

BRIDGING THE DIVIDE: SOME RECOLLECTIONS OF UNDERTAKING COMPARATIVE LABOUR LAW RESEARCH WITH FORMER EUROPEAN SOCIALIST COUNTRIES

*Prof. em. Alan C. Neal**

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This paper offers some reflections on comparative scientific research in the field of labour law by reference to the former socialist countries of Europe prior to 1989. The focus is primarily upon approaches to collaborative research and techniques for comparative evaluation rather than any attempt to deliver a detailed elaboration of “socialist labour law”. The perspective is that of a British labour lawyer whose contemporaneous activities extended to publication, research and teaching projects in collaboration with a broad range of socialist academic experts of the time. This presentation sets out by noting the relative lack of attention paid to experiences in those socialist legal systems – in part as a result of difficulties in accessing and understanding scientific works published in the official languages of those countries, but also due to widespread scepticism on the parts of non-socialist researchers towards the value of work undertaken by the academic community in the socialist countries. The author points to the importance of studying experiences of these legal systems not only for the sake of historical reflection but also by virtue of insights that those experiences can offer to an appreciation of labour law as it has developed post-1989. The historical context provided by this work thus highlights the opportunity for reflection in relation to concrete national systems, as well

* Alan C. Neal, *Professor emeritus*, School of Law, University of Warwick, London, England, Coventry CV4 7AL, United Kingdom; alan.neal@warwick.ac.uk; ORCID ID: orcid.org/0009-0001-4443-0323

as clearly illustrating the timeless importance of conducting comparative research on labour law. Emphasis is placed upon the need for an inclusive approach to the study of labour law in order to discern the totality of developments in that field, rather than limiting the focus to regionally oriented developments as scientific facts and the drawing of conclusions based on them. In the course of presenting this paper, the author also provides an insight into the career of Prof. Željko Potočnjak, whose position as a prominent scholar of labour law in Central and Eastern Europe is considered through the prism of personal recollections and illustrations of the significance accorded to his contributions in that area.

Keywords: comparative labour law; former socialist countries; Željko Potočnjak

1. INTRODUCTION

The career of Professor Željko Potočnjak, and the environment in which that career has been played out, stands as testimony to the remarkable flux experienced by Law and, in particular, Labour Law in Central and Eastern Europe over the last three-quarters of a Century.

His formative years involved studies at the Faculty of Law in the University of Zagreb – at that time located in what is now described as “Former-Yugoslavia”. The subject-matter of his doctoral thesis – “The Right to Strike” – represented an especially challenging topic in the context of the political and social ideology within which he had been educated. On the re-establishment of the Republic of Croatia¹, and the following period of transition from the framework imposed after the Second World War, he came to the fore as a leading intellectual contributor in the project to establish a new Labour Law and social security framework for his home nation. Since then, and particularly in his role as a Judge in the Constitutional Court of the Republic of Croatia, he has achieved a position of pre-eminence both as one of his country’s foremost experts in Labour Law and Social Security Law, and as a specialist in the field of Human and Fundamental Rights Law, at a time when Croatia has progressed to full membership of the European Union.

That illustrious career – which reflects experience gained in the context of a “socialist” system of law prior to the fall of the Berlin Wall in 1989, and has subsequently continued into an era of “transition”, market reform, and eventual “European” integration – reflects the often uncelebrated work of a generation of Central and Eastern European scholars whose composite experience and

¹ Constitution of the Republic of Croatia – the so-called “Christmas Constitution” – of 22 December 1990.

insights have contributed largely to the smooth integration of former Eastern European socialist countries into a 21st-century globalised market economy.

Professor Potočnjak's career, in which he has contributed so much as an academic, a judicial officer, and a policy-maker at the national and European levels, is celebrated in this volume. The preparation of this collective work, published to mark the occasion of his retirement, provides an opportunity to offer some reflections on the "old" ideological and analytical order which has now given way to a "Western" frame of reference over the half century in which Professor Potočnjak has been professionally active.

In the following, some brief comments are offered on the phenomenon of "socialist legal systems".² It is noted that – for various reasons – experiences from over a century of socialist Labour Law were largely ignored or overlooked in post-war (comparative) Labour Law scholarship. Notwithstanding some revival of interest in the period immediately following the fall of the Berlin wall, it is suggested that those experiences continue now to be "air-brushed out" of modern comparative Labour Law writings.

Comment is made in relation to historical attitudes to the emergence of a "socialist" frame of reference for working relationships in Europe in the immediate aftermath of the 1917 Russian Revolution. This is followed by some comments on the post-Second World War consolidation of a socialist *bloc* in Eastern Europe up until the dramatic events of 1989 and their legacy. In passing, brief comment is also made about the historical line of development in China prior to the establishment of the PRC in 1949, through the post-1949 upheavals which brought about the "Cultural Revolution", and the eventual establishment of a modern framework of "socialist Labour Law" in that country after 1978.

It is observed that, generally, there is a remarkable paucity of accessible scholarly work published in relation to these experiences of socialist Labour Law. Some of the practical explanations for this are rehearsed. One underlying reason lies in the rarity of references by contemporary published comparative works to scholarship and research contributions written and published in

² David, R., *Les grands systèmes de droit contemporains*, Paris, 1964. The (essentially 1960s) paradigm developed by leading comparative lawyers of that time – notably René David, Hein Kötz, and Konrad Zweigert – has subsequently been re-visited and questioned (including by Kötz himself in a piece entitled "Farewell to the Theory of Legal Families"). See Kötz, H., *Abschied von der Rechtskreislehre?*, *Zeitschrift für europäisches Privatrecht*, vol. 6, no. 3, 1998, pp. 493-505. See also *inter alia* Pargendler, M., *The Rise and Decline of Legal Families*, *The American Journal of Comparative Law*, vol. 60, no. 4, 2012, pp. 1043-1074.

languages other than English and the other majority languages of international discourse (French, German and Spanish). Another, and hugely significant, reason lies in the “airbrushing” of post-Second World War experience from modern presentations of Labour Law in European (particularly European Union) nations. Alongside the expunging of much of the body of scholarly work produced by socialist scholars during that period, it has to be recognised that those scholars themselves have also often been ostracised by the international Labour Law community. Many of the formerly “leading lights” in socialist Labour Law scholarship ceased to research and publish in the aftermath of the upheavals of 1989. A few relatively well-known figures reappeared on the post-socialist scene, having re-addressed the frame of reference within which they were working – although (sometimes unfairly) allegations of “old wine in new bottles” were not long in coming. By and large, however, a “new generation” of younger scholars began to develop – and it is to the guidance and promotion of that “untainted” generation to which colleagues such as Željko Potočnjak have dedicated their professional efforts over the past thirty years.

