

More anti-union legislation in the UK

Cameron cloaked his legislative program in the language of assisting 'working people'

On 7 May 2015 the first majority Conservative Government in 20 years took power in the UK. Just 20 days later, one of the most vindictive pieces of anti-trade union legislation since Thatcher, was announced in 'the Queen's Speech' (which sets out the government's legislative programme). It is vindictive because, even from the Tories perspective, further restrictions on trade unions cannot be justified given that, as Tony Blair long ago and rightly pointed out, the UK already has the 'most restrictive laws on trade unions in the Western world' (none of which was moderated by the Labour Party's 13 years in office). Here we assess some of the implications of that vote and distinguish the 'pro-worker' rhetoric from the legislative realities.

A disaster waiting to happen

Without a doubt the election result was a disaster on many fronts.

It was a disaster for democracy. The result exposed the political distortions inherent in the UK's first-past-the-post electoral system. The Conservatives won a 12-seat majority despite winning only 36 percent of the votes cast and only 24 percent of the registered electorate. This equates to less than 20 percent of those eligible to register as voters.

It was a disaster for the Labour Party. Labour failed to expose the true nature of the austerity agenda or offer a suitably robust, progressive alternative. It is not surprising therefore that though working class people, as usual, recorded many more votes for Labour than for the Conservatives (41 percent to 27 percent), they were much less likely to turn out and vote than upper class people (57 percent to 75 percent)¹. In consequence, not only did Labour fail to win back the four million voters they lost during their 13 years of government but they haemorrhaged their vote in Scotland to the anti-austerity, anti-trident (missile) voice of the SNP.

Most importantly it was a disaster for working people and their trade unions. Cameron may have cloaked his legislative program in the language of assisting 'working people', but a scant glance at the detail exposes this fallacy. A fine example of Cameron's double-talk was his statement to his first cabinet:

'I call it being the real party of working people, giving everyone in our country the chance to get on, with the dignity of a job, the pride of a pay cheque, a home of their own and the security and peace of mind that comes from being able to support a family. And just as important for those that can't work, the support they need at every stage of their lives'.

In reality, the Queen's Speech unleashed a rolling programme of attacks on working class people, of which the attack on trade unions is only part.

What we wanted.

In the run up to the general election, the Institute of Employment Rights issued a ten point Charter of employment law reforms for an incoming government to consider. Such proposals would help to secure social justice, democracy in the workplace, a reduction in inequality and the stimulation of the economy (See Box 1). If implemented those policies would also go some way to addressing the failure of successive UK governments to uphold international labour standards.

Box 1: Labour Law: What we want

1. The right to a decent wage and to a decent income for those not in employment
2. The effective regulation of zero hours contracts
3. The right of every worker to be protected by a collective agreement
4. The re-establishment of sectoral collective bargaining and Wages Councils
5. The re-establishment of a Ministry of Labour
6. The right to strike in accordance with international law
7. The removal of a qualifying period for unfair dismissal
8. The restoration of the redundancy consultation rights
9. The right to legal protection for everyone who works, regardless of their legal status ('employee', 'self-employed', 'agency worker' etc.)
10. The right of all workers to access to justice, including the abolition of tribunal fees.

Professor Keith Ewing & John Hendy QC

Were the IER's demands too high? Since 1979 the UK has diminished collective rights in favour of individual rights; the negotiating table was increasingly replaced by the court room as the place to resolve employment disputes. The last government ended that by suddenly imposing penal fees on claimants seeking to take a case to such an extent that employment tribunals have themselves with 80 percent less work to do. In consequence workplace disagreements are now typically resolved neither by collective bargaining nor litigation but are left to management prerogative.

But was it really too radical to ask an incoming government to correct the much criticised fault-lines in the UK's labour law? As recently as



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January 2015, the European Committee on Social Rights – the quasi-judicial body overseeing the Council of Europe’s *European Social Charter* – criticised the UK for being in serious breach of workers’ rights. The list of non-conformity was damning and shameful.

The Committee concluded that the UK government was failing in its duty to protect workers against unpaid overtime, unpaid holidays and inadequate rest periods. It was failing to ensure workers received enough remuneration to secure a decent standard of living and to protect workers from unfair deductions from wages. The Committee said the UK was failing to ensure workers were given sufficient notice before termination of employment and was failing to compensate workers exposed to occupational health risks.

