process or a system[7]. This word became mainstream following the publication in French (1991), and two years later in English, of *Capitalism Against Capitalism*[8] by the economist Michel Albert. He investigated the ideological and economic 'models' that would shape societies at the end of the twentieth century. He contrasted the Anglo-American type of capitalism – which was totally oriented towards individual and market freedom – with the German-Japanese model, which was more concerned with social cohesion. In French discourse, many make use of the word *model* to assess a system; it evokes the search for or

[7] As defined by the French Robert Dictionary.
[8] Whurr, London, 1993.

the affirmation of certain policies to solve complex problems. Its English equivalent ('model') has also been used with this meaning, though 'pattern' would be more precise.

Historically, the adjective 'social' as in 'the social question' referred to the division of society into classes, and in particular to the proletarian working class, as opposed to the dominant and wealthy *bourgeoisie*[9]. It is now employed as general term to refer to workers' living conditions.

Is the 'social model' a useful concept to characterize and systematize a certain social system? It would be preferable to describe any shared heritage as an economic and social model because separating these two dimensions seems in many ways an ideal view. Practice has decided otherwise.

In the past, governments adopted at least three kinds of policies to maintain or restore social cohesion among their citizens: Enlightened Despotism, Laissez-faire, and the Social Economy. The analysis challenges the claim that discussions around the European social model are largely or entirely focused on some short-term political or even opportunistic views.

a. Enlightened Despotism

In the 18th century, Prussia and Austria implemented a sort of virtuous authoritarianism that was named 'Enlightened Despotism'. Their governments had their own view of the problems encountered and imposed the remedies they deemed as appropriate. Modern politicians or high-level civil servants have a similar way to proceed in some developing countries, especially in Asia[10]. Being well-educated, they may be brilliant technocrats; they consider themselves to be in a privileged position to understand and solve their people's issues, yet they do not liaise with those concerned.

The development process of Japan, and later on that of South Korea and Taiwan was based on this vision. The State and its officials played an active role in national industrial relations. Their influence appeared substantial, but their concerns centered on growth and productivity. It could be said that the State deals with economic aspects before focusing on social issues, believing the former has priority over the latter. However, in the course of their economic progress, greater attention has been devoted to social problems and to collective negotiations. It was against

[9] A. Lalande, *Vocabulaire technique et critique de la philosophie*, PUF, Paris, 1962, p. 998.
[10] J. Schregle, *Negotiating development. Labour relations in Southern Asia,* ILO, Geneva, 1982, p.184.

this backdrop that the famous three pillars of the Japanese industrial relations system were erected after the Second World War: lifetime employment, seniority-based wages, and social benefits, as well as enterprise-level trade unionism. South Korea, and more recently Taiwan, adopted a similar approach. While the approach implemented in Japan and South Korea bears resemblance with the European Socio-economic model, also in relation to (informal) collective negotiations carried out at the branch or national inter-branch level, other countries in Asia, like Malaysia, have maintained a more totalitarian approach.
Communist countries adopted a different economic policy. Nevertheless, their way to manage social issues could also be qualified as enlightened despotism. The leading role in all matters was left to the party in power; it was seeing itself as the enlightened guard of the labour class. Cuba can still be considered as an example of the Communist way of governing.

b. Laissez-faire strategy

The Laissez-faire strategy is different from the previous one: governments let the 'invisible hand' of the market and labour market make the required adjustments. No country has completely adopted this form of governance. For example, the U.S. approach to labour and employment problems appears to feature little involvement and high levels of voluntarism[11], as it prioritizes political and economic liberalism. The emphasis is placed on individual freedom and responsibility as well as on action by local economic agents and groups, rather than on political power at the state and federal level. The law focuses more on civil liberties than on social rights. Thus, every citizen should – at least theoretically – enjoy equality of treatment and opportunities. There is no general recognition of a social question, but rather of a moral and poverty problem to be dealt with first by private charities. Hence the recent tendency among Anglo-Saxon scholars wishing to strengthen solidarity to consider the defence of workers' rights as human civil rights[12].

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[11] S. Jacoby, *American Exceptionalism Revisited: The Importance of Management*, in S. Jacoby (ed.), *Masters to Managers: Historical and Comparative Perspectives on American Employers*, Columbia University Press, New York, 1991; S. M. Lipset and N. M. Meltz, *Canadian and American attitudes towards work and Institutions*, *Perspectives on Work* (The IRRA's 50th Anniversary Magazine), 1997, Vol. 1(3), pp. 14-19. Earlier, see: S. McCane Lindsey, *The problem of American Cooperation*, in J. T. Shotwell (ed.), *The Origins of the International Labor Organization*, Columbia University Press, New York, 1934, pp. 331-367.
[12] Committee on Monitoring International Labor Standards, *Monitoring International Labor Standards. Techniques and Sources of Information*, The National Academies Press, Washington

Historically, the country's federal system has made it a complex matter for Congress in Washington to act in order to provide workers with the protection granted under the laws of continental Europe or Japan. In the United States, enterprise/workshop-level collective bargaining has been given preference over labour and social security legislation. In Japan and continental Europe, the involvement of the government, the administration, and legislation at varying degrees are expected to improve living and working standards.
Moreover, the socialist doctrine of the struggle of classes for state control never caught on in the United States. In the past, a trend developed there towards greater centralization, in order to give federal administration more leeway on labour matters. However, these efforts never changed the voluntaristic approach of American labour-management relations significantly. Although federal legislation did evolve significantly in the 1960s, it did so mainly in the sphere of civil rights (e.g. protection of various groups from discrimination).

c. The Social Economy

The third policy fulfilled citizens' need to see the State establishing rules, institutions, and practices safeguarding them from social risks, in particular in Continental Europe. The concern to help the less fortunate dates back to Pericles' ancient Athens. It is based on a recognized duty of solidarity and generally founded on the explicit or tacit agreement of large employers' and workers' federations. The expression 'welfare state' takes on a negative connotation. The Germans often speak of 'Social State'. 'Social economy' is the most accepted terminology and mainly refers to the 'European Social Model'. The concept conveys the idea of shared, social culture. Europeans believe in the need to go beyond the simple recognition of civil liberties and political rights as enshrined in the 1776 American Declaration of Independence and in the 1789 French Declaration of the Human and Citizens Rights. A large majority is reluctant to accept exclusion and excessive inequality. They expect the State to act in order to remedy the social consequences of the mechanical operations taking place in the market economy. They wish to find an

DC, 11 May 2004, in particular pp. 224 and ff.; Ph. Alston (ed.), *Labour Rights as Human Rights*, Oxford University Press, 2005; R. Goldschmidt, C. L. Strapazzon, *La hermenéutica responsable y su papel en la protección y promoción del derecho fundamental al trabajo digno: el caso de la nueva redacción del inciso iii de la súmala 244 del tribunal superior del trabajo*, *Revista general de derecho del trabajo y seguridad social*, no 39, December 2014.

answer to the social question, and they have a strong sense of solidarity when facing problems like unemployment and poverty (they are keen to tackle the 'social question').

Admittedly, a 'social dimension' already exists at the EU level. It remains however limited, even if European Law limits the freedom of Member States and consolidates the fundamental rights of people at work[13]. The restrictions derive from the EU's limited competence and from the principle of subsidiarity enshrined in the constituting Treaty. Moreover, some directives, particularly in the area of collective labour relations, concern situations that only have a transnational dimension.

The European social model, therefore, appears more like the common denominator of social policies in place since the 19th century and, above all, in the 20th century, in most EU countries, in particular those involved in the establishment of the EU. Within the framework referred to, the model reflects three historical realities.

The first is concerned with social regulation based on centralized consultation and action, which may have a bipartite or tripartite character. Whatever the number of parties involved, state institutions are never indifferent to the outcome of the talks in which the social actors have participated. This practice of collective negotiations – conceived in a broad sense – is generally supported by a complex system of industrial relations[14]. While it is true that tripartite agreements and other forms of high-level social pacts have been observed in other regions of the world, no other has resorted so significantly to centralised dialogue, be it formal or informal.

The second reality is an elaborate social security system including, where appropriate, the provision of a minimum guaranteed income and other forms of labour protection (e.g. minimum wage). Europeans are unwilling to accept – irrespective of the political party they vote for – exclusion and extreme poverty. They want the State to remedy the negative human consequences of an excessively automatized market economy and an overly painful process of globalization[15]. This second reality also covers

[13] See J. Mulder, *Social legitimacy in the internal market: a dialogue of mutual responsiveness*, Hart Publishing, Oxford, 2018; U. Neergaard et R. Nielsen, *Blurring boundaries: From the Danish Welfare State to the European Social Model?*, *European Labour Law Journal,* 2010,vol. 1 (4), pp. 434-488.

