Towards a new definition of the employment relationship

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This article examines the proposals advanced in the study on “Work in the year 2000” 1 from the point of view of social theory and policy. They focus mainly on labour law, hence on the individual employment relationship. They are therefore only indirectly concerned with problems of employment policy and with questions arising from collective aspects of labour or social security law. For a variety of reasons, the authors of the study consider that it has become extremely important to redefine the concept of work and the employment relationship at individual level and that ways of redefining the structures for worker representation should be explored from an interdisciplinary point of view.

Old and new concepts of solidarity

The basic hypothesis arises from two general premises, both of them directly linked to the current modernization of the economy and both proving to be double-edged in that they open up new possibilities but also present dangers.

The process of individualization which affects wage-earners and other social actors: this holds potential for the development of identity, of self-awareness, of freedom of life choices. It could also herald the development of a new sense of social responsibility, a new work and life ethic. However, the process also involves the danger of a lessened social bond, of isolation and new forms of alienation, the risk of unbridled domination by the profit motive, of anomie.

The crisis of representation affecting the world of work: the social partners managed in the past to maintain a system of self-regulation through

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1 Hildegard Matthies; Ulrich Mückenberger; Claus Offe; Edgar Peter; Sibylle Raasch: Arbeit 2000, Anforderungen an eine Neugestaltung der Arbeitswelt, Reinbek bei Hamburg, Rowohlt Taschenbuch Verlag. 1994. Study conducted on behalf of the Hans Böckler Foundation.

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effective representation at several levels but the danger is that they may now lose their integrating and organizing influence. This poses a threat to the trade unions above all, but also to employers’ associations, since their respective monopolies of representation may be challenged by the emergence of new elites with a more individualistic power base. Conversely, the emerging movement of voluntary associations may result in a revival of the social bond, and this would be an advantage. In an optimistic scenario, there may be a chance of overcoming the traditional apathy of individuals about publicly-owned goods and the long-standing indifference of institutional representatives to the interests of society as a whole and to the external effects of their actions.

The study’s proposals concerning “re-regulation” are based on a new understanding of solidarity. Traditionally, in the labour and Socialist movements, solidarity was based on and identified with equality. The workers were all in the same situation (exploited and oppressed); and their unity was founded on this equality. But this unity gave them strength and solidarity: equality, unity, solidarity was the old slogan.

By contrast, the new rallying call might be: diversity, communication, solidarity. Individuals differ from each other in many ways. Though their interests and wishes may diverge, they all accept each other as equal citizens. This formula is based on the idea not of sameness but of equal value. Citizens recognize each other as equals and equivalents, and so can communicate and coordinate their interests and wishes, according to the rules of dialogue and discourse and in a reasonable manner (communicating here meaning rallying together to create a community, through dialogue and exchanges of view). The experience of playing by these rules leads to the realization that, though they are different, workers are all confronted with the same socio-economic power structure which hinders the fulfilment of their various interests and wishes; this inclines them, despite their differences, towards a degree of mutual understanding, of social cohesion, and hence to joint action. These forms of unity and solidarity spring not from sameness but from the communication of difference.

Obviously, concepts such as “citizenship” and “dialogue and discourse” are central to this hypothesis. It is no accident, therefore, that the study’s proposals concerning re-regulation of the employment relationship revolve around them. Attention should also be given to how these two concepts apply to other aspects of our lives, such as the family, relations between generations, sexes and ethnic groups, politics, culture, etc. However, this article will confine itself to the proposals regarding the world of work.

One last preliminary comment: Western countries are not all experiencing the phenomenon of individualization or the crisis of representation in the same manner. For example, despite their difficulties in recruiting members in emerging modern occupations, the German trade unions still represent a fairly solid pillar around which industrial relations in traditional industries are organized. Individualization has not yet destroyed all social and group bonds (family, church, trade unions). This examination
of the new forms of solidarity has therefore occurred during a transition phase containing many paradoxes, a period in which social bonds are still fairly strong despite showing clear signs of erosion. The question is how to rethink the traditional, and currently crisis-ridden, forms of solidarity and social interaction and how to ensure their stability in the new era of individualism.

Recommendations

This then is the theoretical and socio-political background of the general approach adopted. The projects’ recommendations are summarized below.