2. 1917 AND ALL THAT

The immediate aftermath of the 1917 Bolshevik Revolution was met with widespread international scepticism about the acceptability of the new regime installed in place of the deposed Tzars. Indeed, a vivid flavour of this reaction can be seen in the comments of Albert Thomas (the first Director of the ILO) in an article penned for the first volume of the *International Labour Review* in 1920, where the author posed the question:³

“Has Bolshevism, which exercises a powerful fascination for the masses, shown itself capable of doing anything more than organising a Jacobin dictatorship on the one hand, and of causing discontent and poverty on the other? To what constructive work can it point? Has it really secured for men, women and children the hours, wages and hygienic conditions provided for in the labour charter, or even the conditions of life which the traditions of labour legislation promise to the world?

As a result of Bolshevism the former socialist International has been broken up. Its numerous fragments spend their time in discussions of principle, while most of the various national groups of which it is

³ Thomas, A., *The International Labour Organisation – Its Origins, Development and Future*, *International Labour Review*, vol. 1, no. 1, 1921, pp. 5-22.

composed have not sufficient influence to affect legislation or state policy.

Even if from the point of view of policy they are thinking rightly, what immediate hopes of betterment do they offer to the wage-earners?"⁴

Unsurprisingly, faced with a welcome of that ilk, the development of a Soviet Labour Code in 1918 took place in almost complete isolation from international regulatory activities around the time of the ending of the First World War.⁵ That 1918 Code underwent almost immediate revision, and eventually gave rise to the 1922 Labour Code of the Soviet Union – which, to this day, remains a key point of reference for Labour Law and regulation in socialist systems.

As this author has pointed out elsewhere⁶, history has demonstrated that some of the more extreme proposals propounded in the wake of the 1917 Russian revolution – for example, that the USSR should not even be admitted to the newly-instituted ILO – never eventually came to pass. However, it may be suggested that, throughout the history of the organisation (both in its League of Nations guise and in the post-Philadelphia Declaration era) there have been delicate paths to be trodden when dealing with established Socialist systems. The underlying values of a “socialist system” (in particular, that operating in the USSR itself)⁷ presented major challenges to the coherence of values espoused

⁴ At pp. 20-21.

⁵ The historical USSR time-line runs, effectively, from the 1917 Russian revolution, through an early Labour Code drawn up in 1918, and thereafter to the 1922 Labour Code of the RSFSR. See the Labour Code of the RSFSR of 9 November 1922 – together with its subsequent amendments (LS 1936 - Russ. 1, 1958 - USSR 1) – which remained in force until the Decree of the Presidium of the Supreme Soviet of the RSFSR to repeal certain legislative texts of the RSFSR consequent upon the entry into force of the Labour Code of the RSFSR [LS 1971 – USSR 1]. *Vedomosti Verkhovnogo Soveta RSFSR, 1972, Text 898*. The 1922 Labour Code itself included a number of provisions originally to be found in the 1918 Labour Code of the RSFSR.

⁶ Neal, A., *Implementing ILO Fundamental Labour Rights in China: A Sensitive Meeting of Form and Substance?*, in Liukkunen, U.; Chen, Y. (eds.), *Fundamental Labour Rights in China – Legal Implementation and Cultural Logic*, Heidelberg, 2016, pp. 19-65.

⁷ See, for example, the contributions by a group of leading Soviet scholars to Butler, W.; Hepple, B.; Neal, A. (eds.), *Comparative Labour Law: Anglo-Soviet Perspectives*, Aldershot, 1987. This volume also included contributions on the conduct of Anglo-Soviet comparison – see Ivanov, S., *Methodological Problems of Comparative Legal Research in Labour Law*, which may be contrasted with W. Butler, *Soviet Labour Law in English Comparative Legal Studies*, Hepple, B., *Some Problems of Comparing Socialist and Capitalist Systems of Labour Law*, and Neal, A., *Comparative Labour Law: Projects*

used by the ILO in the course of its international standard-setting activities – something which could be seen particularly sharply in the context of dealing with the socialist countries of Eastern Europe prior to the fall of the Berlin Wall in 1989.⁸

It is also noteworthy that in this immediate post-war period, while the Soviet Union was carving out its trajectory in relative isolation and broadly on its own terms, China – which, following the end of Imperial rule, had been embraced within the Commonwealth of Nations represented at the International Labour Organisation, as a founding member of that body⁹ – had not adopted any of the trends which were eventually to lead to the socialist People’s Republic founded in 1949.¹⁰ Nevertheless, one relevant development during the 1930s may be mentioned as pointing the way forward towards the successful creation of the PRC in 1949. This was the experience in Xinjiang during the early 1930s where, early in the “Long March” of Chairman Mao Zedong, a “socialist” regime was introduced, which gave rise to innovative regulation for

and Publications.

