

Soft regulation' and the modernisation of employment relations under the British Labour Government (1997-2010): partnership, workplace facilitation and trade union change

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‘Soft regulation’ and the modernisation of employment relations under the British Labour Government (1997-2010): partnership, workplace facilitation and trade union change

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1. Introduction

This article examines the role played by the British ‘New Labour’ government in shaping the character and conduct of workplace employment relations between 1997 and 2010. Academic evaluation has largely judged the state role during this period in terms of continuity across different aspects of state intervention. High profile legislative enactments aside, such as the National Minimum wage or the statutory union recognition procedure, New Labour did not ‘roll back’ the numerous legislative constraints on trade unions imposed during previous Conservative administrations. Instead the emphasis was put on extending individual rights within a changing labour market context. More broadly, this was enmeshed within an economic philosophy characterised by the ideological promotion of neo-liberal policies that privileged the mechanism of markets and the promotion of labour flexibility (Howell, 2005; Smith and Morton, 2001). Despite its aversion to ‘hard’ regulatory reform, and in part because of this, New Labour sought other means to modernise British employment relations during its term of office. The mechanism for this was ‘soft regulation’.

The article explores the way in which New Labour sought to craft a modernised approach to employment relations in Britain, through non-legislative enactments. It focuses on three dimensions of modernisation. The first dimension is the promotion of *labour-employer partnerships* for mutual gains. Partnership was heavily promoted during the first New Labour administration, with financial support through a dedicated Partnership at Work fund. The policy and practice of partnership was subject to much academic scrutiny, with opinion divided about its ongoing relevance. For example, Guest et al (2008: 149) concluded that ‘any partnership movement, if it ever got going, has run out of steam’. Its demise was seen to relate, in part at least, to the limited enthusiasm of employers to voluntarily adopt partnership. However, in its role as employer the state sought to implement major changes to employment relations explicitly via the partnership route, such as in the National Health Service. Such implementation often required the intervention of third-party guidance and support, notably through the auspices of the Advisory, Conciliation and Arbitration Service (ACAS). The second dimension considers this *facilitation of workplace change*, and can be seen as recognition that management and employee representatives may not have the perceived capacity and competency to develop cooperative relations in isolation. It involved the use of experts to craft new forms of dialogue and workplace relations around public sector organisational change. Related to this, the third dimension focuses on the *modernisation of trade unions* themselves. This was supported during New Labour’s third term in government (2005-2010) via the Trade Union Modernisation Fund, which sought to improve the operational effectiveness and efficiency of trade unions. For Ewing (2005: 2) this is best understood in terms of the way in which ‘trade unions themselves are being compelled by government to accept their changing role in the contemporary economy’.

These three dimensions of employment relations modernisation are considered with reference to discrete empirical projects conducted during each of New Labour’s three terms of office. The first study was a survey of trade union representatives’ experiences of partnership and

co-operative forms of working within a range of UK public and private firms. The second study explored the role of ACAS within the development of co-operative forms of dialogue and support within the public sector through qualitative case studies. The third study relates to the issue of modernisation and the role of the state in funding union programmes to renew their internal structures and relations to their members and was based on a wide set of qualitative research. The studies cover the period 2000 to 2010.

The article examines each dimension in turn. Following this, the article locates these developments in terms of wider debates around the state role in employment relations and 'soft' forms of regulation. In conclusion we argue that a focus on the different dimensions of the role of the state in the modernisation of employment relations allows for a deeper appreciation of state intervention, providing us with a broader view of state activity than simply mapping the presence or not of hard regulation alone. The paper concludes that the lack of collective regulation in Britain has meant that the state has had to intervene in ever more subtle, discrete and complex ways precisely because of the limits of (post)voluntarism. These new forms of intervention bring new tensions and challenges to the organisation of the state's presence in employment relations.

2. Union-employer partnerships for mutual gains: Steering through cooperation

The partnership approach to the modernisation of employment relations was extensively promoted and endorsed by the New Labour government during its first term in office, 1997-2001. In crude terms, New Labour was keen to banish historical depictions of adversarial British employment relations and usher in a new period of productive cooperation. This was seen to have implications for the roles and responsibilities of employers, unions and employees. Conflict and industrial action were largely regarded as avoidable, provided all parties at the workplace improved communications and participatory practices and recognised the demands of competitive international markets. Partnership was seen as essential for competitiveness in an increasingly global market place.

While academic critics of partnerships noted the unitarist underpinnings of this agenda, the government sought to promote the practical application of partnership through a system of state funding, under the Department for Trade and Industry's (DTI) Partnership at Work Fund launched in 1999. The Fund called for joint projects between workplace actors (the promotion of partnership did not imply a role for unions per se) against a set of key criteria (such as dissemination, culture change, work-life balance), on the basis of match funding, with a maximum state grant of up to £50, 000. As Terry and Smith (2003: 2/5) note, while the government's definition of partnership was 'open and diffuse' it could be seen as a 'call for self regulation between the workplace actors' (see also Martinez Lucio and Stuart, 2004), albeit influenced by wider developments in European policy and regulation. Alongside the Fund, a range of bodies sought to promote the facilitation of partnership through sets of principles and practices, in what some referred to as the 'industry for partnership' (Martinez Lucio and Stuart 2002). The most notable of these were the six principles of partnership advocated by the Trade Union Congress, which also established a consultancy body the Partnership Institute (Stuart and Martinez Lucio, 2005); but similar frameworks were also promoted by the Involvement and Participation Association (IPA) and ACAS in terms of their 'Working Together' strategy.

