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Advancing Theory in a Global Context: The Why's of the Colloquium

Introduction

All industrial societies are reported to witness fundamental transformations. However, despite enormous efforts to describe and analyze these processes in detail, a paradoxical situation has arisen in which although we know increasingly more about social and economic transformations, we seem to understand less about what is actually happening (cp. Rogowksi and Wilthagen, 1994: 1).

It can be argued that, to a large extent, this paradox is a problem for theory. There appears to be mounting evidence that current theories in the aforementioned fields are having difficulty to perform the very distinct and vital task of grasping the meaning and impact of changes in the world of work, organization and law, and to offer a conceptual basis and guideline for both new research and new policies.

Without doubt, the problem is rather acute, due to both external and internal factors. First, existing systems of labour law and industrial relations are increasingly challenged by politicians and by organizations such as GATT, OESO, IMF, employers' organizations and multinational companies. Business has responded to the observed 'globalization of the economy' and the alleged trend towards individualization by a cry for flexibilization, deregulation, privatization, decollectivization and decentralization. As a consequence, political debates and reforms are dominated by neo-liberal economic approaches. In research as well, the neo-liberalist economic paradigm is dominant, whereas labour law and industrial relations theory seem to be on the defensive. Second, this defensive position of labour law and industrial relations theory not only appears to be related to the ongoing fundamental transformations, which indeed are difficult to grasp, but it can also be questioned whether labour law and industrial relations theory have succeeded in taking into account and integrating recent shifts in paradigms such as interpretive sociology, second order system theory, structuralism, structuration theory, game and network theory, law and economics, gender theory, legal pluralism, international law and civil and basic rights theory, to mention but a few examples. Evidently, the vitality of field-specific theory depends on its ability to respond to advances in general scientific theory.

Objectives of the Colloquium

Thanks to the Royal Netherlands Academy of the Arts and Sciences, we were able to bring together outstanding foreign and national experts in the field to report and reflect

on the topic of *Advancing Theory in Labour Law and Industrial Relations in a Global Context*. The general objectives of this Colloquium were formulated as follows:

(a) To 'bring into the limelight' a number of original and promising approaches in labour law and industrial relations theory;
(b) To encourage discussion and debate between researchers from various theoretical backgrounds;
(c) To reflect on theoretical and conceptual innovations and on global-oriented research designs in the field of labour law and industrial relations, which can be expected to stimulate and structure future research.

The speakers at the Colloquium were asked to touch upon the following questions:

(a) From your theoretical perspective(s) how do you perceive the importance of globalization and individualization processes? Do you think that current theory in the field is in need of revision?
(b) Which particular (sub) themes or topics do you feel theory and research should focus on in the next years?
(c) In most countries, strong pressure is put on legal protection standards in labour law and industrial relations to enhance labour market flexibility. Is it, in your judgment (theoretically, practically), desirable and feasible to develop alternative/additional strategies or instruments, be it on the supra-national, national, sectoral or company level, to uphold certain levels of protection for (certain types of) workers and their representatives?

Why in the Netherlands?

Why are we here in this 336-year-old building of the Royal Netherlands Academy of Arts and Sciences, right in the centre of Amsterdam, the Netherlands? Why are we discussing theory at this very location?

An acceptable way to characterize the Netherlands, and Amsterdam in particular, is as a transit port. As all of you know that the Dutch have been living from foreign trade for ages. The Trip brothers who built this house (as a double house for two families) dealt in arms and ammunition, but nevertheless they were considered peacemakers. It has been argued that the characterization of a transit port also applies to the way the Dutch deal with theory and philosophy. We are said to import ideas – from overseas and from our Eastern neighbours – every now and then, just reshipping them, without adding much.[1] It may be true that this has led to a form of theoretical anaemia in fields such as labour law and industrial relations. However, this judgement disregards the important work on theory that a fair number of Dutch researchers are involved in.[2]

[1] The famous Dutch historian Johan Huizinga portrays the Netherlands as a type of clearing house and as an intellectual mediator due to its geo-political situation and its universities (Huizinga, 1968). In this context, it should be added that at times of growing intolerance many important thinkers, such as Hugo Sinzheimer, sought refuge in Amsterdam. This, without doubt, has influenced the Dutch intellectual climate.
[2] A recent overview is Leisink, 1996.

