

# Britain and the European Social Model: Capitalism Against Capitalism?

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## Abstract

It is common to argue that 'Anglo-Saxon' capitalism differs fundamentally from that of continental Europe, and that this contrast results in incompatible systems of industrial relations. This paper outlines some of the key arguments which suggest that Britain and the rest of Europe – or at least, continental western Europe – represent incompatible varieties of capitalism, and explores this further by considering some of the meanings of that elusive concept, the 'European social model'.

The paper looks at the complex interconnection between economic integration and social (or labour market) regulation within the EU. It goes on to examine how European regulation has contributed to the transformation of British industrial relations which has occurred over almost four decades of British membership. Finally the paper indicates some possible influences in the reverse direction, leading to the question whether Britain is now spearheading the transformation of continental Europe into an Anglo-Saxon variant of capitalism.

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### Introduction

In 1969 – the year the IES was created – Charles de Gaulle resigned as President of France after his proposals for constitutional amendments were defeated in a referendum. De Gaulle had vetoed the first two British applications, made by the Macmillan and Wilson governments in 1961 and 1967, for accession to the (then) European Economic Community (EEC) or Common Market. His successor, Georges Pompidou, indicated his willingness to accept enlargement of the EEC from the six signatories of the original Treaty of Rome in 1957, paving the way for the third UK application under the Heath government and accession in January 1973.

Britain's relationship with what is now known as the European Union (EU) has always been regarded as uneasy. The UK did not participate in the construction of the EEC in 1957, partly because governments saw membership as a threat to national autonomy; instead it took the lead in creating the much weaker European Free Trade Area (EFTA) in 1960, providing the first two secretaries-general. However there was a change of mind when the EEC appeared a success; in consequence the UK applied to join a club whose rules had already been defined – most notably, perhaps, in the Common Agricultural Policy which consumed the bulk of the limited central budget. And for much of the period of its membership, Britain has been regarded as the 'awkward partner' (George 1990), acting as a brake on further integration, particularly in the social and political sphere.

The tensions became particularly clear following the election of Margaret Thatcher as prime minister in 1979. In marked contrast to her predecessor as Conservative leader, Edward Heath, she was suspicious of all attempts to strengthen the regulatory competence of the European level at the expense of national sovereignty, and particularly of the idea of European intervention in the labour market which might reverse the deregulatory efforts of her own government. 'We haven't worked all these years to free Britain from the paralysis of Socialism only to see it creep in through the back door of central control and bureaucracy from Brussels,' she insisted at her party conference in 1988. The UK government refused to sign the (non-binding) 'social charter' of 1989, insisted (under Thatcher's successor John Major) on an opt-out from the social chapter of the 1991 Maastricht Treaty and refused to participate in economic and monetary union (EMU). Though the government of Tony Blair reversed both opt-outs, he equivocated on entry to the euro and resisted much new EU regulation. In 2000 the Labour government blocked the incorporation of the new Charter of Fundamental Rights within the Nice Treaty; while ratification of the subsequent ill-fated Constitutional Treaty was made conditional on the outcome of a referendum. Gordon Brown signed up to the Lisbon Treaty without such conditions, but demanded an opt-out from inter alia any application to British industrial relations of the Charter of Fundamental Rights which it incorporated.

In his press conference explaining his original veto, in January 1963, de Gaulle insisted on the incompatible characteristics of Britain and the members of the then EEC. The latter were 'Continental' with common principles of social and economic organisation and increasingly dense relations of mutual dependence. Britain by contrast was detached from the rest of Europe, politically and economically more closely connected to the Commonwealth and the USA. This view was paralleled in the arguments of many British opponents of membership: the interests and obligations of the UK lay primarily outside Europe, not in alliance with the EEC. And 'euroscepticism' has of course remained strong, not only in governmental circles; as Eurobarometer studies consistently show, public support for EU membership in Britain tends to be the lowest of all member states.

Does this reflect a 'clash of civilisations', a struggle of 'capitalism against capitalism' (Albert 1993)? It is common to argue that 'Anglo-Saxon' capitalism differs fundamentally from that of continental Europe, and that this contrast results in incompatible systems of industrial relations. In this paper I will first outline some of the key arguments which suggest that Britain and the rest of Europe – or at least, continental western Europe – represent incompatible varieties of capitalism, and explore this further by considering some of the meanings of that elusive concept, the 'European social model'. I will then discuss the complex interconnection between economic integration and social (or labour market) regulation within the EU. I will go on to examine in more detail how European regulation has contributed to the transformation of British industrial relations which has occurred over almost four decades of British membership. Finally I will indicate some possible influences in the reverse direction, leading to the question whether Britain is now spearheading the transformation of continental Europe into an Anglo-Saxon variant of capitalism.

## Britain and Europe: Capitalism against Capitalism?

Was de Gaulle correct in arguing that in politics and economics, Britain was more closely aligned to the United States than to continental Europe? A central theme in the recent literature on comparative political economy is the existence of different varieties of capitalism, with distinctive institutional configurations which shape the operation of markets (including labour markets). The simplest presentation of this approach is by Hall and Soskice (2001), who outline a contrast between liberal market economies (LMEs) and coordinated market economies (CMEs). In the former, the functioning of markets is subject to few institutional constraints, and in consequence the unequal control of economic resources shapes market outcomes; in addition, collective action problems are hard to overcome. In the latter, a range of institutions – in some countries the government, in others private associations or networks – sets tight limits to the autonomy of individual economic actors. Many subsequent critics have pointed to inadequacies in this dichotomy. First, markets require some form of institutional coordination even in LMEs; second, it makes a considerable difference whether coordination is effected primarily by the state, or by other social institutions; third, nowhere do LMEs or CMEs exist in pure form.

Nevertheless, the stylised contrast between ‘Anglo-Saxon’ and ‘Rhineland’ capitalisms (Albert 1993) does have heuristic value. Britain, like other English-speaking countries, has a common law system and a bias within economic jurisprudence towards the primacy of individual contracts. Private companies are the exclusive property of their owners, and the duty of managers is with few qualifications to maximise the financial returns to shareholders. This distinguishes the UK from the civil law regimes in most of western Europe, where the interests of other stakeholders are a legitimate concern of managements and where freedom of contract has less iconic status. An additional factor of importance is that while the British electoral system with its ‘first-past-the-post’ method normally results in single-party majorities in parliament, in many European countries proportional representation typically leads to coalition government, creating an inbuilt bias against radical change in the institutional order of the kind seen in Britain in recent decades.

