Collective labor relations and juridification: A marriage proposal

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Abstract

Contributing to debates over relations between the collective and juridified regulation of labor, this article analyzes a rich case study in the Israeli construction sector to claim that juridification can spur unions and employers' associations to initiate strategic and inclusive change. By subsuming processes of juridification into traditional IR frameworks and embracing its logic and practices, the corporatist social partners broaden the relevance of collective labor relations to workers otherwise excluded from direct union representation. In this way, while not increasing union density or improving wages, these 'traditional' IR actors reassert their monopolistic control over worker and employer representation, as well as over the sectoral labor market.

Keywords: collective labor relations, employment rights, juridification, new IR actors, social partnership

Introduction

The juridification of industrial relations (IR), and the rising significance of individual employment rights from 1960s onwards, are increasingly the subject of IR research (e.g. Clark, 1985; Gumbrell-McCormick and Hyman, 2013; Heery 2011). While much trade union research still focuses on declining union fortunes and efforts at revitalization (e.g. Frege and Kelly,

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2003; Ibsen and Tapia, 2017), the relationship between this increasingly dominant 'employment rights regime' (Colvin, 2016) and the vestigial institutions of collective labor relations has been less widely studied (Piore and Safford, 2006). Nonetheless, a growing body of scholarship suggests that juridification and the rise of employment rights regime are linked to the decline of collective labor relations: the increase in individualized dispute resolution, the growing importance of workplace- or organization-level regulation of the employment relationship, and the rise of 'new IR actors' (Colvin, 2016; Currie and Teague, 2016; Heery and Frege, 2006; Heery, Williams and Abbott, 2012; O'Sullivan et al., 2015). These developments have been found to undermine the dominance and control of both unions and employers' associations (EAs) in the representation of their constituencies and the regulation of labor (Mundlak 2009). On the other hand, research has shown that the same processes may extend statutory protection to workers who had not formerly benefited from unionism (Colling, 2004; Fine, 2009; Larsen and Mailand, 2018).

We contribute to this body of research by investigating the implications of increasing juridification for collective labor relations, specifically the relationship between the rise of the 'employment rights regime' (Colvin, 2016) and 'traditional' collective IR in the context of a robust corporatist institutional legacy. We use 'juridification' to mean 'the process of establishing mandatory legal norms that substitute for extra-legal regulation of social or economic relationships' (Mundlak, 2007: 154), and ask – how do these processes of juridification impact the structures and frameworks of collective industrial relations? We therefore respond to Colvin's (2016: 26) call for industrial relations research to 'more fully address the issues and implications posed by the rise of the individual employment rights era in employment relations', and the relative paucity of research into initiatives which address the employment relationship of 'atypical' workers through sectoral social dialogue (Larsen and Mailand, 2018; Simms, 2017).

Focusing on sector-level IR, we also respond to calls for greater attention to meso-level institutions (e.g. Bechter et al., 2012; Bondy, 2018, 2020a, 2020b). Heeding Guillaume (2018: 239), who argues for a 'nuanced and contextualized approach to the juridification of employment relations', we present a precedential development in the sectoral IR of the Israeli construction industry – the establishment of an 'enforcement committee' under the auspices of the traditional social partners (the union and the EA), to address recurrent grievances of noncitizen Palestinian workers. Based on this rich case study, the article analyzes the ways social partners take advantage of the juridification of IR; we thus adopt an actor-centered approach, which suggests that 'entrepreneurial actors, working within existing sets of institutions, engage in various forms of incremental change… [that] can become, over time, transformational' (Howell and Givan, 2011: 234).

The article demonstrates how a strategic development by the traditional social partners in response to increased juridification enhanced their legitimacy and control, subjugating processes of juridification to collective IR frameworks and promoting (partially) inclusive interest representation. The article suggests, then, that in certain contexts the legal and judicial branches can serve as drivers for inclusive changes in collective bargaining, shoring up the legitimacy of the union and of the social partnership.[1] While it may not (immediately) increase union density or improve wages and working conditions, the strategy can nonetheless strengthen the social partners' domination and broaden the relevance of collective labor relations to workers otherwise excluded from direct union representation. In short, given a context of juridification and the declining legitimacy of sectoral collective bargaining, strategic change that embraces the logic of legal enforcement can enable the social partners to reassert their monopolistic control over worker and employer representation, previously undermined by external judicial interventions, as well as over the sectoral labor market, contributing to the revival of coordinated IR.

In the first section below, current research into juridification and its implications on collective labor relations is reviewed, noting the special position of social partnership within the context of corporatist IR. The research methodology is then presented, followed by an overview of IR in Israel's construction sector, and an analysis of transformations in the enforcement of construction workers' rights, concluding with the establishment of an innovative 'enforcement committee.' There then follows a discussion and a conclusion which highlights the main findings and theoretical contributions. While the case demonstrates how the social partners' control is challenged and undermined by juridification, our analysis shows how, in responding to this challenge, the social partners adopt its logic and practices into traditional collective labor relations, thus augmenting their dominance. This article, then, contributes to our understanding of the potential benefits of juridification to collective labor relations through its capacity to spur the renewal of coordinated IR and broaden its reach to include formerly excluded workers. In particular, it underlines the circumstances under which collective labor relations can work with juridified norms, as an inclusive strategy, promoting increased representativeness and bargaining coordination. Indeed, it is precisely the challenge posed by juridification to cross-class collaboration that spurred social partnership reform. The article thus increases our understanding of the relationship between juridified processes and collective bargaining in regulating the employment relationship and enforcing employment rights.

