time to cut the Gordian Knot –
the case for consensus and reform of the UK’s employment relations system

By David Coats
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The Smith Institute wants to raise awareness and provoke debate on job quality and the world of work. This timely report on the parlous state of the UK's employment relations system is at the heart of that conversation. It follows on from our reports on corporate social responsibility, fair pay, and employee engagement, and presents a challenge to government, employers, workers and trade unions. David Coats not only presents a clear and comprehensive critique of the employment relations regime in the UK, but offers a series of practical policy proposals. We support David's call for a new 'workplace settlement' and thank him for his excellent contribution.

Paul Hackett
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Introduction

• The UK’s employment relations system is in a mess. While the Labour government introduced new statutory rights for individuals and trade unions they did little to address the problems that perplex employers, workers and trade unions.

• Employers complain about over-regulation and red tape and trade unions attack the so-called anti-union laws. Both approaches have little to say about the two most significant problems in the world of work: a very low level of employee engagement and a very high level of perceived unfairness.

• Achieving a coherent public policy approach is difficult because the responsibilities for workplace issues are widely dispersed across government. Unless the Whitehall machine is redesigned it is very unlikely that significant progress will be made. The case for a revived Department of Employment is compelling.

• Of course problems exist elsewhere, but other countries do achieve better results and consider their employment relations systems as systems, where each element of the institutional architecture reinforces all of the others. It has been some time since this could be said with conviction about the UK.

So what’s the problem?

• Different stakeholders characterise the problems in the world of work rather differently. Employers demand deregulation and unions demand a major programme of labour law reform. Despite the high volume rhetoric, the evidence supporting the employer argument is weak. The UK has a very lightly regulated labour market by international standards. It is easy to hire and fire just as it is easy for businesses to be born and to die. While it is true that workers are more inclined now to take cases to employment tribunals, this phenomenon seems to be related inversely to union membership decline – the fewer the union members the more cases to employment tribunals. Reviving workplace institutions to nip problems in the bud might be a reasonable solution, but many (perhaps even most) employers are resistant to such a proposal.

• Trade unions are struggling to maintain and rebuild their membership across the developed world. This is true no matter what the public policy dispensation. It is
economic, and especially technological change, that is driving union membership trends, not hostile public policy. Trade unions need to be the agents of their own revival.

- While awareness of employment rights is good in the UK, there is still a widespread perception of unfairness in many workplaces. Very often the examples of unfair treatment are beyond the limits of formal employment rights and have a great deal to do with management practices, style and culture. Equipping all managers to be better managers of people would be a major step in the right direction.

- Job quality in the UK is lower than in some other comparable countries. That is not to say that jobs are generally awful, but in many British workplaces there is considerable room for improvement. The perception of widespread unfairness is compounded by the fact that people report that they are working harder today than they were fifteen years ago. Moreover, autonomy in the workplace and control over the process of work have been on a consistent downward trajectory, even though these are very important indicators of high quality jobs. A tight labour market did little to improve the situation. Even though employment was growing throughout the boom period, the net effect was to push people out of unemployment into low quality, poorly paid jobs. The level of working poverty went up as a result.

- All these negative results should be surprising because the human resource profession has spent so much time apparently trying to improve people management over the last two decades. Unfortunately the practice falls short of the results predicted by theory. The full range of so-called enlightened HR or high performance practices are rarely applied in their totality and the outcomes are often disappointing. Some commentators have suggested that the practices may be self-defeating unless they are introduced in an environment with strong workplace institutions (unions or works councils) that can hold employers to their promises. Others have suggested that the theory is based more on faith than evidence – those investigating high performance practices are presupposing the results they are claiming to investigate. In any event, the failure of enlightened HRM helps to explain why so few employees are "engaged" in the current jargon.

- It is reasonable to conclude that this system was not fit for purpose in the good times and may be an obstacle to the development of an effective
employment relations architecture in the post-crisis era. Legitimising unpalatable decisions with the workforce (around reductions in public spending for example) is particularly problematic if workers have no serious influence over management decisions. The same is equally true in relation to technological or organisational change. The decline of trade unions has left an institutional gap that no amount of well-meaning HR practices can fill.

History matters

• A brief historical account can illuminate the extent of the change. In the early 1960s it was entirely accurate to describe the employment relations system as voluntarist, and public policy as abstentionist. Employers and trade unions were allowed to conclude whatever agreements they found acceptable. The state generally kept out of the picture except to regulate certain aspects of safety at work, child labour and the payment of wages in low wage industries. Similarly, the judges kept out of the field of industrial conflict. Not for nothing was this described as the era of *collective laissez-faire*.

• At the heart of the system was the notion of the imbalance of power between the employer and the individual employee. Some form of collective action was needed to correct this inequality and trade unions were seen by all political parties as appropriate vehicles for worker voice.

• The system began to break down under the economic strains of the later 1960s and 1970s. Governments of all parties became convinced that an inflationary bias was built into the collective bargaining system and both Labour (*In Place of Strife*) and the Conservatives (the Industrial Relations Act) engaged in failed attempts to use the law as an instrument of reform.

• Once she became prime minister, Mrs Thatcher avoided the pitfalls of a big bang approach to policy and engaged in a process of step-by-step changes to collective labour law. Trade unions found themselves constrained by legislation on strike ballots, the scope of lawful industrial action, the regulation of internal democratic processes and eventually the abolition of the closed shop.

• The philosophical justification for the Thatcher-Major employment law reforms was derived from the political theory of Friedrich Hayek, who had a profound antipathy to collective bargaining and the role of unions in, as he saw it, bidding up wages through coercion. However, Hayek conceded a role for
organised labour in negotiating pay structures (differentials and relativities) and in agreeing workplace rules with the employer. He failed to explain how this would work in practice, a gap which the 1979-97 governments made no attempt to fill.

- One can best understand the process as an exercise in institutional vandalism. Mrs Thatcher may have tamed organised labour, but nothing was put in place to compensate for the absence of unions, even on the limited terms that Hayek found acceptable.

**Labour’s record in government and other reform proposals**

- Labour did little to undo the Thatcher settlement but added significantly to the corpus of employment rights – the National Minimum Wage, the measures following accession to the EU social policy provisions, additional rights for working parents and the trade union recognition procedure. Nonetheless, these interventions appeared piecemeal and were not woven into a wider narrative about labour market reform. Indeed, the government favoured the language of labour market flexibility that had been commonplace under the previous administration and strongly resisted any new EU social policy measures which, in their eyes, might put the UK’s prized flexibility at risk.

- Despite these assumptions, the OECD’s work suggests that flexibility has a number of dimensions. The standard view that flexibility is equivalent to an absence of effective regulation has been rejected. Before the crisis, Nordic labour market performance was as good as, and in some senses superior, to the UK and the USA. Moreover, Labour’s measures, on any conventional interpretation, made the UK’s labour market significantly less flexible, with no adverse impact on employment.

- What Labour lacked was a story about how good business could be combined with good work. There was no narrative about the impact of work on life chances or life expectancy and no determined effort to shift the terms of trade in the labour market conversation.

- This general approach had a negative effect on the process of union modernisation. Those committed to a progressive future for the trade union movement found themselves squeezed between unsympathetic employers and a resurgent left. An opportunity was missed by government to encourage good
employers to work with the unions and transform the employment relations system.

- Latterly, the Labour government placed great weight on the work of the MacLeod review of employee engagement. While MacLeod made some useful recommendations, it only offered a partial account and could not really explain why so few organisations were implementing good practice. Resources will be needed if even these limited recommendations are to be implemented and there is a strong possibility that the Treasury axe will fall, meaning that the state will absent itself from the field.

What next?

- The objective of this report is to encourage a ‘grown up’ conversation on the need for reform of our employment relations system. And an effective dialogue can only take place if the parties have a similar appreciation of the problem. Much of what needs to be done is beyond the reach of public policy and depends on changes to employer, employee and trade union behaviour. But the state can do more than simply nudge the parties to do the right thing. For example, setting standards, enforcing rights, gathering information about best practice and getting involved in the dialogue about how national income should be split between investment and consumption are all essential roles for the state.

- Perhaps the most important step government can take is to get the stakeholders to talk to each other. There is no national institution in existence in the UK that allows for all those with an interest to be exposed to each others’ arguments. Similarly, government, in search of policy advice, may have bilateral discussions with stakeholders but never engages in a wider conversation. Our central recommendation then is that the UK needs a standing Labour Market Commission to keep the whole of the system under review. This must be supplemented by more coherence in Whitehall decision making and the revival of the Department of Employment. The recommendations below could either be implemented following the advice of the Labour Market Commission or, if more urgent action is needed, could be subject to the oversight of the Commission.

- The design of the Commission would also be the subject of stakeholder involvement. If the new institution is to have credibility then it must be developed with the active support of those with an interest in the outcome. Employers, trade unions and others (CABs, training institutions) must be part of the implementation process. This is how
the parties can be encouraged to abandon entrenched positions and work towards a durable settlement.

• Against the backdrop of fiscal austerity and the coalition government’s commitment to political and economic renewal, the report focuses on five key areas where reform is possible:

1. Corporate governance and accountability
2. Re-establishing widely accepted norms for fair pay across the earnings distribution
3. Rebuilding effective workplace voice institutions
4. Developing government support for innovative job quality/job enrichment programmes
5. Improving the effectiveness of enforcement

• Corporate governance and accountability: The coalition government are committed to the introduction of an Operating and Financial Review for all listed companies. This is supposed to be a narrative section in the annual report that will give readers a fair view of the business, broadly defined. The government should consider prescribing the information relating to the management of people that should be presented in the OFR. This could include information about:

  - accident rates
  - sickness absence
  - labour turnover
  - progress made towards the elimination of the gender pay gap
  - arrangements for collective voice (trade unions, works councils etc)
  - job quality data (drawing on staff survey results)

Similar obligations could be imposed on public sector employers.

• Fair pay: Income inequality has risen without restraint over the past two decades. This has adverse social and organisational effects. Senior managers find it hard to legitimise their decisions if they apply one set of rules to their own pay levels and a totally different set of rules to employees. Social norms about legitimate pay expectations have eroded over time and must be restored. This is unlikely to happen spontaneously and the UK needs a sophisticated national conversation about the fairness of pay across the distribution. There is a strong case for the establishment of a Fair Pay Commission to explore these questions in both the public and private
sectors, and produce recommendations that can inform pay developments in the future. There is a potential link to the OFR here too since companies could be invited to report on their compliance with fair pay principles.

- **Rebuilding workplace voice institutions**: In formal terms British workers have more rights to be informed and consulted collectively about workplace issues than at any time in the past. Yet even thought these rights are well-established on the statute book they are poorly understood and rarely used. Some might argue that stronger unions can fill the so-called voice gap. But there is little evidence to show that unions are reaching the unorganised in the private sector and these workers need representation now. Government must at least ensure that workers are aware of their rights and, if the law is not to fall into disrepute, must create the conditions for effective implementation. The evidence shows that non-union representatives often lack the training, support and advice they need to discharge their obligations effectively. One possibility would be for the government to fund the provision of these services but leave the choice of provider to the workers representatives. In other words, a competitive market would be created for the provision of training and advice to the members of consultative bodies. Where unions are recognised for collective bargaining they would continue to have exclusive rights. But in the rest of the economy unions would need to take their chances with other potential providers – CABs, law centres, lawyers, FE colleges. There is an opportunity for unions here if they can gain the confidence of hitherto non-union representatives and combine that activity with an effective campaign to organise the workplace.

- **Improving job quality**: Many other countries have publicly funded programmes designed to improve productivity and the quality of work. The best results are found in the Nordic countries. Even in an age of austerity there is a case for doing something similar in the UK, not least because a modest public investment could reduce sickness absence and labour turnover. Moreover, giving workers a good job to do is the best route to high trust and high productivity. Improving the quality of management is an essential part of this process.

- **The enforcement of employment rights**: While there is little evidence of widespread non-compliance with employment rights there remains a case for seeking to improve the effectiveness of enforcement. This is probably a matter of allocating additional resources to target areas of high risk – an approach
already used in relation to the National Minimum Wage – rather that a more
general regime of inspection. Of course, resources may be constrained in
an age of austerity, leading to the conclusion that economies of scale can
be achieved by merging all those agencies responsible for labour market
regulation. Nonetheless, policymakers must be aware of the reasons for
establishing separate institutions in the first place and must be alert to the risks
inherent in any major reorganisation. Making the existing institutions more effective
should be the preferred option.
Chapter 1

The workplace: off the agenda?
The workplace: off the agenda?

Six years ago, shortly after joining The Work Foundation, I published a paper that was intended to revive the British debate about industrial democracy and the importance of voice in the workplace.1 While this attracted some academic interest and received a small amount of journalistic attention, there was no sense that I had raised an issue deserving further discussion.2 Government studiously ignored the case for worker voice. Employers suggested that I was flogging a dead horse, and trade unions, despite having been in the vanguard of the campaign for wider information and consultation rights, preferred to focus their attention on a rather conventional model of collective bargaining.

It is with some trepidation therefore that I enter similar territory again for the Smith Institute, not because I am concerned that there will be a hostile reaction, but because I fear there will be no reaction at all. The same might be said about other efforts to generate controversy about the future of employment relations. Professor Keith Sisson (formerly of Warwick University) and Mike Emmott of the Chartered Institute of Personnel and Development (CIPD) managed a lively two-way conversation in 2006 (of which more later), but nobody was listening beyond the usual suspects, and their spirited exchange had little impact on the wider discussion about people management or the regulation of the workplace.3

This is all rather disappointing. There is ample evidence to show that the UK has an employment relations problem, not in the sense of high levels of industrial action and workplace conflict, but in terms of the quality of the workplace relationships, the organisation of work, the design of jobs and the effectiveness of management.4 It is also plausible to say that these unresolved employment relations challenges help to explain the UK’s persistent productivity gap with other major economies. While the gap has closed a little in the last decade, there is still a risk that the UK’s relative prosperity could fall. And there is the more troubling possibility that we may find ourselves struggling to stay ahead of those countries now joining the global economy.

Readers beyond the limited ranks of employment relations initiates may already be puzzled. What do any of these issues have to do with industrial democracy? Why should anybody

2 See for example, Wilby, Bossing the bosses around, New Statesman 21/2/08, published four years after my paper.
say that the UK has an employment relations problem when the levels of industrial action are at historically low levels and job satisfaction is high? How can anybody be really concerned when HR professionals invest so much time and effort in improving the psychological contract and creating the conditions for genuine employee engagement?

The central argument I want to make is that the UK’s employment relations system is in a mess. What we have today is confused, unstable, borderline dysfunctional and potentially damaging to productivity and performance. One might even say that it is scarcely possible to describe it as a system at all. To begin with, there is a residue of union organisation and collective bargaining in the private sector, but otherwise, non-state organisations are largely union free. The public sector is different again, with high levels of union organisation (an average of 60% union membership density), the remains of the Whitley structures for joint regulation of the workplace and national collective bargaining on pay and conditions (except in those areas where there are pay review bodies).

Interventions by the European Union run counter to the general tendency of employment relations in the UK and add a further layer of complexity. Most importantly, perhaps, EU legislation in the employment field assumes that there will be institutions for worker representation, social partnership structures, collective bargaining systems that allow for flexible derogations from EU directives and respect for the principle that employer decisions need to be justified and legitimised. One of the reasons why successive British governments have been resistant to EU intervention is that the UK’s system is now founded on very different assumptions – although as we shall see this was not always the case. It will be very difficult for the UK is to remain a member of the EU and locate itself in the social policy mainstream unless some of these institutional weaknesses are addressed.

Employers complain continually about excessive employment regulation, “red tape” and “burdens on business” despite the fact that the UK has the second least regulated labour and product markets in the developed world. Trade unions complain that they are still hamstrung by the (so-called) anti-union laws and that the weakness of labour market regulation offers employees inadequate guarantees of fair treatment.5 Moreover, as the CIPD are honest enough to admit, employees report that they rarely receive feedback from their managers, are not properly informed about what is happening in the organisation for which they work, find senior managers less than trustworthy and are unlikely to be “engaged” in the sense that employee aspirations are aligned with the goals of the business.6 If this is a “system” then it is a system that seems to leave most stakeholders dissatisfied.

5 A viewpoint with some empirical support: see Fevre et al, Fair Treatment at Work Report: Findings from the 2008 Survey, BIS (2009)
We might add that the collapse of the post-war industrial relations consensus in the 1980s and 1990s contributed to the growth of low pay (somewhat ameliorated by the National Minimum Wage) and the explosion of excessive rewards at the top of the earnings distribution. Union decline meant that the sword of justice effect associated with collective bargaining diminished significantly over time. And the disappearance of countervailing power in many workplaces meant that the inhabitants of Britain’s boardrooms were subject to less frequent challenge about the fairness of their rewards.

Fragmentation of bargaining arrangements and increasing confusion about roles and responsibilities inside organisations have been reflected by fragmentation in the machinery of government. The abolition of the Department of Employment in 1995 and the permanent revolution of departmental reorganisations have led to some policy incoherence, with responsibility for labour market issues widely dispersed across Whitehall. A swift glance at the structure of government reveals that the formulation of labour market policy (in the broadest sense) is shared between:

- the Department of Work and Pensions (employment and unemployment, health and safety at work, the health of the working age population, job quality);
- the Department for Business, Innovation and Skills (employment relations, National Minimum Wage, vulnerable employment, skills policy);
- HM Treasury (productivity and performance, skills, absence/productivity in the public sector);
- the Department of Health (health in the workplace, health promotion, job quality);
- and the Cabinet Office (public sector absence – and under the previous government the strategy unit undertook an enquiry into the quality of employment and the impact on individual health and organisational performance).

For the time being at least, nobody in government has full ownership of the employment relations agenda. Modest progress in one department (for example, the DWP’s effort under the Labour government to take the question of job quality seriously) can be hamstrung by restricted ministerial responsibilities and inter-departmental competition. We might think, for example, that the work related health outcomes about which the DWP (and the DH) are concerned should be subject to a narrative account in the annual reports of listed companies. Fortunately the coalition government agrees and is committed to the reintroduction of an operating and financial review (OFR) for all listed companies. But there is no guarantee that the OFR will cover such matters as employee turnover, objective indicators of job quality, the results of the most recent staff survey or benchmarks of people management performance. Somebody in government must take responsibility for
co-ordination and the risk is that a rather weak and attenuated set of requirements will result because BIS has been given the task. Keeping up the pressure on the coalition is essential.

Before the recession pushed up unemployment, the DWP’s declared objective was to raise the UK’s employment rate to 80% of the working age population. Whether this remains an objective of the coalition is unclear, but there can be little doubt that the government wants to get more people back to work – witness for example, the desire to reduce the bill for disability living allowance and incapacity benefit. Obviously a return to robust economic growth will boost the employment rate, but alone will not be sufficient. There is more than enough compelling evidence to show that raising the employment rate (and activating the “inactive”) depends on an improvement in the quality of entry jobs available for the previously unemployed. 7 This in turn demands a strategy to eliminate low pay, boost productivity in low wage industries, and equip employers with the wherewithal to offer decent work. The need for a joint DWP/BIS strategy should be obvious. Of course, claiming something to be self-evident does not necessarily mean that government will act. Once again pressure must be applied to ensure the appropriate level of inter-departmental co-ordination.

If these observations are correct then part of the solution to the UK’s employment relations conundrum must lie in improving the coherence and quality of Whitehall policymaking. The case for a revived Department of Employment is compelling.

Changes in the machinery of government could make a difference but they could equally amount to little more than rearranging the deckchairs on a sinking ship. Progress depends on all stakeholders (government, employers and unions) working together to find compelling answers to the following questions:

- How can organisations ensure that employees are managed fairly and effectively?
- How can employees be given real voice in the workplace so that they are able to influence (although not determine) the decisions that affect them most directly?
- What needs to be done to improve workplace relationships, improve trust levels and respond to the negative findings revealed by the CIPD’s research?
- How can some basic norms of fairness be re-established to inform the process of pay determination? Is it possible to reinstate the fundamental principles that all workers should get the rate for the job and that pay differentials should be felt to be fair?

7 Coats and Lekhi, op cit
What needs to be done to create an employment relations system that delivers valuable outcomes for employers, workers and government? How much reform is needed and who should take responsibility for that enterprise?

It is not the intention of this paper to respond to each of these points. Instead we want to explore how the UK can cut the Gordian Knot that constitutes the employment relations system today and devise a new set of arrangements that support high trust relationships in well managed workplaces offering worthwhile, sustainable, high quality jobs.

Some preparatory work is required for this enterprise to be successful. Most importantly, perhaps, we need to understand the past if we are to develop workable policies for the future. More specifically, we need to appreciate how the UK’s voluntarist system of employment relations, which worked moderately well for much of the immediate post-war period, degenerated into the mess and muddle that perplexes employers and employees today. We will also review the record of the Labour government, refer to earlier efforts to inspire a serious discussion of the employment relations question and offer some thoughts about the action that needs to be taken.

Of course, this paper is being written at a time of political uncertainty. The coalition may be in power but we are not yet certain what they will do. There is a clause in the Programme for Government that looks reasonably explicit, but the scope of the ambition and the timetable for action remain rather opaque:

We will review employment and workplace laws, for employers and employees, to ensure they maximise flexibility for both parties while protecting fairness and providing the competitive environment required for enterprise to thrive.8

This might be interpreted in at least three ways. It can be seen as a complete capitulation by the Liberal Democrats to the Conservative Party’s atavistic deregulatory impulses.9 Or it can be viewed as a shabby but necessary compromise, offering something to the market fundamentalists on the Tory right without promising any specific measures. Or perhaps it reflects a genuine open-mindedness on the part of the coalition, a

8 The Coalition: our programme for government (2010) p.10
9 For example, the Conservative Party’s policy document Regulation in the Post-Bureaucratic Age (2009) says little or nothing about the role of employment protection regulation, but it adopts a conventional “burdens on business” stance.
willingness to reconsider how and why the labour market should be regulated to achieve “fairness” and “flexibility”.

So far not a great deal has happened. Lord Young of Graffham has been asked to review health and safety law and the compensation culture and it is very likely that there will be (yet another) review of the employment tribunals system. Both initiatives are more consistent with the shabby compromise story than the ideological conviction or open-minded reflection narratives. Reviews of this kind are an almost permanent feature of government – with the Labour Party just as guilty as others. Unfortunately, from the point of view of enthusiastic deregulators, much health and safety legislation is derived from EU directives so the scope for national action is very limited. And the problem with employment tribunals is not so much that procedures are complicated or that lawyers are now dominant, but that recourse to a tribunal is an inevitable consequence of the weakness of workplace institutions for dispute resolution.

It was clear in 1979 that the Conservative victory was partly a result of dissatisfaction with the industrial relations status quo following the ‘winter of discontent’. Mrs Thatcher won because she was committed to dealing with the UK’s “union problem”. No workplace issue played a decisive role in this year’s election. Similarly, while Mrs Thatcher had a very clear industrial relations agenda in 1979 one would be hard pressed to say the same of David Cameron today. No doubt the prime minister has views about such iconic disputes as Royal Mail and British Airways but it is not entirely clear that either demands a public policy reaction. Employment relations might be said to be a low priority for the coalition today and may remain so for some time. Alternatively, as a consequence of the problems at BA and the Royal Mail, along with the perennial problems with industrial action on the railways, the government could decide to prevent strikes in those sectors that cause huge inconvenience to the public – often described as essential services. Their determination to act may be confirmed if a wave of strikes across public services follows the cuts likely to be announced in the spending review. But government is then left with the knotty problem of defining an essential service and identifying those areas where strikes are most “disruptive” to the public. Previous efforts to legislate in these terms have usually been rapidly abandoned because of the technical difficulties, the likely deterioration of industrial relations that would result and the unavoidable fact that the UK could find itself in breach of international treaty obligations. It is probably right to anticipate some fierce anti-union rhetoric and equally right to assume that punitive legislation will remain firmly stuck on the drawing board.
The purpose of an employment relations system

Having said all this, the coalition’s proposed review does respond to genuine employer discontent. Unfortunately the employers’ diagnosis (too much regulation) is wrong and their prescription (deregulate!) faulty. Perhaps both trade unions and employers are guilty of displacement activity, calling on others (generally government) to solve problems when the most effective solutions are to be found in the workplace. The unions blame the anti-union laws – when in reality they are failing to respond creatively to industrial restructuring, technological change and the rising aspirations of the workforce. And employers blame burdens on business even though the UK has very light touch labour market regulation and amongst the most liberal product markets in the developed world.

