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DIALOGUE AND DEBATE: SYMPOSIUM ON MICHAEL A. WILKINSON'S AUTHORITARIAN LIBERALISM AND THE TRANSFORMATION OF MODERN EUROPE

Authoritarian liberalism: A labour law perspective

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Abstract

In my contribution to the symposium on Michael Wilkinson's new book, I focus in on his analysis of Hermann Heller's thinking regarding the state. I compare Heller's writings with those of Hugo Sinzheimer (1875–1945), a legal scholar, practising lawyer and politician who was in a position in 1918-1920 to shape the new labour law of the Weimar Republic and who thereafter became a prominent commentator on that law. In particular, I look at two publications from 1933: Heller's Autoritärer Liberalismus and Sinzheimer's Die Krisis des Arbeitsrechts, or 'crisis of labour law'. I then consider the trade union movement's orientation to the state during the Weimar years, and what light this shone on Heller's and Sinzheimer's analysis. I conclude by identifying several questions raised by the Weimar debates for labour law, trade unions and employment relations that are of enduring importance today.

Keywords: Hugo Sinzheimer; labour law; crisis; Weimar Republic

In his fascinating and provocative new book, Michael Wilkinson invites us to reconsider the history of the European Union (EU) as having been shaped, from the very outset, by a fear of democracy that was shaped by the experience, in the interwar period, of democracy threatening to 'unleash itself'.[1] The treaties of Paris and Rome and the creation of the European Economic Community should be understood as an important element of a wider process of structural transformation of the European state system, Wilkinson argues, involving the insulation of the economy from democratic power and accountability. The label 'authoritarian liberalism' is used by him to describe this process, invoking the work of Hermann Heller, who famously published an article with that title during the final months of the Weimar Republic.[2] There, Heller described the defence of the capitalist economy *against democracy* by an increasingly authoritarian state.

In what follows, I focus on Wilkinson's analysis of Heller's thinking regarding the state. I compare Heller's writings with those of Hugo Sinzheimer (1874–1945), a legal scholar, practicing lawyer and politician who was in a position in 1918–1920 to shape the new labour law of the Weimar Republic and who thereafter became a prominent commentator on that law. In particular, I look at two publications from 1933: Heller's *Autoritärer Liberalismus* and Sinzheimer's *Die Krisis des Arbeitsrechts*, or 'Crisis of Labour Law'.[3] I then consider the trade

[1]Michael A. Wilkinson, *Authoritarian Liberalism and the Transformation of Modern Europe* (Oxford University Press 2021).

[2]Hermann Heller, 'Autoritärer Liberalismus' (1933) 44 Die Neue Rundschau 289–98, now reprinted in H. Heller, *Gesammelte Schriften*, vol. 2 (Leiden: A. W. Sijthoff 1971) 643–65; in English translation, 'Authoritarian Liberalism?' 21 (2015) European Law Journal 295–301, trans Bonnie Litschewski Paulson, Stanley L Paulson, and Alexander Somek.

[3]Heller, 'Autoritärer Liberalismus'; Hugo Sinzheimer, 'Die Krisis des Arbeitsrechts' 20 (1933) Arbeitsrecht, Columns 1–10, reproduced in Hugo Sinzheimer, *Arbeitsrecht und Rechtssoziologie: gesammelte Aufsätze und Reden* (Europäische Verlagsanstalt 1976), 135–41.

union movement's orientation to the state during the Weimar years, and what light this shone on Heller's and Sinzheimer's analyses. I conclude by identifying several questions raised by the Weimar debates about labour law, trade unions and employment relations that are of enduring importance today, in the European Union and beyond.

