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Explaining Perceptions of the Unemployed in Europe

Tim Vlandas *

Abstract. This article explores the determinants of the perceptions of the unemployed in 29 European countries along three dimensions: whether people see the unemployed as the ‘government’s responsibility’; whether they believe the unemployed do not ‘try hard to find a job’; and whether they think that the standard of living of the unemployed is ‘bad’. I derive a number of expectations from the political economy literature on policy preferences and test whether these expectations explain variation in the perceptions of the unemployed. Using logistic regression analysis, I find that labour market status and occupations influence individuals’ perceptions of the unemployed. For instance, the unemployed and workers in low skill occupations are most likely to think that the government is responsible for the standard of living of the unemployed. However, certain factors such as gender, occupations, education, and union membership affect distinct types of perceptions differently. The determinants of policy preferences help us make sense of perceptions of the unemployed but certain factors affect different types of perceptions in distinct ways.

Keywords: *Perceptions of the Unemployed, Labour Market Dualisation, Europe, Occupations, Political Economy.*

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1. Perceptions of the Unemployed in Europe

Unemployment has been a policy concern in many European countries since at least the early 20th century. Movements of the unemployed have struggled for a social settlement between the two world wars¹ and many governments consequently introduced unemployment insurance². Once the welfare state was in place, attitudes towards welfare state policies have been found to be fairly stable at least until the 1980s and 1990s³. However, unemployment is a significant problem in many European countries in the context of the ongoing economic crisis. Recently, many governments have chosen to curtail welfare state benefits in the pursuit of austerity⁴. Yet, policy makers are at least partly constrained in what they can do to address unemployment by the perceptions of the unemployed among the wider population. There is for instance some evidence that public policy and policy outcomes are in part shaped by public opinion⁵. It is therefore important to identify the determinants of perceptions of the unemployed. How does unemployment and individual characteristics affect perceptions of the unemployed?

There is a large literature on both perceptions of the welfare state and benefit recipients⁶. More recently, there has been a growing body of research on the

¹ Croucher, R. (2008) The History of Unemployed Movements. *Labour History Review* 73(1):1-17.

² Flora, P., and Heidenheimer, A. J. (1981). *The Development of Welfare States in Europe and America* (Transaction Books, New Brunswick, NJ. Forrester, J).

³ Svallfors, S. (2010) 'Public attitudes.' In F. G. Castles, S. Leibfreid, J. Lewis, H. Obinger, and C. Pierson (eds), *The oxford handbook of the welfare state* (Oxford: Oxford University Press).

⁴ Theodoropoulou, S. and Watt, A. (2011) 'Withdrawal symptoms: an assessment of the austerity packages in Europe.' *European Trade Union Institute Working paper* 2011.02.

⁵ E.g. Page, B. I. and Shapiro, R. Y. (1992) 'Effects of public opinion on policy.' *American Political Science Review* 77: 175-190; Vlandas, T. (2016) 'The impact of the elderly on inflation rates in developed countries.' *LSE Europe in Question Discussion paper series*. LEQS paper no. 107/2016.

⁶ Blekesaune, M. and Quadagno, J. (2003) 'Public Attitudes toward Welfare State Policies A Comparative Analysis of 24 Nations.' *European Sociological Review*, 19(5): 415-427; Burstein, P. (1998) 'Bringing the Public Back In: Should Sociologists Consider the Impact of Public Opinion on Public Policy?', *Social Forces* 77 (1): 27-62; Forma, P. and Kangas, O. (1997) 'Need, Citizenship or Merit: Public Opinion on Pension Policy in Australia, Finland and Poland.' in S. Svallfors and P. Taylor-Gooby (eds) *The End of the Welfare State? Responses to State Retrenchment* (London: Routledge); Halvorsen, K. (2002) 'Solidarity and the Legitimacy of the Welfare State: Attitudes to Abuse of Welfare Benefits in Scandinavian Countries.' Florence: COST13 Working Group II meeting; Manza, J., Cook, F. L. and Page, B. (eds) (2002) *Navigating Public Opinion: Polls, Policy, and the Future of American Democracy* (New York: Oxford University Press); Taylor-Gooby, P. (1985b) *Public Opinion, Ideology and State Welfare* (London: Routledge); Van Oorschot, W. (2000) 'Who Should Get What, and Why? On Deservingness Criteria and the Conditionality of Solidarity among the Public.' *Policy and Politics* 28 (1): 33-49.

political economy determinants of labour market policy preferences and the implications for the cross-national variation in policies across European countries⁷. Yet, the insights of this latter literature, for instance on the role of occupations and labour market position, have not been applied to the study of perceptions of the unemployed.

In this paper, I build on the political economy literature on individual policy preferences to derive expectations concerning the determinants of perceptions of the unemployed in European countries. In contrast to much of the earlier literature on labour that posited homogenous interests and preferences among workers, recent contributions in the labour market dualisation literature emphasise various divides in post-industrial labour markets between workers that face different risks⁸. Put simply, this literature finds that those with low risk of becoming unemployed increasingly stop caring about the rest of the workforce, with important implications for the politics of labour market policy in Europe.

Two sets of factors are generally delineated in the literature on the perceptions of benefit recipients: self-interest and ideological factors⁹. This paper focuses on the effect of self-interest. In the political economy literature on policy preferences, two approaches to identifying individual self-interest can be delineated. First, the ‘dualisation approach’ contends that labour is systematically divided between insiders in well-protected and permanent jobs whereas outsiders are in non-standard forms of employment or unemployment. Because insiders are unlikely to become outsiders, they are expected not to favour policies that benefit these groups¹⁰. Second, the

⁷ Rueda, D. (2007) *Social democracy inside out. Partisanship and labour market policy in industrialised democracies* (Oxford University Press: Oxford); Schwander, H. and Hausermann, S. (2013) ‘Who is in and who is out? A risk-based conceptualization of insiders and outsiders.’ *Journal of European Social Policy*, 23 (3), 248-69; Iversen, T. and Soskice, D. (2001) ‘An asset theory of social policy preferences.’ *American Journal of Political Science Review*, 95: 875-93; Rehm, P. (2009) ‘Risks and redistribution: An individual level analysis.’ *Comparative political studies*, 42(7): 855-81; Rehm, P. (2011) ‘Social Policy by Popular Demand.’ *World Politics*, 63(2): 271-299.

⁸ Emmenegger, P., et al. (2012) *The Age of Dualization: Structures, Policies, Politics* (New York: Oxford University Press).

⁹ E.g. Hasenfeld, Y. and Rafferty, J. A. (1989) ‘The determinants of public attitudes towards the welfare state.’ *Social Forces* 67: 1027-1048; Groskind, F. (1994) ‘Ideological influences on public support to poor families.’ *Social Work*, 39: 81-89; Taylor-Gooby, P. (2004) ‘Open markets and welfare values: welfare values, inequality and social change in the silver age of the welfare state.’ *European Societies* 6: 29-48.

¹⁰ Rueda, D. (2005) ‘Insider–Outsider Politics in Industrialized Democracies: The Challenge to Social Democratic Parties.’ *American Political Science Review*, 99(1): 61-74; Rueda, D. (2007) *Social democracy inside out. Partisanship and labour market policy in industrialised democracies* (Oxford University Press: Oxford); Saint-Paul (1996) ‘Exploring the political economy of labour market institutions.’ *Economic Policy*, 23: 265-300.

‘occupational approach’ instead posits that individuals in distinct occupations have different skills and hence face different risks. Where individuals work in occupations with specific skills, they may be less likely to find a new job that relies on their skill set. Therefore, individuals in specific skills occupations will favour labour market policies to insure themselves against the risk of job loss¹¹. Building on this literature, the present article explores whether the determinants of policy preferences also affect the perceptions of the unemployed. In contrast to much of the political economy literature however, I treat the ‘dualisation’ and ‘occupational’ approaches as complementary rather than alternative drivers of perception. While the ‘dualisation approach’ emphasises a discontinuous distribution of risk generated by labour market contracts and status, the ‘occupational approach’ focuses our attention on a more fine grained distribution of risk that cuts across labour market status.

I analyse the determinants of the perceptions of the unemployed using several questions from the European Social Survey. Results from a logistic regression analyses suggest that being unemployed or on a temporary contract makes you more likely to have positive perceptions of the unemployed. Women and those with partners in unemployment are similarly more favourable to the unemployed. The effect of being in different labour market occupations is less clear cut and depends on which dependent variable is used.

The rest of this article unfolds as follows. Building on the political economy literature analysing the determinants of policy preferences, the next section discusses some theoretical expectations concerning the perception of the unemployed. Next, I outline my empirical strategy and present results from several logistic regression analyses on survey data from 29 European countries. The last section concludes.

2. The Determinants of Policy Preferences and Perceptions towards the Unemployed

Perceptions of the welfare state are important because they may have important effects on policies¹². The unemployed are generally seen as the least

¹¹ Iversen, T. and Soskice, D. (2001) ‘An asset theory of social policy preferences.’ *American Journal of Political Science Review*, 95: 875-93.

¹² Burstein, P. (1998) ‘Bringing the Public Back In: Should Sociologists Consider the Impact of Public Opinion on Public Policy?’ *Social Forces* 77(1): 27–62; Manza, J., Cook, F. L. and Page, B. (eds) (2002) *Navigating Public Opinion: Polls, Policy, and the Future of American Democracy* (New York: Oxford University Press).

‘needy’ benefit recipients¹³, partly because unemployment benefits are less universal than other benefits such as pension schemes¹⁴. In addition, most studies suggest that there is a large part of the population in Europe and the US that does not believe the unemployed really want to return to work¹⁵ as they are seen to have greater ‘control over their neediness’¹⁶.

The literature contends that both self-interest and ideology shape individuals’ perceptions of the unemployed¹⁷. This paper focuses on the effect of self-interest, which implies that the likelihood of someone becoming a recipient of a benefit improves their perceptions of benefit recipients. In other words, individuals display more positive views of social and labour market policies when they may themselves depend on these policies in the future¹⁸. Previous work suggests self-interest influences perceptions of the unemployed¹⁹. Thus for instance, individuals in different social classes, as well as with different levels of education, express different levels of support for welfare state policies²⁰. Younger individuals with lower income are more likely to be supportive of welfare state benefits because they are more likely to benefit

¹³ Taylor-Gooby, P. (1985b) *Public Opinion, Ideology and State Welfare* (London: Routledge); Blekesaune, M. and Quadagno, J. (2003) ‘Public Attitudes toward Welfare State Policies A Comparative Analysis of 24 Nations.’ *European Sociological Review*, 19(5): 415-427.

¹⁴ Forma, P. and Kangas, O. (1997) ‘Need, Citizenship or Merit: Public Opinion on Pension Policy in Australia, Finland and Poland’, in S. Svallfors and P. Taylor-Gooby (eds) *The End of the Welfare State? Responses to State Retrenchment* (London: Routledge).

¹⁵ Halvorsen, K. (2002) ‘Solidarity and the Legitimacy of the Welfare State: Attitudes to Abuse of Welfare Benefits in Scandinavian Countries’. Florence: COST13 Working Group II meeting.

¹⁶ Van Oorschot, W. (2000) ‘Who Should Get What, and Why? On Deservingness Criteria and the Conditionality of Solidarity among the Public.’ *Policy and Politics* 28(1): 33–49.

¹⁷ E.g. Taylor-Gooby, P. (2004) ‘Open markets and welfare values: welfare values, inequality and social change in the silver age of the welfare state.’ *European Societies* 6: 29-48; Cook and Barrent, F. L. (1992) *Support for the American welfare state* (New York: Columbia University Press); Svallfors, S. (1997) ‘World of welfare and attitudes to redistribution: a comparison of eight western nations.’ *European Sociological Review* 13: 283-304.

¹⁸ E.g. Kangas, O. (1997) ‘Self-Interest and the Common Good: The Impact of Norms, Selfishness and Context in Social Policy Opinions.’ *Journal of Socio-Economics* 26(5): 475–94; Svallfors, S. (2004) ‘Class, Attitudes and the Welfare State: Sweden in Comparative Perspective.’ *Social Policy and Administration* 38(2): 119–38.

¹⁹ For a good discussion of the recent literature on this topic, see Van Oorschot, W. (2006) ‘Making the difference in social Europe: deservingness perceptions among citizens of European welfare states.’ *Journal of European Social Policy*, 16(1): 25; Van Oorschot, W. Reeskens, T. and Meuleman, B. (2012) ‘Popular perceptions of welfare state consequences: A multilevel, cross-national analysis of 25 European countries.’ *Journal of European Social Policy* 22(2): 183.

²⁰ Edlund, J. (1999) ‘Trust in government and welfare regimes: attitudes to redistribution and financial cheating in the USA and Norway.’ *European Journal of Political Research* 35: 341-370.

from the welfare state²¹. Conversely, individuals with higher income are less supportive of benefits²². Women are more supportive of the welfare state because they face greater risks and hence higher likelihood of becoming recipients. Unemployed respondents are more supportive of the unemployed²³. Age also has an effect though it is not always consistent across studies, with some finding that younger respondents are more supportive and other studies finding that support increases with age²⁴.

The political economy literature looking at preferences for policies also starts from the premise that the likelihood that one will benefit from the policy is a key determinant of their preference for this policy. As a result, the risk profiles of individuals shape their preferences for welfare state policies²⁵. As was the case for the determinants of perceptions discussed above, the expectation is straightforward: the higher the likelihood of becoming unemployed, the more the individual will support more generous labour market policies. However, the literature on policy preferences has gone further in theorising and analysing what factors shape workers' risk of becoming unemployed and how this in turn determines their preferences for policies that benefit the unemployed. In what follows, I discuss which insights from the policy preferences literature may be applied to the study of perceptions.

Earlier literature analysing how partisanship might affect policy making conceptualised labour as being one fairly homogenous group with broadly favourable preferences for policies that are seen to benefit the unemployed and/or maximise employment²⁶. The representatives of labour, whether in unions or social democratic parties, could therefore be expected to demand

²¹ Hasenfeld, Y. and Rafferty, J. A. (1989) 'The determinants of public attitudes towards the welfare state.' *Social Forces* 67: 1027-1048.

²² Cook and Barrent, F. L. (1992) *Support for the American welfare state* (New York: Columbia University Press).

²³ Blekesaune, M. and Quadagno, J. (2003) 'Public Attitudes toward Welfare State Policies A Comparative Analysis of 24 Nations.' *European Sociological Review*, 19(5): table 2.

²⁴ Gould Andersen, J. (2002) 'Public support for the Danish welfare state: interest and values, institutions and performance.' in E. Albaek, V. Eliason, S. N. Norgaard and Schwartz (eds) *Crisis, Miracles and Beyond: Negotiated Adaptation of the Danish welfare state*. (Aarhus University Press).

²⁵ E.g. Overbye, E. (1995) 'Explaining welfare spending.' *Public Choice* 83: 313-35.

²⁶ Boix, C. (1998) *Political parties, growth and equality : conservative and social democratic economic strategies in the world economy* (New York: Cambridge University Press); Garrett, G. and Lange, P. (1991) 'Political Responses to Interdependence - Whats Left for the Left!' *International Organization*, 45(4), 539-64; Hibbs, D. A. (1977) 'Political Parties and Macroeconomic Policy.' *American Political Science Review*, 71(4), 1467-87; Janoski, Thomas (1990) *The political economy of unemployment: active labour market policy in West Germany and the United States* (Berkeley: University of California Press).

more welfare state policies, more redistribution and attempt to lower inequality²⁷.

However, in an ‘age of dualisation’²⁸ characterised by a shift to a post-industrial labour market as well as enduring differences between workers, more recent scholarship has shown that different workers may have very different preferences for labour market policies because the risks they face are now very diverse. Specifically, there are robust empirical findings suggesting workers are divided between labour market insiders and outsiders: whereas insiders are in fairly stable permanent employment, outsiders oscillate between unemployment and non-standard forms of employment such as temporary work²⁹. Because they face systematically distinct risks, insiders and outsiders also exhibit different policy preferences. Thus, for instance, unemployed individuals are less likely to favour cuts in unemployment benefits³⁰.

This is not to suggest that the consensus concerning the effect of divides on preferences is total. Indeed, the effect of risk on certain policy preferences remains contested, for instance in the case of employment protection legislation³¹, and it is as a result not clear whether social democratic parties in Europe have necessarily been unresponsive to the standard of living of unemployed and temporary workers³². For instance, permanent workers may under certain conditions, such as low wage coordination and a predominance of general skills among the workforce, promote the re-regulation of the

²⁷ Bradley, D., et al. (2003) ‘Distribution and redistribution in post-industrial democracies.’ *World Politics*, 55(2), 193-228; Korpi, W. (2006) ‘Power resources and employer centred approaches in explanations of welfare states and varieties of capitalisms.’ *World politics*, 58: 167-206.

²⁸ Emmenegger, P., et al. (2012) *The Age of Dualization: Structures, Policies, Politics* (New York: Oxford University Press).

²⁹ Burgoon, B. and Dekker, F. (2010) ‘Flexible employment, economic insecurity and social policy preferences in Europe.’ *Journal of European Social Policy*, 20(2): 126-41; Palier, Bruno and Thelen, K. (2010) ‘Institutionalizing Dualism: Complementarities and Change in France and Germany.’ *Politics & Society*, 38(1): 119-48; Rueda, D. (2005) ‘Insider–Outsider Politics in Industrialized Democracies: The Challenge to Social Democratic Parties.’ *American Political Science Review*, 99(1): 61-74; Schwander, H. and Hausermann, S. (2013) ‘Who is in and who is out? A risk-based conceptualization of insiders and outsiders.’ *Journal of European Social Policy*, 23(3): 248-69.

³⁰ Fraile, M. and Ferrer, M. (2005) ‘Explaining the determinants of public support for cuts in unemployment benefits spending across OECD countries.’ *International Sociology* 20(4): table 2.

³¹ Emmenegger, P. (2009) ‘Barriers to entry: insider/outsider politics and the political determinants of job security regulations.’ *Journal of European Social Policy*, 19(2): 131-46.

³² Vlandas, T. (2013) ‘Mixing apples with oranges? Partisanship and active labour market policies in Europe.’ *Journal of European Social Policy*, 23(1): 3-20; Vlandas, T. (2013) ‘The Politics of Temporary Work Deregulation in Europe: Solving the French Puzzle.’ *Politics & Society*, 41(3): 425-60.

temporary work sector³³. Deregulation at the margins, for example through reducing the employment protection legislation of temporary workers, may increase wage inequality between insiders³⁴. But despite these ongoing debates, the conventional wisdom now is that insiders should be much less favourable to generous labour market policies than outsiders.

How we should operationalise the dividing line between insiders and outsiders is also contested. While some authors in the dualisation literature in political science conceptualised the divide in contractual terms – i.e. whether one is in a permanent or temporary contract, or in unemployment³⁵, others posited that occupations and skills shape individuals' exposure to risk and hence preferences in perhaps more significant ways³⁶.

Moreover, what is still not clear is whether this divide is also salient when analysing the perceptions of the unemployed. In this article, I want to explore whether both these alternative ways of thinking of the emerging divides in the labour market influence perceptions. If the risk of becoming unemployed affects the perceptions of the unemployed, there is no a priori reason to expect only occupation or labour market status to matter. Thus, I expect individuals in unemployment or temporary contracts, and those in low and general skills occupations to hold more positive perceptions of the unemployed. Note that it is important to distinguish between unemployed and temporary workers because they have been shown to have different preferences³⁷.

Besides contracts and occupations, other factors may capture important divides in the labour force. Previous literature for example suggests that the status of an individual's partner may also matter, so I expect individuals with unemployed spouse to have more positive perceptions of the unemployed.

³³ Vlandas, T. (2013) 'The Politics of Temporary Work Deregulation in Europe: Solving the French Puzzle.' *Politics & Society*, 41(3): 425-60.

³⁴ Vlandas, T. (2013) 'Coordination, inclusiveness and wage inequality between median- and bottom-income workers.' *Comparative European Politics*. First online.

³⁵ E.g. Marx, P. and Picot, G. (2013) 'The party preferences of atypical workers in Germany.' *Journal of European Social Policy*, 23(2): 164-78; Rueda, D. (2007) *Social democracy inside out. Partisanship and labour market policy in industrialised democracies* (Oxford University Press: Oxford); Vlandas, T. (2013) 'The Politics of Temporary Work Deregulation in Europe: Solving the French Puzzle.' *Politics & Society*, 41 (3): 425-60.

³⁶ E.g. Iversen, T. and Soskice, D. (2001) 'An asset theory of social policy preferences.' *American Journal of Political Science Review*, 95: 875-93; Rehm, P. (2009) 'Risks and redistribution: An individual level analysis.' *Comparative political studies*, 42(7): 855-81; Rehm, P. (2011) 'Social Policy by Popular Demand.' *World Politics*, 63(2): 271-299.

³⁷ Emmenegger, P. (2009) 'Barriers to entry: insider/outsider politics and the political determinants of job security regulations.' *Journal of European Social Policy*, 19(2): 131-46; Marx, P. and Picot, G. (2013) 'The party preferences of atypical workers in Germany.' *Journal of European Social Policy*, 23(2): 164-78.

Similarly, women and the young are often considered to be closer to outsiders³⁸ than middle aged men so this could potentially feed into perceptions of the unemployed.

The expectations concerning union membership are more indeterminate. On the one hand, an approach emphasising material interests would focus our attention on their lower risk of dismissal and hence expect less favourable perceptions of the unemployed – if perceptions have similar drivers to policy preferences. On the other hand, unions may, through a more sociological logic, render their members more favourable to the unemployed³⁹. The matter is further complicated by the fact that different unions within a country may have opposite preferences towards certain labour market policies⁴⁰. This is ultimately an empirical issue.

Finally, while the direction of the effects for each variable can be inferred deductively, the relative magnitude of these factors in determining perceptions of the unemployed is an open question. For instance, does occupational or labour market status divide matter more for explaining the perceptions of the unemployed? A related question is whether the magnitude and sign of each independent variable is contingent on the type of perception of the unemployed that we consider. In the next section, I discuss the data that is used to test these expectations and set out my empirical strategy.

3. Data and Empirical Strategy

I test these expectations using the European Social Survey (henceforth ESS). The ESS is a cross-national survey led by a team of academics that carries out face-to-face interviews every two years. It utilises rigorous pre-testing and piloting procedures, and ensures that equivalent sampling designs are implemented in all participating countries. For the purpose of analysing perceptions of the unemployed, I use the fourth round of the ESS (ESS4-2008 Edition 4.2) that was carried out in late 2008 and early 2009, and covers a number of relevant questions concerning labour market status and

³⁸ Schwander, H. and Hausermann, S. (2013) 'Who is in and who is out? A risk-based conceptualization of insiders and outsiders.' *Journal of European Social Policy*, 23(3): 248-69.

³⁹ For the case of active labour market policies, see Nelson, M. (2006), 'Unionized Workers and Support for Active Labour Market Policies.' Fifteenth International Conference of the Council for European Studies Chicago (Chicago).

⁴⁰ For the case of French unions, see Vlandas, T. (2013) 'The Politics of in-work benefits: The case of the 'active income of solidarity' in France.' *French Politics* 11: 117-142.

perceptions⁴¹. This dataset covers 31 countries but due to data limitations for certain variables, the full model only comprises of 29 countries in Western and Eastern Europe.⁴²

Table 1: Perceptions of the Unemployed across Countries

Country	% that believe 'Standard of living for the unemployed, governments' responsibility'	% that believe 'Unemployment standard of living is bad'	% that disagree or strongly disagree that 'Most unemployed people do not really try to find a job'
Belgium	62.4	65.6	28
Bulgaria	72.5	99.7	48.6
Switzerland	65.5	67	47.5
Cyprus	82.4	70.3	27.5
Czech Republic	57.1	77.5	30.5
Germany	61.3	85.6	38.7
Denmark	70.3	61.1	57.9
Estonia	74	96.4	41.4
Spain	86.4	89.1	45.2
Finland	87.6	77.1	41.3
France	60.4	86.6	33.9
United Kingdom	57.3	70.1	29.7
Greece	90.5	96.3	45.7
Croatia	79.3	96.3	33.5
Hungary	67.9	96.6	24.2
Ireland	71.4	69.9	52.6
Israel	78.5	86.5	37.7
Latvia	87.1	96.6	47.7
Netherlands	71.6	56.5	40.9
Norway	82.2	65.3	55.1

⁴¹ ESS (2008) European Social Survey Round 4 Data. Data file edition 2.0. Norwegian Social Science Data Services, Norway - Data Archive and distributor of ESS data.

⁴² This includes European Union countries - Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Latvia, Lithuania, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, United Kingdom; and non-European Union countries: Israel, Norway, Switzerland, Russian Federation, Turkey, and Ukraine.

Poland	60.3	96.3	18.2
Portugal	76.7	92.8	30.9
Romania	79.4	90.8	26.9
Russia	67.8	96.4	28.7
Sweden	82.9	81.1	60
Slovenia	69.2	87.3	20.2
Slovakia	51.2	92.6	15
Turkey	78.8	90.7	34.5
Ukraine	81.7	98.5	43.7
Total	69.6	87.8	34.5

Note: population and design weight applied. Source: ESS2008.

Three separate dependent variables are constructed to capture perceptions towards the unemployed. First, I create a binary variable “unemployed is government responsibility” which is coded 1 if respondents have chosen strictly more than 5 in the ESS variable ‘gvslvue’ which measures respondents’ views on whether the standard of living of the unemployed is the government’s responsibility, and 0 otherwise. Respondents choose a value between 0 if they think it is not at all government responsibility and 10 if they think the government is entirely responsible. Table 1 shows that between 51.2% (in Slovakia) and 90.5% (in Greece) believe that the unemployed are the government’s responsibility. Second, I create a binary variable “unemployed standard of living is bad”. It is coded 1 if respondents answer between 1 and 5 and 0 if respondents answer between 6 and 10 to the question: “What do you think overall about the standard of living of people who are unemployed?”; where they choose a number between 0 (extremely bad) and 10 (extremely good). As shown in table 1, between 56% (in Netherlands) and 99.7% (in Bulgaria) of respondents believe the standard of living of the unemployed is bad. Third, I create a binary variable “unemployment try to find a job” which is coded 1 if respondents answer that they strongly disagree or disagree with the statement “most unemployed people do not really try to find a job”, and 0 otherwise. Table 1 shows that between 15% (in Slovakia) and 57.9 (in Denmark) disagree or strongly disagree that ‘most unemployed people do not really try to find a job’.

For the independent variables, I create a series of binary variables to capture the respondents’ gender, whether they are unemployed, on a temporary contract, a union member and whether their spouse is unemployed. I also control for the number of years of education they completed⁴³, their age⁴⁴ in a

⁴³ Cusack, T., Iversen, T., and Rehm, P. (2006) ‘Risks at work: The demand and supply sides of Government redistribution.’ *Oxford Review of Economic Policy*, 22(3): 365-89.

quadratic specification to allow for non-linearity, and their occupation by recoding the ISCO88 occupational scheme into 9 categories using Torben Iversen's do-file.⁴⁵

To test the impact of the independent variables on my dependent variable, I run binary logistic regression analyses while including country fixed effects to capture unobserved country heterogeneity. I report robust standard errors clustered by country. I do not model the hierarchical nature of the data using a multilevel approach because I have less than 30 units at the national level whereas one generally need more than 30 cases at that level to employ this method⁴⁶. Note further that I am not primarily interested in explaining variation at this level. All results are plotted graphically to facilitate interpretations.

4. Empirical Results

To evaluate the relative importance of each independent variable, Figure 1 plots semi-standardised coefficients that have been rescaled by the standard deviation of the variable in the data. For each variable, a positive coefficient suggests the factor under consideration increases the probability of the respondent holding favourable perceptions of the unemployed. The figure displays the 95% confidence interval which is shown by the line around the point estimate. Where the line intersects the 0-line, the variable is not statistically different from 0 at that level of confidence.

The results are as follows. Being a female respondent, unemployed, or having an unemployed spouse makes it more likely than an individual thinks “the unemployed are government responsibility”. Being in a temporary contract has a similar effect to that of being unemployed. Union members do not have a statistically different perception of the unemployed. Education makes you less likely to agree that the unemployed are government's responsibility but this

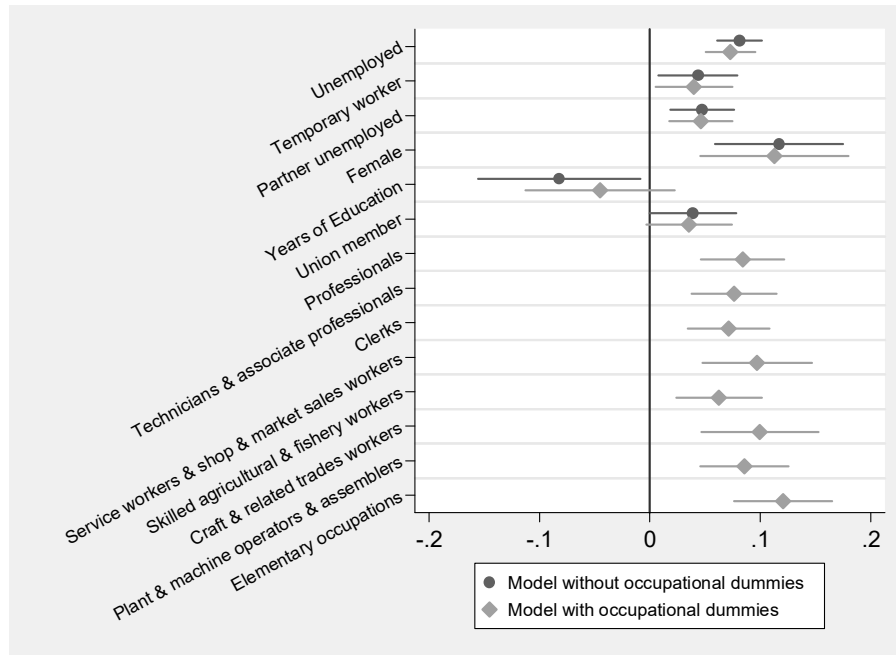
⁴⁴ Schwander, H. and Hausermann, S. (2013) ‘Who is in and who is out? A risk-based conceptualization of insiders and outsiders.’ *Journal of European Social Policy*, 23(3): 248-69.

⁴⁵ The nine occupations are: (1) Legislators, senior officials and managers (reference category for occupations); (2) Professionals; (3) Technicians & associate professionals; (4) Clerks; (5) Service workers & shop & market sales workers; (6) Skilled agricultural & fishery workers; (7) Craft & related trades workers; (8) Plant & machine operators & assemblers; (9) Elementary occupations. Category is the reference category, meaning that the effect of belonging to other occupations is relative to an individual in category 1. The do file can be accessed at: <http://www.people.fas.harvard.edu/~iversen/SkillSpecificity.htm>

⁴⁶ Fraile, M. and Ferrer, M. (2005) ‘Explaining the determinants of public support for cuts in unemployment benefits spending across OECD countries.’ *International Sociology* 20(4): endnote 10.

effect disappears when occupational dummies are included, suggesting the effect of occupation might occur through occupational sorting into high/low skill occupations.

Figure 1: European Social Survey Results – “Standard of Living for the Unemployed, Governments’ Responsibility”, with rescaled Coefficients



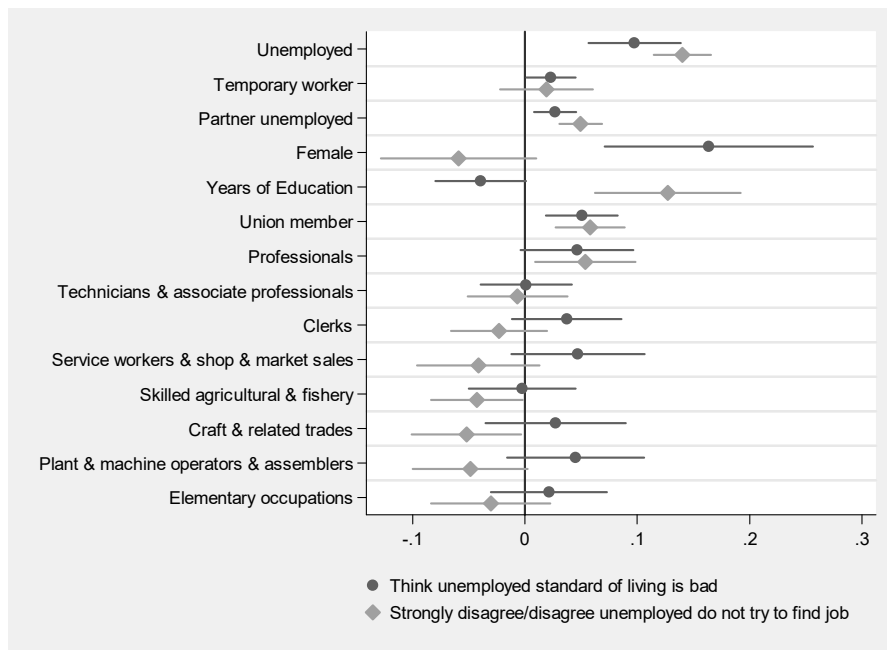
Note: Country fixed effects and age (not significant) are included but not shown. Robust standard errors clustered by country. Effects are rescaled by the standard deviations of the predictors (semi-standardized effects).

The effect of occupations themselves seems less clear cut. Craft workers, those in elementary occupations as well as plant and machine operators are all significantly more likely to agree that the unemployed are government’s responsibility (the reference category is being in the occupation “Legislators, senior officials and managers”). The effect is similar but less strong for technicians, service workers and clerks. Taken together these results do not seem to suggest that perceptions are strongly influenced by skill specificity since the occupation with the highest specific skills - craft workers - are not noticeably more favourable to the unemployed than those with low but more general skills such as workers in elementary occupations (which have the lowest ISCO skill level of all occupations).

If we turn our attention to other variables that measure perceptions of the unemployed, the results are similar in some respects but quite different in other

ways. On the one hand, Figure 2 reveals that being unemployed or having an unemployed partner makes it more likely to think that the standard of living of unemployed people is bad and more likely to disagree that unemployed do not try hard to find a job. The variable capturing whether the respondent is on a temporary contract and being a female respondent only have a statistically significant effect on perceptions of the unemployed standard of living. In contrast to Figure 1 however, being a union member is now statistically significant: union members are more likely to have be sympathetic to the unemployed as captured by these two dependent variables.

Figure 2: European Social Survey Results – Alternative Dependent Variables



Note: Country fixed effects and age (not significant) are included but not shown. Robust standard errors clustered by country. Effects are rescaled by the standard deviations of the predictors (semi-standardized effects): with and without occupational dummies.

On the other hand, education now has the opposite effect than before: more highly educated respondents are more likely to disagree that unemployed do not try to find a job (but this has no effect on the perceptions of their standard of living). Occupations now surprisingly seem to have opposite effects on the two dependent variables, though they are often not statistically significant. One exception is being in craft and related trade, an occupation that requires very specific skills, which makes it less likely that respondents disagree that

unemployed do not try to find a job. In other words, workers with more specific skills seem to have worse perceptions of the unemployed in this respect. By contrast, the other exception is being in a professional occupation which makes it more likely to disagree that unemployed do not try to find a job.

5. Conclusions

The literatures on perceptions of the unemployed and the determinants of policy preferences have largely developed in parallel. This is surprising because, as I have tried to show in this article, insights from the political economy literature on policy preferences are also relevant when considering perceptions of the unemployed. The more refined conceptualisation of various forms of labour market risks and how these may affect preferences sheds some interesting light on the determinants of perceptions.

This article has shown that labour market dualisation also has some explanatory power when looking at perceptions of the unemployed. Where one stands along several dividing lines in the labour market shapes whether individuals think the standard of living of the unemployed is governments' responsibility: the unemployed, those in low skill occupations or those on temporary contracts are more likely to think so. Thus, as high skill occupations have expanded over the previous decades, those believing the government is not responsible for the unemployed have become more numerous. On the other hand, there has also been a rise in the number of unemployed and precarious workers who tend to think the unemployed are governments' responsibility.

Being unemployed or having an unemployed partner makes it more likely to think that the standard of living of unemployed people is bad and more likely to disagree that unemployed do not try hard to find a job. Union members are also more likely to have positive perceptions of the unemployed using these two dependent variables. The falling share of the workforce that is unionised in many European countries may have had adverse implications for the perceptions of the unemployed. Interestingly, more highly educated respondents are more likely to disagree that unemployed people do not try to find a job but less likely to think that their standard of living is government's responsibility. Occupations have different effects on the three dependent variables. Being in craft and related trade, an occupation that requires very specific skills, makes it less likely that respondents disagree that unemployed do not try to find a job, but more likely to think that the standard of living for the unemployed is governments' responsibility.

Together these findings make two broader contributions. First, they suggest that different types of perceptions of the unemployed have partly distinct drivers: certain factors affect all types of perceptions of the unemployed similarly (e.g. being unemployed and having an unemployed partner make individuals more positively inclined towards the unemployed); other factors are only significant for certain types of perceptions (e.g. being a temporary worker and being a union member); and yet other factors have opposite effects on different perceptions (e.g. being a craft worker and years of education). Thus, reforms that increase the requirements for the unemployed to look for jobs and those that cut the unemployment benefit replacement rate may not build on the same underlying coalition.

Second, this paper shows that unemployment influences perceptions through multiple channels. The first channel is that being unemployed not surprisingly makes you much more likely to have positive perceptions of the unemployed. However, the effect of unemployment does not stop here. A second channel operates through having an unemployed spouse, which also positively influences your perceptions of the unemployed. As countries have an increasing number of unemployed workers, it makes it more likely that at least one household member experiences an unemployment spell, and a growing part of the population may therefore develop more positive perceptions of the unemployed. On the other hand, this also has the important implication that if unemployment is increasingly concentrated in certain households, the share of the population that has positive perceptions of the unemployed is likely to shrink because fewer employed workers have perceptions that may be influenced by an unemployed spouse. If the distribution of unemployment risk is driven by the distribution of skills, homogamy may lead to more concentrated perceptions of the unemployed and a lower overall share of the population with positive perceptions of the unemployed.

Thus, in times of higher unemployment and rising numbers of precarious jobs, my findings suggest that the politics of unemployment may change in important ways.

The “Labour Mobility Package”: A European Fraud against Mobile Workers and their Countries of Origin?

Carlo Caldarini *

Abstract. Among the reforms announced by the European Commission headed by Juncker, we have often heard about the “Labour Mobility Package”. But what is it, exactly? Indeed, the Commission does not provide us with much information about it. In theory, the main objective of this measure is “promoting a more comprehensive and fairer internal market for mobile and migrant workers”. In reality, under the pretext of preventing “fraud and abuse”, the EC’s “hypotheses to review provisions” challenge the pillars of free movement of workers and the coordination of social security systems, undermining the foundations of the entire European project. It will be mobile and migrant workers, and their countries of origin, that will suffer the most serious consequences of this move.

Keywords. *Coordination of Social Security Systems, Europe, European Commission, Family Allowances, Free Movement of Workers, Labour, Migration, Social Security, Unemployment Benefits.*

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1. Introduction

The European Commission is gradually disclosing the content of the so-called *Labour Mobility Package*. This is a new set of measures on free movement of workers which, as announced in the spring of 2015, will be part of the programme of the Juncker Commission.

The Package builds on well-known pillar principles, according to which EU citizens have the right to:

- Seeking employment in another EU country;
- Working in that country without a work permit;
- Residing in that country for reasons of work;
- Remain there even after completion of the assignment.
- Enjoying equal treatment as nationals of that country as far as employment, welfare and social benefits are concerned;
- Transfer their health and pension insurances to the new country of residence.

Over the last years, the European Commission has repeatedly pointed out the issue of low intra-EU mobility (concerning only 3% of the EU labour force), highlighting the benefits associated with the principle of free movement of workers.

Nevertheless, and despite all principles and advantages, European workers still face many hurdles if they wish or, as is frequently the case, need to relocate abroad and seek employment in another Member State. These challenges have multiplied during the crisis and mobile workers often face discrimination and unequal treatment as regards in social security, working conditions, remuneration, access to welfare, training and taxation. It is cross-border workers and people on atypical contracts who are discriminated against, because of their ill-defined and low-protected status.

