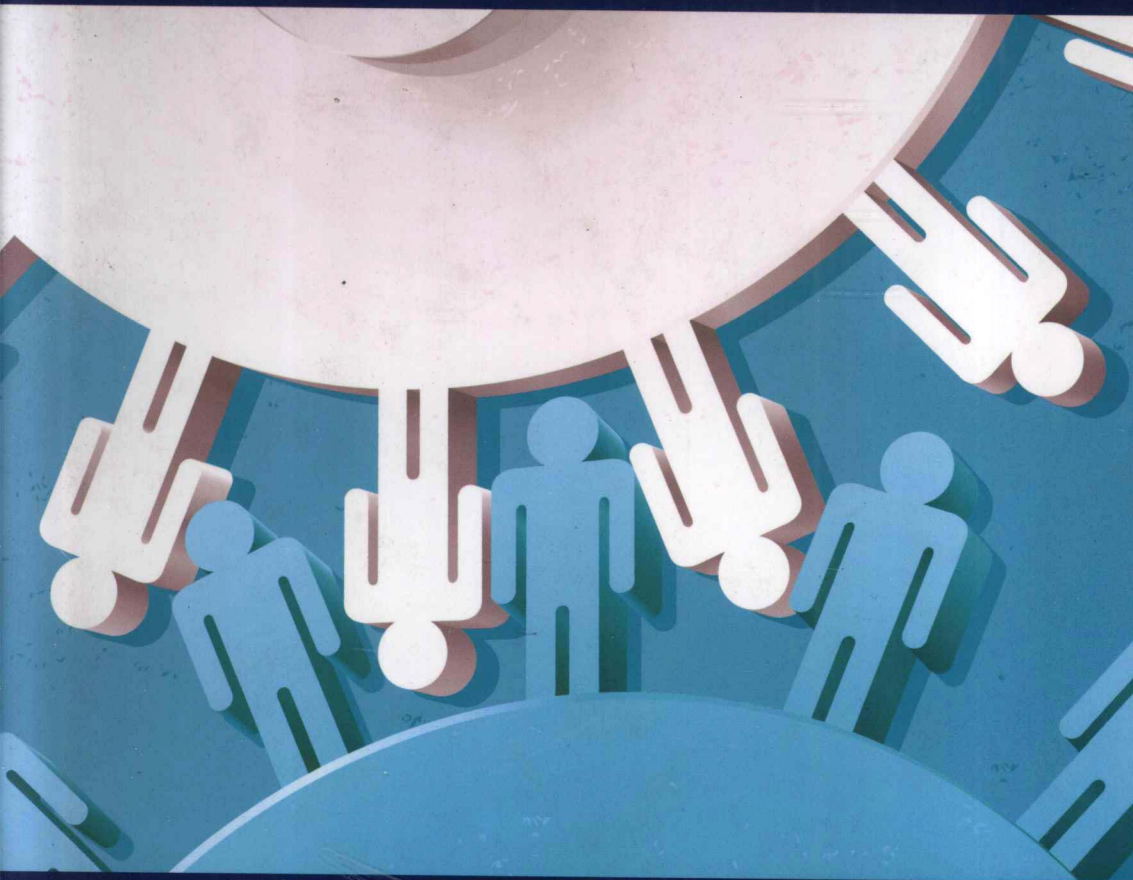


COLUMBIA-LONDON LAW SERIES



Regulating Labour in the Wake of Globalisation

New Challenges, New Institutions

Edited by

Brian Bercusson and Cynthia Estlund

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BRIAN BERCUSSON AND CYNTHIA ESTLUND




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Fax: +1 503 280 8832
E-mail: orders@isbs.com
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GENERAL EDITORS' PREFACE

With volume 2 in our Columbia–London Law Series—a path-breaking comparative study of contemporary workplace law—we continue the remarkable collaboration between our colleagues, respectively, in the Columbia University School of Law and the law schools of the different colleges of the University of London. The model of direct collaboration between the faculties through the media of workshops and publication has again proved its worth, though all recognition for bringing this chapter in the collaboration to fruition belongs to Cynthia Estlund, of Columbia, and Brian Bercusson of Kings College, respectively.