Anyway, we have a point here regarding our 'why-theory & why-here' question. This Colloquium offers Dutch researchers a marvellous opportunity to engage in discussions with foreign experts from various theoretical backgrounds. We are indeed very honoured and pleased by the positive and enthusiastic responses we received from the key speakers invited to attend. We are proud to have you all here.

Labour law and industrial relations theory

Another question you may have asked yourselves concerns the combination of labour law and industrial relations in this Colloquium. Obviously, there is a close connection between labour law and industrial relations, as much labour law aims at regulating or facilitating industrial and employment relations. Nevertheless, we cannot deny that labour law and industrial relations are, to a large extent, separate fields of study with their own research communities, research associations and journals. When asked, industrial relations researchers will acknowledge the importance of the legal system, while at the same time shying away from the so-called technicalities of law. The complexity of dismissal law is a well-known example.

On the other hand, labour lawyers do not feel very confident and comfortable dealing with the sociological and economical approaches that are common in industrial relations research. Not infrequently, they are put off by matters of methodology, statistics and social science theory. However, it is our belief that, while maintaining mutual respect, it is necessary to break down the barriers between the two fields if we are to understand adequately what is going on in the world of labour and organization (cf. Gahan and Mitchell, 1995). I am happy to refer to the work of the name giver of my institute, Hugo Sinzheimer, who put considerable effort into an interdisciplinary approach.[3]

Why worry about theory now?

As argued already, the importance of theory is beyond doubt. Theory can be defined as a second order construction of the way our world is (being) constructed, it enables us to make sense of our observations in a systematic manner. There is, as the famous saying goes, nothing as practical as a good theory. Without theory we still can do research but we are, in fact, acting in the dark. As Roy Adams (1988: 6-7), who is also present here today, aptly puts it: 'Without theory there is art, perhaps, but not science.'

So what is the problem then? Don't we have enough theory in labour law and industrial relations, or are our theories inadequate or outdated? The answer to this question is far from easy. Besides, I am afraid that, reluctantly, I have to distinguish between labour law and industrial relations research. In discussions with social scien-

[3] An English introduction to the life and work of Sinzheimer is Kahn-Freund, 1981. Kettler and Tackney, 1998, give an original and exciting account of Sinzheimer's impact on the Japanese life-time employment system.

tists, labour lawyers often conclude that they have 'no theory'. They picture their discipline as a normative and deductive undertaking. Law is more like a craft, many lawyers will contend, aimed at decision making or at reflecting on legal decision making and interpretation, rather than aimed at providing empirical data, explanations or predictions. Of course, labour lawyers will point to legal theory and doctrine. When pushed a little further, there is a chance they will start talking about the 'morality of law' (Fuller), about constitutionalism, perhaps about the rule of law and certainly about the underlying principles of labour law. There seems to be a large degree of agreement on the basic principle of labour law, i.e. offering compensation for workers' (economic) inequality and their subordinated and dependent position in relation to their employers. Traditionally, the mechanisms and methods of compensation are of a collective nature: state law, collective agreements, union action, etc. As I will make clear later, these collective mechanisms are now under attack or viewed by many commentators as outdated (see Wedderburn et al., 1994). This can be said to have resulted in some sort of crisis in labour law, as the alternatives are far from clear.

Are things different in the field of industrial relations? Despite the involvement of social scientists in industrial relations research it has been remarked time and again that 'there is no such thing as IR theory' (Adams, 1993: 2). The study of industrial relations has been portrayed as pragmatic, directed at problem-solving, descriptive, pre-occupied with national systems and particularities, and as having a narrow scope which ignores the broader issues in society (Bamber and Lansbury, 1994; Hyman, 1995a). Certainly, this over-simplified picture ignores the painstaking theoretical work that has been done by industrial relations researchers. Nevertheless, from the 1980s on, a sense of urgency seems to have emerged. In that decade, profound changes were noted that affected western industrial relations systems. Union membership declined, strikes became rare, deregulation became a popular credo, management reasserted its 'right to manage', collective bargaining focused on lower levels and flexibility, productivity and competitiveness were launched as the new commandments. The question was raised by Roy Adams in 1988 whether we were supposed to start desperately seeking industrial relations theory. Reassuringly, Adams drew attention to bodies of theory regarding issues such as industrial relations systems, trade unions, collective and individual bargaining, industrial conflict, etc. In Adams' (1988) view, theory with respect to these issues should be considered industrial relations theory and any debate on the progress of the field should focus on that theory.