[14] S. Avdagic, M. Rhodes, J. Visser (ed.), *Social Pacts in Europe : Emergence, Evolution and Institutionalization*, Oxford University Press, 2011 ; S. K. Andersen, J. E. Dølvik, Ch. Lyhne Ibsen, *Nordic labour market models in open markets*, Report 132, ETUI, Brussels,2014.

[15] O. Giraud, *Nation et globalisation. Mécanismes de constitution des espaces politiques pertinents et comparaisons internationales* , in J.C. Barbier and M. Th. Letablier (eds.), *Social Policies.*

public services provided by the State in the social and economic spheres. All European governments, whether right- or left-sided, have enacted tax or social security legislation imposed for that very purpose, as well as fiscal and social charges to the citizens. If those levies have been criticized by some as weakening business competitiveness, recent history demonstrates that European voters continue to prefer this approach, while accepting, as the case may be, limited adjustments.

The third reality – which is related to the other two – is the implementation of Keynesian principles, i.e. active State intervention in industrial, economic and social matters, and, in collaboration with the social partners participating to varying degrees, the search for consensus in the elaboration and application of these policies. For many years, and following governments' request, both businesses and trade unions have been involved in seeking compromises among different economic variables – i.e. wealth creation and distribution, and job creation. When collective negotiations are unable to settle social problems, the state is pressured into adopting protective legislation[16].

Those realities are also reflected in EU legislation, as illustrated by Articles 145 to 164 of the Treaty on the functioning of the EU. The divides between countries and persons, which are able to take advantage of the new economic context, and the others, the losers, who feel more and more marginalized and impoverished, have led the EU and its Members to reaffirm their role of protection, not least to protect their political support against populism and euro-scepticism. They have considered that there is still a need for national and supranational institutions to mediate between the individual and the global market, even if their impact will be more limited than in the past; multinational labour-management relations require a transnational legal framework. On 24 April 2017, the EU adopted a recommendation establishing a European Pillar of Social Rights. The instrument aims to provide targets in the Eurozone that should be progressively achieved by national social and employment policies. Drawing on the common social heritage of the states concerned, it confirms and seeks to strengthen a European socio-economic model.

This common heritage should not mask the differences between countries. In particular, the importance of job security and social protection varies greatly, as illustrated by a debate on the merits of the 'Danish model' that gives preference to the latter. The United Kingdom

Epistemological and Methodological Issues in Cross-National Comparison, Peter Lang, Berlin, 2006, pp. 97-118.

[16] S. K. Andersen, J. E. Dølvik, Ch. Lyhne Ibsen, *op. cit.*

has traditionally adopted a more voluntary vision of the world of work, which brings it closer to the USA. Interestingly enough, similar elements may be found in countries like Japan, South Korea, or even Taiwan, where the State and its officials play an active role in economic and social policies. Informal consultations take regularly place with trade unions confederations and enterprises' representatives, and an extensive system of social security is in force.

B. The Relationship between Unions, Political Parties and the State Structure

The vision of a European, socio-economic model inherited from history is also visible in the formal or informal involvement of the trade union movement in the State structure, especially when compared to other regions.

Generally speaking, the attitude of public authorities towards trade unions and their rights is rarely neutral. Some are hostile, not even allowing any authentic workers' association to be established (e.g. Saudi Arabia or Oman). Others have put in place legislative or practical measures that are, purposely or not, detrimental to the trade union movement and its activities. The ILO reports[17] contain numerous examples, not to mention cases in which the protective legislation or the institutional recognition given to workers' organizations was weakened.

The first part of this section examines the relevance of workers' associations in countries where an institutional relationship exists with public authorities. The second part critically describes the search for an adjustment of the European trade union movement in a more globalized world.

[17] The material used comes mainly from the reports of the ILO, especially from its Committee of Experts on the Application of Conventions and Recommendations (CEACR) and of its Committee on Freedom of Association (CFA). When examining the implementation of Convention no. 87 (on freedom of association and the protection of the right to organise, 1948) and Convention no. 98 (on the right to organise and to bargain collectively, 1949), they describe extensively the law and the practice in the concerned countries. This constitutes an extremely rich source of comparative information. The CFA and the CEACR reports are reproduced country by country on the ILO website under "Labour standards/ Countries profiles": http://www.ilo.org/global/standards/lang--en/index.htm. See also the *Compilation of decisions of the Committee on Freedom of Association*, 6th ed. Geneva, *2018*. http://www.ilo.org/dyn/normlex/en.

1. Trade Unions and their Political Weight

The following paragraphs deal with the role of trade unions in countries where opposing visions exist in relation to them in society and in its constituting structure. In a communist country, trade unions are subordinated to the ruling party while, in the continental states of Western Europe, centralized social dialogue has been freely established, in close cooperation with the government. The fear of Bolshevist subversion has shaped the industrial relations scene in Japan at the end of the Second World War and led other countries (e.g. Malaysia, Singapore, and South Korea) to exercise control over the trade union movement. In general, the end of the Cold War brought a more flexible attitude.

a. The Role of Trade Unions in Totalitarian Regimes

In a People's Republic, the trade union movement is closely linked to the ruling Marxist party to which the legal order, normally the Constitution, grants a leading position[18]. The Party, the State, and the trade union organization are given a common objective: building a socialist society. Any opposition or serious divergences between the three elements can only harm, in their view, the interests of the working class. Strikes were considered as superfluous and directly or indirectly prohibited through a system of mediation of collective labour conflicts, with the Party constituting the last resort. More generally, all activities seen as detrimental to the socialist regime were sanctioned.
Most firms belonged to the public sector, even if a small private sector continued to exist. The organizations of the heads of enterprises were mainly the Chambers of Commerce, which had a limited role in the social field.
According to this approach, workers' organizations could not be independent from the Party; only one trade union movement, the communist one, is therefore authorized. It must go on defending their members' interests – by resisting particular bureaucratic distortions –

[18] V.I. Lenin, *The role and functions of the trade unions under the new economic policy*, *Collected work*, Progress Publishers, Moscow,1966, vol. 33, pp. 184-196; S. Gaspar, H. Warnke, I. .Loga-Sowinski, F. Danalache, *Les syndicats dans les pays socialistes*, *Nouvelle Revue internationale* (Paris), July 1970,vol. 13(7), pp. 148-162; ILO, *Trade Union Rights in the USSR*, ILO, Geneva, 1959; L. Trócsanyi, *Fundamental problems of Labour Relations in the Law of the European Socialist Countries,* Akadémiai Kiado, Budapest, 1986; B. Taylor, Ch. Kai, Li Qi, *Industrial Relations in China*, Edward Elgar, Cheltenham,2003.

while at the same time serving the general interests of the socialist society – by disseminating Communism and increasing production. Its responsibilities should be that of instructing and mobilising workers, similar to a 'transmission belt' linking the Party and the masses[19].

In European communist countries, the law had generally transferred to the trade unions functions traditionally discharged by the State in the areas of social security and of safety and health protection. The collective agreements aimed at adapting the legislative provisions and the State plans to the conditions of each enterprise, giving workers a stake in its efficient operation and distributing amongst them the benefits accruing from the successful implementation of the enterprise plan, all within the framework of the national economic guidelines and instructions. In particular, the government fixed basic wage rates; other parts of the remuneration were established at the enterprise level, including fringe benefits and bonuses.

Even when communication worked bottom-up as well as top-down, this dual role became a source of tension. Diverging views are a fact of life, including in employment relations. There exists some blurring in relation to the distinct roles of a party representing workers, both of a government of that party, and of a trade union, not to mention the management's responsibilities in public enterprises. It appears extremely difficult in such a system to settle conflicts peacefully, i.e. without the threat of severe sanctions by judges, who are not independent of the Party.

The ruling communist party is still perceived a major role in Cuba, in Vietnam and China; it sees itself as the enlightened advanced guard of the labour class. While Chinese authorities have carried out a deeper liberalization than the two other countries, the relationships between the three main actors of the social scene remain similar. This approach has been replicated by a number of totalitarian states, which have not adopted the Marxist dogma, as illustrated by Egypt, Syria, and some African countries. In countries like Algeria, Tanzania, and Zambia, unions received full recognition – as they took part in national liberation movements – but at the same time, they had difficulties originating from the other components of the new ruling forces. On the whole, their

[19] ILO, *The trade union situation and industrial relations in Hungary*, ILO, Geneva, 1984, especially pp. 16-27; M. Myant and S Smith, *Czech Trade Unions in Comparative Perspective*, *European Journal of Industrial Relations*, 1999, vol. 5(3), pp. 265-285; K. Bomba *Sindicalismo en el este y en el centro de Europa, el ejemplo de Polonia*, *Revista internacional y comparada de relaciones laborales y derecho del empleo*, 2014, Vol.2 (4), pp. 76-78.

influence has therefore been limited[20]. Fascist regimes also control the trade union movement.

b. The Role of the Trade Unions in Continental European Democracies

The ties between trade unions and political parties have been historically close in most Western European countries. They have developed together during the 19th century and the beginning of the 20th century, with a view to defend and promote the interests of wage-earners and other people excluded from the benefits of the Industrial Revolution. In most cases, social movements also included women, youth associations, and cooperatives. They were divided mainly into Socialist, Christian, and Communist leagues, whose presence and strength varied from one country to another.