2. Preventing “Fraud and Abuse”?

In theory, the main objective of the European Commission’s Labour Mobility Package is promoting a more comprehensive and fairer internal market for mobile and migrant workers. In reality, the package will mainly aim to increase the capacity of Member States to prevent “fraud and abuse”, as it was put it.

The package intends to prevent fraud and abuse by monitoring companies’ behaviour, for instance in relation to posted workers, and by introducing new and more stringent criteria to access social security benefits, with the latter being the real aim of the Commission. This move will favour countries such as Germany and the United Kingdom, while penalising both mobile workers and

their countries of origin, as their economic, social and pension systems are usually weaker than those in destination countries.

In all likelihood, the Labour Mobility Package was influenced by the joint letter sent by representatives of Austria, Germany, the Netherlands and the United Kingdom to the Presidency of the European Union in April 2013¹. Highlighting the “benefits of free movement of European citizens”, the four Ministers asked forcefully to review EU rules to provide stricter sanctions, such as bans on re-entry after expulsion (currently, all bans on entry, including those following expulsion, are prohibited under Directive 38/2004 on the free movement of EU citizens and their family members). Their main argument is that:

this type of immigration from other Member States burdens the host societies with considerable additional costs, in particular caused by the provision of schooling, health care and adequate accommodation. On top of this strain on vital local services, a significant number of new immigrants draw social assistance in the host countries, frequently without a genuine entitlement, burdening the host countries' social welfare systems.

Therefore, EU citizens may be considered as “immigrants” and treated as “foreigners”. The European Commission provided its response 8 months later, arguing that no data supported the argument that these citizens are deriving benefit from the system, nor that they constitute a burden for host countries' welfare systems². However, this was not enough to pour oil on troubled waters. Following the joint letter, leading policy-makers from Germany, United Kingdom and the Netherlands seized any available opportunity to put forward proposals to review EU rules on free movement of workers. Their background rationale is that migrant workers come handy to domestic and European economies, especially when they pay social contributions, but they do not when they claim the resulting social security benefits.

The British Prime Minister, David Cameron, believes³ that European “immigrants” should not be given access to work-related social benefits – e.g. to jobseeker's allowance (JSA) in the first four years living in the UK. Further, if their offspring do not live in the UK, they should not be entitled to receive family allowances. In such a tense climate, the Labour Party backs these

¹ <http://bit.ly/1ReNzb5>.

² European Commission upholds free movement of people, 25 November 2013, <http://bit.ly/1QgA6C3>.

³ David Cameron: We will bar EU nationals from benefits 'for four years', The Independent, 28 November 2014, <http://ind.pn/21wzxME>.

views. In the words of MP Rachel Reeves⁴, an economist and the shadow Minister of Labour and Pensions, “Labour too should curb new EU migrants’ access to social security benefits”. In addition, “People arriving from EU countries should not be able to claim jobseekers’ allowance for the first two years of living in the UK”. In Germany,⁵ decision-makers are of the opinion that the amount of family allowances for foreign workers should be calculated based on the offspring’s country of residence. It might seem that the demands from Germany and UK are just small adjustments. In reality, they undermine the pillars of free movement of people and coordination of social security systems, therefore challenging the entire European project.

These restrictions were first introduced by Luxembourg 2000 and concerned children of foreign workers in Luxembourg not residing in the Grand Duchy. As a result, in 2013 the Court of Justice of the European Union ordered to withdraw all restrictive measures, stressing that migrant workers “shall enjoy the same social and tax advantages as national workers” (article 7.2 of Regulation EU 492/2011 on freedom of movement for workers).

However, the amendments currently reviewed by the European Commission build on the tackling-fraud-and-abuse argument to reduce the rights for mobile workers, lift social accountability from host countries and place a heavier burden on sending countries as far as economic, political and social security issues are concerned. But, how come that the Commission has not yet revealed the details of this project?

The EU Commissioner, Marianne Thyssen, presented the project guidelines at the international conference on labour mobility held on 23rd April 2015 at Krakow University. In Thyssen’s words, the Labour Mobility Package will “support national authorities tackle fraud and abuse” and European rules on coordination of social security systems will be reviewed “to reflect the changes in the economy and society”⁶. Nevertheless, the Dutch Vice-President of the European Commission, Frans Timmermans, had already announced its main contents one month earlier, bluntly explaining that “Access to labour markets and social security is not the same thing. Access to the labour market does not mean automatic access to social security systems”⁷. In plain language: one may surely come and work in our countries, will pay social contributions and taxes

⁴ EU migrants would have to wait two years before claiming jobseekers’ allowance under Labour, www.labourlist.org, 18 November 2014, <http://bit.ly/1gHoPhj>.

⁵ Staatssekretärsausschuss: Kabinett beschließt Abschlussbericht, Bundesministeriums des Innern, August 27, 2014, <http://bit.ly/18nIs91>.

⁶ Intervention of Commissioner Marianne Thyssen at 3rd Labour Mobility Congress, 23 April 2015, <http://bit.ly/21wBd8Q>.

⁷ Timmermans backs UK push against ‘welfare tourism’, EurActiv.com, 6 mars 2015, <http://bit.ly/1OIEwgC>.

just as national citizens, but he does not enjoy equal rights on social security, as that would be a fraud!

3. Did You Say Impact Assessment?

In recent meetings with social partners, the European Commission has repeatedly stated that its Labour Mobility Package is at a planning stage and that an “impact assessment” will be carried out before defining its content that will involve representatives from European social partners.

But, what is it exactly?

In May, we had the chance to look at the questionnaires⁸ used to conduct this study. In short, the European Commission appointed three research institutes to assess “changes to administrative/compliance costs” in national administrations and for the families affected that might result from the possible review of the current EU provisions on unemployment and benefits laid down in Regulations 883/2004 and 987/2009 on the coordination of social security systems. One might note that here reference is made to “administrative/compliance costs” not to the economic and social ones for Member States and individual citizens.

More specifically, the study aims to “assess variations in administrative tasks” and the resulting costs for social security bodies to comply with the new rules. Half a page of the 16-page questionnaire focuses on “assessing whether unemployed workers and their family members who receive benefits should - also - face changes in their administrative tasks in order to comply with new rules”.

The “administrative impact” on workers and their families is not calculated taking into account the amount of benefits, which is reduced, but rather the “man-hours/minutes” to comply with the new administrative tasks, as it is with social security bodies.

Through a phone interview, the questionnaires ask to clarify “the list of tasks and estimates of your current administrative/compliance time needs for handling the current EU provisions, and in assessing how these time needs may change from revisions to the provisions”.

The “impact assessment” questionnaire is based on the hypothesis that a European citizen from Member State B (which has a higher cost of living than that of Member State A) works in Member State A (where the cost of living is higher than that in Member State B). For reasons of simplicity, let us suppose that the worker is a Polish citizen who works in Germany.

⁸ Please contact c.caldarini@numericable.be to request a copy of the questionnaires.

The two tables on the following pages summarised the possible outcomes in relation to a review of current legislation.

Table 1. Family Allowances

Provisions in Force	Examples	Hypotheses of Amended Provisions	Consequences
<p>Any worker is entitled to receive family benefits for his dependant family members from the country of employment where he pays social contributions, regardless of the country of residence of the family.</p>	<p>Example 1: A <u>Polish citizen</u> lives, works and pays social contributions <u>in Germany</u> (which has a higher cost of living than Poland) whereas his wife, who does not work, lives <u>in Poland</u> with their children.</p>	<p>Hypothesis 1: The worker will receive family allowances from his working country, reduced to the <u>cost of living of the country of residence of his family</u>.</p>	<p>The Polish worker shall receive lower family allowances, although he pays social contributions just as his German counterpart!</p>
		<p>Hypothesis 2: The worker will receive family allowances from the country of residence of his family members, at the standard rate applied in that country, <u>plus integration</u> from the country of employment as allowances are higher there.</p>	<p>Overall, the worker receives the same amount but one part of this cost is borne by Poland whilst social contributions are totally paid by the worker to Germany!</p>
	<p>Example 2: A <u>German citizen</u> lives, works and pays social contributions <u>in Poland</u> (which has a lower cost of living than Germany) whereas his wife, who does not work, lives <u>in Germany</u> with their children.</p>	<p>Hypothesis 3: The worker will receive family allowances from the country of residence of his family members, at the standard rate applied in that country, <u>with no integration</u> from the country of employment as allowances are lower there.</p>	<p>Family benefits will be paid by the country of residence of the family and not by the country of employment to which social contributions are paid. This is the only case when the worker would receive, pursuant to the new legislation, higher family allowances. Too bad migration flows go from Poland to Germany and not the other way round!</p>

Source: Observatory Inca Cgil, based on the questionnaires used for the impact assessment.

Table 2. Unemployment Benefits

Provisions in force	Examples	Hypotheses of Revised Provisions	Consequences
The worker is entitled to receive unemployment benefits in the last country of employment, aggregating any insurance periods completed in other Member States as well.	Example 1: A <u>Polish worker</u> moves to Germany and works there for <u>2 weeks</u> before losing, involuntarily, his job.	Hypothesis 1: The worker is entitled to an allowance in the employment country, taking into account the periods of insurance completed in other Member States, only once he has worked <u>at least 1 month</u> in the employment country.	In both cases, the Polish worker would receive no unemployment benefit from Germany or Poland either, even though he had worked (and paid insurance contributions) for many years in Poland and in other Member States before moving to Germany!
	Example 2: A <u>Polish worker</u> moves to Germany and works there for <u>2 months</u> before losing, involuntarily, his job.	Hypothesis 2: The worker is entitled to an allowance in the employment country, taking into account the periods of insurance completed in other Member States, only once he has worked <u>at least 3 months</u> in the employment country.	
	Example 3: A <u>Polish worker</u> moves to Germany and works there for <u>2 months</u> before losing, involuntarily, his job.	Hypothesis 3: The worker is entitled to unemployment allowance in the country of employment. However, for the purposes of calculating the amount of the benefit, his <u>income earned</u> in other Member States will be taken into account.	Germany would pay the Polish worker lower allowances, calculated on the basis of his income in Poland, despite the worker took up residence in Germany where the cost of living is much higher!
	Example 4: A <u>German worker</u> moves to Poland and works there for <u>2 months</u> before losing, involuntarily, his job.		This is the only case when the worker would receive, pursuant to the new legislation, higher allowances. Too bad migration flows go from Poland to Germany and not the other way round!

Source: Observatory Inca Cgil, based on the questionnaires used for the impact assessment.

4. Some Figures

While it would be certainly given media coverage, the enforcement of such restrictive rules would produce a negligible impact. For instance, 14 million children are entitled to family allowances in Germany and only 0.6% of them live abroad. But, this may have detrimental effects on the families of the around 44,000 Polish workers who live in Germany and still have one dependent child in Poland.

According to a European Commission's press release dated 25 September 2014, workforce mobility in Europe constitutes a cost for sending countries rather than for host countries⁹. Indeed, the amount of taxes and contributions paid by the "foreign" population to its host country is higher than what is received in the form of welfare benefits and other forms of financial support. This gap would be further widened by the new rules because, as we have seen, they reduce the amount of allowances workers receive and not the contributions paid, with the costs of these measures that have to be met by the countries of origin.

The press release referred to above was based on a study carried out in 2013, which also showed that foreigners are a small minority among those who benefit from welfare allowances. For example, they are less than 1% in Austria and less than 5% in Germany and the Netherlands; as for national spending for healthcare, the cost ascribable to the foreign population is, on average, 0.2%¹⁰.

A University College of London study from November 2014, based on UK Government data, compared the net fiscal contribution of British nationals to the contribution of several groups of immigrants. The net fiscal contribution of European citizens exceeded that of British nationals by 10% between 1995 and 2011¹¹.

Another study published in June 2014 by *IZA World of Labor* shows that individual immigration decisions are not made based on the generosity of the welfare systems of host countries¹². On the contrary, immigrants - including EU immigrants - rely on welfare less than national citizens, even if they face a higher risk of poverty. In short, once again, foreign workers pay their host

⁹ European Commission, Labour Mobility within the EU, September 25, 2014, <http://bit.ly/1QQihx5>.

¹⁰ ICF GHK, Milieu (2013), *A fact finding analysis on the impact on the Member States' social security systems of the entitlements of non-active intra-EU migrants to special non-contributory cash benefits and healthcare granted on the basis of residence*. Final report, DG Employment, Social Affairs and Inclusion via DG Justice Framework Contract, October 14, <http://bit.ly/1BxQkf8>.

¹¹ Dustmann C., Frattini T. (2014), « The Fiscal Effects of Immigration to the UK », *The Economic Journal*, vol. 124, n° 584, November, p. 593-643.

¹² Giulietti C. (2014), « The welfare magnet hypothesis and the welfare take-up of migrants », *IZA World of Labor*, n° 37, May, <http://bit.ly/1QLSVdN>.

country more than what they receive. And, even when immigrants benefit from welfare more than national citizens, this is because of social differences, and not the result of their immigrant status. Consequently, the myth that migrants take advantage of the generosity of social systems in rich countries is dispelled by international statistics¹³. According to a 2013 OECD Report on International Migration, the delta between social and tax contributions paid by immigrants and the allowances they have received is always in favour of host countries, and to the detriment of migrants¹⁴. The net fiscal contribution of migrants is positive in all countries except Ireland, where the balance is negative for national citizens, too (see table below). The OECD also clarifies that the balance is negative because the immigrant population is older than in other countries and, as a consequence, immigrants are over-represented in the group of beneficiaries of old-age pensions.

Table 3: Immigrants' Net Fiscal Contribution in Some OECD Countries (2007-2009 average, purchasing power being equal)

	Families Born in the Country	Abroad	Mixed Families
Australia	+ 3,776	+ 8,353	+ 2,303
Belgium	+ 9,159	+ 5,560	+ 16,830
Canada	+ 7,552	+ 5,167	+ 15,494
France	+ 2,407	- 1,451	+ 9,131
Germany	+ 5,875	-5,633	-4,453
Ireland	-2,487	- 1,274	+6,511
Italy	+ 3,980	+ 9,148	+ 12,126
Luxembourg	-1,228	+ 9,178	+ 7,232
The Netherlands	+ 9,940	+ 2,544	+ 21,303
Poland	+291	- 5,691	- 4,630
United Kingdom	+ 2,604	+ 3,029	+ 11,954
Spain	+ 3,106	+ 7,496	+ 9,830
Sweden	+ 6,815	+896	+ 13,473
Switzerland	+ 14,968	+14,549	+ 21,437
USA	+ 8,534	+ 8,274	+ 17,158

Source: OECD (<http://dx.doi.org/10.1787/888932831870>). Statistics have been summarized by the Inca Cgil Observatory on European Social Policies.

¹³ 'Benefits tourism' in the EU is a myth, report says, EurActiv.com, <http://bit.ly/1QQiqAC>.

¹⁴ OCDE (2013), *Perspectives des migrations internationales 2013*, Paris, Éditions OCDE, <http://bit.ly/1DaVfqG>.

As we already said, a quick overview of the envisaged review might convey the message that just a few amendments are being made. Further, these changes appear to be based on common sense, for instance as a way to tackle fraud and abuse, bring allowances into line with the cost of living, and so on. In this connection, the package aims to prevent access to social security from workers who have earned this right based on their contribution. This can be seen as a “fraud”. As clearly stated by the Vice-President of the European Commission, the intent is to decouple access to labour market from access to social security. After 60 years spent building a united Europe, it has been understood that workers move from countries with lower standards of living to countries with higher standards of living. This is the alleged “abuse”. It came as a shock to realize that Polish workers move to Germany, the Portuguese to Luxembourg, the Romanians to Italy, and the Italians to Belgium. One must not be a sociologist to understand that the reverse would be surprising. The “hypotheses to review provisions” challenge the very pillars of free movement of people and coordination of social security systems, undermining the foundations of the entire European project. They question, among others:

- The principle of “equal treatment” enshrined by the treaty and Article no. 24 of the directive on free movement of EU citizens;
 - The principle whereby all people are entitled to family allowances “even family members who reside in another Member State” (Article 67 of EU Regulation 883/2004 on the coordination of social security);
 - The principle whereby European workers “shall enjoy the same social and tax advantages as national workers” (Article 7.2 of Regulation EU 492/2011 on freedom of movement for workers);
 - The principle of unity of applicable legislation, whereby a person is subject to the legislation of a single Member State only, generally the country of employment (Article 11 of EU Regulation 883/2004 on the coordination of social security);
 - The principle of retention of rights in course of acquisition. That is, the possibility to “aggregate” insurance periods completed in a Member State in order to determine entitlement to a right in another Member State (article 6 of the EU Regulation 883/2004 on the coordination of social security);
- More importantly, this would deny a fundamental principle of social law, namely that cash benefits are a part of an individual and insurance-based right

to which one is entitled upon the payment of contributions during his/her professional career.

5. Concluding Remarks

To conclude, the Labour Mobility Package is part of a wider strategy and not a single political measure. This was clearly demonstrated, among other things, during the European Council meeting of 18 and 19 February 2016¹⁵, when in order to “find mutually satisfactory solutions” to the British Prime Minister’s conditions for the permanence of his country in the EU, the 28 Heads of State and Government unanimously approved a legally binding arrangement, *de facto* challenging 60 years of European legislation and case law on workers’ free movement.

This arrangement provides, among others, an “alert and safeguard mechanism” to limit access to social benefits to those who exercise their right to freedom of movement, and more precisely, to prevent EU workers from claiming “non-contributory in-work benefits” for a total period of up to four years from commencement of employment.

Moreover, a major amendment to Regulation No. 883/2004 regarding the coordination of social security systems will be presented by the European Commission in order to index (i.e. reduce) the child benefits exported to a Member State other than that where the worker resides. If the first device can be activated at the request of one Member State, the second will be automatically applicable in all EU states once it enters into force.

To the casual observer, this might appear as a minor adjustment: the fight against fraud and abuse, a cost-of-living indexation of family allowances, etc. However, it seems clear to us that the real goal is to limit access to social protection to workers entitled to it on the basis of their tax and social security contributions; and in this lies the real “fraud”.

The finding that populism and xenophobia concerning refugees, migrants or EU citizens, are spreading among EU authorities shows how the European project is itself in danger. As the Vice-President of the European Commission clearly stated, the goal is to separate access to the labour market from that to social security. And, while today this is the case for “foreigners”, the same might soon be applied to everyone else.

¹⁵ European Council meeting - Conclusions, 18 and 19 February 2016 (<http://bit.ly/21z0mji>).

Active Ageing and Supportive Working Time Measures

Agne Kalson *

Abstract. This paper considers some of the most important working time arrangements (e.g. part-time work, job-sharing, working time accounts) which promote active ageing and encourage the elderly to remain in the labour market. An overview of Estonia's labour law and its limitations hindering the successful implementation of these working schemes will be provided. This will be done by relying upon comparative and analytical research, taking UK and German legislation as examples of best practice, in order to point out those aspects that can be replicated in Estonia in order to overcome the obstacles hampering the effective implementation of these working schemes.

Keywords. *Working Time, Working Time Accounts, Estonia, Labour Law, Working Time Arrangements.*

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1. Introduction

The ageing of the population is a global phenomenon and represents one of the major social and economic challenges of the 21st century for European societies. By 2025, more than 20% of Europeans will be 65 and over, and a particularly rapid increase will be witnessed in the number of those aged 80 and above. By the same year, the working age population in the European Union (EU) is expected to decline by 14.2%¹, producing gaps in the labour market. Consequently, more workers will be needed in the coming years to maintain the current levels of economic capacity. Thus, to tackle the decrease in the number of those in employment, efforts ought to be made to increase the employment rate across all age groups, including elderly people.

Concerning this last point, it would be appropriate to safeguard people's ability to work and help them to stay on in employment until reaching retirement age². Taking the side effects of ageing into consideration, the creation of a suitable work environment is decisive to support older age groups and prevent their early exit from the labour market. In the survey, *Elderly People in the Labour Market*³ carried out in Estonia in 2012 by the Centre for Applied Social Sciences (RAKE), it was shown that giving older people the opportunity to choose the most suitable working time and working pace would help increase their employability⁴.

Working time can be organised flexibly in a number of ways. However, some working time options, such as part-time work, job-sharing and working time accounts are known to be particularly widespread among older workers, as they enable a reduction of their working hours in line with their age-related needs. These working schemes can promote older people's employment rates only if they are facilitated by less stringent legislation regulating their implementation. This would give the parties to the employment relationship more options to promote older people's access to the labour market and help them stay at work.

In view of the above, this paper considers some of the most important working time arrangements (e.g. part-time work, job-sharing, working time

¹ European Commission. Ageing Policy, http://ec.europa.eu/health/ageing/policy/index_en.htm (accessed April 13, 2015).

² While in most EU Member States certain health conditions are linked to retirement, Estonian workers report long-lasting health problems prior to it. See: Ü. Marksoo, L. Malk, E. Põldis. Vanemaalised Eesti tööturul [Elderly People in Estonian Labour Market]. Teemaleht [Theme sheet], 2001, n. 4, 18.

³ K. Espenberg, M. Sammul, S. Vahaste, R. Haljasmäe. Vanemaalised tööturul [Elderly People on the Labour Market, RAKE, Raport, 2012.

⁴ K. Espenberg, M. Sammul, S. Vahaste, R. Haljasmäe, *op. cit.*, 32.

accounts) which promote active ageing and encourage the elderly to remain in the labour market. An overview of Estonia's labour law and its limitations hindering the successful implementation of these working schemes will be provided. This will be done by relying upon comparative and analytical research, taking UK and German legislation as examples of best practice, in order to point out those aspects that can be replicated in Estonia in order to overcome the obstacles hampering the effective implementation of these working schemes.

2. Active Ageing

The challenges posed by demographic changes have dominated the debate on the future of the EU. Specifically, the ageing population and the shrinking labour force raise concerns about economic growth. In this sense, "Europe 2020", the strategy for a smart, sustainable and inclusive growth, emphasises the need to promote active-ageing policies⁵. The expression "active ageing" was originally used in the early 1960s in the United States. At first, the keys to what was described as "successful ageing" were "activity and financial success, with a carrying over into old age of activity patterns and values typically associated with middle-age"⁶. By the 1990s, a new notion of "active ageing" began to emerge, heavily influenced by the work and activities of the World Health Organization (WHO)⁷, which adopted this expression to describe the process for achieving this vision. According to the WHO, active ageing is "the process of optimizing opportunities for health, participation and security in order to enhance quality of life as people age"⁸. The definition includes the notion of extending the work activity to older people, both within the labour force, through delaying their retirement, and within society, through participation in a range of social, economic, civil or cultural activities.⁹

⁵ European Commission, Population Ageing in Europe, Facts, implications and policies, 2014, 8, http://www.net4society.eu/media/Population_Ageing_in_Europe.pdf (accessed August 24, 2015).

⁶ F. Hendrickx (ed.) Active Ageing and Labour Law, Contributions in honour of professor Roger Blanpain in Social Europe Series 31, Antwerpen, Intersentia, 2012, 40.

⁷ F. Hendrickx (ed.), *op.cit.*, 41.

⁸ World Health Organization, Active Ageing, A Policy Framework, 2012, 12 http://apps.who.int/iris/bitstream/10665/67215/1/WHO_NMH_NPH_02.8.pdf (accessed August 24, 2015).

⁹ Eurostat, Active ageing and solidarity between generations, A statistical portrait of the European Union, 2012, 8, <http://ec.europa.eu/eurostat/documents/3217494/5740649/KS-EP-11-001-EN.PDF/1f0b25f8-3c86-4f40-9376-c737b54c5fcf> (accessed July 5, 2015).

For the EU, active ageing means “growing old in good health and as a full member of society, feeling more fulfilled in our jobs, more independent in our daily lives and more involved as citizens”. In relation to labour law, it covers a wide variety of issues, such as [...] work-life balance, involving working time regulations and adjustments made for older people in order to allow them to stay on the labour market¹⁰.

The EU designated 2012 as the European year of active ageing and solidarity between the generations, bringing the topic back into the focus of the international community. In line with this initiative, Estonia laid out a “Development Plan for Active Ageing for 2013-2020”¹¹. The goal of the plan was to create an age-friendly environment for older citizens, by increasing their quality of life, and guaranteeing the same opportunities as other age groups. A more specific goal was set, namely that of making elderly people more active in the labour market, and making them feel satisfied with their working lives¹². To reach this objective, a number of flexible work options were provided to them¹³.

3. Working Time Organisational Measures

In 2014, the survey “Attitudes of the over 50s to Fuller Working Lives”¹⁴ was conducted in the UK. When participants were asked about flexibility, just over half of them (51%) claimed that their employer allows people to work flexibly as they get older; 9% of them reported that their employer does not allow it, while 40 % said they did not know if their employer allows flexible working. Tellingly, the share of respondents who did not know if their employer offers flexible working decreases considerably with age, suggesting that, as employees get older, they are more likely to seek out information about flexible working¹⁵.

¹⁰ F. Hendrickx (ed.), *Active Ageing and Labour Law*, cit., 6, p.v.

¹¹ Sotsiaalministeerium [Ministry of Social Affairs], *Aktiivse vananemise arengukava 2013-2020* [Active Ageing Development Plan 2013-2020], Tallinn, 2013, http://www.sm.ee/sites/default/files/content-editors/eesmargid_ja_tegevused/Sotsiaalhoolekanne/Eakatele/aktiivsena_vananemise_arengukava_2013-2020.pdf (accessed July 25, 2015).

¹² Sotsiaalministeerium [Ministry of Social Affairs], *op.cit.*, 4.

¹³ Sotsiaalministeerium [Ministry of Social Affairs], *op.cit.*, 48.

¹⁴ Department for Work & Pension, *Attitudes of the over 50s to Fuller Working Lives*, London, 2015, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/394642/attitudes-over-50s-fuller-working-lives.pdf (accessed August 25, 2015).

¹⁵ Department for Work & Pension, *op.cit.*, 19.

Workers from older age groups often prefer to work part-time instead of full time, as a way of preparing for the transition from work to retirement. A European Company Survey¹⁶ was conducted in 2009 by EUROFOUND, where part-time work was found to be the most common working scheme, particularly among younger and older workers. Older people in particular preferred to work part-time because of their health problems or to make use of (financially) attractive gradual retirement schemes¹⁷. Cuesta and Guilló also refer to part-time employment as a policy tool to “increase the labour force participation of older workers who can smooth over the transition from full-time work to retirement, especially among men”¹⁸.

Part-time work in the form of job-sharing is also implemented in many EU Member States as a way to provide working time flexibility. According to Wheatley, job-sharing enables one to solve a number of labour market issues, particularly in a situation such as that of the EU, characterised by the high unemployment levels of young people and the ageing of the labour force. The author also points out that job-sharing can be used as an option for the elderly people to “slowly exit” the labour market¹⁹. In Czech Republic, Hungary, Ireland and Slovenia job-sharing has been said to have the potential to increase the employment rates of those in disadvantaged groups in the labour market, notably [...] older, disabled or sick people who are not able to work full-time²⁰. The use of working time accounts also encourages the smooth transition from working full time to working shorter hours. From a life course perspective, long-term working time accounts are of particular interest, as this option allows people to save time or money to finance any kind of leave at a later stage. In theory, this is the most dynamic and flexible working time option²¹ one can

¹⁶ E. Sandor, Part-time work in Europe, European Company Survey 2009, European Foundation for the Improvement of Living and Working Conditions, 2011, 2, http://www.eurofound.europa.eu/sites/default/files/ef_files/pubdocs/2010/86/en/3/EF10_86EN.pdf (accessed August 25, 2015).

¹⁷ In some European countries, there exist regulations (often laid down in collective agreements concluded at sectoral level) for older workers aimed to reduce their working hours, which often come with a high price. See: E. Sandor, *op.cit.*, 7.

¹⁸ European Commission, Population Ageing in Europe, cit., 5, 37.

¹⁹ D. Wheatley, ‘It’s good to share: Job share as a solution to youth unemployment and ageing working populations’, Conference presentation at the 15th Association for Heterodox Economics Conference, London, 2013.

²⁰ I. Mandl, M. Curtarelli, S. Riso, O. Vargas, E. Gerogiannis, New forms of Employment, European Foundation for the Improvement of Living and Working Conditions, 2015, 38-39. https://www.eurofound.europa.eu/sites/default/files/ef_publication/field_ef_document/ef1461en_4.pdf (accessed August 23, 2015).

²¹ U. Klammer, S. Keuzenkamp, Working time options over the life course: Changing social security structures, European Foundation for the Improvement of Living and Working Conditions, 2005, 37-39.

rely on. Working time accounts are actively used in a number of Member States, including Germany, Finland, The Netherlands, Spain and Portugal. One might note that these “age-supportive” working time measures cannot always be applied successfully, for obstacles may arise at a supranational, national, sectoral, company and individual level. This aspect is important, as it can lead the parties to the employment contract to access different opportunities²² concerning the reduction of working time.

Yet, to date, the author of this paper has not identified any limitations concerning the working arrangements covered here. Working Time Directive 2003/88/EC²³ only stipulates the maximum amount of working time, which cannot be exceeded (to preserve employees’ health). Within statutory limits, Member States and the contractual parties are free to organise working time autonomously. Therefore, the restrictions concerning the application of part-time work, job-sharing and working time accounts can arise from all the other levels of regulation, except the supranational one.

In the report “A New Vision for Older Workers: Retain, Retrain, Recruit”²⁴, Altmann puts forward a number of proposals for employees, employers and the UK Government to improve the working lives of people over 50. As he has stated “Whilst it is for employers to adopt age and family friendly policies including flexible working, job-sharing, family leave and phased retirement, I would like to see Government do more to promote these policies positively, both to employers by way of good practice and to employees so they are aware of options open to them. Flexible working and its benefits for young families are well known, but I feel there is more we can do to promote its utility for people in the later stages of their careers”²⁵.

At a national level, much can be done to promote the use of age-supportive working time measures, such as part-time work, job sharing and working time accounts. In addition to rising people’s awareness of these working arrangements, the obstacles hindering their application also need to be identified and dealt with. To this end, the following paragraphs will outline the

http://www.eurofound.europa.eu/sites/default/files/ef_files/pubdocs/2005/101/en/1/ef05101en.pdf (accessed August 23, 2015).

²² U. Klammer, S. Keuzenkamp, *op. cit.*, 21-22.

²³ Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time. OJ L 299, 18.11.2003, p. 9-19, <http://eur-lex.europa.eu/legal-content/ET/TXT/?uri=celex:32003L0088> (accessed August 26, 2015).

²⁴ R. Altmann, A New Vision for Older Workers: Retain, Retrain, Recruit, Report to Government by Dr Ros Altmann CBE Business Champion for Older Workers, 2015, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/411420/a-new-vision-for-older-workers.pdf (accessed August 20, 2015).

²⁵ R. Altmann, *op. cit.*, 35-36.

issues hindering the implementation of the initiatives mentioned before, providing solutions to overcome them.

3.1. Part-time Work

In the survey “Attitudes of the over 50s to Fuller Working Lives” carried out in the UK, participants were asked what their advice would be to someone who was thinking about stopping work altogether and retiring. Some 36% of them recommended to consider switching to flexible or part-time work before stopping altogether²⁶.

In Estonia, the importance of part-time work among elderly people was acknowledged in the strategic document “Bases of Estonian Elderly Policy”²⁷. The document emphasises the need to create options for older employees to be flexibly transferred from working life to retirement, by implementing, among others, part-time work. The latter is considered to be one of the most common working arrangements in contemporary labour relations. Regardless of its promotion, the parties who wish to enter part-time work often face issues that make the use of part-time work unfavourable or even impossible.

It has been seen that the regulatory and the institutional framework varies considerably across the EU countries and may play a major role in the international implementation of this form of employment. Many regulations exist that may have a direct or indirect effect on the use of part-time work. For instance, labour laws may give the employer the right to deny an employee’s request to work part-time under certain circumstances. On the contrary, other types of regulations may facilitate the voluntary conversion of full-time to part-time employment in order to reconcile personal and professional lives²⁸.

A number of surveys conducted in the EU have indicated that the recourse to part-time employment over time and the variation in its use across countries are significantly affected by institutional and policy changes. In particular, policy measures aimed at encouraging part-time work are found to be

²⁶ 2,235 people aged 50+, including people not currently retired (1,003 in employment and 220 unemployed/not working) and people who had retired (1,022), were polled between 28 November and 3 December 2014 to explore their experiences and attitudes on late-life work and retirement. See Department for Work & Pension, *Attitudes of the over 50s to Fuller Working Lives*, cit. 14, 27.

²⁷ 28.09.1999 the Estonian Government approved the „Bases of Estonian Elderly Policy“. See more: https://www.eesti.ee/est/vanuripoliitika_eestis and <http://www.videvik.ee/447/alused.html> (accessed August 5, 2015).

²⁸ H. Buddelmeyer, G. Mourre, M. Ward. *Recent Developments in Part-Time Work in EU-15 Countries: Trends and Policy*, IZA DP No. 1415, 2004, 10.

positively related to certain initiatives. These measures include both the legal framework affecting part-time work and the creation of financial incentives (subsidies and increased social protection) to take up a part-time job. Moreover, other labour market institutions, including benefit systems, are found to significantly (albeit indirectly) affect the growth of part-time work²⁹.

The author of this paper finds that financial incentives are particularly effective, especially after removing the constraints/restrictions hampering the use of this form of employment. Specifically, by reducing normative restrictions, there will be a more widespread use of part-time work, and the promotion of financial incentives to encourage the use of this working scheme will no longer be needed.

As far as Estonia is concerned, a number of legal constraints limiting the implementation of part-time work have been identified by the author. One of the main obstacles to the application of part-time work in Estonia is connected with employees' right to move from full time work to part-time work. In some Member States, the right to increase (or decrease) one's working time is stipulated by law, while in others it would be more complicated to amend one's working hours, as workers are only granted the right to ask for such a change. The legal right to move from full time work to part-time work can be exerted in Sweden, Germany and The Netherlands. In France, Spain and the UK, employees can only request to be transferred from full time work to part-time work. After receiving the request, employers have an obligation to consider the possibilities of approving it³⁰.

In the UK, section 80 F of the Employment Rights Act 1996³¹ allows individuals to request reductions in working hours, changes to scheduling and place of work. However, legislation only applies to parents of young or disabled children, and, from April 2007, to some employees caring for adults, standing in stark contrast to the provisions in force in Germany applying to all employees (except to those in small firms with less than 15 workers). In the UK, employers can reject a request if implementing it would entail disproportionate costs or organisational problems³².

²⁹ H. Buddelmeyer, G. Mourre, M. Ward, *op. cit.*, 16-17.

³⁰ U. Klammer, S. Keuzenkamp, Working time options over the life course: Changing social security structures, European Foundation for the Improvement of Living and Working Conditions, *cit.*, 21, 31.

³¹ Employment Rights Act 1996, 22nd May 1996, <http://www.legislation.gov.uk/ukpga/1996/18/section/80F> (accessed August 12, 2015).

³² C. Fagan, Out of Time, Why Britain needs a new approach to working-time flexibility, 2006, 9, <https://www.tuc.org.uk/sites/default/files/extras/outoftime.pdf> (accessed August 15, 2015).

The normative limitations to part-time work related to specific social groups or enterprises of a certain size hamper the contractual parties' freedom to agree on shorter working time. The specific limitations may exclude elderly people from the labour market, as they may fall within the group that cannot enter into part-time employment contracts. Therefore, an analysis should be carried out at the national level to assess whether the limitations to part-time employment are justified and reasonable, especially considering their effects on older workers' employment rates.

According to the Estonian Employment Contracts Act³³ (EVTLS), which is no longer in force, working hours could be changed at the request of the employee. § 63¹ (1 and 2) of the EVTLS stipulated the employer's obligation to consider, whereas possible, the employee's willingness to transfer from full-time work to part-time work and vice versa or to increase working hours. This regulation is not provided in the Employment Contracts Act³⁴ (TLS), the provision that currently governs enforceable employment contracts. In this sense, in taking account of the employee's working activity for amending their working time, then the TLS prevails over the EVTLS, compelling the employer to provide the information needed. The employer's obligation to provide this information includes their duty to apprise a full-time employee of the possibility to move to part-time work, and the same should be done when full-time positions are available to part-timers, in consideration of their skills and expertise. The obligation arises from Directive 97/81/EÜ³⁵, which aims to ensure that workers are adequately informed, so they can choose the most appropriate form of work. Pursuant to § 28 s 2 ss 10 of the TLS, the employer has an obligation to make information regarding any opportunities that might arise to move to part-time or full-time employment available to staff. The employer fulfils this obligation properly if specific information is made publicly available, for example on the employer's homepage, information board or in other channels used by the employees³⁶. Changes to working time can take

³³ Employment Contracts Act, RT 1992,15/16,241. Void – RT I 2009,5,35/RT I 2009,11,67 – in force. 01.07.2009.

³⁴ Employment Contracts Act, RT I, 13.12.2014,55; RT I, 13.12.2014, 1.

³⁵ Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC – Annex: Framework agreement on part-time work, OJ L 14, 20.1.1998, p. 9-14, <http://eur-lex.europa.eu/legal-content/ET/TXT/PDF/?uri=CELEX:31997L0081&from=ET> (accessed August 23, 2015).

³⁶ E. Käärats, T. Treier, S. Suder, M. Pihl. M. Proos, Töölepingu seadus [Employment Contracts Act], Selgitused töölepingu seaduse juurde [Explanations to the Employment Contracts Act], Sotsiaalministeerium [Ministry of Social Affairs], 2013, 68. https://www.sm.ee/sites/default/files/content-editors/eesmargid_ja_tegevused/Too/Toolepingu_seadus/selgitused_toolepingu_seaduse_juure.pdf (accessed August 23, 2015).

place by mutual agreement, otherwise it is impossible to amend one's working time. Working time flexibility depends on the responsiveness of the employer to create a modern working environment and to provide employees with the opportunities to work part-time. In the survey "Elderly People in the Labour Market" carried out in Estonia by RAKE in 2012, Estonia's rigidity concerning working time became evident, as 63% of those in employment who were surveyed pointed out the impossibility to amend their working time. In addition, 76% of the unemployed questioned for the survey also highlighted their impossibility to change working hours in their previous jobs³⁷. Others also referred to Estonian employers' reluctance to implement part-time work. Pursuant to § 8 s 7 of Germany's Act on Part-Time and Fixed-Term Contracts (TzBfG)³⁸, the reduction of working time is possible if the employer has more than 15 employees, not counting trainees. If an employee, whether or not employed part-time, wants to change the duration or the distribution of the agreed working time, the employer is compelled to inform the employee of any equivalent position available at the company³⁹. According to § 8 s 5 of the TzBfG, the decision concerning the reduction or the distribution of working time shall be notified to the employee in writing within one month of the changes taking place. If no agreement is reached, the employer may reject the employee's request for "business reasons", which is valid if part-time work considerably complicates the workflow of the enterprise, endangers the safety of the company, or if it entails significant costs⁴⁰.

In Estonia, the employer's obligation to inform a full-time employee about the possibility of entering part-time work and a part-time employee about the possibility of accessing full time work does not compel the employer to offer workers the position⁴¹, nor does it include the employer's duty to meet the employees' request to be transferred from full-time to part-time work. Unlike German law, the TLS does not stipulate the conditions regulating the cases in which the refusal of working time reduction is justified, and the employer is

³⁷ The elderly were defined in the survey as people aged 50 to 74 years. See more: K. Espenberg, M. Sammul, S. Vahaste, R. Haljasmäe, Vanemaealiseid tööturul [Elderly People on the Labour Market], cit. 3, 32.

³⁸ Act on Part-Time and Fixed-Term Contracts [Teilzeit- und Befristungsgesetz], BGBl. I S. 1996; BGBl. I S. 2854

³⁹ M. Weiss, M. Schmidt, *Labour Law and Industrial Relations in Germany*, Third revised edition, Kluwer Law International, 2000, 54.

⁴⁰ H. Lovells, *Part-time work in Germany*, Lexology, 2012, <http://www.lexology.com/library/detail.aspx?g=cef321f3-4dcc-4c45-9e97-03356c5a51e2> (accessed August 25, 2015).

