

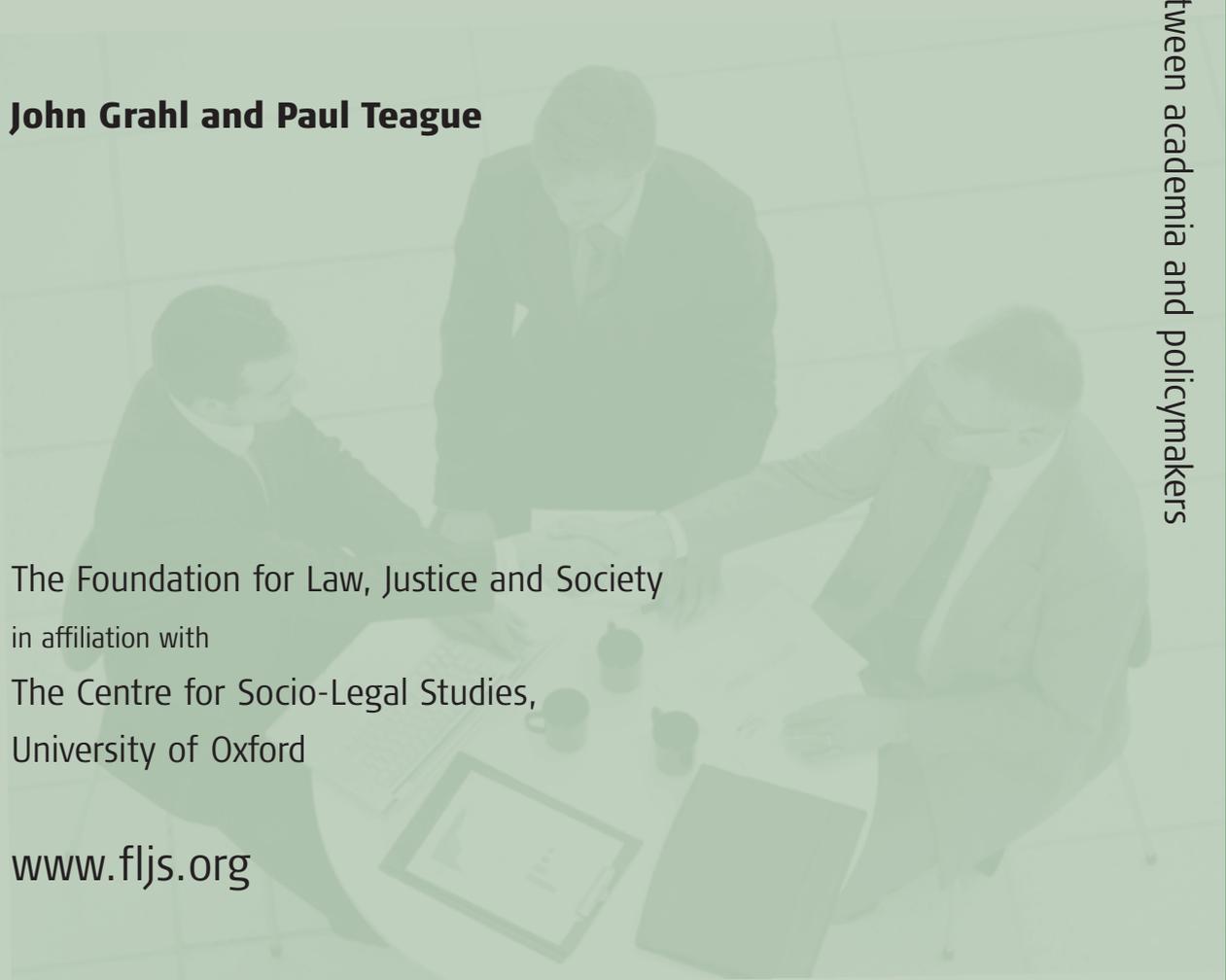
The Social Contract Revisited

Renewing the Social Contract for Work in Anglo-Saxon Economies

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Executive Summary

- The notion of a social contract for work and employment refers to institutional procedures used to establish the rights and rules through which people are incorporated into the labour market. It also refers to the expectations and obligations that employees, employers, and societies have for work and employment relationships.
- In the past, the social contract at work in most Anglo-Saxon countries was embedded in a series of collective industrial relations institutions. A feature of this old social contract was that it produced a series of public goods for the labour market that ensured equity was combined with efficiency: a positive relationship was established between employee demands for decent work and employer demands for organizational efficiency.
- This social contract at work has effectively broken down. Structural economic transformation alongside political change has weakened the functioning of collective industrial relations institutions in Anglo-Saxon countries. The decline of trade unions almost everywhere epitomizes the eclipse of the old social contract.
- The drive towards labour market flexibility alongside the growth of human resource management (HRM) practices has fragmented labour markets. Labour markets now operate in the absence of public goods, causing inequalities in employment to rise in most Anglo-Saxon countries.
- The programme for labour market flexibility has been heavily criticized both in social and economic terms. However, some assessments of the current state of Anglo-Saxon labour markets and the possibilities for change are too bleak. More constructive thinking is required on how to re-establish a new social contract.
- First, there must be recognition that there are developments occurring in the labour market other than flexibility and decentralization. It should be recognized that increasingly, employees are prepared to use the law to vindicate employment rights. As a result, the social contract at work in the future is likely to have an important legal dimension, which requires new strategies to be developed to ensure compliance with and enforcement of employment legislation.
- But more importantly, efforts must be made to rebuild public goods for the labour market. This is not a call to re-establish the social contract of the past: that institutional configuration cannot be resurrected. Instead, it must be recognized that decentralized labour markets are here to stay. Consequently, the key task is to create public goods that ensure people do not have to make labour market transitions by themselves. Institutional supports to facilitate labour market transitions are the key public goods that should be created for a new social contract.

Renewing the Social Contract for Work in Anglo-Saxon Economies

Introduction