Since the end of the Second World War, and especially since the late 1960s, the mutual influence of political parties and trade unions has led Western European governments to increasingly involve in economic and social policies workers' organizations and their counterpart on the employer's side. They have done so by carrying out formal or informal consultations, by acting jointly and concluding tripartite social pacts, and/or by offering them to participate in various public and semi-public bodies.

Later on, the situation has evolved. The links between trade unions and political parties have loosened in a number of countries, as seen in France, Italy, and Sweden. The reasons for this are many. The fact that workers' interests are increasingly diverse is certainly one. It not only reflects the divide between long-term wage-earners and precarious ones. Their concerns differ more than before depending on the branch of activity, occupation, skill, age, or sex of the people involved. Trade unions have had difficulties to represent the growing diversity in workers' priorities[21]. Furthermore, the digital revolution and the dispersion of workers that it

[20] See also: T. Fashoyin, S. Mantanmi, *Democracy, Labour and Development: Transforming industrial relations in Africa*, *Industrial Relations Journal*, 1996, vol. 27 (1), pp. 38-49; W. Annaba, *Trade Union movement in Africa: promise and performance*, St. Martin´s Press, New York ,1979; C. Phelan, *Trade Unions in West Africa. Historical and Contemporary Perspectives*, Peter Lang, Berlin, 2011; T. Bramble, F. Barchiesi, *Rethinking the Labour Movement in the "New South Africa"*, Ashgate, Aldershot, 2003.

[21] Ph. Davezies, *Individualisation of the work relationship: a challenge for trade unions*, Policy Brief (European Economic, Employment and Social Policy), ETUI, Brussels, N° 3/2014.

brings about also affect traditional forms of workers' representation. New forms of social mobilization include the use of social media.[22]
The links with public authorities remain nevertheless strong and try to adhere to the European social model. Trade unions and their employers' counterparts are often members of institutionalized joint bargaining committees, with or without the participation of public authorities. Their involvement is further strengthened by their presence in the governing body of the social security institutions and, in some countries like Belgium, in the entire structure of the system. They also participate in a number of other bodies such as vocational training joint committees. Sometimes, like in France, they even receive a significant amount of money in the form of attendance fees.[23] Furthermore, five of the countries with the highest unionization rate (Belgium, Denmark, Finland, Iceland, and Sweden) have an unemployment insurance scheme under which workers' organizations may handle the payment of benefits (as part of the so-called Ghent system).

2. Trade Unions in the New Context

a. A New Social Environment

A combination of the political changes that occurred at the end of the twentieth century, the revolution in communication and production technologies and the organization of work, and the growing interdependence of national economies among countries and firms have had a major impact on governments, businesses, and trade unions. The internationalization of the market economy – particularly the pre-eminence of more laissez-faire policies – limited the powers of public authorities in the social field[24]. Keynesian national policies presupposed complete control of economic instruments by the State. It cannot function in the same way if the state loses some of that control.
While workers' associations have constituted an internationalist movement from the outset, they have faced difficulties in adapting to the

[22] J.-L. Fabiani, *Contestations politiques et nouvelles prises de paroles*, *Esprit*, March-April 2015, n°413, March-April 2015, pp. 165-177.
[23] See http://www.metiseurope.eu/infographie-syndicats-adhesion-financement_fr_70_art_30058.html and the issue of *Droit social* on *L'argent, les syndicats et les élus du personnel*, 2014, no 9, pp. 692-759.
[24] See A. Martin, G. Ross (eds.), *Euros and Europeans: Monetary integration and the European model of society*, Cambridge University Press, 2004.

new environment. The most obvious obstacles stem from legal provisions that hamper the coordination of trade unions action at a transnational level[25]. The variety of provisions in domestic law concerning trade unions activities, including the right to strike, often impedes true cooperation among unions.

These legal barriers are not the only obstacles in the way of cross-border solidarity between workers. Other barriers, which are just as serious, stem from differences in languages and culture[26]. When it becomes institutionalized, cooperation can also mean a shift of authority and resources to supranational bodies, and this may encounter reluctance of national leaders. International trade unions have nevertheless tried hard to influence the social scene at the global level. They have conducted truly transnational campaigns (e.g. the elimination of child labour), approached politicians or members of governments, raised their voice in the ILO, lobbied in other international institutions like the OECD or the UN, or attempted to draw attention in G8 and G20 meetings. They have signed from time to time framework agreements with major multinational companies[27] or established workers' committees at that level.

The very concept of 'a trade union' varies from one country to another. Trade union structures centered upon the workplace are often not suited to new forms of work organization. Another focal point of the organisation therefore needs to be found. Enterprise-oriented unions in the U.S. – and, to a varying extent, those of other English-speaking countries – have for a long time sought primarily to defend the immediate interests of their members and those of other workers within the negotiating unit.

The term 'trade union' reflects the differences. It is defined as a group of people belonging to the same branch who come together to defend their common 'corporatist' interests, while its translation into French (*syndicat*), Spanish or Portuguese (*sindicato*), Italian (*sindacato*), or Romanian (sindicat), derived from the Greek *sundicos*, does not contain this restriction, and

[25] E. Ales, I. Senatori (eds.), *The Transnational Dimension of Labour Relations. A New Order in the Making?*, Giappichelli Editore, Turin, 2013; M.-E. Gordon and L. Turner (eds.): *Transnational Cooperation among Labor Unions*, ILR Press, Ithaca (NY), 2000.

[26] G. Meardi *Understanding Trade Union Cultures*, *Industrielle Beziehungen / The German Journal of Industrial Relations*, 2011, vol 18 (4), pp. 336-345.

[27] K. Papadakis, *Shaping Global Industrial Relations. The impact of International Framework Agreements*, Palgrave MacMillan, Basingstoke, 2011; S. Sciarra, M. Fuchs, A. Sobczak, *Towards a Legal Framework for Transnational Company Agreements,* European Trade Union Confederation, Brussels, 2014; R. Hyman, A. Dufresne (eds.), *Transnational Collective Bargaining*, *European Journal of Industrial Relations*, special issue, June 2012,vol. 18(2).

applying to an association which defends a group of people at work. We may also find this etymology in the Russian word *синдикалис* (trade unionist). The German word *gewerkschaft* appears closer to the English one. In the latter at least, the term 'syndicalism' specifically refers to a revolutionary movement and theory advocating for the transfer of the means of production and distribution to the workers' unions, i.e. ownership and control.

Beyond these linguistic remarks, we observe that unions in Continental Europe have rather claimed to represent workers as a whole, to go beyond labour relations issues, influencing the current views of society. Very often mistrustful of governments, they present themselves as mass labour and social movements rather than just as trade unions. That being said, the main concerns of most trade unions remains the defence of their members, i.e. workers enjoying a stable job. They also often failed to reach the most vulnerable people.

Some trade unions have nevertheless succeeded in linking community concerns to those of the workplace, either directly or through alliances with grassroots movements. Their action has now been extensively analysed[28]. Their influence however remains quite limited. In particular, the growing number of NGOs and social movements in some regions does not compensate for the (sometimes) weak trade union activities and the government's partial withdrawal from social policy. With a few

[28] K. V.W. Stone, *The Decline of the Standard Contract of Employment in the United States: A Socio-Regulatory Perspective*, in K.V.W. Stone and H. Arthur (eds.), *Rethinking Workplace Regulation: Beyond the Standard Contract of Employment,* Russell Sage Foundation, New York, 2013, p. 75; K. Nakamura, M. Nitto, *Organizing Nonstandard Workers in Japan: Old players and New players*, *ibid*., pp. 253-270; J. Fine, *Alternative labour protection movements in the United States: Reshaping industrial relations? International Labour Review,* 2015, Vol. 154 (19 ; D. Gelot, *Travailleurs pauvres et syndicalisme. L'exemple américain*, *Droit social*, 2010, n°6, pp. 615-622; J. McBride and I. Greenwood (eds.), *Community Unionism: A Comparative Analysis of Concepts and Contexts,* , Palgrave McMillan, London 2009; A. Hyde, *Who Speaks for the Working Poor?, A Preliminary Look at the Emerging Tetralogy of Representation of Low-Wage Service Workers*, *Cornell Journal of Law and Public Policy*, 2004, Vol. (3)p.599; M.L. Ontiveros, *A New Course for Labour Unions : Identity-Based Organizing as a Response to Globalization* in J. Conaghan, R.M. Fischl, K. Klare, *Labour Law in an era of globalization. Transformative practices and possibilities,* Oxford University Press, 2002, pp. 417-428; P. Waterman, *Globalization, social movements and new internationalisms,* Continuum, New York (N.Y), 2001; ILO, *Industrial Relations, democracy and social stability, op. cit.* pp. 44-51.

exceptions, those new actors do not possess the qualities and abilities that they are attributed[29].