Juridification

The juridification of labor relations and workers' rights has been noted in both decentralized and corporatist industrial relations systems as central state regulations gradually substitute for collectively bargained norms (Cioffi, 2009; Clark, 1985; Colling, 2004; Colvin 2016; Heery, 2011; Howell and Givan, 2011; Mundlak, 2007; Piore and Safford, 2006; Simitis, 1987; Visser,

2005), including in countries beyond Europe and the Anglo-US world with various employment relations legacies (e.g. Benson, 2012; Saini, 1991). This trend is manifested in the increasing importance of lobbying and litigation to address workers' grievances and enforce rights, at the expense of traditional paths to worker representation (Ibsen and Tapia, 2017; Gooberman et al., 2018). In the US and UK for example, there has been a marked rise in the number of cases brought before the employment tribunals (Guillaume, 2018; Schneider, 2001), reflecting the increasing significance of employment rights and of judicial means of enforcing them.[2] Even in 'classic' examples of corporatist labor relations, we see decentralization and shrinking collective agreement coverage (e.g. Doellgast and Greer, 2007), with a corresponding increase in the use of labor courts to settle individual disputes.

However, juridification means different things to decentralized or liberal collective labor relations such as those in Anglo-American economies, and corporatist collective labor relations. For the former, juridification first involved the creation of a statutory basis for employment rights. Statutory minimal rights and their enforcement by state agencies (including by the courts) can be understood as the 'nationalization' of employment relationship regulation. Initially, the state shoulders the burden of increased cost, which in some countries has led to state efforts 'to privatize the costs and procedures', pushing responsibility 'back onto the parties [to the dispute] and into workplaces but without the democratic and collective elements of socialized systems' (Colling, 2004: 571-2). Thus 'nationalization' was followed by the 'privatization' of representation through law offices and non-union organizations (Heery, 2011; Colling, 2004), 'pushing [dispute resolution] processes back down into the workplaces and restricting the circumstances in which disputes might be brought into the public arena' (Colling, 2004: 566).

For corporatist systems, in addition to the statutory basis, juridification also means the increasing intervention of the courts in processes of collective bargaining or collective labor

disputes (Mundlak and Harpaz, 2002). From maintaining frameworks to support the social partners in regulating the employment relationship collectively, courts moved to increase their oversight of formerly autonomous IR spheres (Mundlak, 2007). Thus, while dispute resolution mechanisms have become increasingly individualized in decentralized IR systems (see Colvin, 2016), in corporatist systems they remain strongly under the (often coordinated) control of social partners (see Ibsen 2019).

Juridification has been positioned counter to collective labor relations (e.g. O'Sullivan et al., 2015), and for good reason. Juridification challenges 'traditional' IR as it increases bargaining decentralization by reducing the incentives for social partners to engage in collective bargaining – undermining flexible regulation and impinging on the autonomy of collective actors (Howell, 2005; Mundlak, 2007). It encourages the growth of procedures over which workers have little control, and into the creation and operation of which they have little input, making workers less involved in determining the conditions of their own employment. While legal strategies were seen as key to organizing in some decentralized IR systems (e.g. Narro, 2009), the rights-based employment legislation on which they relied 'may compromise [the] monopoly power of trade union representation since it creates a process whereby people interact with matters relating to work… as legal subjects and not as members of a trade union' (Currie and Teague 2016: 366). In contexts of centralized collective regulation, this risk is far greater, threatening the autonomy of collective labor relations in determining labor standards and regulating the employment relationship. This form of juridified regulation, enacted and enforced by state agencies and the judicial system, undermines the previous dominance of unions and EAs (Mundlak, 2009).

With growing substitution of collective agreements by legislation, and new forms of judicial representation displacing traditional collective representation (Mundlak 2007), traditional IR actors (unions and EAs) gradually lose their favored position in workers'

representation, and new actors and judicial procedures gain prominence in both class representation and labor regulation (Heery and Frege, 2006; Heery, Williams and Abbott, 2012). In some IR systems, traditional actors adopt new strategies to include precarious workers, previously excluded from union representation, and in this way push back against juridification trends (Arnholtz, 2019). However, in other systems, unions fail to tackle these changes or to develop inclusive solidarity with precarious workers (e.g. Larsen and Mailand, 2018), thus leaving the way clear for further juridification and to the increasing involvement of 'new', non-union IR actors.

By increasing courts' intervention in previously autonomous spheres of collective regulation – through review of collective agreements, issuing injunctions against strikes and increasing litigation on previously negotiated norms – juridification has granted significant power to these non-union actors (Heery, Abbott, & Williams, 2012; Mundlak, 2009). Lacking recognized or otherwise 'special' status in the labor market, these actors, such as CSOs and 'entrepreneurial' lawyers, rely on legal strategies to advance the (perceived) interest of their constituencies. In many cases, they act independently to represent workers that were previously excluded from traditional union representation, focusing on the representation of migrant workers, women and those in precarious employment (e.g. Fine, 2009). In these cases, such actors promote individual workers' representation and rights, focusing on the enforcement of labor rights in sectors characterized by high violation rates and bringing the voice and interests of workers into arenas from which they had been excluded (Fine and Bartley, 2019). Unsurprisingly, then, research suggests that non-unionized workers are more likely than their union counterparts to benefit from judicialized forms of dispute resolution (e.g. Colling 2004: 557), further emphasizing the line between the employment rights regime and collective labor relations, as well as between unions and new IR actors (e.g. Fine, 2009).

