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Rainer Diaz-Bone, Claude Didry & Robert Salais (Eds.)

Law and Conventions from a
Historical Perspective

Focus

Pascal Schillings & Alexander van Wickeren (Eds.)

Spaces – Objects – Knowledge.
An Integrative Perspective on Recent
Turns in Historical Research

Mixed Issue

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Who were the Unemployed? Conventions, Classifications and Social Security Law in Britain (1911-1934)

Noel Whiteside*

Abstract: »Wer waren die Arbeitslosen? Konventionen, Klassifikationen und Sozialversicherungsrecht in Britannien (1911-1934)«. The British government introduced the first mandatory national scheme of unemployment insurance in 1911. This required uniform legal definitions to be introduced to govern rights to state benefits. In an unstructured labour market, this process was never straightforward. In analysing how categories were established and specific rights endowed under constantly changing unemployment insurance law, the article witnesses the re-emergence of conventional judgments reflecting earlier distinctions between "deserving" and "undeserving" claimants. Using convention theory, this article thus explores constructions of legitimacy that underpinned claimant categorization, but also the constraints imposed in a liberal political economy on state-sponsored labour market interventions that blocked official influence on the distribution of work. In this respect, British governing conventions have proved long lasting and are reflected in very similar systems of categorization derived from the same type of market judgment that characterizes recent policies governing support for the unemployed.

Keywords: Unemployment, unemployment insurance, Britain, categorizations, British legal identities, social security in Britain, conventions.

1. Introduction

The advent of the British national scheme of unemployment insurance represented a breakthrough in European welfare legislation before the First World War. Perhaps surprisingly (in view of its liberal reputation) the UK emerged as a pioneer in this field. In continental Europe, with the singular (and short lived) exception of the Swiss province of St. Gallen, voluntary insurance dominated protection against job loss: the provision of unemployment benefits was confined to municipal experiments that sought to extend trade union cover and thus to accommodate varied trade practices. A national, mandatory system created new challenges. Initially confined to five trades, British unemployment insur-

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ance was extended after the First World War, to cover all manual workers (bar agriculture and domestic service). This required a uniform identity of the unemployed to be legally specified and enforced, a process necessarily confronting established and highly varied work organization and practices with very deep roots. During the years 1911-1934 legal definitions came to confront this variability: legal definitions where market judgment dominated (to sustain the unemployment scheme's actuarial viability) but where social conventions and political challenges came to be accommodated.

Establishing a stable and permanent solution proved to be no easy matter. On the one hand, from its inception the British scheme embodied normative assumptions about efficient workplace management and a proper (in the sense of morally correct) working life. Such assumptions fitted ill within an economy grounded on the precepts of liberal individualism that repudiated the right of any public authority to intervene in industrial affairs. However, legal identifications of the "unemployed" were only half the problem: the new scheme also confronted established understandings of "insurance" as a means to mediate the financial consequences of risk. Commercial insurance had long offered compensation for property damaged or lost: professional assessment determined both property values and the likelihood of risk: charges were calculated accordingly, premiums pooled to permit the good risks to subsidize the bad. A similar approach also underpinned early British health insurance. Unlike in Germany under the *Kaiserreich*, where local systems of health insurance flourished, the British imitation (also introduced in 1911) was embedded in a market culture that encouraged competition between providers (registered as "approved societies") for "good" lives by allowing the most efficient to offer additional cover for the same price, skewing better medical protection towards the healthiest subscribers as a result (Whiteside 1997). In the course of the early twentieth century, commercial insurers (notably the Prudential) flourished while the highly developed mutual aid ("friendly") societies went into precipitous decline. It was this triumph of the commercial over the mutual that encouraged the political left to abandon insurance as a basis for health care and promoted the foundation of a National Health Service in the UK after the Second World War.

In the realm of unemployment insurance, however, market competition had no place; all the insured paid the same premium and gained the same cover in accordance with legally determined conditions. This necessarily posed enormous problems for the legislator – in part to guarantee actuarially sound balance between contributory income and benefit expenditure, in part to create legal borders to map the moral boundaries distinguishing "deserving" from "undeserving" claimants and in part to enforce them. Earlier distinctions had been relatively simple. Under Britain's notoriously punitive Poor Laws, all able bodied males who sought public assistance were judged as unworthy – on the grounds that work was available for all who searched for it and who were willing to take no matter what job at no matter what price. To prevent their mem-

bers thereby being subject to this judgment and being forced to take work on non-union terms, some British skilled trade unions offered “out of work pay” in those trades (shipbuilding, engineering, metal working among others) where high labour mobility translated into periods of joblessness when work was slack. It is precisely these trades that offered the statistical evidence about an incidence of unemployment and whose union leaders were recruited into the Board of Trade Labour Department to develop the legislation that initially appeared to reflect trade union practices (Whiteside 1994). However, contrary to the principles of union support, the 1911 Act constructed a barrier between help for the “unemployed” (now newly defined) and the protection of trade practices and conditions. Claimants who left work voluntarily or were sacked for protecting established trade agreements were denied state benefits. Other regulations governed waiting periods and contributions made before a claim could be lodged, to weed out the lazy, the incapable and the idle. After the war, and the scheme’s extension, new rules emerged concerning the claims of women, particularly married women, whose labour market participation did not accord with prevalent middle-class views about domestic duties and family care. Further, as unemployment rose, it proved politically impossible to force the ex-soldier who had fought for his country back onto the Poor Law when he failed to find work. Thus the legislator cast and recast the law governing rights to support. The precepts of insurance as a basis for determining both the identity of the unemployed and their benefit rights were corroded and disappeared, replaced by judgments that owed much to preceding systems.