The notion of a social contract for work and employment has a number of different meanings. First of all, it refers to institutional procedures used to establish the rights and rules through which people are incorporated into the labour market. But it also refers to the expectations and obligations that employees, employers, and societies have for work and employment relationships. Although the situation varies from country to country, the two institutions that traditionally have been associated with the social contract at work are collective bargaining and the welfare state. To put the situation in schematic terms, the economic status of those in employment was determined by collective bargaining more or less reinforced by legislation; while the rights and obligations of those not in employment such as the retired or the unemployed depended primarily on the welfare state.

This policy brief argues that the traditional social contract has fragmented, unable to stand firm in the face of multiple centrifugal pressures. It suggests that labour markets now operate in the absence of an overarching institutional structure that satisfactorily balances employee demands for decent work with employer demands for organizational efficiency and flexibility. Structural change and the search for greater labour market flexibility are identified as the two culprits for the disorganization of modern labour markets. The argument made here is that it is time to move beyond recriminations of labour market flexibility programmes so that more attention can be devoted to renewing the social contract for work in a manner that allows decentralized labour markets to operate in a socially responsible manner.

The fragmentation of the 'old' social contract

The traditional social contract, which reached its heyday in most advanced economies in the 1960s, tended to

exhibit a number of institutional features, some of which are set out below. First, trade unions were assigned a special public status and played an important role in securing and upholding the social contract at work. Typically, trade unions entered into a collective agreement with employers that involved balancing conflicting interests to ascribe rights and obligations to individual workers and enterprises in a way that tended to diffuse serious conflict between them. This collective bargaining process was at the centre of the forward march of labour in the 1950s and 1960s (Regini 1991).

Another feature was the functioning of occupational labour markets. Membership of an occupation or craft, or even a liberal profession, is a status relationship that runs in parallel with the contracts entered into by individuals. Thus, the specific nature of services and of remuneration is governed by free contract but is embedded in an invariant structure of obligations that ensures the competence, responsibility, and probity of the practitioner. The client or firm thus had a guarantee which made it possible to employ or transact with any recognized member of an occupation: the counterpart of this for craft and professional workers was precisely their mobility from one client or firm to another. In addition, occupational labour markets, validated by training and skills qualifications recognized economy-wide, conferred on workers precontractual rights, which in turn created a series of expectations and obligations for employees and employers about how work should be organized and the employment relationship managed. In other words, the functioning of many labour markets was rooted in well designed and comprehensive public systems of vocational training and skills development (Streeck 1992).

