THE ISRAELI SYSTEM OF LABOR LAW: SOURCES AND FORM

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I. INTRODUCTION

The Israeli system of labor law is currently a highly developed, semiautonomous body of law. This short introductory description of the system is intended to serve as a background to the articles on particular issues in Israeli labor law, as part of a project comparing labor law in several Mediterranean countries. In the following pages, I wish to trace the origins of the system, with an emphasis on its manifold sources on the one hand and idiosyncratic features on the other. The article analyzes four major stages: pre-statehood (until 1948), the initial legislative stage (1948–1969), the establishment of the Labor Court (1969–1987), and the current stage of pluralism (1987 onward).[1]

The chronological description indicates that the Israeli system of labor law, like that of other systems, is path-determined, and, consequently, it may sometimes be difficult to classify or categorize. Moreover, it is in a transient state. The analysis indicates several peculiarities of the system. First, despite its common law origins due to the influence of the British Mandate, it grew into a system based predominantly on continental European law. As such, it also drifted apart from the more common patterns of influence that affected the development of Israeli labor law. The legal system accommodated a *corporatist* industrial relations system in which exclusive associations of workers and employers, to which the state delegated its power to regulate the labor market, engaged in centralized and coordinated bargaining. Second, the system shifted from its European to Anglo-

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1. Much of the information that appears here is taken from GUY MUNDLAK, FADING CORPORATISM: ISRAELI LABOR LAW AND INDUSTRIAL RELATIONS IN TRANSITION (2007).

American roots, but not because of any Anglo-American heritage. Instead, the shift was a result of instability in the European industrial relations transplants that were introduced after statehood. The move to the Anglo-American system reflected a transition away from corporatism to a more *pluralist* system, in which many associations compete over resources and power, seeking to advance their constituencies' claims.[2] Third, in its current state the law is eclectic, drawing on various sources and influences. Thus, while the system has gradually leaned toward the Anglo-American model, it still draws on corporatist institutions, such as extension orders and broad social pacts, albeit to a lesser degree than in the past and with some important qualitative differences. The legal institutions that developed throughout the four phases have not disappeared and tend to give rise to manifold, and sometimes unexpected, political solutions to disputes over labor market policy.

II. PRE-STATEHOOD: FROM OTTOMAN TO BRITISH COLONIALIZATION

At the time Palestine was a part of the Ottoman Empire, labor law was governed by the Magela, the Ottoman legal code, to which two particular laws were added in later stages.[3] The Ottoman law dealt only with individual employment relations, treating the employment contract as yet another example of rental contracts. It provided no statutory minimum standards and was generally adapted to the characteristics of an agrarian society, in which the employment relationship was the exception rather than the rule. Only with the British Mandate over Palestine following World War I did the development of labor law begin to receive more particular attention.

While small associations resembling trade unions had appeared already at the end of the nineteenth century, it was only in 1920, when the General Histadrut (Israel's dominant trade union) was established, that the presence of collective action made it necessary to consider the legal treatment of the collective aspects of labor law. The

2. For the distinction between corporatism and pluralism, see *id.* at ch 1. On the importance of corporatism to deciphering the Israeli system of industrial relations, see MICHAEL SHALEV, LABOUR AND THE POLITICAL ECONOMY IN ISRAEL (1992); LEV L.GRINBERG, SPLIT CORPORATISM IN ISRAEL (1991).

3. The Law of Strikes (1909), later cancelled by the Israeli Industrial Disputes Resolution Law 5717-1957 (1957) (Isr.), and the Law of Professional Guilds (1912), which was never formally cancelled, but also had never been implemented, and can therefore be assumed to have been voided by the rules of transition to statehood. The Jurisdiction and Powers Ordinance of (1948) (Isr.).

British Mandate over Palestine was engaged in one way or another in an effort to regulate the labor market in Palestine, or abstain from regulation, for almost thirty years.[4] Britain's colonial authorities tended to apply British conceptions of labor law to their colonies, but Palestine was somewhat of an exception. The vast differences, economically and politically, between the Arabs and the Jews in Palestine made the task of standardization more difficult to apply. The British Mandatory government also held that labor law at that time was not necessary because the development of industry in Palestine was still in its infancy.[5] Furthermore, the British Mandate introduced the political spirit of nonintervention in economic affairs that was prevalent in Great Britain at the time. Consequently, the list of issues that were legislated was relatively slim compared to the prevailing legislation in the United Kingdom, and over time its narrow reach was highlighted by the emerging expansive agenda of the International Labour Organisation (ILO).[6]

Many legal developments in Israel's labor law can be traced to fundamental disagreements over the law of strikes. As in other areas of labor law, the seeds of this controversy can be traced back to the Mandatory period. Following the minimal ordinances that dealt with employment standards, the British ruler also passed the Prevention of Intimidation Ordinance (1927), which sought to restrict violence in the process of industrial disputes and picketing.[7] This ordinance did not abolish the Ottoman law on strikes, which permitted strikes, but restricted any activity other than the cessation of work, as well as any strike activity in the public services, broadly defined.[8] The Ottoman law also held that any violation of these provisions was a criminal offense. The British ordinance merely added criminal offenses regarding any threat or act of intimidation that might be used during a strike.[9] Despite the British Mandate's effort to market this ordinance together with the occupational health and safety ordinances as a single

4. For a general description of labor law's development at the time of the British Mandate, see Itzhak Zamir *Labor and Social Security*, 16 SCRIPTRA HIEROSOLYMITANA 298 (1966) (Isr.); Abraham Doron, *Labor and Social Insurance Legislation: The Mandatory Government's Policy*, *in* ECONOMY AND SOCIETY IN THE BRITISH MANDATE: 1918–1948, 519 (A. Bar-Eli & N. Karlinski eds., 2003) (Isr.).

5. Assaf Likhovski, *Between 'Mandate' and 'State': Re-thinking the Periodization of Israeli Legal History*, 29 MISHPATIM 689, 698 (1998)(Isr.).

6. Among the more important Ordinances were The Workmen's Compensation Ordinance (1927) and The Women and Children Ordinance (1927).

7. On the tradeoff, see Likhovski, *supra* note 5, at 700.

8. The Ottoman Law on Strikes (1909).

9. ITZHAK BAR-SHIRA, LABOR AND EMPLOYMENT LAWS IN ERETZ ISRAEL 187–90 (1929).

package, the Histadrut viewed the restrictions imposed on industrial action as outweighing all the minimal rights provided by the other ordinances. It also saw the danger in far-reaching labor legislation, which could have potentially curtailed its activity instead of abetting it. In the following years the Histadrut tended to object to the idea of increasing the regulatory reach of the British Mandate over the labor market.

