

Changing expressions of conflict

Main tasks

- **Explain why the employment relationship is characterised by conflict as well as cooperation**
- **Review the manifest expressions of conflict at work**
- **Consider the changing patterns of these expressions and the reasons for them**

Summary

The employment relationship is characterised by conflict as well as cooperation, reflecting its enduring features and, in particular, an in-built 'structural antagonism'. Conflict, which can be defined as the discontent arising from a perceived clash of interests, can involve individuals and/or groups and take a number of expressions. The most manifest are disputes that employees initiate, either individually or collectively, in response to employer action such as a disciplinary charge or change in working practices or a refusal to meet a wage demand. 'Other expressions' include forms of 'organisational misbehaviour' such as working without cooperation, theft and sabotage. Absenteeism, accidents and resignations may also be indicators of discontent. In terms of patterns, the incidence of strikes has declined massively over the last twenty five years not just in the UK but other OECD countries as well. By contrast, individual disputes remain a prominent feature in the UK, with measures such as Employment Tribunal claims increasing substantially though still affecting a relatively small percentage of workplaces. Meanwhile, other expressions of conflict such as absenteeism and resignations show no signs of reducing. Yet, contrary to the relationship that this suggests, the different forms of conflict are not, in the most part, substitutes to one another, with the issues as well as the parties being

different. The more opportunities employees have to air their grievances, especially through employee ‘voice’ mechanisms, the more they are likely to do so. In the absence of these opportunities and mechanisms, conflict is likely to manifest itself in much higher levels of employee turnover. Legislative change may have played some part in the reduction in strike activity, but the fact that most countries experienced similar falls in recent years suggests that other factors were also at work. As well as a weakening in the structure of collective organisation, seen in reduced trade union density and bargaining coverage, these include shifts in the distribution of employment between sectors and occupations; increasing competition in both product and capital markets as a result of trade liberalisation and globalisation; an increase in human resource ‘professionalism’ and ‘proceduralisation’ reflecting the ‘juridification’ of employment relations; and a changing ideological context.

Introduction: a ‘structured antagonism’

Conflict can be defined as the ‘discontent arising from a perceived clash of interests’¹. Conflict at work can involve a variety of individuals and different groups. For example, different sections of employees may see their interests in conflict – demarcation disputes are a case in point. The same goes for the different functions of management or for managers at different levels of the organisation. Conflict at work may also reflect discontent with government policy that has significant implications for wages and conditions – an example would be the strikes in October 2010 protesting against the French government decision to raise the pension age as this text was being completed. It is normally thought of as something that arises from the conduct of the employment relationship, however, reflecting what has been described as an in-built ‘structural antagonism’². Importantly, this does not necessarily mean that there is a general conflict of interest – as Chapter 2 stressed, employees have many interests that the employment relationship may serve. It does mean, though, that the potential for specific conflicts of interest is ever present and that the expressions of such conflicts, be they over the fixing of wages and conditions or the exercise of the employer’s

discretionary rights, is not just a matter of faulty procedures, 'bad' management or willful employees.

The reason why conflict looms so large in employment relations is because of the enduring features of the employment relationship outlined in Chapter 3. Chief among these is the exploitative nature of the employment relationship. Employers 'exploit' employees in as much as they deploy their labour and/or knowledge power in order to meet their objectives which, in the case of private sector companies, is to generate a surplus. Unlike the independent worker, moreover, many employees have little or no say in how their labour or knowledge is deployed, reflecting the asymmetric or unequal power relationship discussed in Chapter 6.

Also fundamentally important is the *contradictory* nature of the employment relationship. In as much as they 'sell' their labour and/or knowledge power to be used at the discretion of the employer's agents, the employment relationship involves employees in an act of submission or subordination. This means that, in democratic societies, the contrast between their organisational and civil lives could hardly be sharper. Employees as citizens are not only encouraged to have expectations about justice and due process, but also have the right to vote to determine those who govern them and the way that they govern. For those who have to manage it, the employment relationship is contradictory for different reasons. In as much as employees represent both a cost and an investment, compromises inevitably have to be made. They are under pressure to cut costs to be bone and yet at the same time have to motivate employees not just to obey managers' instructions, but also to exercise their judgment and initiative.

The fact that the employment relationship is *indeterminate* means that there is also great uncertainty, fuelling the prospect of divergent goals and interpretation. Contracts of employment, it will be recalled from Chapter 3 are 'incomplete by design', in the sense that the details of the work to be done are largely left to be decided by managerial direction: for employees, it is the equivalent of signing Simon's 'blank cheque'. For employers, the implications are no less profound. In effect, they are purchasing not a finite amount of work, as in the case of the labour service contract, but the employee's ability to work. Nothing is automatic about the employment relationship, however, and the exercise of the employer's ex post or residual control rights is far from straightforward. Managers need employees to do more than

simply comply with instructions. They need their co-operation and commitment to continuously improve performance. The sting in the tail is that the motivation and commitment so critical to performance reflect not just the economic return, but also the job satisfaction and emotional reward that people derive from their work. The upshot is that negotiation and the exercise of power are integral to work organisations, regardless of the presence of trade unions.