On collective rights and trade union freedoms, the Committee concluded that the UK was failing in its obligations to protect the rights of unions to organise, to negotiate and to take collective action. On the latter the Committee was particularly stinging, saying:

- The possibilities for workers to defend their interests through lawful collective action are *excessively limited*
- The requirement to give notice to an employer of a ballot on industrial action is *excessive*
- The protection of workers against dismissal when taking industrial action is *insufficient*.

Against that barrage of criticism, IER’s ten-point policy plan seems somewhat mild. Asking an incoming government to moderate some of the UK’s ‘most restrictive laws on trade unions in the Western world’ is hardly revolutionary. Seeking to replace those laws with a framework of labour law that recognises and welcomes the roles unions play in promoting social justice and economic wellbeing, seems sensible.

What we got

Instead, we got a Tory Government determined to fast track an ideologically driven programme of austerity cuts and a new Business Minister, Sajid Javid, tasked with the introduction of a Trade Union Bill as a ‘priority policy’.

Box 2: Trade Union Bill at a glance

The contents of the Trade Union Bill, though not yet published, have been heavily trailed by the Conservatives and are expected to include:

- A 50 percent voting threshold for union ballot turnouts (retaining the requirement for a simple majority of votes in favour).
- An additional 40 percent yes vote requirement in ‘core public services’ (health, education, transport and fire services)
- New time limitations on ballot mandates
- Proposals to prevent alleged intimidation of non-striking workers during a strike
- Tightening regulations on picketing and the introduction of new criminal sanctions.

- Removal of the ban on using Agency Staff to replace striking workers
- Changes to the operation of the political fund element of trade union subscriptions
- Further restrictions on check-off facilities for trade union subscription collection
- Threats to facility time for trade union representatives
- Unspecified changes to the role of the Certification Officer

According to the government, the main benefits of the Bill would be to ensure that strikes are the result of ‘clear, positive and recent decisions by union members’ and that any ‘disruption to essential public services has a democratic mandate’.

But these new restrictions come on top of a vast array of draconian, extensive and complex existing regulations on trade unions in general and industrial action in particular. Failure to comply – even on the smallest technical point – often results in a court injunction preventing strike action from taking place.

On the question of balloting, there has been heavy criticism of the new ‘triple lock’ proposals (at least 50 percent of constituency must have voted, a majority of those votes must be in favour, and, in ‘essential services’, at least 40 percent of the constituency must have voted in favour). Contrast has been made with the democratic deficit of the general election. 331 of the 650 MPs were elected with less than an absolute majority, 50 were elected with less than 40 percent of the votes cast for him or her, and one was elected with only 24.5 percent of the votes cast in his favour². Indeed, the new Business Secretary, Sajid Javid, failed to reach the proposed 40 percent threshold, elected by just 38.3 percent of his electorate. Half of the new Cabinet ministers would not have been elected to Parliament if the Tories’ planned strike ballot rules had applied to the election.

The TUC also condemned the Tories’ refusal to modernise balloting procedures, arguing for the introduction of secure, confidential electronic balloting as a way of encouraging greater participation in ballots. Even the Institute of Directors, in a report published in 2013 admitted that the postal voting system the unions are currently restricted to should be updated to include electronic balloting. That report noted:

A key obstacle to securing greater support for strike action is the current postal ballot system. Provided that a fair and transparent system of electronic voting can be delivered, there is no reason why – in return for asking for a higher level of legitimacy – the union movement should not be allowed to embrace technological advances to increase participation³.

But all this detail masks the real issue which is that these restrictions infringe the autonomy of trade unions. As ILO Convention 87 states; trade unions must be free to draw up their own constitutions. And though the State may legitimately require unions to be democratic what is utterly offensive is that in the UK employers have the

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right to seek injunctions or damages on the basis that a union's decision to support industrial action is not sufficiently democratic. No third party should have a legal right to interfere in the way that UK law does.

To make it worst, even when unions do manage to navigate the legislation and organise official industrial action, a number of the new proposals are likely to undermine the effectiveness of such action.

It is proposed that employers will have the right to bus in agency workers to cover the jobs of strikers, abandoning a law that's been in place in the UK since 1973. Similarly, the Bill will include measures to 'tackle intimidation of non-striking workers' despite the fact that there is no evidence of such behaviour notwithstanding the 2014 Carr Inquiry which sought to find some.