Reflecting the approach pertinent to this HSR Special Issue (Diaz-Bone, Didry and Salais 2015, in this HSR Special Issue), this paper addresses this history to demonstrate how varied established conventions that characterized the operation of poor laws, union regulations, employment practices and commercial insurance shaped and reshaped the UK unemployment insurance scheme. The original objectives of the legislator were constantly modified: this paper will analyse how this was so and will identify the main factors influencing change. A number of points emerge concerning the instrumentation of conceptual categories that underpinned the scheme’s operation. First (as elaborated in the concluding section), the paper shows how the category “unemployed” can never be a given fact, in spite of the role it assumes in macroeconomics, but is largely a socio-political product derived from prevalent assumptions about how labour markets should work and the role (if any) public authorities are expected to play in their operation. Both vary over time. This conclusion is hardly new, as illustrated in academic contributions to the literature (e.g. Salais et al. 1986; Mansfield et al. 1994; Topolov 1994). Second, the paper reveals the limitations of law in a liberal state as a means to secure reform of economy and labour market. It thus addresses constructions of legitimation and legitimacy: how conventional judgments become reference points to establish the legality of specific initiatives, to secure their acceptance. In this regard, the focus is on the legislator as

law-maker, rule-setter and arbitrator: on critique from those subject to judgment and on how the judicial establishment employed particular justifications to determine the scope and reach of the scheme – thereby establishing the legitimacy of specific claims from specific groups. In this sense, convention here is employed to identify moral arguments used by those in authority (and their critics) to legitimate (or challenge) spheres of state action and governance as a basis for socio-economic co-ordination.

Here, convention theory bears some similarity to the Foucauldian concept of “governmentality” that has invaded many branches of the social sciences in recent years (for a critical review of a substantial literature, see Lemke 2012). Both address issues of state power and authority: both identify varied instruments used to secure compliance with specific agendas. However, there are key differences. First, recent writers employing the concept of governmentality are (in general) less concerned with historical analysis but use the theory to address recent trajectories of neo-liberalism and its instrumentation. In this context, the role of the state has become over-generalized. As a national law-maker, it can engage any strategy to realize its objectives, an assumption denied by convention theory that acknowledges how conventions shape varied remits of state power. Second, while governmentality acknowledges how new practices are mutually constructed in the process of their instrumentation, thanks to public resistance and critique, the foundations of this critique remain underspecified. A convention approach analyses the multiple roots and logics of resistance: how established practices provide the foundation from which critique develops and with what consequences. This enables us to examine the multiple bases of moral judgment derived from common knowledge about established systems of socio-economic co-ordination, understood as the right and proper way of doing things. In unpicking the arguments surrounding British unemployment insurance, in this instance, we note the omnipresence of critique, not simply between state and wider public, but within the state machine itself – with civil servants and judges seeking to restore a *status quo ante*. Spheres and forms of authority are renegotiated or recalibrated in processes of instrumentation to accommodate changing technologies, bargaining power, terms of engagement and so forth, with government holding the ring or, when occasion demanded, retreating completely from the field. For the advent of social insurance in the UK flouted the values of a liberal political economy that repudiated state intervention as detrimental to established freedoms: freedoms defended not only by the subjects of new legislation but by the governing classes themselves who fought to restore moral orders and social obligations that underpinned “good character” and respectability. Such moral orders reflected legacies of liberalism: collective faith in the untrammelled operation of free enterprise, the efficacy of financial instruments to address risk and in the opprobrium heaped onto the “idle poor,” whose “demoralization” was assumed to threaten Britain’s economic performance – all features that have proved extremely durable.

The following section offers a brief overview of the main developments in British unemployment insurance in this period. This is followed by an analysis of contemporary debates and their consequences in terms of legislative change and legal judgment, the impact on classification systems as well as on the scheme itself. The final section draws some conclusions. This paper argues that – in seeking to discover the “real” extent of unemployment in Britain – we chase a chimera as both concept and instruments used for its creation reflected prevailing systems of labour market co-ordination that varied widely by place, industry and time. Further, in a liberal political economy, the law operated at the margins of realizing changing situations, being but one actor among many in determining outcomes.

2. National Insurance Act 1911 and After: The Law as Reforming Instrument

In the face of growing foreign commercial competition and sporadic industrial unrest, social investigation in late nineteenth-century Britain revealed the close relationship between chronic poverty, physical incapacity and irregular (or casual) employment. Casual workers, notoriously reliant on locally-financed poor relief, exacerbated high rates of pauperism that provoked financial crisis in major urban centres (Charity Organisation Society 1908, 15-7; Royal Commission on the Poor Laws 1910, para. 1150). Specialist experts recruited to the Board of Trade Labour Department understood “the social question” in terms of dysfunctional labour markets and created the legislative impetus for reforms realized under the Labour Exchange Act (1908) and the National Insurance Act (1911). Poverty (and pauperism) consequent on a “want of work” provided a major focus for action. A logic of rationalization, based on a normative definition of the working week, sought to concentrate available work in the hands of the most productive workmen, thereby promoting industrial efficiency to restore Britain’s economic and commercial pre-eminence. This agenda replaced earlier systems of public works that had, since the mid-1880s, combined municipal employment with charitable help – now criticized as a source of intermittent employment that encouraged casual habits. Instead, policy promoted decasualization and the classification of those out of work in accordance with the ostensible cause of their situation. The reform program offered separate treatment for the elderly, the sick and the “real” unemployed, challenging established conventions of labour management in major industries – and creating a new role for the law as an instrument of social improvement. Such developments had marked implications: both for the role of law in industrial affairs and for work practices that underpinned specific trades, which were occasionally ratified under industrial agreements.