1. Heller and the social democratic state

According to Wilkinson, Heller was an orthodox left-Hegelian, who placed his faith in the *soziale Rechtstaat* and in the capacity of the Weimar State and its constitution to deal with the social question.[4] Heller understood the state to be autonomous from capitalist social relations, standing over and above civil society as a transcendental mediator of competing interests. Even in the face of the economic and political turmoil of the 1920s, he was very slow to give up on these ideas. As late as 1931, during Brüning's reign as chancellor, Heller considered the authoritarian primacy of the state as necessary to ensure the primacy of political authority over private economic power, and to preserve the institutions of the Republic. As Chris Thornhill put it, Heller's faith in the state as the expression of community, the guardian of the common interest, endured long after the state had abandoned all interest in protecting the citizen from the economy.[5] Nonetheless, his thinking was influential in shaping Social Democratic (SPD) policy and, it would seem, the thinking of prominent trade unionists.

Autoritärer Liberalismus appeared in 1933, as the Weimar Republic was teetering on the brink of collapse.[6] Here, at last, Heller characterised the idea of the 'neutral state' as a dangerous illusion. The Weimar state was, by now, a capitalist state, diametrically opposed to socialism and to democracy. The 'authoritarian state' described by Carl Schmitt was nothing other than the liberal state in its pure form, weak in relation to the capitalist economy but strong in fending off democratic 'interference' in its operation.

2. The labour constitution and the social democratic state

On the face of it, the labour legislation and relevant constitutional provisions of the Weimar Republic expressed an intention that also reflected 'left-Hegelian' thinking regarding the state.[7] As analysed by Sinzheimer, labour law was understood to perform the function of democratising the economy, thereby steering the new Republic down a middle road between state planning on the one side and free market capitalism on the other. Specifically, labour law would provide for the bipartite government or regulation of the economy by the collective representatives of capital and labour: employers' associations, trade unions, and works councils. In the famous words of Article 165 of the new Weimar Constitution, workers would be 'called to participate, in community with employers and with equal rights, in the regulation of wages and conditions of employment as well as in the overall economic development of the productive forces'. The underlying principle here was that there would be no, or very little, direct involvement of the state in the regulation of the economy. Rather, the state would perform the role of architect and ultimate enforcer of the system of bipartite government, conferring authority upon the unions and employers' associations to reach collective agreements that were legally binding on themselves and on the affected businesses and workers. The creation and enforcement of rules would be the primary responsibility of the

[4]Heller, 'Autoritärer Liberalismus'; Wilkinson, *Authoritarian Liberalism and the Transformation of Modern Europe*, especially 26–36.

[5]Chris Thornhill, *Political Theory in Modern Germany: An Introduction* (Blackwell 2000), 112.

[6]Wilkinson, *Authoritarian Liberalism and the Transformation of Modern Europe*, 44.

[7]For further discussion and references see Ruth Dukes, *The Labour Constitution: The Enduring Idea of Labour Law* (Oxford University Press 2014), chs 2–3. See also Roy Lewis and Jon Clark (eds), *Labour Law and Politics in the Weimar Republic* (Blackwell 1981).

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collective parties, in other words, and the state would stand ready in the wings to act, if necessary, as the guardian of the common interest.

As things turned out, the state was eventually much more interventionist in industrial relations than had been originally intended.[8] From 1923, when the unions had lost their cash reserves and strike funds due to hyperinflation, state arbitration was used to set wages. Initially, the government's intention was to ensure wage increases at a time when the unions were too weak to secure these, as planned, through 'autonomous collective bargaining'. From 1929, however, state arbitration was used to *lower* wages, ostensibly as a means of combatting inflation. As part of a raft of measures – including the use of military and paramilitary force – state arbitration was also used to quash whatever industrial action the unions were able to organise. Such were the limitations of the freedom to take industrial action under Weimar law, that it has been doubted whether it is even appropriate to speak, in connection with the Republic, of worker rights to freedom of association.[9]

