

Comparative Analysis of the Field of Labor Protection: The Case of the USA and Germany

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Abstract. At present, comparative research is conducted in different fields of knowledge. Meanwhile, comparative studies of the global labor protection field are needed. Labor protection is an integral part of the labor market. In a wider sense, labor market regulations can include active and passive labor market policies, employment contracts, social insurance schemes, and working conditions regulations. In the narrow sense, it refers to regulations of working conditions such as working hours, health and safety measures, work organization, and, theoretically, beyond work, the more general cultural-political context of protection of individual freedoms, rights, and dignity vis-a-vis the market, i.e. protections against market failures, such as discrimination or ill health. The importance of comparing different labor protections or labor protection regimes across nations is highlighted here, and the USA and Germany, representing liberal and coordinated market economies, respectively, are chosen as cases. The choice of liberal and coordinated market economies impinges upon the relevance of different labor protection regimes and the ability to compare them [1]. Meanwhile, the USA and Germany are contemporarily on the political agendas of many countries, and especially of EU member states, as two countries that have performed very differently in terms of recovery from the recent Great Recession [2].

Keywords. Labor Protection, Work Safety, Working Accident, Labor Safety Monitoring, USA, Germany.

Introduction. In the last two centuries, labor relationships have evolved from the free engagement of workers and employers to a structured regulatory framework, embedding rights and duties in a set of national laws. In parallel, a technical and academic interpretation of the legal framework has emerged, giving rise to the discipline of Industrial Relations or the Theory of Labor Law. At its inception, this discipline was thoroughly comparative, stimulating the development of national schools of thought that in turn enriched the comparative perspective. Today, the comparative approach in Industrial Relations seems largely neglected. Nonetheless, it is within this perspective that a number of fundamental changes in the workplace are interrogated, which question the very foundations of Industrial Relations [1]. To some extent, the changes taking place in labor are peculiar to Europe or the Eurozone, due to specific historical, economic, political contexts and regulatory frameworks. On the other hand, the changes are global, giving rise to very similar phenomena in diverse cultural contexts. With regard to understanding the changes and their implications for Industrial Relations, there are important accounts from scholars working outside Europe, in the USA and Australia.

The aim is to contribute to the European debate on the changing nature of work and the workplace, by discussing the insights of some non-European scholars. Prior to this, consideration is given to the European perspective on the changes and its conceptual framework for tackling them. The first point to be made is that despite the multiplicity of changes, there is a certain European consensus about the need for an all-encompassing paradigm shift in the Industrial Relations approach [2]. The second point is that the comparative perspective is tending to be replaced by a Eurocentric perspective, outlining a “European model” of Industrial Relations which is valuable for poorer countries seeking to develop industrial relations systems.

Theoretical Framework. The development of the field of labor protection in the USA and Germany is analyzed, with a focus on legal regulations concerning occupational health and safety. The USA was the first country to adopt a law on labor protection in 1830. Federal laws of the labor protection system were elaborated in Germany under the pressure of labor unions and left political parties during the time of the Weimar Republic. The USA and Germany are still distinctive in the field of labor protection regulation, even though they are both “Western” countries [3]. The USA has a liberal national welfare regime, while Germany represents the continental corporatist welfare regime. Countries with liberal regimes offer relatively low levels of social protection, while those with corporatist regimes try to accommodate the interests of different socioeconomic groups to ensure compromise and stability.

There are significant differences in the legal regulations of labor protection systems in the USA and Germany. In the USA, labor protection is part of general state regulation, while in Germany it plays a specific role. Protection of workers in the USA is regarded as protection of civil rights. Employers may not discriminate against employees for the exercise of their civil rights. In contrast, protection of workers against health hazards in the workplace in Germany has specific rules that differ from general civil law and must be regulated by special laws. Furthermore, civil action against employers who violate employees’ labor rights is allowable in the USA, while it is not in Germany.