Unlike the labour services agreement, the employment relationship is also *continuous* or *open-ended*. Being *continuous* means that there are more or less constant pressures on and opportunities for the parties to act opportunistically, i.e. to seek to adjust the exchange in their favour. Historically, it was employees and their trade unions that were most associated with such change and the focus was on terms and conditions. More recently, with intensifying pressure on business performance, it is managers who have come to the fore, with the emphasis shifting to 'continuous improvement' and 'smarter working' as discussed in Chapter 5.

Finally, as several previous chapters have emphasised, the employment relationship involves a complex 'governance' regime of institutions or rules. The scope for differences over both substance and process is considerable. Alongside a hierarchically-based structure dealing with work organisation and 'performance management' will be found statutory employment rights and collective agreement provisions (where trade unions are recognised), along with a raft of local informal norms ('custom and practice') and expectations of behaviour imported from the wider society. 'Psychological contracts' reflecting individual employee experience also have to be built into the equation. Encompassing such divergent paradigms, the relationship is by its very nature given to conflict as well as cooperation.

In recognition of the potential for the employment relationship to give rise to conflict, governments have almost invariably intervened to minimise the impact. As well as encouraging the parties themselves to put in place procedures for resolving their differences, they have also introduced state-funded machinery for resolving both individual and collective disputes. As a later section describes, in some countries these are part of the general court system; in others there are specialist labour courts; in yet a further group, there specialist and independent

agencies such as employment tribunals with practitioner as well as legal involvement.

Expressions of conflict

Conflict at work cannot be measured – there may be considerable discontent that is hidden or suppressed. It is only the expressions of conflict that are visible and so quantifiable. The most manifest and popularly understood expressions are disputes that employees originate. These may be collective or individual. In the first instance, sometimes known as ‘organised’ conflict, a trade union or a work group is the instigator. It could be the result of a disagreement over the tangible benefits of the employment relationship such as wages and conditions reflecting the continuous nature of the relationship. Or it could involve the exercise of management’s residual control rights and/the imposition of sanctions for what managers regard as breaches of discipline.

The action could take the form of a strike or stoppage of work and other forms of industrial action such as overtime bans, work to rule and ‘blacking’ of work. It could be official or ‘unofficial’ action depending on whether it was sanctioned by the union – a key distinguishing feature of ‘organised’ conflict in the UK in the 1960s and 1970s was that it was largely autonomous, unofficial and informal.

In the case of individual disputes, the conflict could result from managers acting in ways that employees deem to be unfair. It could be because the employee believes that they have been wrongly disciplined or dismissed or because they have been discriminated against. Inconsistency of treatment can also be an underlying consideration³. Again, a range of possibilities is involved. The most visible is the raising of a grievance or the pursuit of a claim to a labour court or employment tribunal. But there are also what have come to be known as ‘other expressions’ of conflict. These include forms of ‘organisational misbehaviour’⁴ such as working without cooperation, theft and sabotage. Absence and resignation are also included. Obviously, not all such activity can be counted as conflict - absenteeism may reflect genuine sickness. Nonetheless, there is evidence that employees use absenteeism, accidents and resignations as forms of ‘exit’ from unsatisfactorily-regarded relationships when

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more familiar, or more organised, forms of expression are either unavailable or are less attractive⁵.

Although conflict at work is usually associated with employee action, employers cannot be left out of the equation. As already indicated, most employee expressions take place in response to employer action reflecting dissatisfaction with some element of the existing employment relationship – in the words of the US saying, ‘management moves and the union grieves’. Such employer actions range from enforcing higher levels of performance and stricter application of disciplinary and dismissal procedures through outsourcing and subcontracting to redundancies and closures. Just as it takes two to tango, so it also takes two for there to be a strike – it is not so much the trade union claim that results in a strike; it is managers’ rejection of the claim. Managers may even ‘engineer’ a strike if it suits their circumstances – many strikes in the UK motor industry in the 1960s and 1970s, it has been suggested, took place following a period of over-production.

Employers can also express their dissatisfaction with the state of play more directly by taking ‘industrial action’ of their own. In the case of individual employees, they can use disciplinary procedures to deal with behaviour that they think is unacceptable. In the case of trade unions, they can resort to the lockout to deal with strikes or the threat of strikes. Although a rarity these days, employers’ organisation-orchestrated lockouts were the main offensive weapon which employers used to fashion their early relations with trade unions. As Chapter 4 emphasised, the lockout played an especially critical role in the development of the institutional framework of employment relations in countries such as Sweden and the UK.

