

A EUROVISION AT WORK

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Preface

This Warwick Paper publishes the text of the second Warwick-ACAS Lowry Lecture which was delivered on 17th March 2003 by outgoing TUC General Secretary John Monks to an invited audience at the Engineering Employers' Federation (EEF), which hosted the event, in London.

The Lecture, organised by the Industrial Relations Research Unit together with ACAS, is named in honour of Sir Part Lowry. Sir Pat was for many years an honorary Professor at Warwick, a long standing member of the Business School's Advisory Board and a source of valued counsel to IRRU in its work. His outstanding contribution to the practice of industrial relations commenced when he joined the EEF in 1938. Following military service during the second world war he returned to work for the EEF, becoming the Federation's Director of Industrial Relations. He left in 1970 to join British Leyland as Director of Industrial Relations, taking up what, in introducing the Lecture, EEF Director-General Martin Temple described as 'probably at that time one of the most difficult jobs in the UK'.

In one of his last public engagements before taking over as General Secretary of the ETUC, John Monks sets out his vision for industrial relations in the UK in the context of ever-closer European integration. He contends that the EU's approach to labour market regulation is not entirely alien to the UK's voluntarist traditions. The transition from abstentionist state to interventionism began before UK entry, and some EU measures such as equal pay built on national initiatives already underway. Notwithstanding this, EU initiatives concerning information and consultation (I&C) are transforming the institutions and agenda of UK industrial relations. Observing that all labour markets depend on a measure of regulation to temper the destabilising effects of unequal power relations, Mr Monks argues that the latest I&C Directive - with other legislation such as that concerning working time - provides a vital opportunity for employers and unions to rediscover workplace partnership, and for the government to champion collective bargaining as a collective good.

Jim Arrowsmith
Paul Marginson

Tonight I want to look more forward than backwards and reflect on the changes in union attitudes to Europe, on the influence that the EU has exercised on British industrial relations and finally set out some emerging thoughts for the future. I would also like to test four arguments.

- First, that the approach adopted to labour market regulation at EU level is not incompatible with the venerable British tradition of voluntarism.
- Second, that some EU instruments have built on public-policy foundations that were already established in the UK - principally in the field of equal pay and gender equality.
- Third, and contrary to the previous point, some EU level interventions *have* been and will continue to be transformational.
- Fourth, that all labour markets depend for their legitimacy on some form of regulation - the question being whether this is achieved through statute, collective bargaining or litigation on different forms of civil liability.

But let me begin my remarks tonight by saying a word about evolution of the TUC's approach to the EU. Many of you will recall that in the 1970s unions were either sceptical or openly hostile to the Common Market. There were few enthusiasts - and they were mostly dismissed as eccentrics or irredeemably right wing. This capitalist club had nothing to offer trade unionism. Indeed, continental trade unions had sacrificed much of their independence. They were co-opted into the management process through works councils. Bodies that offered milk and water consultation rather than the red meat of negotiation. The vibrant workplace democracy of the shop steward system that characterised British trade unionism was simply absent in Europe. Yes, this is a caricature - but it is not too far from the view expressed in the 1970s by many influential union voices.

Of course, British trade unions learned about the weaknesses of our supposedly superior model through the hard realities of Thatcherism. We learnt that a determined government, with a huge parliamentary majority, could abandon the post-war social settlement, deregulate the labour market, impose hitherto unimaginable constraints on trade unions and dismantle the machinery of collective bargaining in the private sector. We discovered to our cost, that the absence of legal guarantees in the UK made it much easier for a government to mount a full-scale assault on the strongholds of trade unionism. While our sister organisations in Continental Europe retained bargaining strength and social legitimacy - partly as a result of well-developed social partnership structures - we were mercilessly excluded from any influence over public policy.

And then in 1988, after almost a decade of defeat and retrenchment, Jacques Delors addressed Congress and offered British trade unionism a different vision. At the time of course some commentators suggested that the TUC's change of mind on the EU was entirely cynical. Delors would deliver social democracy for the TUC in Europe when Mrs Thatcher offered nothing but neo-conservative orthodoxies at home. Unions were being offered protection against the worst that a Conservative government could do when the prospect of a Labour government was at best remote and at worst a fantasy. No doubt there is some truth in this. But the reality is that Delors offered a much grander prospect. He said that the completion of the single market in 1992 would create great opportunities. It would intensify competition. It would lead to restructuring, perhaps even a high degree of what one great economist disturbingly labelled 'creative destruction'. Yet this process - which could potentially raise the overall prosperity of the EU - would not be legitimate unless workers' interests were properly protected.

