NATIONAL STYLES IN LABOR LAW AND SOCIAL SCIENCE SCHOLARSHIP: A PERSONAL VIEW

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This subject is especially important to us academics. Indeed, it raises fundamental questions about how we are conducting our research and our teaching, the very objectives of our academic duties and privileges. And, as for all other matters, it is obvious that our style of research and teaching were influenced by the example and learning by our teachers, who transmitted to us their values and ways of doing things, not only at home, but also from abroad, the latter one especially, when one is raised in a small, pluri-cultural country like Belgium.

Personally, I was, and still am, immensely under the spell of Professor Dr. Zeger Van Hee, my promoter, who always saw the broad picture, highlighted the historical dimensions, and instructed me about the very critical role an academic has to play in society. "An academic," he told me, "is the only one, who is free to speak his mind, as he is not on the pay roll of someone controlling his ideas and words." I found the same message from Professor Clyde Summers, whom I met as early as 1963, and who was insisting on the necessary democracy in labor law and industrial relations. The more power one has, the greater the democratic legitimization necessary was (and is) his vision. Clyde Summers referred here to the enormous legal binding effect collective agreements can have when they are extended to all employers and employees by governmental decree, as is the case in many European countries. Clyde's concerns regarding trade union democracy influenced me greatly. Clyde was also a staunch defender of academic freedom. I remember him saying after a discussion with some colleagues that "he was not a mouth piece for multinational enterprises." Professor Otto Kahn-Freund also left a lasting legacy for his generation and the younger scholars at that time. His

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"collective laissiez faire" theory and the role of collective bargaining, as well as of the social dialogue, fitted well with the realities of quite a number of national labor law and industrial relations systems. I recalled one of his sayings, namely that "labour relations are power relations," repeatedly in my classes. Professors Nipperdey and Paul Durand were also widely read outside their national boundaries.

However, one's approach to research and teaching evolve as the years go by, especially, if one participates fully in comparative work, as many have the privilege to do. It has always been my conviction that one could learn more about one's own system by spending time studying abroad than by staying at home, as one is confronted there with new questions that challenge the too-often self-evident homemade solutions. This being said, I would like to deal with a number of evident points, relating to research and teaching of labor law.

I. WHAT IS OUR SUBJECT?

According to our (Belgian) tradition, labor law comprises the individual as well as the collective relations between employers and employees. We do not consider those working in the public sector. This is a hangover of the traditional division between private and public law—labor law forms a part of private law—although there is a growing symbiosis and interpenetration of both labor markets and the integrated study of both would be indicated.

II. HOW IMPORTANT IS THE FIELD?

In most European countries, the field of labor law remains very important for various reasons:

- In the European Union, not less than 155 million people are involved as employees.
- From the scholarly point of view, labor law a remains a very original object, especially as far as its legal sources are concerned; thus, the collective agreement. The same goes for collective topics such as the representation of employees or the legalized warfare: strikes and lock-outs. Legal doctrine struggles with the problem of how to conceptually integrate the collective notions and concepts in the overall legal framework, which only recognized individual channels to create legal obligations between parties. I always described the collective agreement as an egg with a double yolk: one agreement with a dual content—an obligatory part and a normative one.

Obviously, the collective nature of the collective agreement had to be respected when ascertaining its legally binding effect. The collective agreement cannot be reduced to a juxtaposition of individual relationships between employees and employers.

- The field is also important, in Belgium at least, as labor law is a mandatory course for all law students. It is taught in the third year of law school, the curriculum being one of five years. Indeed, I wanted the students to be confronted with labor law as soon as possible in the course of their legal training in order to give them an insight, almost from the beginning, on how society really works and functions in this respect: the power relations involved and the balance of power being maintained, the influence of the social partners on the legislative process; the role of the group of "10": five representatives of the employers and five of the trade unions, dealing directly with the government and deciding upon the social and economic agenda, marginalizing Parliament in this respect; the role of the social partners in the functioning of the labor courts, the administration of Social Security. An insight into the real world.

III. HOW IS LABOR LAW DEALT WITH IN RESEARCH AND TEACHING?

In most European countries, research and teaching limit themselves to the analysis of the legal rules, notions, and concepts. The deductive method prevails. Case law is only used as an illustration of how the legal rules are to be interpreted. That's also the way textbooks are composed and essays and articles are written. What happens in the real world is not of much concern to the legal scholars. A pure legal academic approach prevails. This is, in general, still the case.

I had learned my lesson well. In 1961, I got my Ph.D. in Law with a thesis on "the collective agreement at sectoral level according to Belgian Law." As mentioned earlier, I had the privilege to meet Clyde Summers in Belgium, and Clyde informed me about his wish to talk to someone on collective bargaining in Belgium. I was obviously the indicated scholar. But Clyde asked about the content of the collective agreements, what kind of wages and conditions and other issues were dealt with by way of collective agreements; how the different levels of bargaining relate to each other and so on. These questions were totally alien to me. Mine was a purely legal approach: ask me what is the legal nature of the collective agreement, its binding

effect, that of the obligatory and of the normative part of the agreement, the legal condition for extension of the agreement. What the real impact of the agreement on the wages and working conditions of the employees were, was not a legal concern. Clyde confessed to me that this was not really helping him; that he wanted to know what was going on, not what someone was thinking.

Indeed, I learned my lesson well. Since then, I concentrate not only on the law, but also on the facts. I combine traditional labor law and industrial relations, the legal rules and how they operate in practice. But still, I remain an exception. The old style continues. A purely legal approach is preferred. Even if you as ask a HRM Manager or a trade unionist to talk to your students about their experience, they will give you a theoretical lecture, a pure academic approach. With this, the word "academic" has, in general, a rather negative connotation of someone who has no contact whatsoever with the real world and, for practical purposes, is of not much use.