We are grateful to our own home institutions—including the Institute of Advanced Legal Studies of the University of London—for supplying the essential administrative support without which the intellectual input of the participants in this workshop and publication enterprise would not have yielded the excellent results it has.

The genius of the model is demonstrated by the fact that several other collaborative research projects between Columbia and London law faculty are underway within this series, as future volumes in this book series will record.

As before, recognition is owed to Richard Hart and Hart Publishing of Oxford for having undertaken the publication of this series of volumes and for manifesting the confidence that this commitment implies.

The quality of the present volume further reveals ‘the spirit of joint study, reflection and problem-solving’ to which we referred in our Introduction to the inaugural volume. We look forward to the further fruits of this collaboration.

George A Bermann
*Walter Gellhorn Professor of Law and Jean
Monnet Professor of European Union Law,
Columbia University School of Law*

Avrom Sherr
*Woolf Professor of Legal Education,
Director, Institute of Advanced Legal Studies
University of London*

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Regulating Labour in the Wake of Globalisation: New Challenges, New Institutions

BRIAN BERCUSSON* AND CYNTHIA ESTLUND**

By the mid-twentieth century most North American and European societies had converged upon a model of national regulation of firms' labour standards and labour relations, coupled with collective bargaining, as the response to unacceptable labour market outcomes. Regulation and collective bargaining occupied largely separate spheres, within which firms were seen as the objects of 'command-and-control' regulation and as the sites of industrial self-governance respectively. Subnational and supranational levels of government played only a very marginal role in labour relations or in labour regulations.

In recent decades, however, the viability of both national regulation and collective bargaining has come under increasing pressure, and the appropriate institutional locus of workplace and labour regulation has become hotly contested. The forces at work are familiar: cross-border mobility of capital, goods and services, and to a lesser extent labour; the rise of multinational corporate entities; intense product market competition from outside the wealthy West; rapidly changing technology, shorter product cycles, and the resulting clamour for flexibility; and the growing importance of information and intellectual capital relative to physical capital. As the balance of power has shifted away from national governments and labour unions, on the one hand, and toward capital, on the other, employers have ratcheted up the demand for deregulation while gaining the practical ability in many sectors to circumvent or escape regulation by outsourcing production.

In response to these forces, there have been efforts to move the locus of regulation 'downward' to smaller units of governance, including firms themselves, 'upward' to larger units such as regional federations and international organisations, and 'outward' to non-governmental organisations (NGOs) and civil society. Institutional actors at every level of governance—the International Labour Organisation, NAFTA and the European Court of Justice, national regulatory agencies, state and local governments, trade associations, labour unions, corporations, and NGOs—are all

* Professor of Law, King's College London

** CA Rein Professor, New York University School of Law.

jostling for a role in the emerging regulatory regimes. Actors at disparate levels, from the firm to the ILO, are linking up to form novel regulatory approaches that do not depend on the efficacy of traditional national regulatory institutions. The efficacy of these emerging forms of labour regulation, their democratic legitimacy, the goals and values underlying them, and the direction of reform are all in dispute.

With this as our very large theme, we and our colleagues at the School of Law of King's College London, the University of London's Institute of Advanced Legal Studies and the Columbia University School of Law convened an accomplished group of European and North American labour law and labour relations scholars. The group met twice, in 2003 and 2004, to discuss and compare emerging developments on both sides of the Atlantic and beyond. This book is the product of those presentations and discussions.

Globalisation and the Challenge to National Labour Regulation

Globalisation of the economy challenges established national approaches to governing labour standards and labour relations. The primary challenge that globalisation poses to labour regulation lies in the organisation of production itself. Because many goods are manufactured in different countries and marketed globally, often by multinational corporations, employers are not practically bound by the labour standards applicable to production in any one nation. A Report in 1997 of the Director-General of the ILO pointed out that globalisation threatens the autonomy of states to maintain labour standards:¹

Implicit in the [ILO] Constitution is the notion that the context in which social justice is to prevail is that of each State, which is to be democratic . . . Globalisation destroys this framework by placing greater emphasis on comparisons between workers in the same trade or industrial group and not only within the same country. Within the deepening inequalities in the developed countries, there is a danger that globalisation might increasingly make this principle seem a threat rather than a promise.

So globalisation tends both to undermine national labour standards as an economic matter and to weaken the control that democratic institutions exercise over market activity.