Thus, the old social contract used collective institutions to establish the terms through which people were incorporated into working life.

An economic feature that this institutional architecture made possible was a broad association between overall wage increases and average productivity increases, which resulted in a number of beneficial effects. First, workers shared in the benefits of economic progress and efficiency. In addition, economic growth advanced in a non-inflationary way (real wage increases were paid for by increases in economic efficiency). Lastly, economic inequality was kept in check: collective labour market institutions placed both a floor and a ceiling on wage settlements. In short, an economic growth regime was created in which equity and efficiency connected together in a complementary manner.

Perhaps the best way to view this old social contract is that it created public goods in the labour market. Economic theory tends to see public goods as given; as determined by objective characteristics of the good in question that prevent it from being privately appropriated. It is more realistic, however, to see public goods as socially constructed; as being based on a gradually widening recognition of the common benefits arising from a particular type of public provision and of how that provision might be arranged (Touffut 2003). Although voluntarist in character and not formally part of the state, collective employment relations in Anglo-Saxon countries operated in a way that produced, almost by surrogate, public good effects.

For example, collective employment relations give negotiations between employers and trade unions some public good characteristics in that individual employees and employers could not vary the outcome in any substantial manner. But the wider significance of collective bargaining for both macroeconomic policy and social policy was only slowly accepted and never completely or by all parties. Indeed, before the public goods arising from the social contract had been fully established, the process of social deconstruction – denying the importance of common benefits and emphasizing the social and individual disadvantages of the same arrangements – was well underway.

The social contract based on collective employment relations has been under pressure for some time in most Anglo-Saxon economies. Everywhere there has been a reduction in the extent of coverage and the bargaining power of trade unions. Over the past twenty years, working days lost through industrial action have declined steeply across countries. First unemployment and then globalization, alongside wider social and cultural changes, have been the major forces in reducing the bargaining power of unions. Of course, the weakening of trade unions has called into question the extent to which they can operate as effective guarantors of the social contract at work.

Occupational labour markets, which established economy-wide status structures, have also been eroding, partly because of deindustrialization and technical change, and partly because of the decentralization of employment relations. The association between wages and productivity has been severed, causing a big increase in the share of profits in national income across countries. Traditional institutional rules that used to govern the employment relationship have been repudiated as the source of economic sclerosis rather than mechanisms to provide workers with a series of social safeguards. The biggest upshot of this decline in the old social contract has been a sharp rise in income inequality in liberal market economies. The gap between the haves and have-nots in countries like the United States and United Kingdom is now wide and growing (Pontusson 2005). In short, the public good features of the old social contract have been dismantled. Labour markets have fragmented and now operate in a relatively disorganized manner.

Labour market flexibility, HRM, and the social contract

The disorganized nature of many Anglo-Saxon labour markets has been accentuated by the drive towards greater labour market flexibility. The simple case for labour market flexibility is that restrictions on employment contracts should be kept to a minimum as they introduce a series of labour market rigidities. Less regulated labour markets allow firms to respond

more quickly to changing economic conditions. In addition, any form of collective bargaining outside the firm is seen as a distortion as it is likely to lead to wages being set at levels not warranted by market conditions and to firms having little room to customize payment systems. Thus, national and sector-level collective bargaining structures, the main source of such restrictions in the 'liberal' market economies, need dismantling. From a labour market flexibility perspective, trade unions promote narrow sectional interests in a manner that harms the overall efficiency of the labour market or the 'public good'. As a result, trade unions should have no special public status. Overall, the aim of labour market flexibility has been to make labour markets more competitive, more decentralized, and less regulated.¹

Perhaps as important a challenge to the traditional social contract as labour market flexibility has been the growth of human resource management (HRM) at the workplace (Kochan 2007). In the past, personnel management performed a welfare function inside the organization, seeking to balance the needs of the firms with the needs, aspirations, and interests of the workforce. With the growth of HRM, the personnel management profession has moved away from this welfare function and sought a more strategic role inside the firm. In their efforts to align HRM policies with the competitive strategy of firms, human resource managers have introduced major changes to the organization of workplaces. One important result of these changes has been the transformation of the psychological contract at work.