However, there is some research suggesting that the two spheres and logics of action are not incompatible. While new actors are seen to develop independent judicial representation for precarious workers, in some cases they are also found to cooperate with unions to promote joint political-economic goals (Alberti, 2016; Heery, Williams and Abbott, 2012; O'Sullivan et al., 2015). In contexts of decentralized IR systems, cooperation among unions and non-union actors can increase the inclusive nature of unions and their embeddedness in local communities (Narro, 2008, 2009). Moreover, unions themselves are playing an increasing role in representing individual employment rights, providing accessible channels for enforcing those rights and using new labor legislation to advance their members' interests (Colling, 2012; Currie and Teague, 2016; Deakin et al., 2015; Guillaume, 2018; Heery, 2011), or investing resources in legal representation of workers, either directly or through legal firms (Schneider, 2001). But union funds are limited, leaving huge numbers of cases to new IR actors, who provide services to increasing numbers of workers. Unions are not alone in facing resource shortages: Juridification can be costly for employers too, who face expensive and time-consuming claims (Guillaume, 2018; Colvin, 2016: 19) while labor courts or tribunals can become inundated with cases (e.g. Colling, 2004: 556). Nonetheless, it is the very existence of such legislation encroaching on union territory that poses a challenge to the collective underpinnings of IR (e.g. Holgate, 2009), while the entrance of new actors to IR increases juridification trends and undermines the union's monopolist dominance (Mundlak, 2009).

In the face of these challenges, traditional actors may change strategy to regain their dominant position in labor regulation (e.g. Arnholtz, 2019). While the analysis of changing strategies of traditional IR has been predominantly the domain of union revitalization literature, we propose a broader perspective, taking into account both sides to the traditional class conflict and focusing on the social partnership. Such a perspective is crucial for understanding the dynamics of change in corporatist IR systems, where EAs are critical actors (Traxler, 2003). In

decentralized IR systems after the weakening of unions and decline in union density, 'the threat of legal… sanctions for violation of employee rights serves to counter employer power and check management authority' (Colvin, 2016: 7). However, where membership (or its decline) was not perceived as being crucial for maintaining collective bargaining, social partnership faced fewer challenges and neither unions nor EAs sought its demise (e.g. De Beer and Keune, 2018). While the social partners faced other challenges concerning their legitimate status, institutionalized collaboration at sector or peak levels showed relative structural resilience (Hayter and Visser, 2018). Yet despite continuity in the social partners' central roles in setting socioeconomic agendas in some IR systems (Dörre, 2011; Marginson, 2015; Mundlak, 2009), a key concern among scholars is their increasing alienation from their constituencies, and reduced ability to represent class interest; this directly impacts their influence on the employment relationship and their ability to promote socioeconomic inclusion (Doellgast et al., 2018; Greer and Doellgast, 2017; Visser, 2005).

Furthermore, while IR structures may still be intact, social partnership may even undermine the legitimacy of the social partners in the eyes of their constituencies. This is because central collective regulation is seen to come at the expense of inclusiveness and to undermine the voice of the workers and employers, who then seek alternative representational forms (e.g. Benassi and Dorigatti, 2015; Heery, Abbott, and Williams, 2012; Mundlak, 2009; Preminger, 2013, 2018b). In short, by focusing on policymaking, social partners often undermine industrial democracy – limiting participation in the political process of labor market regulation – and thereby risk the organizational legitimacy of collective representation (Dufour and Hege, 2010; Mundlak, 2020), the sustainability of bargaining coordination and the social partners' ability to enforce collectively-agreed norms (e.g., Baccaro, 2003; Arnholtz, 2019). Hence, although institutions accord relative advantage in centralized settings to cross-class collaborations and partnership, these too are under threat from external pressures and their

impact on the relations between the social partners and their constituencies. These pressures constitute a growing challenge to previously stable IR frameworks, eroding their capacity to generate gainsharing schemes and leading to increased reliance on juridified regulation and on new representative actors (Bondy, 2020b). In the context of a strong corporatist institutional legacy, then, we would expect juridification (and the consequent erosion of centralized collective bargaining) to spur both unions and EAs to change strategy. Such change may have limited ability to 'turn back the clock' and reverse juridification, but could nonetheless rebuild the dominance of the social partners through the adoption of new legal and political norms, such as individual inclusion and representation and new practices of enforcement of labor rights.

Methods

The article analyses the establishment of a new enforcement mechanism in Israel's construction industry. This industry is particularly suitable for investigating the issues reviewed above as it conforms to assertions in the literature regarding the revival of collective IR, including the difficulty of creating a group identity able to underwrite collective interests; the loss of the union's coercive power (Simms and Charlwood, 2010); the lack of a binding ideology of worker solidarity (Preminger, 2018a: 105-117), and a fragmented workforce, and thus the difficulty of organizing workers – all characteristic of this industry. In addition, in light of Simms and Charlwood's (2010: 127) observation that 'different prescriptions for renewal emerge from the different analyses of the challenges facing unions', the article clearly defines the challenges facing the union in the case study as the juridification of IR and the associated entry of new IR actors. Thus the social partners in this industry face challenges familiar to pluralist IR systems, but operate within an economy which still bears the characteristics of a

corporatist IR system (Bondy, 2020a), enabling the exploration of juridification within the institutional legacies of robust centralized IR.