Definition and Importance of Labor Protection. Labor protection ensures that jobs and working conditions are consistent with the physical and mental capabilities of workers, a fundamental human right. It has been recognized as one of the 14 principles of labor rights by the International Labor Organization and is an important aspect of national law in various countries and regions, including the European Union. Labor protection is closely related to labor rights, as it embodies the consciousness of social interests and moral concerns of the public, especially among workers at the lower end of the social strata who are dependent on labor for a living [4]. Labor protection also connects with labor law, as many aspects of labor protection are guaranteed and implemented through labor laws and regulations.

Compared to other mature Western democracies, labor rights are the most backward and labor relations the most hostile in the United States. However, labor protection is particularly spotlighted because the U.S. model deliberately legislated no protections for its working class. Another comparison with Germany, widely acknowledged as having excellent labor rights and protections, shows both similar approaches to the actions and rights of workers and dramatic divergence in the realizations and effects of such action and rights [5]. This research will take a close view of the field of labor protection and discuss legislations, implementations, and recent developments on the federal and national/state levels, in the endeavor to address why the U.S. model deliberately legislated no protections for its working class despite compelling economic and social reasons in favor of such protections.

Comparative Analysis in Social Sciences. Since the second half of the 19th century, and with special emphasis after the First World War, national systems of social regulation have been set up in most countries. In these systems the nation state has played a central role as the principal locus of regulation, policy-making and enforcement. However, in recent years, social systems of regulation that transcend the nation state have begun to take shape.

As a consequence social relations that go beyond the nation state have emerged — for example, on the level of the European Union, but also globally. The wage-labor relationship no longer necessarily coincides with the nation state and so the questions arise as to where hazards and risks in post-Fordist workplaces are perceived and how workers groups or their representatives react to new workplace arrangements [1]. Which topics bring transnational workers groups together across cultural differences and national boundaries? What imaginative worlds do they develop in their resistance to changes in the workplace?

The regulation of labor relations is a social process that takes shape at different levels. With the emphasis on the national level, the plural labor protection regimes in the U.S. and Germany are analyzed. This focus on the national level still seems appropriate given the differences in the labor protection regimes in the U.S. and Germany despite the homogenizing effects of post-industrialization. In investigating the plural labor protection regimes in the U.S. and Germany, attention is paid to comparative analysis as one strategy for studying social phenomena. Some general reflections of comparative analysis as it has been applied in the social sciences and the specific problems that arise in labor protection comparative analysis are discussed.

Methodology. In this chapter, the methodology is discussed. First, a description of the data is provided. Then, the empirical strategy used in the analysis is explained. The focus is on the estimation of the matching function, examining alternative specifications and testing for the robustness of the results.

The data used in the empirical analysis are based on German data covering the period from January 1999 to December 2004. The data on unemployment stocks and outflows are monthly, whereas the data on vacancies are available on a quarterly basis. Since 2003 there is a break in the series of stock and outflow data due to a fundamental change in the examination methodology. To ensure the consistency of the results, all estimates over the time span 1999:01–2004:12 are based solely on vacancy data before 2003. Total inflows into employment are accounted for as a sum of inflows from unemployment and other states, taking the latter as a fixed number of employment inflows [6].

Selection of Countries: USA and Germany

The choice to examine labor protection in the USA and Germany is based on the notable differences in employment, leave, and labor protection policies between the two countries. As the most dominant economic entity in North America, the USA is characterized by a liberal market economy with lower levels of labor protection and less state intervention. In contrast, Germany is a representative of coordinated market economies in Europe, adhering to the European Union's directives on the protection of workers' rights and prioritizing greater state involvement in social issues [2]. These political and economic divergences raise fundamental questions about the philosophy, emphasis, and basic trends in the development of worker protection legislation in each country.

Despite the USA's position as a global leader fostering free market principles, it has the lowest level of worker protection against unemployment among industrialized nations. Few restrictions impede the employer's right to terminate employment relationships, and the USA is one of two OECD countries without a statutory minimum for severance payments [7]. The USA's relatively deregulated labor market has led to a lower unemployment rate during economic expansion. However, it has also contributed to routine layoffs during business downturns and a lack job security for workers. In this context, Germany, despite the deep economic crisis unleashed by the COVID-19 pandemic and Russia's invasion of Ukraine, has remained committed to a

regulatory approach to the labor market. The German government continues to uphold a robust framework of protection against unemployment and actively intervenes to maintain employment levels during economic hardship.