Only at a later stage, starting in 1943 with the establishment of the British Mandate's Department of Labor and Department of Social Welfare, did the regulation of the Palestinian labor market increase, and initial attempts were made to start a government-supervised welfare system.[10] More ordinances were passed, labor standards were raised, and municipal provision of welfare to the poor was attempted. In addition, the British Mandate Department of Labor sought to address the slack enforcement of labor standards, often infringed by the British government itself and disregarded by private employers except when enforced by means of collective bargaining. However, the scope of regulated issues remained limited to the same topics concerning occupational health and safety, and special protections for women and minors.[11] Despite the establishment of the Labor Department, the formal law governing labor relations was still generally regarded as standing in the margin of labor market regulation, and it had little impact on both individual and collective employment relations.[12]

The minor role played by law in the period 1917–1948 should be contrasted with the very significant developments in autonomous collective regulation, as it applied to the Jewish labor market. The relationship between these developments and law was twofold: they were not directed by law, but neither were they prohibited by the law. They were developed voluntarily, based on the economic and social incentives for the Jewish labor force to organize as a means of gaining leverage in the labor market. The collective agreements signed at that

10. The Department of Labor was established by the Department of Labor Ordinance (1943) (Isr.).

11. In the area of occupational health and safety, the most important development was the enactment of the comprehensive Factories Ordinance (1946) (Isr.), The Industrial Accidents and Occupational Diseases (Notification) Ordinance (1945) (Isr.), and the Workmen's Compensation Ordinance (1947) (Isr.). In the area of labor standards, the new ordinances were still restricted to the regulation of women and minors. *See* Employment of Children and Young Persons Ordinance (1945) (Isr.); Employment of Women Ordinance (1945) (Isr.).

12. Itzhak Bar-Shira, *Labor Legislation in the State of Israel*, 2 CHIKREI AVODAH [LABOR RESEARCH] 59, 61 (1948) (Isr.). *See also* the editorial that appeared in 1 CHIKREI AVODAH [LABOR RESEARCH] 7–8 (1947) (Isr.), which was published by the General Histadrut's research department.

time were perceived as socially binding, but, exactly as was the case in Great Britain, they were not justiciable (and hence in the nature of a "gentlemen's agreement"), nor did they entitle the workers, as individuals, to any enforceable rights.

The extensive use of collective agreements provided all the norms not legislated by the British Mandate. There are estimates that 71% of Jewish-owned enterprises were governed by collective bargaining agreements, and that 82% of the Jewish workforce was covered by such agreements.[13] However, the norms that were developed in these agreements had an impact that exceeded even their broad coverage, as they were viewed as embodying the basic employment norms of the Jewish labor market.[14] These norms included, *inter alia*, the actual right to organize in trade unions, the right to cease work on May 1st, the right to limit the workday to eight hours, the right to prior notice before dismissals, protections against unjust dismissals, severance pay, cost-of-living adjustments, seniority wage premiums, sick-days pay, and even maternity benefits.[15] Paradoxically, it can be argued that the passive approach the British Mandate adopted with regard to the regulation of the labor market actually created an incentive for individual workers to organize and support trade union activity. There was no substitute for the achievements of the Histadrut in the area of employment rights and also in the broader social sphere (i.e., social security or healthcare). As will be described in the following sections, more recent developments in Israel's labor law have in fact reversed the pattern that developed in the pre-statehood period, with heightened regulation and statism coming at the cost of declining importance of collective bargaining.

That the development of autonomous collective bargaining overshadowed the formal writing of labor law at the time is demonstrated by the British Mandate's effort, and subsequent failure, to extend the scope of labor legislation. During the last few years of the British Mandate, three important ordinances were enacted. The most important of these was the Trade Union Ordinance (1947), which was based on the British Trade Union Act of 1871, as later

13. Bar-Shira, *supra* note 12.

14. The Supreme Court of Israel realized the significance of these norms as the customary law of Jewish employees and employers, above and beyond the direct coverage of collective agreements, CA 25/50 Wolfson v. Spanis Ltd. PDI [1954] IsrSC 5(1) 265.

15. BAR-SHIRA, *supra* note 9, at 11. The limited set of rights that appears in collective agreements in Bar-Shira's book in 1929 becomes much more extensive by the end of the mandatory period, as can be seen in Bar-Shira, *supra* note 12.

amended and developed in 1876 and 1913.[16] This model of legislation, which was exported by the British ruler to its various colonies, encountered stiff resistance from the agents of the already developed and autonomous collective bargaining system. The ordinance required a declaration of the High Commissioner for it to come into effect, but given the objections of the General Histadrut to the ordinance, no such declaration was forthcoming and the ordinance was rendered moot by the founding of the Israeli state. First and foremost the Histadrut objected to the requirement that the trade unions be supervised and monitored by a governmental agency. The ordinance also required prior registration, and held that registration could be annulled by the government. Severe restrictions would have been placed on the collection of union dues, and personal responsibility placed on the union leaders at the same time for compliance with collective agreements and the law. The Histadrut's demand that collective agreements be recognized and enforced was not incorporated into the ordinance. The Histadrut was therefore concerned that such supervision would undermine the autonomy of the agents to collective bargaining and only harm the already established, dense net of collective agreements.

At the time the Israeli state was founded, most of the formal provisions of labor law (i.e., statutes) were accepted into the Israeli law, until changed or developed by Israeli legislation. But this "legacy" of the British Mandate's legislation was in reality very insipid, its only lasting contribution being in the area of occupational health and safety, with regard to standard-setting, enforcement, and compensation.[17] Its more important bequest, which served as the real basis of the Israeli corporatist labor pact, was the existence of a system for collective bargaining and social provisions, characterized by autonomy (lack of interference by the state) and voluntary independence (lack of recognition and aid from the state). Formal law (unlike the autonomous making of norms) was only developed with the consent of the autonomous agents in civil society. Thus, ordinances that were not supported by the agents were not

16. The normative origins of the Trade Union Ordinance lay in the British Trade Union Act, 1871, 34 & 35 Vict. (U.K.) and subsequent amendments. Yet the British Mandate's ordinance did not adopt the British acts precisely. Most notably, the ordinance added various regulatory measures that could enhance the government's power to oversee and control trade union activity.

17. This is also one of the last areas in Israeli law that is still governed by ordinances, although these have been amended numerous times. The Accidents and Occupational Diseases (Notification) Ordinance (1945) (Isr.) and the Factories Ordinance (1946) (Isr.) are still in effect (the latter has been renamed the Work Safety Ordinance).

implemented. By contrast, the norms established in collective agreements during the years preceding statehood served as the basis for the first labor statutes in Israel.

