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## *The Labor Constitution: The Enduring Idea of Labor Law*, by Ruth Dukes. A Review

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In an attempt to understand the enduring quality of labor law, Ruth Dukes, Professor at University of Glasgow, has written a valuable book, *The Labor Constitution* (Oxford University Press, 2014), which was recently been issued in paperback. The book begins with defining and comparing the three main approaches to the labor law that has divided several prolific writers, scholars, thinkers, and politicians of early 20<sup>th</sup> century. The first half of the book is devoted to these three approaches – the labor constitution, collective-laissez faire, and the law of the labor market (p.7) – each of which has been adopted in Germany, the United Kingdom (UK), and the European Union (EU), respectively, and are introduced in the book in a systematic process with each chapter introducing an agent of change. The agents' ideology, the political environment they were working in, and an exploration into their personal experiences, lead to a detailed analysis of these ideas in the conclusion section of each chapter.

The novice may find themselves frequently turning to Google to research the numerous commissions mentioned, and research cited. Dukes' writing is captivating. Each chapter starts with an event and carries characters and stories through time in a compelling way. The intricate connections between personal biography, historical events, and employment relations theory make the book a very interesting read.

The labor constitution is the idea of defined laws for employment relations and the involvement of government in labor negotiations as a third party. The collective-laissez faire is the idea of government setting laws in the interest of the workers but staying out of labor negotiations over the terms of employment. The free labor market approach introduces the readers to the adverse impacts of laws of employment – especially the reduced competition in labor markets which could also hinder economic growth. The second half of

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the book gives an abridged version of recent works published in the field of labor law pertaining to these ideas, and an analysis of these scholarly articles.

As the title suggests, the idea of labor law and constitution that safeguards the interests of workers is a resilient one that endured through two world wars and subsequent political uprisings and movements. The story begins with Hugo Sinzheimer, a Jewish scholar in the newly formed Weimar Republic, who was later stripped of his title from University of Frankfurt and spent remainder of his years in hiding, surviving Nazi Germany barely, only to die of exhaustion some weeks after the end of the war. His work begins with aligning himself with Marx's definition of 'labor as human activity' (p.15), but Sinzheimer's works do not distinguish between social law and labor law even though the Weimar Republic's constitution has various expressions to define these laws. Sinzheimer developed the 'economic constitution' after the revolution in 1918 that referred to various laws that allowed for the participation of labor, together with other economic actors, not only in terms and conditions of employment, but also production – what should be produced and how (p.13).

The book continues with the ideologies of Otto Kahn-Freund - who studied law under Sinzheimer at the University of Frankfurt (p.72). However, for Kahn-Freund, the principal flaw in the Weimar system of labor law was too much state involvement (p.26). The belief that the state's undermining of collective institutions contributed to the rise of Nazism was something that stayed with Kahn-Freund throughout his life (p.73). "The past is too strong and emotional" acknowledges Kahn-Freund, in his autobiography which he never completed (p.73). In a series of papers, he developed the idea of collective-laissez faire where "the government policy in industrial relations was directed at promoting free play to the collective forces of the society... the forces of organized labor and of organized management" (p.69). Kahn-Freund, who was also a Jew, fled Germany for the UK, and served as a member of Royal Commission of the Reform of Trade Unions and Employers' Association (the Donovan Commission), which changed his perception on industrial relations quite radically (p.79).

Kahn-Freund opined that the integration of trade unions into the economic or labor constitution was highly problematic, because it was necessarily compromising of the unions' autonomy. His research, and other scholars, recognized that centralized union leadership, and employers' associations acting at an industry level, were not always responsible when formulating terms and conditions of employment; rather, less centralized bargaining units held greater responsibility, a development in the UK that Kahn-Freund wrote positively about while serving the Royal Commission. It was noted that the bargaining units were negotiating separately with their respective managements at a micro-level and not a macro-level for the industry in which they are

operating. Kahn-Freund strongly disapproved the idea of compulsory arbitration to impose terms and conditions on collective parties which had been set externally by a third-party body (p.80). The author compares the labor constitution with collective-laissez faire and makes a compelling argument in favor of collective-laissez faire.

The readers are then introduced to the later works in the field of employment relations with works such as Simon Deakin and other scholars who were looking at employment relations from a third perspective. It was proposed that the scope of the subject should be extended beyond the core institutions of the employment contract and collective bargaining to include aspects of social security law, tax law, family law and other types of law relevant in understanding work relations (p.104). Globalization was also identified as one of the prominent factors which rendered 'old' social democracy ineffective, and in need of updating. These developments implied the need for a different kind of relationship between states and markets – states should direct their resources at promoting competitive and well-functioning markets (p.111). The labor institutions – statutory rights, trade unions, collective bargaining practices – constitute barriers to the optimal functioning of labor markets; unless responding to defined set of failures, labor market institutions produce a series of labor market inefficiencies such as has higher unemployment and depressed rates of economic growth (p.119). The idea of social dialogue is then introduced – which is a structure of negotiations between the 'social partners', i.e. the representation of management and labor – in supranational, national, subnational, cross-cultural, and sectoral levels. This social dialogue has been an important negotiating aspect in the formation of the EU and the dimensions of this is the free labor market in the EU which is discussed in detail.

As a whole, this is an excellent book that captures and analyzes the existence, and risks, of three approaches to labor laws that are relevant in Germany, the UK and the EU. The three approaches are analyzed from various perspectives along with details of scholarly work and political movements surrounding the approaches. The ideologies are also analyzed in terms of their relevance to the current scenario, along with the trajectory these ideologies have paved for other scholarly work. It might be a herculean task to imagine labor constitution at a global level. But it provides ready answers to the challenges posed to the protection of workers (p.221). This very framework of labor constitution that acknowledges and integrates the other factors beyond the collective agreements in an employment scenario ensures enquiry in important fields of study that have consequences for workers - especially the role of markets, economic growth, and social issues like unemployment.

The broad view that Dukes presents and the historical perspective makes this book an excellent introduction for any novice student of employment



relations, and a very rewarding perspective for any experienced student who wishes to learn more about Germany, the UK and the EU.

# Adapt International Network



**ADAPT** is a non-profit organisation founded in 2000 by Prof. Marco Biagi with the aim of promoting studies and research in the field of labour law and industrial relations from an international and comparative perspective. Our purpose is to encourage and implement a new approach to academic research, by establishing ongoing relationships with other universities and advanced studies institutes, and promoting academic and scientific exchange programmes with enterprises, institutions, foundations and associations. In collaboration with the Centre for International and Comparative Studies on Law, Economics, Environment and Work, (DEAL) the Marco Biagi Department of Economics, University of Modena and Reggio Emilia, ADAPT set up the International School of Higher Education in Labour and Industrial Relations, a centre of excellence which is accredited at an international level for research, study and postgraduate programmes in the area of industrial and labour relations. Further information at [www.adapt.it](http://www.adapt.it).

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