Between 1880 and 1914, the role of the British legislator in industrial affairs was transformed. In the 1880s, *laissez-faire* principles remained dominant. The law determined hours and conditions of work for women and children, but not for adult males. Legislation addressing trade unions, passed in the late 1860s, had extended their liberties by offering defense against prosecution for breach of public order, but imposed no other restrictions. Generally, labour markets were assumed to operate best under voluntary arrangements. By 1914, the situation was transformed. New laws provided the voluntary arbitration of disputes, made employers liable for industrial injuries and diseases, introduced representative trade boards to prevent “sweating” (the employment of workers – largely domestic workers – at below subsistence wages in specified trades). A nationally co-ordinated system of labour exchanges (another global first) was in place and the National Insurance Act (1911) had created mandatory social insurance, covering health and unemployment. Although exchanges and health insurance drew on the example of Bismarckean Germany, a national scheme of unemployment insurance was a pioneering measure. An agenda of labour market organization and reform underpinned the legislation (Harris 1972). For the legislator, the object was to improve organizational capacity: to use both health insurance (Part 1 of the 1911 Act) and unemployment insurance (Part 2) to encourage both sides of industry to adopt rationalized working practices. Casual labour was condemned as expensive, inefficient and a source of social and moral degeneration (poverty breeding criminality, sickness and incapacity). In accordance with liberal principle, the object of policy should be to restore personal independence and, in contravention to liberal principle, the state should be instrumental in achieving this. In the words of the young William Beveridge (one of the Act’s main architects):

Irregular work and earnings make for irregular habits; conditions of employment in which a man stands to gain or lose so little by his good or bad behaviour make for irresponsibility, laziness, insubordination [...] The line between independence and dependence, between the efficient and the unemployable, must be made clearer. Every place in ‘free’ industry, carrying with it the rights of citizenship – civil liberty, fatherhood, conduct of one’s own life and government of a family – should be a ‘whole’ place involving full employment and earnings up to a definite minimum (Beveridge 1907, 326-7).

Contributory national insurance reinforced this strategy. Both health and unemployment schemes involved flat-rate contributions from employer and employed, with an additional state subsidy. While health insurance covered 13 million workers earning below a stipulated annual minimum (£120), the unemployment experiment only covered five trades where skilled unions already offered protection against job loss. The state subsidy funded the extension of protection to the unskilled, embracing 2.5 million workers overall. Unlike most voluntary municipal unemployment insurance found in continental Europe, the British scheme operated a single set of regulations and invoked a single set of rights. The ratio of one week of benefit for five weeks’ contributions and a

maximum 15 weeks' claim per year were sacrosanct. The "morality of mathematics" (according to Winston Churchill) would distinguish the "deserving" from the "undeserving" cases: the contributory record reflected past regular employment. From the legislative detail the British unemployed emerge: a select group of regular workers who were temporarily surplus to immediate requirements.

The legislation, however, was not inscribed onto a blank space. Specific trades had varied management strategies for dealing with recession, reinforced by industrial agreement and, in some instances, the provision of trade union benefits for members losing work (Whiteside 1994). In cotton and coal, slack trade translated into systems of work-sharing by reducing the weekly number of shifts worked or short-time working. Such arrangements enabled employers to retain men with special skills during downturns without paying for slack time or losing them through dismissal. From the standpoint of the operatives, short-time working on reduced earnings was preferable to complete job loss, real distress and the threat of pauperism. Systematic short-time was widespread, characterizing all branches of textile production, clothing, boots and shoes, hosiery, carpet-making, potteries, brick making, confectionary, cutlery and many sectors of metal manufacture. In more informal vein, work-sharing within gangs characterized work in construction and on the docks. In contrast, trade unions organizing skilled men in shipbuilding, engineering and the skilled branches of the construction industry (carpenters, joiners, stonemasons) offered benefits to members out of work: these could be stratified according to seniority or length of union membership. Some benefit systems, such as the London Compositors and the Amalgamated French Polishers, were generous, offering protection for up to 20 weeks per year (Beveridge 1930, 224). Unions thus offered an income to men in transit between different shipyards, construction sites or engineering shops, to prevent them being forced through poverty to take work on non-union terms. While public officials were happy to encourage short-time working as a response to temporary downturns, the blatant problems these variable working conventions posed to any objective identification of the "unemployed" also exacerbated friction.

Such frictions were most evident when governments tried to extend the 1911 scheme to a larger proportion of the working population, both during the war itself and in 1920, when new legislation drew all blue-collar workers into the state unemployment scheme (see following section). We need to understand the wider context within which debate took place. First, 1917-1919 proved to be years of greatest industrial conflict (in terms of man-days lost through strikes) in the twentieth century (bar 1926: the year of the General Strike): state unemployment insurance was only one cause (and a minor one) of widespread discontent. Second, as recession bit and unemployment rocketed in the winter of 1920-1921, the government lost its nerve and transformed the scheme's operation. The Lloyd George Coalition introduced "uncovenanted" (later renamed "transitional" or "extended") benefit to allow those unemployed with no con-

tributory record to claim benefits, as required contributions would be paid once normal trade resumed. However, “normal trade” was never restored: throughout the 1920s, legislation was passed on an annual (sometimes a bi-annual) basis that continually redefined benefit rights (Garside 1990, ch. 2), largely to the benefit of the better-organized sectors of the labour market. Dependents’ allowances were added in 1922. In consequence and in spite of compensatory adjustments in contributions designed to prevent it, the Unemployment Fund collapsed into deficit from which it never re-emerged until the whole system was overhauled in 1931-1934, with the introduction of the notorious Household Means Test for all who had exhausted their benefit rights: a system that, to all intents and purposes, submitted the long-term unemployed to a destitution test characteristic of the Poor Law.