Globalisation is not, of course, simply a disembodied process; it has its agents, chiefly the multinational corporations (MNCs) and their global production networks. Much of the debate over globalisation is essentially about whether and how citizens, organised geographically or otherwise, can effectively govern the conduct of the MNCs and their supply chains, or 'whether global competition spells the end of national economic strategy and the welfare state'.²

¹ *The ILO, Standard Setting and Globalisation*, Report of the Director-General, International Labour Conference, 85th Session, 1997, Geneva, 'Introduction', p 5.

² D Held and A McGrew, 'The Great Globalisation Debate: An Introduction', pp 1–50 in D Held and A McGrew (eds), *The Global Transformations Reader* (2nd edn), (Polity Press, Cambridge, 2003), at p 19.

There is no doubt that MNCs play a central role in globalisation and global competition:³

In 2001 there were approximately 65,000 MNCs worldwide with 850,000 foreign subsidiaries selling \$18.5 trillion of goods and services across the globe (UNCTAD 2002). Today transnational production considerably exceeds the level of global exports (\$7.4 trillion) and has become the primary means for selling goods and services abroad. Multinational corporations now account, according to some estimates, for at least 20 per cent of world production, 11 per cent of world GDP (compared to 7 per cent in 1990), 54 million direct jobs and 70 per cent of world trade . . .

Manuel Castells confirms the place of MNCs in the global economy, but highlights the more recent 'organisational transformation of the production process, including the transformation of multinational corporations themselves'.⁴ He points out that:

Global production of goods and services, increasingly, is not performed by multinational corporations, but by transnational production networks, of which multinational corporations are an essential component, yet a component which could not operate without the rest of the network . . .

Thus, the new international division of labor is increasingly intra-firm, or, more precisely, intra-networks of firms. These transnational production networks, anchored by multinational corporations, unevenly distributed across the planet, shape the pattern of global production, and, ultimately, the pattern of international trade.

Transactions within these 'transnational production networks', both among different units of a MNC and within networks coordinated by MNCs and other large firms (sometimes called 'transnational corporations' or TNCs⁵) account for the bulk of world trade.⁶

Another primary facet of economic globalisation, besides MNCs and integrated production chains, is global financial integration. Together with trade liberalisation and expanded foreign investment, 'the emergence of massive cross-border financial flows' made global markets more competitive, and 'created the enabling conditions for the onset of globalisation'.⁷

The combined result of these developments has been intense international competition and an erosion of the ability of individual states to enforce their own labour standards. Nowhere is this more evident than in the sphere of international

³ Held and McGrew, *ibid*, p 26.

⁴ See M Castells, 'Global Information Capitalism', *ibid*, pp 311–34, at pp 317–20.

⁵ P Dicken thus defines the transnational corporation (TNC) as one that 'has the power to coordinate and control operations in more than one country, even if it does not own them'. 'A New Geoeconomy', *ibid*, pp 303–10, at p 306.

⁶ Castells, *op cit*.

⁷ *A Fair Globalisation: Creating Opportunities for All*, Report of the ILO World Commission on the Social Dimension of Globalisation, 2004, paragraph 132. See also 'Introduction', in D Held and A McGrew (eds), *Governing Globalisation: Power, Authority and Global Governance* (Polity Press, Cambridge, 2002), pp 1–21, at p 3. Also JA Scholte, 'Governing Global Finance' in the same volume, pp 189–208.

capital transfers. The details are almost impenetrably complex, but the basic problem, as Fritz Scharpf explains, is painfully simple:⁸

While governments and workers are indeed without alternatives, capital owners do have a choice. If they find it unattractive to invest in job-creating productive assets, they may instead opt for speculative or interest-bearing financial assets, they may buy gold or other value-conserving assets, or they might simply consume, rather than invest, their savings . . . At the same time, technological innovations and the increasing importance of multinational firms undercut the effectiveness of national controls over capital transfers . . . As a consequence, financial assets are now mobile around the globe, and the minimal rate of return that investors can expect is again determined by global financial markets rather than by national monetary policy.