For the UK, there is also evidence of increased stress and bullying as the recession following the financial crisis has hit home. In the words of a Helpline Adviser from the North East in a recent *Acas Policy Discussion Paper*,

There is a cascade of stress down the management chain. The MD shouts at senior management who takes it out on the line manager which in turn affects the employees. The uncertainty in companies is leading to more problems between colleagues. It is not necessarily being raised with employers as people are scared to be seen as making a fuss and problems can escalate quickly.

Changing patterns

The decline of strikes

There are a number of measures of strike activity. The main ones are the absolute number of strikes, the number of workers involved and the number of working days lost (WDL) as a result of industrial disputes and in most cases also the total number of employees. Of these, it is the third measure (WDL) that is the preferred indicator for most observers⁶. This is because, on their own, neither of the first two measures is a good indicator of the overall situation; WDL is also regarded to be less affected by statistical measurement problems in particular because of differences in statistical reporting by the individual countries of the 'number of strikes'.

Very clear, as Tables 7.1 and 7.2 confirm, is that, although major conflicts have far from disappeared, there has been a considerable decline in the number of WDL as a result of strikes. In the words of one recent European survey,

In the 1970s, European employers and employees every year lost on average almost 420 working days for every 1000 employees through industrial conflict. In the 1980s this figure declined to 200, in the 1990s to 56 and today seems to have stabilised at a level of just over 50 days lost, little more than an eighth of the level in the strike-prone 1970s ... In absolute figures, the number of working days lost (WDL) due to industrial conflict has fallen from over 48 million in the 1970s to just 7.2 million days today⁷.

It is not just that there has been a decline in the number of very large and prolonged strikes, such as the British miners' strike in 1984–85 or those (mainly political) strikes in Italy and Spain in the 1970s and 1980s. The underlying trend for shorter and minor strikes also seems to show a decline. In Denmark, for instance, the level of WDL has dropped from around 70 per 1000 employees per year to 40 disregarding large conflicts in the period from 1970 to 2003⁸.

The decline has also been regardless of a country's longer-term strike proneness. Countries such as Italy and Spain, which had almost twice the incidence of industrial conflict (both in terms of workers involved and of WDL) as in northern Europe in the 1970s, show a particularly dramatic decline. But there has also been decline in

countries that were in the middle of the pack (such as France) and at the other end of the spectrum (i.e. the Netherlands, Germany and Sweden). Even though there remain considerable differences between the countries in terms of relative strike-proneness, the variance has also become smaller than in the 1970s.

Comparatively speaking, the UK used to be above the middle of the range for WDL, but since the 1990s has been in the middle or just below the middle. Further details of the trends in strike activity in the UK will be found in Table 7.3.

The USA also shows strong evidence of a long term decline. US Bureau of Labor Statistics suggest that, throughout the period 1948-1970, the number of WDL was never less than 150, with peaks of 700+ in the late 1940s/early 1950s, 900+ in the early 1960s and 600+ in the early 1970s. Thereafter there has been more or less continuous decline. The average number of WDL in the 1990s was less than 50 and in recent years has been even lower still⁹.

A comparison by sector suggests a shift in the balance¹⁰. Historically, sectors such as mining and quarrying, manufacturing, construction and transport tended to dominate the overall pattern. Although still prominent, they are less so than they used to be. In recent years it is the contribution of the public sector that has grown.

Individual disputes

Most countries have specialist procedures for dealing with disputes between individual employees and employers – the exception among the countries included in the comparison in the Appendix is the Netherlands, where such disputes are handled in the normal courts. In Germany and Sweden, there is a hierarchy of Labour Courts (*Arbeitsgerichte* and *Arbetsdomstolen* respectively). In the UK, there are Employment Tribunals (ETs) (originally named ‘Industrial Tribunals’) and in France *Conseils de prud’hommes*, both of which also have appeals to higher levels. A common feature is the relative accessibility of these bodies. In Germany and Sweden, the labour court comprises a legal chair plus social partner representatives, while in the UK they are accompanied by people of practical experience. In France, members of the *Conseils de prud’hommes* are elected every five years from lists put forward by trade unions and employers’ organisations.

Differences in jurisdiction and reporting arrangements make it difficult to compare the pattern of individual disputes between the countries. There are nonetheless two observations that can be made. First, there would appear to be considerable differences in the number of disputes going before the various bodies. At one end of the spectrum is Sweden, where the number of cases amounted to only just 400 in 2008¹¹. By contrast, the level in the other countries is considerably higher even allowing for the differences in the size of the workforce. In France, there were nearly 176,000 cases before the *Conseils de prud'hommes* in 2001¹². In Germany, the *Arbeitsgerichte* heard some 600,000 cases in 2007¹³. In the Netherlands, the number of dismissal cases alone amounted to around 70,000 in 2002¹⁴. Second, there is the rate of change. Here the UK stands out. As Table 7.4 shows, the number of cases has risen considerably since the introduction of Employment Tribunals in 1965. In the 1970s and 1980s, the number rarely exceeded 40,000 per annum; by 1995, it had grown to 100,000 – a level that has been exceeded in several years since¹⁵. In the other EU member countries, by contrast, the number of such disputes has been relatively stable or declining. In Germany, for example, the number of case fell by around a third between 1997 and 2007.