This contrast underlies significant differences in approaches to industrial relations. ‘There is no such thing as society’, Thatcher notoriously proclaimed in 1987. Such an assertion would be taken as evidence of insanity in much of Europe. However, it clearly expresses the underlying philosophy of the Anglo-American model of capitalism. Piore (1995:7, 24) has written of the USA that ‘we take the individual as the basic building block of socioeconomic systems .... We as a society are committed to individualism. We try to understand society as an aggregate of its individual members and the economy as a collection of individual producers and consumers .... We find it difficult to think of society as anything more than a collection of

individuals and reject social theories predicated on the idea that human beings understand themselves only as part of cohesive social groups.' Of course Britain is not the USA, not least in terms of the systems of welfare provision and labour market regulation. Nevertheless there are important similarities in terms of approaches to industrial relations, and I outline five of these.

The first links closely to the traditional British legal system, with its emphasis on freedom of contract (and the associated doctrine of restraint of trade) and its difficulties in admitting the idea of collective actors (except, interestingly, for the capitalist corporation; judges have had few problems in treating this as a sort of large-scale individual). Common-law systems, as La Porta et al. (1998) have demonstrated, tend to give high priority to the protection of property and correspondingly weaker rights to employees. Market forces are treated as primary; the role of government intervention is corrective rather than directive.

A second characteristic is 'voluntarism': the notion that the employment relationship is in large measure unconstrained by the 'external' imposition of norms by legislation or other modes of state intervention. In Britain, 'voluntarism' is (or was until very recently) a deeply embedded tradition, shared by unions, employers and governments alike (Hyman, 2001). In the USA, the restricted will and capacity of governments to intervene in the structuring of the labour market has similarly helped shape industrial relations as a sphere of relative autonomy. Such, incidentally, was the background to the emergence and consolidation of academic industrial relations as a field of analysis largely detached from the broader agenda of social science.

Third, one expression of voluntarism is that collective associations are treated as essentially private entities. This implies that there is no qualitative distinction between an employers' association or trade union on the one hand, a sports club or residents' association on the other – though of course there may be important differences of size and resources. Public status is contingent rather than formally assigned – with the notable exception of the Church of England.

A fourth feature is the primacy of the individual company or workplace as the terrain of industrial relations. This links to a rather narrow conception of the employment relationship. In Britain for the past quarter century, as in the United States throughout its history, collective bargaining (where it still occurs) is overwhelmingly centred on the individual company. Industrial relations is thus primarily a micro-level process (as is also true of Japan).

Fifth, there is a strong institutional separation between industrial relations, the regulation of wages and other core conditions of employment by collective bargaining or (increasingly) unilateral management decision, and other dimensions of social protection and citizenship. There are clear boundaries between 'industrial

relations' and 'social policy', a demarcation reflected in similar compartmentalisation of ministerial responsibilities and academic specialisms.

These characterisations are of course oversimplifications: reality is more messy and qualified. Nevertheless they become plausible in comparative perspective, when contrasted with societies in which far greater regulation of market forces is accepted as necessary and appropriate. And this contrast lies at the heart of the problematic relationship between Britain and 'Europe'.

## The 'European Social Model'

'The "employment relationship", although acknowledged as being at the heart of industrial relations study, is not in itself adequate to describe the processes at work in different European countries' (Milner, 1994: 28). What in English has a clear and specific meaning becomes much more diffuse and wider-ranging in continental Europe, implying a relationship not merely between employers and employees but implicating other actors, in particular the state; not merely an economic exchange but a complex of rights, responsibilities and obligations which guarantee workers a recognised status (Supiot, 2001); and even in economic terms, the framework not only for a wage-work bargain but also for the definition of a range of other social entitlements.

This far broader understanding of the employment relationship is a feature of 'Rhineland capitalism', which Albert (1993) counterposes to Anglo-American economic liberalism. In CMEs, the term preferred by Hall and Soskice, the sway of the market is substantially bounded. In distinct ways in different countries, the commodity status of labour is severely circumscribed; freedom of contract, much more generally, is subject to legal and other constraints; and the conditions of employment, and of employees outside work, are recognised as of major social and political concern. To adopt the distinction of Polanyi (1957), the countries of western Europe are market economies but not however market societies. Markets represent vehicles for the organisation of economic activity but are not assigned overriding political priority, and a market logic does not overwhelm social identity or political initiative. The German concept of the 'social market economy' (soziale Marktwirtschaft) which developed in the 1950s reflected this philosophy. The idea of a 'European social model' also expresses this feature of continental western Europe, even though the term is misleading because it implies greater uniformity than is actually the case.

For the practice and the analysis of industrial relations, there are several important corollaries, which contrast sharply with the Anglo-Saxon framework. First, collective organisation and action are regarded as normal. In western Europe, mainstream parties of right as well as left have traditionally accepted that individuals are embedded in society and that social regulation is the prerequisite of individual welfare. The notion of solidarity can be used without embarrassment across the political spectrum. Both socialist and catholic traditions have viewed the individual employee as at a serious disadvantage in attempting to achieve an equitable contract with the employer, and have thus encouraged a wide range of market-steering interventions. To take two examples, the principles of a national minimum wage and of a universal statutory limit to working time are uncontroversial in the majority of countries, whereas they have only recently been applied in the UK, against significant resistance.

Second, Anglo-Saxon voluntarism has more limited resonance (though certainly more in Scandinavia than further south). The labour market is seen to be socially constructed and delimited: it is taken for granted that the state is directly implicated in industrial relations. In most countries, law and collective bargaining are treated as complementary rather than contradictory (Supiot, 2001: 95-8). This perspective is equally influential for industrial relations actors and policy-makers and for academic analysts: it is recognised that industrial relations practice is to an important degree politically constructed.

Third, there is little sense of the company or workplace as segregated societies. Employer solidarity and multi-employer collective bargaining contrast with the far greater decentralisation in Anglo-Saxon countries (and also in most of eastern Europe), so that multi-employer collective bargaining remains an important practice even if, increasingly, company-level bargaining occurs in parallel. A consequence is that the coverage of collective bargaining tends to be high, even in countries where union membership is far lower. There exist standardised national systems of workplace representation (established by law or peak-level collective agreement, or both), which entail that employees are collectively represented whether or not strong union organisation exists in their enterprise. Trade unions, though in some cases strongly rooted in the workplace, have a much broader social identity; and their role often extends to detailed engagement in the formulation of public welfare and labour market policy and the administration of social benefits. (In some countries, such as France and perhaps also Italy, this may be more significant than their role as collective bargainers.) It may be symptomatic that in most European countries the ministries responsible for industrial relations have titles such as Labour and Social Affairs. We may also note that elusive element of Eurospeak, *espace social*: usually translated as the 'social dimension', but also meaning more prosaically the sphere of industrial relations.