Geoffrey Garrett affirms that '[t]he potential for massive capital flight acts as the ultimate discipline on governments' and, ending on a lighter note, he quotes the Clinton political strategist James Carville: 'I used to think that if there was reincarnation, I wanted to come back as the president or the pope. But now I want to be the bond market: you can intimidate everyone'.⁹

While the proponents of free trade and freer markets in labour and products hold out the promise of expanding global prosperity, workers and their allies see the spectre of a 'race to the bottom' in labour standards—a globalised version of the same 'race to the bottom' that prompted states on both sides of the Atlantic in the last century to assert control over largely unregulated labor markets, to put a floor on 'destructive competition', and to foster the development of labour market institutions that could generate more socially acceptable labour and living conditions. The globalised flow of capital, goods, and services is increasingly running circles around the regulatory systems put in place in the last century. The result might be best described as a 'race to the rising bottom': There is evidence of economic gains in the countries to which production is flowing; but the gap in wages and living standards between workers in those countries and those in the developed countries is so dramatic that this 'rising bottom' does little to assuage the latters' fears about the downward spiral. Given the unprecedented wealth that is being generated at the top of the emerging global economic hierarchy, there must be a better way of improving living standards in the developing world without impoverishing the workers of the developed world.

More than economic well being is at stake: Production is flowing toward nations and parts of the world where democracy has at best a tenuous hold. But

⁸ 'Globalisation and the Political Economy of Capitalist Democracies', in Held and McGrew, *op cit* 2003, pp 370–8, at pp 370, 372, 374–5.

⁹ 'Global Markets and National Politics', pp 384–402, in *ibid*, at p 386. TI Palley refers to 'the emergence of a new regulatory paradigm. The old paradigm (call it the New Deal paradigm) had government regulating finance, with finance being harnessed to work for full employment. The new paradigm works in reverse, with finance now regulating government. This is an important part of the new political economy espoused by the IMF where open international financial markets are seen as a means of disciplining governments'. 'Industrialised country financial markets: the missing dimension in the stabilising global finance debate', in D Foden, J Hoffmann and R Scott (eds), *Globalisation and the Social Contract* (ETUI, Brussels, 2001), pp 55–73, at p 63.

even if democracy spreads to more of those nations, global capital is not governable within national boundaries. And we do not yet see the advent of genuinely democratic mechanisms of governance that operate above the national level. Even within Europe—a highly-evolved aggregation of firmly democratic states—there is concern about the ‘democratic deficit’ of the European Union. So if national governments lose their grip on labour standards and workplace governance, then so do the people within those nations.

Globalisation and Workers’ Organisations: European and North American Perspectives

Alongside national labour standards, the second pillar of workplace governance has been organisation of labour through trade unions capable of representing workers at the workplace level and beyond. Trade unions are by far the dominant, and in some places the only, institutional vehicle for workers *qua workers* to influence not only their own working conditions but also the legal regime governing working conditions. Trade unions function in democratic societies as supplemental vehicles of democratic accountability and control within the economic sphere. So one might ask whether trade unions can take up some of the regulatory functions of national governments and serve as an alternate vehicle of democratic control.

Unfortunately, globalisation and cross-border mobility of trade and capital pose a threat to trade unionism and traditional collective bargaining strategies that is similar to, and stems from a similar asymmetry as, the threat to national regulation. Since labour is relatively immobile, and tends to be organised geographically, it is losing the capacity to bind increasingly footloose and transnationally organised employers.

Trade unions face challenges not only from the relative immobility of labour (relative to capital), but also from labour’s increasing mobility and resultant diversity across both Europe and North America. Traditional labour unions were founded on assumptions of demographic and cultural homogeneity and virtual identity of interests among the workers represented. Globalisation has contributed to changes in the nature of the labour force, the widely noted erosion of the ‘standard employment relationship’, increasing fragmentation of the workforce and demographic changes. The rise of workforce diversity and employment discrimination as major regulatory concerns parallel the simultaneous influx of women into the workforce, bringing to the fore issues of work/life balance and working time. Increasing diversity of those workers and their interests poses a serious challenge to any effort to give collective voice to the workers in any particular workplace or sector.

At least within the US, the predicament of organised labour is aggravated by the willingness and ability of employers to combat and avoid unionisation when they

perceive it in their interests to do so; resistance to unionisation has hardened in the US as competitive pressures on firms have intensified and globalised.