The lesson from those experiences seems clear: the adaptation problems to globalization should encompass a democratic response from the local level[30]. A number of initiatives have for a long time been taken in Europe by municipal or regional authorities with the collaboration of various actors, including local unions and with the support of EU funds[31]. They have aimed at creating jobs (Austria, Belgium, France, and Germany[32]), *inter alia* at training redundant workers and at integrating or reintegrating the unemployed into the labour market (Belgium[33]). More broadly, they have stimulated economic and social development (Ireland[34], Italy[35]), with a focus on the reform of the labour market and of vocational training

[29] A. Bayat, *Social Movements, Activism and Social Development in the Middle East,* Working paper (Civil Society and Social Movements, Progamme paper no3), UNRISD, Geneva, 2000; Special issue of *Esprit* on *A quoi sert le social?* , March-April 1998.

[30] S. Giguère (ed.), *More than just Jobs: Workforce Development in a Skills-Based Economy*, OECD, Paris, 2008; J. Donzelot, *Le social et la competition*, *Esprit,* November 2008, pp. 51-77; J.K. McKullum, *Global Unions, Local Power : The New Spirit of Transnational Labor Organizing*, Cornell University Press, ILR Press, 2013; L. Gardin, J.L. Laville,, *Les initiatives locales en Europe*, *Travail et Emploi*, January 2000, no 81, pp. 53-66; OECD (Labour Management Programme), *The role of trade unions in local development*, Paris, 1997; M. Geddes, *Local partnership: a successful strategy for social cohesion?* European Foundation for the improvement of living and working conditions, Dublin, 1998; comp. J. Bauer et D. Bell (ed.), *The East Asian Challenge for Human Rights*, Cambridge University Press., 1999, p. 23.

[31] K. V.W. Stone, *Green shoots in the labour market: A cornucopia of social experiments*, ILO, Geneva, pp. 21-22; European Commission, *Guidance on community-led local development for Local actors*, Brussels, 2014.

[32] OECD, LEED Forum on Partnerships and Local Governance, Austria, Belgium, France, Germany, etc.

[33] See in particular the 29 December 1990 Act adding various provisions on social policy; the 23 December 2005; the Act regarding solidarity between generations; the French Community Decree of 24 October 2008 subsiding employment in the socio-cultural sector; the Royal Decree of 9 March 2006 concerning the active management of restructuring.

[34] W.K. Roche, *Social Partnership in Ireland and New Social Pacts*, *Industrial Relations: A Journal of Economy and Society*, July 2007, Vol. 46 (3), July 2007, pp.395–425.

[35] B. Caruso, *Decentralised social pacts, trade unions and collective bargaining: How labour law is changing,* in Marco Biagi, *Towards a European Model of Industrial Relations. How Labour Law is Changing,* Kluwer, The Hague, 2001, pp 193-224; F. Cossentino, F. Pyke, W. Sengenberger, *Local and regional response to global pressure: the case of Italy and its industrial districts*, International Institute for Labour Studies, Geneva, 1996; F. Pyke, G. Beccatini, W. Sengenberger (eds.), *Industrial districts and inter-firm cooperation in Italy*, International Institute for Labour Studies, Geneva, 1990.

programmes[36] or the improvement of life and working conditions (e.g. the '*tempi della città*' initiatives in Italy[37]).
Trade unions have also obtained major achievements in the European Union where workers' and employers' associations play a prominent role in solving labour issues. The EU legal system of industrial relations significantly contributes to adapting the trade union movement and social dialogue to its employers' counterpart.

b. The EU Experience

The original purpose of the European Treaties has been to establish an internal market with free movement of persons, services, and capital. Especially since the 1980s, the EU has aimed at balancing economic development with concerns regarding full employment, social progress, and the fight against social exclusion and discrimination. With the view of correcting the social consequences of market Europeanization and softening the transition to the new economic environment, the EU has taken measures to promote employment, education, vocational training, and social cohesion. It also aims at improving living and working conditions.
In all their areas of action, the European institutions are formally requested to adopt a participative approach, to "give citizens and representative associations the opportunity to make known and publicly exchange their views" and in particular to recognise and promote the role of the social partners at their level. They have to facilitate dialogue between the employers' and workers' organizations, respecting their autonomy and to organize tripartite social summits for growth and employment (articles 11 TEU and 152 TFUE). The role of the trade unions, as well as the employers' confederations, in the elaboration and in the application of social policy could not be more clearly promoted. They do so by lobbying at all levels of the European system. The political parties, represented in the European Parliament, relay them and so do national governments, which share their views. They have therefore access to the highest spheres of European power.

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[36] A. Bevort, A. Jobert, *Sociologie du travail. Les relations professionnelles,* A.Colin, Paris, 2011, pp. 209-210 and 243; M. Mainland, *Networks, training and tripartism in active labour market policy: the case of Denmark*, *Congress Proceedings*, Sinnea, 1998, Bologna, vol. 3, pp. 295-296.
[37] S. Bontiglioli and M. Mareggi (eds), *Il tempo e la citta` fra natura e storia. Atlante di progetti sui tempo della città*, *Urbanistica Quaderni*, 1997, no 12; M.C. Belloni and F. Bambi (eds), *Microfisica della cittadinanza. Città ,genere, politiche dei tempi*, Franco Agneli, Milan, 1997.

They are consulted or they integrate a variety of committees entrusted with designing or supervising European social policy. The fields covered include employment, vocational training, the functioning of the European Social Fund, coordination of social security entitlements, or general social policy. Bipartite bodies – i.e. representatives from workers and employers – have also been created in branches of activities where they express their opinions, adopt recommendations, or sign framework agreements, such as in the agriculture sector.

The European Commission favours the dialogue between the social partners. Their negotiations do not always lead to legal commitments. In many cases, they only express joint opinions, recommendations, or declarations without binding legal effects. They are nevertheless given by articles 154-155 TFUE the preference to elaborate social regulation. Before submitting proposals in the social field, the Commission has to consult them on the possible direction of EU action. If, at a second stage, the Commission considers EU action advisable, the Commission must consult them again on the content of the envisaged proposal. The representatives from both sides may then inform the Commission of their wish to initiate a process of negotiation with a view to conclude an agreement; the duration of this process is limited – it will not exceed nine months – unless management and labour concerned and the Commission jointly decide to extend it.

In a number of cases, they have concluded framework agreements at a branch or general level. The TFUE formally recognizes the effects of those agreements. They may be implemented in accordance with the law and practices specific to each Member State. A procedure of extension *erga omnes*, inspired by the equivalent option afforded by some members, may also be used. At the joint request of the signatory parties, the Commission may ask the European Council to take a decision – i.e. a directive – that applies to all workers and employers concerned.

At the enterprise or group of enterprises level, too, the EU promotes social dialogue. It has adopted a directive on the establishment of a European Works Council or a procedure in Union-scale undertakings and Union-scale groups of undertakings for the purposes of informing and consulting employees. Moreover in some branches, the directive has strengthened the international dimension of national collective bargaining[38]. Other directives contain an obligation of informing and

[38] J. Arrowsmith and P. Marginson, *The European Cross-border Dimension to Collective Bargaining in Multinational Companies* , *The European Journal of Industrial Relations,* 2006, vol. 12 (3), pp. 245-266.

consulting, including in cases of redundancies, mergers, divisions, and transfer of enterprises, or takeover bids. The information and consultation procedures should be useful, i.e. it shall be made in due time and with a view to reach an agreement. If there is no formal obligation to negotiate, the manner in which provisions are written implies similar effects.
EU legislation constitutes undoubtedly the most sophisticated attempt to associate trade unions and employers' organizations, to a more open economic market. It is true that the negotiation power of the trade unions has been weakened by some highly controversial sentences of the Court of Justice where the rights to strike or the freedom to bargain collectively has been limited, by opposing them to the entrepreneurial right to establishment and to the free movement of services.[39] A more recent directive, n° 2018/957 of 28 June 2018, however, seeks to remedy the abuses which previous legislation might cause.