Fourth, conflict and cooperation are widely regarded as interdependent: economic dynamics generate conflicts which are more manageable when overtly expressed and collectively represented. The language of 'social partners', so puzzling to most native English speakers (I include myself), seems to reflect a consciousness of the precariousness of social order and the potential for economic antagonisms to explode into destructive warfare (the fate of much of Europe in the first half of the twentieth century). Conflict management is regarded as an art which requires stable collective organisation; in this sense, 'social partnership' is virtually equivalent to the English concept of joint regulation, though it implies a significantly broader agenda.

Yet if the organised capitalisms of western Europe share important common features in their industrial relations systems, there are also major differences (Ebbinghaus, 1999). Crouch (1993) has indeed argued that every national system of industrial relations is distinctive, in that the historical evolution of employment regulation has



been shaped by specific national 'state traditions'; and Turner has written (2002: 165) that 'there is no one European and social model but many different national models common only at the level of objectives and broad approaches'. To simplify this diversity, one might suggest that mainland (western) Europe seems to encompass three subsidiary types (though with many 'mixed cases'): a 'Mediterranean' (or southern) model, with elaborate legal regulation of substantive employment conditions; a 'Germanic' model, in which the actors and procedures of industrial relations are juridically defined, with varying degrees of substantive regulation of employment conditions but a bias towards 'free collective bargaining'; and a 'Nordic' model, more 'voluntarist' than the Germanic systems but based on strong collective organisation on either side, reinforced by institutional integration in para-state labour market regulation bodies. This means that the much-cited idea of a 'European social model' is deeply ambiguous. Given the great diversity in both the extent and the institutional form of labour market regulation across the member states, there are remarkably few common features. 'Social Europe' is thus a menu from which those who adopt the term can pick and choose with substantial discretion. Crucially also, the 'different European social models [have] different performance in terms of efficiency and equity' (Sapir 2006: 370) – a key point for any discussion of the need for 'reform' and 'modernisation'.

Such cross-national differences have also made it very difficult to 'harmonise' institutions and processes within the EU. However, Britain is clearly an 'outlier': it possesses neither a tradition of extensive state regulation, nor strong central organisations of unions and employers; in consequence it is scarcely possible to speak of a national system of industrial relations, since there is large scope for each company to establish its own employment regime.

## The Single Market and the 'Social Dimension'

The EU is something of an enigma for political (and other social) scientists. It is not just a regional trading bloc; unlike for example the North American Free Trade Area, it possesses a significant administrative infrastructure with authority of a political nature. But nor is it, as sometimes asserted, a 'super-state': the competence of the EU institutions is limited to the agenda specified in the governing Treaties, and the principle of 'subsidiarity' insists that the European level should regulate only when this cannot be accomplished effectively at national level (though it is less clear who is to judge whether this is the case).

Almost from the formation of the EEC, analysts debated the nature of the EU polity. Much of the early academic discussion assumed that the political authority and competence of the European level would inevitably expand, because powers to regulate in one policy field would 'spill over' into others. Thus increasingly, the balance of power between national and European governments would shift. This would obviously favour harmonisation of employment systems. But scholars soon proposed a contrasting interpretation: there would never be a truly federal Europe, because national governments were effective protectors of their own autonomy. Europe was not a super-state in the making, but an arena governed by the diplomatic manoeuvres of the member states – hence the emphasis on subsidiarity. The obvious corollary was that national employment systems would remain distinctive. More recently, attempts have been made to bridge these conflicting positions. Today a fashionable notion is 'multi-level governance' (Marks et al. 1996). This implies that both national and European (and also sub-national) levels have an important influence, and that it is the interaction between levels which is crucial. Moreover, the primary locus of power may shift over time, and may also vary according to policy issue.

A second key question is the character of European integration. For many commentators it once seemed self-evident that if the importance of the European level increased, this would entail a growing body of European rules, including those regulating employment and the labour market. But subsequently a more sceptical position was developed, based on the concept of 'negative integration' (Scharpf 1999). The argument here was that integration has occurred primarily through weakening or eliminating national rules which constrain cross-national economic integration, without necessarily establishing supranational rules in their place. For example, central to the single European market are the 'four freedoms' of movement (for goods, services, capital and labour). Freedom of movement meant eliminating national barriers; but for neoliberals and advocates of flexibility, it was neither necessary nor desirable to create positive regulation at European level, a position recently reasserted by the European Court of Justice (ECJ). I will say more about this issue below.

This question overlaps with the relationship between economic and social integration. What was established in 1957 was a European Economic Community, or 'common market', and market integration was in the eyes of many observers (both supporters and opponents) the be-all and end-all. However, there were some fears that countries with inferior employment conditions would gain an unfair advantage in the common market (what would later be described as 'social dumping'). For this reason, the original Treaty of Rome included Article 118 (now 137) on the harmonisation of working conditions and Article 119 (now 141) prescribing equal pay for women. In the 1970s (when centre-left governments were in power in many member states) there were more ambitious efforts to adopt directives which would ensure upwards harmonisation of employment regulations. But this was halted with a shift to the right in European politics (notably Thatcher's election in Britain in 1979) and the more general post-Keynesian enthusiasm for labour market deregulation.

A new phase began when Jacques Delors became Commission President in 1985. He helped drive the single market project, but also insisted that greater economic integration must possess a 'social dimension'. This developed into the initiative for a European 'social charter' (formally the Community Charter of Fundamental Social Rights for Workers), eventually adopted by eleven member states in December 1989 (with the UK dissenting). This had no binding status, but gave a green light for further Commission initiatives. This was followed by the 'social chapter' agreed at Maastricht in December 1991, with provision for the UK opt-out. This enlarged EU competence in the employment field, and extended the range of issues on which directives could be adopted by qualified majority voting (QMV). Maastricht also established the 'social partners' route' to European regulation. As well as being guaranteed consultative input during the framing of Commission legislative proposals, the 'social partners' at European level – the European Trade Union Confederation (ETUC), the employers' confederation UNICE (now BusinessEurope) and the public sector employers' body CEEP – acquired a new right to opt to deal with an issue by means of European-level agreements. Such agreements could be implemented either 'in accordance with procedures and practices specific to management and labour in the Member States' or, at the joint request of the signatory parties and on a proposal from the Commission, by a 'Council decision'.