III. AFTER STATEHOOD: LEGISLATING FOR THE CORPORATIST SYSTEM AND THE CONTINENTAL INFLUENCE

With the establishment of the state, and even a few months prior to independence in fact, the Histadrut had already prepared an agenda for drafting Israel's labor law. This, however, was not an "interest group" agenda. The deliberations over the new agenda were conducted by individuals within the Histadrut who also had an impact in the dominant political party and in the Jewish Agency, and the agenda had an overall nationalist perspective. By 1948 the Histadrut's Institute for Social Research had a well-prepared and carefully drafted proposal for labor legislation.[18] This agenda was echoed almost word-for-word at the first sitting of the Knesset, when the government announced its plans to commence with extensive legislation in matters of labor and social security.[19]

In the emerging consensus over the need for renewed labor legislation in the Israeli state, a number of basic principles emerged. First, there was agreement that workers' rights must be made constitutional. Not only should they be put into law, but they also had to be made the founding principles of the Israeli state. Second, there was a demand to strengthen the position of autonomous lawmaking through collective bargaining. The Histadrut's position was not against all legislation in the area of collective labor law. In this sense, its approach was somewhat different from that of the British Trade Unions. The Histadrut merely opposed the particular model proposed by the British Mandate. What it sought in legislation was to ensure its autonomy on the one hand, but, at the same time, to receive legal recognition of collective agreements and their enforceability on the other. The third and fourth components of the agenda derived from the second. The Histadrut sought to preserve its dominant role in the area of social provision. Thus, despite its support for devising a comprehensive social security scheme, it demanded that the scheme not interfere with its administration of healthcare, pensions, and other social services. In the same spirit, the Histadrut was in favor of

18. Bar-Shira, *supra* note 12, at 62–78.
19. DK (1948) 56.

developing statutory minimum standards, but held that these must be limited so as not to make collective bargaining redundant.

To characterize the Histadrut's broad agenda for the writing of Israel's labor law, it can be said to have continued the trend of the pre-statehood years while breaking away from it at the same time. The Histadrut sought to maintain the autonomy of the collective bargaining process; unlike during the British Mandate years, however, it also asked for the formal recognition of collective agreements and for the state's intervention in enforcing and encouraging collective bargaining. In this sense, the Histadrut's position was different from that of the previous period, when it viewed the optimal state of affairs as consisting of a "side-by-side" model in which law and collective bargaining are parallel avenues that do not interact with one another (i.e., law does one thing, and collective bargaining does the rest). In the absence of any significant influence over the Mandatory ruler, the Histadrut viewed interactions between law and collective bargaining as a threat to its autonomy. By contrast, after the foundation of the state, the newly elected government was no longer seen as an adversary. It was democratically accountable to the electorate, but more importantly—it was dependent on the Histadrut as one of its major sources of power. Thus, the Histadrut did not seek to be delegated power by the state so much as it used its de facto power over the government to arrange for autonomy and recognition. Law was no longer a potential threat, but rather a potential instrument for strengthening and securing the autonomous sphere of bargaining.

Except for the constitutionalization of labor's rights, all the other goals defined by the Histadrut at the time of the state's founding were achieved. The constitutional objective failed only because the writing of a constitution as a whole failed, due to the controversy over the relationship between the Israeli state and the Jewish religion. By contrast, the objective of maintaining social services in the hands of the Histadrut succeeded. This was one of the strong corporatist trademarks of the Israeli system. As in the case of the "Ghent system" where unemployment funds are administered by the trade unions, the Histadrut realized that prior to labor law its hegemonic position relied on the public's need for the Histadrut, just as much as the Histadrut needed the state's support to secure its position. Adopting the Ghent model at the time was not an option, because of the government's general objection to including unemployment benefits in the Israeli

social security system.[20] Yet the Histadrut had even stronger cards to play than unemployment funds, because during the British Mandate it had assumed the responsibility for instituting and managing social provisions. Upon the foundation of the state, the government appointed a national commission that was headed by Kanev (Kanevski), a leading member of the Histadrut's research and policy-setting group.[21] In the commission's recommendations there was an objection to taking away services already provided by the Histadrut, which was even more forceful in its implementation. The argument was made in terms of "continuity." Consequently, until the mid-1990s both healthcare provision and pensions were for the most part provided by the Histadrut. This was found to be the most important reason for membership in the Histadrut.[22] The importance of similar systems can be observed even today in countries where the remains of the Ghent System endure, such as Belgium and Sweden.[23]

The failure of the constitutional project on the one hand (for reasons not concerned with social or economic issues) and the relative ease with which the Histadrut's "social role" was accepted in the domain of social security legislation on the other led to the centrality of the legislative project of labor law. The core of the corporatist system of labor law was rooted in the careful design of labor legislation.

The most striking legal development in the area of labor law during the years 1948–1969 was the "translation" of norms that were established in collective agreements during the pre-statehood years into statutory standards. On this matter the Histadrut held an ambivalent position. On the one hand, it represented broad segments of the population and was therefore interested in promoting a statutory safety net for all workers. Even putting ideology aside, the Histadrut was concerned with wage undercutting by workers who were not covered by collective agreements, and the potential disincentive for employers to negotiate agreements. On the other hand, at the same time the Histadrut sought to maintain its position as

20. John Gal, *The Development Of Unemployment Insurance In Israel*, 3 SOCIAL SECURITY (ISRAEL, ENGLISH EDITION) 117 (1994) (Isr.); John Gal, *Unemployment Insurance, Trade Unions And The Strange Case Of The Israeli Labour Movement*, 42 INTERNATIONAL REVIEW OF SOCIAL HISTORY 357 (1997).

21. Israel, Ministry of Labor and the People's Insurance (1950). Kanev Commission Report, *The Commission's Report on the Planning of a Social Security System* (1950) (Isr.).

22. Yitchak Haberfeld, *Why do Workers Join Unions? The Case of Israel*, 48 INDUS. & LAB. REL. REV. 656 (1995).

23. *Cf.* Lyle Scruggs, *The Ghent System and Union Membership in Europe, 1970-1996*, 55 POL. RES. Q. 275 (2002); Jens Lind, *A Nordic Saga? Ghent System and Trade Unions*, 15 INT'L J. EMP. STUD. no. 1 (2007).

the sole negotiator for rights at work, and the greater the gap between individually negotiated and collectively negotiated agreements, the greater the incentive for individuals to join the union. In compromising these conflicting interests, the Histadrut devised a list of issues it thought suitable for legislation, namely: working hours, annual leave, prior notice before dismissals, protection of wages, and in a different matter, the establishment of a state-run Employment Exchange.[24] By contrast, the determination of wages and the norms of unjust dismissals were deemed to be matters that should remain in the sphere of collective bargaining. These are the two areas usually deemed to stand at the heart of corporatist self-regulation.

