'New Labour's Britain: Between Deregulation and Reregulation'

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Introduction

It is an honour to be invited to give the thirteenth in this distinguished series of lectures. Were I standing up in Britain, I might be a little apprehensive at the prospect of delivering the 'unlucky thirteenth'. But I'm sure that here in Melbourne, the sporting capital of Australia, I should have to wait until the 87th to entertain such foreboding.

I make no apology for focusing on developments in an offshore island 12,000 miles away. Britain under Mrs Thatcher was the scene of the original experiment in labour market deregulation. For 18 years successive Conservative Governments drove forward a programme of deregulatory measures which transformed the landscape of industrial relations. Two years ago, giving the 11th lecture in this series, John Purcell persuasively argued that institutional industrial relations in Britain, based on the model of trade union recognition and generalisable sector-level collective agreements, was at an end. In taking an approach aimed at systematically minimising, if not eliminating, the influence of collective institutions in industrial relations Britain soon found itself not to be alone. Indeed others, notably New Zealand, subsequently went further and faster. In Australia, my reading at a distance of the Coalition Government's Workplace Relations Act is that diminishing the role of the Australian Industrial Relations Commission and constraining the ability of trade unions to represent workers, and determine pay and conditions on their behalf, are amongst its central priorities.

Equally important, in the face of similar economic forces in the shape of accelerated rates of product and process innovation, the increasingly international scale of competition and production organisation and associated continuing restructuring, many of Britain's neighbours in the European Union took a different route to securing the flexibility and enterprise-level discretion that was one objective of the Conservative's industrial relations reforms. In countries such as Germany, Italy and the Nordic states, far from facing a frontal assault collective institutions have played an important role during the 1980s and 1990s in managing processes of labour market adjustment and industrial relations decentralisation. Increased flexibility and a greater emphasis on the enterprise level has been secured within the existing framework of social partnership arrangements and sector-level collective bargaining (Ferner and Hyman, 1998).

The election in 1997 of new Labour under Tony Blair undoubtedly marks a turning point in the long march towards a deregulated labour market in Britain. But a turning point to where, and to what degree? Can we speak of a renewal or renaissance of institutional industrial relations? Or are the effects of the sharpest edges of market principles merely being cushioned? In terms of headline measures, the initial turn in direction has been rapid indeed. The first 15 months have seen new Labour sign up to the social chapter of the European Union's treaty, from which will flow new employment rights for Britain's workers; fulfil its manifesto commitment to implement a national minimum wage; and the publication of proposals to extend individual employment protection and put in place a statutory procedure for trade unions to secure recognition by employers. Yet, Tony Blair has insisted that even in the face of these measures, "Britain will have the most lightly regulated labour market of any leading economy in the world." The proposals "put a very minimum infrastructure of decency and fairness around people in the workplace." (Fairness at Work, 1998, p3). Others

disagree: Robert Taylor, the employment editor of the influential Financial Times has argued that new Labour's approach, in combination with the effects of EU membership now fully embraced by new Labour, amounts to a 'softly-softly revolution' in Britain's workplace relations. "By the end of next year, the UK will have the most intricate and comprehensive framework of labour legislation that it has ever had." (Financial Times, 18th June 1998).

Of course, the two claims are not incompatible. An important consideration in interpreting them is new Labour's pro-business credentials and determination to remain close to business. The current government is notable for its inclusion of three prominent business leaders as ministers for trade and industry. Other business leaders have been brought in to head high profile Government task forces, for instance on welfare reform. The contrast with previous Labour administrations is stark: in 1945 and 1964 a cabinet level position went to the general secretary of the country's largest trade union on both occasions. As Taylor argues, Blair's rhetoric may be aimed at reassuring business even though the reality may be somewhat different. Although others have argued that an emphasis on maintaining good relations with the business community has been an important factor shaping new Labour's approach to industrial relations (Hall, 1998). My argument will be that a quiet revolution is occurring in important aspects of Britain's system of industrial relations, but that new Labour's embrace of Europe notwithstanding it does not amount to a full-blooded shift towards a continental-style model of industrial relations based on social partnership and universal employee rights to representation.

There are no easy parallels between this turning point in Britain and contemporary developments in Australia. In opposition, new Labour proclaimed its admiration for the Keating Governments' programme of economic modernisation and welfare reform. In office it is in these respects trying to emulate its Australian predecessor. But in industrial relations Labor in Australia was attempting to introduce flexibilities and an enterprise dimension within a highly institutionally regulated system. Whereas in Britain, new Labour is attempting a measure of re-regulation in the face of a deregulatory project which is deemed to have generated economic inefficiencies as well as growing injustice in the workplace. The character of the deregulatory measures being introduced by the Coalition Government invite comparisons with Britain's experience up until 1997, but that is not my theme.