After Maastricht there was a considerable acceleration in employment legislation by the EU, but from the late 1990s the pace slowed again. Many argue that the accession of the new 0 from Central and Eastern Europe has now created a large bloc without the traditions of 'social Europe' and with a competitive interest in preventing new employment regulation (though they have been required to adopt the rules already in place). Moreover the whole architecture of EU decision-making compounds the obstacles. Legislation involves complicated interaction between the Commission (which has the prerogative of initiating the process), the Council (which in effect can veto any initiative unless the necessary majority can be constructed) and the

European Parliament (EP), which possesses far fewer powers than any national legislature but can nevertheless provide an additional veto point. Much delicate manoeuvring and diplomacy is involved before any European legislation can take effect. It should also be noted that the main instrument of regulation is through directives; these are binding as to the result to be achieved but leave the method of implementation to member states, allowing considerable discretion as to the national legislation which results. At least in the employment field, it is commonly argued that UK governments adopt a minimalist approach.

Is the 'social dimension' simply a fig-leaf to make a neoliberal economic project more acceptable, or is it a thing of substance? How far has the relationship between economic and social changed over time? If the whole idea of a social dimension is little more than rhetoric, the possibility of significant European-level employment regulation is minimal; if it has real meaning, then the Europeanisation of industrial relations seems more feasible. In terms of the EU 'constitution', the Single European Act (SEA) prescribed a large agenda of economic integration, with disagreements in many instances resolvable by QMV, rather than unanimity which was previously the general rule. The Treaty imposed far fewer obligations concerning social regulation, and most decisions still required unanimity (though the Maastricht and Amsterdam Treaties increased the scope for QMV on employment issues).

## European Social Regulation: The Impact on British Industrial Relations

Given the obstacle-ridden framework of EU decision-making, particularly in the social field, regulation of employment issues is often viewed as the adoption of a 'lowest common denominator' of existing practice in the member states. However, because of the contrast between 'Anglo-Saxon' and 'Rhineland' capitalisms, regulation of the labour market which is commonplace in most of western Europe is harder to accommodate within the 'lightly regulated' British system. Below I examine the impact in several distinct policy areas.

### Working time

Historically, British law has regulated working time only for specific categories of employee (women and young workers) and in occupations with significant safety implications; whereas in most continental countries, maximum working hours for all employees have long been prescribed by law. EU regulation in this area has therefore been contentious. The SEA provided (article 118a, now part of article 137) for legislation, which could be adopted by QMV, in pursuit of 'improvements, especially in the working environment, as regards the health and safety of workers'. Yet while 'working environment' seems to cover most aspects of employment conditions, 'health and safety' seems much narrower in scope. The Commission (which has the discretion to choose the 'Treaty base' on which it makes any proposal for legislation) argued that it was entitled to use a broad interpretation – which would enable the UK veto to be by-passed in the Council. Wedderburn (1990) has referred to this as the 'Treaty base game'.

The 1989 social charter (which, as noted above, had no binding effect, but legitimised many subsequent Commission proposals for directives) included a clause insisting that 'approximation of living and working conditions' must be part of the internal market process, 'as regards in particular the duration and organisation of working time'. There was specific mention of the need for a weekly rest period and annual paid leave, 'the duration of which must be progressively harmonised in accordance with national practices'. A draft directive was published in 1990, and was adopted in 1993 against the opposition of the UK – despite the dilution of a number of its provisions in response to British objections. Key provisions included a maximum working week of 48 hours including overtime (though this could be averaged over a 'reference period' of 4 months); a maximum of 8 hours' night work on average; a minimum daily rest period of 11 consecutive hours; a rest break where the working day is longer than 6 hours; a minimum rest period of 1 day per week (in principle Sunday) plus 11 hours; and minimum annual paid leave of 4 weeks. The working time directive (WTD) allowed for variation in this provisions via collective agreements, and for working hours above the 48-hour maximum with an employee's

agreement. The directive did not apply to a number of transport sectors or to junior hospital doctors; but these groups were covered by extension directives in 2000 and 2004.

The UK challenged the validity of the QMV treaty basis, arguing that working time was an issue of social policy rather than health and safety. This challenge was almost wholly rejected by the ECJ in November 1996 (ironically, this was widely seen as strengthening the hand of the Commission by confirming the broad scope of Article 118a). The Conservative government then pressed for the directive to be 'disapplied' from the UK, before drafting regulations which fell short of the directive's requirements. The Labour government elected in 1997 accepted the directive, and issued regulations in October 1998 which 'took full advantage of the derogations and exemptions in the WTD'. In particular, the UK was the only member state to include a blanket provision for an individual opt-out. Its restrictive interpretation of the right to holiday entitlement was successfully challenged in the ECJ (Geyer et al. 2005: 131).

At the start of 2004 the Commission launched a consultation process on the revision of the directive. Key questions were whether the individual opt-out should be retained; whether time spent 'on call' should count as working time – as the ECJ had ruled in 2003; and what should be the 'reference period' over which working time is averaged. The Commission subsequently issued proposals which would retain the opt-out, narrow the definition of on-call time which would count as working time, and extend the reference period from 4 to 12 months. The ETUC considered this 'very unsatisfactory', and in 2005 the EP proposed major changes to the Commission's draft. Currently the issue is still deadlocked, though in June 2008 the Council of Ministers agreed on proposals broadly in line with the earlier Commission draft.

What is the practical significance of the WTD? In most member states, the 48-hour ceiling is above, or equal to, the maximum normally permitted under national working-time law in most countries, while collectively agreed limits are usually significantly lower. In the UK by contrast, the directive required the introduction of a completely new statutory framework because of the absence of any universal legislation on working time issues. And because of the British 'overtime culture', the average working week (for full-time employees) is considerably above the European norm. Yet because of the widespread use of individual opt-outs (and the weakness of enforcement mechanisms) the impact of the directive seems to have been minimal. Official statistics show that in the first six years after the regulations took effect, the proportion of the workforce normally working over 45 hours a week did decline (from 37% in 1998 to 31% in 2004) but the figure has since stabilised. Whether this reduction was actually caused by the regulations is uncertain: a survey by the CIPD (2001) after the regulations had been in place for two years found that the majority of workers who had been working over 48 hours a week were still doing so, while only

2% were working reduced hours because of the directive. Analysing unpublished official data, the TUC (2008) reported that those recorded as working over 48 hours a week fell from 3.8 million in 1998 to 3.1 million in 2007, but rose again to 3.3 million in 2008.

## Employment protection and ‘atypical’ work

In Britain, the contract of employment was traditionally open to termination by either side, subject only to the period of notice which it specified. Legislation in 1965 established a statutory system of compensation in cases of redundancy, and the principle of unfair dismissal was introduced by the 1971 Industrial Relations Act (both subject to a minimum length of service). Much subsequent legislation on employment protection has however stemmed from EU directives.