The most important purpose of this report is to get the parties out of their trenches. What is needed is an open conversation about the problems in the world of work and a serious strategic discussion about the solutions. In other words, the parties need to ask themselves some big questions: What is the purpose of an employment relations system? What does “good work” look like in an organisation that is efficient, effective and successful? How does this relate to the notion of “good business”? Where, if at all, do institutions for collective worker representation fit in this story?

To begin with, we could adopt a straightforward business friendly stance and say that the goal is to enable organisations to operate efficiently. After all, the business of business is business and anything that gets in the way is an unacceptable brake on growth. This position obviously has a certain logic, but it fails to take any account of the position of the employee. In other words, without some level of employee commitment a business will almost certainly fail; and employee commitment depends on workers believing that they are being treated fairly in the widest possible sense. Felt unfairness is also likely to lead to conflict and therefore to the disruption of business activities – most obviously through industrial action, high levels of sickness absence and high labour turnover. Achieving a balance between justice and efficiency must be a central goal of any employment relations system.

Perhaps we can go further and argue that the rights that we cherish in democratic societies are just as relevant inside the workplace as outside. In other words, freedom of speech and freedom of association are values that employers ought to respect. Put another way, we might say that workers need to consent to employer decisions; workers must to be participants not victims; and employers therefore have an obligation to ensure decisions are justified and legitimised in the eyes of employees. This line of thinking is far from the commonsense of business and sounds absurdly radical. But really all it amounts to is a
statement that workers do not surrender their rights as citizens when they cross their employer’s threshold.

The American scholar John Budd, in his work on the employment relationship, has suggested that the principles of efficiency (productivity and performance), equity (fairness for workers) and voice (respect for the principles of industrial citizenship) are the foundations on which a functioning system can be built.¹⁰ They offer practical guidance and a benchmark against which to measure success. As we have seen, the UK performs less well than one might expect on each of these dimensions. Another purpose of this paper is to explain how we got here and offer some thoughts about how rather better outcomes might be secured.

The pursuit of an illusion?

Before we turn to our substantive consideration of the issues there is a final preliminary objection to be addressed. Critics might argue that the quest for an efficient employment relations system is the pursuit of a mirage. Every country has to deal with an element of messiness – this is simply a fact of life. Different governments adopt different approaches and the residues of previous policies lie one on top of the other like sedimentary layers. Expressed slightly differently, governments may change some of what their predecessors have done but they never change everything. Contingency, variation and path dependency (where you go next is limited by where you have come from) are ubiquitous. From this standpoint the UK’s situation is by no means unique and it is quite wrong to believe that other countries do any better.

Undoubtedly, there is an element of truth in this criticism, and one needs to be alert to the perils of believing that the UK is getting most things wrong when others are getting most things right. But one can, for example, talk about the German system and describe a set of interlocking institutions that are mutually reinforcing – works councils, board level co-determination, a national collective bargaining system, industry specific skills formation. These arrangements may be subject to the usual stresses and strains and there may be both change and continuity – witness for example the move to decentralise bargaining and include “opening clauses” that allow for enterprise level variations to national collective agreements – but nobody would say that the German system is incoherent. A minority of employers may call for radical reform, but the majority fall behind the consensus position that these institutions are working well and have helped the German economy to weather the storms of the recession.

The same observation applies to Denmark, where it is possible to describe the system as voluntarist and be treated with the utmost seriousness. The social partners really

¹⁰ Budd, Employment with a human face (2004)
are left to reach agreements that suit them and the state really does take a back seat – unless it is compelled to intervene to ensure that EU directives are given effect in Danish law. Most employment protection in Denmark is secured through the almost universal coverage of collective bargaining and Danish employers, employees and trade unions are broadly satisfied with the results.

Both systems have a powerful internal logic that can be easily described and readily understood. The same cannot be said for the UK. Perhaps the problem requires a little more elucidation before we turn to a short account of how our employment relations system deteriorated to produce outcomes that all stakeholders find unacceptable.
Chapter 2

So what's the problem?
So what’s the problem?

The short account in the previous section may have been too brief to convince sceptics that there are real problems in the world of work. After all, in the period immediately before the recession employment growth was strong, unemployment was low, average earnings were rising and the national minimum wage had established a solid floor in the labour market – or a Plimsoll line for labour to use an expression coined by the Low Pay Commission. Moreover, the trade union recognition procedure gave workers the right to representation where they wanted it and the Information and Consultation Regulations established some basic requirements for collective employee participation in non-union workplaces.

Employers might equally have taken the view that there were no serious or systemic problems to be addressed. The human resource management (HR) profession may have been in a continual state of existential crisis, but an increasing number of organisations recognised that their real value was located in their human capital. In theory, managing people had moved beyond the routines of “personnel” and an array of increasingly sophisticated techniques were being deployed (sometimes described as enlightened HRM, high performance working or high commitment management11). Through the rose tinted spectacles of many HR professionals, British workers had never had it so good. Communication was better than ever before, there were more face to face meetings with managers, more company newsletters, more joint problem solving activities and more sophisticated (often performance based) reward systems. Employers were increasingly focused on the need to achieve “employee engagement”, believing that a motivated, committed workforce was a prerequisite for organisational success.

Of course, not everything was perfect; most organisations fell short of a utopia where employers and employees found their interests always converged. But the decline of trade unions had largely eliminated industrial conflict in the private sector. And even in parts of the public sector (the NHS, schools education) some progress had been made towards a new model of employment relations based on effective employer-union partnerships.

It would be absurd to deny that there is some truth in all of this. And it is always wise to avoid falling into the trap of declinist narratives – that everything was better in

11 Purists will no doubt argue that these expressions all have slightly different meanings. But they are used almost interchangeably in the literature and seem to contain similar bundles of HR practices.
the past and that things can only get worse. Most obviously, perhaps, real progress had been made with the equality and diversity agenda. Overt racism was both legally prohibited and socially unacceptable. The gender pay gap had narrowed and women were both more likely to be in the labour market generally and more likely to return to work immediately after maternity leave. Yet a partial truth is self-evidently not the whole truth and a generally positive account fails to explain why many workers and employers felt a profound sense of dissatisfaction with the status quo (CIPD surveys continue to report low job satisfaction).

To focus our attention on the right issues we might briefly summarise the problems (both pre and post-crisis) as follows:

- Some employers take the view that the UK’s labour market is close to being over-regulated. They argue that the growing corpus of employment rights and the increasing willingness to litigate is making business uncompetitive and consuming huge quantities of management time.

- Some trade unions take the view that their failure to grow (and provide better protection for people at work) is a consequence of the “anti-union laws” introduced by the Conservative governments between 1979 and 1997. Levelling the playing field will lead to better labour market outcomes.

- Workers continue to report a high level of unfair treatment, often beyond the scope of employment rights. The juridification of the labour market has not necessarily improved the position of those intended to benefit from the establishment of statutory rights for workers.

- Good evidence suggests that the UK achieves worse job quality outcomes for employees than other comparable countries (most obviously the Nordics). Work intensification and declining autonomy and control are widespread features in many British workplaces.

- It is not entirely clear that the positive story about enlightened HR and improving people management is reflected in practice. The Workplace Employment Relations Survey series documents the decline of the trade unions but fails to detect the more widespread application of “progressive” people management techniques. Nor is it necessarily proven that the application of enlightened HRM or high performance working/high commitment management leads to higher organisational performance.
If all the above is correct then it must be reasonable to ask whether an employment relations system unfit for purpose in the good times can cope with the stresses and strains of the post-crisis world – sluggish growth, fiscal consolidation, big cuts in public service budgets, continued technological change, market integration and intensifying competition. It is clear that we are living in tough times, but the times could be much tougher if the wrong judgments are made about the regulation of the labour market and the best route to high trust relationships at work.

Red tape and regulation
Whether the UK labour market is over-regulated or not is a relatively simple matter to determine. The Organisation for Economic Co-operation and Development (OECD) regularly publishes structural indicators that offer a comprehensive, comparative assessment of the regulatory regimes in member countries. On all the measures that we might consider relevant the UK is either at or close to the bottom of the hierarchy of regulatory tightness.

So, for example, employment protection legislation is the second weakest in the OECD (only the USA is lower in the index - figure 2.1) and product market regulation is equally liberal (figure 2.2). It is easy for employers to hire and fire just as it is easy for businesses to be born and to die. Indeed, the UK performs well (meaning has limited regulation) on virtually every measure treated as important by the OECD, whether we are discussing barriers to entrepreneurship, the complexity of administrative requirements or the regulation of particular industries. Given these unavoidable facts, it seems that British employers have very little about which to complain as compared with their continental counterparts. Certainly, it is very difficult to argue that the Labour government’s modest re-regulation of the world of work has significantly increased so-called burdens on business. If this assessment is right then there is no case for a further bout of labour market deregulation.

Unfortunately, looking beyond the narrow frame of labour market regulation, the coalition seems to have swallowed a hefty dose of what Americans might call the neo-liberal ‘Kool-Aid’. Nick Clegg appears to be entirely serious when he argues that the UK is in some sense over-regulated and that a bonfire of red tape would be socially beneficial. More problematic than the deregulatory rhetoric is the suggestion that the government plans to operate a “one in, one out” rule – the introduction of a new regulation must be matched by the removal of an old regulation. Any dispassionate observer might struggle to understand how this can be applied sensibly in the labour market. Does it mean that extra protection for temporary workers (as
envisioned by the EU directive) must be matched by a reduction in unfair dismissal compensation, or weaker union recognition provisions or a lower minimum wage? Given that so much labour market regulation now derives from European level action the coalition’s room for manoeuvre is very limited. To operate a serious “one in-one out” rule would run the risk of putting the UK in breach of its treaty obligations.12

The yawning gulf between the rhetoric of burdens on business and the practical realities should lead us to ask just why so many employers believe that these complaints are justified. Perhaps the simple answer is that all employers everywhere prefer fewer to more regulatory obligations. Much of the public conversation in the UK over the last thirty years has been shaped by the belief that strong employment rights are in some way incompatible with competitiveness. Yet these beliefs are mostly false, as the OECD demonstrated in their work published in 2004/05.13

Figure 2.1: Strictness of employment protection legislation 2008 (index of 0-5)

Source: OECD.Stat 2010

12 We might also ask whether this is a matter of political expediency for Mr Clegg too, bolstering the coalition by making statements to appease the market fundamentalists in his own and the Conservative ranks. For the time being it remains unclear.
13 See the OECD Employment Outlook for 2004 and 2005
There is no single route to good economic performance. Markets are largely deregulated in the USA and the UK but economic performance is comparable to countries with higher taxes, stronger welfare states, stronger trade unions and more regulated labour markets (most obviously the Nordics). What all these countries have in common, however, is relatively strong competition policies and liberal product market regulation. The economic case for labour market deregulation in the UK is at best unproven and at worst owes more to a theistic belief in the perfection of free markets than a dispassionate inspection of the evidence. How these arguments play out over the lifetime of the coalition will determine the shape of the British labour market in the period ahead.

Yet while the economic arguments for deregulation look less than convincing, the employer complaints are not entirely without merit. There is a case to be made that disputes in British workplaces too often lead to an employment tribunal application, and that a better route to dispute resolution would be to the advantage of all parties. Alex Bryson of the Policy Studies Institute and the London School of Economics has demonstrated with great clarity that there seems to be an inverse relationship between the percentage of the workforce in trade union membership (otherwise known as trade union density - Figure 2.3), the number of days lost through strikes (Figure 2.4) and the number of applications to employment tribunals (ETs). In other words, as union membership has fallen and the number of strike days has fallen so the number of ET applications has risen (Figure 2.4).

This finding is not without difficulty for employers, since it implies that weak workplace institutions drive the trend towards greater litigiousness. As we shall see, most private sector employers have welcomed union decline (whether implicitly or explicitly) and, quite paradoxically, expressed rising levels of concern about the juridification of the employment relationship.

There are two observations to be made here. First, the really significant increases in ET claims took place before Labour’s modest re-regulation of the labour market between 1997 and 2010. Second, unfair dismissal is still the most important jurisdiction. A recent increase in the number of equal pay cases does not reflect a rising tide of pay inequality, but the willingness of some lawyers to try and undo the effectiveness of collective settlements between unions and public sector employers by encouraging aggrieved employees to claim back pay.

14 A more detailed treatment of these issues can be found in Coats, Who’s Afraid of Labour Market Flexibility?, The Work Foundation (2006)
Figure 2.2: Product market regulation 2008 (Index 0-6)


Figure 2.3: Union density 1979–2009 (% employees)

Source: Labour Force Survey
Figure 2.4: Days lost to industrial action 1979-2009 (000)

Source: Office of National Statistics

Figure 2.5: Claims to employment tribunals 1972-2006 (000)

Source: Employment Tribunals Service
The previous government was apparently alert to the problem and responded to employer concerns by requiring employers’ internal processes to be exhausted before a claim could be made to an employment tribunal. These measures failed to achieve the desired outcome, caused unions to complain that justice was being denied and led eventually to a policy u-turn. The lesson, perhaps, is that the solution is not to be found in limiting access to tribunals. Workplace problems are best resolved in the workplace. As Lord Wedderburn observed in the 1980s:

*Most workers want nothing more of the law than that it should lead them alone. A secure job is preferable to a claim to a redundancy payment; a grievance settled in the plant or the office is better than going to a court or to an industrial tribunal.*\(^{15}\)

This maxim has been largely forgotten and it is time for it to be revived. If employers want more effective routes to resolution then they must recognise the value of workplace institutions. Problems that, in the past, would have been nipped in the bud by effective shop stewards and high quality personnel professionals now fester and become acrimonious disputes. John Monks, former general secretary of the TUC was right when he said that:

*Employers and government have a clear choice, either more negotiation or more litigation.*\(^{16}\)

**The anti-union laws: shackling organised labour?**

So much for the employer complaints, but what about the arguments advanced by organised labour? Inevitably, trade unions have a rather different view of the situation. Since the turn to the left amongst union leaderships in the early 2000s the focus has been on repealing the anti-union laws that are said to prevent unions from successfully organising in the private sector. Unfortunately, these claims about the anti-union laws lack substance in much the same way as the employer complaints. To begin with, British trade unions are not alone in experiencing membership decline. Unions across the developed world have been struggling for the last two decades no matter what the public policy dispensation. In other words, decline is driven not just by ideologies hostile to organised labour, but by profound changes in the structures of developed country economies. The shift in employment from manufacturing to services, the disappearance of whole industries that used to be well organised (coal mining in the UK is an obvious example), rising skill levels, the growth of more

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knowledge intensive employment and the erosion of a monolithic working class have all conspired to make life more difficult for the trade union movement.

Of course public policy does matter, but it has affected only the speed of union decline, not the fundamental direction of travel. Moreover, structural change can trump public policy, no matter how favourable the institutional architecture may be (Figure 2.6). German unions, for example, now represent barely one in five of the workforce, despite the presence of workers’ representatives on the supervisory boards of companies, the universal (formal) coverage of collective agreements and the legal guarantees offered by co-determination in the workplace through works councils. It is important to remember that German works councils are elected on a universal franchise, by all workers in a workplace, not just by trade union members. Yet even though most members of works councils are backed by the trade unions this has not operated in any way as tourniquet to stem the flow of membership loss. French unions, always relatively weaker in membership terms, have now reached a position where they are more like organisations of activists than mass membership bodies. Since the turn of the century even the Nordic unions have witnessed membership loss from their very high base.¹⁷ The statistics tell a story of stagnant membership everywhere at a time when the global economy was booming and employment growing.

Figure 2.6: Union membership density, selected OECD economies 1999–2007

Source: OECD.Stat

¹⁷ The Swedish unions have seen a 10 point decline in membership density over the decade – larger than anything witnessed in the UK.
A defender of the unions might argue that the predominant market fundamentalist ideology can still be blamed for their difficulties across the developed world. After all, even conservative parties in the Nordic countries subscribed to the rhetoric of the Thatcher-Reagan revolutions. Nonetheless, it is very hard to sustain the argument that there are no differences between the regimes applied at national level, especially when the formal structures of social partnership and collective bargaining remain intact in so many continental European countries. In other words, it is not so much politics as economics that explains the stagnation or decline of organised labour across the OECD.

A natural conclusion is that the repeal of all the so called “anti-union” laws would do little to improve the prospects for British unions. We could go even further and say that to make the reform of labour law the cornerstone of union strategy is to devote far too much effort and energy to the achievement of a quite pointless objective.\(^{18}\) A more “favourable” legal environment may make union activists feel happier about the world, but it is unlikely to produce a flood of new membership applicants.

Perhaps the problem is cultural as well as structural. Many unions look and feel “old fashioned”. There are far too many middle-aged men giving the impression that unions are suitable for those working in Royal Mail, the car industry or on the railways but have little to offer to anybody else. Of course, this does not reflect the realities of union membership – public sector professionals are more likely to be union members than anybody in the private sector and around half of all members are women. But one wonders quite legitimately whether the language of struggle, strikes and strife has much resonance with well qualified people working in private services. The challenge is to appeal to today’s workforce, not a mythical proletariat or the workforce of thirty years ago. New strategies, new messages and new services may be required – an issue to which we return in the final section.

Moreover, most union members find the structures of their unions alienating rather than welcoming. Participation in branch meetings has never been high and unions have an ageing activist base. A paradoxical effect of the Thatcher trade union reforms has been to make unions more insular. General secretaries need to get elected (and re-elected), largely on the back of votes from union activists (turnout in such elections is invariably low). The whole process means that unions are increasingly talking to themselves, not in the sense of their wider membership, but in the sense of the highly organised (but small) political factions whose efforts can determine the outcome of elections. Breaking the mould, saying something bold, striking out in a new direction, challenging entrenched preconceptions or

\(^{18}\) This is not to say that particular elements of regulation are not ripe for reform – witness the complexities of the balloting regulations that caused such difficulties for Unite in their dispute with British Airways. But this is an argument for reform, not wholesale repeal.
questioning the value of heroic myths will put any candidate in the fast lane to electoral catastrophe. This is part of the log-jam obstructing union growth. Unions will only recover if they can craft a language, an offer and organisational structures that speak to the realities experienced by the majority of people at work today. In other words, unions need to be open minded, forge new alliances and look outwards.

It is worth recording at this point that I remain an optimist about the prospects of trade unions if they can respond with imagination and creativity to the problems in a changing world of work. That there remains a commonsense understanding of the logic of collectivism is clear from evidence in both the UK and the USA (a much more hostile environment for organised labour). But, and here is the challenging finding for unions, a large majority of workers (around two-thirds) do not see unions as the appropriate vehicle for collective action. Simply recognising that fact and understanding why unions are so apparently unappealing is the first step on the road to resurgence.

The proposal that the UK needs a new drive to improve the quality of work (and by implication the quality of management) discussed below could offer real opportunities for unions, as could a determined effort to transform the information and consultation obligations into living, breathing institutions. Others have offered a more downbeat assessment, largely because they doubt the strategic capacity of British trade unions to rise to the challenge. Melanie Simms and Andy Charlwood put it like this:

[W]e see little basis for ...optimism in practice, such renewal would take a leap of imagination that is not, in our view, currently evident within the British trade union movement. Thus, opportunities to build legitimacy in the eyes of workers, employers and the state will remain severely constrained.20

This could be read as a counsel of despair, but I interpret it as a call to action. There is nothing more rewarding than confounding the predictions of industrial relations academics. Surely there are people in the trade union movement who would relish that opportunity?

While unions demand a programme of repeal, the CBI have recently called for a tightening of the laws regulating strike ballots. Their proposal is that a lawful strike should only be possible if the union has won a majority of those voting in the ballot and secured the support of 40% of those entitled to vote.21 The proposal is obviously controversial, but it is

21 Making Britain the place to work: An employment agenda for the new government, CBI (2010)
not entirely clear that the CBI have devised a solution to a genuine problem. As we have seen, the number of working days lost to industrial action is at a very low level. Unions find it difficult to organise lawful strikes anyway – as the recent BA dispute has demonstrated – and given the low level of union membership in the private sector (fewer than one in six workers) not even the most optimistic revolutionary would predict a sudden upsurge of proletarian discontent. Moreover, it is not entirely clear why the CBI should be concerned about low turn outs in strike ballots. From the employer’s point of view a low turn-out ought to be a cause for celebration rather than complaint simply because it demonstrates that the union has failed to enlist the enthusiastic support of its members. A half-hearted or grudging acquiescence is hardly the stuff of a rousing industrial victory.

Once again it seems employers are directing their attention to the wrong question. A harsher critic might even go further and accuse the CBI of hypocrisy - on the one hand they demand as little regulation for themselves as possible and on the other propose that trade unions should be subject to even greater statutory constraints. A more charitable observer would describe the policy as another example of displacement activity. After all, it is much easier to jump on a passing anti-union bandwagon than to recognise that the UK has a management quality and a job quality problem. It is much simpler to blame the unions than take responsibility for one’s own failures, especially when only poor people management can explain the high level of perceived unfairness and poor job quality observed in many British workplaces.

**Felt unfairness in the British workplace**
The claim that British workplaces are still characterised by an unacceptable level of felt unfairness may sound more than a little counter-intuitive. Employees have more formal legal protection today than at any time in the past (a finding consistent with the UK having “light touch” regulation, because there was an absence of effective protection before 1997). Moreover, recent research suggests that employees’ knowledge of employment rights rose and the experience of problems at work fell quite dramatically between 2005 and 2008. Yet despite this supposed improvement, around 34% of employees reported that they had experienced a problem at work over the preceding two years. While almost a third of that group reported a problem with specific employment rights, the remainder had rather less precise grounds for complaint – or at least not grounds that could generate a claim for a legal remedy. According to the Fair Treatment at Work Survey 2008:

22 See Fevre et al, op cit
[W]ith the exception of pay, respondents were less likely to identify a specific employment rights problem as part of their most serious problem than they were to identify unfair treatment, bullying and harassment, other serious problems impacting health/well-being and discrimination. There may, of course be overlap between some or all of these categories,...but the important point to make here is that, pay problems apart, it was the problems which were less easily identified with specific employment rights that were the things that respondents were most likely to choose when they told us what their most serious problem looked like.\(^{23}\)

In other words, the most frequently experienced problems seemed to owe more to the culture of the workplace and the quality of management than a straightforward breach of a legal obligation by the employer. This is clear if we look at the reported causes of perceived unfairness which include: “being ignored”; the type of work the employee is being asked to do; performance appraisal and assessment processes; pay, and working hours. Almost one in ten of those reporting unfair treatment referred to “being excluded from social activities or not being part of a social group”. Far from concluding that some people are thin skinned and should pull themselves together, we would be better advised to accept that workplace cultures can sometimes be exclusionary and unfriendly to those who do not “fit”; that employers should be alert to the phenomenon; and that remedial action should be taken.

The most interesting finding here, perhaps, is that the reported sources of unfairness map rather well onto the indicators of job quality discussed in more detail below. Control, autonomy, being a participant rather than a victim and having some influence over the course of events are all important. Moreover, most of the grounds for complaint could be remedied by better people management and stronger workplace institutions that could, as in the old days, nip problems in the bud. This is not a plea for a more effective HR department in those organisations experiencing widespread reported unfairness, but a suggestion that a little more judicious attention to the people management skills of operational managers could go a long way towards resolving these problems.

It is important to understand the limits of the law here too. Few would argue for a statutory right not to be ignored by your manager or for a right to refuse an “excessive” workload. Most importantly perhaps, it is hard to see how effective individual remedies might be designed or how a tribunal could determine a claim without substituting their own judgments about operational effectiveness for those of the employer. It is easy to define an “excessive” workload in extreme cases, but most claims would probably be at the margin, leading to complex and expensive litigation with a multiplicity of expert

\(^{23}\) Ibid pp79-80.
witnesses. On the other hand, public policy can intervene to create collective rights to be informed and consulted; workplace representatives can be given rights to discuss such matters as workload, working hours and the impact of operational changes on job quality. Collective action may also offer at least a partial solution.

**Not enough good jobs?**

It would be reasonable to worry a little less about perceived unfairness if we could be confident that workers were broadly satisfied with their jobs, and that job quality was high and rising. Inevitably, the recession may have set the process back a little, but surely, the boom years must have led to a gradual improvement in the quality of work in the UK? Economic theory tells us that tight labour markets ought to encourage employers to offer better terms and conditions of employment so that they can recruit and retain the best employees. On this view, full employment is the best policy for a significant improvement in the quality of work.

Yet if we take the incidence of in-work poverty as a reasonable indicator of rising (or falling) job quality then the picture is not entirely encouraging. Even though the labour market was expanding and the minimum wage offered a robust and rising floor under wages, the combined effect of full employment and stronger statutory rights (in the pre-recession period) was to move people from worklessness into in-work poverty (Table 3.1).

