

Debate

Why Is It so Difficult to Reform Dismissal Protection?

PATRICK EMMENEGGER
University of St.Gallen

Introduction

The 2007 financial crisis has cast a long shadow over European economies. Facing large deficits and low economic growth, most European countries are looking for new ways to kick-start their economies. Mainstream economics suggests two main strategies to achieve this goal: expansionary austerity and structural reforms. The first strategy, expansionary austerity, follows a simple (and probably flawed) logic (Blyth 2013): By cutting public spending the deficit can be reduced (austerity), while the roll back of the state sets market forces free, thereby generating more economic growth (expansionary). Thus, expansionary austerity reduces the deficit by decreasing the numerator (the deficit), while simultaneously increasing the denominator (typically the GDP).

European countries have followed this strategy to a considerable extent. Most European countries, in particular the so-called PIIGS (Portugal, Ireland, Italy, Greece and Spain), have attempted to reduce their budget deficit by cutting public spending. As (even) *The Economist* (2013) admits, Greece “has cut deficits more than anyone else”. Nevertheless, the Greek deficit remains huge, amounting to around 10 per cent of GDP in 2012¹. Hence, governments have got the austerity part right; what did not work was the expansionary part: In 2013 the Greek GDP is likely to decrease for the sixth time in a row, thereby inflating the public deficit by decreasing both tax revenue and the GDP (the denominator).

How can European economies start growing again? Here, mainstream economics typically points to structural reforms. Examples include the marketization of public services, the deregulation of labour markets and the reduction of ‘red tape’. One labour market institution in particular has been at the centre of attention: the regulation of job security. Job security regulations restrict the managerial capacity to dismiss employees to allow for downsizing, or to replace workers and use new forms of employment such as temporary work when hiring new workers (Ragini 2000: 16). Quiggin (2010: 17) notes that no labour market institution “has been more vilified than restrictions on dismissal of workers, or requirements for generous redundancy pay” and that mainstream economics typically blames job security regulations for the sclerosis of European labour markets, in particular in Southern Europe (cf. Siebert 1997; Saint-Paul 2004; Skedinger 2010). But so far, European countries have mostly failed to reform dismissal protection – despite the economic crisis and pressure from both international organizations and donor countries. For instance, Greece has successfully cut public spending but, as *The Economist* notes (2013), “only ... in

¹ http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/Government_finance_statistics (accessed on August 29th 2013).

the sixth year of recession ... did it pass a law to allow incompetent civil servants to be fired more easily". In a similar vein, Italian governments have forced through multiple austerity packages, but the attempt of the technocratic Monti government to reform dismissal protection in 2012 is widely considered a failure (Emmenegger et al. 2013).

Insider-outsider politics and the 'logic of membership'

Why is it so difficult to reform dismissal protection? Standard accounts typically point to dysfunctional politics and in particular the power of vested interests. In this story, interest groups have an incentive to defend their concentrated benefits, while the wider public is mostly ignorant of the diffuse costs of these regulations (Olson 1982). With regard to job security regulations, Rueda (2007) has summarized this argument most clearly. Taking the insider-outsider theory of employment and unemployment (Lindbeck and Snower 1988) as a starting point, Rueda (2007) argues that job security regulations protect the jobs of labour market insiders (workers in open-ended employment relationships), while they are barriers to entry for labour market outsiders (workers in atypical employment relationships or the unemployed). These barriers to entry do not only protect labour market insiders from the competition for jobs by labour market outsiders, they also help labour market insiders to extract higher salaries from employers (Lindbeck and Snower 1988). As a consequence, labour market insiders have a clear interest in retaining dismissal protection.

Unions face a strong need to offer sufficient incentives to attract and retain members. Given that in most European countries trade union membership is strongly skewed towards labour market insiders (Ebbinghaus 2006), we can expect unions to oppose any reform that reduces the level of protection offered to workers on open-ended employment contracts. This reasoning closely corresponds to what Schmitter and Streeck (1999) have called the 'logic of membership': interest groups need to represent the (short-term) interests of members to justify membership. The implications of this argument are thus rather straightforward: Unions defend job security regulations because these regulations mostly benefit labour market insiders (i.e. their members). What is more, the more trade union membership is skewed towards labour market insiders, the more willing unions are to sacrifice outsider interests if it helps them protect insider interests.

