

## **Autopoietic Industrial Relations and Reflexive Labour Law in the World Society**

### **Abstract**

The article suggests to improve the theory of industrial relations and labour law by using advanced sociological systems theory. It starts by criticising Dunlop's approach to industrial relations systems from the perspective of Niklas Luhmann's theory of social systems. It then outlines the major elements and structures of an autopoietic industrial relations system and introduces the concept of reflexive labour law. In its final part the article engages in a discussion of industrial relations in a world society which transcends national boundaries. Theories of globalisation and of world systems are compared and used for an assessment of the future of industrial relations and labour law in the emergent world society.

### **Introduction**

'... philosophy ... (a)s the *thought* of the world ... appears only at a time when actuality has gone through its formative process and attained its completed state. ... the owl of Minerva begins its flight only with the onset of the dusk.'<sup>1</sup> Hegel's famous verdict of the lateness of philosophy appeared in the preface to his 'social theory', i.e. the *Philosophy of Right*. Indeed, if we look at today's state of theorising in industrial relations and labour law, one is reminded of Hegel's resigned account. Advances in theory blossom in times when the object of analyses has reached its peak. The decline of industrial relations is fertile ground for theory.

However, the hope always remains that a better theory might lead to an adequate understanding of the crisis of industrial relations and ultimately contribute to uphold its decline. Whether such hope is justified, is for history to decide. At least it seems worth to seize the moment to ask pertinent questions. Are we satisfied with our definitions of the field of industrial relations and labour law? Are the theories equipped to guide research which transcends the national context of industrial relations? Do the theories of industrial relations and labour law take adequate notice of developments in social theory in general? In the following I suggest that the theory of indus-

<sup>1</sup> Hegel, 1820/1991: 23.

trial relations and our understanding of labour law can be improved by using advanced sociological systems theory. Such theoretical innovation can address the above questions and, indeed, lead to a new understanding of industrial relations and labour law.

Modern social systems theory suggests to reformulate industrial relations as an autopoietic social system and to describe labour law as a type of reflexive law. Systems theory has a long-standing history in industrial relations research. In particular John Dunlop's 'Industrial Relations Systems', which was first published in 1958, reprinted several times since then and republished in 1993 with a new Preface,<sup>2</sup> has been a most influential text in this tradition.<sup>3</sup> In the following I shall use Dunlop's systems theory approach (in part 2), which was inspired by Talcott Parsons' theory of structural functionalism, as the background for the introduction of an alternative approach to the conceptualisation of industrial relations, which is based on Niklas Luhmann's work on social systems (in part 3). I shall then introduce the new approach to conceptualise labour law which accompanies the systems theoretical view of industrial relations. This approach is called reflexive labour law (in part 4). Finally theories of globalisation and of world social systems are compared and used for an assessment of the future of industrial relations and labour law in the emergent world society (in part 5).

### **A Critique of Dunlop's 'Industrial Relations Systems'**

John Dunlop's concept of industrial relations systems is derived from Talcott Parsons' theory of social systems. In Parsons' theory, society or the overarching social system consists of four subsystems which are specialised to fulfil certain functions for the system at large (the AGIL scheme: adaptation, goal attainment, integration and latency).<sup>4</sup> Parsons' theory of society includes a concept of modernisation which is based on a theory of functional differentiation of social systems. Primitive societies are characterised by a low degree of differentiation into social subsystems whereas modern societies are characterised by structural differentiation of the economic, the political, and finally the cultural system, respectively achieved by the Industrial Revolution, the Democratic Revolution, and the Educational Revolution.<sup>5</sup>

Dunlop's starting point is to call the industrial relations system 'an analytical subsystem of an industrial society on the same logical plane as an economic system'.<sup>6</sup> This, however, deviates from the Parsonian theory in which the economic system is one 'functional' subsystem of the overarching social system. For Parsons, the industrial relations system can only be a subsystem of a subsystem. Thus, the industrial relations system cannot be on the 'same logical plane' as the economic system.

<sup>2</sup> Dunlop, 1958/1993.

<sup>3</sup> See Meltz, 1991: 10-20. For a critical discussion see Hyman, 1989, ch. 5.

<sup>4</sup> See Parsons, 1951.

<sup>5</sup> See Parsons (1971) on the three revolutions which distinguish early from late modernisation.

<sup>6</sup> Dunlop, 1958/1993: 5.