⁸ By way of example, consider the observations in relation to the report on Convention No. 87 (Freedom of Association & Protection of the Right to Organise) 1948 to the effect that: “The Government states that Soviet law and practice afford the trade unions more favourable conditions of existence, operation and independence than those prescribed by the Convention. It adds that the provisions laid down in the Convention were put into effect in the Soviet Union long before their adoption by the I.L.O. It therefore considers that there is no need for any amendment to its legislation, which meets and even surpasses the standards set by the Convention...”; and “...In conclusion the Government states that, as a result of the structure and philosophy of the régime, the workers, and hence the unions, play an active part in all aspects of the country’s economic, social and cultural life. Evidence of this participation can be seen in their association in the drafting and subsequent enforcement of labour legislation”. See ILC, 40th Session, 1957, *USSR Government report on Convention 87 (Freedom of Association & Protection of the Right to Organise) 1948*, p. 83.

⁹ It is often overlooked that post-imperial China was a founder member of the organisation in 1919 – at that time constituted under the umbrella of the League of Nations – and that a period of steady engagement with the ILO’s standard-setting and implementation arrangements in the wake of the First World War was developed throughout the 1920s and 1930s. By 1934, indeed, China had been elected as a member of the ILO Governing Body, and the years preceding the outbreak of the Second World War saw the continuation of a process of ratification for a wide range of ILO standard-setting instruments by the Chinese nationalist government.

¹⁰ Eastman, L.; Ch’en, J.; Pepper, S.; van Slyke, L., *The Nationalist Era in China, 1927-1949*, Cambridge, 1991.

workers' legal relationships in that limited area of influence¹¹, until the formal abolition of the "Chinese Soviet Republic" in 1937.¹²

3. POST-SECOND WORLD WAR EUROPE AND THE "IRON CURTAIN"

While the system of values embodied in the regime established by the 1922 Soviet Union Labour Code continued its development up until and throughout the Second World War, it was not until the redrawing of political lines in Europe, and the creation of what Winston Churchill described as the "Iron Curtain" that a modern variegated system of socialist law (including labour law) was to be introduced across much of the Eastern European land mass.¹³ The establishment of the so-called COMECON group of countries was accompanied by co-ordinated regulation along the lines drawn broadly from experience in the Soviet Union since the 1917 Russian Revolution.¹⁴ Thus, the post-war

¹¹ Thus, a "Labour Law of the Chinese Soviet Republic" was adopted in November 1931, together with a Resolution, the following month, on implementing the Labour law, and a set of "Provisional Organisational Principles for Labour Sections of Chinese Soviets". Chapter 9 of the 1931 Law formalised the position of the "All-Chinese Labour Federation" (along with local-level organisations), and included provisions on "collective contracts", as well as establishing arrangements for dealing with violations of the Labour Law and for the settlement of labour disputes between workers and employers.

¹² For an introductory survey of that period, see Butler, W. (ed.), *The Legal System of the Chinese Soviet Republic 1931-1934*, New York, 1983. The direct influence of the 1922 Soviet Union Labour Code is traced in the chapter contributed to that volume by van den Berg, G., *Affinities between USSR and Chinese Soviet Labor Legislation*.

¹³ See the speech delivered by The Right Honourable Winston Churchill, M.P., upon receipt of an honorary degree at Westminster College, Fulton, Missouri (5 March 1946): "...From Stettin in the Baltic to Trieste in the Adriatic an iron curtain has descended across the Continent. Behind that line lie all the capitals of the ancient states of Central and Eastern Europe. Warsaw, Berlin, Prague, Vienna, Budapest, Belgrade, Bucharest and Sofia, all these famous cities and the populations around them lie in what I must call the Soviet sphere, and all are subject in one form or another, not only to Soviet influence but to a very high and, in some cases, increasing measure of control from Moscow."

¹⁴ COMECON, the *Council for Mutual Economic Assistance*, was established in 1949 to facilitate and co-ordinate economic development in the Eastern European countries. The original members, along with the USSR, were Bulgaria, Czechoslovakia, Hungary, Poland and Romania. These were subsequently joined by Albania (which eventually ceased active participation in 1961), the German Democratic Republic ("East Germany") and Mongolia. Former-Yugoslavia negotiated limited terms of

regimes in Bulgaria, Czechoslovakia, the German Democratic Republic (GDR – “East Germany”), Hungary, Poland and Rumania began to find a degree of harmonisation. The situation in Former-Yugoslavia¹⁵ reflected a non-aligned dynamic, following the policy of “neutrality” adopted by General Tito after 1948 – something which shaped the trajectory of developments in Professor Potočnjak’s location throughout that period.¹⁶ Meanwhile, the experience of Albania offered a very different trajectory, with early inspiration derived from the Soviet Union later giving way to closer alignment with the People’s Republic of China.¹⁷

Academic treatment and analysis of the emerging experiences in the socialist systems of Labour Law continued to be rather limited at the international level throughout this period.¹⁸ Although the Soviet Union, as a member of the United Nations, was an active player within the ILO, presentations of Soviet Labour Law tended to be few and far between, with “special reports” reflecting descriptive presentations of the structures and substance of the emerging socialist Labour Law regulation.¹⁹ So far as published material covering the

participation from 1964, before Cuba and Vietnam eventually became the final adherents.