This thumbnail sketch of the scheme’s main changes demonstrates how new circumstances altered official perspective. Attention shifted away from the casual worker and towards the long-term claimant in Britain’s “depressed areas” where heavy industry dominated as the principle social problem. In consequence, legal redefinitions constantly reshaped rights, who might be allowed to claim benefit as “unemployed” was thrown into question. This raised the influence of insurance officers (who reviewed cases lasting more than 12 weeks), courts of referees (where appeals against benefit refusals were heard) and the Office of the Umpire (the final arbiter in disputed cases) in determining answers. As the “morality of mathematics” (and, with it, the solvency of the Fund) was abandoned, the significance of legal judgments rose in importance, creating volumes of legal precedent and jurisprudence. In the dialogue between public law and private industrial practice, employment conventions were modified and administrative processes redefined to create mutual accommodation. This requires more detailed attention to which we now turn.

3. Identifying the Unemployed

In accordance with the reform agenda, administrative features of the 1911 National Insurance Act promoted decasualization (Phillips and Whiteside 1985, ch. 3). Actuarial calculation identified the regular worker and specified benefit rights: limitations that did not recognize long term unemployment as, when benefit rights were exhausted, the claimant re-entered the pauper class. Both Part 1 and Part 2 of the Act stated that any employer using casuals had to pay a full week’s insurance contribution, even if only employing for a half day. An employer who employed a man continuously for 12 months could have one-third of his contributions refunded and, in a downturn, employers and men who arranged short-time working instead of lay-offs would have contributions reimbursed. Any worker reaching the age of 65 having paid 500 contributions would be reimbursed (less the value of any benefit claimed) at interest of 2.5

percent. Finally, the Act allowed casual industries to create schemes that confined short engagements to a pre-defined group of registered men (section 99): to allow the labour exchange to concentrate work among the smallest number of hands. Through a process of rationalization and centralized payments of wages, each employer would pay contributions in proportion to the number of weeks' work he provided. Using financial incentives, employers and workers were thus encouraged to eliminate the use of casual labour.

These incentives had little effect. As one Board of Trade regional officer lamented, very few employers bothered to read the legislation and even fewer sought to alter employment practices or reduce the number of casuals they employed.¹ The opportunity for both sides to reclaim contributions in exchange for regular work was ignored. As the solvency of the Fund came into question early in 1921 and claims rose, these clauses were abolished. No-one mourned their passing. The few section 99 schemes that were created proved both expensive and unpopular with both sides of industry. Schemes for dock workers were founded in Liverpool, Sunderland and Goole, but a falling incidence of casual work probably reflected improved trade more than the organization imposed by the schemes themselves. These initiatives failed to achieve their objectives and, at the insistence of the Treasury, section 99 was suspended in 1914 (Phillips and Whiteside 1985, 88-106). By 1931, the use of casual labour was as widespread as it had ever been and its association with chronic poverty (and its reliance on public funds) remained equally marked (Royal Commission on Unemployment Insurance 1931, 496).

While the legislator's attempt to promote decasualization flopped, the reform of trade union practices proved more successful in the long run. The 1911 Act disqualified claimants leaving work voluntarily, dismissed for misconduct or involved in industrial dispute. These constraints imposed serious problems for prevailing union classification procedure. To win the co-operation of organized labour, the legislation permitted unions to register as administrative agencies under the Act, allowing them to administer state benefits alongside their own (section 106). Trade unions, however, made no distinction between claimants out of work due to slack trade and those dismissed for defending wages and working conditions. Employers knew this very well. "How do you know it (union unemployment benefit) is not being paid to men who should not be paid it?" a major shipbuilding employer confronted the Board of Trade.

The question comes up then, what is a strike? What is a trade dispute? Do you know? I do not know. I maintain that a particular man is out on a trade dispute and the union say he is not, but he is out of employment and you will use my money to help him.²

¹ Papers on file LAB 2/1483/ LE2211/6 The National Archive [TNA].

² Henderson, Shipbuilding Employers Federation deputation to the Board of Trade, 14 June 1911, 56: MSS 237/B/1/144: Modern Record Centre (MRC) Warwick.

The 1911 legislation “modernized” union classifications to conform to new orthodoxies, to distinguish different types of claim (Whiteside 1994, 384-412).³ Strict central surveillance through the official bi-annual audit of union accounts (moneys dispersed as state benefit being reimbursed retrospectively) guaranteed respect for new legal distinctions. In consequence, the category of “unemployed” emerged as a distinct class of claimant in trade unions’ books. Unions registered because the arrangement allowed their officials to retain control over access to specialist skilled (and well paid) work, thereby keeping at bay the threat posed by less qualified workers sent to vacancies by labour exchanges (who administered benefits to those unemployed not covered by a union scheme). By 1921, following the extension of unemployment insurance to all manual workers the previous year, 183 trade associations with over four million members administered unemployment benefits. However, strikes, disputes and high levels of unemployment in the industrial heartlands where union organization was strong took its toll of their finances and, by 1926, 75 per cent of this number had been forced to de-register as they no longer offered union benefits alongside the state scheme, as the law required.⁴ However, the new demarcation outlawing claims from strikers remained and provided an endless stream of claims and counter-claims adjudicated by courts of referees and the Umpire (see below).