Delors was very explicit. He said, 'It is impossible to build Europe only by deregulation..... the social dimension is a vital element'. The vision was more than just a succession of short-term palliatives - directives that took the rough edges off Thatcherism. Delors was offering a social model of deliberative governance, a quest for consensus, genuine social partnership and a legitimate role for unions. He was saying that the success of the European project demanded strong welfare states, full employment and a platform of guaranteed social rights. More specifically he referred to measures to guarantee information and consultation in European-scale undertakings (which finally emerged as the directive on European Works Councils) and rights of access to training. The values that Delors outlined are my values - and it is because of my commitment to the European social model that I will be moving to Brussels in May.

Yet I wonder what reaction Romano Prodi might get were he to deliver a similar speech today - but referring to the single currency rather than the single market. I know what the CBI would say. Not more European regulation. Not more red tape. Not more assaults on labour market flexibility. And I suspect that the government would display some nervousness too. I can anticipate the rhetoric already: this instrument (whatever it happens to be, information and consultation, the directive on agency work) has been designed in Brussels, it is wholly inconsistent with the UK's law and practice, it is incompatible with our traditions and fails to recognise the importance of labour market flexibility. Sometimes it sounds to a trade union audience that there are official regrets about signing the social chapter. And it is a matter of irritation to me that a left-of-centre government uses a language of flexibility more associated with the right, even though this is not a true reflection of Labour's record in office.

Yet the arguments that applied with such force to the single market in 1988 apply with even more power to the single currency in 2003. A single currency in a single market will lead to more trade across Europe and greater overall prosperity. But it will also drive an intensification of competition, an attempt by firms to maximise economies of scale, strip out surplus capacity and inevitably more 'creative destruction'. It is difficult to see how that process can have any legitimacy at all unless the platform of social rights is sustained and enhanced.

Let me just note in passing that the bogus nature of the CBI's anti-red tape and taxation campaign has been exposed by none other than Adair Turner, the former Director General of the CBI. In his recent Queen's Prize lecture at the LSE Turner suggested that much of the business-lobby-group rhetoric about taxation and red tape is at the very least greatly overstated. He then went on to explore the impact of tax and welfare spending on flexibility and employment performance - and pointed that there are three countries in the EU with higher employment rates than the UK: Denmark at 76%, the Netherlands at 74% and Sweden at 74%. My observation is that according to the OECD all these countries have employment protection legislation at least twice as stringent as the UK. So much then for the argument then that a strong floor of labour rights leads to job flight to India, China or Brazil as the CBI have recently suggested. It depresses me a little when the high-volume rhetoric from employers' organisations suggests that they have abandoned a politically neutral defence of their members' interests and embarked on a campaign that associates them with the political Right.

Let me now develop further my first argument - that EU level regulation is not *entirely* incompatible with supposed British voluntarism. To test this, I want to take you back thirty-five years to when I joined the TUC. This is not only because I am feeling slightly nostalgic (which I am) but because I want to set a frame of reference for the remainder of my remarks. My observation here is that it is some considerable time since the heyday of abstentionism and collective laissez faire. In 1965, when he published the first edition of *The Worker and the Law*, it was still possible for Lord Wedderburn to argue with conviction that: 'Most workers want

nothing more of the law than that it should leave them alone'. Equally, in 1972, when he published his classic *Labour and the Law*, Kahn Freund could still write coherently about the UK's self-regulating system of industrial relations. If the law had a role in the labour market, he said, it was to maintain an equilibrium between employers and workers by ensuring the effective operation of the voluntary system of collective bargaining. Indeed, labour law had *no other purpose*. Yet this was precisely the time when the supposedly abstentionist state began to get decidedly interventionist. Whether it was *In Place of Strife*, the Industrial Relations Act 1971, the right not to be unfairly dismissed, the right to redundancy compensation, the right to equal pay for like work or judicial intervention in industrial disputes, the principle that the law kept out of industrial relations had been pretty fundamentally undermined. The trend continued through the social contract legislation in the 1970s - the CAC was given a wider role, extending collective agreements in the private sector under Schedule 11 of the Employment Protection Act 1975 and 'equality proofing' collective agreements on equal pay principles. Sex and race discrimination legislation extended the reach of the equalities agenda. The Health and Safety at Work Act 1974 established arrangements for the co-management by unions and employers of health and safety questions. And throughout this period the unfair dismissal and redundancy compensation remedies continued to generate a significant caseload for industrial tribunals.

