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## Article

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## The emergence of reflexive global labour law\*\*

**Abstract** – The article introduces the main tenets of reflexive labour law and uses this perspective to interpret core trends in global labour law. It suggests a conceptual distinction between international and global labour law and identifies a transformation in the global labour law regime related to processes of reflexivity and constitutionalisation. The first part of the article analyses reflexivity within the International Labour Organization (ILO) in relation to its policy of defining labour standards as human rights. It interprets the increasing attention given to soft law in the ILO as a reflexive response to the globalisation of labour law outside the confines of the nation state. The core reflexive law concept of regulation of self-regulation is applied to analyse a key source of global labour law, namely codes of conduct regulating corporate citizenship and corporate social responsibility programmes in multinational companies. In the final section, the article argues that global labour law is emerging as a separate regime in the world society and comments on constitutionalisation as a key process in the emerging regime of global labour law.

### Die Herausbildung eines reflexiven globalen Arbeitsrechts

**Zusammenfassung** – Der Artikel stellt Grundannahmen des reflexiven Arbeitsrechts vor und verwendet diese Perspektive zur Analyse des globalen Arbeitsrechts. Er schlägt eine konzeptionelle Unterscheidung zwischen internationalem und globalem Arbeitsrecht vor und beschreibt die Transformation des globalen Arbeitsrechtregimes mit Hilfe der Konzepte Reflexivität und Konstitutionalisierung. Der Artikel stellt Reflexivität innerhalb der Internationalen Arbeiterorganisation (ILO) fest, zum Beispiel in Bezug auf die Politik der Priorisierung bestimmter Arbeitsbedingungen als Menschenrechte. Die zunehmende Nutzung sog. soft law Instrumente in der ILO wird als reflexive Rechtsstrategie gedeutet, die auf die Globalisierung des Arbeitsrechts außerhalb der Grenzen des Nationalstaats antwortet. Das reflexivrechtliche Kernkonzept der Regulierung von Selbstregulierung wird angewendet in der Analyse einer zentralen Quelle des globalen Arbeitsrechts, der sog. codes of conduct oder Unternehmenskodex, die Corporate Social Responsibility (CSR) und andere Programme zur sozialen Verantwortung der multinationalen Unternehmen regulieren. Im abschließenden Abschnitt diskutiert der Artikel, inwieweit globales Arbeitsrecht als autonomes Regime in der Weltgesellschaft verstanden werden kann, das sich durch Konstitutionalisierung stabilisiert.

**Key words:** global labour law, reflexive labour law, codes of conduct, corporate social responsibility, corporate citizenship  
(JEL: G34, J80, K31, K40, M14)

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## 1. Introduction

Starting point for the following analysis is the observation that the creation of labour law at the global level is no longer confined to international labour law. Labour law in the world society globalises worldwide and global labour law derives from a multiplicity of sources. Thus, international labour law has lost the position of being an exclusive or a hierarchically superior source of labour law at the global level. In short, international labour law forms part of plural global labour law and is itself responding to developments outside the realm of public international law.

The article pays particular attention to the interaction of international and other global labour law developments. In fact, realising this interaction and making creative use of it constitutes the core of reflexive global labour law. The article starts with a general introduction to reflexive law and its application to labour law. It is followed by a description of reflexivity in the law-making process of the International Labour Organisation (ILO), in particular in relation to the ILO's move to identify core universal labour standards and the combination of labour standard setting with new forms of governance within the ILO's Decent Work Agenda.

The article then discusses a key aspect of reflexive global labour law linked to labour norm creation resulting from self-regulation in multinational companies. Main topoi are policies and practices pursued under the headings of Corporate Social Responsibility (CSR) and Global Corporate Citizenship (GCC). A particular focus in this section will be codes of conduct of multinational corporations. In the final section, the article comments on constitutionalisation of global labour law in the world society.

## 2. General features of reflexive law

The theory of reflexive law transforms insights of modern sociological systems theory and post-structuralist approaches to law and society into new questions for the sociology and theory of law. The core of its approach is to view the legal system as an autonomous function system, located within society on the same plane as the economy, the industrial relations or the political system. It argues that the legal system becomes consciously reflexive when it recognises that the societal domains which it purports to regulate, and to which it seeks to respond, are independent autopoietic systems - similar to itself.

According to Niklas Luhmann's theory of society as a social system, chances for reflexive processes increase once society has adopted functional differentiation as mode of integration (Luhmann 2012, 2013). He demonstrated this in relation to what he calls positivisation of law (Luhmann 2014: 164-167). The argument goes as follows. Reflexivity occurs in the development of the legal system as an autonomous function system as a by-product of norm application in decision-making. Reflexivity describes the process of introducing new types of norms for the regulation of norm application. By developing second-order norms, the legal system becomes capable of reducing its function to decision-making based on the application of the binary code legal/illegal. In this way reflexivity contributes to the closure of the system and to its autonomy.

In his general theory of social systems, Luhmann distinguishes between reflexivity as a reflexive mechanism and reflexion as process of self-constitution of the system.

The concept of reflexion describes and analyses processes of operational self-awareness of the system, “where system reference and self-reference coincide” (Luhmann 1995: 455). These include basic operations of self-reference, forms of self-observation and modes of self-description. Reflexion is in fact a process at the heart of autopoiesis or self-reproduction of the system.

Applied to the legal system we can identify reflexivity as a means of self-control of law and stabiliser of positivisation of law that differs from the founding reflexivity or reflexion related to stabilisation of expectations. In particular, the emergence of reflexive expectations in the form of expectations of expectations is crucial for the development of law as a system. The processing of normative expectations of normative expectations is constitutive for the evolution of law as an autonomous legal system in society.<sup>1</sup> Legal reflexivity on the other hand is not confined to self-reproduction. Reflexive processes can lead to change of structures and to the establishment of reflexive mechanisms.<sup>2</sup> Examples of reflexive mechanisms in law are the introduction of legislation that regulates legislation (legislation of legislation or standardisation of standardisation), decisions about how to decide (decision-making of decision-making) and solving conflicts that arise from conflict resolution.<sup>3</sup>

We can further distinguish between internal and external reflexivity within system-theoretical accounts. Luhmann was mainly interested in reflexive processes inside systems. Gunther Teubner, with his concept of reflexive law, focuses on external reflexivity in inter-systemic links. Such reflexivity can be called meta-reflexivity or second-order reflexivity since it turns attention to processes inside the system that result from external referencing in the form of reflexion of reflexion in other systems.