The promotion of labour-management by the state was hardly novel – being a focus of concern underpinning major policies and rhetoric in the 1960s Labour Government - but

marked something of a departure from the policy agenda of previous Conservative governments, which had focused predominantly on employer interests and the suppression of union activities through highly restrictive policies and laws. Commentators such as Ackers and Payne (1998: 3) saw this as an opportunity for unions to regain their institutional legitimacy within the context of British employment relations, and to become 'active agents in the workplace and wider society'. Partnership also chimed well with an established American literature on labour-management cooperation and 'mutual gains' (Cooke, 1990; Kochan and Osterman, 1994). In simple terms this work stressed the need for management and employees to work together, through participative workplace structures and communication processes, to ensure that businesses prospered in more competitive environments. The emphasis was on strategies of reciprocity between workplace actors for win-win outcomes, and seemed to be supported by evidence from a range of 'good practice' cases.

In response, a large body of research sought to interrogate the potential for workplace partnership to deliver. The British variant of partnership was found wanting. At a macro level, commentators pointed to the institutional deficiencies of British voluntarism, and its continued emphasis on labour market flexibility, compared to the more corporatist and *dirigiste* governance of industrial relations in so called European models of social partnership, found in countries such as Germany (Terry, 2003). Noting the definitional ambiguity of partnership, more empirically minded research focused on two key limitations of partnership. First, was the extent to which partnership enhances or diminishes 'trade union representative capacity' (Terry and Smith, 2003: 2). Samuel's (2005) careful qualitative research in Legal and General found that partnership could, under certain conditions, act as a spur for union organization and membership gain, but the balance of evidence pointed to potential risks for unions. Kelly's review (2004) of leading partnership agreements in the UK, for example, found no association between the introduction of a partnership agreement and increased trade union membership. While Taylor and Ramsay's (1998) study of a high street supermarket chain showed how partnership-based arrangements could draw trade unions into a management strategy of enhancing surveillance and work intensification. A key concern was the extent to which trade unions may become incorporated into the 'power structure of companies' (Taylor, 2004: 6), with deleterious consequences for union independence, representative capacity and ability to challenge management decisions (Danford et al., 2002; Wray, 2005).

The second limitation related to perceived gains for members and employees. Little positive evidence was found to support the assertion of advocates that partnership enhanced job security, increased employee voice, improved quality of working life and raised levels of employee commitment (all central elements on New Labour's fairness at work agenda). For example, Kelly's (2004) analysis associated the introduction of partnership agreements with declining employment levels rather than job security. Suff and Williams' (2004) study of Borg Warner's flagship agreement, found that while employees generally associated partnership with an improved employment relations climate, increased job security and better communications with management, few employees felt safe in their jobs or associated partnership with an improved working environment or trusted management. Dietz (2004) and Wray (2005) also found that for many employees partnership had little bearing on their working lives and did not lead to any fundamental improvements in voice. More broadly, Richardson et al's (2005) research in aerospace and local government explicitly linked the furtherance of partnership practices with increased levels of employee stress, work intensification and job insecurity.

Explicit government support for the partnership agenda diminished mid way through New Labour's second term, when the Partnership Fund was dropped. To some extent the 'industry for partnership' also receded, as the TUC hived off its Partnership Institute and the IPA started to look 'beyond partnership' and more recently turned to 'employee engagement'. Whether this marked the 'end of partnership' has been a matter of debate. Guest et al (2008: 149) concluded from their analysis of WERS 2004 that '[A]ny partnership movement, if it ever got going, has run out of steam'. In contrast, Bacon and Samuel (2009: 246) argue that partnership has not faded from the 'industrial relations agenda in Britain'. They record a steady increase in partnership agreements and note that such agreements are relatively stable, albeit typically in the public sector. The issue of contention, of course, remains the definition of partnership. While Bacon and Samuel (2009) assess partnership in terms of number of agreements, others examine practices or principles. For Guest et al (2008: 127) any assessment is best framed in terms of 'action and the presence of practices rather than agreements'. Agreements need effective implementation to be meaningful and in some contexts may be more constraining rather than beneficial (Oxenbridge and Brown, 2005). Context is seen as central to shaping the different varieties of partnership, which may range from a normative 'genuine' partnership to the reality of 'sham' partnership (Wray, 2005), with agreements often established as 'marriages of convenience' or 'shotgun weddings' (Martinez Lucio and Stuart, 2005). The central issue remains how partnership works and is understood by stakeholders in practice, what is achievable and how this can be measured.

Our first study examined the practices of partnership based on a survey of workplace union representatives' experiences of employment relations change. The survey was conducted in 2000, at the height of government support for partnership, of a sample of union representatives from the then Manufacturing, Science and Finance Union (MSF) (now part of the union UNITE). At the time, MSF had 425,000 members. In total, 317 useable responses (15 per cent response) were elicited, across 8 sectors (Aerospace, Airlines, Chemicals, Education, Health, Finance, Manufacturing, and Voluntary). The study sought to understand the nature of partnership, and the difference between specific partnership agreements and what may constitute 'good employment relations'. The study examined this initially through unpacking the well known six principles of partnership advocated by the TUC into 16 specific items (see Stuart and Martinez Lucio, 2005).

MSF representatives were asked to respond on a five point scale from strongly agree (5) to strongly disagree (1). The representatives' attitudes towards the principles of partnership were then aggregated and calibrated in terms of *low*, *medium* and *high* partnership environments. The scores were also recalibrated to give a general measure of agreement with the principles of partnership (where 1= high and 0= otherwise). These measures (i.e. commitment to the principles of partnership) were then assessed against a range of variables to consider workplace practices around employee participation, organisation and development and general management-union relations. They were compared with the findings for 56 reported partnership agreements. There were two propositions guiding the analysis, derived from the wider literature. First, the degree of commitment to partnership principles will be associated with the potential practices of partnership. Second, partnership agreements are associated with constrained practices.