This 'logic of membership' argument, however, is certainly incomplete. On the one hand, it cannot explain why it is more difficult to reform dismissal protection than to cut funding for programmes that are particularly beneficial for certain organized groups. Put differently, it cannot explain why dismissal protection in case of open-ended employment contracts is distinctively more difficult to deregulate than it is to, say, retrench public subsidies for certain groups in society. On the other hand, the 'logic of membership' argument struggles to account for the puzzling finding that French and Swedish unions are equally insider oriented when it comes to dismissal protection although Swedish unions are much more encompassing with regard to union membership than French unions (Davidsson and Emmenegger 2012). In other words, although Swedish unions count more labour market outsiders among their members than French ones, they protect insider interests in the field of dismissal protection just like the French ones. Clearly, something is missing in this account.

Institutional power

What is missing in the standard account is the insight that job security regulations are institutions that shape the balance of power between capital and labour. Put differently,

job security regulations are sources of institutional power that trade unions have an interest in defending independent of trade union membership.

According to the definition of Barnett and Duvall (2005: 51), institutional power is the result of formal and informal institutions that mediate between actors, as one actor, “working through the rules and procedures that define those institutions, guides, steers, and constrains the actions (or nonactions) and conditions of existence of others”. In other words, the presence of institutions can change the way two actors interact and give one actor the possibility to influence the actions of another actor. Institutional power is thus different from compulsory power that entails the direct control of one actor of the conditions and actions of another, for instance by mobilizing members to protest against a given employer. Rather, institutional power is “indirect” because “evolving rules and decision-making procedures can shape outcomes in ways that favor some groups over others; these effects can operate over time and at a distance, and often in ways that were not intended or anticipated by the architects of the institution” (Barnett and Duvall 2005: 48).

Before the advent of historical institutionalism, the power implications of institutions have often been overlooked. Take for instance the important work by Korpi (1983) who differentiates between basic and derived power resources. Basic power resources are “characteristics which provide actors – individuals or collectivities – with the ability to punish or reward other actors” (Korpi 1983: 15). Trade unions can then invest these basic power resources in the creation of institutions for conflict resolution such as laws and ordinances, collective agreements or the dissemination of ideologies. Through these investments of basic power resources, Korpi (1983: 15) explains, actors can derive new types of power resources, which “ultimately depend on the basic power resources for their effectiveness”. Korpi’s (1983) definition of basic power resources clearly corresponds to Barnett and Duvall’s (2005: 49) definition of compulsory power because it emphasizes the direct control of one actor over another. Hence, in Korpi’s account, institutional power is ultimately dependent on the unions’ ability to mobilize members (compulsory power).

In a similar vein, Traxler et al. (2001) distinguish between primary and secondary power resources where the former refers to union density and the latter to unions’ ability to extract resources from third party actors, in particular the state. This distinction corresponds to different conceptualizations of power. While arguments based on union density are mostly concerned with maintaining or increasing compulsory power (i.e. union membership), arguments based on the (institutionalized) involvement of unions in decision-making processes are affiliated with what Barnett and Duvall (2005) call institutional power. However, just like Korpi (1983), Traxler et al. (2001) consider primary power resources (i.e. union density) to be more relevant because unions’ secondary power resources (i.e. union involvement in decision-making processes) are fundamentally dependent on the state’s and the companies’ willingness to grant unions influence. As Traxler et al. (2001: 75) emphasize, unions “need state support when trying to exert influence on socioeconomic policy issues formally regulated by the state”. So even though these authors consider multiple sources of power, they put more emphasis on compulsory power and the accounts therefore imply that trade unions first and foremost represent the interests of their constituencies to maximize compulsory power.

However, these accounts fail to acknowledge that unions have often managed to institutionalize their roles in decision-making processes, thus making these ‘derived’ or ‘secondary’ power resources largely independent of unions’ compulsory power. Hence, even though compulsory power may play an important role in generating and defending institutional power, as emphasized by Korpi (1983), compulsory power cannot be considered a

more basic power resource (Barnett and Duvall 2005). Rather, institutions, once created, become independent power resources (Mahoney and Thelen 2010). In fact, institutional power resources can even increase compulsory power by increasing the attractiveness of union membership. Trade unions therefore have a strong interest in adopting strategic positions that protect these institutions.

