Linda Dickens and Alan C. Neal (eds)

The Changing Institutional Face of British Employment Relations

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Studies in Employment and Social Policy

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Edited by
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A C.I.P. catalogue record for this book is available from the Library of Congress.

ISBN 90 411 2541 8

Published by:
Kluwer Law International
P.O. Box 316
2400 AH Alphen aan den Rijn
The Netherlands

Sold and distributed in North, Central and South America by:
Aspen Publishers, Inc.
7201 McKinney Circle
Frederick, MD 21704
USA

Sold and distributed in all other countries by:
Turpin Distribution Services Ltd
Stratton Business Park
Pegasus Drive
Biggleswade
Bedfordshire SG18 8TQ
United Kingdom

Printed on acid-free paper

Printed in the Netherlands

The Changing Institutional Face of British Employment Relations

Studies in Employment and Social Policy

In the series Studies in Employment and Social Policy this book *The Changing Institutional Face of British Employment Realtions*, is the thirty-first title.

The titles published in this series are listed at the end of this volume.

This volume is dedicated to Jon Clark
1st June 1949 – 21st October 2005

PREFACE

This volume has been prepared to mark thirty years of Acas activity at the heart of British employment relations.

The idea was conceived during the course of discussions between Alan Neal and John Taylor, while working together in Beijing on a technical assistance project to develop a Labour Arbitration Court for China. Thereafter, the book gradually took shape under the guiding hand and editorship of Linda Dickens, in collaboration with Alan Neal, at the University of Warwick.

The editors wanted to provide a contemporary picture of the institutional landscape of British employment relations. Much of the available literature (which, in any event, covered only some of the relevant institutions) was significantly out of date. We felt that public policy debate, as well as researchers, students and other readers, would benefit from a comprehensive, expert presentation of the current 'state of play', along with a discussion of developments and current challenges

The invited contributors to the volume are a mixture of highly regarded academics and senior practitioners, notably those most closely associated with particular institutions. The academic/practitioner distinction is a blurred one, however. Some authors have been both at different times; many of the academics involved in the project also have experience in practitioner/institutional roles, and the 'non-academics' are what are sometimes termed 'reflective practitioners'. We felt that this combination would provide a valuable mix of expert independent discussion with additional personal insights gained from direct involvement with the operation of various bodies. We hope that, as a result, the book will be of interest not only in terms of the substantive topics covered, but also as regards what those writing about them have to say. To this end, the editors have refrained from intrusion into authors' personal contributions and views.

Invitations to contribute were taken up enthusiastically, and we are grateful to the contributors for giving up valuable time to meet and discuss their areas and approaches, and to develop their contributions within our general framework.

The volume is dedicated to Professor Jon Clark who, as both an academic observer and active participant, contributed much to some of the institutions included here, and to our critical understanding of them.

The final presentation (unless otherwise indicated) reflects the institutional face of British employment relations as of 1st January 2006.

Linda Dickens
Alan C. Neal

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CHANGING TIMES, CHANGING NEEDS

Institutional Development Through Three Decades

INTRODUCTION

The catalyst for this volume is the 30th anniversary of the Advisory Conciliation and Arbitration Service (Acas). Acas shares its birth decade with a number of other institutions featured in this collection. This introductory chapter, which draws, in part, on previous work published by the authors (including Neal 2000; 2004, and, particularly, Dickens 2002; Dickens & Hall 1995, and 2003), considers political, employment relations and legislative developments over the past three decades as a context and institutional map for the contributions which follow. This is no easy task, given the dramatic changes and volatility of trends of that period.

These changes include: the end of 'voluntarism' and increasing juridification of the employment relationship; greater supra-national influence on British legislative policy; considerable decline of union membership and strength; the 'withering away' of strike action; the decentralisation and shrinking coverage of collective bargaining; political differences on how best to manage the British economy in the face of increasing global competition; shifts in the structure and composition of the labour force with, among other features, increased feminisation, more 'non-standard' workers, a growth in the service sector and decline in manufacturing, and restructuring of the public sector. Some of these macro-changes are reflected in the changes which have taken place in Acas as an institution which survived three turbulent decades. Elsewhere in the landscape are ruins or fragments of institutions past. Those which do survive – rather like British pubs – generally have undergone re-modelling, conversion and extensions, and changes in use or emphasis. The sign outside may appear familiar, but a look inside can reveal major transformations.