Key findings are reported in Table 1. We report levels of trade union involvement (negotiation (4), consultation (3), information sharing (2) and no involvement (1)) and various workplace practices by degree of partnership. Statistical significance is represented by simple t tests, although further probit and ordered probit analysis supported the findings. A

perceived high commitment to the principles of partnership by MSF representatives was associated with higher levels of union involvement across a range of workplace practices than partnership agreements. This was statistically significant for equal opportunities, training and performance appraisal. Where commitment to the principles of partnership was considered low, this was associated with less involvement than environments with partnership agreements. In simple terms, partnership agreements appear better for unions than environments where employment relations are considered poor, but result in less involvement than those environments where employment relations are considered good. It is also possible to read from this that environments with high union involvement will be associated with good employment relations (in terms of underpinning principles), suggesting little need for partnership agreements. Indeed, representatives in high partnership workplaces were more likely to report that union-management relations were good compared to those with partnership agreements, but at the same time high partnership workplaces were also associated with higher numbers of workplace representatives.

Table 1: Partnership principles, workplace practices and levels of union involvement (n=317)

	Partnership Agreement	Low partnership	Medium partnership	High partnership
<i>Level of union involvement</i>				
Pay and working conditions	3.36	3.15	3.30	3.53
Health and safety	3.09	2.81 -*	3.00	3.17
Equal opportunities	2.68	2.37	2.56	3.13 +**
Levels of training investment	2.06	1.77 -**	1.91	2.38 +*
Training opportunities	2.30	1.88 -***	2.07	2.69 +**
Performance appraisal	2.44	2.16	2.31	3.00 +***
Staff and manpower planning	2.09	1.69 -**	1.97	2.35
Business investment decisions	1.63	1.40 -*	1.55	1.87
Family friendly policies	2.74	2.08 -***	2.45	2.91
<i>Working practices</i>				
Communication via team meeting, notice boards and newsletters	0.98	0.94	1.00	0.98
Communication via suggestion schemes, attitude surveys, quality circles	0.81	0.50 -***	0.69 -*	0.61
Communication via consultation committees, factor meetings	0.78	0.49 -***	0.59 -**	0.76
Information about change at work increased last three years	0.41	0.16 -***	0.26 -*	0.54
Annual performance appraisal	0.78	0.81	0.82	0.93 +**
Annual personal development plans	0.73	0.38 -***	0.51 -**	0.76
Increased emphasis on training and development	0.67	0.60	0.69	0.84 +**
The intensity of work has	0.95	0.89	0.89	0.80 -*

increased over the last three years				
Has the security of employment increased over the last three years	0.04	0.04	0.03	0

Source: MSF union representative survey (2000); * = significance at 10%; **at 5%; *** at 1%

Turning to workplace practices, the findings show that trade union representatives associated partnership agreements relatively positively with communication and information sharing but not so significantly in terms of employer investments in training and development. Those workplaces that scored highly on the principles of partnership were more positively associated with a range of employee development practices around training and appraisal compared to those workplaces with formal partnership agreements. In contrast, workplaces that scored low in terms of partnership principles were associated more negatively with communication and information sharing than workplaces with partnership agreements. Neither partnership agreements nor high partnership environments were associated with job security, although the latter were associated with workplaces with lower reported increases in work intensification. Two points are worth making in summary. First, partnership agreements have limits. Second, to the extent that agreements have to be implemented, it is more important to understand how management commitment to partnership principles and practices and the wider workplace context may contribute to good employment relations.

The data cautions against the reification of the likely impact of partnership agreements. The development and presence of workplace dialogue and cooperation between management and unions is typically dependent upon the extant workplace culture and practices of employment. The potential impact of any formal intervention either through the state or a new agreement may therefore be limited, as good employment relations and related workplace practices are typically contingent on the way that dialogue and the principles of mutual gains are embedded at the workplace. For the workplaces surveyed, the state was not seen as significant compared to the influence of the custom and practices of particular firm-based employment relations processes in influencing partnership developments. The Partnership Fund thus served to assist in creating benchmarks or good practice reference points, but it did not fundamentally push the development of a new dialogue and culture of co-operation. For example, follow-up cases in a number of financial services firms with Partnership Fund projects found that even when there were indicators of good partnership practices there remained uncertainty about long term employer intentions and the position of joint regulation and union representation. Uncertainty about whether the organisational risks from making joint decisions would be shared between trade unions and management was a recurrent theme. So whilst the government propagated the rhetoric of partnership it did not create a more systematic platform for labour-management cooperation capable of building on various examples of good practice and joint working. It relied on the rolling out of best practice and a mimetic isomorphic set of effects (Di Maggio and Powell, 1983) through the Fund, which did not appear to emerge. It is difficult for the state in this sense to create new forms of partnership, given its hands off role through the Partnership Fund. However, the state has played other roles in terms of the *facilitation* of partnership, in relation to public sector change and in circumstances where partnership may have broken down.

3. The facilitation of workplace transformation and good employment relations through third party intervention: steering through intermediation

The Advisory, Conciliation and Arbitration Service (ACAS) was formally established (as a free state service) in the mid 1970s (see Hawes, 2000). Its remit right from the outset included the promotion of good employment relations, and innovatory projects were conducted in support of this. However, its main concern was the mediation and conciliation of collective disputes and it had a statutory objective to extend and promote free collective bargaining. This aspect was rescinded during the neo-liberal Conservative governments of the 1980s-1990s, but its wider role remained. This changed again from the early 1990s in response to the declining frequency of collective disputes and workplace bargaining arrangements. ACAS put more emphasis on individual conciliation and advisory work. A key concern of advisory work has been the pre-emption of 'future disputes by encouraging good procedures and employment practices', based on the principle that 'prevention is better than treatment' (Brown, 2004: 453). This has been underpinned by the promotion of partnership-based working and relations between management, employees and their representatives (Brown, 2004; Kochan and Osterman, 1994).