In line with Parsons' theory of social evolution Dunlop's theory of industrial relations focuses on differentiation and modernisation processes both in society and in industrial relations. Dunlop calls industrial societies 'modern' when relations of managers and workers are formally arranged outside the family, when these relations are distinct from political institutions, and when the industrial relations system has an existence separate from the economic system.

Dunlop's concept of an industrial relations system is centred around four 'elements': ideologies, contexts, actors, and rules. The separate existence or 'autonomy' of industrial relations systems is shaped by these four 'elements'. Dunlop defines the 'elements' in the following way: the three main *actors* are management, workers and government agencies; *contexts* consist of technology, market constraints, and the power distribution in society; and *ideologies* provide a common set of ideas for the allocation of roles to the actors.<sup>7</sup> The last, and most crucial 'element' in Dunlop's theory of autonomous industrial relations, is the concept of *rules* which govern the relations of industrial actors. This body of rules, which includes rules on procedures for the establishment and administration of substantive rules, constitutes 'the centre of attention in an industrial-relations system'.<sup>8</sup> In fact, the specific character of industrial relations systems derives from rule-making independent of decision-making in the economic system.

However Dunlop's approach in studying rules remains rather unsatisfactory. Decision-making processes are largely neglected. Dunlop makes no effort to study the actual processes which generate the stable 'grid of rules' at the various levels of national industrial relations systems. Furthermore, it is both astonishing and revealing that Dunlop's theory of industrial relations systematically neglects not only the contribution of collective bargaining and grievance procedures to rule-making but the analysis of collective bargaining as such. There is no separate analysis of the process and structure of collective bargaining and arbitration procedures in his analytical study of industrial relations systems.

Dunlop's approach is an input-output analysis which places high emphasis on contextual factors that influence the structure of the system. Dunlop shows in detail how the content or substance of rules reflects the various contexts of the industrial relations system. The question which is not addressed, however, is what constitutes the 'core' of an industrial relations system independent of external forces. In summary it can be stated that Dunlop's systems theory remains at a classificatory level. This is partly related to the lack of understanding of the theory of structural functionalism which he himself admitted.<sup>9</sup> Indeed, his systems-theoretical understanding has hardly exhausted the potential of Parsons' systems theory to conceptualise industrial relations systems.

Since the 1950s the general theory of social systems has evolved from a closed systems approach to an open systems approach and has more recently been developed into a theory of operationally closed but cognitively open systems. Dunlop

<sup>7</sup> A critical discussion of the ideological factor can be found in Shalev, 1981: 251.

<sup>8</sup> Dunlop, 1958/1993: 13.

<sup>9</sup> Dunlop thought his own application of systems theory 'may not be acceptable to Professor Parsons, and it may reflect a lack of understanding of his theoretical system'. Dunlop, 1958/1993: Fn. 30.

applied the open systems paradigm to the study of industrial relations. However, a discussion of the recent 'paradigm shift' in systems theory towards autopoiesis concepts can assist us to move beyond the Dunlopian theory of industrial relations.

### **Industrial Relations as an Autopoietic Social System**

The theory of operationally closed and cognitively open social systems has been developed by Niklas Luhmann.<sup>10</sup> In his theory, society consists of a number of function systems which are capable of reproducing themselves. This self-reproduction or autopoiesis is a result of self-referential communications which constitute the main elements of each social system.

Luhmann himself has not analysed industrial relations in any depth. However, in my view it is most productive to apply his theory of autopoietic function systems to industrial relations. Indeed I propose to view the industrial relations system as a fully-fledged autopoietic functional subsystem of society. This system is located on the same plane as the legal, the economic or the scientific systems and it is able to reproduce itself through collective communications.

I want to discuss this proposal in relation to four hypotheses which Luhmann has outlined in his analysis of the economic system which constitute a 'catalogue' for the empirical testing of the existence of a social subsystem.<sup>11</sup> The four hypotheses can be used to characterise the industrial relations system in the following way:

- Form and scope of differentiation have reached a level in modern society which provide the means for an autonomous industrial relations system to operate independently of other function systems.
- The industrial relations system operates with a specific combination of closure and openness with respect to its elementary operations.
- The industrial relations system operates under a binary code which represents the exclusive function of the system.
- The industrial relations system has achieved a relative prominence in society at large in its ability to arrange corporatist exchange relations with other function systems to enhance its autonomy.

