

**Comparative
Labour Law
and
Industrial
relations
in
Industrialised
Market
Economies**

**Industrial
Relations**

Volume 2

General Editor
R. Blanpain

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O. Clarke
E. Córdova
B. Creighton
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Fourth and
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Editor's Preface

Comparativism is no longer a purely academic exercise but has increasingly become an urgent necessity for industrial relations and legal practitioners due to the growth of multinational enterprises and the impact of international and regional organisations aspiring to harmonise rules. The growing need for comprehensive, up-to-date and readily available information on labour law and industrial relations in different countries led to the publication of the *International Encyclopaedia for Labour Law and Industrial Relations*, in which almost 60 international and national monographs have thus far been published.

This book, *Comparative Labour Law and Industrial Relations in Industrialised Market Economies*, goes a step further than the *Encyclopaedia* in as much as most of the 25 chapters provide comparative and integrated thematic treatment. Our aim is to describe the salient characteristics and trends in labour law and industrial relations in the contemporary world. However, this work is more than a set of papers written by individual authors. For the first edition (1982) twelve of the nineteen contributors, the associate editor and the publisher were able to meet to discuss the chapters, carefully evaluating, reviewing and co-ordinating our collaborative efforts. The meeting was exceptionally informative and productive. It was sponsored by and took place at INSEAD (Fountainbleau) with the additional support of the Catholic University of Leuven and Kluwer Publishers. I thank them for their courtesy and assistance. This close contact was maintained in the development of the second, third and fourth revised editions.

Our book obviously is not exhaustive, with respect to the coverage of countries and topics. For example, in order to continue our efforts within the area of our greater expertise, the comparative chapters in the second and third editions do not examine the collectivist economies, but rather the developing countries. In the fourth edition, we limit ourselves to the industrialised market economies. One chapter is devoted to the public sector. In the fourth edition, an attempt has been made to strike a better balance between labour law and industrial relations. With this in mind, our book is now divided into two main parts, Labour Law (Part I) and Industrial Relations (Part II), published separately as Volume I and Volume II. The first volume contains the Introductory chapters and the 12 chapters concerning labour law; the second volume comprises the 10 chapters that pertain to Industrial Relations. The complete index appears in both volumes. A number of new chapters has been added, i.e.; The New Labour Force (4), Wage

EDITOR'S PREFACE

Determination, An Institutional Approach (6), Working Time (7) and Human Resource Management (21).

Encouraged by the warm reception of the first three editions, we hope that also the fourth edition will serve as a textbook and reference work to facilitate the task of teachers and students of comparative labour law and industrial relations. We hope, too, that the book will provide labour lawyers with the necessary insights to cope with a world which is increasingly international.

The English language does not have a personal pronoun that is gender neutral and we find the form *s/he* somewhat inelegant. Accordingly, where the authors have used the form *he*, this should be taken to refer also to the feminine gender, unless the context indicates otherwise.

Finally, my warm personal thanks go to all those who made the first as well as the other editions of *Comparative Labour Law and Industrial Relations* possible: to Dr. Frances Millard who was very much involved in the rewriting and editing of the first edition and to Prof. I. Christie and the staff of the Institute of Labour Relations in Leuven: M. Bringmans, Mrs. T. Theuwissen and J. Van Rijmenant. A special thanks also to Ms. Angela Fairbank for her help in the editing and rewriting of this fourth and revised edition.