Other expressions of conflict

Evidence from the UK suggest that only a minority of employees experiencing a problem at work choose any kind of formal approach to addressing their complaint. For instance, one review reports that only a quarter (24 per cent) of those who had experienced a problem at work had put their concern in writing to their employer and just three per cent had brought an ET case as a result of their complaints¹⁶. No data are available for the other countries, but it is likely that only a minority of problems similarly go beyond the workplace – in Germany, the Netherlands and Sweden especially, most individual grievances would seem to be resolved in the workplace either by works councils (Germany and the Netherlands) or discussions between management and trade union officials (Sweden).

The one other expression of conflict for which internationally comparative data are available is that of sickness absence. As Bonato and Lusinyan observe on the basis of Eurostat *New Cronos* data,

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In the period 1995–2003, the share of employees [in Europe] on sickness leave was 2.8 per cent, on average, which is very close to the 2.6 per cent registered in the United States ... There are wide differences across countries, however. Absence seems to be particularly high in the Netherlands (6 per cent), Sweden (5.2 per cent), Norway (5.0 per cent) and the United Kingdom (3.9 per cent)¹⁷.

The figures for France and Germany, the other countries included in the comparison in the Appendix, were 2.9 per cent and 1.5 per cent respectively.

In percentage terms these figures do not amount to very much. In absolute terms, it is a different matter. Thus in the UK, fifty times as many days have been lost through absence in some recent years as through strikes. Absenteeism, according to the CBI, costs around £12.2 billion each year¹⁸.

In most countries, Bonato and Lusinyan found that public sector employees were more likely to be on sick leave than those in the private sector, which to some extent reflects the large proportion of women in public employment. The difference in sickness absence between public and private sector is also wider in countries characterised by high overall absence. In Nordic countries, where the share of public sector employment is particularly large, this ‘composition’ effect was deemed to be quite important.

The review also confirmed that labour force characteristics are important in determining sickness absence. In particular, good health - proxied by life expectancy - and low labour force participation reduce absence. But age shows no significant independent impact. Gender is also important, with women more likely to be on sick leave than men. Working time arrangements have a significant impact too. In particular, while more flexibility—measured by the share of part-time employment and flexible working time arrangements—helps to reduce sickness absence, longer usual hours of work tend to increase it. The results also suggest that more flexible work arrangements reduce the impact of long working hours on attendance.

It seems that absence levels do not change very much from year to year. There is some evidence, though, that they are procyclical in some countries. This is true, for example, of the Netherlands and Sweden, where there is a statistically significant relationship between

absence and the unemployment gap defined as the percentage deviation of the unemployment rate from its trend.

In the UK, a range of data has been used to try to measure other expressions of conflict. One indicator is provided by Citizens Advice Bureaus (CABs), who record the number of employment-related problems raised with it bureaux each year. Another comes from the British Social Attitudes Survey (BSAS). Since 1983 it has asked employees working 10 or more hours per week to rate relations between management and other employees at their workplace. WERS has asked a similar question of workplace managers in each of its five surveys. There is also a measure of overall job satisfaction, available from the British Household Panel Survey each year since 1991,

The validity of tracking such attitudinal ratings of the employment relations climate over time can be questioned. As a recent review of the evidence points out, however, it is striking how uniform the message coming though appears to be. Employment-related problems reported to the CABs peaked in the mid-1990s. Similarly, whilst there are some fluctuations in the BSAS series from year to year, the prevalence of poor relations seemed to have risen in the BSAS through the 1980s and early 1990s, to reach a high point in the mid to late-1990s. A measure of overall job satisfaction, available from the British Household Panel Survey each year since 1991, also shows a peak in dissatisfaction in the mid-1990s, with another following in the late 1990s¹⁹.

The reasons for this trend have not been firmly established. One study attributes the decline in job satisfaction in the mid to late-1990s to a decrease in task discretion and an increase in work intensification²⁰. Data from BSAS point towards improvements in management style since the mid-1990s, which may well have contributed to better relations. A question which asks employees whether 'management always try to get the better of employees if they get the chance' is available only intermittently since 1984 but follows a broadly similar pattern to ratings of climate, showing a peak of discontent in mid to late 1990s. Responses to a question asking whether 'the workplace is well managed' follow the same broad pattern, with ratings falling between 1983 and 1993/4 and rising thereafter. There is also some evidence to suggest that material features of people's jobs – and thus some potential sources of discontent – improved in the decade since the mid-1990s. Fitzner, for

example, presents evidence of a decline in the risk of redundancy, a reduction in average working hours, and widespread gains in real wages over the past ten years²¹. However, as previous chapters have suggested, circumstances have changed in the wake of the financial crisis – in the words of the *Acas Policy Discussion Paper* already quoted, ‘Growing unemployment, downward pressure on wages and greater uncertainty over job security inevitably increase the strain on workplace relationships and the potential for conflict’²².