Teubner’s concept of reflexive law is largely a new theory of regulation. Reflexivity refers to law’s capacity to reflect on its environment’s expectations in relation to its regulatory capacities (Teubner 1993). The theory of reflexive law is not only an abstract account of modern law but has concrete implications for regulatory design. Its starting point is that in seeking to influence other autopoietic systems, which are operationally closed to their environment, the legal system must have resort to indirect means of regulation. Legal intervention is dependent for its effects on self-regulation within the systems, which are the target of legal initiatives. Thus, the law can only

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<sup>1</sup> “The legal system as a whole operates normative expectations of normative expectations as its secure base. It differentiates itself on the basis of the reflexivity of its own operations. Only in this way is the competence to make decisions in the legal system socially understandable and acceptable. Only in this way are instances of legal decision-making more than they were in most of the high cultures: alien elements of a corporative kind in a society ordered by families (houses), with the consequence that communication among neighbours or the community-based justice of the village or guild was always preferable to going to court. Only in this way can confidence in formal law and a differentiated use of law develop to give structure to the problems of everyday life, and achieve this in competition with local structures which are the more probable one as far as evolution is concerned” (Luhmann 2004: 159-160).

<sup>2</sup> On reflexive mechanism in general Luhmann (1970: 92-112).

<sup>3</sup> On conflict resolution of conflict resolution see Rogowski (2009).

work as far as it facilitates self-reflexion and self-regulation. This implies a shift from substantive to procedural law (Teubner 1983).

Regulation of self-regulation is the solution to Teubner's well-known regulatory trilemma. He called it ironically a "strategy for post-regulatory law" (Teubner 1986) but it is in fact a sophisticated account of limits and potentials of legal regulation. Hugh Collins describes it as follows: "The trilemma states that either the legal rules may fail to have an impact on social practice, or they may subvert the desirable social practices by making impractical demand, or the law may lose the coherence of its own analytical framework by seeking to incorporate sociological and economic perspective in its reasoning" (Collins 1999: 68-69). Reflexive law suggests as strategy to tackle the trilemma a concept of regulation of self-regulation, which pays particular attention to the conditions in regulated systems that enable and foster self-regulation. However, what is most important in Teubner's account is that any legal regulation of social practices depends on law's own self-regulation. Reflexive law means that law changes itself so that it becomes capable of actually facilitating self-regulation in other systems. The emphasis is on new procedural instruments that enable law to influence self-regulation indirectly.

### **3. General introduction to reflexive labour law**

The concept of reflexive labour law applies Luhmann's notion of reflexivity and Teubner's insights on limits and new directions of legal regulation to labour law (Rogowski 2013: 87-186). Reflexive labour law was first introduced two decades ago and claims to be a new labour law theory that matches the complexity of labour law in the modern society (Rogowski/Wilthagen 1994). It describes a stage in the development of modern labour law when labour law realises its systemic limits with respect to regulation of other social systems. Furthermore, labour law detects at this reflexive stage a source of strength in its capacities for self-regulation.

The evolution of the modern legal system and the development of the field of labour law can be explained with the concept of functional differentiation. Labour law is the product of differentiation within the legal system and results from specific reflexive processes within the legal system. In fact it evolves in the beginning as a subsystem of a national legal system, largely in reaction to legal perceptions of the facilitative role of law within industrial and employment relations.

Marc Amstutz (2001) has demonstrated how an evolutionary perspective informed by systems theory can be useful in an analysis of the emergence of commercial law as a new field in law. Crucial in his analysis is the creation of "sub models" within the legal system with which law observes changes in its environments and then uses them as "means of self-modeling" (Ladeur 2012: 227). Applied to labour law this view detects in the evolution of the legal system new forms of legal communication about the role of law in the industrial society. It leads to a self-understanding of law in which it accepts its supportive role for industrial relations and company constitutions. Such "self-modelling" results in internal differentiation of the legal system and the formation of the subfield or subsystem of labour law.

Social systems theory offers a new understanding of both the nature and the relation of law and industrial relations. It conceives industrial relations and law not as

systems of action (or collective action) but instead as systems of legal and collective communication (Rogowski 2000). Both systems have developed structures that render autonomy to each system in society and protect a self-reference of their system-specific communications that form the bases of self-reproduction or autopoiesis.

In conceptualising the social systems of ‘industrial relations’ and ‘law’ as operationally closed systems of communication, it becomes possible to understand how different communication systems operate with different types of regulation. Furthermore, attention can be directed to the important relationship between modes of external regulation and processes of self-regulation (Bothfeld/Kremer 2014). While labour law forms part of the legal system and is thus constituted by legal communication, collective agreements and collective bargaining belong to the self-regulatory structure of the industrial relations system and are foremost constituted by industrial relations communication. The shift to new forms of governance, the use of soft law and proceduralisation are indicators of reflexive regulation.

In the following, an attempt is made to use the concept of reflexive law in a discussion of the emergence of global labour law. Reflexive labour law claims to grasp transformations that are associated with the rise of new governance and policy responses to challenges posed by changes in the political economy. New governance techniques are increasingly used in national and international labour law regimes in particular in areas like vocational training, occupational health and safety and employment discrimination (Lobel 2004). This is also true for reflexivity in the law-making process of the International Labour Organisation (ILO), which can be exemplified in relation to the combination of labour standard setting with new forms of governance within the ILO’s Decent Work Agenda.

#### **4. Reflexive trends in the International Labour Organisation’s (ILO) labour standard setting and promotion of decent work**

The ILO has had problems with ratification of its law since its inception almost a century ago. The binding force of ILO conventions establishing labour standards is limited because it is not mandatory for member states to ratify them. Trying to convince member states to adopt and implement ILO law has traditionally dominated the ILO’s agenda (Kaufman 2006). In addition, mainstream economists took a negative view on labour standards and provided arguments for political opposition to ratification, although recently economists like Amartya Sen and Joseph Stiglitz have convincingly challenged this orthodoxy more recently (see on the economic debate Sengenberger 2006).

In the approach that the ILO adopted to improve effectiveness of its labour standards we can detect a reflexive strategy to gain strength from creative realisation of limits. In order to enhance the awareness of labour standards the ILO gradually began to prioritise specific standards.<sup>4</sup> The turning point came in 1998 when this

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<sup>4</sup> Clarence Wilfred Jenks who later served as Director-General of the ILO from 1970-1973 suggested the strategy of prioritisation already in the 1960s (see Jenks 1960; Stevens/Jenks 1969).



strategy became fully adopted in the Declaration on Fundamental Principles and Rights at Work.

The policy of prioritisation represents a classic case of reflexivity in action. In reflecting on its limitations, the organisation develops creative new strategies. The reflexive move was to openly admit problems with ratification and subsequently concentrate on core standards regulated in eight key conventions, also called the four human rights treaties. These include the abolition of forced labour (Conventions No. 29 and 105), the freedom of association and collective bargaining (Conventions No. 87 and 98), discrimination in the workplace (Conventions No. 100 and 111), and the elimination of child labour (Conventions No. 138 and 182).