It was in 1932, in the midst of economic crisis, mass unemployment, and the use of emergency decrees by the Brüning and von Papen Governments to impose lower wages that Sinzheimer wrote and published his article *Die Krisis des Arbeitsrechts*.[10] What is most interesting about this article, from our perspective, is that Sinzheimer – who had devoted much of his life to the institution of social democracy and economic democracy in Germany – was rather more condemnatory of the economic liberalism of the Brüning and von Papen governments than of their authoritarianism. He was critical, specifically, of the ends to which public power was being deployed – namely to suppress rather than bolster claims for redistribution – rather than of the deployment of public power itself. In 1933, Sinzheimer was stripped of his chair at the University of Frankfurt. He fled to the Netherlands and was employed by the University of Amsterdam, where he continued to lecture and write on legal theory: the sociology of law, jurisprudence, and a theory of legislation. *Die Krisis des Arbeitsrechts* was his last publication on labour law and his last publication in Germany: 'a farewell', as Otto Kahn-Freund later put it; 'his swan song'.[11]

The principal theme of Sinzheimer's 'crisis' essay was the fundamental importance of the economy to labour law. The primary subject of labour law was dependent labour, he explained, and dependent labour was nothing less than an element of the economy. The situation of the worker was defined by economic relations, the assumptions upon which they were based, and the ways in which they were ordered. In a time of crisis, this became all the more clear. The economy didn't any longer produce a yield sufficient to meet the needs of the people. Large sections of the economy, of production, were inactive, and this was so despite a level of technical development never seen before. While people starved to death, goods and food stuffs lay unused in warehouses because buyers could not be found. Workers did not work, as unemployment soared to catastrophic levels.

The crisis in labour law could be understood, in the first instance, as a direct consequence of the crisis in the economy. Labour law, which previously had functioned to raise the price of labour, no longer achieved that aim; the output of the economy no longer corresponded to the collectively agreed rates of pay, and employers refused to bear the 'social burden' that honouring those rates would have entailed. In the face of devastating levels of unemployment, the workers' capacity for collective action was greatly diminished, such that they were unable to force the employers' hand. The government, meanwhile, acted to amend the law so as to free the supposedly 'natural' laws of the economy from the 'artificial' constraints of labour law; to 'recontractualise' labour law to the benefit of employers, with the value of work thereby radically reduced.[12] While billions of marks of

[8]Michael Kittner, *Arbeitskampf. Geschichte, Recht, Gegenwart* (C H Beck, 2005), 429–82; Otto Kahn-Freund, 'The Changing Function of Labour Law' in Lewis and Clark (eds), *Labour Law and Politics in the Weimar Republic*, 162–92.

[9]Kittner, *Arbeitskampf*, 454.

[10]Ibid.

[11]Otto Kahn-Freund 'Hugo Sinzheimer' in Lewis and Clark (eds), *Labour Law and Politics in the Weimar Republic*, 73–107, 95.

[12]Sinzheimer, *Arbeitsrecht und Rechtssoziologie*, 135–6.

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public money were spent in propping up the private sector (in something approaching a 'grotesque paradox'), no means could be found, apparently, of public job creation.[13]

As Sinzheimer went on to describe, the crisis in labour law ran, in fact, far deeper than the mere frustration of its aims in a time of economic recession. The crisis in the economy revealed the situation of tension in which labour law *always* existed (in the Weimar Republic and any other capitalist economy): tension between the 'social' rationality of labour law itself, on the one hand, and the 'individualistic' rationality of the economic order. Labour law was social law, according to Sinzheimer, because it was the (primary) body of law which recognised the social existence of the worker, elevating him from the status of legal person (which he enjoyed in private law) to human being. By recognising and guaranteeing the role of labour in the regulation, or ordering, of the economy, labour law sought at once to emancipate the worker from his relation of subordination to the employer, and to ensure that the economy would function in furtherance of the common interest, as identified by the representatives of labour and capital. It sought, in other words, to socialise the economy. Plainly it had failed in that objective. What had been made clear by the economic crisis, if it hadn't been obvious already, was that the economy continued to be ordered around the pursuit by individuals of their own private interests. Within such an economy, labour law did not and could not have the intended effect, since the entire economic order pulled in an opposite direction.