**Table 3.1: Breakdown of households by working and poverty status (millions)**

<table>
<thead>
<tr>
<th></th>
<th>Poor 1996/7</th>
<th>Poor 2005/6</th>
<th>Not Poor 1996/7</th>
<th>Not Poor 2005/6</th>
</tr>
</thead>
<tbody>
<tr>
<td>Working</td>
<td>2.0</td>
<td>2.5</td>
<td>12.1</td>
<td>13.8</td>
</tr>
<tr>
<td>Workless</td>
<td>2.2</td>
<td>1.8</td>
<td>0.9</td>
<td>0.9</td>
</tr>
<tr>
<td>Total</td>
<td>4.3</td>
<td>4.3</td>
<td>13.0</td>
<td>14.7</td>
</tr>
</tbody>
</table>


In other words, labour market tightness was not driving up job quality (if we use low pay as a proxy) for those at the bottom of the labour market. And what of the majority of workers, from those at the bottom of the struggling middle to those at the top of the distribution? How did they fare over the same period? Before we can answer this question with confidence we need to spend a moment examining the indicators of “good work”, those factors that have a proven effect on important outcomes like health and life expectancy.
There are two initial points to be made. The first is that all societies display a social gradient, with the rich enjoying better health and life expectancy than the poor. And the second is that the steepness of the social gradient or the size of the gap between rich and poor can be ameliorated by intelligent policy intervention.\textsuperscript{24} The most important factor overall is the extent of income inequality. In other words, the wider the gap between the rich and the poor the unhealthier the society.\textsuperscript{25} According to Richard Wilkinson and Kate Pickett, income inequality has a corrosive and widespread social impact. For example, more unequal societies seem to be characterised by lower levels of trust – which may explain why trust is such a problem for many organisations in the UK.

What the evidence seems to establish is that the following workplace factors are of particular significance:

- The security of employment
- Whether work is characterised by monotony and repetition?
- Whether employees have autonomy control and task discretion?
- The extent to which there is an appropriate balance between the rewards workers receive and the efforts that they make.
- Whether employees possess the skills they need to cope with periods of intense work pressure?
- Whether the workplace is seen to be fair? Do workers believe that the employer observes the principles of procedural justice?
- The strength of workplace relationships – or what some researchers have described as social capital.\textsuperscript{26}

On some of these measures the UK performs relatively well. For example, before the recession a high percentage of British workers believed their jobs to be secure, which was hardly surprising given the low unemployment and robust labour market expansion over the previous decade. Yet at the same time, it seemed that other systems were more effective in creating and sustaining more high quality secure jobs (Table 3.2). The UK as a “liberal” economy on this typology has more low quality employment generally (58% of employees) than the Nordic countries (40%). Equally,


\textsuperscript{25} Marmot, op cit, Wilkinson and Pickett, op cit

\textsuperscript{26} A comprehensive discussion can be found in my paper with Rohit Lekhi, \textit{Good Work: Job Quality in a Changing Economy}, The Work Foundation (2008)
the Nordics have the capacity to generate more high quality employment (60%) than the liberal regime (42%).

Now, a twenty percent difference is significant. It means more employees have better life chances and it means that a large amount of unnecessary suffering has been avoided. And in this case there seems to have been no trade-off between social justice and efficiency. Employment performance in all of the Nordic countries has, over the cycle, been either as good as or better than the UK's. Productivity in Denmark and Sweden is at roughly the same level as the UK. Distributional outcomes are superior too, with less poverty and more social mobility.

Table 3.2: Percentage of employees in job quality/job security categories by welfare state regime

<table>
<thead>
<tr>
<th></th>
<th>High quality secure</th>
<th>High quality insecure</th>
<th>Low quality secure</th>
<th>Low quality insecure</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nordic</td>
<td>48.3</td>
<td>11.9</td>
<td>25.9</td>
<td>13.9</td>
</tr>
<tr>
<td>Liberal</td>
<td>34.4</td>
<td>7.6</td>
<td>32.2</td>
<td>25.8</td>
</tr>
<tr>
<td>Continental</td>
<td>38.9</td>
<td>10.2</td>
<td>24.6</td>
<td>26.2</td>
</tr>
<tr>
<td>Southern</td>
<td>30.3</td>
<td>9.9</td>
<td>27.3</td>
<td>27.3</td>
</tr>
</tbody>
</table>

Source: Paugam and Zhou 2007, Eurobarometer

Some might read this as a counsel of perfection and argue that a large, heterogeneous society like the UK can never expect to achieve the same outcomes as small open economies with homogeneous societies on the fringes of Europe. But these countries took time to develop into the robust social democracies that we see today (even though Denmark and Sweden currently have governments of the centre-right). In 1932 none of these countries was rich. Nor did they experience high trust relationships between workers and employers. In fact the period after 1929 was characterised by profound class conflict. Welfare states were at best rudimentary. It was a slow process of institutional construction combined by patient governments with a strong sense of national purpose that helped to create the Nordic model. These may be characteristics specific to a particular time, and it may be absurd to expect rapid progress towards more egalitarian outcomes in the UK. But the importance of these countries is that they offer a practical counter-example to the view that there is no alternative to low taxes, weak welfare states, enfeebled unions and rising inequality.

27 Norway has much higher GDP per hour worked, largely because of access to natural resources, most obviously oil.
Another potential objection is that such international comparisons are unhelpful because we are discussing two very different models of capitalism – and the particular variety of capitalism we inhabit is determined by complex historical processes.\(^{28}\) In other words, if you are living in a liberal market economy it is very different to shift to a totally different development path; you simply have to do the best you can with the legacy bequeathed by previous generations. There is obviously some truth in this, but it ought not to be used to constrain the policy choices available.

In any event, the Labour government’s new rights for workers, which had no adverse impact on economic performance, marked a significant departure from the “liberal” notion of a flexible labour market. Moreover, it would be unwise to forget that the UK had more corporatist arrangements for labour market regulation in place until the advent of Mrs Thatcher. Similarly, while it is still right to see the Republic of Ireland as a liberal market economy, there was, before the crisis, a twenty year history of successful social partnership (wage moderation in return for improvements in the social wage) of the kind that is more commonly found in Continental Europe. Just because we have a labour market that would satisfy the strictures of a market fundamentalist today does not mean that we cannot make different choices tomorrow. In other words, there is an alternative, or perhaps even a range of possible alternatives, all of which are consistent with high employment and robust productivity growth, but achieving very different distributional outcomes. These are important considerations as we begin to discuss a reform programme for the UK.

If we return to the other dimensions of job quality we find that the UK performs even less well. In addition to the widespread perception of unfairness, British workers report a high level of boredom. The epidemiological evidence tells us that control is a very important job quality indicator yet levels of autonomy and control have been falling. Far too many British workers have their senses dulled by their jobs and work in an environment that is by definition unhealthy.\(^{29}\) As Richard Layard has pithily observed:

> Perhaps the most important issue is the extent to which you have control over what you do. There is a creative spark in each of us, and if it finds no outlet, we feel half-dead. This can be literally true: among British civil servants of any given grade, those who do the most routine work experience the most rapid clogging of the arteries.\(^{30}\)

\(^{28}\) Hall and Soskice, *Varieties of Capitalism* (2001)

\(^{29}\) Coats and Lekhi, op cit for a summary of the arguments. Further references can be found in the bibliography to that paper

\(^{30}\) Layard, *Happiness: Lessons from a new science* (2005) p.68
An examination of the evidence on skills supply and demand helps to explain why workers report a high level of boredom. Put simply, the supply of skills in the economy has been outpacing employer demand for skills.\textsuperscript{31} This means that employees consistently report that their skills are being underutilised, and it means too that employers are wasting the productive potential of their workforce. One could argue that this is merely a transitional phenomenon and that employers will eventually work out how to make the best use of their workforce or, more accurately, the flexible labour market will operate to ensure that employees move to good organisations where employment is growing, leaving the “bad” and less productive organisations to wither on the vine. Unfortunately, this standpoint displays the same misplaced faith in markets as the belief that labour market tightness (plus a robust minimum wage) will crack the UK’s low pay conundrum.

A related argument makes a link between skills under-utilisation, the organisation of work and the design of jobs. It is often said, for example, that the solution to the UK’s job quality problem is to be found in the adoption of high performance work systems (HPWS), which demand high skills, high work intensity and high levels of job control. High productivity is achieved when all of these elements are brought together. Performance and job quality are inextricably linked. If organisations want better results then all they need do is adopt the right systems and develop a laser like focus on performance.

It would be wrong to dismiss this view completely. For example, the Nordic countries (and to some extent the Netherlands) offer an experience of work that one might characterise as high skill, high control and high intensity, with high levels of team working and job rotation.\textsuperscript{32} There is a significant difference between these countries and the UK, however, because these practices are implemented in an environment where government, employers and unions consider job quality to be a priority. More to the point perhaps, strong trade unions guarantee that workers are participants in the accelerated change generated by HPWS, which might help to explain why these practices are more widely disseminated than in the UK.

Studies of liberal market economies like the UK and the USA also purport to find a strong link between the use of high performance work systems and productivity. But these studies focus on exceptional cases. Most organisations fail to conform to the HPWS paradigm. Even though the European Working Conditions Survey confirms the more widespread dissemination of these practices in the Nordic countries, we would

\textsuperscript{32} Coats and Lekhi, op cit
do well to remember that they do not have a significantly better productivity record than the UK, but they do offer much higher quality work. There appears to be some link between voice, trust and the application of HPWS, but the precise nature of the causal chain has yet to be explained. The Nordic experience also cautions against reliance on HPWS alone as the solution to the UK’s productivity problem. Investment (capital stock) and the quality of management are also important. Indeed, some recent studies have suggested that it is management that matters more than anything else – which explains why Sweden and Germany have higher manufacturing productivity than the UK.33 In other words, the application of HPWS by incompetent managers may be either self-defeating or positively damaging to productivity and performance.

Not all the problems discussed so far can be laid at the door of the employment relations system. Other pieces of the institutional architecture like skills formation arrangements, corporate governance, the balance of power between capital and labour and whether the quality of work is viewed as part of the politics of the quality of life may play an important role in shaping job quality outcomes. In other words, we must view the employment relations system in context, taking account of all of the other relevant factors. Duncan Gallie tries to capture this perspective and argues that the employment regime (all of these elements combined) has a significant (perhaps decisive) impact on the nature and quality of employment available in any particular economy.34 This is a very useful frame of reference as we explore the ambitions and relatively modest achievements of enlightened HRM, the supposed paradigm for the regulation of the employment relationship in the UK today.

The failure of enlightened HRM
A reader familiar only with the “official” publications of the HR profession might find all of these results rather surprising. To begin with, good HR policies and practices should be effective in reducing the level of workplace dissatisfaction. Effective HR would seem to be more consistent with falling ET applications than the rise witnessed over the last two decades. Equally, job quality outcomes ought to be better, not least because the official ideology of HR seems to place a high value on employee engagement, human capital development and high quality outcomes. Given the rather poor results reported above it seems that something is going wrong. In other words, the reinvention of the HR profession – the shift from personnel to human resources – has failed to deliver its promise.

34 Gallie (ed) Employment Regimes and the Quality of Work (2007)
To understand the problem we first need a working definition of human resource management. Neil Millward, writing in 1994, identified the following elements:35

- Managerial policies designed to engender employee commitment to managerial goals.
- Employee flexibility in terms of the work or jobs performed.
- A general emphasis on quality in both outputs and processes.
- The integration of managements’ personnel (or human resource) policies with strategic business planning.

Since that time the model, as an ideal statement of what HR is for, has become ubiquitous. Some unfortunate confusion arises from the use of somewhat different terms to describe very similar practices, but we should not be in any doubt about the impact of this approach as an official ideology. What I describe as enlightened HRM is close to Millward’s definition, and it can be applied almost interchangeably with employee engagement, high commitment management and high performance work systems.

There are two further preliminary points that need to be understood. First, in 1994 Millward may have described ingredients of the supposed new paradigm, drawing on the results of the 1990 Workplace Industrial Relations Survey, but he failed to find much evidence that it was consistently applied in practice. Employers were more inclined to pick a la carte from the HRM menu (a team briefing here, a bit of performance related pay there) than apply these practices as bundles, even though the evidence suggested that higher performance depended on the bundling of practices. In other words, so-called strategic HR was (and remains) driven as much by management faddism as by a systematic attempt to manage the workforce more effectively. Reality has refused to conform to the grand strategies of HRM theorists. Second, the most recent evidence suggests that these practices are less widely applied than might be anticipated given the focus on the performance related function of HR over the last twenty years.

By 1998 the Workplace Employment Relations Survey (WERS) research team detected a distinctive approach that they labelled “high commitment management”, not least because they believed it offered the possibility of subtler analysis than the blanket term HRM.36 The practices they examined included the limited use of contingent

36 Cully et al, Britain at Work (1999)
workers, psychometric testing, profit related pay, regular appraisals, employee share ownership schemes, fully or semi-autonomous teams, single status for managers and other employees, job security guarantees, formal workplace procedures, joint problem solving groups (involving employees and managers) and the application of family friendly employment practices.

As with the 1994 results, these practices were more likely to be applied in unionised than non-union environments and were treated as an a la carte menu rather than an all embracing model. Furthermore, the reported performance effects related more to positive employee outcomes (higher satisfaction levels and lower labour turnover) than hard measures like productivity growth.37 While WERS 1998 purported to detect the wider application of this approach, later findings have cast doubt on whether the practices are more generally applied than hitherto. So, for example, according to the 2004 WERS “the diffusion of so-called high involvement management practices has been rather muted in recent years”.38

How are we to account for these surprising results? If the logic of HPWS is so compelling then why are the practices so rarely applied as theory demands? Why should organisations be reluctant to implement an approach that apparently have a positive impact on performance – whether defined as productivity or employee satisfaction outcomes? The UK Commission for Employment and Skills (UKCES), in their discussion of HPWS point to the following barriers: management incompetence, a lack of trust on the part of employees, ignorance (employers simply do not know “what works”), inertia (the costs of change are too high) and a lack of capacity (managers do not have the skills needed to make the practices work).39 All these explanations sound plausible and they all allow for the possibility of straightforward remedies – improving information flows, raising management skills – but it may be that the UK has structural weaknesses, derived from capital markets, corporate governance arrangements and (the absence of) workplace voice institutions that make these practices hard to sustain.40 Moreover, it may be that the “win-win” rhetoric of HPWS/high commitment enthusiasts fails to engage with the realities of conflict in the workplace – an issue explored in the next section. There may be good reasons for employees to be resistant to these practices.

37 Ibid pp.284-286
38 Kersley et al, Inside the Workplace (2006) p.107. This is interesting because it may explain why British, Swedish and Danish productivity are at around the same level, even though the Nordics apply these practices more widely.
39 UKCES, op cit p.125
For example, Michael White's research shows that employees find it more difficult to reconcile work and their domestic responsibilities in the high performance workplace than in other settings. The Canadian scholar John Godard has been even more critical, drawing the conclusion that high performance work practices are detrimental to both employers and employees. His argument is that, in Anglo-Saxon countries at least, it is hard to sustain the high trust on which these practices depend, largely because of capital market pressures or merger and acquisition activity. The situation in a “co-ordinated market economy” like Germany is very different. Firms are managed as stakeholder institutions, workers have strong co-determination rights and rapid hiring and firing is anathema. Furthermore, the nature of employment relations in co-ordinated market economies may make it less necessary to apply these practices anyway, because employee commitment and engagement are achieved through other instruments – principally through information and consultation arrangements and works councils.

Godard offers the following hypotheses to explain why “high performance” practices are less widespread than one might expect given the reported effects on performance.

- High performance practices have declining marginal returns because the structure of the employment relationship gives rise to distrust, undermines commitment and therefore undermines the effectiveness of the practices.
- High performance programmes are fragile to the extent that the employer is free to make decisions that are in violation of the implicit contract on which co-operation is based.
- Because involvement on this model may lead to an increase in labour costs, employers may compensate by embarking on a programme of work intensification.
- Where employees are concerned that their workplace might close they are more inclined to co-operate with the employer and therefore the benefits to the employer of an “intensification approach” are somewhat greater.
- If the “declining marginal returns” hypothesis is correct then employers have strong reasons for adopting only a limited range of these practices (rather than the whole bundle) and to do so as “add-ons” to traditional personnel management.
- In an environment of work intensification, workers may be pressured further

43 Although this argument is not entirely consistent with the findings from the Nordic countries.
by members of their team to work harder. This also helps to explain why the full “bundle” is rarely applied because any gains through work intensification may be offset by higher levels of sickness absence or labour turnover.

- The extent to which an employer has an incentive to adopt the high performance model will vary according to sector, size of organisation and the technologies employed.

Toby Wall and Stephen Wood have developed a rather different critique, which focuses on the supposed performance effects that result from the application of “high performance” practices.44 Expressed simply, they argue that most studies are methodologically flawed and do not support the proposition that high-commitment HRM systems necessarily promote improved organisational performance. In their view there are strong indications that these progressive practices are poorly measured and the absence of longitudinal studies “makes causal inference dubious”. Their conclusion however is less critical than Godard’s, amounting to a call for more and better (particularly longitudinal) research. They also offer three useful rules of thumb for application in the future:

- There is a need to temper the claims that are being made for HRM and “high commitment” practices: “The term high performance clearly presupposes the very effects the researchers should be investigating and should be avoided”.
- A strategy of articulating and investigating the relative merits of competing hypotheses may encourage more rigorous and more disinterested research. In other words, investigators should not simply look for evidence that “high commitment” or “high performance” practices have an impact on performance and should explore a range of other possibilities and causal linkages.
- In the future research must avoid the weaknesses of existing studies. Specifically this means not relying on “single-source” measures (like reports from CEOs or HR directors), small samples with low response rates and qualitative rather than sophisticated longitudinal studies.

If we believe these two critical accounts to be right then we are driven to a somewhat depressing conclusion. High commitment/high performance practices are less widespread than generally believed. They may not (absent other structural changes in liberal market economies) be good for either employers or employees. Nor

is it clear which practices work and why. Persuasive associations, which is what Wood and Wall find, fall well short of established causal relationships.

While further research is always an attractive proposition, I am more drawn to Godard's critique, not least because it compels us to return to Gallie's notion of the employment regime in its totality. High trust may depend much less on the application of more enlightened HR practices or even the reform of workplace employee representation and much more on profound changes to corporate governance arrangements (including the proposed operating and financial review), investor behaviour, education and training systems and the relationship between the state, employers and employees. Just how we might develop an ambitious agenda of this kind is considered in the final section of this report.

We cannot leave this part of the discussion without some consideration of the question of employee engagement, often said to be the principal objective of the HR profession today. What is most interesting in this context is the absence of any agreement about what is meant by "employee engagement". The MacLeod Review, established by the Labour government to consider the engagement-performance link, offers at least five definitions (including "you sort of smell it, don't you"), the most convincing of which is:

_A set of positive attitudes and behaviours enabling high job performance of a kind which are in tune with the organisation's mission._45

In other words, engagement is the outcome that is supposed to be delivered through the application of the practices discussed so far in this section. Professor David Guest, in his evidence to MacLeod, noted that many definitions confuse attitudes, behaviours and outcomes to such an extent that "the concept of employee engagement needs to be more clearly defined or it needs to be abandoned".46

Given the gap between the rhetoric of HPWS/high commitment management and the realities of the workplace we should not be too shocked by the disappointing results of the CIPD's most recent employee engagement survey. This was conducted in 2006 and it does not necessarily show the HR profession in the best light, which may explain why no comparable survey has been undertaken since that time. The most important findings are:

45 MacLeod and Clarke, _Engaging for Success: Enhancing performance through employee engagement_, BIS (2010) p.4, para 9. For a longer discussion of MacLeod, see Section 4.
46 Ibid, para 10
• A third of employees never receive feedback from their managers.
• Only half of all employees believe that they will be dealt with fairly if they have a problem at work.
• Two in five say that they are not informed about what is happening in their organisation, and just a third believe that their views will be taken seriously.
• Only a third of employees trust senior managers.
• Only a third of employees are engaged in the sense that they display the attitudes and behaviours needed to deliver the organisation’s mission.

For the representative body of HR professionals to open a report with the finding that most British employees are “generally unhappy with how they are managed” is genuinely astonishing. A cynic might say, of course, that this is nothing more than a slick marketing exercise by the CIPD: “unless you take our members more seriously then your organisations will continue to underperform”. I read the findings rather differently. Indeed, this looks much more like the failure of a whole approach to the management of people than a plea for the more widespread application of high commitment management or HPWS. If enlightened HRM was supposed to be a substitute (especially in the private sector) for the supposedly dysfunctional system of union recognition and collective bargaining then it has fallen well short of its promise. The terrain of conflict has simply been displaced from the collective action of strikes to individual claims in employment tribunals. No doubt employers find this irritating, but making industrial action more difficult, as the CBI propose, will do nothing to remedy the profound problems in many British workplaces.

Perhaps the biggest weakness with the HRM/HPWS paradigm as interpreted by British employers is that it takes no account of conflict in the workplace (indeed denies the legitimacy of such conflict). A failure to engage with the realities of life at work, where employers inevitably want employees to do things that employees may not want to do, will prove a challenge for any theory. This “unitarist” frame of reference is not new – employers have been talking about shared goals, shared interests and one team since the advent of capitalism. But the elevation of such beliefs to a generally accepted ideology is a recent phenomenon and can be dated to the election of Margaret Thatcher in the UK and Ronald Reagan in the USA.

A system unfit for purpose?
Is it right to say that all of these complaints and practical problems prove that the employment relations system is unfit for purpose? Certainly, if we apply John Budd’s principles of efficiency, equity and voice we can only conclude that the present arrangements fail each of these tests. For example, we cannot be confident that
workers are being efficiently managed to deliver high performance, partly because it is not entirely clear why and how particular practices work but also because, as UKCES point out, HPWS depend on trust, and trust levels are low in many British workplaces.

So far as equity is concerned, we have the widespread perception of unfairness revealed by the Fair Treatment at Work Survey and the CIPD's Employee Engagement Survey. It is a commonplace that income inequality in the UK has grown dramatically over the last two decades and (despite the efforts of the Labour government) only limited progress has been made in reversing the trend. Moreover, the expansion of employment at the bottom of the labour market (before the recession hit) had done no more than increase the numbers of the working poor.

On the voice question, we can see quite clearly that trade unionism has retreated, but nothing (except perhaps recourse to an employment tribunal) has replaced the collective bargaining and dispute resolution system that existed from 1945 to 1979.

The current reality could be described as a palimpsest, where the previous text (an earlier policy) can be dimly perceived through the writing on the surface of the parchment. In other words, beneath New Labour's effort to create a fair and flexible labour market lies Thatcherism's drive for a union-free economy, and beneath that lie some measures from the social contract period and beneath them lies the old system of collective laissez-faire (or voluntarism), where the state kept out of employment relations and largely left the parties to their own devices.

The residue of the past most obviously penetrates the present in the public sector, where the remains of the old order are most visible. But even in the private sector some functioning systems remain – the national agreement in the printing industry for example. Far from being relics of a bygone age, these arrangements have the characteristics of adaptive systems. They have changed since the 1960s, but they still display characteristics that would be familiar to a visitor from an earlier era.

One of the reasons for today's apparent incoherence is that at each stage of reform no policymaker seemed to consider the long-term consequences for the employment relations system as a system. If we want to have a serious conversation about what should be done then we need to know where we have come from and how we got here. It is to these issues that we now turn.
Chapter 3

History matters: the disappointments of labour market reform
History matters: the disappointments of labour market reform

How do we best understand the processes that have created today's rather unsatisfactory situation? A commonsense approach would be to say that it is a consequence of poor management, union intransigence and inadequate public policy. Employers, government and unions are all to blame for allowing too much bad work to exist in the UK.

Now this takes us so far, but not really far enough; it skates on the surface of complexity and offers little by way of policy prescription. Better management, modern unions and improved public policy are all desirable, but this story offers little guidance about how they might be achieved.

Another approach would be to say that all developed countries are being transformed into knowledge economies. Despite the persistence of low wage, low skilled work – somebody must flip the burgers, empty wastepaper bins and clean hotel rooms – skill levels are rising, comparative advantage is to be found in human capital and employers will have to treat employees well to recruit and retain the best. Trade unions have declined because they have failed to adapt to economic change. Workers no longer believe that they need to act collectively to exercise influence at work. If there are still problems in the world of work they can be effectively resolved by the more effective application of enlightened HR and the judicious intervention of the state – a floor of rights to prevent the worst of bad practice.