So even though the UK had no comprehensive labour code on the continental model, no institutions guaranteeing worker voice in the workplace or in the boardroom, we did have a substantial body of law that went beyond the principle that the only purpose of labour law was to facilitate the orderly conduct of collective bargaining. Social and political pressure meant that the case for individual employment rights could not be resisted.

The trend was reinforced 1980s in a rather different way - with increasing legal constraints imposed on unions (both by statute or by judicial intervention) while individual rights were eroded. Academic lawyers have a rather ugly word for this process - juridification. The conclusion I would draw is that the UK's system is now a somewhat fragile hybrid - a rather uneasy compromise between voluntary collective bargaining, statutory intervention and individual rights. One might think about this using a rather different analogy - what was a sturdy old ship of voluntarism has been slowed down by the accretions of the last thirty-five years. The question faced by policy makers is whether we take the vessel back to port for a full refit, using the basic structure but supplementing it with modern design and materials - or recognise that our favourite ship has reached the end of its useful life, it should be scrapped and that we should climb aboard a rather different craft.

In my view the UK has a choice. Either we build on the foundations of collective bargaining and regulate flexibly through collective agreements, building on a platform of statutory standards. Or we accept entirely that rights depend on law and enforcement depends on legal action. My message to the CBI and the government is straightforward - you can either have more negotiation or more litigation. My strong preference, and this will not surprise you, is to develop a model of statutory standards, flexibly implemented through worker voice institutions.

Let me turn now to my second argument - that in some areas the intervention of the EU has built on national initiatives. This is of particular importance in the field of gender equality. Take equal pay for example. Were it not for the intervention of the European Court of Justice, the UK would still be labouring under the Equal Pay Act's definition of 'like work'. Equal pay for work of equal value is a concept derived entirely from European law - even though it was embraced in 1983 with something less than wholesale enthusiasm by the Conservative government. The introduction of the Equal Value Regulations did not go well, as Alan Clark, the Employment Minister at the time, recalled later in his Diary: 'As I started the sheer odiousness of the text sank

in. The purpose of the Order, to make it more likely.....that women should be paid the same rate for the same task, as men, was unchallengeable.....But give a civil servant a good case and he'll wreck it with clichés, bad punctuation, double negatives and convoluted apology.

Stir into this a directive from the European Community, some contrived legal precedent and a few caveats from the European Court of Justice and you have a text which is impossible to read - never mind read out'. (I would add, especially after having been to a wine testing!) After much confusion, calls of withdraw and accusations of drunkenness the Regulations were approved. Such was the rather inglorious inception of a new departure in equal pay - although the careers of both Alan Clark and Clare Short proceeded unaffected by their exchange. Many British women have of course seen their pay rise as a result of these regulations despite the inauspicious start. I should also record at this point that most of the advances for part-time workers in the UK have been driven either by the EU directive or by decisions of the ECJ interpreting the equal treatment provisions of the Treaty.

I am confident that progress would eventually have been made at national level in the absence of EU intervention - simply because the political demands of women could no longer be ignored. But progress has been much faster than would otherwise have been the case and it is almost inconceivable that anything could have been achieved during the long period of Conservative government. My assessment then is that on gender equality the EU has accelerated the pace of change but not fundamentally changed the direction.

But turning to my third argument, there is one area where the intervention of the EU has been and will continue to prove transformational - the field of information and consultation. There are three directives that currently provide for I&C which have been implemented in the UK - the Collective Redundancies Directive 1975, the Acquired Rights Directive 1977 and the European Works Councils Directive 1994. And, most importantly, the government is now under an obligation to transpose the 2001 Directive on Information and Consultation in national scale enterprises.

Initially, as I am sure you will all remember, until the judgement of the ECJ in 1994 the I&C rights in the first two cases only applied where trade unions were recognised for collective bargaining. The European Commission took the view that this was an inadequate transposition of the Directives and initiated legal action in 1992 having failed to receive an adequate response to their reasoned opinion from the UK government. The decision of the Court was very explicit. The rights to I&C were universal rights, unconditionally guaranteed by Community law. Member states were not able to impede the exercise of these rights or limit the situations in which they might be exercised. By stating that only recognised unions could exercise the rights to I&C, the UK government prevented workers from being informed and consulted in all workplaces where the employer refused to recognise a union. At the time the full significance of the decision was not well understood - but in essence the ECJ had sounded the death-knell of the single channel as the exclusive means of representing British workers. From a union perspective this might be thought of as a double-edged sword. But the revised redundancy and transfer regulations continue to protect the single channel where unions are recognised - non-union arrangements can only be put in place where there is either no mechanism for collective worker voice at all or no collective agreement applicable to the workplace.