The attempt to strengthen labour standards through prioritisation became truly global with the explicit acknowledgement of the world society context. This happened when the ILO started an initiative in February 2002 that led to the establishment of the *World Commission on the Social Dimension of Globalization*. This Commission demands in its final report, entitled *A Fair Globalization: Creating Opportunities for All* (ILO 2004), respect for core labour standards, in particular in so-called export processing zones. It was a response to criticism of developing countries that labour standards deprive them of their competitive advantage in a globalised economy. The report addressed the issue by acknowledging that more policy autonomy of developing countries is needed with respect to global rules on trade and finance, but by also pointing at the danger of unacceptable relaxation of labour law standards, especially in export processing zones.

The system of Export Processing Zones (EPZs) has become a prominent issue. Over 50 million workers are now employed in such zones worldwide. Persistent concerns have been expressed that EPZs are sometimes given exemptions from national labour laws, or that there are obstacles to exercising rights in practice, and that they engage countries in a competition for foreign investment which leads to damaging tax and subsidy policies. By their nature, EPZs are linked closely to the global economy. However, they often have few linkages back to national economies, thereby creating international enclaves. Outside such zones, similar concerns are expressed about employment and working conditions in a variety of smaller enterprises in international subcontracting chains, both formal and informal (ibid.: 21).

A further case of reflexivity in ILO law making is the ILO's Decent Work initiative. The new agenda allowed the ILO to transcend the traditional legislative route and broaden its range of legal instruments and procedures. The ILO opened up to experimenting with new governance techniques, including the use of soft law. In discovering alternative legal or non-legal procedures for implementing labour standards, it adopted a proceduralist approach that had a greater chance to influence the willingness of companies to participate in enforcing labour standards (Hassel 2008).

The Decent Work initiative started with the 1998 Declaration on Fundamental Principles and Rights at Work and marked the beginning of the already-mentioned ILO campaign to promote core labour rights. The ILO subsequently launched its Decent Work programme in 1999, which marked a watershed for the ILO since it aimed at overcoming organisational boundaries between its policy-oriented and its

legal departments. Labour market policy was upgraded and became a strategic goal of the ILO.

The decent work concept puts labour rights in a broader context: “It is not adequate to concentrate only on labour legislation since people do not live and work in a compartmentalized environment. The linkages between economic, political and social actions can be critical to the realization of rights and to the pursuit of the broad objectives of decent work and adequate living for working people” (ILO 2008: 7). The Decent Work programme focusses on four principal, strategic objectives: standards and fundamental principles and rights at work; employment; social protection; and social dialogue, with gender and development as crosscutting priority themes. However, it acknowledges the need to reform social and economic systems that ensure basic security and employment in order to become capable of adaptation to rapidly changing circumstances in a highly competitive global market. It emphasises in this context the qualitative dimension of labour market policy: “The goal of decent work is not just the creation of jobs, but also the creation of jobs of acceptable quality. The level of employment (quantity) cannot be divorced from its quality” (ILO 1999).

An important goal of the Decent Work Agenda is improving the situation for workers who are either excluded from or under-represented from meaningful social dialogue (ILO 2000: 6). In this respect, it seems to have a beneficial impact on the global industrial relations system. Leah Vosko identified a “new emphasis on extending protections to workers on the periphery of formal systems of employment” in the Decent Work Agenda; “trade unions of informal workers, emerging labour organizations in the informal sector, women’s groups and other NGOs are receiving a greater hearing inside the ILO” (2002: 38).

The Decent Work programme uses new governance techniques and its implementation shows signs of a reflexive labour law approach. Member states are encouraged to make creative use of soft law instruments in establishing so-called Decent Work Country Programmes (DWCPs). These programmes define priorities in responding to the Decent Work programme and provide a structure for ILO assistance. The ILO supports these DWCPs with a wide range of technical assistance that includes the development of employment and work-related policies and legislation, labour market systems, social dialogue, industrial relations, social security, skills and vocational training, labour migration, working conditions and occupational safety and health (Blackett 2011). In addition, the ILO supports the collection of labour market data and analyses economic and social indicators, so that policies and programmes can respond to evolving and emerging labour market trends.



## 5. Corporate social responsibility, corporate citizenship and reflexive global labour law

Global labour law transcends public international labour law. For an account of the emergence of global labour law from a reflexive labour law perspective, it is important to pay attention to the many attempts of introducing labour standards in private contexts. The expansion of labour standard setting from public to private forms of labour regulation provides probably the best case for reflexive labour law at the global level. It also highlights the problems and challenges that “privatising regulation” (Hepple 2005: 69-88) faces in practice.

The most prominent forms of private labour law making are Corporate Social Responsibility (CSR) and Corporate Citizenship or Global Corporate Citizenship (GCC). The development of CSR and GCC and the use of codes of conduct in companies can serve as the model for a reflexive type of regulation. It requires the acknowledgment of the key role of internal regulation in companies and the concept suggested by reflexive labour law, the theory of regulation of self-regulation, seems particularly well suited for an analysis of these modes of governance.

### 5.1 Corporate social responsibility (CSR)

CSR schemes are widely seen as mechanisms in order to increase companies’ sense of responsibility towards their internal social and external community or ecological environments in which they operate.<sup>5</sup> However, from a reflexive law perspective, it is crucial that CSR forms part of corporate governance and is regulated in company codes of conduct. These codes are means by which companies create internal structures for decision-making. They are in fact classic forms of self-regulation and an important feature of CSR is their voluntary nature as an instrument of regulation of internal company affairs.

There are a number of attempts by public international and private global organisations to influence these forms of self-regulation, in particular those adopted by multinational economic organisations operating at the global level. What is characteristic of these attempts of regulating multinational companies is a linking of public and private efforts of regulation of employment and other conditions (Kocher 2008). In order to achieve this, international organisations embark on reflexive policies. They have undertaken efforts of regulating CSR by developing new legal instruments in international law, known as soft law, and have begun to recognise internal policies of multinational companies as promising ways of implementing their standards (Braithwaite/Drahos 2001).

Furthermore, we also witness reflexive trends on the side of multinational companies. In implementing CSR, human resource policies are increasingly de-signed in accordance with international labour standards. CSR schemes are revaluated as important instruments of risk management and viewed as a beneficial productive factor. “The successful framing of CSR in terms of risk management is a key to understand-

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<sup>5</sup> A good summary of recent CSR debates can be found in Kanj/Chopra (2010).

ing the transition from the political terrain of conflicting interests to institutions of private ordering” (Shamir 2011: 329).