Unfortunately, the evidence is against this account. Indeed, as outlined in the previous section, the retreat of trade unionism and the failure of HRM are at least partially responsible for the problems we face. Moreover, while the knowledge economy narrative has some persuasive power it has little to say about how one deals with the problems of low pay and low productivity in sectors that are not internationally traded. A frequent response to this objection is that rising consumer expectations will either force employers to improve or go out of business. But this story assumes too that the proportion of the population with low incomes and therefore a limited capacity to consume high quality goods and services is diminishing. A touching faith in the benign consequences of market processes seems somewhat misplaced in a country with rising income inequality and a growing number of working poor. As Ewart Keep and Ken Mayhew have pointed out, the continued presence of low income consumers means that for some employers low road product market strategies may
be perfectly rational. Decent profits can be made by offering low cost, low quality goods in domestic markets simply because there are enough poor shoppers in the UK to make it worthwhile.

From 1945
So, we have two flawed accounts that tell us something but nowhere near enough. Is it possible to do better? A more persuasive story might look at the development of employment relations since 1945 and draw a parallel between the changing condition of capitalism and the transformation of relationships in the world of work. This is a useful device because it enables us to see where there were breaks in a trend and where capitalism took a new path. It is conventional to talk about the post-war consensus as enduring from 1945 to the middle 1970s, with a break taking place following Mrs Thatcher’s election in 1979 (and Ronald Reagan’s election in 1980). This is broadly the approach adopted by Anatole Kaletsky in his provocative new volume *Capitalism 4.0*. For his purposes capitalism has progressed through three distinct phases since the industrial revolution. Capitalism 1.0, the era of genuine laissez-faire, endured from the early nineteenth century until the Great Depression. Capitalism 2.0 is exemplified by the post-New Deal (in the USA) and post-war (in the UK) consensus. States were generally believed to be superior to markets. Indeed, the government had an indispensable role in stabilising an inherently unstable capitalist economy to maintain full employment, secure social cohesion and promote social justice. This second phase was discredited by the stagflation (high inflation and high unemployment) of the 1970s. Citizens lost faith in the idea that wise government technocrats could fine tune the economy to guarantee rising prosperity. The stage was set for a counter-revolution. When it came, this looked a great deal like Capitalism 1.0, but with the retention of some elements of the welfare state and a focus on wealth creation through financial engineering. The limits of Capitalism 3.0 and the ideology of market fundamentalism were mercilessly exposed by the banking crisis. Weak regulatory regimes that kept out of the way of markets made the situation worse and helped push the global economy into recession.

According to Kaletsky we are now at the stage of the emergence of Capitalism 4.0, a post-ideological world, where a new relationship between the market and the state will be forged by pragmatic politicians willing to experiment in the same spirit that Franklin Roosevelt demonstrated in the 1930s. The planet, according to this analysis, is on the threshold of a new era. The causes for optimism are, in Kaletsky’s view, more compelling than the grounds for pessimism.

47 Keep and Mayhew, *Was Ratner Right?*, EPI (1998)
48 Kaletsky, *Capitalism 4.0* (2010)
How does this account of capitalist development map onto our story about employment relations? The straightforward answer is actually, quite well. My brief summary loses some of the subtlety of the analysis – each model of capitalism is characterised by evolutionary change; for example, Capitalism 1.0 becomes Capitalism 1.1 and so on. But we do have a broad historical narrative that may offer a better lens through which to view our present problems than the alternatives discussed above.

Simply put, Capitalism 1.0 (and its variants) was characterised by a struggle between the classes. Not surprisingly, unions sought to squeeze the maximum level of concessions from employers in a very unstable economic environment. Once unions had escaped the trap of being criminal conspiracies (which they were at the beginning of the period), free collective bargaining was the most sensible strategy to pursue. Under Capitalism 2.0, in an era of full employment, the threat of the reserve army of labour could not be used to restrain wage inflation. In principle, state-led capitalism demanded either a voluntary or a compulsory approach to incomes policy. Corporatist models were used (in some countries) to influence the wage formation process and the formulation of public policy. Britain’s problem during this era was that it failed to evolve effective institutions to secure non-inflationary wage growth under conditions of full employment. Trade unions approached collective bargaining very much as they had under capitalism 1.0 (or perhaps 1.2 or 1.3). This was not necessarily the case in continental Europe, where guaranteed access to board level decisions and workplace participation (through works councils) both modified workplace relationships, transformed the collective bargaining process, and placed a huge roadblock in the path of any politician who tried to dismantle the post-war settlement.

Capitalism 3.0 is also well matched with the advent of HRM, HPWS and high commitment management alongside the decline of trade unions. Yet, so far as public policy is concerned, the Conservative governments in the UK made no effort to incentivise the creation of a new employment relations system to replace union representation and collective bargaining. In part this was because they believed, as a matter of ideological conviction, that the market left to itself would create both full employment and quality jobs. Of course, this was not the experience of Capitalism 1.0 and it proved not to be the experience of Capitalism 3.0 either.

*From the 1960s*
This remainder of this section discusses the development of employment relations since the early 1960s. It notes that most attempts at reform failed and that
Thatcherism’s achievement was to sweep the old order into the dustbin of history. That this has not been an unqualified advantage for either employers or employees is confirmed by the evidence we reviewed in Section 2.

Voluntarism and Collective Laissez-Faire: The Old Order
How might we best characterise the employment relations system in the UK under Capitalism 2.0? In the 1960s students of both labour law and industrial relations were offered a simple description. Trade unions and employers were left to their own devices by the state, free to negotiate whatever agreements they believed to be appropriate. This essentially self-regulating system fulfilled the same function as comprehensive labour codes in continental Europe. British businesses were under no obligation to consult with works councils, or deal with workers’ representatives on boards of directors, or accept that trade unions had a constitutional right to collective bargaining. It was simply a matter of custom and practice that most employers recognised trade unions and that most employees either directly or indirectly had their pay and conditions of employment determined by collective bargaining.

The collective agreement was at the centre of the system. Sometimes described as “crystallised custom”, it constituted both a peace treaty and a series of rules for the workplace. While employees enjoyed rights under the common law of contract, the reality was than most of the terms of employment contracts were derived from either collective agreements or informal workplace practices. Most importantly, perhaps, collective agreements were not legally enforceable documents. They were binding in honour only. In this sense it was entirely accurate to describe the system as ‘voluntarist’ and the philosophy of government as ‘abstentionist’. For a prolonged period the consensus view was that the state should not intervene in the relationships between the parties and it would be wise for judges to keep out too. The great labour lawyer Otto Kahn-Freund coined the expression collective laissez faire to describe these arrangements. Collective regulation at the level of the industry or sector was seen to be essential for industrial order. The best results were secured when the parties were allowed to work out what was best for them.

Governments (and Labour governments in particular) as well as employers and trade unions were uncomfortable with the idea that employment rights should be derived from statute. There was nothing in the 1945-51 period to compare with the Blair government’s albeit modest reconstruction of employment law. Trade unions, with some honourable exceptions, were largely opposed to the introduction of a national

49 Arrangements that are commonplace in continental European countries.
minimum wage, or information and consultation rights on the continental European model, or even a floor of statutory rights for individuals - hence Lord Wedderburn’s observation noted earlier that workers wanted to keep as far away from the law as possible.

Of course the law intervened to protect those outside the scope of collective agreements through legislation on health and safety at work, child labour, the employment of women in certain occupations and the establishment of a wage floor in “sweated trades” through wages councils. But, as Paul Davies and Mark Freedland pointed out in their introduction to the 1983 edition of Kahn-Freund’s classic *Labour and the Law:*

*The central purpose of labour law is seen as that of maintaining an equilibrium between employers and workers by ensuring the effectiveness of a voluntary system of collective bargaining. Beyond that, labour law is concerned with protecting the social rights of workers, but even that is subsidiary to the main aim.*

Inherent in this account was a set of simple beliefs about the nature of the employment relationship. Here is Kahn-Freund’s description:

> [T]he relation between an employer and an isolated employee or worker is typically a relation between a bearer of power and one who is not a bearer of power. In its inception it is an act of submission, in its operation it is a condition of subordination, however much the submission and subordination may be concealed by that indispensable figment of the legal mind known as the “contract of employment”.

**Subordination, control and the contract of employment**

Viewed from today this can look impossibly old fashioned, redolent of the worst excesses of class based thinking and rooted in a view that conflict is the dynamic influencing workplace relationships – although that would do a serious injustice to the subtlety of the analysis. Most HR professionals now would probably see Kahn-Freund’s view as wholly alien, appropriate perhaps to another social order (obviously Capitalism 2.0), but completely irrelevant in a world where employers know they must treat employees with concern and respect (not least because HR professionals tell them to do so) or run the risk that they will find it impossible to recruit and retain a motivated and committed workforce. How could such an old fashioned

50 See Davies and Freedland’s introduction to Kahn-Freund’s *Labour and the Law* (3rd edition), Stevens (1983) p,2
51 Ibid, p.18
perspective possibly be right in a world where the value of an organisation is to be found in its human capital? According to the commonsense of the HR profession today, successful organisations are those that invest most heavily in employee engagement. Any organisation that fails to recognise the importance of the people it employs will either fail completely or find itself in serious difficulty.

Is this really a better characterisation of the modern world than Kahn-Freund's account of subordination and control? Few contemporary commentators may be comfortable with the notions of submission or inequality of bargaining power, but that does not mean they are right. Substituting the "soft" language of employee engagement for a description of capitalism red in tooth and claw (authoritarian management, hire and fire, command and control) could be seen as a significant advance – at least it gives the appearance of taking employees' interests seriously. But most modern descriptions of the employment relationship are devoid of any account of the power dynamics between employers and employees. And the somewhat confused notion of the "psychological contract" in particular generates more heat than light.

In theory the psychological contract is supposed comprehensively to capture the realities of work, recognising the importance of relationships, trust and social capital. But we might reasonably ask whether the use of legal and contractual language is more of a hindrance than a help? Most importantly, perhaps, the psychological contract presupposes a fictitious equality between the parties as the basis for the mutuality on which the employment relationship depends. And it presupposes that either party is equally free to walk away from the arrangement, replicating the weaknesses inherent in the common law notion of the contract of employment.

So, for example, if the employee is either dismissed or resigns then the employer will know where to look for a replacement and can, without too much difficulty, absorb the costs associated with recruitment and training. For the employee the process is not quite so simple. Finding out about possible alternative employment is a time consuming process and there is no guarantee that the worker will spot all the opportunities available. Some jobs may just be unsuitable for reasons of status and location. The local labour market could be weak too, leaving the worker to face a period of involuntary unemployment. And even if the labour market were strong, employees still expose themselves to significant risk when they change jobs. Failing to complete a probationary period successfully, for example, can be devastating to a worker's livelihood and career prospects. It is equally possible that the new workplace may not live up to expectations; the worker can find that they do not fit,
relationships sour quickly and a further exit may look like the only sensible course of action.

Most seriously at the centre of the employment relationship is the idea that employers may want workers to do things that, other things being equal, workers may not want to do. Workers can be sceptical about the likely impact of a new process or system, they may have little faith in the competence of management to make change effectively (confirmed by the CIPD’s research), or they may believe that the change proposed will lead to more stress and insecurity. Equally, workers may believe that the employer has simply “got it wrong”; although change may be necessary there are better ways to handle the process.

We might reasonably ask how these anxieties can be expressed and how differences of interest might be recognised and reconciled if the only focus of our concern is the relationship between the employer and the individual employee? In other words, the asymmetry of power in the employment relationship can only be dealt with if workers have access to a countervailing collective voice.

In sum then, the whole notion of the “psychological contract” is built on the weak foundations of the contract of employment, which remains, as Kahn-Freund observed, “an indispensable figment of the legal mind”. “Indispensable”, because without it employment lawyers would find it impossible to fit the world of work into a legal frame of reference. A “figment”, because the treatment of the contract of employment as if it were any other commercial contract fails to recognise that the labour market is a market in people rather than commodities, that equality of bargaining power is an illusion and that the employment relationship cannot be reduced to a statement of conditions of employment. To use slightly different language, all contracts of employment are by definition incomplete because they cannot foresee every contingency. Employment tribunals recognise that implied terms are necessary to make a contract of employment work.

Simply put, it is the human relationships that matter most, relationships that are only weakly reflected in either the contract of employment or in the “psychological contract”. Indeed, the use of transactional language (and contracts cannot be anything other than transactional) denudes the employment relationship of much of its richness and complexity. The mistake is to believe that “freedom of contract” (in the sense that either party can exit from the arrangement) is a social fact rather than a verbal symbol.\(^{52}\)

\(^{52}\) Ibid, p.25
To mistake the conceptual apparatus of the law for the image of society may produce a distorted view of the employment relation.\textsuperscript{53}

It is not too fanciful to suggest that enthusiasts for the "psychological contract" have fallen into precisely this trap.

Kahn-Freund's standpoint was viewed as uncontroversial across the political spectrum from the late 1940s until at least the middle 1960s and perhaps even later than that. For example, Mr James Prior, Margaret Thatcher's first secretary of state for employment, spoke as follows when introducing the legislation that became the Employment Act 1980:

*The law should always give full recognition to the inherent weakness of the individual worker vis-à-vis his employer, to the need for him [sic] to be organised in a union and to the need for his union to have such exceptional liberties as may be necessary to redress the balance.*\textsuperscript{54}

While the language may be different, Anthony Crosland reached a similar conclusion in the early 1960s:

*There are two sides of industry, whatever the pattern of ownership and management... These are harsh facts that cannot be spirited away by moral-rearmament touring troupes, or luncheons of progressive businessmen or syndicalist castles in the air.*\textsuperscript{55}

More importantly, perhaps, Kahn-Freund went further and argued that both inequality of bargaining power and differences of interest, far from being unique characteristics of capitalism, will manifest themselves in any society:

*Any approach to the relations between management and labour is fruitless unless the divergency of their interests is plainly recognised and articulated. This is true of any type of society one can think of and certainly of a communist as much as of a capitalist society. There must always be someone who seeks to increase the rate of consumption and some who seek an increase in the rate of investment. The distribution of the social product between consumption and investment can only be determined by a constant and unending dialogue of powers, no matter whether the*

\textsuperscript{53}Ibid
\textsuperscript{55}Crosland, *The Conservative Enemy*, Jonathan Cape (1962) p. 219
task takes place at the bargaining table, in parliament, or in the recesses (more or less dark) of government offices.\textsuperscript{56}

A sceptic would also say that this confirms our earlier observation. Kahn-Freund’s view is simply “old fashioned”, rooted in a model of class conflict (in all societies) and unable to capture the need for workplace co-operation. The criticism might be valid if the widely accepted notion of inevitable conflict was based on a purely Marxist analysis, but we have already seen that this is not the case. James Prior could hardly be described as a devotee of dialectical materialism. Moreover, this perspective does emphasise the indispensability of co-operation.\textsuperscript{57} If conflict were endemic it is difficult to see how any work could be done at all. Employees and employers would be engaged in trench warfare, signing occasional truces, but fundamentally irreconcilable. Obviously working life is not like that (and cannot be). The clear implication of the argument is that conflict, while unavoidable and legitimate, must be balanced by an equivalent commitment to co-operation.

**Unitarism, pluralism and the collapse of the status quo**

The industrial sociologist Alan Fox, writing in 1966, drew a very helpful distinction between the “unitarist” and “pluralist” frames of reference as an analytical tool to understand the dynamics of employment relations.\textsuperscript{58} The notion of a frame of reference or a standpoint influences our view of how we expect people to behave, how they ought to behave and how we influence people to behave in the right way.

By “unitarism”, he meant the frame of reference that sees an organisation as a unitary whole, with all participants committed to shared goals, shared values, common purpose and teamwork. This is reflected in much modern HR rhetoric about the importance of employee engagement, the alignment of an employee’s values with business goals and a strong psychological contract. By “pluralism” he meant the standpoint we have already discussed: that organisations are populated by interest groups, that by definition these groups will have different interests, that conflict (whether between workers and workers or workers and their employer) is inherent in industrial organisation and that effective representation and reconciliation of these interests is the appropriate endeavour of industrial relations.

\textsuperscript{56} Kahn-Freund, op cit, p.26-27.

\textsuperscript{57} These principles are eminently social democratic and emphasise the realities of conflict in all forms of industrial society – a conclusion with which orthodox Marxists might struggle. Note too that Kahn-Freund refers to a dialogue of powers, suggesting that industrial diplomacy rather than class war is central to the analysis.

\textsuperscript{58} Fox, *Industrial Sociology and Industrial Relations, Research Paper 3, Royal Commission on Trade Unions and Employers Associations*, HMSO (1966)
The unitarist view endorses the argument that trade unionism and other forms of collective representation are an "alien and slightly disreputable force", whereas the pluralist view accepts that a trade union is not "an invader of a private realm" but the "institutionalised expression of sectional divisions already existent within it". According to Fox:

In recognising union rights and freedom, we are doing no more than accepting, in the industrial sphere, the basic principles of our society.

This was the conventional view from 1945 to at least the late 1970s. Trade union rights were seen as fundamental human rights and international conventions protected freedom of association and collective bargaining for those reasons. In principle nothing has changed since Fox's time. These obligations remain in international treaties and the conventions of the International Labour Organisation, which are widely accepted (again in principle) as hallmarks of a democratic society.

More recent commentary in the same vein can be found in John Budd's work. His reconceptualisation of the goals of the employment relationship as efficiency (the employer's demand for high quality output, customer service and profitability), equity (the workers' demand for fairness) and voice (respect for the principles of freedom of association, recognising that employer decisions must be justified and legitimised) is intended to recover pluralism from the dustbin of history and emphasise the importance of a balance of power between the parties. Similarly, Joseph Stiglitz, the Nobel Prize winning economist, has emphasised the importance of 'economic democracy' (by which he means employee participation or industrial citizenship) in a democratic society. Unfortunately this is not how we discuss workplace voice in the UK today. Public policy is at best neutral about the role of collective bargaining and the unitarist frame of reference is now the commonsense of the British managerial class.

This is a striking, not to say revolutionary change. In the 1960s, personnel professionals saw themselves as indispensable to the smooth operation of the industrial relations system. Their task was to secure a harmonious working relationship with the trade unions or run the risk that a catastrophic industrial relations failure could lead to a

59 Ibid
60 Ibid
61 Budd, Employment with a human face (2004)
prolonged strike and serious damage to a company's profitability and performance. Personnel directors were significant individuals and critical members of the management team; they counted for something and could not be ignored.

Nor could there be any doubt that keeping the show on the road with the unions was a strategic objective. There was none of the agonising about role, function or status that afflicts HR professionals today. Of course there were still dilemmas and a potential contradiction in personnel managers' minds between unitarist belief and pluralist practice. But what we can say about this period is that both parties (or representatives of the sides of industry) had a high level of self-confidence. Personnel directors understood their roles, were secure in their view of the world and knew they could construct persuasive arguments to convince colleagues from other disciplines. Trade unions were equally secure in their belief that they had a guaranteed seat at the table, both nationally and in the workplace, that employers were (with some limited exceptions) convinced by or at least unwilling to challenge the legitimacy of the union role and that collective bargaining would remain the principal method of joint regulation for the foreseeable future.

The trouble with self-confidence is that it can easily degenerate into complacency. When Fox, Kahn-Freund and others were describing the voluntary, pluralist system their opponents were already subjecting that account to a practical and ideological challenge. The broad support that kept the system in being was under threat from at least the middle of the 1960s. From then on the political consensus which saw trade unions as indispensable institutions of economic regulation began to look decidedly shaky.

The challenge to the status quo came first from Harold Wilson's Labour government, which was concerned about the number of strikes and the potentially inflationary bias built into the industrial relations architecture. A royal commission under Lord Donovan was appointed and a comprehensive set of recommendations published. The government responded with the white paper, In Place of Strife, which sparked strong union opposition and divisions in the cabinet – James Callaghan, then home secretary, was the most well-known opponent. Eventually the prime minister and Barbara Castle, the secretary of state for employment, backed down. A rather shabby compromise was reached and an opportunity to adapt the status quo – to allow perhaps for evolution with the consent of the trade unions - was missed.

Nonetheless, the clamour for reform continued and Edward Heath's Conservative government made another attempt in the Industrial Relations Act 1971. This is not
the place to give a detailed account of the Act's provisions, except to say that what the Conservative government attempted was a fundamental reconstruction of British industrial relations with the law as the principal instrument of reform. Once again, the legislation faced union opposition (matched by employer apathy in enforcing the provisions), the government was left with a largely unworkable piece of legislation and a second attempt at reform was declared a failure.

What is most interesting for our purposes is that policymakers had concluded by the late 1960s that the system could not be made to work without the steadying hand of state intervention. More seriously politicians had lost faith in the capacity of the system to reform itself and believed that the use of the law to bring about change was unavoidable. This was a matter of consensus between Mr Heath and Mr Wilson, even though their approaches differed.

While most of the Heath reforms were swept away with the election of the Labour government in 1974, some of the changes proved to be of enduring importance. *In Place of Strife* had proposed the introduction of an unfair dismissal remedy, a suggestion that was adopted by the Conservative government in the 1971 Act. At the time, the new statutory right was seen as a last resort measure if workplace dispute resolution had failed. The aim was to secure a guarantee of procedural (and substantive fairness), which would avoid industrial disputes inspired by an employer's contested decision to dismiss or discipline an employee. In that sense the unfair dismissal remedy was (and remains) entirely consistent with the view that it is appropriate for the law to intervene and create a framework for the orderly conduct of industrial relations with collective bargaining at the centre of the action.

The initial intention was that reinstatement (rather than compensation) should be the principal remedy if a dismissal was found to be unfair. In addition, the industrial tribunal was supposed to be informal in its proceedings, acting as an industrial jury, applying commonsense industrial relations principles to determine disputes and keeping lawyers at arm's length by allowing the parties to present their cases without legal representation. We know that the reality proved to be rather different, with industrial tribunals (subsequently employment tribunals) dominated by lawyers and now falling within the purview of the Ministry of Justice rather than the Department of Employment/DTI/BIS.

The rising volume of cases in employment tribunals and the willingness to litigate rather than resolve disputes in the workplace is perhaps the enduring legacy of the 1971 Act. Juridification took time to emerge, and it had a rather different form
than that envisaged by the framers of the legislation. Lord Wedderburn may still be right, workers may continue to want nothing more of the law than that it should leave them alone. But the volume of cases in employment tribunals suggests that workers under pressure are more inclined to turn to the law for help than was the case in the past. The growing corpus of statutory employment rights suggests that this process will continue unless there is a serious effort to rebuild effective workplace institutions that can resolve disputes fairly and effectively.

The Social Contract and the advent of Thatcherism
After two failed attempts at reform the Labour government adopted a less ambitious approach in the 1974-79. Having been bruised once by a failed attempt at union reform, Harold Wilson and his colleagues were reluctant to endure the same experience again and in any event faced serious economic problems that demanded urgent attention. A factor in both Labour's 1974 general election victories (in the first as the largest party and the second with a small majority) was the belief that only a Labour government could manage the relationship with the unions. The Conservative Party's counter-claim that only they could solve the industrial relations problem looked rather threadbare following the failure of the 1971 Act and the miners' strikes of 1972 and 1974. But the agenda pursued by Labour in government in the 1970s was much closer to the original Donovan prescription than anything contained in In Place of Strife – the establishment of ACAS (with an explicit obligation to promote collective bargaining), continued efforts to ensure that the informal collective bargaining system was formalised, a statutory procedure for trade union recognition, statutory rights for unions to be consulted in redundancy processes and an expansion of individual employment rights (especially in the fields of gender and race equality). Further measures provided for the extension of collective agreements to non-signatory employers (Schedule 11 of the Employment Protection Act 1975) and for the conversion of the remaining wages councils to statutory joint industrial councils as a precursor to the introduction of genuine collective bargaining in low wage industries.

One might say that the cumulative effect of the reforms of the 1970s made clear the limitations of the old order. Leaving the parties to their own devices could not guarantee fair treatment of dismissals, proper redundancy consultation, equal pay, equal treatment regardless of race and gender or uncontested processes for union recognition. Kahn-Freund's Labour and the Law was published in 1977, but the system he described was under pressure by the middle of the 1960s, and by the end

63 See Ministry of Justice Employment Tribunal and Employment Appeal Tribunal Statistics
of the following decade was metamorphosing into something new and different. The
tension embedded in the system was becoming increasingly apparent – an in principle
commitment to voluntarism (collective bargaining as the best form of rulemaking)
together with a practical agenda of employment law reform that recognised the
inadequacies of pure abstentionism. Experience elsewhere might suggest that other
countries have managed to combine elements of regulation and voluntarism without
difficulty (German collective bargaining, co-determination at board level and works
councils for example) and it is therefore quite wrong to criticise policymakers in the
UK on those grounds. There is some truth in this observation; but there is a world
of difference between a system that both delineates and integrates the terrain of
collective bargaining, the field of individual rights and the province of industrial
democracy and a system that does not. By the end of the 1970s an impartial observer
might have concluded that the system was beginning to lose coherence.