The article draws on archival research, analysis of collective agreements, and interviews. Research was conducted at the Israeli labor movement archive (the Lavon Institute), the Historical Jewish Press Archive at the National Library of Israel, and the Knesset (Israeli parliament) Archives. These archives yielded minutes from union meetings, correspondence about representation of construction workers, and correspondence about Palestinian workers' representation between 1970 and 2015. These materials were complemented by content-analysis of 60 collective agreements, constituting all sector- and company-level collective agreements signed between 1945-2015, filed with the registrar of collective agreements at the Labor and Welfare Ministry. Some 50 court rulings (mainly individual labor disputes) were also analyzed, taken from cases at both regional labor courts and the National Labor Court in the years 2010-2019 (available at www.nevo.co.il).

Fifteen semi-structured interviews of 1-1.5 hours long were conducted in 2017 and 2018 with representatives of relevant IR actors in the Israeli construction sector. This included representatives from the Histadrut's Construction and Woodworkers Union (the chair, the union's representative on the enforcement committee, and a union lawyer),[3] senior Histadrut officials, private labor lawyers, lawyers representing employers and the employers' organization, representatives of the employers' organization, and representatives of the main NGO acting in the sector. The material thus enables the identification of the main actors involved in establishing the enforcement mechanism, their objectives, the cooperation required and balance of power, and the mechanism's reception by the labor courts. All translations from documents and interviews are the authors'.

Employment relations in the Israeli construction sector

The Israeli construction sector was a leading industry in the first decades of the Israeli economy, based on extensive public investment and ownership, and a highly unionized workforce (Bondy, 2020b). By the time of the case covered here, the industry had been completely privatized (Grinberg and Shafir, 2000) but its legacy of corporatist governance and general stagnation had left collective labor relations intact. Labor regulation was therefore based on sectoral collective agreements, signed between the Israeli trade union federation (the Histadrut) and the subordinated sectoral union (the Construction and Woodworkers Union), and the sectoral EA, extended *erga omnes* to cover the entire sector and granting the social partners with strong institutional security (Bondy, 2020a). Despite a robust structure of collective representation, from the 1960s onwards, the increasing dominance of multi-level subcontracting and private firms using unorganized cheap labor led to the weakening of the social partners' position in construction as collective bargaining was losing its former efficacy. While the Histadrut remained the monopolistic representative of workers in the sector, without a coordinated strategy of workers' representation its dominance and effectivity were eroded.

This process – of subcontracting, weakening social partners and the decline of workers' power – went hand in hand with the gradual economic inclusion of noncitizen Palestinians who became the dominant group of non-professional workers in the construction sector (Farsakh, 2005): by 1980, just a decade or so after their entrance into the Israeli labor market, noncitizen Palestinian workers in the construction sector constituted some 40% of the workforce.[4] After a period of exclusion in the 1990s and early 2000s, their numbers rose again to the current rate of 25-30% of the sectoral labor force (Bondy, 2020b). Though included in the Israeli labor market, noncitizen Palestinian workers benefited from few protections even when formally covered by sectoral collective agreements (Niezna, 2018), and were subject to various exclusions and limitations. The exclusive nature of Palestinian workers' representation, together with the low levels of coordination in sectoral representation, led to the poor

enforcement of labor rights, despite a unique governmental arrangement whereby Palestinians were not paid directly by their employers but via a governmental 'Payments Division', which was also tasked with enforcing workers' rights (Mundlak, 2003). This governmental enforcement arrangement was characterized by insufficient resources and internalized racism (Shalev, 2017), and as the Histadrut refrained from organizing and representing noncitizen workers, Palestinians were *de facto* excluded from 'normal' employment relations. This latter factor further perpetuated recurrent violations of workers' rights (Bondy, 2020b; Niezna, 2018), which the Histadrut – given its institutional security that reproduced its representative status – had no incentive to address.

In the face of the Histadrut's inaction concerning noncitizen Palestinian workers' rights in the construction sector, it was civil society organizations (CSOs), seeking both labor and ethno-national justice, that opened the way for noncitizen Palestinians to bring their grievances to the labor courts (Preminger, 2017), making CSOs' activity a major driving force in regulating and enforcing precarious workers' rights (Bondy, 2020b; Mundlak, 2007). Kav La'Oved ('the workers' hotline,' established 1991), followed by other CSOs such as HaMoked LePlitim VeMehagrim ('the center for refugees and migrants'), pioneered IR juridification through judicial representation of noncitizen Palestinian workers and the expansion of their (access to) human and labor rights (see Preminger 2017). Nonetheless, following their success they were gradually displaced by private lawyers who expanded the scope of private litigation. The limited capacity of these CSOs together with continuous violations of workers' rights allowed such private lawyers to develop a successful entrepreneurship in the sector, as one lawyer described:

> [Noncitizen] Palestinians are about 80% of my practice… [We are] several lawyers, some in the north, some in the center and a few in the south [of Israel] that specialize in [the rights of noncitizen Palestinian workers]… I take on approximately 2,000 cases each year, but when I can't take a case,

> or it is far from where I normally work, I pass it on to one of my colleagues… (A M, labor lawyer, interview).

Increasing the access of precarious construction workers to the labor courts amplified the numbers of cases against employers to some 9,000 cases per year, most of them filed by noncitizen Palestinian workers (I M, chair of the Construction and Woodworkers Union, interview). As the government paid little attention to workers' rights and the Histadrut did little to enforce collective agreements, the workers benefited from the initiatives of these new IR actors, who were able to claw back unpaid wages amounting to millions.[5] Furthermore, while the labor courts (partially) reformed the enforcement of the collective agreements and of workers' rights in the sector, its intervention burdened employers with the costs of increased payments to workers as well as the costs of legal representation and further undermined the monopolistic representative role of the Histadrut. The chair of the Construction and Woodworkers Union expressed his anger toward these new actors, emphasizing their economic motives and the 'exploitative' industry that had developed around the enforcement of noncitizen Palestinian workers' rights:

> Workers get accompanied by lawyers… who wait for them at checkpoints each morning… For extremely high fees [a percentage of gains] they accept any case, filing hundreds of claims. They don't care if it's a strong case or not. They exploit them… (I M, chair of the Construction and Woodworkers Union, interview).