An associated area of dispute concerning labour market classification addressed the identity of “the trade” which unions and governments interpreted in very different ways. Trade union organization in Britain was structured horizontally, by level of skill and specialization. In its early years in particular, unemployment insurance was constructed vertically: the definition of “trade” according to the Umpire signalled industrial sectors, not specific working skills. The 1911 Act pooled contributions across the five trades covered, to allow the contributions of low-risk skilled workers to subsidize the higher rates of unemployment found among the unskilled. From the start, this change of principle in “pooling” risk provoked dispute. Initially attention focused on problems of scheme coverage: construction of roads and buildings was included but, the Umpire declared, their repair was not. Hence brick layers, plasterers, joiners and carpenters who moved between different sectors sometimes contributed and sometimes did not. Equally blacksmiths and forgers in iron and steel were covered if they worked in shipyards, but not for work elsewhere. The Umpire remained deaf to the pleas of union organizers who wanted their

³ Section 106: National Insurance Act (Part II) was extended under Section 17 Unemployment Insurance Act 1920.

⁴ Evidence of the National Joint Advisory Council to the Blanesburgh Committee, 13 April 1926: vol. II, 149-51

members either “in” or “out” but not left halfway.⁵ To resolve anomalies, the insurance scheme was extended in 1914.⁶

Another attempt to extend coverage was made in 1916, to bring in munitions workers liable to be thrown out of work at the end of the war (Whiteside 1980). By now union hostility to state intervention had consolidated into open opposition. Thanks to wartime full employment, unions could claim that their benefit systems offered unemployed members better support at lower cost than the state alternative. Led by the Boot and Shoe Operatives, non-compliance was widespread: by 1917, only 188 600 out of the 4.5 million in war-related work were registered. Faced with non-compliance, the state changed tack. A jointly representative Cotton Control Board, established by statute to manage the industry for the duration of the war, unilaterally negotiated its own unemployment protection in the form of a “make-up” wage for under-employed operatives. A rota system allocated available work and a levy on spindles and looms funded a make-up wage paid via union branches, reinforcing established systems of meeting fluctuations in trade and making employers pay the cost.⁷ In 1918, faced with the prospect of unrest (at worst) or widespread non-compliance (at best), the government introduced a tax-funded Out of Work Donation for both soldiers and munitions workers thrown out of work at the end of the war. Although a temporary measure, this scheme offered benefits substantially higher than those available under the 1911 Act, included dependents’ allowances and was available virtually on demand. Its operational principles contrasted strongly with those created by unemployment insurance.

The failure of the 1916 legislation, the popularity of the Cotton Control Board scheme and the introduction of Out of Work Donation threw the future of the 1911 scheme into question as industrial interests fought to re-establish their autonomy. Uniform rules imposed on benefit claims ignored forms of job loss specific to particular sectors: split shifts, reduced hours or short-time working penalized claims from workers who were obliged to pay contributions but were never able to conform to the six-day waiting period before a claim could be lodged. By 1919, the TUC was demanding that tax-payers, not workers, should fund state help for the unemployed – or at least that those trades wishing to make alternative arrangements should be allowed to do so. As the extension of the 1911 scheme to all manual workers was debated in 1919-1920, new concessions were made. Under section 18 of the 1920 Unemployment Insurance Act, any industry running a scheme that offered the same level of benefit as the state could “contract out” – subject to official approval. Once again, distinctions between “trade” and “industrial sector” blocked new initiatives.

⁵ See Phillips’ Inquiry with regard to Draft Special Extension Order June 1914: on file: LAB 2/1486/LE2298/114/1914 The National Archive, Kew (TNA)

⁶ Letter Board of Trade to Treasury, 31 December 1913: on file LAB 2/184/LE22733/24/14: TNA

⁷ Cotton Control Board papers on file PIN 7/31: TNA.

The Treasury refused to sanction any scheme based on union membership alone as this would leave the state to cover “poor lives” (the unskilled) which would upset future balances of the Unemployment Fund. As unemployment rocketed in the winter of 1920, legislation passed the following year suspended the creation of any “special” scheme pending the restoration of the Fund’s solvency (not secured until 1934). Only the banking and insurance industries managed to escape. Schemes proposed for woollen textiles, hosiery, boots and shoes, printing and wire-making, among others, failed to comply with official definitions and were rejected.⁸ In consequence, thanks to persistent high unemployment, the 1920 extension of the 1911 unemployment scheme to all manual workers retained universal cover and nominally sustained uniform benefit rights.

During the 1920s, as recession was worst in industries where trade union benefits had been most extensive, protection for members diminished as prolonged unemployment corroded union funds. Where men had once turned to their union branch for help, they now turned to the state. As industrial unrest remained high until the General Strike (1926), further concessions were made – and the Unemployment Fund ran up a large deficit as the conditions governing benefit rights were constantly amended. Rules aligning benefit claims to contributory record dissolved and access became increasingly discretionary. Benefit in advance of contributions (“extended” later “uncovenanted” and “transitional” benefit), the addition of dependents’ allowances and alterations in the continuity rules⁹ allowed some long-term cases to gain state support and enabled many “unemployed” to lodge claims on more flexible terms. Where industrial relations were good, work sharing systems were adapted to allow reduced earnings to be supplemented by unemployment benefit.¹⁰ A senior Ministry of Labour official pointed out to the Royal Commission on Unemployment Insurance that, of three million claims lodged at the exchanges in June 1921, one million were from workers “temporarily stopped” (working short-time).¹¹ Far from seeking to eliminate irregular or intermittent employment, as the 1911 Act originally intended, the legislator encouraged the spreading of available work as widely as possible, to the advantage of organized trades. Conversely, where industrial relations were poor, the scheme’s regulations could be adapted to punish those regarded by the Umpire and insurance officers as not “unemployed” but “in dispute” with their employer.

⁸ Phillips Report: Cmd 1613 / 1922, 11-3.

⁹ From 1921, any three days in six became legally defined as ‘continuous’ unemployment and any two such spells in six weeks counted as a week’s unemployment as the government sought to encourage short-time working in depressed industries.