An alternative analysis would argue that the Labour government’s programme was
only partially implemented. Many inconsistencies would have disappeared if the
1974 manifesto commitments had materialised in their totality, particularly if the
measures to promote industrial democracy had been implemented and if trade unions
had embarked on a voluntary process of reform. An impartial observer might have concluded that the system was beginning to lose coherence.

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only partially implemented. Many inconsistencies would have disappeared if the
1974 manifesto commitments had materialised in their totality, particularly if the
measures to promote industrial democracy had been implemented and if trade unions
had embarked on a voluntary process of reform.64 This is a rather better story. We can
see that a floor of individual employment rights on dismissals and discrimination is
entirely consistent with the notion that collective bargaining should be the route
to the determination of most conditions of employment. Furthermore, board level
representation can ensure that the workers' voices are heard in corporate decision
making, which can encourage the pursuit of mutual gains through collective
bargaining. Equally, one can envisage a system that seeks to deal with most incidents
of bad practice or discrimination through workplace dispute resolution mechanisms,
with the resort to law as a reserve if a voluntary solution proves elusive.

In a different political climate these policies might have been implemented
successfully. Unfortunately, the opportunity for a new settlement, weaving together
the threads of voluntarism, individual employment rights and industrial democracy,
foundered on the rocks of union opposition to incomes policy, the ‘Winter of
Discontent’ and the Conservative victory in the 1979 general election.

Another particularly important factor in this period was the change in employer
attitudes. Edward Heath’s Industrial Relations Act was defeated not just by union

64 Although it is fair to say that the industrial democracy proposals from the Bullock Commission foundered
on the rocks of employer hostility and union indifference at a time when the government was fighting for its
political life.
intransigence but by employer indifference and collusion too. By the end of the
1970s, however, employer opinion seemed less sanguine about the capacity of the
system to reform itself. Indeed, it is not too much of an exaggeration to say that
many employers were largely out of sympathy with the pluralist perspective that had
underpinned public policy throughout the post-war period.

To some extent that was because employers were easily seduced by the unitarist
story; although as Alan Fox shrewdly pointed out, many managers held unitarist
beliefs at the same time as they adopted pluralist practices, even though by the
middle 1960s the “unitary emphasis” had “long since been abandoned by most social
scientists as incongruent with reality and useless for the purposes of analysis”65 But
more importantly, perhaps, even those employers broadly sympathetic to the role of
trade unions in theory found it hard to muster much enthusiasm in practice. This is
not entirely surprising following two abortive reform attempts by governments of
both major parties, continuing industrial disruption, problems with manufacturing
quality and productivity, a sustained challenge from minority elements of the trade
union movement to the legitimacy of government and disruptive strikes in the public
sector culminating in the Winter of Discontent.

There was a view abroad that “something must be done”; but quite what that
“something” might be was unclear at the time. The Conservative Party had won
the 1979 election partly because the electorate believed that Mrs Thatcher had a
practical programme of trade union reform. Nonetheless, the manifesto proposals
were rather modest and failed to offer even a glimpse of the radical action that
would follow. Conservative ministers initially talked about balance and the case for
step-by-step reform, but after a cautious start the pace accelerated and by the end
of the 1980s the ideological direction was clear.

The upshot of this legislative activism (with a new statute every two years) was to
restructure the old order out of existence. By the middle of the 1990s trade union
power had been tamed and the labour market liberated from some of the accretions
of individual rights that supposedly acted as a disincentive to job creation (although
as the OECD has subsequently demonstrated the evidence for that belief was weak).
It is right to see the process as revolutionary, but it was a gradual revolution; this
may sound like an oxymoron, but it neatly captures the scale and pace of the change.
If there was a plan it was revealed slowly, and the coherence of the approach only
became clear with the benefit of hindsight. Perhaps it is better to say that the leading

65 Fox, op cit, p.4
political figures of the day had a clear set of beliefs (or instincts, or prejudices) and that each step along the road opened up the possibility of further legislative restraints on the activities of trade unions. The political logic was impeccable; after several failed attempts at all encompassing reform, it was hardly surprising that policymakers should be cautious. But beyond a crude acceptance of market outcomes there appeared to be a vacuum at the heart of public policy. The commitment to collective bargaining as a collective good for employers and workers may have been abandoned, but nothing was put in its place. So, while the old order may have been destroyed in the private sector, the new order looked more anarchic than systematic, sowing the seeds of the confusion and muddle that we experience today.

Why political theory matters: Hayek’s influence
Mrs Thatcher’s policy had strong ideological leanings towards the philosopher F.A. Hayek, author of *The Constitution of Liberty*. It is not entirely absurd to say that we should therefore take Hayek’s views on employment relations seriously. Even though he may not have been the legislative draftsman, Hayek was almost certainly the animating spirit of the Thatcher government’s reform programme, giving these measures plausibility, justification and a patina of philosophical respectability.

As Lord Wedderburn has pointed out, a Hayekian justification still offers the best ideological account of labour law and industrial relations reform over the course of the 1980s.

It is difficult to do justice to the richness and complexity of Hayek’s work (even though I profoundly disagree with both his point of departure and his conclusions), but we might simplify a little and say that for Hayek, liberty is defined as the ability to acquire and hold property under the rule of law. Property ownership gives us the independence we need to make use of other freedoms (freedom of expression, freedom of religion etc). Indeed, independence of this kind is essential if societies are to avoid the unacceptable concentrations of power (in the state or trade unions, but obviously not businesses) that lead to coercion, authoritarianism and the end of the free society.

68 Wedderburn, ILJ (1989) op cit
69 It is perhaps worth noting that Hayek sat well outside the mainstream from the 1940s to the late 1970s. It was only once the Keynesian consensus began to crumble that his ideas achieved widespread popularity on the political right.
Perhaps the critical element of the theory is how we respond to our knowledge and understanding of the world. Because our usual condition is ignorance (we cannot know everything about our current situation), our ability to make progress as a society depends on adapting behaviours and institutions to unforeseen circumstances. *Competition* is the instrument that we use to test alternatives and discover what works best, whether we are talking about the market for goods and services, ideas or social arrangements. To impose a plan is to fail to understand the uncertainty of our lives and the impossibility that any human endeavour can ever anticipate all contingencies.

What all this amounts to when pared back to the core is the belief that markets are better instruments for acquiring and processing knowledge than public sector bureaucracies. Policymakers may claim superior performance, but they are less agile than their private sector counterparts and find it harder to learn from failure. In competitive markets failed experiments are not repeated and markets work best (in this sense) when they are left to their own devices. The only role for the state is to ensure that markets remain competitive, most obviously through robust anti-monopoly policies, but also through action to prevent civil society institutions like trade unions interfering with market processes.

Whether Hayek is “right” or “wrong” is a question with two dimensions. The first is the dimension of principle: do we accept his premises about the nature of liberty? The second is essentially an empirical question: do we believe that he offers an accurate description of the role that trade unions have played in the economy since the 1950s onwards? It is easier to answer the second question than the first. Indeed, we may not need to answer the first question at all, depending on whether or not the evidence supports Hayek’s descriptive account.

We could begin by noting, perhaps, that his analysis of the employment relationship ignores the imbalances of power and information that we have described. His description of collective bargaining also looks a little odd because he suggests that unions are only successful to the extent that they can establish pre-entry closed shops (which is almost certainly not true).70

His biggest objection to trade unionism is that organised labour operates through coercion of individual workers. In Hayek’s view unions can only be effective in securing pay increases if all workers in a workplace or industry are members. Unions

70 Ibid, p.235-237
therefore need to establish a monopoly in the supply of labour, which will have the incidental negative effect of preventing competition from “acting as an effective regulator of the allocation of all resources”.71 Furthermore:

The unions cannot achieve their principal aims unless they obtain complete control of the supply of the type of labour with which they are concerned; and, since it is not in the interest of all workers to submit to such control, some of them must be induced to act against their own interest.72

Anybody with even the sketchiest understanding of labour history might have questioned whether this was an accurate account at the time of writing, but Hayek goes further and emphasises his point in slightly intemperate language:

It can hardly be denied that raising wages by the use of coercion is today the main aim of unions.73

Many industrial relations experts would have denied that this was the main aim of unions in the 1960s. Indeed, Alan Fox did precisely that in his 1966 paper, by recording that while the pay bargaining function had been emphasised by public opinion, this meant that:

an even more important role [my emphasis] has been neglected and insufficiently understood. This is the role of union organisation in the workplace itself in regulating managerial relations, i.e. the exercise of management authority in deploying, organising and disciplining the labour force after it has been hired.74

I have stressed these words deliberately, because Hayek conceded a legitimate role for unions as joint rule makers in the workplace, as friendly societies and as institutions that could play a valuable role in ensuring distributional fairness; differentials had to be felt to be “just”. His objections to trade unionism are really about the pay bargaining function and the alleged “coercion” needed to make this effective. We could summarise his story as follows:

- Unions are keen to raise their members’ wages to the highest possible level.
- They can only do this if they have control over the supply of labour.

71 Ibid, p.238
72 Ibid
73 Ibid, p.240
74 Fox, op cit p.7
• To control the supply of labour all workers must be members of the union before they apply for jobs.
• This means that unions must coerce some people to join a union who would, other things being equal, choose not to join.
• By forcing up the level of wages unions are compelling the employer to pay more than it can afford.
• The economic consequence of forcing wages to “uneconomic” levels will be higher inflation and higher unemployment.

One can see why this account might appeal to Conservative politicians struggling to produce a compelling policy response to inflation, unemployment and recalcitrant unions. Ready-made arguments were available:

• offering a defence of liberty, guaranteed by a market order under the rule of law;
• identifying unions as a potential threat to liberty, giving the politicians a strong argument of principle;
• making explicit that unions are aggressive, coercive institutions in the labour market which, given the unpleasant events that took place on picket lines, associated organised labour with “bullying” and picking on the weak;
• explaining why trade unions (rather than any other actors) were responsible for both inflation and unemployment.

For a thinker with a reputation for intellectual clarity, Hayek’s account is flawed by descriptive errors and an Anglo-centrism that displays little knowledge or understanding of industrial relations systems across the developed world. To begin with, it is not the case that trade unions have always sought to establish closed shops (whether pre or post entry). It is true that union power depends on the ability to affect product markets, but that depends far less on the closed shop and far more on whether domestic markets are open or closed to international competition. If unions are organising in closed domestic markets (or markets where international competition is weak) then strike action across a whole sector can severely disrupt the supply of goods and services. But if markets are open then customers may be able to look to the international marketplace for alternative sources of supply. As William Brown and Sarah Oxenbridge have pointed out, developments of this kind have reduced the economic rents available to be shared between unions and employers, which partly explains the declining union wage premium over the last 25
Hayek's description tells us nothing about how trade unions are supposed to exercise coercive power in a global economy.

Furthermore, there is little here that can account for the successful economic performance of countries with strong trade unions, wide coverage of collective bargaining and strong welfare states. The Nordic countries and the Netherlands share many of these characteristics, but enjoyed strong employment performance (and low inflation) throughout the boom of the last 15 years. Nor is there any suggestion that trade unions might co-operate with employers to improve productivity and reduce unit labour costs – even though that was established as a practical possibility by (amongst others) Freeman and Medoff’s *What Do Unions Do?*. Nor does Hayek seem to recognise that the right to associate is, in some countries, mirrored by the right to dissociate – and even in the USA (the country where Hayek was living when he wrote the book), conscientious objectors to union membership are free to pay the equivalent of a union subscription to charity if the union has secured a collective bargaining contract following an application to the National Labour Relations Board.

If *The Constitution of Liberty* gave a distorted account in 1960 it offers a wholly inadequate account of modern employment relations. Can anything be salvaged from the intellectual wreckage? Is there anything that might inspire a thoughtful Conservative in the future to turn to Hayek as a source of creative thinking about the world of work? Surprisingly, the answer may be yes. Even if we reject Hayek’s account of the “negative” role of unions as hopelessly flawed, his description of the legitimate role for union action could suggests a potential role for trade unions that may appeal to a Conservative government – and perhaps to both sides of the current coalition.

There are two intriguing possibilities here. The first is derived from Hayek’s observation that pay differentials and the rules for promotion must be felt to be just by the majority of the workforce. It is worth quoting the relevant passage at length:

*The most effective way of securing consent is...to have the general scheme agreed to in collective negotiations in which all the different interests are represented. Even*

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77 A principle that was embodied in the EU’s Social Charter adopted under the presidency of Jacques Delors, which led the Labour Party to abandon support for the closed shop. Tony Blair was Labour’s employment spokesperson at the time, an experience that set the tone for his subsequent relationship with the trade unions.
from the employer’s point of view it would be difficult to conceive of any other way of reconciling all the different considerations that in a large organisation have to be taken into account in arriving at a satisfactory wage structure.\textsuperscript{78}

This is a quite remarkable statement for a supposed enthusiast for unconstrained markets. Hayek is essentially arguing here that the guarantee of the legitimacy of a pay structure, which depends on felt fairness, is to negotiate that pay structure, defined in terms of differentials and relativities, with representatives of the workforce. The language used is declamatory and unequivocal, “it is difficult to conceive of any other way of reconciling the different considerations”. We should note of course that there is no reference to power relationships at all and the argument is essentially practical – an employer needs to get a general scheme accepted by all the workers and is unlikely to do so either by presenting the workers with a fait accompli (which would be standard practice in many British workplaces today) or by seeking the consent of each worker individually.

We might conclude that this already offers a fairly significant role for trade unions, but Hayek goes further:

\textbf{A large organisation must in a great measure be governed by rules, and such rules are likely to operate most effectively if drawn up with the participation of the workers. Because a contract between employers and employees regulates not only relations between them but also relations between the various groups of employees, it is often expedient to give it the character of a multilateral agreement and to provide in certain respects, as in a grievance procedure, for a degree of self-government among the employees.}\textsuperscript{79}

What we have here is an impeccably Hayekian argument for collective employee participation in the governance of the workplace whether through rulemaking or through involvement in the design of the pay structure.\textsuperscript{80} What is most striking, perhaps, is that many British employers would wholly reject these premises today. Pay structures, workplace rules and grievance procedures are all within the ambit of employer prerogative; to surrender an inch of ground to collective representation

\textsuperscript{78} Hayek, op cit, p.241
\textsuperscript{79} Ibid
\textsuperscript{80} Hayek was opposed to “industrial democracy” defined in the German sense of board level co-determination and praised the US unions for reaching the same conclusion. The evidence he gives to support his case is rather weak – two research papers from Germany published in the early 1950s. He takes no account whatsoever of the argument that co-determination may have helped to sustain the post-war German economic miracle. See pp.241-242, op cit.
is to surrender control – an eventuality that some employers are keen to avoid. Moreover, many HR professionals would be profoundly uncomfortable with Hayek's approach. Today's common sense is that representative participation is of little use unless it can "add value", and the judgment whether value has been added lies wholly with the employer. Paradoxically, it is Friedrich Hayek, prophet of capitalism red in tooth and claw, who seems to have a keener understanding of workplace realities than an HR profession focused on the psychological contract and employee engagement.

The purpose of this rather lengthy digression is to make clear that even market fundamentalist philosophy leaves room for a wide and legitimate role for trade unions. It certainly does not recommend an end to all forms of collective employee participation or the elimination of trade unions as labour market institutions. In this sense, The Constitution of Liberty is more sympathetic to worker representation than a conventional interpretation of Thatcherism. Indeed, while Hayekian thought justifies the legal constraints that the Thatcher and Major governments imposed on trade unions, it might also endorse the argument that leaving a vacuum where there was once real scope for worker participation is likely to be damaging to employers (because it makes it harder to manage their organisations) and employees (because they have no institutional guarantees that pay structures are fair).

Employment relations and the evolution of capitalism
What Hayek offers us is a critique of the role of trade unions under the conditions of Kaletsky's Capitalism 2.0. But a careful reader will already have noticed that the alternative to be applied under conditions of "liberty" is a sketch rather than a comprehensive description. Many practical questions were left unanswered. Could free markets really guarantee that people would be managed fairly and effectively to deliver sustained increases in productivity? Would employers, if left to themselves, invest in human capital to maintain competitive advantage? And, most pressingly, was it right to believe that the removal of the supposed rigidities of the post-war consensus would lead to the sustainable, non-inflationary full employment?

We know from bitter experience that the answer to each of these questions is a resounding "no". The end of Capitalism 3.0 was characterised by the failure of both an economic and a people management paradigm. It made perfect sense for personnel specialists to reinvent themselves as HR professionals in the transition from Capitalism 2.0 to Capitalism 3.0 but, in doing so, they jettisoned some fundamental

81 See for example, High Performance Workplaces: The role of employee involvement in a modern economy – CBI Response, CBI (2003)
insights about the nature of the employment relationship so that the HR/HPWS/employee engagement account offered only a partial description of workplace realities. So far as workplace relationships were concerned, Capitalism 3.0 looked more like a demolition exercise than the construction of a new model. The old order was largely swept away and nothing was put in its place except the logic of the market. Power, as a contested issue in the workplace, disappeared from the agenda. Conflict was deemed to be unacceptable in an intensely competitive world where employers and employees had to pull together. It was hardly surprising that the workplace settlement under Capitalism 3.0, such as it was, proved to be such a mess.

Central to Kaletsky’s lively narrative is the belief that a new variety of capitalism is being born. If he is right then there is a great opportunity to return to questions that market fundamentalism swept off the political agenda. A sustainable capitalism must surely be a capitalism that offers employees high quality jobs in high trust workplaces where either technologies or rising customer expectations are driving a continuous process of change. The politics of the workplace, the inevitable conflict between employers and employees, the necessity of co-operation, the need for effective individual employee involvement and a measure of industrial democracy, the notion of the firm as a vehicle for more than the maximisation of shareholder value and the notions of “good work” and responsible business should all be open for public discussion. Hitherto, any such conversation was virtually prohibited in the UK on the grounds that labour market flexibility would be threatened, the UK would lose competitive advantage, the country would be less prosperous and unemployment would rise. A consequence of the banking crisis is that the ideological foundations of this standpoint have been comprehensively undermined. How we might begin to develop an alternative is dealt with in the final section. But first we need to spend a moment considering the Labour government’s record from 1997–2010 and other attempts at reform over that period.
Chapter 4

Labour’s record: the impact on employment relations
Labour’s record: the impact on employment relations

The consequences of Labour’s period in office were described in Section 2. A modest re-regulation of the labour market had no adverse impact on employment. Contrary to the pre-97 Conservative predictions, neither the National Minimum Wage nor the strengthening of unfair dismissal protection pushed up the jobless total. New rights to paid holidays may have imposed extra costs on some employers, but most workers believed that they had these rights before they were given a statutory foundation. The union recognition procedure was introduced with a minimum of fuss – although trade unions were moderately dissatisfied with the concessions made to employers in the drafting of the legislation. Signing the social chapter and rejoining the mainstream of EU social policy was a generally progressive step. Extended parental leave and the right to request flexible working almost certainly improved work-life balance. And the new rights preventing discrimination on the grounds of sexuality and religious belief entrenched equalities principles in the workplace. On balance, this is a solid record of achievement.

Nonetheless, as already noted, the UK still has too many low paid workers with low quality work. Unfairness seems to be widespread. There is evidence to suggest that job quality improved a little but for some people may have deteriorated. The phenomenon of work intensification (working harder) may have been halted, but effort levels remain high. In other words, the world of work may be better and fairer in 2010 than it was in 1997 but the achievement has fallen short of expectations. More to the point, perhaps, the Labour government can be criticised for having no grand plan for the reconstruction of employment relations and no vision of what a “good” labour market should look like. Many ministers were wary of making normative statements and often seemed wedded to a rather orthodox analysis that accepted many of the tenets of market fundamentalist thinking. This can be seen in the consistent use of the rhetoric of labour market flexibility at the same time as the government was introducing legislation to make the labour market somewhat less flexible in conventional terms.

We need to be clear too about where problems did not (and do not exist). It is often said, for example, that good jobs in the UK are being swept away by a tsunami of casualisation. Low quality agency jobs are replacing high quality permanent jobs. While this may be happening in certain limited sectors of the economy it is not a widespread phenomenon. The level of contingent work is lower in the UK than in many other countries (Figure 4.1), although this may simply reflect the fact that the flexibility of the UK labour market makes notionally permanent jobs more like
temporary work elsewhere. It would be equally wrong to believe that all of these jobs are low quality and that every temporary worker is exploited and disempowered. Even if some temporary agency workers have utterly appalling experiences it would not necessarily be sensible to base policy generally on what is happening to a relatively small number of people at the margins of the labour market. This is not to suggest that no action should be taken but it does mean that temporary agency work is not the greatest threat to quality employment in the UK today.82

Legacy commitments, labour market flexibility and employer opinion
While it is important to debunk myths when they begin to shape the labour market discussion in an unhelpful way, it is equally essential to understand the inspiration of the measures introduced by the Labour government, particularly during the first term from 1997-2001. Simply put, most of these policies were legacies of the Neil Kinnock and John Smith party leaderships, adopted by Tony Blair when he became leader in 1994 and too totemic to be dropped from the party’s programme. Moreover, the modest programme of reform was often explained in language that would have looked familiar to ministers from the previous administration. A rather clear story about the risks of labour market deregulation – the Tories have gone too far, exploitation is widespread, fairness must be restored – was often muddied by the continued use of the rhetoric of labour market flexibility.

In his foreword to the Fairness at Work white paper, for example, Tony Blair noted with pride that, even after Labour’s landmark reforms, the UK would continue to have one of the least regulated labour markets in the developed world.83 The Treasury, often seen as an alternative centre of power during the Blair premiership, took a similarly conventional view of the importance of labour market flexibility.84 For these purposes, the Treasury argued that the flexibility of the labour market could be judged by the following elements: all forms of wage flexibility (relative, nominal and real); geographic labour mobility; employment flexibility defined as the range of working patterns on offer and the composition of work; and, functional flexibility in the workplace (whether workers had a mix of skills, could undertake a range of functions etc). Institutional factors were important too, including the range of active labour market policies in operation, the strength of employment protection legislation, product market regulation and collective bargaining institutions.

82 For a longer discussion see Forde et al, Agency working in the UK: What do we know?, LUBS and CERIC (2008)
83 Fairness at Work Cmd 3968 (1998)
84 EMU and Labour Market Flexibility, HM Treasury (2003)
It is not too much of a caricature to say that leading members of the Labour government wanted to preserve some of the legacy of Thatcherism and give it a human face. Certainly, there was plenty in the Treasury view to give comfort to those who believed that low benefits, tight job search and eligibility conditions, enfeebled unions and strong competition policy were all hallmarks of an efficient labour market.\(^{85}\)

This slightly alarming conclusion raises two related questions. First, did leading figures in the government really believe the flexibility story? And second, if they did not then why persist in using language that so many of the government's natural supporters found offensive? Short of undertaking extensive psychoanalysis of the then prime minister and chancellor, the first question is probably unanswerable. Nonetheless, the second question is essentially about the political rationale for the policy, and the justification is much more open to inspection and evaluation.

The critical thing to understand about New Labour's view of the world is that electoral defeat and intellectual nervousness were the driving forces behind the project. Perfectly

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\(^{85}\) Although all these supposed ingredients of success were undermined by the OECD's endorsement of the Danish labour market model which has very high unemployment benefits, strong trade unions, high taxes but relatively easy hiring and firing, liberal product markets and strong competition policies. Sweden and Norway display some of these characteristics too.
reasonable policies (like the National Minimum Wage) proved to be electoral negatives in the 1992 election (when Tony Blair was employment spokesperson) and Labour decided that such a thing should never happen again. Learning from the experience of Bill Clinton's successful campaign in 1992, both Tony Blair and Gordon Brown concluded that progressives could only be elected in conservative countries (like the UK and the USA) if they accepted many of the premises of the status quo, filed off the rough edges and engaged in some mild redistribution by stealth. Whether this was ever an accurate assessment of the UK's political culture remains an open question. It is perfectly possible that the electorate was less radical than the Labour Party under Neil Kinnock and somewhat more radical than New Labour under Tony Blair.