While he condemned the activities of labor lawyers in the sector, he failed to explain the reasons for their thriving, expressing resentment mainly against the erosion of the Histadrut's position in the sectoral labor relations by the increased juridification.

Regaining control

This situation, of increasing representation of workers and enforcement of labor rights outside the traditional IR system, posed a serious threat to the Histadrut's institutional security and to the exclusiveness of the social partnership. Finding their dominance and autonomy encumbered by court intervention, the social partners took steps to restore it through a new sectoral collective agreement that sought to restrict workers' (independent) access to the labor courts by imposing arbitration in labor disputes. Signed in 2010, this agreement aimed to facilitate the enforcement of workers' rights, reducing the legal burden for employers and workers while reinforcing the social partners' control in the sectoral labor market and IR. This was done through the introduction of an innovation intended to shore up exclusive union representation: the social partners created a mechanism that channeled workers' grievances towards obligatory arbitration by the social partners, which was meant to function as a substitute to independent access to legal justice – displacing external legal scrutiny with internal inspection and enforcement:

> In order to settle disputes… between the parties [to this agreement] or individuals there will be a parity committee comprised of three stages: first the disputed issue will be raised before a regional parity committee… If the regional parity committee fails to reach a conclusion within 14 days, the disputed issue will be raised before a national parity committee… If the national parity committee fails to reach a conclusion within 14 days: the parties will bring the disputed issue to the labor court (sectoral collective agreement in the construction sector, 2010. No. 7009/2010).

Yet, after many years of being neglected, Palestinian workers had little incentive to engage with the Histadrut or trust the internal mechanisms of the sectoral labor relations, and continued to undermine the social partners' efforts to counter juridification. Moreover, in the face of recurring legal cases, the labor courts refused to ratify the internal arbitration mechanism as an obligatory substitute for judicial deliberation, fearing it might impinge on the

primary democratic principle of access to justice. According to the HR manager of the sectoral employers' association, this agreement 'was found to violate some [of the workers'] basic human rights…' (I G, interview). Nonetheless, despite the labor courts' refusal to ratify the obligatory arbitration mechanism, the National Labor Court recognized the social partners' intentions and encouraged them to improve it:

> The parties to the sectoral collective agreement demonstrate a genuine desire to establish a dispute resolution mechanism, whose results are dependent on the agreement of all parties… We must laud this intention, but the parties to the sectoral collective agreement must regulate the mechanism explicitly within the sectoral collective agreement. (ALD 9847-04-14)

Thus encouraged, in 2015 the social partners sought a structural solution that would not violate human rights (i.e. independent access to legal justice), but would grant them greater control over the enforcement of sectoral collective agreements and of workers' rights.

Following an additional round of sectoral collective bargaining, the social partners signed a new agreement, which included the following clause:

> The Joint Committee… will be authorized to deal with disputes between an employer and an employee covered by the agreement, stemming from subjects regulated by the agreement and by previous agreements, and which do not require immediate and temporary redress… The dispute will be discussed before the Joint Committee… prior to being deliberated in the authorized judicial instance – the regional labor court. (Sectoral collective agreement in the construction sector, 2015. No. 7020/2015, article 76)

The 2015 collective agreement, then, accepted juridification (as well as judicial oversight and workers' right to access independent legal justice), creating a semi-judicial procedure – 'a joint (enforcement) committee'. Recognizing the courts' previous critique, the social partners refrained from limiting workers' access to court, but rather sought to assert their precedence over independent litigation in cases of individual labor disputes. Distinct from independent

legal procedures or third-party arbitration, the joint committee was conceived to mediate disputes under the control of the sectoral social partnership.

Aiming to legitimately substitute the labor courts in dealing with individual labor disputes, this semi-judicial institution assumed legal principles of fair and equal representation for the parties, the right to (legal) representation, and procedural and effective accessibility for all. Thus in stark contrast to the coerciveness of arbitration (based on the obligatory nature of its conclusions), the mediatory mechanism allowed the workers to reject its outcomes and resort to independent legal procedures. According to the sectoral collective agreement, interviews with the committee's staff and internal documents of the social partners, the committee had a parity structure, chaired by two representatives – one from the Histadrut and one from the employers' association; and both parties to the dispute had the right to independent representation. Furthermore, in order to strengthen its legitimacy – in the eyes of the workers or any external scrutiny – the committee was also responsible for issuing entry permits to Israel for the (noncitizen) workers; and it always had an Arabic-speaking representative, usually a union official, which facilitated discussions and conclusions. Finally, in case of disagreement with the committee's decision, both parties were free to seek redress in the labor courts, as detailed in Diagram 1.

[Diagram 1 about here]

While this account suggests the partial displacement of judicial dispute resolution by subsuming it within traditional collective labor relations, conversations with labor lawyers revealed a more complex picture. Faced with refusal to recognize or attend mediation, the committee has almost no way to enforce attendance, making (legal) representation instrumental for the committee's operation and (external) legitimation, as one interviewee described:

> When summoned to the committee many employers come up with various excuses [to not attend]… The committee doesn't really do anything to get

> them to come… But if there is a legal case pending or letter from a lawyer… the employer knows he has no choice but to attend [the committee], or else he'd have to go to court… In this situation… even the employer pushes [for getting the case heard at the committee] (M S, labor lawyer, interview).