3. The Theoretical Framework

In his 1748 *Spirit of Laws*, Montesquieu tells us that "the political and civil laws of each nation ... must be so specific to the people for whom they are made, that it is a great coincidence that the laws of one nation can suit another". He underscored the relationship between law and religion. He analysed the effects on the law of climate, topography, demographics, customs, and manners[40]. One of the human soul's vital needs is undeniably to have roots. Individuals have roots when they are active and spontaneous participants in the existence of a community that is a living reflection of treasures from the past and presentiments of the future. Human beings could attain no higher position in the universe than a civilization based on spirituality at work[41].
Heightened internationalization of human activity has a lasting and profound impact on culture in every region and country; some differences in the vision of social problems can even be reduced. The term 'globalization' is generally used to describe an increasing internationalisation of markets for goods and services, the means of production, financial systems, competition, corporations, technology, and industries. Amongst other things, this gives rise to greater mobility of

[39] A. Bronstein, *International and Comparative Labour Law: Current Challenges*, Palgrave MacMillan, Basingstoke, 2009, pp. 207-212.
[40] Montesquieu, *The spirit of Law*, (J.V. Prichard translation) J. Bell & Sons Ltd, London, 1914, 14-24.
[41] S. Weil, *L'enracinement*, NRF/Gallimard (Idées), Paris, 1949, pp. 61 and 128.

capital, faster propagation of technological innovations, and a deeper interdependency and uniformity of national markets[42].

In the past, the internationalization process showed however that globalization also concerns intellectual tools, communication codes, and means of expression.[43] English has only one word, 'globalization', to cover the two terms *mondialisation* and *globalization* in French and its Spanish or Italian equivalent. The first term refers to the advent of the World, as a space, as society, and as a relevant scale of analysis in many areas. Its history follows the emergence of human exchanges and movements. It highlighted the idea that Europeans began to convey a representation of the World by the end of the 15th century[44]. Globalization in French refers to the metamorphosis of emancipated capitalism of the national (or post-fordist) and financial framework. Globalization takes part in a reflection on the transformation of capitalism and on the re-composition of the local under the effect of transnational[45].

The cultural dimension continues to greatly influence each country or group of countries' systems of industrial relations[46] and the expression of the concepts used (A).

Comparing national labour law in their spatial (that is, rights in force today) and temporal (because rights history explains many of their avatars) dimensions looks therefore like an obstacle course[47] (B), all the more so since attention must be paid not only to the words used but to the interpretation and implementation of the provisions under consideration.

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[42] Eurostat, IMF, OECD, UN, UNCTAD, WTO, *Manual on Statistics of International Trade in Services*, 2002, Geneva, Luxembourg, New York, Paris, Washington, D.C., 2002, Annex II, Glossary.

[43] S. Gruzinski, *Les quatre parties du monde. Histoire d'une mondialisation*, La Martinière, Paris, 2004, pp. 359-377.

[44] S. Gruzinski, *op.cit.*; Boucheron Patrick (ed.), *Histoire du monde au XVème siècle*, Fayard, Paris, 2009.

[45] C. Ghorra-Gobin, *Mondialisation et globalisation* , *Géoconfluences*, décembre 2017, http://geoconfluences.ens-lyon.fr/informations-scientifiques/a-la-une/notion-a-la-une/mondialisation-globalisation

[46] Mahdi Zahraa, *Characteristic features of Islamic law : Perceptions and Misconceptions*, *Arab Law Quaterly*, 2000, pp. 168 and ff.; S. Jahel, *Les droits fondamentaux en pays arabo-musulmans*, *Revue internationale de droit comparé*, Oct-Dec. 2004, p 795.

[47] M. Finkin and G. Mundlak (eds.), *Comparative Labor Law*, E. Elgar, Cheltenham, 2015. Compare M. Weiss, *Convergence and /or Divergence in Labor Law systems? A European perspective*, *Comparative Labor Law and Policy Journal*, 2006, vol. 23 (3), pp. 469-486.

A. The Cultural Dimension Matters

The ILO founders inscribed in its Constitution that its Annual Conference had the duty to introduce flexibility into the legal texts it adopted: "In framing any Convention or Recommendation of general application, the Conference shall have due regard to those countries in which climatic conditions, the imperfect development of the industrial organization, or other special circumstances make the industrial conditions substantially different and shall suggest the modifications, if any, which it considers may be required to meet the case of such countries".[48] Their successors therefore introduced into the instruments they adopted what is known as flexibility clauses.

Differences are not only explained by economic or geographical factors. The role of the law in the settlement of disputes for instance varies from one society to another. American citizens turn more readily to the courts than those of Japan, who see court action as a last resort when all efforts at conciliation have failed[49]. Another factor is that disciplined conduct and respect for authority are more marked in some mind-sets and periods than others, as evidenced by the well-known anecdote about German railway workers in the early 20th century who bought their platform tickets before joining a demonstration at a railway station platform. Times have certainly changed: where, in today's world, could one imagine workers acting the same way?

The state's institutional capacities are a factor of paramount importance for shaping the domestic legal order[50]; social security springs to mind. The same holds true of religious convictions; they sometimes encourage observation of measures to protect others. In contrast, faith gives way to superstition, the effect of which can be perverse, such as the case of the Thai workers in a cutlery factory who thought there was no point in wearing the protective equipment, once the Buddhist monk had blessed the workshop.

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[48] Article 19 §3.

[49] K. Sugeno: *Japan Employment and Labor Law*, Carolina Academic Press, Durham, 2002; W. Gould: *Japan's Reshaping of American Labor Law* The MIT Press, Cambridge (Massachusetts), 1984.

[50] T.L. Caraway, *Protective repression, international pressure, and institutional design: explaining labor reform in Indonesia*, *Studies in Comparative International Development,* autumn 2004, vol. 39 (3), pp 28-49.

The method chosen to implement labour standards is also predicated on history, on the socio-political context, and on the respective place of the law and collective agreements in the system of industrial relations.

1. The Impact of Culture

The economy is no doubt the most studied meeting ground for the private and public spheres and a key field in the configuration of social relations. The cultural dimension is nevertheless fundamental to explain why even neighbouring countries adopt different solutions to the same problems. A good example is the distinct way in which labour and its role in society are viewed, depending on whether the viewer is French or British, Brazilian or Australian, Japanese or Canadian. In one place, the unemployed are considered to be unlucky; in another, as lazy and good-for-nothing. The religious ideal in one country is to withdraw from working life, like a hermit or at least a missionary; in another, it takes the form of material success. The ancient Greeks showed clear disdain for paid work; present-day moralists insist that work brings personal fulfilment. This, in any case, was how Luther, and above all Calvin saw work.

Max Weber has aptly described the effects of Lutheran and Calvinist doctrine on the formation of modern society and the spirit of capitalism. The Reformation valued work and condemned idleness, which was deemed harmful; riches and success in earthly tasks were the harbingers of eternal salvation. Hence considerable effort was made to rationalize ways of life, organize activities, and, in time, secularize those ideals[51]. Sergio Buarque de Holanda by contrast has shown to what extent affective ties and *farniente* underpin Brazilian civilization[52].

[51] Max Weber, *The protestant ethic and the Spirit of capitalism*, (translation), Taylor & Francis Ltd, London, 2001; H. P. Müller, *Travail, profession et vocation. Le concept de travail chez Max Wéber* in D. Mercure et J. Spurk, *Le travail dans l'histoire de la pensée occidentale*, Presses Universitaires de Laval, Québec, 2003, pp. 261-266.

[52] S. Buarque de Holanda, *Raízes do Brasil*, Companhia dos Letras, São Paulo, 26e ed., 1995.

2. Culture, Work and Industrial Relations

Our view of work is shaped by where we live. The American view allows an enormous scope for individual initiative[53]. It prefers enterprise- (or establishment-) level collective bargaining on employment conditions to legislation; the United States has no labour code or equivalent statute, even at the State level. The collective agreements concluded with trade unions – or other forms of worker representation – usually, within production units, constitute the essential form of protection and provide most social security. Where these agreements are not in place, guarantees depend on the company's personnel policy.

When an American employer decides to recognize a trade union within the enterprise or the establishment and to sign a collective agreement with it, the effect on costs is not negligible since most costs relating to the financing of labour protection and social security are borne by the enterprise. The situation is different in Continental Europe, where social legislation applies to all units of production; sectoral collective agreements still have primacy for remuneration and working time; they are often made binding, even in unrepresented companies by public procedures of extension. Wages and social costs are therefore not a factor of competition and the risks of social dumping are remote.

The price of social dialogue and its repercussions in terms of competition probably explains the highly adversarial nature of industrial relations in the United States and the amount of labour litigation. This antagonism is further fuelled by the fact that American collective agreements contain clauses enabling workers' organizations to oversee posts and performance. The original aim was to safeguard jobs in the company, and even to reserve them for union members. Employers' reluctance understandably stems from more than financial concerns: these clauses limit their customary prerogatives and oblige them to engage in protracted discussions whenever they want to reorganize.