So far as the world of work was concerned, the principal goal was to ensure that employers remained politically neutral as between the political parties. If that meant concessions to the CBI both before and after the election then so be it. For Tony Blair and others the price was worth paying if legislation reached the stature book and stayed there – like the minimum wage and the union recognition procedure. Occasional employer grumbling was better than either open hostility or a campaign for a future Conservative government to undo all of Labour's work.

There was one further implication of this exercise in triangulation. Labour in government had given an informal undertaking to the CBI that the measures in the 1997 manifesto would set the limits of policy innovation. There would be new obligations on employers agreed at EU level, no further rights for trade unions and no attempt to resurrect anything that smacked of corporatism. The Low Pay Commission was the only new institution that might be described as consistent with the European model of social partnership, where a real discussion took place between trade union and employer representatives about a significant labour market issue. Otherwise the policy making process proceeded through a process of parallel lobbying with the CBI leaving through the back door as the TUC delegation entered through the front.

As an electoral strategy this was stupendously successful. Labour managed to keep employers and unions happy enough to ensure that employment relations questions never became serious political issues that could be exploited by the opposition. But as a strategy for government one can only describe this aspect of triangulation as a failure. High volume employer complaints about over-regulation never ceased and trade union rhetoric about the need to repeal the anti-union laws became ever fiercer and rancorous. When the government found itself in trouble ministers began to realise that they had few real friends.
The problems with the trade unions were compounded when the government began to adopt what (to the unions) seemed like a euro-sceptic approach to EU social policy. So, for example, the UK government initially opposed the directive on information and consultation, fought tigerishly to defend the opt-out from the 48-hour week (required in principle by the working time directive) and acted to block the directive on temporary workers. At worst, the government’s position appeared incoherent – implement a minimum wage and stronger protections against unfair dismissal but oppose modest measures to promote industrial democracy. Unlike the disagreements between unions and previous Labour governments these were all minor issues, which rarely penetrated the consciousness of the electorate and never threatened electoral defeat. Yet one can only view this period as another missed opportunity (rather like *In Place of Strife*). Labour could, in partnership with the enlightened leadership of the TUC, have reshaped workplace relationships, shifted the balance of power away from employers and towards workers (rather than trade unions), made more effort to build effective workplace institutions (using the information and consultation obligations as a foundation) and created a new employment relations settlement. That the government failed to do so tells us something about their lack of intellectual self-confidence, but it also tells us something about the power of the official ideology of Capitalism 3.0. For those who were enthusiastic about the status quo any reform programme was self-evidently hopelessly nostalgic, or utopian, or a threat to the UK’s continued prosperity.

Towards the end of his period in power it became clear that Tony Blair believed much of the strategy to have been a mistake, at least so far as it applied to the role of unions and the treatment of work as a political issue. He could see that by failing to give union modernisers enthusiastic support he made his life more difficult by creating space for the flourishing of a rather unimaginative left – a left who believed that long-term political strategy was best developed through the close inspection of objects in the rear-view mirror. Any number of possibilities might have materialised had the government acted differently during the first term. A more confident community of progressive employers might have emerged to act as a counterweight to the deregulatory blow-hards. A more successful generation of union modernisers might have found the route to membership growth and resurgence. And a stronger trade union movement might have applied some downward pressure to the irresistible growth of income inequality.

One cannot blame the government exclusively for failing to spot the alternative trajectories. Union modernisers were too weak and enlightened employers in a shrinking, soft-voiced minority. Perhaps the lesson here is that good short-term and
tactical judgments make for excellent electoral victories, but thumping majorities in the House of Commons mean little in the absence of long-term thinking. Once the 1997 manifesto commitments were implemented Labour had little more to say about the world of work. Certainly, there were major new initiatives in the fields of equality legislation and parental rights, but this hardly amounted to an all encompassing story about how the labour market was changing, how the government would protect people subject to industrial restructuring or how work was related to wider social changes. In sum, the government never articulated a vision of “good work”. They never explained how the quality of work related to the quality of life and never considered how improving the quality of jobs could lead to better life chances. Labour lacked an analysis of work informed by Amartya Sen’s capabilities perspective. In other words, Labour never really considered how work might affect (either positively or negatively) the capabilities of individuals to choose lives that they have reason to value.86

The Labour government, having initially opposed the Information and Consultation directive eventually embraced that instrument as a useful device to create more high performance workplaces.87 The case was presented as essentially economic in nature – involve your workforce and higher performance will be the inevitable consequence – with little or no reference to the principles of industrial citizenship. A government with a better story about the place of work in a social democratic notion of the good life would have adopted a rather different approach. It would have been possible to use the information and consultation regulations to give all workers a real stake in the decisions that affected them most directly. Workers could have become serious participants in decision making rather than the victims of employer prerogatives. The government could have challenged employers with the evidence of poor performance from the WERS series and argued with conviction that these new rights were designed to protect workers rather than promote unions. What, after all, could employers have to fear from a model of universal rights where every worker counted for one and no more than one?

At this stage (2002-03) TUC officials still held out some hope that the government would use the implementation process to fill the institutional gap that had opened up with the retreat of trade unionism. The expectation was that government would begin to appreciate the logic that joint problem solving in a high trust workplace was infinitely superior to a low trust workplace generating claims to employment

87 High performance workplaces: The role of employee involvement in a modern economy, DTI (2002)
tribunals. In their more optimistic moments, these officials also believed that unions would begin to organise the members of information and consultation committees as a route to the organisation of workplaces. Yet once again an opportunity was missed because the government remained committed to triangulation and the unions were disappointed with the outcome.

In this case the TUC and the CBI were exposed to each other’s arguments. A series of meetings took place to try and broker an agreement about the practical details of implementation. As ever, the CBI were seeking the weakest possible obligations on employers and the highest possible hurdles for workers wishing to vindicate their rights. Contrary to the intention of the directive, which envisages a conversation or dialogue between employer and employee representatives, the British regulations permit an employer to use arrangements that allow for individual employee involvement only. Somewhat bizarrely, such an agreement would need to be negotiated by employee representatives elected for the purpose of concluding an I&C agreement. In other words they would negotiate themselves out of the picture by accepting that they had no further role to play in the future. These provisions have yet to be used, but they give a flavour of the weakness of the legislation.

More seriously, the Labour government never promoted the regulations, leaving most employees (and employers) in a state of total ignorance. No provision was made for the training of employee representatives and those brave enough to put their heads above the parapet often found that they lacked the resources either to interpret the information being provided by the employer or formulate a response. Without access to training, advice and guidance, non-union representatives will always find themselves at a disadvantage when confronted with the collective strength of the employer. An extensive research programme has documented the muted impact of I&C in great detail. The reasons for the relative failure are manifold: legislative drafting that allows employers to defeat the intention of the legislation; a lack of awareness amongst employees; and, a lack of enthusiasm amongst trade unions for a universal rights model.

Any government that is serious about the need for effective workplace representation should support that enterprise with public money, ensuring that the employer is confronted by an intelligent interlocutor on the workers’ side. In a more rigorous regulatory environment, trade unions could be presented with a unique opportunity

88 See Hall et al, Implementing information and consultation: evidence from longitudinal case studies in organisations with 150 or more employees, BIS (2009) and Implementing information and consultation: developments in medium-sized organisations, BIS (2009)
to reinvent themselves as institutions offering precisely the training and advice that workers' representatives need. And if unions are providing these valuable services, demonstrating real impact in the workplace, then workers might be more inclined to see the value of a union card. We explore these issues at greater length in the next section.

The New Labour record is a reflection of intellectual timorousness, a pathological fear of electoral defeat and a belief that employers had to be conciliated at the same time as trade unions were confronted. Towards the end of his time as prime minister, Tony Blair began to fill the gaps in Labour's story – his valedictory speech about the importance of quality jobs is a good example of what could have been a new departure in Labour's thinking. James Purnell, as secretary of state for Work and Pensions, also delivered some very useful progressive speeches about the world of work. But this emerging narrative never became part of Labour's core story. Most strange perhaps (especially to non-British readers) is that the Labour Party had so little to say about work that rang true in the ears of the electorate. Whether the coalition can do any better remains to be seen. But all that we have heard so far about the perils of over-regulation suggests that they may very probably do worse.

“Partnership” and the failure of the union modernisation
The disappointment in Labour's achievement is deepened by the failure of the project to modernise British trade unions and make them fit for a twenty-first century economy. This is a rather bold statement and it demands some justification. First, there can be no doubt that from 1993 until the end of the decade a real effort was made to ensure that the TUC was an effective machine, making powerful arguments, using modern communication techniques and seeking to exercise real influence over public policy. Second, this policy focus was matched with a laser-like intensity on the importance of good workplace organisation. Lay union representatives (shop stewards in old language) were seen as a source of useful intelligence for full-time officials and as the lynchpin of organised labour. Results from the various WERS surveys confirmed that unions were strongest where ordinary members had regular contact with their union representative. In other words, if union reps could build strong, high-trust relationships with their members then they were building a resilient union. Moreover, it was clear that representatives were most effective when they had employer support. A poorly organised but militant union facing resistance from an employer is not particularly well positioned to win a series of resounding victories.

89 Although both David and Ed Miliband have shown a refreshing degree of open-mindedness about these issues in the Labour leadership campaign.
All this may sound rather conventional and not at all modern, but the difference from earlier periods was the belief that unions and employers could work together to solve shared problems at the same time as they bargained with great (but good humoured) ferocity over the division of the spoils. Much of the groundwork was done by the Involvement and Participation Association, an organisation that brought together the more progressive employers and the more thoughtful union general secretaries. At the heart of their “mutual gains” or industrial partnership model launched in 1992 were the following principles:

- A joint commitment to the success of the enterprise
- Building trust and greater employee involvement
- A recognition of the legitimacy of the role of each party

These principles rested on four pillars:

- A recognition of the employees’ desire for employment security and the company’s need to maximise flexibility.
- Sharing success within the company both financially and in non monetary ways.
- Informing and consulting staff and involving staff in discussion of issues both at the workplace and at company level.
- Providing the means for the effective and independent representation of the people who work in the organisation.

To some extent this bears a resemblance to the aspiration of enlightened HRM. Its purpose is to achieve a highly motivated and committed workforce, and one of the strategies to be used is a closer link between pay and organisational performance. Informing and consulting staff is contrasted here with independent representation, suggesting that the model is based on both direct (individual) and indirect (collective) models of participation. But despite these nods to the pieties of HRM, Towards Industrial Partnership was self-evidently a pluralist model since it recognised the importance of co-operation and the inevitability that differences of interest would emerge. One could say it was a rallying cry for the values of Capitalism 2.0 under the conditions of Capitalism 3.0; although it was by definition “market friendly” since it recognised the necessity of organisational success, which presumably would emerge through a competitive market process.

90 A summary account can be found at: www.ipa-involve.com/EasysiteWeb/getresource.axd?AssetID=52568
A more pertinent criticism, which could be levelled at the employers involved as much as at the unions, was that *Towards Industrial Partnership* failed to grapple effectively with the ruthless nature of the finance driven model of capitalism that was dominant from the mid-1980s until the Lehman collapse. How could a workplace partnership survive a leveraged buy-out, or a huge merger or acquisition that led to the relentless pursuit of cost reduction in the service of shareholder value? Where did partnership sit in a multi-national company that saw production facilities as platforms that could operate wherever labour costs were cheapest?

The TUC believed that entrenching the partnership approach at all levels could help to crack the conundrum. Partnership in the workplace only made sense if it was nested within partnership at EU level – the social dialogue popularised by Jacques Delors when president of the European Commission – domestic level (discussions between employers, unions and government), sectoral level and the workplace. Moreover, while the idea of workers representatives on the boards of public listed companies may have died with the Bullock report (1977), the TUC also presented a case for stronger corporate governance and more responsible corporate behaviour. Proposals were made to change directors' duties, to take account of long-term corporate success, to shift the focus from the relentless pursuit of shareholder value and to impose restraints on the upward spiral of executive pay. This was a comprehensive programme of reform and considerably more radical than anything on offer from the Labour Party at that time.

John Monks, then general secretary of the TUC, could see that continental European unions had weathered the storms of the 80s rather better than their British counterparts. They had retained their legitimacy in part because of their institutional embeddedness and in part because they accepted the concomitant obligations. Policymakers elsewhere in the EU knew that unions would defend their members vigorously, but would also act responsibly in a crisis and could be indispensable institutions in legitimising painful economic transitions. This, in essence, was the offer that the TUC made to Tony Blair; trade unions could be important players in the New Labour project to modernise Britain. By using the continental model of social partnership the TUC was attempting to transcend the weaknesses of previous British attempts to create a viable corporatism. Most importantly, the TUC was willing to accept that the single channel (where unions were recognised as the only legitimate representatives of workers) was dead. In part this was mandated by EU law and was therefore unavoidable, but it also reflected Monks's belief that an effective works councils system offered a route to recovery for Britain's struggling unions.
Unfortunately there were two significant obstacles to delivering this ambitious programme. First, many employers, including some of the most vociferous and influential, were opposed to anything that re-empowered unions. Far from believing that Mrs Thatcher had tamed organised labour, there was a continuing (slightly paranoid) view that the barbarians would break through the gates and sack the city if any concession, however small, was made to the unions. Second, the leadership of the Labour Party were never entirely convinced that all unions (defined as Labour's affiliated unions) were enthusiastic about the reform programme either. Employer hostility and a luke-warm reaction from government left the enthusiasts for partnership feeling rather lonely and exposed.

So, the “failure” of partnership was not a practical failure. The mutual gains model was not proved to be incompatible with a dynamic economy offering high quality employment at decent wages partly because, in the UK at least, no effort was made (beyond some limited islands of excellence) to implement the model on a wide scale. It was politics rather than the consequences of a defective approach to workplace relationships that weakened the partnership strategy. And it then became very easy for the left of the trade union movement to adopt an anti-government stance and chalk up some significant victories in the election of general secretaries – although the more adversarial stance taken by these leaders has done nothing subsequently to revive union membership and influence.

What else ought to be said about “partnership”? Most importantly, it quite explicitly rejected the seductions of enlightened HRM for an approach that reflected workplace realities. It recognised the weaknesses of the old order (too much conflict) at the same time as it recognised the faults of the new dispensation (by denying the realities conflict was displaced to the employment tribunals system). While all this is to be applauded, a simple revival of Towards Industrial Partnership or the more sophisticated TUC variant will hardly suffice as we face the challenges of the post-crisis world. After all, trade unions are much weaker today than they were in 1992, especially in the private sector. Manufacturing plays a much less important role in offering large numbers of jobs. Multi-national capital remains somewhat footloose (although this may change). Financial engineering may be fighting its way back as the most effective route to the maximisation of shareholder value and, despite the optimism when the crisis broke, the old paradigm is not yet dead.

Alternatively we could follow Anatole Kaletsky’s argument that a new model of capitalism is emerging and that the space exists for a new departure in policy. If this analysis is right then fresh thinking is indispensable. The old model has to be given a
decent burial, but “partnership” as a hybrid of Capitalism 2.0 and 3.0 is probably not the solution that its proponents believed in the early to mid-1990s. A return to first principles may be required.

Before we embark on the first stage of that bold project it is worth reflecting both on the current state of the employment relations discussion and on whether employee engagement, to which the previous government attached so much importance (at least latterly), offers any possibilities for the future.

The state of play
Moving on from a generally historical account, how best might we characterise the state of the employment relations conversation today? And, how do the participants understand the realities they confront?

Some of the more academic accounts of the state of play offer a different and more illuminating analysis than the views of those directly involved. Paul Davies and Mark Freedland, for example, in their magisterial Labour Legislation and Public Policy, describe the trajectory of policy from 1945 to the end of the Tory ascendency in 1997 in terms of a growing willingness by governments to use labour law as an instrument of inflation control.91 This enables them to explain how very different policies could be used to achieve a common objective – although perhaps it does rather less justice to Thatcherism’s radical break with the past and conflates Capitalism 2.0 and Capitalism 3.0. Similarly, they describe the early to middle period of Labour’s tenure in office as focused on the preservation of labour market flexibility, albeit that the government was deviating from the pure milk of the market fundamentalist word.92 Both are valuable analytical devices, even though their description is rather different from the language used by practitioners.

Nonetheless, the continued use of the “flexibility” lens is not particularly useful in trying to construct a new approach to employment relations in the post-crisis era. As already discussed, the whole notion of “flexibility” is contested. On some definitions, like that preferred by HM Treasury in the early part of this decade, the Danish labour market is amongst the least flexible in the EU 15; and on others, like that used by the OECD, the Danes have created a highly efficient model of “flexicurity” (a portmanteau of flexibility and security - first developed as a labour market policy in the Nordic countries). Our language and our analytical tools may both need to be refreshed if we want to move beyond today's rather arid debate.

91 Davies and Freedland, Labour Legislation and Public Policy, OUP (1993)
92 Davies and Freedland, Towards a Flexible Labour Market, OUP (2007)
Many employers seem to believe that there are no problems that cannot be solved by either deregulation or by better people management as conventionally conceived. And some trade unions, to the contrary, have a hankering for their past glories and the pre-1979 status quo. Most striking perhaps is the almost atavistic hostility displayed by some employers to the whole notion that the collective representation of workers can be a collective good for all parties. There is often an absolute unwillingness to accept either the efficacy or legitimacy of collective representation unless it can be shown to add value to an employer’s business. The official ideology of the HR profession, best expressed by Mike Emmott, a senior official of the CIPD, is that individual employee involvement is an almost universal good but that collective forms of voice and participation make very little difference at all. Indeed, he goes further and suggests that employee relations (which for these purposes is interchangeable with the more familiar expression employment relations) is a not entirely useful way of looking at the employment relationship:

As a term it remains ambiguous, with no clear boundaries. Few organisations outside the public sector now have employee relations departments, and most HR people don’t use the term on an everyday basis. It’s not calculated to help managers focus on what they need to know and do to increase performance – the language has echoes of a historical era that offers few insights into contemporary practice...”Commitment” and “engagement” are becoming vital requirements, underpinning high performance as they do and emerging from a positive employment relationship.

One could not wish for a more elegant expression of the case for enlightened HRM/high commitment management /HPWS. But, perhaps unwittingly, Emmott also tells us what is wrong with the model. Despite the rhetoric of engagement, commitment, human capital and “our employees are our greatest asset”, the motivation here is entirely instrumental. Organisations need engaged employees because that is the route to high performance. The idea that employees might have distinctive interests of their own - to work in a humane environment, to have a high degree of job control, to find fulfilment in their work as craft - are all ideas beyond the reach of much of the human resource profession. In the wider employer community the CIPD represent a liberal, broadly progressive and therefore welcome current of opinion. But the inadequacies of much conventional HR thinking tells us just how far we must travel before a genuine conversation can take place about the relationship between organisational performance, job quality and the conditions under which human beings flourish in the workplace.

94 Ibid, p.16
Keith Sisson, in his response to Mike Emmott, starts with a bold statement that condemns the efforts of much of the HR profession:

*Trying to do the wrong things better can only bring limited satisfaction and will do little to increase engagement.*

HR professionals reading his paper may begin to feel a little uncomfortable at this point, but at least Professor Sisson’s assessment offers some explanation of the disappointing results reviewed in the previous chapters. He argues that management is often a barrier to the reform of work organisation, that HR professionals have a vested interest in talking down the prospects of trade unions and that evidence failing to endorse the conventional wisdom is conveniently ignored: “the considerable investment in existing arrangements...puts a very high price on change.”

I am generally sympathetic to this view, and one might have expected the sharp exchanges between Sisson and Emmott to have provoked a wider discussion. But, rather disappointingly, their dialogue remained no more than that. Some industrial relations researchers joined the fray, but nobody, at that time, was willing to accept Keith Sisson’s challenge to stop doing the wrong things and start identifying the right things. When the economy was booming it was difficult to sustain an argument that the UK had a systemic problem, or at least difficult to get others to pay attention. Politicians too would have been driven by the desire to do as little as possible for fear of upsetting the fragile balance between the TUC and the CBI, leading to the return of employment relations as a controversial question.

Now, of course, the situation is rather different. An entire economic paradigm has collapsed and we are all groping for a new model of capitalist development. The question is whether some of the “old” thinking drawn from the discipline of industrial relations can be made relevant as we design a new workplace settlement, which offers the possibility of sustained productivity growth and fulfilling employment for all.

**Employee engagement**
The one theme uniting Sisson and Emmott is employee engagement. They both agree that it is essential for good organisational performance. Nonetheless, while Mr Emmott takes the purely instrumental view we have described, Professor Sisson

95 Sisson, What industrial relations suggests should be at the heart of employee relations: Responding to Mike Emmott, mimeo (2006). Available at http://www.employmentrelationsmatters.info/4.html
96 Ibid, p.9
uses employee engagement as a device to initiate a much wider discussion about the quality of life and the quality of work:

The key message is that improving working life and organisational performance are not necessarily mutually exclusive as they are often presented. Rather they can be mutually reinforcing. Improved performance makes it possible for managers to bring about a sustained improvement in working lives. Taking improving working life into account makes it possible for managers to get the motivation, commitment and loyalty that they increasingly need for success.  

In other words, employee engagement will prove to be a chimera unless employers focus on the quality of work, the design of jobs, the scope for employee participation and all the other factors that we discussed earlier as having an impact on health and life expectancy. Work has to be viewed as a social act and not merely as an economic transaction.

I admire Professor Sisson’s effort to refocus the discussion in this way and to a degree some of his thinking was reflected in the MacLeod review. And yet, as David Guest has observed, the lack of clarity about what is really meant by employee engagement demands that it either has to be defined with much more precision or dropped completely. Returning to Emmott’s argument, he may find the term employee relations ambiguous, but eminent commentators are pretty clear that employee engagement is even more opaque.

The MacLeod conclusions are important because they accept the legitimacy of collective voice alongside individual participation, although this is a minor rather than a major theme in the report. More problematic again is the purely instrumental nature of the argument – the sub-title of the review is enhancing performance through employee engagement. What MacLeod also fails to do (or do adequately) is explain why the engagement results are so poor if the logic of engagement is irresistible. Their discussion of the barriers to engagement is detailed in eight pages of a document that runs to one hundred and twenty pages. Furthermore, the barriers they identify look very much like the barriers UKCES identify to the application of HPWS:

• Lack of awareness
• Uncertainty about where to start

97 Ibid, p.31
98 Engaging for Success, op cit
• Managers and organisational culture
• An underestimation of the challenges involved – believing that engagement requires the ticking of boxes.

No doubt these challenges are real, just as are the challenges to the application of HPWS. But once again there is no analysis of the structural factors that may make it hard to sustain engagement – the role of capital markets, the culture of mergers and acquisitions, corporate governance arrangements, the skills formation system and legal guarantees for employee participation. What MacLeod offers us is a partial account, a useful description of what is possible and some shining examples of good practice. But MacLeod does not (perhaps cannot) tell us why these good practices are not more widespread.

A cynic would say that MacLeod offers a powerful case for engagement which then disappears into a miasma of wishful thinking. While an effort is made to link the identified barriers to the policy recommendations we might reasonably ask whether the action proposed is adequate to the task. For example, the most important proposals include:

• A national awareness campaign.
• Aligning business support resources to interventions that promote employee engagement and ensuring collaboration across government to involve UKCES, the HSE, ACAS, sector skills councils etc.
• Increasing other sources of support available to those who want to make progress – workplace visits, access to evidence, coaching from those who have done it.

Of course these are all good and useful interventions that could make a modest difference to those employers already taking an interest in the engagement discussion. But even the members of the MacLeod review team would probably accept that these initiatives will have only a limited impact on the employment relations system as a system. Moreover, the resources for each of these initiatives may fall victim to the Treasury axe in the age of fiscal austerity. Unless something radical happens, the highest probability remains that employers will carry on trying to do the wrong thing better.

**A conversation not a debate**

I believe we have reached the point where a conversation rather than a debate in needed. There must be an open and honest exchange of views about the future of the
UK’s industrial relations system. Ideological baggage should be jettisoned and all parties, government, employers, unions and others should take a clear sighted look at the real problems in the world of work. As Keith Sisson suggested in 2006, the starting point has to be a close inspection of the evidence. The real challenges have to be identified, not just those drawn from popular myths and legends like declining employment security, the rising tide of casualisation or the over-regulation of the labour market. This means that everybody must be willing to grapple with complex ideas drawn from economics and the social sciences. If reforming the employment relations system is a serious enterprise then it must be the best informed conversation possible. That unions, employers and others can engage in a dialogue of this kind is obvious from the work of the Low Pay Commission, which is perhaps the best informed pay negotiation in the country and an exercise in rational policy making.