### **5.2 *Global corporate citizenship (GCC)***

The concept of global corporate citizenship (GCC) is vague. Some argue it goes beyond CSR and should be referred to as CSR-plus, others claim that it has a different focus.<sup>6</sup> In the economic discussions, in particular in the US, a definition of corporate citizenship dominates that focuses on shareholders. It measures the extent to which businesses are socially responsible by meeting legal, ethical and economic responsibilities placed on them by shareholders in the first place.

An alternative discourse focuses on stakeholders. It claims that corporate citizenship is about stakeholders, which includes employees, and furthermore that companies themselves are citizens “alongside governments and civil society” (Schwab 2008). This definition emphasises the “political role” of companies “as active agents of governance” (Thompson 2011: 63; see also Thompson 2012).

Dirk Matten and Andrew Crane take a pragmatic position. In their account, GCC is about governance and administration of rights of citizens: “corporate citizenship describes the role of the corporation in administering citizenship rights for individuals. Such a definition reframes GCC away from the notion that the corporation is a citizen in itself (as individuals are), and towards the acknowledgement that the corporation administers certain aspects of citizenship for those individuals” (Matten/Crane 2005: 173). This position is suitable in identifying the core of this form of self-regulation from a reflexive labour law perspective.

According to Grahame Thompson, activities associated with GCC comprise a considerable list of topics. These include social protections in the form of labour standards and working conditions as well as human rights, environmental protection including emission of pollution, sustainable development and biodiversity, health, economic governance including ‘fair’ trading and ethical demands of shareholders and consumers, organisational concerns related to corruption and local community and other external social policy issues including poverty (Thompson 2011: 70). For Thompson GCC schemes play an important role in the constitutionalisation of the global corporate sphere.

### **5.3 *The effectiveness of CSR and GCC and international law***

Central for an account of private forms of regulation from a reflexive labour law perspective is the extent to which they are recognised in public policies and legal strategies. CSR and GCC have received strong public support from international law. Although dating back to discussions in the United States during the 1950s, the ILO and the Organization of Economic Co-operation and Development (OECD) were important drivers. The debate over CSR at the global level started in earnest during the 1960s and 1970s when multinational enterprises were identified as objects of regulation in international labour law. Particular noteworthy in this respect are the ILO’s Tripartite Declaration of Principles concerning Multinational Enterprises and Social

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<sup>6</sup> See the useful overview of the debate in Scherer/Palazzo (2010).

Policy (MNE Declaration) of 1977 and the OECD Guidelines for Multinational Enterprises.

Although the enforcement of the ILO Declaration aiming at establishing codes of conduct in MNEs is voluntary and it is formally not subject to the reporting and monitoring systems of ILO Conventions and Recommendations, the ILO nevertheless carries out its own monitoring through reports and studies of the use of codes of conducts by MNEs. In analyses of the content of codes of conduct the ILO found reference to main ILO conventions in the codes, in particular those regulating child labour, forced labour; harassment and abuse; occupational safety and health; wages and benefits; and working hours. Some but not all codes also mention non-discrimination, freedom of association and the right of collective bargaining (Mamic 2004: 48-54).

However, there is only sketchy evidence to determine the actual impact of codes on labour practices. Empirical studies report a selective approach in addressing labour issues and an uneven implementation of fundamental labour rights (OECD 1999) and, as Bob Hepple (2005: 73) emphasises, codes vary significantly among industries and countries. A factor limiting impact is a restriction in scope when codes are not or only insufficiently covering suppliers and so-called supply chains. Research found that codes rarely cover every link in the supply chain and rarely encompass workers in the informal sector, for example home workers or unregistered workers of subcontractors. They often only cover the companies' main suppliers and their workers (Locke et al. 2012). However, research also found cases of successful transformation of the supply chain into a "network mode of governance" with "the suppliers' proactive involvement in this process" (Fichter/Sydow 2002: 376).

In order to increase effectiveness many codes of conduct of multinational enterprises include mechanisms for the monitoring of their implementation. Monitoring either is carried out in-house or is delegated to a consultancy firm. Monitoring means assessing the conformity of the core organisation and its suppliers with key provisions of a code of conduct. Research has found improvement of working conditions as a result of successful monitoring of the implementation of the code.<sup>7</sup> However, research also found that monitoring and auditing is often seen as responsibility of management and does not involve worker representatives (Compa 2004; O'Rourke 2003).

Nevertheless, monitoring is an area that has the potential to enable civil society organisations and trade unions to engage in controlling the conduct of multinational enterprises. In fact, it offers trade unions a new field of activity. In addition to management audits, trade unions can participate in monitoring of conformity with a code of conduct that is carried out at a country level. This is known as social audit and is necessary for producers who want to be accredited as suppliers to a particular market. Social audits are often subcontracted and carried out by specialist consultants and should be of particular concern for trade unions (see the critical account in Vogel 2005).

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<sup>7</sup> See for example the case of Nike, analysed and reported by Locke et al. (2007).

#### **5.4 Regulation of CSR and CC through international framework agreements, collective bargaining and social accountability standards**

A more traditional and direct form of bilateral participation of trade unions in regulating codes of conduct are offered by collective agreements. Multinational enterprises have begun to enter so-called International Framework Agreements (IFAs) with globally operating trade unions. These agreements aim at establishing an on-going and stable relationship between MNEs and trade unions and offer in particular sectoral trade unions from the MNE's home country to participate in the negotiation of the agreement (Papadakis 2011). In framework agreements, multinational enterprises commit themselves to applying the same labour standards to their employees in all the different countries in which they operate. Since frameworks agreements result from negotiations between companies and international trade unions, they are viewed by the ILO as ideal instruments to promote industrial relations in the world society. However, so far they are geographically biased because the majority are concluded between European MNEs and European unions (Stavis/Boswell 2007: 194).

Research found that International Framework Agreements vary according to the type of companies and trades unions involved and according to industrial relations traditions and practice of the parties involved (Gibb 2005). In general, framework agreements include the ILO's four fundamental labour principles but differ in covering other ILO standards such as the protection of workers' representatives, wages, occupational safety and health, and skills training. Most framework agreements refer to the entire supply chain, even if supplier companies are not parties to them. Companies usually commit to inform all their subsidiaries, suppliers, contractors and subcontractors about the agreement (Eurofound 2009: 6-7).

It has been argued that the success of framework agreements depends on strong global unions in order to be successful (Fairbrother/Hammer 2005). However, it also depends on the design of the agreements in order to guarantee that trade unions are involved, for example in the follow-up mechanisms. There are good examples of agreements that set up procedures for joint implementation of the agreement through joint action of management and unions or employee representatives. Examples of such joint action are joint responsibility for company-wide dissemination of the agreement or the development of joint training programmes. In any event crucial for joint responsibility of implementation are procedures that allow global unions to make a complaint if the company violates the terms of the agreement.

