

Prepared for the *Oxford Handbook of Job Quality*,
edited by Chris Warhurst, Chris Mathieu, and Rachel Dwyer

USING EFFICIENCY, EQUITY, AND VOICE FOR DEFINING JOB QUALITY
AND LEGAL REGULATION FOR ACHIEVING IT

Stephen F. Befort
University of Minnesota Law School
229 19th Avenue South
Minneapolis, MN 55455 USA
befor001@umn.edu

Silvia Borelli
Department of Law
University of Ferrara
Corso Ercole I d'Este 37
44100 Ferrara ITALY
brslv@unife.it

John W. Budd
Center for Human Resources and Labor Studies
Carlson School of Management
University of Minnesota
321 19th Avenue South, Suite 3-300
Minneapolis, MN 55455 USA
jbudd@umn.edu

Version Date: December 11, 2017

Abstract

This chapter uses the three key employment relationship objectives identified by pluralist employment relations theory—efficiency, equity, and voice—to define the elements of job quality. This unique approach results in the principle that high-quality jobs are those that deliver efficiency, equity, and voice for workers and organizations whereas low-quality jobs lack efficiency, equity, and/or voice. The resulting job quality measures are new additions to the scholarly literature and policy statements on job quality, especially with respect to efficiency and voice. Notably, the foundational use of efficiency, equity, and voice uniquely indicated that good jobs are not only those that are good for workers, but are also productive jobs that serve organizational and societal interests and that provide multiple channels of voice. Pluralist industrial relations thought is also used to inform strategies for achieving high levels of job quality. In contrast to alternative perspectives that rely on markets or organizational leaders, a pluralist industrial relations approach focuses attention on how to structure capitalist, non-market institutions to promote desirable levels of job quality. Legal interventions in the United States and Europe that can promote job quality by improving efficiency, equity, and/or voice are used as illustrations.

To establish dimensions and measures of job quality, an underlying framework is needed to serve as a guide for identifying what is considered important. Many frameworks are possible. For example, an approach rooted in economic theorizing would identify income and other economic aspects of work as key elements of job quality. The approach in this chapter is to use the objectives of the employment relationship as a framework for crafting dimensions and measures of job quality. In other words, questioning what the employment relationship is intended to produce provides an important framework for identifying the important elements of job quality.

Specifically, we draw on pluralist industrial relations theorizing that indicates that there are three key employment relationship objectives—efficiency, equity, and voice (Budd 2004)—to define the elements of job quality. This is a unique approach that says that high-quality jobs are those that deliver efficiency, equity, and voice for workers and organizations whereas low-quality jobs lack efficiency, equity, and/or voice. Some of the job quality measures derived from this framework, especially in the equity dimension, are consistent with those rooted in other frameworks, such as the Charter of Fundamental Rights of the European Union (EU) or the conventions of the International Labour Organization (ILO). But rooting job quality in the objectives of the employment relationship is a unique approach that deserves consideration. And the specific use of efficiency, equity, and voice uniquely says that good jobs are not only those that are good for workers, but are also productive jobs that serve organizational and societal interests and that provide multiple channels of voice.

But how to achieve high levels of job quality in practice? A pluralist industrial relations perspective again underlies the approach in this chapter. Neoliberal market theorizing points toward competitive labor markets as the best route for achieving job quality while the unitarist human resource management model focuses on the role of enlightened organizational leaders in

crafting high-quality jobs. But pluralist industrial relations thought rejects the reliance on markets because of market imperfections and discounts the reliance on organizational leaders because of assumed conflicts of interests between employers and employees (Budd and Bhawe 2010). So institutional interventions such as legally-enforceable labor standards forms of independent worker representation such as works councils and labor unions are seen as necessary to make high-quality jobs a reality. In other words, without binding rules, job quality standards are unlikely to be effective. This chapter, then, considers some examples of legal interventions in the United States and Europe that can promote job quality by improving efficiency, equity, and/or voice.

FOUNDATIONS OF INDUSTRIAL RELATIONS THEORIZING

Industrial relations scholarship is characterized by a multidisciplinary approach to studying and improving the employment relationship, rooted in a concern with the labor problems that were created by the transformation of work brought on by the industrial revolution and the rise of industrial capitalism (Kaufman 2004). The then-newfound importance of labor markets for determining workers' wages and working conditions were and are analyzed by classical and then neoclassical economists through a lens that embraces perfect competition and the importance of consumption and other economic activities. The industrial relations paradigm, in contrast, emphasizes imperfectly-competitive labor markets in which employers typically have a power advantage over workers, and embraces a broader social view in which non-economic goals are also important. Workers' rights, institutions, and power are therefore important in industrial relations thought (Hyman 1975; Budd 2004; Heery 2016).

Perhaps the most famous critic of the classical economists, especially in the context of a concern for the plight of workers under capitalism, was Karl Marx. Unlike the classical economists who saw capitalism as something separate from society, Marx viewed it as set of unequal power

relations created by society. Today's critical school of industrial relations continues to see the employment relationship as an unequal power relation between antagonist groups embedded in systemic inequalities throughout the socio-politico-economic system (Heery 2016; Kelly 1998).

In the late 19th and early 20th century, Sidney and Beatrice Webb in Britain, John R. Commons in the United States, and others sought to craft an institutional approach to economic analysis that, like Marx and his followers but unlike the (neo)classical economists, emphasized the human and the moral implications of economic activity and the contingencies of institutions (Kaufman 2004, 2005). But unlike the early followers of radical Marxist thought, Commons (1934: 143) and others sought "to save capitalism by making it good." From these roots sprang today's pluralist school of industrial relations that recognizes the human qualities of labor, rejects perfectly-competitive labor markets, and accepts capitalism (Kaufman 2004), and therefore sees the employment relationship as characterized by a plurality of legitimate interests akin to a pluralist political system (Ackers 2014). Whether in the context of scholarship by industrial relations scholars, legal scholars, institutional economists, sociologists, or others, pluralist industrial relations thought therefore embraces the use of institutions within the capitalist system to solve labor problems, and places greater weight on balancing a plurality of competing yet legitimate employer and employee interests in the workplace and society than does the critical school (Budd 2004; Heery 2016).