Challenging questions

A substitution effect?

An initial question that is begged by the preceding discussion is whether the different expressions of conflict are substitutes for one another; whether, in particular, individualised conflict is the ‘flipside’ of the decline in union power and collective action²³. Certainly, in the case of the UK, Tables 7.3 and 7.4 appear to suggest that the growth in ET applications is the mirror image of the decline in collective disputes. Moreover, these trends taken together bolster arguments that the fall in trade union membership and coverage of collective bargaining has refracted in the wider individualisation of the employment relationship.

Yet closer inspection of the data suggests that this portrayal may be over-simplistic. None of the other countries, it will be recalled, has experienced an increase in individual disputes going before the formal machinery. The relationship in the UK is also far from straightforward. For it is not just a case of the actors being different, but also the issues. Except in rare cases such as a walkout in support of sacked colleagues, collective action has typically been prompted by concerns about pay levels, other general terms and conditions, and redundancies. In contrast, ET claims have typically been concerned with underpayment (rather than levels) of wages, unfair selection for dismissal or discriminatory behaviour. Furthermore, ET claims are rarely brought in the context of a continuing employment relationship. In the case of unfair dismissal claims, for example, re-employment has long been regarded as the ‘lost remedy’.

It remains to be seen whether this pattern is changing. The recent growth in multiple ET cases involving a single issue (or set of issues)

affecting a number of people in the same workplace or organisation suggests it might be. Indeed, the Gibbons report into dispute resolution attributes the growth in multiple cases directly to collective issues, commenting that the rate of such cases ‘fluctuates substantially because it is heavily influenced by large scale disputes’²⁴. The equal pay ‘multiples’ described earlier, many of which are union led, are the most notable example.²⁵

The role of institutions

A second question concerns the role of different institutional arrangements in either promoting or resolving underlying feelings of discontent. Conflict can be ignored, suppressed or resolved as well as lead to disputes. Other things being equal, though, it is more likely to evolve into a dispute when there is a recognised vehicle for articulating concerns that employees believe offers the prospect of resolving the issue at stake. If there are no collective disputes or grievance procedures, workers are less likely to be able to raise their concerns within the workplace and so are more likely to ‘resolve’ the conflictual situation by quitting. In the UK, the WERS evidence from sectors such as ‘Hotels and restaurants’ and ‘Other business services’ supports this point. Workplaces here not only register the lowest levels of grievances and ET claims along with the lowest levels of grievance procedures, but also report above average rates of voluntary resignations²⁶.

The UK evidence also supports the idea that workplace representation encourages the internal resolution of disputes. Thus, workplaces with representative ‘voice’ arrangements involving trade unions report much higher levels of collective disputes and grievances than those that do not. By contrast, the average rate for ET claims per 1000 employees is much lower in unionised workplaces than non-unionised ones.

As for the association between ‘voice’/‘agency’ mechanisms and other expressions of conflict, WERS suggests that that representative ‘voice’ arrangements are associated with comparatively low rates of disciplinary sanctions and resignations, whereas the opposite is true of workplaces with no voice or non-union ‘voice’. On the other hand, perhaps more surprisingly, workplaces with no ‘voice’ or non-union ‘voice’ report lower levels of absenteeism. Arguably, it is the greater

exposure to the dynamics of workplace debates, together with their awareness of the possibility of conflict and disputes, that also helps to explain the higher proportion of employees in these ‘voice’ workplaces reporting ‘poor’ or ‘very poor’ relations between managers and employees. Overall, it seems that workplaces with no ‘voice’ mechanisms are characterised by strong disciplinary regimes in which the main expression of conflict takes the form of employees exiting from the organisation.

Looking across countries, one issue is the relationship between the pattern of strikes and the level of collective bargaining – in particular, whether it is multi-employer or single-employer. Other things being equal in countries characterised by multi-employer bargaining strikes tend to be rarer but larger, reflecting the number of workers covered by collective agreements. A similar pattern is observable in the public sector in the UK. There also appears to be an association between the pattern of strikes and the role of the state. In the ‘Latin’ countries of France, Italy and Spain there is a stronger tradition of the ‘demonstration’ stoppage designed to promote government intervention, helping to explain the relative size of strikes.

