

 **‘QUICK NOTE’ AUGUST 2016**

**Workplace relations**

**– a new agenda for progressive change?**

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**Summary**

We are in the midst of unprecedented political turmoil. Fortunately, this has allowed the bringing forward onto the mainstream political agenda of proposals concerning ideas for workers’ rights in the workplace that have long been marginalised and ridiculed. Amongst these are proposals for worker directors, sectoral collective bargaining and extended union recognition. They have come from Theresa May, Owen Smith and Jeremy Corbyn. This ‘Quick Note’ examines the main proposals that have emerged over the summer on these areas. Using historical experience, it concludes that considerable fleshing out of the proposals is needed in order to avoid any potential pitfalls.

**Introduction**

Politics is not in its normal habitus at the moment. This is especially true in regard of proposals for major reforms to workplace relations in Britain. From the Conservatives, Theresa May promised on 11 July in her first and only campaign speech – just two days before she was crowned as new Tory leader and PM – that she would introduce worker representation onto the boards of companies. This was part of her pitch to create an economy and society that ‘works for everyone’. Then, following the announcement of a formal challenge to Jeremy Corbyn for the leadership of the Labour Party, Owen Smith laid out his ‘Workplace Manifesto’ on 2 August. Given that Smith’s claim to be genuinely on the political left is open to considerable doubt because of his background and voting record since becoming an MP in 2010, his manifesto can be read as an attempt to out-Corbyn Corbyn – especially where it has become abundantly clear that the political terrain in Labour has moved profoundly to the left. In other words, there would be no point standing against Corbyn on a centre or right-wing position. Indeed, some have accused Smith of pinching the policies of Corbyn (and John McDonnell) in this area (as well as others). Corbyn, of course, had outlined a programme of proposals that won him the Labour leadership in the summer of 2015. He has for this contest laid out a new manifesto based on ten pledges. One of this concerns workers’ rights. Looking at the proposals from Smith and Corbyn, it is nonetheless the case that both sets are a vast advance on from the timid proposals put forward by Ed Miliband for the Labour manifesto for the 2015 general election.

In this ‘Quick Note’, the proposals from May, Corbyn and Smith are critically examined. Varying degrees of scepticism emerge about them even accepting that these tend to be fairly bald campaign pledges rather than fully worked out policies. But it is incumbent upon those making them to at least present something more than just the ‘headline’ or ‘slogan’ for each proposal. This is because for the proposals to have sufficient credibility and durability, they must be developed to some extent in order to show a sense of genuine commitment to them and that some prior thought has gone into formulating them (rather them being plucked out of the air or off the shelf of ideas of others). Notable in amongst all this political maelstrom is that the third largest political party (by membership and MPs), the SNP has made no recent announcement on the subject. Recalling that its initiative of the Fair Work Framework was launched in March 2016, this is not surprising. Yet, and notwithstanding that employment matters remain a reserved issue to Westminster, it was still the case that the SNP Scottish Government’s Fair Work Framework did not bring forward concrete proposals to operationalise its aspirations.

**Theresa May**

On the morning of Monday 11 July 2016, May outlined her political perspective (and attendant proposals) on a number of issues, including the reform of corporate governance, in her bid to become the new leader of the Tories, and, thus Prime Minister of Britain. They formed part of her pitch for a new form of ‘one nation’ Toryism. A key part of this pitch was, to quote her, ‘Putting people back in control’. Having ‘have not just consumers represented on company boards, but employees as well’ was central to this pitch.

By later that afternoon, she had become leader and PM in waiting after fellow contender, Andrea Leadsom, pulled out. There is no evidence to show the two events were related in a cause and effect manner. But it became clear that a May Tory government would – in words at least and for the time being – be neither a continuation of the Cameron Tory government nor a bonfire of labour market regulations that Leadsom favoured. May’s proposals on workplace democracy were but just one indication of this.

Any right-minded trade unionist or socialist should welcome the proposal that May made to put workers on the boards of public limited companies. This puts front and centre the issue of workplace democracy on the top of the political agenda, opening up the space for a wide-ranging public debate that even the dispute between Ineos and the Unite union of late 2013 did not manage to create. But trade unionist or socialist will also want to suspend judgement on how far to welcome May’s proposal until they see exactly what she is putting forward because, as ever, the devil will be in the detail. Indeed, they will remember that the proposal was made as part of the beginning of what was expected to be a three month leadership campaign, and they will note that the reaction from business and corporate leaders to her proposal has been lukewarm to say the least.

They will recall that the last time they were given what seemed like a simple, unambiguous commitment from a PM in waiting was from Tony Blair in 1996. Then, he promised to legislate to create a law that allowed union members to gain statutory union recognition from a recalcitrant employer where they constituted a simple majority. The *Employment Relations Act 1999* was the result but it was also the product of allowing employers, principally through the CBI, to influence the nature and implementation of the scheme for statutory union recognition. What resulted was a weak form of statutory union recognition and not the one that the TUC and its union affiliates had hoped for or expected.

