

BULLETIN FOR COMPARATIVE LABOUR RELATIONS – 92

# Labour Law and Social Progress

Holding the Line or Shifting the Boundaries?

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# Preface

This volume contains a selection of papers presented at the 21st World Congress of the International Society for Labour and Social Security Law,<sup>1</sup> including keynote addresses and other contributions that are relevant from an international and comparative point of view.

The original Call for Papers, written at the end of 2013, had introduced the theme of the Congress as follows:

‘In the era of globalisation, the four pillars of the ILO’s Decent Work Agenda ultimately depend on the prospects for the global economy. Since the recession of 2008 these prospects have changed for the worse. Unlike previous recessions it has not been followed by renewed growth. Rather, it has opened up a period of even greater uncertainty in which a new paradigm of fragile and unpredictable growth could be in the making. This raises the spectre of labour market policy concerned more with spreading the burdens of insecurity through negative reforms than sharing the fruits of growth through positive reform.’

‘If this is so, how can labour law continue serving the ends of collective regulation, individual protection and social justice?’

Events have moved on since this was written but economic uncertainty continues, coinciding with pervasive and explosive political tensions, manifested in phenomena such as the refugee crisis in Europe and its intractable causes. This volatility, intensifying the destabilizing consequences of decades of ‘globalisation’ based on ‘neo-liberal’ policies (itself a term of art), frames the present discussion.

But times of volatility are also times of creative response. Because the old can no longer suffice, new understanding is needed. The challenge of the future has been an insistent theme of labour law scholarship over the past thirty years. In this collection the focus is not so much on the future as on the present. The papers take stock of what has emerged and what can be learned from previous analyses in putting forward a range of new and possibly more nuanced perspectives on certain crucial issues of labour market regulation.

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1. Held in Cape Town, South Africa, from 15 to 18 September 2015.

The richness of the contributions makes it impossible to write meaningful summaries, especially since various themes recur in different papers. Rather, it will be attempted by way of introduction to lift out some of the central themes.

Most fundamental, perhaps, is the premise that labour law is not the problem (as the neoliberal paradigm would have it); it is, or should be, part of the solution. This remains true whether the question is viewed from the standpoint of economic development (Simon Deakin) or the pursuit of social justice (Alain Supiot). Indeed, as these and other papers demonstrate, these purposes are interwoven in a quest for what may be termed ‘social progress’: that is, sustainable economic growth combined with social justice, including mechanisms for (re)distribution of social wealth to eliminate unjustifiable inequality. And to play this role in a dramatically transformed world, it is widely accepted that labour law must move beyond its traditional forms. But here at least two qualifications emerge, the elaboration of which runs through several of the papers.

First, the processes of change associated with globalisation are not unilinear, a one-way journey towards the atomization of trade unions and the dismantling of labour law under the inexorable pressures of neo-liberalism. Opposed to this is the resilience of trade unions and collective bargaining as mechanisms of labour market regulation at least in certain sectors as well as the importance of national policy, despite the influence of global market forces, in shaping national outcomes that are far from uniform (Graciela Bensusán).

The continuing relevance of collective bargaining is also reflected in the significant number of papers presented at the Congress dealing with the right to strike (of which three are included in this collection). The recent attempt by the employers’ group at the International Labour Conference to delete the right to strike from ILO Convention 87 may partly explain this interest. However, it is also a fact that non-standard as well as standard work – despite the promotion of ‘individualisation’ – by and large remains collective in nature. This creates an ongoing basis for collective action and legal protection thereof, as one of the few checks on the power of corporate employers, in the interests of market effectiveness as well as fair outcomes for workers.

But, if not unilinear, the processes of change are also not circular. The growth of labour law cannot pick up from where it left off in its pre-globalisation heyday. Not only is it impossible to turn the clock back; even in its golden age labour law was shot through with limitations reflective of that period, implicitly marginalizing much of the workforce beyond the ‘standard’ paradigm. To recover its vitality in today’s labour market calls for more than a streamlining of existing institutions (Judy Fudge, Adelle Blackett). The goal of social justice implies nothing less than a reimagining and reconstruction of labour law as a discipline encompassing the rights of all those performing what Judy Fudge terms ‘socially valuable’ work.

What this could mean for the existing institutions of collective bargaining and worker protection, but above all in the evolution of new institutions responsive to different needs, should be a central focus of academic research and is engaged with in several papers. But, as the analyses of Alain Supiot and Simon Deakin demonstrate in different ways, it also needs to be confronted at a very practical level if labour law is to contribute to social progress. The papers referred to above and others (for example, by



Isabelle Vacarie and Stefan Bellomo) build on previous scholarship in bringing more clarity to different aspects of this interventionist project.

What is true of labour law is, in essence, true of social security law also. Keith Puttick examines the challenges at the 'labour-social security interface'. After highlighting the problems resulting from underemployment, short-term and increasingly intermittent work and diminishing wages, he notes how such transformations have meant increasing reliance on State in-work support. Such support is problematic, however, and costly in an era of austerity. Partly in response to this, he argues for more effective regulatory interventions, including measures to close the gender gap, improved sectoral bargaining and other redistributive mechanisms. On the social security side of the interface, besides improved design and funding, much can be learnt from systems in the Americas, South Africa, Asia and China. The purpose of social security is complementary to that of labour law; it is to promote social justice for workers outside as well as in the workplace. Indeed, it is impossible to conceive of workers enjoying meaningful labour rights without socio-economic rights, enabling them to lead dignified lives both as citizens and workers.

This leads back to the theme of social justice in which labour rights are understood as an aspect of human rights and the protection of those rights is redefined as an affirmation of 'industrial citizenship' in an inclusive sense, overlapping with, but also transcending the limitations of, national citizenship.

Tragically absent from this collection is the paper by the late Sir Bob Hepple, 'Can Labour Law Survive Globalisation?', that was to have been a keynote presentation at the Congress. To the shock of many, he passed away less than four weeks before he was due to deliver it. The question in the title, of course, was metaphorical. What was really awaited were his insights into the development that labour law might be expected to undergo in order to 'survive', that would no doubt have addressed, qualified or enriched the ideas put forward in these papers. Although this was not to be, much can be learned from his rich legacy of published work, an important part of which speaks to the central theme of the Congress: the relationship between labour law and social progress.

And so, to express the esteem in which he was held and the affection of those who knew him, the session he would have addressed was used to pay tribute to his life and work. Six of his former colleagues from South Africa and other countries shared their recollections of this unassuming man and outstanding scholar in what many delegates described as the most moving and memorable congress session they had ever attended. A video of the event, 'A Tribute to Professor Sir Bob Hepple QC', can be seen at <https://www.youtube.com/watch?v=zcbY3twHRD4>.

Finally, special thanks are due to Professors Manfred Weiss and Stefan van Eck for their assistance in selecting the papers in this collection.

*D'Arcy du Toit*  
*Guest Editor*  
29 November 2015



## CHAPTER 9

# The Challenges for Labour Law and Social Security Systems at the Labour-Social Security Interface

*Keith Puttick*

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### §9.01 INTRODUCTION

The focus of this chapter is the inter-action of labour and social security at what may be called the labour-social security interface, the challenges facing social security, and the two systems' ability to meet the needs of their key stakeholders: workers and their families, employers, and the communities they serve.

Social security systems face a number of significant challenges, not least from the effects of austerity measures and cutbacks to budgets we are seeing in many countries. Much of that pressure derives from the effects of labour market transformations, including the growth in precarious work, casualisation, underemployment, and particularly in some sectors the phenomenon of 'dwindling wages' (ILO, 2014: 26). In some instances this forms part of wider trends, particularly when regulatory and collective mechanisms to maintain wages and occupational benefits no longer function. A lot of the discourse around deregulation of the labour market and its implications is concerned with the transfer of risks, and costs of risks. An interesting exploration of this has been the idea of mutualisation or demutualisation of risk and 'risk-costs'. This encompasses a number of possibilities, including the scope for risk and costs to transfer *away* from the worker so that they are borne by others such as the community (mutualisation), or to transfer in the opposite direction, i.e., *to* the worker (demutualisation). There are other variants to this account, of course, and the 'map' is not complete until other possible directions of travel and actors are taken into account: intermediaries like employment agencies, labour sub-contractors, collective groups, consumers, the social market, and so forth (Countouris and Freedland, 2013: 7-9).