- ¹⁵ Comprising Bosnia and Herzegovina, Croatia, Macedonia, Montenegro, Serbia and Slovenia.
- ¹⁶ Former-Yugoslavia’s stance came about following the so-called “Tito-Stalin split” which came to a head in 1948.
- ¹⁷ See generally, Bowers, S., *Stalinism in Albania: Domestic Affairs under Enver Hoxha*, East European Quarterly, vol. 22, 1989, pp. 441-457, and see the historical contextual material presented in Tarifa, F., *Albania’s Road from Communism: Political and Social Change, 1990-1993*, Development and Change, vol. 26, 2008, pp. 133-162.
- ¹⁸ From Western scholarship came *inter alia* significant contributions from Clark Brown, E., *Soviet Trade Unions and Labor Relations*, Cambridge, 1966, and McAuley, M., *Labour Disputes in Soviet Russia, 1957-1965*, Oxford, 1969. Out of the Socialist academic community had already come the early seminal work on the legal status and rights of trade unions in the USSR published by Vasilii Dogadov – regarded as one of the “fathers” of Soviet Labour Law – as Dogadov, V., *Правовое положение профессиональных союзов СССР: очерки профсоюзного права (The Legal Status of Trade Unions in the USSR: Essays on Trade Union Law)*, Moscow, 1928. Work during the post-Second World War period by another of the Soviet “greats” - Nikolaj Aleksandrov – was published as Aleksandrov, N., *Трудово правоотношение (Labour Law)*, Moscow, 1948, and *Советское трудовое право (Soviet Labour Law)*, Moscow, 1959, and multiple editions.
- ¹⁹ See, for example, ILO, *Industrial Life in Soviet Russia 1917-1923* [Studies and Reports, Series B (Economic Conditions) No. 14], Geneva, 1924. It is notable that the 1952 ILO publication *Reports and Inquiries: Collective Agreements in the U.S.S.R.*, International Labour Review, vol. 66, 1952, pp. 477-484, was drawn from material

Labour Law of the former socialist countries of Eastern and Central Europe was concerned, mention should be made of the important comparative encyclopedia co-ordinated by Professor Semion Ivanov in Moscow, under the title of *Codification of Labour Legislation in Socialist Countries*.²⁰ This work was assembled with the assistance of a number of scholars throughout those former socialist countries of Europe, and constituted a point of initial reference of obvious importance for those concerned with examining the systems operative within those countries.

However, amongst Western academic observers, there was a clear division between scholars who sought to engage with enquiry into the functional activities within these socialist regimes, and others who – for ideological or other reasons – adopted a view that presentations made by representatives of socialist countries were simply “not worth the paper upon which they were written”. Certainly, experience at international conventions (such as the four-yearly meetings of the International Society for Labour Law and Social Security)²¹, at which “rapporteurs” from socialist countries would mount the podium to deliver pre-scripted tidings of great joy to the international audience, did little to dispel the latter opinion.²²

set out in the *Soviet Manual of Labour Law*, Institute of Legal Sciences of the Ministry of Justice of the USSR, 1949.

²⁰ See Кодификация трудового законодательства в социалистических странах (Moscow, 1979). See also Ivanov, S. (ed.), *Трудовое право: энциклопедический словарь (Labour Law: Encyclopedic Dictionary)*, 4th ed., Moscow, 1979. Cited by this author in Neal, A., *Comparative Labour Law and Industrial Relations: Major Discipline? – Who Cares?*, in Engels, C.; Weiss, M. (eds.), *Labour Law and Industrial Relations at the Turn of the Century. Liber Amicorum in Honour of Prof. Dr. R. Blanpain*, The Hague, 1998, p. 55. As well as the encyclopedic work edited by Semion Ivanov, the leading English language encyclopedic reference for Soviet law, which included much of interest on labour law, was Feldbrugge, E; Simons, W. (eds.), *Encyclopedia of Soviet Law*, 2nd ed., The Hague, 1985.

²¹ It is notable that, amongst the World Conferences organised by that organisation, only the VIIth World Congress was held in the former socialist bloc, taking place in Warsaw (Poland) between 14-17 September 1970. Of the European Regional Congresses organised under the auspices of the ISLLSS, in addition to the Szeged (Hungary) event in 1984, a further such meeting took place in Warsaw (Poland) in 1999, while, since the modern redrawing of the geo-political spheres of influence in modern Europe, a subsequent meeting has taken place in Prague (Czech Republic) in 2017.

²² Note that most of the “national reporters” were also regarded by more cynical colleagues as “the usual suspects” – their roles not being confined to delivery of formal prepared papers touching upon the technical subjects under consideration, but extending also to occupation of places given over to “National Representatives”

This author vividly recalls a time when, as the founding editor of the *International Journal for Labour Law and Industrial Relations*, he attended the regional congress of the ISLLSS in Bangkok, together with the late Benjamin Aaron²³, the editor of the *Comparative Labor Law Journal*.²⁴ Both of us were keen to promote our publications to the international audience represented in the international committee of that society. Ben's view of socialist scholarship and writing was rooted very much in the view that such material was, generally, not worthy of publication. That contrasted sharply with this author's view – over which we never did achieve consensus – that such scholarship (whatever view one might have in terms of political analysis concerning the underlying values of the presentations) nevertheless represented the fruits of intellectual activity on the parts of scholars and researchers, and should thus receive an airing and be subject to discussion and debate. We both agreed, however, that an almost insurmountable obstacle existed in the presentation of experiences within the socialist systems when it came to drawing any comparisons with experience in market economies and, in particular, in Western “democracies”. Nevertheless, it would not be many years before the American Journal included scholarly articles produced by academics reflecting experience with Socialist legal arrangements.²⁵ For this writer's part, a clear view was taken that “socialist”

on the National Executives or Organising Committees of the international bodies involved.

²³ The late Benjamin Aaron was one of the pioneers of comparative Labour Law research in the second half of the 20th Century. As a member of the Comparative Labour Law Group (along with Xavier Blanc-Jouvan, Gino Giugni, Thilo Ramm, Folke Schmidt and Bill Wedderburn) he was instrumental in developing a particular technique of comparative labour law research. See his account of the work undertaken by the group in Aaron, B., *The Comparative Labor Law Group: A Personal Appraisal*, *Comparative Labor Law and Policy Journal*, vol. 2, 1977, pp. 228-237 and for a personal perspective upon his lifelong field of activity, see Aaron, B., *A Life in Labor Law: The Memoirs of Benjamin Aaron*, Los Angeles, 2007.

²⁴ What was subsequently re-named and is now published as the *Comparative Labor Law and Policy Journal*.