#### *(a) Differentiation of an Industrial Relations System*

The function of a modern industrial relations system for the society at large is to protect and improve living and working conditions of employed persons through collective action. The forms of collective action range from industrial strife to collective bargaining and co-determination. However, from a sociological perspective industrial relations fulfil a further societal function which is the management of violence of collective industrial actors. Collective violence is instrumentalised in the industrial relations system as support for collective bargaining.

<sup>10</sup> Luhmann, 1984, :15-29. (English translation, 1995: 1-11).

<sup>11</sup> Luhmann, 1988: 51.



Most industrial relations systems have been conflict systems in the beginning of their development. In this phase the relations are dominated by an adversarial principle which inhibits the creation of stable structures. However, with increase in collective bargaining open conflict is gradually reduced and transformed into an instrument which becomes 'the sparingly used *ultima ratio* in the arsenal of the groups', to use Otto Kahn-Freund's words.<sup>12</sup> Industrial opponents become aware of their capacity to regulate vital economic affairs like wage determination and working conditions. A new understanding of industrial action emerges with collective bargaining. Industrial relations become responsive to societal dissatisfaction with collective violence and introduce through collective agreements mechanisms to channel conflicts.

Ideally typically we analytically distinguish three stages in the development of an industrial relations system: a conflictual, a co-operative and a participatory or co-determination stage. These stages are accompanied by different modes of regulation: first regulation of industrial action, then regulation of arbitration and other forms of third party intervention and finally recognition of self-regulation. In a certain sense this history of industrial relations is reflected and remembered in the conduct of modern collective bargaining in a reversed order: First negotiation, then arbitration, then industrial action.

At the second stage, when collective bargaining begins to dominate industrial relations, negotiations tend to replace open hostility. Collective bargaining takes over the tasks of wage determination, regulation of working conditions and enticing the collective actors in order to maintain industrial peace. Through focusing on collective bargaining industrial relations develop from a conflict system, located within the economic system, into a societal subsystem.

The autopoiesis of the industrial relations system is stabilised in the third phase by new structures of communications. In this phase the relationship of collective bargaining and collective actors reverses and the system is no longer dominated by collective actors and their particular concerns. The conditions of participation and co-decision dominate the system imperatives of self-referential communications and determine collective negotiations and the conduct of the representatives.. The collective actors become dependent on the system, and their integration into the system creates the main basis of their existence. The system becomes able to engage in exchange relations with other systems on the basis of mutual recognition of their respective societal functions.

#### *(b) Operational Closure and Cognitive Openness*

The main characteristic of a modern industrial relations system is its capacity for self-reproduction. Autopoietic systems theory distinguishes elements and structures of a system and emphasises internal self-reproductive processes at the level of elements. The elements of an autopoietic industrial relations system are communications between collective actors. At the operational level the relation of these elements is closed. However, at the structural level the system is open to environmental influences which shape its institutions.

<sup>12</sup> Kahn-Freund, 1978: 42-45.

Industrial relations research has traditionally discussed problems of operational closure and cognitive openness under the heading of the autonomy of industrial relations or of collective bargaining. However, the conventional analysis of the autonomy of industrial relations, and in particular of collective bargaining, is only concerned with the limits of external regulation and state intervention and the capacity of the industrial relations system to regulate itself. Thus, autonomy is discussed as an aspect of the structure of the industrial relations system.

The concept of autonomy receives a new meaning in autopoietic systems theory. Although a structural property, autonomy is related in a specific way to autopoiesis. Indeed autonomy of the system not only protects autopoiesis but enriches self-reference through cognitive openness towards external referencing. This can be demonstrated with respect to collective negotiations which are the main mechanisms of self-reference in the industrial relations system. Negotiations are based on and thus continue previous rounds of negotiations and they also provide the ground for future negotiations. In autonomous industrial relations in which self-reference is guaranteed collective bargaining can expand to include political topics, like the concern with unemployment or fiscal policies. Indeed, it becomes attractive for the political system as it provides an alternative means of policy formulation, implementation as well as decision-making, usually in the form of tripartite corporatism.

### *(c) The Code of the Industrial Relations System and its Operation*

A closer look at the core operations of the industrial relations system reveals the significance of the code. The autopoietic operation requires that the system can identify its elementary communications. Furthermore the system must be able to distinguish its communications from other societal communications. It achieves autonomy in this respect by applying a code which is specific to the industrial relations system.

