

Hugo Sinzheimer, 'Der Mensch im Arbeitsrecht' (1930n, 1930o)

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Man in Labour Law

In all fields of thought there is nowadays an aspiration to put man in the centre of reflection. This is no coincidence: it has its roots in the spiritual need of our times not to content oneself with stating facts or norms, but to grasp their significance, at their ultimate point of reference. This human-directed reflection is in particular obvious in labour law.

The social basic fact to start from is the dependency of working man. This dependency is *material*, as it is not the worker but another one who controls the means that he needs to perform his labour and thus for his subsistence. It is also *personal* in that labour cannot be detached from the person of the worker; therefore the person entitled to its product also has a claim of disposal of the personality of the worker. And it is, finally, also a *collective* dependency while the measure, price and conditions of labour are not only determined by the will of the worker, but also by the actual and possible labour conditions of all others who work with him, or are prepared to replace him. The peculiarity of this type of dependency, compared to all previous types (slavery, serfdom etc.), is that it is not based on a legal qualification of man but upon the social situation in which the worker in the capitalist era finds himself. The question of man's position in labour law therefore concerns how law relates to this dependency. The bourgeois¹, the social, and the socialist conceptions of law are to be distinguished.

The *bourgeois* conception of law finds expression in the pure civil law. It disregards the dependency of the working human being. It only knows of persons, i.e. abstract individuals separated from all social bonds, which are as such free, equal, and mutually independent. This abstraction from the 'real human being' is mediated by the natural law conception of Enlightenment that asserts 'man's nature', i.e. what is common to all men. However, it was not this mediation that determined this idea of 'humanity', but the social *a priori* that underlies civil law. The social *a priori* of civil law is the independent human being, i.e., the human being who "possesses a property that supports him (Kant)." The legal forms of bourgeois civil law correspond to this social presupposition. They are meant to serve the private interests of independent human beings. To dependency, accordingly, no justice is done. It is left to the free play of forces, to natural superiorities of power, on which the law exercises no influence. The result of this conception was a factual subjugation of the human being, that Marx called, not incorrectly, "emancipated slavery."

The *social* conception of law finds expression in the labour law of today. It does not ignore the dependency of the working human being, but rather gives it its due by withdrawing the social condition on which dependency rests from the free play of forces, and subjecting it to norms. Dependency, which was a 'mere fact' in civil/bourgeois law, becomes the 'matter of fact' of labour

¹ 'bürgerliche' in original.

law. The norms characteristic of labour law have the task of protecting the working human being from the social effects of dependency that threaten his human existence.

The material dependency is countered by social insurance law which guarantees the subsistence of people who are dependent on labour for their subsistence but cannot work (due to illness, accident, disability) or do not find a job (unemployment). The personal dependency is countered by protective labour law. It secures the existence of those who hand over the control of their labour power to other ones and are thereby exposed to dangers that may rise from foreign control over human life goods. The collective dependency is countered by new collective labour law. It secures man's existence by combining all workers of a same concern into a collective will, and by collective regulation of working conditions, disengaging them from individual arbitrary decisions. What finds expression in these norms is a conception of man that differs from the bourgeois concept. *In labour law man is not just a person of an ideal existence but a concrete human being whose real existence is at issue.* Bourgeois law² has raised the species of man from the world of things, from slavery and serfdom, to the idea of self-determination. Labour law carries human liberation on by securing not only abstract competences, but also man's real existence. Thereby the legal order has started to liberate itself from the social *a priori* that founds bourgeois law. Regulation of the real life sphere of man could be indifferent to bourgeois law, because it presupposed this sphere in the 'property that supports' independent man. At the moment that dependent man manifests himself before the legislator and demands his attention, law needs to take a stand about the issue of the real existence of man.

The *socialist* conception of law extends beyond labour law in its current sense. The bourgeois conception ignores dependency, the social conception asserts it, the socialist conception aims to eliminate it. Elimination requires rooting out, not private property itself, but private property of the means of production. The labour of dependent man is mediated due to the strength of private property: although it is a social productivity, it is not immediately performed for society but for the private owner of the means of production who controls the labour and its product. The socialist conception turns against this mediatisation, like the bourgeois conception did against the feudalisation of labour. For dependent man should be realised socially what has been reached for independent man politically; that he 'will serve nobody but the Common in its proper sense' (Kant). In this conception the current contradiction between employer and worker will dissolve into a new unity of labour that will be uniformly performed for a social subject. The old, naïve conception that this subject could only be the state, has been abandoned. This opening up of the bounds within which dependent labour is nowadays kept from fulfilling its social tasks, can only come about in a multifarious historical process. We look at it as a (general, definitely not only determined by the state) depersonalisation of private capital that increasingly withdraws the control over capital from individual civil law subjects. On the one hand we find a collectivisation of capital in the hands of the labour class (labour banks, labour associations), on the other hand a functionalisation of the employer that transforms his privilege into a responsible task, as his decisions will be tied both by the collectivity of workers from below and by the collectivity of employers from above (labour constitution, economic constitution).³ Finally, we observe an objectivation of legal models that detach themselves from the control of those authorized by them, to develop a social existence of their own to fulfil the material goals implicated in them (think of new company law). One day will appear the uniform

² 'Das bürgerliche Recht', here rather meaning *bourgeois* than *civil law*'.

³ 'Arbeitsverfassung, Wirtschaftsverfassung'.in original.

social subject which develops itself (nowadays) in all these creations. It will bring the last (for us perceivable) liberation of man that will no longer tolerate private beings standing between individuals and society.