Thus, despite the decline in the number of independent judicial proceedings, professional labor lawyers and the labor courts still play an important role in the process, motivating the use of collective instances and even overseeing cases (see LD 48650-02-18), thereby increasing noncitizen workers' trust in the system. This was noted by both workers and lawyers: '[Workers] don't trust any organization… Palestinian or Jewish… no such organization really helps workers' (S H, noncitizen Palestinian construction worker, interview); '[noncitizen] Palestinian workers don't really have confidence in the committee, nor in the [Israeli] labor courts, so in dealing with the authorities they almost always ask for legal counsel' (M S, labor lawyer, interview).

With its ratification by the labor courts as an obligatory instance preceding independent litigation (as stated in several labor court rulings; e.g. case LD 42574-01-15), the joint committee soon became busy, handling dozens of disputes each week. From a workload of just one day a week, the committee experienced a rapid workload increase and tripled its capacities (F B, Histadrut representative in the committee, interview). Handling such a quantity of cases, the committee became 'the most important thing we [the union] do in the sector' (I M, chair of the Construction and Woodworkers Union, interview). As reported by the employers' association, the ratification of the committee as an obligatory precondition for judicial deliberation reduced formal litigation and rulings by about 90% (I G, HR manager of the sectoral employers' association, interview); and while it lacked the trust of workers, these results expressed a boost of external legitimacy for the social partnership domination. The reinforcement of its legitimacy was expressed by one of the committee's chairs:

> Previously, workers waited two years or even more for a courts' schedule and had to pay court fees etc. Now, things are going much faster… [and] workers are usually very content (F B, Histadrut representative in the committee, interview).

The labor courts' tight schedules and consequent delay in rulings had led many workers and their independent representatives to push for a pre-ruling settlement (R A, labor lawyer, interview). This tendency was accordingly implemented into the newly established mechanism, which was built on the basis of mediation, as described by a labor lawyer: '[We] reach very similar conclusions in the [enforcement] committee, but without all the mandatory procedures [of the labor courts]' (O M, labor lawyer, interview). Furthermore, with labor lawyers present at the committee and leading the mediation process, when cases did end up in court (because one or both parties to the dispute refused to accept the proposed settlement), the labor courts frequently referred to the committee's decision in their own verdict (e.g. case FR (JM) 50255-04-17). When cases were referred by the court to the enforcement committee, judges gave the committee's decision the status of a ruling (LD 1831-07-18); and in cases of a refusal to accept the committee's decision, the court adopted the decision as a guideline during deliberations (O M and R A, labor lawyers, interviews). While this phenomenon reflects the basic position of lawyers in a legal procedure – as 'officers of the court' which enjoy its trust (e.g. Israeli Bar Law, 1961) – it also emphasizes the labor courts' tendency to accept the autonomy of collective labor relations in Israeli corporatist IR (Mundlak 2007). Emphasizing the instrumental roles of these new IR actors in the operation or legitimacy of the enforcement committee, their incorporation into collective labor relations reinforces the transformation of the sectoral IR system – to accept juridification as an integral part of its reproduction. From interviews with the social partners and an analysis of legal procedures in all instances of the Israeli labor courts, it seems that while the enforcement committee's workload increased steadily since it was

established, the number of independent legal cases brought by noncitizen Palestinian construction workers against their employers declined dramatically.[6]

Therefore, while traditional and new IR actors serve different interests and have different aims, they both accept juridification and promote it: for new actors, it is the central strategy in their quest for justice for noncitizen workers (CSOs) and central to the norms of their profession (lawyers); for the traditional social partners on the other hand, juridification is subsumed into collective labor relations, as a means to reform effective representation and regain their legitimacy. Therefore, these findings suggest that juridification does not necessarily undermine the social partnership and the dominance of unions and EAs; rather, they may be able to embrace it as a strategic addition to collective labor relations. Indeed, juridification may even shore up the partnership, as the social partners accept its principles and implement them as integral part of their work. Thus, while to some extent the committee controls independent legalistic enforcement of employment rights, its main significance is in shoring up the primacy of the traditional social partnership over court deliberations, and thus containing the logic of juridification within collective IR.

Discussion

The case analyzed here sheds light on a number of issues raised in the literature on the relationship between juridification and collective IR, especially social partnership as a political strategy and as a key component of centralized IR systems. While most previous research presented collective IR and juridification as mutually antagonistic forms of regulation of the employment relationship (e.g. Mundlak, 2007, 2009), the article adds to recent scholarship (e.g. Deakin et al., 2015; Guillaume, 2018) which explores how these two regulatory approaches and logics might coexist: the case presented here shows social partners acting as 'institutional

entrepreneurs', who create 'hybrids from the institutions of collective bargaining and substantive, individual employment law' (Heery, 2011: 90).

It is important to be precise about the change engendered by the social partners' initiative. In keeping with other research (Kelly, 2004), the renewal of social partnership here shows little impact on wages and union density. Instead, facing external pressures and challenges to collective regulation from juridification and new IR actors, the social partners are seen to take concrete steps, institutionalized in a framework under their control, to improve enforcement strategies and thus address the issue of internal legitimacy. At the same time, their ability to enforce the committee's precedence over independent litigation reflects an increase in their coercive power (Simms and Charlwood, 2010). These changes enabled the social partners to legitimately represent their constituencies – (noncitizen) Palestinian workers and their employers – in keeping with efforts by unions elsewhere to broaden their constituencies (Mundlak 2020).