²⁵ Stimulated in no small measure by the approach of David Ziskind, the journal's first Editor – who developed the journal out of a previous “Newsletter and Bulletin” circulated by the United States National Committee of the International Society of Labor Law and Social Legislation between 1967 and 1975. Ziskind also penned several of the journal's early contributions. Of particular interest was a piece on cross-ideology comparative method: Däubler, W., *Comparison of Labor Law in Socialist and Capitalist Systems*, *Comparative Labor Law*, vol. 4, 1981, pp. 79-98. See also Ziskind's thoughtful piece in the same volume: Ziskind, D., *Finger-Prints on Labor Law: Capitalist and Communist*, *Comparative Labor Law*, vol. 4, 1981, pp. 99-114.

scholarship should enjoy broader exposure²⁶, but that there was a necessity to “ring fence” such presentations in order to overcome the reality that, alongside presentations of, for example, Western European Labour Law and industrial relations experience, there was a risk of purporting to “compare apples with pears” with little value in any conclusions eventually drawn.²⁷

Where, by contrast, a “mixing” of socialist and non-socialist materials was undertaken in specific studies, this sometimes resulted in artificial parallels being presented, and could become subject to (often justifiable) criticism that the methodologies engaged were not fit for purpose.²⁸

4. “BRIDGING THE DIVIDE” – DEVELOPING COMPARATIVE RESEARCH CONTACTS

Nor were there many opportunities for collaborative activity between researchers, academics, and policy-makers from the non-socialist countries when

²⁶ Of the 38 contributions published in the first two years of the *International Journal of Comparative Labour Law and Industrial Relations*, a goodly proportion reflected the fruits of East European “Socialist” scholarship, including pieces by Miroslav Bělina and Marie Kalenská (Czechoslovakia), Csilla Kollonay-Lehoczky (Hungary), Marek Pliszkiewicz (Poland), Sanda Ghimpu (Rumania), and Semion Ivanov (USSR).

²⁷ One example of such “ring fenced” contributions can be found in the International Journal volumes on “work teams”/“work collectives” in socialist countries. See the first issue of Volume 3 of the *International Journal of Comparative Labour Law and Industrial Relations* (1987), containing contributions from scholars in four Eastern European socialist countries, linked together by an overview written by Frithjof Kunz: Kunz, F., *The Position of Workteams under the Labour Law of European Socialist Countries*, International Journal of Comparative Labour Law and Industrial Relations, vol. 3, 1987, p. 1. Another is to be found in the comparative papers reflecting contrasting experiences between the Soviet Union and the United Kingdom in 1985. The fruits of that international collaboration between United Kingdom Labour Law scholars and researchers in the Soviet Academy of State and Law were published separately in W. Butler, Hepple, B.; Neal, A. (eds.), *Comparative Labour Law: Anglo-Soviet Perspectives*, Aldershot, 1987. A Russian language version of that book was published by the Soviet Academy of State and Law, Moscow, under the direction of Semion Ivanov, in the same year: see *Сравнительное трудовое право (по материалам советско-британского симпозиума)*, Moscow, 1987.

²⁸ An unfortunate example can be seen in the attempt to compare Norwegian and other Western European with Yugoslav experience of something labelled “Industrial Democracy” in the 1960s and early 1970s undertaken by Emery, E.; Thorsrud, E., *Form and Content in Industrial Democracy – Some Experiences from Norway and other European Countries*, London, 1969. More successful was the assessment of worker participation schemes in Yugoslavia, Israel, and Norway produced by Adizes, I.; Mann Borgese, E. (eds.), *Self-Management: New Dimensions to Democracy*, Oxford, 1975.

it came to studying Labour Law (or, indeed, any) experience within those Eastern European countries. This was not only due to the tensions between the socialist and non-socialist spheres of influence, but also reflected the difficulties (and expense) of travel for researchers who might wish to interact with scholars in Eastern European countries. Apart from a small number of individual scholars, who by various means managed to forge fruitful liaisons with particular socialist country contacts²⁹, there were remarkably few researchers whose activities involved significant visits or periods of time spent in the locations of their focal interests. Indeed, by and large, it was generally only in the context of the activities of the ILO (in particular, the annual International Labour Conferences, held in Geneva) that sustained and relatively meaningful contacts and interactions could be established and maintained.³⁰

However, a significant boost to the development of comparative links was given in 1984 when the International Society for Labour Law and Social Security (ISLLSS) held its first European Regional Conference in a socialist country – with a meeting organised in Szeged, Hungary.³¹ That event, which enabled a new generation of socialist Labour Law scholars to interact with the wider international research community, quickly gave rise to an institutional forum for “East-West” scholarly exchange. This came in the form of what would develop into an annual Summer School, organised by Professor László Nagy, in the University of Szeged. In the decade following the 1984 international conference of the ISLLSS, this three-week colloquium – under the title of the “International Seminar on Comparative Labour Law and Social Security” – would bring together a group of invited experts (leading academics

²⁹ Mention might here be made of scholars such as William Butler in relation to the USSR and Hilary Josephs in relation to the PRC. For many other would-be researchers, the barriers posed by access to, and (particularly financial) support for, such fieldwork were simply too great to overcome. So, too, were linguistic barriers not to be under-estimated, while direct contact with government-level officials or with members of the judiciary was particularly problematic.

³⁰ Writing in 1995, this author observed that: “Looking back, it is easy to forget how problematic was the task of co-ordinating work from particular ideological ‘blocs’ and, indeed, how much controversy was initially stirred by the Editor-in-Chief’s insistence that contributions from Socialist commentators should be included alongside the work of ‘Western’ colleagues.” See *International Journal of Comparative Labour Law and Industrial Relations*, vol. 11, 1995, pp. 303. More than a quarter of a Century on from that comment, it remains important not to take for granted the facility to communicate, travel, and share research projects, with which we have become accustomed in the age of the internet!