⁴¹ E. Käärats, T. Treier, S. Suder, M. Pihl, M. Proos, *Töölepingu seadus [Employment Contracts Act]*, Selgitused töölepingu seaduse juurde [Explanations to the Employment Contracts Act], cit. 36, 68.

not obligated to justify the rejection. The existing rules increase employers' powers and make the employment relationship more rigid. In the author's opinion, working time flexibility can be improved by establishing a legal obligation for employers to motivate their refusal, or by determining the criteria when the employer's refusal is justified. Factors hindering the application of part-time work can also be found in Tax Law. In Germany, for example, the differences in the amount of working time, and certain social security thresholds, significantly influence the use of part-time work⁴². The author's opinion is that marginal part-time workers should not be treated unequally compared to other part-time workers whose working time exceeds the minimum statutory threshold, especially in relation to the allocation of public unemployment benefits, health and pension insurances.

In Estonia, the granting of the pension and the health insurance is dependent upon the payment of social contributions deducted from one's wage and other forms of remuneration. In 2016, full-time workers (40 hours per week) have the right to a minimum wage of 430 euros per month⁴³. § 43 s 1 of the TLS defines part-time work as working time shorter than full time work. Therefore, part-time work occurs when one performs work up to a maximum of 40 hours per week. This might result in wages less than the minimum one and inferior to the minimum rate of tax required monthly. According to Estonian Social Tax Act⁴⁴ (SMS) § 21, the monthly rate providing the basis for the payment of social tax shall be established in the state's annual budget, which for 2016 is equal to 390 euros. The minimum tax amount is therefore 128,70 euros per month (33% of 390, save for exceptions provided by law)⁴⁵. By fulfilling minimum tax obligations, employees comply with the qualifying period to draw the pension and access the health insurance.

However, the author of this paper thinks that the minimum social tax obligation does not encourage the implementation of marginal part-time work, as it may give rise to disproportionate tax obligations if compared to the payable wage. For this reason, the author argues in favour of employees' equal

⁴² In Germany, however, a number of thresholds have traditionally been in force excluding the so-called *geringfügig Beschäftigte* (part-time workers not complying with "the requirement of a minimum working time (15 hours) per week and whose income does not exceed one-seventh of the monthly wage or, where pay is higher, one-sixth of the total income") from social security areas such as that of unemployment insurance, health insurance and statutory pension schemes. N. Countouris, *The Changing Law of the Employment Relationship, Comparative Analyses in the European Context*, Ashgate, 2007, 93.

⁴³ Determination of the Minimum Wage, Estonian Government Regulation, n. 139. RT I, 22.12.2015, 51.

⁴⁴ Social Tax Act, RT I, 19.03.2015, 62; RT I, 19.03.2015, 2.

⁴⁵ Tax rates in 2015, Estonian Tax- and Customs Board, <http://www.emta.ee/index.php?id=35954&tpl=1026> (accessed July 23, 2015).

treatment, regardless of their wages and hours worked. Any form of part-time work can be promoted by stipulating rules pursuant to which the amount of taxes to be paid is arrived at irrespective of one's salary and other forms of remuneration. This mechanism would enable all workers to be treated equally and eliminate the disproportion of taxation affecting marginal part-time workers.

3.2. Job Sharing

In the context of the EUROFOUND project “New Forms of Employment”⁴⁶ carried out in 2013, ten new forms of work were identified in the EU, one of which was job-sharing. This working scheme has been known in Europe for some time, though it might represent a novelty in a number of Member States. The concept of job-sharing was introduced in Europe in recessionary times. In the 1980s and the early 1990s, OECD countries faced a tremendous increase in the unemployment rate (10%), so work-sharing was proposed as a remedy for high unemployment. There are two types of work-sharing that have been used until recently: “job-sharing” (e.g. a position is filled by more than one person) and “trading hours for jobs” (e.g. reducing the working time of workers under contract to create jobs)⁴⁷.

Job-sharing differs from work-sharing in that the latter is a more generic term that applies to any steps taken to redistribute work in order to reduce unemployment.⁴⁸ Many countries facilitate work-sharing as a labour market policy tool aimed to preserve existing jobs or to create new ones. Unlike work-sharing, today job-sharing is not usually used as a measure to avoid layoffs or increase employment⁴⁹. Job-sharing is seen as one of the flexible work paradigms that could provide relief from work overload for employees' with disabilities, young children, health problems, or eldercare responsibilities, as well as for those who seek early retirement.

⁴⁶ M. Curtarelli, New forms of employment and work. First results from a Eurofound EU-28 (+Norway) research project, <http://webcache.googleusercontent.com/> (accessed March 23, 2015).

⁴⁷ T. Miyakoshi, The efficacy of job-sharing policy, *Applied Economics Letters*, 2001/ 8, 437-439.

⁴⁸ J. G. Pesek, C. McGee, An Analysis of Job Sharing, Full-Time and Part-Time Work Arrangements: One Hospital's Experience, *American Business Review*, 1989, vol. 7, issue 2, 35.

⁴⁹ International Labour Office, Work-sharing and job-sharing, Information Sheet No. WT-17, 2004, 1, http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_169673.pdf (accessed March 19, 2015)

Job-sharing as a working time organisational measure is not used consistently by all Member States. Therefore, the definition of job-sharing may also differ among countries. For example, in the UK, job-sharing is defined as a “form of flexible working which enables two employees to voluntarily share the responsibilities and duties of one full time job. Pay, benefits and leave entitlement for job sharing are allocated on a *pro rata* basis (divided approximately by hours worked)”⁵⁰. In Germany, part-time working schemes in the form of job-sharing are explicitly permitted by the TzBfG⁵¹. §13 s1 ss1 TzBfG stipulates the following “the employer and the employees may agree that some of the latter share working time at work (job- sharing).”

At a supranational level, job-sharing has been defined by the International Labour Organisation (ILO) as “a voluntary arrangement whereby two persons take joint responsibility for one full-time job and divide the time they spend on it according to specific arrangements made with the employer.”⁵² EUROFOUND defines job-sharing as an “employment relationship in which one employer hires several workers, but normally just two, to jointly fill a single full-time position.”⁵³

Most Member States (including Germany, Hungary) provide special regulations for job-sharing, even though the lack of specific rules does not prevent the use of this working scheme. During the 7th annual seminar “New Forms of Employment and EU Law” organised by the European Labour Law Network, participants found that some of the new working arrangements in the EU are covered by existing norms applying at the national level (e.g. job sharing is regulated by rules governing part-time work)⁵⁴.

Job-sharing arrangements are seen in Germany as forms of part-time employment, while in the UK, job-sharing is considered to be flexible working⁵⁵. The concept of job-sharing is unknown in Estonian labour law, though the author sees no obstacles to apply job-sharing in the framework of part-time work regulation. To define job-sharers as part-time workers, they have to be guaranteed the same rights as full-time workers. The obligation to guarantee job-sharers the same rights as full-time workers makes the

⁵⁰ Civil Service Employee Policy, Guide to Job Sharing, JobShareGuide260115FFVnoDNs, 2, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/406045/JobShareGuide260115FFVnoDNs.pdf (accessed August 23, 2015).

⁵¹ Weiss, M, Labour Law and Industrial Relations in Germany, KLI, 2008, 63.

⁵² International Labour Office, Work-sharing and job-sharing, cit. 49, 1

⁵³ Eurofound, New forms of employment, 2015, 31, http://www.eurofound.europa.eu/sites/default/files/ef_publication/field_ef_document/ef1461en_3.pdf (accessed August 26, 2015).

⁵⁴ New Forms of Employment and EU Law, 7th Annual Legal Seminar, European Labour Law Network. Seminar Report, 2014, 31.

⁵⁵ Civil Service Employee Policy, Guide to Job Sharing, cit. 50, 2.

application of the rules governing part-time work too costly for Estonian employers.

For instance, § 55 of the TLS establishes that an employee's annual holiday consists of 28 calendar days, which have to be granted to all employees, regardless of the working arrangement entered into. Accordingly, this also applies to part-time employees sharing work. In the author's opinion, Estonia's regulations on part-time work fail to promote the use of job-sharing schemes, since they produce additional costs for the employer. Therefore, ad-hoc regulation should be foreseen to encourage the recourse to this form of employment and simplify its implementation, making provisions for the right to calculate holidays, and the resulting pay amount, on a *pro rata* basis.

3.3. Working Time Accounts

The system of working time accounts was introduced in Europe as early as 1967, and is actively used in a number of Member States. Germany has led the way in the implementation of this tool, which is used to provide a more dynamic approach to working time during the life course. Working time accounts have been introduced in an estimated 67% of German companies⁵⁶, while their use is a possibility that remains under-explored in the UK⁵⁷. Working time accounts enable employers to react rapidly to market fluctuations, and employees to organise their working time according to individual needs and interests⁵⁸. Short-time and long-time working time accounts also help to combine work and family life better⁵⁹.

The principle of working time accounts establishes that, in a reference period, employees can work more or less hours than agreed in the employment contract or in collective agreements, and are entitled to collect credit or debit hours in their working time accounts. Accumulation of credit hours will give employees the right to gain time off from work as a form of compensation. As for debit hours, they express the time employees have to work beyond normal

⁵⁶ C. Fagan, Out of Time, Why Britain needs a new approach to working-time flexibility, cit. 32, 55.

⁵⁷ C. Fagan, *op. cit.*, 9.

⁵⁸ T. Schulten, Provisions on working time accounts in collective agreements, European industrial relations observatory on-line, Germany, 1998, 2.

⁵⁹ P. Berg, Working Time Flexibility in the German Employment Relations System: Implications for Germany and Lessons for the United States, Industrielle Beziehungen, 2008, 138.

working time to pay off his/her “working time debt”⁶⁰. Consequently, it is possible for elder employees who have saved working time in such accounts to work less if they get older without losing any wage⁶¹. Although the principle for implementing working time accounts is rather similar in Member States, the system put in place might differ depending on the economic sector and the type of business⁶².

Working time accounts can differ in the way they are used, in the application of time-elements, and in the distribution of working hours. Other categorisations of working time accounts are based on the length of compensation periods and make a distinction between short-time⁶³, long-time and lifetime accounts⁶⁴.

The differences between working time accounts are due to the fact that the main conditions of this work arrangement are generally agreed at the collective or at individual level and not laid down by statute. For example in Germany, the Working Time Act (ArbZG)⁶⁵ only stipulates the mandatory terms and certain exceptions which need to be complied with once working time has been agreed upon. Therefore, the minimum requirements established by law set the framework for collective agreements, while the duration and variability of working time are often negotiated at a collective level. Sectoral collective agreements generally leave enough leeway to negotiate working time conditions at the company level⁶⁶. Decentralisation of working time from national, regional or sectoral level to company level substantially simplifies the application of working time accounts⁶⁷.

In Member States, collective agreements are the most common tools to agree on working time account systems. In Estonia, collective relations are not well developed, and the role of collective agreements to organise labour relations is

⁶⁰ F. Kramarz, Working Time Developments in Germany. T. Boeri, M. Burda, F. Kramarz (eds.), Working Hours and Job Sharing in the EU and USA: Are Europeans Lazy? Or Americans Crazy? 2008, 156.

⁶¹ F. Hendrickx (ed.), Active Ageing and Labour Law, cit., 6, 225-226.

⁶² T. Schulten, Provisions on working time accounts in collective agreements, cit. 58, 2.

⁶³ Short-time accounts are defined as having a compensation period of up to one year. See more: H. Seifert, Flexibility through working time accounts: reconciling economic efficiency and individual time requirements, cit. 71, 3-4.

⁶⁴ H. Seifert, Flexibility through working time accounts: reconciling economic efficiency and individual time requirements, WSI Discussion Paper No. 130, 2004, 2.

⁶⁵ Working Time Act - BGBI. I S. 1170, 1171; GBl. I S. 868.

⁶⁶ R. Bispinck, Germany: working time and its negotiations. M. Keune, B. Galgoczi (eds.), Collective bargaining on working time, Recent European Experiences, ETUI, Brussels, 2006, 112.

⁶⁷ International Labour Office, Flexitime and „time banking“ schemes, Information Sheet No. WT-14, 2004, 2.

marginal⁶⁸. Therefore, agreements concerning the application of working time accounts are mostly decentralised to the company level, enabling each enterprise to decide individually whether, and under which conditions, the system of working time accounts can be implemented. Within the company, a number of working time accounts can be set up concurrently, although, in the presence of transition criteria, it would be possible to transfer the collected debit or credit hours from one working time account to another⁶⁹.

The possibility to transfer the time-elements helps to move unused credit hours from short-time to long-time or lifetime working time accounts, also enabling to collect the time elements in larger amounts and to use them at a later stage of life in a number of ways. Short-time, long-time and lifetime working time accounts differ primarily in the ways they are used and the different time-elements that can be entered into them as well as in their method of organisation⁷⁰. Short-time working time accounts usually consist of time-elements accumulated as a result of fluctuations in daily working time. Long-time and lifetime accounts may additionally contain other time-elements, such as overtime work, unused holiday days, and so forth.

Based on the duration of the working time account, various options exist allowing one to use the time-elements collected. For example, the credit hours collected in short-time working time accounts can be used mainly to make working days or weeks more flexible, while those accumulated in long-time or lifetime working time accounts can be used for longer holidays, for educational purposes or to work shorter hours.

Lifetime working time accounts enable workers to use the credit hours collected in the account in their later stage of life to reduce their working time. In addition, they favour access to pension schemes at the company level⁷¹.

In Estonia, the main concern is the expiration of the credit hours collected in the account. In this sense, pursuant to §146 s1 of the General Part of the Civil Code Act⁷² (TSÜS), a three-year limitation period should be set for a claim arising from a transaction. Therefore, the employee's claim concerning the

⁶⁸ For example, in 2009 the working conditions were collective negotiated only in 5,8% of the Estonian companies. See more: M. Masso, the Survey on Estonian Working Life 2009. Ministry of Social Affairs 2011, n. 3, 70.

⁶⁹ P. Wotschack, E. Hildebrandt, Working-life Time Accounts in German Companies: New Opportunities for Structuring Working Hours and Careers? P. Ester, R. Muffels, J. Schippers, T. Wilthagen (eds.), *Innovating European Labour Markets. Dynamics and Perspectives*, 2008, 4.

⁷⁰ H. Seifert, Flexibility through working time accounts: reconciling economic efficiency and individual time requirements, cit. 64, 2.

⁷¹ P. Wotschack, E. Hildebrandt, Working-life Time Accounts in German Companies: New Opportunities for Structuring Working Hours and Careers? cit. 69, 2.

⁷² General Part of the Civil Code Act - RT I 2002,35,216; RT I, 06.12.2010,12.

time and the monetary elements collected in the working time account expires at the end of the third year, hampering the possibility to apply for those working time accounts which last longer (e.g. long-time and lifetime working time accounts).

In the author's opinion, this state of things can be prevented by enforcing §158 s1 of the TSÜS, pursuant to which the limitation period is interrupted and resumed upon recognition of the claim by the applicant.

The fact that, every three years, the employer acknowledges the credit hours collected by the employee in working time accounts enables the latter to last longer⁷³.

⁷³ A. Kalson, Tööajakontod ja nende rakendamine Eesti tööõiguses [Working Time Accounts and their Application in Estonian Labour Law], *Juridica*, 2014, n. 2, 112-119.

Social Concerns in Free Trade Agreements

Vincenzo Ferrante *

Abstract. There is no doubt that we live in a world in which national economies are increasingly interdependent. This implies that non-compliance with labour standards in one country can have repercussions for other countries, in the form of shifting investments and weakening regulations. When in the 19th century, for the first time, the idea to limit working hours was launched, it was clear from the beginning that this could be done only at an international level, because otherwise any reduction effected in only one country would be to the advantage of the others. To put it briefly, in a non-protectionist economy, labour standards cannot be guaranteed only in one country. This is because mutual recognition of labour standards makes countries more self-confident, reduces customs duties, breaks down barriers and makes for fairer competition between companies of different countries.

Keywords: *Free Trade, ILO, WTO, International Labour Standards.*

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1. Free Trade and Labour Standards

There is no doubt that we live in a world, in which national economies are increasingly interdependent. This implies that the non-compliance with labour standards in one country can have repercussions for other countries, in the form of shifting investments and weakening regulations. When in the 19th century, for the first time, the idea to limit working hours was launched, it was clear from the beginning that only at an international level could this be done, because otherwise any reduction effected in only one country would be to the advantage of the others¹.

Not surprisingly, a few years ago in Italy in the early years of this century, when the international trade with China underwent rapid development, the head of the association of industries pressed for strengthening of labour rights: it took just a couple of seconds to understand that the issue was Chinese workers, not Italian ones.

Working time limits, health and safety regulations, a ban on child labour, equal pay for men and women: all these items have an impact on labour costs and, consequently, on production costs. Of course, constraints on labour regulations come not only from statutes but also from collective bargaining: this is the reason why freedom of speech, the right to organize collectively and plant level workers' representatives are all important factors in ensuring that labour legislation is applied correctly, countering the endemic lack of public enforcement mechanisms².

To put it briefly, in a non-protectionist economy, labour standards cannot be guaranteed only in one country. According to Valticos and Von Potobsky, this is the main reason why the ILO has been created: “from the outset, it was felt that national legislation on labour matters could not be solidly established in

¹ See N. Valticos, *Droit international du travail*, Paris: Dalloz, 1970 (II edit. 1983 *non vidi*); P. Léon, *Storia economica e sociale del mondo*, Roma e Bari: Laterza, 1979-1981; from a different point of view, see also D. Roediger, Ph. Forner, *Our own time: a history of American labor and the working day*, London and NY: Verso, 1989; on more recent developments, Ph. Askenazy, *Working time regulation in France from 1996 to 2012*, in *Cambr. Jour. Econ.*, 2013, 37, 323-347.

² It is easy to recognize in the items mentioned the main ILO conventions (on Forced Labour, n. 29 and 105, on collective rights, n. 87 and 98; on Equal Pay and Discriminations, n. 100 e 111; on Child Labour, n. 138 and 182); with regard to core labor standards and decent work agenda, see J.-M. Thouvenin et A. Trebilcock (eds.), *Droit international social: droits économiques, sociaux et culturels*, Bruxelles: Bruylant; Paris: CEDIN, 2013; S. Hughes and N. Haworth, *The ILO: coming in from the cold*, London & New York: Routledge, 2011; J.-M. Servais, *Normes internationales du travail*, Paris: LGDJ, 2004; see also R. Blanpain, M. Colucci (eds.), *L'organizzazione internazionale del lavoro: diritti fondamentali dei lavoratori e politiche sociali*, Napoli: Jovene, 2007.

individual countries if not supported by parallel standards adopted internationally”³.

Mutual recognition of labour standards makes countries more self-confident, reduces customs duties, breaks down barriers and makes for fairer competition between companies of different countries. It is well known that also in the Rome Treaty the main concern on labour matters was to guarantee equal treatment in salary, irrespective of gender, and established paid holidays, mainly to avoid textile products made in Italy being able to invade the French market⁴. A common market requires no boundaries and urges people to move: so the second step is represented by free movement of workers and mutual recognition of professional qualifications.

It is important to stress that, from this point of view, it is in the interest of workers to boost labour standards: the ILO is the only tripartite International organization, and also the EU recognizes and fulfils the social dialogue in various ways. Conversely the WTO knows no collective action or bodies, and primarily limits its scope to consumer goods and services.

Nevertheless, it seems to me that there is no better way to promote freedom than through commerce. The ancient inhabitants of Athens were mainly sailors and dealers: they regularly discussed whether it was better to have good relationships with the other peoples of the Aegean Sea or to wage war against them. Democracy was a contagious disease, because everyone could adopt, for example, the Athenian practices. It was no different during the dark times of the Middle Ages, when slavery was banned just on the very day on which the market was held. In the same way, frankly speaking and without prejudice, it could be said that colonialism is not a good example for approaching the need to develop commercial relationships and to internationalize trade, but we have to recognize that in the last few centuries it has (also) been a way to do this.

It is a matter of fact that, despite the great diplomatic ability of permanent Bureau in Geneva and the efforts made by the Committee of Experts, the ILO decent work agenda does not work by itself, if not at small steps, but needs a stimulus or a penalty to make sure that its standards are respected⁵.

About core labour standards, it has been written that: “all over the world states are violating the basic principles embodied in the various declarations, but this

³ V. Valticos and G. Von Potobsky, *International labour law*, Deventer, Boston: Kluwer, 1995, 2nd rev. ed.

⁴ See M. Roccella e T. Treu, *Diritto del lavoro dell'Unione europea*, 6th ed., Padova: Cedam, 2012; C. Barnard, *The substantive law of the EU: the four freedoms*, 3rd ed., New York: Oxford U.P., 2010; R. Blanpain, *European labour law*, 12th rev. ed., Alphen aan den Rijn: Kluwer Law International, 2010.

⁵ *Les normes internationales du travail: un patrimoine pour l'avenir*, Mélanges en l'honneur de Nicolas Valticos, Geneva: BIT, 2004.

has almost never had repercussions for relations among states. This might change if these principles, or rights, were enforceable through trade measures”⁶. Not surprisingly there is only weak coordination between ILO concerns and WTO matters, despite all the attempts to have the two organizations linked via social clauses⁷.

2. WTO and international labour standards

At the very beginning, under the Havana Charter, adopted by 56 countries at the first World Trade Conference in 1948, member States “recognize that all countries have a common interest in the achievement and maintenance of fair labour standards related to productivity, and thus in the improvement of wages and working conditions as productivity may permit”.

The Conference also decided to establish an international organization to promote international trade. But it never appeared, mainly because the Congress of the United States refused to ratify it. The transitional agreement, born from the ashes of this failure, the GATT, lasted 47 years and completed eight rounds of trade negotiations, the latest of which concluded with the signing of an agreement that provided for the establishment of the World Trade Organization (WTO).

During the final part of the negotiations, the so-called Uruguay Round, the USA and France made an attempt to insert core labour standards into an article within the WTO Agreements, to oblige a member states to respect them; any violation of the social clause, consequently, could represent a breach of contract and could become subject to WTO scrutiny through the usual WTO dispute settlement provisions.

When the Round was out the question still remained on the table and was left to further developments. At the first Ministerial Conference of the newly created WTO in Singapore considerable attention was paid to the question.

A compromise on the issue resulted in a paragraph on labour standards in the final Declaration of the Conference, the first time that a reference to such standards was included in a WTO official document. The declaration is as follows:

⁶ G. Van Roozendaal, *Trade Unions and Global Governance. The Debate on a Social Clause*, Continuum, London & N.Y., 2002, 46.

⁷ See G. Altintzis, E. Busser, *The Lesson from trade agreements for just transitional policies*, in *Int. Jour. Lab. Research*, 2014, vol. 6, 270-294; L. Compa, *Labor Rights in the Generalized System of Preferences: A 20-Year Review*, “Comp. Lab. Law. & Pol. Journ.”, 22 (2001), 199-238.

We renew our commitment to the observance of internationally recognized core labour standards. The International Labour Organisation (ILO) is the competent body to set and deal with these standards, and we affirm our support for its work in promoting them. We believe that economic growth and development fostered by increased trade and further trade liberalization contribute to the promotion of these standards. We reject the use of labour standards for protectionist purposes, and agree that the comparative advantage of countries, particularly low-wage developing countries, must in no way be put into question. In this regard, we note that the WTO and ILO Secretariats will continue their existing collaboration⁸.

The declaration was a very ambiguous one: it was the consequence of different points of view, which nobody was able to synthesize: on the one hand there was the attempt of the US Government, strongly supported by American union bodies, to avoid social dumping and relocation of business via widespread minimum wage protection, on the other, the fear of a new colonialism by imposing on Southern countries standards they are not able to respect, as it would make the price of their goods higher.

Indeed, the point is most problematic. On both sides of the Atlantic, a substantial proportion of public opinion opposes further trade liberalization on the grounds of competition from countries with low wages and low social protection. According to this idea free trade truly applies only within relatively homogenous entities, and worldwide trade liberalization will exacerbate social inequalities and erode the wages of unskilled European workers. The social clause, however, has hardly any supporters also in Africa or in India, where the unionists often think that labour standards are “luxury goods” that cannot be afforded at a certain stage of development⁹.

3. Unilateral Measures Implementing International Labour Law Standards

The increasingly popular idea of an institutional link between labour standards and fair trade left room for a different kind of social clause, in an area hitherto dominated by multilateral efforts, emphasizing the system set up by the United States, which is comprehensive, referring specifically to social rights, and very widespread because the United States, with its 10 per cent share of international trade, is the world’s premier trading nation.

⁸ World Trade Organization, Singapore Ministerial Declaration, § 4. WT/MIN(96)/DEC/W. 13 December 1996.

⁹ See A. Vandaele, *International labour rights and the social clause: friends or foes*, London: Cameron May, 2005.

According to Section 301 of the 1974 Trade Act, as amended by the 1988 Trade and Competitiveness Act, United States Trade Representatives are authorized to withdraw or suspend trade benefits extended to a foreign country, or to impose duties or other restrictions on imports from it, if it fails to comply with a trade agreement, if it unjustifiably restricts imports from the United States, or if its trade legislation, policy or practices are deemed unreasonable or discriminatory towards the United States.

Such practices include export subsidies, support to activities constituting an obstacle to imports, inadequate protection of intellectual property rights and a persistent pattern of conduct that denies enjoyment of certain key labour rights¹⁰.

The same criteria are applied under the generalized system of preferences. (GSP), a program designed to provide preferential duty-free treatment for products from a wide range of designated beneficiary countries, granting to them the “most-favoured-nation” status.

According to US laws a GSP beneficiary must have taken or be taking steps to afford internationally recognized worker rights, including 1) the right of association, 2) the right to organize and bargain collectively, 3) a prohibition on the use of any form of forced or compulsory labour, 4) a minimum age for the employment of children, and a prohibition on the worst forms of child labour, and 5) acceptable conditions of work with respect to minimum wages, working hours and occupational safety and health.

A GSP beneficiary must take all steps in order to eliminate the worst forms of child labour. The recognized status is subject to an investigation into respect for human rights: an investigation can be initiated on submission of a petition by any interested party, such as a trade union.

Some states bound by specific international agreements are treated as one country for GSP rule-of-origin: so Member Countries of the Cartagena Agreement (Andean Group)¹¹; some Member Countries of the Southern Africa Development Community (SADC)¹²; Member Countries of the West African Economic and Monetary Union (WAEMU)¹³; Member Countries of the South Asian Association for Regional Cooperation (SAARC)¹⁴; some Member Countries of the Association of South East Asian Nations (ASEAN)¹⁵; Member Countries of the Caribbean Common Market (CARICOM):

¹⁰ See C. Breton, *Traités de commerce et actes unilatéraux*, in Thouvenin-Trebilcock, *Droit international social*, cit., t. I, 203-220.

¹¹ Bolivia, Ecuador, Venezuela.

¹² Botswana, Mauritius, Tanzania.

¹³ Benin, Burkina Faso, Côte d'Ivoire, Guinea-Bissau, Mali, Niger, Senegal, Togo.

¹⁴ Benin Afghanistan Bhutan India Nepal Pakistan Sri Lanka.

¹⁵ Philippines, Thailand, Indonesia, Cambodia.

This system has often been criticized for its unilateral – not to say discretionary – nature. Obviously, a multilateral arrangement would silence the critics, and so when the North American Free Trade Agreement (NAFTA) between Canada, the United States and Mexico entered into force on 1 January 1994 it looked like it might have been only the first step towards the establishment of a vast common market creating a new path to follow.

The North American Agreement on Labor Cooperation (NAALC), which supplements NAFTA, provides a mechanism whereby trade barriers can be restored if a state party fails to observe its own labour legislation. It also provides that national labour standards cannot be revised “downwards”. Such mechanisms are in the nature of a social clause.

To be honest, the *ad hoc* body created to manage labour claims arising from everyone, the Commission for Labor Cooperation (CLC), has dealt with less than 30 complaints and only a few have not been rejected¹⁶.

The EU also has its own scheme of generalised tariff preferences, laid down by Regulation No 978/2012 of 25 October 2012, with the primary aim of eradicating poverty and fostering the sustainable economic, social and environmental development of third world countries. Alongside to a general arrangement, a special system (GSP+) is provided for partners which have ratified all the conventions listed in a special annex¹⁷. Art. 9(b) of the Regulations obliges beneficiary States until 2024 to comply with the latest conclusions of the ILO monitoring bodies, which has not to identify a serious failure to effectively implement the relevant conventions.

4. Bilateral Trade Agreements and Jurisdiction: CETA AND TTIP

In the light of the experiences analysed above, two treaties involving the EU have to be evaluated. The first one is not far from final signature and will bind the EU and Canada, with the acronym CETA. The second one is at an early stage of negotiations, but it has attracted the most attention of all: of course, the reference goes to the Transatlantic Trade and Investments Partnership (TTIP), planned to join USA and EU.

While we know little about the latter, the contents of the first are already known: there is a long chapter on the temporary entry and stay of natural persons for business purposes and on contractual services, suppliers, and

¹⁶ In addition, its website looks like it has not been updated for years: see <http://www.naalc.org/naalc.htm> (visited September 20 2015).

¹⁷ Annex VIII includes OIL Conventions 29 (1930), 105 (1957), 87 (1948), 98 (1949), 100 (1951), 111 (1958); 138 (1973) and 182 (1999).

independent professionals. A special Chapter is devoted to labour regulations, but these provisions are mostly procedural.

At the very beginning of Chapter X of Template CETA (art. 1, § 2), Canada and EU recognize “the beneficial role that decent work, encompassing core labour standards, and high levels of labour protection, coupled with effective enforcement, can have on economic efficiency, innovation and productivity”.

Nevertheless, article 2, in proclaiming “the right of each Party to set its labour priorities, to establish its levels of labour protection and to adopt or modify its relevant laws and policies” oblige the Parties to act only “in a manner compatible with its international labour commitments, including those in this Chapter”, so binding every modification of internal legislation to the compliance of a special dispute resolution procedure laid down by the last article of the Chapter.

It has little importance that each Party reaffirms its commitment under the ILO Declaration on Fundamental Principles and Rights at Work 1998 and its Follow-up, to reach the objectives included in the Decent Work Agenda, and in the 2008 ILO Declaration on Social Justice for a Fair Globalisation, if in the meantime art. 11 provides that “for any matter arising under this Chapter where there is disagreement between the Parties, the Parties shall only have recourse” to an arbitration body, without the possibility to access the national jurisdiction.

It has been discussed¹⁸ whether the TTIP has to embody a similar clause or a special social clause to prevent European workers from unemployment and to protect against unfair commercial practices. Obviously the point is only partially about free trade of goods, because European customs charges are all in all very low (around 4%). On this side, the concern is about overseas quality standards, for instance in agricultural products, to protect European farmers and producers against low prices, due to the use of products banned elsewhere. In the same light are well known environmental fears, because of US energy policy.

On the other side, there is concern about the possibilities that multinational enterprises can conquer the old continent by installing manufacturing plants not obliged to follow European legislation on minimum wages and social security burdens or to respect the traditional collective relationship at plant level. It means that, due to the posted workers directive and private international law, production costs would be significantly lower than those

¹⁸ See C. Scherrer (ed.), *The Transatlantic Trade and Investments Partnership (TTIP): Implications for Labor*, Rainer Hampp Verlag: München, 2014; T. Treu, *Postfazione*, «Economia & Lavoro», XLIX (2015), 143-155, special issue on “TTIP: Widening the Market and Narrowing the Competition?”.

charged by European based companies, forced to guarantee their respect by territoriality principle.

Of course, the insertion in the TTIP of an investor-to-state dispute settlement (ISDS) clause will protect investors from the risk of expropriation due to the nationalisation of plants and against the weakness of hetero-dominated judicial systems but it is obvious that such private arbitration would allow companies to sue governments and limit their ability to regulate in the public interest¹⁹.

In the light of European history of institutions, such a clause is very difficult to accept: it is normal that, via diplomatic channels, foreign governments can make a complaint against discrimination because, and even nowadays, diplomacy has always dealt with business interests. In case of failure, the use of the legal system has always been very common for a large number of American multinational companies already installed in the European territory too, without anyone ever having accused the courts of bias. Europeans do not have the “process clause” of the 5th amendment of the American Constitution, but the European convention on human rights in art. 6 ensures everyone the “right to a fair trial” and EU court systems are largely seen as reliable in business communities, whereas in many third world countries they are viewed as politicised or erratic. In other words and conclusively, politicians and scholars have to make an attempt to find new legal institutions and to abandon solutions that have already been tested, when America and Europe are planning to walk along an unexplored road.

¹⁹ See particularly European Parliament, *The TTIP and Parliamentary Dimension of regulatory Cooperation*, Brussels: 2014; L. Compa, *Labor Rights and Labor Standards in Transatlantic Trade and Investments Negotiations: a US Perspective*, «Economia & Lavoro», XLIX (2015), 87-102.

Labour Aspects of Corporate Social Responsibility Emanating from the United Nations Global Compact: the Global Case and that of the EU and the United Kingdom

Jo Carby-Hall *

Abstract. This essay attempts to define the corporate social responsibility (CSR) concept while treating the triple bottom line (TBL) and other concepts. The ten principles of the United Nations social compact are discussed and analysed in the light of company practical commitments in their capacity of global compact partners. An analysis and evaluation follows on international framework agreements (IFAs), the European Union and the United Kingdom global compact network and its benefits. The epilogue treats, inter alia, the focusing from shareholder to stakeholders, the Global Compact's tentacles, the CSR concept being elevated to the central stage, some criticisms and future perspectives of CSR, IFAs and the Global Compact.

Keywords: *Corporate Social Responsibility, United Kingdom, European Union, UN Global Compact*

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1. Prolegomenon

The concept of Corporate Social Responsibility (CSR) has developed considerably during the last fifty years. In 1999, at the World Economic Forum held in Davos, Switzerland, the then United Nations Secretary General, Kofi Annan proposed the concept of the UN Global Compact which resulted in catapulting the CSR concept to the highest global level. The UN Global Compact has some 8,000 participants all of which consist of commercial enterprises. There are 4,000 additional non-company participants which consist of NGOs, government, university business schools and others, making a total of 12,000 participants.

This chapter proposes an analysis on the relationship between the concepts of CSR and that of the UN Global Compact and related matters in the global, European and British contexts. With this in mind the allied concepts of corporate social responsibility, the IFSO 26000 and the triple bottom line will feature. Various aspects relevant to the United Nations Global Compact will then be treated, followed by the European Union and globalisation and the United Kingdom network dimension. An epilogue will sum up the analysis.

2. Corporate Social Responsibility, ISO 26000 and Triple Bottom Line

Three issues allied to corporate social responsibility need to be mentioned, discussed and analysed. These include the meaning and definition of the concept of Corporate Social Responsibility, ISO 26000 on social responsibility and the concept of the Triple Bottom Line.

2.1. Meaning and Definition of Corporate Social Responsibility

Corporate Social Responsibility (CSR) is a process of assessing a company's impact on society and evaluating its responsibilities towards, *inter alia*¹, its employees by attracting, maintaining and retaining a happy workforce and be an employer of choice. CSR also known as “corporate conscience”, “responsible business”, “sustainable business”², “corporate responsibility” or “corporate citizenship” is a form of “self-regulation integrated into a business

¹ Because CSR also includes the food chain, its customers, the environment and the community at large.

² “Sustainable” means involving CSR activities which the company or firm is able to maintain without affecting adversely, (even if the firm or company is experiencing changing fortunes such as financial crises) the business missions, aims and goals of that firm or company.

model”³. CSR comprises a policy whereby a business monitors and insures its active compliance with the law, ethical values and standards and national and international norms. With some models a company’s implementation of CSR goes well beyond compliance with legislation and engages on a long term basis “in actions that appear to further some social good beyond the firm’s interest and that which is required by law”⁴ including respect for communities and persons therein and the natural environment. The concept of CSR demands a change of emphasis in the business world from maximising company profits and shareholder returns to satisfying the interests of a broader section of society and/or policies beneficial to mankind such as the environment, poverty, education, healthcare, charities, ethical and other allied issues.

CSR therefore aims at embracing the responsibility for corporate actions and at creating a positive impact on the environment and stakeholders which include a company’s customers, suppliers, investors, local and wider communities, employees, workers and others.

With so many aspects to it, CSR is defined variously depending on the objectives and policies which a company wishes to pursue. It is therefore difficult to have a standard definition of CSR policy which is applicable to all companies. There is however one motive which is universal; namely, that companies operating a CSR policy should not be focused only or solely on the maximisation of profits. Companies generally have a two point agenda, namely (a) to improve qualitatively⁵ (sometimes referred to as the *inner circle*) and (b) quantitatively⁶ (referred to as the *outer circle*). Stakeholders in every company are increasingly taking an interest in the activities of the company and how these activities have an impact on the *outer circle*, namely society, the environment, local and general welfare, local or wider communities, *etc.* Definitions therefore vary depending on the policy to be pursued by a company or organisation. Thus the World Business Council for Sustainable Development defines CSR as a “continuing commitment by businesses to contribute to economic development while improving the quality of life of the workforce and their

³ See D. Wood “*Corporate Social Conscience Revisited*” *Academy of Management Review*. vol. 16 n. 4 (October, 1991) at pp. 691-718.

⁴ For an analysis of the CSR concept see A. McWilliams, D. Siegel “*Corporate Social Responsibility. A Theory of the Firm Perspective*” *Academy of Management Review* (2001) vol. 26, pp. 117-127 and A. McWilliams, D. Siegel, P. Wright “*CSR: International Perspectives Working Papers*” (0604) Troy. New York. Department of Economics, Rensselaer Polytechnic Institute (2006).

⁵ Namely the management of processes and people within the company, e.g. shareholders, clients/customers, financial analysts and employees and trade unions all of whom have to do with the marketplace and workplace.

⁶ Namely the nature of, and quantity on, the impact on society as a whole, e.g. the environment and NGOs and the government and the community at large.

families as well as of the community and society at large”⁷. A more general definition given by Mallen Baker is that⁸ “CSR is about how companies manage the business process to produce an overall positive impact on society”. Business for Social Responsibility defines CSR as “Operating a business in a manner that meets or exceeds the ethical, legal, commercial and public expectations that society has on business”. The European Commission defines CSR as “A concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis”⁹. CSR “concerns actions by companies over and above their legal obligations towards society and the environment. Certain regulatory measures create an environment more conducive to enterprises voluntarily meeting their social responsibility”¹⁰. The Financial Times defines CSR as “a business approach that contributes to sustainable development by delivering economic, social and environmental benefits to all stakeholders”¹¹. The definitions given above show clearly the differing views expressed by the various organisations on the CSR concept. However, the central theme which resonates clearly time and time again in each of those definitions, is that of *altruism* on the part of companies which manifests itself in different ways namely businesses exceeding their normal legal obligations towards the environment, the community and society at large. The Financial Times put it admirably when it stated that CSR

is a concept with many definitions and practices. The way it is understood and implemented differs greatly from each company and country. Moreover, CSR is a very broad concept that addresses many and various topics such as human rights, corporate governance, health and safety, environmental effects, working conditions and contribution to economic development. Whatever the definition is, the purpose of CSR is to drive change towards sustainability¹².

This comment is echoed by the World Business Council for Sustainable Development which said

⁷ Source: <http://www.wbcd.org/work-program/business-role/previous-work/corporate-social-re> (Retrieved 3rd August, 2015) Publication by Richard Holme and Phil Watts “*Making Good Business Sense?*”. (January 2000).

⁸ Source: <http://www.mallenbaker.net/csr/definition.php> (Retrieved 1st August, 2015).

⁹ Source: COM (2001) 366.

¹⁰ See “*Communication from the Commission to the European Parliament, the Council, the European Social and Economic Committee and Committee of the Regions. A renewed European Union strategy 2011 – 14 for Corporate Social Responsibility*” COM/2011/0681/final. For an interesting analysis see Alexander Dahlsrud “*How Corporate Social Responsibility is Defined: An Analysis of 37 Definitions*” (2006) John Wiley and Sons Ltd. and ERP Environment.

¹¹ See <http://lexicon.ft.com/Term?term=corporate-social> responsibility – (CSR).

¹² *Ibid.*

stakeholders throughout the world have revealed that CSR means very different things to different people, depending upon a range of local factors including culture, religion and government or legal framework conditions. There can be no universal standard [...] business is not divorced from the rest of society. The two are interdependent and it must be insured through mutual understanding and responsible behaviour that business's role in building a better future is recognised and encouraged by society¹³.