Whatever the merits or otherwise of particular deregulatory trends, or the impacts associated with particular actions, deregulation generally comes at a price – not just for those immediately affected workers, families, and trade unions (when collective institutions are affected), but for the wider community. That community includes State social security agencies at all levels, and particularly those which have to deploy support out of social assistance programmes funded from community assets and resources, taxation, and borrowing.

Notwithstanding a fragile recovery in the aftermath of post-2007 financial and economic crises, and despite initiatives to construct effective social protection floors in the ways called for by the Bachelet Report and subsequent ILO Recommendations (Bachelet, 2011; ILO, 2012), sizeable sections of the population continue to be at risk of poverty or social exclusion. In Europe the EU Commission has estimated that as many as one in four EU citizens ‘at risk’ in this way, although the extent of the problem varies greatly country by country, with the Nordic countries performing best (EU Employment Plan, 2014: 4). The increasing proportion within the ‘at risk’ group who are *employed* citizens highlights the scale of the challenges on both sides of the interface.

Developing points from my keynote paper at the International Society of Labour and Social Security Law (ISLSSL) XI European Congress of Labour Law in September 2014 in Dublin (‘Social Security and State Support for the Wage-Work Bargain: Reconstructing Europe’s Floor of Social Protection’) I argue that whilst there are a lot of remedial actions and improvements which policy-makers, agencies, and governments could take to address shortcomings in social security systems, it is to the *labour* side of the interface to which we should primarily be looking in order to rebuild and maintain citizens’, and in particular labour market participants’, ‘welfare’.

Whilst effective social security systems continue to be important at all stages in the employment cycle, including welfare-to-work transitions and after employment has ended, the central argument will be that it is an effective wages and conditions floor which should generally be the centrepiece of any effective social protection floor. Consistent with that approach, wages and occupational benefits paid at a fair level coupled with measures to close gender and equalities gaps and otherwise maintain Decent Work standards, should be the cornerstone of that floor; and, if necessary, newer, more effective labour market regulatory and redistributive mechanisms should be constructed.

There is already some evidence, albeit still nascent, of such reconstruction. In the face of budgetary limitations and constraints on governments’ and agencies’ ability to extend social security provision and programmes, it is perhaps not surprising that the quest has begun for alternative ways of extending protection. Those in precarious work in its various forms – agency workers, casuals, and others more likely to have to look to the State to replace or supplement their income, and meet household costs – are a case in point. In Italy, for example, new forms of employment contracts which include improved job security and economic protection, provide an example of what can be done. The policy driver for such initiatives has been limited budgetary resources to fund support low-pay groups through social security, and constraints on any further extension of public spending. The more general context is a fall in average per capita

income of around 10% (Pizzoferrato, 2015: 187-205). The use of legally regulated, standard form contracts which incorporate minimum forms of protection undoubtedly have the potential to assist workers in precarious and atypical types of employment, although studies of such usage between different countries reveals a range of potential gains, as well as drawbacks (Hiessl, 2014: 67, 83-85). Similarly, initiatives like the regulation of agency work in Namibia and South Africa in pursuit of Decent Work aims, and which clearly have the potential to improve the position of workers and their families, no doubt also have the potential to provide enhanced security while at the same time relieving the burden on social protection schemes and public finances (van Eck, 2014). They are also, perhaps, a further example of how governments can make fuller use of regulatory options to deliver 'welfare' (van Eck, 2014).

The incorporation of international standards, including elements taken from the ILO's Decent Work agenda, is perhaps the easier aspect of developing measures on the labour side of the labour-social security interface which have the potential to assist atypical, less secure categories of worker. The harder part, arguably, is in *enforcement* (Olivier, 2013). In the South African context, for example, this is evidently a significant problem in relation to the enforcement of minimum wage requirements and sectoral determinations set by the Employment Conditions Commission, although the levels of violation appear to be high compared with other countries (Bhorat, Leslie and Mayet, 2010: 2-5). In the bigger picture, enforcement of regulatory requirements is rightly seen by the ILO as a vital component in regulating the labour side of the interface and in maintaining the quality of social protection floors (Bonnet, Saget, and Weber, 2012). In countries like the USA which utilise a combination of both minimum wage regulation at Federal and State levels *and* targeted support from Federal and State welfare programmes, the reliance on tax-based systems to assess and support low-paid workers, notably through the Earned Income Tax Credit system, means that enforcement of requirements to assist claims and facilitate take-up of support is easier. Measures to deal with non-compliance with other areas of regulatory intervention, particularly in the area of equalities law is harder, though. Nevertheless, non-compliance necessarily adds to the pressures on strained social security budgets, particularly when this means social security claimants are not receiving what they should be in their pay packets. So it is no great surprise that governments have been looking to a range of innovative approaches to securing and enforcing standards and compliance. In the UK, for example, the current gender pay gap – currently estimated by the Equality and Human Rights Commission and other official sources to be 19.1%, with full and part-time women earning 80 pence in the pound less than men in the same or similar employment – has prompted the government to require all organisations with more than 250 workers disclose pay information and pay gap details annually starting in the first quarter of 2016. This, says Prime Minister David Cameron, will enable those who are not complying with equal pay law to be 'named and shamed' in the media (Cameron, 2015b; Mason and Treanor, 2015). The last Labour government included such powers in the Equality Act 2010 but the provisions were not activated until April 2016.

Despite their shortcomings, and the pressures now facing them, social security systems play a vital supporting role to supplement regulatory measures and standards

on the labour side. The precise scope of that role, and extent of that support, can vary considerably when the systems operating in the world are compared. Nevertheless, the support they provide by way of income and other sources of assistance – whether directly to the worker or indirectly to the worker’s family and household (often meetings costs which would otherwise have to be met from the pay packet) can be invaluable. Given how this complements the contractual wage and occupational benefits deriving from the job it is apt to describe this source as a ‘social wage’. Interestingly, South Africa’s Minister for Social Development, Bo Dlamini MP, describes the South African government’s ‘overarching policy’ and the Social Security Agency’s remit in terms of a social wage *package* (SASSA, 2015: 9).

In many systems that package has certainly been widening – not just in response to the changing nature of work, and its effects, but also to take on tasks like welfare-to-work transitions and provide in-work support. Why is that necessary, and why has that kind of support become an important part of the social security landscape? The rationale in policy terms is clear enough. It is generally better, and more efficient in terms of the allocation of limited resources, to support people *in* work than to have to sustain them, and their families and dependants, when they are *out* of work. That role, and particularly in the area of schemes to ‘make work pay’, has been another by-product of the labour market’s inability to provide, or provide sufficiently, for a growing number of labour market participants: a group described by the ILO as affected by reduced opportunities to work longer hours but also ‘dwindling’ or ‘inadequate’ wages (ILO, 2014: 26).

States and communities taking on this role, particularly at times of crisis and when the labour market is not delivering support at the levels needed, is not a new phenomenon. In the UK we had such in-work support as far back as the early nineteenth century despite warnings by political economists like J.S. Mill of the risks of ‘depressing wages’ and ‘pauperising’ the rest of the working population (Mill, 1838: 13; Puttick, 2010: 236). ‘Make work pay’ (MWP) systems in their various forms are now a significant feature of both developed and developing social protection floors, responding to a range of transitional and in-work needs (Adireksombat and Jinjarak, 2008). Reducing a dependency on them can be difficult, politically and in every other way, as the UK government discovered earlier in 2015. I will discuss this later when considering recent initiatives in the UK to make radical changes to the current system of in-work welfare, as part of a wider programme aimed at transforming the UK into a ‘high wage, low tax, low welfare’ country.

Besides MWP schemes I also have in mind social security schemes’ *enabling* function: support for groups who are not in a position to fully participate in the labour market but for whom *some* participation may be an option – albeit only with targeted financial assistance and training. Examples are single parents, carers, older returnees, and the disabled and long-term incapacitated. Canada’s support for single parents, the ‘Self-Sufficiency Project’ assisting lone parents employment with earnings supplements (OECD, 2003: 120), aimed at improving the labour market participation of ‘under-represented groups’ was just one of a number of influential models. I will return to this aspect of support later.

Before concluding I will comment on some of the impressive new approaches to social protection, operating in Asia, Africa, and the Americas (and particularly in countries like China, India, Brazil, and South Africa). Going forward, there is undoubtedly much to be learnt by other countries and Europe from those systems.

At the outset, though, I propose to look at some of the challenges which social security systems face. Then, after considering the question ‘what is social security?’ issues on the labour side of the interface will be discussed.