One initiative with an important impact in the UK was the 1977 Acquired Rights Directive (ARD, revised in 1998 and 2001). This was implemented in the UK as the Transfer of Undertakings (Protection of Employment) Regulations 1981 (amended several times between 1995 and 2006), usually known simply as TUPE. The aim was to ensure that when an undertaking was transferred, in whole or in part, to another firm, employees’ continuity of employment and their associated terms and conditions should be protected.

In implementing the directive in 1981, the Thatcher government defined its scope to apply solely to ‘commercial’ undertakings. This meant, in particular, that activities ‘outsourced’ by public authorities under the compulsory competitive tendering (CCT) requirements imposed from 1983 were not covered. A decade later, this narrow interpretation was shown to be inconsistent with the meaning of the ARD, through a series of ECJ rulings and a Commission report critical of TUPE. In consequence, the government was obliged to widen the scope of TUPE as part of the 1993 Trade Union Reform and Employment Rights Act (Cutler and Waine 1998: 93). The impact ‘on the “property” rights of UK firms initially produced shocks of a seismic scale’ (Anderman 2004: 107). Since much of the logic of CCT was to enable outside contractors to cut labour costs, this radically diluted a key element of Conservative strategy towards public services. However, this did not prevent the new employer from ‘negotiating’ inferior conditions with the workforce, and new employees lacked any protection, often leading to the development of a ‘two-tier’ workforce with different contractual provisions.

For many observers, the ARD was internally inconsistent and contained many ambiguities, for example over the continuity of pension entitlements. Rulings by the ECJ compounded the uncertainties (Davies 1993; McMullen 1996; Shrubshall 1998). A decade ago, Adnett (1998: 79) wrote that ‘nearly twenty years after its introduction the ARD is still a significant source of confusion and uncertainty in European labour

markets. Nowhere is the confusion greater than in the UK.' Though recent revisions of the directive and the Regulations have clarified some of the uncertainties, complexities remain; nevertheless, the ARD has certainly imposed significant limits on the ability of employers – whether in the private or the public sector – to use subcontracting as a simple cost-cutting measure. In this respect, a 'liberal market economy' has become more coordinated.

The treatment of 'atypical' employment – usually understood as involving contracts which are not full-time and permanent – has long been a contentious issue in the EU. One rationale for regulation has been the argument of a 'level playing field'; if 'atypical' workers have inferior terms and conditions of employment to 'standard' workers, and if such contracts are more common in some member states than others (both of which are indeed the case), competition will be distorted. Another concerns equal opportunities, particularly in the case of part-time work, which disproportionately involves women; for this reason I discuss this aspect in a separate section. The Commission first proposed the regulation of the conditions of part-time and temporary workers – primarily in respect of statutory and contractual employment rights – in 1982, but without success. The initiative was revived as a package of three directives on 'atypical employment' in 1990, of which only the health and safety element was adopted. Subsequently the Commission consulted the social partners on a proposed initiative on 'flexible working time and security for workers'. Negotiations between the social partners began in October 1996 separately (at UNICE insistence) over part-time and temporary work. In June 1997 they reached an agreement on part-time work (see below), and in March 1999 on fixed-term contracts; the Council adopted both agreements as directives.

Talks on a directive regulating temporary agency work broke down in May 2001; the Commission issued its own draft in March 2002, but this was blocked, mainly because of opposition by the UK. However, in May 2008 an agreement was reached between the TUC and CBI, in part brokered by the government. This reflected an assessment that, within the horse-trading processes of the EU, the UK government would only sustain the 48-hour opt-out if it was willing to agree a directive on agency work. The key points in the agreement were that after 3 months in a given job, an agency worker would be entitled to equal treatment – at least as regards 'basic employment and working conditions' – with directly employed workers. The following month there was 'political agreement' in the European Council on equal rights on core employment conditions without any waiting period, and these terms were approved by the EP in October 2008, paving the way for formal adoption of the directive.

The fixed-term directive has had a relatively limited impact in the UK, where the proportion of such contracts is only about half the EU average. This reflects the fact – linked to the contrast between varieties of capitalism – that 'permanent' contracts of



employment are in practice far easier to terminate in the UK than in many other member states. Conversely, the impact of the agency worker directive will be far greater – the main reason for UK government opposition – because the incidence of such work is far higher than in most of the EU. On some estimates, agency work covers 5 per cent of the UK force, by far the highest proportion among the member states.

## Information and Consultation

As noted above, most countries of continental western Europe have long-established national systems of company-level employee representation – with works councils or similar channels of ‘industrial democracy’. Yet attempts to generalise such arrangements by EU legislation have proved particularly contentious; despite continuous debate since the 1960s, no breakthrough was achieved until the European Works Councils (EWC) directive of September 1994. A major reason for the long deadlock was the lack of any analogous arrangements in the UK. But though all the original six members of the EEC possessed standardised works councils or committees, their composition and powers differed significantly; and this diversity was increased with each round of enlargement. In particular, company-level representation in the Nordic countries rested on peak-level collective agreements rather than legislation and usually involved a ‘single channel’ structure based on trade unions.

During the 1970s and 1980s the Commission launched three main initiatives, with drafts of the European company statute (1970 and 1975); the Fifth company law directive, providing for board-level employee representation (1972 and 1983); and the ‘Vredeling’ directive concerning information and consultation in multinationals (1980 and 1983). All were blocked as a result of employer opposition (including strong lobbying by US firms), resistance by some governments (primarily the UK) and problems in ‘harmonising’ diverse national practice. Early drafts tended to attempt to generalise the ‘German model’; later drafts were more flexible, but still ‘alien’ for many member states.

The Single European Market, which was expected to lead to an acceleration of cross-border mergers and acquisitions, encouraged new Commission proposals on transnational information and consultation procedures: a revised collective redundancies directive (adopted in 1992); successive drafts of the EWC directive; and new proposals for a European company statute (1989 and 1991).

The rationale for Vredeling, and subsequently the EWC directive, was that nationally-based rights of employee participation were being outflanked by the transnationalisation of corporate structures; and there was a political need for ‘social acceptability’ of such restructuring. Also important was trade union pressure, and

the precedent set by the voluntary establishment of 'prototype' EWCs in some (mainly French- and German-owned) companies. The Commission proposal of December 1990 required unanimity; it went through the initial stages of the legislative procedure, but opposition by the UK (and also reservations on the part of Portugal) prevented adoption. Prospects were transformed by the ratification of the Maastricht Treaty. Since measures adopted under the social chapter were not directly applicable in the UK, Britain had no formal role in the legislative process; and directives concerning information and consultation of workers were subject to QMV among the eleven other member states. Under the Maastricht provisions, consultation of the social partners led to 'talks about talks' between ETUC, UNICE and CEEP about triggering negotiations for a Community-level agreement on transnational information and consultation procedures instead of legislation. Talks broke down in March 1994 (partly because the British CBI stiffened UNICE resistance). An amended directive was adopted by Council in September 1994, applying to all members of the by now enlarged EU, except for the UK, plus the three other members of the EEA.