To prepare the labor laws for the Knesset, an advisory body was established, consisting of prominent representatives of the Histadrut, the major employers' associations (the Industrialists Association and the Chamber of Commerce representing small businesses), and the Ministry of Labor and Social Security. The debates in general were short, very pragmatic. The standards reflected the norms in prevailing collective agreements as well as the international standards that were already in place at the time at the ILO. The references to international standards were usually helpful in adjusting the appropriate level of benefits and protections when collective agreements were uneven in their scope of provision. The first laws provided minimum standards in traditional areas, most notably including annual vacations, overtime, weekly rest, and special protections for women and minors in the labor market. These issues were quickly dealt with by 1954, with several supplements being enacted several years later.[25] The second set of laws was intended to provide the regulatory infrastructure for autonomy and recognition of collective bargaining, as explained in the following subsection. This set of laws was concluded by 1959 and included related statutes, such as those dealing with the establishment of the Employment Bureau.[26]

As opposed to the United States, where there is a strong divide between employment standards and labor law, the legislative project

24. *See supra* note 18.

25. Discharged Soldiers (Reinstatement in Employment) Law (1949) (Isr.); Annual Leave Law (1951) (Isr.); Hours of Work and Rest Law (1951) (Isr.); Night Baking (Prohibition) Law (1951) (repealed 1998) (Isr.); Women's Equal Rights Law (1951) (Isr.); Apprenticeship Law (1953) (Isr.); National Insurance Law (1953) (Isr.); Youth Labor Law (1953) (Isr.); Employment of Women Law (1954) (Isr.); Labor Inspection (Organization) Law (1954) (Isr.); Wage Protection Law (1957) (Isr.); Severance Pay Law (1963) (Isr.); Male and Female Workers (Equal Pay) Law (1964) (Isr.).

26. Collective Agreements Law (1957) (Isr.); Settlement of Labor Disputes Law (1957) (Isr.); Employment Service Law (1959) (Isr.).

of the first decade of statehood sought to integrate the two bodies of law according to a continental European tradition. For example, the transition from a six- to a five-day work week was based on a combination of both methods of labor market regulation. The transition, which required an extension of each workday beyond eight hours, was not accomplished by legislation, but rather by a collective agreement that derogated from the maximum workday of eight hours as prescribed by the Hours of Work and Rest Law, holding that a workday could be prolonged up to nine hours. The collective agreement that derogated the statutory standards received the approval of the Minister of Labor and was later extended to cover most of the employers in the state.[27]

Indeed, a key to understanding the body of law that evolved over the first decade is to be found in the laws regarding collective labor law. While labor standards appear in all systems of labor law, the differences between systems are most readily apparent when comparing collective labor regimes. As noted, the role of law in collective labor relations before statehood was underdeveloped, mostly because of the British tradition that regarded collective agreements as merely a gentleman's agreement. The system that was developed in the Law of Collective Agreements (1957) and the Law of Industrial Disputes (1957) resembled that of European corporatist systems and can be characterized by highlighting several significant features.

First, it sought to provide a minimal legal shell for collective relations. The law provides very few mandatory provisions, the most important of which determines the parties to the collective agreements (the most representative trade union on the one side and employers or employers' associations on the other side). Furthermore, the law ties the workers to the collective agreement by holding that for the most part the rights and duties prescribed in it are inserted into the individual collective agreement. The law further determines the application of the collective agreement (coverage). Other than a few other arrangements of a technical nature, the law for the most part leaves the parties to negotiate on their own. Second, the system sought to promote centralized collective agreements. The law makes the negotiation of sector- and state-wide collective agreements

27. The instruments used for the transition were therefore: the General Collective Agreement signed by the Histadrut and the Federation of Economic Organizations (The Collective Agreements Registry, 7037–88, (1988) (Isr.), approved by the Minister of Labor, 1988, YH 3586, and extended by the Minister of Labor, 1990, YH 3799, 3858.

easier than that of workplace-based agreements. And third, the system sought to establish the supremacy of the collective norm over market and regulatory norms. The law also provides voluntary methods of dispute resolution, but does not require the parties to take part in these processes, and hardly imposes any restrictions on the trade unions' right to strike.

The industrial relations system from which this legal system emerged was fundamentally Continental, most resembling that of the Nordic countries, Germany, Austria, and the BeNeLux. The legal system that emerged from the industrial relations system drew on Continental legal principles that are a "mix and match" of these countries, such as a strong legal preference for centralized bargaining (as in Belgium or Sweden),[28] centralized application (as in Austria),[29] coverage that exceeds the natural domain of the agreement (*erga omnes* as in Germany),[30] the use of extension orders (as in the Netherlands),[31] and derogation clauses (as in Sweden and the Netherlands).[32]

IV. FROM LEGISLATION TO ADJUDICATION

Within a short period of time after statehood the statutory system governing labor relations was completed, based on prior agreements between the General Histadrut and the employers' associations with the full support of the Labor Party. Further attempts to legislate were thwarted due to the absence of consensus on various matters, most notably on any legislation that might have an impact on the right to strike. Despite the achievements and stability of the newly established framework, the legal framework remained incomplete. On the one hand, the governance of the labor market remained, as

28. In Belgium, see Jacques Vilrokx and Jim Van Leemput, *Belgium: The Great Transformation*, *in* CHANGING INDUSTRIAL RELATIONS IN THE NEW EUROPE) 316–18 (Anthony Ferner & Richard Hyman eds., 1998); in Sweden see Axel Aldercreutz, *Sweden*, *in* INTERNATIONAL ENCYCLOPAEDIA FOR LABOUR LAW AND INDUSTRIAL RELATIONS ¶¶ 109, 474, 496, 649 (Roger Blanpain ed., 1998).

29. Rudolph Strasser & Johannes Kepler, *Labour law and Industrial Relations in Austria*, *in* INTERNATIONAL ENCYCLOPAEDIA FOR LABOUR LAW AND INDUSTRIAL RELATIONS ¶¶ 521–39 (Roger Blanpain ed., 1992).