So as to prevent the reader from suffering indigestion, it is not proposed to coin yet another definition! The definitions given above serve to send the right message to the reader without having to add additional ones. The development of CSR from its controversial origins is beginning to be accepted as a legitimate business function.

2.2. ISO 26000 – Social Responsibility

In 2010 the International Organisation for Standardisation released ISO 26000 which consists of a set of *voluntary* standards¹⁴ intended to assist companies which implement CSR in their policies. This ISO which is applicable to all types of businesses and organisations whatever be their activity, size or location, provides assistance and guidance to businesses and organisations in clarifying what social responsibility consists of, helps them translate principles and aspirations into effective actions and shares global best practices with regard to social responsibility.

It is important to note that this ISO does not provide for any requirements to be met. It only provides a guide. This means that “it cannot be certified to, unlike some other well-known ISO standards”¹⁵.

The company's or organisation's relationship to society at large and to the environment in which they operate is a critical factor in their ability to continue to operate in an ethical and transparent manner which contributes to the welfare and health of society. It is also being increasingly used as a measure of their overall performance.

¹³ Source: <http://www.wbcsd.org/work-program/business-role/previous-work/corporate-social-re> (Retrieved 3rd August, 2015).

¹⁴ Although launched in 2010, it took five years of negotiations with different global stakeholders to bring it about before international consensus was reached. These stakeholders consisted of representatives from businesses, NGOs, governments, consumer groups and trade unions. There was a working group set up consisting of some 500 experts.

¹⁵ Source: <http://www.iso.org/iso/home/standards/iso26000.htm> (Retrieved 13th September, 2015).

2.3. The Triple Bottom Line Concept

Another concept closely allied to CSR is that of the “Triple Bottom Line” (also known as TBL or 3BL). So as to account for the importance of social and ecological considerations in doing business some organisations/companies advocate the concept of the Triple Bottom Line, namely social, environmental (or ecological) and economic. These three divisions are also called “the three Ps” standing for “people, planet and profit” or the “three pillars of sustainability”¹⁶. This concept, as explained by Business Ethics¹⁷, assumes that a company, being a moral community member, has social responsibilities to fulfil. As such, a company needs to weight its actions on three independent *long term sustainability* scales, namely *economic sustainability*, *social sustainability* and *environmental sustainability*. Triple Bottom Line accounting is practised by profit-making organisations, non-profit-making bodies as well as governments. In the private sector, a commitment to Corporate Social Responsibility (CSR) implies a commitment to transparent reporting about the material impact of the business for its ethical behaviour on the environment and the community. The Triple Bottom Line is one framework for reporting this material impact.

The word “people” or the expression “social sustainability” treats fair and beneficial business practices towards the labour force of a company, the community at large and the area¹⁸ in which the company operates. A TBL company has a policy of providing benefits for many constituencies without exploiting any group within them. Thus, a portion of the profits made by a company on the marketing of finished goods needs to be spent by the company going back to the original producer of the raw materials, namely the food chain if the company is in the food production industry¹⁹. A TBL company does not employ child labour, nor does it allow its suppliers to do so, it pays its workers and employees fair wages and ensures that its suppliers do so as well, such company and its suppliers should maintain a safe working environment and ensure that working hours are reasonable taking into account the circumstances of the company. Nor would a TBL company exploit the

¹⁶ See John Elkington “*Cannibals with Forks: The Triple Bottom Line of Twenty-First Century Business*” (1997) Capstone, Oxford and “*Triple Bottom Line*” The Economist 17th November, 2009. <http://www.economist.com/node/14301663> (Retrieved 13th December, 2015).

¹⁷ See <http://philosophia.uncg.edu/phi361-matteson/module-3-social-responsibility-professio> (Retrieved on 13th September, 2015).

¹⁸ Such “area” could be the locality in which the company operates, a whole country if a national company or other countries in the world in which multinational companies operate.

¹⁹ For example, in the case of fair trade coffee, the company must ensure that the raw materials themselves, in Colombia or African countries are respecting the norms of fair trading. The same applies to chicken farms in the in the case of corn-fed chickens or free-range eggs.

community at large and its workforce. A TBL company should aid the community in granting part of its profits to the community by providing, for example schooling, medical care²⁰, social centres, etc.

The word “planet” refers to sustainable environmental practices which implies that a TBL company tries to respect, as far as is reasonably possible, its environmental footprint in all its forms, whether they be forests²¹, the sea, the natural habitat of animals and plants and so on. If that is not possible, such company should minimise any possible harm to the environment. Furthermore, such company should reduce its ecological footprint by not wasting electricity, gas, water and other energy products such as LPG²². It should also manage its non-renewables policies in such a way as to reduce manufacturing waste and rendering toxic waste, either safe or safer, prior to its disposal. A life cycle assessment of products should be in place which evaluates the environmental cost of a manufacture from the time it is manufactured, through to the time when it is, sold and put into full use and to the time when it is disposed of. This life cycle is known by the expression “cradle to grave”. The ecological footprint also includes such matters as over fishing in certain sea areas (which is illegal) and the depletion of resource such as the protection of certain species of animals such as elephants or birds, for example, golden eagles.

The word “profit” describes the economic value which the company enjoys after the deduction of all inputs including the capital of the company.

When one talks of the “bottom line” in business accounting one understands it to mean the profit or loss which the company or organisation has recorded at the very bottom line of its financial statement. In the last forty five or so years environmentalists and social justice activists have wanted to define “the bottom line” in broader terms by introducing the notion of *full-cost accounting* and by thus adding to the economic bottom line two further bottom lines, namely the environmental and the social bottom lines.

A practical example will serve to a better understanding of the triple bottom line concept in the context of full cost accounting. A non-profit organisation such as a charity may have a policy and the financial means of offering opportunities for employment to blind persons who are classed as unemployed or unemployable. Vacancies for such employment exist in a company which deals with the recycling of toxic waste. Full scale accounting takes into consideration the totality of this financial situation. The non-profit charity

²⁰ In Cyprus the Ioannou Foundation finances a special children’s hospital.

²¹ The Leventis Foundation in Cyprus partly finances the regeneration (tree planting and gardens) of the former Amiantos asbestos mine in the Troodos range of mountains.

²² Liquid Petroleum Gas which is a refined petroleum gas used as a green replacement fuel in vehicles which have been converted.

obtains monies from benefactors. Those monies are then distributed into the community as follows. Those blind persons will cease to be on the unemployed list by no longer seeking unemployment benefit or Job Seekers' Allowance (JSA) or/and also disability benefits from the government (and therefore will no longer be a financial burden upon the tax payer). The social benefit will be the employment of those blind persons. On the environmental benefit front, the recycling by those blind persons of the toxic waste on the principle that "the polluter pays" will normally lie on the company which has disposed its toxic waste in a river thus polluting it. The environmental benefit is the actual recycling itself. However, other benefits may ensue in that persons who were contaminated by the toxic waste will no longer need medical treatment on the National Health Service (NHS) as a result of this recycling thus saving costs to the tax payer. The full cost accounting takes into account, and is calculated in accordance with, the triple bottom line concept. In this manner the totality of the real costs is established by taking into account not only the economic costs of the company but also those relating to the environmental and social benefits.

Having analysed the concept of corporate social responsibility and its two associated concepts, it is proposed to discuss (a) the connection between Friedman's doctrine and the CSR and the TBL concepts followed by (b) some of the features of the United Nations Global Compact.

2.4. The Connection between Friedman's Doctrine and the CSR and TBL Concepts

The immensely influential economic philosopher Milton Friedman²³ holds the opinion that the sole beneficiaries of company profits are shareholders of that company and that it is up to those latter in their private capacity to distribute to charities or other social institutions at their discretion, some of those profits made in repayment for the risk – profit and loss – they take in investing in the company. According to Friedman the sole persons to whom the company is socially responsible are the shareholders themselves. The company's aim is solely to maximise profits and to return a portion of those profits to shareholders who constitute the economic source, the drive or the prime movers of the business. It is not for the company's executive personnel to decide to which social institutions monies should be defrayed. The company should therefore have no social responsibility towards the community it serves

²³ In "*Capitalism and Freedom*" (1962) University of Chicago especially Chapter VIII entitled "Monopoly and the Social Responsibility of Business and Labor".

or society at large because its only concern should be to make profits for the company and its shareholders. In Friedman's words

There is one and only one social responsibility of business – to use its resources and engage in activities designed to increase its profits so long as it stays within the rules of the game, which is to say, engages in open and free competition without deception or fraud.

Friedman's stockholder doctrine is not consistent with the concept of corporate social responsibility because, were the company to make donations to a charitable institution, it would not be acting in the best interests of the company and its shareholders. It would be different however were the shareholders decide personally to make such donations if it is their wish. There is thus freedom for the shareholders themselves to donate to the community on a voluntary basis if they so wish.

The Corporate Social Responsibility and Triple Bottom Line concepts are therefore diametrically different from Friedman's doctrine in that companies are seen under both the CSR and TBL concepts, and indeed ISO 26000, as organisations owing moral obligations which are not the same as, and do not fall within, Friedman's economic arguments.

Friedman separates companies from society and the community by putting the onus of social responsibility on the shareholders' shoulders. On the other hand CSR views companies as members of a moral and ethical community which owe to that community at large certain responsibilities. They include at least three types of responsibility, namely economic, legal and moral, ethical or social responsibilities and possibly a fourth one, namely a philanthropic responsibility.

Regarding the company's *economic responsibility*, the CSR concept recognises that a company's primary policy is to make a profit for without such profit the company cannot fulfil its moral, ethical and philanthropic responsibilities. A company has a *legal responsibility* to obey the law whether it understands it or not for the legal saying *ignorantia juris neminem excusat* applies under British law. Corporate morality demands much more than observing the strict law *à la lettre*; such company needs to obey the *spirit* of the law and in doing so go much further into what the *intention* of the law is by observing the social good intended by that law and thus achieve the best results for all concerned and not solely the best economic results for the company²⁴. *Moral, ethical or social*

²⁴ The privatised energy market in the UK is a perfect example to illustrate this phenomenon. The "Big Six" as they are called, have been named in the media as breaking the *spirit* of the law in many respects with the worst being N power, closely followed by Scottish Power and British Gas and three others. They have been described as "ripping-off" their stakeholders namely

responsibility implies that a company should go beyond the letter and spirit of the law (as explained above) and in making financial profits, use part of those profits by acting responsibly and ethically towards society and the community. This responsibility is the *solar plexus* of the CSR concept. The company as a *legal persona*²⁵ is required to act as a responsible body in the community because it forms part of that community. Such legal person is required to act as any natural person in society would act. In addition, philanthropy also plays a significant part in the CSR context. *Philanthropic responsibility* requires a company to behave in a generous manner towards the community by providing such things as health care, schools for the disabled, social centres, welfare centres, parks and gardens, sports centres including swimming pools and other social amenities all of which have nothing to do with the business carried out by the company concerned. In brief, the company, as a member of the community, is required to do something for that community to benefit it even though it reaps no financial gain, at least directly²⁶.

Thus the CSR concept in ascending order requires (i) a company which has made financial profits that it should act (ii) not only within the bounds of law but also (iii) within the spirit of that law. Such company should (iv) also be bound within the boundary of morality and ethics in a socially responsible manner, and (v) it should act in a philanthropic manner if it had met the other four criteria above, namely criteria (i) to (iv). Criterion (i) however is essential for if the company has not made any profit or is a loss-making company, it is unable to fulfil the other criteria and therefore cannot act responsibly to its stakeholders amongst them, its employees and the community to which it belongs.

their customers with inaccurate bills, extortionate prices, singularly poor and dramatically inefficient service. These companies may obey the letter of the law but certainly do not obey the spirit of the law. The same may be said of the large supermarket chains where their employees receive wages at or just above the national minimum wage laws. Companies making enormous profits sometime will purposefully break the laws in order to make even greater financial profits knowing full well that the fines for breaking such laws being insignificant are worth paying. The greatest culprits are banks many of which have been named in the media and fined by the courts or other regulatory bodies for acting illegally.

²⁵ Companies are treated in law as having a separate legal personality from that of its members upon incorporation in accordance with a particular country's laws. Companies thus have legal rights and obligations and can enter into contracts, sue and be sued in their own name. See *Salomon v Salomon & Co. Ltd.* [1896] UKHL 1 and Companies Act 1862 and 2006 s. 7 (1) (2) and s. 16 (2). See too (1897) 13 LQR 6; Otto Khan Freund (1944) MLR 54 and Murray A. Pickering "The Company as a Separate Legal Entity" MLR 31 n. 5. September 1968 pp. 481 – 511.

²⁶ For the company may well reap *indirect* gains by maximising its clientèle, by enhancing its reputation, by being honest and trustworthy, caring, and not appearing greedy for profits. Such companies do exist in the United Kingdom namely the John Lewis Partnership including Waitrose and Marks and Spencer.

The Triple Bottom Line (TBL) concept is another concept of Corporate Social Responsibility (CSR). The TBL concept like the CSR concept both assume that the company being a member of the community owes that community some social responsibility. Both the CSR and TBL concepts, it will be recalled²⁷, do not accord with Friedman's doctrine. The difference between the CSR and the TBL concepts is that this latter concept focuses on the word "sustainability" as analysed above. Such sustainability is *long term*. It requires a company to balance its actions on three separate long term fronts namely the *economic* sustainability, the *social* sustainability and the *environmental* sustainability fronts, each of which is independent of the others.

Economic sustainability must be long term otherwise the business would not be a viable one. Its bottom line must therefore be economically tenable. *Social sustainability* which is also long term has the effect of sharing with the community the company's economic success. The bottom line in the social sphere requires of the company to create an atmosphere in which all within it are able to succeed for it is better for a community to succeed along with the company rather than for the company to succeed solely by itself. Thus both the company and the community to which the company belongs both continue to succeed and thrive under the banner of good will. As for *environmental sustainability*, it is recognised that natural resources will not last forever and that resources which have been destroyed by man should, as much as possible, be re-instated and that therefore they need to be protected for the sake of future generations. Furthermore, natural resources which have been destroyed by man for commercial use, such as the rain forests or asbestos, coal or other mines, should as much as possible be returned to their former natural state. A moral community should not cause harm to itself and to other such communities and their future generations. As such, the bottom line suggests for some protection of the environment in which mankind lives. Where damage to the environment has already been caused, for example the asbestos mine in Cyprus mentioned above, efforts should be made to the re-forestation of the damaged mountain, such damage and re-forestation treat the bottom line.

To sum up the reasoning behind the analysis of economic, social and environmental sustainability, it may be said that where companies have TBL policies which benefit not only the company but also the community both, the company and the community, it is thought would benefit. It should also be noted that ISO 26000²⁸ is relevant in the equation to both the CSR and the TBL concepts.

²⁷ See p. 6 *supra*.

²⁸ See p. 3 *supra*.

3. The United Nations Global Compact

Launched in the year 2000 the Global Compact is a strategic policy initiative for businesses committed to operating in a sustainable and socially responsible manner²⁹.

So as to facilitate and encourage the making of a positive impact by companies towards their stakeholders, the environment and society as a whole, the United Nations Global Compact includes among its membership academics in various disciplines, higher and further educational establishments, governments and governmental departments, non-governmental organisations (NGOs), employers' associations, trade unions and any other interested parties. The main actors in the UN Global Compact are, of course, the businesses themselves, whether small or medium sized companies (SMEs) or multinationals which, when they enter into voluntary international framework agreements (IFAs), requires them to fulfil the obligation of submitting annually a communication on progress (COP) report which, until 2014, was not required by the other non-business member actors who act in an advisory capacity through intercourse with business participants, by educating the public at large on the CSR concept and its benefits or otherwise and sharing their knowledge and expertise with all those who ask for these. Since 2014 however a reporting requirement has been introduced for non-business participants called the Communication on Engagement (COE). To be noted is the fact that the COE is less prescriptive than a COP³⁰.

3.1. The Ten Principles

The ten principles of the United Nations Global Compact³¹ derive from four international documents which include the Universal Declaration of Human

²⁹ Source: <http://www.unglobalcompact.org/AboutTGC/index.html> (Retrieved 23rd July, 2015).

³⁰ Source: E-mail to the author from Mr. Steve Kenzie UNGC UK secretariat dated 21st September, 2015 and see too <https://www.unglobalcompact.org/about/integrity-measures> especially the part entitled Communication on Progress/Communication on Engagement Policies.

³¹ The United Nations Global Compact was launched in 2000 by a former Secretary-General of the United Nations Kofi Annan "to harness the power of collective action in the promotion of responsible corporate citizenship". It is believed by many to be one of Kofi Annan's most significant legacies. (Source: Global Compact Network United Kingdom).

Rights³²; the Declaration on Fundamental Principles and Rights at Work of the International Labour Organisation;³³ the Rio Declaration on the Environment and Development³⁴ and the Convention against Corruption of the United Nations³⁵.

The mission of the United Nations Global Compact is the achievement of corporate sustainability. This requires companies to foster in their strategies, policies, procedures and practices, certain *fundamental minimum values* and observe certain *fundamental minimum principles* when carrying on their respective businesses. Such minimum values and principles are restricted to four different areas, namely human rights, labour, the environment and measures against corruption. By acting with integrity and in a responsible manner in those four fields companies should reap numerous financial and other³⁶ benefits.

The United Nations Global Compact is designed to encourage companies to act as socially responsible members of the international community by committing to certain principles. There are ten principles provided for by the Global Compact. In the *human rights* field they include the support, respect and protection of internationally proclaimed human rights by companies and businesses³⁷ as well as ensuring that they are not complicit to human rights abuses³⁸. In the *labour* field companies and businesses are required to uphold the notions of freedom of association and the effective recognition of the right to collective bargaining³⁹, the elimination of all forms of forced and compulsory labour⁴⁰, the effective abolition of child labour⁴¹ and the elimination of discrimination with regard to employment and occupation⁴². In the field of the *environment*, companies and businesses should adopt a

³² G.A. res. 217A (III) U.N. Doc A/810 at 71 (1948). The Universal Declaration of Human Rights was drafted by the U.N. Commission on Human Rights in 1947 and 1948 and adopted by the U.N General Assembly on 10th December, 1948.

³³ Adopted on 18th June 1998 (revised on 15th June, 2010) covering four fundamental principles and rights at work namely, (i) freedom of association and the effective recognition of the right to collective bargaining; (ii) the elimination of all forms of forced and compulsory labour; (iii) the effective abolition of child labour; (iv) the elimination of discrimination with regard to employment and occupation.

³⁴ United Nations 1992.

³⁵ United Nations Treaty Series vol. 2349. Doc.A/58/422. Entered into force on 14th February, 2005.

³⁶ For example, reputation, respect, reliability, stability, trust and so on.

³⁷ United Nations Global Compact Principle 1.

³⁸ *Ibid.* Principle 2.

³⁹ *Ibid.* Principle 3.

⁴⁰ *Ibid.* Principle 4.

⁴¹ *Ibid.* Principle 5.

⁴² *Ibid.* Principle 6.

precautionary approach to environmental challenges⁴³, undertake initiatives to promote greater environmental responsibility⁴⁴ and encourage the development and diffusion of environmentally friendly technologies⁴⁵. In the *prevention of corruption* field companies and businesses should work against corruption in any of its forms including extortion and bribery⁴⁶.

These ten principles encourage businesses to adopt socially responsible and sustainable practices, report on their implementation and share best practice with other members⁴⁷.

3.2. *The Four Labour Principles*

In the context of this research programme it is only the aforementioned *four labour principles* with which we are concerned. All four of the labour principles of the United Nations Global Compact, namely freedom of association/collective bargaining, the prohibition of forced/compulsory labour, the abolition of child labour and employment/occupation discrimination, mirror the provisions of the ILO's Declaration on Fundamental Principles and Rights at Work. That Declaration calls upon the countries which have ratified it to apply its principles in accordance with the original intent of the core Conventions upon which the Declaration is itself based. Each of these four labour principles is *fundamental*⁴⁸ to the workplace in that companies – whether large multinational⁴⁹, medium or small – should adopt and incorporate them at company level. It may therefore be said that the ILO's policy is to put to use those four fundamental principles by encouraging the business world to adopt them through the Global Compact.

⁴³ *Ibid.* Principle 7.

⁴⁴ *Ibid.* Principle 8.

⁴⁵ *Ibid.* Principle 9.

⁴⁶ *Ibid.* Principle 10.

⁴⁷ Source: <http://www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/index.html> (Retrieved on 25th July, 2015).

⁴⁸ In that these principles are now accepted globally by almost all countries whatever stage their economic development has reached, whatever their culture be and whether or not they are signatories to the relevant ILO Conventions. Such countries' laws – whether hard or soft – are expected to respect those four fundamental principles.

⁴⁹ As will be noticed below (at pp. 5 and 6) international framework agreements (IFAs) are invariably concluded by multinational companies. Agreements of small and medium enterprises (SMEs) also feature on the international stage.

A Global Compact Labour Working Group was established in May 2008 under the auspices of the Global Compact Board⁵⁰ and is chaired jointly by the presidents of the IOE and UNI Global Union respectively.

A Webinar Series has been established between the International Labour Office and the Global Compact Office. Webinars are conducted by ILO experts and offer participants practical guidance, advice and resources which further the four labour principles of the UN Global Compact⁵¹.

⁵⁰ This working group is jointly chaired by the international social partners, namely the International Organisation of Employers (IOE) and the UNI Global Union. The IOE is the largest network in the private sector globally with a membership of over 150 businesses and employer organisation members. The IOE is the recognised voice of business in labour policy matters taking place in the ILO, the UN and the G20. It represents national business organisations in guiding corporate members on, *inter alia*, issues concerning corporate social responsibility, international labour standards, human rights, occupational health and safety and international industrial relations. The UNI Global Union based in Nyon, (near Geneva) Switzerland, is a world trade union federation for skills and services which includes national and regional trade unions. It was founded on 1st January, 2000 and has a membership of 20 million, some 900 affiliated trade unions in 140 countries. When founded in 2000 it was called the Union Network International but it changed its name to NUI Global Union when a merger took place in March 2009 with four organisations, namely Media and Entertainment International, International Federation of Employees, Technicians and Managers, International Graphical Federation and Communications International.

⁵¹ Examples of webinars convened jointly by the ILO and the UN Global Compact include (a) the webinar of 6th May, 2015 in attempting an answer to the question “How can companies uphold freedom of association and the effective recognition of the right to collective bargaining?” This one hour webinar examined how companies may improve the climate of labour management relations, particularly in countries where no adequate institutional or legal framework exist for *recognising* trade unions and for *collective bargaining*. It addressed challenges multinationals may face in their respective workplaces and their communities of operation to bring about *freedom of association*. (b) The one hour webinar of 7th November, 2014 with ILO experts treating *occupational health and safety* in the *construction* industry. This webinar aimed at providing practical guidance to enterprises wishing to focus on health and safety as an integral part of their business model. (c) The one hour webinar held on 5th September, 2014 on *forced labour* and its implications for business conducted by ILO specialists. The discussion focused on the important role of business in the global efforts to eliminate modern forms of slavery and the ILO Protocol and Recommendation to Convention n. 29 on forced labour. (On forced labour and modern slavery see the research carried out for the Commissioner for Civil Rights Protection of the Republic of Poland (Dr. Janusz Kochanowski) by Jo Carby-Hall “*The Treatment of Polish and Other A8 Economic Migrants in the European Union Member States*” (2008) Bureau of the Commissioner for Civil Rights Protection Warsaw particularly Chapter VIII entitled “Exploitation and Abuse” at pp.183 – 260 and Jo Carby-Hall “*The Continuing Exploitation of Economic Migrants and other Vulnerable Workers*” in “Essays on Human Rights: A Celebration of the Life of Dr. Janusz Kochanowski” (Jo Carby-Hall (Ed.)) (2014) Jus et Lex. Warsaw. at pp. 97 – 134.) See too the panel discussion held on 16th July, 2013 hosted jointly by the ILO and the UN Global Compact on the child labour platform to eliminate *child labour* in

The Multinational Enterprises Engagement Unit (ENT/MULTI) is responsible for the follow up of the ILO's "Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy" (MNE Declaration)⁵² which is the ILO's key tool for promoting labour standards and principles in the corporate world. One of its important means of action is the promotion of the MNE declaration among governments, employers, workers and the business community through collaboration with international organisations such as the UN Global Compact.

3.3. What Practical Commitments do Companies have in their capacity of Global Compact Partners?

Global Compact partner companies have an important number of obligations to fulfil in order to retain their partnerships.

In the first instance they need to play an effective part in the Global Compact: Companies are therefore required to make the Global Compact and its ten principles an integral part of the company's strategy, policy, organisational culture and daily operations. Secondly, by acting responsibly, companies are required to advance the Global Compact concept through an active outreach to customers, clients, consumers, employees and the general public. Thirdly, companies need to incorporate at the very highest company level – namely their governing board – the Global Compact and its ten principles. In the fourth instance companies' annual or sustainability reports should describe the manner in which they implement the Global Compact's principles⁵³. Finally, partner companies need to contribute to broad development objectives, including the Millennium Development Goals⁵⁴, through partnerships.

global supply chains. (Source: <http://www.ilo.org/empent/units/multinational-enterprises/lang-en/index.htm> (Retrieved 27th August, 2015).

⁵² Of March 2014.

⁵³ It should be remembered that the partner company also has an obligation to submit annually a Communication on Progress (COP) to the Global Compact office. A new partner company is exempt from this obligation during its first year of partnership but thereafter a COP needs to be submitted annually.

⁵⁴ In 2000 at a summit of world leaders there developed under the auspices of the United Nations the Millennium Development Goals (MDGs) of which there are eight. The target was to eradicate global poverty and human suffering by 2015. Although success has come about in some countries especially in Asia, other countries in Africa, the Middle East and the Latin American continent are far from meeting their targets by 2015. The MDGs consist of (i) the eradication of extreme poverty and hunger, (ii) the achievement of universal primary education, (iii) the promotion of gender equality and empowerment of women, (iv) the reduction of child mortality, (v) the improvement of maternal health, (vi) combating

3.4. International Framework Agreements

Global or international framework agreements (hereinafter called IFAs) may well prove effective as a means of advancing the implementation of the four Global Compact labour principles and in addition improve industrial relations⁵⁵. It should be noted at the outset that IFAs do *not* form part of a CSR initiative because CSR is a totally different concept. This author would not agree, for having said that, IFAs are sometimes referred to in the CSR discussions because of the way in which multinationals respect in their IFAs the rights of employees as provided for in international documents. What distinguishes CSR from IFAs is that these latter are negotiated between the international social partners⁵⁶, with the aim of establishing an ongoing relationship between them. These agreements provide a common platform which addresses, *inter alia*, the four Global Compact labour principles both at company and at national and international law levels. The IFA normally commits the SME or multinational to apply equal standards for all its subsidiaries and branches globally. These standards may more often than not also be applicable to the SME's or multinational's supply chain even though such a supply chain company is, or companies are, not signatories to the IFA. They equally apply to contractors and sub-contractors because in practice the company informs them of the IFA provisions. Should such supply chain, contractor, sub-contractor, branch or subsidiary infringe the IFA provisions, the global social partners jointly may deal with the case and try to find a satisfactory solution by means of their social dialogue. The United Nations Global Compact may thus be viewed as the initial step in effectively developing a forum to monitor CSR internationally.

The mutual advantages of IFAs for trade unions and employers are numerous. One of these is that an IFA may prove useful in situations where trade unions are weak or where trade union membership is low. Another advantage is that time to carry out negotiations at various company locations is either reduced considerably or completely eliminated. A further advantage is that trade unions prefer to negotiate rather than have unilaterally imposed terms and conditions

HIV/AIDS, malaria and other diseases, (vii) the ensuring of environmental sustainability and (viii) a global partnership for development.

⁵⁵ On IFAs see Owen E. Herrnstadt "Are International Framework Agreements A Path to Corporate Social Responsibility?" 10 U. Pa. J. Bus & Emp. L.187 (2007) and by the same author "Corporate Social Responsibility, International Framework Agreements and Changing Corporate Behaviour in the Global Workplace" Labor & Employment Law Forum. vol. 3 Issue 2. (2013) pp. 263-277. See too Siglinde Hessler "International Framework Agreements: Possibilities for a New Instrument" Source: <http://column.global-labour-university.orh/2012/01/international-framework-agreements>.

⁵⁶ Namely between a multinational company and one or more global trade unions.

on employees by the employer. Such negotiated agreements form part of the social dialogue which for European Union Member States' companies encourages, and puts into effect the European social dialogue policy. Another advantage is that negotiated terms and conditions of employment are more readily acceptable to unions and their membership than employers' unilaterally imposed ones thus having the effect of diminishing or eliminating industrial disputes from occurring. An additional advantage is to standardise terms and conditions on a global basis where companies operate in numerous countries⁵⁷. What is important to both global social partners is the fact that there must be a mutual clarity and understanding on the *contents* of the agreement and how it will *apply* on a global basis in the case of multinationals. Care must therefore be taken in both the *language* and *content* of the particular IFA when it is being drafted so that the intention of the social partners be completely clear and transparent. This would avoid future problems of interpretation and misunderstandings as to intention and enforcement.

Enforcement raises another problem. Is an IFA a legally enforceable document as is the case in most of the world's countries' collective agreement laws or is it a gentleman's agreement enforceable in honour only and through the industrial relations system as is the case in the United Kingdom?⁵⁸ To the best of this author's knowledge the legal status of an IFA has not been tested in a court of law. A further complication would be, were an IFA to be legally tested, which of the laws in the different countries in which the multinational or SME operates, is applicable? It is suggested that the IFA being an international framework document, (and therefore constitutes, as such, soft law), it is legally unenforceable in a court of law unless the document specifies such an intention and a particular country's law as being applicable. Judging from the current IFAs' contents examined by this author, such intention does not exist therein. Alternatively voluntary international labour arbitration may be another available opening⁵⁹. Again, such a clause does not appear in current IFAs⁶⁰.

⁵⁷ To be borne in mind is the fact that these advantages to one or both of the social partners are not open to all global trade unions or employers. Depending on the industry concerned, IFAs are more numerous in some, as for example in Union Network International, than in other industries as for example, International Food Workers.

⁵⁸ See J. R. Carby-Hall "*The Collective Agreement – Legal Enforceability?*" Managerial Law vol. 35. Nos 1 and 2 (1993) MCB University Press.

⁵⁹ See Christopher J. Bruce and Jo Carby-Hall "*Rethinking Labour – Management Relations. The Case for Arbitration*" (1991). Routledge London and New York.

⁶⁰ *The Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy* (ILO, Geneva 28th March 2006) Article 59 entitled "Settlement of Disputes" provides that "Multinationals [...] jointly with [...] organisations of [...] workers [...] should seek to establish voluntary conciliation machinery [...] which may include provision for voluntary arbitration". This document provides recommendations on what would be the desirable

What is undoubted however is that IFAs constitute an important contractual (albeit non-legally enforceable) development in a globalised industrial relations setting. An examination of existing IFAs shows clearly that the global social partners wish to keep the law out of industrial relations⁶¹ and therefore do not wish to be legally bound. Should problems arise, most IFAs provide procedures for settling disputes and IFA interpretation matters. Such procedures may include *joint training* and/or *joint action* programmes or *joint monitoring* programmes to ensure that the global agreement core provisions are respected by national/workplace agreements. A majority of IFAs include a procedure whereby the global trade union federation may intervene should a company not respect the agreement terms.

The total number of IFAs signed by the global social partners is believed to be in the region of ninety eight⁶². These IFAs apply to a variety of different industries with the first of these having been signed in 1988 by Danone, the French food processing multinational, followed by the French ACCOR chain of hotels in 1995. It was not until the year 2000 that other multinational companies followed suit, among them IKEA⁶³, the Swedish furniture and furnishing multinational, Chiquito, the American banana multinational, Endesa and EDF the Spanish and French electricity and gas producers respectively, Faber-Castel & Staedler, the German pencil and other office materials manufacturer, Statoil, Lukoil and ENI, the Norwegian, Russian and Italian petrol, diesel, heating oil, etc. producers respectively, Carrefour, the French supermarket giant, Telefonica, France Telecom and OTE, the Spanish, French and Greek telecommunications multinationals respectively, retailers such as H&M in Sweden, car manufacturers in Germany (Volkswagen and Daimler-Chrysler) and France (Peugeot-Citroën and Renault), Siemens the German

behaviour of multinationals in, *inter alia*, industrial relations. Although not specifically provided for in the Declaration, it is suggested that the term “industrial relations” includes industrial disputes.

⁶¹ A good example is the 2012 Siemens IFA (See below) where a dispute arose between the multinational and the IndustriALL Union. And where there was no provision for binding arbitration or any other form of dispute resolution. (Source: <http://www.industriall-union.org/siemens-anti-union-campaign-bullies-workers-out-of-organizing> With such lack of enforcement mechanism in IFAs, (a) the *credibility* of an IFA becomes questionable and (b) frustration and *resentment* through lack of expectations may occur.

⁶² Source: Global Union Federations (GUF) website.

⁶³ The IFA agreement between IKEA and the Building and Wood Workers’ International (BWI) (known at the time of signature of the IFA as the International Federation of Building and Woodworkers) was originally concluded in 1998. It was developed further in 2001 and renamed the IKEA Way on Purchasing Home Furnishing Products. Source: IKEA, BWI, December 19th, 2001, <http://www.bwint.org/default.asp?Index46&Language=EN>; IKEA Way on Purchasing Home Furnishing Products. See <http://www.bwint.org/pdfs/iwayma.pdf>

electrical goods manufacturer⁶⁴, and on 20th March, 2015 IndustriALL and ThyssenKrupp signed an IFA on the promotion of fundamental rights in which 150,000 workers in some 80 countries worldwide are covered and many more⁶⁵.

Since its creation in 2000 the Global Compact has grown into the “world’s largest corporate citizenship and sustainability initiative” with more than 12,000 participants, including more than 8,000 Multinational and SME businesses from 145 countries⁶⁶ and 4,000 non business partners.

3.5. What Matters are Included in the IFAs?

Something needs to be said on what matters are included in the IFAs. The four fundamental labour principles of the UN Global Compact (see above) appear in all IFAs. In addition, the contents of core ILO Conventions or some of these, such as trade union recognition and that of its affiliates also feature. Other matters may include a variety of issues provided for by ILO standards as for example, health and safety at work, hours of work, minimum wages, the protection of trade union or worker representatives, occupational training and so forth. Thus apart from the four fundamental labour principles and references to core ILO Conventions, IFA contents vary from one agreement to another depending on what the global social partners require to include therein. The important fact to be borne in mind is that these kinds of global agreements are *framework* agreements. Such agreements provide only a framework or a structure to be filled in as required with other matters and details relevant to the needs, industrial relations systems, customs and traditions of the social partners following negotiations between them at national and/or workplace levels.

⁶⁴ International Framework Agreement between Siemens AG, the Central Works Council of Siemens AG and the IG Metall and the IndustriALL Global Union of 25th July 2012. Source http://www.industriall-union.org/sites/default/files/uploads.documents/siemens-gfa-2012-english_final_O.pdf (Retrieved 7th August, 2015).

⁶⁵ IFAs have also been signed in Brazil, Malaysia, Switzerland, the United Kingdom, Indonesia, Denmark, Sweden, the Netherlands, Australia, the Philippines, Portugal, Canada, Japan and African countries. See too “*International Union Rights: Focus on Global Framework Agreements*” International Centre for Trade Union Rights, vol. 18, Issue n. 2 (2011) in which many such agreements are discussed and analysed.

⁶⁶ Source: <http://www.unglobalcompact.org/ParticipantsAndStakeholders/index.html> (Retrieved 25th July, 2015). This is hardly representative of the approximately 65,000 transnational businesses worldwide. (Source: Peter Utting “*Why all the fuss?*” 1 UN Chronicle (2003).

3.6. Criticism of the Global Compact Concept

The Global Compact is not without its critics! As early as 2001 while the Global Compact concept was in its infancy, a panel⁶⁷ consisting of five NGOs⁶⁸ expressed grave doubts on this concept. The NGOs considered that the “Global Compact with corporations is fundamentally flawed and that it endangers the integrity of the United Nations”. One of the NGOs questioned the tactics of this venture.

We feel it sent a very bad signal at a very crucial time. Was it tactically the right or strongest move for the UN to put forth this relatively weak compact when the peoples of the world and many governments in fact, were questioning globalisation and the antics of corporations like never before.

Another NGO was more pragmatic when its representative said

But the Compact does embody a classical vague statement of principles that does not provide rules for specific situations or complaint procedures of any kind. Nor does it include any form of systematic monitoring. Instead the UN offers corporations an opportunity to exhibit their code-related “best practices” on a special website www.globalcompact.org. This allows companies to demonstrate adherence by carefully selected examples only. Corporations signing up are able to claim the legitimacy of a wide-ranging code under the prestigious United Nations while only having to adhere to it symbolically.

He went on to say “Secretary General Kofi Annan quickly established relations with the private sector when he assumed his post, in particular with the International Chamber of Commerce. The ICC has been a major player in the Global Compact, ensuring that it remained toothless. It was at that level that the agreement was struck”. Another NGO representative considered that while a few other NGOs supported the Global Compact “there are a large number of groups that have serious reservations and have asked the Secretary General to suspend and reconsider the program”. Such reservations included (a) the *wrong relationship*, namely that “Partnerships should be between entities that share goals – the UN and corporations do not”. (b) the *wrong companies* such as “Known violators of human rights norms [...] [which] are part of the Global Compact [...]. These companies are not merely plain violators but leaders in advancing the ugliest sides of globalisation [...] Moreover they are unrepentant

⁶⁷ An NGO Panel on Corporate Accountability held at the United Nations on 16th February, 2001. (Source: <https://www.globalpolicy.org/component/content/article/225/32152.html>) (Retrieved: 29th July, 2015).

⁶⁸ Namely, Women’s International League for Peace and Freedom, Global Policy Forum, CorpWatch, Health Action International and the Institute for Policy Studies.

about their role”. (c) the *wrong image* in that “from a corporate point of view, clearly the partnership with the UN fits in to a public relations strategy of wrapping themselves in the UN flag and saying we understand about human rights and we are doing something about it. They get the benefit of the ‘mutual image transfer.’ The UN [...] gets the downside – an association with companies that are loathed by millions”. In addition “a company might get to use the UN logo”. (d) *no monitoring and no enforcement* because the Secretary general’s office said that “it does not have the capacity or mandate for monitoring and enforcement and the ICC has made it clear that this condition is a pre-requisite for business participation”. (e) the *ideology* issue. “The Secretary General has made it clear that he fundamentally supports the form of globalisation as it exists today – open markets and free trade. The Global Compact is essentially a legitimizing project for corporate globalisation by integrating human rights, labour rights and environmental protection. But many citizen movements do not accept the current version of globalisation, if it were given a human face”.

At the “Public Eye on the Global Compact”⁶⁹ press meeting, leading NGOs expressed harsh criticisms on that concept. One was heard to say that

The continuous ‘blue washing’ harms the image of the UN as well as the development of effective standards for the trendy topic of Corporate Social Responsibility [...] The extent to which the rhetoric and reality diverge is demonstrated by the various unpunished offenses committed against the ten Global Compact principles.

Another said “the UN must ultimately set internationally-binding CSR standards to corporate behaviour and see to their adherence. The world does not need more declarations of intent from corporations, but real action that can be measured and monitored”. Yet another was of the opinion that “While the Global Compact plays an important role in promoting corporate learning on human rights, without a robust accountability mechanism the potential to improve the human rights of business will be limited”⁷⁰.

“The Economist” says that the Global Compact is toothless. It published a special report on CSR and dedicates two paragraphs to the Global Compact. It says that

A soft code that is proving popular is that of the United Nations Global Compact. To sign up, companies need only to commit themselves to ten

⁶⁹ Held in the Palais des Nations in Geneva on 4th July, 2007 and organised by the Berne Declaration.