One might legitimately wonder whether now is the best possible time to initiate the dialogue. After all, the coalition seem wedded to an orthodox story about the burdens of regulation, employers are apparently unwilling to open a dialogue with trade unions and unions themselves may be content to wait for another Labour government. If all these assumptions prove true then progress over the next three to five years may be slow. Nonetheless, a great deal of preparatory work will need to be done before a policy solution can be implemented. The parties have to agree that a problem exists and that collective action is needed to devise and implement a solution. Once again the NMW offers a relevant analogy – three years or more of careful preparation in opposition meant the policy could be implemented with a minimum of fuss in government. The important thing is to get people talking. That is more than half the battle.
Chapter 5

What next?
What Next?

So, what should be done to break with the past? To beigin with, neither employer nor union opinion should be accepted as gospel. So, for example, I do not agree that the UK's labour market is over-regulated as some employers suggest but nor do I believe that repeal of all the anti-union laws would make very much difference to the future of organised labour. Neither solution is particularly relevant to the difficulties discussed in previous chapters.

Throughout this report I have tried to use the best evidence available to shed light on some of the most intractable problems in the UK labour market. Too much low paid work, too many low quality jobs, poor people management and the displacement of conflict from collective employment relations to the employment tribunals system have been consistent themes. The first step must be to test whether employers, unions, government and other stakeholders agree that these are genuine problems. If the answer is positive then a constructive discussion can begin but if, as Keith Sisson has suggested, some employers are in flight from workplace realities then we might anticipate a series of arid and unrewarding exchanges.

It is sensible to set reasonable limits for the discussion. To begin with, policymakers would be ill-advised to try and recreate the world that existed before the Thatcher/Reagan revolution, not least because the structure of the economy is very different. Workers are generally more highly skilled, the pace of change has accelerated, formerly strong institutions (like trade unions in the private sector) have largely disappeared, there are more women at work and the elimination of discrimination on grounds of race, gender and sexual orientation has proceeded apace (although there is more ground to cover). Moreover, the nature of work has changed for many employees. There are fewer people undertaking back breaking labour and more people engaged in knowledge work – as well as more people undertaking often low quality work in the service sector.

To return to the institutional arrangements of the trentes glorieuses is not an option, Of course policy makers need to have a sense of history but they should not be in thrall to the past. This is, I am afraid, as true of the partnership approaches advanced by the TUC in the 1990s as it is of the rather traditional approach to collective bargaining and the union role now advanced by some of the UK's leading trade unions.
For the same reasons I would rule out a further wave of labour market deregulation in the UK, whether defined as the weakening of individual employment protection or the introduction of processes designed to reduce the number of claims to employment tribunals. There is no evidence that economic performance would improve and a very high risk that the situation of the most vulnerable would deteriorate further. Employers may rail against red tape, but the rationale for their position is very weak.

Asserting that no progress can be made until either trade unions are stronger or the labour market more flexible is to offer entirely false choices. We also need to be clear about where government can and should act and where other actors must accept the burden of responsibility. The discussion may be more easily managed if we return to Duncan Gallie's notion of an employment regime and reconsider the principles on which a distinctively British employment regime might be based. It is essential to be realistic and recognise the limits imposed by history, tradition and existing institutions. It would be a mistake, however, to fall into the trap of believing that path dependency prevents any change at all. Practical ambition is perhaps the best description of the approach adopted here. Some may demand more radical solutions and others piecemeal changes to the status quo; but the most important goal is to inspire a discussion, not to encourage everybody to align themselves behind the policy innovations described below. If the account offered so far is accepted then government, employers and unions need to be around the table looking to solve problems together. A new employment relations settlement will only succeed if it is rooted in a consensus. And forging that agreement is the most important task in the period ahead.

**Why the employment regime matters**

Duncan Gallie's suggestion is that analysis of the employment regime in any particular country can help to explain job quality outcomes. For our purposes it is useful too in understanding how institutions shape behaviours and vice versa. Gallie identifies the following elements as constituting the employment regime:

- Initial skills formation systems.
- Continuing vocational training.
- The position of organised labour.
- Work integration policies – meaning those policies that either reduce or emphasise differences between different categories of workers.
- Employment integration policies – defined as the extent to which policy is focused on securing a high level of labour market participation and integrating the unemployed back into the labour market.
The elements of the employment regime must be supplemented by some consideration of ownership structures, differences in the corporate governance regimes (maximisation of shareholder value v. stakeholder approaches), the role of capital markets and the scale of merger and acquisition activity.

For the purposes of international comparisons he identifies three major employment regimes in Europe – the “inclusive” Nordic model, the “dualist” model (essentially the German model) and the UK’s “liberal market” model. We have already seen that the former delivers better outcomes for employees that the latter two. The inclusive regime is characterised by strong unions, the judicious deployment of power by organised labour to secure policy changes focused on improving the quality of work, union involvement in decision making at all levels, a vocational training system designed to give all workers a sense of independence and pride in their craft, high expenditure on active labour market programmes to get the unemployed back into jobs, high out of work benefits and a culture that sees quality of work as part of the wider politics of the quality of life. Dualist systems are characterised by weaker unions buttressed by institutional guarantees of employee participation (co-determination and works councils), strong protections for labour market insiders and a tolerance of lower quality employment on the (growing) periphery of the labour market. The liberal market model depends on relatively weak unions, rudimentary employment rights, limited institutional support for employee participation and a belief that efficient markets will deliver sustainable high quality employment – hence there is no need for the steadying hand of government, which would probably (on this view) make the situation worse.

The question is whether and how the policy architecture in the UK might be adapted to secure rather better outcomes that satisfy the demands of both employers and employees. It would be absurd to suggest that the UK could simply abandon the liberal market model and transform itself overnight into a more southerly exemplar of the Nordic approach, but there is scope for constructive policy development, building on national traditions and practices.

Most importantly, perhaps, the notion of an employment regime allows us to interpret how different elements of the system relate to each other and identify where and how constructive reforms might take place. It is beyond the reach of this report to explain how reforms might be developed in each area (skills policy alone is sufficiently complex to demand separate detailed treatment99). The proposals here

99 This question will be pursued further in a forthcoming paper for UKCES.
are more in the nature of a preliminary sketch, to give a sense of what is possible and
to encourage others to offer their own suggestions.

**Principles and goals of an employment relations system**
A better sense of these possibilities might emerge if we return once again to the
purposes of an employment relations system. We have referred on several occasions
to John Budd's argument that the objectives of the employment relationship are
*efficiency*, *equity* and *voice*. By extension then, the purpose of the employment
relations system is to create an environment where these principles can be given
practical and sustainable expression.

Some employers may say that this approach is simply too employee friendly. They
may argue further that the consequence of such absurd burdens on business will
be a reduction in overall employment. The report has documented the flaws in this
conventional argument. To treat work as a fully human activity does not mean that
we sacrifice the imperative for businesses to be efficient and effective. After all,
without some commitment to efficiency almost all organisations are doomed to
failure. The objective here is to create an appropriate balance: to impose limits on
over-mighty capital and to impose constraints on irresponsible trade unionism;
to recognise that workers must be treated fairly, but to accept that the relentless
pursuit of egalitarian outcomes may undermine the quest for organisational success.

Part of the solution lies in constructing new institutions that enable all parties to
have an open and honest discussion about the principles and goals of policy and the
employment regime in its totality. In the UK today nothing of this kind exists. One
might have said that the National Economic Development Council (NEDC or Neddy)
used to play this role before it was abolished by John Major's government, but Neddy
became little more than a vehicle for ritualistic exchanges on economic policy.
Perhaps a more radical departure is needed today. One can envisage a standing body
with wide terms of reference that would keep the whole of the employment relations
system under review and would be able to to analyse how well each element of
the employment regime was working in relation to all of the others. Maintaining
this comprehensive oversight could be supplemented by some changes to the
machinery of government outlined below, not least the revival of the Department of
Employment.

Rather than looking back to Neddy for inspiration we should look ahead to the
challenges confronting the UK. Just who has an interest in public policy affecting
the world of work? How are their interests represented? Just who should be formally involved in the public policy conversation? How might a standing Labour Market Commission be constituted?

A sceptical reader might say that this is all very well, but it still has a whiff of the 1970s about it. Surely the argument is simply demanding a sharing of responsibility between government, employers and unions? Were this an accurate characterisation of the proposal then the sceptic would be right. But the argument presented here is that the social partners as conventionally defined are themselves less representative than they used to be. One can envisage an institution that would involve representatives of the voluntary sector providing advice to employees (like CABs), those delivering welfare to work programmes, training providers and a range of professional interest groups as well as the usual suspects.

Another potential criticism is that the membership would be so diverse as to make the institution worse than useless. Just how would a consensus be reached when so many widely divergent interests are represented? The obvious response is that all the various interest groups already lobby for changes in public policy, but megaphone diplomacy through the media or private meetings in ministerial offices means that the parties are never exposed to each others' arguments. Bringing people together in a common enterprise is an important initial step towards more legitimate decision making. Furthermore, the goal is not necessarily to achieve consensus in all cases but to encourage a higher level of understanding even if disagreement continues. Most importantly, achieving a higher quality public discussion about the goals of policy should lead to better implementation, not least because others will have pointed out the potential pitfalls to government. The case for a standing Labour Market Commission is compelling not just to cut the Gordian Knot but to prevent a new tangled skein from emerging.

Some preparatory work may be needed before any such Commission can be established. More than anything, all those with an interest must see the new body as credible and effective. To a degree this can only be proved by experience, but involving those with an interest in the process of institutional design is also likely to lead to a better outcome. In other words the government (and if not government then the opposition) must manage the process so that all those with something to contribute have a stake in the outcome. This was broadly the approach adopted to the establishment of the Low Pay Commission, where politicians made a quite explicit effort to engage with the employers and trade unions expected to make the institution work once it had been established.
Obviously the establishment of the Labour Market Commission is a medium term project and there are some specific measures that might be taken more rapidly to address the problems discussed in this report. For example, action could be taken in the following areas which, depending on the timing, could be the subject of discussion at the Labour Market Commission before implementation or subject to review after implementation:

- Corporate governance and corporate reporting
- Fair remuneration for senior executives and all workers
- Voice institutions – including trade unions and works councils
- Improving the quality of work
- The enforcement of employment rights

Inevitably such a reform agenda demands some consideration of the legitimate role of the state and the responsibilities of employers, trade unions and others. One could say that government can do no more than set the stage; others must write the script and explore where the drama takes them. Yet even on this view the choice of the scenery can shape the actors’ perceptions of their roles, can limit their freedom and encourage certain kinds of performance. Expressed in normative terms, this view follows the general line of argument favoured by Thaler and Sunstein amongst others – that the state can undertake some judicious nudging but in many policy fields should do no more.100 Of course there is something to be said for this approach; Parliament cannot legislate for high trust, or good management or high quality work. However, there is a strong argument that the state does have a more extensive role as a standard setter, establishing behaviours that are and are not acceptable, as a repository of best practice and as an occasional participant in what Kahn-Freund called the “constant and unending dialogue of powers” about the balance to be struck between consumption and investment. The outcome of this process affects the initial distribution of rewards from work and, one way or another, all governments have a view about the appropriate distribution of income (even if, as in the case of Margaret Thatcher, they believe that the best kind of intervention is non-intervention). In other words, the state cannot be a neutral actor but nor can it solve all the problems emerging from the employment relationship. If employers, employees and their representatives cannot construct a solution where else might one look except the state? Indeed, this continual dialogue of powers, expressed through the work of the Labour Market Commission can potentially lead to a more

100 Thaler and Sunstein, Nudge: Improving decisions about health, wealth and happiness (2008)
sophisticated discussion about the responsibilities of the state and the obligations of other stakeholders.

This standpoint is generally consistent with Kaletsky’s account of the emergence of capitalism 4.0. If a new economic model is about to emerge then there has to be a degree of experimentation and a willingness to accept a degree of fuzziness about the boundaries between the state, corporations and civil society. Under Capitalism 3.0 there was an absolute conflation of the public interest and the business interest – whatever was good for business was good for the rest of us. Questions about rights at work or human flourishing in the workplace were simply seen as illegitimate. Statutory intervention was invariably a burden on business and therefore unacceptable. And any concern about the quality of work could be addressed through the more effective functioning of the market. Good employers would find it easy to recruit and retain high quality employees in good jobs. Bad employers would go out of business.

As a consequence of the financial crisis we now have the opportunity to escape from these constraints. We need to ask ourselves how capitalism can evolve to avoid a recurrence of the catastrophic events culminating in the near collapse of the banking system? If the economic policy paradigm has been trashed then the labour market orthodoxy of flexibility has been discredited too. How should policymakers go about constructing an alternative? What sort of institutions are needed to encourage and sustain high quality employment? How distant is the UK from making Budd’s three principles the lived reality of most workplaces, and what action must be taken before progress can be made?

In other words, there is an opportunity now to have an open and honest conversation that, as Keith Sisson found, was simply not possible under boom conditions in a time of financially driven capitalism. Both the crises of the 1930s and the 1970s led to a transformation of the predominant economic model. The challenge to all of us is whether we can, collectively, forge a more effective employment relations settlement that begins to meet the expectations of government, employers, workers and their representatives.

**Governance and reporting**

A critic of this enterprise might say that it is all very well to reform the employment relations system, but why should that require any changes in the corporate governance regime? There are two potential responses. The first is that by requiring
listed companies to report more extensively on the management of their employees, the state is setting a standard that cuts with the grain of social expectations. Most citizens believe that corporations should behave responsibly and there is a real risk to corporate reputation (with a consequential effect on the share price) if good practice is not followed. Moreover, the state is also reshaping the incentive structure for directors by making it clear that good management of people is a prerequisite for a well managed business. No doubt some sceptics will say that such obligations lead to more box ticking or boilerplate reporting, but if well managed corporations adopt good practice in reporting it is likely that the more recalcitrant will follow.

The second response makes clear that the objective is to reshape investor behaviour too. If there is anything at all to the knowledge economy story and if human capital is really becoming a distinctive source of competitive advantage then investors need to know just how well a listed company is managing employees. At present most investors pay only lip service to this maxim, partly because they are uncertain about how such performance might be measured. But the effective management of the workforce may be a better guide to the long term potential of the company than supposedly harder benchmarks like increases in share price or earnings per share (which are, by definition, backward looking measures).

Changing the culture may take time but that does not mean policymakers should not make the effort. Most importantly, perhaps, the implication of the argument about the transition from Capitalism 3.0 to Capitalism 4.0 is that companies must be seen as more than simply vehicles for the maximisation of shareholder value. This is not a new perspective. Will Hutton has argued for some time that ownership creates rights and imposes obligations. Investors should be seen as holding their property in trust for other stakeholders – workers and the wider community – who will be affected by the behaviour of the business. John Kay makes an analogous point when he argues that successful companies are those that build their capabilities over time and successfully adapt to changing conditions. A relentless focus on shareholders is a very crude, not to say trivial, measure of corporate success. There is no shortage of material available to help rethink the role of the large corporation in a reformed model of responsible capitalism.

Devising the obligations to be imposed is not necessarily a complex question. Companies could be required to disclose some simple measures like accident rates, levels of sickness absence, labour turnover and the gender pay gap. Any reader of

101 Hutton, The State We’re In (1995), The world we’re in (2002)
an annual report would have a rough and ready understanding of the safety of the workplace, the ability of the organisation to recruit and retain a skilled workforce and whether the workplace is making progress towards of gender pay equality. Nonetheless, these are minimal requirements and there is scope for considerably more ambition.

So, for example, a company could be required to disclose the arrangements it has made to comply with the Information and Consultation Regulations. What voice arrangements are in place? How effective are they? What information is being disclosed to employee representatives and when? What discussions have taken place over the last year and on which issues? If unions are recognised for collective bargaining then a narrative account could be given of the developing relationship with the employer. Is the relationship adversarial or co-operative? Is the focus simply on collective bargaining or are joint problem solving activities taking place too?

An obvious objection to these indicators is that they all depend on companies evaluating their own performance. Some additional objective measures are needed so that the annual report conveys a real sense of what it is like to work in the organisation. One solution would be to require the publication of the most recent staff survey results, accompanied by an account of the action taken either to sustain good performance or to remedy deficiencies. A more radical approach would require the publication of data related directly to job quality. The questions relevant to this exercise can be framed in simple terms:

- To what extent do workers have real control and autonomy? This can be measured by asking a series of questions about the source of external influence over work effort (clients, supervisors, fellow workers or technology), about the choice of tasks and working methods and the setting of quality standards.
- Do employees believe that the workplace is fair? The CIPD’s questions in the employee engagement survey offer one potential approach.
- Do employees possess the skills they need to do their jobs? Are these skills fully utilised?
- Do employees believe that they are fairly rewarded for the work that they do?
- Do employees trust senior managers?

By implication, the answers to these questions will also give a strong indication of the organisation’s capacity to adapt to changing circumstances. It is much more likely that an organisation characterised by high skills, high trust and high autonomy
with high quality management will be better able to weather the storms of the business cycle, technological change and intensifying competition.

The coalition government are committed to the reintroduction of an operating and financial review for listed companies to ensure that directors' social and environmental duties are properly covered in annual reports.\textsuperscript{103} In principle this would suggest an increase in the rigour of the statutory provisions, although the recent consultation document published by BIS suggests that a voluntary approach might be just as acceptable to the government as long as policymakers can be confident that the approach will generate a real change in behaviour.\textsuperscript{104} One can understand why the government might wish to consider all the options, but the consultation document could be read as a step back from the apparently clear commitment to reintroduce the OFR on a statutory basis. If the financial crisis has proved anything it is that self-regulation can go catastrophically wrong. There is little evidence to suggest that all companies will increase transparency unless they are compelled to do so by statute. In this instance the commitment to legislate should not be abandoned. Moreover, a degree of prescription about the precise information to be disclosed may be necessary to avoid the box ticking or boilerplate mentality that can easily become widespread.

It would be wrong to suggest that these measures will solve all the problems we have identified or that the changes in behaviour will be rapid. Nonetheless, there is a serious opportunity to encourage more reflective behaviour by both listed companies and investors. Policymakers have a great deal to gain and very little to lose, particularly during a period when public confidence in business is very low. Improving narrative reporting could be a very useful route to the relegitimisation of business activity, particularly if it is combined with the measures outlined below.

Imposing new obligations on listed companies is one thing and encouraging similar disclosures across the public sector quite another. In principle the public sector could be an exemplar. Similar obligations to those applying to listed companies could be imposed on local authorities, NHS trusts and universities for example. The Cabinet Office could require all central government departments to publish an account of their people management outcomes alongside a wider range of performance outcomes. Indeed, a degree of cross-fertilisation from public to private sector and vice versa could prove very useful.

\textsuperscript{103} Our Programme for Government (2010) p.10
\textsuperscript{104} BIS, The Future of Narrative Reporting – A Consultation (2010)
Fair remuneration
We have already noted that an appropriate balance between effort and reward is an important indicator of job quality. The principle at stake here is broadly consistent with two other principles that were once commonplaces in the world of collective bargaining: all workers should get the rate for the job and differentials must be felt to be fair. Furthermore, if we return to our earlier discussion of Hayek and the unions in section 3 we find that the great guru of free markets also understood that pay structures had to be felt fair before they could be legitimate. And it was not just trade unions that embraced this approach – employers understood the logic too. From their perspective felt fairness in pay was a necessary condition for organisational cohesion. Unfair outcomes could drive a wedge between workers and their employer or between different groups of workers with sectional interests. Allowing these distributional conflicts to spiral out of control made the job of management much harder. Moreover, business leaders understood that their leadership position had to be justified and legitimised with the workforce. "One rule for them and another rule for us" could be a source of real tension.

In large measure these principles have been forgotten. Income inequality has increased apace in the UK. Executive pay has been on an upward spiral at a time when most employees have seen only modest increases in their earnings – normally in excess of inflation before the recession hit, but often less than would be sustainable given increases in productivity. And earnings in the City appear to be completely disconnected from the real economy. According to Kaletsky, we should understand this as an inevitable consequence of giving investment bankers control over their own earnings.

Banks became private enterprises, owned and capitalised by their shareholders but controlled and managed on behalf of the employees.\(^{105}\)

It is not the purpose of this report to resolve that problem – although it does highlight the pitfalls of workers' control – but we are still left with a more general sense of perceived unfairness. There are already measures in place requiring the disclosure of executive remuneration and an advisory shareholder vote at annual meetings. When these measures were introduced in 2002 it was believed that the power of public embarrassment might lead to a degree of self-restraint. Unfortunately these hopes were disappointed. It would be possible to draft a more prescriptive set of disclosure obligations, but there is no guarantee that they would be any more effective. The

\(^{105}\) Kaletsky, op cit, p.301
problem may be less with governance and reporting requirements and rather more with the general approach to pay at the top, middle and bottom of the earnings distribution.

The gap between rich and poor that opened up in the 1980s has proved stubbornly resistant to policy intervention, despite the Labour government’s significant efforts in the field – the National Minimum Wage, tax credits, investment in skills development, the introduction of an activation model of welfare reform etc. Recent research has confirmed that as the income gap has grown so has the ignorance of average and top earners about the rewards available to each.106 Moreover, the growth of inequality poses some challenges for conventional thinking about pay too. What, for example, does “the rate for the job” mean when it is applied to an investment banker, a City lawyer or the CEO of a multinational corporation? What does felt fairness mean in each of these situations? Are these rewards really determined by market forces? And if so to what extent should market rewards be moderated by other principles?

That these questions do not admit of obvious answers suggests that once again the time is ripe for a national conversation about pay. It has been suggested, by some Labour MPs and unions that a simple solution would be to establish a High Pay Commission with a specific remit to impose a limit on increases in executive pay. This would be matched by the continued work of the Low Pay Commission to ensure that there is a floor at the bottom of the labour market.

While the proposal has some political appeal the approach is fraught with practical difficulty. A particularly important objection is that it looks at the extremities of the distribution and leaves the middle largely untouched. Moreover, we might think that it would be difficult (if not impossible) to reach any kind of agreement on what a maximum wage might be. There may be other solutions (like progressive income or consumption taxes), which could impose effective restraints on excess at the top without the need for a ceiling on pay. In any event, a focus on top earnings alone is open to the accusation that it indulges the politics of envy. Bankers may be unpopular, but a maximum wage will attract justifiable opposition from the whole senior management class and those who aspire to join their ranks.107

107 And would no doubt be opposed by those individuals in sport and entertainment whose earnings reflect the fact that they are global brands and not simply individuals receiving a salary for work performed.
An inquiry which examined the determinants of pay across the distribution would make more sense. One possible model is a Fair Pay Commission (rather like a royal commission) that would review the literature, take written and oral evidence, and seek the views of workers who are both high paid and low paid. The goal must be to reshape the terms of the discussion about labour market rewards and reinstate some generally accepted norms of fairness. A consensus must have something to say about fairness for those at the bottom, those in the middle and those at the top. In other words, the same set of principles must be used to justify the appropriateness of rewards, no matter where an individual happens to find themselves in the distribution of earnings. To a degree this reflects the remit of the Hutton review of Fair Pay in the Public Sector (due to report in March), where as a rule of thumb a ratio of 20:1 between highest and lowest paid is deemed by the government to be an appropriate benchmark of fairness.

No doubt there are problems in the public sector, but the private sector earnings distribution is much wider and the rewards available to those at the top much greater. A pay multiple of 20:1 would require very significant pay cuts for the directors of almost every FTSE 100 company. While desirable in principle it looks very difficult to achieve in practice. Moreover, to treat the public sector as an isolated case, with no connection to the rest of the economy looks like a serious mistake, not least because it means that all the management traffic will be in one direction – from the public to the private sector.

The recent Dodd-Frank Wall Street Reform and Consumer Protection Act (July 2010) in the USA includes a provision (953/6) which will force listed US firms to disclose the ratio between their chief executive pay package and that of the typical employee (the Act requires a company to disclose in their proxy statements the median annual total compensation for all employees, excluding the CEO; the CEO’s annual total compensation; and the ratio of the median employee compensation to that of the CEO).

Although the devil will be in the detail (and the US business lobby are hoping to water down the enforcement rules being drawn up by the Securities and Exchange Commission), the idea of mandatory pay disclosure has tapped into the American public’s anger over chief executive bonuses. The backlash is perhaps not so surprising when you consider that the average CEO pay package in the US is around 500 times that of the average hourly paid employee (up from a ratio of 42:1 in 1980, according to Business Week magazine). To add salt to the public’s outrage, the most highly paid
CEOs have laid off the most staff (the Washington-based Institute of Policy Studies annual survey of executive compensation showed that the CEOs of the 50 companies that have laid off the most workers since the onset of the economic crisis took home 42% more pay in 2009 than their peers on the Standard & Poor’s 500 index).