¹⁰ Hence, for example, midlands colliery owners arranged short-time working for two weeks per month to enable miners to gain access to unemployment benefit – Secretary of the Mines Department to the Miners’ Federation of Great Britain: 9 November 1927: minutes: PIN 7/96 TNA. See also Whiteside and Gillespie (1991).

¹¹ JFG Price to Royal Commission on Unemployment Insurance, 19 July 1930. *Evidence* 1 (4).

The machinery of adjudication over disputed claims worked in favour of employers. Both trade unions and employers were represented on the courts of referees where appeals against benefit refusal were heard, but the Chair was a professional lawyer and, as such, insistent that only written evidence be admitted. Hence unwritten “custom and practice” was inadmissible. Central to any claim for benefit was the dismissal note provided by the employer and, if this indicated that a man was laid off for defending trade union terms and conditions, or for refusing to work for lower pay, this would disqualify any benefit claim. From the start, disqualification of claims from men locked out or on strike had provoked dissent and was frequently cause for appeal to the Office of the Umpire who preferred the strictest interpretation. Until 1924 (when a minority Labour government passed amending legislation), men thrown out of work due to a dispute in an auxiliary trade in which they were not involved were not able to claim unemployment benefit. Even after the 1924 legislation, the Umpire continued to disallow claims lodged by men not involved directly in the dispute but who belonged to a union that was – as, through their membership dues, they were financing the dispute and were thus involved.¹² In the mining industry, characterized by very poor industrial relations in all coalfields outside the midlands, this approach doubled the burden miners had to carry when seeking to protect wages. In September 1925, a deputation from the MFGB (the miners’ union) to the Prime Minister appealed to him to stop the coal owners accepting state subsidies while simultaneously cutting miners’ pay. Individual collieries were shaving a few pence off the basic wage rate: as the process was not documented, the Umpire ruled this was not a breach of agreement, and refused benefit claims from men who resisted¹³ “it means that every pit in the coal fields” the MFGB General Secretary told Baldwin in slightly ungrammatical terms “the 500 pits closed down, wherever they are receiving unemployment pay, they only have to inform them “you can resume work under wage reductions” for benefit to be disallowed.”¹⁴

The exercise of judicial discretion operated most forcefully on marginal workers: women, those in poor health and the long-term cases who had exhausted their statutory benefit rights (Deacon 1976) – all were subject to supplementary tests and legal reviews.¹⁵ In the workings of the courts of referees and the office of the Umpire, we witness how industrial practice and social convention operated to redefine “deserving” and “undeserving” claims. The Ministry of Labour, under acute pressure from the Treasury to contain benefit

¹² Memorandum on the Trade Dispute Clauses of the Unemployment Insurance Acts: Dec. 1925 (Blunden) Part II: on file LAB 2/1149/ ED 37645/1925 – TNA.

¹³ Miners deputation to the Prime Minister: LAB 2/ 1149/ED37645/ 1925 – TNA.

¹⁴ Cook to Baldwin: minutes of meeting 24 September 1925. *Ibid.*

¹⁵ Courts of Referees reviewed all cases after 12 weeks continuous claim and disallowances could be appealed to the Umpire: Morris 1929, Part 1.

expenditure, targeted older workers and those in less than perfect health, the exchanges sending them to claim sickness benefits under the health insurance scheme. This extended problems of insolvency to approved societies recruiting in depressed regions. “I do not expect the Ministry of Labour to listen to reason” the Government Actuary, charged with safeguarding the solvency of approved societies, commented as rising unemployment took its toll “but I am sure that the harsh conditions of Unemployment Insurance are responsible for a considerable part of the disablement benefits we are paying and, what is worse, for the destruction of the will to work which is producing so many human derelicts.”¹⁶ During hard times, employers in heavy industry dismissed older workers with medical complaints who, in a tightening labour market, found that age and physical impairment militated against their finding another job. In consequence, the division of claimants into the unemployed and the sick became the locus for inter-departmental conflict, with ministries of Health and Labour vying with each other to offload “excessive” claims (Whiteside 1987). A spell on sickness benefit could disqualify a future application for unemployment benefit as the courts and the Umpire could translate this into the judgment that either a claimant was “not normally in insurable employment” or, alternatively, that “insurable employment would not be forthcoming” by reason of the applicant’s age or physical condition.¹⁷ Legal jurisprudence operated to push demarcations between healthy and sick further and further up the hierarchy of physical well-being, encouraging many with a medical complaint (bronchitis, arthritis, flat feet, poor eyesight or other impairment) to understand this as the cause of their job loss, reinforcing the judgment reached by their previous employer. In the 1940s, wartime labour shortages caused both judgment and claimant classification to be extensively revised.

Another main target for official attention was the female applicant: most notably the married woman who – outside textile manufacture and the potteries – was assumed to be the responsibility of husband or father, not the state (Beveridge 1930, 280 note). In 1922, new regulations required the exchanges to offer female claimants posts in domestic service. This placed a woman in a double bind: if she rejected the job, the court of referees would disallow unemployment benefit as she had refused work she was capable of doing. If she accepted it, she left the unemployment scheme as domestic service was not an “insured trade”. Here, the observation of established middle-class convention concerning the undesirability of married women’s waged work allied to the Treasury’s desire for economies to contravene both insurance principle and social justice (Morris 1929, 22-3). Unsurprisingly perhaps, domestic service (covering office and pub cleaners as well as parlor maids and cooks) ran second only to coal mining in the numbers claiming sickness benefits. Women working in other

¹⁶ Watson to Kinnear, 1 March 1936, ACT 1/582, TNA.