As for the incidence of individual disputes, perhaps the most striking, if not surprising, conclusion turns on the balance between reliance on legal regulation as opposed to collective bargaining. The greater the reliance on legal regulation, it seems, the greater the incidence of tribunal and labour court applications. Germany, France and the Netherlands, for example, have very high levels of applications. In Sweden, on the other hand, where collective bargaining is the more accepted way of doing things, there is proportionately much less resort to the court system - the numbers are in the hundreds rather than the many thousands of the other countries²⁷. Historically, the UK was closer to Sweden – the tribunal system did not come into being until 1965. Increasingly, however, as Table 7.4 suggests, the UK has moved closer to those countries with a longer tradition of legal involvement in the handling of individual disputes.

In discussing the causes of sickness absence, Bonato and Lusinyan find a strong connection between the levels of absence and the generosity of sickness and the unemployment insurance system²⁸. They go on to suggest that, in Sweden, the relationship is substantially

stronger than the cross-country average, more than twice as large. Absence is also lower when employers bear larger costs of sickness insurance. Characteristics of labor market institutions affect the absence rate in different ways, both directly and through their interaction with the business cycle and sickness insurance provisions. Employment protection has a significant positive impact on absence rates both directly and when interacted with the unemployment gap.

Why the decline in strike activity?

A third and especially challenging question is why the trends in disputes have taken the pattern they have and why, in particular, there has been such a significant decline in collective disputes. The following paraphrases Scheuer's summary of the explanations suggested in the literature:

Labour law and changes in the legal framework. In the UK, there has been a great deal of emphasis on the legal dimension - the programme of legislative change to restrict the activities of trade unions, instituted in Britain under the Thatcher governments in the 1980s. In Metcalf's words, 'the strike threat ... was weakened by a succession of laws which permitted a union to be sued, introduced ballots prior to a strike, and outlawed both secondary and unofficial action'²⁹. However, whilst legislative change may have played some part, the fact that most countries have also experienced substantial falls in collective disputes over this period suggests that other factors were also at work. As Chapter 9 argues, there is also a case for suggesting that it is not so much legislation dealing with trade unions and collective bargaining that has had influenced strike activity. More important has been legislation dealing with individual employment rights: 'juridification' has encouraged a shift away from 'collectivism' towards 'individualism'.

Declining trade union density. The most evident explanation for the decline in strike activity is the general weakening of trade union organisation that is discussed in more detail in Chapter 9. Yet it cannot be the only explanatory factor. For even in countries where trade union membership has been relatively stable, such as Sweden, strike levels have dropped significantly.

Declining collective bargaining coverage: Certainly there has been a decline in the coverage of collective bargaining in some countries as Chapter 9 also describes in more detail. But such decline is by no means universal because of legal provisions for extending the terms and conditions of collective agreements. Furthermore, countries such as France and Germany have high levels of collective bargaining coverage, but their levels of industrial conflict vary substantially.

Unemployment levels. Unemployment may have played a role in earlier periods³⁰. Judging from the patterns, however, it is clear that neither the decline in industrial conflict nor the cross-national variation can be adequately explained by unemployment levels. While industrial conflict fell in concert with increasing unemployment in the 1970s, the recovery of employment in the 1980s and onwards was not accompanied by increasing strike activity, neither generally nor in those countries benefiting most from labour market improvement.

Sectoral and occupational changes. It has long been argued that the shift from manufacturing to services, along with the associated trend in employment from manual worker to salaried employee, adversely affects solidarity and militancy. In practice, however, increased public employment may have increased the tendency to strike (because of the centralisation of collective bargaining and a high degree of employment security); conversely, increases in the private service sector and the 'knowledge economy' may pull in the opposite direction. Increasing privatisation may have contributed to a downward trend in strikes, but this can only have been a major factor in recent years.

Globalisation. The strengthening of the EU internal market, together with the gradually increasing liberalisation of global trade through the World Trade Organisation, entails less state protection and state financial intervention to safeguard employment. Consequently, striking for state support for ailing producers such as shipyards has much less appeal. At the same time, globalised competition means that, should they strike, employees may see their jobs going 'off-shore' to lower cost countries. That said, there is no evidence that differential exposure to international economic forces can help explain cross-national variations in WDL. In the UK, trade liberalisation and globalisation would appear to have been especially important in

accounting for the decline of collective disputes in manufacturing. Intensifying competitive pressures in an increasingly global market place not only helps to explain the demise of many of the larger workplaces where collective action took place, such as in the automotive sector, but also a decline in such action in the workplaces that remain. Survival has become the name of the game, raising the cost of collective disputes to both employers and employees.

Individualisation. A change in the balance of risks and opportunities may make strikes a less attractive option for employees who are more individualistically oriented, with a higher estimate of the sacrifices involved and a lower expectation of gains. If this is the case, however, the increase in individualisation has to be explained, which means taking into account the other factors that have already been considered.

Embeddedness. This takes us back to Chapter 4 and the discussion of ‘path dependency’. Scheuer puts the point like this,

national traditions of either high or low conflict may become established over time and shape the behaviour of the industrial relations actors. Within countries, one may likewise observe such learned patterns in particular companies or industries ...