There is no reason to think a similar process of watering down and tinkering around will not happen with May’s proposal – assuming that it is not a campaign proposal that gets quietly dropped when the so-called ‘serious business’ of being PM – and negotiating Brexit - begins.

But the longer historical record has a more illuminating light to shed on May’s proposal. Back in 1975, the then Labour government commissioned a *Committee of Inquiry on Industrial Democracy*. It terms were:

*Accepting the need for a radical extension of industrial democracy in the control of companies by means of representation on boards of directors, and accepting the essential role of trade union organizations in this process, to consider how such an extension can best be achieved, taking into account in particular the proposals of Trades Union Congress report on industrial democracy as well as experience in Britain, the EEC and other countries. Having regard to the interests of the national economy, employees, investors and consumers, to analyse the implications of such representation for the efficient management of companies and for company law.*

Led by Oxford academic, Alan Bullock, the Committee of Inquiry published in 1977 majority and minority reports. The majority report recommended that in companies with more than 2,000 employees, worker directors be established on the basis of a ‘2x + y’ formula where one ‘x’ was the representatives of capital (the employers and their management) and the other ‘x’ was the representatives of labour (the workers and their unions). Both were to be equal in number while ‘y’ was the independent, third party representatives like lawyers or academics, present to cast the deciding vote or break any deadlock.

The proposals were never implemented so the experiment of industrial democracy in the form of worker directors never broke out of its tiny bridgehead at the Post Office and British Steel. This was on account of the then Labour government imploding, opposition from unions who feared interference in their much valued ‘free collective bargaining’, and because new PM, Margaret Thatcher, was determined to reduce worker and union rights upon entering Downing Street in May 1979.

But the majority report did at least – for our purposes now - flag up that if workers are to be genuinely influential on a company board, they at least need more than token representatives. Equal representation with capital must, therefore, be a foundation stone as must be sitting on the main board of the company and not auxiliary or secondary ones. This vital issue is flagged up by the current practice of the First Group of bus and train operators. Since 1989, each of its companies (currently 12 bus operators and two rail franchise holders) has had its own ‘employee director’ and there is one ‘employee director’ that sits on the main board of the overall group. Yet this level of representation has not been enough to prevent a multitude of recent disputes and strikes in the companies. It is clear that having just one ‘employee director’ per company is not sufficient to allow much influence to be exercised.

Other foundation stones for the operation of worker directors must also be i) the uninhibited freedom for workers to choose their own representatives as workers directors; ii) worker directors not being subject to ‘Chatham House’ rules which prevent them from sharing information from the company board with their own members; iii) worker directors being given full and unfettered access to company information so that they can engage properly in the decision making process (with the rationale of ‘commercial sensitivity’ not giving the usual blanket immunity); iv) worker directors being under no other obligation other than to serve their members’ interests, and lastly v) collective bargaining not being restricted by the operation of company boards with worker directors on them. These are especially important because there is a ‘business case’ for worker directors whereby capital seeks to incorporate labour into its structures and inculcate it with its own ideology. This is known as a strategy of incorporation.

There are also a host of other stipulations that are necessary to ensure effective representation. These concern how the creation of worker directors on company boards is to be triggered and the process by which this is managed. For example, will the law require all public limited companies to have worker directors without exception or what level of support amongst the workforce is needed to create them, i.e., a simple collective (2+ workers) or a simple majority or 40% of all those entitled to vote voting to do so (where non-voters are counted as ‘no’ votes)? Another instance is, if there are to be referenda on creating worker directors, will employers be able to use their resources (financial, ideological, and organisational) to campaign against their creation? And so on and so on.

So right-minded trade unionists and socialists will want to see much meat put on the sparse bone of May’s proposal before making a more definite judgment. They will be able to use the historical record to guide that evaluation. That is only right and proper.

In Scotland, the veracity of the argument made here about the need for equal representation in particular could be examined by way of assessing the experience of employee directors on NHS boards and for NHS Scotland. (There is also an employee interest director on Scottish Water’s board.) Such employee directors have existed since the early 2000s, and the Fair Work Framework has encouraged their adoption elsewhere of the NHS model to all public bodies. The first opportunity was Food Standards Scotland but it chose not to take up the recommendation given it had no statutory obligation to do so.

**Owen Smith**

Smith’s ‘Workplace Manifesto’ (<http://www.owen2016.com/workplace_manifesto>), in his own words, promises a ‘revolution in workers’ rights … [making] Britain the envy of the world for employment rights’. Amongst these are strengthening union recognition rights, providing mandatory access arrangements to workplaces for unions, removing unfair obstacles to industrial action, modernising balloting with e-balloting to increase participation, creating worker representation on all remuneration committees, and repealing the *Trade Union Act 2016* immediately on taking office. The strength of his manifesto is that it seems to cover almost all areas of concern with something said about each. In that sense, it is more joined up. Yet it also reads like a rather overly long and quickly drawn up shopping list and there is considerable inexactitude in a number of his key proposals. For example, in calling for the strengthening of union recognition rights to provide for recognition where majority support exists, it is not clear how this is an advance on the current arrangements embodied in the *Employment Relations Act 1999*. What needs to be offered instead are means to prevent employers working to stop union members becoming a majority. Another case is that in providing mandatory access arrangements to workplaces for unions ‘where requested by workers’ this could allow employers to influence workers so that they are convinced not to request it. It would be far simpler and better to have a universal right to access. Two further examples are that in a) suggesting worker representation on remuneration committee, just like with Theresa May’s proposal on worker directors, the critical issue of the balance of numbers and power between workers and managers is not spelt out; and b) providing ‘a legal framework for voluntary sectoral collective bargaining’ shows the ineptitude of not understanding the distinction between statutory and voluntary mechanisms to the effect that this undermines the potency of the former by the latter.