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[53] S. Jacoby, *American Exceptionalism Revisited : The Importance of Management* in S. Jacoby (ed.), *Masters to Managers : Historical and Comparative Perspectives on American Employers*, Columbia University Press, New York, 1991 ; S. M. Lipset et N. M. Meltz, *Canadian and American attitude towards work and Institutions*, *Perspectives on Work* (The IRRA's 50th Anniversary Magasine), December 1997, vol. 1(3), pp. 14-19; ILO, *Industrial Relations, democracy and social stability*, *op. cit.*, pp. 110 and ff. .See already: S. McCane Lindsey, *The problem of American Cooperation* in J. T. Shotwell (ed.), *The Origins of the International Labor Organization*, Columbia University Press, New York, 1934, pp. 331-367.

The way in which American unions see their role highlights the contrast with the European social scene. Focused on the enterprise – or establishment – their main goal is to defend the direct interests of workers who have joined the union and of other wage-earners in the unit of negotiation concerned. If they seek to have political influence, they use networks, especially at that level, and make election deals with friendly politicians.

Conversely, the conception that people have of work in continental Europe is reflected in institutions that foster, as mentioned above, state intervention in economic and social policies. They are discussed in meetings between public authorities and large employers' and workers' confederations. Detailed social legislation is supplemented by social dialogue whose structure is still essentially national and sectoral on important issues. Trade unions speak for all employed, unemployed, and underemployed workers. They fiercely defend a sophisticated system of state social protection[54].

3. Taking Cultural Particularisms Seriously

Those opposing the argument that the same standards must apply with the right to be different can provoke even greater misunderstandings, in that everyone clings to their vision of social relations and the powerful tend to prevail[55]. Those who refer to a certain culture often feel that this culture has been overlooked and invoke its specificity to distance themselves from a common rule. Some artists even added that the modern world is structured like a factory and that its basic rules are production and advertisement, both generating uniformity and fatal tediousness.[56]

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[54] J. M. Servais, « Quelques réflexions sur un modèle social européen », *Relations industrielles/Industrial Relations*, 2001, vol. 56(4), pp. 701-719; "Universal labor standards and national cultures", *Comparative Labor Law and Policy Journal,* Vol. 26 (1), pp. 35-54. Comp. J. Rifkin, *The European Dream. How Europe's Vision of the Future is Quietly Eclipsing the American Dream*, Jeremy P. Tarcher/Penguin, New York, 2004.

[55] R. Dore, *New forms and meanings at work in an increasingly globalized world* (ILO Social policy lectures, Tokyo, 2003), International Institute of Labour Studies, Geneva, 2004, pp. 66-67; A. Supiot, « The labyrinth of Human Rights », *New Left Review*, May-June 2003, pp. 118-136 and from the same author, *Homo Juridicus. Essai sur la function anthropologique du droit*, Seuil, Paris, 2005, especially pp 312and ff..; S.M. Jacoby, *Economics ideas and the Labor Market: origins of the Anglo-American model and prospects for global diffusion*, *Comp. Lab Law Pol. Journal*, autumn 2003, vol. 25(1), pp 43-78.

[56] Francis Picabia mentioned by Philippe Dagen, *Le Monde* May 8, 2005, p VII.

The issue is not simple. It calls for concrete answers to the old question of how to ease the tensions brought by the existence of different languages, races, religions, and social conducts. There is no one-size-fits-all answer.
In this sense, one might refer to the heated debate that broke out when the United Nations discussed the definition of cultural rights and especially the recognition of minority rights[57]. That debate mirrored another, on whether the individual or the community took precedence in the process of human fulfilment. When the Universal Declaration of Human Rights was being drafted, Canada, the United States, and many Latin American countries upheld the right of the individual to participate in the cultural life of the community; India and the countries of Eastern Europe preferred to speak about minority rights. Beyond ideological conflicts, this controversy reflected fears: of being clearly obliged to delineate the meaning of culture, of upsetting long-lasting practices that were harmful to certain groups, above all of accepting a cultural relativism that could be used to justify violations of fundamental human rights, a fear that – as practice has shown – was well-founded. It was added that the safeguard of civil and political rights (freedom of religious worship, expression, and association, for example) sufficed to allow everyone to live by their convictions and to respect their cultural traditions.
An agreement was reached in 1966: the International Covenant on Civil and Political Rights gives people belonging to ethnic, religious, or linguistic minorities the right, "in community with the other members of their group", to enjoy their own culture, to profess their own religion, or to use their own language[58]. More generally, the second Covenant of 1966 on Economic, Social, and Cultural Rights, proclaims the right of everyone to take part in cultural life[59].
UNDP nevertheless denounces several tenacious preconceived notions[60]: that some cultures are more open to progress than others and that cultural diversity will inevitably lead to opposition to questions of values and even constitutes an obstacle to development. Anyone with experience of international work knows how inane such assertions are. He also knows, however, that being too respectful of national considerations can lead to failure. Striking balance between these two arguments is difficult.

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[57] UNDP, *Human Development report 2004, Cultural liberty in today´s diverse world*, New York, 2004, p. 28.
[58] Article 27.
[59] Article 15.
[60]UNDP*, op. cit.*, pp 38 and ff.

B. The Pitfalls of word-for-word Translation

The previous pages have shown the dangers the comparatist is exposed to. He quickly realizes that his precious terminology, that the categories used to distinguish and classify his rules, that its concepts and legal techniques do not necessarily match in the country that he studies[61]. Beyond the pure difficulties of translation, the same word may have different meanings, other connotations according to cultures; the very concepts vary from one law to another[62]. This is all the more true when the laws belong to different legal families. The way the standard is worded varies between Common Law and Civil Law, as well as the power of the courts and the regulations[63]. Moreover, comparative law covers legislation and also collective agreements, arbitral awards, jurisprudence, and all manifestations of the practice of law, as well as doctrine.

Comparative research, therefore, requires an effort beyond the language to understand foreign thought. Rather than comparing only two legal texts, common problems should be identified. It will then be up to scholars to analyse the various techniques used in different countries to bring a similar or distinct solution.

Comparison is undoubtedly useful to move away from analyses and interpretations based on one's own system. The obstacles should not be overstated. Many bi- or multilingual glossaries allow coming to a clear understanding, even where the words used are identical, but their meaning is different. The ILO has also contributed, through its conventions and recommendations, to establish terminology with well-established meanings, at least in English, French, and Spanish. Foreign jurists,

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[61] W. Bromwich & P. Manzella, *Shock absorbers, tax wedges and white resignations: language challenges in comparative industrial relations*, *The Translator*, 2017, 1757-0409 (Online) Journal homepage: http://www.tandfonline.com/loi/rtrn20 ; Hyman, R., *Words and things: The problem of particularistic universalism* in Barbier, J-C, Letablier, MT (eds.) *Comparaisons internationales des politiques sociales, enjeux épistémologiques et méthodologiques/Cross-national Comparison of Social Policies: Epistemological and Methodological Issues*, PIE-Peter Lang, Brussels, 2005, pp. 191-208; P. Manzella, *Multilingual translation of industrial relations practices in official EU documents: the case of Italy´s Cassa Integrazione Guadagni*, *Perspectives. Studies in Translation Theory and Practice*, http://dx.doi.org/10.1080/0907676X.2017.1347190.

[62] P. Manzella, P. and K. Koch, *A New Approach: The Incorporation of Culture, Language and Translation Elements in Comparative Employee Relations*, in K. Koch and P. Manzella (eds.), *International Comparative Employee Relations. The Role of Culture and Language*, E. Elgar, Cheltenham, 2019, pp. 58-77; R. Blanpain, *Comparativism in labour law and industrial relations*, in R. Blanpain (ed.), *Comparative Labour Law and Industrial Relations in Industrialized Market Economies*, 11th edition, Kluwer, The Hague, 2014, pp. 3-25.

[63] É. Vergès, G. Vial and O. Leclerc, *Droit de la preuve*, PUF, Paris, 2015

however, trained at other schools, practise different methods of reasoning, sometimes even, as we have seen, have a dissimilar view of the law in their society. The first section examines the difficulties that arise when comparing laws (I). The second one will reflect on the particular problems encountered in the manner to interpret and implement them (II).

1. The Comparative Methods

The first question relates to the object of comparison. It may concern systems of labour law or industrial relations, i.e. sets of rules, in which the reasoning identifies - sometimes with some artifice - links, some mutual dependence, so that these rules together form a coherent entity. It may deal with institutions, i.e. forms, structures of organizations established and assembled by the law. A parallel analysis may also be made of specific or bundled legal provisions.