### **§9.02 DEREGULATION, THE CHANGING NATURE OF ‘WORK’ & THE TRANSFER OF COSTS**

At a time when deregulation of labour law is in the ascendant in many jurisdictions – driven over the last decade by a number of factors and a variety of national priorities and variations (Esping-Andersen and Regini, 2003), but in particular the idea that by softening regulatory requirements and reducing wage and non-wage labour costs job creation and retention and competitiveness will be promoted – it is perhaps inevitable that there are going to be casualties. These are not confined to qualitative aspects of work like job security, wages, and working time. They extend to occupational benefits and other conditions contributing to the totality of ‘welfare’ deriving from the employment relationship, and which can, and do, form part of the responsibilities and costs transferred to the social security side of the interface. Included are occupational benefits that derive from collective bargaining processes – national, sectoral, and enterprise – a trend arguably aggravated by increasing decentralisation of bargaining arrangements (Eurofound, 2014a, ch.3; 2015, ch.4).

Prospects for reversing such trends, or even slowing them down, are not good at the present time. Indeed, the scale of the challenge was captured very well by Alain Supiot in 2013 in his lead chapter in *Resocialising Europe in a Time of Crisis* in which he has noted how ‘the only terms in which modernisation of labour law is broached today in Europe are flexibility and deregulation’ (Supiot, 2013: 20). Aspects of this theme are developed in his chapter in this work.

Pressures also derive from the reduced opportunities to work in full-time, mainstream employment, and the consequent additional costs and on-costs this can entail for support systems. As the ILO’s *World Protection Report 2014/5* notes, this impacts in particular on the income security of working age people. Qualitative aspects of work have become increasingly problematic in some sectors, particularly when labour market entrants are only able to undertake partial or atypical – factors which both contribute to what the report describes as the ‘persistently high proportions of working poor’ (ILO, 2014: 26).

Such labour market changes also pose a threat to the viability of social insurance-based schemes. In general, insurance-based social security works most effectively and efficiently at times of labour market stability when the contributory principle and pay-as-you-go type systems – systems to which both employers and employees generally contribute and which in normal times can provide sustainable support. Commentators like Simon Deakin have noted, however, they come under pressure in

periods of prolonged high unemployment and with the growth of precarious work (Deakin, and Wilkinson, 2005: 162-3; 175-195). Deregulation, too, poses problems when the ‘contributions base’ is narrowed – another factor helping to produce new classes of benefit claimant and working poor (Deakin, 2013: 165-167). The growth of social assistance schemes, mainly funded out of taxation and borrowing, owes much to the decline of insurance based coverage, and the factors referred to. However, it has also been informed at different times as far back as the 1920s, and in the post-World War II period, by other factors including governments’ and policy makers’ *choice* to transfer costs away from employers and the community (ILO, 1942). This is often driven by the need for wider, more inclusive coverage. Not all such changes are necessarily bad. Some transitions, for example in the area of support for workers affected by industrial accidents and occupational disease, have had some positive features. Improved consistency in terms of eligibility criteria and coverage, with more comprehensive and clearer entitlements are among some of the advantages which can sometimes be seen once the State has assumed responsibility for risks and support. This was evident, for example, when the UK moved from employer-based liability to a State industrial injury benefits scheme (Lewis, 1987). Such transfers come at a considerable price in terms of fiscal costs and on-costs, and at a time when austerity programmes are impacting on schemes. The issues are not simply related to design quality. There are also sustainability issues in terms of national budgets’ ability to adequately resource schemes in response to the scale of demands placed on their resources (Mai, 2013: 11-15).

The transfer of risk, responsibility and costs away from employers is not just a European phenomenon. Some commentators on China’s social protection systems have noted, for example, how responsibilities for workers’ welfare in key respects, including displacement costs, were transferred away from the former State enterprises (where coverage was inconsistent, and based on an uneven patchwork of enterprise-based schemes) and on to the State. Subsequent moves away from social insurance and towards dependency by sizeable groups on large-scale social assistance programmes – mirroring Europe’s experience – has been a discernible feature of China’s developing programmes (Leung and Xu, 2015: 87).

Unfortunately, a combination of deregulation and roll-back of individual and collective entitlements affecting workers’ occupational welfare, coupled with the impact of austerity and cutbacks to State budgets for social security – whether provided directly to workers in the form of income transfers and other in-work assistance and ‘make work pay’ systems or provided indirectly in the form of support targeting workers’ families and households – can leave the more vulnerable sections of the labour market between two hard places in terms of their overall welfare.

This is echoed in the analyses of commentators in countries like Spain which have been seeing the effects of deregulation and neo-liberal agendas as well austerity and its impacts on the wider social wage (Banyuls and Reccio, 2012; Baylos and Trillo, 2013). Before revisiting the role being played by such systems, I would like to share some thoughts on the subject of what social security is, exactly, and what it is *becoming* – and how it supports the employment relationship in the modern era.



### §9.03 WHAT IS 'SOCIAL SECURITY'?

Methods of support, and harnessing the resources to provide it, vary considerably between countries and systems – even within the liberal, democratic, and corporate Welfare State models identified by Gøsta Esping-Andersen (Esping-Andersen, 1990; Esping-Andersen and Myles, 2011). This much is evident from the comparative tables which are part of data bases kept by the Mutual Information System on Social Protection and the International Social Security Association (MISSOC 2015; ISSA, 2015). Nevertheless, core aims and objectives are generally the same. At the heart of the subject are the pervasive themes of shared resources, risk, and insurance. Allowing for some reconfiguring as a result of austerity, and factoring in the important models and developments being seen in India, East Asia, and China – many of which did not feature in the Esping-Andersen typology (Leung and Zu, 2015: 9) – the focus of most systems is now firmly on the measures taken by the State to promote citizens' welfare. Indeed, Nicholas Barr writing in *The Economics of the Welfare State* has observed the 'State, through various levels of government, is much the most important single agency' within the overall welfare 'mosaic' (Barr, 2012: 6). Consistent with this, another LSE leading light in the field of labour and welfare economics, Nobel Laureate Sir Christopher Pissarides, observed at the Eurofound Conference in April 2014 and in 'Social Europe in a Time of Austerity' that it is to governments we increasingly look to 'support low incomes and provide basic services': an expectation at the core of what he describes as the 'Social State' (Pissarides, 2014). That is certainly the expectation of most citizens in times of crisis and the aftermath. However, in the global era, and with the growth in cross-border movement for work and residence, support from social security systems has also become as important for the non-citizen and migrant worker, and those with less settled 'residence' in legal terms. In this case, access to social security is significantly less assured. It is less of an entitlement based on citizenship or acquired membership of host communities, and rather more the ability to whatever conditions of acceptance are set for them by host communities them (Walzer, 1983: 33). In the face of scarce public resources and a downsizing of the Social State the more important criteria have become more sharply focused on an ability to reciprocate for any kind of public support, evidenced by labour market participation and other forms of economic and social integration (Puttick and Carlitz, 2012c: 271-274).

This is a shift we have been seeing, increasingly, in Europe, transcending older-fashioned notions like the Common Law's Law of Humanity, and the duty to give shelter and assistance to the guest and the stranger without any such immediate expectations of reciprocity. Indeed, EU Law has been adapting to this. In recent leading cases like *Dano* in the Court of Justice of the European Union that host communities can expect new arrivals to be either economically active or have sufficient resources of their own before they can expect social assistance. Furthermore, the new EU Charter of Fundamental Rights, whilst assisting groups who previously participated in the labour market, does nothing for those who are 'economically inactive' – even if they have EU citizenship (Dano, 2014; Puttick, 2015: 255).

As Europe and countries bordering war zones face unprecedented levels of population movements in to their territories, there will also, no doubt, be security

considerations. The biggest challenge, however, will be how to integrate what are likely to be sizeable numbers of entrants into host communities, and then labour markets once they gain access to employment. In this regard, social security systems are now playing a vital role in meeting a range of reception and subsistence needs. They are also key elements in assisting welfare to employment transitions, and supporting labour market integration. The problem is not new. Europe has seen population movements in the past, and examples of such transitional support can be seen in relation to displaced entrants from former Yugoslavia (and protection measures like Directive 2001/55); and the measures to provide assistance for asylum claimants in Directive 2003/9. In the case of asylum seeker support, the lacuna that was evident in the Refugee Convention (which made no provision for asylum claimants as opposed to refugees) meant that that the EU and domestic systems has to respond with a complex mix of trans-continental and national social security and labour measures. One of the more important features of the scheme has been the requirement to grant labour market access to entrants if decisions on refugee status are delayed – the norm being delays beyond a year (Article 11(2)).