A word about the terms in my title. New Labour is the self-styled designation which Tony Blair's Labour Party has accorded itself to signify its radical break with past Labour policies and traditions. Deregulation is taken to mean measures which decrease the influence and role of institutions in the labour market and industrial relations, in favour of market-based forms of regulation. Re-regulation involves the introduction of new regulatory measures by statute, or a re-assertion of the role of collective institutions, resulting in a recomposition as well as in a strengthening of regulation. So much for the preliminaries. The remainder of my lecture will be divided into three parts: the labour market and industrial relations context inherited by new Labour; the content of new Labour's measures, actual and in prospect; and the consequences of new Labour's approach.

The context of new Labour's accession to government

The deregulatory thrust of the economic, industrial and labour market policies of successive Conservative governments between 1979 and 1997 is well known. In industrial relations, collective institutions such as trade unions and collective bargaining were regarded as unnecessary, if not malign, constraints on the operation of market forces. Accordingly, the Thatcher and Major governments implemented a series of measures aimed at either removing or decisively weakening the influence of such institutions on the operation of the labour market.

A central strand of the Conservative programme of legislation was aimed at restricting the ability of trade unions to organise and to take industrial action and thereby to secure recognition from employers and successfully pursue their members interests in collective negotiations. To this end legislative measures were enacted which outlawed all forms of the closed shop (or what in Australia is termed union preference) and restricted union immunities from prosecution whilst taking industrial action. These narrowed the definition of a lawful trade dispute, including making all forms of secondary action unlawful, and made such immunities contingent on the holding of a prior secret ballot. Ballots, moreover, had to fulfil exacting criteria concerning their conduct. Further measures repealed the largely ineffective statutory procedure for securing union recognition, enacted in 1975, enabled employers to offer preferential terms and conditions to non-members of unions, reduced the scope of lawful picketing, made it lawful for employers to dismiss strikers and made it unlawful for unions to discipline any member not participating in legitimately determined industrial action. Further legal restraints on unions took the form of legislative intervention in the conduct of union's internal affairs, including union government and aspects of their finances.

In addition to these legal constraints on trade unions, various institutional supports to collective bargaining were removed. This signalled a major reversal in public policy, under which collective bargaining had constituted the preferred model for industrial relations of governments of different hues since 1918. Specifically, procedures which enabled trade unions to secure terms and conditions at a particular site or bargaining unit equivalent to those determined by collective agreements covering similar workers were repealed. So too was the Fair Wages Resolution, which since 1891 had ensured that public sector contracts were let on terms and conditions that were no worse than those prevailing in the relevant collective agreement. Since 1909 too, in certain sectors where workers were deemed vulnerable to employer exploitation but which trade unions had been unable to organise, basic wages and conditions had been set by Wages Councils with statutory powers of enforcement. The Councils, which comprised representatives of employers and trade unions under an independent chair, were finally abolished in 1993 having seen their powers already weakened by earlier legislation.

The purchase of collective institutions in regulating training provision was tackled too: all but one of the statutory industrial training boards, which comprised both employer and trade union representatives, were abolished. These had required all employers in the industries concerned to engage in training in basic skills, largely for manual workers, through a combination of a levy and exemptions.

The programme of labour market deregulation extended also to measures limiting some individual employment rights, which were deemed to be impediments to hiring and firing. Thus the qualifying period for protection against unfair dismissal was progressively increased from six months to 2 years.

Beyond the labour market, the imposition of market-based forms of regulation in the public sector has had profound effects on industrial relations for the workers concerned. As in Australia, this has taken a variety of forms: privatisation of previously state-owned industries; the introduction of compulsory competitive tendering into large areas of public service provision; and the introduction of market principles into the operation of central and local government services, together with educational and health provision. To take just one of these forms, and often the most dramatic in terms of its industrial relations consequences: in the many cases where compulsory competitive tendering has resulted in the placing of contracts with private sector organisations, the workers concerned have not infrequently

found themselves transferred to an employer who neither recognises a trade union nor engages in collective bargaining.

The deregulatory thrust of the Conservative's legislative programme was, however, blunted by constraints imposed by Britain's membership of the European Union. Although regulation of key aspects of industrial relations, such as the right to organise and the right to strike, lies outside of the competence of the EU, on other matters the Conservatives were forced by EU directives and decisions of the European Court of Justice to introduce legislative measures which ran counter to their ambitions. Instances include the directive on the transfer of undertakings, which the government was obliged to transpose into national law in 1991 with what it itself admitted was a 'remarkable lack of enthusiasm' (Davies and Freedland, 1993: 577). This required existing contracts of employment to be honoured when undertakings were taken over, a requirement that had considerable implications for the outcome of compulsory competitive tendering processes. Elsewhere, the European Court of Justice ruled that existing UK legislation on equal pay did not comply with the EU's equal treatment directive. As a result in 1983 the Conservative government had to enact legislation which established the principle of equal pay for work of equal value. Similarly, the UK's sex discrimination legislation had to be strengthened in 1986 following another ECJ judgement.