I am afraid I might disturb your peace of mind again, when taking a look at the 1990s. The developments observed by Adams continued but their political, economic and social impact was further enhanced and amplified by the phenomenon of globalization. The alleged tendency of globalization lends a compelling character to the pursuit of flexibilization, deregulation, productivity and competitiveness. At least one of the truths about globalization is that it is used as an argument to cast doubt on the latitude of national and local regulatory systems and policies, by referring to the 'fact accompli' that the 'real decisions' are taken elsewhere.[4] William I. Thomas' theorem

[4] Admittedly, this is actually very true to a certain extent, e.g. by 'McWorld' as Benjamin Barber has labelled international business.

still holds: if a situation is defined as 'real', it is real in its consequences – especially if these definitions are provided by powerful actors. As a result, disinterest, scepticism and apathy may grow.

Critical analysis and new directions

We as researchers, of course, should not take globalization for granted. Critical scholars have analyzed globalization as a particular kind of ideology, rather than as an empirical and factual tendency (Ruigrok and Van Tulder, 1995; Klare, 1994, Hirst and Thomas, 1996, Krugman, 1996). It has, for example, been noted that despite all the fuss in the glossy business magazines, the truly global or full-blown transnational corporation is still a myth. At this Colloquium Dr. *Du Gay*, starting from structuralism, treats globalization as a discursive rather than as a ideological construct. He derives an original illustration from the case of organizational reform. The 'enterprise form' is diffused widely; it has invaded domains where social logics previously reigned. Human beings are now being conceived as 'entrepreneurs of the self'.

A similar concern is shared by Professor *Crouch*, who explains why globalization has important implications for industrial citizenship, be it in an indirect rather than in a direct manner. Crouch observes a negative chain of events: demand instability leads to increased labour insecurity, which in turn leads to consumer uncertainty, reduced demand and even more labour insecurity. Industrial citizenship could be crucial in breaking this chain, but is itself under strain as well.

It is important to note that the globalization thesis has a strong scientific and political basis in neo-liberalism. In the words of Winfried Ruigrok, who is also present here, referring to Overbeek: 'neo-liberalism has succeeded in acquiring the status of a *comprehensive concept of control* (...) that captures "a coherent set of strategies in the area of labour relations, socio-economic policies and foreign policies".'[5] What is needed, evidently, is a sound account of tendencies in our economic (i.e. capitalist) system. It is not out of the question that we are facing a cyclic development (Wallerstein, 1995). At the Colloquium, Professor *Boyer* discusses the major findings with respect to the transformation of the 'wage-labour nexus' viewed from the very distinct perspective of 'régulation theory'. He outlines six alternative methods to re-institutionalize workers' protection. However, none of these are considered easy solutions.

I feel that the dominance of neo-liberal economism represents an external challenge or threat to existing systems of labour law and industrial relations and, as a consequence, to theory in these fields. As Professor *Adams* elaborates, neo-liberalism seems to be at odds with the elements valued so much in labour law and industrial relations: the importance of collective mechanisms of inequality compensation and workers' protection, and the indispensability of labour standards – largely guaranteed and enforced by the state – and social institutions.[6] Quite similarly, Kochan (1993)

[5] Ruigrok and Van Tulder, 1995, *o.c.*; see also Stubbs and Underhill, 1994; Engelen, 1995.

[6] See also Sengenberger, 1994; Lord Wedderburn argues that the individual now needs 'the collective shield as never before'. Wedderburn, in: Wedderburn et al., 1994, *o.c.*, p. 46; Gerard Lyon-Caen states

has argued that industrial relations scholars are equally concerned with goals of equity and efficiency in employment relations, and that this normative assumption – the 'mixed motive nature of employment relationships' – distinguishes the work of industrial relations researchers from neo-classical models in which competitive markets are believed to cut out conflicting interests by bringing about optimal labour market outcomes.