This book provides a look inside key institutions in British employment relations. Contributors locate their institution(s) in terms of its purpose, origins, and context; discuss its structure, governance and composition, and assess its operation, considering current challenges and future direction. In so doing, they illuminate various issues relating to institutional choice and role which are outlined later in this chapter.

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The Inheritance of Voluntarism

To understand the changes in the last thirty years, we need to start a little earlier. In Britain, for most of the twentieth Century, the regulation of the employment relationship by means of collective bargaining between employers and unions (and, where absent, by employers acting unilaterally) was far more important than legal regulation through Acts of Parliament. In turn this system of self-regulation was largely free of State control. 'Voluntarism' (or, to use Kahn-Freund's phrase 'collective laissez-faire'), as this approach is termed, was supported by both sides of industry. Unions saw the main role of legislation as preventing hostile intervention by the courts in industrial disputes. Employers were keen to avoid legislation that constrained their freedom to manage. Looking at it from the point of view of the State, 'one might say the State had delegated the task of ordering working life to the social institutions created by employers and workers, whilst according those social institutions a very substantial degree of freedom of action' (Davies & Freedland 1993:10).

Voluntarism was not only about a minimal role for legal regulation permitting the free play of collective forces. It also encompassed the extension and support of regulation provided through collective bargaining between organised labour and employers and their associations. Nor did it imply the complete absence of statutory intervention. Legislation was necessary in the late nineteenth and early twentieth Centuries to legalise trade union activity; a number of auxiliary measures were introduced (e.g. the provision of dispute settlement services by the Ministry of Labour), and regulatory measures were enacted governing the terms and conditions of employment for certain groups, notably those not covered by collective bargaining – as in the Wages Council industries (see Chapter 6). There were also health and safety laws (Factory Acts) covering various occupations and industries. Nevertheless, set alongside other industrialised countries, a crucial and distinguishing characteristic of British employment law from 1870 to the 1960s was its limited role. What formal regulation there was, assumed the desirability of voluntary collective regulation.

In such a context, the main institutions of employment relations were the so-termed 'institutions of collective bargaining': trade unions and employers and their associations, with auxillary support from the State. These institutions were lightly regulated, if at all. Thus, for example, trade unions were regulated through the constitutions established in their own rule books rather than by more interventionist legal regulation, despite the existence of a Registrar of Friendly Societies, a forerunner to the Certification Officer (see Chapter 8). Collective bargaining arrangements involving national or industry level agreements created other institutions – such as Joint Industrial Councils or National Joint Committees, which could be standing bodies with their own secretariats. The bulk of the *Industrial Relations Handbook,* produced by Acas in 1980, is given over to a description of such collective bargaining arrangements and institutions, many of which were soon to disappear, along with a number of the unions and associations of employers involved in them. Today, reading through the institutions, is rather like reading the names on a war memorial.

Institutional Growth and Juridification in the 1960s and 1970s

Signs of a shift to greater legal regulation emerged in the 1960s with the introduction of minimum periods of notice of termination of employment and written particulars of terms and conditions of employment, and redundancy compensation to be paid to workers losing their jobs for economic reasons. These statutory rights produced new jurisdictions for the fledging Industrial Tribunals, originally set up to hear appeals about the imposition of training levies. From such beginnings has grown the (re-named in 1996) Employment Tribunal system (explored in Chapters 10, 11 and 12).

The Royal Commission on Trade Unions and Employers' Associations (the Donovan Commission) was established in 1965 partially in response to growing pressure for the greater legal regulation of industrial relations, particularly strikes – seen as a major problem. Its Report (Donovan 1968:47) however argued against 'destroying the British tradition of keeping industrial relations out of the courts'. The remit of the Commission on Industrial Relations (CIR), set up in 1969 in keeping with a recommendation of the Donovan Commission, was in the voluntary tradition, including the promotion (and reform) of collective bargaining and inquiring into and advising on the state of industrial relations. The political climate within which the CIR began its work, however, was changing significantly, and it operated only a few years on a voluntary basis, with the power, among other things, to hear recognition disputes and make recommendations for their settlement, before becoming part of the statutory arrangements of the Industrial Relations Act 1971. It disappeared in 1974 when Acas was created.