Conservative governments responded by seeking to minimise the impact of the EU on industrial relations. Most dramatically, in 1991 the UK secured an opt-out from the proposed social chapter of the Maastricht Treaty, which in the face of the creation of the single European market envisaged a series of measures aimed at constraining the scope for competition between member states in terms of labour standards and basic conditions, known as 'social dumping' and providing new rights for workers at transnational level. Even so, the UK continued to be affected by measures adopted before the 'opt-out' was secured, and by new measures adopted under the Treaty clause on health and safety which was not covered by the opt-out. Thus, a major directive regulating working time across the EU was adopted under the health and safety Treaty clause in 1996, against which the Major government mounted an unsuccessful legal challenge.

Moreover, in its own terms the opt-out was only partial in its effect. Although not applicable in Britain, because of the scale of their operations elsewhere in Europe over 100 UK-based companies were required to comply with the European Works Councils directive, which requires multinational companies to establish European-level structures for employee information and consultation. Despite ministerial pressure not to do so, all of these companies which had established EWCs by May 1997 had chosen, for sound industrial relations reasons, to include representation from their British workforce. Of local interest is that five Australian-owned companies are also covered by this directive. One, TNT, has already reached an agreement establishing a European Work Council (ETUI, 1998).

If in Britain the shift towards more market-based forms of labour market regulation was more protracted, constrained by membership of the EU and in the end less radical than that which has occurred across the Tasman sea, it was nonetheless marked. The result was that new Labour inherited a labour market transformed since its old Labour predecessor was voted out of office in the wake of a winter of industrial relations discontent in 1979.

Over the period from 1979 to 1997 the proportion of the employed workforce in full-time, permanent employment declined from 76 to around 60 per cent reflecting a substantial increase in less secure forms of employment. Part-time employment grew from 19 to almost 30 per cent of the employed workforce; associated with a continuing rise in the proportion of women employed in the workforce, from 42 to 50 per cent of the workforce. Temporary

employment, which remained at 5 per cent of the workforce throughout the 1980s, rose to 7 per cent in the 1990s. Self-employment doubled, from 7 to 13 per cent of the workforce. Unemployment, which had reached 5 per cent in the late 1970s, remained at over 10 per cent of the labour force for much of the 1980s and returned to double digits in the recession of the early 1990s. Underneath the aggregate figures lay profound problems of youth unemployment and long-term joblessness for older workers.

These changes in the character of employment have been accompanied by growing income inequality. This reversed the long-term trend towards greater equality in the distribution of earnings, dating back to the 1880s when figures were first compiled. Since 1979 the level of real earnings for the lowest decile of the earnings distribution has grown by only a little over 1 per cent p.a., whereas those at the top decile have experienced growth at almost 4 per cent p.a. (LPC, 1998: 189).

Levels of unionisation atrophied markedly. From a high water mark of 55 per cent in 1979, union density declined to 30 per cent of the employed workforce by 1997. The incidence of industrial action has fallen to unprecedented low levels: the five year average of annual working days lost immediately before 1997 was one-twentieth (5 per cent) of the total between 1975 and 1979. The coverage of collective bargaining has steadily retreated. Whereas in 1980, 70 per cent of the employed workforce had their basic pay and major conditions determined by a collective agreement, the pay and conditions of barely 50 per cent were covered by collective bargaining in 1990. Comparable data for 1998 are awaiting the release of the fourth WERS, but it seems certain that the coverage of collective bargaining will have declined to below 40 per cent of the workforce. Employers are showing a marked reluctance to concede union recognition at new sites. Fresh recognition at sites established in the ten years up to 1990 was just half the rate at comparable sites established in the 10 years up to 1980 (Millward, 1994). Amongst large employers with established recognition and collective bargaining arrangements at existing sites, recognition at new sites is a minority phenomenon (Marginson et al, 1993). Whilst in 1993, when John Purcell first spoke of the end of institutional industrial relations in Britain, he felt obliged to add a question mark (Purcell, 1993), it has rapidly become the accepted wisdom.

The content of new Labour's approach

Against this context, new Labour's approach embodies some important continuities with that of Conservative governments since 1979 as well as several marked departures: the turn is less than 180 degrees. In its own terms, new Labour is looking to chart a 'third way' between a return to a labour market regulated by powerful, autonomous collective institutions and the deregulated ideal of its Conservative predecessors. One important component is a further shift in emphasis in UK labour law towards constructing a framework of individual rights and entitlements. Beyond that, the consequences of a more flexible labour market in terms of job insecurity are to be addressed by active employment and training policies aimed at enhancing 'employability'. Charting a 'third way' also involves the promotion of partnership at work between employers and employees in place of conflict. As new Labour's business manifesto stated:

> "The key to orderly and effective industrial relations is to establish a fair and effective balance between rights and responsibilities that will promote partnership, not conflict, at the workplace. This is the principle that will inform our whole approach to industrial relations" (Equipping Britain for the Future: p11).