30. See generally the comparative study at EIRO*, Collective Bargaining and Extension Procedures* (2002) (TN0212102S).

31. Otto Jacobi, Berndt Keller & Walther Muller-Jentsch, *Germany: Facing New Challenges*, in CHANGING INDUSTRIAL RELATIONS IN THE NEW EUROPE 217–25 (Anthony Ferner & Richard Hyman eds., 1998).

32. Adlercreutz, *supra* note 28, ¶ 109; Jelle Visser & Joris Van Russeveldt, *Robust Corporatism, Still? Industrial Relations in Germany?*, *in* INDUSTRIAL RELATIONS IN EUROPE: TRADITIONS AND TRANSITIONS 124–74 (Joris Van Russeveldt & Jelle Visser eds., 1996).

envisioned by the legislature, in the hands of the partners to collective bargaining. At the same time, it was clear that there were some fundamental controversies regarding the "rules of the game," to which no consensual responses had emerged. Any attempt by the Supreme Court to govern industrial action encountered strong resistance from the General Histadrut. Yet the high level of industrial action indicated that some kind of regulation was needed. Absent consent, in 1967 the parties to collective bargaining decided to conclude a collective agreement that called for the establishment of a labor tribunal in Israel. Two years later, the Labor Court was established by law. It is important to emphasize that the establishment of the labor courts system resulted from a profound disagreement regarding the law, while at the same time the parties sought a solution that would generate solutions that accorded the necessary legitimacy to the corporatist system. It was an autopoietic solution, where disagreement feeds a mechanism for devising further solutions within the industrial relations system.

The Labor Court had several goals: to consolidate the adjudication of labor and social matters that were dispersed among various administrative tribunals; to provide a quick and flexible remedy in individual employment disputes; and to draw on a special expertise that was deemed necessary to resolve labor disputes. The most important objective, however, was to provide a forum for dispute resolution in collective labor disputes that would enjoy the legitimacy of the partners to collective bargaining, and that would be able to overcome the prevailing impasse at the time with regard to the absence of regulation over strikes. While collective labor disputes currently account for only a very minor share of the labor courts' activity (approximately 1–2%), this is the sphere of labor law in which their contribution is most visible.

Since its establishment in 1969, the Labor Court has become a central forum for lawmaking in Israel. Clearly, one of the Labor Court's achievements has been to make labor law a live and dynamic body of law. Located at the junction between the industrial relations and the legal systems, the Labor Court also succeeded in having its legitimacy recognized by the social partners (labor and employers) within a short time. In the field of collective labor law, the Labor Court interpreted the broad provisions of the Collective Agreements Law from 1957. Its legitimacy in the eyes of the social partners enabled the court to gradually start regulating the more problematic areas of labor law, most notably the law of strikes. The court established the remedy of injunction against striking workers, despite

the absence of any specific arrangement to that effect in legislation.[33] It endorsed the right to strike on the one hand and drew the limits of the right on the other.[34] In other areas of labor law the court similarly designed both the law and the remedies. It is noteworthy that, given the tripartite nature of the Labor Court (a professional judge, and one representative each from the employers' side and the labor side), the Labor Court did much in its early years to promote the corporatist logic of the Israeli system. The court secured the centralized nature of the system and denied attempts to fragment it.[35] The court protected the autonomy of the bargaining partners from attempts by the state to intervene, as well as from attempts by individuals to undermine the corporatist compromise.[36] Finally, the court issued decisions that secured the primacy of the collectively bargained norm.[37]

In conclusion, by the mid-1980s the Israeli system of labor law was rather developed. It relied on two complementary pillars—statute and case law. Both of them emerged from the corporatist compromise and sought to stabilize it. Both of them gradually abandoned the Anglo common law tradition of the British Mandate over Palestine. While Israeli law in general continued the common law tradition (although always with Continental variations, such as attempts at codification of private law), labor law formed a Continental enclave within the general legal system. However, in reality it was a localized version of corporatist law, which, like Israel's population, brought together distinct legal traditions into some kind of melting pot model.

V. THE CRISIS IN INDUSTRIAL RELATIONS AND LABOR LAW

Starting in the 1980s and throughout the 1990s, the Israeli industrial relations system went into a process of disintegration. The reasons for it were partly of a universal nature and partly local. Table 1 demonstrates some of these factors. Among the factors that

33. National Labor Court 30/5-2 ENGINEERS HISTADRUT—STATE SERVICE GOVERNORSHIP 2 PDA 271 (1970); National Labor Court 32/4-6 MAINTENANCE WORKERS COMMITTEE IN EL-AL – EL AL, 3 PDA 393 (1972)

34. On the development of the case law on strikes, see Guy Mundlak & Itzhak Harpaz, *Determinants of Israeli Judicial Discretion in Issuing Injunctions Against Strikers*, 40 BRIT. J. INDUS. REL. 753(2002).

35. *Cf.* National Labor Court 35/5-1 LEON MARKOVITZ—GENERAL HISTADRUT 6 PDA 197; National Labor Court 42/5-2 GENERAL HISTADRUT—SENIOR WORKERS AT PAZ 14 PDA 367.

36. *See generally* Frances Raday, *Trade Unions—Privileges and Supervision*, 9 TEL AVIV UNIV. L.REV. [IUNEI MISHPAT] 543 (1983) (Isr.).

37. *Cf.* National Labor Court 54/3-85 GOLDFARB—ISRAELI AVIATION INDUSTRY INC. 27(1) PDA 287.

destabilized the Israeli system were changes in the demographics of the workforce that led to a greater level of heterogeneity. These changes included the large immigration wave of the early 1990s from the former Soviet Union, the rapid entry of women into the labor market, and the large share of foreign workers (including Palestinian workers until 1993 and migrant workers thereafter). Moreover, Israel experienced a rapid exposure to global markets. In addition, technological changes and the growth in the high-tech sector led to a significant change in the economy's composition. The effects of these trends included quick economic growth, but also an accelerated level of inequality and poverty. The increase in the general level of well-being was not distributed evenly among the population, with growing levels of inequality between those in the workforce and those who remain outside it, as well as within the labor market itself.[38] Locally, the corporatist pact was also shaken by the political transformation in 1977, whereby the hegemony of the Labor Party was replaced by a dominant central-rightist government in most of the political coalitions since then.[39]

38. On the growing level of inequality and its implications for the labor market, see Yinon Cohen et al., *The State of Organized Labor in Israel*, 28 J. LAB. RES. 255 (2007).

39. Louis L. Grinberg & Gershon Shafir, *Economic Liberalization and the Breakup of the Histadrut's Domain*, *in* THE NEW ISRAEL: PEACEMAKING AND LIBERALIZATION 103–27 (Gershon Shafir & Yoav Peled, eds., 2000).