⁷⁰ Source: <http://www.globalpolicy.org/global-taxes/32267-ngos-criticize-qblue-washingq-by-t> (Retrieved 30th July, 2015).

broad principles – such as promoting environmental responsibility and working against corruption – and report their progress once a year. Yet the concept is toothless. Critics say it just provides cover for companies from China and elsewhere which cheerfully sign up to it and then more cheerfully ignore it. But one thing, George Kell⁷¹ [...] is no softie. CSR is a child of openness, he says. Corporate responsibility in recent years has been driven by globalisation. If markets stay open, it will continue to spread. But openness should not be taken for granted: The day markets close, CSR is over⁷².

The whole of the above criticisms is summed up in the statement that “Its voluntary nature, along with its lack of monitoring and enforcement mechanisms, lead many to view the Global Compact as a toothless ‘bluewashing’ public relations tool ineffective in responding to the business and human rights crisis”⁷³.

3.7. Communication on Progress (COP)

An annual Communication on Progress (COP) report must contain information consisting of (a) the continued support by the company or its chief executive officer for the Global Compact’s ten principles. (b) the activities and concrete actions taken by the company during the previous year to maintain/encourage the Global Compact and (c) the outcomes resulting from such actions⁷⁴.

A COP has four basic functions. The first is to improve transparency and accountability. The second function is to show continuous performance/improvements. The third function is to illustrate the integrity of the UN Global Compact and the fourth to assist the building up of a growing repository of corporate practices to promote social dialogue⁷⁵.

The Global Compact office epitomises the situation as follows:

The public availability of Communication of Progress information promotes transparency and disclosure, allowing stakeholders to ensure companies live up to their commitment to the Global Compact Principles. It also provides stakeholders with material information to make informed choices about the companies they interact with, whether as customers, investors or employees.

⁷¹ Who was the Global Compact’s former chief executive officer.

⁷² The Economist. 17th January, 2008.

⁷³ Source: Joint Inspection Unit, United Nations Corporate Partnership: The Role and Functioning of the Global Compact. UN doc. JIU/REP/2010/9 (2010). See too Jon Entine “*United Nations Global Compact: Ten Years of Greenwashing*” Ethical Corporation (2010).

⁷⁴ Source: <http://www.unglobalcompact.org/COP/index.html> (Retrieved 30th July, 2015).

⁷⁵ See previous footnote *supra*.

Stakeholder vetting is the cornerstone of the Global Compact's mission to promote transparency and disclosure as a means of driving performance⁷⁶.

One of the numerous e-mails sent to the author by Mr. Steve Kenzie⁷⁷ stated that

All UNGC signatories are required to report annually in a COP to their stakeholders on the progress they have made with respect to implementing the principles [...] Signatories are expected to report on the labour principles, or explain why they have not, but the rules regarding the COP are not prescriptive. Companies have considerable latitude to choose what information they disclose and as those reports are in the public domain, it is expected that they will be responsive to their stakeholders⁷⁸.

3.8. *Delisting*

In 2008 the Global Compact office delisted 394 companies because of the fact that these companies were considered to be “inactive”. Such Companies are considered as “inactive” if they miss two consecutive deadlines in their submission of a Communication on Progress (COP) report. COPs are public statements on progress made by companies in the course of implementing the Global Compact's ten principles. Such reports are required annually of all business participants. By January 2010 the total number of “inactive” companies which were delisted stood at 1,840⁷⁹. As of September 8th, 2015 there were 5,624 companies delisted by the UNGC⁸⁰ and by the time the reader gets to read this chapter there will be many more delisted⁸¹ companies. The vast majority of these delisted companies are SMEs rather than large multinationals⁸².

A delisted company may re-apply but practice shows that it is in very few cases that companies wish to re-apply.

⁷⁶ Source: http://www.unglobalcompact.org/COP/analyzing_progress/index/html (Retrieved 25 July, 2015).

⁷⁷ Source: E-mail from the UNGC-UK Secretariat dated 31st August, 2015.

⁷⁸ Annual Reports may be consulted on the UN Global Compact website. <https://www.unglobalcompact.org/library/229>.

⁷⁹ Source: *Ibid*.

⁸⁰ Source: E-mail of Mr. Steve Kenzie, UN Global Compact Network- UK Secretariat, dated 21st September, 2015 to this author. A complete list of delisted companies may be found at <https://www.unglobalcompact.org/participation/report/cop/create-and-submit/expelled>.

⁸¹ The term “expelled” rather than “delisted” is used in that report.

⁸² Source: E-mail of Mr. Steve Kenzie, UN Global Compact Network- UK Secretariat dated 21st September, 2015.

Inactive companies cannot use the Global Compact logo for any purpose until a COP has been issued. The Global Compact logo policy is to encourage its use when the company is listed. It states “We Support the Global Compact”⁸³ The initiative currently includes 3,380 business participants in “active” standing, while 401 companies are listed as “non-communicating”, an expression which is *cautionary* for companies which missed one deadline in submitting a COP. According to the Global Compact’s Integrity Measures introduced in 2005, new signatories to the Global Compact enjoy two years from the date of joining to prepare and submit their first COP. After the first submission a COP is expected annually.

Among the delisted companies there are only a few well known ones which feature. They include Ernst & Young, Brazil, Air India, Agencia EFE (Spain), Pedronas Energy (Philippines) and Editora Globo (Brazil). The vast majority of delisted companies appear to consist, as stated above, of Small and Medium sized companies, many from the developing world. It appears that very few delisted companies re-join the Global Compact which indicates either that it had no significant commercial impact on the company or that the annual COPs proved to be an additional burden on the administrative processes of the company especially if they were SMEs or had nothing positive to report in their COP relating to the four labour (and remaining six) principles of the Global Concept or that they simply are not dedicated to that concept. It also appears that the most compliant countries were companies operating in Germany, the United Kingdom and South Korea whereas the least compliant were companies operating in China, Brazil, the Philippines and the Dominican Republic.

In virtually every case companies are delisted for failure to submit a COP rather than for actions contravening the UNGC principles or information included or omitted from their COP⁸⁴.

It should be noted that the UN Global Compact seeks to advance its principles through the active engagement of the corporate community in co-operation with civil society and representatives of organised labour. The initiative is not designed, nor does it have the mandate or resources, to monitor and measure participants’ performance. However, with the aim of protecting the integrity of the Global Compact, the initiative has adopted the integrity measure called the

⁸³ The logo is a way to show commitment and raise awareness of this initiative. It normally features on corporate websites and corporate sustainability reports. Companies and other organisations must first seek permission and submit a sample of desired usage, each time before using the logo.

⁸⁴ Source: E-mail to the author from Mr. Steve Kenzie, UN Global Compact Network – UK dated 21st September, 2015.

Communication on Progress (COP) as explained above⁸⁵. Therefore, the UNGC does not monitor or measure participants' performance. By design, that role is left to companies' stakeholders. The UNGC encourages transparency, thus empowering stakeholders to hold companies to account.

Granted that the *vast majority* of, and *main reason* for, delisting a company is its failure to submit a COP, other reasons also exist. These include the following, namely that the company no longer exists, the company failed to engage in dialogue, participants requested withdrawal, other reason(s) related to the integrity measures, the consolidation of commitment transferred under the parent company, mergers and acquisition, transfers of commitment and non-applicable issues⁸⁶.

Most of the reasons given above are self-explanatory, but one reason mentioned, namely "failure to engage in dialogue" needs a more detailed explanation. This reason is the one more likely *related* to a breach of an IFA. The word "related" is used advisedly because the expulsion or delisting is not *directly* related to the breach. In order to "safeguard the reputation, integrity and good efforts of the Global Compact and its participants, the dialogue facilitation process is a transparent means to handle credible allegations of systematic and egregious abuse of the Global Compact's overall aims and principles by a participating organization"⁸⁷. Where a credible allegation, as described, is brought to the attention of the UNGC Board, it will compel the parties to the allegation to engage in a dialogue and seek a resolution. Should the UNGC signatory not engage in the dialogue in good faith, the company will be expelled. (i.e. delisted). The company is not expelled directly as a result of the breach itself because the UNGC does not have the capacity to conduct a credible investigation of an allegation of this type. Such disputes are sometimes referred to a National Contact Point for the OECD Guidelines for Multinational Enterprises, which has a more rigorous complaints procedure at its disposal.

⁸⁵ Source: E-mail dated 31st August, 2015 to this author sent by Mr. Steve Kenzie, UN Global Compact Network – UK Secretariat.

⁸⁶ Source: Delisted companies_09202015[1].xlsx [protected view Excel file] attachment to e-mail of Mr. Steve Kenzie UN Global Compact-UK secretariat dated 21stSeptember, 2015 addressed to the author. This Excel file contains a listing of all companies globally which have left the UNGC. It also contains the companies' joining and leaving dates, their industry sector and the reason(s) for their removal from the list.

⁸⁷ Source: <http://www.unglobalcompact.org/about/integrity-measures> (Retrieved 1st September, 2015).

4. The European Union and Globalisation

Labour standards in the European Union represent core values which the EU supports, fosters and encourages. Agreements have been reached between the European social partners on a variety of topics, freedom of association and collective bargaining, child and forced labour being some of them. These agreements normally refer employers to the minimum international standards contained in ILO instruments such as conventions, declarations and other materials.

The ILO Declaration on Fundamental Principles and Rights at Work adopted in 1998 and the World Summit for social development in 1995 were instrumental in, and formed a basis for, the establishment of international standards. Resulting from these international instruments the European Commission issued a communication in 2001 on the promotion of core labour standards and the improvement of social governance in the context of globalisation. It re-affirmed the importance of the ILO as THE central body in the promotion of global core labour standards when it said

core labour standards such as non-discrimination in employment and equal opportunities for men and women are guaranteed by EU law. Freedom of association and collective bargaining are enshrined in the Charter of Fundamental Rights of the European Union, which gained legal force on 1st December 2009 with the coming into force of the Treaty of Lisbon. Although the EU does not expect developing countries to match its own high labour standards, it does not tolerate labour practices in its trading partners that fall below international norms”.

The European social partners, namely BusinessEurope and the ETUC have expressed a commitment to the adoption of collective agreements which set out minimum labour standards. Commenting on corporate social responsibility, BusinessEurope stated in 2011 that “multinational enterprises provide part of the solution to safeguard human rights making a particular positive contribution in countries where governance is weak, by increasing prosperity and social standards, and improving education”⁸⁸.

A mention has been made of some of the IFAs entered into by European multinationals⁸⁹ which provide for core labour standards and which include the global right of workers to form and join trade unions of their choice⁹⁰, and a

⁸⁸ Source: <http://www.eurofound.europa.eu/observatories/eurwork/industrial-relations-dic> (Retrieved 30th July, 2015).

⁸⁹ For examples of some of these see immediately above.

⁹⁰ Peugeot-Citroën (2006 extended in 2010).

framework to promote global social dialogue and negotiate on health and safety, training, climate change and restructuring⁹¹.

It is evident that there is an important “rapport”, “rapprochement” and “consensus” between the European Union labour standards and the international standards provided for by ILO instruments as well as, in particular the European Convention on Human Rights of the Council of Europe, which has been described by the Court of Justice of the European Union as “a special source of inspiration” for EU human rights principles⁹².

Corporate behaviour with respect to worker rights, nationally and globally form the key which opens the corporate social responsibility door. Honouring international labour standards constitutes the true benchmark for measuring the concept of corporate social responsibility.

5. The United Kingdom Network

Under this heading it is proposed to treat the United Nations Global Compact local networks generally, followed by the history of the United Kingdom network and its development. Something will also be said on its structure and membership. There will then follow a discussion on the membership of firms with less than ten employees to join officially the global compact initiative. Finally, some benefits of the global compact will feature.

5.1. UN Global Compact Local Networks Generally

Local networks⁹³ assist in advancing corporate sustainability at the grassroots level by assisting companies in understanding what responsible business means in the national context.

Companies face unique challenges to operating responsibly and have different opportunities to make a positive impact. Companies which enjoy a worldwide presence and their supply chains need to understand locations far from their headquarters and view sustainability through local optics. Local UNGC networks advance the policies⁹⁴ of the UN Global Compact at national level.

⁹¹ GDF Suez (2011).

⁹² Source Paul Graig and Gráinne De Bórcá “EU Law Text, Cases and Materials” (6th Edn) OUP (2015) at p. 380.

⁹³ UN Global Compact Local networks are independent, self-governing and self-managed entities but work closely with the UN Global Compact HQs in New York and act as a point of contact for UN Global Compact signatories in the country.

⁹⁴ For example, the UNGC ten principals and other policies.

These networks help companies understand what responsible business means within different national, cultural and language contexts and facilitate outreach, learning policy dialogue, collective action and partnerships. Furthermore as a result of those networks local connections may be made by companies with other businesses, NGOs, government departments, stakeholders, universities⁹⁵ and so on.

5.2. History and Development of the United Kingdom Network

A number of British signatories to the U.N. Global Compact met in 2003 to explore the possibility of founding a U.K. network which is in accord with the Global Compact's programme of establishing local networks. Within three years the UK network grew from an informal body to becoming a formal fee-paying one with a constitution⁹⁶ policies⁹⁷ and a formal structure consisting of a chairperson, a steering committee, an Advisory Group and Board⁹⁸ and a secretariat consisting of three sustainability hubs⁹⁹. Working groups have also been formed where companies wish to address an issue through such groups¹⁰⁰.

⁹⁵ Universities can give specialist guidance to companies in many fields including the sustainability commitments required of the company.

⁹⁶ The U.K. Network which is the membership's focal point of *co-ordination* and *communication* aims at (i) providing the UK signatories with the facility to *consider* and *advance* matters of concern and mutual interest; (ii) providing a mechanism through which *performance* and *reporting* on U.N. Compact principles can be improved by mutual support; (iii) enabling participants to share and exchange *practice* and *experience*; (iv) providing *input* to the Global Compact on its *future development* and *activity*; (v) *promoting* the Global Compact principles throughout the UK business community; and (vi) helping *promote* and *support* the Global Compact worldwide.

⁹⁷ Namely, policies on each of (i) equality and diversity; (ii) anti-corruption and (iii) health and safety.

⁹⁸ An advisory group consists of multinational companies, small and medium enterprises (SMEs), government observers, trade union representatives and representatives of non-governmental organisations (NGOs). The functions of an advisory group consist, *inter alia*, in pursuing the aims and setting the direction of the network, approving the activity programme of the network, reporting to the network membership at plenary meetings and overseeing the work of the secretariat. The Advisory group and Board Members consist of a chairman and seventeen members. Source: <http://globalcompact.org.uk/about-the-uk-network/advisory-group/>.

⁹⁹ Formerly provided by the International Business Leader's Forum (IBLF) and since 2013 by the Sustainability Hub in Clerkenwell. Source: <http://www.globalcompact.org.uk/about-the-uk-network/> (Retrieved 2nd August, 2015).

¹⁰⁰ Activity orientated working groups in the United Kingdom included the following: (i) *Small and Medium Enterprises Working Group* treating numerous objectives such as the provision of practical support, guidance and tools which are easy to use for SMEs, increase SME

The executive director of the Global Compact Network United Kingdom talked of the function of local networks. He said “Local networks perform the critical task of rooting the Global Compact within a national context – linked to local priorities and needs – and provide opportunities for participants to improve understanding and share experiences on their work to advance the Global Compact principles, partnerships and reporting”¹⁰¹.

5.3. Structure and Membership

Within the structure of the Global Compact Network United Kingdom there are four strategic partners. They include Cynnal Cymru-Sustain Wales¹⁰², the Department for International Development, UK Government¹⁰³, the Trade

membership in the UK, CSR reporting and mentoring and support for UK SMEs and Communication of Progress (COPs) for SMEs. (ii) *Network Liaison Working group* with the aim of UK network representation at external events, assistance, emerging networks with governance issues and placing emerging networks in contact with other working groups on a needs basis. (iii) *Communications Working Group* with the objective of providing a mechanism to exchange information with the UK network and further afield, sharing information on the UN Global Compact and inspire interest and participation elsewhere and serve as a communications base between the UK network and the UNGC office. (iv) *Communication on Progress Working Groups* in 2009, 2011 and 2012 with the aims of reviewing the process of submission and assessment of COPs for network members, ensuring that sufficient guidance is obtained for COP producers and receivers and that it is adequately communicated and engaging with other national networks to share COP experience, aligning the UK network peer review process with new Global Compact COP standards and extending of peer review procedures to accommodate advanced COP category. (v) *Women's Empowerment Working Group* in 2012 with the aim of updating participants on the UNGC activity surrounding the Women's Empowering Principles with an outline of the UK network potential activities. (vi) *Rio+20 Corporate Sustainability Forum (CFS) Working Group* with the aims of defining and implementing the UK's engagement on this issue, opportunities to involve the UK network and best practice. (Source: <http://www.globalcompact.org.uk/about-the-uk-network/working-groups/> (Retrieved 1st September, 2015).

¹⁰¹ Source: <http://www.globalcompact.org.uk/> (Retrieved 30th August, 2015).

¹⁰² This strategic partner is a networking organisation which enables its members to learn from each other and discover good practice in Wales. This organisation works with people and organisations across a broad range of issues, from climate change to economy and fair trade to health. It increases understanding of sustainability issues and good practice and raises awareness of practical resources encouraging sustainable living in Wales. Source: <http://www.cynnalcymru.com>.

¹⁰³ A government department set up in 1997 whose aim is to fight global poverty thus widening the UK's aid programme beyond its traditional economic development. Its objective is to “make global development a national priority and communicate it to audiences both in the UK and overseas [...] [it] is also involved with creating new ‘aid relationships’ with governments of developing countries”.

Union Congress (TUC)¹⁰⁴ and the United Nations Association of Great Britain and Northern Ireland, (UNA), UK¹⁰⁵.

As of August 2015 the Global Compact UK network membership consists of seventy five organisations which include a variety of multinational companies involved in, *inter alia*, (a) management consulting, technology and outsourcing services, (b) the oil, gas and refining industry, (c) the mining and quarrying industry, (d) sustainable investing using technology, (e) semiconductor intellectual property supplier, (f) advisers on risk associated with business responsibility in government, CSR and sustainable development, (g) insurance, (h) energy and energy forecasting solutions (i) global energy market, (j) outer ware retailers, shoe retailers, consumer goods, (k) business, medical, professional imaging, (l) satellite and radio services to organisations working in remote and hazardous areas, (m) catering services, (n) premium drinks, brewers, ethical bottled water, (o) waste management services, technology services, (p) forensic products and services, (q) intelligence agencies, (r) security services, (s) resource exploration and development services, (t) healthcare services, (u) social innovation services, (v) financial services, (w) experiential learning, (x) home improvement retail services, (y) stone, concrete and landscaping services, (z) creative design and software engineering, etc.. In addition to those multinational companies, its membership also includes university business schools in the UK such as Aston Business School which provides inspirational learning and business engagement, Hull University Business School dedicated to responsible leadership for the complex world, Leeds Business School which offers an international business learning experience and universities such as the Universities of Middlesex, South Wales, Winchester and Essex. Global law firms such as Clifford Chance and Freshfields Brukhaus Deringer, international chartered account firms as for example, KPMG and Mazars and the Chartered Institute of Management Accountants (CIMA) also feature as members. Global banks, such as HSBC, Standard Chartered and the Royal Bank of Scotland, the Staffordshire Chambers of Commerce, an international Christian relief organisation, a children's

¹⁰⁴ The TUC represents 66 British trade unions with a total membership of six and a half million members. The TUC campaigns for rights of workers and social justice. Historically the TUC reached a peak of some twelve million workers but since the 1980s and 1990s membership has declined. For an analysis and reasons for that significant decline see Jo Carby-Hall “*Le Syndicalisme en Grande Bretagne: État Actuel et Perspectives*” in “*Le Syndicalisme Contemporain et son Avenir*” (Professor Henryk Lewandowski (Ed)) (1995) Wydawnictwo Uniwersytetu Łódzkiego at pp. 74-112.

¹⁰⁵ This Association is the UK's leading independent policy authority on the United Nations. It is independent from the United Nations and receives no funding whatsoever from it, consequently it can be critical of its decisions and of its activities by calling for reform to enable the UN to become better equipped to fulfil its fundamental functions.

charity, the Equality and Human Rights Commission, the Royal Institute of Chartered Surveyors and a company specialising in the supply chain engagement solutions also feature on the list¹⁰⁶.

Companies which wish to participate in the Global Compact need first to consult the application guidelines¹⁰⁷. In the second instance, a letter of commitment¹⁰⁸ will need to be signed by the highest executive of the company, who will normally be the chief executive officer. The letter of commitment needs to express (a) commitment to the United Nations Global Compact and its ten principles, (b) engagement in partnerships to advance broad United Nations goals and (c) an annual submission of a Communication of Progress. (COP). Finally when the application¹⁰⁹ has been completed it needs to be submitted to the secretariat for processing.

5.4. Global Compact Membership of Enterprises with Less than Ten Employees

The United Nations Global Compact does not currently allow enterprises with less than ten employees to join *officially* the UNGC initiative and database. However, the Global Compact UK network while respecting that policy on small companies, nevertheless argue that

We are conscious of the valuable contribution that smaller organisations can bring to the network. One of our primary goals is to present members with diverse views on the Global Compact's issue areas and including the perspective of smaller organisations is important to us. Therefore we have established a list of organisations that wish to engage with the Network, but cannot join formally. This allows micro enterprises to stay informed of opportunities to engage with the UK Network.

Thus, the possibility is given to small enterprises to be *informed* about the opportunities to engage with the UK network's activities. Furthermore, although most of the UK Network events are for members only "we are prepared to make exceptions to our attendance policy on a case by case basis". This policy is indeed commendable, encouraging and forward looking!

¹⁰⁶ Source: <http://www.globalcompact.org.uk/about-the-uk-network/members/> (Retrieved 1st September, 2015).

¹⁰⁷ To be found at http://www.unglobalcompact.org/HowToParticipate/How_To_Apply.html.

¹⁰⁸ A sample letter of commitment will be found at <http://www.unglobalcompact.org/index.html>.

¹⁰⁹ Which can be made on line or on paper.

5.5. Benefits of the United Nations Global Compact

It will be recalled that the United Nations Global Compact is a purely *voluntary* initiative with the aims of (a) mainstreaming its *ten principles* in global business activities and (b) *catalysing actions* to support the United Nations' goals.

The benefits of companies participating in the United Nations Global Compact are numerous and include (i) advancing responsible corporate citizenship through leadership; (ii) managing risks by taking a pro-active stance on critical issues; (iii) producing practical solutions to contemporary globalisation problems, sustainable development and multi-stakeholder corporate responsibility; (iv) sharing and learning good practices; (v) accessing the UN's broad knowledge on development issues; (vi) improving corporate management, employee morale, productivity and operational efficiencies; (vii) leveraging the UN's global reach and convening power with governments, business, civil society and other stakeholders¹¹⁰.

6. An epilogue

Six matters need highlighting within this epilogue.

6.1. Refocusing from Shareholders to Stakeholders

This research shows that CSR and the UN Global Compact have both had the effect of *refocusing* the business profits ethos from the shareholders to the stakeholders. Such stakeholders are numerous and include not only the employees or workers employed by the company, but also the customers, suppliers and frequently their supply chains. Each of these stakeholders is directly and contractually connected with the company. Other indirectly connected stakeholders may also include NGOs and charities, governments or government departments, trade unions, the media and at times activist groups. Granted that this refocusing is taking place, it is important to note that the number of Global Compact participating companies is statistically significantly smaller, at some 8,000 companies¹¹¹, than the overall number of companies

¹¹⁰ Source: http://www.globalcompact.org.uk/about-the-uk-network/about-the_un-global-compact/ (Retrieved 1st. September, 2015). When joining the United Nations Global Compact, companies are required to make an annual financial contribution. This also applies to those companies joining the UK network.

¹¹¹ This figure excludes the 4,000 non-business partners. See p.14 *supra* for an explanation.

which function globally which includes 45,508 companies *listed* in stock exchanges round the world¹¹². The number of formal *unlisted* companies globally constitutes a wild guess as there is no central quantifying organisation, such as an international registry of companies, in existence. It has been suggested that 115 million such companies operate globally most of which are SMEs. It is therefore unwise to overstate the shareholder/stakeholder *refocusing element* which has come about as a result of the UN Global Compact, other than to say that the Global Compact has a long way to travel to reach the total global figure of listed and unlisted companies. To put in in another way, the Global Compact and CSR both of which are designed to encourage companies to act as socially responsible members of the international community are but two pebbles on a multibillion pebbled beach!

6.2. The Numerous Tentacles of the Global Compact

The road to achieving shareholder/stakeholder refocusing may be a long one, but the principle-based framework of the Global Compact¹¹³ relating to companies operating globally will have the effect, it is suggested, of shortening the long road ahead to shareholder/stakeholder refocusing. These “tentacles” include the numerous *local networks*¹¹⁴ such as the one which exists in the United Kingdom¹¹⁵, the one hundred and two *networks set up globally*¹¹⁶, a cities

¹¹² Source: Quora at <https://www.quora.com> (Retrieved 12th September, 2015). See too the informative materials of the World Bank Data of new businesses registration from 1980 to 2014.

¹¹³ Namely (a), its ten principles in the area of labour, human rights, the environment and anti-corruption and (b) catalysing actions in support to broader United Nations goals, as for example, the Millennium Development Goals. See <http://www.unglobalcompact.org/AboutTheGC/index.html> (Retrieved 17th September, 2015).

¹¹⁴ The function and use of local networks are described as “clusters of participants who [...] advance the United Nations Global Compact and its principles within a particular geographic context. They perform [...] important roles in rooting the Global Compact within different national, cultural and language contexts, and also in helping to manage the organizational consequences of the Global Compact’s rapid expansion. Their role is to facilitate the progress of companies (both local firms and subsidiaries of foreign corporations) engaged in the Global Compact with respect to implementation of the ten principles, while also creating opportunities for multi-stakeholder engagement and collective action. Furthermore networks deepen the learning experience of all participants through their own activities and events and promote action in support of broader UN goals”. Source <http://www.globalcompactnetwork.org/en/the-un-global-compact-eng/global-compact> (Retrieved 3rd September, 2015). See too Local Network Report, 2012 published in 2013.

¹¹⁵ See pp. 20 ss. *supra*.

programme¹¹⁷ whose aim is to improve urban life in cities throughout the world and *Rotary International* partnered with the UN Global Compact¹¹⁸, each of which encourages businesses globally to adopt sustainable and socially responsible policies and report on their implementation. Each of these “tentacles” whether they be within companies, national or global has the effect of spreading the UN Global Compact message within the business world itself, within cities within countries and globally. To that extent the Global Compact and its numerous “tentacles” act as a good missionary for spreading its message across the business world.

6.3. CSR Elevated by the UN Global Compact onto the Global Centre Stage

Before the UN Global Compact came into being, the CSR concept did not enjoy a role on a global centre stage. CSR was certainly talked about and practiced by some companies but did not enjoy the status of being on that centre stage¹¹⁹. It was thanks to the Global Compact with its 8,000 participating

¹¹⁶ Some of these include the United Nations Global Compacts, Australia founded in January 2003, India in November, 2003, Bulgaria in January 2003, Syria in October, 2008, France in 2004, Spain and so on.

¹¹⁷ Source: <http://www.citiesprogramme.org> (Retrieved 7th September, 2015.) In 2001 Melbourne in Australia suggested that both cities and companies should be allowed to join the UN Global Compact. Its argument was that “this would provide a clear statement of a city’s commitment to positive change, as well as motivating participation in international dialogue”. This suggestion was accepted and as from 2002 the UN Global Compact Cities Programme became operative. It should be noted that the Melbourne Model as of 2003, went beyond the UN Global Compact ten principles and in 2007 it went further “by integrating the partnership model with a four-domain sustainability framework named ‘Circles of Sustainability’”. Source Paul James and Andy Scerri “*Auditing Cities through Circles of Sustainability*” in “*Cities and Local Governance*” M. Amen, N.J. Toly, P.L. Carney and K. Segbers (Eds) (2011) Ashgate at pp. 111 – 136. See too Andy Scerri and Paul James “*Communities of Citizens and Indicators of Sustainability*”, *Community Development Journal*, vol. 45. n. 2, 2010 at pp. 219 – 236 and Andy Scerri and Paul James “*Accounting for Sustainability: Combining Qualitative and Quantitative Research in Developing Indicators of Sustainability*” *International Journal of Social Research Methodology*, vol. 13. n. 1. 2010, pp. 41-53. As of 2013, there were 80 member cities in that programme with Melbourne being the one created first in June 2001.

¹¹⁸ Source: http://empathysurplus.com/rotary/?recruiter_id=2 (Retrieved 3rd September, 2015). It should be noted that Rotary International played a part in the chartering of the United Nations. See http://www.unglobalcompact.org/newsandevents/news_archives/2009-11_07.html and <http://www.rotaryfirst100.org/history/history/un/#.VCC3aEsYOxE> (both retrieved 3rd September, 2015).

¹¹⁹ See for example the research carried out in Jo Carby-Hall “*Responsabilité Sociale de L’Entreprise en Common Law et Développement d’Une Corporative Social Responsibility*” in “*Quelle Responsabilité*

companies worldwide described as “the largest voluntary corporate citizenship network of its kind”¹²⁰ that the CSR has since been elevated onto that stage. Furthermore, the global CSR contents form a kind of soft international law on such issues as workers’ rights, human rights, ethical behaviour, environmental responsibilities and general international morality rules all of which spell on the international stage the contents of CSR programmes. It may therefore be said that the UN Global Compact is the document which monitors and gives awareness on the international stage of the CSR concept.

6.4. Criticisms on the Global Compact

There has been some criticism on the UN Global Compact most of which is not unjustified¹²¹. Having discussed this aspect, what has already been said suffices to accentuate and highlight the main points.

The first point to highlight is the fact that the UN Global Compact does not contain any mechanism whatsoever which sanctions member companies which do not comply with the UNGC ten principles. This makes the Global Compact a toothless institution. Secondly, the Global Compact admits among its partners, companies of dubious repute both environmentally and from a labour standards point of view. This means that companies have in the past and/or are actually in the present not respecting one or more of the Compact’s four labour and the six other principles. In the third instance, the company’s continued participation as a partner of the Global Compact concept does not depend upon the manner in which the company is behaving in connection with respecting the ten principles of the compact. There is thus no effective checking by the UNGC Authorities on the companies’ ongoing activities. The lack of effective monitoring and enforcement procedures and the non-accountability of companies¹²² therefore make a mockery of the Global Compact’s principles. Critics say that companies are able to misuse the Global

Sociale pour l’Entreprise? Approches juridiques, nationales et comparatives” (Professor Philippe Auvergnon (Ed)) (2005) Presses Universitaires de Bordeaux at pp. 161-177.

¹²⁰ See Mc Kinsey & Co “*Assessing the Global Compact’s Impact*” (11th (May, 2004) from the UN Global Compact website:
http://www.unglobalcompact.org/docs/news_events/9.1_news_archives/2004_06_09/imp_a_ss.pdf

¹²¹ See pp. 000 ss. *supra*.

¹²² Source: “*Whose partnership for whose development? Corporate accountability in the UN system beyond the Global Compact*”. Forum Europe (Ed.) (2007)
<http://www.scribd.com/doc/17222782/Global-Compact--Alternative-Hearing-2007>.

Compact as a public relations instrument for “bluewashing”¹²³ as “an excuse and argument to oppose any binding international regulation on corporate accountancy” and a door of entry “to increase corporate influence on the policy discourse and the development strategies of the United Nations”¹²⁴.

6.5. *International Framework Agreements (IFAs)*

With the globalisation of production and markets being on the increase, it has become necessary to develop a system of international labour regulation¹²⁵. The International Framework Agreement (IFA) which is a relatively new development¹²⁶ attempts to provide such international labour regulation. IFAs are agreed between global trade union federations and/or works councils and companies’ plants globally and they have the function of defining fundamental labour standards¹²⁷. They also normally extend those labour standards to the *suppliers* of the company which has entered into an IFA. Although IFAs suffer from the same weaknesses as other international instruments which provide for international labour regulation, namely effective legal sanctions, it may be said that at least IFAs having been concluded and agreed by the global social partners, can be monitored and implemented by the employee representatives thus giving IFAs a strong binding (albeit not necessarily a legally binding) character. Furthermore, companies being generally anxious to maintain their reputation tend to respect the labour rights contained in IFAs lest negative publicity has an adverse effect on the company’s reputation through its non-observance of such labour rights.

It is noted that most IFAs are concluded by European companies. IFAs concluded in Asia, North¹²⁸ and South America and Africa are a relatively a

¹²³ See K. Bruno and J. Carliner “*Tangled Up In Blue: Corporate Partnerships in the United Nations*”, (2000).

¹²⁴ G. Knight and J. Smith “*The Global Compact and its Critics: Activism, Power Relations and Corporate Social Responsibility*” (2008) <http://www.scribd.com/doc/17030875/The-Global-Compact-and-its-critics> in *Discipline and Punishment in Global Politics: Illusions of Control* (2000).

¹²⁵ It should be noted that instruments for the international regulation of labour already exist. Examples include the OECD Guidelines for Multinational Enterprises (March, 2012 and 2013); the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy (28th March, 2006) as well as other ILO instruments. The problem with each of these is that the sanctions are weak or non-existent.

¹²⁶ See pp. 12-14 *supra*.

¹²⁷ These fundamental labour standards treat generally the ILO core conventions.

¹²⁸ In the USA for example, there is neither a culture nor basis for social dialogue and in many cases employers do not recognise trade unions.

new phenomenon¹²⁹. The reason for this is that within the countries of those continents there does not exist a culture of social dialogue whereas in Europe the social dialogue concept is encouraged and developed through both European and national policies¹³⁰ and legislation¹³¹. The social dialogue tradition¹³² encourages and facilitates the conclusion of IFAs by reason of the fact that the social partners are experienced in negotiations and in reaching compromises and have a strong commitment towards cooperative labour regulation. Furthermore, respect for fundamental labour rights¹³³ spells good corporate management and an important element in the acquisition and retention for customers.

IFAs should contain a number of essential features. In the first instance they should contain *comprehensive labour standards*¹³⁴, be *transparent*, and *clear, unambiguous*, not subject to different interpretations and worded in such a way that they are readily understood in all the countries in which the company operates.

¹²⁹ The excellent work performed by the Global Union for Skills and Services (UNI Global) to encourage the effective conclusion of IFAs by multinationals in those continents should be particularly noted.

¹³⁰ In the case of the British Isles see Jo Carby-Hall “*The Social Dialogue in the United Kingdom and its Effectiveness*” in “*Przyszłość Prawa Pracy*”(Professor Zbigniew Hajn and Dagmara Skipień (Eds)) Wydawnictwo Uniwersytetu Łódzkiego (16th October 2015) at pp. 601-643.

¹³¹ For example, the laws on redundancy (See Jo Carby-Hall “*Redundancy in the United Kingdom*” in “*I Licenziamenti per Riduzione di personale in Europa*” Professors Bruno Veneziani and Umberto Carabelli (Ed.) SOCRATES PROGRAMME (2001) Cacucci Editore at pp. 387-537); transfers of undertakings (Jo Carby-Hall “*Transfer of Undertakings in the United Kingdom*” in “*La Transmisión de Empresas en Europa*” Professors Bruno Veneziani and Umberto Carabelli (Eds) SOCRATES PROGRAMME (1999) Cacucci Editore pp. 187-263); health and safety at work (Jo Carby-Hall “*Health, Safety and Welfare at Work*” Managerial Law vol. 31 No 1/2 (1989) MCB University Press); contracts of employment (Jo Carby-Hall “*The Contract of Employment: Nature and Formation*” Managerial Law vol. 25 No 5 (1983) MCB University Press to name but a few.

¹³² The works councils, co-determination, supervisory boards and so on systems, which exist in various European countries are social dialogue based rather than being based on an adversarial system.

¹³³ Namely the core labour rights as provided by the following eight ILO Conventions these being, the Forced Labour Convention, 1930, Freedom of Association and Protection of the Right to Organise Convention, 1948, the Right to Organise and Collective Bargaining Convention, 1949, the Equal Remuneration Convention, 1951, the Abolition of Forced Labour Convention, 1957, the Discrimination (Employment and Occupation) Convention, 1958, the Minimum Age Convention, 1973, and the Worst Forms of Child Labour Convention, 1999.

¹³⁴ These standards need to be consistent with the ILO standards which include the prohibition of child and forced labour, discrimination, freedom of association and collective bargaining.

In addition to containing the core international standards the IFA should in the second place cover the *entire enterprise* which would include the supply chain, the company's subsidiaries as well as any joint ventures. Thirdly, the IFA must be *implemented* in a meaningful manner which signifies that implementation has to be communicated in a way in which the average employee or worker and all those such as the suppliers in whichever country fully understand its implications. Furthermore, training is essential at all company levels in order that everyone understands the standards required and the way in which they are applied in the company.

Finally, the IFA needs to be *enforced*. Legal enforcement of IFAs agreed to by the social partners is somewhat problematic¹³⁵ for the reasons already given, but it can be enforced in other ways, for example through global industrial relations, agreed to by the global social partners. An agreed dispute resolution system is essential to solve any problems caused were the IFA terms and conditions to be breached by either of the social partners. Such a system would ensure the integrity and seriousness of the procedure. Arbitration agreed to between the global social partners has already been mentioned¹³⁶ but conciliation and mediation may be other options available to resolve a dispute. Whatever enforcement mechanism is agreed between the global social partners, such agreed procedure must be transparent. One method used to achieve transparency is constant or intermittent *monitoring*¹³⁷. Another method used is the publication of the agreed disputes procedures to all concerned which would stress the fact that the settlement of any problems which arise will be decided on an equitable and fair manner¹³⁸.

To be effective, IFAs should therefore contain the matters mentioned above, namely the labour standards, transparency, clarity and unambiguous materials, the coverage of the entire enterprise, meaningful implementation and enforcement other than legal enforcement. IFAs effectively entered into by the global social partners spell the improvement on an international scale of working standards. More however needs to be done than simply the global partners entering into an IFA. The necessary training, including its resourcing,

¹³⁵ For a discussion on some of the reasons see p. 13 *supra*.

¹³⁶ See footnote 131 above.

¹³⁷ By trade unions, another or other outside independent bodies such as NGOs, or an individual with international industrial relations experience or again an independent government body which specialises in international industrial relations disputes procedures.

¹³⁸ It be noted is the fact that some IFAs do not provide for an enforcement method to be used. The IKEA IFA for example is one such agreement. The social partners therefore have no recourse whatsoever to any method of settling differences of opinions in the interpretation of the IFA's terms. The IKEA IFA provides for the setting up of a "global compliance and monitoring group" without developing this notion by mentioning specifically any form of dispute settlement. Source: <http://www.bwint.org/default.asp?Index=46&>.

of the key actors needs to be undertaken, there must be effective communication between all the sites in which the company operates globally, such communication extending to governments, trade unions and/or works councils.

6.6. The Future Perspectives of CSR, IFAs and the Global Compact?

Looking towards future perspectives, it may well be that CSR and IFAs will prove functional in eliminating many of the evils which currently exist at the beginning of the 21st century, particularly poverty, the ever decreasing employee and worker rights as well as social security rights¹³⁹ human rights generally and particularly in employment and environmental issues. The Global Compact will be the very instrument which will propel CSR programmes to develop internationally and to find answers to problems which are most likely to occur in the latter part of the 21st century.

“Large streams from little fountains flow. Tall oaks from little acorns grow”¹⁴⁰. For the future may the concepts of Corporate Social Responsibility and the United Nations Global Compact and their respective tributaries, such as International Framework Agreements, Triple Bottom Line, *etc.* result in large streams expanding into rivers and mighty oak trees growing ever taller.

¹³⁹ At least in the United Kingdom where worker rights are systematically eroded by government policies and where the many rights given to workers thanks to European Union legislation are, at the time of writing, particularly vulnerable by reason of the British government intending to re-negotiate its terms for remaining in the European Union. The social rights in those negotiations are particularly vulnerable. For an analysis of those loss of rights see Jo Carby-Hall “*Main Measures Taken in the Fields of Social Security, Pensions and Labour Law in the Fight Against the Economic Crisis. The British Position*” in “*Formas Laborales Frente A La Crisis A La Luz de Los Estándares De La OIT*” Professor José Luis Gil y Gil (Ed) (2014) Juruá Editorial (Portugal) at pp. 319 – 379. See too Jo Carby-Hall “*Access to, and Retention of, Employment of Disabled Persons – The British Legal Framework*” in *Revista Derecho Social y Empresa*. Supplement No 1, April 2015 “*The Right to Work of Persons with Disabilities: National Experiences in the EU and International Contexts*” Editorial Dykinson (Spain) at pp. 250-275.