3. Economic democracy or interest representation?

With hindsight, it may be wondered why the trade unions did not put up greater resistance to state intervention in industrial relations, especially after 1929. Though they voiced some objection to the use of compulsory arbitration, for example, they consistently complied with its use, often requesting themselves that disputes be referred to the arbitration boards.[14] In part, such compliance was due simply to pragmatic considerations of the benefits that compulsory arbitration could bring, especially in districts or sectors where union organisation was weak. In part, however, it seems clear that this compliance was due to the unions' and the workers' allegiance to the Weimar state as a hard fought for and won social democracy. 'Today's state is no longer the trade union-hostile state of the pre-war era', stated Clemens Nörpel, leader of the federation of socialist unions, in 1929.

> The trade unions participate in this state, they wield significant influence within its institutions, they can reconfigure those institutions, have reconfigured them to a great extent. This new state must have the right, within certain limits, to place restrictions on the freedom of action of the trade unions and the employers' associations.[15]

Having welcomed the creation of the Republic and the end to the *Kaiserreich* so passionately, many were reluctant to admit the often undemocratic nature of action taken by their ostensibly democratic government. In explanation of the unions' acquiescence, Michael Kittner has drawn attention, finally, to the lack of conceptual clarity that existed at the time, in respect of the semi-public status of the unions and the system of collective bargaining.[16] Though the principle of trade union autonomy from the state was emphasised in labour law theory, and in Article 165 of the Constitution, it was never translated into a clear set of rules establishing and safeguarding the desired relationship between the unions and the state. Some, including Sinzheimer, tended to conceive of collective bargaining as one part of a greater system of state-supported social

[13]Sinzheimer, *Arbeitsrecht und Rechtssoziologie*, 140.
[14]Kittner, *Arbeitskampf*, 455–6, 468–70.
[15]Kittner, *Arbeitskampf*, 470, my translation.
[16]Ibid., 470–2.

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self-determination. Others criticised this approach for blurring the dividing line between state support and state edict, arguing for their part that compulsory arbitration was irreconcilable with the principle of trade union autonomy.

Notwithstanding the tragic fate of the Weimar Republic, the matter was by no means settled in the period up to 1945. In the immediate post-war years, as they discussed their wish list for the new Republic, trade unions were strikingly ambivalent about the importance of a widely drawn right to strike and did not fight, first and foremost, for legal or other guarantees of their autonomy and freedom of association.[17] Influenced still by ideas developed by Sinzheimer and others in the Weimar years, the policies of the trade unions in the formative period up to 1952 focused around demands for the institution of a new state supported economic democracy. Specifically, it was desired that the unions should regulate industry together with the employers through bipartite administrative committees and parity worker representation on company boards, and through participation in the comprehensive state planning of the economy. Within such a 'controlled' economy, it seemed clear to the unions that they would not act straightforwardly as the representatives of the interests of workers, entirely free of the state. Instead, they would act in the public or common interest, sacrificing some measure of their autonomy and freedom in collective bargaining in exchange for a leading role in the administration of industry.[18] As the SPD representative and trade unionist Erich Potthoff put it in 1948: 'in a controlled or planned economy, autonomy in collective bargaining will only be possible within limits set out in advance'.[19]

When it came to the drafting of the new German state constitution, a lack of conviction regarding free collective bargaining and industrial action as central elements of the unions' future role was much in evidence.[20] Within the Christlich Demokratische Union (CDU)-dominated Parliamentary Council, responsible for the creation of the constitution, there was cross-party support not only for the constitutional guarantee of freedom of association, but also for the explicit constitutional recognition of a right to strike. When disagreement arose within the Council as to the specific wording of such a right, however, it was decided instead to omit all reference to it within the constitution, and to leave the question of its nature and extents to a future judiciary. What is remarkable about these events is that, notwithstanding the tragedies of Nazism, neither the trade unions nor the SPD fought hard at this time to have the right to strike included in the terms of the constitution. On the part of the SPD, this was part of a wider strategy to leave as many policy decisions as possible until after the first general election, which it felt confident of winning. On the part of the trade unions, it seems that the right to strike was simply not regarded, straightforwardly and across the board, as important enough to fight for. Writing at the time, Fritz Tarnow, a leading unionist in the Weimar Republic and the Federal Republic, described the unions' position as follows: 'We declared our agreement to the omission of the right to strike from the constitution or basic law. *Of itself, this issue is of little importance.*'[21]