In addition to International Framework Agreements, there is evidence that corporate social responsibility schemes are result of negotiations and not unilateral management initiatives. This is particularly the case in industries in which trade unions are strong (Edwards et al. 2007). Furthermore, the European Union has been supportive in launching three Corporate Social Responsibility initiatives. The first initiative in 2002 was called 'Corporate Social Responsibility: A Business Contribution to Sustainable Development' (European Commission 2002) and explicitly encouraged companies to adopt ILO labour standards and the OECD's Guidelines as minimum standards in their Codes of Conduct. It was followed in 2006 by an attempt to encourage companies by 'Implementing the Partnership for Growth and Jobs: Making Europe a

Pole of Excellence on Corporate Social Responsibility' (European Commission 2006). The recent third initiative supports employee involvement through 'Transnational company agreements: realising the potential of social dialogue' (European Commission 2012).

Karen Buhmann (2011) has shown in her analysis of the Commission's policy-based approach to regulating CSR that the procedural design of reflexive multi-stakeholder regulatory processes was central in the EU's initiatives. She argues convincingly that further attention to reflexive law could lead to improvements in the EU's regulatory technique. However, her plea for normativity and substantive juridification of CSR, especially in the formation and definition of CSR, is less convincing and hardly seems compatible with the procedural self-understanding of reflexive law. Although reflexive law is not adverse to substantive or normative policy considerations, it does not claim to be a normative approach itself.

In addition to unilateral corporate codes of conducts and bilateral collective agreements, there exist a number of so-called social accountability standards, which are promoted by non-governmental organisations. These need to be taken into account from a reflexive labour law perspective since they form part of spontaneous and plural creation of standards, norms and principles. NGO's like OXFAM have developed long-term strategies of engagement with transnational companies. They actively promote companies to adopt voluntary codes of conduct. It has been observed that in their consumer campaigns they switched from "the confrontational tactic of consumer boycotts" to promoting "long-term positive engagement aimed at winning continuous improvement in company practice" (Mayne 1999: 241). Moreover, these practices include labour standards and labour relations in transnational companies.

However, NGOs are not the only players in the field of social accountability. In fact there exists an industry of creating and implementing social accountability standards, often linked to accreditation or certification processes. The logic behind certification is that MNEs seek to conduct business only with certified factories, and this creates in turn an incentive for factories to obtain certification. The established International Organization for Standardization (ISO) developed in 2010 the ISO 26000 standard. It addresses corporate social responsibility and includes among others rules on labour practices. However, unlike some well-known ISO standards the rules on labour practices cannot be certified. Instead, ISO standards only clarify the meaning of social responsibility in practical terms and support the sharing of best practices relating to social responsibility. Nevertheless, research could show that advertising adherence to ISO 26000 achieves higher brand awareness (Matteraa et al. 2012).

A well-known example of social certification is the voluntary standard SA 8000, initiated by the Council on Economic Priority Accreditation Agency and now administered by the New York-based NGO Social Accountability International. SA 8000 can either supplement or replace company codes of conduct and it is particularly concerned with conditions of work. It includes reference to ILO Conventions, and occasionally other ILO standards relating to conditions of work and hygiene and security. Research on SA 8000 comes to the conclusion that, although impressive in its reach and showing signs of having some impact on working conditions at the micro-level of MNEs and their suppliers, given the current dimension of international business activ-

ity, these voluntary corporate responsibility initiatives “are simply a drop in the ocean” (Rasche/Gilbert 2012: 77).

## **6. Constitutionalisation of reflexive global labour law?**

Global labour law forms part of the legal system of the world society. At the global level, law is plural and fragmented (Teubner 1997). According to Paul Berman, we live in a world of overlapping legal authority that is best described as global legal pluralism. World law is governed by “procedural mechanisms, institutions and practices that aim to manage, without eliminating, legal pluralism” (Berman 2012: 10). In Berman’s world of global legal pluralism, hybrid cosmopolitan legal regimes engage in normative dialogue and there is little conflict in conceptual interactions between regimes, although he admits that the procedural mechanisms, institutions and practices used to manage pluralism are often resulting from “regrettable compromises” (ibid.: 188).

Gunther Teubner and his colleagues in their research on legal regimes in the world society present a less comfortable picture (Fischer-Lescano/Teubner 2004; Teubner 2012: 150-174). For them conflictual relations between transnational legal regimes and between these regimes and national legal regimes are of central concern. They emphasise the following five aspects of legal collisions:<sup>8</sup>

- (1) Legal collisions “reflect the double fragmentation of world society and its law. The fragmentation is a double one because, firstly, the functional differentiation of modern society causes collisions between different social functional systems and the legal norms coupled to them. Secondly, differences between social organisational principles cause clashes between the formal law of modern society and the socially embedded legal systems of indigenous societies”.
- (2) Legal collisions “are about the conflict of legal norms”, either in the form that national legal orders collide with the transnational regime law” or that “law collides with legal norms of indigenous cultures”.
- (3) “Neither public nor private international law offers an adequate solution for these new types of collisions. They have been constructed for coping with collisions of national legal orders and not for solving conflicts between national laws and transnational law or the law of indigenous cultures, respectively.”
- (4) “With regard to transnational regimes, collision rules have to be developed which take their character as ‘self-contained regimes’ into account. Here, the substantive law approach which has been developed in private international law seems to be most suitable.”
- (5) “With regard to indigenous cultures, the collision rules to be developed must respect the social embeddedness of the legal norms. In this case, the model of the institutionalised and proceduralised protection of basic rights seems to be the most promising.”

This can be applied to global labour law. What is characteristic of global labour law is fragmentation not only at the level of rules and norms in the function systems law, economics and industrial relations and at the organisational level of multinational

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<sup>8</sup> The following summary is derived from Teubner/Korth (2012: 26-27).



companies but also of the field of global labour law itself. Responsible for this is to some extent the social embeddedness of labour law in “indigenous” industrial relations, which also applies to global labour law. National labour law norms, including those that govern collective bargaining are in conflict with “transnational regime law”. A good example of such regime collision has been the dispute over the *Viking* and *Laval* cases in which the Court of Justice of the European Union (CJEU) dealt with collisions between national labour law and EU law.<sup>9</sup>

Legal collisions and the solutions found to overcome them create opportunities for norm production and legal regime building. However, it seems unlikely that the regime of global labour law will ever be capable of achieving a similar degree of unity when compared to national jurisdictions. Nevertheless, it might be able to constitutionalise. Gunther Teubner promotes the idea of societal constitutionalisation of world law, albeit in fragmented form (Teubner 2012), and following this suggestion we can ask if processes of constitutionalisation can be found in the global labour law regime.