R.B.
Leuven, April 1990

List of Abbreviations

ACAA	Australian Conciliation and Arbitration Act
ACAC	Australian Conciliation and Arbitration Commission
ACAS	Advisory, Conciliation and Arbitration Service (UK)
ACSPA	Australian Council of Salaried and Professional Associations
ACTU	Australian Council of Trade Unions
AFL	American Federation of Labor
AFL-CIO	American Federation of Labor-Congress of Industrial Organizations
AIFLD	American Institute for Free Labor Development (AFL-CIO)
ASAP	Association of Petrochemical Plants (Italy)
ASEAN	Association of South East Asian Nations
AUCCTU	All Union Central Council of Trade Unions (USSR)
AUEW	Amalgamated Union of Engineering Workers (UK)
BATCO	British American Tobacco Company
BATU	Brotherhood of Asian Trade Unionists (WCL)
BDA	Bundesvereinigung der Deutschen Arbeitgeberverbände
BDI	Bundesverband der Deutschen Industrie
BIAC	Business and Industry Advisory Committee (OECD)
BIM	British Institute of Management
CAC	Central Arbitration Committee (UK)
CCO	Confederación de Comisiones Obreras (Spain)
CEEP	Centre Européen des Entreprises Publiques
CFDT	Confédération Française Démocratique du Travail
CFTC	Confédération Française des Travailleurs Chrétiens
CGC	Confédération Générale des Cadres (France)
CGD	Christlicher Gewerkschaftsbund Deutschlands
CGIL	Confederazione Generale Italiana del Lavoro
CGT	Confédération Générale du Travail (France)
CIFE	Council Industriel des Fédérations Européennes
CIO	Congress of Industrial Organizations (USA)
CISC	Confédération Internationale des Syndicats Chrétiens
CISL	Confederazione Italiana Sindacati del Lavoratori

LIST OF ABBREVIATIONS

CNPF	Conseil National du Patronat Français
CNV	Christelijk Nationaal Vakverbond (The Netherlands)
COCCEE	Comité des Organisations Commerciales de la Communauté Economique Européenne
COGECA	Comité Général de Coopératives Agricoles (EC)
Comintern	Communist International
COPA	Comité des Organisations Professionnelles Agricoles (EC)
COPE	Committee for Political Education (AFL-CIO)
CSC	Confédération des Syndicats Chrétiens (Belgium)
DAG	Deutsche Angestelltengewerkschaft
DBB	Deutscher Beambtenbund
DGB	Deutscher Gewerkschaftsbund
DOMEI	Japanese Confederation of Labour
EC	European Communities
EEOC	Equal Employment Opportunity Commission (USA)
EFA	European Federation of Agricultural Workers
ELC	Employers' Liaison Committee (UNICE)
EMF	European Metalworkers' Federation
EO	European Organisation (WCL)
EP	European Parliament
EPCA	Employment Protection (Consolidation) Act (UK)
ERO	European Regional Organisation (ICFTU)
ESC	Economic and Social Committee (EC)
ETUC	European Trade Union Confederation
ETUI	European Trade Union Institute
FCA	Federal Court of Australia
FMCS	Federal Mediation and Conciliation Service (USA)
FNV	Federatie Nederlandse Vakbeweging
FR Germany	Federal Republic of Germany
ICC	International Chamber of Commerce
ICEF	International Federation of Chemical, Energy and General Workers Unions
ICFTU	International Confederation of Free Trade Unions
IELL	International Encyclopaedia for Labour Law and Industrial Relations
IFTU	International Federation of Trade Unions
ILO	International Labour Organisation Office
IME	Committee on International Investment and Multinational Enterprises (OECD)
IMF-JC	International Metalworkers Federation – Japanese Council of Metal Workers Unions
IOE	International Organisation of Employers