USING EMPLOYMENT RELATIONSHIP OBJECTIVES TO DEFINE JOB QUALITY

The interests of the parties to the capitalist employment relationship are a key concern in industrial relations scholarship. Indeed, a central thesis of this chapter is that an industrial relations contribution to thinking on job quality is that job quality should be defined through these interests. In a modern statement of pluralist industrial relations theorizing, Budd (2004) and Befort and Budd

(2009) argue that the central objectives of the employment relationship are:

Efficiency: effective, profit-maximizing use of labor and other scarce resources.

Equity: fairness in the distribution of economic rewards, the administration of employment policies, and the provision of employee security.

Voice: meaningful participation in workplace decision-making.

Efficiency, Equity, and Voice

The neoliberal market ideology emphasizes competitiveness, economic development, jobs, and economic prosperity. As such, the effective use of scarce resources (efficiency) is important to consider as an objective of the employment relationship. A sole focus on efficiency, however, reduces the employment relationship to a purely economic transaction that workers endure solely to earn money. But work is a fully human activity—in addition to being an economic activity with material rewards undertaken, work is also a social activity with psychological rewards undertaken by human beings / citizens in democratic communities (Budd 2011). The goals of economic activity should not be seen solely as production and consumption, but as also contributing to “the full and harmonious development in each individual of all human faculties” (Ely 1886: 3).

It is therefore common in industrial relations to highlight equity as a key objective of the employment relationship (e.g., Barbash 1984; Budd 2004). Equity entails fairness in the distribution of economic rewards, the administration of employment, and the provision of employee security. While human resource management emphasizes fairness and distributive justice, especially to enhance organizational performance (Greenberg 2011), the industrial relations concern with equity traces back to the sometimes abusive employment practices of the early 20th century, such as long hours at low wages in dangerous working conditions (Kaufman 1997). From an industrial relations perspective, then, equitable employment outcomes traditionally

involve minimum standards—minimum wages, maximum hours, minimum safety standards, protections against arbitrary discharge and favoritism, restrictions on child labor, provision of robust social safety nets, and the like. These elements of workplace equity are rooted in political theories of liberty and democracy, moral views of human dignity, humanistic psychology theories of human nature, and religious beliefs about the sanctity of human life (Budd 2004).

In addition to equity, industrial relations scholarship also highlights the importance of employee voice. Voice is the ability to have meaningful employee input into decisions both individually and collectively. This includes not only free speech, supported by unfair dismissal protections and grievance procedures, but also direct and indirect participation in workplace decision-making. Unlike a human resource management perspective that emphasizes employee participation to improve competitiveness and quality, the industrial relations conception of voice focuses on industrial democracy rooted in political theories of liberty and democracy and is premised on the belief that workers in a democratic society are entitled to the same democratic principles of participation in the workplace as in the political arena (Derber 1970). But the importance of individual voice should not be overlooked. In particular, the ability to speak freely and participate in decision-making can be seen as ends in themselves for rational human beings in free, democratic societies. Moreover, religious social teachings, Kantian ethics, humanistic psychology, the stakeholder theory of the firm, and various political theories all support the centrality of employee voice in the modern employment relationship (Budd 2004).

Industrial relations thought further assumes that there are at least some inherent conflicts between efficiency, equity, and voice. Critical perspectives tend to emphasize sharply antagonistic employer-employee conflict and therefore privilege equity and voice (or other conceptualizations of workers' interests) over efficiency and other employers' interests. A central premise of the

pluralist industrial relations paradigm, however, is that the legitimate interests of employers and employees should be balanced. Pluralist industrial relations thought fully respects capitalism and business owners' need to make a profit, but in contrast to mainstream economic thought and the neoliberal market agenda, efficiency is not paramount. Rather, balancing workers' rights / citizenship elements and employers' property rights is necessary for striking a balance among efficiency, equity, and voice (Budd 2004).

Implications for Job Quality

Pluralist industrial relations thought seeks to understand how institutions and practices affect efficiency, equity, and voice while also trying to design institutions and practices to balance efficiency, equity, and voice. A pluralist industrial relations perspective on job quality, therefore, is one that analyzes job quality through a lens that focuses on the efficiency, equity, and voice aspects of jobs as importantly affected by institutions. Specifically, this reasoning within pluralist industrial relations thought indicates that high-quality jobs fulfill efficiency, equity, and voice, while low-quality jobs are those that lack one or more of these elements. And non-market institutions are needed to promote and protect high levels of job quality while improving jobs that are of low quality.

From a critical industrial relations perspective, less weight would be placed on efficiency, and more weight placed on employee power. Indeed, the literature on job quality frequently ignores efficiency issues and focuses largely on focuses on worker-oriented dimensions of equity (e.g., Antón et al. 2012) or equity and voice (e.g., Pocock and Skinner 2012). A pluralist industrial relations perspective uniquely implies that efficiency should also be a legitimate dimension of job quality. From a macro or social perspective, good jobs should add value. In other words, a job that provides many favorable benefits to workers and has robust levels of voice, but is a wasteful or

unproductive job should not be seen as a good job from a macro perspective. This thinking is reinforced by considerations of meaningful work as part of job quality—namely, it seems reasonable to hypothesize that doing something productive and valuable (broadly-defined) at least adds to, if is not required for, deriving a robust sense of meaning from one’s work.

USING EFFICIENCY, EQUITY, AND VOICE TO MEASURE JOB QUALITY

A paradigm of balancing efficiency, equity, and voice can be a powerful conceptual framework, but the dimensions of efficiency, equity, and voice need more specificity if they are to be useful in measuring and improving specific issues such as job quality. A straightforward approach is to identify the key elements that are believed to comprise an efficient employment relationship and turn them into measures, and then to repeat this exercise for an equitable employment relationship and for an employment relationship that delivers voice.

This approach partly aligns with popular job quality indices. Specifically, the equity dimension captures non-participatory aspects of a job that are consistent with the fulfillment of human dignity, and these aspects are well-represented in existing indices. Decent pay, safe working conditions (physically and mentally), skill usage, social support, fulfillment, absence of abuse, employment stability and security, and work-life balance measures, for example, are key parts of the job quality index measured in the European Working Conditions Survey (Antón et al. 2012; Eurofound 2012). An industrial relations perspective on the equitable employment relationship also suggests that nondiscrimination and balanced income distributions should be important measures, and the U.S. experience also highlights the need to include measures of health insurance coverage, retirement security, and unjust dismissal protections since these are often lacking in the United States.