Table 1
Basic Economic Indicators

	1980	*1990*	*2000*	*2005*
Workforce[a]	1,318,000	1,649,400	2,435,000	2,470,000
Participation rate in the workforce (% of adults)	49.53%	51.5%	54.3%	55.2%
% of women in the workforce	36.5%	40%	45.6%	51.6%
Sector[b] (% of workforce)				
Agriculture	6.4%	4.2%	2.2%	2.0%
Manufacturing	31.0%	27.8%	24.0%	21.7%
Services	62.6%	67.5%	73%	74.4%
Public sector	29.6%	29.4%	27.3%	27.9%
High-tech		3.7	6.0	6.3
Union Density[c]				
% of workers unionized	80%	70% (1992)	45%	33% (2006)
% of workers covered by collective agreements	80-85%		56%	56%
Economic Wellbeing				
Gini index of inequality (net income)[d]	0.3239	0.3263	0.3500	0.3837
GDP per capita (in US$)[e]	$14,014	$16,537	$22,236	$24,320
Human Development Index[f]	0.830	0.869	0.918	0.932
Globalization[g]				
Southern imports[h]	0.8%	1.1%	3.6%	6.6%
Capital mobility[i]	0.2%	0.5%	7.1%	6%
Migrant workers[j]	8%	8%	14%	10%

[a] ***Source:*** Bank of Israel
[b] ***Source***: Central Bureau of Statistics
[c] ***Source:*** Yinon Cohen et al, Union Density in Israel: Present, Past and Future, 10 Labor Society and Law (2003) [Hebrew]
[d] ***Source:*** National Insurance Institute, Annual Report
[e.] ***Source:*** Alan Heston, Robert Summers and Bettina Aten, Penn World Table Version 6.2, Center for International Comparisons of Production, Income and Prices at the University of Pennsylvania, September 2006

[f] ***Source:*** United National Human Development Database
[g] ***Source:*** Tali Kristal, Labor's Share of National Income and the Diversification in Sources of Income among Wage and Salary Workers. Ph.D. Dissertation, Department of Labor Studies, Tel Aviv University, Tel Aviv (2008).
[h] Measured as manufactured imports from non-OECD countries as a percentage of GDP.
[h] Measured as Foreign Direct Investments (abroad and in Israel) as a percentage of GDP.
[j] Measured as non-Israeli employed (Palestinian non-citizens and migrant workers) as a percentage of total employed in the Israeli economy.

From the perspective of the industrial relations system, the corporatist system was rapidly losing its stability. Signs of this process included decentralization and fragmentation on the labor side, an incremental yet intensive decline of membership in trade unions and coverage of collective agreements, a gradual displacement of broad collective agreements by enterprise-based or occupational-based agreements (in the private and public sectors, respectively), the disassociation of the state from the corporatist compromise, and a growing adversarial attitude against the participation of the "social partners" in the formulation of economic policy. The General Histadrut, once a mammoth organization and a central player in the Israeli society, extending its role beyond industrial relations per se, has lost the pillars supporting it. The Israeli version of the Ghent system was removed as health care was nationalized away from the trade unions; a reform in the pensions market required the Histadrut to let go of its monopoly in the field of pensions; its vast economic activity was privatized and its political ties with the governing party were lost.[40] Moreover, in the labor market a significant process of peripheralization and casualization took place whereby a growing share of the workforce is employed through temp work agencies, contractors, and other means of atypical service contracts (independent contractors, freelance workers, and the like).[41]

It was not immediately apparent what implications these changes carried for labor law. The high level of development that labor law had reached, its stability, and the legitimacy it enjoyed—these were all important elements in mediating the impact of change. However,

40. *See* Cohen et al., *Unpacking Union Density: Membership and Coverage in the Transformation of the Israeli Industrial Relations System*, 42 INDUS. REL. 692 (2003); MUNDLAK, *supra* note 1, at ch. 2.

41. *See* Frances Raday, *The Insider-Outsider Position of Labor Only Contracting*, 20 COMP. LAB. L. & POL'Y J. 413 (1999); Guy Davidov *Enforcement Problems in "Informal" Labor Markets: A View from Israel*, 27 COMP. LAB. L. & POL'Y J. 3 (2006); Ronit Nadiv, Diversified Employment: The Internal Labor Market of External Workers (Unpublished Doct. Dissertation, Tel-Aviv University 2004) (Isr.).

over time there was also a growing awareness that the law that had emerged from the corporatist pact was no longer suited or adaptable to the new configuration of the industrial relations system. On the one hand the "rules of the game" were no longer acceptable to the parties in the industrial relations system, but on the other the lack of consensus restricted their capacity to agree on new ones instead. The law of collective bargaining remained, although it promoted centralized bargaining while bargaining itself became decentralized. Employment standards in legislation were few because it was assumed that most standards are determined in collective agreements, but a growing share of the workforce was no longer covered by collective agreements.

As the industrial relations system changed, the law had to change as well. Unlike the years after statehood when the partners determined the content of labor law bottom-up, this time it was precisely this lack of agreement that made it necessary to rewrite the law top-down instead. Starting from the end of the 1980s, a gradual rewriting of labor law took place. It was not a revolutionary change, as it was not centrally planned or part of a well-thought-out process. The changes came mostly in response to the problems emerging from the incongruence between law and industrial relations. They took place in both arenas of lawmaking. In the legislative arena we see a gradual absorption of issues that previously belonged in the domain of collective bargaining. The most striking example is that of replacing the setting of minimum wage by means of universally applied collective agreements with a statute.[42] In the judicial arena a similar process took place, as judges started drawing on general doctrines of employment law (the duty of good faith in contractual relationships, or the voiding of contracts that violate the public interest) to replace the job security previously granted in collective agreements.[43] Hence, in a process similar to the one that took place in the United States, courts began to declare some instances of dismissals as being in "bad faith."[44] These two developments are exceptionally symbolic. As

42. The Minimum Wage Law (1987) (Isr.). A similar process took place in other fields as well, such as the enactment of the Law on Prior Notice Before Dismissals and Resignation (1997) (Isr.).

43. For a discussion of the case-law on this issue, see Guy Davidov, *Unbound: Some Comments on Israel's Judicially-Developed Labor Law*, 30 COMP. LAB. L. & POL. J. 283 (2009) [hereinafter Davidov, *Unbound*]; Guy Davidov, *In Defence of (Efficiently Administered) 'Just Cause' Dismissal Laws*, 23 INT. J. OF COMP. LAB. LAW AND IND. REL. 117 (2007) [hereinafter Davidov, *In Defence*].