Institutional power resources and the ‘logic of influence’

There are two (interrelated) ways in which job security regulations are institutional power resources (Emmenegger forthcoming). Both of these ways are directly related to Schmitter and Streeck’s (1999: 54) ‘logic of influence’ that is mostly concerned with strategies that help preserve the unions’ long-term position of power. In both cases, the presence of job security regulations strengthens the trade unions’ position vis-à-vis employers.

The first way concerns the trade unions’ organizational interest in dismissal protection. Job security regulations protect union representatives and union members against arbitrary dismissal. If not for job security regulations, employers who are hostile towards trade unions and collective bargaining could simply dismiss all union members and union representatives. This possibility would also create major disincentives to unionize in the first place. Workers who risk losing their jobs would think twice before joining a trade union. As Orren (1991: 176) argued in her classic analysis of US labour relations at the turn of the century, it is the ability to hire and fire at will that anchors the management’s control over wages and hours, as over all labour matters. As a result, the presence of job security regulations changes the relationship between capital and labour because these regulations restrict employers’ right to fire unwanted workers such as trade union representatives and thus facilitate trade union organization in the workplace.

Once in place, trade unions have a strong interest in defending job security regulations because these regulations help protect their organizations. Consider Golden’s (1997) analysis of strikes. Starting from the observation that large-scale workforce reductions not always trigger strikes, Golden (1997) argues that unions pick their fights strategically. Unions cannot fight all workforce reductions because strikes are expensive and can potentially cause long-term damage by poisoning the relationship between unions and employers. In her empirical analysis, Golden (1997) shows that unions respond with industrial action only when their organizational interests are at stake because the firm is trying to take advantage of the reorganization to break the union itself (for instance, by dismissing a disproportionate share of union members or by arbitrarily firing trade union representatives). Crucially, job security regulations give unions the legal means to fight attempts by employers to attack their organizations (e.g. regulations concerning arbitrary dismissals). The bottom line is that unions have an organizational interest in job security regulations because they help protect their representation at the workplace level.

Understood in this way, job security regulations protect unions’ right to organize and represent workers. However, job security regulations can do more than that for trade unions. The second reason why job security regulations are an institutional power resource is that, depending on the precise regulations (often somewhat hidden in the fine print), institutions such as job security regulations often award trade unions an important role in the administration of dismissals (Davidsson and Emmenegger 2012). Let me give an illustrative example: the Swedish ‘last in, first out’ principle in case of dismissals for economic reasons. Swedish employers are not free to dismiss workers of their choice, but have to dismiss workers with the least seniority (hence, the name ‘last in, first out’). However, this

regulation is optional in the sense that derogations from the ‘last in, first out’ principle can be negotiated between unions and employers. This puts unions in a very strong bargaining position. They can demand concessions from the employers in return for allowing them to deviate from the ‘last in, first out’ principle. In addition, it allows unions to protect union representatives against dismissal, while creating a powerful incentive for employees to unionize (because employees have a strong incentive to make sure that union delegates are well-disposed to them when negotiating about the selection of workers to be dismissed).

The Swedish ‘last in, first out’ principle is no exception. In fact, trade unions play important roles in the administration of dismissals in most European countries. Examples include third party involvement in dismissal procedures, priority rules determined in negotiations between employers and unions, consultation and veto rights of works councils as well as the right to represent workers in court. As I show elsewhere (Emmenegger forthcoming), many of these rules were introduced (and institutionalized) in the late 1960s and early 1970s, at the height of trade union power, to strengthen the role of unions in the workplace and to monitor employers’ behaviour. They are thus the political legacies of historical struggles (Mahoney and Thelen 2010). Although trade union power in terms of union membership and mobilizing capacity has declined in recent years, unions have successfully protected their involvement in the administration of dismissals. As a result, job security regulations continue to be a major (and increasingly important) source of union power.

Three reasons to fight the reform of dismissal protection

Trade unions have thus three reasons to fight the reform of dismissal protection: First, they need to represent their members’ interest in statutory dismissal protection. Second, they have an organizational interest in retaining dismissal protection, so employers hostile to trade unions cannot single out union members in workforce reductions. Finally, unions have an interest in protecting their involvement in the administration of dismissals because this involvement allows them to influence management decisions at the company level. These three reasons do not have the same weight in all European countries. For instance, the fear of employers hostile to unions is probably more important in Southern European countries characterized by conflictual industrial relations, while the involvement in the administration of dismissals is particularly important in countries characterized by long traditions of cooperative industrial relations. Everywhere though, unions have sufficient reason to fight any reform of dismissal protection. Job security regulations are thus unlikely to disappear – even in these times of crisis.