If trade unions lose their capacity to aggregate and amplify workers' own voices in the regulation and governance of work, that will further undermine the democratic character of workplace governance. And there is no doubt that trade union membership and power in Europe and North America have eroded to some degree under the pressure of global competition. Unions have traditionally been particularly strong in manufacturing, which is the sector most exposed to global competition. Declining employment in manufacturing alone will lead to declining union density.

There are, however, important differences between the American and European experiences, and indeed among the EU Member States, in this regard. For example, while trade union density—ie, union membership as a proportion of the working population—is down both in the US and across most of the EU, the variation in union density is striking. The author of one study points out that '[t]he range of variation in unionisation levels among advanced industrial societies is larger than in any other social-economic or political indicator'.¹⁰

The following table sets out union density in 2000:¹¹

Country	Union Density (%)
Denmark	87.5
Finland	79.0
Sweden	79.0
Belgium	69.2
Luxembourg**	50.0
Ireland	44.5
Austria	39.8
Italy**	35.4
Greece	32.5
Portugal*	30.0
Germany**	29.7
UK	29.0
Netherlands	27.0
Spain	15.0
USA	13.5
France	9.1
Unweighted EU avg.	43.8
Weighted EU avg.	30.4
* 1999 figure	** 1998 figure

¹⁰ J Visser, *In Search of Inclusive Unionism*, Bulletin of Comparative Labour Relations, no. 18, 1990, Kluwer, Deventer, at p 36.

¹¹ Source: European Foundation for the Improvement of Living and Working Conditions, Dublin; European Industrial Relations Observatory (EIRO) on-line; comparative overview of 'Industrial relations in the EU, Japan and USA, 2000', Table 2.

Within the EU, four countries maintain a high union density (ranging from 69.2 per cent in Belgium up through the Nordic countries to 87.5 per cent in Denmark), and two big countries have low levels of union density: Spain with 15 per cent and France with only 9.1 per cent union density. Most countries are in between, with the three big economies of Italy (35.4 per cent), Germany (29.7 per cent) and the UK (29 per cent) at around 30 per cent. The unweighted average of the EU-15 (the 15 EU Member States prior to the enlargements of 2004 and 2007 to 27 Member States) countries is 43.5 per cent; but because the biggest countries are clustered below that level, the weighted EU average union density is only 30.4 per cent. In contrast, trade union density in the USA in 2000 was 13.5 per cent, lower than any EU country except France.

The impact of the higher levels of unionisation in the EU is magnified by the degree of centralisation of collective bargaining in most EU-15 Member States. Because of the predominance of centralised bargaining on pay in Europe, collective agreements tend to cover all employers in the sector or the country, even where workers are not members of trade unions, employers are not members of employers' organisations, and no collective agreement is in effect. That is in striking contrast to the USA (as well as the UK and France), where the bargaining takes place almost entirely at the individual company level, with only limited instances of 'pattern bargaining' in some industries. As a result, the disparity between US and European levels of collective bargaining coverage is even more striking than the disparities in union density. The following Table illustrates this:

Collective bargaining coverage, Europe, Japan and USA

Country	Coverage
Austria	98%
France	90%–95%
Belgium	90%+
Sweden	90%+
Finland	90%
Italy	90%
Netherlands	88%
Portugal	87%
Denmark	83%
Spain	81%
Average of 13 EU Member States	c 80%
Germany	67%
Luxembourg	58%
Average of 9 (then) candidate countries	c 40%
UK	36%
Japan	21%
USA	15%

Sources: figures for EU Member States and candidate countries—referring to various years from 1999–2002, and in some cases estimates—are in most cases as calculated by EIRO for TN0301102S and TN0207104F; figure for Japan (2001) is from JIL; figure for USA (2001) from BLS.

Beyond the higher levels of union density and a collectivised system of pay determination, there is yet another dimension along which working life in Europe, far more than in the US, is determined through collective processes. A European Directive was finally adopted in 2002, after many years of deliberations, established a general framework for improving information and consultation rights of employees at workplace level, supplementing and reinforcing the levels above.¹² In the US, by contrast, there is no legal mechanism for worker participation in the workplace outside the small and shrinking ambit of collective bargaining. (Indeed, neither individual states nor employers within the US could lawfully institute 'works councils' on their own without an amendment—an extraordinarily unlikely one—to the national labor laws).