But rooting job quality indices in an efficiency, equity, and voice framework also reveals

the narrowness of existing measures. The previously-mentioned index from the European Working Conditions Survey, for example, is limited in its incorporation of voice and overlooks efficiency considerations. So equity-based measures of job quality need to be complemented by additional measures. With respect to voice, we propose four broad dimensions based on inclusive conceptualizations of employee voice (e.g., Dundon et al. 2004): 1) employee free speech, 2) individual self-determination, 3) consultation, codetermination, and social dialogue, and 4) countervailing collective voice such as trade unions that have sufficient power to counterbalance corporate power. Specific measures could then be constructed that capture the availability of a particular worker to engage in individual forms of voice (#1 and 2), and the extent to which a worker is covered by collective voice institutions such as a works council or a trade union when desired (#3 and 4).

Efficiency is perhaps the most challenging aspect of job quality to measure. Freedom of occupational choice, the ability of workers to move to new jobs, and opportunities for training and development could be starting measures. High wages could be an indicator of jobs that add value to the economy, but alternatively could reflect scarcity of skills. Employer flexibility could also be a measure of the extent to which jobs are able to be productive. This squarely brings the pluralist industrial relations prescription of a balanced employment relationship into the conversation because excessive employer flexibility undermines employment security and other aspects of the equity dimension, while excessive rigidity could indicate a lack of efficiency. So some kind of balanced measures are needed. More work is clearly needed in this area of measuring job quality.

In addition to providing a foundation for identifying specific elements of measurable job quality indices, a pluralist industrial relations approach that emphasizes the need for public policy provides a complementary approach to assessing job quality. Specifically, we can evaluate the

extent to which public policy supports or falls short of fostering job quality through the promotion (or not) of efficiency, equity, and voice, and thereby create aggregate, country-specific scorecards that can be used for comparative analyses. In the remainder of this section, we illustrate this approach by considering the current status of efficiency, equity, and voice in the United States and European Union (EU) with a particular emphasis on the connections with existing U.S. and E.U. public policy; in the next section we describe specific U.S. and E.U. public policy changes that could improve job quality by enhancing efficiency, equity, and/or voice.

Efficiency

United States

Efficiency is usually seen as achieved by self-interested agents freely interacting in competitive markets. From such a view, the most efficient employment regime is the one with the fewest legal constraints, and the U.S. system should rank as highly efficient. U.S. labor and employment law evolved out of a strong laissez faire tradition, and the American employment relationship continues to be subject to far less governmental “interference” than in the remainder of the industrialized world. But this does not necessarily mean that the system of workplace regulation currently in place operates in an efficient manner. Indeed, two aspects of the present-day U.S. regime fall particularly low on the overall efficiency scale (Befort and Budd 2009).

First, the U.S. regulatory scheme relating to the individual employer-employee relationship is a confusing, overlapping maze that imposes undesirable transaction costs. U.S. employment law relies principally on a litigation enforcement model. But there is no overarching federal statute that regulates employment matters, nor is there a single enforcement tribunal such as a labor court. Instead, employees may assert a multiplicity of federal, state, statutory, and common law claims. Not only are many of these claims overlapping in nature, but they are subject to a multiplicity of

forums, including federal courts, state courts, administrative agencies, and private arbitration. The result is a system that is costly to access and quite time consuming.

Second, the prevalent employer-sponsored system of employee benefits in the United States, particularly with respect to health care benefits and private pensions, taxes select employers, under-provides benefits, and dampens employment. Approximately 60 percent of all individuals in the United States who are younger than age 65 obtain health insurance through an employer-provided plan. While the Affordable Care Act provides significant incentives to expand overall insurance coverage, the system continues to rely on an employment-based model rather than a single payer regime. In addition, about one-half of all American workers are covered by employer-sponsored pensions. This benefit model comes with some significant disadvantages. Many Americans are uninsured or have no pension to supplement government-sponsored Social Security benefits. In addition, the cost of providing these benefits can dampen employment. Since benefit costs are usually fixed for each employee, companies can reduce costs by hiring fewer employees and asking them to work longer hours. Finally, U.S. firms operate at a competitive disadvantage to non-U.S. companies that do not bear similar costs.

European Union

In the E.U., the debate on efficiency has been mainly focused on labor productivity. However, after the financial and economic crisis, the legitimacy of labor laws has been undermined by claiming that these laws interfere with the efficient functioning of free markets and unduly limit the employer's freedom to manage, hire and fire without restraint. The concept of efficiency has therefore shifted from labor productivity to reducing legal and administrative burden (see, for example, the European Commission's Communication, *EU Regulatory Fitness*, COM(2012)746 final).

The neo-liberal policies supported by several governments have also weakened the trade unions' action, particularly in the post-communist countries of Central and Eastern Europe that are experiencing "a kind of allergy to the interference to the free market economy relations" (Lyutov 2013: 8). In Western Europe, several Member States (e.g. Germany, France, Greece, Spain, Italy) have allowed collective agreements at the company level to derogate from the standards set by national collective agreements. The resulting weakening of supra-company collective industrial relations has caused an explosion of individual disputes. However, the European litigation model is extremely inefficient in the countries where there are severe shortcomings in the judicial administration of employment disputes (e.g., Spain, France, Italy, Greece).

Finally, to overcome the inefficiencies and others costs of high levels of unemployment, many European Union States have enacted active labor market policies. Unfortunately, the impact of these policies on reducing unemployment so far seems to be less promising than many had hoped. The States most affected by the diktat of the European economic governance (e.g. Portugal, Greece, Spain and Italy) cannot invest enough to reorganize and invigorate employment services. The reforms have sometimes been set up quickly and so do not follow a coherent design.