¹⁴⁰ D. Everett in “*The Colombian Orator*” (1794).

Human Capital and Earning Differentials for Canadian Artists

Laurence D. Dubuc *

Abstract. Artists have traditionally been depicted in academic literature as younger and more educated workers who gain less economic returns from their human capital investment and earn significantly lower self-employment income than workers showing similar human capital features on more traditional labour markets. Filling an important gap in the literature relating to Canadian artists and their financial situation on the labour market, this article estimates the effect of human capital features and other socio-demographic variables on self-employment income of 9 categories of artists using data drawn from the Canadian census of 2006. Results show that experience is not generally associated with an increase of earnings for Canadian artists. Moreover, in opposition to human capital theory, a higher level of education is not consistently associated with higher earnings. Rather, it seems that only particular diplomas yield positively on earnings depending on artistic specialty. This indicates that there exist a few precise profitable profiles of education in each different field of the arts. Our findings constitute a major contribution in cultural economics while providing useful information to educational policy designers in Canada.

Keywords: *Human Capital, Canadian Artists, Earning Differentials, Cultural Economics, Artistic Labour Market, Artistic Careers.*

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1. Introduction

As creativity has become more widely recognized as a competitive advantage facilitating innovation and allowing companies and industries to differentiate themselves, economists have become increasingly interested with cultural industries and the arts in general. Adding to this interest is the fact that the cultural sector now generates multiple positive externalities, such as important job creation. According to Menger (2001), even though there are slight chances of success in artistic professions, “artistic labor markets are steadily expanding, and growing numbers of new candidates to fame or to self-achievement enter the market”¹ (242). Forming a somewhat heterogeneous occupational group in terms of qualifications, abilities and networking capacities, important wage differentials are more likely to exist between artists, particularly on the basis of their artistic specialty. Additionally, and perhaps more importantly, wage differentials may be even more important between artists and other individuals showing similar human capital features on traditional labour market. Building off empirical results of studies conducted by Alper and Wassall (1992) and Throsby (1994), Menger describes artists as an occupational group in the following way:

Artists as an occupational group are on average younger than the general work force, are better educated, tend to be more concentrated in a few metropolitan areas, show higher rates of self-employment, higher rates of unemployment and of several forms of constrained underemployment (nonvoluntary part-time work, intermittent work, fewer hours of work), and are more often multiple job-holders. They earn less than workers in their reference occupational category, that of professional, technical, and kindred workers, whose members have comparable human capital characteristics (education, training and age) and have larger income inequality and variability².

Theoretically, what is interesting in this depiction of artists and their characteristics on the labour market is that human capital theory seems to apply only partially to them. Human capital theory, as elaborated by G. S. Becker in 1964 in his landmark work *Human capital*, relies on the assumption that investing in activities that are aimed at enhancing individual productivity (e.g. educational or training) will translate into higher individual earnings over time. In cultural economics, a recurrent paradox arises from the fact that artists’ remuneration is also importantly determined by talent, which cannot be taught. Regarding this issue, Towse (2006) concludes the following “inherited

¹ P.-M. Menger, *Artistic labor markets and careers*, in *Annual Review of Sociology*, no. 25, 241 – 254.

² P.-M. Menger, *Artists as workers: theoretical and methodological challenges*, in *Poetics*, 2001, no. 28, 541 – 574.

characteristics, tacit knowledge, innate ability and acquired skills; each plays some role in the individual's productivity and earning power but how much influence is exerted by one or the other has proved difficult to pin down"³. The recognition of the effects of both education and experience on earnings dates back to Adam Smith's *Wealth of a nation* (1776), where he was already commenting on the remuneration superiority of certain types of highly appreciated artists. As human capital features can be enhanced through education and on-the-job training, two common ways of measuring these in economics are coherently found to be the level of education of an individual and his experience on the labour market.

Empirically, Menger's description of artists' features on the labour market has been tested and found to be accurate in many studies conducted by researchers⁴ in Australia and the United States. But does Menger's characterization of artists' features apply to the Canadian case? Answering this question will be the main focus of this paper. It is certainly possible to find satisfactory statistical information on artists and cultural labour markets in Canada through Statistics Canada, Hill Strategies Research Inc., and other specialized organizations such as the Institut de la Statistique du Québec (ISQ) and Observatoire de la Culture et des Communications du Québec (OCCQ). Some of these specialized data sources along with a tradition of public support of the arts show that Canada does take interest in the monitoring of its cultural sector. As for prior work on the object of interest in Canada, it is our understanding that existing studies generally do not offer associative explanations of the level of earnings between artists of different specialties and/or of different levels of schooling, etc. To our knowledge, the only study on artists' earnings differentials is Panasuk's (1974), which shows that Canadian artists were earning on average 6% less than other occupations. However, Panasuk's study does not control for important determinants of remuneration such as the socio-demographic characteristics of the individuals constituting the samples, even though gender and status of immigrant, to mention only a few, are largely recognized today as wage determinants.

When looking at statistics on the employment situation of Canadian artists, we find that both the 2011 National Household Survey (NHS) and the Labour Force Survey (LFS)⁵ show that 11% of responding artists reported having at

³ R. Towse, *Human capital and artists' labour markets*, in V. Ginsburgh and D. Throsby, *Handbook of the economics of the arts and culture*, Amsterdam: North Elsevier, 2006, chapter 24, 865 – 894.

⁴ To mention only a few, G.D. Snooks (1982), G. Withers, M. Rengers (2002) in Australia and R. K. Filer (1990) and Alper and Wassall (2006) in the United States.

⁵ Hill Strategies Research Inc. A Statistical profile of artists and cultural workers in Canada, 2014, <http://www.hillstrategies.com/content/statistical-profile-artists-and-cultural-workers-canada> (accessed September 1st, 2015)

least two jobs as opposed to 5% for other occupations. More importantly, the same databases also provide estimates of self-employment rates. The numbers show that these rates are as high as 51% (NHS) and 70% (LFS) for artists as compared to respectively 11% and 15% for other occupations. Even though these data sources have some limitations due to relatively small samples sizes, particularly for artists, we can nevertheless observe that some of the features described by Menger (2002) seem to be accurate within the Canadian context. Moreover, sorting income data drawn from the Canadian census of 2006, which was the most recent census available when this study was conducted, we observe that the median⁶ value of self-employment weekly earnings of artists in 2005 was 335\$ while for other occupations the median value of labour weekly earnings was 735\$. Investigating time allocated to work for both groups, we find that artists and other occupations both worked on average 45 weeks in 2005, but that other occupations work on average 3 additional hours per week than artists. On the whole, this represents a very small gap in time allocation that does not seem sufficient to explain such important earnings differential between both groups as reported above.

Our article seeks to fill the important gap in cultural economics literature in the Canadian context by investigating the grounds on which these earnings differentials lie. We proceed to estimate the impact of certain human capital features and other socio-demographic variables known to discriminate between individuals on the labour market on Canadian artists' self-employment earnings. In our opinion, conclusions derived from our study will provide Canadian policymakers with new information related to the most rewarded features on the artistic labour market. On this matter, we agree with Towse (2006) that "the study of artists' labour market is important in cultural economics because we need to understand what factors affect supply of work by creative artists and performers since cultural policy, whatever its explicit aims, is ultimately designed to encourage creativity"⁷.

This topic also proves to be highly relevant to larger areas of inquiry within the field of industrial relations such as the proliferation of new forms of arrangements on the labour market like freelance and project-based work,

Note that Hill Strategies Cabinet use an Index set at 100 regarding the three-year moving averages they use in order to compare the growth of relatively small artists' sample with overall labour force.

⁶ As artists tend to show great disparity of wages/earnings as an occupational group, it is thus more adequate to use median values in comparison to mean values when analyzing statistics relating to the matter. Also note that these numbers are drawn from our samples, whose will be described further in the article.

⁷ R. Towse, *Human capital and artists' labour markets*, in V. Ginsburgh and D. Throsby, *Handbook of the economics of the arts and culture*, Amsterdam: North Elsevier, 2006, chapter 24, 865 – 894.

which represents a typical form of employment for artists. Because of the high level of flexibility that seems inherent to careers in the arts, Menger (2002) mentions that these could represent a generalized career model in the future. Also, as we point to creativity as one of the new major drivers of economic configurations (Sacco and Segre, 2009; Storper and Scott, 2009), we can no longer afford to conduct strictly descriptive studies on artistic and cultural workers, as these do not allow us to fully understand the particular dynamics that occur on the labour market. In addition, descriptive accounts prevent us from providing pertinent recommendations that will guide artists to take better decisions regarding their investment in human capital. For example, since artists are often multiple-job holders, human capital acquisition can work as a signal for employers on the traditional labour market that will work as a positive mechanism to access higher earnings on that particular market. Also, we are very much interested in the different roles educational institutions can play in providing artists with a better future. More precisely, we wish to address the fact that because arts appreciation relies heavily on education, these institutions can also be understood as channels through which we could generate a raise of demand for artistic and cultural goods.

We start by reviewing the cultural economics empirical studies conducted on a similar subject. We then present the methodology for estimating the impact of human capital features on Canadian artists' self-employment weekly earnings. The third section shows results that were statistically significant and bring new information regarding Canadian artists' earning power. To conclude, we discuss the implications of educational institutions and the different ways they can directly and indirectly take action in the human capital debate applied to the artistic labour market.

2. The Review of Empirical Studies on Human Capital and Artists' Earnings

This brief section presents the results of a few empirical studies measuring the effect of different human capital features and socio-demographic variables on artists' earnings. All these studies used the following traditional mincerian equation (1958) as their methodology to run regression analysis:

$$y = \beta_0 + \beta_1 s + \beta_2 x + \beta_3 x^2 + u$$

Where y represents earnings or wages, β_1 represents the education variable coefficient, β_2 and β_3 represents the experience variable coefficients showing a

quadratic relation to earnings and η represents the residual term. Human capital is thus empirically measured with an earnings function's model allowing us to proceed to "any regression of individual wage rates or earnings on a vector of personal, market and environmental variables thought to influence the wage"⁸. Note that experience is also traditionally measured by the mincerian equation $x = a - s - \phi$ where a represents age, s the education level measured by the number of years of schooling completed and ϕ the age an individual normally enters school.

In Australia, Snooks (1983) conducted a study on a sample of 360 artists randomly selected. Running a regression analysis on annual earnings and on the log of hourly wages separately, he found that human capital features did not have a significant effect on both dependent variables. The determinants of artists' earnings were identified as gender, artistic specialty and number of children in the household, a proxy for parental responsibility. Note that some critics pointed to the very small sample used by Snooks that had an overall low representativity potential, especially for statistical analysis. Withers (1985) proposed a similar study on a sample constituted of 976 Australian artists. Running his equation with the log of hourly wage as the dependent variable, he found that human capital features had an impact on artists' earnings, but to a lesser level than for other occupations. With low values of adjusted R², he suggested that talent and innate abilities might play a more important role in the determination of earnings for artists. Rengers (2002) used an already existing sample of 950 Australian artists that allowed him to access detailed information regarding their earnings on the traditional labour market versus the artistic labour market, as many artists often hold multiple jobs. What he found was that human capital features did have a positive effect on artists' earnings on the artistic labour market, but that the effect was more important on the traditional labour market. Gender also was identified as a major earnings' determinant, with female artists being financially penalized when compared to male artists even though showing similar human capital features.

In the United States, Filer (1990) used data drawn from the 1980 census to estimate the effect of human capital features and other socio-demographic variables on total annual earnings. After sorting the initial 82 000 individuals classified as artists to keep only those working full-time in their arts job, he did not specify the actual size of the reduced sample. Moreover, keeping only full-time artists in his sample seemed biased, as they regularly have to work part-

⁸ Willis, R, *Wage determinants: A survey and reinterpretation of human capital earnings functions*, in O. Ashenfelter and R. Layard, eds, *Handbook of Labor Economics*, Amsterdam: Elsevier/North Holland, 1986, 525 – 602.

time in their arts job while simultaneously working on the traditional labour market to fund their art activities. His conclusions were that education did affect positively artists' income but to a lesser level than for other occupations and that the yield of human capital features on earnings were varying importantly according to the artistic specialty. Towse nevertheless disputed Filer's conclusions in 2001 as the latter used aggregate income data. Finally, Alper and Wassall (2006) conducted a longitudinal study on American artists using data also drawn from every census between 1940 and 2000. With samples varying from 3 863 to 109 469 individuals, they also regressed human capital and socio-demographic variables on annual earnings. They again found that education yields positively on artists' earnings but to a lesser level than for other occupations and that socio-demographic variables yield differently from one artistic specialty to the other. For a more detailed review of this literature one can refer to Towse (2006).

3. Methodology

Our data comes from the Canadian census of 2006 where occupations are classified according to the National Occupational Classification for Statistics (NOC-S). To be considered an artist by Statistics Canada, an individual has to have devoted more than half of his labour time in an artistic occupation, a definition that represents an important limit linked to the professional identity and financial situation of many artists⁹. To proceed to the inclusion of certain categories of artists in the sample, we proceeded to the comparison of the artistic specialties that had been selected by Alper and Wassall in 1982 and 2006, by Filer in 1990, and by Hill Strategies Research Inc. in their recent statistical study on Canadian artists' earnings (2009). To proceed to their selection, Hill Strategies used two criteria. First of all, the title and NOC-S description were used to determine whether the profession was of an artistic nature, then were selected the artists' categories that had the most recurrent possibility to ask for subsidies to the different arts councils in Canada.

Below is the list of artists we have selected for our study. Because it was in accordance with the literature we presented earlier, we chose the exact same

⁹ For example, if in 2005 a painter, for different reasons, has been working 49% of the time on his canvases, he will not be considered in the census as an artist. It does not seem sensitive to the fact that artists, for financial reasons, often hold multiples jobs. This represents a limit that has been encountered by numerous authors working with census data in cultural economics.

categories as Hill Strategies¹⁰. In parenthesis are found the NOC-S reference codes.

1. Actors and comedians (F035)
2. Artisans and craftspersons (F144)
3. Authors and writers (F021)
4. Conductors, composers and arrangers (F032)
5. Dancers (F034)
6. Musicians and singers (F033)
7. Other performers (F132)
8. Painters, sculptors and other visual artists (F036)
9. Producers, directors, choreographers and related occupations (F031)

To create our samples, we also arbitrarily filtered for a minimal level of annual earnings fixed at 5 000\$ for self-employment earnings and labour earnings, to make sure artists included in the sample were engaged in the sale of their products/services and not just doing art as a recreational activity. Indeed, sometimes the earnings associated with artistic work are so low that very wealthy people could be considered artists by Statistics Canada while not having to work for a living. We chose not to restrict our artists' sample to only full-time workers; this decision would have been inappropriate considering that they often hold multiple jobs and are regularly working part-time in their arts jobs (Benhamou, 2000; Menger, 2001 ; Papandrea and Albon, 2004 ; Throsby, 2011). We removed artists that had a degree in medicine/dentistry/veterinary medicine/optometry, as its influence on the level of earnings of artists would constitute an important bias. Note that the samples have been weighted to meet Statistics Canada requirements, meaning they represent the population studied and not the actual number of individuals on whom is drawn this study. Population constituting other occupations is $N = 14\,994\,000$ individuals while the one of artists is $N = 39\,315$ individuals. Table 2 shows variables means for artists' sample.

The dependent variable has been manipulated in order to create weekly earnings; we divided annual earnings by the number of worked weeks in 2005 and expressed the result under its logarithmic form. The independent variables, chosen according to cultural economics literature and other similar studies are the level of schooling, experience, gender, status of immigrant, status of visible

¹⁰ Note that all individuals belonging to these categories (apart from 1, 5 and 6) can be self-employed as well as salaried. Secondly, if specialised teachers in arts are included in these categories, teachers of elementary school, high-school and post high-school are included in the category E1 – teachers, and thus even if they teach arts they are not considered as artists.

minorities¹¹, legal marital status¹², zone of residence, household maintainer and artistic specialty. All socio-demographic variables are dummy variables. Table 1 shows descriptive statistics of both of our samples. We can see that artists are on average 3 years older than members of other occupations, which is not consistent with Filer's suggestion (1990) that artists would get less economic returns on their investment in human capital as they would be on average younger than the other members of the labour force. Also, beside a smaller fraction of artists who declared being members of visible minorities (11% compared to 17% for other occupations), we find that overall the statistical portraits of both samples are similar, which allow us to investigate the determinants of artists' earnings in order to identify the grounds on which the earnings differential lies.

Table 1: Descriptive Statistics Comparing Socio-demographic Features of Artists and Other Occupations

Variables	Artists (<i>N</i> = 39 315)		Other occupations (<i>N</i> = 14 954 685)	
Age (mean)	44		41	
	Number (<i>N</i>)	Percentage (%)	Number (<i>N</i>)	Percentage (%)
Member of visible minorities (status of visible minority)	4140	11%	2 572 255	17%
Household maintainer	22 050	56% ¹³	7 902 785	53% ¹⁴
Immigrant (status of immigrant) ¹⁵	8640	22%	3 193 065	21%
Married (legal marital)	18 630	47%	7 644 455	51%

¹¹ Classification of members of visible minorities by Statistics Canada: Chinese, South Asian, Black, Filipino, Latin America, Southeast Asia, Arab, West Asian, Korean, Japanese, multiple visible minorities, not a member of visible minorities.

¹² Classification of legal marital status by Statistics Canada: married, widowed, separated, divorced, single.

¹³ Because of missing values the ratio has been calculated on a total of *N* = 39 250.

¹⁴ Because of missing values the ratio has been calculated on a total of *N* = 14 917 425.

¹⁵ We included in this category immigrants that were not permanent residents.

status)				
Urban area (zone of residence)	33 745	86% ¹⁶	12 107 420	81%
Female (gender)	19 530	49.7%	6 984 380	47%
Male (gender)	19 785	50.3%	7 970 305	53%

Source: Statistics Canada, 2006 census, author's estimation.

An important feature was found when sorting data related to the schooling variable. Indeed, while observing the general level of education of Canadian artists, we found that 53% of them had a university diploma or degree, compared to 23% for other occupations. Even though this feature of Canadian artists regarding education falls in accordance with statistical portraits already depicted by authors studying the same occupational group in other countries, it does not comply with human capital theory as defined by Becker in 1964 in which much emphasis is put on the economic importance of education.

Empirically, human capital theory can be translated into an equation allowing the regression of an individual's wage or earnings on a vector of personal and/or market and environmental variables. Inspired by the first econometric model developed by Mincer (1958), we apply the following equations (1) (2) to our first sample constituted of other occupations (**a**) and second sample constituted by artists (**b**) of every specialties. :

$$(1) \quad \ln w = a_0 + a_1 S + a_2 E + a_3 E^2 + \sum_{i=1}^n a_{4i} x_i + \varepsilon$$

$$(2) \quad \ln w = b_0 + b_1 S + b_2 E + b_3 E^2 + \sum_{i=1}^n b_{4i} x_i + \varepsilon$$

Where $\ln w$ represents the 2005 weekly earnings expressed under its logarithm form;

S represents the level of schooling measured by the highest certificate or degree obtained

E represents experience on the labour market measured by the proxy constituted by age and squared age¹⁷;

¹⁶ We removed individuals that answered "no object" in this category so the ratio has been calculated on a total of $N = 39\,090$.

¹⁷ Note that because the Canadian census had already stopped in 2006 giving the number of years of schooling completed as a measure of the level of education, we are not using Mincer's

- x_i represents the control variables;
 ε represents the residual term

We apply equation (2) to the artists' sample to estimate the yield of our independent variables on the weekly self-employment earnings according to their artistic specialty to consider their heterogeneous features.

$$(2) \quad \ln w = b_0 + b_1S + b_2E + b_3E^2 + \sum_{i=1}^n b_{4+i} x_i + b_5 OCC + \varepsilon$$

Where OCC represents the artistic specialty

We use traditional Ordinary Least Squares (OLS) as our estimator as it is more reliable when using multiple regression analysis. Relying on cultural economics literature, we were able to draw three principal hypotheses:

- a) Human capital features – education and experience - will yield positively on artists' self-employment earnings, but to a lesser degree than for other occupations on the traditional labour market.
- b) The yield of socio-demographic variables on self-employment earnings will vary greatly according to the artistic specialty.
- c) We expect that being a man in both samples will translate into higher earnings.

The following section shows the obtained results that were statistically significant with $p \leq 0.05$. Note that because of the low level of adjusted R2, which could indicate that talent and innate abilities are more important earnings' determinants, we are not showing results applying to authors/writers, musicians/singers and producers/directors/choreographers/other related occupations, leaving us with 6 artistic specialties.

traditional proxy for experience. We inspired our method from P. Ebrahimi and F. Vaillancourt (2010) who studied the private and social yields of a university level of schooling in Quebec according to different disciplines. The authors used a similar methodology to ours and using the 2006 Canadian census, they encountered the same problem we did regarding the measure of education in the creation of a proxy for experience.

Table 2: Variable Means for the Artists' Sample

Variable <i>N = 39 315</i>	Mean	Standard deviation
Log weekly self-employment earnings	5,9148	2,00295
Human capital variables		
Age	44,01	30,475
Squared age	2084,1498	2776,35856
Crafts diploma	,0283	,41607
Secondary school diploma or equivalent	,1961	,99684
Apprenticeship or trades certificate or diploma	,0108	,25990
Non-university 3 months to 1 year diploma	,0142	,29753
Non-university 1 year to 2 years diploma	,0731	,65340
Non-university more than 2 years diploma	,0941	,73322
University diploma below bachelor level	,0756	,66376
Bachelor degree	,3016	1,15228
University diploma above bachelor level	,0404	,49418
Master's degree	,0968	,74231
Earned doctorate	,0156	,31141
Socio-demographic variables		
Married (marital status)	,4640	1,25213
Household maintainer	,5597	1,24641
Immigrant (status of immigrant)	,2143	1,03033
Male (sex)	,5059	1,25529
Member of visible minorities	,1018	,75924
Urban area (zone of residence)	,8630	,86334
Artistic specialty		
Actors/comedians	,0989	,74963
Craftspersons	*	*
Authors/writers	,1561	,91130
Conductors/composers/arrangers	,0189	,34200
Musicians/singers	,3262	1,17711
Dancers	,0418	,50243
Other performers	,0241	,38522
Painters/sculptors/other visual artists	,1258	,83260
Producers/directors/choreographers/related occupations	,1132	,79562

Source: Statistics Canada, 2006 census, author's estimation

* Craftspersons were excluded as constituting reference group for artists' sample.

4. Results

4.1. Artists versus other Occupations on the Traditional Labour Market

Table 3 shows results of the regression analysis applied to weekly labour earnings of other occupations in relation to artists. The reference group is constituted of (1) women from the other occupations who (2) do not have a diploma, (3) are not married, (4) are not immigrant, (5) are not a member of visible minorities, (6) are not the head of the household, and (7) live in an urban zone of residence. Note that the results section focuses on the effect of the separate variables included in our model, assuming that other things are being held equal.

Regarding other occupations' human capital features, we observe that an additional year of experience on the labour market yields a 2% increase of weekly earnings. This suggests that investing in the acquisition of experience on the labour market is, as predicted by human capital theory, associated with higher earnings. When it comes to the impact of an increase of the level of education, results show all diplomas yield an increase of weekly labour earnings except the apprenticeship or trades certificate diploma. In accordance with human capital theory, if we choose not to take account of the degree in medicine/dentistry/veterinary medicine/optometry, an increase of the level of education measured by the obtention of a superior degree or diploma shows a growing relation with weekly labour earnings for other occupations. For example, having a high-school diploma yields a 6% increase of weekly earnings when compared to having no diploma, while a Bachelor's diploma yields a 55% increase, a Master's degree a 71% increase and an earned doctorate a 112.5% increase.

Regarding the economic returns of socio-demographic variables on weekly labour earnings, we observed that being a male, married, head of household and living in an urban area is translating into respectively a 26%, 10%, 10% and 5% increase of earnings. Because of discrimination on the labour market, we can observe that being an immigrant and a member of visible minorities is associated respectively with a 19% and 18% decrease of earnings.

We can also observe that choosing a career in the arts is financially very penalizing on the traditional labour market, except if you are an actor/comedian. A plausible explanation could be that for this artistic specialty, the superstar phenomenon is more likely to be accurate within the Canadian context. According to the superstar theory, for careers whose wages/earnings are largely determined by talent such as arts or sports' careers, only a few individuals will have the sought-after talent or the capacity to efficiently

instrumentalize their networks and thereby hog the lion's share of these wages/earnings, leaving the large majority with a very little share of the pie (Rosen, 1981; Alder, 2006). Regarding the other artistic specialties, choosing an artisan/craftperson's career is associated with a 44% decrease of weekly labour earnings, an author/writer's career with a 27% decrease of earnings, a conductor/composer/arranger's career with a 36% decrease of earnings, a musician/singer's career with a 58% decrease of earnings, a dancer's career with a 23% decrease of earnings, another performer's career with a 20% decrease of earnings, a painter/sculptor/other visual artist's career with a 48% decrease of earnings and a producer/director/choreographer/other related occupation's career a 4% decrease of weekly labour earnings.

An important feature mentioned by Robinson and Montgomery (2000) in their study of a sample of American artists from different fields was that being a union member was associated with a 55% increase of art-income. Even though it is impossible for us to draw the same type of reflexion since the Canadian census do not include information relating to the status of unionization and since we also use another more general form of earnings as our dependent variable, it is worth noting that the cinema industry, in which the last category of artists included in our sample is mostly present, is highly unionized in Canada. It is also this artistic specialty that is associated with a less important decrease of earnings when compared to other occupations, while the category constituted of painters/sculptors/other visual artists, identified as Robinson and Montgomery as the category that were earning the lowest level of income, are mostly self-employed. In our case, this category is, along with musicians/singers, the one associated with the highest decrease of earnings when compared to other occupations. This suggests that a further study of the impact of the status of unionization on artists' earnings could be extremely relevant in the Canadian context.

Table 3: Regression results on labour weekly earnings comparing artists to other occupations

Model	Coefficient ¹⁸	Statistic
N = 14 994 000		
(constant)	5.401*	571.798
Age	.020*	49.951
Age2	.000*	-49.018
No diploma	--	--
Crafts diploma	-.040*	-11.346

¹⁸ * is for coefficient statistically significant with $p \leq 0.05$.

Secondary school diploma or equivalent	.060*	21.780
Apprenticeship or trades certificate or diploma	.010*	2.594
Non-university 3 months to 1 year diploma	.192*	34.505
Non-university 1 year to 2 years diploma	.120*	34.391
Non-university more than 2 years diploma	.188*	51.844
University diploma below bachelor level	.306*	74.321
Bachelor degree	.553*	185.149
University diploma above bachelor level	.681*	130.988
University diploma above bachelor level	1.744*	412.701
Degree in medicine, dentistry, vet medicine or optometry	.714*	181.201
Master's degree	1.125*	174.115
Earned doctorate	.105*	61.545
Married (marital status)	.105*	60.311
Household maintainer	-.191*	-90.884
Immigrant (status of immigrant)	.262*	151.153
Male (gender)	-.182*	-72.359
Member of visible minorities	.052*	26.051
Urban area (zone of residence)	--	--
Other occupation	.071*	5.228
Actors/comedians	-.438*	-31.653
Artisans/craftspersons	-.272*	-25.202
Authors/writers	-.358*	-11.554
Conductors/composers/arrangers	-.578*	-77.000
Musicians/singers	-.231*	-11.073
Dancers	-.203*	-7.419
Other performers	-.478*	-39.855
Painters/sculptors/other visual artists	-.041*	-3.257
Producers/directors/choreographers/related occupations		

Source: Statistics Canada, 2006 census, author's estimation (R2: 0.233/Squared R2: 0.233)

4.2. Artists Versus Other Occupations on the Self-Employed Labour Market

Table 4 shows results of the application of our model to the same sample and reference group as table 1, except that the regression analysis was conducted on self-employment weekly earnings. Regarding human capital features, the yield of experience is the same for other occupations on both markets, meaning that an additional year on the self-employed labour market is translating into a 2% increase of the weekly income. When it comes to

education, we can observe that again, all diplomas yield positively on self-employment earnings except for the crafts diploma and the apprenticeship/trades certificate/diploma, but generally to a lesser degree than on traditional markets. This could indicate that education is less financially compensated on the self-employed labour market. It seems that the acquisition of a higher level of education is again associated with higher earnings by showing a growing relation, as predicted by human capital theory, with the exception of university diplomas above the bachelor and the Master's level, where the positive yield of the former on self-employment weekly earnings is 3% superior than the yield of the latter.

Regarding the yield of socio-demographic variables, we can observe that being a male, married, head of household and living in an urban area is again associated to respectively a 26%, 7%, 9% and 3% increase of weekly self-employment earnings. Also, being an immigrant and a member of visible minorities is associated with respectively a 15% and 16% decrease of earnings. Table 3 and 4 shows us that discrimination based on sex and gender is important for the other occupations on both labour markets, which is in accordance with our third hypothesis.

Results from table 4 also show that engaging in an artistic career is less financially penalizing on this kind of labour market, even though being a member of the group constituted of actors and comedians is still the only artistic specialty associated with a 17% increase of self-employment weekly earnings when compared to other occupations. It seems to make sense that artists, working in flexible and contractual arrangements on the labour market, would then be less disadvantaged on the self-employment labour market. Engaging in a career in the arts remains a costly choice. Choosing an artisan/craftsperson's career when compared to another non-arts occupation is associated with a 32% decrease of weekly self-employment earnings, an author/writer's career with a 17% decrease of earnings, a conductor/composer/arranger's career with a 31% decrease of earnings, a musician/singer's career with a 44% decrease of earnings, a dancer's career with a 17% decrease of earnings, another performer's career with a 5% decrease of earnings, a painters/sculptors/other visual artist's career with a 34% decrease of earnings and a producer/director/choreographer/other related occupation's career with a decrease of 7% of weekly self-employed earnings. Tables 3 and 4 show us that artists do face earnings differentials when compared to other occupations on both studied labour markets. That said, the following section identifies which variables are associated with an increase of self-employment weekly earnings for the six chosen artistic specialties.

Table 4: Regression results on Self-employment Weekly Earnings comparing Artists to other Occupations

Model	Coefficient	Stats
N = 14 994 000		
(constant)	5.209*	544.393
Age	.021*	50.897
Age2	.000*	-42.813
No diploma	--	--
Crafts diploma	-.060*	-16.841
Secondary school diploma or equivalent	.012*	4.371
Apprenticeship or trades certificate or diploma	-.027*	-6.514
Non-university 3 months to 1 year diploma	.117*	20.733
Non-university 1 year to 2 years diploma	.033*	9.387
Non-university more than 2 years diploma	.091*	24.865
University diploma below bachelor level	.177*	42.361
Bachelor degree	.398*	131.600
University diploma above bachelor level	.514*	97.668
Degree in medicine, dentistry, vet medicine	1.701*	397.243
or optometry	.472*	118.240
Master's degree	.734*	112.237
Earned doctorate	.073*	-69.690
Married (marital status)	.089*	50.441
Household maintainer	-.148*	-69.690
Immigrant (status of immigrant)	.259*	147.693
Male (gender)	-.156*	-61.574
Member of visible minorities	.031*	15.599
Urban area (zone of residence)	--	--
Other occupation	.165*	11.982
Actors/comedians	-.316*	-22.548
Artisans/craftspersons	-.173*	-15.810
Authors/writers	-.305*	-9.710
Conductors/composers/arrangers	-.441*	-57.980
Musicians/singers	-.172*	-8.134
Dancers	-.048	-1.730
Other performers	-.337*	-27.706
Painters/sculptors/other visual artists	-.076*	-5.903
Producers/directors/choreographers/related occupations		

Source: Statistics Canada, 2006 census, author's estimation
0.203).

(R2: 0.203/Squared R2:

4.3. Artists on the Self-Employed Labour Market According to their Specialty

Tables 5 to 10 show significant results of the application of our model on self-employment weekly earnings of each of the following artists' subsamples: actors/comedians, craftsmen/women, conductors/composers/arrangers, dancers, other performers, and painters/sculptors/other visual artists.

Regarding the yield of human capital variables on self-employment weekly earnings in these subsamples, we can only partially confirm our first hypothesis that it would be positive, but to a lesser extent than for other occupations. Indeed, the experience variable is only associated to an increase of earnings for artisans/craftspersons up to a level of 3.7%, while for all the other artistic specialties, experience is contrarily associated with a decrease of earnings. For other performers, the negative relationship between experience and self-employment weekly earnings is up to a level of 6.5%, which could be explained by the fact that for performance artists' careers are usually short lived as physical capacities decrease with age. For painters/sculptors/other visual artists, the acquisition of an additional year on the self-employed labour market is also associated with a decrease of 4.7% of weekly earnings. This pattern relating to experience is surprising, as other authors have shown that experience is usually associated with a larger increase of earnings for artists than for other occupations, partly because as experience is accumulated they are able to create efficient networks providing more opportunities in the future and partly because they often do not retire at all (Robinson and Montgomery, 2000; Towse, 2006).

Even though we can only speculate about the reasons underlying this pattern, we suppose that this could mean that for Canadian artists, levels of earnings are more related to their reputation and/or talent than their level of experience, which is traditionally considered an important wages/earnings' determinants in human capital theory. What seems of high relevance here is that one way of building reputation relies on forging sustainable networks and that institutions do not only represent an important channel through which to achieve this goal, but also contribute to making experience a source of leverage for accessing higher earnings throughout the career. The integration of more programs of mentoring or apprenticeships linking art colleges and universities to established artists or artists' centres could enhance the possibilities of making experience more financially profitable for artists. We will comment on the effect of education on self-employment weekly earnings for artists according to their specialty later on as we wish to build upon a discussion relating to the role of educational institutions in the support of artists as an occupational group.

Regarding the yield of socio-demographic variables on self-employment weekly earnings according to the artistic specialties, we can confirm our second

hypothesis that it does vary greatly depending on the field of artistic occupation. For example, being a male is associated to a 16% increase of weekly self-employment earnings for actors/comedians while for dancers it is associated to a 13% decrease of earnings. Being married might be associated with a 13% and 26% increase of earnings for respectively dancers and other performers, but it is associated with a 11% and 16% decrease of earnings for respectively artisans/craftspersons and conductors/composers/arrangers. The same phenomena can be observed for the zone of residence variable, the immigrant variable, the household maintainer variable and so forth. Our results are consistent with those of Alper and Wassall (2006) regarding the fact that the socio-demographic features have an important effect on earnings. To summarize, the variables yielding the most important increase on earnings for other occupations can be identified as gender and education, while for artists they can be identified as the status of head of household, marital status in some cases and, also in certain cases, education.

Table 5: Regression Results on Actors/Comedians' Self-employment Weekly Earnings

Model	Coefficient	t Statistic
N = 3655		
(constant)	6.164*	43.827
Age	-.018*	-2.845
Age2	.000*	3.337
No diploma	--	--
Crafts diploma	.030	.247
Secondary school diploma or equivalent	-.706*	-9.797
	-.579*	-3.324
Apprenticeship or trades certificate or diploma	-.601*	-3.740
	-.351*	-4.133
Non-university 3 months to 1 year diploma	-.216*	-2.823
	-.229*	-2.631
Non-university 1 year to 2 years diploma	-.418*	-5.736
	-.533*	-3.801
Non-university more than 2 years diploma	-.512*	-4.737
	-.675*	-3.516
University diploma below bachelor level	-.072	-1.907
	.194*	5.623
Bachelor degree	.133*	2.760
University diploma above Bachelor level	.160*	5.000
	-.024	-.468
Master's degree	.520*	8.230

Earned doctorate		
Married (marital status)		
Household maintainer		
Immigrant (status of immigrant)		
Male (gender)		
Member of visible minorities		
Urban area (zone of residence)		

Source: Statistics Canada, 2006 census, author's estimation (R2: 0.103/Squared R2: 0.099).

Table 6: Regressions Results on Artisans/Craftspersons Self-employment Weekly Earnings

Model	Coefficient	t Statistic
N = 3700		
(constant)	5.121*	27.703
Age	.037*	4.697
Age2	.000*	-5.191
No diploma	--	--
Crafts diploma	-.092	-1.622
Secondary school diploma or equivalent	-.099*	-2.326
Apprenticeship or trades certificate or diploma	-.049	-.703
Non-university 3 months to 1 year diploma	-.068	-.900
Non-university 1 year to 2 years diploma	-.331*	-6.631
Non-university more than 2 years diploma	-.191*	-3.804
	-.425*	8.177
	-.050	-.977
	-.353*	-3.235
	-.002	-.021
	*	*
University diploma below bachelor level	-.106*	-4.238
Bachelor degree	.125*	4.748
University diploma above bachelor level	-.162*	-5.057
Master's degree	-.015	-.591
	0.17	.397
	-.008	-.340
Earned doctorate		
Married (marital status)		
Household maintainer		
Immigrant (status of immigrant)		
Male (gender)		
Member of visible minorities		
Urban area (zone of residence)		

Source: Statistics Canada, 2006 census, author's estimations (R2: 0.094/Squared R2: 0.089).

Table 7: Regression Results on Conductors/Composers/Arrangers' Self-employment Weekly Earnings

Model	Coefficient	t Statistic
N = 720		
(constant)	4.995*	5.494
Age	.038	.925
Age2	.000	-.844
No diploma	--	--
Non-university 1 year to 2 years diploma	-.965*	-2.746
	.033	.118
Non-university more than 2 years diploma	-.010	-.043
	-.077	-.044
University diploma below bachelor level	-.315	-1.033
	.389	1.700
Bachelor degree	-.213	-.820
University diploma above bachelor level	-.156	-1.111
	.374*	2.542
Master's degree	.047	.290
Earned doctorate	.298	1.892
Married (marital status)	.199	.707
Household maintainer	-.293	-1.359
Immigrant (status of immigrant)		
Male (gender)		
Member of visible minorities		
Urban area (zone of residence)		

Source: Statistics Canada, 2006 census, author's estimation

(R2: 0.227/Squared R2: 0.132).

Table 8: Regression Results on Dancers' Self-employment Weekly Earnings

Model	Coefficient	t Statistic
N = 1720		
(constant)	6.046*	35.436
Age	-.007	-.964
Age2	-9.116 ^E -006	-.108
No diploma	--	--
Crafts diploma	.318*	3.853
Secondary school diploma or equivalent	.122	1.731
	.328*	2.684

Apprenticeship or trades certificate or diploma	-.135 -.246*	-1.402 -2.850
Non-university 3 months to 1 year diploma	.326* -.037	4.131 -.444
Non-university 1 year to 2 years diploma	.021 .321*	.287 3.280
Non-university more than 2 years diploma	.378* *	3.759 *
University diploma below bachelor level	.130* .100*	3.539 3.022
Bachelor degree	.128*	3.377
University diploma above bachelor level	-.130* -.057	-2.785 -1.245
Master's degree	-.245*	-4.723
Earned doctorate		
Married (marital status)		
Household maintainer		
Immigrant (status of immigrant)		
Male (gender)		
Member of visible minorities		
Urban area (zone of residence)		

Source: Statistics Canada, 2006 census, author's estimation (R2: 0.118/Squared R2: 0.109).