Modernization of workplace relations

Citizenship in the enterprise

In the German industrial sector, there should be a considerable increase in employees’ rights of participation. Firstly, workers’ citizenship status must be consolidated in the enterprise. Standards governing the employment relationship must be based on the principles of dialogue and equal rights, and no longer on the authority of the employer and personal dependence. A redefined employment relationship must therefore allow more room to standards and procedures based on discourse and permit the establishment of appropriate collective instruments guaranteeing individual rights.

Following from this assumption, workers’ rights to organize their own lives will gain recognition at the workplace and outside it, and they will be given some opportunity to influence not only employment relations in the production process, but also the impact of that process on society and the environment, its externalities, and the goods workers produce. Workers are entitled to conditions, especially regarding working time, which enable them to exercise their rights (notably to education and training, periods of leave, communication areas, etc.). The exercise of their rights as citizens must not lead to discrimination or sanctions. They must be entitled to refuse work that might be harmful to them or to society. Ecological rights are an integral part of citizenship in the enterprise and of the new employee status.

Gender relations and the workplace

There must be changes in gender relations and in the sexual division of labour at work, in the family and in society. The study’s proposals tend in two directions. Firstly, anti-discrimination laws must be made more effective and the application of existing standards reinforced. To this end, the study proposes quotas for women, affirmative action, the allocation of times and places for women to raise issues concerning their situation in the enterprise, the special representation of women workers, the right of pressure groups to file complaints with industrial tribunals on behalf of female victims of
discrimination, and the application of court decisions to women who did not file a complaint but experienced the same discrimination, etc.

Secondly, ways and means must be found for both male and female workers to reconcile their roles as workers and parents, to share career and domestic responsibilities. Working time must be organized in ways that enable workers to engage in training or family-based activities. Rules governing parental leave should be improved and such leave be made more widely available. Wage compensation should be provided as an incentive to both parents to share child-rearing responsibilities, as is the case in Sweden. Finally, the person on parental leave should be guaranteed the right to training during that period, so that he or she can remain in contact with the enterprise and return fully qualified. All these measures are designed to prevent parental leave from turning into a dead-end, and to facilitate the return to work. Other proposals concern the right to day-care facilities for employees’ children.

Freedom of choice on the allocation of time

A new organization of working time is proposed with a view, if not to reconciling, at least to reaching an honest compromise between three pressures: the demands of economic efficiency, the basic needs of the employees and their need to have access to various goods and services. Already some enterprises run on modern management lines allow their employees total freedom to arrange their working time. This practice involves a preliminary collective agreement on the work to be carried out by a given team, as well as rotation planning (spreading the agreed workload over the working hours of the employees in question). This system may be negotiated by the employees themselves, provided certain priorities are respected; the result is that there is no longer any need for orders to be given, for authority to be exercised. As regards any externalities arising from working-time arrangements in the enterprise, it is proposed to include concerns external to the enterprise in the internal negotiation process. Thus, for example, the interests of the unemployed would be taken into consideration in agreements on overtime, in negotiations on the reduction of working hours to safeguard jobs. Similarly, the interests of consumers would be taken into account in decisions affecting opening times of public or private services, etc. Experiments conducted in Italy as part of the operation tempi ed orari della città are the most advanced model in this area. However, including such concerns in the bargaining structures of enterprises is not likely to be easy, at any rate on the basis of individual labour law.

Winners and losers

A few words must also be said on the way in which a reform in labour law might contribute to the protection of workers in precarious employment and to the fight against social exclusion. The focus is on forms of employment
where the risks run by the enterprise are passed on to the employees, the latter not receiving the slightest compensation or benefit in return (such as risk bonuses, the possibility of becoming self-employed, a broader range of personal options). A revision is proposed of the legal concept of “employee”, which in all Western labour law is still based on the notions of personal dependence and subordination. Similarly, the threshold values specified in certain labour and social security laws should be reassessed. At present these laws discriminate particularly against workers in the “modern” employment sectors (or the ostensibly self-employed). There should be ways and means guaranteeing that atypical workers are not excluded from existing communication channels and vocational training measures in the enterprise, and that they are given the right of self-expression concerning their economic activity. It is true that such increased protection of atypical employment would have an unacceptable economic impact on small and medium-sized enterprises. The study therefore proposes establishing individual rights for the employee, which would provide employers with an incentive to group together (as in the industrial districts in Italy, for example) and thus reduce some of the risks passed on to employees.