³¹ A note on that Szeged conference is to be found in Aaron, B., *Report on the First European Regional Congress, ISLLSS, Comparative Labor Law*, vol. 6, 1984, pp. 293-296.

and senior officials from the ILO) from Western countries and active Labour Law scholars from the socialist countries of Eastern Europe.³² These Eastern European colleagues included not only young and upcoming researchers, but also some of the best known and well-established figures in the field within their national systems. The colloquium was conducted bilingually in English and French, and the regularity of the meetings and contact provided a fascinating observatory at a time when the established order in the socialist countries was coming under increasing pressure. That momentum eventually led to the dramatic events of 1989, the dismantling of the Berlin Wall, the reunification of the two Germanies, and a resetting of the spheres of influence across the European continent in the run-up to the Millennium.

Indeed, as historic events in Poland had already served to underline, this period of the 1980s was witnessing dramatic and fundamental shifts in attitude towards formerly strictly controlled expressions of opinions through “trade unions” and emerging “collective voice” bodies. The experience of *Solidarność* in Poland marked the beginning of a route which could eventually be traced to the queues of Trabant motor cars at the borders of the former German Democratic Republic before the eventual fall of the Berlin Wall. Even in the USSR, the period of *Glasnost* – the term popularised by Mikhail Gorbachev in the mid-1980s as a political slogan for increased government transparency in the Soviet Union – and *Perestroika* (the period of “reconstruction”) indicated that underlying changes in attitude were afoot. Inevitably, some of this contextual atmosphere found its way into academic discourse and scholarly exchanges in international gatherings concerned with issues of work, labour regulation, and the operation of what in Western societies were regarded as “labour markets”.

Yet, notwithstanding the inauspicious circumstances in which such comparative Labour Law research was being undertaken, it should also be recalled that, outside the framework of formalised diplomatic relationships established by the ILO, a small number of collaborative projects spanning the “Iron Curtain” had been achieved during the Cold War period.

As well as visits and collaborations undertaken by individual scholars³³, a

³² Amongst the non-socialist members of the Szeged faculty (for example, in the Summer School of 1988) were Wolfgang Däubler, Ioannis Koukiadis, Yota Kravaritou, Guy Perrin, Johannes Schregle, Jean-Michel Servais, Jean-Maurice Verdier, Manfred Weiss and the present author. Amongst the members of the faculty drawn from the Socialist countries, there was also included the late Vljako Brajić, then in the University of Belgrade, Former-Yugoslavia. See *A József Attila Tudományegyetem, Évkönyve 1988/89*, Szeged, 1990, pp. 109-110.

³³ For example, this author spent time in Poland in 1985, following a period in Moscow at the Soviet Academy of State and Law, and had previously collaborated with

significant project was completed during 1985 the 1986, as has already been mentioned, between scholars from the United Kingdom and researchers working within the Soviet Academy of State and Law in Moscow.³⁴ Nevertheless, even where scholarship emanating from (mainly) the socialist countries of Eastern Europe did see the light of day – and became available in an accessible language of publication – an entrenched resistance to taking that work entirely seriously could regularly be perceived.

The comment by Albert Thomas concerning his reservations about the ability of post-Bolshevik Revolution USSR to deliver what today might be described as “social justice” has already been mentioned.³⁵ Wonderful examples of even more trenchant critiques are to be found in contemporary book reviews by Western academic commentators. For example, in a review of the 1964 work *State and Law: Soviet and Yugoslav Theory*³⁶, the late Michael (R. W. M.) Dias felt able to opine that:³⁷

“The author’s Conclusion in Chapter 4, which occupies barely two pages, is somewhat of an anti-climax. He merely explains it is the hateful associations of the words “state” and “law” that are responsible for the persistent talk of their “withering away”. The point, if one may respectfully observe, is scarcely worth making. After his able exposure of the antics which theorists have been performing one would expect something more. Whom do the Russians hope to convince by their evasions, distortions and contradictions? Only a race with the mentality of sheep could be so lulled.”

Meanwhile, in a review by Simon Honeyball of work published by Laszlo Trocsanyi as *Fundamental Problems of Labour Relations in the Law of the European Socialist Countries*³⁸, the comment was made that:³⁹

scholars in Czechoslovakia while preparing a chapter for the *International Encyclopedia of Comparative Law* together with the late Folke Schmidt. See the collaboration with Professor Karel Witz and Professor Marie Kalenska (University of Prague, Czechoslovakia), which produced original background material to inform the presentation eventually published as Schmidt, F.; Neal, A., *Collective Agreements and Collective Bargaining*, in *International Encyclopedia of Comparative Law*, Volume XV, Tübingen, 1984, Chapter 12.

³⁴ See *supra*.

³⁵ See *supra*.

³⁶ Lapenna, I., *State and Law: Soviet and Yugoslav Theory*, London, 1964.

³⁷ In: *Cambridge Law Journal*, vol. 23, 1965, p. 150.

³⁸ Trocsanyi, L., *Fundamental Problems of Labour Relations in the Law of the European Socialist Countries*, Budapest, 1986.

³⁹ In: *International & Comparative Law Quarterly*, vol. 37, 1988, p. 218.

“It has to be said that the Hungarian translator would appear to be rather more familiar with the English dictionary than the English language, and this sometimes makes for rather heavy going and the necessity for the reader to add a translation of his own, from the English he is reading to an idea with which he is familiar. But, as the titles above may indicate, the fault may also lie with the author’s customary socialist jargon. Once the reader has penetrated both this and the translation, and divested himself of any thought of theory or analysis, he cannot but be struck by two things. The first is that the rules of law themselves bear a striking similarity to that which one finds familiar. This is largely because, perhaps somewhat surprisingly, the socialist view of labour relations insists on a contractual approach. In addition, a principle of equivalence demanding a relationship between production and reward which is allowed to be indirect is not that far removed from the capitalist approach in ends if not in means.”

This contrasted with a rather more sympathetic review of the same work by Johannes Schregle, who, while observing that the work’s main value “resides in the comparative information it provides on the law of the countries concerned”, nevertheless commented – along similar lines to the comments of Honeyball – that:⁴⁰

“The Western reader may not be fully satisfied, however, with a study that is based solely on the labor code provisions of the countries concerned, supplemented by quotations from legal textbooks, and that contains no empirical information on enterprise practice.”