In policy terms, five major initiatives capture the essential features of new Labour's approach. The first are the Government's plans for educational and training provision to promote life-long learning. These include the launching of a University for Industry, offering

continuing training on an open and distance learning basis; expansion of educational provision in the tertiary sector for mature students and those from disadvantaged backgrounds; and plans for the introduction of individual learning accounts, enabling adults to purchase courses to meet their training and development needs. The second is the New Deal welfare-to-work programme for the young unemployed, offering various forms of subsidised work, each of which involve day release for education or training leading to a qualification. New Deal embodies an element of compulsion too: failure to take up any of the options on offer may result in state benefits being removed. A similar blend of coercion mixed with subsidised provision, in this instance for childcare, is being used to get lone parents, largely young mothers, into work. The third is the framework of new individual and collective employment rights proposed in the Fairness at Work white paper. The fourth, aimed at fulfilling new Labour's pledge to introduce a national minimum wage, was the establishment of a Low Pay Commission to recommend its level and coverage. The fifth is the signing of the social chapter of the EU's Treaty of Amsterdam, which replaced the earlier Maastricht document.

The content of these initiatives will be dissected under three headings: flexibility, training and skills; individual rights and entitlements at work; and collective employment rights.

Flexibility, training and skills

Continuities are evident in new Labour's emphasis on the virtues of flexibility. In the words of its Election Manifesto: "New Labour believes in a flexible labour market". Whilst in this belief it shares common ground with its Conservative predecessors, an important difference is evident in the means by which new Labour sees greater labour market flexibility as being secured. Whereas measures taken by the Conservatives were largely aimed at promoting numerical or quantitative forms of flexibility, for example through restricting protection against unfair dismissal, new Labour stresses the importance of training and the acquisition of new skills in making workers more adaptable both in their current jobs and in moving between employment. In its manifesto for business, the importance of upskilling Britain's workforce is repeatedly underlined. New employment rights for individual workers - outlined below - are aimed at curbing what are seen to be the excesses of numerical flexibility, whilst forms of qualitative or functional flexibility are promoted, as is 'employability'.

As well as enhancing the competitive potential of Britain's economy, the emphasis on training and skill acquisition has a second strategic purpose: that of promoting greater social inclusion. The New Deal for the young unemployed, the promotion of life-long learning through the University for Industry and the widening of access into further and higher education are all aimed at promoting equality of opportunity and thereby tackling growing problems of social exclusion.

Yet in its overall approach to training provision, new Labour has accepted key premises on which the Conservative's own training policies were built. These are that training provision remains employer-led, and that its supply is regulated by market signals. Compulsion to engage in training activity applies only to the long-term young unemployed. The implications are returned to later.

Individual rights and minimum entitlements at work

The underpinning of a flexible labour market by a framework of individual rights and minimum entitlements represents a significant departure for British industrial relations. Elements of this framework derive from new Labour's embrace of obligations to implement EU measures, including those decided under the social chapter by the other member states during the UK's opt-out. In the words of Tony Blair: "..it cannot be just to deny British

citizens basic canons of fairness - rights to claim unfair dismissal, rights against discrimination for making a free choice of being a union member, rights to unpaid parental leave - that are a matter of course elsewhere" (Fairness at Work, 1998: 3).

Specific proposals in Fairness at Work include a reduction in the qualifying period for protection against unfair dismissal to twelve months and abolition of the maximum limit for awards in unfair dismissal cases; making it unlawful to discriminate against employees on the grounds of trade union membership, as well as non-membership; and giving employees the statutory right to be accompanied by another employee or trade union representative in grievance and disciplinary cases. The White Paper also invites views on how the Government might legislate so as to prohibit so-called 'zero hours' contracts, where employees wait at home to be called to work but are not paid whilst doing so.

In addition, Fairness at Work proposes to introduce new family friendly employment rights. These include implementation of the EU's parental leave directive, which for the first time will establish an entitlement of up to three months unpaid parental leave for men and women with children under 8 years of age; and extension of the length of statutory maternity leave from 14 to 18 weeks. The impact of the parental leave legislation is likely to be extensive, as little provision currently exists on a voluntary basis in Britain (Hall, 1998).