ACAS was at the forefront of debates in partnership in Britain. It developed its own associated notion of 'working together' and designed a practical set of tools to support this activity: brought together as a guide book entitled the 'model workplace', which 'provides a benchmark for employers who want to assess their employment relations performance and take advantage of the benefits this offers their organisation' (ACAS, 2006: 30). ACAS's advisory activity has covered a wide variety of organisations and sectors, and it was frequently invited to participate in and facilitate the working of projects supported by the Partnership at Work fund. Much activity, however, has focused on assisting and facilitating major change programmes in the public sector; the area of the economy where partnership agreements have continued to develop and are most prevalent (Bacon and Samuel, 2009).

The New Labour government developed a raft of partnership initiatives to shape the conduct of public sector industrial relations. This was particularly pertinent in the National Health Service (NHS) (Bach, 2004), where new policies around human resource management, employee involvement and participation and working conditions were implemented from the late 1990s. The most significant reform package focused on a new pay equality system under the rubric 'Agenda for Change'. It was negotiated jointly in partnership with the NHS unions and enshrined in a collective agreement in November 2004. The reform package included the harmonisation of various terms and conditions of employment, pay assimilation and a new job evaluation scheme. As Bach (2004:3) notes, '[A]t the core of these (Agenda for Change) proposals is an emphasis on partnership working with trade unions...'. Problematically, the progress of the reforms was hampered by widespread participation deficits and problems within NHS Trusts (Bach, 2004). The imperatives of the 'Agenda for Change' programme only heightened the need to address such challenges and establish more productive structures of consultation. The prospect of Agenda for Change, along with the reconfiguration of many Trusts due to merger processes, had led to an unprecedented level of requests for ACAS assistance from NHS employers. Against this backdrop, ACAS played an important role in facilitating a new co-operative dialogue. This could be understood as a state role based on **teaching, signposting and facilitating** developments in employment relations through benchmarking and institutional mentoring.

Against this backdrop, our second study examined the processes and outcomes of ACAS workplace advisory projects in five NHS trusts during the period 2002-2004. The empirical approach was qualitative, based on a research protocol for data collection that involved a standardised interview schedule, tailored to take account of whether the informant was an ACAS adviser, management representative or union representative. Management interviewees included Trust Human Resources managers and Chief Executive Officers, while trade union interviewees included staff-side chairs (lead union representatives) and full-time officers (FTOs) of the Royal College of Nursing (RCN), Unison and Amicus. In total, 16 interviews were conducted across the five Trusts between July and September 2004, complemented by three interviews with key ACAS respondents.

The request for ACAS assistance was influenced by the imperatives for organisational change in the NHS. This related not only to the overall approach of human resource strategy in the sector, and its attendant emphasis on partnership working, but also wider structural changes, specifically merger processes that created new organisational units, such as Primary Care Trusts. Following merger, the cases were faced with the daunting task of harmonising often diverse terms and conditions of employment. This often meant dealing with long standing points of contractual differentiation and contention. Cases were also going through processes of contractual renegotiation with services providers that had implications for established working practices. Changes in senior management had also led to a re-appraisal of the ways in which employment relations were conducted.

The main mechanisms for dealing with these processes of organisational change were through either Joint Negotiation Committees or Joint Consultation Committees. But in many cases they were not considered by management and union alike to be operating effectively. In the cases of Eastern and Northern Trusts, a merger had combined sites with very different traditions of employment relations, which meant that representatives on the negotiation and consultation committees often approached issues from 'opposite ends of the spectrum'. This was particularly pronounced in the Eastern Trust case, where the employment relations traditions of two sites were differentiated by partnership working and adversarialism. At the latter site, union representatives were not only hostile to the new management cadre of the merged trust but also their trade union counterparts at the more partnership-orientated site. As a result the new merger Joint Staff Consultation Committee became politically charged, with high levels of attendance, as both union and management representatives sought to look after their local and specific interests. Points of local dispute were frequently raised, without advance notice, and little headway was made on the implementation of broader strategic issues (such as harmonisation policies).

Problems with consultative structures were also evident in the other Trusts, where they had almost ground to a halt. Faced with the challenge of harmonising often very diverse, and in some cases archaic, terms and conditions of employment, differences of interest meant that it was proving impossible to agree, and in some cases even discuss, broader strategic matters. In a number of cases senior management had stopped attending meetings in response to what they perceived to be an emphasis on 'trivial' rather than 'meaty' issues.

In all these cases, the ineffectiveness of the extant consultation machinery was recognised and accepted by both management and trade union representatives. When articulating how the joint consultation machinery should develop it was common for respondents to espouse the rhetoric of partnership working, as the ultimate goal for good and effective employment relations. At London PCT, a training workshop (facilitated by ACAS) on partnership working

had actually been held, resulting in a series of partnership principles that were added to the Trust's union recognition agreement. Partnership working was historically most well developed at Midlands Trust. There, a partnership agreement had been established on the back of a DTI Partnership Fund project and had been working effectively until management sought to introduce change without informing or consulting the unions. In response, union representatives expressed concerns over management commitment to partnership and decided to suspend their involvement in the partnership process until the broader question of management commitment was settled.

