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Labor Mobility in a Federal System: The United States in Comparative Perspective

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Abstract: Those who view Europe as having insufficient geographic mobility often draw a comparison to the United States, where mobility is higher. But the disparity in mobility is not an innate characteristic differentiating European and U.S. labor markets. Rather, mobility rates have fluctuated over time in the United States and Europe in response to changes in economic conditions, in demographic characteristics, and in socio-legal institutions. In this paper, we first explain why the legal regime in the United States is conducive of mobility. Barriers imposed by the state to deter immigration have long been unlawful and indirect barriers, though subject to less stringent examination, must also pass constitutional muster. Next we review historical trends in geographic mobility, which show that both Europe and the U.S. have experienced dramatic changes in mobility over the last 200 years and that these changes have occurred roughly in tandem.

Lessons from the Nordic Countries - "Basic Building Blocks" for an Enlarged Common European Labour Market

Alan C. Neal

Abstract: This article presents experience with the first three decades of formalised common labour market arrangements in the Nordic countries. It traces the historical roots of Nordic co-operation, and examines how early initiatives were stimulated to develop free movement for workers and a more open Nordic labour market during the inter-war years. Post-war momentum towards the establishment of a common Nordic labour market is then considered, with a focus on the 1954 Agreement laying down the basic framework and the subsequent revised Agreement of 1982 which now underpins the modern Nordic labour market arrangements. Some observations are offered in relation to the creation of basic building blocks for free movement of workers and integrated labour market administration, set against the recent backdrop of "enlargement" of the European Union.

Immigration and the Free Movement of Workers after Enlargement: Contrasting Choices

Orsolya Farkas, Olga Rymkevitch

Abstract: The article examines recent developments in the fields of Community immigration policy and the free movement of workers from the new Member States during the transition period. It is argued that policy choices have been dominated by narrow economic considerations rather than by a comprehensive vision of the issue. Reading between the lines of legal norms and policy initiatives, what emerges is a division based not so much on citizenship, but rather one the fact whether one has already been admitted to the European labour market or not. The article also reviews some recent cases of the ECJ, arguing that access to social benefits for those who exercise the right to free movement of workers between the Member States is not a subjective right, although

the restrictions are more limited than they were before the introduction of the concept of European citizenship. This should have the effect of allaying fears of "benefit tourism" from the new Member States.

The Efficacy of Statutory Union Recognition under New Labour: A Comparative Review

Brian B. McArthur

Abstract: Now that the dust has settled over the introduction and review of statutory recognition procedures in Britain, perhaps it's time to comment on the overall effectiveness of the legislation from a comparative perspective. This article follows the historical development of union recognition in Britain and the response to it by various governments and special interest groups. The intent underpinning the law is examined followed by a jurisdictional comparison using the key indicators of freedom of association, industrial stability and workplace dialogue. The new British legislation, despite its shortcomings, has been moderately effective in contributing towards the government's partnership agenda. Although the legislation is not as effective as the Canadian law, it is vastly better than the American system that has failed to develop into an instrument of balanced or fair public policy.

The Bottom Line of European Labour Law

Maximilian Fuchs (Part II)

Abstract: Due to the dominance of the economic approach (see the first part of this paper) the Treaty of Rome provided for only a small body of provisions concerning labour relations, with the emphasis on guaranteeing the free movement of labour. In the absence of a sound legislative basis in the Treaty, it is not surprising that European labour legislation has been adopted on a piecemeal basis. This is to a certain extent the result of the competition between the (pure) economic model and the social policy approach of European integration. The former favours abstentionism by member states, the latter, especially in the formulation of social rights, seeks a high level of employment rights protection. Against this background nearly all areas of European Labour Law are characterised by the need to strike a balance between economic and social objectives. Some examples of this are the respect for the freedom of contract, limited only by the duty not to discriminate against workers on grounds of sex, ethnic origin, age and other factors, and the safeguarding of entrepreneurial decision-making, limited only by information and consultation rights for workers. In examining the Directives on atypical work (part-time, fixed-term employment) it is evident that considerable efforts have been made to strike a balance between employers' and employees' interests. Clearly, not all the legislation commands universal support, but this is only to be expected in view of the heterogeneity of the 15 Member States. However, it seems that European Labour Law has achieved a considerable degree of success in the search for social cohesion.

Government Responsibility and Bargaining Scope within Article 4 of ILO Convention 98

Klara Boonstra

Abstract: This article reviews two decisions made by the Committee on Freedom of Association (CFA) of the International Labour Organisation concerning limitations on collective bargaining. In recent years many governments have been inclined to take a firmer grip on labour conditions that have an impact on government social policy, such as the retirement age. While in the years of economic prosperity these matters were left to the social partners, the current recession causes governments to regain control, not so much by drawing up statutory law, but by determining the extent to which the employer and worker are allowed at an individual level to deviate from otherwise binding collective labour agreements. In these two cases the collective bargaining partners contested the government's right to determine the level of bargaining and filed a complaint with the CFA. In its decisions, the CFA explicated the appropriate interpretation of the ILO standards concerning the right to bargain collectively and the determination of the level of bargaining.
Report on the Conference in commemoration of Marco Biagi on "The Reform of the Labour Market: Deregulation or Reregulation?", Rome, March 2004, organised by the Marco Biagi Foundation, University of Modena and Reggio Emilia, ADAPT, AISRI and the Association of Friends of Marco Biagi William Bromwich, Olga Rymkevitch

Book Review

Jeffrey Kenner, EU Employment Law. From Rome to Amsterdam and Beyond, Hart Publishing, Oxford, 2003

Roger Blanpain

Review of Julia Palca & Catherine Taylor, Employee Law Checklists, Third Edition, Oxford, Oxford University Press, 2004

William Bromwich