The package of minimum entitlements is completed by the implementation of a national minimum wage from the (British) spring of next year and by legislation implementing the EU's directive on working time. Up until now Britain, along with Ireland, was one of the few advance industrialised economies to have no minimum wage provision. As noted earlier, minimum wage protection did exist in certain sectors under the Wages Council system, but this was dismantled in 1993. The minimum wage, set at £3-60 per hour for 1999 (equivalent to about AUS$9 per hour - or AUS$360 for a 40 hour week, which was the 1997 level of the new federal minimum wage) applies to all adult workers, defined as those aged over 21. Workers aged 18 to 21, and those over 21 starting a new job and receiving accredited training for up to six months, will be paid a lower 'development' rate of £3 (or AUS$7-50), rising to £3-20, per hour. Youth workers of 16 and 17 are not covered at all. Particular controversy surrounded the level of the lower development rate and its extension to include 21 year olds - both issues on which the Government chose to undercut the recommendations of its Low Pay Commission. Concerns that the minimum wage may adversely impact on its training policies and New Deal for the young unemployed appear to have prevailed. Set at about 45 per cent of full-time adult median earnings, the Low Pay Commission estimates that some 2 million workers amounting to 9 per cent of the workforce will benefit from the minimum wage's introduction; 80 per cent of these are women workers.

The EU's working time directive, which will be transposed into UK law in the forthcoming parliamentary session, introduces for the first time a statutory framework regulating a wide range of aspects of working time. Historically, working time has not on the whole been subject to regulation by law in Britain. Moreover, the little regulation that did exist (for instance protecting the hours of women workers) was rescinded by recent Conservative governments. Major provisions include the introduction of a maximum 48 hour week, averaged over a four month reference period (which can be extended by agreement between the parties), specification of minimum rest periods, statutory breaks during working hours and entitlement to four weeks paid holiday.

Taken together, this framework of individual employment rights and minimum entitlements moves Britain some way from its traditional system of 'voluntarism', in which there was minimal intervention by the state and the law in shaping the terms and conditions of

employment in the workplace. It is one part of a quiet revolution which is transforming the legal framework of industrial relations.

Collective employment rights

Although the headlines have been grabbed by new Labour's proposals in its Fairness at Work White Paper to introduce a statutory procedure for union recognition, two other developments are of equal if not more significance. The first is new Labour's commitment to maintaining the overall framework of the laws governing industrial action and union governance inherited from the Conservatives. The second is the growing impact on Britain's single channel system of employee representation, based on trade union recognition, of legislation introduced as a result of EU directives.

In the words of Tony Blair, the White Paper "seeks to draw a line under the issue of industrial relations law". Stressing that the White Paper's proposals, together with the minimum wage and its EU obligations, are the "industrial relations settlement for this Parliament" Blair continues:

> "There will be no going back. The days of strikes without ballots, mass picketing, closed shops and secondary action are over."

Accordingly, save for its proposals on union recognition, Fairness at Work confines itself to minor modifications of what are regarded as extreme features of the legal framework put in place by the Conservatives. Henceforth, unions will no longer be required to furnish employers with the names of members to be balloted on industrial action, and employees dismissed for taking part in a lawfully-organised industrial dispute will be able to take cases for unfair dismissal.

In circumstances where no voluntary recognition agreement is reached with an employer, unions can secure recognition for employees in a 'bargaining unit' either by demonstrating more than 50 per cent membership or through securing a majority in a ballot. Considerable controversy has surrounded the additional requirement that such a majority must constitute at least 40 per cent of those eligible to vote. Where a union secures recognition, the White Paper further specifies that if the parties subsequently fail to reach a procedure agreement, a statutory default procedure will apply. In a break with Britain's voluntarist tradition, this default procedure will be legally binding and provide for collective bargaining over pay, hours and holidays as a minimum. The White Paper also proposes that a broadly similar procedure should be set in place for circumstances where employers are seeking to derecognise a trade union.

The impact of the procedure proposed is difficult to gauge. In certain well-known cases where employers have derecognised unions in recent years, despite substantial union membership, unions will quickly be able to establish recognition by demonstrating that more than 50 per cent of the relevant workforce are members. Drivers in oil supply, dockworkers at some ports and parts of the media are all examples. Beyond that, there is widespread concern in trade union circles - and quiet confidence amongst employers who lobbied hard for it - that the 40 per cent threshold may prove insurmountable in many cases. For instance, a 65 per cent majority on a 60 per cent turnout would not be sufficient to secure recognition.

Turning to the impact of the EU on collective employment rights, a succession of directives and court judgements is highlighting the incompatibility of the traditional single channel British system of employee representation, based on voluntary recognition of trade unions by employers, and the dual channel system of employee representation found in many continental European countries and on which EU legislation tends to be modelled. Under the dual channel system, employees are represented by trade unions for collective bargaining

outside of the enterprise, whilst within the enterprise there are universal forms of employee representation through works councils or similar structures for the purposes of information and consultation. The unrelenting decline in union density and the coverage of collective bargaining in Britain is exacerbating the problem of what has been called the 'representation gap' further.