Even leaving such negative appraisals of socialist scholarship aside, however, it still has to be borne in mind that the period from the mid-1980s was not one in which access to the internet had yet been developed. Perhaps more problematically, this was also an era in which free movement of scholars for research purposes was nothing like as open as has been the case for the modern generation of academic commentators. It may, therefore, be considered hardly surprising that productive collaborative projects spanning the “Iron Curtain” were few and far between, and that, once the obvious linguistic accessibility factors are also factored in, the body of available material upon which to evaluate activity prior to the fall of the Berlin Wall is remarkably limited.

⁴⁰ In: *Industrial and Labor Relations Review*, vol. 43, 1989, p. 152.

5. AFTER THE FALL OF THE BERLIN WALL

In the wake of the dramatic events of 1989, comparative Labour Law scholarship tended (and has continued) to turn its back on what were now “historical” developments in the socialist countries during the “Cold War” era.⁴¹ This has been the case whether one is talking of the socialist legacy from post-*Solidarność* Poland, the re-unified German Democratic Republic, or the fledgling States re-emerging from the Former-Yugoslavia. Consequently, it has been to the development of a new “transition generation” of younger scholars that Željko Potočnjak and his contemporaries have devoted their energies, while at the same time playing a significant role in the re-establishment of a modern social and legal order for the Republic of Croatia.

Once the true impact of the seismic shift in 1989 became evident, a sea-change in attitudes towards research and scholarship swiftly followed. Initially, this took the form of various non-socialist regimes seeking to influence the direction of travel for the establishment of “industrial relations institutions” in the newly-“released” countries of Eastern Europe. Thus, delegations from the American Department of Labor were swiftly mobilising in visits to the capitals of the former Eastern *bloc*, while the European Community likewise sought to have its preferences heard through technical delegations of labour market and

⁴¹ Even during the period of the “Iron Curtain” the work of the Comparative Labour Law Group had consciously excluded “the Socialist frame of reference” from its studies. See *supra* and the comments of Benjamin Aaron in Aaron, *op. cit.* (fn. 23), p. 228. So, too, was there an absence of such input into the project which gave rise to the volumes produced by a group of scholars under the leadership of Bob Hepple and published as: Hepple, B. (ed.), *The Making of Labour Law in Europe: A Comparative Study of Nine Countries up to 1945*, London, 1986, and Hepple, B.; Veneziani, B. (eds.), *The Transformation of Labour Law in Europe: A Comparative Study of 15 Countries 1945-2004*, London, 2009 – notwithstanding the nod in the title of the latter volume to experience in European Union “accession States” which had experienced previous incarnations within the pre-1989 Socialist grouping. In his introduction to Davidov, G.; Langille, B. (eds.), *The Idea of Labour Law*, Oxford, 2011, Bob Hepple dismisses the body of socialist labour law scholarship with the observation that “... Soviet-style socialism had only a very limited appeal in the western countries, apart from France and Italy in the early post-war years, and by the 1980s had become widely discredited both ideologically and in practice...”. Hepple, B., *Factors Influencing the Making and Transformation of Labour Law in Europe*, Chapter 2 in Davidov, Langille, *op. cit.* For an interesting historiographical evaluation of research in relation to former European socialist countries, see Heumos, P., *Workers under Communist Rule: Research in the Former Socialist Countries of Eastern-Central and South-Eastern Europe and in the Federal republic of Germany*, *International Review of Social History*, vol. 55, 2010, pp. 83-115.

Labour Law “experts”.⁴² Indeed, it was in the course of the ensuing “shared development” phase, as a post-Millennium trajectory began to emerge and the prospect of “enlargement” within an expanded European Union became more realistic, that this author first had the pleasure of meeting and working with Željko Potočnjak. Thereafter, the agenda for comparative Labour Law research and collaboration has changed beyond all recognition – with new frames of reference focused increasingly upon analysis of the legal model constituted by the modern European Union of 27 Member States⁴³, the “human rights” perspective offered by the post-Millennium activity of the Council of Europe⁴⁴, and the international standard-setting endeavours of the International Labour Organisation.⁴⁵

A result has been the creation of a substantial body of research evaluation and social policy-making initiatives which have emerged against a background of remarkable homogeneity in European labour markets and regulatory frameworks.⁴⁶ The direction and speed of transition and reform has varied

⁴² Indeed, this author, along with his colleagues Marco Biagi (Italy), Roger Blanpain (Belgium), and Manfred Weiss (Germany), were initially sent as the European Community’s representative delegation to the Hungarian government in Budapest. Shortly afterwards, the same quartet found themselves next lined up to visit Dubrovnik, with a view to delivering their “words of wisdom” to the region formerly constituted as “Former-Yugoslavia”. As things turned out, that scheduled visit never took place, by reason that, on the evening before the delegation were due to travel to that city, the bombardment of Dubrovnik began in earnest, making travel impossible.

⁴³ Particularly in the wake of accession by the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia, and Slovenia on 1 May 2004. Subsequent European Union enlargement has seen the reception of Bulgaria and Romania in 2007 and, eventually, the entry of Croatia on 1 July 2013.

⁴⁴ By reference, in particular, to the *European Convention on Human Rights 1950*. For the arrangements within the framework of the Council of Europe and discussion of challenges a quarter of a century after the fall of the Berlin Wall, see Council of Europe, *The Longer-term Future of the System of the European Convention on Human Rights* (Report of the Steering Committee for Human Rights (CDDH) adopted on 11 December 2015).

⁴⁵ Particularly in the context of promoting the ILO’s “Decent Work” agenda since 1998.