The technicalities of the systems of law may be compared, along with their legal processes or the social policy on which they are based. Difficulties will, however, accumulate in the handling of concepts and in the analysis of the socio-economic context. There exists a serious risk of examining everything through the prism of one's own legal order and/or of oversimplifying the foreign law. Similar reasoning applies, although difficulties appear to be less significant, to the comparison of institutions. The focus should be on their functions more than on their names, as in the case of courts and labour disputes, collective bargaining and agreements, workers' participation[64], employment services, or labour inspection.

The paths of comparative law allow us to bring together not only two or more legal texts dealing with the same or related topics, but the chosen solutions to a given problem, as well as the reasons for these choices. Their foundations are found in the history of the country considered, in the political, economic, social, and cultural context, in the respective strength of the various intermediary groups (especially employers' organisations and trade unions), and so forth.

This approach, therefore, leads to the parallelism of not only two rules, two sets of rules, two institutions, but that of the profound mechanisms of two laws, namely the assumed functions and the determining factors

64 J. Schregle, *Comparative Industrial Relations: pitfalls and potential*, *International Labour Review*, Jan.-Feb. 1981, vol. 120 (1).

for the creation and development of rules and institutions. Finally, it is the balance of the respective capacities of employers, workers, and the State that emerges, a fragile balance, synthesis, or reconciliation whenever possible from their inevitably divergent interests.

When comparison concerns several legislations, and when it extends beyond a homogeneous group of countries, international labour conventions and recommendations are both precious instruments of analysis and valuable benchmarks for measuring the degree of correspondence of a given right with generally accepted principles at the universal level. These instruments give comparison a truly international perspective. It is therefore not possible, and certainly not desirable, to approach a specific area of comparative labour law without examining the standards and principles developed by the ILO; standards are contained in the texts voted by the International Labour Conference, the principles established by the ILO bodies responsible for their supervision.

The Transfer of Foreign Rules and their Integration

Reality appears thus to be highly complex, consisting of many elements specific to each national culture[65]. Comparative labour law remains nevertheless a strong stimulus to reflection and creativity and facilitates the evolution of one's own law. The exercise is especially useful in times of reform when considering the possibility of importing a foreign law and the extent to which it will be done.

The study of other countries' laws is a natural attitude for a government or a parliament, especially when a country is faced with unprecedented developments in individual or collective labour relations. Here, as in the other branches of law, history brims with examples of the influence of foreign legislation. It is also good policy, in an integrated framework such as the EU, to look specifically at the law of other Member States before finalizing a national legislative reform. This is part of the European dynamic.

The influence of foreign rights is observed in different spheres of national life. Admittedly, the analysis of the relevant provisions is primarily the

[65] See C. Crouch and F. Traxler (eds.): *Organized Industrial Relations in Europe: What Future?*, Avebury, Aldershot, 1995, pp. 311 and ff.; J. Goetschy, *Les relations professionnelles en Europe dans les années 1990: convergences ou diversification accrue?*, *Droit social*, Dec. 1993, nº 12, pp. 993-998; comp. H.C. Katz et O. Darbishire, *Converging Divergences: Worldwide Changes in Employment Systems*, Cornell University Press, Ithaca, ILR , 2000 and the discussion of the book in *Industrial and Labor Relations Review*, Vol. 54(3), April 2001, pp. 681-716.

responsibility of scholars. Nevertheless, the results of their work concern ministers, parliamentarians, political parties, and their advisers, as long as wider circles covering employers' and trade union associations and the judiciary. Therefore, foreign law influences beyond the domestic legal provisions, the sentences of the courts and tribunals (this is often the case in countries that share common law)[66], the arbitral awards, the collective agreements, and the doctrine.

The fact that so many people are interested in foreign labour laws has other consequences. Sometimes, their influence comes not so much from their objective content. It rather derives from the knowledge — more or less fragmentary, or even partisan — or from the interpretation — it may be imprecise, or even convey prejudices — that is given in the receiving country. How many simplistic and erroneous analyses have we not read of European systems outside Europe and overseas rights in the old continent! There are, it is true, successful and brilliant exceptions.

Moreover, the transfer of a foreign law rarely constitutes a purely technical operation, especially in a field as closely linked to common life organization as labour. Legislative reform most often has a political purpose. The foreign model, imported voluntarily (or not as it was the case in non-independent territories), is used to solve a national problem and to meet specific national needs. Foreign law may simply serve as an argument in an internal debate.

In other words, it is common for international comparisons to prove that a provision or a system has more advantages, not technical ones—in the sense that they relate to economic facts, social factors, the administration of the country, etc. —but political ones—because they suit the state and its government, that foreign provisions correspond to their approach to social problems, that they help achieve the social balance they want, etc. The comparison then involves not only the analysis of two provisions or two systems, but the introduction of a third element, of a value scale to which these provisions, these systems are examined[67].

Absent any moral or political assessment, the identification of mediating concepts also facilitates comparison, in particular of labour law of largely

[66] See also A. Le Quinio, *Le recours aux précédents étrangers par le juge constitutionnel français*, *Revue internationale de droit comparé*, 2014, vol 2, pp. 581-604.

[67] J. Schregle, *op. cit.*; B. Essenbert: *The interaction of industrial relations and the political process in selected developing countries of Africa and Asia. A comparative analysis* International Institute for Labour Studies, Geneva, 1985, pp. 5 and ff..; S. Simitis, Denationalizing labour law: The case of age discrimination, *Comparative Labor Law Journal*, spring 1994, vol. 15 (3), pp. 323-326.

different inspirations (e.g. French law and English law). In the development of national laws, we cannot overlook the weight of the ILO's internationally accepted standards[68]. In one century, the ILO has built a body of conventions and recommendations covering most aspects of labour law and social security.

The comparison may lead to identifying groups of rules that could be integrated, more or less well, in the country concerned. The choice of models is obviously not unrelated to the economic success of the countries concerned. Investments and commercial goods also appear as significant factors. In East and Southeast Asia, it is known that the United States, the United Kingdom, and Germany have played this role; Japan today exerts a stronger grip on the countries of this region as cultural solidarity is simultaneously affirmed[69].

Colonial powers have also partially transferred their legal regime to their non-metropolitan territories. The Trade Union law and the Labour Conflicts Act, introduced in 1926 and 1929 respectively in the East Indies, were based on both legal techniques and the conception of industrial relations in the then metropolitan area. Likewise, the influence of France and the United Kingdom on the labour legislation of the African countries, which were their non-metropolitan territories, remains significant[70]. In French-speaking ex-colonies, the French overseas code is still the basis of labour law, despite changes that have sometimes taken place in the wake of structural adjustments.

A transfer of legal rules raises two questions: a) to what extent can one country's law easily be imported into another[71]; and b) to what extent does

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[68] See interesting examples in M. Brassey: ... *Something new, something borrowed ...: Comparative labour law in South Africa*, in R. Blanpain and M. Weiss (eds.), *The Changing Face of Labour Law and Industrial Relations, Liber Amicorum Clyde W. Summers*, Nomos Verlagsgesselschaft, Baden-Baden, 1993, pp. 139-140; S. Deery and R. Mitchell (eds.): *Labour Law and Industrial Relations in Asia. Eight Country Studies*, Longman Cheshire, Melbourne, 1993, p. 9; J. Thirkell; R. Scase; and S. Vickerstaff (eds.): *Labour Relations and Political Change in Eastern Europe. A Comparative Perspective*, University College London, 1995, pp. 4, 35 and 177 in particular.

[69] The *Monthly Journal of the Japan Institute of Labour* devoted a special issue to *The influence of foreign law on union rights policies in Asian countries*, Sept. 1993, vol. 35 (9) .

[70] The fact remains, of course, that these countries did not simply reproduce their law there, but adapted it according to their policies of colonial power: see for example K. Panford, *The evolution of workers' rights in Africa: The British colonial experience*, *Boston University International Law Journal*, spring 1996, vol. 14 (1), pp. 55-79.

[71] See the classical O. Kahn-Freund, On uses and misuses of comparative law, *The Modern Law Review*, Jan. 1974, vol. 37 (1), pp. 1-27;see also L. M. McDonough, *The transferability of labor law: Can an American transplant take root in British soil*?, *Comparative Labor Law Journal*,

the latter have to adapt its formulation and implementation before being applied in the law and practice of the receiving country[72]? A quite critical issue relates to the legal dimension of the 'policy transfers', in particular through the influence of lenders like the World Bank[73]. For instance, the Organization for the Harmonization of Business Law in Africa (OHADA) is a project for the harmonization of African labour law, which gave rise to controversy.

Incorporating is rarely done in a pure, direct, and complete manner. Most often, foreign provisions, by being inserted, adapt to the national context and its political, economic, social, and cultural components. The imported rule also acquires a sort of life of its own and the rules implemented evolve differently in their interpretation and application. Examples abound in labour law, in countries as different as Spain, Japan, or Turkey.