It was in recognition of the employment relations problems faced in each of the Trusts that ACAS was commissioned. While this typically related specifically to the ineffectiveness of consultation machinery, there were also a number of related issues (such as partnership training) and issues with working practices (such as rostering). ACAS was asked to assist in the reformulation of the terms of reference of the various consultation forums, to advise organisations on where they were going wrong and to identify how they could improve. The approach to ACAS was discussed and agreed jointly between management and trade union representatives in each case. ACAS was seen as impartial, objective and independent and thus unlikely to be perceived by staff as being management-driven; something that contrasted with the appointment of external consultants typically seen as biased towards the interests of management.

In each case an ACAS adviser worked with the organisation, on the basis that 'the adviser's role is centred on acting as a facilitator to establish facts, clarify problems, and help to identify solutions in order to promote joint agreements. Advisers do not act as an arbiter, or decide on the merit of competing positions' (Dix and Oxenbridge, 2004:523-524). Advisers sought to clarify the potential problem with management and union representatives in each case, and, once all parties had agreed this, a joint working project was typically suggested and planned. This initial process often involved the Advisers observing Joint Staff Forums and then feeding their views back to participants on what they saw as problematic. Interventions ranged from single workshops to a more sustained series of joint workshops and joint working groups.

In some cases, the differences in perspective between management and union representatives were considered so entrenched that the likelihood of the workshops succeeding was considered remote.

The Advisers were able to refer to examples of previous NHS work and also to illustrate with reference to good practice how to and how not to deal with specific problems. Most highly valued was an approach to facilitation that did not lay down a prescriptive position that participants were expected to follow, but empowered the participants to identify the problems for themselves and then work as a group to find common solutions.

Once Advisers had established a *modus operandi* for joint working, the remaining work of projects tended to be directed, again typically via joint workshops, to teasing out the specifics of an agreement or terms of reference (for Joint Forums). The ACAS Advisers played a key role in seeking to establish certain behavioural expectations of joint working, with reference to different approaches to employee involvement and the principles of partnership working. Giving the difficulties that many of the cases were facing in differentiating between what was an issue for consultation and negotiation this approach was imperative in getting participants to think more deeply than the immediate issues of disagreement. Having agreed jointly what

was consultation and how consultation should be conducted, participants had a far clearer view of how their consultation committees should work in the future.

Following ACAS intervention, the consultation machinery in all the cases was seen to have improved significantly and the committees were generally considered to be operating in a more positive and productive fashion. Significantly, the relationships between management and union representatives sitting on the committees improved and, as result, they were more able to engage in joint working. Key to this was a renewed appreciation of what consultation actually meant. The significance of this was most obvious in the case of Northern Trust, where a previously (confused) Joint Negotiating and Consultation Committee had been separated into two clearly delineated Negotiation and Consultation Committees. For management, the main benefit of this process had been that ‘trivial’ or purely ‘local operational’ issues were no longer brought to the committees as a matter of first resort: they were dealt with locally. The corollary of this was that the committees were now free to focus on more strategic issues, such as harmonisation of contracts. Improvements in joint working and in the relationships between management and trade union representatives also meant that decisions-taken tended to be viewed by both sides with a greater degree of confidence and there was also more respect between management and union representatives of their respective roles and responsibilities.

It is also important to recognise that the demonstrated improvements in the effectiveness of the consultative structures are not disconnected from the more general climate and conduct of employment relations in the Trusts. These committees occupied a central role in the governance of the cases and, as such, connected to a wide range of employment relations issues, management policies and developments in working practices as well as wider issues of employee representation and work. Thus, in the London Trust, the need to improve the effectiveness of the JCC was predicated on strengthening the representational apparatus (and hence voice) of Trust employees. Following the ACAS intervention, a number of new trade union representatives were appointed and trained and a non-union staff representative was also appointed. As a result of this increase in representative activity it was reported that trade union membership had increased (although no hard data was provided to support this assertion). This had led to a more robust engagement between staff and management, which was seen by the lead trade union representative as part and parcel of good employment relations, where staff are able to question and challenge managerial decisions, within an overall climate of respect. In all cases, this was seen to have particular resonance within the context of the implementation of the Agenda for Change programme. The need to establish productive structures of consultation was heightened by this process of modernising pay, terms and conditions and working practices and many respondents suggested that the improvements effected through the consultative structures had laid crucial foundations for the implementation of Agenda for Change.

Hence, the role of the state in this case can be seen to be built on using experts and ‘independent’ individual conciliators to guide, measure, record and frame local developments in dialogue and management-union relations. The state in this case is highly personified through a series of individuals who arbitrate and create a common consensus around the processes of employment relations. While this is nothing new in terms of conflict management, this more proactive set of roles is nevertheless an example of soft regulation and more subtle forms of state intervention. One of the problems however is that such forms of intervention require significant levels of investment and are related to outcomes which

may not in the short term be clearly visible or perceptible. Such intervention is thus conditional on the strategic funding imperatives of the state and can be can back accordingly.

4. The modernisation of trade unions: Steering through capacity building

The third dimension of the state that we consider is *steering through capacity building*, specifically through the introduction of the Trade Union Modernisation Fund (UMF). The idea for the UMF originated from the union movement and was a product of the Warwick Agreement between the unions and the Labour Party, prior to 2005 General Election. Following a consultation exercise, New Labour put aside an admittedly ‘modest sum’ of between £5-10 million to support union innovation and modernisation, administered through the Department of Trade and Industry (DTI - and its changing nomenclatures). The UMF offered match funded project money of up to £200,000 against designated priority themes: it did not support activity that directly led to membership recruitment, the support of strike action or political activity (but only unions could apply). In total, the UMF supported 79 projects across three rounds of funding: UMF1 (35) projects started in 2006, (31) UMF2 in 2007 and (13) UMF3 in 2009, with all projects projected to be completed by the end of 2011¹. The UMF has attracted little academic attention, but has often been portrayed as a continuation of the Partnership Fund, reflecting state design to foster less adversarial union activity and a ‘supply side trade unionism’ (see Ewing, 2005). The key question, however, is the extent to which the UMF has allowed unions to develop projects largely of their own choosing, for ends that support core union agendas as representative agents rather than specific state interests.