Equity

United States

With respect to equity, the United States generally promotes positive job quality through laws relating to employment discrimination and workplace health and safety. Three federal statutes prohibit discrimination on such important characteristics as race, sex, age, and disability (Title VII of the Civil Rights Act, Age Discrimination in Employment Act, and Americans with Disabilities Act). Notably absent, however, is any ban on sexual-orientation discrimination. The Occupational Safety and Health Act also provides broad-based provisions designed to safeguard the working

environment. Enforcement largely relies on monitoring via site visits by government safety inspectors, perhaps prompted by employee complaints, injuries, or fatalities. While a lack of inspectors reduces the effectiveness of the statute in practice, avoiding monetary penalties also provides an incentive for employers to improve safety (Mendeloff and Gray 2005).

The United States does less well on several other facets of the equity dimension (Befort and Budd 2009). U.S employers are increasingly using contingent workers, *i.e.*, leased, temporary, and other arrangements in which workers have little long-term attachment to the employing entity. These workers, particularly those classified as "non-employees" under U.S. law, generally receive lower compensation and benefits and fall outside the regulatory safety net that applies only to "employees" (Bauer 2015).

Increasing global competition also has placed considerable stress on the work-life balance of American workers. The average full-time American employee now works nearly 200 more hours per year than thirty years ago, and the United States leads the industrialized world in the number of hours worked per full-time employee. Meanwhile, the federal Family and Medical Leave Act provides no pay to employees who seek time off for parenting or sick leave purposes. These deficiencies, combined with the continuing decline of the U.S. labor movement, have contributed to a significant growth in income inequality. Currently, the poorest twenty percent of U.S. households earn less than 5 percent of U.S. total income, while the richest 20 percent earn more than half of the country's total income (Elwell 2014).

Finally, U.S. job quality falls short in two important measures of security. Most U.S. employees—at least outside of the shrinking unionized sector—lack employment security. Under the uniquely American employment-at-will rule, employers have the right to terminate employees without cause. Retirement security also is precarious for many American workers. The

government-sponsored Social Security system is underfunded, endangering the viability of future benefit commitments.

European Union

E.U. Labor Law, as well as U.S. Labor Law, promotes job quality through a solid legal framework on antidiscrimination and workplace health and safety. Since the beginning of European integration, equality between men and women has been guaranteed and promoted by the Treaties and the adoption of several directives. After the implementation of the Amsterdam Treaty, antidiscrimination law has been expanded to other grounds, such as race, ethnic origin, religion, belief, disability, age, and sexual orientation.

Key measures to improve health and safety at work have been enforced by Directive 89/391/EC. Moreover, the European Commission has adopted several multiannual strategies [see Commission's Communication, *EU Occupational Safety and Health Strategic Framework 2014-2020*, (COM (2014)332 final)] and a European Agency for Safety and Health at Work (EU-OSHA) has been set up. Health and safety regulations are nowadays submitted to an evaluation of their adequacy, efficacy, and coherence in the context of the *Regulatory Fitness and Performance Programme* (REFIT).

In the E.U., as in the U.S., the number of contingent workers is increasing. These workers are called non-standard workers (since they deviate from the full-time contract of indefinite duration), atypical workers, or precarious workers (since they are usually employed in low-skilled and low-income jobs, they have less career opportunities and no job security, and they receive lower social security benefits). The number of economically dependent workers is also expanding. Although formally self-employed, this category of persons remains economically dependent on a single principal or client for its source of income (Borelli 2012). Along with widespread

undeclared work and informal employment, these trends undermine the effectiveness of European labor regulation. Notwithstanding the attention recently put on this topic (e.g., the launch of a European Platform tackling undeclared work), the drastic cuts in public expenditure entailed by the austerity measures adopted to face the economic and financial crisis have had a negative impact on the number of labor inspectors, the enforcement of integrated databases, and, in general, the means necessary to fight informal employment.

Work-life balance policies in Europe are very different from one country to another (Eurofound 2014). These policies are currently threatened by the budget restraints that have entailed an externalisation of the social services and a general reduction of public services provided. This has obliged many families to find self-made solutions that often involve irregular work performed by female migrants (Angermann and Eichhorst 2013; Carbonnier and Morel 2015; Fudge 2014).

The European situation is not encouraging either for income inequality. The declining role of national collective agreements, together with the individualisation of the employment relationship, have brought a significant increase of income inequality. Facing an enlarging social instability, in 2015, Germany has introduced a minimum wage. Similar policies are currently supported as an instrument to mitigate the risk of deflation some European States are facing.

Concerning job security, no legislation in Europe allows the employment-at-will rule, and the right to protection against unjustified dismissal is guaranteed as fundamental right (Art. 30 of the Charter of Fundamental Rights of the European Union). However, practically all European countries have recently reduced job protection regulations governing the termination of employment contracts. Indeed, since 2007 the EU has strongly promoted *flexicurity*, i.e. an integrated strategy to enhance flexible contractual arrangements and security in the labor market

(European Commission 2007, 2013; Muffels and Wilthagen 2013). The latter part of the strategy could however not be implemented due to financial constraints, so that unemployment benefits, employment services and active labor market policies remain in need of further strengthening almost all over Europe.

Finally, European job quality concerning retirement security has been affected both by a series of reforms to foster postponing retirement of workers and by the reduction of pensions, especially in the South and periphery of Europe, which includes Greece, Ireland, Italy, Portugal, Spain, Bulgaria, Croatia, Cyprus, Estonia, Latvia, Lithuania, Malta, and Romania (European Commission 2015). There, the necessity to preserve long-term financial sustainability of the pension system and to contain public expenditure has led to significant cuts of public pensions.

Voice

United States

The United States has few effective mechanisms for facilitating employee voice. Private sector employees have no right to engage in free speech or to demand a say in how work is scheduled. Outside of the unionized sector, employees have no legal right to participate in workplace decision making. Indeed, the National Labor Relations Act actually prohibits some types of employee participation programs, particularly those that focus on representing employee interests (Moberly 2005).

Collective bargaining through trade unions represents the principal voice mechanism for employees in the United States (Befort and Budd 2009). The trade union movement, however, is in decline and now represents only eleven percent of the non-agricultural workforce. At least some of this decline is likely the result of deficiencies in the National Labor Relations Act. Employers are permitted to actively oppose union organizing efforts, and even illegal activities, such as firing

union adherents, are met with weak and ineffective remedies. The right to strike, while protected by statute, is significantly weakened by management's right to hire permanent replacement workers (*NLRB v. Mackay Radio* 1938).