The code must be binary, i.e. it must distinguish a positive and a negative value. Only the use of a binary code enables to decide which elements belong to the system and which to its environment. I propose to call the binary code of the industrial relations system *negotiable or non-negotiable between collective industrial actors*. Like other binary codes the code of the industrial relations system entails a paradox insofar as the code itself cannot be justified by applying the code. The distinction between negotiable and not negotiable is itself not negotiable for the industrial relations system.

A major concern of industrial relations as a social system is the reduction of both internal and external complexity. However, industrial relations have to manage a higher internal complexity than most other function systems of society due to its specific form of organisation, or, more precisely, the requirement of interaction between organisations. Luhmann emphasises competition among organisations as a mechanism to maintain structural openness. But unlike the political, the economic, the religious, and the scientific systems, in which political parties, corporations, churches or universities compete at the organisational level, industrial relations operate at two organisational levels. On the one level there is union competition and competition among employer organisations. In addition there is collective bargaining which develops its

own organisational structures. Collective bargaining is in a certain sense a form of second order organisation, an organisation of organisation or reflexive organisation. And it is at this level of reflexive organisation where Luhmann's question of competition becomes interesting. Autopoietic industrial relations might well encourage competition between different regimes of collective negotiations, although so far there are only few examples of such processes in our industrial societies (union versus non-union systems, competition between human resource management models).

*(d) Intersystemic Relations of the Industrial Relations System in Society*

A last feature of the autopoietic industrial relations system concerns the relationships of the system and its social environment. In Luhmann's approach there are three logical relationships of a social system: function, performance and reflexion. Function describes the relation of the industrial relations system to society at large, performance the relation between social systems and reflexion the relation of the industrial relations system to itself.

The intersystemic relation between two second order social systems is a performance relation. It is established when the means used by the sending system to achieve a certain effect in another system are compatible with the structure of the receiving system.<sup>13</sup>

Advanced industrial relations systems display a tendency to develop their performance relations with the political and the legal system into intersystemic exchange relationships. These exchange relations are commonly described as tripartite corporatism.<sup>14</sup> Systems theory stresses both the potential and the limits of intersystemic relations between the industrial relations system and its neighbouring systems. In the end corporatism depends on the industrial relations system's ability to secure its autonomy and autopoiesis.<sup>15</sup>

## **Reflexive Labour Law<sup>16</sup>**

Reflexive labour law accompanies autopoietic industrial relations by recognising the autopoietic nature of industrial relations within the legal system. The theory of reflexive labour law shares basic assumptions about the legal system with the general theory of reflexive law.<sup>17</sup> This legal theory transforms concerns of modern sociological systems theory but also poststructuralist discourse theory into new questions for the sociology and theory of law. It suggests to replace methodological individualism by studying communication processes which constitute the legal system.

The concept of reflexive law assumes that the legal system, like other function systems of society, is guided by a systems-specific view of the world. This view can-

<sup>13</sup> Luhmann, 1990a: 75.

<sup>14</sup> See the theoretical and comparative account of corporatist exchange relations in Crouch, 1993.

<sup>15</sup> See also Willke, 1989: 90.

<sup>16</sup> The following remarks are based on Rogowski and Wilthagen, 1994: 4-7.

<sup>17</sup> Teubner, 1992.

not claim superiority over views developed in other social systems. Only within the legal system the system-specific view of law has superiority over other modes of perception. Like any other form of social knowledge law is bound by its system reference.

The legal system is an autonomous function system, located on the same plane as the economic, political or the industrial relations system. It becomes reflexive by recognising that its societal context consists of independent function systems and that it is itself such a system which is limited by its autopoietic nature. The theory of reflexive law intends to increase the awareness inside the legal system of the limits of law in regulating other function systems which are similarly constituted by autopoietic processes.

Thus legal intervention is dependent on self-regulation within the regulated systems.<sup>18</sup> A major function of reflexive law is to stimulate and instigate self-reflection and self-regulation in other social systems. Sophisticated legal interventions try to regulate not only through performance but also through influencing centres of reflexion within other social systems. In becoming reflexive the form of legal regulation changes from substantive to procedural law.<sup>19</sup>

Within the traditional study of labour law and legal theory the concept of reflexive labour law is not easy to locate. It is neither a doctrinal interpretation nor a separate legal theory nor a policy analysis or an empirical account of labour law, although it contributes to each of these fields of legal analysis. It deliberately keeps a critical distance to the traditional classifications in order to be able to challenge basic premises which underlie conventional labour law discourses.