⁴⁶ A vast collection of work has emerged over the past three decades. Amongst the contributions looking at institutional challenges in “transition” mention may be made of Thirkell, J.; Petkov, K.; Vickerstaff, S., *The Transformation of Labour Relations: Restructuring and Privatization in Eastern Europe and Russia*, Oxford, 1998; Ashwin, S.; Clarke, S., *Russian Trade Unions and Industrial Relations in Transition*, Basingstoke, 2002; Svejnar, J., *Transition Economies: Performance and Challenges*, *Journal of Economic Perspectives*, vol. 16, 2002, pp. 3-28; Borisov, V.; Clarke, S., *The Rise and Fall of*

dramatically as between national systems. Furthermore, as it should constantly be borne in mind, strong echoes of post-1917 values are still to be found in many parts of Eastern Europe, Central Asia and, of course, in the People's Republic of China.⁴⁷ These tensions, variations in approach, and sensitivities have all been well known to Željko Potočnjak, whose pre-1989 doctoral studies had centred upon the phenomenon of “the strike”, and whose sensitivities to multiple variants of “socialist” evolution for the world of work have provided a significant advantage in attempting to meet the challenges which were emerging for his national context of Croatia. So, too, was the ability of Professor Potočnjak to contribute his analyses of the European Charter (in the context of the Council of Europe) and appreciation of the institutional framework for Labour Law in the context of “human rights” at the level of the United Nations to prove so important to promoting continuing stability for regulatory regimes in various former “socialist” countries of Europe.

Many of the “Old Men” of those “transition years” – notably, Marco Biagi, whose assassination in 2002 brought home to all of us just how ideologically and politically sensitive industrial relations and Labour Law can be in a modern society, and Roger Blanpain, whose campaigning research and politico-economic reform proposals continued to pour forth until his death in 2016 – are no longer with us. Nevertheless, it is still the case that the sage voices of colleagues such as Csilla Kollonay-Lehoczky, Jean-Michel Servais, Michael Sewerinsky or Manfred Weiss, steeped in the experiences of “Cold War” Europe, “Transition Europe”, and “Reformist Europe”, continue to be heard, along with the particular nationally accumulated wisdom of figures such as Željko Potočnjak.

Today's challenges are posed in a context where Europe has witnessed remarkable homogenisation over the past 30 years, but in which that Continent continues to face the instability and existential challenge of a continuing war in Ukraine and the uncertainties created by geo-political manoeuvrings by the

Social Partnership in Post-socialist Europe: The Commonwealth of Independent States, Industrial Relations Journal, vol. 27, 2006, pp. 607-629; and Lehmann, H.; Muravyev, A., *Labor Markets and Labor Market Institutions in Transition Economies*, Quaderni – Working Paper DSE No. 783, Bologna, 2011.

⁴⁷ As well as the direct historical development in the modern Russian Republic, and – as already noted above – the inspiration provided to the People's Republic of China, the continuing influence of the old USSR 1922 framework for regulating the world of work is still discernible. See, *inter alia*, the introductory historical observations in Kuddo, A., *Labor Laws in Eastern European and Central Asian Countries: Minimum Norms and Practices*, World Bank, Social Protection Discussion Paper No. 0920, Washington, 2009.

major global powers – America, China, Russia and the European Union. The progress achieved since the dramatic change of direction marked by the fall of the Berlin Wall in 1989 cannot in any way be taken for granted. Nevertheless, it is testimony to the contributions of experts (whether scholarly, judicial, or political) such as Željko Potočnjak that today's Europe continues to have the fortitude to promote basic labour rights, fundamental human rights, and a pluralism of ideologies and political stances in the world of work.

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Sažetak

Alan C. Neal*

**PREMOŠĆIVANJE PODJELA: SJEĆANJA NA
PROVOĐENJE USPOREDNOG ISTRAŽIVANJA RADNOG
PRAVA S BIVŠIM EUROPSKIM SOCIJALISTIČKIM
ZEMLJAMA**

U radu se analiziraju znanstvena promišljanja i istraživački rad u području radnog prava u bivšim socijalističkim državama Europe. Rad u većoj mjeri predstavlja znanstvene dosege i doprinose obradbe radnog prava u tim državama uz usporednopravne refleksije britanskog pravnika iz područja radnog prava sa značajnom međunarodnom reputacijom nego što detaljno prikazuje "socijalističko radno pravo". Polazna točka jest manjak pozornosti pridane iskustvima tih pravnih sustava koja su dijelom rezultat kako poteškoća u pristupu i razumijevanju znanstvenih radova objavljenih na službenim jezicima tih država, dakle ne na engleskome, tako i naglašene skepse prema akademskoj zajednici socijalističkih država od strane znanstvenika nesocijalističkih država. Želja je autora naglasiti važnost izučavanja iskustava tih pravnih sustava radi refleksije koja ta iskustva imaju na cjelovitost razumijevanja radnog prava i danas. Navedenim pristupom radom se daje i uvid u karijeru prof. dr. sc. Željka Potočnjaka, istaknutog znanstvenika radnog prava Srednje i Istočne Europe, a kroz prizmu posve osobnih opažanja i slika značaja njegova doprinosa u tom području. Povijesni kontekst dan ovim radom nije tu samo radi refleksija u odnosu na konkretne nacionalne sustave već jasno pokazuje bezvremenski značaj provođenja usporednopravnog istraživanja radnog prava, naglašavajući potrebu za inkluzivnim pristupom proučavanju, ako se želi razaznati cjelina zbivanja u području radnog prava, a ne kao znanstvene činjenice samo uzimati regionalno-centrična zbivanja te zaključivati na osnovi njih.

Ključne riječi: usporedno radno pravo, bivše socijalističke zemlje, Željko Potočnjak

* Dr. sc. Alan C. Neal, *professor emeritus* Sveučilišta u Warwicku, London, Engleska, Coventry CV4 7AL, Ujedinjeno Kraljevstvo; alan.neal@warwick.ac.uk; ORCID ID: orcid.org/0009-0001-4443-0323