The psychological contract at work can be viewed as a set of reciprocal expectations held by employees and employers about how each should perform and be treated at work: an integral dimension of the social

contract. Organizational reforms and changing management practices have led to a new set of beliefs and assumptions about the relationship between employees and employers. In the past, employees had an expectation of a job-for-life in return for loyalty to the organization. Now, employability has replaced job security as the core organizing principle of the employment relationship. Employees are required to take responsibility for upgrading their skills so that they remain attractive to employers. Employers have also training and skills development responsibilities, but these are mostly seen in terms of improving the firm-specific competencies of employees rather than participating in economy-wide occupational/professional labour markets. Pay is increasingly based on performance rather than collective bargaining procedures. Target setting backed up by performance appraisal procedures is replacing the culture of a 'fair day's work for a fair day's pay'. Hierarchical organizational arrangements at the workplace – job ladders, seniority rules and redeployment restrictions – are giving way to flatter organizations based on team working, multi-skilling or tasking, and internal flexibility (Osterman 1999).

Together, labour market flexibility and HRM have formed a decisive pincer movement against the old social contract. On the one hand, labour market flexibility has undermined the institutional framework that delivered the economy-wide public goods that maintained labour market order and stability under the old regime. On the other hand, HRM has both elevated the role of the firm in determining the conditions under which people enter into and participate in the labour market and inculcated the notion that it is individuals alone who are responsible for their employment fate. Individualism and decentralization are the by-words of the new labour market order.

This way of organizing the labour market has provoked intense criticism, since it has retrogressive consequences for the social contract at work. It is regarded as flawed both in social and economic terms. On the social side, Sennett in his sociological critique of the contemporary organization of work,

1. See Solow, R. M. (1998) 'What is Labour-Market Flexibility? What is it Good for?' *Proceedings of the British Academy*, Volume 97. Note also that the specific economic rationale for flexibility measures has changed over the years. Originally, the focus was very much on wage inflation; more recently, flexibility has been put forward as a means of preserving especially less qualified jobs in the face of technological change and/or globalization.

captures a widely shared feeling about the labour market flexibility/HRM model when he states: 'a regime that provides human beings with no deep reason to care about one another cannot long preserve its legitimacy' (1998: 1). On the economic side, labour market flexibility alongside HRM is seen as disorganizing labour markets through a proliferation of specific agreements, each with different terms and conditions, which can increase employment segmentation. Flexibility reforms encourage management to make more use of casual or short-term employment, 'outsiders', to respond to quantitative variations in demand. At the same time, greater use is made of a relatively privileged core of more qualified and committed workers, 'insiders', to bring about the necessary qualitative adaptations to market or technological changes. Thus, the disjunction between insiders and outsiders becomes sharper, which actually reduces effective labour market competition (Groos and Manning 2007).

In terms of the social contract, this kind of segmentation and differentiation can be seen as damaging. Those employees fortunate enough to be considered core workers within strong companies may find their status enhanced, but this outcome is not generalized, as the corollary is increased casualization and precariousness in employment. Thus, there are big distributional consequences from the flexibility agenda. Andrew Glyn's work (2006), for example, shows how this agenda reduced the relative income of lower paid workers, as well as their employment security; in both the United States and the European Union, unemployment is concentrated on just those groups who have had to accept flexible contracts and lower incomes. It should be added that although core workers remain privileged relative to labour market outsiders, they too are facing increased work intensification pressures with the introduction of a battery of performance management schemes.

Employment rights and the social contract

The move towards greater flexibility and decentralization has encouraged a deeply pessimistic view of labour market change: the broad movement

to more decentralized employment relations is seen as a form of privatization, a withdrawal of public concern with labour market processes and outcomes, and a retreat from public intervention in them. This pessimism is normally accompanied by an equally bleak view regarding the possibility of using political processes to construct a meaningful new social contract for employment and work. Colin Crouch, a political scientist with specialized knowledge of employment relations, suggests that, 'the fundamental cause of democratic decline in contemporary politics is the major imbalance now developing between the role of corporate interests and those of virtually all other groups' (2004: 9).