I believe that this establishes an important principle for the implementation of the I&C Directive itself. Where unions are recognised and arrangements are working well there is no need to establish parallel machinery. But, and this is the critical issue, it is also important to understand that this is an instrument about collective voice, exercised through duly-elected representatives of the workforce. Some may wonder that it is even necessary for me to make the point since it is

self-evident that this is what the directive is about. Unfortunately my understanding is not shared by British employers. Leaving aside their rhetoric about the raging torrent of regulation, the CBI have argued that the directive requires nothing more than this: an employer faced with a demand from a group of workers for I&C need do no more than organise a ballot to ratify existing communication arrangements - quality circles, team meetings and the like - and if a majority of employees indicate their consent then that is the end of the matter. Without wishing to dwell on the detail of the Directive, the CBI argue that this approach is sufficient to constitute a 'freely negotiated' agreement modifying the application of the Directive to an undertaking. This is an interpretation of the process of negotiation with which I am unfamiliar. Negotiation requires two parties, parties who can present proposals and counter proposals to each other and who can reach an understanding. And this is at the heart of the problem. The CBI want to ignore the power relationships at the heart of the world of work. For example, they claim not to recognise the following as an accurate characterisation at all:

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

You do not need to be a Marxist to believe that. The words are Kahn Freund's - and he was nothing if not an orthodox social democrat - and they are as accurate a description of the employment relationship today as they were in 1972. Perhaps, as Roy Hattersley once suggested for the Prime Minister, I can prescribe my employer colleagues a good reading list - and some visits to Britain's less happy workplaces.

It would be helpful if employers could acknowledge that the UK has a problem that the I&C Directive might help to address. We know from WERS 1998 that fewer than a fifth of employees reported frequent consultation about workplace change. Only eight per cent of employees thought they were properly informed and consulted about redundancies and on pay the figure was only five per cent. Equally, we know that there is significant support for extending collective voice. A recent TUC survey suggested that almost two-thirds of employees in non-union workplaces favoured some form of collective consultation with seventy-seven per cent of non-members favouring legislation that requires management to meet with employees or their representatives. This is a popular policy for which there is a huge appetite in the world of work.

There is another dimension to the Directive that I believe will prove even more important. Since I became the General Secretary of the TUC I have argued for radical change in British industrial relations - a decisive shift in workplace cultures towards a mutual gains or partnership model. So far progress has been patchy - islands of partnership excellence in an ocean of mediocrity. But an intelligent use of the I&C Directive could provide the leverage needed to change employer (and trade union) behaviour. The directive demands that the parties 'work in a spirit of co-operation'. It imposes obligations on employers to offer far more information about strategic decisions and submits the process of workplace change to co-determination. I&C on decisions likely to lead to significant changes in work organisation or contractual relations must be 'with a view to reaching an agreement'. Essentially all aspects of workplace change are back on the agenda - and this can only be seen as a major advance for people at work today.

I would draw one further aspect of the Directive to your attention which may break a new path for further exploration in the future. Even though I have criticised the CBI's approach to 'flexibility' in implementing this Directive, it certainly does not require a 'one size fits all' model. There is ample scope for employers and workers representatives - whether union reps or not - to negotiate agreements that define the practical arrangements for information and consultation.

How many representatives? What kind of structure? When should consultation take place? At what level of management and representation? How do these I&C systems relate to arrangements for individual employee involvement? What are the responsibilities of the parties? How should questions of confidentiality be handled? These are all matters that may be defined by agreement. No prescription. No German-style co-determination. No specified works council structure. There is more than enough flexibility here for any reasonable employer and the Directive provides safeguards for workers - a framework in which negotiation must take place. Employers who refuse to accept this argument should be honest and say that they are opposed to the principles of I&C. They should make clear that in the absence of unconstrained prerogatives they cannot manage - which is a rather damning indictment of their own capabilities. They should be explicit and say that yes, the employment relationship is about subordination and control and the state has no legitimate role in changing this unequal balance of power. I suspect that such employers would find it hard to recruit anybody not desperate to work for them.