Thus, under British law, the obligation to consult employee representatives contained in the directives on collective redundancies and the transfer of undertakings had been restricted to employers recognising trade unions. The European Court of Justice found these provisions to be deficient because it failed to guarantee all employees in such situations the right to be consulted. In response, the current Government is proposing in the absence of union representation the formation of a body of properly elected representatives from amongst the workforce affected. In case of dispute, it will be the responsibility of the employer to demonstrate to a tribunal that such a body is both capable and independent (Beardwell, 1998).

By signing-up to the social chapter, the pressure on new Labour to address the 'representation gap' will mount further. One of the major measures already adopted is the directive on European Works Councils. It considerably extends the principle of universal rights to employee information and consultation within the UK to a wide range of financial, business, employment and social policy matters, albeit of a transnational nature. Implementation of the directive therefore has important implications for employee representation. Ensuring that the rights to information and consultation which the directive provides can be exercised by employees not organised by trade unions requires that companies in many cases address the representation gap. This is already evident amongst the large number of UK- and overseas-owned companies which have included their British workforce within the scope of their existing EWCs. In some instances where MNCs' operations in the UK are entirely non-union, such as the Fujitsu-ICL electronics group, direct elections of all employees are being used to select employee representatives from the UK to sit on the EWC. Alternatively, and controversially, Marks and Spencer attempted to establish an EWC based on existing 'focus groups' of employees, an initiative which has been challenged by unions representing the group's employees in other EU countries. More frequently, some sites of a group's operations in the UK may be unionised whilst others are not, or some sections of the workforce may be unionised but others not. In a number of such cases, hybrid systems of representation have been established within the UK to select members of EWCs. One such instance is engineering group GKN, where British representatives on the EWC comprise established union representatives sitting alongside representatives directly elected by those employees in the group not organised by trade unions. In short, the requirements of the EWCs directive are stimulating management and employee representatives, usually trade unions, to develop innovative arrangements designed to address the representation gap.

A second important part of the quiet revolution taking place in Britain's industrial relations system therefore is the growing encroachment of the principle of universal rights to employee representation common elsewhere in western Europe. It is important to register, however, that the extension of collective rights to representation for the purposes of information and consultation is something very different from measures to promote a substantial reverse in the long decline of union recognition and collective bargaining. As Brown and Rea (1995: 372) observe: "there is nothing to suggest that the influence of the EU offers Britain the prospect of a substantial revival in collective bargaining. It is primarily consultative and representational rights that are on offer.." Even so, current proposals being drawn up by the European Commission to provide universal rights to employee information and consultation

at national level are potentially even more far-reaching in their impact on the British system of employee representation than anything so far. Hall (1996) argues that in time, British industrial relations law as well as practice, will have to accommodate to this fundamental feature of the continental European model. Yet, gauging from its opposition to the Commission's proposals for national level rights to information and consultation, new Labour would appear to be some way yet from embracing this prospect.

The consequences of new Labour

Pushed by the effect of EU measures in highlighting the growing representation gap in Britain, and embracing the language of partnership, is new Labour moving decisively in the direction of the continental European social model of a more highly regulated labour market? The argument so far suggests an inconclusive answer. Such an assessment is further underlined when account is taken of new Labour's adherence to voluntary or market-based approaches on central aspects of labour market regulation. The consequences can be illustrated by further examination of its approach on two matters which are central to its objectives: training provision and the promotion of partnership.

Training provision

In its approach to training provision, new Labour continues to adhere to the market-based, employer-led model promoted by the Conservatives. This views the enterprise as the primary site for training, and decisions on training as being the responsibility of individual employers and individual employees. Such a model contrasts with the vocational or educational models which characterise training provision in other major European economies, including France and Germany. Here vocational training in general or market-based skills is held to be of much greater importance, and decisions on training provision are the responsibility of the labour market actors beyond the enterprise - employers collectively in both France and Germany, trade unions, particularly in Germany, and the state, particularly in France.

Yet it is widely recognised that reliance on a market-based model of training leads to both periodic skills shortages and more generally to the systematic under-provision of skills (Streeck, 1989). Periodic skills shortages occur because although employers training activity does respond to market signals, these responses are lagged. Systematic under-provision of skills arises out of the collective good nature of training. Employers are reluctant to provide training in general or market-based skills because either they fear that workers will be subsequently poached by other employers, or because they consider the payment of a wage premium to tempt skilled workers away from other employers to be a lower cost route to securing skilled labour. Looked at another way, under a market-based system of training provision employers have an incentive to train workers only in skills that are firm-specific. Such bias is exacerbated by the exclusion of trade unions from a central role in training provision: arguably unions tend to emphasise training in general skills, as this avoids members becoming reliant on a single employer. In Britain the exception that proves the rule is the steel industry: levels of training provision are high and there are no evident skill shortages. But there is effectively only one employer of most kinds of skilled labour, for whom the collective good problem is thereby minimised (Keep, 1989).