This view is hard to challenge, but it may be one-sided and overly pessimistic. Certainly, the themes of flexibility and decentralization are dominant, but they are not the only labour market game in town. Other developments are occurring that need to be treated more seriously. Consider the significant growth of employment legislation across Anglo-Saxon economies, affording employees a greater range of individual employment rights. Some commentators, such as Pollert (2007), downplay the significance of this development, arguing that individual employment rights remain paper tigers due to weak enforcement mechanisms. This argument is not entirely convincing. Some countries such as Canada and Ireland possess what appear to be effective enforcement mechanisms. Moreover, the increase in the number of cases adjudicated by employment tribunals and similar bodies suggest that people are increasingly prepared to vindicate their employment rights.

We regard the increase in individual employment rights as important as it resonates with wider emerging trends in democratic practice. Pierre Rosanvallon (2006), in a fascinating study of 'Counter-Democracy', suggests, in contrast to the 'post-democracy' thesis, that there are three ways in which ordinary citizens in practice, limit and even subvert governments otherwise completely subordinated to corporate interests. The first is an unprecedented intensity of scrutiny by the media and amongst those using the internet, which, in the past,

the political class was not subject to. The second is the growth of legality as a norm of political and social action. The third is the systematic and committed use of veto rights (in referenda, in public consultations, in by-elections, in local politics, and so on): what were in the past merely formal steps in the exercise of executive power become real and very hazardous obstacles.²

Obviously such countervailing powers do not suffice to establish an active democracy or even to counter the power imbalance in employment. The key point here, however, is that these powers do correspond to the needs of a more individualized workforce engaged in decentralized employment relations. With or without the support of collective organizations such as trade unions, workers are increasingly of the view that it is legitimate to use employment legislation to defend or advance rights at work. It is even plausible to argue that the extension of individual employment rights has created a stronger rights-based dimension to the social contract at work. However, the consequences of this development are unclear, with a range of contrasting arguments being put forward.

One argument is that the expansion of employment legislation has promoted the emergence of a new identity politics at the workplace (Piore and Safford 2006). On this view, people increasingly think of themselves in terms of religion, gender, sexual preference, and ethnicity rather than class. Many of these different groups have come to see their problems at work as related to their social identities and not to their position as employees. In this situation, identity groups use various legislative and judicial routes to address employment-related issues that are seen as blocking their interests at work. Across Europe, for example, equality groups have used EU directives to challenge the perceived limitations of domestic employment legislation. Thus, the emergence of a rights-based

dimension at work is seen as encouraging a new form of social contract at work based on people's social rather than occupational identities.

A contrasting interpretation is that the increase in employment legislation has produced a litigious culture at the workplace. On this account, employees are prepared to use the law opportunistically to advance their interests at work. Perhaps the most stark example of this behaviour is in the United Kingdom where low-paid women workers have used 'no win no fee' solicitors to lodge equal pay cases at the Employment Tribunal. It is estimated that over 50,000 of such claims have been lodged so far by local government workers and 10,000 by health care workers. The majority of cases that have been heard have been settled in favour of claimants and have cost the relevant authorities £1 billion. Some estimates suggest that compensation payments in these cases could cost anything up to £10 billion.

Thus, it seems apparent that the law will figure in the future of the social contract at work and will involve individual workers using legislation, sometimes opportunistically, sometimes not, to advance their interests. Although employment legislation can provide employees with important guarantees, this is essentially a 'negative' power, mostly used by employees facing difficult employment times. The social contract for work should not be constituted solely along narrow legalistic lines. It needs to have a more expansive remit of creating an ensemble of public institutions that seek to support employees in their efforts to obtain decent work and to manage successfully the vagaries often imposed by labour market participation. In short, the social contract for work needs to re-establish public goods for the labour market. In so doing, the task is not to try to reinvent the past, but to create institutional supports that accord with modern decentralized labour markets.