**Jeremy Corbyn**

Corbyn’s proposals on workplace rights are to be found as one of the ten pledges of his manifesto (<http://www.jeremyforlabour.com/>) and in his article in *The Observer* (1 August 2016). The pledge in full reads:

*We will give people stronger employment rights from day one in a job, end exploitative zero hours contracts and create new sectoral collective bargaining rights, including mandatory collective bargaining for companies with 250 or more employees. We will create new employment and trade union rights to bring security to the workplace and win better pay and conditions for everyone. We will strengthen working people’s representation at work and the ability of trade unions to organise so that working people have a real voice at work. And we will put the defence of social and employment rights, as well as action against undercutting of pay and conditions through the exploitation of migrant labour, at the centre of the Brexit negotiations agenda for a new relationship with Europe.*

In addition to this, he has previously promised to bring about a return to centralised collective bargaining in the civil service after its abolition by the Conservatives in their ‘Next Steps’ initiative of 1994 (when nearly one hundred agencies were created with the ability to determine their own terms and conditions). Later, he added, echoing Miliband’s 2015 general election manifesto, that ‘the election of staff representatives to executive remuneration committees’.

His commitment to utilise the law to create new rights rather than suggest voluntary codes is to be welcomed, especially on the issue of the legal right to sectoral collective bargaining for if bargaining rights only exist at the enterprise or company level, the terms and conditions of workers in different companies in the same sector would still be the subject of downward pressure in a ‘race to the bottom’ as companies compete against each other on the basis of labour costs. But the absence of any further detail is still noticeable and of concern. In particular the statement that: ‘We will strengthen working people’s representation at work and the ability of trade unions to organise so that working people have a real voice at work’ is woefully inadequate. Another example of the lack of thought out proposals concerns Corbyn’s pledge of mandatory union recognition in companies of over 250 employees (which is the standard definition of a SME (Small and Medium Enterprise). This pledge ignores that:

* Companies will reorganise themselves into units of less than 250 employees to avoid such a new law if they so wish;
* The majority of employees (in 2015, 15.6m or 60% of those in the private sector) work in companies of less than 250 employees;
* Guaranteeing the right of the process of collective bargaining does not mean the outcomes of collective bargaining are any good – cuts to jobs as well as terms and conditions (pay, pensions etc) happen in unionised workplaces as well as non-unionised ones.

So this pledge needs to be rethought in order to see, *inter alia*, i) the creation of a 'duty to bargain' obligation where outcomes can be broadly specified; ii) the introduction of a United States style but stronger ‘unfair labour practices’ offence so that employers are barred from undermining the ability of unions to organise so that they can exert the necessary leverage over employers in collective bargaining; and iii) obstacles placed in the way of employers circumventing any size threshold by re-organising and configuring their operations.

Sympathetic commentators have noted similar problems with Corbyn’s pledges here. Writing in the *Morning Star* (3 August 2016), Keith Ewing, John Hendy and Carolyn Jones from the Institute of Employment Rights noted that ‘Most employment is with small and medium-sized employers (SMEs). To get the economic benefits, especially by the avoidance of undercutting, it is essential that all businesses in an industrial sector are bound by the same conditions ... Enterprise level agreements, even with the biggest firms, simply cannot either prevent bad employers undercutting or raise income across the working population’. This is a precursor to their promotion of their *Manifesto for Labour Law: towards a comprehensive revision of workers’ rights* which is a worked out and thought through set of proposals.

**Conclusion**

All three sets of proposals from May, Smith and Corbyn are to be welcomed. Notwithstanding their weaknesses and doubts over the degree of commitment to them in the case of May and Smith, they present an opportunity to re-open a public debate on a long marginalised subject, namely, levelling up workers’ rights and asserting the rights of labour over capital. They open the door, particularly in the case of Smith and Corbyn, to advocate truly radical demands like maximum wages, where the highest remunerated (that is, not just pay) is paid no more than a set ratio of what the lowest remunerated are paid. This could be one-to-ten or one-to-five. It must be the job of the left-led unions and their activists to seize the opportunities presented by these proposals in order to develop more concrete and effective iterations of these so that the potential represented by the bald proposals can be fully realised. With regard to May’s proposal, this will take the form of government consultation of the matter if May does move forward on the issue. With regard to Corbyn and Smith, this will take the form of the present Labour Party consultation exercise called Workplace2020 (<http://www.workplace2020.org.uk/>).