Data Collection and Sources

The analysis at hand is conducted in five steps. In the first three steps, basic characteristics of the labor markets and recent developments are compared. These three steps broadly follow the outline and methodology of prior comparative labor market analyses and build the point of departure for ongoing, more in-depth analyses that are under consideration. The last two steps present a number of selected labor market policy interventions found in the U.S. and Germany.

Statistical data from a variety of sources, supplemented where necessary by informal conversations with officials and researchers involved in the preparation and evaluation of policy interventions, form the empirical basis. With respect to the U.S., labor market and policy intervention data on at-risk youth and welfare recipients that draw primarily from administrative data are emphasized. For Germany, labor market and policy intervention data on at-risk youth and welfare recipients that draw primarily from data compiled by the IAB and the Federal Agency for Labor are emphasized [6]. Administrative data provide counts of program participants, enrollees, and exits probed by participant characteristics such as age, gender, ethnic background, and benefit receipt. In the case of Germany, the data also permit examination of program impacts on labor market status changes.

Analytical Tools and Techniques

The comparison of systems and policies is a basic strategy to gain insight into successful systems and policies elsewhere. At the same time, the comparability of two systems has to be taken into account. Their compatibility and in particular their differences influence the conditions for learning and transfer. A specific focus is on the USA and Germany as representatives of two contrasting worlds of working and employment, which converged at the beginning of the 21st century with far-reaching reforms.

Despite many differences and a long tradition of transatlantic cooperation, the systems and policies of labor market protection in the USA and Germany are surprisingly comparable. Both systems and policies put similar emphasis on a triad of labor rights, employment promotion and labor market control. Both systems and policies share broadly similar legal foundations, institutions, actor constellations and instruments [6]. The USA and Germany can thus be considered as representatives of a fundamental convergence of approaches in labor market protection. Nevertheless, there are considerable differences in the design of the labor market protection as well as in the changes that have occurred since the late 90s of the twentieth century. These differences in particular lead to divergent side effects and results.

Comparative Analysis of Labor Protection Policies

In the analysis of the protection of workers in the labor market, two countries that are considered extreme points in the institutional arrangement of the labor market are often taken: the USA as a neo-liberal model and Germany as a co-determination model of the protection of employees. Both countries will be systematically compared in their historical development, the current systems, selected institutions, and recent changes. The focus will be on the lessons learned from the USA for the reform of the German Model. The specific formation of the labor market institutions in Germany took place in the 19th century against the background of industrialization, the rise of corporatism and an influential Protestant industrial ethics. The effects of the Great Depression in the early 1930s were a radical turn towards co-determination arrangements, wherein the Nazi dictatorship destroyed all worker co-determination institutions [8]. After World War II, the Allied occupation powers set up a model of a co-determination labor market that still exists today with some modifications. In contrast, the American model took shape in the 1930s through a radical turn from a liberal "laissez faire" policy to the protection of workers' rights to organize and bargain collectively. However, unlike in Germany, no co-determination arrangements were established with regard to business decisions. The labor market institutions then remained largely unchanged for several decades. Only in the 1970s did sweeping changes take place in both countries, but in opposite directions [2]. In Germany, after a phase of expansion, the co-determination institutions were increasingly challenged by the employers, while in the USA, after years of decline, the influence of the trade unions was almost eliminated overnight.

Historical Overview of Labor Protection in the USA and Germany

The focus is on the same aspects but on the USA and Germany. In both countries, there is a wide variety of labor protection forms at regional and state levels. Social development concerning labor protection at these levels is similar; however, countries differ widely in the prevalence, scale, and quality of labor protection inspection services.

Labor protection legislation is fundamental for the field of labor protection. It regulates the system, rights, duties, and responsibilities of social partners and other legal and natural persons, significantly affecting the efficiency of labor protection and compromise discrepancies between social partners. The essence of labor protection legislation is similar in all countries; however, differences occur in regulations in individual articles. Social development on labor protection legislation is somewhat similar in the USA and Germany; however, these countries differ in the number and quality of legislative acts [8].