Table 9: Regression Results on Other Performers' Self-employment Weekly Earnings

Model	Coefficient	t Statistic
N = 975		
(constant)	7.495*	22.613
Age	-.065*	-3.734
Age2	.001*	3.580
No diploma	--	--
Crafts diploma	-.023	-.191
Secondary school diploma or equivalent	.041 .023	.468 .116
Apprenticeship or trades certificate or diploma	.867* -.511*	3.654 -3.687
Non-university 3 months to 1 year diploma	.362* -.126	2.357 -.905
Non-university 1 year to 2 years diploma	.437* -.190	4.325 -.772
Non-university more than 2	.053	.223

years diploma	N/A	N/A
University diploma below bachelor level	.263*	3.666
Bachelor degree	N/A	N/A
University diploma above bachelor level	-.088	-.925
Master's degree	-.044	-.700
Earned doctorate	-.373*	-3.489
Married (marital status)	-.536*	-5.140
Household maintainer		
Immigrant (status of immigrant)		
Male (gender)		
Member of visible minorities		
Urban area (zone of residence)		

Source: Statistics Canada, 2006 census, author's estimation (R2: 0,157/Squared R2: 0,141)

Table 10: Regressions Results on Painters, Sculptors and Other Visual Artists' Self-employment Weekly Earnings

Model	Coefficient	T test
N = 4950		
(constant)	6.852*	46.005
Age	-.047*	-8.452
Age2	.001*	9.853
No diploma	--	--
Crafts diploma	-.010	-.136
Secondary school diploma or equivalent	.051	1.109
Apprenticeship or trades certificate or diploma	-.040*	-4.429
Non-university 3 months to 1 year diploma	.343*	3.422
Non-university 1 year to 2 years diploma	.038	.673
Non-university more than 2 years diploma	-.006	-.119
University diploma below bachelor level	.407*	7.304
Bachelor degree	-.077	-1.668
University diploma above bachelor level	.056	.708
Master's degree	.077	1.361
	-.513*	-3.488
	.046*	1.983
	-.045	-1.917
	-.284*	-10.383
	.008	.344
	.133*	3.338
	-.120*	-4.377

Earned doctorate		
Married (marital status)		
Head of the household		
Immigrant		
Male (gender)		
Member of visible minorities		
Urban area (zone of residence)		

Source: Statistics Canada, 2006 census, author's estimation (R2: 0.080/Squared R2: 0.076)

The impact of education on artists' self-employment weekly earnings according to their specialty shows that it is more profitable for other occupations to invest in education than for artists, which confirms our first hypothesis. It also shows different results than those predicted by human capital theory. First of all, for actors/comedians and for conductors/composers/arrangers, none of the diplomas included in our model have been associated with an increase of self-employment weekly earnings when compared to having no diploma or degree at all. This again suggests that for these specialties, since the yield of experience is also not significant in both cases, talent might play a more determinant role in earnings determination. What has been shown in tables 5 to 10 is that sorting diplomas from the lowest to the highest level of education it provides is not showing a growing relation when it comes to self-employment weekly earnings of artists. In fact, it seems that depending on their specialty, very precise diplomas yield an increase of their earnings while others, even considered superior on the diploma/degree continuum, are on the contrary associated with a decrease of earnings. Table 6 shows the profitable diplomas according to the artistic specialty, other things being equal.

Table 11: Education Profiles Financially Profitable for Canadian Artists according to their Specialty

Artistic specialty	Profitable profiles of education
Dancers	<ul style="list-style-type: none"> • Crafts diploma • Apprenticeship or trades certificate/diploma • Non-university diploma for programs of more than 2 years (college, CEGEP) • University degree above Bachelor's level • Master's degree
	<ul style="list-style-type: none"> • Non-university diploma

Other performers	for programs from 3 months to one year (college, CEGEP) <ul style="list-style-type: none"> • Non-university diploma for programs of more than 2 years (college, CEGEP) • Bachelor's degree
Painters/sculptors/other visual artists	<ul style="list-style-type: none"> • Non-university diploma for programs from 3 months to one year (college, CEGEP) • University diploma below bachelor's level

The fact that only certain diplomas yield positively on artists' self-employment earnings raises questions regarding the adequacy of academic programs offered to Canadian artists. For instance, is the content of school programs too theoretical? We already argued for the inclusion of more on-the-job training through mentoring or apprenticeships, as it would enhance chances of making useful contacts and build reputation. What we now suggest is that it could also make the education variable more financially profitable. Making more profiles of education profitable should play an important role in encouraging artists to pursue their current pattern of acquiring a high level of education, as it represents an important investment of time and money they certainly would like to see compensated. Also, as artists often hold more than one job, we can only be in favor of encouraging them to continue to invest in schooling, as it will certainly be profitable in other job(s) such as teaching, for example, if they wish to get out of the artistic labour market. To summarize, it seems that besides recommending the inclusion of more on-the-job training within academic programs, the discussion relating to the patterns of human capital features of artists is becoming a bit obsolete. Indeed, the information relating to the little chances of success is easily accessible to anyone wishing to engage in an artistic career, but nevertheless according to the 2013 Canadian Labour Force Survey (LFS) the number of individuals engaging in an artistic career in Canada has registered a 56% increase between 1987 and 2013 comparatively to an increase of 38% for the overall labour force¹⁹. In other words, aspiring

¹⁹ Hills Strategies Research Inc. A Statistical profile of artists and cultural workers in Canada, 2014, <http://www.hillstrategies.com/content/statistical-profile-artists-and-cultural-workers-canada> (accessed September 1st, 2015)

artists do not seem to be discouraged by high competition and financial precariousness related to the choice of career. Artists act not only on cultural wealth but as they are highly qualified and creative workers, they also participate actively to the emergence of cultural districts by attracting employers seeking their talent.

The following section wishes to go beyond our analysis that has up to now focused exclusively on the individual level because, amongst other things, of limitations inherent to the census. Precisely, in the next section we wish to explore the different ways institutions can play an active role in improving the financial situation of Canadian artists. It is argued that human capital theory might be of a different use to the study of artists' earnings by pointing to education as the main channel through which the general skills necessary to appreciate the arts are developed. We therefore reverse our analysis by assessing initiatives that could stimulate the demand for cultural goods.

5. Discussion: Institutions and Human Capital

Human capital theory postulates that individuals will invest in the acquisition of different skills or abilities as a means to maximise utility. Put differently, this means artists are seen according to this view as rational actors capable of assessing the costs and benefits associated with the activities leading to the acquisition of human capital. Underlying the traditional equation used to measure the effect of human capital on earnings/income/wages, Mincer said that "the starting point of an economic analysis of personal income distribution must be an exploration of the implications of the theory of rational choice"²⁰. Referring to Milton Friedman, he also identified two ways through which individual choice could affect the income distribution: the risk aversion level of individuals and the formation of a wage differential mechanism compensating a job for its disadvantages. For artists, the use of this theoretical framework and underlying assumptions pose a few challenges. Indeed, artists are depicted in the literature as individuals with a relatively low level of risk aversion when compared to other occupations (Santos, 1976; Benhamou, 2003), which suggests that as they choose to engage in risky careers they should have access to well paid jobs. Moreover, following Adam Smith's theory of compensating wages differential (1776), the fact that artistic careers

Note that Hills Strategies Cabinet use an Index set at 100 regarding the three-year moving averages they use in order to compare the growth of relatively small artists' sample with overall labour force.

²⁰ J. Mincer. *Investment in Human Capital and Personal Income Distribution*, in *Journal of Political Economy*, 1958, vol. 66, no. 4, 281 – 302.

show very high inconsistency of employment should also be compensated by higher earnings in the labour market. The findings presented above show that this is not entirely the case in the Canadian context.

Also, in economics, the study of institutions has traditionally been pursued in accordance with rational choice institutionalism, where they are seen as "shaped patterns of action that economic agents devise in order to overcome uncertainty and economize on search processes"²¹. As we suppose that individuals seek to get compensated for their investment of time and/or money after having invested in education, for example, this also suggests that accessing higher labour earnings represents an important source of well-being for a large fraction of population. What is problematic here is the well-known hypothesis that artists could be more interested in maximizing their 'psychic' income deriving from working in the arts than their monetary income. For example, even if recognizing that artists are at different levels reactive to economic incentives on the labour market, Throsby underlined that:

The primary desire to create art as a principal occupation must be recognized as the essential driving force behind an artist's labor supply decisions. In this respect artists may be seen as similar to academics, researchers, and other professionals where non-pecuniary motives relating to work satisfaction exert a significant influence on patterns of time allocation. Nevertheless, artists as a group differ by virtue of the fact that their professional creative work alone is, in the majority of cases, unlikely to generate a living wage over a reasonable period of time, either because the hourly earnings are too low and/or because remunerative work opportunities are not available.²²

Putting the concept of the desire to participate to the lottery of success that represents artistic careers aside, the Canadian situation of artists suggests that it seems unlikely that they invest in education to access higher earnings. We assist to a paradox in cultural economics where the application of strictly quantitative methods can hardly measure or estimate the implications of the fact that "education and learning may yield utility directly to the individual rather than a deferred utility of potential earnings. Furthermore, occupational choice may not be determined solely by financial reward because people may choose an occupation for non-pecuniary motives such as a preferred lifestyle"²³. Also, as

²¹ G. Morgan and M. Hauptmeier. *Varieties of institutional theory in comparative employment relations*, in A. Wilkinson, G. Wood and R. Deeg eds, *Oxford Handbook of Employment Relations - Comparative Employment Systems*, Oxford: Oxford University Press, 2014, chapter 9.

²² C.D. Throsby. *The production and consumption of the arts: a view of cultural economics* in *Journal of Economic Literature*, 1994, vol. 32, no.1, 1 – 29.

²³ R. Towse, *Human capital and artists' labour markets*, in V. Ginsburgh and D. Throsby, *Handbook of the economics of arts and culture*, Amsterdam: North Holland Elsevier, 2006, chapter 24, 865 – 894.

psychic income was defined by Thurow in 1978 as "a term used to characterise all manner of non-monetary costs and benefits derived from work, such as fame, power, companionship, discomfort and risk to life"²⁴, it seems to us like the study of artists' motivations, time allocation and remuneration on the labour market could benefit from the mix of quantitative and qualitative methods allowing a better understanding of the dynamics underlying their career paths. For example, situating the experiences of artists to try to have a contextualized understanding of their allocation of time might allow us to identify if they're trying to maximise their monetary income or their psychic income when considering rational choice assumptions. Even though artists can most definitely switch from one pattern of maximisation to another, the tradition of economics in our opinion can go further than the strict analysis of rational behaviour of artists on the labour market to include a study of their motivations and subjective preferences at a given time, which are difficult to measure with econometric tools. Also, as we pointed before, even the most detailed source of statistics in Canada did not contain any information about the presence/absence, amount or portion of grants and/or bursaries in total self-employment earnings, which prevented us to estimate the effect of state interventionism in the determination of their earnings. This represents a serious limit since artistic and cultural sectors rely heavily on public funding.

The subjective dimensions of artistic remuneration, for example work patterns, the importance of psychic remuneration and so forth are also difficult to overcome with econometric analysis. An alternative which might help researchers get a deeper understanding of the dynamics occurring on the artistic labour market would be to link the economic behavior of artists to the idea that "actors learn what frames of meaning, cognitive schema, and normative templates are legitimate and expected in these particular fields and what sanctions exist for those unwilling to conform"²⁵. The very fact that talent plays a major role in artistic remuneration raises questions about how talent is consecrated. The people shaping and establishing the different criteria necessary for an artist to be considered talented often have either the appropriate schooling level and/or experience that makes them experts in their fields. Again, it is partly their human capital that gives them legitimacy. An artist deciding not to comply with these constantly evolving but institutionalized trends and criteria might decide to expose its work through

²⁴ L.C. Thurow, *Psychic income: useful or useless?* In *American Economic Review*, 1978, vol. 68, no. 2, 142 – 145 in M. Rengers, *Economic lives of artists: studies into careers and the labor market in the cultural sector*, University of Utrecht, 2002, 194 p.

²⁵ G. Morgan and M. Hauptmeier. *Varieties of institutional theory in comparative employment relations*, in A. Wilkinson, G. Wood and R. Deeg eds, *Oxford Handbook of Employment Relations - Comparative Employment Systems*, Oxford: Oxford University Press, 2014, chapter 9.

alternative channels, but he or she will suffer the consequences of not being exposed in major venues. Since art should not be made after factoring the different limits and boundaries that are implicit to arts institutions, this represents a paradox recognized by Becker (1982) who emphasized the idea that rationality can translate into different forms of behavior that can be difficult to measure with econometric tools.

Indeed, the multiplicity of institutional logics that are shaping "individual preferences, organizational interests and the categories and repertoires of actions to attain those interests and preferences"²⁶ seems accurate if we agree that artists might not be investing in education to maximize their earnings throughout their careers. Following the same logic, the application of human capital theory on the occupational group constituted by artists considers the subjective dimensions that we identified that are not necessarily of relevance for other occupations. Yet human capital theory and its focus on the benefits of education still have a lot to offer in cultural economics as it can also indirectly participate to the financial support of artists through its capacity to develop the cognitive frame necessary to arts appreciation. Indeed, encouraging the formation of a human capital that allows understanding and appreciation of the arts would enlarge the fraction of population that is open to arts consumption. As artistic goods have been depicted as addictive goods (Becker and Murphy, 1988), such a strategy might contribute to the formation of sustainable consumption habits that will translate into a raise of demand for arts goods.

As the need to create for artists constitutes most probably the cause of the growing number of candidates engaging in this lottery of success even knowing the very little chances of success, stimulating demand for arts goods should be regarded as a part of the equation. As Becker and Stigler (1977) have shown, investing in the development of the human capital features that are necessary to appreciate certain types of experience goods such as artistic goods will result in more sophisticated choices by consumers in addition to raise the productivity of the time allocated to the activity. The dynamics participating to the development of taste is also playing an important role shaping the consumption patterns of cultural goods, as emphasized by Lévy-Garboua and Montmarquette (2002) when they argued that individuals were not necessarily aware of their own tastes and that their discovery was mostly relying on accumulated experience also known as their learning-by-doing model. For Bourdieu, there are two principal channels through which individuals can

²⁶ G. Morgan and M. Hauptmeier. *Varieties of institutional theory in comparative employment relations*, in A. Wilkinson, G. Wood and R. Deeg eds, *Oxford Handbook of Employment Relations - Comparative Employment Systems*, Oxford: Oxford University Press, 2014, chapter 9.

develop their cultural capital, either the domestic or scholastic sphere. What interests us here is the latter; as we have argued that educational institutions can have a direct effect on artists' human capital features, but also on the general population's human capital features allowing them to appreciate artistic goods.

The fact that the more educated tend to consume more art under various forms has been proved in many empirical studies (Bourdieu, 1984; DiMaggio and Useem, 1978; Peterson, 1992), even though again none of these studies have been conducted on a Canadian sample. What institutions provide is described by Bourdieu as the possibility to offer the cognitive skills necessary to the appreciation of the arts and encouraging the transmission of knowledge. Apart from the level of education that has been identified as playing a major role in the range of artistic goods that is consumed – either lowbrow, middlebrow or highbrow forms of arts, the variables that have been identified as major determinants of the level of arts consumption is the time available for leisure activities (Withers, 1980, Diniz, Ghama, Golgher and Machado, 2014), changes affecting family structures and the general aging of the population (DiMaggio and Mukhtar, 2004).

Our results as well as the above discussion have a lot to offer for Canadian policymakers. Indeed, the fact that the traditional family structure seems to be more and more decomposing into the proliferation of single-person households and single-parent households have deep implications regarding the time available for leisure activities. As education can enhance the skills necessary to art appreciation for the first category of household, the encouragement of parental support during mandatory cultural activities included as part of academic programs also represents a way educational institutions can act on stimulating their interest in artistic goods and services. To summarize, estimating the human capital yield on artists' earnings might represent an important source of knowledge allowing us to identify the attributes that are most in demand on the market. What it cannot do is tell us why Canadian artists are still investing so much in education even though most diplomas do not yield an increase of their artistic earnings. Since there are numerous dynamics still difficult to measure with traditional econometric tools when it comes to the artistic labour market, the debate revolving around human capital might have to shift towards learning more about different ways institutions can provide artists with more opportunities to create sustainable networks in their respective fields while providing the population with the skills necessary to art appreciation. With regards to this first proposition, the revision of academic arts programs to see whether they provide students with adequate networking opportunities, which seem to represent a more powerful tool for artistic success than diplomas should be considered. As education is

without a doubt one of the most promising ways to reduce social and economic problems by encouraging positive socioeconomic externalities such as social mobility, the second proposition underlines the potential of educating the Canadian population as an indirect way of supporting the arts, which contributes to the well-being of our society.

Remembering the Forgotten: The Need for Proper Regulation of Working Conditions of Live-in Domestic Workers in Ethiopia

Bereket Alemayehu Hagos *

Abstract. Working conditions of live-in domestic workers in Ethiopia are often characterized by violations of the labour and other human rights of workers. This is chiefly owing to the lack of a comprehensive labour law on the matter and the scantiness of the existing legislative protection afforded to domestic workers, contrary to the government's obligations provided under the Ethiopian Constitution and international and regional human rights instruments ratified by Ethiopia. Hence, a detailed labour law should be enacted by the government so as to respect and enforce the rights of live-in domestic workers and to improve their working conditions.

Keywords. *Domestic work, Live-in Domestic Workers, Working Conditions, Working conditions, Ethiopian live-in Domestic Workers, Civil Code.*

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1. Introduction

Domestic work around the world shares common physiognomies that may act to define it. For the purpose of labour regulation, the definition incorporated in the Decent Work for Domestic Workers Convention captures the characteristics of domestic work by defining it as “work performed in or for a household or households”¹. Article 1 (b) of the Convention defines a domestic worker as “any person engaged in domestic work within an employment relationship”. From these descriptions, it may be deduced that a live-in domestic worker is an individual who undertakes chores and lives in her/his employer’s house.

Despite its ubiquitous nature and indispensability to the economy outside the household², live-in domestic work has been greatly undervalued, gendered and generally invisible³. Furthermore, mainly owing to its private nature, domestic work is unregulated by the general labour laws of many countries; as a result, domestic workers are vulnerable to appalling work conditions and other human rights abuses⁴.

Following the widespread approach, the existing principal Ethiopian labour law also excludes live-in domestic workers from its scope of application. Nevertheless, the House of Peoples’ Representatives (the Federal Parliament) did not intend to leave them without legal coverage. Hence, it delegated its legislative power to the Council of Ministers (the Federal Executive) and it to

¹ Decent Work for Domestic Workers Convention No. 189, International Labour Office, Geneva, June 2011, Article 1 (a).

² L. Heimeshoff and H. Schwenken, “*Domestic Work: A Significant Sector*”, in Helen Schwenken and Lisa-Marie Heimeshoff (eds.), *Domestic Workers Count: Global Data on an Often Invisible Sector*, Kassel University Press, Kassel, 2011, p. 5.

³ International Labour Office, *Decent work for domestic workers*, International Labour Conference, 99th Session, Report IV(1), Geneva, 2010, p.1. http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@relconf/documents/meetingdocument/wcms_104700.pdf, (Accessed on January 16, 2016). See also, E. Albin and V. Mantouvalou, *The ILO Convention on Domestic Workers: From the Shadows to the Light*, UCL Labour Rights Institute On-Line Working Papers – LRI WP 1/2011, 2011, pp. 2-3. <http://www.ucl.ac.uk/laws/lri/papers/EinatAlbin-VirginiaMantouvalou.pdf>, (Accessed on May 11, 2015).

⁴ International Labour Office, *ILO Resources on Domestic Work- Catalogue*, Geneva, 2016, p. 3. http://www.ilo.org/wcmsp5/groups/public/@ed_protect/@protrav/@travail/documents/publication/wcms_248947.pdf, (Accessed on February 26, 2016). See also, African Union, *Social Protection for Inclusive Development*, First Session of the Specialised Technical Committee on Social Development, Labour and Employment (STC-SDLE-1), Special Initiative on Domestic Workers, Addis Ababa, 20-24 April, 2015, p. 2. <http://sa.au.int/en/sites/default/files/Special%20Initiative%20on%20Domestic%20Workers-%201st%20SDLE-2015-%20Rev.1-%20TC-English.pdf>, (Accessed on February 26, 2016).

enact a labour law to regulate the employment relations of live-in domestic workers and their employers. Be this as it may, the Council has not yet passed a labour law for this purpose. In other words, Ethiopian live-in domestic workers have been forgotten by the Council and are still unprotected. Though the 1960 Civil Code (hereinafter “Civil Code” or “Code”)⁵, which long predates the Council, does contain provisions dealing with the working conditions of live-in domestic workers, they are insufficient.

This article is designed to show the inadequacy of the present special labour law in safeguarding domestic workers from multifaceted human rights violations by their employers and to serve as a reminder to the Government of Ethiopia to take, among other things, legislative measures so as to properly govern the work conditions of live-in domestic workers.

2. The Scanty Legislative Protection of Domestic Workers in Ethiopia

As alluded to above, domestic workers, who are employed under “contracts of personal service for non-profit making purposes”, are among groups of workers left out of the sphere of application of the Labour Proclamation No. 377/2003 and its amendments⁶. The Council of Ministers, which was tasked to offset the legislative precariousness of live-in domestic workers by enacting a labour law for them⁷, has not carried out its duty. Hence, the only extant law which regulates the employment relationships between employers and live-in domestic workers is the Civil Code. Even though, as will be explained in the next section, Ethiopian live-in domestic workers do not usually sign written contracts with their employers, employment contracts can also be extra layers of protecting their interests.

The part of the Civil Code that deals with employment conditions of live-in domestic workers is found in Book V (Special Contracts), Title XVI (Contracts for the Performance of Services) of the Code. Under Chapter 2 (Contracts of particular kinds of work), Section 3 (Contracts of domestic servants living in) of this Title, there are only four articles (namely, Articles 2601 - 2604) included

⁵ Civil Code of the Empire of Ethiopia, Proclamation No. 165/1960, Negarit Gazeta, Gazette Extraordinary, 19th Year, No. 2, 5 May, 1960.

⁶ Labour Proclamation No. 377/2003, Federal Negarit Gazeta, 10th Year, No. 12, 26 February, 2004, Article 3 (2) (d). This Labour Proclamation has been amended by the Labour (Amendment) Proclamation No. 466/2005, Federal Negarit Gazeta, 11th Year, No. 56, 30 June, 2005; and the Labour (Amendment) Proclamation No. 494/2006, Federal Negarit Gazeta, 12th Year, No. 30, 29 June, 2006.

⁷ *Ibid*, Article 3 (3) (c).

to govern the employment relationship between an employer and a live-in domestic worker⁸.

With regard to living quarters, food, times of work and rest, Article 2601 of the Civil Code obliges an employer of a live-in domestic worker to “take all reasonable steps to safeguard the health and moral well-being of the employee.” This provision of the Code simply left the judgment on “reasonableness”, regarding accommodation, food, hours of work and rest of a live-in domestic worker, to the stronger party in the relationship (employer) and, hence, is to the prejudice of the weaker party (live-in domestic worker).

An employer of a live-in domestic worker is, besides, per Article 2602 (1) of the Civil Code, duty-bound to “provide any care which the illness of the employee requires, either by way of medical attendance at his[/her] house or by sending the servant to hospital” in the event of the worker’s illness. This duty of an employer is “limited to one month where the illness occurs after at least one year from the beginning of the contract, and to two weeks, where it occurs after at least three months from the beginning of the contract”⁹. Pursuant to Article 2602 (3) of the Code, an employer is entitled to offset any expenses he/she has incurred for the worker’s medication and/or care against the worker’s wages that become due during the period of illness. An employer may, however, be relieved of his/her obligation to care for his/her domestic worker, if the latter has intentionally contracted the illness or is covered by a compulsory health insurance scheme¹⁰. Nonetheless, an employer may not free

⁸ At this juncture, it has to be noted that a separate section (Book V, Title XVI, Chapter 1, Articles 2512 - 2593) is earmarked in the Civil Code to deal with the employment relations of other workers and their employers, which indicates the intention of the then-Parliament to exclude live-in domestic workers from the general labour law.

⁹ The Civil Code, *op. cit.*, Article 2602 (2).

¹⁰ *Ibid*, Article 2603 (1) and (2). In Ethiopia, although there are legal (mainly, the Social Health Insurance Proclamation No. 690/2010) and institutional (the Ethiopian Health Insurance Agency) frameworks that are set up for the implementation of a compulsory social health insurance scheme for employees and pensioners, their enforcement has been postponed by the government for an indeterminate period. See, Social Health Insurance Proclamation No. 690/2010, Federal Negarit Gazeta, 16th Year, No. 50, 19 August, 2010 and the Ethiopian Health Insurance Agency Establishment Council of Ministers Regulation No. 191/2010, Federal Negarit Gazeta, 17th Year, No. 4, 2 December, 2010. See also, *In Policy Making, Clarity, Communication, Consultations are Key*, *Ethiopian Business Review*, 4th Year, No. 37, Champion Communications, Addis Ababa, March 16, 2016 - April 15, 2016. The inapplicability of the Social Health Insurance Proclamation on live-in domestic workers is, however, expected. This is because the Proclamation, under its Article 5, obligates only private persons who employ at least ten workers, public offices, public enterprises and the Social Security Agency to get their workers/pensioners registered for the insurance. As typical Ethiopian households do not employ ten workers, live-in domestic workers employed in households will not be covered by the compulsory health insurance scheme.

himself/herself of this duty by terminating a domestic worker's employment on the ground of illness¹¹.

The first shortcoming of Articles 2602 and 2603 of the Code is their failure to distinguish between occupational and non-occupational injuries/illnesses. Sweepingly, they also ultimately make a live-in domestic worker bear all the expense of her/his medication and/or care, which may seriously reduce her/his meagre monthly wage.

Finally, the Civil Code, under Article 2604 (1), provides that a live-in domestic worker's wage should be paid every three months, unless otherwise agreed in an employment contract. Yet, if the employment relationship between an employer and a live-in worker is terminated, wages will be automatically due¹². When seen in the light of the Ethiopian practice of not using written employment contracts for live-in domestic workers and the difficulties of proving the terms of oral employment contracts, making salaries payable every three months inhibits live-in domestic workers from utilizing their salaries for routine purchases and other expenses.

In addition to the aforementioned defects of each of the four articles, the Civil Code left a host of other important rights of live-in domestic workers unregulated. Among others, these include maximum daily and weekly working hours, paid leave (maternity, sick, paternity, annual and other special leave), occupational safety and injuries, formation of unions, grounds of termination of employment and associated rights (certificate for services provided, due compensation and severance payments etc.). The Code also failed to incorporate a system of governmental supervision on working conditions of live-in domestic workers, which could have served as a tool for regulation.

At this juncture, it must be borne in mind that the government's failure to enact a law that comprehensively governs the working conditions of Ethiopian live-in domestic workers is incompatible with its obligations under the international instruments that Ethiopia ratified¹³ and the Constitution, which entitle workers to equal and effective legal protection and to favourable working conditions¹⁴. In particular, according to Article 25 of the Constitution,

¹¹ The Civil Code, *op. cit.*, Article 2603 (3).

¹² *Ibid.*, Article 2604 (2).

¹³ Ethiopia has, so far, ratified almost all major international and regional human rights instruments. It is also a party to the fundamental ILO Conventions. Article 9 (4) of the Constitution stipulates that "all international agreements ratified by Ethiopia are an integral part of the law of the land." Constitution of the Federal Democratic Republic of Ethiopia, Proclamation No. 1/1995, Federal Negarit Gazeta, Extraordinary Issue, 1st Year, No. 1, 21 August, 1995.

¹⁴ See, for example, Articles 7, 8, 23 and 24 of the Universal Declaration of Human Rights, UN General Assembly, Paris, December 1948; Articles 6, 7 and 8 of the International Covenant on Economic, Social and Cultural Rights, UN General Assembly, New York, December 1966;

all persons are equal before the law and are entitled without discrimination (of any type) to the equal and effective protection of the law. More specifically, the Constitution declares that “workers have the right to reasonable limitation of working hours, to rest, to leisure, to periodic leaves with pay, to remuneration for public holidays as well as healthy and safe work environment”¹⁵. Furthermore, the Constitution guarantees live-in domestic workers their freedom of association and collective bargaining¹⁶.

3. Working Conditions of Live-in Domestic Workers in Ethiopia

As in other African countries, domestic workers in Ethiopia are mostly internal migrants, who travel from rural to urban parts of the country due to of poverty, lack of education and harmful traditional practices¹⁷. Since the skills domestic work demands are low when compared to other types of work, it is mainly unschooled and less educated women who are employed as domestic workers in Ethiopia. As explained above, these circumstances together with the insufficiency of the Civil Code to protect their rights make Ethiopian live-in domestic workers prone to excessively one-sided employment relations and vulnerable to human rights infringements.

Research¹⁸ reveals that the working conditions of live-in domestic workers in Ethiopia are often characterized by violations of the labour rights of workers. The first problem, in this regard, is the use of unwritten employment contracts

Article 15 of the African Charter on Human and Peoples’ Rights, Assembly of Heads of State of the Organization of African Unity, Nairobi, June 1981; and Articles 1 and 2 of the Minimum Age Convention No. 138, International Labour Office, Geneva, June 1973.

¹⁵ The Constitution, *op. cit.*, Article 42 (2). Additionally, Article 35 (5) of the Constitution entitles women workers to maternity leave, both prenatal and postnatal, with full pay.

¹⁶ *Ibid*, Articles 31 and 42 (1).

¹⁷ S. Tesfaye, *Denial of Rights, Human Rights Abuses and Violence Against Domestic Workers in Some Selected Areas of Addis Ababa*, Addis Ababa University, Institute of Gender Studies, MA Thesis, Addis Ababa, July 2007, p. 37. <http://etd.aau.edu.et/bitstream/123456789/5989/1/21.%20SELAMAWIT%20TESFAYE.pdf> (Accessed on March 03, 2016). See also, International Labour Office, *Rural-urban migrants employed in domestic work: Issues and challenges*, Making Decent Work a Reality for Domestic Worker in Africa: a regional knowledge sharing forum, (Briefing Note No. 5), Dar es Salaam, 28-30 May, 2013, p. 2. http://www.ilo.org/wcmsp5/groups/public/@africa/documents/meetingdocument/wcms_214732.pdf, (Accessed on January 10, 2016).

¹⁸ Researches hitherto conducted in Ethiopia on these matters are limited to and focus on live-in domestic workers of a specific city in the country, mainly Addis Ababa. But, it is believed that working conditions of live-in domestic workers in other parts of Ethiopia do not differ greatly from those who work in Addis Ababa.

and job descriptions¹⁹. These circumstances expose live-in domestic workers to unrestrained responsibilities and long hours of work²⁰. In other words, they are frequently required to carry out almost all types of household duties with little rest per day and week.

Furthermore, live-in domestic workers in Ethiopia do not usually take leave. They typically do not take annual leave, which is one of the most important rights of workers. Even when they are granted, their “annual leave” will customarily be once a month, usually on the Sunday²¹, that should have been their weekly day of rest. As such, most of the times, there is no clear distinction between weekly rest days and annual leave. There are also no statutory and, typically, contractual bases that allow live-in domestic workers to take paid sick leave. They are, in addition, frequently not granted maternity leave. Before getting to the issue of maternity leave, women live-in domestic workers are discouraged, sometimes even prohibited, by their employers from engaging in romantic relationships, thereby facing unwarranted invasions of their privacies²².

Ethiopian live-in domestic workers also usually find themselves in deplorable working and living conditions with regard to their wages, food, accommodation and other rights. As there is no legally-prescribed minimum wage²³, numerous live-in domestic workers receive salaries that are disproportionately lower than the chores they perform²⁴. Additionally, some employers of domestic workers deduct from their workers’ salaries for faults alleged against the workers²⁵. With regard to food, some “discriminatory and dehumanizing practices”, such as serving them with leftover foods, are

¹⁹ E. Biadegilegn, *Working conditions for Adult Female Live-in Paid Domestic Workers in Addis Ababa, Ethiopia*, Research and Perspectives on Development Practice, Kimmage Development Studies Centre, Dublin, 2011, pp. 12 and 7. <http://kimmagedsc.ie/wp-content/uploads/2013/10/Elsa-Biadegilegn.pdf>, (Accessed on May 11, 2015). See also, K. Mulugeta Gebre, *Vulnerability, Legal Protection and Work Conditions of Domestic Workers in Addis Ababa*, International Institute of Social Studies, MA Thesis, The Hague, December 2012, p. 19. https://thesis.eur.nl/pub/13194/Kidist%20Mulugeta%20Gebre_Kidist%20RP_1503.pdf, (Accessed on January 10, 2016). However, it has to be noted that, per Article 1719 (1) of the Civil Code, contracts are not required to be made in special forms, unless otherwise provided in law. Accordingly, since there is no law that requires an employment contract of a live-in domestic worker and an employer to be in written or other special forms, it is valid when the parties orally agree to create an employment relationship *inter se*.

²⁰ Mulugeta Gebre, *op. cit.*, p. 20.

²¹ Biadegilegn, *op. cit.*, p.9.

²² *Ibid*, p. 10.

²³ Nor is there a minimum wage for other workers in the private sector in Ethiopia.

²⁴ Mulugeta Gebre, *op. cit.*, p. 21.

²⁵ Biadegilegn, *op. cit.*, p.9.

observed²⁶. Similarly, providing decent accommodation to live-in domestic workers is very uncommon²⁷. Moreover, due to the sector's highly feminized nature, many women domestic workers are subjected to sexual harassment and violence²⁸. During termination of their contracts of employment, Ethiopian live-in domestic workers also do not have legal and contractual bases for some types of claims, such as severance pay. To the contrary, many even have the payment of their salaries denied when their employment relations are terminated²⁹.

Another problem observed in the domestic work sector in Ethiopia is employing children as domestic workers³⁰. Many child domestic workers, in addition to the above-mentioned problems, are exposed to arduous and perilous tasks, marginalization and other multiple forms of exploitative activities³¹. As a result, their health and education are negatively affected.

4. Conclusion and Recommendations

It has been briefly shown above that the work conditions of many live-in domestic workers in Ethiopia are appalling. The author is of the opinion that the absence of a detailed and adequate law is the principal, albeit not the only, reason for these phenomena.

It is, therefore, recommended that the government, without delay, ratify the Domestic Workers Convention. Moreover, the Council of Ministers, pursuant to Article 3 (3) (c) of the Labour Proclamation, must discharge its duty by passing a law (regulation) to govern the employment relations of live-in domestic workers and their employers and to effectively protect the workers from multidimensional human rights violations. In this regard, the role of the Ministry of Labour and Social Affairs is of paramount importance, as it is obliged to, "in cooperation with concerned bodies, establish a labour

²⁶ Mulugeta Gebre, *op. cit.*, p. 21.

²⁷ *Ibid*, pp. 22-23.

²⁸ Biadegilegn, *op. cit.*, p. 10.

²⁹ Mulugeta Gebre, *op. cit.*, p. 21.

³⁰ A. Kifle, *Child Domestic Workers in Addis Ababa: A Rapid Assessment*, Investigating the Worst Forms of Child Labour No. 38-Ethiopia, International Programme on the Elimination of Child Labour (IPEC), International Labour Organization, Geneva, July 2002, p. ix. <http://www.ilo.org/ipecinfor/product/download.do?type=document&id=689>, (Accessed on March 04, 2016).

³¹ *Ibid*, pp. ix-xii and 57. These acts violate the Ethiopian Constitution which stipulates "every child has the right not to be subject to exploitative practices, neither to be required nor permitted to perform work which may be hazardous or harmful to his or her education, health or well-being." The Constitution, *op. cit.*, Article 36 (1) (d).

administration system around their labour relation that enables the proper transition of the informal economy to the formal economy”.³² The Ministry, which has experts on labour regulation, may assist the Council by drafting a labour law and providing technical reports and explanations on the conditions of work of Ethiopian live-in domestic workers. In any case, a labour law that should be enacted to deal with the working conditions of live-in domestic workers must clearly incorporate, among others, a minimum age for employment, maximum daily and weekly working hours, minimum wage, paid leave, grounds for termination of employment and associated rights, procedures for the formation of unions and collective bargaining, rules on occupational safety and injury, inspection and complaint handling systems and a specific regulatory government body.

The enactment of a law, it is proposed, should also be followed by its enforcement, the resolution of problems leading to domestic work (such as poverty and lack of education) and the creation of awareness about the importance of domestic work to the formal economy and the need to respect the human rights of workers.

³² Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia Proclamation No. 916/2015, Federal Negarit Gazeta, 22nd Year, No. 12, 9th December, 2015, Article 34 (7).

*The Changing Faces of Employment Relations:
Global, Comparative and Theoretical
Perspectives* by David Farnham.
A Review

Chris Leggett *

Studies of employment relations and its antecedent industrial relations have depended on metaphor for their explanatory models, although not without contention — as to whether or not their seductiveness detracts from the strength of the idea (Dunn 1990). David Farnham's *The Changing Faces of Employment Relations: Global, Comparative and Theoretical Perspectives* offers the reader changing 'faces' for the intrinsic and extrinsic dynamics of employment relations and 'players' for the tripartite participants in those dynamics, once, to the irritation of trade union leaders, who did not believe they were acting, 'actors' in a 'system' by Dunlop (1960). It is unlikely that today's trade union leaders would regard themselves as 'players' in a 'game' of industrial relations. Changing 'faces', in Farnham's book replaces the morphological 'transformation' used to explain the emergence of new forms of industrial relations by the 1980s by Kochan et al. (1986) and the mutational 'global evolution' of industrial relations by Kaufman (2004). Your reviewer notes that *The Changing Face* [singular] of *Employment Relations* was the title and theme of a UK Advisory, Conciliation and Arbitration Service (ACAS) conference in 2013.

Farnham's text is aimed at graduate and final year undergraduate students ('often with little prior knowledge of the field') and 'seeks to provide a critical review and evaluation of employment relations as a field of study [of employment relationships] in the early twenty-first century...' Following an

* Chris Leggett is an Adjunct Professor in the College of Business, Law and Governance at James Cook University, Australia. The present review refers to David Farnham. *The Changing Faces of Employment Relations: Global, Comparative and Theoretical Perspectives*. Palgrave, London, UK, 2015. 650 pp. ISBN 978 1 137 02712 2.

introductory chapter the text is organized into four parts composed of Chapters 2 to 11 looking much like a systems model, and a 'Conclusion' (Part 4) a single chapter on 'Employment Relations in a Global Age'. Part 1 (Chapters 2-4) is titled 'Employment Relations as a Field of Study', Part 2 (Chapters 5 to 7) 'The Players in Employment Relations', and Part 3 (Chapters 8 to 11) 'Processes and Outcomes in Employment Relations'. Farnham introduces each chapter with a statement of its purpose and the means for fulfilling that purpose, for example for Chapter 1 'to provide the background'... 'by highlighting some key issues'. This is particularly helpful to the student reader because, in spite of the logic of their sequence, the means for achieving its purpose vary from chapter to chapter.

Chapter 1 'Unravelling the Employment Relationship' (an appropriate metaphor for the struggling student at this stage) 'provides the background' and sets the tone of Farnham's book. It offers an extensive justification for the study of employment relations — largely of the discipline's spread from the UK and North America to non-English speaking countries and to the employment relationship as fundamental to capitalist market economies, regardless of which model of capitalism, liberal market or coordinated market, is practiced. In this respect Farnham's approach differs from (but is complementary to) that of the latest edition of Bamber et al. (eds) (2016), which has increased its emphasis from earlier editions on the Varieties of Capitalism (VoC) of selected countries. Farnham illustrates his themes with evidence from a range of countries and although his focus is on globalizations they are not without acknowledgement of the diversity of national phenomena. Before he unravels the warp and weft of its themes and national, regional and global threads, Farnham identifies for the student reader the basic issues of employment relations: its dominance in organizing work, its concerning the application of power (and therefore its contentiousness), the displacement of the 'industrial relations consensus' by the 'Human Resource Management (HRM) paradigm', and the dynamics of internationalization. Its 'changing faces' include: 'institutional, conceptual, methodological, theoretical, practical, ideological and disciplinary ones' that are subject to the effects of what are the 'distinctive features' of the text: the impact of globalization, the use of cross-national comparisons, the ratchet effect of historical path dependency, the breadth of comparisons, the use of strong theoretical themes; the importance given to political economy. The remainder of the unravelling is of distinctive features with a genuflection towards systems theory as a heuristic.