Towards citizenship in the enterprise

The underlying aim of all these proposals is to develop in the wage employment sphere a form of dialogue based on genuine communication, on freely consented coordination and mutual trust. Clearly, such an approach does not necessarily reflect the realities of the working world we know today, with its uneven power relations, subordination and distrust. But in presenting the standard-setting model outlined here, the study sought to do two things at once: to offer a critique of traditional forms of authority and subordination as enshrined in the law, and to seek desirable alternatives, for without these the concept of citizenship in the enterprise will not be taken seriously.

Other arguments are advanced later to show that the concept of citizenship in the enterprise cannot simply be dismissed as unrealistic, interventionist and utopian. Citizenship in the enterprise was viewed as a contribution to the legalization of the concepts, procedures and projects involved in modernization which have already made some headway in Germany, but which are still far from being in widespread use. Modernization, in the broad and ambitious sense proposed here, does not occur spontaneously or automatically. Rather it comes about through a series of small advances, through the emergence of new options which only gain currency if they attract sufficient support and encouragement. One form of such support and encouragement is legal regulation.

Dialogue

The term “modern” is currently applied to a great number of situations and trends, and is used by many different social actors and organizations.
According to the definition adopted by the study, any measure or policy claiming to contribute to the modernization process should comply at least with the three criteria already mentioned in the section on working time: the first is economic in nature, the second social, the third relates to society itself.

- From an economic point of view, regulations concerning employment policy must be examined for their contribution to efficiency and productivity. This is a question of business management, which perceives the organization of labour and the labour force in purely instrumental terms.

- From a social point of view, an evaluation of such regulations should seek to establish whether they provide protection to workers and their social environment (family, neighbourhood, friends, leisure, etc.) but also opportunities for personal development, and whether they create conditions enabling plans to be made to meet the needs arising from gainful activity and those arising from other aspects of daily life. This criterion is a reflection of people's attitudes towards work, leisure and other social activities.

- Finally, regulations concerning employment policy should be examined from the point of view of society as a whole, in order to determine possible externalities with an impact on society outside the enterprise. Particular attention should be paid to any externalities detrimental to the interests of society or inflicting on the community some of the nuisances engendered by the enterprise.

Simply enumerating these three criteria indicates the conflicts between objectives, but contributes little (if anything) to their solution. However, even at this early stage of our reasoning, one observation is very important in any reflection on the legal policy to be pursued. The three criteria mentioned represent parameters which, so far, have been set by different social actors: the efficiency criterion by enterprises, the social criterion by workers and trade unions, and the criterion concerning society as a whole – in so far as it has been set at all – by public opinion in general. As regards the political strategy to be adopted this results in a well-known dilemma. The social actor evoking one of these three criteria tends to ignore or downplay the other two criteria, so that the demands and proposals put forward by that actor are considered incomprehensible and irrational by the others. Another consequence of this mutual obstructionism over criteria and policy proposals is that, in the event of conflict, the result is determined solely through a power struggle, with dialogue, good will and reason carrying little weight in the ultimate outcome.

No new form of regulation of employment relations has a chance of being applied throughout society unless these three criteria and their interaction are fully taken into account. Only on this condition can such regulation be discussed by the actors concerned, and solutions based on consensus or, failing that, on compromise be found and implemented. This does not mean that the actors on each side must first rack their own brains on
these questions, and then rack each other’s brains. It means that each must be able to evaluate the ever-present contradictions between these different criteria in order to understand fully any proposals deriving from them, and thus to discuss areas where consensus or compromise can be reached.

For this reason, the modern and intelligent approach to conflict resolution should rely largely on dialogue and consultation, which create the conditions for mutual comprehension and recognition of interests, motives, standpoints and aims, and include actors and concerns hitherto outside the consultation process. It is also important that a third party should be able to intervene in an advisory capacity to define areas of consensus and compromise. Such procedures are vitally important as, in situations of uncertainty, they alone can bring about fair and reasonable solutions to conflict.