I remember that in the 1970s I introduced a request for a research grant regarding works councils, about their legal competences and how they operate in practice: what kind of information did they really get, how does the consultation procedure function, and what was their real impact on management decision making. The legal committee of the research council refused the grant, as, so it was explained, this was not legal research, but food for social scientists and sociologists. I was knocking at the wrong door.

We are still on that road: Ph.D.'s in law are still purely legal, concentrating on principles, notions, and deductions. Whether the legal solutions do make sense in the real world seems not to be a concern.

Similar problems seem to prevail in other European Countries. When I started in 1975 with the International Encyclopaedia of Labour and Industrial Relations, this was a deliberate choice. We wanted to focus both on law and on reality. I got an enthusiastic call from Professor Gino Guigni from Italy, crying out that this was the approach that was needed, as the same battle between theory and practice was going on in Italy and the younger scholars were longing for an integrated approach.

We followed the same approach when launching the *Book on Comparative Labour Law and Industrial Relations* and *The International Journal of Comparative Labour Law and Industrial Relations*, which was an offshoot of the *Encyclopaedia*. But traditions never die. The dichotomy remains and the distance between the two worlds continues, in general, to prevail.

IV. WHAT ARE THE OBJECTIVES OF RESEARCH AND TEACHING?

These are manifold:

- to know what is going on, to understand;
- to get and provide an insight into how the labor law system works; and,
- an analysis of the meaning of words, notions, and principles; the significance of the cases.

But, to my mind, there is much more:

- the link with reality: e.g., the impact of new technologies on the world of work, on the employment relationship, and the organization of work;
- whether the notions and concepts of yesterday (the industrial society) are still appropriate in dealing with the information society;
- an evaluation of the social policies developed—a critical assessment of the values retained and of the realities of social inclusion and exclusion; and,
- the development of an alternative strategy leading to appropriate social policies, involving criticism and constructive proposals.

These last objectives become self-evidently rather personal and thus subjective. At the end of the day, everyone is subjective, be it merely by the choice of items one thinks to be important. But here academic freedom plays. Hopefully people, while subjective, will be honest and say what they mean and mean what they say. At the same time, I, at least, tell my students that there are other points of view, that they are entitled to their own opinion and that one can perfectly agree not to agree.

I share this critical-constructive approach with a number of European colleagues. In 1996, 114 of us from 15 European Countries made proposals to include fundamental social rights in the Treaty on the European Community: we believe in free markets, but corrected by strong social policies, aiming at redistribution and equality. Other points, which, according to my view, should be stressed continually are:

- democracy in the trade union movement, as few trade union leaders are elected by the rank and file;
- transparency of sectoral social funds, financed by contributions paid by all employers and administered by the social partners;
- trade of humans in soccer, through transfer systems; and,

- the difference of blue and white collars are, at least in Belgium, a disgrace, but kept alive because it suits the trade union structures, which are set up along those lines.

In making these choices and speaking my mind, I got guidance on what to do, again from my promoter, the already mentioned Dean Zeger Van Hee. The case was as follows.

In Belgium in the 1960s, works councils had to be mandatory established in the enterprises, operation in the economic sector, not in the non-profit sector. The non-profit sector is huge: hospitals, schools, handicapped, elderly, cultural activities, etc. Eighty percent of that sector was of Catholic obedience. There was a governmental proposal to extend the establishment of works councils to the non-profit sector as well, which would also lead to the obligation for the enterprises involved to contribute financially to the fund for the indemnification of employees in case of insolvent employers. The appropriate Catholic authorities took up this issue. The University of Leuven is a Catholic university and I, as the incumbent Professor in Labour Law, was asked to give my opinion in this respect and back up the position that works councils were not appropriate for the non-profit sector. So I went to my Dean to seek his advice about what I should do. He asked me, "What is your opinion?" My answer was "I see no difference between workers in an hospital and workers in a manufacturing company. Both are entitled to information and consultation rights. So, there should be works councils in both sectors: profit and non-profit alike." He said to me, "speak your mind because, if you lick their heels, they will kick you as a dummy dog." So I spoke my mind, was called a communist, and thrown out of the meeting.

I must recognize, that at least in my country, few academics exercise a critical function. Many never utter a critical word for a variety of reasons, such as:

- academics have to be discrete;
- academics—practicing lawyers—cannot displease their clients;
- those engaged in arbitration want to appear neutral; and,
- you want to please those in power, get research grants etc.

Finally, in smaller countries, studies are often undertaken in a comparative way. This should be self-evident, but it is not. Especially in larger countries, lawyers stick to the study of their own systems, which seem to them largely self-sufficient.

V. CONCLUDING

Labor law as a field of study and teaching is important because of the large number of people involved, the originality of legal sources and institutions, and, consequently, as a mandatory course in the legal curriculum. In many European countries, however, study and teaching are limited to pure legal analysis, without attention to what is really going on.

We should do more than that and:

- integrate law and reality in our research and teaching: indeed, "the rule of law should run closely to the rule of life";
- engage in comparative analysis where necessary and useful; and,
- try to understand where we are, where we are going, and what should be done in order to have a socially acceptable system aimed at maximum productivity, job creation, employability, and adequate social protection, where
    - fundamental social rights are respected and legally binding;
    - the free market can play, also a free labor market;
    - decent social protection prevails, financed by an adequate tax system, aiming at social inclusion; and,
    - where democratic rights are respected in representing employees.

One should make full use of academic freedom to point out, in a subjective but honest way, what should be done, according to our own national traditions, realizing that there are many ways to obtain a just society. This is what I tried to do my entire life. Sometimes it is lonely at the top, often one has the impression of dreaming, but sometimes dreams come true.