Institutional factors may be judged to play a substantial role: legal–regulative institutions affect the dynamics of industrial conflict, while normative or cultural–cognitive institutions play a role in explaining national variation. In sum, strikes are often based on and have to be understood as rational calculations, embedded in an institutional system, which to a large extent affects the actual calculation: not necessarily economic, however, for calculations may be value-based³¹.

Turning to individual disputes, it is the seemingly inexorable rise of ET cases in the UK that stands out. Arguably, it is here that the law has played a critical role, with what has been termed the ‘explosion’ in individual employment rights extending the effect of legality into areas of the employment relationships which had previously been a matter of voluntary determination³². The expansion, which reflects developments in the EU’s social dimension as well as British governments’ domestic agendas, means that more areas of working life and more employees are covered by the law, as they have been for

much longer in the other countries. At the beginning of the 1980s, there were around 20 individual employment rights under which an employee may bring a claim. By 2008, there were in excess of 60³³. Yet it is not just the growth in rights that has contributed to the rise in claims, but frequent changes in the law stemming from the ‘uncertainty’ experienced by employees and employers about their respective responsibilities and obligations. Moreover, those rights which have been introduced also rarely involved a collective representation role in their enforcement, thereby contributing to the individualisation of the employment relationship³⁴.

But underlying considerations were almost certainly also of relevance. These include a greater awareness of the system encouraged by landmark cases attracting considerable press attention. Telling here is that the rise in applications does not just reflect an increase in the number of employment rights. The incidence of those claims against underpayment of wages, breach of contract and unfair dismissal (though the latter is subject to greater fluctuation) which continue to be the main issues of contention, has risen even if their overall proportion has fallen. As Burgess and his colleagues suggest, it is difficult to escape the conclusion that a key factor has been an increase in the average value of awards over the period - in part due to the raising of the ceiling of awards and, in the case of discrimination, the lifting of any ceiling to comply with European law³⁵.

Table 7.1 Annual average WDL per year in 15 European Countries by decade, 1970–2003³⁶

| Period | Dependent employment (000) | WDL (000) | Simple average | Weighted average |
|---------|----------------------------|-----------|----------------|------------------|
| 1970–79 | 115,342 | 48,280 | 351 | 419 |
| 1980–89 | 129,807 | 25,947 | 175 | 200 |
| 1990–99 | 147,640 | 8,278 | 70 | 56 |
| 2000–03 | 142,511 | 7,257 | 44 | 51 |

Note: Simple average is average of averages of countries (disregarding country size). Weighted average is calculated on aggregate numbers, as shown in the table. Countries are those with available data for almost the whole period: Austria, Belgium, Denmark, Finland, France, Germany (Western Germany until 1993), Ireland, Italy, Netherlands, Norway, Portugal, Spain, Sweden, Switzerland and the United Kingdom.

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Table 7.2 Annual average strike participation per 1000 employees, 1970–2003³⁷

| Country | 1970–1979 | 1980–1989 | 1990–1999 | 2000–2003 |
|-------------|-----------|-----------|-----------|-----------|
| Denmark | 41.4 | 39.5 | 39.6 | 26.3 |
| Finland | 174.5 | 136.0 | 38.3 | 28.2 |
| Norway | 4.0 | 13.6 | 10.2 | 11.4 |
| Sweden | 4.9 2 | 8.4 | 7.4 | 5.4 |
| Ireland | 34.2 | 37.3 | 11.9 | 12.3 |
| UK | 70.6 | 47.7 | 8.5 | 14.1 |
| Austria | na | 4.2 | 4.9 | 2.7 |
| Germany | na | na | 4.3 | 3.7 |
| Switzerland | 0.3 | 0.2 | 0.8 | 3.7 |
| France | 90.2 | 6.5 | 0.8 | 0.6 |
| Belgium | 23.3 | 7.8 | 3.4 | 2.8 |
| Netherlands | 5.1 | 3.8 | 4.7 | 3.0 |
| Portugal | na | 17.7 | 17.8 | 8.6 |
| Italy | 491.4 | 318.9 | 91.3 | 112.9 |
| Spain | 221.0 | 271.3 | 173.3 | 162.8 |
| Average | 96.8 | 66.6 | 27.8 | 26.6 |

Table 7.3 The changing pattern of strikes in the UK³⁸

In the 1970s and the 1980s, official statistics showed a decline in strike activity, with this being seen most obviously in the falling number of stoppages. The number of working days lost also showed a decline, albeit with a shallower gradient, if one excludes the ‘spikes’ in the series caused by the ‘winter of discontent’ and the miners’ dispute (which alone accounted for over 80 per cent of days lost in 1984). Even so, in the late 1970s and early 1980s, the average number of days lost per year stood at around seven million working days in official records, or 300 days per 1000 employees. Each successive year between 1986 and 1994 registered the lowest number of stoppages since World War 2, however, with the numbers of stoppages and working days lost stabilising at these historically low levels since 1994. Thus, by the early years of the twenty-first century, days lost to officially-recorded stoppages stood at around 0.5 million per annum or just 20 days per 1000 employees.