The pay gap might not be so extreme in the UK (according to Income Data Services the CEO to average worker pay ratio for the 100 largest companies was 81:1 in 2009, compared with 47:1 in 2000), but there is arguably just as strong a case for mandatory disclosure.

The terms of reference of a Fair Pay Commission could include the following questions:

- Has the commonsense understanding of fairness in labour market rewards changed over the last three decades? How is this different from the values that applied hitherto? How much continuity have we seen? Are there differences in attitude at different points on the earnings distribution? What is the consensus view of fairness if any?
- How much change in pay inequality can be explained by the growth of winner-take-all labour markets? Are such effects universal or limited to particular sectors?
- Trade unions are obviously much weaker than was the case thirty years ago. How important is this phenomenon in explaining growing pay inequality? Have trade unions changed their bargaining strategies? Are there any other sources of countervailing power in the workplace affecting the distribution of pay? What, if anything, needs to be done to rebuild workplace institutions?
- Are there sectoral differences in felt fairness? If so, why is this the case?
- Is there a particular problem in the public sector as the government has suggested? Is it illegitimate for senior public sector managers to earn more than the prime minister?
- Are international comparisons relevant? What can we learn from those countries with a narrower distribution of pay and more egalitarian social outcomes?
- What role is played by the tax system in compensating for the perceived unfairness of market rewards? Is the UK’s tax system sufficiently progressive and what more needs to be done?
- Can changes to corporate governance deliver changes in remuneration strategies? Will the introduction of greater transparency (following the Walker
review) have any impact? What do investors need to do to hold remuneration committees to account? Where should the balance be struck between voluntary action and company law reform?

- The National Minimum Wage is generally seen as a successful floor under wages, yet the UK continues to have a large number of low paid workers. To what extent is low pay seen as unfair pay? What other policy instruments are available to improve the earnings of those at the bottom of the distribution?
- Low pay is concentrated in those sectors employing a large number of women working part time. What can be done to link the recommendations of the Women and Work Commission to a practical agenda for the elimination of low pay and a closing of the gender pay gap? How would this process be connected to the desire to entrench robust norms of fairness in the labour market?
- What weight do we attach to each of the three factors said to be driving the growth in pay inequality: skill biased technical change, globalisation and domestic political choices? How much room for manoeuvre is there for intelligent policy intervention in an integrated global economy? What do we know if anything about the most effective policy interventions?

Voice

Much of this report has been concerned with the advance and retreat of the tide of trade unionism. We noted the declining official faith in the system of employment relations in the 1960s and 70s, the revolutionary upheaval of the Thatcher period and the consolidation of many of those policies in the early period of New Labour. Similarly, we have explored the various trade union attempts at reform and ruled out a return to the partnership model as it was described in the mid-1990s. Where then might we look for a constructive alternative? It would be easy to say that the solution is stronger unions. But it is not self-evident just what changes in public policy would deliver stronger unions, even if we believed a resurgence of organised labour to be a desirable objective. On the other hand, we cannot ignore the question of voice completely. John Budd’s approach places equal weight on the principles of efficiency, equity and voice. Moreover, we know from good social science research that a commonsense understanding of the logic of collectivism is deep rooted across the workforce – and this is true beyond the UK.108 There are two critical questions here. Do unions have a future? And if unions are not to be the principal vehicles for workplace voice then where should we look for an adequate substitute?

Our earlier analysis suggested that trade unions could have a future if they modernised and recognised the changing labour market realities. The task is to develop a strategy that appeals to a more highly skilled and aspirational workforce on the one hand and an increasing number of people working in low quality private service jobs on the other. Public policy has probably done as much as it can explicitly to help unions and amending the recognition provisions would make very little difference. There is a risk, however, that the coalition will begin to dismantle some of Labour’s legislative changes, even though the arguments for repeal are weak. The union recognition procedure is working well and the union role in promoting workplace learning is generally recognised as positive. Despite the views of some members of the Conservative Party, the coalition should show determination and resist the siren calls for more anti-union measures.

Public policy can either accelerate or slow speed of union membership decline but, other things being equal, the state cannot propel organised labour to a new ascendancy through the force of legislative intervention alone. Simply put, union revival is essentially a matter for the unions.

Answering the second question demands more detailed attention, not least because some critics may argue that there is no need for a substitute for unions. Those sympathetic to unions might observe that the unions are already quite good enough. Enthusiasts for enlightened HRM might say that the best HR professionals have already taken on the role of employee advocates. Neither response is really adequate. Trade unions represent less than one in three employees across the economy as a whole and around one in six in the private sector. Unrepresented employees have a right to representation now and it is simply unacceptable to wait for the unions to devise a successful organising strategy for the majority of the workforce. HR professionals may make the case that independent voice is unnecessary, but we have already seen that enlightened HR seems to leave many employees disengaged and dissatisfied. We could go further and say that employers will only meet their obligations to their employees if they are confronted by some countervailing power (or an intelligent interlocutor) in the workplace. There does seem to be an institutional gap in the UK. Can we find anything in existing practice that might contribute to the development of a solution?

In principle, British workers have more voice rights today than at any time in the past. That may sound like a paradox given the dearth of practical opportunities available to influence employer decisions but it is nonetheless true. Most of these
rights are derived from EU directives all of which are based on the assumption that workers, whether trade union members or not, should be informed and consulted collectively about critical events in their workplace. If trade unions are recognised for collective bargaining then the law gives union reps exclusive rights unless another arrangement has been made with the employer. Taking account of this exclusion, workers in non-union workplaces have rights to elect representatives to deal with the following issues:

- Health and safety in the workplace
- Redundancy consultation
- Consultation on the consequences of a business transfer (the TUPE regulations)
- Information and consultation at EU level through a European Works Council (assuming that the employer meets the tests for the establishment of an EWC)
- Information and consultation (under the I&c Regulations), the default provisions of which demand the following:

  - information about long term business strategy
  - information and consultation about employment levels
  - information and consultation with a view to reaching an agreement about significant changes to work organisation or contractual relations

These rights look extensive and might suggest that there is no institutional gap to be filled at all. If British workers choose not to make use of these rights then that is a matter for them. Yet, as we have already seen, the application of these regulations is patchy at best. There are two reasons for this. First, most workers do not know that they have these rights. Second, where some effort has been made to establish I&c arrangements workers soon discover that they are no match for the employer. They have no real access to advice or expertise and very quickly realise that the exercise is less valuable than it initially appeared. Of course employer attitudes do make a difference and the BIS research shows that there are examples of employers using I&c as part of a deliberate strategy to improve employee commitment and motivation. But these are exceptional cases amongst a group of employers

109 The default provisions apply where the employer and employee reps have not reached an agreement on the scope of the I&c arrangement. In principle, a negotiated agreement can provide more restricted rights than the default provisions - and employee reps can, if they wish, negotiate themselves out of the picture by providing for I&c through direct consultation with individual employees. A better reading of the intention of the legislation is that the default provisions constitute a minimum. They set a floor not a ceiling for I&c.
110 Hall et al, op cit.
that are already in a small minority. Experience to date tells us that there is a yawning chasm between the formal statutory rights and practical implementation.

Some employers may be quite satisfied with the situation. It means that they can carry on as before (probably doing the wrong things) untroubled by any challenge from inside the workplace. But government should find the status quo more than at little unsettling, not least because allowing extensive rights to sit alongside non-implementation brings the law into disrepute. Moreover, we have already seen that the absence of voice is associated with the individualisation of conflict and that this is a real irritant to employers. It is not too fanciful to suggest that a further effort to revive the I&C provisions might have a positive impact on both employers and employees.

In other European countries works councils (which is what the I&C provisions amount to when combined with the other consultation rights) are sustained by the enthusiastic support of the trade unions. In France the strength of the various trade union confederations is measured by the number of seats they secure on works councils. In Germany the unions play a vital role in supporting their members who also happen to be works councillors. Both cases are in contrast to the UK, where trade unions have been either hostile towards or suspicious about any non-union forms of representation. In the early part of the decade TUC officials may have believed that unions would organise I&C committees with a view to organising workplaces but the TUC’s affiliates continue to take the view that nothing less than conventional collective bargaining will do. This leads us to an inevitable question. If trade unions are unenthusiastic can I&C arrangements derived from EU legislation ever be effective in the UK?

My answer is that government and employers have a direct interest in making these provisions work – and I mean the coalition specifically rather than government generically. We can see from the results of the CIPD engagement survey and the job quality data that many employers have a trust problem. Management decisions are too often viewed with either cynicism or hostility. One might even say that British management faces a legitimation crisis. In part this is a consequence of the upward spiral of executive pay and in part a result of union decline. Workers are more likely to feel like victims of management prerogatives than participants in the governance of the workplace. Changing the dynamics of the employment relationship by making a strong I&C model the lived reality of most workplaces
would be a significant step towards the solution of some the most intractable problems in the world of work. No doubt there will be some members of the Conservative Party who find this approach a little challenging, but even Hayek accepted the legitimacy of some forms of collective action and there is a good Tory argument for a more participative approach to the management of the workplace.

That still leaves the problem of making the new institutions operational in the absence of union support. But it should be possible to create a structure of incentives to encourage unions to play a constructive role and perhaps to transform their activities across the whole of the economy. At the very least, government should ensure that all employees understand their statutory rights. Promoting the I&C and the associated regulations would be a very useful initial step. A more ambitious government might be prepared to go further and offer some public money to support non-union representatives access the training and expertise they need properly to discharge their responsibilities. Costs could be shared with employers, subject to a specified upper limit, with the aim of withdrawing state funding completely at the end of (say) a five year period.

Just where training, support and expertise might be sought would be a matter for the workers' representatives. One can envisage CABs, law centres, lawyers, accountants and FE colleges (through their training programmes for trade union representatives) all taking an interest in this new information and consultation market. And one might reasonably say that trade unions would begin to appreciate the opportunities too, not least because the offer of support to members of I&C committees might encourage other workers to understand the value of a union card, especially if such activity was combined with a union organising campaign.

The policy might therefore be beneficial to trade unions, but it would not be explicitly pro-union. Organised labour would have to take its chances in an environment where other organisations were competing for the opportunity to support the I&C process. No doubt trade unions will be at best sceptical about this proposal, but they already live in a world of this kind because non-members in the private sector, which today means most employees, are already likely to look beyond the trade union movement for support when they have a problem at work.

111 I would leave unions with exclusive rights where they have well established relationships with employers. There is no value whatsoever in destabilising otherwise stable relationships. All that follows in the section concerns the non-union rather than the unionised sector of the economy.
The proposal has a number of other advantages. First, it potentially recollectivises workplace problems. Even though it is beyond the scope of the existing I&C legislation, there is no reason why workers’ representatives should not become an instrument that allows the employer to take the temperature of the workplace. Nor is there any reason why representatives should not bring problems to the employer that, in the absence of effective representation, might lead to individual grievances or claims to an employment tribunal. Equally, reps might be able to spot problems with particular managers, not necessarily to present a hostile account of that individual’s deficiencies, but to ensure that skills gaps in people management are properly addressed. The role of the representative in this model is not to cause problems or foment discontent but work with the employer to solve problems where there is an obvious clash of interests.

Another potential difficulty (assuming moderate enthusiasm in government) is that there simply will not be enough public money available to support the initiative. While the percentage of public spending involved may be tiny, BIS is a department subject to very deep cuts and may be keen to preserve resources for other programmes. Yet a dispassionate assessment might conclude that a modest investment in building workplace institutions will be repaid handsomely by a reduction in individual employment disputes and improvements in trust, motivation and commitment, leading to potentially higher productivity. There are no certainties here and progress might be slower than policymakers would like, but at least this approach avoids the pitfalls of making it harder to bring a claim before an employment tribunal, which many observers would see as a denial of justice.

How can we be certain that workers themselves want to participate in information and consultation processes? A sceptic might say that the relative ineffectiveness of the current regime shows that government can do little about apathy and indifference. Going further, it might be argued that the lack of appetite for collective voice invalidates the approach adopted in this report. If workers were really dissatisfied then they would use every instrument at their disposal to express their dissatisfaction - and they have conspicuously failed to do so.

Both these objections can be dispensed with summarily. We have already noted that employer opinion matters. If workers believe that they will confront opposition or hostility when they put their heads above the parapet then a certain reluctance to make use of the I&C rights seems entirely rational. Moreover, as the BIS research demonstrates, representatives were enthusiastic (and effective) when the employer
was committed to the process and incorporated I&C arrangements into a wider strategy for the management of the workforce. It is possible to create a virtuous circle.

Nonetheless, we know that employer enthusiasm can wax and wane and that capital market pressures, a merger or an acquisition can undermine the patient work of building trust between workers and their employer.\textsuperscript{112} That is why it is important to see each of the elements described in this section as mutually reinforcing. The governance and reporting arrangements put some sand in the wheels of the shareholder value model and are rooted in a different conception of the corporation. An inquiry into fair pay and the reinstatement of effective social norms would give real meaning to the statement “we’re all in this together” when managers address employees. If the same rules apply to everyone then managers ought not to find their legitimacy questioned quite so readily. Similarly, the presence of effective I&C institutions can hold employers to account, ensure that promises are kept, reduce workplace conflict and improve the quality of employment relationships. One can see how this bundle of proposals might begin to modify the UK’s employment regime without either a revolutionary upheaval or a self-defeating attempt to make the UK more like Sweden, Denmark or Germany.

In \textit{Speaking Up!} I suggested that trade unions could be academies of democracy, that citizenship had to be learned and that trade unions were practical examples of organisations that made progress through discussion, debate, the assessment of alternative points of view, a democratic decision by majority vote and a willingness by the losers to live with the outcome. This was hardly a new insight, but it needed to be emphasised because the trade union contribution to active citizenship had been largely forgotten. Today it is more acceptable to talk about the “big society” than civil society, at least in liberal Conservative circles. But the argument that workplace institutions can make a significant contribution to active citizenship, social capital and social cohesion remains as strong today as it was six years ago. If David Cameron is looking for a readymade justification for an effort to rebuild workplace trust he need look no further than his own rhetoric and, if he is looking for an attractive philosophical justification he need do no more than re-read Hayek.

Whether these arguments are sufficiently persuasive remains to be seen, but it does suggest that the possibility exists for a constructive dialogue about the future of employment relations. No doubt the age of austerity will prove to be an obstacle,

\textsuperscript{112} Konzelman et al, op cit.
not least because public service unions will be resisting job cuts and reductions in their members’ conditions of employment. But a failure to develop a dialogue over the next three years – involving employers, unions and all political parties – is simply to delay a necessary process and make it that much harder to achieve real change.

**Improving the quality of work**

A critical element in Gallie’s description of the Nordic or “inclusive” employment regime is the commitment to high quality work, where job quality is viewed as part of a wider politics of the quality of life. While this looks to be a distinctive feature of the Nordic regime in Gallie’s account, there is no reason in principle why there should not be a similar focus on the quality of work in the UK. Some progress was made under the previous government through the development of the joint DH/DWP health, work and well being strategy, the appointment of the eminent clinician Dame Carol Black as the national director of health and work and an attempt to link the job quality agenda to welfare reform (getting the unemployed back into sustainable jobs) and the impact of work on health, life expectancy and life chances. Progress was slow and both ministers and officials seemed tentative. Nevertheless, it was a significant achievement to put the job quality question back on the agenda and there was a real prospect of further constructive policy development in the future. The same could be said of Sir Michael Marmot’s review of health inequalities, which also made reference to the quality of work as an important determinant of health. Whether the coalition is equally enthusiastic about work as a public health issue remains an open question.

Even in those countries with dualist systems it is still possible to find programmes, supported by the state, focused on improving productivity and the quality of work. In this respect the UK is an exceptional case. In an earlier paper with Rohit Lekhi, I proposed that the DWP should offer financial support to employers, trade unions and others wishing to improve the working environment and secure better job quality outcomes. Projects could be evaluated by asking the following questions:

- How have these changes affected the security of employment?
- Has control and autonomy been enhanced or reduced?
- Has work intensity increased, reduced or remained the same?
- Have working hours increased, reduced or remained the same?

114 Coats and Lekhi, *Good Work*, op cit
• Have employees changed their views about whether they are fairly rewarded for the work that they do?
• Have workplace relationships and trust levels been weakened or strengthened by these initiatives?

In addition, we proposed that some assessment might be made of the impact on recruitment (does the employer have enough choice in their labour supply?), retention (are the right employees staying with the organisation?) and motivation (does the staff survey show engagement or disengagement?). And while “hard” measures can sometimes be difficult to define, we still suggested that the impact on labour productivity should be evaluated.

It might be said that this approach is appropriate in good times, but has little relevance in a period of high unemployment when the economy has barely recovered from recession. Certainly, the quality of work is rarely discussed in the media, but it cannot be right to believe that a recovery depends on the deliberate creation of bad jobs. Any work is almost certainly better than no work at all. But bad work is unlikely to be sustainable work and more often than not leaves people in a revolving door between low quality jobs and unemployment.\textsuperscript{115}

Given the uncertainty about the direction of public policy and an even higher level of uncertainty about the UK’s economic prospects, the best that can be done at this stage is to say that the quality of employment must be part of the emerging discussion about the reform of the UK’s employment regime. Improving job quality is the implicit objective of the corporate governance proposals outlined above and the measures to enhance workplace voice.

We should remember too that much perceived unfairness is a consequence of bad management and dysfunctional workplace cultures. Making British workplaces fairer will only happen if we focus on the quality of work. Once again, each reform proposed here is designed to reinforce all of the others.

The enforcement of employment rights
Much of our discussion has been about the decline of self-regulation in the workplace and the growth of individual rights. In one sense this has been a positive process because individuals are better protected, but in another it has been negative because it has led to legal dependence on the part of employers (what does the law tell me

\textsuperscript{115} Graham et al, \textit{The role of work in low income families with children} (2005)
to do?) and rising litigiousness on the part of employees. Creating new individual rights would probably not be desirable, although there is an overwhelming case for a continued focus on the equalities agenda in all its dimensions and on the rights of working parents to balance their jobs and caring responsibilities. But beyond that there is no serious case for either more regulation or more deregulation.

The most serious challenge, perhaps, is to ensure that the system (defined in the widest sense) works more effectively and observes John Budd’s principles of efficiency, equity and voice. This takes us to an agenda around productivity, fairness and participation that would probably not be supported by the creation of additional individual employment rights. We have reached the stage where the state’s role should change to setting governance standards, enforcing public expectations about fair pay and facilitating the growth of strong voice institutions, whether unionised or non-union.

Some readers may find these claims surprising and argue that people at the bottom of the labour market are ripe for exploitation and deserve greater protection. I agree. But I am not sure that conferring additional rights will make very much difference, just as I am not convinced that there is a widespread problem with enforcement. One can see that the enforcement agency (HMRC) for the National Minimum Wage might benefit from additional resources, but the official data does not tell a story of general non-compliance. We have a small number of genuinely awful cases and a continuing search for loopholes, but beyond anecdotal evidence there is little to confirm that the problems of enforcement are persistent.

That is not to say, however, that enforcement efforts could not be intensified or that the range of agencies currently policing the labour market should not be rationalised into a single labour inspectorate. Certainly, this has some logic in an age of austerity. But there are equally good reasons why, for example, ACAS and the HSE are separate institutions, even if their activities sometimes overlap. There may come a point when the choice is between swingeing budget cuts or mergers to generate economies of scale. But the creation of the Equality and Human Rights Commission is an example of how institutional upheaval can create problems. Most of the institutions with labour market responsibilities are working well they should be left untouched.

If all the other measures outlined in this section work effectively then the relationship between the individual employee and the employer may become less salient. Most importantly, if the process of rebuilding workplace institutions is successful then problems may be nipped in the bud as was the case under the shop stewards
system. Furthermore, the problems experienced by the low paid are often less about the explicit breach of rights and more about poor management or low pay, low productivity business models. Policies like the living wage, where the power of procurement is used to improve wages for workers like contract cleaners, caterers and security guards, are more likely to improve the position of the most vulnerable than tougher employment laws.

The machinery of government
All of the above depends on a level of public policy coherence that has been conspicuously absent since the iconic Thatcher reforms of the 1980s. As discussed at the beginning of this report, the machinery of government as it relates to the world of work is complex and confused. No single department has responsibility for the workplace agenda. Achieving a reasonable level of co-operation between the DH and DWP was a difficult enterprise – although the results were promising until the general election. BIS has rarely seen the need to engage with other departments and even within the department employment relations and corporate governance policies are not always consistent. Politicians are more to blame than civil servants for the bureaucratic muddle. The prime minister determines the shape of the government machine and if departmental structures lead to policy incoherence it should be clear where the responsibility lies.

Once again the UK is unique amongst developed countries in not having a ministry of labour. The Secretary of State for Work and Pensions may feel responsible for unemployment, but has no accountability at all for the employment relations agenda. The Treasury has an interest in productivity, but has paid little attention to the research on the importance of work organisation, job design and management, which fall within the purview of the BIS. Most importantly, perhaps, there is no champion in cabinet who can take responsibility for all the issues relevant to the world of work. Ministers see the small number of trees in their department, but nobody in government has a detailed map of the forest.

This may not matter too much under the coalition if the Conservative Party’s deregulatory impulses are to be indulged – indeed, a modest level of policy incoherence may help to preserve protection for the most vulnerable. But a Labour government should have a more challenging agenda for the workplace and ought to see the need for a more systematic approach. Many of the disappointments of the 1997-2010 period (at least so far as the world of work is concerned) can be attributed to bureaucratic competition within the government machine. The refusal to re-establish a department of employment was another example of triangulation. The
unions wanted it, the employers were opposed to it and the government attempted to implement a progressive agenda using a machine that was not entirely fit for purpose. No doubt keeping the employment relations function in the DTI/BIS had a certain logic and it cemented New Labour’s reputation for neutrality or business friendliness, but it made it more difficult to develop a coherent approach to employment relations broadly defined. Whatever one makes of the more political elements of this assessment, there is a powerful case for giving a single department responsibility for the workplace agenda in the future.

**A final word**

This report began with a clear statement: that the UK’s employment relations system is dysfunctional and is therefore failing to meet the expectations of employers, trade unions or employees. The intention at the outset was to distinguish myths from reality, convince a sceptical reader that these problems are genuine, that other countries do better than the UK, and that a practical programme of reform can make a difference.

Most important in the period ahead is to reach agreement on the nature of the challenges facing people at work and their employers. Only once there is general agreement about the dimensions of the problem can a real conversation begin. Some of the arguments presented here are controversial. Much of the HR profession may resist the view that they have, in Keith Sisson’s words, been doing the “wrong things” for the past two decades. Equally, trade unions may be irritated by the case that the repeal of the anti-union laws will make little difference and that the weakness of organised labour in the private sector requires a fresh approach to rebuilding workplace institutions. But the objective has not been to exclude either HR professionals or trade unionists from the developing discussion. On the contrary, both are indispensable participants in a conversation that would otherwise be dominated by orthodox and not necessarily enlightened voices. The criticisms of HR and the unions are designed to encourage each party to wash their preconceptions in cynical acid so that, to mix metaphors, they have a clear sighted view of workplace realities.

This is particularly important as the UK embarks on the reconstruction of the employment relations system in the post-crisis era. It should be self-evident that market fundamentalism has failed and that a financially driven model of capitalism has been discredited. At the same time of course enlightened HR (in all its varied hues) has failed too, as has partnership and (self-evidently) the status quo ante 1979 beloved of some trade unionists. Reviving any of these models is, to my mind, a false prospectus. There may be elements that can be recovered and reused, but
people need to come to the table with open minds and a willingness both to listen and be contradicted. This means that the modus operandi of the last thirty years must change. For too long participants in debates about the world of work have been defending entrenched, ideological positions, looking to fell their opponents with a knock-out blow. This may have made sense after the intense social conflicts of the 70s and 80s but it is of little value today. Of course I am not suggesting that all disagreements can be eliminated. But I am opposed to the idea that the employment relations system should itself be the subject of a disagreement that seems to continue in perpetuity. Our predecessors in the post war period understood the need for a consensus within which reasoned (and sometimes unreasonable) argument could take place. If Kaletsky is right about the emergence of Capitalism 4.0 then the task is urgent. Policy choices made over the next five to seven years could set the agenda for the next thirty. The last transformational event in capitalism (the Thatcher-Reagan revolution) left us with the confusion and disorder in the world of work that we confront today. We owe it to the next generation to prove that we can do better.
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