The debate on the constitutionalisation of international and global law in general has largely focused on international organisations. A prominent example is the World Trade Organisation (WTO) and its role as regulator of international trade. In a survey of the literature on constitutionalisation of the WTO, Deborah Cass (2005) has introduced a useful distinction of approaches in theorising constitutionalisation. She calls them institutional managerialism, rights-based constitutionalisation and judicial norm-generation. For global labour law, the rights-based approach is of particular interest since it includes a debate over social and human rights which, despite the formal rejection of a social clause referring to labour rights in trade agreements, have been occasionally on the agenda of decision-making of the Dispute Settlement Body and the Appellate Body, the powerful quasi-court of the WTO.<sup>10</sup>

A similar typology can be applied in discussing constitutionalisation processes in the ILO. The experience the ILO gained in defining labour rights and labour standards as human rights provides a good example of a rights-based constitutionalisation of the regime of global labour law. In fact, there is a lively debate about considering labour rights as human rights (see Alston 2005). Virginia Mantouvalou (2012) has provided a useful distinction of three approaches in the discussion of labour rights as human rights. She calls them the positivist, the instrumental and the normative approach. The positivist approach is satisfied if human rights are grounded in legal documents and is sufficiently supported in law. The instrumental approach adopts in contrast a contextual understanding of human rights and asks if either state or international institutions, like courts, or civil society organisations, like trade unions and NGOs, are actively promoting them. The third approach is taken in labour law scholarship and in human rights theory and examines the issue as theoretical matter and occasionally in normative terms as a question of moral truth.

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<sup>9</sup> For a discussion of implication of the CJEU case law starting with *Viking* and *Laval* see Deakin/Rogowski (2011).

<sup>10</sup> See Picciotto (2011: 347-81) on the Constitution of the WTO with reference to the well-known debate between Ernst Petersmann and Philip Alston.

ILO policy in relation to labour rights as human rights largely belongs to the first approach. It is legalistic in nature and puts emphasis on formal statements that endorse labour standards. Although the ILO also promotes political campaigns, their main concern is legal support for labour rights and formal legal recognition is of considerable importance for the ILO.

An example of the third approach is Hugh Collins' interrogation into the capacity of human rights providing a normative basis for labour law. He has argued that a contrast exists between universal human rights and labour rights and that "the latter are not a compelling candidate for presence in the pantheon of the former" (Collins 2006). He questions whether human rights are able of replacing the justification for labour law in terms of welfare or social justice.

The second approach is closest to a reflexive labour law understanding of labour rights. Harry Arthurs' enquiry about the usefulness of viewing labour rights as human rights is a good example of a critical assessment of the instrumental or functional aspect and the context of labour rights as human rights (Arthurs 2006: 61-66; Arthurs 2009). He believes that this discourse disempowers workers by distracting them from political activities. In Arthurs' opinion, reform of labour law happens in political processes and not through human rights discourse or reliance on constitutionally protected rights. Based on his Canadian experience of campaigning for labour rights as human rights he warns against relying too heavily on the judiciary or the ILO to accomplish labour law objectives that cannot be achieved through worker mobilisation.

In contrast, Gunther Teubner (2006), in his analysis of the role of human rights in the emerging law of the world society, adopts a rather optimistic view of the potential of combatting violations of human rights by 'private' transnational actors. In his reflexive law perspective human rights, including labour rights, should be understood as fundamental rights that have three dimensions: firstly they constitute personal rights protecting the autonomy of "the social artefacts called 'persons'"; secondly they protect the autonomy of social discourses like art, science, religion against their subjugation to what Teubner (ibid.) calls "the totalising tendencies of the communicative matrix"; and thirdly human rights limit societal communication, where the integrity of individuals' body and mind is endangered.

For Teubner fundamental rights have a 'horizontal' effect and impose obligations not only on governmental bodies but also directly on private actors. They play an important role in creating a corporate consciousness. The crucial new dimension is for Teubner that they become binding on 'social institutions' and not just on individuals.

However, there is a further dimension to human rights for Teubner. And this is their contribution to constitutionalisation inside organisations and beyond. Human rights play a role in the constitutionalisation of private transnational legal regimes (Teubner 2010a; Teubner 2012). In his theory, global private legal regimes make direct recourse to law and create their own substantive law.

Today, the most prominent private legal regimes are the *lex mercatoria* of the international economy and the *lex digitalis* of the Internet. To these, however, we must add numerous private or private-public instances of regulation and conflict resolution which create autonomous law with a claim to global validity. These postnational formations are organised around principles of finance, recruitment, coordination, communication, and reproduc-

tion that are fundamentally postnational and not just multinational or international. Among them are multinational enterprises building their own internal legal order but also transnational regimes which regulate social issues worldwide. These private regimes clash frequently with the legal rules of nation states and other transnational regimes (Teubner 2010a: 332).

Following this line of analysis we can ask if, and to which extent global labour law can be considered as a postnational legal regime. For this assessment the focus has to shift from public international law in the form of labour standard setting by the ILO to private forms of regulation as part of global labour law. The important arena for this type of constitutionalisation of the regime of global labour law is the adoption and operation of codes of conducts in companies.

Corporate codes are vehicles for the constitutionalisation or quasi-constitutionalisation (Thompson 2011: 99-134) of the private governance regimes of multinational corporations. Constitutionalisation is for Gunther Teubner the result of an intertwining of private and public corporate codes. “Both types of corporate codes, taken together, represent the beginnings of specific transnational corporate constitutions conceived as constitutions in the strict sense” (Teubner 2011: 620). These transnational corporate constitutions are constituted through double reflexivity of secondary legal norms and reflexive social structures.

“An autonomous, non-state, non-political, civic constitutionalisation of multinationals takes place if reflexive social processes, which concern the relationship of the multinational in its various environs, are interwoven with reflexive legal processes. Under these conditions, it makes sense to speak of elements of a genuine constitution in the corporate codes of multinationals” (ibid.).

Teubner identifies in corporate codes typical elements of a constitution. He calls them “norms of the upper level of the codes” which “are neither substantive rules, such as the standards at the lower level, nor mere procedural norms such as those at the central level. Instead, they are explicit superior norms of the company constitution, which are formulated as general principles, and serve both as the departure point for internal norm-generation and as the yardsticks of the internal and external reviews” (Teubner 2010b: 209-10). Corporate constitutional norms include organisational and procedural rules regulating decision-making processes (see also Bottomley 2007).