4. State and autonomy

As two prominent left-leaning legal scholars, we can be fairly confident that Sinzheimer and Heller were familiar with each other's work if not personally acquainted. In 1931–2, Sinzheimer was in a position, as a member of the appointments committee of the law faculty of Frankfurt University,

[17]Ibid., 560–2.

[18]Ibid., 562–3.

[19]Ibid., 562, my translation; Potthoff (1914–2005) served as an SPD representative in the government of the USA/UK Bizone (1947–8), and as the leader of the economic-science institute of the trade unions (1946–9 and 1952–6).

[20]Kittner, *Arbeitskampf,* 566–9.

[21]Ibid., 569, my translation and emphasis.

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to ensure that Heller was chosen over Schmitt as the new Professor of Public Law.[22] Whether directly influenced by Heller or not, Sinzheimer's thinking on the role of the state quite clearly followed a strikingly similar trajectory to Heller's. In the early years of the Republic, he too assumed that the new social democratic state would act in furtherance of the common interest, that the state's interest was coextensive with the common interest. And he too was late to give up on that idea of the state as the embodiment and guarantor of the common interest – that is, to acknowledge that the social democratic project embodied in the state Constitution and in the labour constitution of the Republic had failed.

By the late 1920s and early 1930s, a number of younger scholars of labour law were very much more critical of the state than either Sinzheimer or Heller. Reviewing the labour legislation of the Republic in 1929, and the courts' interpretation of the legislation throughout the 1920s, Ernst Fraenkel made the following assessment.

> If one compares Article 165 with the social and political realities, one must draw the conclusion that the construction of the economic constitution was not only not completed – since 1920, but it has also not even been seriously contemplated. When one reads in Article 165 that district works councils and a national workers council should be responsible for the achievement of socialising legislation, that workers should participate on a parity basis in the regulation not only of wages and working conditions but the entire economic development of productive forces, one must smile a weary smile. The attempt, in Article 165, to weaken the absolute sovereignty of the political parliament has not been successful.[23]

Writing in 1931 and 1932, Kahn-Freund identified the principal flaw in the Weimar system of labour law as precisely a problem of too much state involvement. Focusing on the courts' role, and on aspects of the Weimar labour legislation that had been intended to herald the institution of an economic constitution, Kahn-Freund demonstrated how the courts had decided disputes so as to further, instead, the professed interests of the state. These interests had been identified by the courts as lying with the maintenance of industrial peace and continued production. In deciding cases in this way, Kahn-Freund argued, the Weimar courts had acted according to a 'social ideal' identical to that of the fascist courts in Italy. Specifically, they had: ascribed to industry and to the workplace a unitary aim defined in accordance with the state's interest in production and industrial peace; they had encouraged collective worker and employer organisations to act in furtherance of this aim; and they had proscribed industrial action.[24] In the hands of the courts, labour law, originally 'an instrument to assist the rise of the suppressed class,' had been transformed into 'an instrument of the state to suppress class contradictions.'[25]

Reflecting, much later in life, on questions of labour relations and the state, and on differences of opinion with Sinzheimer, Kahn-Freund explained that he himself had come to the study of labour law at a time when the plans for an economic constitution contained in Article 165 had already been abandoned.[26] He had never regarded the implementation of those plans as a real possibility: 'I always read paragraphs 2, 3, 4 and 5 of Article 165 [referring to the institution of industrial and workers' councils] a little bit the way one reads *Alice in Wonderland*.'[27]

[22]Otto Ernst Kempen, *Hugo Sinzheimer: Architekt des kollektiven Arbeitsrechts und Verfassungspolitiker* (Societäts Verlag 2017). Heller held that position at the Goethe University in Frankfurt from 1932 to 1933. In 1933, he fled to Spain via England and took up a position at the University of Madrid, only to die shortly afterwards.