The full significance of the assumptions underlying these dialogue procedures should not be underestimated. Dialogue and the rules of debate can only succeed where the balance of power is symmetrical. This means that the different sides must recognize each other as equals, must be prepared to accept the rules of debate – which is very difficult to ensure in situations where the balance of power and influence is asymmetrical, as in the employment relationship. This is why it is so important to upgrade workers’ citizenship rights to the level of citizenship status. Recognition of this status is, in fact, a precondition of their status as equals, as equal partners in the dialogue. Obviously, citizenship status cannot be established simply by granting workers a de jure citizenship status at the workplace. But to do so could contribute by reducing the obstacles to such recognition and by encouraging employers and employees to acknowledge their equal status and their rights and obligations as citizens.

Regardless of these legal considerations, there are discernible economic trends which seem to point in the same direction. In certain secondary – and more so in tertiary – sectors, there are signs that dialogue and consultation are beginning to take root, in the context of a new organization of working life, and these will also affect individual aspects of the employment relationship. This trend is developing concurrently with a decline in traditional patterns of one-way, authoritarian transmission of instructions, and of worker subordination. The study concludes that these trends, which are outlined below, offer a real empirical basis for innovative policies in labour law.

New production patterns require new forms of regulation

In the developed countries, recent research in industrial psychology and sociology has revealed the emergence in the basic production and service sectors of a new type of employment, which Kern and Schumann\(^1\) have

\(^1\)Horst Kern; Michael Schumann: *Das Ende der Arbeistellung?* Munich, Back-Verlag. 1984.
called “new production models”, and Piore and Sabel\(^2\) defined as the transition from “rigid mass production” to “flexible specialization”, now termed “lean production”. These models are decentralized production processes, in which highly skilled workers, working in teams assigned to a given project, assume new responsibilities in respect of planning, optimization and production control. This is in keeping with developments in the United States towards what is termed “corporate identity”, referred to in Germany as *neue Unternehmenskultur* (a new enterprise culture). In the organizational and operational structures of enterprises, a third set of objectives and responsibilities is gaining ground. In addition to economic efficiency and the capacity to control social conflict associated with the enterprise there is a new sense of the responsibility of industry towards the social environment, i.e. encompassing the physical environment, infrastructure, company image, regional interests, sport, art, culture, etc.

These changes affecting working life have not yet been adequately taken into account in labour law, nor have they been organized to meet modern needs. Five major developments in production and the service sector can be expected.

New forms of integrated production: with demand now focusing more on personalized goods and services and on quality, it has become vital to achieve greater flexibility in integrated manufacturing structures, in logistics. The various sectors of activity in the enterprise are being scientifically surveyed to determine their potential for optimization. Perceptions of enterprise activity and rationalization based on the distribution of tasks are increasingly giving way to a global approach: work is characterized less and less by a hierarchical organization of hermetic functions within the production unit or single enterprise, and increasingly by a synthetic approach which extends beyond the production unit. The enterprise is becoming more open to the outside world, to the environment in which it operates. There is growing acceptance of the idea of social obligation and the need for open-minded dialogue.

Controlled autonomy: organization patterns inspired not by Taylorism but by a new definition of work and skills are increasingly prevalent. Their aims are decentralization, integration and the breaking down of hierarchy. Planning can no longer be separated from execution, either in time, in space or from the human resource point of view. Unlike centralized organizational structures, which are sluggish and prone to risk, decentralized structures can react more rapidly to changing situations and new problems.

Increased personal development: workers’ lifestyle preferences are becoming evident in their attitudes to work generally and in their own work. They are demanding greater participation and opportunities to exercise their creativity and achieve personal fulfilment; they are proving willing to take assume responsibility in the workplace and elsewhere.

“Lifetime learning”: skills are now the vital link between the development of the work environment and human development. Ongoing training, the ability to make decisions and workers’ ability to assume responsibility are essential both in the enterprise and in society. Generally processes such as participation, vocational training and retraining in the workplace require a new type of structure reflecting their increased importance.

Winners and losers: new production patterns can also lead to a polarization between winners and losers. Modernization does not have universally beneficial effects on workers, some of whom lose their jobs, or fail to improve their prospects through new skills or enhanced communication in the enterprise. Certain “stigmas” (associated, for example, with sex or nationality) have attracted new types of discrimination. Women are often the victims in this process, regardless of the level of their skills and qualifications. New forms of exclusion and poverty are emerging and becoming increasingly accepted.