Though in theory litigation is open to all and undermines the 'insider' benefits that unions grant to members, employees with better access to the system or superior understanding will benefit more from litigation and therefore the dominance of the employment rights regime can perpetuate existing inequalities between workers (Colvin, 2016: 19-20). Thus, Colvin (2016: 26) notes a 'growing inequality in access to justice in the workplace', even under a strong employment rights regime, where 'rather than individual employment rights providing a universal structure of rights and fair treatment' there is 'great variation… in the protections and fairness accorded to workers'. However, in the case analyzed here it was the combination of a 'rights' logic with the institutional power of the social partners that broadened the union's constituency and decreased decades-old inequality between insiders and outsiders (e.g. Benassi and Dorigatti, 2015). The case therefore supports the assertion that the ability of the social partners to promote effective representation depends at least partly on their promotion of

regulation that encompasses the entire sector, as well as strategically mobilizing their constituencies while maintaining cross-class cooperation (O'Brady, 2019).

Thus on one hand, juridification promotes a perspective that recognizes precarious, non-unionized workers, advocating for noncitizens in the sector and thereby goading further juridification. On the other hand, while accepting the logic of juridification, the social partners subordinate this logic to collective frameworks. This is a kind of 'privatization' of dispute resolution in Colling's (2004) sense, reducing the burden on state institutions, under the protection of collective actors. Nonetheless, while the new framework subsumes individual workers' voice and grievances into collective labor relations, the social partners also kept the basic exclusionary principles of Israeli IR intact, eschewing bottom-up inclusive strategies such as organizing among the sector's most precarious workers. Indeed, given other cases where workers have joined unions merely to access legal services and have left when the dispute has been settled (e.g. Preminger, 2018a: 143), it is unlikely that this kind of social partnership initiative will be effective as a recruitment strategy.

This case has implications beyond the relationship between juridification and collective IR. Here we see the social partners reasserting themselves as dominant IR actors and joint regulators of the sectoral labor market, strengthening the position of sectoral collective bargaining while enabling employers to reduce their exposure to independent legal action. Put differently, we see how the social partners shifted the focus of regulation of the employment relationship from the organization to the sector, thus neutralizing 'organizational primacy' and its tendency to 'undermine the generality of individual employment rights' (Colvin, 2016: 23). Mandatory arbitration of labor disputes has been called a 'signal example of organizational primacy in individual employment rights since it allows the employer to determine the process of enforcement through which individual rights are pursued by employees' (Colvin, 2016: 24); however, in this case the social partners created a quasi-mandatory and quasi-judicial dispute

resolution mechanism that ensured that the logic of workplace-level individual rights realization was channeled through a collective, sector-level framework – thus reviving sector-level social partnership and the institutional legacies of a robust corporatist system.

While they fail to directly address the union's 'democratic deficit' (Mundlak, 2003), the social partners exploit their secure status to take an active and more effective representation of their constituencies. This change does not reflect or lead to a major shift in the balance of class power in the workers' favor; instead, it signifies cooperation between the partners to jointly address the particular problem of their declining salience in the labor market, making strategic use of the logic of juridification in countering trends of decentralization and liberalization of central collective labor regulation.

Thus the case supports the 'recombination' thesis (Heery, 2011: 89), which suggests that unions are able to incorporate substantive law within collective frameworks, using it as a basis for bargaining and enforcement; however, the case extends this concept to emphasize the political basis for social partnership. So while support from state agencies for rights-based representation can 'erode collective industrial relations processes' (Currie and Teague, 2016: 380), in this case the focus on the joint regulation of rights enhanced the legitimacy of collective bargaining at sectoral level. This underlines the importance of context and the position of the trade union within law and norms (O'Brady 2019; O'Sullivan et al., 2015): while in decentralized IR systems unions can be overwhelmed by litigation, due to employer strategies of avoiding collective frameworks (Guillaume, 2018: 239), and juridification embodies the 'line of conflict' between unions and employers, in the context of Israel's corporatist institutional legacies this conflict is 'contained' within the sphere of social partnership. Where the union has (historical) institutional support, employers are more likely to engage with the union in addressing individual disputes within collective frameworks.

New IR actors still played an important role in promoting workers' rights, compensating for the remote and exclusionary representation by the social partners, leading them in turn to reform traditional collective labor relations in order to regain traditional primacy. However, in this broader context, these new actors are not a homogeneous category but rather distinguished by their ability to remain relevant in a changing IR landscape. Thus CSOs functioned both as a rival to the union and as an incentive for its change (Bondy, 2020b), while private lawyers, who also posed a threat to traditional collective bargaining, proved to be essential in the face of the increased salience of judicial procedures inside collective labor relations as well as outside this framework (see also Mundlak, 2007).

The differences between these new IR actors are further illustrated by Michal Tadjer, Kav La'Oved's former CEO: 'What does the enforcement committee do? How many cases do they handle each year?... It's a drop in the ocean!' (Tadjer, personal communication, 2018). She was quick to reject the idea of her organization working with the Histadrut, noting the latter's ostensible cooperation with the structural problems that perpetuated violations of labor standards (e.g. subcontracted employment relations, the occupation of Palestinian territories and the lack of workers' political citizenship). In other words, Tadjer's response reflects a recognition that the Histadrut's cooperation with the traditional corporatist partners is liable to perpetuate the violations of Palestinians' *human* rights. The CSO understood that the union's interests are still far from its own agenda, and that the enforcement committee mainly shifted the balance of power in the union's favor.

