Articles

Fragmented and Centralized Bargaining in Europe: A Comment on Joel Rogers

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Confronted with the task of commenting Rogers' paper I must admit that I know hardly anything about U.S. labor law and U.S. industrial relations. In particular, I have no idea of what bargaining strategies unions adopt in that half of the U.S. labor force which is not covered by the LMRA.

So let me simply contrast Rogers' story with three European short stories about fragmented bargaining. I know about the problems of cross-cultural comparisons but I shall nevertheless tell my stories because I ask myself what is really exceptional about fragmented bargaining in the U.S. and whether law can be regarded as a decisive factor in this context.

My first story: Great Britain in the sixties. Almost 600 unions, over 450 with under 5.000 members.[1] Two or more unions, sometimes many more, in most British industries and factories.[2] No legal rules discouraging centralized bargaining.[3] There was a formal system of industry-wide agreements but at the same time a growing volume of work place bargaining.[4] This workplace bargaining was characterized as "largely informal, largely

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[1] *Royal Commission on Trade Unions and Employers' Association*, Report 7 (1968).

[2] *Id*., 29.

[3] See N. COLNERIC, DER INDUSTRIAL RELATIONS ACT 1971 – EIN BEISPIEL INEFFEKTIVER GESETZGEBUNG AUS DEM BEREICH DES KOLLEKTIVEN ARBEITSRECHTS, 27-32 (1979).

[4] Royal Commission, *supra*, note 1, 18.

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fragmented and largely autonomous".[5] It was conducted in such a way that different groups in works got different concessions at different times.[6] The consequences were competitive sectional wage adjustments.[7] The gap between industry-wide agreed rates and actual earnings continued to grow.[8] There was a lot of talk about "curbing trade union power," and what people who demanded this had in mind was mainly curbing the power of the work groups and putting an end to fragmented bargaining.[9]

My second story: Germany, end of the 19th century, beginning of the 20th century. When employers saw that they could not smash the growing unions they tried a new strategy. As a journal of that time put it they now aimed at shackling workers by contract for a certain time and - if possible - using trade union power in the interest of employers against the aspiring workers.[10] The employers formed associations and reacted to small, local strikes by locking out ever growing numbers of workers.[11] It was the employers who enforced centralized bargaining. They aimed at a nation-wide agreement, and they regarded such an agreement as a means to curb trade union power.[12]

Even today this struggle is not yet finished. The most powerful German trade union - the metal workers' union IG Metall - has a policy of concluding regional agreements. The metal employers press for nation-wide bargaining.[13]

When the union signs a collective agreement in Germany it means in fact legal shackles for the workers because of the so-called peace obligation and a clause in the Works Constitution Statute invalidating plant agreements between the works council and the employer on matters regulated by the collective agreement.[14] But this did not prevent

[5] *Id*.

[6] *Id*.

[7] *Id*.

[8] *Id*. 14, 36.

[9] For details, see Colneric, *supra*, note 4.

[10] *Die Neue Zeit*, 29. JAHRGANG, ZWEITER BAND, 474; quoted by Schneider, *Der Streik. Begriff und Geschichte*, in: ZUR THEORIE UND PRAXIS DES STREIKS, 52 (D. Schneider, ed., 1971).

[11] Schneider, *supra*, note 10.

[12] Schneider, *supra*, note 10, 53.

[13] See, *e.g.*, DEUTSCHER BUNDESTAG, 10. Wahlperiode, *Ausschuß für Arbeit und Sozialordnung* 752 – 2450, STENOGRAPHISCHES PROTOKOLL DER 91./92./93. *Sitzung des Ausschusses für Arbeit und Sozialordnung,* ÖFFENTLICHE INFORMATIONSSITZUNG – AM MITTWOCH, dem 26./27. February 1986 *in* Bonn, BUNDESHAUS, am Montag, dem 10. März 1986 *in* Berlin, REICHSTAGSGEBÄUDE, 184-186.

[14] Section 77 (3), *Betriebsverfassungsgesetz* 1972; similarly, section 59, *Betriebsverfassungsgesetz* 1952.

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plant bargaining on precisely those matters where and when workers were sufficiently strong. For example, in 1969, during a phase of boom, there was a whole series of unofficial strikes aiming at a wage increase while the central collective agreements were still running.[15] As a recent study showed there is no measurable impact of the centrally agreed rates on effective earnings.[16]

My third story: France, today. A dense floor of statutory rights for workers,[17] very few legal limits to industrial action,[18] not even a peace obligation when there is a collective agreement, density of union membership 20 % (which is very low),[19] the trade union movement fragmented.[20] Until recently very little collective bargaining. The Mitterrand administration wanted to change that.[21] One of the things they did was to allow derogating from statutory rules to the workers' disfavor by means of collective agreements but they limited that possibility to very few exceptions.[22] What is happening now is lots of plant agreements derogating from statutory rules even where the law does not allow that. As a French expert told me about three agreements per day. The unions instruct their members not to conclude agreements of that kind but they are unable to control the situation. The fear of losing employment is overwhelming.

These three stories raise the question what kind of fragmented bargaining is going on in the U.S. and why a more centralized level would further workers' interests. And of course they raise the question: Would collective bargaining in the U.S. really have been significantly less fragmented without the LMRA?

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[15] For details, see K. Schacht & L. Unterseher, *Streiks und gewerkschaftliche Strategie in der Bundesrepublik*, *in* ZUR THEORIE UND PRAXIS DES STREIKS(D. Schneider, ed., 1971), *supra,* note 10, 289, 316-322.

[16] U. GOLL, ARBEITSKAMPFPARITÄT UND TARIFERFOLG, VERSUCH EINER RECHTSTATSÄCHLICHEN FUNDIERUNG ARBEITSKAMPFRECHTLICHER FRAGESTELLUNGEN UNTER BERÜCKSICHTIGUNG DER "COLLECTIVE-BARGAINING"-THEORIEN (1980).

[17] For details, see Sterzing, *Der Stand des Arbeitsrechts in* FRANKREICH, RIW 107 (1985).

[18] H. SINAY & J.-C. JAVILLIER, LA GRÈVE (2nd ed., 1984).

[19] Kißler & Sattel, *Die Arbeitsbedingungen als Handlungsfelder staatlicher Politik und gewerkschaftlicher Praxis. Ein deutsch-französischer Vergleich*, WSI-MITTEILUNGEN 47 (1985).

[20] For details, see Schäfer & Schäfer, *Die Tarifpolitik der Gewerkschaften*, *in* FRANKREICH, MSI-MITTEILUNGEN 327 (1983).

[21] See Kessler, *Das neue französische Tarifvertragsgesetz vom 13. November 1982*, BLSTSOZARBR 369 (1983); le Friant, *Frankreichs erneuertes Arbeitsrecht*, ARBUR 78 (1984); Savatier, *Das französische Arbeitsrecht von 1981 bis 1985*, RDA 34 (1986).

[22] See, *supra*, note 20 and Bélier, *Les dérogations au droit du travail dans de nouveaux contrats d'entreprise: réflexions critique sur certains projets*, DROIT SOCIAL 49 (1986).