Under a system where employers are obliged to engage in training activity, as is the case in France and Germany, the collective good problem and therefore systematic under-supply of general skills can be overcome. Yet despite being widely advocated by trade unions and specialists in training policy, new Labour has eschewed any form of compulsion on employers to engage in training. In doing so, it might well be jeopardising its aspirations to secure a continued upskilling of Britain's workforce.

Partnership at work

If the promotion of partnership between employers and employees is the principle that will inform new Labour's approach to industrial relations, it remains harder to identify what this means in terms of particular policies. As Beardwell (1998) has recently observed, there is no established or accepted definition of the term in Britain. However, from Fairness at Work it is possible to distil essential ingredients of what new Labour regards as a partnership approach. This comprises a high degree of communication with employees and involvement of them in the business; an emphasis on training and employee development; employee adaptability and initiative in the face of change; resulting in improved quality of work and employment security. The absence in Britain of robust institutional structures at economy-wide and sector levels on which to build partnership arrangements means that the process will turn on developments at enterprise level.

At macro-level, there is a distinct absence of institutions through which the TUC and CBI might engage in the forms of concertation over aspects of labour market policy and employment terms and conditions found in other European countries. Those institutional structures that did exist, such as the tri-partite Training Commission, were torn down during the Conservative years. In turn, New Labour has shown little sign of fostering the development of new tripartite or social partnership institutional forms at national level. Reflecting the possibilities that now exist for agreements between the EU social partners to form the basis of legislation, as was the case with the directive on parental leave, the Government did invite the CBI and the TUC to enter into discussions with a view to reaching an agreement, or at least to narrow their differences, on its manifesto proposals for statutory union recognition. Some might regard this as rather a poisoned chalice with which to stimulate the development of partnership arrangements at macro-level. Rather less charged was the remit of the Low Pay Commission, which comprised equal numbers of trade union and employer representatives together with independent academics. As much as its composition, the Commission's modus operandi and its achievement in drawing up a unanimously agreed report have been cited as an instance of successful social partnership in practice (Metcalf, 1998).

At sector-level, British industrial relations is now characterised by an institutional vacuum in many sectors. The abolition during the 1980s of the statutory Industrial Training Boards, comprising employer and trade union representatives, has already been noted. To this can be added the continuing demise of multi-employer collective bargaining structures, which concluded industry-wide collective agreements. This accelerated during the 1980s and early 1990s, to the extent that there are now only a handful of sectors in which multi-employer bargaining structures remain intact (Brown et al, 1995). This institutional lacunae means there is little scope in Britain for the development of partnership arrangements at the enterprise which are articulated within a wider framework of agreements and understandings reached between the social partners at sector and national levels, as occurs elsewhere in Europe.

At enterprise level, a central consideration in assessing the prospects for partnership arrangements is the means by which employees are able to secure a voice in decisions concerning the business. A report by the Industrial Participation Association (1997) *Towards Industrial Partnership* identified mechanisms which give employees "a distinctive and recognisable voice" and greater input into business decisions, both at the workplace and at more strategic levels, together with a greater commitment to employment security, workforce adaptability and single-status terms and conditions, as the key features of successful partnership organisations (IRS, 1997a: 2). Under a market-based approach, employers have considerable scope to choose the form by which such voice might be exercised.

In companies where trade unions are organised, the development of partnership arrangements has involved the renewal or transformation of existing voice arrangements between management and trade unions representing the workforce. The bargaining agenda has been widened, to embrace matters such as employment security, training and employee development. Consultation through established representative structures has been extended and deepened and/or specific partnership mechanisms have been set up for communication and consultation on particular initiatives (IRS, 1997b). Although far from widespread, notable examples of partnership agreements are those concluded between management and unions at Rover, United Distillers, Blue Circle and Welsh Water. One of the most far reaching is the recent agreement at the leading supermarket chain, Tesco. Concluded with the shopworkers' union USDAW, this replaces existing company-wide collective bargaining arrangements with consultative forums elected by all employees at each of the companies 500-plus stores, together with regional and national forums which have both a consultative and a negotiating role. The representatives elected from the store-level forums to these higher-level bodies must be union members. The result provides both for employee voice over a wide range of matters at different levels, and recasts relations between union and management away from its traditional industrial relations focus on pay and conditions.