[23]Ernst Fraenkel, 'Kollektive Demokratie' in Thilo Ramm (ed) *Arbeitsrecht und Politik: Quellentexte 1918-1933* (Luchterhand 1966), 86.

[24]Otto Kahn-Freund, 'Social Ideal of the Reich Labour Court' in Lewis and Clark (eds), *Labour Law and Politics in the Weimar Republic*, 108–61, 110–11, 124.

[25]Ibid., 152.

[26]Otto Kahn-Freund 'Postscript' in Lewis and Clark (eds), *Labour Law and Politics in the Weimar Republic,* 195–205, 201.

[27]Ibid.

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In a lecture given in 1975, Kahn-Freund found fault with Sinzheimer's placing of faith in the government and the law; with his Hegelian conception of the state as a unitary entity quite separate from society embodying the common interest.[28] The whole idea of a 'labour constitution' as expressed in the Constitution and legislation of the Weimar Republic had been 'utopian', Kahn-Freund judged: Sinzheimer had had 'high, perhaps too high hopes' for the bipartite regulation of the economy.[29]

> If ... we still today read Sinzheimer's essays, and especially his speeches on these matters, with rapt attention, this is because of the coherence of his plan and above all the visionary power and conviction of his words. We read his stirring exposition on the 'economic constitution' in the same way as we read the great utopian books and political novels of the European past. [30]

5. Conclusion

Just as there has been renewed interest in Heller's work in recent years, so too have Sinzheimer's writings been returned to by a new generation of legal scholars, myself included.[31] As even this brief review illustrates, these writings deal with matters of enduring importance, not least the matter of a shared societal belief in the capacity of law and state-power able to be harnessed in furtherance of democratically developed ideals of social justice.

These writings also raise questions of particular relevance to systems of labour law and industrial relations that might be described as corporatist, or as comprising corporatist elements. In the 1930s, Italy offered a concrete example of a corporatism that shaded into fascism, suppressing class conflict with authoritarian means. Since that time, the question has been debated time and again, and in a variety of national contexts, whether this is a tendency inherent in corporatism, or whether a liberal corporatism is possible – a corporatism that would recognise class conflict and compromise as a dynamic, non-state source of law, both capitalist and democratic?[32] Beginning in the 1990s, with the constitutionalisation of the European social dialogue in the Maastricht Treaty, concerns of a different sort were raised regarding the Commission's assumption of a 'state' role in this putatively corporatist arrangement that it was ill-equipped to perform.[33] Having neither the carrots nor the sticks necessary to persuade the employer side to make concessions to the trade unions, the Commission's threat of 'negotiate or we will legislate' was understood by the employer side as an invitation to reach a '"social partners" agreement' that would be less inconvenient to them than a new directive. Rather than setting a floor of legislative standards, in other words, community legislation had come to represent a ceiling of standards, above which agreement would not be reached.[34]

Understood with reference to the history of the Weimar years, Sinzheimer's writings also speak to the related question of how a government that is so minded can provide support to trade unions without compromising them politically and without undermining their social or collective power base. In the immediate aftermath of the Second World War, and with the experiences of Weimar fresh in his mind, Kahn-Freund argued passionately for the need for a wide measure of

[28]Kahn-Freund, 'Hugo Sinzheimer'.

[29]Ibid.

[30]Kahn-Freund, 'Hugo Sinzheimer', 88.

[31]See eg Michel Coutu, 'With Hugo Sinzheimer and Max Weber in Mind: The Current Crisis and the Future of Labor Law' (2012-13) 34 Comparative Labor Law and Policy Journal 605–26; Sakari Hänninen, 'Social Constitution in Historical Perspective: Hugo Sinzheimer in the Weimar Context' in Kaarlo Tuori and Suvi Sankari (eds), *The Many Constitutions of Europe* (Routledge 2016), 219–40.