References

- Barnett, Michael and Raymond Duvall (2005). Power in International Politics. *International Organization* 59(1): 39–75.
- Blyth, Mark (2013). *Austerity: The History of a Dangerous Idea*. New York: Oxford University Press.
- Davidsson, Johan Bo and Patrick Emmenegger (2012). “Insider-Outsider Dynamics and the Reform of Job Security Legislation”, in Bonoli, Giuliano and David Natali (eds.), *The Politics of the New Welfare State*. Oxford: Oxford University Press, pp. 206–229.
- Ebbinghaus, Bernhard (2006). Trade Union Movements in Post-Industrial Welfare States. In Armingeon, Klaus and Giuliano Bonoli (eds.), *The Politics of Post-Industrial Welfare States: Adapting Post-War Social Policies to New Social Risks*. London: Routledge (123–142).

- Emmenegger, Patrick (forthcoming). *The Power to Dismiss: Trade Unions and the Regulation of Job Security*. Oxford: Oxford University Press.
- , Silja Häusermann, Bruno Palier and Martin Seeleib-Kaiser (2013). Structural Change and the Politics of Dualization. *Rassegna Italiana di Sociologica* 54(2): 201–226.
- Golden, Miriam A. (1997). *Heroic Defeats: The Politics of Job Loss*. Cambridge: Cambridge University Press.
- Korpi, Walter (1983). *The Democratic Class Struggle*. London: Routledge and Kegan Paul.
- Lindbeck, Assar and Dennis J. Snower (1988). *The Insider-Outsider Theory of Employment and Unemployment*. Cambridge: MIT Press.
- Mahoney, James and Kathleen Thelen (2010). “A Theory of Gradual Institutional Change”, in Mahoney, James and Kathleen Thelen (eds.), *Explaining Institutional Change: Ambiguity, Agency and Power*. Cambridge: Cambridge University Press, pp. 1–37.
- Olson, Mancur (1982). *The Rise and Decline of Nations: Economic Growth, Stagnation, and Social Rigidities*. New Haven: Yale University Press.
- Orren, Karen (1991). *Belated Feudalism: Labor, the Law, and Liberal Development in the United States*. Cambridge: Cambridge University Press.
- Quiggin, John (2010). *Zombie Economics: How Dead Ideas Still Walk Among Us*. Princeton: Princeton University Press.
- Regini, Marino (2000). “The Dilemmas of Labour Market Regulation”, in Esping-Andersen, Gøsta and Marino Regini (eds.), *Why Deregulate Labour Markets?* Oxford: Oxford University Press, pp. 11–29.
- Rueda, David (2007). *Social Democracy Inside Out: Partisanship and Labor Market Policy in Industrialized Democracies*. New York: Oxford University Press.
- Saint-Paul, Gilles (2004). Why Are European Countries Diverging in their Unemployment Experience? *Journal of Economic Perspectives* 18(4): 49–68.
- Schmitter, Philippe C. and Wolfgang Streeck (1999). The Organization of Business Interests: Studying the Associative Action of Business in Advanced Industrial Societies. MPIfG Discussion Paper No. 99/1.
- Skedinger, Per (2010). *Employment Protection Legislation: Evolution, Effects, Winners and Losers*. Cheltenham: Edward Elgar.
- The Economist (2013). After Austerity, What? May 4th 2013.
- Traxler, Franz, Sabine Blaschke and Bernhard Kittel (2001). *National Labour Relations in Internationalized Markets: A Comparative Study of Institutions, Change, and Performance*. New York: Oxford University Press.

Patrick Emmenegger is professor of comparative political economy and public policy at the University of St.Gallen. He is the author of “The Power to Dismiss: Trade Unions and the Regulation of Job Security in Western Europe” (Oxford University Press, forthcoming) and co-editor of “The Age of Dualization: The Changing Face of Inequality in Deindustrializing Societies” (Oxford University Press, 2012). His work has been published, amongst others, with *Comparative Political Studies*, *European Journal of Political Research*, *Journal of European Social Policy*, and *Socio-Economic Review*. *Address for correspondence*: Department of Political Science, University of St.Gallen, Rosenbergstrasse 51, 9000 St.Gallen, Switzerland. Email: patrick.emmenegger@unisg.ch