Putting these three dimensions together can then yield a scorecard for job quality. An overview of an aggregate scorecard with a U.S. public policy emphasis is provided in Figure 1. More detailed scorecards could also be created with more detailed measurable dimensions within the three broad categories of efficiency, equity, and voice. Note that the normative implications of these analyses depend on the relative importance one wants to give the three objectives. Regardless of these weights, however, explicitly analyzing the dimensions of efficiency, equity, and voice provides a useful and unique way to conceptualize and measure possible aspects of job quality.

European Union

E.U. law provides a rich set of directives on workers' rights of information and participation. On one side, there are the sectorial directives, concerning transfers of undertaking (Directive 2001/23/EC), collective redundancies (Directive 98/59/EC), and health and safety at work (Directive 89/391/EEC). On the other side, there are the directives that regulate the workers' rights to be informed and consulted at national level (Directive 2002/14/EC) and in European-scale enterprises and groups of enterprises (Directive 2009/38/EC). All these regulations have been submitted to a fitness check in the context of the REFIT programme. Furthermore, it must be underlined that workers' abilities to participate in decision making are significantly weaker in small and medium enterprises and are still highly ineffective in some States, especially in Eastern Europe.

As already mentioned, almost all European countries witnessed a decentralization of collective bargaining. This process is caused both by market-oriented labor law reforms and by the

decision of several employers to leave their organizations so that they can autonomously bargain at a company level. Moreover, in Greece, Italy, Spain, and Portugal, public sector collective bargaining has been marginalized by the exigency to cut public expenditure and reduce public debt.

The role of the trade unions has been challenged also by the financial constraints imposed by international organizations and EU institutions. These constraints heavily reduce the States' autonomy in developing their own national policies so that conservative governments (as in Spain) have almost ignored the trade unions' requests, while trade unions are incapable of developing joint actions vis-à-vis left-wing governments (as in France and in Italy).

EU law lists the right to strike among the fundamental rights (Art. 28 of the Charter of Fundamental Rights of the European Union). Notwithstanding that the right to strike has been severely limited by the European Court of Justice (ECJ) decisions known as *Laval Quartet*. In these decisions, the ECJ has considered the freedom to perform an economic activity in different Member States as prevailing over the right to strike. The European Court of Human Rights has reacted to the ECJ decisions by guaranteeing the right to strike under Art. 11 of the European Convention on Human Rights (*Demir and Baykara*, Grande Chambre, *Application no. 34503/97*).

The job quality scorecard constructed around efficiency, equity, and voice in Europe, therefore, is one that shows that that job quality in Europe is higher than in the United States on the equity and voice dimensions (see Figure 2), but also suggests that the situation is worsening in these two critical dimensions (Green et al. 2013). This is mainly due to the E.U. response to the economic and financial crisis. The austerity programmes imposed by the E.U. institutions have obliged the Member States to cut drastically their public expenditure, and this has entailed an overall decline of job quality. Currently, labor lawyers across Europe are trying to use the

European Social Charter (ESC) and the ILO Conventions as a protective barrier against regressive labor law reforms, but their efforts are still largely ineffective due to the difficulties in enforcing both ESC and ILO regulations (De Schutter 2014).

PROMOTING JOB QUALITY THROUGH INSTITUTIONAL INTERVENTIONS THAT BALANCE EFFICIENCY, EQUITY, AND VOICE

Pluralist industrial relations thought indicates not only that high-quality jobs fulfill efficiency, equity, and voice, but also that non-market institutions are crucially important. So through this lens, any consideration of job quality closely intersects with legal regulation and public policy. In this section we examine potential legal regulation and public policies that could enhance job quality in both the United States and in the European Union.

Efficiency

United States

To many, the best governmental policies for promoting economic efficiency are limited to the maintenance of law and order so that the invisible hand of the marketplace can produce efficient outcomes. But to be completely effective, markets need to be perfectly competitive. There are many factors that inhibit perfect competition in the labor market—employees often have imperfect information about accident risks and pensions, a lack of savings can make it difficult to hold out for the best job, and there are many externalities in the modern employment relationship. Consequently, public policies that correct market failures can enhance efficiency and thereby improve this aspect of job quality (Befort and Budd 2009).

One means to enhance efficiency interests that underpin job quality in the United States would be to streamline workplace law enforcement into a more coherent and efficient system. Overlapping claims and multiple forums should be consolidated in proceedings before an expert

administrative or arbitral tribunal (Befort and Budd 2009). Efficiency also would be served by decoupling benefits, such as health care coverage, from employment. A single-payer universal health care system—the norm in most industrialized countries—would enhance the overall level of employment and improve the competitive capabilities of American employers. Employee benefits also should be made more portable so that employee mobility is not deterred by a potential loss of benefits.

European Union

In the E.U. efficiency is currently undermined by the unbalanced economic growth among the Member States. In the South and periphery of Europe, the unemployment rate is stubbornly high, and youth unemployment was, at the beginning of 2015, 50.1% in Greece, 49.6% in Spain, 45.5% in Croatia, and 40.9% in Italy (Eurostat 2015). It is now clear that the financial constraints imposed on these countries have worsened the situation.

Several programmes have been launched to tackle unemployment (such as the *Youth Guarantee*; the *Employment Package*; and the *Social Investment Package*). However, these *ad hoc* programmes could not reverse the effects of the constraints imposed by the European Economic Governance. In order to support efficient active labor market policies, the Member States should be allowed to elaborate and finance long-term policies on vocational education and training systems, and to implement education and training systems adapted to the country's economic and institutional context (Zimmermann et al. 2013; Eichhorst et al. 2015).

The European 2020 strategy, launched in 2010, has targeted 75 percent employment rates for 20-64 year-olds. Even if the target is too ambitious, it is clear that to increase the employment rate, supply-side policies are necessary (Ritzen and Zimmermann 2014). Many commentators have underlined as well the need to fight against inequality (Galbraith 2012): as the former President of

the E.U. Parliament Martin Schultz declared, a CEO earns 100 times more than the company's average worker but he/she does not buy 100 times more meals, or have 100 times more haircuts or buy 100 times more cars.