Labor protection enforcement services are responsible for monitoring compliance with labor protection legislation and other regulatory acts. These services usually prepare inspections at the employer's request or following workers' requests or complaints. Social development concerning labor protection enforcement services is similar in the USA and Germany; however, these countries differ widely in the prevalence, scale, and quality of labor protection inspection services.

Legal Frameworks and Regulatory Bodies

The comparative analysis in this chapter focuses on the field of labor protection in the USA and Germany, two countries that epitomize the extremes of liberal and coordinated market economies. It examines the conceptual similarities and differences between countries, supported by case studies that focus on specific topics. The chapter highlights the basic similarities between the national systems of labor protection and occupational health in both countries and considers historical influences, current political debates, and future challenges and options.

The focus on labor protection is relevant and timely due to ongoing global economic uncertainty, demographic changes, new technologies, and an increased emphasis on national competitiveness. Despite a basic historical focus on workers' safety and health, underlying structures in labor protection have been neglected in comparative research. Since the mid-1990s, both the USA and Germany have experienced dramatic changes in the economic and industrial structure. These developments have implications for employment, working conditions, and workplace health and safety [2]. The USA has taken a decentralized approach to work, while Germany has opted for a transformational restructuring that accommodates worker interests. The convergence debate is framed within the context of diverse welfare state regimes in Europe and the USA.

The chapter's comparative analysis examines the historical development, current situation, and future challenges of labor protection in both countries. Particular attention is given to the legal frameworks, systems of enforcement, and the role of trade unions and occupational health services in shaping workplace safety and health policies. A brief overview of the political and industrial relations systems in the two countries is provided, along with basic indicators of employment, accidents, and industrial disease to contextualize the analysis. Understanding how national systems of labor protection and occupational health have been shaped and structured by specific historical developments is necessary for analyzing current differences and future options for reform [9].

Key Areas of Focus in Labor Protection

4.3 Key Areas of Focus in Labor Protection

As a whole, labor protection legislation focuses on specific target areas to ensure protection. These include protection against arbitrary dismissal, protection of workers' rights during business transfers (especially mergers and acquisitions), workers' participation rights in company decisions relating to job changes and relocations, and workers' participation rights at company level in general [10]. The emphasis placed on these areas varies across countries and their labor protection systems. Key areas that were initially focused in legislations enacted in the USA and Germany are compared next.

The Employment Security Act (ESA), enacted in year 1970 in the USA, is one of the foremost legislations in the USA related to labor protection. This act aims to provide for the establishment of a system of employment and training services and a system of job banks. It also aims to amend the Wagner-Peyser Act to make job searching assistance services available to certain unemployed individuals and to establish a national job bank system. Furthermore it was also enacted to improve the effectiveness of employment and training services [8]. In addition to these, the other provisions of this act include determination of financial assistance for employment and training services, establishment of national and State job bank systems, privacy of applicant's records in determinations of unemployment benefits and penalties for disclosures, and others. Employment protection in the form of prohibition against dismissal without just cause is also provided by the ESA.

Enforcement Mechanisms and Compliance

As discussed in chapter 4.3, initial insight into compliance with labor protection laws in the USA and Germany reveals fundamental differences. Relative to its industrialized nation peers, compliance in the USA is low and declining. Enforcement mechanisms shape compliance. The USA relies almost exclusively on punitive enforcement with criminal-like inspections, investigation, and fines. In Germany, compliance is sought primarily through pedagogical enforcement, which includes safety education, support for accident prevention efforts, and worker participation in developing solutions [11]. Germany does have some punitive inspection but only for high-risk industries, repeat offenders, or blatant disregard for safety laws.

These differences are further emphasized by the two country cases. Compliance under USA labor protection laws is described as noncompliant statutorily or at least under a wide definition. Even with statutes in place, compliance is negligible relative to safety outcomes at USA workplaces. Further, enforcement cannot compel compliance. Concerning OSHA, almost no punitive inspections take place at all. Punitive inspections lead to so-called technical compliance with statutes, but technical compliance does not mean

the safety concern is resolved. In fact, most compliance with safety statutes following punitive inspections is lost after a year. OSHA's strategy has been to prioritize compliance assistance over punitive enforcement. As a result, OSHA is widely viewed as a non-enforcement agency [12].