LIST OF ABBREVIATIONS

ITS	International Trade Secretariat
ITT	International Telephone and Telegraph Corporation
LO	Landsorganisationen (Denmark, Norway, Sweden) (Central Confederation of Employees)
MNE	Multinational Enterprise
NLRB	National Labor Relations Board (USA)
NVV	Nederlands Verbond van Vakverenigingen
OECD	Organisation for Economic Co-operation and Development
OEEC	Organisation for European Economic Co-operation
OB	Official Bulletin of the European Communities (ILO)
ORIT	Interamerican Regional Organization of Workers (ICFTU)
QWL	Quality of Working Life
RILU	Red International of Labour Unions
SAF	Svenska Arbetsgivareföreningen (Swedish Employers' Confederation)
SE	Societas Europaeae
SOHYO	General Council of Trade Unions of Japan
TCO	Tjänstemanns Centralorganization (Sweden) (Central Organization of Salaried Employees)
TGWU	Transport and General Workers' Union (UK)
TUAC	Trade Union Advisory Committee (OECD)
TUC	Trade Union Congress (UK)
TUI	Trade Union International (WFTU)
UAW	United Automobile Workers (USA)
UIL	Unione Italiana del Lavoro
UIMM	Union des Industries Métallurgiques et Minières (France)
ULA	Union der Leitenden Angestellten (FR Germany)
UN	United Nations
UNIAPAC	International Christian Union of Business Executives
UNICE	Union des Industries de la Communauté Européenne
WCL	World Confederation of Labour
WFTU	World Federation of Trade Unions

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Chapter 16. Industrial Relations in a Changing Economic World

O. Clarke

I. THE POSTWAR DEVELOPMENT OF INDUSTRIAL RELATIONS SYSTEMS

1. The main influences shaping the structure and operation of industrial relations systems may be identified as economic, social, and technological. The nature and strength of these influences varies according to circumstances, as does which of them is in the ascendant at a particular time. This chapter will pay regard to all three influences but will give particular attention to the economic, which has confronted many industrial relations systems with their most serious challenge in the postwar era.

2. The countries taken into account here are all but the smallest of the 24 OECD market-economy countries except, for the earlier years, Greece, Portugal, Spain and Turkey, these omissions having regard to the special political developments which these countries have experienced. This said, in the countries covered, apart from Italy, the bases of present industrial relations systems were in place by around 1952, as postwar reconstruction drew to its conclusion.

3. The industrial relations systems of 1952 differed widely from one another. The United States maintained its pre-war predominantly enterprise bargaining and market-oriented unionism. Japan developed an entirely new system under mainly American influence but building nevertheless on the important Japanese concepts of 'lifetime' employment and the seniority wage system and based largely on enterprise unionism; (the practice of the coordinated 'Spring Labour Offensive' was to come later). The continental European systems tended to make a distinction between negotiation and consultation, with negotiation being conducted on a national or regional industry-wide basis, and consultation and worker representation being the province of works councils, with unions virtually excluded from the enterprise. European unions, though divided on political or confessional grounds in Belgium, France, Italy and the Netherlands, had largely developed close links with political, mainly social democratic, parties, though the largest union centres in France and Italy were associated with communist parties. Exceptionally, the Federal Republic of Germany had instituted worker representation not only through works councils but also on supervisory boards in many companies, and, in the case of the coal, iron and steel industries, on management

boards. In the United Kingdom, while national industry-wide collective bargaining remained the norm, workplace bargaining was slowly developing – particularly in some major industries – as national agreements, often keyed to what the less efficient firms could afford, failed to satisfy workers whose shopfloor bargaining power had greatly increased in strength. (The growth in influence of shop stewards was a corollary of this.) British unions continued their traditional close relationship with the political Labour Party. Australia retained its centralised, judicial-type, arbitration machinery in preference to collective bargaining (though some bargaining nevertheless took place), but more emphasis was coming to be placed on conciliation by the Commonwealth and State Conciliation and Arbitration Commissions. On the employers' side, central and industry-wide employers' associations continued, or were newly established, in almost all of the countries, though playing a less significant role in North America than elsewhere. There were to be few major structural changes in the following 20 years in these industrial relations systems, although, as is made clear in section IV, the product and operation of the systems changed considerably. The most significant structural differences were in the levels of collective bargaining, and its coverage and content, and in the strengthening of workers' participation in managerial decisions.

II. THE ECONOMIC ENVIRONMENT SINCE THE SECOND WORLD WAR

4. The development of the economic environment since the second world war falls clearly into three parts: 1948–1973, 1974 to 1979, and the nineteen-eighties. The first of these periods was characterised by economic growth of unprecedented levels, duration and near continuity, widely accompanied by more or less full employment. Though growth rates varied between countries it was possible to maintain the regime of fixed exchange rates instituted at Bretton Woods near the end of the war, until the beginning of the 1970s, and the economies of the major countries moved roughly in line over most of the period.