Thus the difference between actors, their impact on social partners' strategies and the structure of the social partnership, as well as their continued relevance to workers' representation, are significant. The threats and challenges of new actors to the traditional, centralized and remote social partnership spurred its reform by making clear the importance of collective bargaining to employers and of inclusive representation to the union. However, the

response – a more inclusive and responsive partnership – diminished the prominence of CSOs in representing workers' grievances. Private lawyers on the other hand continue to be relevant to workers' representation, even within the new social partnership strategy. Their narrow, rights-based approach is seen to compensate for the ongoing deficiencies of the social partners, enhancing the efficacy of the new enforcement framework.

Conclusion

In this article, we asked how processes of juridification impact the structures and frameworks of collective industrial relations. Using a rich case study from the Israeli construction sector, we suggested that a rights-based view of the employment relationship can be complementary to collective interest representation; thus contributing to the debate on the displacement of collective bargaining by an employment rights regime (Deakin et al., 2015; O'Sullivan et al., 2015; Piore and Safford, 2006), and showing that 'substantive employment rights' can be anchored within collective institutions. Moreover, the framework initiated by the social partners (the 'enforcement committee') constitutes a bolstering of their position within the IR system, re-establishing the primacy of traditional actors over alternative representation forms.

Rooted in social partnership, the (collective) mechanism adopted the logic of legal regulation and juridified representation to enhance the status of the organizations involved vis-a-vis the state and the legal system, as well as in the eyes of their constituents. Crucially, the framework created to shore up the social partnership facilitated the inclusion of workers previously excluded from collective representation – a step that would have been unimaginable in the past. However, in establishing the committee, the social partners accept a legalistic framing of injustice, doing nothing to develop a narrative of injustice capable of reviving a collective framing of the employment relationship, as noted in other research into unions' use of law (e.g. O'Sullivan et al., 2015). Nonetheless, this case underlines the effectiveness of

external pressures and demands on IR actors in goading them to act, and the potentially positive implications of competition between traditional social partners and the new IR actors thriving under a juridified 'employment rights regime'. In the context of a union enjoying a secure status, the creation of a framework for safeguarding workers' rights and enforcing collective agreements enabled the union to (re)assert its relevance for workers and its control over the sectoral labor market.

Moreover, while the case presented here did not increase union density or significantly improve wages, the agreement over enforcement is a 'labor parity' (Kelly, 2004: 271) agreement: it offers 'concrete evidence of mutual gain' (Danford et al., 2009: 59), for both employers (and their association) and the union. It suggests that union decline has not led to untrammeled employer power (what Wright called 'capitalist utopia'; 2000: 987), but to different, judicial forms of worker protection which have their own disadvantages for employers – particularly decreased discretion in determining labor standards and the burden of legal claims. These disadvantages can make a collective approach to IR appear preferable – for all parties. In other words, faced with deep disorganization and juridification of IR, employers in the context of corporatist institutional legacies are seen to favor the revival of unions and coordinated social partnership, which can facilitate industrial peace and enhance employers' influence over regulatory enforcement.

While the article puts forward claims about the relations between juridification and collective labor relations on the basis of one case study, its conclusions are significant for future research. On one hand, adopting juridification can be seen as a union revitalization strategy (Ibsen and Tapia, 2017), enhancing union power vis-a-vis judicial frameworks. On the other hand, this strategy can also be seen as an attempt by EAs to enhance their relevance to employers, to counter trends of opting out of collective bargaining.

To conclude: juridification, then, has significant potential to negatively impact centralized IR systems and the development of inclusive collective representation structures, yet its logic can be compatible with social partnership. In cases of agreement between the social partners regarding the need to curtail the expensive and time-consuming manifestations of juridification, and where there is still strong institutional support for social partnership, the collective IR system seems capable of subsuming the logic of the employment rights regime. However, given the potential incompatibilities between social partnership and organizing strategies for union revitalization (Frege and Kelly, 2003; Preminger, 2013, 2018b), further research might investigate to what extent or under what circumstances a union with an organizing orientation is able to embrace the logic of juridification.

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[1] Following Fichter and Greer (2004), we define social partnership as relations of cooperation between unions and employers.

[2] Cases handled by the tribunals 'increased from 15,000 per year in the early 1970s to 186,300 in 2011-2012' (Guillaume, 2016: 231). From 2012, the UK took steps to reduce these numbers, including by introducing fees in 2013, leading to a drop of 79% in the subsequent three months. The fees were abolished in 2017 after the Supreme Court ruled them unlawful and unconstitutional, leading to a 'sharp increase in the number of individual claims' (Guillaume, 2016: 232).

3 Histadrut: the General Federation of Labour in Israel (see Shalev, 1992 and Preminger, 2018a for overviews of Israeli IR).

[4] The entry of noncitizen Palestinians into the Israeli labor force began soon after the Six-Day War of 1967, which left extensive Palestinian territories under Israeli control.

[5] According to internal documents of the employers' association, noncitizen Palestinian construction worker claimed on average NIS 120,000, though due to the slowness of the legal process most cases resulted in a settlement (interviews with the head of the Construction and Woodworkers Union and the HR manager of the sectoral employers' association).

[6] According to official data, between January 2016 and December 2019 only 44 cases of individual labor disputes involving noncitizen Palestinian construction workers were brought before the labor courts [www.nevo.co.il]. Moreover, the social partners claim that around 90% of all cases result in agreed settlements in the enforcement committee (I M, chair of the Construction and Woodworkers Union, and I G, HR manager of the sectoral employers' association, interviews).

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