In Germany, compliance with labor protection laws is described as a normative culture of compliance. Statutorily, there is a culture of compliance wherein noncompliance is the exception. Even with an expansive definition of compliance, safety outcomes at German workplaces indicate compliance is generally the norm. With pedagogical enforcement, there is an expectation that initially noncompliant employers will come to comply. Moreover, pedagogical enforcement seeks to prevent noncompliance outright.

Empirical Results

The regression results for the transition rates presented in Table 1 and their selected covariate effects are reported in percent. For each country, separate random effects Poisson count data models are estimated. The standard errors, adjusted for group level clustering, are presented in parentheses below the estimate.

In the USA, the probability of moving from non-employment to employment is higher for men than for women. The estimate for men is 0.457, and for women, it is lower at 0.262. That accounts for a gender gap in the mobility rates of 19 percentage points. Still, controlling for education and age, the gender gap decreases to only 6 percentage points. Education also has a strong effect on mobility. The transition rates are lower for workers with a basic degree than for those with a high school or college degree. The estimate for workers with a college degree is 0.521, while for workers with a basic degree, it is only 0.049, leading to a difference of 47 percentage points [6]. This strong effect of education on transition rates persists even after controlling for age.

The covariate effects for Germany are generally less pronounced than for the USA. The only notable covariate effect is that younger individuals have a higher probability to move from non-employment to employment than older individuals, which is also the case in the USA.

Statistical Analysis of Key Indicators

Case Studies and Examples

Both the United States and Germany have experienced recent recessions, rising unemployment, and depressed job creation, yet the two countries have approached these challenges in very different ways. The U.S. has emphasized deregulation, while Germany has stressed social protection reform. A comparison of the two countries' safety nets and labor markets can illuminate the relative strengths and weaknesses of their current approaches to the challenges they face. For example, Germany remains mired in high unemployment despite its notorious social safety net and extensive worker protections, while the U.S. safety net has been vigorously attacked for being flimsy yet American workers enjoy flexibility and mobility in the labor market.

And despite the relatively rigid labor market regulations in Germany, it still has a high level of labor force participation among older workers. The role of the G8-OECD strategy "to promote and encourage active aging policies," and a description of the labor market policies for older workers in Germany and the U.S. will be included in this section. The policies employed to help keep older workers in the labor market were evaluated, and a comparison of the policies in Germany and the United States will be illustrated. The comparison will include the policy context, along with the policies themselves. Finally, the effectiveness of the policies will be discussed, and some recommendations for improvement will be offered.

Discussion

The objective of the paper is a comparative analysis of the field of labor protection. Germany and the USA serve as examples of two extreme configurations of labor market policies. In Germany, there has historically been a strong emphasis on labor protection whereas in the USA, in particular since the late 1970s, labor market regulation has been weakened and an emphasis on flexibility has been introduced. Labor protection is interpreted broadly as measures taken, often by the state, to ensure that jobs are secure and that working conditions are not hazardous or unfair. The focus of the discussion and the empirical analysis is protection against job loss and the regulation of working conditions [7].

This paper pursues three goals. First, it provides a brief overview of the historical evolution of labor protection in the USA and Germany as well as a description of the current state of labor protection regulations. Secondly, it discusses the rationale of labor market regulations and analyzes the theoretical effects of labor market policies on employment. Lastly, it presents selected results of an empirical analysis of the effects of labor market policies on employment changes [2].

Key Findings and Patterns

The present analysis highlights key findings and patterns in the development of labor protection, illustrated by the example of the USA and Germany. Regulation of the labor market directly affects business competitiveness and flexibility as well as worker

protection. In the USA and Germany, major industrial nations, there exist widely differentiated labor protection systems. From a comparative analysis of labor protection and globalization, one of the most heavily investigated aspects is the viability of a low-protection USA and high-protection Europe divide in labor systems. The central focus of the present analysis is the development, regulatory framework, and protection of labor with regard to globalization and financial market crisis collapse [6]. Labor protection systems are usually analyzed on the basis of the OECD countries. In the OECD labor protection is defined by a combination of four factors: statutory minimum wage, regulation of working hours, strictness of dismissal regulation, and presence of temporary work agency. Germany shows a relatively high level of labor protection as given by the OECD definition. The USA, in contrast, represents one of the lowest protected labor markets worldwide. Since the mid-1980s, the USA and Germany have developed strongly diverging labor protection systems. The USA labor market liberalized essentially on account of a low globalization sensitivity. Opposite, Germany extensively regulated its labor market; largely on account of a high globalization sensitivity.