The third study involved an evaluation of rounds one and two of the UMF and was conducted between 2005 and 2010². This included analysis of all project documentation and formal reporting, 10 qualitative case studies of selected UM1 Projects (with 4 interviews in each), interviews with civil servants and UMF Advisory Board members, and telephone surveys of project managers in each round. The survey of UMF1 project managers did not include the 10 case study projects or three projects that failed and elicited 21 responses out of the remaining 22 projects (95 per cent response), while the survey of UMF2 elicited 25 responses of the 31 projects (81 per cent). The research explored the activities, outputs and outcomes of projects, the challenges that they faced and the lessons learnt by unions in the delivery of the initiatives.

The rationale for the UMF was clearly detailed in the Regulatory Impact Assessment published in 2005 (DTI, 2005a). The backdrop to union modernisation was the changing world of work, which had seen rapid developments in new ICT technologies, more flexible patterns of work and changing diversity in the labour market, most notably in terms of female participation but also an increasing presence of black and minority ethnic groups and migrant labour. This had raised two big challenges for unions. First, in the face of increased competition, ‘the best employers now use a wider range of managerial initiatives to engage their workers’ (DTI, 2005a:2). It was suggested that unions need to better understand the changes that are taking place in the world of work so they can ‘work with employers to

¹ The UMF was official wound up by the disbanding of its Advisory Board by the Conservative-Liberal Coalition government in 2010. However, New Labour itself had no intention of funding beyond the three rounds of UMF.

² We wish to thank our colleagues, Andy Charlwood (York), Robert Perrett (Bradford), Jennifer Tomlinson (Leeds) and Emma Wallis (Community), who collaborated with us on various stages of the UMF research.

maximise the potential benefits of new ways of working' (DTI, 2005a: 2). Second, and related, whilst unions had been taking the initiative to modernise themselves, the pace of change had been quite slow and unions faced a number of obstacles in their ability to change. Competition between large numbers of unions had meant that subscriptions were low, while most unions only employ a small number of people and their management systems were relatively unsophisticated. This meant that unions 'have a limited capacity to invest for the longer term and to take financial risks associated with innovation (DTI, 2005a: 2). Nonetheless, unionised workplaces were known to be associated with 'more progressive workplace policies towards training, health and safety and diversity' (DTI, 2005b:2). It was therefore asserted that '[B]y supporting a forward-looking agenda for unions, the UMF should therefore enable unions to realise more fully their potential to improve the world of work for all concerned' (DTI, 2005a:2).

The purpose of the UMF was thus to support innovative projects to help speed unions' adaptation to changing labour market conditions. It aimed to support projects that either explored the potential for, or contributed to, a *transformational* change in the organisational efficiency or effectiveness of a trade union or unions. Through helping unions to explore and test innovative ways of working, and by disseminating the results of projects widely across the union movement, the Fund also aimed to provide a *demonstration effect* to the broader trade union movement (see DTI, 2004, 2005b). Embedded within the logic of this state project was the notion of creating an environment of innovation within and across trade unions, to assist in responding to changing economic and social demands.

In total 66 projects were funded under the first two rounds of the UMF. They were led by 40 different unions (a very small number had multiple unions), plus a further four projects led by the TUC. The Transport and General Workers Union had four projects, while Amicus, Communication Workers Union, the Bakers, Food and Allied Workers Union and Unison all had three. The first round of projects started in 2006 and focused across 6 thematic priorities. UMF2 projects started in 2007 and followed the same basic thematic priorities, although two of the original priorities were merged (modern management methods and professional competence) and a new priority added (at the recommendation of the Women and Work Commission) focused on the training and capacity building of equality representatives. The priority themes are detailed in Table 2, along with examples of funded projects. Typically, projects were seen to fall across a number of key themes.

A concern of critics was the extent to which the UMF represents an attempt by the state to shape the strategic priorities and practices of unions, principally in favour of the adoption of more partnership-based approaches. Superficially, there is some evidence for this. The aspiration of UMF theme one was essentially to encourage the understanding of modern business and working with employers through partnership. The wider rationale for the UMF also talks about 'working with employers'. However, in reality few projects were explicitly focused on this dimension. Indeed, the original employer representative on the UMF Advisory Group expressed disappointment at the lack of projects on partnership (Stuart et al, 2006). Where projects did have a focus on partnership they were typically dominated by the smaller unions and staff associations in the finance sector. A good example was that by the Portman Group Staff Association. Initially a small UMF1 project to develop partnership working with the company, the focus of the project changed as the employer merged with a larger company and a redundancy programme instituted. The UMF contributed to the training of 46 new workplace representatives to help negotiate the terms of redundancy, a significant increase on the previous cadre of just a few representatives (Stuart et al, 2009).

The three main themes of projects were those related to two-way communication, representing diverse labour market groups and the introduction of modern management methods and development of professional competence. Projects dedicated to improving two way communications were most common under UMF1. They covered many different aspects, but tended to focus on the updating of union websites, from static to more interactive entities. In fewer cases, unions sought to embed this within the introduction of more sophisticated management systems or, for the Communication Workers Union, wider ICT solutions such as text messaging. UMF2 projects embedded such communication even more systematically within the wider strategies and structures of specific unions, for example the use of web technology to develop, as in Unison’s case, virtual branches (Stuart et al, 2010a). The overall aim of such projects was to increase membership participation and wider union democracy.

