

Preface

Labour law is under attack. The powerful critique of conservative neo-liberal labour economics claims that it is both possible and desirable to abolish labour law and return to a market order exclusively regulated by private law norms. Labour law is viewed as interference with the market mechanism and produces, according to Friedrich August von Hayek, 'injustice in the form of new privileges, obstacles to mobility and frustration of efforts' (Hayek 1976, pp. 139–40).

Astonishingly labour law is under a similar attack from left libertarian positions. Their critique alleges that labour and employment laws privilege employees and employers in standard employment relationships and contends that large parts of the working population are excluded from being protected. The alleged 'dualism' of the employment relationship is viewed as outmoded in the world of 'work after globalization': 'Labour law must be phased out, not further refined; it should become part of common law, covered by contract and tort law' (Standing 2009, pp. 268–9). It is ironic, if not paradoxical, however, that this position demands at the same time a new regime of 'work rights' for all social activity. For such a new system of rights to be effective, in particular when protecting those workers that constitute a new 'precarariat' (Standing 2011, pp. 160–64), a reformed labour law seems essential.

This book claims to offer an alternative to abolitionist theories by advocating a reform of labour law that pays particular attention to the global context. The book will try to show that the political reforms of labour law based on neoliberal economic beliefs led in effect to contradictory results. It will be argued that the proper way ahead in reforming labour law is making it reflexive. In a reflexive labour law perspective neoliberal deregulation has to be understood not only as a particular form of regulation but as necessarily accompanied by new regulation or re-regulation.

Reflexive labour law claims to be a new type of labour law that understands the limits and exclusionary effects of traditional labour law while at the same time facilitating strategies of re-regulation that overcome these problems through reflexive second-order or meta-governance of the field. Reflexive labour law can be understood as part of the tradition that views labour and employment law as public regulation (Deakin and Wilkinson

2005; Collins 2010). However, it adds to these debates a thorough rethinking of labour law as a regulatory regime within the legal system of the world society.

The book is divided into three parts. Part I contains three chapters outlining the theoretical approach. Chapter 1 discusses the global context of modern labour law with the help of Niklas Luhmann's concept of the world society (Chapter 1). This is followed in Chapter 2 by an overview of main features of reflexive labour law. Chapter 3 provides a theoretical account of industrial relations from a social systems theory perspective.

Part II contains four chapters that apply the reflexive labour law approach in analysing current trends in modern labour law. Readers who are interested in substantive analyses from a reflexive law perspective are advised to go directly to these chapters. The chapters include assessments from a reflexive labour law perspective of employment protection (Chapter 4), regulation and deregulation of labour market policies and labour law (Chapters 5 and 6) and labour and employment conflict resolution (Chapter 7).

Part III consists of three chapters on European and international labour law. These include discussions of reflexive coordination of European social and employment policies (Chapter 8) and reflexive implementation of European employment law – a case study of the EU's Working Time Directive (Chapter 9). The final chapter is devoted to an analysis of reflexive trends in global labour law (Chapter 10).

A number of chapters are based on earlier publications, although in each case they have been substantially revised. Copyright permissions are hereby acknowledged. Chapter 2 is in parts based on my chapter 'The Concept of Reflexive Labour Law – Its Theoretical Background and Possible Applications', published in David Nelken and Jiri Prihan (eds), *Law's New Boundaries – The Consequences of Legal Autopoiesis*. Aldershot: Ashgate 2001, pp. 179–96. Chapter 3 is a revised version of my article 'Industrial Relations as a Social System', published in *Industrielle Beziehungen*, The German Journal of Industrial Relations, Vol. 7 (1), 2000, pp. 97–126. Chapter 5 is in parts based on the chapter (jointly written with Ton Wilthagen) entitled 'The Legal Regulation of Transitional Labour Markets' that was published in Günther Schmid and Bernard Gazier (eds), *The Dynamics of Full Employment. Social Integration through Transitional Labour Markets*. Cheltenham, UK and Brookfield, USA: Edward Elgar 2002, pp. 233–73. Chapter 6 is in parts based on a translation of a German publication (jointly written with Günther Schmid), 'Reflexive Deregulierung – Ein Ansatz zur Dynamisierung des Arbeitsmarktes', published in Berndt Keller and Hartmut Seifert (eds), *Deregulierung am Arbeitsmarkt*. Hamburg: VSA 1998, pp. 215–53.

Chapter 7 is a revised version of my chapter ‘Reflexive Regulation of Labour and Employment Conflict Resolution’, published in Galf-Peter Calliess, Andreas Fischer-Lescano, Dan Wielsch and Peer Zumbansen (eds), *Soziologische Jurisprudenz. Festschrift für Gunther Teubner*. Berlin: De Gruyter Recht 2009, pp. 573–86. And finally, Chapter 8 is in parts based on the book chapter ‘Flexicurity and Reflexive Coordination of European Social and Employment Policies’, published in Henning Jørgensen and Per K. Madsen (eds), *Flexicurity and Beyond. Finding a new agenda for the European Social Model*. Copenhagen: DJØF Publishing 2007, pp. 131–53.