Resistance to modernization

The modernization of manufacturing and the services does not come about automatically, it must overcome many obstacles. A laissez-faire policy is totally inappropriate – as is the complete deregulation of the employment relationship. Legal instruments and other forms of intervention must be used to help emerging modernization to overcome resistance, and then to spread.

The first difficulty is coping with time lags in the achievement of modernization. As regards organizational and technical progress, there are wide disparities between industries and service sectors, between regions, between small, medium and large enterprises. In many cases, there is a huge gap between public demand in respect of social responsibility, the company’s external image and its employees’ desire for participation, on the one hand, and the actual level of participation that companies grant their employees or that employees exercise, on the other.

Two closely related factors often prevent any real spread of a new culture of participatory management: a culture of “the leader and the led” and differences in management styles. On analysis, these factors prove to be largely cultural, not technical or organizational; in other words, they are related to perceptions, attitudes, habits and the established routines of the persons involved.

Culture of the leader and the led: sometimes, managers refuse to allow any kind of participation, even when everything points in its favour, from the technical and organizational points of view. Hierarchies in companies and government departments sometimes reveal a form of resistance born of inertia that cannot be overcome by efficiency arguments. Employees often do not dare to insist on participation, even when this might prove more productive and might be of greater advantage to society than mere subordination.

Varying management styles: even when encouraged by management, democratic behaviour patterns geared towards participation are often
thwarted by internal hierarchies. Sometimes they are thwarted by resistance at lower or intermediate levels. Lean production and direct employee participation often lead, in fact, to a loss of authority at lower levels in the hierarchy, as well as to a loss of the authority exercised by worker representatives, who therefore opt for passive or active resistance, rather than trying to control developments. Indeed, new production patterns often do pose a threat to jobs lower in the hierarchy — a threat which does not necessarily involve redundancy and unemployment, but which requires role changes that are hard to accept psychologically (for example, the foreman or supervisor suddenly relegated to the function of adviser or “coach”) and often associated with a loss of prestige.

The way in which information about innovation is communicated (or not) is important in breaking down passive resistance. Middle management constitutes, in a sense, a “lock” within the company’s authority structure. Thus, a situation may arise in which ideas developed by higher management are not, or are only partially, communicated to the employees. Similarly, as a result of this passive resistance, employees’ complaints to their immediate superiors, or their suggestions regarding improvement in work organization, “seep away” and fail to contribute to the modernization process. In part, this information lock can be attributed to a structure based on subordination and to the fact that the employees are not accorded their civil rights. These forms of resistance would undoubtedly lose their hold on company culture if individual workers were given more responsibilities and a greater right to self-expression.

Certainly, as suggested above, workers’ rights to autonomy and self-determination should be interpreted as the right to the humanization of work: to this extent they represent “social” rights. But they are more than merely social in nature, they are in keeping with the progress of the “economy” and of “society”, to which they may even contribute, for example in the following ways:

- Granting these rights would help put an end to obsolete cultural patterns of management and subordination, of leaders and led. Both higher management and society could be provided with information to which they would otherwise not have access — information concerning hazards and errors within the existing work organization, and also possible alternatives for the future. As well as rendering traditional forms of authority obsolete, such rights would help to release new productive and innovative forces in the workers.

- Such rights also help to restrain company practices of discrimination and exclusion, which — along with other externalities, and the social costs to employers — would sooner or later be stopped and placed under the control of a third party, such as the region or society as a whole. Such rights would act as a counterweight to the process of social disintegration and other disorders affecting society.

In short, because of their beneficial effects on the workers’ personal and career development such rights can be considered truly social in nature. But
they represent far more than mere social concessions by employers and society to workers (with the workers giving nothing in return); they also have positive effects on productivity both for the enterprise and for society. The idea that rights of this kind would impair the economic efficiency of the enterprise seems to be based on an interpretation of “efficiency” which dissociates microeconomic efficiency from the potential of the enterprise to influence social relations and social reality, or which even places them in opposition to one another. Such a narrow interpretation is alien to the modern approach to management and company objectives and should be considered a thing of the past.