Despite Donovan, both the Labour government's 1969 white paper *In Place of Strife* and the subsequent Conservative government's Industrial Relations Act 1971 accorded a central role to legal intervention in the reform of industrial relations. The 1971 Act, in particular, represented an ambitious attempt at the comprehensive legal regulation of industrial relations, with a National Industrial Relations Court (NIRC) (Weekes *et al* 1975). However, this controversial legislation was given little chance to operate as the drafters envisaged. Its operation depended to a large extent on union registration (see Chapter 8), but most unions opposed this, and the Act had little impact on day-to-day industrial relations in most workplaces before its repeal in 1974. Only its statutory protections against unfair dismissal, originally proposed by the Donovan Commission, were re-enacted. Appeals from tribunals in such cases, which had been heard by the NIRC, were soon entrusted to a new body, the Employment Appeal Tribunal (see Chapter 12) as the NIRC, discredited by association with the Industrial Relations Act, was abolished.

By the time of our starting point of the mid-1970s, there was a return to a modified, supplemented form of voluntarism under the Labour governments of 1974-1979. The traditional framework for immunities for industrial action was reinstated and various auxiliary measures to support collective bargaining were enacted. A mass of piecemeal legislation in the Factory Acts gave way to a more comprehensive system following the Robens Report which led to the Health and Safety at Work Act 1974. This set up the Health and Safety Commission (HSC), emphasising self-regulation within a framework of State inspection and enforcement (see Chapter 4). Equal pay and anti-discrimination

legislation covering sex and race was enacted, requiring new institutions – the Equality Commissions (discussed in Chapter 9).

The Employment Protection Act 1975 restructured much of the institutional framework of the industrial relations and employment law system, providing a statutory basis for the activities of Acas (see Chapter 3), which took over dispute settlement functions from the government, and a role in statutory recognition from the CIR; and for the Central Arbitration Committee (CAC) which superseded the inappropriately named Industrial Court (primarily an arbitration body and briefly renamed the Industrial Arbitration Board) to carry out statutory functions, including generalising collectively agreed terms of employment (see Chapter 7). It also introduced important new individual employment rights and strengthened others as the previous gap-filling role of the law gave way to a more 'universal floor of rights'. Although core areas of the employment relationship remained untouched, still resting on regulation by collective bargaining where it existed, there was a clear move towards the increasing juridification of the individual employment relationship.

Institutions established in the 1970s (under both Labour and Conservative governments) such as Acas, HSC, and the Manpower Services Commission (see chapter 5) sought to involve the social partners (as we would now term employers and trade unions) in the tripartite, co-operative administration of labour market and employment relations issues. In this they echoed the National Economic Development Council (NEDC) set up by a Conservative government in 1961: a 'corporatist' institution seeking to integrate business and trade union peak organisations into the conduct of economic policy (Crouch 2003). Acas, HSC and MSC performed roles previously within the remit of the Department of Employment, a development which both reflected and affected the development of that institution (Freedland 1992; and see below, Chapter 2). Developments at this time – notably, perhaps, the setting up of the Bullock Committee of Inquiry on Industrial Democracy in 1977 to report on how trade union representation on company boards might be achieved – were unthinkable less than a decade later.

1979 – 1997 AND THE RUPTURE WITH THE PAST

A major break with the past came with the employment law, economic and institutional reforms introduced by Conservative governments under Prime Ministers Thatcher and Major between 1979 and 1997. The long-standing public policy view that joint regulation of the employment relationship through collective bargaining was the best method of conducting industrial relations was accepted no longer. The change of Acas' terms of reference symbolised the shift away from the ethos of collectivism. It was no longer charged with 'the general duty of promoting the improvement of industrial relations, and in particular encouraging the extension of collective bargaining and the development and, where necessary, reform of collective bargaining machinery'.

Law was used to curb union strength, reduce collective bargaining (but not to replace it with legal protection) and to restrict industrial action. Reforms introduced on an incremental basis curtailed the scope of individual legal rights; enhanced employer freedom of action and reduced union autonomy. In pursuit of this last objective, the

government departed from its general preference for minimising the scope of legal regulation and even set up a new institution – the Commissioner for the Rights of Trade Union Members (see Chapter 8), the sparse use of which before its abolition in 1999 indicated it had more symbolic than practical value.

The post-1979 legislative agenda was strongly influenced by the Conservative government's neo-liberal economic and social objectives, with statute law being utilised as a key instrument facilitating labour market restructuring. Neo-liberalism emerged as the political response to the problems of collective bargaining under full employment (wage militancy, inflation and poor adaptation to change), especially where they were exacerbated by growing international competition (Ludlam *et al* 2003).