The right accorded to new entrants to take up employment, supported in general by the courts, has underlined another central feature of modern social security at the labour-social security interface: recognition of the importance of a job – not just as a source of welfare and security, but as a central element in private and family life. This facet of support at the labour social security interface has featured prominently in the CJEU, ECtHR, and national courts' jurisprudence. In the UK our Supreme Court has endorsed this emphatically. In *R (Zo) v. Secretary of State for the Home Department* [2009] 2 All ER 193; [2009] 3 CMLR 27; [2010] 4 All ER 649 the court said this:

Ability to take employment is an aspect of private life under the European Convention on Human Rights 1950 Art. 8. The ability to develop social relations with others in the context of employment, as well as the ability to develop an ordinary life when one was in possession of the means of living to permit travel and other means of communication with other human beings, was also an aspect of private life. The positive prohibition on being able to work, when placed alongside the inability to have recourse to cash benefits, restricted a claimant's ability to form relations in the workplace and outside it.

To these observations may be added another point which the courts have also not been slow to recognise since *Zo*. By excluding new entrants from the labour market the community is being asked to take on a bigger burden of costs than would otherwise be the case if those individuals are able to access wages and be independent of the State and the community's support.

As far as labour market entry and participation are concerned, host States in some cases have been reluctant to accord workers from other countries the same degree of access as their own nationals, and others with more settled status. In the EU context the problem is assisted, if not entirely resolved by the inclusion of 'equal treatment' requirements as a vital component in the free movement system. For workers from other countries the position is rather more precarious, as it may be in other parts of the world. For that reason, bilateral and multilateral agreements on social security access

may offer scope for enhanced access, and may in many cases be a way forward (Blainpain, Ortiz et al., 2013).

### [A] Social Security as an Economic Tool

Clearly, modern social security programmes are not *just* about philanthropy and assisting the less well advantaged. They are also an important tool of economic management conferring advantages on a wider group of stakeholders, and serving the needs of the political communities and systems that manage them. In terms of economic policy, as the ILO's World Commission on the Social Dimension of Globalization in 2004 put it succinctly, 'a minimum level of social protection needs to be accepted and undisputed as part of the socio-economic floor of the global economy' (ILO, 2004: 110). Social security systems, when they are functioning effectively in terms of allocative efficiencies, and avoiding or minimising distorting the effects they can have on labour market institutions – labour supply, wage differentials, savings, and the like (Barr, 2012: 10) – also play a vital role in maintaining aggregate demand. For that reason, besides their 'cushioning' effects in supporting workers, businesses, and families, when economies weaken spending on social security generally needs to go up as part of wider 'stabilizing' and 'stimulus' measures (Stiglitz, 2009: 4-13). In the bigger picture, social security schemes perform a range of functions, with income replacement being just one.

### §9.04 HOW IS 'SOCIAL SECURITY' TO BE ACHIEVED?

The ideas of Aristotle about distributive justice in the *Nicomachean Ethics* (Aristotle, 337 BC: Book V) have been influential in shaping the architecture of modern social security. Transposed to the modern era, welfare derives from two main sources, with the modern State and its agencies taking on the mantle of both regulator and provider.

In regulatory mode, interventions may be targeted at transactions like employment contracts and at schemes which support the employment relation like pensions, savings, investments, life insurance, and the like. In some national systems it is the market which delivers a range of products including pensions: in this case effective regulation is, of course, all important: a topic on which our General Rapporteur, Professor Asher, has written extensively (Asher and Nandy, 2006: 152-154). National minimum wage regulation, the regulation of working hours, and equalities laws are perhaps the best examples of what have been described as 'welfare-led' interventions (Kronman, 1980: 472).

Representing an altogether different strand of distributive justice, governments and agencies are able to draw upon the 'divisible assets of the State' and target them on selective groups. One of the biggest such redistributive project in history was the USA's American Recovery and Reinvestment Act of 2009. Trillions of dollars to support a raft of social assistance programmes, with much of it directed, as the Act said, as 'aid for low income workers'. Interestingly, some economists, including Nobel Laureate Paul

Krugman, argued that this was far from adequate in the face of the threat posed by a continuing deflationary downward spiral (Krugman, 2009).

Whilst insurance-based, contributory schemes still play a vital part of modern social security, collective insurance against risk is increasingly dependent on non-contributory, unreciprocated social assistance funded out of taxation and borrowing.

Europe and other developed Welfare State models cannot, of course, claim a monopoly on such approaches to collective social insurance, or even the idea of social justice itself. In the Muslim tradition, the idea of redistribution and providing a guaranteed income for needy individuals has roots going as far back as 632 CE and the Rashidun Caliphate led by Abdullah ibn Abi Quhaafah (Abu Bakr), father-in-law of the Prophet Muhammed.

That legacy can still be seen in welfare measures like Pakistan's *Zakat* and *Ushr* (Clarke, 1985; *Zakat and Ushr Ordinance* 1980).

### [A] The ILO's Input

ILO definitions and approaches to social security have been broadening in recent years, largely in response to changing needs and in the aftermath of post-2007 crises. In 2010 it still saw social security essentially as:

'all measures that provide benefits, whether in cash or in kind, to secure protection, inter alia, from

- a *lack of work-related income* (or *insufficient income*) caused by sickness, disability, maternity, employment injury, unemployment, old age, or death of a family member
- the *lack of access or unaffordable access to health care*
- *insufficient family support*, particularly for children and adult dependents
- *general poverty and social exclusion*' (ILO, 2010: 13).

By 2012 the ILO's stance had started to change and adapt. By then it was seen as necessary to factor in, more overtly, the role of systems operating on the *labour* side of the labour-social security interface – particularly in areas like minimum wage interventions as these operate in conjunction with collective bargaining as a redistributive mechanism. Whilst these are by no means new, their role as part of the wider social protection floor, and in supporting wage levels and working conditions, was prompting some new thinking.

In 2012 a review was carried out of 'changes in the level of minimum wages during the crisis with respect to their potential to avoid deflationary wage spirals, and protect the purchasing power of low-paid workers...'. The conclusions in *Social Protection and Minimum Wages Responses to the 2008 Financial and Economic Crisis* were significant. They highlighted some important differences of approach, with some countries making fuller use of regulatory interventions coupled with a sizeable investment in social security programmes, as a means of maintaining an effective wage floor, and maintaining aggregate demand and consumers' spending power. Other countries, too – but by no means all – saw these as an important element in the overall social protection picture (Bonnet, Saget, and Weber, 2012). The analysis chimed with

conclusions in the Bachelet Report in 2011 (Bachelet, 2011: xxiv) and the ILO Recommendations that followed a year later (ILO, 2012) which stressed the importance of employment measures and labour market institutions in maintaining the overall floor of social protection. Earlier orthodoxies on the point stressed, too, how a job can be as much an ‘equalising force’ as other forms of ‘redistribution’. This was certainly among the underlying assumptions around which architects of modern State social security like William Beveridge designed post-World War II systems of social insurance and contributory benefits (Beveridge, 1942; 1944). Furthermore, assumptions about the ability of the labour market to deliver full-time employment meant that flat-rate social security benefits based on flat-rate national insurance contributions could be modelled on private insurance actuarial projections (Barr, 2012: 30-32). The ability of social insurance to be provided at levels above the poverty line, and on a securely funded basis, also obviated, or at least reduced, dependency on means-testing and social assistance.

Design features of most modern developed systems certainly did not anticipate, or cater for, some of the changes we have seen in more recent times, including the problems associated with systemic underemployment, low wages, and short-term and intermittent work ILO reports since 2007 have been highlighting.

Quite simply, an increasing proportion of labour market participants do not receive wages at the levels needed to meet day-to-day living costs, and have to look more than ever before to the State for support.

### **§9.05 IS A JOB STILL THE BEST FORM OF ‘SECURITY’?**

Unfortunately, the answer is ‘no’ for a sizeable and growing section of the labour market. This is likely to continue – at least in those countries and sectors where there are inadequate wages and conditions floors, and where State social security and other sources of social protection are unable to deal with the resulting welfare deficit.