There is, finally, the institutionalised participation of the major trade union confederations, as leading 'social partners', in the 'social dialogue' that operates within many EU member states and that is part of the evolving European policymaking process. The pervasive presence and role of workers' organisations at both EU and Member State levels, in the form of macro-level national dialogue, collective bargaining at intersectoral and sectoral levels, and collective participation in decision-making at the workplace, is the most salient quality distinguishing the European social model, particularly from the US model. These differences between European and American experience in levels and forms of labour representation and regulation surfaced as a prominent theme in our workshops and a focus of our discussions of labour regulation in an internationalised and globalised economy.

So the two great pillars of 20th century labour regulation—of democratic control over markets and capital—have been national labour standards and nationally-governed collective bargaining through trade unions. While there are important differences between the US and Europe in this regard, on both sides of the Atlantic, both of those institutions are being undercut and weakened by globalisation and outmaneuvered by the chief agents and beneficiaries of globalisation, the transnational and multinational corporations. What is growing up, and what can be cultivated, to take the place of or to strengthen these institutions and restore the power of workers to have a say in their own economic destinies?

The contributions by the North American and European labour law scholars in this book focus on two general substantive themes in relation to the labour dimension of international economic regulation: institutional design and democratic legitimacy.¹³

¹² See the Preamble to the final directive, particularly Recital 17: '... the object is to establish a framework for employee information and consultation appropriate for the new European context described above [in Recitals 6–16] ...'. Council Directive No 2002/14 establishing a framework for informing and consulting employees in the European Community. OJ 2002, L80/29.

¹³ Other scholars have similarly identified three 'primary and interrelated concerns ... in debates about global regulation': 'First comes the question of how institutions emerge and evolve in mediating the dynamic of the global marketplace. Secondly, there is ... the problem of the appropriate level for public governance of economic activities. ... Thirdly, there is a problem of democratic deficit. This stems from a perception that internalised economic activities are no longer subject to control or facilitation by national governments acting alone, while international structures are institutionally underdeveloped'. W Bratton, J McCahery, S Picciotto, C Scott (eds), *International Regulatory*

Labour Regulation in a Global Economy: Institutional Design and Levels of Governance

Our first and most explicit mission was to explore matters of institutional design, and specifically the efficacy of different regulatory mechanisms, techniques, and institutions for the attainment of the objective of real rights and protections for workers. How viable and effective are emerging mechanisms of 'soft law' and internalised 'self-regulation' by firms themselves as compared to more traditional forms of state-centered 'hard' regulation? Is 'soft law' and 'self-regulation' a trap and a delusion or can it deliver real rights and protections to workers? Are we seeing hybrid forms of soft and hard law that can improve upon both?

In this volume, for example, Professor Susan Sturm argues that complex and subtle forms of employment discrimination have proven resistant to formal equal employment mandates in the US; but that informal mechanisms—both within firms and among public and private actors in the aftermath of litigation—have extended the law's reach and its efficacy. She argues for a reflexive conception of law that includes 'creating occasions and incentives for non-state actors to deliberate about norms in context, and to construct conditions of permeability between legal and non-legal actors so that formal law can legitimately and effectively take account of informal normative activity and vice versa'.

Professor Harry Arthurs, in his contribution, takes a more pessimistic view of 'reflexive law', with its decentering of the state, its encouragement of self-regulation, and its deemphasis on hard law. He suggests that the reflexive move in legal theory follows the Reagan-Thatcher romance with deregulation and coincides with rising corporate power, and that the purportedly positive claims of reflexive legal theory risk becoming normative, and legitimating the withdrawal of the state from its hard-won role in protecting workers from the ravages of the market.

Professor Cynthia Estlund aims for a compromise that taps into the self-regulatory capabilities of major employers while preserving a major role for both the state (including, in the US, through private litigation) and organisations representing workers. She contends that conventional legal pressures should be designed and deployed as leverage to secure more effective forms of 'self-regulation' in which workers themselves, through organisational intermediaries, help to monitor compliance with legal norms.