Finally, research demonstrates that the high use of temporary contracts of employment hampers productivity growth within firms (Lucidi 2012). E.U. law should therefore foster contracts of an indefinite duration that “are, and will continue to be, the general form of employment relationship between employers and workers,” since, as declared by the Agreement on fixed-term work annexed to Directive 1999/70/EC, indefinite employment relationships “contribute to the quality of life of the workers concerned and improve performance.”

Equity

United States

The forces of global trade and technology have altered the relative power of labor and capital in the economic marketplace, with negative consequences for equity in the U.S. employment relationship. Several public policy options could help to rectify this situation. These include (Befort and Budd 2009):

- The adoption of paid family and sick leave to improve work-life balance;
- Extending protective employment regulations to dependent workers and preventing the misclassification of employees as independent contractors;
- Improving employment security by adopting legislation that would protect employees from termination in the absence of good cause;
- Improving retirement security by ensuring the financial survival of the Social Security system;
- Extending anti-discrimination protection to gay, lesbian, and transgendered

employees; and

- Enhancing occupational health and safety monitoring.

These policies would also help to foster more balanced income distributions, as would limits on corporate tax deductions for excessive levels of executive compensation.

European Union

Equity in Europe has been severely worsened by the measures adopted to face the economic and financial crisis. Moreover, the REFIT programme is threatening labor law which is considered as a burden to the economic development of enterprises, in particular, health and safety at work regulation. Therefore, it is currently necessary to reverse the “delegitimation” of labor law, i.e. accusing it of interfering with the efficient functioning of free markets. First of all, the importance of social services to promote work-life balance must be recognized, and the financial constraints to develop these services should be removed. Second, the right to adequate social security benefits (Art. 34 Charter of Fundamental Rights of the European Union) must be guaranteed to every person that resides in a Member State. Finally, the role of health and safety regulation to protect the dignity of workers must be recognized.

In order to fight the pauperization of working condition, it is necessary to introduce in all countries a minimum wage. Moreover, the substantial definition of worker provided by the ECJ and codified in some directives should be employed to prevent the misclassification of workers. Also, a substantial definition of employer would help in detecting the real employer in case of outsourcing. The principles of non-discrimination between non-standard and standard workers are an important instrument to assure decent working conditions for contingent workers, but they should be strengthened by rules on remedies and enforcement. Finally, the rights guaranteed by the EU Charter of Fundamental Rights, by the ESC, and by the European Convention on Human

Rights, must be effectively used to verify the legitimacy of EU law in all fields, included the European Economic Governance (Kilpatrick and De Witte 2014).

Equity can also be promoted by tackling “regime shopping.” No enterprise in Europe should be allowed to perform its activity throughout Europe complying only with the rules of the country where it has decided to establish its main seat, in some cases this being only a letterbox. The fundamental principle of *lex loci laboris* must therefore be re-stated.

Voice

United States

With respect to voice, the situation is slightly more complex because public policy cannot mandate voice. The role of public policy, therefore, is to facilitate employee voice by protecting individuals who want to exercise various forms of voice and by outlawing actions that restrain employee voice (Befort and Budd 2009).

In the United States, voice can be enhanced by enacting free speech protection for private sector employees (balanced with legitimate employer concerns) and by giving employees a right to request modified work schedules, a right already established in several European countries. The United States also should adopt legislation clarifying and encouraging the type of participation and consultation provided in the European Union's Works Council Directive (Directive 2009/38/EC).

The most crucial step needed in the United States to enable employee voice is to strengthen the National Labor Relations Act's protection of the rights of employees to unionize and to engage in meaningful collective bargaining. Desirable reform measures include limiting employer interference in employee organizing efforts, enhanced remedial measures for illegal employer interference, and prohibiting the hiring of permanent strike replacements.

European Union

As already mentioned, EU Law could play a fundamental role in supporting European and transnational agreements. In January 2013, the European Parliament invited the Commission to adopt a proposal for a legal act on information and consultation of workers, anticipation and management of restructuring (European Parliament Resolution of 15 January 2013 with recommendations to the Commission on information and consultation of workers, anticipation and management of restructuring, 2012/2061(INI)).

Another important debate in Europe concerns the type of participation. During the crisis, the German *Mitbestimmung* (co-determination) has demonstrated to be an efficient instrument to avoid the negative effects of the recession. However, EU legislation in the area of company law has placed the German model of co-determination under pressure.

Finally, the E.U. should terminate the accession process to the European Convention for the Protection of Human Rights and Fundamental Freedoms (as stated by Art. 6 § 2 of the Treaty of European Union), so that the E.U. institutions, as well as the Member States, will be obliged to respect the rights here guaranteed (first of all, the right of collective action) (Dorssemont et al. 2013).

CONCLUSION

The intellectual principles of industrial relations sketched in the previous sections yield an industrial relations perspective on job quality that emphasizes workers' rights and the need for non-market institutions to provide safeguards against poor levels of job quality and to provide improvements in job quality. This perspective highlights a workers' rights view of job quality because industrial relations sees workers as citizens entitled to standards of human dignity and self-determination, and the importance of institutions is derived from the belief in imperfect rather than perfectly-competitive labor markets (which discounts a reliance on markets for providing job

quality) and a belief in conflicts of interests in the employment relationship (which discounts a reliance on managers for providing job quality). A specifically-pluralist perspective further, and uniquely, points to efficiency as an important dimension of job quality in addition to the dimensions of equity and voice. Consequently, a pluralist industrial relations approach also includes significant attention on how to structure capitalist non-market institutions to effectively balance a plurality of competing yet legitimate employer and employee interests and thereby promote desirable levels of job quality.

With that said, industrial relations scholarship focuses more on how workers should be treated than on the nature of work and why workers work. This is a limitation of this paradigm, and this approach to job quality should be complemented with other scholarship that focuses more directly on the nature of work. In particular, work can have many meanings and many facets (Budd 2011), and our treatments of job quality or job-related well-being need to be equally rich (Budd and Spencer 2015; Cooke, Donaghey, and Zeytinoglu 2013; Rothausen 2013). Industrial relations has a strong tradition of embracing multidisciplinary approaches so it should welcome these types of complementary perspectives on job quality and worker well-being.