Reality or myth, the globalization of markets, finances, competition and technology, often bracketed together with the tendency towards individualization, somehow seems to represent a test to current theories and paradigms in labour law and industrial relations.[7] Nevertheless, as Javillier (1994) has stated, current 'misgivings can be turned to good account. Doubt and criticism especially in respect of industrial relations and international and national labour legislation, are indispensable to anyone wishing to advance further.'[8] Though there might still be no need to start desperately looking for theory in labour law and industrial relations, we as organizers belief there is every reason to worry about theory now. After all, this external challenge to theory links up with an internal challenge in our particular fields.

As I said, in industrial relations theory there is an ongoing concern about the identity of the discipline. Is, again in Adams' (1988) terms, industrial relations theory merely the sum total of relevant theory in all of the fields which address employment relations issues? Is industrial relations research such a multidisciplinary affair that it lacks any distinct scientific identity?[9] Although we cannot deny we have a problem here, it is not as if labour law and industrial relations scholars have thrown in the towel. In labour law, it has been realized that for several reasons expectations for national law should not be pitched too high for the moment. Therefore, scholars have started to explore the possibilities of transnational or supranational regulation to counteract or even counterattack processes of globalization.[10]

Professor *Stone* takes this position, scrutinizing four approaches: pre-emptive legislation, harmonization, cross-border monitoring and extraterritorial jurisdiction. She concludes that we must develop a new model of transnational labour regulation that draws on the strengths of each of the existing models. Quite recently, a group of labour lawyers has adopted a social rights point of view. Professor *Sciarra* deals with the prospects of this strategy at a theoretical level; a strategy that is considered

that labour law does evolve, it resists the economic ups and downs, because it is largely timeless ('The Evolution of Labour Law', in: Wedderburn, et al., *o.c.*, p. 93).

[7] In Kuhn's (1970: 66 ff) terms: Are we still engaged in 'normal science' with its puzzle-solving character, or are we experiencing a crisis, 'a period of pronounced professional insecurity', preceding the emergence of new theories? If the latter is the case, we can not trust blindly the views of our colleagues and ourselves: 'Though they may begin to lose faith and then to consider alternatives, they do not renounce the paradigm that has led them into crisis. They do not, that is, treat anomalies as counterinstances (...)'. Moreover, Kuhn states about the behaviour of science in times of crisis: 'They will devise numerous articulations and *ad hoc* modifications of their theory in order to eliminate any apparent conflict.' On paradigms and schools in industrial relations see Adams, 1983.

[8] I doubt, however, that pragmatism rather than theory is going to show us the way.

[9] See Adams, 1988, *o.c.* For an overview disciplines and approaches relevant to industrial relations research see Kochan and Katz, 1988: 2-3.

[10] Cp. the idea of a 'World Social Contract' as envisaged by Petrella.

inevitable by a commentator to make a Europe of citizens out of a Europe of merchants.[11] Sciarra concludes that in a changed setting, with a renewed active role for unions, industrial conflict must remain a counterbalancing value, strong enough to impose equity as an outcome of social pacts. Within this framework labour law is reborn.

Dr. *Campbell* of the International Labour Organization tries to rehabilitate a positive economic rationale for labour standards. He criticizes orthodox theory for focusing on short-term adjustment and for its individualistic bias. His conclusion is that labour standards and good economic performance are complements rather than substitutes.

Like their colleagues in labour law, a number of industrial relation researchers have embarked on a similar quest concerning *European* industrial relations. Professor *Hyman* observes several notorious obstacles to the creation of a global industrial relations system involving global processes of social regulation. Hyman sketches three options for students of industrial relations:

(a) the role of a neutral observer, as the object of study is submerged under the waves of globalization;
(b) the HRM route, i.e. to seek a niche as servants of power; and
(c) the one preferred by Hyman – to offer their skills in a partnership with social actors that struggle to uphold a civilized regulatory regime in the labour market.