This brings me to my fourth argument: that all labour markets depend for their legitimacy on some form of regulation. I have already touched on this in my comments about power relationships. All systems of industrial relations, one way or another, must embrace notions of fairness and citizenship otherwise the fabric of capitalism is under threat. The labour market, left to itself, will lead to the exploitation of the weak by the strong, to concentrations of unaccountable power, to outcomes that undermine the values of a democratic society. In other words, a degree of regulation is essential to save the market from itself. The broad philosophical point has been well expressed by Joseph Stiglitz, Nobel Prize Winner and former Chief Economist at the World Bank:

‘We care about the kind of society we live in. We believe in democracy. Democratic processes must entail open dialogue and broadly active civic engagement, and require that individuals have a voice in the decisions that affect them, including economic decisions....Economic democracy is an essential part of a democratic society’.

Systems can give effect to these values well or badly. Some countries may over-regulate, others may allow rather too much scope for the free play of market forces. Some may leave the social partners to make their own arrangements. Some will regulate through comprehensive labour codes and legal guarantees of co-determination. Others (the most obvious example being the USA) will regulate the organised sector of the economy but leave the rest to litigation on the contract of employment and other forms of civil liability - hence the desire of the Republican Party in the USA to secure 'tort reform' which will reduce business exposure to legal action from aggrieved ex-employees and consumers.

I suggest that a failure to provide an adequate degree of economic democracy, of collective voice, will always manifest itself somewhere in the labour market. Take for example the increase in employment tribunal claims. There is a clear correlation between the decline in the coverage of collective bargaining in the private sector and the increase in litigation on individual employment rights. Employers seem to have forgotten that unions exist to resolve disputes - not to promote them. That strain of anti-unionism, that almost atavistic fear of collective action, is blinding too many British employers to that very simple fact that collective bargaining is a collective good for workers, their unions and employers. We used to understand this principle very well. Indeed, British trade unionism exported the notion across the world - and it is reflected in many of the conventions of the International Labour Organisation. It is still well understood in Denmark where the labour market is regulated almost exclusively by collective agreement - voluntarism that works! And in the Netherlands, where agreements between the social partners often prefigure legislative change.

My plea then is that we begin to learn this lesson once again in the UK. A good test will be the likely revision to the Working Time Directive later this year that will - barring a catastrophe - introduce a genuine ceiling of 48 hours on the average working week. This is a great opportunity for unions and employers to work together to solve a shared problem - a reliance on excessive overtime whether paid or unpaid. It creates an opportunity for a serious discussion about improving productivity, boosting skills, better job design - all those things that are needed to make Britain a more prosperous nation. But what we also need is a clear signal from government. A clear signal about the importance of collective voice, about the need for negotiated flexibility in a framework of minimum statutory standards.

There is no harm in having a hybrid system of industrial relations, but the uneasy compromise we have today is unstable. Let's learn from the best of our European partners and let the government accept that collective bargaining is a collective good for them too. Collective bargaining has been in retreat in the UK for too long and despite the so far excellent results of the trade union recognition law, it remains so. There was a crisis of confidence in it, a sense that it institutionalises conflict and promotes adversarial behaviour. In my time at the TUC, I saw many employers lose faith in it and, in response, unions turn to legal routes. Yet now we are seeing the limits of the law, not at least its huge costs, and I believe that the time is ripe for a new drive to rediscover the virtues of collective bargaining - bargaining about opportunity and trade off, bargaining to get rid of unsatisfactory status quos, bargaining for mutual success.

The talks on information and consultation provide an initial means for doing this. But more will be required. A government which is pro-active in building a better, more equal system of industrial relations - not just maintaining the balance but energetically committed to the spread of collective bargaining. Next it will need employers with the vision to recognise that collective bargaining at its best can be an excellent means of establishing high morale workplaces and also that it is not 'wimpish' to act in concert with other employers at sectoral or regional level on those issues which employers have in common. Pat Lowry upheld this principle very well as Chairman of the joint machinery in engineering construction.

And finally, it needs unions who do not see collective bargaining as an opportunity to find something to have a dispute about, to show that the union is a fighting organisation who at most do truces with employers in a continuing class war. We can do much better than that as the partnership agreements so clearly demonstrate. And indeed if collective bargaining is to prosper, we can hardly expect the co-operation of employers or Government if heightening conflict is to be at the heart of what we do and how we act.

So a simple agenda for the future - reinvent collective bargaining - and do it together.