In the following I would like to outline some research hypotheses which derive from the theory of reflexive labour law. For this purpose I have chosen the field of regulation of labour and employment conflicts.

#### *(a) Labour courts and legislation*

Labour courts and their relationship to legislation are a good example for a discussion of intersystemic links between the political and the legal system.

Labour courts and industrial tribunals are specialised courts which form part of the general judicial system. If the political system manages to adopt a plural judicial system with separate jurisdictions granted to specialised courts, a paradoxical situation arises. The independence of the differentiated judicial system relieves the political system to some extent from regulating certain policy areas. However, the increase in complexity in the judicial system, due to enhanced autonomy of its subsystems, also leads to increased dependence of the political system on courts.

The paradox of dependence and independence requires an analysis of the concept of judicial autonomy. Professional control over procedures and organisational independence are constitutive for autonomisation of labour courts.<sup>20</sup> Furthermore, the

<sup>18</sup> See also the critical remarks on reflexive law by Luhmann, 1992

<sup>19</sup> See Teubner, 1986a.

<sup>20</sup> In Luhmann's view 'organisation' and 'professionalism' create the main conditions for successful judicial decision-making. They provide buffers which enable recursive decision-making and, further-

labour court's autonomy is a result of its decision-making. Case law and doctrinal figures gradually replace statutory provisions as basis of decision-making. During this process courts become self-confident and begin to demand specific legal changes from the legislator. The hierarchical relationship of courts and legislation transforms into mutual observation of decision-making. The traditional division of roles between legislation and the courts reverses. Statutory law increasingly is reduced to ex-post endorsement of doctrinal solutions established by case law.<sup>21</sup>

However, it is necessary to emphasise that labour courts only achieve an important role in creating labour law norms if there is sufficient internal differentiation of the judicial system. Indeed the judicial system must transform from a unitary organisation in which vertical control is exercised at different levels of appeal to a decentralised system comprising of independent judiciaries. The degree to which such transformation has occurred in particular jurisdictions is a challenging question for comparative law.<sup>22</sup>

The internal differentiation hypothesis can be used to compare national labour court systems. German labour courts are advanced systems with a high degree of internal complexity. They are organisationally independent and have their own appeal structure. They have a high propensity to become autopoietic systems.<sup>23</sup> In contrast the lay labour courts in France, for example, lack both professional decision-making and independence at the appeal level and are thus largely confined to conflict resolution of single cases and inhibited in their capacity of self-reproduction. British industrial tribunals are also deficient in this respect. British common law courts enjoy in general a higher degree of independence than industrial tribunals. Their lack of final appeal restricts them from transforming into law-making bodies similar to the German labour courts.

#### *(b) Proceduralisation*

Labour law regulates both substantive rights and procedures. It forms part of social regulations of the welfare state. In discussions of reflexive law it has been argued that a transformation in the form of legal regulation occurs in modern welfare states. Substantive regulation is gradually replaced by procedural regulation.

Some proponents of the theory of reflexive law argue that this proceduralisation indicates a new form of juridification. Proceduralisation is seen as the response to a general decline of instrumental law and disillusion with legal formalisation and materialisation.<sup>24</sup> This proceduralisation is alleged to have penetrated not only the judicial practice but also the rationality structure of law and the development of legal doctrine.<sup>25</sup>

more, the implementation of the most peculiar, but ultimately characteristic requirement that courts, in contrast to other decision-making bodies, cannot decide not to decide. See Luhmann, 1993: 310-337.

<sup>21</sup> See the chapter on 'Die Stellung der Gerichte im Rechtssystem (The position of courts in the legal system)' in Luhmann, 1993: 297-337.

<sup>22</sup> See Rogowski, 1996: 225-6.

<sup>23</sup> See Rogowski, 1994: 85-86.

<sup>24</sup> Wiethölter, 1986 and Teubner, 1986b.

<sup>25</sup> See Eder, 1986.

However, the novelty of the use of procedures as a regulatory instrument might be questioned with respect to labour law. Procedures have always been the major devices in the regulation of industrial relations. In fact, it remains doubtful, if there was ever substantive legal regulation of industrial relations affairs. The situation is probably different with respect to employment protection.<sup>26</sup> Nevertheless substantive employment rights also show some tendencies to become procedural matters. Dismissal protection, a main example of substantive regulation, is regularly translated in the judicial practice of advanced labour courts into a mere obligation on the part of the employer to follow company procedures. The law assesses the fairness of dismissals by resorting to questions of formal adherence to procedures.

