

AIDLASS, Bologna, 16-17 May 2013

Struggling to Survive: Labour Law in Recessionary Britain

Professor Alan C. Neal

THE UNIVERSITY OF
WARWICK

A Labour Market in Recession: Evaluating an Apparent Paradox

THE UNIVERSITY OF
WARWICK

A Labour Market in Recession: Evaluating an Apparent Paradox

“Classic” indicators of recessionary impact:

- Public Sector job losses, wage freezes, and attempts to limit pension benefits
- Broader contraction in provision of public services

WARWICK

**A Labour Market in Recession:
Evaluating an Apparent Paradox**

But displaying “unexpected” features:

- Strong Private Sector job creation
- Rising level of active labour force
- Absence of “dramatic” rise in levels of unemployment

WARWICK

**A Labour Market in Recession:
Evaluating an Apparent Paradox**

In particular:

- Falling Youth Unemployment
- Falling Long-term Unemployment

WARWICK

**A Labour Market in Recession:
Evaluating an Apparent Paradox**

Combined with:

- Low trade union membership density (particularly in the private sector)
- Diminishing level of days lost through strikes (almost entirely occurring in the public sector)

WARWICK

Dancing on the “Floor of Rights”

THE UNIVERSITY OF
WARWICK

Dancing on the “Floor of Rights”

In the half century since “Donovan”
analysed the United Kingdom position:

- Retreat from “voluntarism”
- Rise of “normative regulation” through
“Labour Law”

WARWICK

Dancing on the “Floor of Rights”

Collective Labour Law:

- Statutory support for TU “Recognition”
- Withdrawal of explicit promotion of “free
collective bargaining”
- Limits placed on “right / freedom to strike”

WARWICK

Dancing on the “Floor of Rights”

Individual Labour Law:

- Development of individual rights (such as “unfair dismissal”; protection of wages; health and safety protection; and a variety of “anti-discrimination” measures)

WARWICK

Dancing on the “Floor of Rights”

Individual Labour Law:

- Inspired by established domestic (UK) contract-based and other rights
- Derived from EU-inspired regulation
- Conformity with “human rights” (ECHR)

WARWICK

Dancing on the “Floor of Rights”

Labour Law: Effective Enforcement?:

- Access to industrial justice (ACAS)
- Access to “juridified” justice (Employment Tribunals & Employment Appeal Tribunal)
- Access to administrative and penal justice

WARWICK

Re-laying the “Floor of Rights”

THE UNIVERSITY OF
WARWICK

Re-laying the “Floor of Rights”

Only limited evidence of “dismantling” the established “floor of rights”

However, evidence of a combination of “undermining trends” impacting upon the ability to resort to effective Labour Law protection

WARWICK

Re-laying the “Floor of Rights”

1. An on-going structural attack on “tripartism” and tripartite bodies
2. Some limited examples of a “lowering” of the floor of rights
3. Various initiatives effectively limiting access to industrial justice

WARWICK

Re-laying the “Floor of Rights”: A Structural Attack on “Tripartism”

- Roots of this trend may be traced back to a position adopted by the TUC in 1982
- Transformation of formerly tripartite bodies (training, health & safety) to reflect more explicitly “the interests of business”
- Removing explicit CBI / TUC influence in appointments to Employment Tribunals

WARWICK

Re-laying the “Floor of Rights”: A Structural Attack on “Tripartism”

- A variety of (mainly Treasury-inspired) proposals to limit the role of “lay” members in Employment Tribunals
- Increasing allocation of tribunal cases before an Employment Judge sitting alone
- Now “normal” for cases to be heard by a Judge alone (both in ETs and in the EAT)

WARWICK

Re-laying the “Floor of Rights”: A Structural Attack on “Tripartism”

Place this “attack on Tripartism” in a broader international context:

- ILO employer side position adopted at the 2012 International Labour Conference
- ILO evaluation of Greece in the wake of “conditionality” imposed by the “troika”

WARWICK

**Re-laying the “Floor of Rights”:
Lowering the Level of Rights**

Direct legislative intervention:

- Thresholds for consultation prior to implementing “collective dismissals”
- Limiting the scope of “whistle-blowing” protection
- Extending “qualifying periods” for rights

WARWICK

**Re-laying the “Floor of Rights”:
One “Against the Tide”**

Extending the scope of the “floor of rights”:

- Protection in relation to political opinion or political affiliation
- Extending “anti-discrimination” protection to the protected characteristic of “caste”

WARWICK

- **Re-laying the “Floor of Rights”:
Limiting Access to Justice**

Existing “obstacles” in the way of access to judicial dispute resolution:

- Deterrent “deposit orders”
- Powers to “strike out” claims
- Costs awards by way of “penalties”

WARWICK

- **Re-laying the “Floor of Rights”:
Limiting Access to Justice**

New (2013) “obstacles” limiting access to judicial dispute resolution:

- Charging fees for claimants to make claims to Employment Tribunals
- Charging additional fees to enable claims to be heard by Employment Tribunals

WARWICK

- **Re-laying the “Floor of Rights”:
Limiting Access to Justice**

New (2013) “obstacles” limiting access to judicial dispute resolution:

- Introduction of “pre-claim conciliation” (through ACAS) before a claim can be presented to an Employment Tribunal
- Revised Tribunal “Rules of Procedure”

WARWICK

**Key Drivers for Labour Law in
Recessionary Britain**

THE UNIVERSITY OF
WARWICK

**Key Drivers in Recessionary
British Labour Law: Political**

- **Discrediting of Labour Government economic management competence**
- **Inability of any single political party to achieve a majority in the 2010 General Election**
- **Marginalisation of trade union voice**

WARWICK

**Key Drivers in Recessionary
British Labour Law: Political**

- **Coalition Government – passivity in the face of “the voice of business”**
- **The dominance of “opinion-based” justifications for policy interventions**
- **Unchallenged antagonism to notions of “social rights” and “human rights”**

WARWICK

**Key Drivers in Recessionary
British Labour Law: Disputes**

- **Absence of an effective “employee voice” through trade union and collective bargaining mechanisms**
- **Limited role of ACAS**
- **Increasingly narrow scope for “formal dispute resolution”**

WARWICK

**Key Issues for Labour Law in
Recessionary Britain**

THE UNIVERSITY OF
WARWICK

**Key Issues in Recessionary
British Labour Law**

Is there any identifiable “strategy” or
policy for the modernisation and
reform of British Labour Law?

Are we simply witnessing *ad hoc*
“reactions” to situations perceived as
standing in the way of “growth”?

WARWICK

**Key Issues in Recessionary
British Labour Law**

For how long will “the voice of
business” hold sway, before some
form of reaction sets in?

What lessons should be drawn in
respect of traditional (particularly trade
union) channels for “employee voice”

WARWICK

**Key Issues in Recessional
British Labour Law**

What result will flow from the continuing restriction of access to dispute resolution mechanisms for dissatisfied employees?

Might we see “new forms of protest” in the absence of any “safety valve”?



**Key Issues in Recessional
British Labour Law**

Has there truly been a sustainable shift in the balance of power in the wake of the financial crisis and recession?

What role is there for Labour Law in establishing a “new balance” to ensure stable future industrial relationships?



AIDLASS, Bologna, 16-17 May 2013

**Struggling to Survive: Labour
Law in Recessional Britain**

Professor Alan C. Neal