¹⁷ Scottish Congress Bulletin Jan 1927: TUC archive, Modern Records Centre [MRC] Warwick.

sectors were obliged to contribute to the unemployment scheme but could rarely claim benefit. The “not genuinely seeking work” regulation (NGSW), also introduced in 1922, required all long-term claimants to undertake a job search within a minimum of three square miles from their place of residence, a condition that married women in particular found hard to meet. The regulation was reinforced in 1925 when new legislation extended ministerial discretion over all married women’s claims, both to statutory rights and extended rights, when the husband was still employed. The Umpire’s interpretation¹⁸ allowed the rule to operate as an informal household means test, to the detriment of textile and pottery districts where, at the best of times, the employment of both adults was needed to make ends meet. Moreover, this disqualification was imposed as the incidence of short-time working was rising and household income falling in consequence.¹⁹

NGSW allowed the courts of referees and the Umpire to come into their own. The interrogation of all long-term claimants sought to expose weaknesses in the claimant’s case through a close examination of personal behaviour in the search for work:

such questions as the number of firms visited, the distances traversed, whether they [sic] had sought work outside their own district, the nature and incidence of their interviews, whether they had pursued their enquiries further than the work gates, the types of person they had seen and whether they had been content with the word of a mate of a foreman or had spoken to managers (Morris 1929, 18, para. 38).

Such cross-examination resembled an interrogation of a prisoner at the bar: the least slip could provoke a disqualification from all benefit for 6 months for “not making a reasonable effort to find work,” even in towns where no work was available. “In considering whether a person is genuinely seeking work” the Umpire stated in a legal leading decision in 1926 “the most important fact to be ascertained is the state of the claimant’s mind.”²⁰ The legal process that required insurance officers and courts of referees to ascertain the state of the claimant’s mind on a case-by-case basis unsurprisingly gave rise to uneven judgment and subsequent complaints. This inconsistency led to NGSW being repealed by another Labour government in 1930, causing the insolvency of the Unemployment Fund to reach new depths, but reflecting how legal judgments emanating from London had won the open hostility of organized labour.

The financial crisis of 1931 forced reappraisal: between 1931 and 1934 the principles of insurance were restored to the unemployment scheme at the in-

¹⁸ Appendix to Blanesburgh committee vol. I.

¹⁹ See evidence from Scottish textile workers to Morris committee: 11 November 1929: 142-60.

²⁰ Umpire’s Leading Decision no.1404/26 cited in Morris (1929, 18-9). Again this ruling aimed primarily at women whose wages were commonly so low that they dipped below the levels of unemployment benefit.

sistence of the Treasury, long the champion of actuarial calculation as the basis for determining benefit rights. Separate provision was introduced for long-term claimants under an Unemployment Assistance Board that involved a household means test, leaving the Unemployment Fund for those with a contributory record – but under more liberal conditions than those that had pertained in 1911. This settlement was less than welcome: greeted with furious protests and demonstrations, its reception explains the widespread acclaim that was given to the Beveridge Report (1942) with its promise to abolish means tests and offer protection as of right for all “from the cradle to the grave.”

4. Conclusions

The early introduction of national insurance in Britain offers an impression of uniformity in the experience of unemployment that is highly beguiling but ultimately misleading. Innumerable economic historians have still used the scheme’s statistics to measure unemployment rates during these years: even though ample evidence exists to demonstrate that classifications of the jobless were subject to constantly changing laws, socio-political objectives and practices. This means the scheme’s statistical product only partially and unevenly reflects the incidence of job loss during these years. Using an analysis derived from convention theory, we can see how different types of moral judgment determined how the statistics were compiled. This approach offers an exploration in constructions of legitimacy: in terms of the arguments used to justify specific claims and in demonstrating how established systems of industrial authority imposed limits on the remit of state power in promoting labour market reform.

In this last respect, the fate of the 1911 legislation is striking as this attempt to use law as an instrument of labour market improvement failed to achieve anything very much. Both sides of industry repudiated state attempts to reform employment and, by 1920, industry after industry was petitioning for exclusion from the official unemployment scheme on the eve of its extension. Faith in the merits of free collective bargaining as a sound basis for industrial organization was also championed throughout the 1920s by a Ministry of Labour eager to promote “home rule for industry” – a policy that contrasted strongly with that promoted by the Board of Trade before 1914. This reversion to *laissez-faire* legitimated industrial strategies of multiple types: both to allow wages reduced by short-time to be supplemented by state benefits and, where industrial relations were poor, to enable employers to use juridical processes to discipline the workforce. This produced marked anomalies. A well-organized trade – such as the Bradford Dyers, Bleachers and Finishers – could “carry” a 60 percent labour surplus as short-time was organized to allow operatives to supplement

reduced wages with unemployment benefit.²¹ Elsewhere, the incomes of coalminers ostensibly in work (but on short-time) could fall below state benefits received by the unemployed (Griffin 1988, 54-7). As the short-time worker with a sympathetic employer continued to pay contributions, he could claim benefit as of right and often evaded the 12-week scrutiny of the insurance officers or courts of referees. Bizarrely, in light of its original objectives, the law allowed benefits to subsidize intermittent employment, but was less inclined to support those fully unemployed for prolonged periods.