The aim of the EWC directive was to coordinate national provisions in order to create a European legal framework for transnational information and consultation within 'community-scale' enterprises (with at least 1000 employees in the EEA countries, including 150 in at least two of these). On a request by employee representatives, companies were to set up EWCs or transnational information and consultation procedures. There was considerable flexibility for the negotiation of company-specific arrangements, but the directive defined a standard EWC package as a 'default option' in the absence of agreement. This provided for an EWC of up to 30 members drawn from existing employee representatives, to discuss transnational issues in an annual information and consultation meeting with central management. The operating costs were to be met by the enterprise. In line with 'subsidiarity', member states were given considerable scope for ensuring that that legal framework for EWCs reflected national traditions and practices.

The effect of the UK 'opt-out' was only partial: the UK government did not have to implement the directive, but UK-based multinationals with requisite employment figures in the other countries concerned were still obliged to establish EWCs in respect of their non-UK operations within the EEA. In such cases there was inevitable, and usually successful pressure to include UK representatives voluntarily in the EWC. Following the election of the Labour government with a commitment to end the Maastricht opt-out, an extension directive was agreed in December 1997. Enlargement in 2004 and 2007 has extended its scope.

What do EWCs mean in practice? Streeck (1997) argued that they were 'neither European nor works councils' but mere token mechanisms, lacking the powers of national representative institutions and typically ancillary to national procedures in

the companies' home country. Subsequent research has revealed a slightly more nuanced picture. First, the complexity of the procedure for establishing an EWC (and the scope for hostile managements to obstruct the process) means that only just over a third of the companies that meet the size thresholds in the directive actually possess an EWC – though coverage of larger multinationals is far greater. Interestingly, the proportion of UK-owned firms with an EWC is above the average. There is evidence that most EWCs are either marginalised by management, or else incorporated into a process of instilling 'company culture'. Problems of language and of different national industrial relations backgrounds inhibit cross-national unity among employee representatives, and in times of restructuring and redundancy, representatives are often preoccupied with protecting their 'national interests'. Nevertheless, there is evidence that in a minority of cases, EWCs have developed into genuine transnational actors with a quasi-bargaining role (Fitzgerald and Stirling 2004; Lecher et al. 1999; Whittall et al. 2007). In any event, the EWC gave roughly a thousand UK employees (mainly trade unionists) – and also managers – the experience of 'continental' representative mechanisms which were previously unfamiliar (Marginson et al. 2004).

The ETUC has pushed for a decade for stronger powers, more resources, and a lowering of the employment threshold for the establishment of EWCs, but without success. In February 2008 the Commission announced a new consultation process on possible revision of the directive, and issued detailed proposals in July. On this occasion, the 'social partners' at European level were able to agree a common position on at least some elements of revision; but the UK government appears to be lobbying hard to block or minimise any changes.

Potentially more radical in its impact on the UK is the 2002 directive establishing 'a general framework setting out minimum requirements for the right to information and consultation of employees in undertakings or establishments within the Community'. This was proposed by the Commission in November 1995 as a revival of the initiatives on this theme launched in the 1970s, and (after negotiations between the 'social partners' failed to take off), a draft directive was issued in November 1998.

There were considerable differences of opinion within Council, with strong UK opposition in particular, reflecting a powerful campaign by the CBI; but 'political agreement' on a revised (and diluted) text was reached in June 2001. The EP pressed for amendments, a 'conciliated' text was agreed in December 2001, and the directive was adopted in March 2002.

The directive applies to undertakings with at least 50 employees, with a phased introduction to firms with under 150 employees in countries without established information and consultation arrangements (the UK and Ireland). It creates an obligation to inform and consult employee representatives on recent and foreseeable developments in the firm's financial situation, employment and work organisation;

with opportunities for the representatives to respond and seek agreement before implementation of changes.

In practice, the UK was the main country where significant institutional innovation was required – though after EU enlargement in 2004 most of the new member states also had to introduce new mechanisms. The government brokered an (unprecedented) agreement between the TUC and the CBI on the detailed arrangements for transposition, and legislation was implemented by regulations issued in 2004, which took effect in April 2005. This provides that a request by 10% of employees can ‘trigger’ negotiations to establish an information and consultation procedure. A fall-back mechanism is prescribed for cases where no agreement can be reached, and ‘pre-existing agreements’ are protected. In line with the requirements of the directive, the employment threshold for application of the regulations was reduced to 100 in 2007 and 50 in 2008.

In formal terms, the information and consultation legislation entails a major institutional innovation in the UK. The practical significance is far harder to assess. Certainly the procedures specified in the directive fall far short of the rights of employee representatives in most of western Europe, and the UK regulations make extensive use of the flexibility which the directive permits – indeed some consider that it fails to comply fully with the requirements. In the debates before the adoption of the directive, some observers suggested that the election of employee representatives might provide a bridgehead for unionisation, while others on the contrary saw this as a means for anti-union employers to bypass union representation. At this stage there is little indication that either scenario will be common. One of the few studies of the implementation of the new provisions (Hall et al. 2007) indicates that the main outcome has been to provide a communication channel for management.

## Equal Opportunities

Equality between women and men is the area of social policy where EU law has had the most sustained and profound influence. As noted above, the Treaty of Rome embodied the principle of equal pay for equal work – the springboard for all subsequent developments in this area. However, for almost two decades the formal commitment to this principle had little practical effect. This changed in the 1970s and 1980s, with the adoption of directives in 1975 prescribing equal pay for work of equal value, and in 1976 banning sex discrimination in all aspects of employment. The ECJ also played a path-breaking role with a series of landmark rulings interpreting and developing EC equality law. In some cases it ruled that Treaty provisions and certain aspects of directives had a ‘direct effect’: in other words, they should inform national judicial decisions even if national law had not been brought into conformity.