5. At the end of 1973 the massive increase of oil prices hit a world economic system which was not only unprepared for such a move but which already contained an ominous constellation of circumstances which of themselves would have been likely to have a serious effect on most economies. Taken together,¹ these factors heralded the onset of major difficulties.

6. Inflation had been a present or lurking problem in most countries throughout the period of growth² but most particularly (apart from the time of the Korean war) from 1970 on.³ With the economic events of 1973–1974 it came to grow towards high and obdurate levels. What was additionally

1. See P. McCracken, *et. al.*, *Towards Full Employment and Price Stability*, OECD, Paris, 1977, for a review of causation, resultant problems and prospective remedies.
2. W. Fellner, *et. al.*, *The Problem of Rising Prices*, OEEC, Paris, 1961.
3. *Inflation, the Present Problem*, OECD, Paris, 1970.

serious was that this inflation was frequently accompanied by slow or even no growth and by rising unemployment – the phenomenon of ‘stagflation’.

7. In the new economic environment it seemed fairly clear to governments generally that their first concern must be to roll back inflation, even though some of the restrictive measures commonly deemed necessary for this purpose were unfortunately likely both to discourage growth and to increase unemployment. But there was, at the time, a widespread belief that such measures were likely to be of relatively short duration: there had been an economic check but when it had been surmounted the customary growth pattern would be resumed.

8. In the cold economic climate prevailing after 1973 a wide measure of agreement emerged between the governments of the advanced industrial countries as to the economic policies which should be pursued. When inflation had been beaten, or at least had fallen back to the levels prevalent in the sixties, the way would be clear to concentrate on growth, and with that, to reduce unemployment. To give priority to growth and thereby make an earlier immediate attack on unemployment would, it was thought, be likely to exacerbate inflation. High unemployment now was, at least, preferable to higher unemployment in the future.

9. But it was not long before it became apparent that if a future return to pre-1974 growth levels was still possible it would not be quick or easy to accomplish. Meanwhile, though most countries, in most years, were achieving some growth, even if usually much less than in the sixties, unemployment was rising, and industrial profitability and investment were commonly at low levels. The international prescription for public policy was viewed as to dampen inflation, necessitating continuing tight monetary and fiscal policies; to discourage rising wage levels, and to stimulate business initiative by encouraging profitability and investment.

10. Towards the end of the seventies, understanding grew that the economic check of 1974 was much more than a brief halt but rather marked the end of one economic phase and the beginning of a more difficult one, in which most countries would have to struggle to achieve even small economic growth, by postwar standards. Governments saw the need to think more and more about medium and long-term as well as short-term correctives. They started to examine the rigidities which had crept into their countries’ economies over the years, asking, for example, whether their existing industrial structures were optimal for future needs and whether undesirable obstacles to efficient mobility and utilisation of labour had grown up in their labour markets. The implications for employment of the vastly increased payroll-based charges which employers had come to be called upon to pay, and of the more stringent and detailed provisions introduced to improve workers’ safety and to ensure healthy working conditions, also came under review.

11. In addition the economic pinch was being felt in public expenditure generally. Through the long years of growth public spending had been rising steadily in nearly all countries, usually more rapidly than the portion of national income going to private expenditure. In particular social expenditure, with the extension of provision for education and the establishment and growth of the Welfare State, had risen steeply. The cost of providing for the growing proportion of elderly people and the large numbers of unemployed in most countries was becoming increasingly difficult to meet, not to mention the rocketing costs of many health services.

12. Patterns of world trade too were changing and the old advanced industrial countries were faced with growing competition from newly industrialising countries – who were sometimes offering financially very attractive ‘free trade zones’ – with relatively low costs, and with a tendency by multinational enterprises to put down new plants or extend production in developing countries rather than in their home countries, be it to establish new markets or to take advantage of long-labour costs, or both.