2. Implementation Practices

Effective comparative analysis of legal provisions cannot consider texts alone. It must take into consideration the manner in which they are put into practice. It must take into account the cultural and economic specificities referred to before. A clear distinction must nevertheless be made between legal and purely socio-economic arguments. The latter must not be allowed to serve as a pretext for defending the indefensible and affirming that two laws provide the same solutions when differences are legally self-evident. The example below illustrates this well. It is taken from the implementation of fundamental rights at work in the former socialist regimes with planned economies in Eastern and Central Europe[74].

Certain civil liberties are essential if trade unions and employers' organizations are to normally exercise their activities: in addition to freedom of association, these are guaranteed personal safety, freedom of assembly, freedom of opinion and expression, protection from arbitrary

summer 1992, vol. 13 (4), pp. 504-530; Cl. Thompson, *Borrowing and bending: The development of South Africa's unfair labour practice jurisprudence*, in R. Blanpain and M. Weiss (eds.), *op. cit.*, pp. 109-132.

[72] With regard to Japanese law, see: K. Sugeno, op. cit. pp. 5-10; W. Gould, *op. cit.*

[73] M. Hadjiisky, L. A. Pal, Ch. Walker (eds.), *Public Policy Transfer. Micro-Dynamics and Macro-Effects*. Edward Elgar, Cheltenham, 2017; D. Stone, *Transfer and translation of policy*, *Policy Studies*, 2012, vol. 33(6), pp. 483-499. See also C. Park, M. Wilding, Ch. Chung, *The importance of feedback: Policy transfer, translation and the role of communication*, *Policy Studies*, January 2014, vol. 35(4).

[74] J.M. Servais, *International Labour Law*, 6th ed., Kluwer, The Hague, 2020, §§ 152-163.

interference in the private sphere, etc. As a rule, the constitutions of the countries in question recognized a fair number of these freedoms, and their legislation provided for their comprehensive protection in specific texts such as the civil or penal code. Those same regulations nevertheless set conditions for the implementation of those freedoms, for fear that they would be used to thwart the established political, economic, and social system. Restrictions allowed authorities to refuse, for example, the creation of organizations the purpose of which did not correspond to the objectives of building a socialist society.

Who could decide if an activity was or not in line with the interests and promotion of a socialist system? The answer to that question led to queries about the extent of the powers of the Interior Ministry in the absence of jurisdictions in charge of checking the lawfulness and operations of administrations. It also raised questions about the independence of the judiciary, especially since the legal formulas set forth, for example, in the penal code, were general and therefore liable to differing interpretations. In short, what were the limits, if any, to the administration's discretionary power? That power risked being exercised in a particularly discretionary fashion when the administration feared that the existing social order would be disrupted. The executive authorities in the countries concerned played an essential role in the interpretation and application of the legal texts on these basic freedoms, and this inevitably led to paralysis and frequent abuse of authority.

Ultimately, in the countries of Eastern and Central Europe, the law was considered a means to a certain end, namely the consolidation and development of a socialist society. Legal texts were construed using a teleological method. Indeed, legal scholars in those countries stressed that the recognized rights did not have an abstract content and that they were to be fulfilled in a real society, that they depended on the economic and social system.[75] This obviously did not shield the interpreter from subjectivism.

The question resulted in a long controversy about the observation by the USSR and other communist countries of the ILO conventions on the fundamental rights of workers (freedom to form employers' and workers' associations, absence of forced labour, equality of opportunity and treatment in employment).

[75] *See also* S.A. Ivanov, *Sur les études comparatives en droit du travail*, *Revue internationale de droit comparé*, April–June 1985, No. 2, especially p. 383 *et seq*.

The governments of those countries long held the view that the existing economic and social conditions or systems were a factor in the evaluation of the conventions dealing with those rights. They expressed reservations about the opinions of the Committee of Experts on the Application of Conventions and Recommendations (CEACR) on the implementation in their countries of those instruments and reiterated that the real conditions had to be taken into account when examining their application. They argued that it was impossible to obtain a clear picture of the organization, functions, and rights of trade unions without taking into consideration the economic, political, social, and legal structure of the socialist State. In short, they believed that the international labour conventions, which were universal by nature, slotted into differing social realities that could all be in conformity with ILO standards. The methods by which those instruments were made effective in capitalist countries, and the results of their implementation, were not the only ones that were in conformity with the conventions. Opposing views, which they denounced, were in their eyes incompatible with the fundamental principles of international law, which were based on peaceful co-existence.

The majority of the members of the ILO's supervisory bodies rejected those arguments. The CEACR, in particular, conceded that differing social realities prevailing in different social and political systems could be in harmony with a given ILO convention and, conversely, that discrepancies between national law or practice and a ratified instrument could clearly arise in countries belonging to one or the other system. It nevertheless emphasized the following point: in assessing national legislation and practice in respect of ILO conventions, its role is to ascertain whether the provisions of a given convention are being applied, no matter what the economic and social conditions were in the country concerned. The requirements of that instrument are constant and uniform for all States, subject only to any derogations that the convention itself explicitly authorized. In performing its task, the Committee is guided solely by the standards contained in the conventions, although it never loses sight of the fact that the arrangements for their implementation may differ from one State to another. These are international standards, and the way in which their application is evaluated must be uniform and not affected by concepts derived from a specific social or economic system.[76]

[76] *See in particular* International Labour Conference, 73rd session (Geneva, 1987): *Report of the Committee of Expert for the application of Conventions and Recommendations*, report III (Part 4A), ILO, Geneva, 1987, § 20; see also §§ 22–24, 50–52.

Regime changes in these countries have led new governments to accept the argument. The objection has, however, been more recently used by African and Asian developing countries. They have insisted that the implementation of the conventions must be evaluated flexibly and the socioeconomic context be taken into account.

The ILO's supervisory bodies and a majority of delegations in its governing bodies have refused to see things this way. They acknowledge the constraints of economic progress and the struggle to eliminate poverty, but they also maintain that the austerity policies inevitably adopted had to respect the principles of equity and not oblige the most deprived to bear the burden of development. They further consider that international labour standards are not just admirable but somewhat unrealistic moral concerns, especially in times of crisis. The standards have meaning, they have a real impact in promoting dynamic and harmonious economic growth. They are also precise legal rules that the States are obliged to respect when they have made the commitment to do so. Hard times are therefore no argument for relaxing their application: although ILO standards are drafted in sufficiently flexible terms to be adapted to different levels of development as well as to different legal, economic, or social systems. The same flexibility does not apply when it comes to ascertaining the degree to which a convention is applied in a given country.

In the final analysis, this is a principle of legal interpretation: nothing allows a distinction to be made if the standard to be applied does not make that distinction. Of course, the judge in a criminal case, for example, makes allowances for attenuating circumstances; he does this, however, on the basis of the legal texts authorizing him to do so. The same holds true for all branches of the law. In the case at hand, the majority opinion of the Committee of Experts seems to have won over most of ILO experts and delegates. The above observations call for additional comments. A national or international piece of legislation may expressly or indirectly authorize derogations to a common rule in the light of economic and social conditions. This is the case for the flexibility clauses and devices laid down in ILO conventions that allow above all developing States to implement the Convention progressively in connection with their economic development. Consideration of this factor is then a function of the analysed texts. In the best-case scenario, those texts stipulate clearly who can assess the circumstances, to what extent, and with what effect.

Comparing legal regulations, therefore, presupposes knowledge of the tools or techniques which make it possible to identify shared values

enshrined in law at a more abstract level, but to articulate them to their concrete realization through a process of interpretation and implementation, in each legal order, in other words, to associate unity and plurality. A focus on national peculiarities and their linguistic expression has limits: cultural identity encompasses an individual's belonging and bars him, by the risk of being seen as a traitor, from doubt, irony, and reason, anything that detaches him from the collective matrix[77]. The problem was the object of the preceding lines. The dialectic of the common and the particular direct the sense of comparative research and the success of its results.

[77] A. Finkelkraut, *La défaite de la pensée*, Gallimard (NRF), Paris, 1987, p. 165.

ADAPT International Network

ADAPT is a non-profit organisation founded in 2000 by Prof. Marco Biagi with the aim of promoting studies and research in the field of labour law and industrial relations from an international and comparative perspective. Our purpose is to encourage and implement a new approach to academic research, by establishing ongoing relationships with other universities and advanced studies institutes, and promoting academic and scientific exchange programmes with enterprises, institutions, foundations and associations. In collaboration with the Centre for International and Comparative Studies on Law, Economics, Environment and Work, (DEAL) the Marco Biagi Department of Economics, University of Modena and Reggio Emilia, ADAPT set up the International School of Higher Education in Labour and Industrial Relations, a centre of excellence which is accredited at an international level for research, study and postgraduate programmes in the area of industrial and labour relations. Further information at *www.adapt.it*.

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