This had a significant impact on the development of equality law in the UK. The 1970 Equal Pay Act was adopted before membership of the EEC but after accession negotiations had commenced, and the need to comply with forthcoming Treaty obligations was one argument for the new law. The 1975 Sex Discrimination Act anticipated the directive adopted the following year. However, the UK failed to implement the equal value requirements of the 1975 Equal Pay Directive. The government's argument that 'equal value' could be demonstrated only if an employer had undertaken a systematic evaluation of grading procedures – which no employer was obliged to do – was contested by the Commission and firmly rejected by the ECJ in 1982 (Kilpatrick, 1997; Stone Sweet and Caporaso 1998: 124-5). Accordingly, the Thatcher government found itself obliged to amend the 1970 Act to take account of the ruling, resulting in a series of successful equal value claims (Schofield 1988).

In the 1980s the Commission introduced a series of 5-year Action Programmes on Equal Opportunities, containing detailed proposals for legislative and other measures to promote the integration of women in the labour market. In 1990 the NOW programme (New Opportunities for Women) was launched. An annual Commission report on equal opportunities has been published since 1996.

Directives concerning 'equality between men and women with regard to labour market opportunities and treatment at work' were earmarked for QMV under the Maastricht social chapter, making legislation easier to achieve. A directive was adopted in 1992 covering maternity leave, prohibition of dismissal on grounds of pregnancy, maternity pay and health and safety provision for new and expectant mothers, and one on parental leave in 1996 following the first Community-level agreement between the social partners. The UK government limited the right to parental leave to children born after the legislation took effect, but after a legal challenge was eventually obliged to remove this restriction. Another directive, on the reversal of the burden of proof in sex discrimination cases (putting the onus on the employer to rebut a claim), first proposed in 1988, was adopted in 1997 under the Maastricht 'social chapter' procedures; and extended to the UK in July 1998. The social partners' agreement on equal treatment for part-time work – which particularly involves women – was implemented as a directive in December 1997. This was particularly important for the UK, where 44% of women workers are part-time – a proportion exceeded only in the Netherlands. Another proposal, to outlaw sexual harassment, was initiated in 1996 but made slow progress, eventually leading to an amendment to the Equal Treatment Directive in 2002.

The 1997 Amsterdam Treaty radically extended the EU's formal commitment to equal opportunities, authorising 'appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation'. A framework directive on equal treatment was adopted in November 2000, covering

age, disability, race/ethnicity and sexual orientation; and in 2006 a Consolidated Equal Treatment Directive was adopted, strengthening some of the provisions against gender discrimination, in particular in terms of legal remedies in national courts. The UK was one of the few member states with a tradition of legislation against racial or ethnic discrimination, dating back to the 1976 Race Relations Act; while the Disability Discrimination Act had been passed in 1996; but three new sets of Regulations were required to meet the other anti-discrimination requirements. At the time of writing a challenge to the 2006 Age Regulations (issued almost three years after the implementation deadline), which permit employers to maintain a mandatory retirement age of 65, has been referred to the ECJ.

The Charter of Fundamental Rights contains a chapter on Equality which is more comprehensive still: 'any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited' This would however take effect only if the Lisbon Treaty were adopted – and even then, the legality of the UK opt-out would need to be tested.

Equal opportunities is certainly the area of employment relations where the EU has had the most substantial impact in member states. Achieving 'hard law' on equality issues has been slow and partial, but nevertheless there is an extensive body of regulation. As in so many other policy areas, one can ask the question: is the glass half-full or half-empty? In the case of gender equality the history of regulation is long enough to make a reasonable assessment of its impact. As noted above, UK governments of both parties have been forced reluctantly to change national law to meet EU requirements. Some critics argue that the main focus of regulation has been on formal equality within the labour market, rather than on the social institutions outside the labour market which prevent most women from participating on equal terms. As Mósesdóttir (2006) puts it, most EU initiatives have been concerned to give women 'the same rights as men insofar as they behave like men on the labour market'.

But real advances have been made, and at first sight the extent of current EU regulation is surprising. Given the strength in many EU countries of ideologies defining domestic responsibilities as essentially female, the wide range of legislation on gender issues is noteworthy. And the degree of prejudice on questions of sexual orientation means that many countries would not voluntarily have adopted national legislation. So one could ask why socially conservative governments have signed up to such regulation at EU level. In many respects, equal opportunities is an issue on which a coordinated and determined campaign can exert a substantial impact on EU policy, in the absence of a similarly organised counter-movement. Some speak of an 'advocacy coalition' (Sabatier 1987) involving women Commissioners, the EP

Committee for Women's Rights, the European Women's Lobby (EWL, which receives Commission funding), and actors at national level. Since 1995, a 'Group of Commissioners' on equal opportunities has held regular meetings with the EP Women's Rights Committee and the EWL. The Commission has also funded considerable academic research which documents the need for reform. As van der Vleuten (2005) suggests, one can detect a 'pincer movement' at national level with governments under pressure from the EU institutions above and equal opportunities organisations below.

## Shareholder Value and Flexibility

The previous section has documented the key areas in which EU legislation has brought major changes in the regulation of employment relations and the labour market in the UK. In important respects, the nature of British industrial relations has been 'Europeanised'. Yet it is also possible to speak of a reverse process, the 'Anglicisation' of continental employment relations. As indicated earlier, European integration has always involved a contradictory mix of market liberalisation and social regulation. The Thatcher government was willing to endorse the SEA because, for all the rhetoric concerning the 'social dimension', its core objective was to enshrine the 'four freedoms' characteristic of a liberal market economy.

These developments must be seen against the background of a shift in many western European economies towards the principles of 'shareholder value' rather than stakeholder obligations. Neoliberalism has become part of the conventional wisdom in most European countries, influencing social-democratic governments as well as those of the right, embodying 'a project that has attempted to transform some of the most basic political and economic settlements of the post-war era, including labour market accords, industrial relations systems, redistributive tax structures, and social welfare programs' (Campbell and Pedersen 2001: 1). One of the foundations of social market economies was 'patient capital', the long-term commitment of institutional investors to companies in expectation of similarly long-term pay-offs; but the short-termism characteristic of British capital markets is increasingly evident in continental Europe. 'The higher mobility of financial capital and the greater scope for short-term profit in the international market tend to destabilize the long-standing network of relations between banks and firms that was typical of Rhine-Japanese capitalism' (Trigilia 2002: 254).

The assumption implicit in much early 'varieties of capitalism' writings, that both LMEs and CMEs were functionally integrated wholes incapable of piecemeal change, is by now generally discredited: increased economic interdependence can facilitate incremental adaptations which cumulatively result in systemic transformation (Campbell 2004; Crouch 2005; Streeck and Thelen 2005). Such pressures have been reinforced by the strict monetary discipline inherent in EMU; and the Blair government, though not part of the single currency project, was active in constructing a policy coalition with other European governments committed to a neoliberal agenda (Sbragia 2004: 68).