[32]See eg Phillippe C. Schmitter, 'Still the Century of Corporatism?' 36(1) (1974) The Review of Politics, 85–131.

[33]Wolfgang Streeck, 'Neo-Voluntarism: a New European Social Policy Regime?' 1 (1995) *European Law Journal* 31–59.

[34]Ibid.

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trade union autonomy from the state, so as to avoid that risk.[35] In terms later developed by Phillippe Schmitter and Wolfgang Streeck, the issue was cast as one of conflict between the 'logic of influence' and the 'logic of representation'.[36] Wherever unions rely to any extent on legal and other state supports, their actions will come to be determined not only by the interests and wishes of their members but also by the conditions and strategic imperatives of interaction with the public power and other organised interests. Different systems of labour law and industrial relations shape and address this conflict in a variety of ways but the conflict cannot be avoided.[37]

The most fundamental question raised by Sinzheimer, at the end of the 'crisis' essay, was that of the capacity of labour law to protect workers from ill or unfair treatment within an unreformed capitalist economy – in a context, in other words, in which the rationale of labour law conflicts with the rationale of the economy, with labour law directed precisely *against* the free play of market forces. Was it a mistake to imagine that the conflicting interests of capital and labour could be peaceably integrated underneath the benign supervision of an autonomous, coordinating state? If capitalism is constantly innovating or 'disrupting' and escaping attempts at institutional containment, shouldn't labour – as the countervailing power, or countermovement – be allowed the freedom to do the same? In consideration of Sinzheimer's legacy, I have recently argued with Streeck that recognition of the conflict between the rationale or ambition of labour law and the market-expansionist rationality of a capitalist economy is no reason for fatalism.[38] History teaches us that protective labour laws and other labour market institutions can serve to configure markets differently, they can move the goalposts as it were, changing the meanings of flexibility and efficiency, and encouraging corporations to innovate and seek profits other than by cutting labour costs. It also teaches that labour law reform can be supported by reform in other fields: social policy, taxation, corporate law, finance, immigration. If the ultimate goal today is democracy at work and democracy in the economy, as it was in the Weimar Republic, then a multi-level process of reform is required and should be fought for: progress at the workplace and in the wider economy reinforcing each other and creating new opportunities for strategic political intervention.[39]

In more ways than one, the deep Weimar past tends to cut both ways. It is a powerful reminder of the limits of the capacity to mould socio-economic structures through state power, not least because of the long shadow that internal and external constraints can place on democratically configured law and policy, even before the stage of the liberal authoritarian involution is reached. But, at the same time, the work of Sinzheimer and Heller remains a precious inheritance that proves that there is no reason to give up too quickly on the democratic transformation of modern societies, provided there is a clear understanding of the political, economic, and cultural conditions under which the law and the state can be turned into transformative tools.

[35]Ruth Dukes, 'Otto Kahn-Freund: A Weimar Life' 80(6) (2017) Modern Law Review 1164–77.

[36]Phillippe C. Schmitter and Wolfgang Streeck, 'The Organization of Business Interests: Studying the Associative Action of Business in Advanced Industrial Societies' (1999) MPIfG Discussion Paper No 99/1, available at https://pure.mpg.de/pubman/faces/ViewItemFullPage.jsp?itemId=item_1235421_1 (accessed 12 February 2022).

[37]Guy Mundlak, *Organizing Matters: Two Logics of Trade Union Representation* (Edward Elgar 2020).

[38]Ruth Dukes and Wolfgang Streeck, *Democracy at Work: Contract, Status and Post-Industrial Justice* (Polity Press, forthcoming).

[39]Ibid., citing Richard Hyman, 'The Very Idea of Democracy at Work' 22(1) (2015) Transfer: European Review of Labour and Research, 11–24.

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