It is tempting to conceptualise Employment Relations as a loose composite of industrial relations and human resource management. In Chapter 2, 'The Origins and Development of Employment Relations' where Farnham explores the traditions and origins of employment relations, he is at pains to refine this

simplistic conceptualization, devoting nine pages to ‘The Human Resources Management Tradition’. He is well placed to do this because of his long association with the former Institute of Personnel Management (IPM), now the Chartered Institute of Personnel and Development (CIPD), the premier and increasingly international association of human resource management professionals. Farnham distinguishes the Human Resource Management (HRM) — upper case and singular — paradigm from its earlier ‘personnel management’ and contemporary paradigms, such as ‘human resources management’ — lower case and plural, and he further distinguishes a ‘contextual HRM paradigm’ that searches for a wider, ‘overall’ understanding, one that is more contingent than strategic, more pluralist than unitarist, more driven by its environment than by employer needs at the firm level. Most of the rest of Chapter 2 is concerned with the history of trade unionism, the institutional tradition of employment relations, the revolutionary tradition and the labour process, the last of which generates academic and political debate.

In Chapter 3 ‘The Changing Contexts of Employment Relations’, Farnham outlines and critically reviews the ‘contextual faces’ by applying them to the contexts of VoC theory — ‘as a good starting point’ and the theme of the Bamber at al. (eds) (2016) publication, following Hall and Soskice (eds) (2001), to labour markets and their institutions, to the nation state, and to technological change. The effect of environmental change on employment relations is continued in a more theoretical vein in Chapter 4 ‘Theories, Ideas and Research in Employment Relations’. This chapter discusses the specialist subjects employment relations theory building — economic and institutional theory, management theories, theories of change, and theory building and research that make up for the absence of an integrated theory of employment relations.

Chapter 5 ‘Employers, Managers and the Management Function’, Chapter 6 ‘Workers, Employee Voice and Trade Unions’, and Chapter 7 ‘The Nation State and International Agencies’ analyse and critically assesses the ‘changing faces’ of each of the tripartite ‘players’. These chapters however are more than institutional analyses of the ‘players’; they provide reviews of the research and competing theoretical perspectives of management, trade unionism and economic governance. By addressing his book to students ‘with little prior knowledge of the field’ Farnham has reinforced his ‘changing faces’ of theoretical employment relations and of the substantive employment relationships, particularly in these three chapters, but dispersed throughout the book with materials that almost amount to separate mini courses in ‘A History of Management Thought’, ‘A History of Capitalism’ ‘Principles of HRM’, ‘International Industrial Relations, Comparative Employment Relations’, ‘International HRM and ‘Social Science and Employment Relations’. For the

naïve students there is, justifiably, a lot to get their heads around, so anxious is Farnham not to leave anything out.

Chapters 8 to 11 are devoted to the regulation function of employment relations. Chapter 8 reviews the ‘changing faces’ of the law as a regulator and is in effect a mini-text on labour law, including the protection, rights and enforcement, with examples from several countries. Chapter 9 reviews the employer as a regulator and builds on the explanations of the ‘changing faces’ of management in earlier chapters by drawing on sociological and psychological perspectives of work. Chapter 10 reviews the union as a regulator (taking in modes of industrial action and the concept of worker resistance. Chapter 11 examines and critically reviews the ‘collective faces’ of employment relations, from bargaining and European workplace representation to mediation and dispute resolution.

Chapter 12 ‘Employment Relations in a Global Age’ forms the conclusion to *The Changing Faces of Employment Relations* and reflects on the national differences in employment relations and nations’ responses to globalization and neo-liberalism, arguing that there is no universal model. The determinants of ‘The changing faces of employment relations in a global and neo-liberal era’ are reiterated as the importance of history and contexts, the sophistication and diversity of HRM, the decline of unions and collective bargaining (including TNC union avoidance and the phenomenon of growing income inequality as measured by the Gini coefficient), the resilience of, in particular, European institutions, the changing role of labour law, and both change and continuity in employment relations.

Supported by a formidable range of sources, *The Changing Faces of Employment Relations* by analysing (rather than synthesising) the industrial relations and HRM, global, comparative and theoretical perspectives on employment relations, very broadly conceived, and not without contradictions and critical review, should both engage and inform the students towards whom it is directed.

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***International and Comparative Employment
Relations: National Regulation, Global
Changes* edited by Greg Bamber,
Russell Lansbury, Nick
Wailes, Chris Wright.
A Review.**

Frank Burchill *

There is a foreword, contributed by Professor William Brown, welcoming this new edition of the book. This is preceded by a number of statements of praise by other eminent academics well qualified to express such views. All of the comments constitute a brief, very favourable review and with a common theme. The common theme relates to the account of employment relations of a variety of countries as being ‘integrated’ and being very much the product of a tried and tested framework of analysis. This framework has served the various editions of the book very well over a period of twenty five years. Brown tells us that:

...this latest edition of a widely respected book adds to the separate studies of different countries a concluding overview of international developments. The result breaks new ground as an integrated account of the forces shaping employment relations in the world economy. (*op cit p vii*).

This is praise indeed, and worthily so. However, it does raise the question of what a reviewer can add, or how a reviewer can deal with the task of

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commenting on such a widely respected and used volume of work. At the minimum it requires a reading of the whole text. My focus will be on how each section ‘on twelve carefully selected countries’, *op cit*, adds to my, possibly idiosyncratic, understanding of employment relations and whether or not there are additional considerations each author might have addressed, in my opinion. However, it also deals with the introduction to the book. There is a danger that the review might appear over critical at times because it asks questions, but the reviewer has nothing but respect for the overall quality of this text.

Chapter 1. Introduction: An Internationally Comparative Approach to Employment Relations, written by the Editors

The concept of globalisation is considered at the very beginning. Quite rightly the question of whether or not it produces a kind of convergence between economies in respect of the structure of employment relations in those countries selected is raised. The post-2007 global financial crisis is seen to have given ‘...a more urgent focus on this issue.’ p. 1. How the 2007 financial crisis is seen by the various country authors will be discussed in this review.

On the same page a token reference is made to Picketty (2014). No page reference is given, but we are told that the publication ‘...shows, the period since the 1980s has seen rising income inequality within countries as well as between countries.’ This is a clear suggestion that the trends towards inequality within and between countries, exacerbated by the depression initiated by the banking crisis and the corruption associated with it, are likely to be factors affecting employment relations in the countries selected for comparison in this new edition. Page 2 raises a series of questions following from an examination of a number of the subsequent chapters emerging from their evidence of change in the countries studied. They state that the ‘...growing size and significance of international business institutions such as multi-national enterprises (MNEs) and standardised production systems, often operating across national borders, have led some to conclude that the scope for national differences in how work is organised and governed has been eroded.’ (*ibid.* p. 2). This supports the convergence thesis.

However, the questions then raised, on the same page, suggest that the new pressures in that direction are both a cause and consequence of a growing weakness of labour relative to capital. Collective and individual labour rights are being reduced under the pressure of global capital and competition on governments and related employment institutions. ‘Do national institutions, actors and policy-makers still have the most important roles in shaping employment relations?’ (*ibid.* p. 2). This is a key question.

What follows, beginning on page 3, is an analysis of why there should be a study of international and comparative employment relations beginning with some definitions. Distinctions are made between industrial relations (IR) and Human Resource Management (HRM). Employment relations is defined as dealing with both. It also takes an eclectic approach in terms of what is covered by the concept of international and comparative labour relations, the subject of the book itself. This is a very helpful piece of analysis. It also introduces us to the Varieties of Capitalism (VoC) framework, which removes an element of determinism from the convergence thesis, but not completely so. Careful reading of the Introduction is required to identify the nuances implicit in the different approaches to comparative analysis.

Table 1.1 on page 19 categorises different types of economy attaching two types of classification to each one described in the subsequent chapters of the book. These are overlapping categories essentially locating each economy in terms of whether or not it can be predominantly described as on the one hand a liberal market economy (LME) or a coordinated market economy (CME) and on the other hand, the relevance of its current state of economic development. There is also some debate on the lack of universal technical definitions of certain words used in the field. Examples of this will be given in the discussions of each country which follow in this review. Given the nature of our subject matter this is a problem within each country. For a discussion of how confusions develop see Burchill (1999).¹

Chapter 2. Employment Relations in the United Kingdom **Jeremy Waddington**

Waddington opens by describing the UK as approximating to a liberal market economy (LME). He refers to the trickle-down effect, often, in the literature, ‘...associated within neo-liberal economics²...’, and refers to Picketty, 2014, pp

¹ Burchill, F. (1999) ‘Walton and McKersie: A Behavioral Theory of Labor Negotiations’, *Historical Studies in Industrial Relations*, Vol. 8 1999 especially pages 156 – 168.

² The term neo-liberal economics is now used widely in the literature on employment relations. It was actually coined by Alexander Rustow in 1938. In terms of this definition Keynes was the classic neo-liberal. He advocated state intervention to manage capitalism. He was not intent on destroying capitalism, which made his approach appear liberal compared with Lenin, Stalin and Trotsky, the leading critics of capitalism. Marx was classified as a classical economist because he propagated the labour theory of value. The early neo-classical economists, later associated with the term neo-liberal, were people such as Hayek and Von Mises. Latter day neo-classical scholars, the Chicago school, Friedman etc. later became referred to as neo-liberals. These streams are best referred to as neo-classical. A corollary of all this is that the neo-liberal narrative has to be treated carefully. The American literature, for example, tends to use neo-

304-35, which is the whole of Piketty's Chapter 7. This is to indicate that trends toward inequality are important in understanding changes in employment relations. He then provides data in terms of the labour market, the parties to employment relations, industrial action and so on, very much in terms of the model laid down in the Introduction to the book. He goes on to discuss the role of the state, giving some historical background, and examines important recent legal reforms affecting the field of study, with some comment on the influence of the European Union, (EU). He contrasts what he calls a 'neo-liberal interventionist state' bringing to an end to a 'Keynesian consensus'. (pp 30-31). (See below for reference to some comment on this use of terminology). He tells us under the heading of 'Dispute settlement' that 'The British (sic) state has provided conciliation and arbitration services to voluntary collective bargaining and disputes procedures since the end of World War II.' p. 32. Historically, it is necessary to understand that in the 'UK' such services have, in fact, been provided since the last quarter of the nineteenth century. This was of importance to former British colonies, and helps in understanding national and international differences, as well as similarities, in employment relations.

The Chapter goes on to provide useful information about the impact of the EU, employee participation, fairness at work and the future. It concludes that since '...the 1970s the United Kingdom has been subject to substantial change, with profound implications for the roles of the state, employers and unions. In essence, the United Kingdom adopted more features of an LME in transforming the relationship between state and market, and jettisoning any pretence to social market relations.' p. 44. This is the kind of information the book was designed to cover.

However, when it comes to the role of the state, the public sector and the coverage of collective bargaining there are serious omissions which obscure not only what is currently happening, but ignore crucial historical UK developments with considerable influence on the structure of employment relations' institutions worldwide. Perhaps the most important of these is the omission of any reference whatsoever to Whitley Councils, often referred to as 'Whitleyism'.³

liberalism, as a term, quite differently from the way it is used in the UK and elsewhere. See Rustow, D A, Attanasio, S, (1980) *Freedom and Domination A Historical Critique of Capitalism* Princeton University Press.

³ In 1917, a date of obvious significance, J H Whitley was appointed by the UK Government to chair a committee which would produce a *Report on the Relations of Employers and Employees* in the immediate aftermath of the Bolshevik revolution and the impending end of WW1. In the years leading up to WW1 UK trade unions were undertaking industrial action on a large scale, with the war to some extent rescuing both employers and the Government. The Reports

This is further supplemented by a failure to refer to the role of Pay Review Bodies (PRBs) in the public sector. At the time of writing this review the NHS is faced by an all-out strike by junior doctors. There are threats of industrial action in other parts of the NHS, the education sector and considerable resentment in the police force. All of this reflects the activities of these bodies, an understanding of which helps to explain a lot of what is going on in the UK public sector. It also puts into perspective the minimal role of Acas in collective mediation. The Government has recently influenced the review bodies essentially to impose austerity type restrictions on pay whilst demanding significant changes in work practices, particularly in respect of junior doctors. Rhetorical positions are being taken up by both sides similar to those taken up with the miners and Government in 1984. There is talk of the need to crush the doctors to prevent widespread attempts by workers in other parts of the public sector to emulate the doctors. The longest standing PRB is the Doctors and Dentists Review Body (DDRB) set up in 1971 in response to industrial action by medical staff in the late 1960s. Ironically during the Thatcher era, being granted a PRB, particularly in the NHS, became a reward for controlling militancy.

PRB reports are easily downloaded to gain access to underutilised, but highly informative, material on public sector employment relations.

There are eight PRBs which make recommendations which apply to 2.5 million workers, 45% of all public sector staff. These bodies are serviced by the Office of Manpower Economics (OME) which provides an independent secretariat of civil servants to all of the PRBs. The membership of PRBs consists of a

*(Reports of the Committee on the Relations between Employers and the Employed (HMSO London, 1916-18, Cd 8606, Cd 9001, Cd 9002, Cd 9009, Cd 91530), commissioned by the Ministry of Reconstruction, advocated the establishment of Joint Industrial Councils. These would consist of strong national employers' organisations meeting strong national trade unions at national level. They would be empowered to negotiate national agreements covering all collective issues including total earnings, hours of work and disciplinary and grievance procedures. At plant level there would be joint consultative committees dealing with domestic issues such as working conditions, the environment and health and safety. These were intended to cover both the private sector and the public sector. The first Whitley Council system was established in the Pottery Industry with its inaugural meeting in 1920. This was part of a post-war settlement, along with 'homes fit for heroes', not simply for purposes of fairness and social justice but also to avoid Bolshevism in the UK. The formation of the International Labour Organisation in 1919, as part of the Treaty of Versailles in 1919 was very much influenced by Whitley provisions. Ultimately both the Whitley Committee structures and the ILO were marginalised by the recession beginning from 1922 and running through to the build up to WW2. In the post-war settlement period Whitley style committees were established across the public sector. See Lord McCarthy (1976) *Making Whitley Work* Department of Health and Social Security. Whitleyism embraced pluralism. Attempts to introduce Whitley style arrangements were made in both Australia and Canada.*

chairman and persons with experience of HRM, employment relations, selected from senior academics, managers, practitioners, with a sprinkling of labour market economists. Annual Reports of the PRBs are easily downloaded and they give terms of reference and summarise evidence given to them by representatives of employers, trade unions, Government Departments and so on. The OME supplements this evidence with commissioned research and research of its own. Each body meets about eight times a year and members pay visits to workplaces and engage in discussions with all types of staff. These will include visits to hospitals, schools, prisons and so on, depending upon the PRBs remit.

As stated above PRBs are expected to make recommendations based on the evidence they receive and in accordance with their terms of reference. By definition, recommendations are not legally binding and may be rejected by the Government or unions. This therefore constitutes collective mediation and is part of collective bargaining coverage, although employment relations literature in the UK is very confused about this. Collective mediation by Acas is of minimal importance compared with that provided by PRBs. This kind of confusion about what constitutes collective bargaining becomes even greater when making international comparisons. The academic literature in the UK generally takes up the position that collective bargaining within PRBs only takes place when they fail to agree.⁴ Clearly an absurd position. If the parties in the private sector were treated as only engaged in collective bargaining when they failed to agree, then there would be very little coverage of collective bargaining.

Chapter 3. Employment Relations in the United States **Harry C. Katz and Alexander J.S. Colvin**

In the terms used in this book's Introduction, the United States can be seen as the archetypal liberal market economy (LME)', a clear and strong opening statement. The term '...labour market diversity...' refers to '...a high degree of diversity in the conditions under which employees work.' This obviously refers to a lack of labour market regulation and control brought about by a lack of union representation, membership having declined from a peak of 35 per cent in the early 1950s to 11 per cent on the most recent figures.

⁴ For comments on some of the issues raised here see Burchill F, (2014) *Labour Relations* Palgrave Macmillan pp1-2, p80, pp103-4. For a more detailed discussion see Burchill F (2000) 'The Pay Review Body System: A Comment and a Consequence', *Historical Studies in Industrial Relations*, Vol 10, Autumn 2000, pp 141-157.

They then give an inevitably brief history of employment relations in the USA which is very interesting and informative in explaining how the USA achieved the status attributed to it in the opening statement referred to above. The section on the parties is equally interesting. On the employers it gives a short, but very insightful explanation, of the weakness of employers organisations in the USA compared with management consultants and lawyers in respect of company administration and policy. The section on unions will be equally valuable to newcomers to employment relations. It begins 'The US labour movement generally is considered an exceptional case because of its apolitical business union ideology, focusing rather narrowly on benefits to existing members.' This is especially significant and no doubt readers will follow up the references to historical material provided by the authors, to which this is an excellent introduction. The unions never tried to form their own political party, and their stance affected both the early development of the ILO and the International Confederation of Free Trade Unions (ICFTU). The AFL-CIO relationship has also been unstable with repercussions both nationally and internationally, and, historically, in respect of the ILO and the International Confederation of Trade Unions (IFTU).

The section on Government points to complexities in the whole notion of a free enterprise, unregulated system. This needs to be read and followed up. Western economies learned a lot from the USA's early introduction of a minimum wage, which more often than not contradicted the theories of classical and neo classical economists. In 1963 the Federal Government introduced equal pay for work of equal value, well ahead, for example, of the UK. The USA is clearly a country of contrasts. It is easy to think of the country in general terms as applying illiberal policies and being reactionary. However, the USA has always been a source of ideas given the history and strength of its intellectual tradition in this field. In this respect, a section on 'Collective bargaining initiatives' is particularly interesting. Although union membership density is low in the USA, it has a very large workforce compared with other countries. This means that the number of members is high and allows unions to provide funding, through universities in particular, to departments with academics sympathetic to their objectives. Not surprisingly, there is a very strong contribution to employment relations literature from the United States. Reference is made to the attempt by VW to make its Chattanooga plant a part of its European Works Council. p. 69. There does appear to be a legal problem here which needs examining.⁵ Many American companies have EWCs which

⁵ The attempt by VW to secure representation for its employees in its Chattanooga plant between 2012 and the present produced a response from senior Republican politicians which seemed to be suggesting a fate worse than cancer for the whole of the population of

they find useful, in some cases extending membership to operations in non-EU countries. President Obama's recent visit to the UK where he explained what he considered to be the value of remaining in Europe was important. Perhaps this aspect of USA legislation should be re-examined, although recent behaviour of VW senior managers and union leaders in respect of their EWC illustrates the dangers of something akin to company unionism.⁶

The occupy movement which started in the USA with protests against social and economic inequality, is mainly a consequence of the kind of globalisation process referred to in the Introduction to the book. This Chapter is written by academics who clearly feel passionately about the consequences of all of this and who undoubtedly support trade unionism and the original objectives of organised labour. Facing up to the consequences of a world without trade unions is a theme which recurs throughout the whole volume.

Chapter 4. Employment Relations in Canada **Daphne G. Taras and Scott Walsworth**

This is a Chapter written with considerable clarity and objectivity, focusing on analysis without resort to any wishful thinking. It neatly combines descriptions of the impact of both European influences, especially from France and the UK, and those of the United States. The historical section highlights the impact of immigration showing how from the 1960s this shifted from mainly the UK to Asian countries impacting on workplace demographics in ways experienced worldwide.

In terms of the VoC model Canada is portrayed as a LME. Interestingly, there is a strong emphasis on collective bargaining in all sectors supplemented by a ruling that employees covered by such must pay union dues, overcoming the 'free rider' issue. Union density is relatively low, whilst unions are quite strong and compared with the other countries portrayed in this book Canada has the highest level of industrial action.

Tennessee. It is worth the reader googling the variables in this issue if only to understand why early legislation in the USA designed to prevent company unions does not allow other forms of worker representation. This legislation in the USA designed to protect workers from company unionism had the unintended consequence of preventing any kind of worker representation other than via an external union. In this case VW's attempt to secure a ballot in favour of UAW recognition provoked the wrath of the Republican Governor and local Republican senators.

⁶ See Connolly, K. (10 January 2008) *VW boss says he did not know of perks and prostitutes* The Guardian

It could be said that, on the surface, all of this appears paradoxical. However, the text explains it all. For the wishful thinkers, concerned to offset the impact of globalisation on the income and security of workers and their organisations, perhaps there is a ‘Canadian Model’. The authors describe the employment relations context in Canada as being sufficiently stable to withstand the buffeting of the trade cycle more effectively than many economies of a similar economic size.

Chapter 5. Employment Relations in Australia **Chris F. Wright and Russell D. Lansbury**

The introduction to this Chapter describes Australia as being ‘...widely regarded as a liberal market economy (LME) with a relatively flexible labour market...’ p. 103. This they tell us is a recent development. The Chapter follows the subdivisions which appear in other Chapters. It is an intricate and instructive description of the development of employment relations in Australia showing fluctuations between centralised and decentralised approaches to the related institutions and practices. On the whole, an excellent introduction to Australian employment relations.

Under the heading ‘CURRENT ISSUES’ the issue of ‘Workplace productivity’ is discussed. pp. 116 – 118. Interestingly it is possible to secure a Google alert for the term ‘industrial relations’. Such an alert produces something like five alerts a week, often with multiple references. Of these, 80%, approximately, refer to Australia, with most being to concerns emanating from the Productivity Commission.

The subsection on Trade Unions, pp. 107 – 110, makes no reference to the Royal Commission into trade union governance and corruption. This is currently collecting evidence. There appears to be a considerable amount of corruption. Also, a double dissolution on matters relating to industrial relations has been called by the Coalition.

Many names have been mentioned in connection with such corruption, including that of the Fair Work Commission vice-president and his partner, a union leader, leaders of the CFMEU and so on. Much of this is associated with bribery, collusion and power, emanating from the fact that many ALP senators have trade union officer backgrounds.⁷ A great deal of this behaviour must be

⁷ See Flanagan, R (2011) *THE AUSTRALIAN DISEASE* Black Inc., eBook ISBN: 9781921870491 Flanagan is the Tasmanian novelist who won the 2014 Man Booker Prize for his 2013 *The Narrow Road to the Deep North*. In the book referred to here he imagines himself at the beginning to be Craig Thomson on stage, and then embarks on a wide ranging discourse

detrimental to productivity improvement. What is happening is astonishing, with academics apparently remaining totally silent.

Between this edition and the previous edition it could be argued that the most significant event in the field of employment relations in Australia was the challenge presented to trade union practices made by Alan Joyce on 29 October 2011 when he grounded the entire Qantas mainline fleet, regardless of locations, and locked out its staff. From an academic point of view, it deserves some mention and analysis. Whatever the short term impact, there was some popular approval in Australia. Qantas profits have increased in the longer term. Has all this been at the expense of job security?

Following from the above, partnership/productivity bargaining seems to have very little traction, either in practice or in the academic literature in Australia.⁸ This is quite different from the UK and the USA, particularly in the motor vehicles industry. A similar black hole appears to be the concept of joint consultation or works councils.⁹ Interestingly, in this context, the list of Australian companies indicates that many would be eligible for requests from employees to establish European Works Councils, but none appear to have done so. Australian businesses do have offices in Brussels. The European countries listed do have EWCs, even Switzerland. This is also true of, course, of many U.S. companies with operations in Europe, along with Japanese companies. Several large companies have seen EWCs as valuable enough to their business as to include plants on a worldwide basis. This could be an interesting research area.

Chapter 6. Employment Relations in Italy **Lucio Baccaro and Valeria Pulignano**

This is a complex Chapter in terms of the VoC literature classifications. The editors to the book as a whole do recognise that this approach can be constricting as well as constructive. This Chapter well illustrates that point. However, it does end on a familiar note. Trade unions are seen to be in decline, as in most developed economies. Hence, students of employment relations should be reflecting on what a world without unions would look like. They should also consider which new institutions and social forces may emerge

about Australian politics and ultimately the importance of individual responsibility and morality.

⁸ See Cutcher-Gershenfeld, J, Brooks, D Mulloy, M. (2015) *The Decline and Resurgence of the U.S. Auto Industry*. Economic Policy Institute.

⁹ For a thorough discussion of the issues associated with these concepts, see Hall, M. and Purcell, J. (2012) *Consultation at Work* (Oxford: Oxford University Press).

to take up the crucial role – embedding a market economy – historically played by unions.’ p. 148. At least it suggests the relevance of the notion of convergence.

This is, of course, the crucial question being posed by the whole book. It is also a crucial question for politicians in a grossly inequitable and unstable world. It is equally a crucial question for employment relations academics locked into the Business and Management Schools of Universities who sell their products on the basis that they will add to the lifetime earnings of their purchasers, rationalised on the grounds of the notoriously absent ‘trickle-down effect.’

The Chapter gives a very good introduction to the background to current employment relations issues in Italy and to the structure of the parties, and early attempts at tripartism which inevitably failed. It also quite tellingly states ‘The trajectory of Italian employment relations after World War 11 was linked to the evolution of the Italian political system as a whole. In 1944, union groups of different ideological orientations (communists, socialists, Catholics and others) joined ranks to establish a unitary union confederation the Confederazione generale Italiana del lavoro (CGIL) ... With the start of the Cold War, the unity of anti-fascist forces vanished...’ p. 127.

The importance of both world wars of the twentieth century cannot be underestimated in terms of their effects on the institutions and government structures impacting on the institutions affecting employment relations. A point to be taken up at the end of this review will be the importance of the state of politics in individual states depending upon how they emerged from all of this in 1949 – the timing of the start of the Cold War. It is possible to consider this as a supplementary model to the VoC one. There are also signs that there is a newer disintegration of what in the not too distant past was also seen as a unity of anti-fascist forces.

Chapter 7. Employment Relations in France

Patrice Laroche

French exceptionalism is the opening theme of this chapter. ‘Shaped by historical, political and economic factors, French exceptionalism is paradoxical. The density of unionisation in France is the among the lowest in Organisation for Economic Cooperation and Development (OECD) countries (less than 8 per cent) while the coverage of collective bargaining is among the highest (93

per cent).¹⁰ This could be an answer to the question of what the world could be like with very few unions and members. The Chapter does explain how the unions, in spite of their lack of membership, are in fact very powerful as a social and political force.

The Chapter provides a very interesting account of a certain kind of labour strength and stability of its institutions, and continuity, in complex political circumstances. A lot of this is attributed to the state playing a strong interventionist role. Given the theme of 'exceptionalism' the conclusions do not link to the VoC model. More of the same within a social democratic framework is the aspiration of the author of this Chapter.

Chapter 8. Employment Relations in Germany **Bernt K. Keller and Anja Kirsch**

This Chapter opens by telling us that 'In the Varieties of Capitalism (VoC) approach (Hall & Solskice 2001), Germany is seen as the classic example of a coordinated market economy (CME), where employment relations are characterised by well-organised trade unions and employers' associations that comprehensively regulate working conditions through industry-wide collective bargaining, formalised participation of employees in decision-making to curb managerial prerogative, secure employment and elaborate industry-based training schemes that produce a labour force with high industry-specific and firm-specific skills.' p. 179.

How this apparent ideal of labour management relations came into being is a story worth understanding. This Chapter tells that story in clear detail. It then discusses the changes which have developed since the early 1950s, both internally and externally, to bring pressures and strains to this model. Both stories focus on the relevance of the VoC framework. There is a wealth of statistical data and historical detail.

The conclusion emphasises the impact of trends in labour force diversity and what is referred to as '...a more neo-liberal, market-driven orientation towards the shorter-term maximisation of shareholder interests (Jackson & Sorge 2012).' p. 205. This is a familiar story.

The Chapter on Germany is a key to the understanding of VoC analysis. It revolves around what appeared to be the establishment of an ideal social democratic model. This Chapter provides an excellent introduction to German history relating to employment relations and future challenges.

¹⁰ In sessions on union density, the question to students when asked if union density in the UK is 26% what do you think it is in France, usually elicited an answer of 85 to 95%.

Chapter 9. Employment Relations in Denmark **Jorgen Steen Madsen, Jesper Due and Soren Kaj Anderson**

‘The state has played the role of the third actor in the industrial relations (IR) system (Dunlop 1958). This has occurred in relation to labour market policy, which to a large extent has been formulated within the framework of tripartite agreements. Welfare issues, such as questions of pensions and further training, have also been the subject of tripartite negotiations and agreements, particularly over the last couple of decades. From this perspective, the Danish political economy is a typical coordinated market economy (CME) (Hall & Soskice 2001).’ p. 209.

The ‘Danish Model’ of employment relations has shown stability over a long period of time and continues to do so. Like France and Germany, it has been an inspirational model for other social democracies, but appears to be less vulnerable to either internal or external threats. A reading of the chapter illustrates this, and also demonstrates a different kind of history from both the other countries. It is a well-constructed chapter and one which helps further to put flesh on the bones of the VoC framework of analysis. Similarly, it does not fit the convergence model. All of this is well explained.

Chapter 10. Employment Relations in Japan **Hiromasa Suzuki, Katsuyuki Kubo and Kazuya Ogura**

Millward, N. (1994) *The New Industrial Relations* (London: Policy Studies Institute) identified what he called the ‘Japanese Model of Industrial Relations’. This was very much based on the behaviour of Japanese companies in the UK. The core elements of the model were said to be recognition of a single union with sole bargaining rights; pendulum arbitration as a basis for enforcing a no-strike agreement; access by all employees to a consultation forum; single-status employment conditions; freedom of management to organise work.

On page 10 of this Chapter we are told that ‘The international interest in Japanese management and employment relations was perplexing to many Japanese people, as for most of the twentieth century Japan had tried to follow models derived from the West (e.g. the United Kingdom, the United States and Germany).’ They argue that jobs for life and an ageing population have become increasingly incompatible.

The Chapter ends with the following: ‘In sum, aspects of Japanese employment relations seem to be moving to adopt LME-style approaches.

However, Japanese employment relations retain similarities with CME-style approaches – albeit with Asian characteristics.’ p. 263.

This is a challenging chapter for the reader. We are told ‘After Japan’s surrender in 1945, the Allied powers General Headquarters (GHQ) sought to rebuild the organisation of work and employment relations as part of the post-war reconstruction. Many elements of the present model were shaped by American influence after the war.’ This could be of some significance. Maybe Japan, with a defeated management and docile labour force provided a base for people such as Deming and Juran to conduct experiments in modern Taylorism which were not feasible in their own land given the return of its heroes. This would explain the paradox in the two introductory paragraphs above.

Chapter 11. Employment Relations in South Korea **Byoung-Hoon Lee**

In the Introduction to this volume South Korea, like Japan, is classified as an *Asian developed economy*. That both fall into such a category could be the result of USA influences in the immediate aftermath of World War II, with a second round for South Korea following the Korean War. South Korea, the Republic of Korea, is referred to as Korea throughout the remainder of the Chapter. p. 266.

This Chapter tells us a great deal about how Korea became a leading economy, not just in Asia, but in the world at large. According to data collected in Wikipedia, ‘South Korea’s tiger economy soared at an average of 10% for over 30 years in a period called the Miracle on the Han River, rapidly transferring it into a high-income economy... Today, it is the world’s fifth largest exporter and seventh largest importer with the OECD’s third largest budget surplus. It is Asia’s most advanced democracy with high government transparency, universal healthcare, freedom of religion and fundamental rights protected by the most developed rule of law in Asia.’ (Google).

The account given in this Chapter points to ‘...growing precariousness and polarisation, exemplified by the proliferation of the non-regular workforce and the widening pay gap, as well as employer dominance, supported by the government’s neo-liberal policies.’ p. 286. Since 2013, President Park has sought to weaken the rights of workers and trade unions. Penal sanctions have been applied against unions and officers.¹¹

¹¹ Hyun Lee November 12 2015 *South Korean Labour Strikes Back* Foreign Policy in Focus (Institute of Policy Studies).

This Chapter provides a perfect example of the relevance of the VoC model to developed economies.

Chapter 12. Employment Relations in China

Fang Lee Cooke

In the model China is classified as an *Asian emerging economy*, like India. ‘Commentators outside China also use the term ‘state capitalism’ to emphasise continuing state intervention as a feature of the country’s liberalising economy.’ p. 291. ‘The Chinese economy is a ‘mixed economy’ characterised by ‘a blend of market-driven, government-controlled and *guanxi* (relationship) – based culture’, with strong management implications (Si et al. 2008: 932).’ p.291.

In the section on the role of the state we are reminded that ‘As China is a socialist country with the legacy of state-planned economy embedded in its political economy, the role of its government – or more broadly the state – is dominant as an employer, a legislator and an economic manager.’ p. 293. Historically China was a Leninist/Stalinist state, with Mao, Zhou and Deng being fervent supporters of Lenin, followed by Stalin. (Pantsov and Levine, 2015).¹² This is where its current socialism originates.

One can only read this Chapter, and be a little questioning of some of the data – for example, trade union membership figures expressed in a continuous series from 1952 to 2012 – whilst recognising that attempts are being made to improve the lot of the Chinese people, as suggested by the author. Genuine efforts are being made to improve the protection of workers, but there are examples, currently of what Amnesty International regards as breaches of human rights. The People’s Republic of China has reformed its constitution to introduce the rule of law but still allows the Communist Party the final say.

This Chapter is one that does not readily fit the VoC model, although China’s marketization policy could be seen as an indicator of convergence.

¹² Pantsov, A. V. and Levine, S. I. (2015) *Deng Xiaoping a Revolutionary Life* (Oxford University Press). This book is a ‘warts and all’ biography of Deng. The book contains an ‘Epilogue’ which is sympathetic to what Deng was ultimately trying to achieve in his latter days and is very close to what is being expressed by Fang Lee Cooke.

Chapter 13. Employment Relations in India **Anil Verma and Shyam Sundar**

'We ...show that Indian developments do not fit neatly into categories such as liberal market economies (LMEs) or coordinated market economies (CMEs), as elaborated in the Varieties of Capitalism (VoC) framework (Hall and Soskice 2001). The developments also defy the notion that India is simply transitioning from being a CME to an LME.' p. 317. They do actually posit another model for Asian economies such as Japan, South Korea, China and India '...that seeks high economic growth rates by liberalising economic policies while maintaining a strong role for the state in social policy, including employment relations policy.' p. 317.

In the introduction to the Chapter, India is described as the world's largest democracy. It is also a large multi-party democracy '... with a diverse population in terms of ethnicity, language, religion and caste.' p. 316.

Apart from definitions there are problems with data. Apparently, depending on the source of information, '...union density varies from less than 5 per cent to around 30 per cent.' p. 320. When it comes to collective bargaining apparently the state plays a weak role. 'The coverage of collective bargaining is extremely limited; it is estimated to be only 2 per cent (Venkata Ratnam 2003).' p. 325. This is attributed to a high use of compulsory conciliation and adjudication of disputes in the public utilities. Voluntary arbitration is also referred to. Such 'adjudication' would be regarded as collective bargaining in other jurisdictions.

Given the scale of the Indian population and the wide variations in living standards it is difficult to know what much of this Chapter means.

India has a big influence on world trade. Its car industry is of considerable importance to the UK, for example. It is also of considerable importance to India. TATA is important for both steel and car production. Does it recognise unions? A focus on such a company would help to indicate what happens in the advanced manufacturing sector. How widespread is child labour? What about Health and Safety? To what extent are outside companies exploiting the Indian labour force?

Conclusion

The authors of the text are well aware of the limitations of the VoC model, but it does seem to work well for developed economies whether in Europe or Asia. Even China shows some indications of potential fit. India is certainly the most complex of the countries on the basis of its chapter given the twelve countries chosen. The choice of countries obviously reflects the affinity between

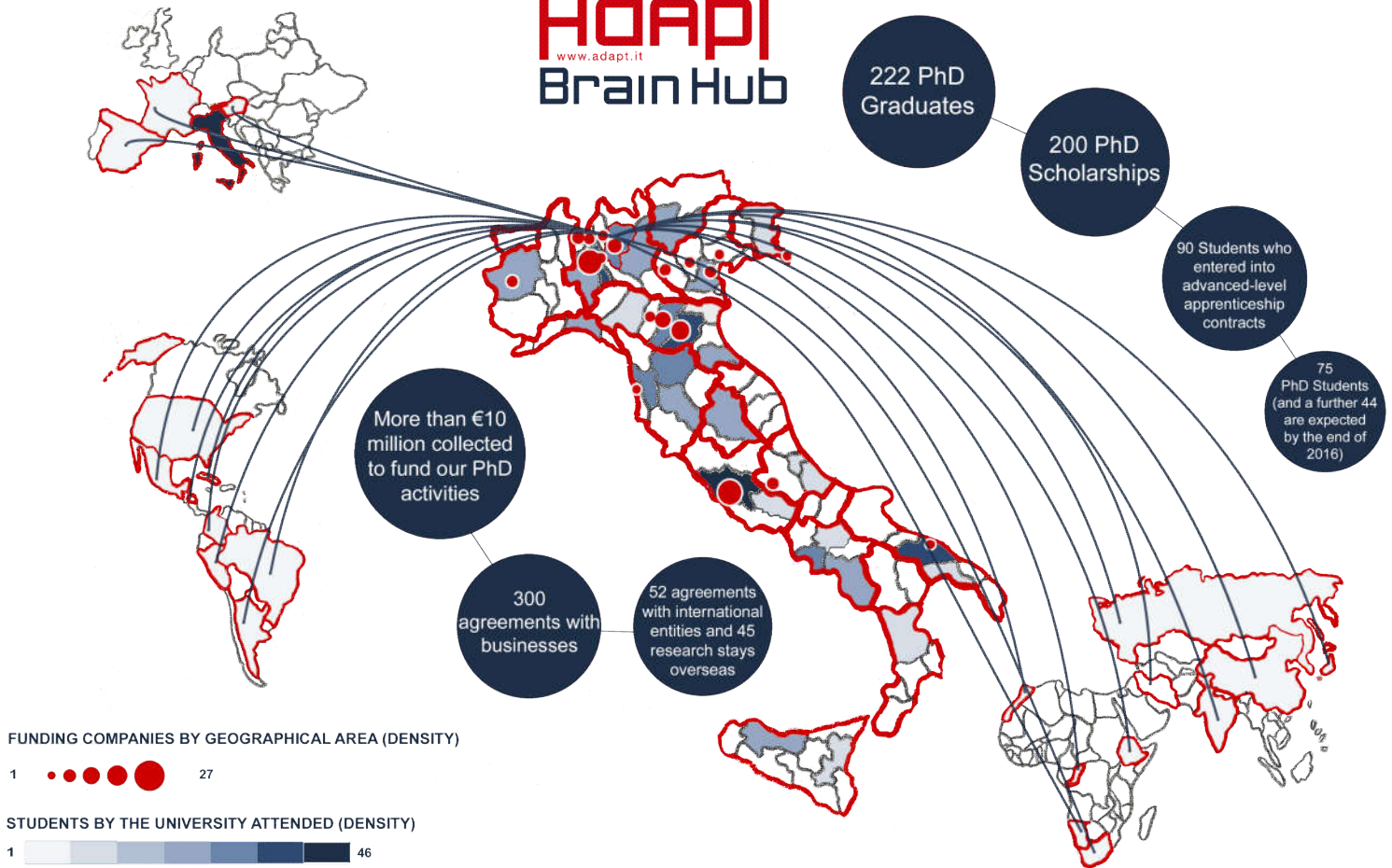
Australia and Europe and the proximity of Asia. Once we move into comparisons with Asia, the Rostow model, with all its weaknesses comes to mind.¹³ No doubt its subtitle itself deterred a lot of academics. Countries such as Nigeria and Ghana might be worth adding to a newer edition, but then much the same would be true of Latin America. What are described as liberal market economies in the twelve chosen could now include all the European developed economies minus Denmark and France, who could be joined by Canada, as a separate, exceptional group. All classification models have substantial difficulties.

What appears to be the case is that capitalist, liberal market democracies are winning out. Historically capitalism will be seen to be the worst system inflicted on the human race with its two total wars destroying not only each other's armies but any part of the civilian population deemed to be disposable for whatever reason. Capitalism spawned Leninism, Stalinism and fascism and two unprecedented world wars. However, this is in the past and social democracy with much greater emphasis on equality is clearly desirable.

Where countries ended up in 1949 crucially affected where they are now, even if they claimed neutrality. This is reflected in all the countries in the volume, including India and China. This does not need to be spelled out for these countries. For a more global analysis see: Kershaw, I (2015) *To Hell and Back; Europe 1914 – 1949* (Allen Lane; Penguin, Random House, UK).

¹³ Rostow, W.W. (1960) *The Stages of Economic Growth: A Non-Communist Manifesto*. Cambridge: Cambridge University Press.

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