The complex interaction between 'Europeanisation' and 'Anglicisation' can be seen in the development of the European Employment Strategy (EES). This dates from the 1993 Delors White Paper 'Growth, Competitiveness and Employment', which was an uneasy compromise between demands for a positive programme of public expenditure and active labour market and incomes policies, and calls – particularly



from the UK government – for deregulation and ‘flexibility’. The Amsterdam Treaty, and the subsequent ‘jobs summit’, gave the EES a formal basis: the Commission was to draft annual guidelines for employment policy, and member states were to produce national action plans which would be reviewed by the Commission and Council, which could issue recommendations to individual governments. The Luxembourg jobs summit in November 1997 adopted 19 employment guidelines with four main ‘pillars’: employability, entrepreneurship, adaptability and equal opportunities. These were radically revised in 2003, and the whole structure of the EES was transformed in 2005. The predominant focus on supply-side measures closely matched the priorities of the new Blair government.

The EES was amplified at the Lisbon summit of March 2000, which famously declared that Europe should become by 2010 ‘the most competitive and dynamic knowledge-based economy in the world, capable of sustained economic growth with more and better jobs and greater social cohesion, and respect for the environment’. Here, in an approach which I have elsewhere termed the ‘composite resolution’ (Hyman 2005), essentially competing aims were subsumed in a manner which delegated the choice of priorities to administrative discretion. Lisbon also introduced the concept of the open method of coordination (OMC), whereby information exchange, peer review and the highlighting of ‘best practice’ were expected to guide national policy without the need for coercive sanctions: an approach consistent with the UK government’s preference for exhortation rather than regulation.

A further boost to UK government conceptions of labour market flexibility derived from the European Employment Taskforce under former Dutch premier Wim Kok, which was appointed by the Council in March 2003 and reported that EU policies should focus on increasing adaptability of workers and enterprises, attracting more people to the labour market, investing more, and more effectively, in human capital and ensuring effective implementation of reforms through better governance. The current Commission under José Manuel Barroso has intensified the pressure for flexibility – presented in the now fashionable language of ‘flexicurity’. Its Green Paper Modernising Labour Law, issued in November 2006, placed central emphasis on this concept – but was far more concrete in its prescriptions for flexibility than in those for security (Keune and Jepsen 2007). Indeed Ashiagbor (2007: 110, 113) has remarked that the final version of the Green Paper reflected ‘fierce criticisms from Member States, in particular the UK, as well as concerted lobbying from business organisations, above all UNICE’. She added that ‘there are marked similarities between British discourse on labour market policy, and EU-level discourse on the need to remove labour market “rigidities”’ (113).

‘Discourse .... matters most in moments of crisis’ (Schmidt 2002: 309), and changes in the dominant economic discourse and in the balance of power between social and political actors can have radical effects on institutional arrangements. A key current

development is the role of the ECJ, which has become increasingly autonomous in its rulings (Alter 1998). 'Expanded judicial review in the European Union simultaneously has empowered judges, shifted agenda-setting powers away from the member states toward the European Commission, altered the character of discourse over policy reform, transformed the kinds of policy instruments that decision makers prefer to use, and dramatically changed the value of political resources traditionally employed by interest groups' (Pierson 2004: 109). In the past the ECJ used its discretionary competence to enhance employment protections, but today it is increasingly interpreting the Treaty commitment to market freedoms as overriding national employment protection rules (Höpner and Schäfer 2007). Its landmark decisions in the Viking and Laval cases in 2007 adopted the principle that, irrespective of national law, industrial action which interfered with freedom of movement was legitimate only if it satisfied a 'proportionality' test (A.C.L. Davies 2008). This was followed in 2008 by the Rüffert and Luxembourg cases, which set very strict limits on the extent to which public authorities could prescribe minimum employment standards if these interfered with the freedom to provide services (P. Davies 2008).

'No-one is forcing the European Union to become more competitive than the United States in nine years time,' declared Frits Bolkestein (2000), who as Commissioner responsible for the internal market pushed for the radical liberalisation of services. 'But if that is what we really want, we must leave the comfortable surroundings of the Rhineland and move closer to the tougher conditions and cold climate of the Anglo-Saxon form of capitalism.' Though Bolkestein failed to realise his objectives during his period as Commissioner, the balance of forces within the EU is increasingly favourable to the agenda which he – in common with UK governments – espoused.

## Conclusion

The British system of industrial relations has been radically transformed over the past four decades. Many of the changes reflect domestic social, economic and political developments in the UK. But EU membership has also had a significant impact, as the previous sections have shown. Given the resistance of both Conservative and Labour governments to statutory regulation of the labour market, it is very improbable that legislation on working time and information and consultation would have been enacted voluntarily, and the same is true of much of the legislation on employment security and equal opportunities. Indeed the virulence of UK governments' resistance to most EU social legislation, and their minimalist approach to implementing those directives which are nevertheless adopted, indicates that British labour law today would be very different but for EU membership. Over the recent decades, British governments have been obliged to move closer to the 'European social model' of individual employment rights – though the EU has little capacity to shape collective industrial relations.

The EU has clearly added a new level above, and influencing, national industrial relations systems: there are new rules, new pressures, new actors, and a new agenda (Marginson and Sisson 2004). For most countries – at least before enlargement – 'Europeanisation' has probably had limited impact, except over issues which were previously not seriously addressed at national level. This is most obviously the case as regards equal opportunities: here, the EU has been the matrix of a 'policy community' (Falkner 1998; Hecló and Wildavsky 1974) which has driven initiatives which would have been far less likely to achieve results at the level of individual member states. The impact of EU regulation has however been more extensive in countries like Britain and to a lesser extent Ireland, where the 'voluntarist' tradition has meant that areas of employment relations controlled by law in most of continental Europe were left to regulation (or not) through collective bargaining.

'The UK has played the role of cheerleader for economic reform in the European Union for at least two decades' (Hopkin and Wincott 2006: 53). The ambiguous and multi-faceted character of the 'European social model' (Jepsen and Serrano Pascual 2006) makes it vulnerable to erosion; British governments have shown some skill in exploiting this vulnerability, and particularly since enlargement have increasingly found allies in other member states. Thus we can discern a form of double movement. The processes of British industrial relations have in significant measure been Europeanised, despite often strenuous resistance by both Conservative and Labour governments. But the European social model has become in key respects increasingly Anglo-Saxon. Complete convergence is unlikely, but it no longer makes much sense to speak of a clash of systems.

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