Central to the issue of institutional design is the question of the appropriate level or levels of regulation. Apart from the question of whether some regulatory functions can be devolved effectively to firms themselves, there is the question of

which levels of government should exercise external regulatory authority. Should and must regulation aspire to global reach to match the reach of capital and product markets? Or is there still an enduring role for national regulation? What is the appropriate role of subnational—ie, regional and local—regulation, or for supranational—eg, European—regulation?

Clearly no single level of regulation, nor even any single configuration of multiple levels of regulation, will be able to respond to the variety of regulatory challenges posed by workplace and labour issues. On the one hand, the ever-increasing mobility of capital, of products and services, and of production itself seems to militate for higher and broader levels of regulation. Yet much economic activity remains highly local. The need for physical proximity to customers, to suppliers, to concentrations of skilled and knowledgeable workers continues to constrain capital's ability to seek less regulated or less unionised environments. That creates both acute regulatory challenges and surprising opportunities, and helps account for the sheer variety of regulatory experiments and proposals.

Professor Simon Deakin's analysis of the origins of the contract of employment aims to illustrate his conclusion that 'the institutional underpinnings of capitalism are perhaps more diverse, and more contingent, than some current theories allow'. The institutional design appropriate for labour protection in the early period of capitalist development in Britain is characterised by a contract of employment whereby, in return for subordination, workers were offered only much later protection through fiscal legislation, social insurance and collective bargaining. In contrast, on the European continent, there was earlier 'recognition of the role of the contract of employment as a mechanism of economic integration within the enterprise and of social cohesion beyond it'. This dynamic conflict is evident in continuing debates over the 'European social model', itself in competition with other institutional designs for worker protection in a globalised economy.

In his analysis of the changing institutional architecture of the European social model, Professor Brian Bercusson explores the interaction of different techniques of enforcement of labour law at different levels, primarily the national and the EU levels. New techniques of labour regulation at EU level include the 'open method of coordination' (OMC) of Member State labour administrations and the transnational social dialogue between European organisations of trade unions and employers. His analysis of the European social dialogue focuses on the interaction of representative organisations of workers at EU, national and sectoral levels, in order to highlight issues of the democratic legitimacy of transnational mechanisms of labour regulation.

One example of the regulatory opportunities created by globalisation is found within corporate governance structures. In Europe, corporate governance encompasses the institutional voice of workers through works councils. So, for example, the EU Directive on European Works Councils (EWCs) requires firms to provide information and consultation on financial issues: 'in particular . . . the structure, economic and financial situation, the probable development of the business and of production and sales, the situation and probable trend of employment, invest-

ments, and substantial changes concerning organisation . . .'.¹⁴ The first three cases decided by the European Court of Justice involving the EWCs directive were concerned with disclosure of information about the financial links between different enterprises.¹⁵

Professor Marie-Ange Moreau uses the case of the European Works Councils Directive to focus on the central role of multinational corporations (MNCs) as illustrating the transformation whereby norms elaborated by a central state are now created by private actors. She identifies a 'principle of concordance' as a tool to confront the challenge of MNCs' power: concordance of scope, whereby norms must match the transnational scope of MNCs; concordance of time, whereby enforcement of norms must match the swiftness of MNC decision-making; and concordance of action, whereby transnational norm-creating actors representing employees have the freedom and power to act at the level of the MNC.

Such developments show that globalisation does not only erode national-level controls on capital and labour conditions; it also potentially extends the reach of the advanced economies, and potentially of their social norms, beyond national (and European) boundaries. To the extent that multi- and transnational firms make their home or maintain establishments in Europe, for example, European labour legislation, and particularly EWC provisions, have the potential to fill part of the emerging governance gap—and particularly the 'participation gap'—that globalisation has opened up.¹⁶ This is an illustration of how a regional federation can intervene into the internal governance of firms themselves, and then potentially use the firm's own global organisation to extend the reach of regional labour norms. National regulation and trade unions, the traditional actors in labour regulation, may play a supporting role, but the leading actors in transnational labour

¹⁴ Council Directive 94/45/EC of 22 September 1994 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees. OJ L 254/64 of 30.9.94. Annex, 'Subsidiary requirements', paragraph 2.