A key problem is that a job – particularly at the lower end of the wages spectrum, and in some sectors higher up the scale towards median levels – is increasingly unable to deliver the income and security needed by workers and their dependants. This includes the costs of essentials like housing, food, and income. Qualitative aspects of employment on the labour side of the labour-social security interface continue to be downgraded by the combined effects of deregulation and weakening distributive mechanisms, including those associated with collective wages and conditions setting. In theory, access to social security directed at supplementing household income through the intervention of social assistance, and the range of schemes of social solidarity that have been developed, do not necessarily prevent large numbers of people being ‘at risk of poverty and social exclusion’. In Europe we have seen the numbers of Europeans and Europeans’ households at such risk continuing to rise, despite increasing evidence of recovery after the post-2007 financial and economic crises. In that sense the ‘crisis’ could be said to be continuing, not helped by continuing sluggish growth and low productivity in some sectors, and signs of a possible return to deflationary conditions. According to the EU Commission, tracking the European

Union Statistics on Income and Living Conditions, and taking into account factors like average wages, household income, income differentials, and the Gini index, one in four EU citizens is at risk of poverty or social exclusion (EU Employment Plan, 2014: 4). With some exceptions (notably Denmark) it is mostly only the Scandinavian countries, with their lower income differentials, better wages floors, and more comprehensive social benefits, that have been beating this trend, with levels below the 25% + 'at risk' EU-28 average.

The position of most of the Scandinavian countries like Norway (showing less than 15% of people in low income households or 'at risk of poverty') compares starkly with Europeans at the other end of the scale. These include Latvia, Greece, Romania and Bulgaria, with over 35% people in low income households and at risk of poverty (FTimes, 2015).

Worse, as the EU has observed in a report for the G20, in-work poverty has also risen, partly reflecting the fact that those who remain in work have often been working fewer hours and/or for lower wages (EU Employment Plan, 2014: 4). Eurostat identifies a person 'at risk of poverty' as someone who is 'living in a household with an equivalised disposable income below the risk-of-poverty threshold': this is 60% of the national median equivalised disposable income after social transfers (Eurostat, 2015).

## §9.06 THE LABOUR SIDE OF THE INTERFACE

As the Bachelet Report in 2011 concluded, the 'core idea' of a social protection floor is that no one should live below an income level which leaves them in poverty. To achieve that, in the first instance, the floor depends on a functioning labour market with employment underpinned by the Decent Work Agenda. If the attributes of such a floor are missing then, as the report concluded, social protection measures have to be accompanied by measures such as 'strengthening labour and social institutions and promoting pro-employment macroeconomic environments' (Bachelet, 2011: Executive Summary, xxiv). Taking this further, and addressing the need for 'coordination and coherence', development of the floor necessitates measures to address the vulnerabilities and needs of groups like the 'underemployed and working poor', assisted by systems that combine income replacement functions with active labour market policies, as well as 'where appropriate' assistance and incentives that 'promote participation in the formal labour market' while at the same time 'minimizing labour disincentives so that people in work are relatively better off than those receiving unemployment benefits' (Bachelet, 2011: Recommendations, Ch. 5, 91-98).

Bachelet rightly noted how, by the time the report was published, Europe – despite having well developed social security and social protection systems – was seeing some significant 'gaps' in its systems. In particular, the wages part of the European 'floor' was not performing particularly well even before the onset of the crisis: this was, in part, the result of declining growth and productivity (Whittaker and Hurrell, 2013). As a result of the post-2007 crises, and in their aftermath, living standards were hit very hard. The position is improving, but in the period 2012-2014 wages in many sectors were still well below 2007 levels (ILO, 2012/13 and 2014/15).

The up-to-date position is variable, but with pay and occupational benefits levels in many sectors still looking stagnant and sluggish across much of the EU – notwithstanding a fragile recovery and modest signs of recovery. At the same time, however, living costs have continued to rise. Although there has been some evidence of wage improvements in some sectors, this is by no means the general picture. Although there is evidence of purchasing power receiving a modest boost in some parts of the EU, much of this is just down to the short-term effects of deflationary trends (Aumayr-Pintar/Eurofound, 2014).

On a less positive note, the EU Commission said this at the end of 2014 about the state of Europe’s labour market, noting concerns expressed by G20 leaders about the European labour market, the growth of in-work poverty, reduced hours, and lower wages:

‘Nearly a quarter of the EU population is at risk of poverty or exclusion, with the biggest increase among those of working age as levels of unemployment and the number of jobless households have increased. In-work poverty has also risen, partly reflecting the fact that those who remain in work have tended to work fewer hours and/or for lower wages. Children in such households are also exposed to increased poverty. The uneven impact of the crisis within, as well as between, EU Member States has recently seen rising inequality, with the effects being most felt by the lower income groups who were the hardest hit by job losses. A growing divergence is evident across the EU with two thirds of Member States seeing increased poverty, but one third not. Since 2010, household incomes have been declining in real terms and, the stabilising effect of social transfers lessened significantly after 2010’ (EU Employment Plan, 2014: 4).

### **[A] Weakened Collective Bargaining**

European employment, and the wage income component of the floor, continues to feel the impact of weakened labour market institutions including collective bargaining, minimum wage regulation (national and sectoral), and other redistributive mechanisms that have in the past helped to maintain an effective wages floor. Despite some UK sectors bucking the trend and ‘surviving’ – mostly in public services, and local government (Beszter et al., 2015) – countries like the UK have seen a steep decline both in union membership and in collective bargaining coverage (Wanrooy/WERS, 2014); and action needs to be taken to rebuild and strengthen collective bargaining mechanisms, the workers voice, and social partnership (Hendy and Ewing, 2013). In the wider picture, Europe’s wages and conditions setting mechanisms have been weakening as a result of increasing decentralisation of bargaining arrangements (Eurofound, 2014). Furthermore, despite a fragile recovery, unemployment is still high in parts of the continent, and has started to rise again this year. In the face of such trends, most of the Member States of the EU need to see both growth promotion, measures to boost productivity (which is inextricably linked to wage levels), and active labour market measures to support greater employment take-up (EU Commission, 2015). As already noted, average per capita income in countries like Italy have fallen by as much as 10% in line with sluggish growth and reduced GDP (Pizzoferrato, 2015); and it is largely

reduced access to income from employment, high unemployment and underemployment, and the wider problems that result from low household income that have served to maintain the continuing high proportion of EU citizens still at risk of poverty. Last year the Commission observed that although unemployment has declined from the ‘crisis peaks’, it remains in double digits in the EU as a whole. Youth and long-term unemployment is a particular concern. Much of the recent employment growth has consisted of just temporary or part-time work, which the Commission sees as ‘suggestive of the uncertainty that prevails on the hiring side’. Also, despite some signs of improvement in household income levels since late 2013, this is ‘insufficient to address the social challenges that have exacerbated since the beginning of the crisis’ (EU Commission, 2014: 9). The position appears to be worst in six of the Member States where increased levels of poverty and inequality ‘threaten the EU goal of inclusive and sustainable growth’. That problem is no doubt aggravated by austerity measures, and cutbacks to States’ in-work and other social security programmes; and this has been particularly problematic in those countries affected by the sovereign debt crisis and the burdens of debt restructuring (Barnard, 2012).

### **[B] Is Improved Social Security Enough?**

Much depends on the quality of design, adequacy of funding, and overall ‘reach’ in terms of modern social security systems’ ability to absorb the macro-economic shocks associated with unemployment and reduced earning capacity – particularly at times of crisis and when labour conditions are weak. In comparison to Spain’s experience after 2006, and that of other countries that were particularly affected by the sovereign debt crisis, countries like Sweden and Austria appear to have been able to maintain higher levels of social protection over the same period. According to the analysis undertaken by Verena Mai, which featured comparisons between those countries’ systems, factors in gauging success focus on the need for a high level of investment, but also continuing investment that is responsive to changes in demand (Mai, 2013: 36). Clearly, some countries saw the need to adapt to new challenges, and improve the resources needed to be able to provide support at the levels which were needed after 2006. Germany by all accounts fared well, or better than most, and appears to have come out of the crisis sooner than other countries (Brecht-Heitzmann and Röns, 2014). Countries like France, Austria, and the UK have also not been slow to address the changing needs of the labour market in the aftermath of the crisis, developing newer approaches and forms of support.

This has been evident, for example, with the changes made to France’s welfare-to-work and in-work systems including the evolving *Revenu de Solidarite Active* (RSA) (Vlandas, 2012; Denis and L’Horty, 2012); Austria’s *Bedarfsorientierte Mindestsicherung* (Steiner and Wakolbinger, 2010); and the UK’s *Universal Credit* (Puttick, 2012a; 2012b). All these, in their ways, offer important examples of how adaptations have been in progress. In many cases they have been aimed at facilitating entry to, and retention in, the newer forms of employment available, including short-term and often more flexible kinds of work transaction. In some instances they operate at both ends of



welfare-to-work and work-to-welfare transitions. For example, the RSA after a series of recent modifications can provide a minimum income for both unemployed *and* low waged (or underemployed) workers, supplementing wages when these are paid, but also other sources of income and wages. It may be paid with another benefit, the Prime Pour L'Emploi on a means-tested basis. As with the UK's Universal Credit, reforms have rationalised (or are updating) support under earlier schemes, including the Allocation de Parent Isolé and Contrat Initiative Emploi. At the same time the RSA has some of the characteristics of US minimum income schemes like Supplemental Security Income (SSI).