State welfare in Britain was thus inscribed within an agenda that mediated labour market effects but could not influence its operation. Official influence on industrial governance remained (and remains) minimal. The social insurance scheme, designed by an older and wiser Beveridge (1942) and introduced by the post-war Labour government, could not touch labour market organization and remained limited to rescuing casualties. After 1945, as full employment restored trade union membership and bargaining strength, memories of interwar unemployment reinforced union determination to defend collective bargaining as the means to protect traditional working arrangements covering recruitment, manning levels and working hours. Beveridge's wartime writings reveal the object of his plan was to secure productive capacity lost by idle labour: unused capacity evident not only among the unemployed, but also embedded in traditional work practices sustained by unions and interwar management to protect jobs and spread work. Moving away from the interventions he proposed in 1911, Beveridge now argued that, if full employment and decent public support became central tenets of state policy, then unions might change their bargaining strategies, accept work rationalization and promote higher productivity. Such expectations were never realized. Past experience of mass unemployment proved salutary, forming a rallying point for trade union defense of free collective bargaining as the template of job control. Nor were employers any more responsive to the siren calls of post-war governments to accept any state intervention in private industrial affairs. The ability of a liberal British state to intervene in labour markets: to train, to redeploy, to fix hours or manning levels, remains minimal. Thus, the incidence of (meaning the accepted definition of) unemployment never reflected the operation of the rationalized labour market envisaged by the 1911 legislator. On the contrary, in its actual operation, unemployment insurance demonstrates an inherent plasticity as compromises in particular situations – accommodating both established work practices and familial conventions of social support to belie any notion of uniform protection against a uniform risk.

In addressing unemployment, we thus view an amorphous object through a changing lens. British unemployment insurance built on dual foundations: the

²¹ Bradford Dyers, Bleachers and Finishers evidence to Blanesburgh, 21 April 1926: vol. II: 194-95. The arrangement dated back to an industrial agreement established in 1907.

systems skilled unions ran in trades covered by the 1911 Act and conventions governing commercial insurance that, reflecting early foundations in shipping and trade, expanded rapidly in Britain from the mid-nineteenth century. Under private insurance, both parties were subject to commercial law that enforced the terms of the contract. Unemployment insurance was fundamentally different: one party to the contract could alter its terms and conditions at will – and, as this account has shown, this happened repeatedly. In consequence, unemployment insurance lost its association with trade union or commercial practice. The scheme variously operated as a personal savings bank (deferred wages),²² a pooled salary reserve and as a public relief system at different points in time and in different industrial contexts. In addition social mores concerning female domestic duties undermined the legitimacy of women’s benefit rights in a manner totally at odds with insurance principles. They were, if in industrial employment, required to make contributions but claims were assessed in terms of their domestic circumstances, reinforcing their position as “dependents” rather than as insured wage earners.

The constant modification and redefinition of benefit rights endowed the Umpire and his acolytes with growing authority in determining the legitimacy of specific claims, to decide who was (and who was not) “unemployed.” Extended benefit rights in particular were subject to official scrutiny. In consequence, the object of the 12-week review was less the letter of the law or the state of the labour market than the claimant: specifically, the extent of the search for a job and the willingness to work for less pay. In this manner, the Umpire’s decisions mirrored those of the Treasury: that “unrealistic” wages were to blame for persistent high unemployment (Beveridge 1930, 360-72). Reliant on employers’ reports and excluding “custom and practice,” legal adjudication reinforced market-based assumptions and discipline. The legal process focused less and less on the employer as generator of intermittent, insecure employment or as the agent of dismissal and more and more on the individual claimant: his demeanor, his ability to give an accurate account of his behaviour and his “state of mind.” In deliberating judgment, the courts of referees and the Umpire reverted not to principles of social insurance, but to judgments that had long governed poor relief – disqualifying female claims as a matter of course and subjecting the rest to tests of “character”: a scrutiny that, like the poor law guardians, assumed that the candidate’s plight was due to personal defects that explained the failure to find work. In this way personal assessment invaded the categorization process: a personal assessment that invoked moral judgments

²² “I think every wise person keeps some of his wages in hand for a rainy day. Everybody is not equally wise and we wanted to insist that everybody kept something in hand for a rainy day [...] a compulsory spreading of the remuneration of labour from good times into bad times.” Beveridge to Royal Commission on Unemployment Insurance, 31 March 1931: 278, para. 5899.

derived from age-old distinctions between the “respectable” and “undeserving” poor. This transition of the long-term unemployed into a pauper class was completed as their claims became subject to the household means test (essentially the poor law destitution test) from 1931 – provoking the 1930s Hunger Marches as a result.

This is not to argue that jurisprudence achieved a wholesale return to late nineteenth-century practice. The “line between independence and dependence” that Beveridge advocated in 1907 had, in some respects, become clearer (but without the regulation of employment he proposed). By the late 1920s, the state was distinguishing between those who merited support (who sustained contributions) and those who did not (who were pauperized in all but name). This distinction is not merely of antiquarian interest: it has proved remarkably resilient and has re-emerged in recent years. In the decades immediately following the Second World War, as indicated earlier in this section, full employment and strong trade union influence established collective agreements that secured regular work weeks and wages for nearly all employees. However, since the early 1980s, sustained attacks on trade union privileges and collective bargaining, changing economic structures and sporadic recessions have undermined such post-war settlements. The triumph of neo-liberal orthodoxies and the promotion of “flexible” labour markets have fostered employment practices reminiscent of the Victorian age: casual employment and part-time work have proliferated, sometimes disguised by the euphemistic category of the “self-employed,” whose numbers have risen markedly in the UK over the past decade. Again, the categorization of the “unemployed” is thrown into question. The Labour Force Survey, the most common measure, now views anyone as “employed” who undertakes one hour of waged work per week. Within a disorganized labour market, old judgments about the relative merits of claimants for state support are re-emerging. On the one hand, those unable to find any work at all are subject to close personal inspections, to determine their “employability” and to promote their compliance with market demand. On the other, the casual or partially employed can claim working tax credits with far less interrogation (other than an annual tax return) – and working tax credits currently account for over 50 percent of benefit payments made to working-age claimants. The labels attached to state help and the legislation sustaining it may be different, but the bases for judgment in justice shows remarkable continuity with historical precedent.

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