Of particular concern for a reflexive labour law perspective is what Teubner calls “codification of the boundaries of the organisation in relation to individual freedoms and civil liberties (basic rights)”. This aspect of codes regulates the fundamental relationship of the organisation to its employees (Teubner 1994), and he views these code provisions “as genuine constitutional norms of the multinationals” (Teubner 2010b). Thus, codes of conduct are means of self-constitutionalisation of transnational corporations that to a significant extent are based on recognition of employee rights. And in this sense codes of conduct do not only provide the means for constitutionalisation of multinational companies but also are important sources for the emergence of reflexive global labour law measures. How the constitutionalisation of companies impacts the constitutionalisation of the regime of global labour law is, however, a tricky and so far unresolved question for the theory of societal constitutionalisation.

## References

- Alston, P. (Ed.) (2005): *Labour rights as human rights*. Oxford.
- Amstutz, M. (2001): *Evolutorisches Wirtschaftsrecht. Vorstudien zum Recht und seiner Methode in den Diskurskollisionen der Marktgesellschaft*. Baden-Baden.
- Arthurs, H. (2006): Who's afraid of globalization? Reflections on the future of labour law. In: Craig, J.D.R./Lynk, S.M. (Eds.): *Globalization and the Future of Labour Law*. Cambridge: 51-74.
- Arthurs, H. (2009): The constitutionalization of labour rights. Lecture at the School of Law. University of Leicester 24 November 2009. Available at: [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1531326](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1531326).
- Berman, P.S. (2012): *Global legal pluralism. A jurisprudence of law beyond borders*. Cambridge.
- Blackett, A. (2011): Beyond standard setting: A study of ILO technical cooperation on regional labor law reform in West and Central Africa. In: *Comparative Labor Law & Policy Journal*, 32: 443-492.
- Bothfeld, S./Kremer, S. (2014): Reflexive regulation of employment conditions. In: Aasen, H.S./Gloppen, S./Magnussen, A.-M./Nilsen, E. (Eds.): *Juridification and social citizenship in the welfare state*. Cheltenham: 43-59.
- Bottomley, S. (2007), *The constitutional corporation. Rethinking corporate governance*. Aldershot, Ashgate.
- Braithwaite, J./Drahoš, P. (2001): *Global business regulation*. Cambridge.
- Buhmann, K. (2011): Integrating human rights in emerging regulation of corporate social responsibility: the EU case. In: *International Journal of Law in Context*, 7: 139-179.
- Cass, D.Z. (2005): *The constitutionalization of the World Trade Organization: Legitimacy, democracy, and community in the international trading system*. New York.
- Collins, H. (1999): *Regulating contracts*. Oxford.
- Collins, H. (2006): Theories of rights as justifications for labour law. In: Davidov, G./Langille, B. (Eds.): *The idea of labour law*. Oxford: 137-155.
- Compa, L. (2004): Trade unions, NGOs, and corporate codes of conduct. In: *Development in Practice*, 14: 210-215.
- Deakin, S./Rogowski, R. (2011): Reflexive labour law, capabilities and the future of social Europe. In: Rogowski, R./Salais, R./Whiteside, N. (Eds.): *Transforming European employment policy – Labour market transitions and the promotion of capability*. Cheltenham: 229-254.
- Edwards, T./Marginson, P./Edwards, P./Ferner, A./Tregaskis, O. (2007): *Corporate social responsibility in multinational companies: Management initiatives or negotiated agreements*. ILO Discussion Paper Series 185. Geneva.
- Eurofound (2009): *European and international framework agreements: Practical experiences and strategic approaches*. Dublin.
- European Commission (2002): *Communication on corporate social responsibility: A business contribution to sustainable development*. COM 347 final.
- European Commission (2006): *Communication on implementing the partnership for growth and jobs: making Europe a pole of excellence on corporate social responsibility*. COM 0136 final.
- European Commission (2012): *Transnational company agreements: Realising the potential of social dialogue*, commission staff working document. SWD 264 final.
- Fairbrother P./Hammer, N. (2005): Global unions: Past efforts and future prospects. In: *Relations Industrielles/Industrial Relations*, 60: 405-431.
- Fichter, M./Sydow, J. (2002): Using networks towards global labor standards? Organizing social responsibility in global production chains. In: *Industrielle Beziehungen*, 9: 357-380.
- Fischer-Lescano, A./Teubner, G. (2004): Regime-collisions: The vain search for legal unity in the fragmentation of global law. In: *Michigan Journal of International Law*, 25: 999-1045.
- Gibb, E. (2005): *International framework agreements: Increasing the effectiveness of core labour standards*. Available at: [http://www.globallabour.info/en/2006/12/international\\_framework\\_agreem.html](http://www.globallabour.info/en/2006/12/international_framework_agreem.html).
- Hassel, A. (2008): The evolution of a global labor governance regime. In: *Governance*, 21: 231-251.
- Hepple, B. (2005): *Labour laws and global trade*. Oxford and Portland, OR.