44. For the comparison of the Israeli development with the American one, see Guy Mundlak, *Information Forcing and Cooperation-Inducing rules: Rethinking the Building Blocks*

noted earlier, upon statehood the General Histadrut and the employers' associations decided to endorse legislation that guaranteed minimum employment standards, with the exception of two issues—wages and dismissals. By contrast, as the new project of rewriting labor law progressed, trying to adapt it more suitably to the changes in the industrial relations system, the two most important spheres of new regulation were precisely wages and dismissals. In this process, the legislature and the courts drew on the experience that had accumulated in the sphere of collective bargaining and universalized rights to all workers, compensating for the gradual decline in collective bargaining but also rendering collectively negotiated norms partially redundant, as some fundamental labor market rights were entering the domain of regulation and being removed from the domain of bargaining.

The new legal activity also indicated that labor law was experiencing an *hourglass effect*. From the supremacy of the collectively determined norm, law went through a Polanyi-like double-movement reform.[45] On the one hand, the shrinking coverage and depth of collective agreements permitted employers broader scope to use their managerial prerogative and strengthened the market-ordering of the labor market. On the other hand, the legislative and judicial response to the process of individualization resulted in a growing body of protective regulation that restricted the employers' prerogative. This did not mean merely preserving the mass of labor law intact. The change from collective to individualized ordering based on markets and regulation reflected the change from a legal system that resembled various countries in Continental Europe to a system more closely resembling the pluralist or liberal model of the Anglo-American countries.

While in some areas of labor law there has been a shift from collective bargaining to markets/regulation, new areas of law emerged with the same duality. The most striking example is antidiscrimination legislation. This area of the law is described in greater detail in a separate essay for this conference.[46] In a nutshell, while some seeds of the law were planted in the corporatist phase, the more rapid development started in the late 1980s, with intense

of Labour Law, *in* LAW AND ECONOMICS AND THE LABOUR MARKET 55–91 (Greest De Geest, Jacques Siegers & Roger Van den Bergh eds., 1999).

45. KARL POLANYI, THE GREAT TRANSFORMATION: THE POLITICAL AND ECONOMIC ORIGINS OF OUR TIMES (1944).

46. *See* Guy Mundlak, *The Law of Equal Opportunities in Israel: Between Equality and Polarization*, 30 COMP. LAB. L. & POL. J. 213 (2009)

regulation in statutes and the slow development of case law. While the law tilts between a permissive position toward labor market inequality and strong protections for groups that suffer discrimination, it is clear that collective bargaining is often viewed as part of the problem rather than a means toward a solution. Moreover, the move to identity-based regulation has had an effect on the class-based instruments of the past.

Furthermore, the increased use of regulation to remedy the decline of collective relations has brought about a strong process of juridification.[47] Replacing the communications characteristic of industrial relations with those that characterize the legal system, the new law prescribes a detailed and complicated set of legal rights and duties. These are best demonstrated in yet another article presented to this conference on the managerial prerogative and on the law regarding dismissals.[48] In both of these areas, norms that were written by the social partners then implemented at the firm level by representatives from the employer's side and the trade union's side have been replaced by legal norms.

Stemming from the processes that have taken place in industrial relations, juridification has also been intensified by changes that took place in the legal sphere. Of particular importance was the passage of the two basic laws on human rights in 1992. As noted earlier, the enactment of a constitution upon statehood failed because of the controversy over the relationship between state and religion. At the time it was determined that a series of basic laws would be passed, later to be compiled into a single constitution. The precise normative position of these basic laws was not spelled out in advance, and over the years the Supreme Court has treated them as enjoying roughly the same status as "regular" legislation. Several attempts in later years to pass basic laws on human rights have failed.

In 1992, two basic laws were passed—Basic Law: Freedom of Occupation, and Basic Law: Human Dignity and Liberty. These two laws provide a narrow list of rights (occupation, liberty, dignity, privacy, property, and movement) that has not been expanded because of the public controversy over the constitution. At the same time, the Supreme Court viewed these laws as revolutionary, and has contributed to what has been designated by some as a "constitutional revolution." First, the court added more rights to the list of constitutional rights, by using a method of deriving particular rights

47. On the process of juridification, see MUNDLAK, *supra* note 1, at ch. 6.
48. *See* Davidov, *Unbound*, *supra* note 43.

from the general rights to dignity and liberty. Hence, "human dignity and liberty" has become an all-encompassing policy clause. Second, the Supreme Court held that human rights and constitutional rights also apply to private agents, and not only to the state. As a result of these two decisions, the area of labor law has become heavily constitutionalized.[49]

This "constitutional revolution" carried immense implications for labor law. In the spheres of both collective labor law and individual employment rights (including antidiscrimination law), much of the discussion is shaped along constitutional lines. The development of collective labor law draws on recognizing the freedom of association as a fundamental right (even though it is not formally to be found in the emerging constitution).[50] Moreover, the Labor Court developed the seeds of an employees' property right in the workplace, to act as a countervailing force against the employer's recognized property right in the workplace.[51] When the state sought to circumvent collective bargaining, the court also referred to the right to bargain (recognized as a derivative of human liberty and its derivative, autonomy).

In the area of individual rights, the Labor Court held that constitutional rights affect the employment contract and set the boundaries of the negotiable sphere. On the employer's side there is the right to property, often the freedom of contract as well, while on the labor side several rights have been recognized—including the freedom of speech (the employee's right to speak against the managerial prerogative),[52] right to privacy (e.g., placing limits on testing in the workplace and the use of surveillance methods),[53]

49. On the "constitutional revolution" and its effect in private law, see generally Daphne Barak-Erez & Israel Gilead, *Human Rights in Private Law: The Israeli Case*, *in* HUMAN RIGHTS AND THE PRIVATE SPHERE: A COMPARATIVE STUDY 252–75 (Dawn Oliver & Jorg Fedtke eds., 2007).

50. However, it was presented in formal statute in an amendment to the Collective Agreements Law, § 33(h) (1957) (amended 2001).

51. *Cf.* National Labor Court 98/3-7 MENASHE MO'ADIM – STATE OF ISRAEL 31 PDA 441 (property rights at time of transfer of undertaking); National Labor Court 40000058/98 GENERAL HISTADRUT AND NATIONAL COMMITTEE OF ADMINISTRATION WORKERS IN STATE OWNED HOSPITALS—STATE OF ISRAEL, 35 PDA 103 (property rights and the duty to bargain); National Labor Court 400024/98 GENERAL HISTADRUT AND SEA-OFFICERS UNION—ZIM 36 PDA 92 (property rights and the right to be promoted); National Labor Court 1008/00 HORN AND LEIBOVITZ—THE GENERAL HISTADRUT 35 PDA 145 (property rights and the right to organize in a trade union).