REFERENCES

- Ackers, Peter (2014) "Rethinking the Employment Relationship: A Neo-Pluralist Critique of British Industrial Relations Orthodoxy," *International Journal of Human Resource Management*, 25: 2608-25.
- Angermann, Annette, and Werner Eichhorst (2013) "Who Cares for You at Home? Personal and Household Services in Europe," IZA Policy Paper No. 71.
- Antón, José-Ignacio, Enrique Fernández-Macías, and Rafael Muñoz de Bustillo (2012) "Identifying Bad Jobs Across Europe," in Chris Warhurst et al., eds., *Are Bad Jobs Inevitable? Trends, Determinants and Responses to Job Quality in the Twenty-First Century* (Basingstoke, Hampshire: Palgrave Macmillan): 25-44.
- Barbash, Jack (1984) *The Elements of Industrial Relations* (Madison: University of Wisconsin Press).
- Bauer, David (2015) "Misclassification of Independent Contractors: The Fifty-Four Billion Dollar Problem," *Rutgers Journal of Law and Public Policy* 12 (Spring): 138-78.
- Befort, Stephen F., and John W. Budd (2009) *Invisible Hands, Invisible Objectives: Bringing Workplace Law and Public Policy Into Focus* (Stanford, CA: Stanford University Press).
- Borelli, Silvia (2012) "Job Quality in Atypical Forms of Employment. Utopia or Reality?" in Silvia Borelli and Pascale Vielle, eds., *Quality of Employment in Europe. Legal and Normative Perspectives* (Bruxelles: P.I.E. Peter Lang): 125-40.
- Budd, John W. (2004) *Employment with a Human Face: Balancing Efficiency, Equity, and Voice* (Ithaca, NY: Cornell University Press)
- Budd, John W. (2011) *The Thought of Work* (Ithaca, NY: Cornell University Press).
- Budd, John W., and Devasheesh Bhave (2010) "The Employment Relationship," in Adrian Wilkinson, et al., eds., *Sage Handbook of Human Resource Management* (London: Sage): 51-70.
- Budd, John W., and David A. Spencer (2015) "Worker Well-Being and the Importance of Work: Bridging the Gap," *European Journal of Industrial Relations* 21 (June): 181-96.
- Carbonnier, Clément, and Nathalie Morel, eds. (2015) *The Political Economy of Household Services in Europe* (London: Palgrave MacMillan).
- Cooke, Gordon B., Jimmy Donaghey, and Isik U. Zeytinoglu (2013) "The Nuanced Nature of Work Quality: Evidence from Rural Newfoundland and Ireland," *Human Relations* 66 (April): 503-27.
- Commons, John R. (1934) *Myself* (New York: Macmillan).

- Derber, Milton (1970) *The American Idea of Industrial Democracy, 1865-1965* (Urbana: University of Illinois Press).
- De Schutter, Olivier (2014) *The Accession of the European Union to the European Social Charter* (Bruxelles, 8 June 2014).
- Dorssemont, Filip, Klaus Lörcher, and Isabelle Schömann (2013) *The European Convention on Human Rights and the Employment Relation* (Oxford: Hart Publishing).
- Dundon, Tony, Adrian Wilkinson, Mick Marchington, and Peter Ackers (2004) “The Meanings and Purpose of Employee Voice,” *International Journal of Human Resource Management* 15 (September): 1149-70.
- Eichhorst, Werner, Núria, Rodríguez-Planas, Ricarda, Schmidl, and Klaus F. Zimmermann (2015) “A Road Map to Vocational Education and Training in Industrialized Countries,” *Industrial and Labor Relations Review* 68 (March): 314-37.
- Elwell, Craig K. (2014) *The Distribution of Household Income and the Middle Class* (Washington, DC: Congressional Research Service).
- Ely, Richard T. (1886) *The Labor Movement in America* (New York: Thomas Y. Crowell).
- Eurofound (2012) *Trends in Job Quality in Europe* (Luxembourg: Publications Office of the European Union).
- Eurofound (2014) *Third European Quality of Life Survey – Quality of Life in Europe: Families in the Economic Crisis* (Luxembourg: Publications Office of the European Union).
- European Commission (2007) *Towards Common Principles of Flexicurity: More and Better Jobs through Flexibility and Security*, COM(2007)359.
- European Commission (2013) *Flexicurity in Europe. Administrative Agreement JRC N°31962-2010-11 NFP ISP - FLEXICURITY 2 Final Report*. Brussels: European Union.
- European Commission (2015) *Employment and Social Developments in Europe 2014*. Brussels: European Union.
- Eurostat (2015) *Unemployment statistics*, http://ec.europa.eu/eurostat/statistics-explained/index.php/Unemployment_statistics.
- Fudge, Judy (2014) “Feminist Reflections on the Scope of Labour Law: Domestic Work, Social Reproduction, and Jurisdiction,” *Feminist Legal Studies* 22 (April): 1-23.
- Galbraith, James K. (2012) *Inequality and Instability: A Study of the World Economy Just Before the Great Crisis* (New York: Oxford University Press).
- Green, Francis, et al. (2013) “Is Job Quality Becoming More Unequal?” *Industrial and Labor*

Relations Review 66 (July): 753-84.