In spite of the obligation of the government to guarantee freedom of association (Article 11 of the European Convention on Human Rights), the UK's *Code of Practice on Picketing* (which restricts the number of pickets at the workplace to six) will become legally binding, so that breaches of it will be a criminal offence. In effect, that means the more popular a dispute, the more likely the legislation will turn aggrieved workers into criminals.

International standards and human rights

When announcing the proposed Bill, Javid said that the changes would 'certainly increase the hurdles that need to be crossed' before a lawful strike could be called but said that it was the 'right' and 'fair' thing to do. He went on to say that 'the changes that we want to make to strike laws are ... proportionate, they're sensible', and claimed 'If you look at other countries and what they've done they're not too dissimilar'⁴.

But as noted by the Institute of Employment Rights⁵, very few other countries have strike ballot requirements in any way comparable to the kind now being proposed in the UK. Of those that do, strikes in the Czech Republic require the consent of at least one third of those eligible to vote. In Denmark the action must be supported by at least 75 percent of those taking part in the vote but this requirement is one the unions voluntarily included in a collective agreements rather than one imposed by legislation.

According to IER, similar thresholds to those proposed by the Tories are to be found only in Bulgaria and Romania, where it is understood that the law permits industrial action only if it has the support of a majority of those eligible to vote. But those laws have been criticised by the ILO.

In addition, the only industrial action that may be banned under international law is that which relates to workers in essential services, a term that is not synonymous with working in the public services. Even then a system of independent, impartial, binding and speedy arbitration must be available in substitution.

One can assume therefore that the ILO's Committee of Experts would similarly reject Javid's claim that the UK's proposed thresholds are 'right, fair, proportionate and sensible'. Rather, as with Bulgaria, the UK would be reminded by the Committee that under international law, in strike ballots '*account should only*

be taken of the votes cast', while any '*required quorum and majority should be fixed at a reasonable level*'.

Human Rights

The problem with ILO standards and obligations is that traditionally they have been unenforceable in the UK, with Governments repeatedly ignoring recommendations of the Committee of Experts. However, cases in the European Court of Human Rights (ECtHR) in recent years (not least the *RMT v UK* case in 2014) have acknowledged that the right to strike is a basic human right, protected by Article 11 of the European Convention on Human Rights (ECHR).

It is hardly surprising therefore that the Queen's Speech also announced the Government's intention to 'consult' about the abolition of the Human Rights Act 1998 (which incorporates the ECHR into UK law) and its replacement with a British Bill of Rights. Such a move would mean UK Courts would no longer be bound by the decisions of the ECtHR, including those decisions protecting the fundamental rights of workers.

Conclusion

The Tory aspirations are clear. They want cheap workers, unable to withdraw their labour, unprotected by either trade unions or employment rights and threatened with destitution via benefit cuts if they refuse to accept low-standard work. Trade unions distort the free labour market according to neo-liberal dogma. In fact, much recent research shows that trade unions and collective bargaining are an antidote to economic inequality and create demand in the economy and hence jobs, investment, tax revenues and so on.⁶ Over-regulating the role of unions at work is the other side of the coin of Tory determination to deregulate the workplace. They want a labour market free from what they call 'red tape' and what we call rights at work. And the Cameron government is leading the spread of this philosophy to the EU as part of his demand for concessions to keep the UK in the EU. Above that looms the EU's determination to impose the Transatlantic Trade and Investment Partnership and the parallel TISA and CETA⁷ on all Europeans, one effect of which will be to destroy collective bargaining and rights at work.

We must resist.

Notes

- 1 Comparing classes AB to DE. Figures from Ipsos Mori, *How Britain Voted in 2015*, 22 May 2015.
- 2 J Garland and C Terry, *The 2015 General Election, A Voting System in Crisis*, Electoral Reform Society, 2015, p22.
- 3 IoD, *Big Picture*, Winter 2012
- 4 Interview on Today Programme, BBC Radio 4.
- 5 <http://www.ier.org.uk/blog/tory-plans-restrict-right-strike-have-been-widely-condemned>.
- 6 E.g., E Dabla-Norris et al, *Causes and Consequences of Income Inequality: a Global Perspective*, International Monetary fund, June 2015.
- 7 The Trade in Services Agreement and the Comprehensive Economic Trade Agreement, respectively.

Workplace
disagreements
are now typically
resolved neither
by collective
bargaining
nor litigation
but are left to
management
prerogative