In the case of Universal Credit many of the design features are directed at responding in real time to the kind of labour contract that consists of variable hours, periods when there is either no working or reduced working, and where much of the burden of income replacement falls squarely on the community rather than the employer. To that extent, employers, as a group, are significant stakeholders in this evolving area of in-work support. This has been controversial at times – particularly when support during welfare-to-work transitional stages is accompanied by coercive measures – and especially so when the unemployed and ‘underemployed’ are expected to enter low-paid employment that may lack the other attributes of Decent Work: a ‘fair income’, ‘security’, social protection for family and dependants, reasonable prospects of personal development and integration, participation in decisions affecting their working life, and so forth (ILO, 2008).

As controversial, perhaps, is the point that the support provided from the community is supporting a new generation of flexible working contracts which includes transactions like zero hours and on call contracts (often entailing misuse of ‘self-employment’ status, while at the same time seeing some significant transfers of costs and risks away from the employer and onto both the worker and the community).

Assuming the levels of public investment needed to support such in-work schemes, and the innovations we have been seeing, can be sustained is it likely that such approaches are going to be sufficient to address *all* the other shortcomings we are seeing on the labour side of the labour-social security interface? This must surely be very doubtful. There is clearly a sizeable political dimension to the issues around funding of in-work schemes, and it is by no means clear that there is the requisite degree of public support needed for the substantial public investment that is needed if they are to be sustainable. In France, the RSA has come under considerable fire, particularly from the Right, largely on grounds of escalating cost, but also for its ‘missed targets’ (Landre, 2014). At the same time there have been calls to address the very real shortcomings in its labour law system, and its seeming inability to respond to changing needs (Panyerre, 2014).

Needless to say the problem of funding is not helped when welfare programmes are being asked to cut back on their expenditure as part of wider austerity initiatives. Coupled with this is recognition that, in any case, social security systems are not enough: and even with improvement and adaptation, the repairs needed to the social protection floor also extend to labour market institutions. In effect, better, more efficient coordination between the two sides of the interface.

The observations made by the ILO in the *World Protection Report 2014/5* are particularly apposite. It observed that:

Most people seek income security during working life in the first instance through participation in the labour market. Income security is strongly dependent on the level, distribution and stability of earnings and other income from work ... Recent labour market and employment trends have increased the pressure on social security systems to ensure income security for persons of working age. These trends include in particular higher risks of unemployment, underemployment and informality; increasing prevalence of precarious forms of work; and declining wage shares, dwindling real wages and inadequate wages, leading to persistently high proportions of working poor. In the light of these observations, it is very clear that income security cannot be achieved by social security alone. Social protection policies need to be coordinated with well-designed policies to address these challenges in the fields of employment, labour market and wage policies, with a view to alleviating excessive burdens on national social security systems and allowing them to work more efficiently and more effectively. (ILO, 2014: 26).

How do employers' responsibilities relate to this?

### **[C] Employers' Responsibilities: Low Pay**

As far as the costs being picked up by the social security system (and related issues of resources) are concerned, it is at least arguable that many of the rising costs to social security systems that we are seeing, and which derive from increased casualisation, informal working, and abuse of employment status – particularly when this is used as a device for avoiding regulatory costs – are avoidable. Typically, there may be no good reason why employers should be employing staff on an agency work basis, particularly when on closer scrutiny they are doing the same or broadly similar work as staff employed on regular mainstream terms, but at significantly lower pay rates and on worse general conditions. This has even been an issue in the profitable automotive industry, illustrated by cases where agency workers have taken action in protest at being kept on agency rates, despite doing the same work as full-timers employed on better paid, more secure terms (Bentley, 2011). Needless to say, such arrangements inevitably put pressure on State in-work support systems. More often than not, such casualisation is associated with wage levels at the bottom or lower end of the pay scale. Indeed, research by the Resolution Foundation has shown how it is part-time, casual, and temporary staff who tend to populate those sections of the workforce on minimum wage levels; and linked to that is the problem that minimum wage floors, rather than just being that – *minimum* levels – have a propensity to become *ceilings* (Bain, 2013). Furthermore, the tendency for such minimum wage levels to become the 'going rate' is highly problematic, particularly when it is clear that in some sectors employers may be able to afford wages at higher levels. The point reinforces the case for minimum wages and conditions setting to be a matter for sectoral determination rather than national; and with better evidence-based systems replacing the somewhat imprecise and over-cautious systems associated with national minimum wage-setting.

**[D] The Problem of In-Work Support for Employment: Employer Disincentives**

Unfortunately, in-work social security schemes can and do produce a disincentive for employers to raise wages to levels higher than they could (and should). As a result the cost to the community of State support (income transfers, etc) may be much higher than it needs to be. There's quite a history! When the UK's Poor Law started to subsidise the low wages in the early nineteenth century, particularly those of agricultural workers at times when wages were falling, people like the political economist and philosopher John Stuart Mill railed against it and the risks he identified. In particular, he warned that by enabling employers to 'throw part of the support of their labourers upon the other inhabitants of the parish' such subsidies risked depressing wages and 'pauperizing' the working population (Mill, 1838: Book 2, Ch XII).

He was also aware, no doubt, that by creating two groups of dependants – the employer as well as worker – such publicly-funded income transfers have a propensity to become a long-term, systemically ingrained feature of reward systems. Interestingly, concerns along these lines were directed by welfare economists at Earnings Top-Up, the forerunner in the 1990s of the UK's current primary in-work support system of income transfers, the Working Tax Credit. The Conservative government took this seriously, and undertook to monitor employers' wage-setting behaviour 'very carefully' (DSS, 1995: 2.19). However, since then, systems have expanded massively and now assist sizeable sections of the labour market (Puttick, 2012b: 237).

At a time when the UK, like other countries, has been looking to implement austerity measures, the welfare budget has come under close scrutiny. As part of the long-term policy objective of creating the conditions for what it has dubbed a 'high wage, low tax, low welfare' economy, the government in this year's Summer Budget 2015 saw the beginnings of a deconstruction of in-work social security. Freezes in the value of in-work benefits, and a tightening of the eligibility criteria for support, has been a feature of Budgets in the last two years. However, two new measures were announced in July 2015 (Budget, 2015; Cameron, 2015b). At the same time as announcing the introduction of a new National Living Wage (NLW), which over five years will be incrementally raised (thereby raising the minimum wage floor) it was announced that there would be significant cuts to in-work social security payments, and in particular the Working Tax Credit (WTC) and the Child Tax Credit (CTC) – the CTC being a family income-focused benefit which is generally paid alongside the WTC to parents working above a prescribed minimum working time threshold. Enabling legislation to facilitate what on the face of it looks like a major reversal in policy was also introduced (Welfare and Work, 2015). The Institute of Fiscal Studies (IFS) and Resolution Foundation – our two leading think tanks on the economy and such issues – immediately criticised the proposal. Whilst welcoming the raising of the wage floor by the introduction of the NLW, it pointed out that it would do little to soften the impact of what would, in effect, amount to a sizeable pay cut for over 3 million low-paid workers (BBC, 2015; IFS, 2015a; 2015b). The key change would have meant that the wages threshold at which in-work tax credits would start to reduce would be reduced from GBP 6,420 to GBP 3,850, resulting in an estimated 3 million families taking an

income cut of GBP 1,000 a year, and 12 million other families receiving smaller cuts (Resolution Foundation, 2015a; 2015b).

Nor were many employers happy, for a variety of reasons (and not just because the changes meant, in effect, a transfer of costs to them. As the Director of the IFS suggested, by raising minimum wages as the government proposed it was gambling on them being able to improve ‘productivity’ to a level that would justify the imposition of the new NLW. Plainly, the IFS envisaged that the costs would be met in ways such as training, IT and efficiency improvements, or simply passing on the consequential costs and on-costs to consumers. However, he likened this to a ‘bet’ which could go badly wrong, resulting in job cuts and other negative consequences (IFS, 2015c). Other ways in which employers said they might have to fund the changes the costs of the change, namely withdrawing occupational benefits, lengthening the working week, or increasing unpaid overtime did not appear to raise any problems for the government. Surprisingly, no additional employment measures were proposed to address such risks, leaving legislators to ponder the likely impacts of the changes. In the event, the government’s proposals were derailed when they were rejected by the upper chamber of the legislature, and the government then withdrew them – but with the promise that when the replacement for the current regime, Universal Credit, is finally rolled out in 2016 the issue will be ‘revisited’.