Public goods and decentralized labour markets

Designing public goods for decentralized labour markets will clearly require considerable policy experimentation. But it will also involve reframing

2. Rosanvallon does not say so but the present impasse in the EU, with all the significance it has acquired for employment relations, is an excellent illustration of his argument.

important employment policy developments so that the public and private realms in an economy interact in a manner that produces employee-friendly outcomes. Consider the fashionable theme of flexicurity. This can be viewed in two different ways. One is to advance the notion of employability that seeks to make individuals responsible for their own careers. In policy terms, this approach can lead to initiatives being proposed that seek to weaken and dilute the security that is often embedded in standard employment contracts. The European Commission appears to have adopted this policy orientation, which has already had significant consequences in France, through a root-and-branch amendment of the Code du Travail, and other member states of the European Union are following this example (Filoche 2008). Thus, flexicurity can be designed in a manner that adds to the social costs of the flexibility agenda.

The second view regards flexicurity as an important public programme to facilitate labour market transitions (European Commission 2004). On this approach, public policies are encouraged to adapt to the decentralized and often individualized employment contracts that predominate today, but in a manner that does not undermine the social and individual value of job security for most employees. The implication of this approach is that, although individuals must retain the right to decide about changes to their employment circumstances at critical moments of their working lives, there is a strong public interest in the success of their transitions. Three obvious cases include movements between jobs, movement from education into the workforce, and movement from employment into retirement. However, other cases, such as parenthood or the establishment of a new household, raise very similar problems and have given rise to similar initiatives.

Nothing in these considerations justifies weakening job security, and thereby propelling people towards risky transitions which they would prefer to avoid. What seems to be clearly justified, however, is a detailed study of how individuals actually do cope

with these transitions and of the circumstances most conducive to success. On this basis, reforms and interventions can be designed, not to move back to a centralized labour market, but to support the emergence of a more decentralized one with conditions favourable both to its efficient functioning and the well-being of employees. Already, in fact, policies of this kind are advanced in the areas of work-life balance and support for parents.

A similar line of argument can be pursued in relation to the subjective aspects of flexible employment relations. There are powerful critiques of the impact of flexible work on the individuals concerned, but they may not be the last word on the issue.³ A loss of continuity and stability may raise problems both of personal identity and of insecurity. Nevertheless, not all the workers concerned would prefer a career spent in the shadow of a single powerful corporation, and there are aspects of the new situation, such as margins of autonomy and occupational mobility, which do have a positive side although they are usually experienced by workers in more advantaged positions. Thus, the second approach to flexicurity seeks to move beyond the pessimistic view that accepts increased inequalities as a consequence of the proliferation of flexible contracts, and which seeks to develop new forms of public intervention and redistribution that make labour market transitions go hand-in-hand with social integration. It is about socially constructing new public goods for modern decentralized labour markets.

Conclusions

We live in new employment times. A combination of structural change and the drive for greater employment flexibility have made labour markets in Anglo-Saxon economies more decentralized and individualistic than ever before. One outcome of this

3. The account in Richard Sennett, *The Corrosion of Character: Personal Consequences of Work in the New Capitalism*, Norton, New York, 1998 is a very powerful critique, but it is possible for Pierre Veltz to accept all its analysis while making a less pessimistic assessment of the changes in question. See *Le Nouveau Monde Industriel*, Gallimard, Paris, 2000.

labour market change has been the fragmentation of the old social contract at work, which was more or less grounded in collective industrial relations institutions. As a result, modern labour markets operate without any well-functioning public goods, which in the past were successful at balancing employee demands for decent work with employer demands for organizational efficiency.

The distorting effects of labour market flexibility have been identified and widely criticized. Yet the time has come to move on and find ways to renew the social contract so that public goods can be established that are in line with the decentralized character of modern labour markets. Part of this involves creating public agencies that allow employees to vindicate employment rights. But more important is the building of public support systems that ensure that employees do not have to navigate the high seas of modern labour markets alone. Labour market transitions should be the organizing focus for efforts to build new public goods for the world of work in Anglo-Saxon countries.

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