- Greenberg, Jerald (2011) "Organizational Justice: The Dynamics of Fairness in the Workplace," in Sheldon Zedeck, ed., *APA Handbook of Industrial and Organizational Psychology, Vol 3: Maintaining, Expanding, and Contracting the Organization* (Washington, DC: American Psychological Association): 271-327.
- Heery, Edmund (2016) *Framing Work: Unitary, Pluralist, and Critical Perspectives in the Twenty-First Century* (Oxford: Oxford University Press).
- Hyman, Richard (1975) *Industrial Relations: A Marxist Introduction* (London: Macmillan).
- Kaufman, Bruce E. (1997) "Labor Markets and Employment Regulation: The View of the 'Old' Institutionalists," in Bruce E. Kaufman, ed., *Government Regulation of the Employment Relationship* (Madison, WI: Industrial Relations Research Association): 11-55.
- Kaufman, Bruce E. (2004) *The Global Evolution of Industrial Relations: Events, Ideas, and the IIRA* (Geneva: International Labour Office).
- Kaufman, Bruce E. (2005) "The Social Welfare Objectives and Ethical Principles of Industrial Relations," in John W. Budd and James G. Scoville, eds., *The Ethics of Human Resources and Industrial Relations* (Champaign, IL: Labor and Employment Relations Association): 23-59.
- Kelly, John (1998) *Rethinking Industrial Relations: Mobilization, Collectivism and Long Waves* (London: Routledge).
- Kilpatrick, Claire, and Bruno De Witte (2014) "Social Rights in Times of Crisis in the Eurozone: The Role of Fundamental Rights' Challenges," EUI Department of Law Research Paper No. 2014/05.
- Lucidi, Federico (2012) "Is There a Trade-off Between Labour Flexibility and Productivity Growth? Some Evidence from Italian Firms", in Tindara Addabbo and Giovanni Solinas, eds., *Non-Standard Employment and Quality of Work* (Berlin: Springer): 261-85.
- Lyutov, Nikita (2013) "Challenges of the Implementation of Works Councils in Central and Eastern Europe: General Overview," *Bulletin of Comparative Labour Relations* 85: 1-10.
- Mendeloff, John, and Wayne B. Gray (2005) "Inside the Black Box: How do OSHA Inspections Lead to Reductions in Workplace Injuries?" *Law & Policy* 27 (April): 219-37.
- Moberly, Robert S. "The Story of Electromation: Are Employee Participation Programs a Competitive Necessity or a Wolf in Sheep's Clothing," in Laura J. Cooper and Catherine L. Fisk, eds., *Labor Law Stories* (New York: Foundation Press, 2005): 315-51.
- Muffels, Ruud, and Ton Wilthagen (2013) "Flexicurity: A New Paradigm for the Analysis of Labor Markets and Policies Challenging the Trade-Off Between Flexibility and Security,"

Sociology Compass 7 (February): 111-22.

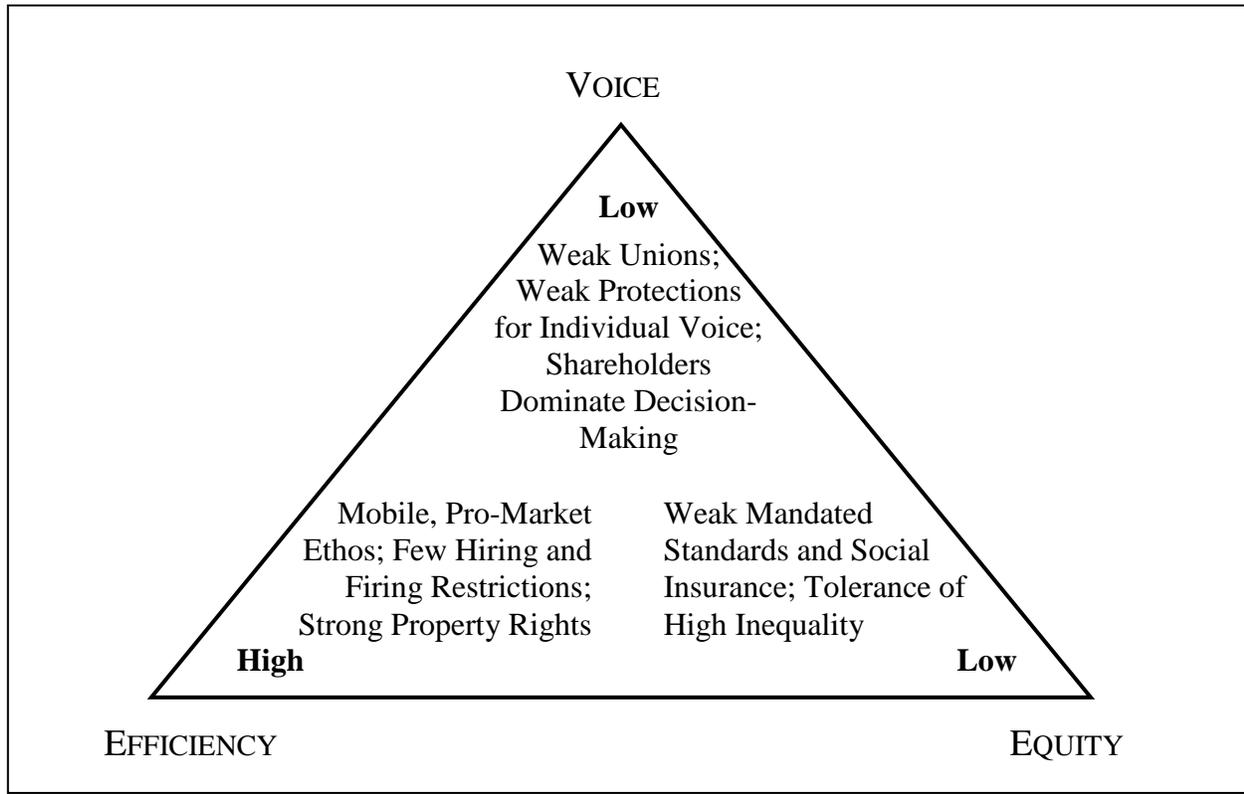
Pocock, Barbara, and Natalie Skinner (2012) "Good Jobs, Bad Jobs and the Australian Experience," in Chris Warhurst et al., eds., *Are Bad Jobs Inevitable? Trends, Determinants and Responses to Job Quality in the Twenty-First Century* (Basingstoke, Hampshire: Palgrave Macmillan): 61-77.

Ritzen, Jo, and Klaus F. Zimmermann, (2014) "A Vibrant European Labor Market With Full Employment," *IZA Journal of European Labor Studies* 3:10.

Rothausen, Teresa J. (2012) "Hedonic and Eudaimonic Job-Related Well-Being: Enjoyment of Job and Fulfillment of Job Purpose," Available online at:
<http://ir.stthomas.edu/cgi/viewcontent.cgi?article=1000&context=ocbmgmtwp>.

Zimmermann, Klaus F., et al. (2013) "Youth Unemployment and Vocational Training," *Foundations and Trends in Microeconomics*, Vol. 9, Nos. 1-2: 1-157.

Figure 1: An Aggregate Scorecard for U.S. Job Quality



Source: Adapted from Befort and Budd (2009)

Figure 2: An Aggregate Scorecard for Job Quality in the European Union