In the 1980s, the first two Workplace Industrial Relations Surveys (WIRS) surveys showed the extent to which strikes were either concentrated or dispersed across workplaces in the economy. The first survey showed that one in ten workplaces (11 per cent) had experienced some strike action in the year 1979-1980 - one in five in private manufacturing and one in seven in the public sector, but fewer than one in twenty in private services.

These data also show that, in 1980, manufacturing establishments accounted for almost two-fifths of all workplaces experiencing strike or non-strike action, but less than one fifth in 1984. Public sector workplaces, in contrast, had become more prone to industrial action. Having accounted for one half of all workplaces experiencing such action in 1980, they accounted for over two-thirds in 1984 – a dominance that they retain to the present day.

The third WIRS in 1990 and the fourth in 1998 confirmed the steep decline in strike action - the overall proportion of workplaces experiencing any form of industrial action came down from one in eight to just one in fifty. The receding power of trade unions in the private sector was one part of the story, but not obviously to any greater extent than in previous periods. More notable in the 1990s, it seemed, was the changing experience of the public sector. Here, 34

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per cent of workplaces reported some form industrial action in 1990, but in 1998 that figure stood at just 5 per cent.

The period since 1998 has seen relative stability in the survey estimates of the incidence of strike action among private sector workplaces, with the percentages experiencing either official or unofficial action standing at or below 2 per cent in both private manufacturing and private services. There was, however, a rise in the public sector between 1998 and 2004. One in seven public sector workplaces experienced industrial action in the year preceding the 2004 survey, commonly a strike or employees' 'working to rule', compared with one in twenty in 1998. This helps to explain the most notable trend in official statistics in recent years, which has been the rise in the number of workers involved per stoppage. This has arisen as the result of the decline in private sector stoppages, with national public sector disputes now dominating the statistics to a greater degree than ever before.

Table 7.4 The changing pattern of Employment Tribunal cases in the UK³⁹

Following the introduction of unfair dismissal legislation in the 1960s, there was a steady growth in ' case load, with the total volume of applications growing four-fold to just over 41,000 by 1980. These were located largely under unfair dismissal and redundancy pay jurisdictions, though claims relating to equal pay and to sex and race discrimination were also within the ETs' scope. The 1980s saw a small downward trend with applications falling to 29,000 in 1988. Here the steady growth in cases relating to equality issues plus a new right to claim against infringement of wages payments was offset by a small decline in unfair dismissal cases. In the 1990s, there was considerable overall growth, with cases soaring to in excess of 100,000 by 1999 and reaching 130,000 in 2000/2001. It was during this period that employees were given new rights to bring cases relating to Breach of Contract, and discrimination on grounds of disability (1995) and age, sexual orientation and religion or belief (2006). Applications have remained high, albeit with fluctuations, peaking again in 2006/7 when 132,500 applications were registered.

Perhaps not surprisingly, the subject matter of applications has changed with the coming of new rights. In 1986, unfair dismissal represented three quarters of claims and in 2008, 40 per cent. In the same year, discrimination cases around 15 per cent of all applications. There has also been an increase in the volume of applications involving more than one issue. In 1998, according to Acas' Annual Report, just under half of all applications in the preceding year had two or more jurisdictions, compared with only around one third in the year before that. In 2006/7, 132,500 registered claims covered a mix of 238,500 jurisdictions or an average of 1.8 per claim.

Another indicator of complexity is the level of representation. In the mid-1980s around four in every ten applicants were represented. Twenty years later, according to the 2004 'Survey of Employment Tribunal Applications' (SETA), 55 per cent of applicants and 59 per cent of employers had a representative handling their case, whilst most others had sought active professional support.

A further feature of the current caseload is the incidence of multiple claims involving more than one applicant bringing the same case against the same employer. In 2005/6, 55 per cent of the total

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claims received were multiple claimant, a sizeable proportion of which related to equal pay claims brought against local authorities in relation to the 1997 national agreement to seek 'single status' of pay across employees.

Overall, the WERS series suggests that, in spite of the growth, ET claims affect only a minority of workplaces. Between 1980 and 1990, around 10 per cent of workplaces with twenty five or more employees experienced a claim in the year preceding the survey, the figure rising to 13 per cent and 15 per cent in subsequent WERS. WERS data also accord with other sources in suggesting that it is medium-sized businesses that generate a disproportionate share of claims. The suggestion is that medium-sized organisations are caught between two posts, being disadvantaged by the absence of the close working relationships characterising small firms yet at the same time not benefiting from the formality of the larger ones.

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