Where unions are absent, structures for employee representation which might provide the mechanism for employee voice on which partnership arrangements could be built are unusual. The 1990 WERS, which is the most recent available, found that employee representatives were present in just 10 per cent of non-union workplaces: committees of representatives existed in even fewer instances (Millward et al, 1992:164-5). Of course, this implies that there may be exceptions amongst non-union companies. A second leading supermarket chain, J Sainsbury, provides an example of a partnership arrangement built upon a non-union, employee-based representative structure for employee information and consultation. This involves a combination of local store-based consultative forums and a national group-level body, elected from the local forums (IRS, 1996). Alternatively, some other non-union companies have developed partnership arrangements built around direct forms of employee involvement, such as Marks and Spencer's' use of its employee focus groups. Whether the latter system provides for the exercise of collective employee voice, or for influence at the strategic level, is, however, unclear.

Elsewhere, the implication is that partnership arrangements in many non-union companies will have to be built around agreements with individual workers. There are two points to be made here. First, the personal or individual contracts of employment - which are the voluntarist approximation in Britain of Australian Workplace Agreements - on which partnership arrangements might be forged are not widespread amongst non-union workplaces. A representative survey covering two industrial sectors conducted in 1994, found that personal contracts were used for the largest occupational group in only one in three non-union workplaces in electrical engineering and two in five in the insurance sector. In both sectors, the predominant pattern in the absence of collective bargaining was that management unilaterally determined pay and other conditions (Cully and Marginson, 1995). Second, even where personal contracts are being used, research evidence questions the extent to which they can be considered as agreements in anything other than a formal sense. Thus Evans and Hudson (1994) found that personal contracts embodied highly standardised conditions with only rates of pay subject to variation, and concluded that they were best described as 'standardised packages individually wrapped'. Moreover, the contracts were silent rather than transparent in spelling out employee rights and limits to managerial discretion - which had opened the way not to further discussion and agreement but to an expansion of management prerogative. In short, the research evidence contains little to

suggest that personal contracts might form the basis from which genuine partnership arrangements might develop.

The argument leads to the conclusion that representatives structures are, for the great majority of cases, essential to securing the mechanism for employee voice, at workplace and strategic levels, which is a pre-requisite for successful partnership. Yet on this critical issue, new Labour continues to largely adhere to a market-based or voluntary approach: unless faced with a majority of employees voting for union recognition, employers are free to decide whether or not employees can exercise voice, and the form that any mechanism for the exercise of voice should take. In its approach to employee representation new Labour has proven to be decidedly 'old', by introducing a statutory procedure for union recognition which will leave large parts of the workforce without any rights to representation and therefore voice. Promotion of partnership arrangements at enterprise and workplace levels would be best guaranteed by conferring statutory rights to representation for the purposes of receiving information and consultation on all employees. If such rights are the best way to promote partnership arrangements, they would also, as has already been argued, enable Britain to swim with the tide of a growing body of EU legislation. The absence of a coherent and comprehensive approach to employee representation is the 'Achilles heel' of new Labour's approach to industrial relations.

Conclusion

In conclusion, the turning point for Britain's industrial relations signified by new Labour's arrival in power entails developments in new directions but also elements of continuity with the trajectory of the Conservative's deregulatory programme. The new directions are being underpinned by a measure of re-regulation, a process which is involving a re-composition of legislative regulation. Most evidently, there is a distinct shift in emphasis towards conferring enhanced rights and minimum entitlements on the individual employee, rather than a restoration of collective rights which bolster the ability of unions to organise and take industrial action, and extend the impact of collective agreements. Developments in the sphere of collective rights, are taking a new direction too. Under pressure from a growing body of EU legislation, employees in the UK are acquiring new rights to representation for the purposes of information and consultation on certain matters. A quiet revolution in Britain's system of industrial relations is underway, driven by the dynamic of Britain's obligations to implement EU measures, itself reinforced by new Labour's acceptance of the social chapter, as well as by a change in the home-grown agenda.

Yet the fulfilment of some of new Labour's aspirations to transform industrial relations appear unlikely. Above all, this is due to a continued adherence to market-based forms of regulation. Ambitions to secure a sustained upskilling of Britain's workforce may well founder because new Labour has accepted the premise that training provision should be employer-led and voluntary. The spread of partnership arrangements is also likely to be somewhat less than total. New Labour remains ambiguous about its intentions to promote social partnership at the macro and sector levels. But here there are probably too many institutional lacunae for effective arrangements which provide a framework for enterprise-level industrial relations to develop. At enterprise level, the absence of guaranteed employee rights to information and consultation on most matters relating to employment and the business, is likely to constrain the spread of partnership arrangements. In the absence of such regulatory intervention, a variety of models of industrial relations are likely to persist of which the partnership approach is one amongst several. For these reasons, new Labour's Britain will remain between deregulation and re-regulation.

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