- ILO (1999): Report by the director-general: Decent work. 87th Session of the International Labour Conference. Geneva.
- ILO (2000): A pioneering ILO global report calls for more widespread respect for rights at work. In: *World of Work*, 35: 4-7.
- ILO (2004): A fair globalization: Creating opportunities for all. Report of the World Commission on the Social Dimension of Globalization. Geneva.
- ILO (2008): The decent work agenda – Looking back, looking forward: A growing consensus. In: *World of Work*, 64: 6-9.
- Jenks, C.W. (1960): Human rights and international labour standards. London.
- Jenks, C.W. (1969): A new world of law? A study of the creative imagination in international law. Harlow.
- Kanj, G. K./Chopra, P. K (2010): Corporate social responsibility in a global economy. Abingdon.
- Kaufman, B. (2006): The global revolution of industrial relations. Geneva.
- Kocher, E. (2008): Codes of conduct and framework agreements on social minimum standards – Private regulation? In: Dilling, O./Herberg, M./Winter, G. (Eds.): Responsible business: Self-governance and law in transnational economic transactions. Oxford: 67-86.
- Koskeniemi, M. (2007): The fate of public international law: Between technique and politics. In: *The Modern Law Review*, 70: 1-30.
- Ladeur, K.-H. (2012): The evolution of the law and the possibility of a 'global law'. Extending beyond the sphere of the state – Simultaneously, a critique of the 'self-constitutionalisation'. Thesis. In: AN-CILLA IURIS, 2012: 220-255.
- Lobel, O. (2004): The renew deal: The fall of regulation and the rise of governance in contemporary legal thought. In: *Minnesota Law Review*, 89: 342-470.
- Locke, R./Kochan, T./Romis, M./Qin, F. (2007): Beyond corporate codes of conduct: Work organization and labour standards at Nike's suppliers. In: *International Labour Review*, 146: 21-37.
- Locke, R./Rissing, B./Pal, T. (2012): Complements or substitutes? Private codes, state regulation and the enforcement of labour standards in global supply chains. Massachusetts Institute of Technology Political Science Department Working Paper No. 2012-2. Cambridge, MA.
- Luhmann, N. (2012-3): Theory of society. 2 Volumes. Stanford.
- Luhmann, N. (2014): A sociological theory of law. 2nd ed., Abingdon and New York.
- Luhmann, N. (1995): Social systems. Stanford.
- Luhmann, N. (2004): Law as a social system. Oxford.
- Luhmann, N. (1970): Reflexive Mechanismen. In: Luhmann, N.: *Soziologische Aufklärung*. Vol. 1. Opladen: 92-112.
- Mamic, I. (2004): Implementing codes of conduct: How businesses manage social performance in global supply chain. Geneva and Sheffield.
- Mantouvalou, V. (2012): Are labour rights human rights? In: *European Labour Law Journal*, 3: 151-172.
- Matten, D./Crane, A. (2005): Corporate citizenship: Towards an extended theoretical conceptualization. In: *The Academy of Management Review*, 30: 166-179.
- Matteraa, M./Baenab, V./Cerviñoa, J. (2012): Analyzing social responsibility as a driver of firm's brand awareness. In: *Procedia – Social and Behavioral Sciences*, 58: 1121-1130.
- Mayne, R. (1999): Regulating TNCs: The role of voluntary and governmental approaches. In: Picciotto, S./Mayne, R. (Eds.): *Regulating international business: Beyond liberalization*. Basingstoke: 235-254.
- OECD (1999): Codes of conduct: An inventory. Working party of the trade committee. TD/TC/WP(98)74/Final. Paris.
- O'Rourke, D. (2003): Outsourcing regulation: Analyzing nongovernmental systems of labor standards and monitoring. In: *Policy Studies Journal*, 31: 1-29.
- Papadakis, K. (Ed.) (2011): Shaping global industrial relations. The impact of international framework agreements. Basingstoke.
- Picciotto, S. (2011): Regulating global corporate capitalism. Cambridge.
- Rasche, A./Gilbert, D.U. (2012): Social accountability 8000 and socioeconomic development. In: Utting, P./Reed, D./Reed, A.M. (Eds.): *Business regulation and non-state actors: Whose standards? Whose development?* London: 68-80.

- Rogowski, R./Wilthagen, T. (Eds.) (1994): *Reflexive labour law studies in industrial relations and employment regulation*. Deventer.
- Rogowski, R. (2000): Industrial relations as a social system. In: *Industrielle Beziehungen*, 7: 97-126.
- Rogowski, R. (2009): Reflexive regulation of labour and employment conflict resolution. In: Calliess, G.P./Fischer-Lescano, A./Wielsch, D./Zumbansen, P. (Eds.): *Soziologische Jurisprudenz. Festschrift für Gunther Teubner*, Berlin: 573-586.
- Rogowski, R. (2013): *Reflexive labour law in the world society*. Cheltenham.
- Scherer, A.G./Palazzo, G. (Eds.) (2010): *Handbook of research on global corporate citizenship*. Cheltenham.
- Schwab, G. (2008): Corporate global citizenship: Working with governments and civil society. In: *Foreign Affairs*, 87: 107-118.
- Sengenberger, W. (2006): International labour standards in the globalized economy: Obstacles and opportunities for achieving progress. In: Craig, J.D.R./Lynk, S.M. (Eds.): *Globalization and the future of labour law*. Cambridge: 331-355.
- Shamir, R. (2011): Socially responsible private regulation: World-culture or world-capitalism? In: *Law and Society Review*, 45: 313-336.
- Stavis, D./Boswell, T. (2007): International framework agreements: Opportunities and challenges for global unionism. In: Bronfenbrenner, K. (Ed.): *Global unions – Challenging transnational capital through cross-border campaigns*. Ithaca, NY: 174-194.
- Teubner, G. (1983): Substantive and reflexive elements in modern law. In: *Law and Society Review*, 17: 239-285.
- Teubner, G. (1986): After legal instrumentalism: strategic models of post-regulatory law. In: Teubner, G. (Ed.): *Dilemmas of Law in the Welfare State*. Berlin, New York: 299-325.
- Teubner, G. (1993): *Law as an autopoietic system*. Oxford.
- Teubner, G. (1994): The public interest of the company “in itself”. In: Rogowski, R./Wilthagen, T. (Eds.): *Reflexive labour law studies in industrial relations and employment regulation*. Deventer: 21-52.
- Teubner, G. (1997): Global Bukowina: Legal pluralism in the world-society. In: Teubner, G. (Ed.): *Global law without a state*. Aldershot: 3-28.
- Teubner, G. (2006): The anonymous matrix: Human rights violations by ‘private’ transnational actors. In: *Modern Law Review*, 69: 327-346.
- Teubner, G. (2010a): Fragmented foundations: Societal constitutionalism beyond the nation state. In: Dobner, P./Loughlin, M. (Eds.): *The twilight of constitutionalism?* Oxford: 327-341.
- Teubner, G. (2010b): The corporate codes of multinationals. Company constitutions beyond corporate governance and co-determination. In: Nickel, R. (Ed.): *Conflict of laws and laws of conflict in Europe: Patterns of supranational and transnational juridification*. Oxford and Portland: 203-214.
- Teubner, G. (2011): Self-constitutionalizing TNCs? On the linkage of ‘private’ and ‘public’ corporate codes of conduct. In: *Indiana Journal of Global Legal Studies*, 18(2): 617-638.
- Teubner, G. (2012): *Constitutional fragments. Societal constitutionalism and globalization*. Oxford.
- Teubner, G./Korth, P. (2012): Two kinds of legal pluralism: Collision of transnational regimes in the double fragmentation of world society. In: Young, M. (Ed.): *Regime interaction in international law: Facing fragmentation*. Cambridge: 23-54.
- Thompson, G. (2011): *The constitutionalization of the global corporate sphere?* Oxford.
- Thompson, G. (2012): What is happening to corporations and what of their future? In: Morgan, G./Whitley, R. (Eds.): *Capitalisms and capitalism in the twenty-first century*. Oxford: 298-317.
- Vogel, D. (2005): *The market for virtue: The potential and limits of corporate social responsibility*. Washington.
- Vosko, L.F. (2002): ‘Decent work’ – The shifting role of the ILO and the struggle for global social justice. In: *Global Social Policy*, 2: 19-46.