The complementary role of modernized legislation

It would be a very serious mistake to cast doubt on the modernizing role of legislation in the social development process. Legal standards and procedures are playing an increasingly structuring role in the functioning of labour markets and the employment relationship. For this reason, any process of renewal in this sphere requires legal innovations – what Max Weber called “legal discoveries”. Contrary to simplistic Marxist theories on the opposition between base and superstructure, these cannot just be taken for granted.

The relationship between individual and collective rights and the changes they are now undergoing need to be examined in greater depth. Research on the subject remains somewhat patchy. Given the current state of knowledge, therefore, the individualization process and the crisis of representation should be given very serious consideration. A mere extension of collective rights would have no effect on this process, and would certainly not contain it. For such a strategy would ignore the need for a genuine radical reappraisal of the collective community ethic, one which takes as its starting point the new civil society based on individualization and the changed role of its members. Collective association still seems essential to the advancement of individual interests, especially in situations based on asymmetrical power structures. But in cases where it is difficult to identify common interests, and hence to achieve unity, the community needs a new basis. Fundamental civil rights in employment certainly present a real challenge to traditional definitions of the ethic of collective and voluntary effort – but they may actually lead to its renewal and consolidation.

The study's proposals on legal changes are based on the three functions that such changes may assume in the actual modernization process in industry and the service sector.

The law is a basic factor in the daily life of the various actors involved. But it is naïve and simplistic to imagine that the law, as it appears in the statute book, is actually applied in practice. It is more realistic to think of the social actors as perceiving the law as a set of instruments and means to be used in their negotiations and informal discussions, which their opponents can also use if a consensual settlement to a given dispute cannot be reached.
Here, paradoxically, the law functions best when it remains in the background, i.e. when it is not directly applied. In the case under consideration, therefore, it is quite unrealistic to think that increased civil rights for employees would lead to an explosion of court cases and procedures. Initially, increased rights would only give those workers who consider their opinions and convictions are constantly disregarded the possibility of formalizing the conflict, which entails additional costs to the other party, in time and in money. An employer who is aware of the possibility of such costs will be more inclined to dialogue. The fact that laws, even when they are not applied directly or do not lead to court proceedings, can encourage readiness to dialogue is borne out in practice in the day-to-day workings of the laws governing industrial relations in Germany.

One possible approach would be to examine how far existing laws actually contain positive inducements to traditional behaviour which discourage modern behaviour patterns. Such inducements can be removed so as to allow and even encourage modern forms of behaviour and conflict settlement without any loss of rights. For example, the abolition of privileges associated with traditional forms of employment relationship would not necessarily make German men readier to accept part-time work, but it would at least have the advantage of enabling those willing to take this option to do so. Similarly, a modification to the German regulations on the tax-deductible dependants' allowance, which unquestionably favour married couples where one spouse earns considerably less than the other, would remove the incentive for married women to neglect their careers.

In conclusion therefore, the law can be closely examined to determine whether it retains elements likely to have a negative effect on modernization. If these elements are eliminated, the law would no longer penalize modern forms of behaviour or approaches to the settlement of conflict – i.e. certain types of behaviour would no longer entail negative consequences under civil or criminal law. For example, the uncertain legal situation of employees who publically criticize the political or ecological attitudes of their employer may well deter workers from taking responsible action for the benefit of society as a whole. Similarly, existing labour law creates a situation in which people who are willing to withdraw temporarily or partially from economic activity (a decision that may have many positive effects on the labour market, gender relations and family responsibilities), in order, say, to work part time, become self-employed, or take on voluntary work, are reluctant to do so for fear of being permanently excluded from the labour market.

Positive legal incentives designed to preserve traditional forms of behaviour and lifestyle and negative incentives standing in the way of a more modern approach are mere relics of the patriarchal past. They are incompatible with a modern society, which sees itself as open and pluralist. The proposals discussed here reflect a determination to end such incentives by refuting their legitimacy. The intention is not to impose another lifestyle on workers, merely because it is considered "better" or "more modern". Rather, these proposals seek to create a legal situation ensuring security and
individual responsibility which will permit greater diversity in lifestyles and forms of employment freely chosen by those concerned – a free choice from among different forms of employment and lifestyle, all on an equal footing, not set off against each other in terms of privileges or disadvantages. There is every reason to believe that the future of society will depend on such a pluralist system providing both protection and the possibility of individuals negotiating their own employment relationship.