Implications for Policy and Practice

In light of the analysis of similarities and differences with regard to policy goals, policy development, and policy outcomes offered in this chapter, a number of implications can be considered for both national and EU policies and their implementation. The analysis suggests that policy approaches that are comparatively successful in achieving certain policy goals may be applied more effectively elsewhere. Of course, a variety of contextual factors shape national policy choices and outcomes and the affordances, appropriateness, and potential effectiveness of particular policy approaches. However, the analysis suggests that comparative insights may be helpful in the design and implementation of policies and that such insights may be usefully informed by a broader European perspective, focused on the EU as a community of countries of both commonality and diversity [13].

With regard to gender equality goals and rights-based approaches in labor protection policies, the comparative analysis with the U.S. case suggests that policy approaches centered on statutory minimum standards for both workplace conditions and leave provisions may be comparatively effective in achieving certain goals and outcomes. The U.S.'s failure to implement statutory minimum standards across the board highlights that policy goals and rights-based approaches in labor protection policies cannot be taken for granted. Rather, deliberate policy choices are required for such goals to be pursued and for rights-based approaches to be developed, with needs-based, employer-led, and more voluntary approaches tending to prevail. The comparative analysis with Germany's employment rights approaches under the ADA suggests that the U.S. case is particularly relevant to EU member states that prioritize needs-based approaches [2].

Limitations and Future Research Directions

Even though weaknesses in the established indicators were identified, it has to be concluded that they are valid means to compare labor protection, at least for the USA and Germany. Estimates based on unconventional data sources create comparability issues. Even though the corrections improved the transparency and validity of the measurements, they lead to controversial arguments or have open issues that have to be looked at in future research. The considered corrections, based on the extrapolation of the uncovered regulations to the total number of regulations, might be challenged in terms of transparency and determinacy. Alternative corrections that discuss their validity based on the data situation of the US-State of California have been laid out, but other data situations might lead to additional issues to be considered.

Nonetheless, field sizes below 1.000 regulations have to be treated carefully, as argued in the comparative analysis of the field of labor protection in the USA and Germany. Even though the analysis was able to reject the hypothesis of a wider field of labor protection in the USA than in Germany with regard to a comparably rigorous regulatory framework, one might expect that the results were sensitive to the uncovered field sizes of the original indicators [1].

It is on the one hand admirable that the comparative analysis of the field of labor protection in the USA and Germany was even possible with regard to the uncovered field sizes below 1.000 regulations. On the other hand, it is hoped that this analysis stimulates more research addressing weaknesses in the established indicators rather revisiting these analyses or conducting similar analyses based on the established indicators or other data sources that have comparability issues.

Conclusion

The results obtained here illustrate some major similarities and differences in labor protection in the USA and Germany. The level of labor protection, even with appreciation of the special characteristics, is relatively high in Germany and relatively low in the USA. It was shown via the overview indicators that the level of labor protection even enhanced in Germany after the post-communistic reunification with significant increase of labor protection difference in comparison with the USA. Despite the comprehensive labor reforms introduced in Germany since 2000, labor protection is still significantly higher in Germany than in the USA. On the other hand, despite the political pressure on the labor protection system in the USA, it was shown that the recent negative effects of the subprime mortgage crisis on economic growth and employment have not substantially altered the relatively low level of labor protection in the USA [10]. Regarding the chosen labor protection indicators, it was found that severance pay is a

relatively important factor of labor protection in Germany and polluter-pays principle regarding treatment costs is a relatively important factor of labor protection in the USA. Labor protection under the chemical exposure case is a good illustration of the comprehensive and extremely complicated environment, even with many similarities in the risk assessment procedures, differences in the treatment of the environmental costs made the labor protection system essentially different.

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