

A Global Labour Constitution?

An Abstract, Ruth Dukes

The paper seeks to develop Hugo Sinzheimer's notion of a labour constitution as a framework for the analysis of labour law today. It begins from the recognition that any approach to the study of labour law which focused exclusively on the nation state as the source or site of such law would be inadequate. Under conditions of advanced globalization, fields of enquiry must be re-orientated to take account of new sites of decision-making and new centres of power and influence with the capacity to impact significantly on labour laws and labour market institutions: supranational regulatory bodies, trade organizations, transnational corporations, financial institutions. Through the lens of the labour constitution, with its emphasis of the critical nature of the link between democracy and labour law, these various spaces, bounded territorially or organisationally, may each be regarded as (potential) sites of constitutionalisation, the term understood here to imply a search for more legitimate and more democratic forms of governance. But the posited existence of a plurality of labour constitutions – state, non-state, supranational, subnational – raises a host of difficult questions: questions regarding the implications of the uneven development of labour constitutions in different countries, regions, corporations: questions of inequalities between workers, of conflicts of interest between insiders and outsiders, of labour rights which benefit the few to the cost of the many, and of threats of competitive deregulation. Could a global labour constitution in the form of a global conflicts law provide a means of resolving disputes?¹ Could it serve at the same time to prevent capital from exploiting differences in the terms and conditions of workers in different locations and organisations, setting in motion a deregulatory dynamic? Does the very notion of a global conflicts law then raise further questions of its own? Who would decide the terms of such a law – who would decide how decisions were to be made, and by whom, and who would be responsible for their

1 Joerges and Rödl; Teubner.

enforcement?² Absent a global state capable of coordinating a plurality of nation state, regional and societal constitutions, how could the powerful be held to account by the weak?³ Is it possible, after all, to find an alternative to the old logic and the old conclusion: that a global economy demands nothing less than a unitary global labour constitution?⁴

2 'In all these questions that could lead to controversies and conflict, what is at stake is the enforcement of the decision concerning the premises of decisions'. N Luhmann, *Die Politik der Gesellschaft* (Frankfurt 2002/2000). 85

3 H Lindahl, 'Societal Constitutionalism as Political Constitutionalism: Reconsidering the Relation between Politics and Global Legal Orders' (2011) 20 *Social and Legal Studies* 230-52

4 H Sinzheimer, 'Europa und die Idee der wirtschaftlichen Demokratie' (1925) reproduced in H. Sinzheimer, *Arbeitsrecht und Rechtssoziologie: gesammelte Aufsätze und Reden* (Frankfurt, Cologne 1976). 221-5, 225