

# A Global Labour Constitution?

## An Abstract

The term 'labour constitution' is familiar first and foremost from the work of Hugo Sinzheimer (1875-1945). In Sinzheimer's work, the labour constitution figured as the body of law that allowed for the collective regulation of the economy by the 'economic organisations' – trade unions and employers' associations. It was, in his terms, the body of law which called labour into a community with 'property' (ie capital); which created a community of labour and property that existed for the furtherance of the common good; and which guaranteed the right of labour to participate, on a parity basis, in the administration of the means of production. Through its participation in the regulation of the economy, labour was freed from its subordination to capital; workers were freed from employer efforts to dictate the social and economic conditions of their existence and, at the same time, became free to participate in the formation of those conditions.

Building on Sinzheimer's work, I investigate in this paper the possibility of a global labour constitution. Given the importance ascribed to the role of 'the state' by Sinzheimer, one of the key questions that arises is: who or what might do the work, in the state-less global space, of 'constitutionalising'? If constitutionalisation can be understood with Gunther Teubner as a spontaneous, state-less, process, what could it mean, in the context of work, other than a reinforcement of already existing market relations and market powers?<sup>1</sup> Could the ILO form the core of a market-correcting international labour law? Could international labour standards serve as a globally respected set of rules, 'entrenched' increasingly through recognition by a constellation of human rights adjudicators, trade unions, NGOs, consumer groups, TNCs?<sup>2</sup> Or are the barriers to such a global labour constitution insurmountable: the diversification of working relations and fragmentation of the working classes; the asymmetry between

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<sup>1</sup> eg G Teubner, 'Societal Constitutionalism: Alternatives to State-Centred Constitutional Theory' in C Joerges, I-J Sand and G Teubner (eds) *Transnational Governance and Constitutionalism* (Hart 2004)

<sup>2</sup> B Hepple, *Labour Laws and Global Trade* (Hart 2005)

*global* capital, on the one hand, and weakened trade unions and other democratic, representative institutions still tied to the national level, on the other; the discord between a labour constitution aimed at democratising the economy and the ‘new [neo-liberal] constitution’ of global capital?<sup>3</sup> If the prospects for a global labour constitution akin to the national labour constitutions of the twentieth century appear bleak, the idea of the labour constitution continues nonetheless, I argue, to provide a useful basis for the critical analysis of labour law.

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<sup>3</sup> On this last point, see E Tucker, ‘Labour’s Many Constitutions’ forthcoming in *Comparative Labor Law and Policy Journal* (April 2012) and the work that he references at note 7.