¹⁵ *Betriebsrat der bofrost Josef H Boquoi Deutschland West GmbH & Co. KG, Straelen v bofrost Josef H Boquoi Deutschland West GmbH & Co. KG Straelen*, Case C-62/99, [2001] European Court Reports I-2579. *Gesamtbetriebsrat der Kuhne & Nagel AG & Co KG v Kuhne & Nagel AG & Co KG*, Case C-440/00, decided by the ECJ, 13 January 2004, *Betriebsrat der Firma ADS Anker GmbH v ADS Anker GmbH*, Case C-349-01, ECJ, 15 July 2004.

¹⁶ See B Bercusson, 'Labour and multinational capital: the potential of European Works Councils', in P Humblett and L Lenaerts (eds), *Arbeid en Kapitaal: (on) verzoenbaar?*, Tegenspraak-Cahier 19; 1999, Ghent, pp 103–20. EWCs need to be perceived in this context of the precise role of MNCs in the global economy. As indicated, the scope for EWCs may have to extend beyond the boundaries of the MNC itself and link up with the integrated production chains in which the MNC plays a central role. See, for example, 'The TNT European information and consultation committee', *European Works Councils Bulletin*, Issue 4 (July/August 1996), pp 11–14; 'Nissan agreement', *European Works Councils Bulletin*, Issue 18 (November/December 1998), pp 17–20; 'Nortel agreement', *European Works Councils Bulletin*, Issue 19 (January/February 1999), pp 17–20; 'American Express agreement', *European Works Councils Bulletin*, Issue 20 (March/April 1999), pp 18–20; AM Artiles, 'Working for Big Brother Ford: limits to the effectiveness of the European works councils?', *Transfer*, vol 5, no 3 (Autumn 1999), pp 394–9; T Royle, 'Avoidance strategies and the German system of co-determination' (on MacDonalds in Germany), (1998) *The International Journal of Human Resource Management* (December), pp 1026–46; cf M Whittall, 'The BMW European Works Council: A Cause for European Industrial Relations Optimism?' (2000) 6 *European Journal of Industrial Relations* (No 1), pp 61–83.

regulation are regional and corporate entities, and the worker-participants in European works councils.

The role of regional integration in the process of economic globalisation is a well-known theme in the literature. As stated by Bjorn Hettne: 'The basic issue is the relationship between forces of globalisation and forces of regionalisation. Regionalism is one possible approach to "a new multilateralism" . . .'. He adds that 'Europe represents the most advanced regional arrangement the world has seen . . .'.¹⁷

The emergence of the European Union as the world's largest trading bloc holds particular interest, not least due to the EU's development of transnational labour standards applicable to its Member States. EU law regulates the largest economy in the world. The economic integration of twenty-seven sovereign states requires a legal framework which allows for transnational business activity. The development of this legal framework illustrates the complexities of transnational public institutions regulating international business activity. The EU is the most advanced modern example of *regional* economic integration providing a legal framework for the regulation of international business. At regional level, the EU has developed a growing body of regulations governing employment standards and industrial relations. As the EU develops labour standards applicable to transnational economic activities, the EU's role in the global economy may offer valuable lessons in techniques linking labour standards to transnational economic activities. The case of labour regulation in multinational enterprises is but one example. The continuing continent-wide debate over a new Constitutional Treaty for the European Union has raised popular consciousness and stimulated discussion of the future of labour regulation as well as the place of labour organisations in the overall institutional design of a European Union. Both regulatory techniques (legislation, the 'open method of coordination', social dialogue) and levels of regulation ('subsidiarity', vertical and horizontal, and federalism) have been central issues in that debate.

Still, European social norms and governance institutions are not going to match the reach of global capital. So, inevitably, the problem of globalisation leads to an exploration of international labour standards, and international organisations—the United Nations, the ILO, even the World Trade Organisation (WTO)—as mechanisms of governance.

The paper by Professor Bob Hepple examines how the objectives of raising labour standards in exporting countries, or to secure compliance with international labour standards, or at least to secure adequate enforcement of domestic labour standards have been pursued in both the USA and in Europe through various measures: unilateral measures (the Generalised System of Preferences), bilateral and regional agreements (the North American Agreement on Labor Co-operation of NAFTA and the EU's external trade agreements) and multilateral

¹⁷ 'Global market versus the New Regionalism', in Held and McGrew, *op cit* 2003, pp 359–69, at pp 359, 362.