Keynesian demand management became increasingly incapable of coping with the inflationary tendencies of the world economy during the 1970s, and co-ordination of the labour market through neo-corporatism did not appear to offer a solution. Post second world war attempts to tackle recurrent periods of inflation through incomes policy, whether statutory or voluntary, had produced at best wage restraint for only relatively short periods and institutions had come and gone. Among them was the National Board for Prices and Incomes established in 1964, given statutory status in 1966 and abolished by the incoming Conservative government in 1970 who then set up a Pay Board and a Price Commission. The former was abolished when Labour returned to power in 1974 with its 'Social Contract' understanding with the trade unions whereby the TUC would co-operate in tackling the economic problems, including through wage restraint, in return for a wide programme of measures in industrial relations (including supportive legislation outlined above) and in other social and economic spheres. It ended with the 1978/79 'Winter of discontent' and the election of a radical Conservative administration.

Institutions which had been set up as part of the previous approach (notably a Standing Commission on Pay Comparability) were no longer required after 1979. Institutional arrangements seen as underpinning institutionalised structured collective bargaining and/or imposing rigidities on the operation of the free market (such as Wages Councils) were eroded or ended. Widespread use had been made of voluntary unilateral arbitration arrangements in the public sector following its massive expansion from the 1940s, but most such arrangements were disposed of by the Conservative government on grounds they were inflationary. The public sector was restructured through privatisation and compulsory competitive tendering; determination of the pay and conditions of certain public sector groups was removed from collective bargaining as normally understood and entrusted to Pay Review Bodies, which provide for 'bargaining' at arm's length or one remove (Burchell 2000:147). Also ended was the United Kingdom's adherence to certain international conventions (e.g. ILO Convention No. 94) which stood in the way of dismantling multi-employer collective bargaining.

Collective bargaining in the private sector was increasingly conducted at a decentralised, company or workplace level where it took place at all. In the 1970s, around 80% of employees were covered by collective bargaining for wage fixing, and for over half of them the principal level was multi-employer (industry level) bargaining. By 1998, collective bargaining coverage had slumped to around 40% of the workforce, only 14% of which was multi-employer (Brown *et al* 2003).

Monetarist economic policies cast unions as an obstacle rather than potential partner of the State in economic management. Neo-liberalism involved a rejection of corporatism in principle, and of limited experiments with forms of tripartism in practice such as the NEDC, abolished in 1992. Industrial Training Boards were dismantled; the union role within the MSC was reduced in 1987, and the Commission itself abolished in 1989 (see Chapter 5). Many so-called 'quangos' faced extermination or were put on meager rations with budgets repeatedly cut in real terms. A low profile and caution were the price some paid for survival.

The deregulation and de-rigidification of the United Kingdom labour market during this period conflicted with the approach being taken at European level. Particularly from the 1980s on, legal intervention in the employment relationship has reflected not only national concerns but also the increased supra-national influence of the European Economic Community (later to become the European Union) which the United Kingdom joined in 1973. European legal instruments (usually, in the form of legally binding Directives) were used as a way of addressing disparities between levels and costs of employment protection legislation in different Member States, and as part of the social dimension of the single European market. The unions, frozen out at home, saw the European Community as a source of assistance: providing a competing model, a source of minimum labour standards, and an opportunity to engage in social dialogue. This pro-Europe union stance was a marked reversal from their previous hostility. The Conservative government, meanwhile, was moving in the opposite direction, becoming increasingly hostile to the social dimension of the European Community.

Post 1997 – New Labour

By the time a Labour government was returned to office in 1997, the debate within the Labour party had switched from whether the law should play a role in British industrial relations to what role it should play. Under the Labour government, re-elected in 2001 and 2005, the trend toward the legislative regulation of industrial relations and the juridification of the employment relationship continued. There are some clear differences in approach, but also underlying continuities with the preceding period.

The Labour government retained large parts of the Conservatives' industrial relations legislation, notably restrictions on industrial action and the control of internal union affairs, while in other areas, such as minimum wages to tackle low pay, there was new statutory intervention, as called for by both the Labour Party and the TUC. Unions had learned to live with the law and, at a time of greatly reduced membership density after the neo-liberal onslaught, came to see it as a potential source of support and renewal. The peak union density of 56% in 1979 was followed by the longest period of continuous annual union membership decline since records began in 1892 (Waddington 2003:219). By 1997, unions organised only 3 in 10 of the British labour force, and union recognition became predominantly a public sector phenomenon (Cully *et al* 1999:93). Applications to Employment Tribunals, rather than strikes, emerged as a measure of 'workplace well being' (Cully *et al* 1999), and it is no mere co-incidence that the rise in the number of