### *(c) Self-regulation*

The reflexive law concept emphasises that modern law, since it cannot claim superiority over other systems, is dependent on the recognition provided by other function systems. However, such recognition has to be mutual recognition of both the regulatory efforts of law and the conditions within the regulated system. Law is thus confronted with demands to change from an authoritative instrument of control into a facilitative instrument for mutual recognition of self-regulation.

In an advanced stage labour law realises that the regulation of industrial relations and employment conditions is limited by the mutual search for autonomy and requirements of self-reproduction of the regulating and the regulated system.<sup>27</sup> Thus, in order to be successful labour law, including the legal regulation of labour conflicts, must facilitate processes of self-regulation within other social systems. Self-regulation is fundamentally linked to processes of seeing oneself 'through the eyes of the other', to use Heinz von Foerster's phrase.<sup>28</sup> If this is achieved in relation to other systems of regulation and in relation to its own constitutive structures and processes labour law has become reflexive.

Furthermore, reflexive labour law becomes able to instigate societal processes by regulating itself. Labour courts and other official dispute fora, for example, distinguish types of conflict which are suitable for a judicial forum and those which are left to systems-specific fora which form part of the self-regulatory mechanisms of the collective bargaining or workplace industrial relations system. Through restrictive decision-making labour courts in fact encourage the use of company procedures and other mechanisms of self-regulation.

However, such judicial regulation of industrial relations is not a common affair. The legal system and the courts are on safer grounds in resolving conflicts compared with regulating other systems. The legal system has an advantage in conflict resolution because it can remain within its boundaries of self-regulation by applying legal devices (norms, procedures and legal doctrine) whereas the regulation of other social systems requires a sophisticated retranslating of societal needs into legal facilitation.<sup>29</sup>

<sup>26</sup> Rogowski, 1997.

<sup>27</sup> Luhmann, 1990b.

<sup>28</sup> Von Foerster, 1991.

<sup>29</sup> Teubner, 1992: 88-89.



We can conclude our short discussion of features of reflexive labour law with some general observations. Reflexive labour law highlights both the dangers and the strengths which the regulation of employment and industrial relations derives from legal autonomisation, and in particular from judicial autonomisation. It emphasises a retreat from substantive to procedural regulation in response to an increasing use of system-specific codes for self-regulation by other social systems. However, labour law can gain from this development by becoming reflexive. It then realises that by acknowledging self-regulation in industrial relations and other social systems its own potential for self-regulation is equally acknowledged. The message of reflexive labour is in this respect that the future development of labour law depends on mutual recognition of self-regulation.

## **Industrial Relations and Labour Law in the World Society**

National industrial relations and labour law systems are increasingly confronted with the fact that they are located in an international context. Theories of autopoietic social systems and reflexive law provide distinct accounts of the role of social regulation and industrial relations in this international context. In particular Luhmannian social systems theory is inherently transnational in its approach and his theory of society is deliberately not linked to a concept of nation or national culture. Indeed it rejects the notion of national societies altogether and adopts instead the concept of the world society.<sup>30</sup>

The world society concept overcomes many of the weaknesses of the studies of social processes at the world level. In the traditional approach of international relations internationalisation was seen as a gradual process of expanding international trade, of intensified interdependence of nation-states and greater roles of intergovernmental organisations. This approach has been criticised in recent debates for insufficiently assessing the fundamental transformations of internationalisation. An alternative paradigm is suggested which is commonly referred to as the concept of globalisation.

The theories of globalisation can be divided into approaches which reserve the concept of society for the nation-state and in those which opt for an encompassing concept of a world society. The first type is still the most common approach. In his account of the global system Leslie Sklair, for example, focuses on practices of transnational corporations.<sup>31</sup> Anthony Giddens prefers a low-key notion of mapping institutional dimensions in describing globalisation which are centred around notions of increased time and space distancing and of disembedding of social relations from local contexts.<sup>32</sup> Malcom Waters emphasises symbolic cultural exchanges, liberated from spatial referents, as key factors of globalisation.<sup>33</sup> Roland Robertson pro-

<sup>30</sup> Luhmann, 1971.

<sup>31</sup> Sklair, 1995.