Table Two: *UMF rounds 1 and 2 by priority themes*

Theme	Example projects
Understanding modern business practices and working with employers as partners, including Information and Consultation of Employees Regulations	UMF1: Partnership working for the Portman Group Staff Association; TGWU preparing opinion formers for ICE. UMF2: TUC Green Workplaces projects; Accord and Unite developing union reps within a partnership framework at HBOS.
Improving two way communication with members	UMF1: NUT on-line interactive membership centre; CWU project to trial novel ICT solutions. UMF2: BECTU project on the network union; Unison virtual branches project
Responding to increased diversity of labour market	UMF1: British Dental Association on young member participation; NUJ development of equality representatives. UMF2: Unison migrant workers project; CWU deconstructing equality barriers through union training.
Equality Representatives	UMF2: TUC Equality representatives network project; TSSA, Unison, Prospect, PCS, GFTU etc
Applying modern management methods	UMF1: USDAW introduction of union ‘balanced score-card’; URTU supporting the growth and stability of a small union. UMF2: GMB developing modern management methods in union; TGWU (Unite) modernising management and training
Developing professional competence	UMF1: Community creating capability through training of union senior staff; GFTU training of generic management skills.
Assessing the challenges	UMF1: CYWU building an evidence-base prior

and opportunities of mergers and restructuring	to merger. UMF2: Nautilus training for global union structures; CSP (and 6 other small unions) potential for shared union services
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Equality representatives were a dedicated theme for Round 2; * Applying modern management methods and developing professional competence were merged as a theme for Round 2.

The representation of diverse membership groups was a central concern of UMF1 and UMF2. This was developed further in UMF2 with a distinct strand on equality representatives, which had been trialled in flagship UMF1 projects by the NUJ and TGWU. The organisation of UMF2 projects on equality representatives was also overseen by a TUC coordination project to help improve networking between unions: something that had been identified as a weakness of projects in UMF1 (Stuart et al, 2009). More widely, this strand of innovation saw projects on the mentoring of women activists, the encouragement of young member participation and a number of projects on the specific concerns of migrant workers. Together, these projects saw a large investment in training across the union movement in the area of diversity. This thematic priority developed across the UMF rounds, culminating in UMF3 which focused specifically on vulnerable workers.

The final core thematic interest of projects was around the introduction of modern management methods and the development of professional competence within unions. This involved a variety of different training programmes within unions. For example, Community sent its entire senior management team on a bespoke course on globalisation and key management skills at Henley Management College for its UMF1 project, and then repeated the exercise for its National Executive Committee under UMF2. More significant were projects that sought to systematically implement new management systems. This was trail blazed by a UMF1 project by USDAW, which saw the introduction of a balanced score card for the union, along with key performance indicators, an appraisal system and extensive training. Both the GMB and TGWU introduced similar, though less prescriptive, management models for UMF2. For USDAW the new management approach was seen as central in terms of producing efficiency savings to direct more resources to organising, a process that some would see as commensurate with an approach of ‘managed activism’. Both the GMB and the TGWU were concerned with professionalising practice within their respective unions; in the former case this was seen partly about challenging historic regional baronies, while in the latter it involved extensive training and a concern with the career development, but also accountability, of union officers.

While the funding under UMF clearly came with restrictions attached, the variety of project activities, outputs and outcomes makes it difficult to understand the fund as an exercise in simple social engineering by the state. The 66 projects under UMF1 and 2 led to an extensive programme of training and upskilling within unions, the wide-ranging introduction of new technologies to assist with democratic participation, new union roles such as equality representatives and new policies, procedures and practices for involving previously under-represented groups. Running such projects did not come without obvious problems for unions. Projects geared to working with employers often faced major engagement issues due to employer ambivalence, while many projects prefigured potential cultural change that challenged internal administrative legacies and hierarchical traditions. Likewise, the needs and demands of previously underrepresented groups, such as migrant workers, often

challenged the servicing obligations and remits of union rules books, while the need to contract and manage external contractors with regard to new technology proved to be a major headache for many unions. But in dealing with such challenges unions often developed important new sources of organisational learning. Moreover, the UMF also funded a large research effort across the union movement, as many projects started with mapping or survey exercises to find out the nature of membership and their future needs and wants. This activity contributed to often systematic informational flows within unions and deeper sets of knowledge assets. Rather than being seen as exercise in the development of ‘supply side unionism’, the UMF may, therefore be better seen as example of social exchange between the state and the union movement (Stuart et al, 2010b). The UMF created an opportunity structure for unions to take advantage of and to use their own active internal modernisation in a way that could develop long-term benefits. The UMF focused on – in theory – engineering an environment where projects, project officers and union leaders could create a general climate of innovation and change linked together by the DTI/BIS and key experts within the TUC and others.

5. Discussion and conclusion: Steering employment relations modernisation and change

This article has explored empirically three dimensions of state action under the Labour Government of 1997-2010: partnership, facilitation and union modernisation. The endorsement of partnership was central to the *narrative* of employment relations under New Labour’s first term of office. Supported by a scheme of funding, as a political narrative at least this had fallen by the wayside by New Labour’s second term. State exhortation for greater labour-management cooperation did not usher in a new system of employment relations based on a partnership-based approach. As Thompson (2003) has argued this has much to do with the inability of employers in the current competitive environment to deliver mutual gains; unions certainly did not feel employers bought into this agenda (Stuart and Martinez Lucio, 2002). The weakness of labour is the other side of the same problem. Good employment relations characterised by the principles and practices of partnership are more likely to be associated with workplace environments with higher levels of union involvement and capacity and workforce development. In such cases, there appear to be little need for partnership agreements per se, although the ongoing sustaining of high partnership workplace is far from a given; beyond such workplaces building partnership in any realistic sense is more problematic.