Plainly, the renewed attention on the wages and occupational benefits floor, and how it can be improved, is welcome – particularly as reports from the Resolution Foundation like *Low Pay Britain 2013*, and *Fifteen Years Later*, have been saying that there are some significant sectors where pay levels could and *should* be higher (Whittaker and Hurrell, 2013; Plunkett and Hurrell, 2013).

### **§9.07 DECENT WORK STANDARDS: BETTER REDISTRIBUTIVE AND SUPPORT MECHANISMS**

Arguably, one of the more important sets of standards influencing the challenges currently posed is the Decent Work agenda, particularly given its influence in international forums and in debates shaping key themes like investment, growth, job creation, and the enabling function played by social security and inclusion measures. These are matters which featured strongly in debates at the 2015 United Nations Economic and Social Council Conference (ECOSOC, 2015) in all the sessions but particularly the session ‘At Work in Africa’, to which South Africa’s Minister for Development, H.E. Ebrahim Patel contributed. As with recent debates in Europe on this, debates around the African Union’s Agenda 2063 highlighted the need to allocate the burdens fairly between stakeholders. Among other things, these stressed the importance of putting the values set out in the African Charter on Human and Peoples Rights at the heart of implementation of Decent Work standards. This mirrors similar values set out in the EU’s Charter of Fundamental Rights in many ways, not least in ensuring that social protection measures take on board a wider range of ‘enabling’, equalities, and capacity-building measures than is the case now.

Enabling and equalities matters then featured strongly in the priorities laid out by leaders of the G7 when they met in Germany later in the year. Interestingly, these figured prominently among the German Presidency's concluding statement on 'priorities'. A need for improved training programmes to facilitate opportunities for women to enter the labour market, assisted by targeted social security support, was identified by Mrs Merkel, Chancellor of Germany. She saw this as essential in raising women's labour market participation rates, with one of the spin-offs being reduced dependency on social assistance programmes (Merkel, 2015: 2).

Needless to say, this is an important issue in Europe, mapping on to a number of important priorities. So, too, are other priorities, including the need for a renewed focus on labour market institutions. As Bachelet signalled, an approach to strengthening the social protection floor which utilises mechanisms on *both* sides of the work-social security interface, and in ways which are most effective, is likely to become increasingly important. The point was made that:

'The social protection floor relates strongly to the Decent Work Agenda; to succeed in combating poverty, deprivation and inequality, it cannot operate in isolation ... Its strategies must be accompanied by others, such as strengthening labour and social institutions and promoting pro-employment macroeconomic environments' (Bachelet, 2011: Executive Summary, xxiv).

### [A] Is There Scope for Better Redistributive Mechanisms?

The answer is undoubtedly 'yes'. In Europe, but particularly the UK, this has the support of influential sections of both the trade unions and employers communities. Unfortunately, current trends – at least at the national level in the UK – have been, at times, in the other direction. Most notably, 2012 saw the abolition of the UK's agricultural wages board (AWB) system in England – a system that set minimum wages and conditions for the agricultural sector (DEFRA, 2012). This was accomplished, eventually, despite it being readily apparent from the legislation's 'impact assessment' that this would quickly lead to wage falls in many parts of the sector *and* as the risk assessments that followed a commensurate rise in demands on the social security system.

The government in London then expected that the other three countries – Wales, Scotland, and Northern Ireland would follow suit and abolish their own versions of the AWB. In fact, since then all three countries have resolutely maintained those boards, conscious of the impact abolition, and a reduction in wages and spending, would have on the rural economies of those countries (and on the consequent pressures that would be put on their social security and social services programmes). The fear was that as wages went *down* reliance on social security systems, support for housing costs, etc would go *up*. In one case, Wales, the central government in London tried to force the country to accept the change. This proved unsuccessful when Wales asked the Supreme Court to review the measure and its legality under the UK's complex constitution and devolution arrangements. The court ruled in Wales' favour (UKSC, 2014). In common with our neighbour, the Republic of Ireland, it has maintained a

similar system to the AWB. Going forward, all four countries may use the AWB model as a springboard for extending sectoral wage and conditions to other low-pay sectors if there is employers' support. Interestingly, moves are now being made to extend the wages board system to other low pay sectors, mirroring recent moves in the Republic of Ireland where the government, despite set-backs in the courts, has continued with initiatives to extend and improve the system putting social partner dialogue and a shared responsibility for working conditions at all levels – enterprise, sectoral, and national. Such regulated sectoral bargaining mechanisms are far from perfect, however – not least given the difficulties there may sometimes be in enforcing minimum wages and conditions standards as is apparent in South Africa (Bhorat, Leslie, and Mayet, 2010). Nevertheless, in principle such moves are to be welcomed; and they may well be pointing to a start of a reversal of recent deregulatory trends.

### **§9.08 SOME RETRENCHMENT AND NEW(ER) DIRECTIONS OF TRAVEL?**

As I have been suggesting we may be seeing some changes, and a return to earlier orthodoxies, including the centrality of work, the importance of the labour component of the wage (wages, occupational conditions, etc) as well as collective bargaining and other aspects like social dialogue in the determination of the wages and conditions component of the social protection 'floor'. Whilst, for a variety of reasons, it is unlikely that we will be seeing any significant reduction in the current reliance on mechanisms like in-work welfare support and make work pay schemes, it may well be that as the labour market strengthens the extent of that reliance and dependency (by all stakeholders including workers and employers) will diminish. For the time being, in-work support, income transfers, tax credits, and so forth are likely to continue to be a feature in many countries' systems. Furthermore, as OECD studies such as *Making Work Pay*, *Making Work Possible* have noted, MWP programmes have been utilised for a range of 'non-financial' reasons over the past decade; and there is no sign of that role diminishing. This has included strategies aimed at improving the labour market participation of 'under-represented groups' such as single parents entering the labour market with childcare and other support, disabled entrants (assisted by a combination of regulatory equalities interventions and targeted financial assistance, and support for older returnees. Canada's 'Self-Sufficiency Project' assisting lone parents employment with earnings supplements (OECD, 2003: 120) was just one early example of a species of social security that has been developing (OECD, 2003: 120). By 2008 twelve countries, including Singapore, were operating MWP programmes with the use of a combination of targeted in-work benefits, direct wage subsidies supporting employers, and tax credits or tax-based schemes.

Otherwise, ways of relieving workers and their households of the costs (or full costs) of expenses that would otherwise be met out of wage income are widely in operation, including support for housing costs, assistance with travel costs, and so forth. There are a number of rationales for schemes' use. The principal one is that MWP programmes, by improving the combined 'take' from employment, by combining what

may be a low-paid job with in-work benefits, tax credits, etc, incentives to take up work, and remain in it, are increased (Adireksombat and Jinjarak, 2008).

The Scandinavian countries, too, provide a range of targeted support as part of a generally more comprehensive range of support schemes and social services, and to good effect as we see with this year's EU statistics on EU countries with citizens at risk of poverty and social exclusion (Eurostat, 2015). Interestingly, in the aftermath of Eastern European States' accession to the European Union in 2004, the IMF has routinely been recommending the adoption of MWP programmes to try to promote welfare-to-work transitions as part of a more generalised approach to reduction of wage inequalities. Both Slovenia and the Czech Republic have been the subject of such recommendations.

Outside of Europe, such programmes are still less common. Nevertheless, a number of the fast growing economies which are seeing exponential growth (while facing huge inequalities issues) have been developing innovative new approaches which combine support for both work and welfare. India is a good example of how social protection programmes can be used to promote needs on *both* sides of the work-welfare divide, and in 'joined up' ways.

India's programmes include employment guarantee programmes which also operate with anti-poverty schemes, covering an estimated 53 million citizens, e.g., operating with social assistance schemes, 'smart-card', cashless health insurance, etc. The Mahatma Gandhi National Rural Employment Guarantee Scheme provides 100 days of employment per rural household per year (MGNREGS, 2015). This has become one of the largest rights-based social protection initiatives in the world, with scheme entitlements being underpinned by legislation. The scale of support is truly awesome, currently reaching around an estimated 52.5 million households and with plans to expand!