<sup>32</sup> Giddens, 1990: 63-78.

<sup>33</sup> Waters, 1995.



motes the idea of the global field with culture as the core instance and institutionalisation of local particularisms as core processes of globalisation.<sup>34</sup> And finally Martin Albrow puts forward a grandiose phenomenological account of fundamental historical transformations which give birth to a new epoch of mankind, called the global age.<sup>35</sup>

These accounts of globalisation processes are quite perceptive in describing the many forms in which the globe serves as focus for human activities. However, they are unable to understand how the heterogeneous processes are used by the social system at world level in creating its own structure. Theories which study the global social system as such argue that non-synchronical levels of development should be understood as structural effects of the world social system itself. Two main approaches can be distinguished in this respect: Wallerstein's world-systems theory and Luhmann's concept of the world society.

The world-systems analysis of Immanuel Wallerstein is essentially an analysis of the history of capitalism.<sup>36</sup> It assumes a 'single social system' at world level which consists of 'boundaries, structures, member groups, rules of legitimation and coherence'.<sup>37</sup> These structures are analysed historically and statistically. There exist varieties of world-systems which include world-empires (political systems) and world-economies. Wallerstein analyses political blocks at the world level (the triadic scenario: US, Japan and Europe) and assumes that the world economy is following historical cycles (à la Kondratieff).

Aspects of labour and industrial relations are discussed under the rubric of the 'world welfare' in Wallerstein's system. The world labour force is hierarchically structured. This structure is a prerequisite for the uneven distribution of wealth in the world-system. Labour is discussed as migrant labour, part-time female labour, wage impact on households, and rural labour.<sup>38</sup> What is largely missing in this account are analyses of labour law, industrial relations and collective bargaining.<sup>39</sup> A reductionist economic bias hinders Wallerstein and his followers from adequately grasping the heterogeneous nature of global processes, including the independent and dynamic nature of law and industrial relations. The economic bias prevents this theory ultimately from becoming sociological and analysing the world system as world society.<sup>40</sup>

Luhmann's notion of the world society<sup>41</sup> overcomes the weaknesses of world-systems theory by assuming functional differentiation of social systems at the world level.<sup>42</sup> It is an inclusive concept which explains developments of the world society

<sup>34</sup> Robertson, 1992.

<sup>35</sup> Albrow, 1996. Postmodern analyses, in particular the thesis of the end of meta-narratives by J.-F. Lyotard (1979/1984), are criticised as end-of-epoch accounts which Albrow replaces with his beginning-of-epoch idea of the global age.

<sup>36</sup> Wallerstein, 1974-1984.

<sup>37</sup> Wallerstein, 1974: 347.

<sup>38</sup> Tabak, 1996.

<sup>39</sup> Shannon, 1989, ch. 6 and 7.

<sup>40</sup> In defining society, Wallerstein adheres to an old-fashioned semantic concept of society as the entangled opposite of the state. See Wallerstein, 1991: 244-248.

<sup>41</sup> On an early concept of the world society see Burton, 1972.

<sup>42</sup> Luhmann, 1982. Reprinted in Luhmann 1990b.

as result of its internal operations.<sup>43</sup> Luhmann distinguishes between three levels of society: interaction, organisation and function system and proposes to analyse globalisation at all three levels.<sup>44</sup>

In functionally differentiated modern societies societal subsystems develop along separate trajectories. National boundaries play different roles in different societal function systems. While economic, technological and scientific communications are increasingly international and are linked globally, such 'globalisation' is less characteristic of law and politics. Since industrial relations and labour law are specifically linked with politics and law at the national level, major questions arise with respect to their future in an increasingly international world.

Luhmann predicts less dependence of the major function systems on both legal regulation and the availability of the legal code in the evolving world society.<sup>45</sup> However, law and industrial relations will continue to play an important role in shaping conditions under which economies can engage in activities for the global market. They are relevant forces in creating 'cultures' or institutional regimes which are considered more important as factors in economic growth than government policies.<sup>46</sup>

A few remarks should suffice to illustrate how current communications in industrial relations and labour law are related to the world society.

In the global age strikes of a certain size are reported world-wide as important economic news. Wage struggles and negotiations over working conditions are perceived as events which have an impact beyond national markets. The costs of transnational companies with production sites in several countries are directly affected by strikes in a particular country. Thus collective bargaining and strike threats in German industries are important beyond Germany. Furthermore, strikes of lorry drivers in one European country have a direct impact on economic activities in other member states of the European Union and beyond.