Perhaps unsurprisingly, therefore, it is in the public sector where partnership has to a large extent been sustained³. This can be seen as a classic case of the state as the ‘model employer’, setting an example for the private sector to follow (Stuart and Martinez Lucio, 2000). In the NHS a major programme of reform, Agenda for Change, was enmeshed within a so called partnership framework. Yet the implementation of partnership even here was far from straightforward, as structural reorganisations had led to complicated governance structures and, in many cases, a breakdown in established employment relations. In response, the state took on another role, as a facilitator, through the auspices of ACAS to steer through organisation change and ‘renew’ workplace relations.

Finally, consideration was given to the Union Modernisation Fund. Given the limited capacity amongst unions that was identified in some critical accounts of partnership (Terry

³ However, the current Conservative-Liberal Democrat coalition elected in 2010 is likely to undermine that, as its deficit reduction programme will render partnership limited at best and meaningless at worse; and this may present conflict as the only viable option to unions looking to represent members’ interests.

and Smith, 2003), this could be seen as an attempt by the state to steer capacity building within unions to make them more amenable to partnership, and the new realities of the labour market (Ewing, 2005). This would allow for a linking between the three specific cases of state roles considered in the article. Certainly one of the themes of the UMF encouraged partnership, and its underpinning rationale stressed the need for unions to be equipped to work with employers. Yet, in terms of how the activities of the UMF have played out it is difficult to see this as the outcome of a state attempt to shape a new 'supply-side trade unionism' or an overall agenda of partnership. The UMF originated as a political exchange between the unions and the Labour party prior to the 2006 General Election. The sum invested was modest and the life of the UMF always limited. While projects were funded against prescriptive criteria, union activities have varied greatly and only a minority have focused on partnership working with employers. Unions have used the UMF to trial new strategies, develop new representational roles and increase their knowledge and democratic assets. The influence of state agendas has not been deterministic and unions have been able to develop many initiatives largely through their own agency.

How can these state roles be located against wider debates and concepts of the state in work and employment relations? The central contribution of the article has been to consider the relatively under-explored dimension of non-legislative state intervention, what is often referred to as 'soft regulation'. As Howell (2005: 13) observes the field of employment relations in the UK has tended to focus on the role of the state in terms of the law, 'to the exclusion or marginalisation of a much broader range of state actions'. This is explained in terms of the tradition of voluntarism in Britain and the 'view of the abstentionist state': regulation was typically associated with a comprehensive legal framework, which was lacking, and therefore any changes have been considered to be notable. Yet, as Howell (2005: 14) also notes, 'state regulation of industrial relations can take place in a wide variety of forms' and the 'British state has intervened constantly in industrial relations'. His historical analysis shows a committed and coherent state project of intervention at different historical junctures. Projects of state intervention can often be seen as direct responses to periods of profound economic change and upheaval. For example, state intervention has been seen as a necessary response to the 'steering problems' inherent to market mechanisms in liberal capitalism and the crises that evolve from this (Habermas, 1973). Yet, the direction of travel since 1979 has been towards greater liberalisation and marketisation, and the de-collectivisation of employment relations. This has been accompanied by a curious juridification of employment relations, with constraining legislation on the actions of trade unions and relatively more enabling legal rights for individuals (Heery, 2011). Yet enforcement of these remains a challenge.

The New Labour project of the modernisation of employment relations is not seen to mark any significant break with the contemporary process of de-collectivisation. Isolated examples aside, such as the Minimum Wage and the statutory procedure for union recognition, there has been little by way of legal support for collective employment relations: collective bargaining as a means to regulate the employment relationship has continued to decline and individual rights have been further enhanced. In this regard the promotion of partnership by the state appears curious: as it was developed in a regulatory vacuum. As Howell (2005) rightly observes this must be situated against a New Labour commitment to a neo-liberal macro-economic policy that sought to situate the promotion of labour-management cooperation firmly within the need for increased labour flexibility and mutual gains for the benefit of economic competitiveness. Yet the creation of a new system of partnership employment relations inevitably foundered on the limits of regulation. In a crude sense the

exhortation of partnership could be understood as an attempt to build a new institutional form of employment relations given the historical decline of collective bargaining.

It has long been argued that institutions are underpinned by the embedding of rules and resources (Giddens, 1984). Limited by its economic ideology, the New Labour government sought modernisation of employment relations not through legal enactments and hard law, but through a series of loosely connected forms of soft regulation. In a sense the new rules of employment relations were exhortated through recourse to the principles and benefits of partnership, with resources fostered through crude financial support for key actors through dedicated funds that sought to foster transformatory practice through self activity. Such forms of state activity are of course not new, but we would argue that soft regulation has become a more widely utilised form of state intervention. In the field of employment relations specifically, the role the state plays in steering practice, establishing benchmarks, encouraging learning and generally facilitating the means for self regulation have become more significant and are worthy of much wider analysis.

Such regulation can in part be seen as a more dynamic way of intervening, in that it supports specific moments and examples of innovation in employment relations terms, creates frameworks in cultural and institutional terms for micro level developments, and provides an environment designed to allow for sharing and learning. The dilemma is whether such developments would be better served by a stronger and more coherent system of regulation which would provide actors, such as unions, with a greater legal and resource capacity for implementing and embedding practice and to facilitate relations of trust built on a greater level of certainty and sustainability in terms of worker representation.

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