Additionally, and in conjunction with such initiatives, means-tested health insurance is provided for eligible claimants. This is achieved via the RSBY scheme. Cashless health insurance cover is provided on the basis of a smart card. This assists a range of low-income groups including workers in the informal economy and their family members (RSBY, 2015).

### **§9.09 ARE THERE 'LESSONS' EUROPE CAN LEARN FROM OTHER SYSTEMS?**

Undoubtedly 'yes'. Besides those countries which successfully deploy a hybrid mix of insurance-based schemes, social assistance, and other forms of social insurance to support the labour market, workers, and retirees – I have in mind successful contributory programmes like Singapore's CPF pension scheme which, despite the challenges of an ageing population and other demographics – operate an effective system of top-ups from public finances in ways which make European systems like the UK's Pension Credit look positively mediaeval (IMF/Singapore at 50, 2015). Indeed, there are a number of 'third force' systems offering other positive features in terms of social security systems' design, operation, and funding.

Older systems, including those in Europe, may well take note and learn some lessons.

In terms of coverage and funding, many of the newer social insurance schemes now operating in China have a number of positive features. Secure funding and management arrangements are among the characteristics they display. Arguably, these owe much of their success, to date, to the point that most of the newer contribution-based schemes are directed at higher income groups, and individuals enjoying relatively stable employment conditions and labour market participation in the sectors in which coverage is targeted. Nevertheless, they display innovative funding and management arrangements which are clearly responsive to changing labour market conditions, and provide models for other categories of labour market participant and retiree (World Bank, 2013; Hwang, 2011; Leung and Xu, 2015). It is that responsiveness that marks such systems out as distinctive and valuable, as commentators have noted.

Looking at other aspects of the country's social security, holistically, China has also made significant strides in other ways: not least in developing the *scope* of basic health coverage at a truly impressive rate, i.e., from 16% of the population before 2003 to an estimated 80% (including, reportedly, 800 million people in the basic health rural cooperative medical scheme). Since 2009 it has been implementing pilot rural pension schemes aimed at assisting many of its ageing population – something it has in common with Europe – by upwards of 700 million people in rural areas by the target date of 2020 (Bachelet, 2011: 15).

Nevertheless, there are still some significant challenges which China faces, by all accounts. These include the growing impact of widening inequalities (Li et al., 2013), and inefficiencies in systems' delivery of support: for example public and mixed public/private providers have been seen by some as behaving like 'profit-maximising private providers'. An ageing population, and difficulties of managing schemes in a country with such diversity – economic, social, cultural – are further issues (World Bank, 2013: 272).

As with China and Singapore, South Africa, too, has led the way in many respects, particularly with regard to some of the characteristics of its social assistance programmes. For example, one of the problems faced by all stakeholders in many areas of European social assistance, and no doubt elsewhere, is the lack of integration and coordination between the strands of support offered by different schemes. The South African system, including basic income grant, child support grant, old age grant, child protection, and other services, forms part of a clear and holistic approach to addressing beneficiaries' needs.

Furthermore, support is provided as part of what the Minister for Social Development, Ms Bo Dlamini MP, has described as an overarching policy. The aim is to produce a comprehensive 'social wage packet' as the core component in the South African Social Security Agency's mandate to provide 'comprehensive social security services'; and doing this within a 'constitutional framework' (SASSA, 2014: 9). A leading South African commentator has observed in this regard that systems are 'beneficial' in that they enable a degree of balance between measures which are integrated and complementary, focusing on reducing what he describes as the main



forms of poverty in the country – income, asset, and ‘capability’ poverty (Mpedi, 2012; 2013: 219). The need for such holistic approaches, and integration of schemes, has also been stressed by other leading South African academics like Marius Olivier, for example when writing on the subject of informality, coverage, and standards (Olivier 2011, 2013); and he provided an invaluable commentary and analysis of the variety of schemes and models in use world-wide when he spoke at the XX World Congress in Chile (Olivier, 2012).

With coverage extending to an estimated 90% of eligible families with children, including those in low-paid employment – a significant achievement by any standard – the social protection regime in South Africa has been successful in raising the living standards of many of the country’s most needy and vulnerable households. Furthermore, it is doing this as part of a *rights*-based approach to entitlements, and achieving this while carrying significant popular support (something which is often missing in most tax-funded European schemes). Interestingly, one of the plus points noted by commentators on South Africa’s social assistance system – no doubt due in part to the legal underpinning of entitlements – is that support is consistent, and schemes are less prone to changes affecting take-up (Hagen-Zanker, Morgan et al, 2011). This avoids the kinds of roller coaster effects we sometimes see in European schemes. Without such legal underpinning and constitutional protection, litigation and uncertainty is undoubtedly much more likely (Puttick, 2014).

Support systems also straddle the in-work and out-of-work divide, enabling income and other support bridges to those in less secure, more short-term employment. This is something that UK systems like Child Tax Credit, and now the UK’s new Universal Credit system – due to be fully rolled out by the end of 2016 – have long aspired to, but with mixed success. Even with the support of state-of-the-art IT systems carrying out needs/means re-assessment as income and other circumstances change in ‘real time’, reforms trying to achieve this have been plagued by operational and technical difficulties (Puttick, 2013). Initiatives to extend social assistance along the lines of the Brazil’s *Bolsa Família* – featuring ‘conditioned’ support – mean that by linking eligibility to requirements to engage in education, training, and welfare-to-work transitions, supplemental support can be provided holistically.

South Africa no doubt still faces difficult challenges, as we do in parts of Europe: slow growth, low productivity, growing inequalities, and low wages in some sectors. All of which puts an increasing burden on sizeable sectors in the labour market, and wider community. It was interesting to note the comments of a recent speaker from the IMF, David Lipton (one of the Fund’s Deputy Managing Directors), discussing these points during a visit to the University of Capetown in March this year. He began with some rather bleak points, including observations about South Africa’s economy growing last year by just 1.5%. This, in turn, he said, has been a factor in per capita income not rising, and unemployment remaining steadfastly at about 25% (with nearly 50% of young people not participating in the labour market). Unfortunately, for now, this puts unemployment levels at among the highest in the G-20.

At the same time he offered important and positive messages about the government’s strong commitment to anti-poverty initiatives, social security programmes, and health and education (IMF/Lipton, 2015).

## §9.10 CONCLUSIONS

Social security systems certainly face a lot of challenges and increasing pressures, many of them as the ILO has been saying the result of problems on the labour side of the work/social security interface. As I have argued, the two systems' ability to deliver on the goals set by modern social security systems and social protection floors will depend on policy-makers' ability to respond to challenges like low productivity, systemic unemployment, shortcomings in redistributive and collective mechanisms, the prevalence of part-time, short-term, and casual work, and the phenomenon of underemployment.

Clearly, social security and labour law institutions must address such issues in tandem, in order to provide an effective and integrated floor of social protection. Arguments in favour of such integration were made as far back as the 1920s by pioneers like Hugo Sinzheimer who understood the importance this, and indeed put forward ideas for a high degree of integration, with social security and the support it provides even being part of a wider-ranging legal regime (Sinzheimer, 1907; 1927: 108). What goes around comes around! On the social security side, systems will benefit from improved design features and secure funding, informed by some of the good practice features evident in the schemes and countries I have been discussing. As the UK has been striving to achieve as it designs, implements, and operationalises the new Universal Credit during its pilot phases the watch-word will be responsiveness, measured in terms of speed, breadth of coverage, and ability to deal with a roller coaster ride of fast-changing income and other needs.

As I have argued from the outset there are other issues, too, on the labour side of the labour/social security interface. This includes the need for improved redistributive mechanisms and action to promote the quality of work and the Decent Work agenda – a major theme in the most recent ILO *World Protection Report* when it highlighted recent employment trends. The ILO had in its sights, in particular, risks and needs linked to casualisation and 'informality', the increasing prevalence of precarious forms of work, and the on-going problem of dwindling and inadequate wages – a problem that has, it says, led to persistently high proportions of 'working poor' (ILO, 2014/15: 26).

Sir Paul Pissarides, Nobel Laureate and Professor of Economics at the London School of Economics, was undoubtedly right when he said that the ideal 'model' combines the ability to create jobs, coupled with a Social State providing good quality social security and services. He added, though, that such a 'perfect State' does not yet exist, and that 'there is still a lot of work to be done' (Pissarides, 2014: 3).

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