13. The second massive rise in oil prices, around the end of 1979, exacerbated the problems of the non-oil producing countries. But this time, though their economic performances were more widely dispersed, so far as collective bargaining was concerned most countries were markedly more successful than they had been in 1974 in preventing, largely by using non-accommodating monetary policies, what was in effect an external tax on them from passing through into inflationary wage increases. By then, however, the industrialised countries were entering the most serious recession since the 1930s and the high level of unemployment, low order books and poor profitability had a depressive effect on wage increases and on inflation. If the changes did not lead to any fundamental change in the structure of industrial relations systems they certainly led to changes in how the systems were operating. Though by 1983 countries were generally emerging from the recession a ‘return to the sixties’ came to seem increasingly unlikely.

14. As things stood at the end of 1989 the industrialised countries were in substantially better shape than they had been in the early part of the decade. In 1988, OECD GNP had grown by over 4 per cent. Investment had grown and productivity performance had generally improved. The average rate of unemployment had fallen back to a little over 7 per cent – where it had stood in 1981. Employment growth in OECD countries in 1988 was 1.8 per cent, the highest for ten years. On the negative side the strengthening of demand was contributing to renewed inflation, which was running at an annual rate of 4 1/2 per cent. On prices, unemployment and economic growth, the performance of the US and Japan continued to surpass that of OECD European countries, though the rate of inflation in the US was giving some ground for concern. Inflationary tendencies in countries where unemployment was still high emphasised the importance of microeconomic policies, including the search

for more flexible and efficient markets, including labour markets.⁴

15. Virtually from the beginning of the post-1973 era, the trade unions found themselves the major force, internationally, in expressing disagreement, even alarm, at the policies on which governments were embarking. They did not disagree that inflation was a dangerous enemy which must be defeated but they were generally of the view that priority should be given to growth, and with it to employment. In this campaign, public expenditure (increasingly a source of concern to governments) was a force for good, not only satisfying social needs but also providing employment.

16. There was of course, international co-ordination of trade union views on economic policy long before 1974 but such concertation as was possible was frequently expressed in somewhat vague and simplistic terms. As tough national economic policies took effect, as scarce finance and declining trade hit enterprises and strengthened the opposition of employers to wage claims, and as unemployment grew, it became increasingly important to unions to argue against what they saw as policies for stagnation. International trade union coordination was therefore strengthened. Efforts continued through the International Confederation of Free Trade Unions (ICFTU); the World Confederation of Labour (WCL), and the International Trade Secretariats (ITS); but increasingly the lead was taken by an able and influential group of union economists working through the Trade Union Advisory Committee to the OECD (TUAC); and, for Europe, the European Trade Union Confederation (ETUC), and the European Trade Union Institute (ETUI).⁵ The alternative international economic policies thus developed were given wide exposure, including being urged on world leaders by presentations on the eve of 'summit' meetings of the European Community; of the seven major market economies (the meetings initiated by President Giscard d'Estaing of France at Rambouillet in 1974), and the annual Ministerial Council of the OECD.

17. This trade union urging had little apparent impact on most governments, who felt that, even if in some ways the outcome of their economic strategies was disappointing, economies were mainly moving in the right direction, though restrictive policies were still necessary.

III. INDUSTRIAL RELATIONS AND GOVERNMENT ECONOMIC POLICIES

18. Industrial relations are a social sub-system and hardly an end in themselves. It is clearly desirable that they should work smoothly but there is no

4. For the argument about labour market flexibility see *Report of Group of Experts on Labour Market Flexibility* (the Dahrendorf Report), OECD, Paris 1986, and for a technical analysis, *Flexibility in the Labour Market, The Current Debate* OECD, Paris, 1986.

5. Among the first publications of the Institute, in 1979, were *The Economic Situation in West Europe in 1979* and: *Keynes Plus: Towards a Participative Economy*.