The demand for decent labour standards reduces the chances of developing countries to compete with low labour costs. A national strike, for example in South Korea, receives immediate world-wide attention because of ramifications of labour unrest on liberalisation and flexibilisation policies in developing countries. Although the strike reasons might be national in origin, i.e., a change of Korean dismissal law and the role of trade unions in Korean companies, the protest receives global news coverage because it is immediately perceived as a direct response to free market policies in the so-called Tiger economies.

The reform of legal policies and labour law are increasingly driven by global concerns. Deregulation of employment protection is commonly justified by expectations of an alleged international demand for flexibilisation of work forces. These experiments with massive deregulation of labour standards receive much attention, e.g. the radical abolishing of employment protection in New Zealand, and are openly used as means in competition over foreign investments.

<sup>43</sup> Stichweh, 1995: 34.

<sup>44</sup> Luhmann, 1975.

<sup>45</sup> Luhmann, 1993: 581-587.

<sup>46</sup> Albrow, 1996: 132.

If we look at supranational or international law and policy-making, a number of processes can be discerned. In the European Union economic integration is accompanied by measures to integrate social and labour policies. These measures form the so-called social dimension of European integration and contain a number of 'hard' legal rules in areas like health and safety of workers and equal pay and equal treatment between men and women. These laws are vigorously enforced by European institutions with active support from the European Court of Justice. In addition to the core of hard rules there exists a plethora of 'weak' supranational legal norms in the European Union. Their implementation depends on the willingness of the Member States to enforce them effectively.

European social policy measures are not the outcome of corporatist arrangements, as is characteristic of many national labour law systems. They form part of neo-voluntarist policies which aim at instrumentalisation of national labour law and its supporting coalitions for a programme of neo-liberal restructuring of national economies; they increase competition between national regimes.<sup>47</sup> Nevertheless European social policy and labour law provide a basic frame for transnational private regulation in Europe. This includes promotion of sectoral collective bargaining and European works councils in the European Union.<sup>48</sup>

In switching from the European to the international level, we notice attempts to add a 'social dimension' to globalisation by establishing a global legal framework of labour standards. International labour law derives foremost from labour standards introduced by the International Labour Organisation. Links of trade measures and labour rights (the so-called social clause), enforced by the World Trade Organisation,<sup>49</sup> and economic and social rights as part of universal human rights are currently promoted as new sources of global labour law. The lively debate will possibly lead to further legislative efforts to create minimum labour standards at the global level. However the major obstacle of weak enforcement of these standards is also likely to remain.

If globalisation is mainly associated with markets and free trade, the adoption of labour law and collective bargaining at supranational and international level indicate the limits of globalisation. An entirely free world market will not be able to retain growth over a longer period. It seems likely that the world market, like all other markets, requires 'state intervention' to achieve 'growth with stability'.<sup>50</sup>

Insofar as industrial relations and collective bargaining at international level are concerned, much will depend on the role of collective organisations. Since support from an active welfare state and law are lacking, traditional trade union internationalism will have to find new partners at the global level. A possible candidate are social movements which promote human rights, in particular those of migrants. In utopian versions of a law of humankind, which creates the basis of a global community, replacing both the state and the market as regulatory sites, labour might find support and a place in transnational coalitions.<sup>51</sup>

<sup>47</sup> Streeck, 1996.

<sup>48</sup> Bercusson, 1996.

<sup>49</sup> Myrdal, 1994.

<sup>50</sup> Boyer and Drache, 1996.

<sup>51</sup> De Sousa Santos, 1995: 365-373.

However, it is more likely that the globalisation of the labour movement takes place at home. Indeed, increased recognition of the local through global exposure already supports labour movements in their endeavours. Achievements at the workplace and in collective negotiations can rapidly be disseminated in the global world. Furthermore the global challenge to workplace industrial relations releases new energies to defend and even strengthen existing institutional regimes.<sup>52</sup> Autopoietic industrial relations and reflexive labour law of advanced national economies become mediating forces which protect their achievements through endorsement of their global role. Insofar as collective bargaining at sectoral and company level and national labour law systems are able to accept the global challenge through reflecting their global position, these confident local, regional and national industrial relations will constitute important premises of the world society.

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<sup>52</sup> Bélanger, Edwards and Haiven, 1994.

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