Clearly, both in labour law and in the study of industrial relations, scholars now strongly cling to international comparative research, hoping to find clues to sketch and promote supranational models, discover ways to improve national systems[12] or to stimulate the development of theory. As Dr. *Van Peijpe* argues, comparing Dutch and Nordic labour law systems, comparative analysis can indeed serve a number of purposes and it can be, under certain conditions, useful. One of these conditions is, in the case of legal scholars, that sociological insights are not ignored. In the area of industrial relations, comparative studies have led to the very interesting convergence/divergence debate[13]; but still the problems of comparative research are manifold (Keenoy, 1995: 157-158).

Interestingly, in reaction to the processes of globalization and the withering character of national or central regulatory systems, other groups of researchers have descended to the micro or firm level. In labour law, there is a renewed interest in exploring so-called company-made labour law, e.g. agreements between the employer and the works council. Some researchers emphasize the limited role of state regulation and turn to informal or 'soft' law. Professor *Arthurs* observes three

[11] See Simitis, 1994a. See also the well-know plea from Ulrich Mückenberger and Simon Deakin (1989) for a 'European floor of rights'.
[12] See Simitis, 1994b. Simitis strongly objects to the view that labour law can be reviewed and restructured only with the context of the national tradition. Indeed, he uses American law to criticize German law in the case of age discrimination.
[13] See Poole, 1993; Crouch, 1994; Bamber and Lansbury, 1994, *o.c.*, 11 ff.,; Mueller, 1994.

kinds of crises: a crisis of the new economy, a crisis of industrial relations and practice, and a crisis of legal theory. These crises converge on the diminishing role of the state in constructing and regulating the labour market. Arthurs develops a critical legal pluralism position that stresses the importance of informal standards, institutions and processes, notably at the workplace.

Dr. *Rogowski* introduces the concept of reflexive labour law, i.e. law that accompanies autopoietic industrial relations by recognizing the autopoietic nature of industrial relations within the legal system. In his view, legal intervention is dependent on self-regulation within the regulated systems. In the emerging 'world society', autopoietic industrial relations and reflexive labour law of advanced national economies become mediating forces which protect their achievements through endorsement of their global role.

Social scientist have, indeed, to a significant extent gathered under the flag of human resource management, that also highlights the firm level. The HRM movement has encountered severe criticism, because in the eyes of a fair number of scholars, it is considered a split off from industrial relations theory and research, that incorrectly ignores the collective and partly conflictuous nature of employment relations, thus undermining industrial relations as a paradigm.[14] Other commentators deem this critique and these fears exaggerated. They subscribe to the analysis that the transformation from Fordism to post-Fordism has a profound influence on industrial relations systems, and that we cope and play along with the altered circumstances (Van Ruysseveldt, 1995: 7-9).

Dr. *Huiskamp* points at the regeneration of collective bargaining in the Netherlands, whereby corporate flexibility and workers' individual choice are combined. Reflecting on industrial relations theory, he proposes the employment relationship as a central concept. Dr. *Tijdens* approaches labour market flexibility from gender theory. She comments on three models (the work force model, the median voter model and the representation model) that explain gender biases in collective bargaining with respect to working time. Professor *Collins* discusses new opportunities for workers' empowerment in the light of the pursuit of flexibility. Altered relations of production are undermining the conditions necessary for effective collective bargaining. He suggests that works councils, also at a transnational level, contain the potential for an adaptive arrangement for worker representation. Professor *Sadowski* as well concentrates on the firm level, evaluating different regulatory strategies and their effects on corporate decision making and competitiveness. He derives his point of view from the new institutional business economics, a perspective which he deems more adequate than macrosociological, macroeconomical and 'economics of labour law' approaches. His analyses focus on the often-neglected private net benefits of regulation.

In conclusion, the only appropriate slogan for labour law and industrial relations scholars these days might be put as follows: Let's get to work!

[14] See e.g. Adams, 1993, *o.c.*, 1993: 9; Beamount, 1995: 38 ff;; Richard Hyman's (1995b) 'Editorial' to the first volume of the *European Journal of Industrial Relations*); Adams, 1995: 56-58; Keenoy, 1995, *o.c.*, 159 ff.; Legge, 1995. Storey and Sisson (1993: 3-4), however, observe a new agenda concerning the handling of *both* collective and individual issues (in unison).

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