52. *Cf.* National Labor Court 93/3-223 PALESTINE POST—JAOANNA YECHIEL 27 PDA 436. The protection of free speech can also be observed in statutes, for example, in the context of the protection extended to whistleblowers in the Protection of Workers Law (Exposure of Offences of Unethical Conduct and Improper Administration) (1996) (Isr.).

53. *Cf.* National Labor Court 97/4-70 TEL AVIV UNIVERSITY—GENERAL HISTADRUT, 30 PDA 385.

equality (expanding the project of antidiscrimination law beyond the particular provisions laid down in statute),[54] and occupation (placing strong limits on covenants not to compete upon the termination of the employment relationship).[55] The decisions have not been unequivocally in favor of labor, but in this they are no different than a state-based bill of rights. Thus, they can be viewed collectively as forming an employment-based workers' bill of rights.

In addition to the "constitutional revolution," the Supreme Court has also noted in the context of labor law that the Israeli system is gradually adopting a "jurisprudence of values."[56] This quasi-revolution is more difficult to grasp, as its characteristics are not clear. Generally it means that the courts are moving from a formal application of legal norms to the development of norms on the basis of value-laden objectives. In the case where the above statement was proposed, the issue at stake was the scope of the employment relationship. The jurisprudence of values suggests that instead of applying the formal test that distinguishes employees for other service providers, and then deciding whether labor law should apply, a different approach should be adopted. Thus, the court should first ask: Does the group of workers involved deserve the protection of labor legislation? If the answer is in the affirmative, then the boundaries between employees and non-employees should be more inclusive. In subsequent cases, which have dealt with carving the distinction between employees and non-employees, as well as determining who the employer is, the court has developed a candid, value-laden approach regarding the desirable coverage of labor protection.[57]

To assess this final phase in Israeli labor law we must think again about both the *form* and the *substance* of lawmaking. While in the previous phase law emerged from a consensus among the social partners and was aimed at stabilizing the corporatist pact, the current phase is characterized by a highly legalistic determination of rights and duties, which shifts the substance of industrial relations to labor

54. Beyond the extensive legislation protecting workers from discriminatory practices, as described in Mundlak, *supra* note 46, the case law discussed issues of general equality claims, even when no prohibited group-distinctions are concerned. *Cf.* National Labor Court 56/3-182 SHA'AREI TSEDEK HEALTH CENTER DR. ORLY PRAT 29 PDA 244; Regional Labor Court (Tel-Aviv) 5817/00 ALIZA NAGLER—EL AL (13/11/2004).

55. *Cf.* National Labor Court 164/99 DAN FRUMMER AND CHECKPOINT TECHNOLOGIES—REDGUARD INC 34 PDA 294; CA 6601/96 AES Sys. Inc. V. Moshe Sa'ar [1997] IsrSC 54(3) 850.

56. HCJ 4601/95 Sarusi v. Nat'l Labor Court [1996] IsrSC 52(4) 817.

57. *Cf.* the discussion on the legitimacy of outsourcing and the long term employment of workers through temp work agencies in National Labor Court 273/03 DOVRAT SCHWAB—THE OFFICE OF AGRICULTURE AND FARM DEVELOPMENT (2.11.2006).

legislation. The double movement that has taken place in Israeli law was an outcome of the decline in the regime of centralized collective bargaining, but it was also a means of expediting the process even further. The Histadrut's concern in 1947 that statutory standards might make the trade union redundant still applies. The more the court introduces protection from dismissals in case law, by means of a universal duty of good faith, the less the collective agreement has to offer in terms of comparative advantage. Hence, a new equilibrium has emerged in which the decline in corporatist industrial relations induces pluralist (liberal) legal solutions, and these in turn reinforce a pluralist industrial relations system. The Israeli system has thus increasingly adopted some North American characteristics: more decentralized bargaining, juridification of the collective bargaining process, and a growing body of individual rights.

Despite this legal adaptation to the new industrial relations system, it should be emphasized that the Israeli system did not perform an out-and-out transition to the North American model. This can be attributed mostly to the fact that labor market institutions tend to be "sticky" and are not easily removed. Those of the past remain in the current repertoire of labor market measures. For example, in the new governance of temporary work agencies, the law permitted to derogate from the statutory standards by means of a broad (sector-wide) agreement. After several years of failed attempts, competing trade unions, employers associations, and temp work agencies concluded a broad pact for the private sector that was later extended by a collective agreement.[58] Similarly, the social partners decided to organize a broad pension base in collective bargaining, partially as a means of thwarting legislative attempts to regulate the pensions market.[59] Finally, during litigation over employees' privacy rights with regard to emails at work, the "social partners" decided to reassert their traditional role and concluded an agreement with broad coverage on privacy at work; at the time of this writing they seek to receive an extension order of agreement so that it will apply to the workforce as a whole.[60] The future of labor legislation and case law

58. For a detailed analysis of this process, see MUNDLAK, supra note 1, ch. 7.

59. General Collective Agreement on Mandatory Pension Insurance, signed by the General Histadrut and the Federation of Israeli Economic Organizations on 19.7.2007 (Collective Agreements Registry 7019/2007), extended by the Minister of Labor (YH—Government Records 5772, 29.1.2008).

60. National Labor Court 90/08 312/08 TALI ISSKOV AND OTHERS—MINISTRY OF INDUSTRY, COMMERCE AND EMPLOYMENT AND OTHERS (pending); Collective Agreement between the General Histadrut and the Federation of Israeli Economic Organizations was signed on 25.7.2008, and submitted for registration in the Registry of Collective Agreements.

therefore suggests an idiosyncratic development bringing together principles from very different legal systems and creating an innovative, sometimes erratic body of law that merely reflects the lack of stability in the industrial relations system. At the same time it also prevents the process of ossification thesis that was described with regard to American labor law, and prevents stagnation.[61] A large toolbox, turmoil, and chaos also aid in placing labor market policy at the center of policy debates and public deliberations.

61. Cynthia Estlund, *The Ossification of American Labor Law*, 102 COLUM. L. REV. 1527 (2002); it is however interesting to compare the process taking place in Israel to that which is described by Benjamin Sachs, *Employment Law as Labor Law*, 29 CARDOZO L. REV. 2685 (2008).