Public policy – balancing flexibility and security?

Main tasks

- Explain why the state plays such a pivotal role in employment relations
- Outline the changing agenda that policy makers have had to confront
- Consider the challenge of ‘casino’ capitalism

Summary

Although the nature and extent of the state’s role has differed from country to country, it has nonetheless been pivotal everywhere in shaping the governance framework of the employment relationship. Indeed, the state has come to assume the role of ‘guarantor of the employment relationship’. Historically, the main common concern was with industrial conflict - the machinery for handling disputes continues to be an important function. A recognition of the asymmetry of power in the employment relationship, coupled with the growth of a substantial working class with the vote, led to the introduction of individual employment rights and legislative support for employee ‘voice’ in the form of employee works councils and/or support for collective bargaining. From the 1980s the thrust of public policy changed reflecting intensifying international competition and the rise of ‘neo-liberalism’. ‘Flexicurity’ became the watchword. The need to guarantee employees a measure of security in terms of rights was to be offset by greater flexibility for employers in terms of hiring and firing, setting working time and bearing the costs of employment, leading to major changes in pension and social security arrangements as well as
legislation on the employment relationship. Also featuring has been legislation dealing with family friendly working – partly to achieve greater equality, but also partly to encourage greater participation by women in employment. More recently, it is the financial and economic crisis that has dominated. If this is intensifying pressure to achieve greater flexibility in the form of concessions to capital, it is also beginning to draw attention to the threat that the speculative behaviour associated with so-called ‘casino capitalism’ poses to the traditional functions of the work organisation in the development of human and social capital. Most of the attention is focusing on putting in place a regulatory framework that puts the break on such behaviour – this involves legislation dealing with the banks and the activities of hedge funds and other alternative investment funds. Takeover provisions are also under scrutiny. It remains to be seen whether the crisis leads to more radical thinking that brings into play ‘stakeholder’ arrangements or alternative forms of work organisation such as worker co-operatives.

Introduction: theories of the state

As previous chapters have pointed out, the role of the state in employment relations has differed considerably from one country to another. In France, for example, this role has been all-pervasive and legal enactment rather than collective bargaining the dominant process. In the UK, by contrast, the state until recently largely stayed out of the area – 'voluntarism', 'abstentionism' and ‘collective laissez-faire’ were the guiding principles. In part, to develop a point in Chapter 3, this is because of differences in the timing and pace of industrialisation and in part because of very different conceptions of the role of the state. Be that as it may, the role of the state has been pivotal in every country with activity in four main areas. The first, and most obvious, takes the form of legislation dealing directly with the employment relationship or amendments to it such as the activities of trade unions and collective bargaining. The second might be described as the field of ‘employment policy’. Most governments have introduced measures to ensure employment training and skills. They have also funded employment exchanges - affecting the incentive to take employment and employment opportunities. The third is that of social protection. More or less encompassing measures have been
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provided for dealing with the situation of those unable to work or no longer able to work – these include basic provision for illness, incapacity and old age. The fourth area is the overall legal and economic context within which employment takes place. Especially critical in the first instance is the legal framework of corporate governance. In the second, the nature and extent of fiscal and monetary policies stand out. Not to be forgotten either is that the state, in both its national and local forms, is a very large employer in its own right. Whether it likes it or not, the state is effectively responsible for setting standards across the broad swathe of employment relations policy and practice.

If what states ‘do’ is relatively transparent, the motivation for doing it is much more complicated. In the words of Heyes and Nolan, the role of the state is ‘one of the most complex and under analysed, across the social sciences’1. Complicating matters is that it is not only the nation state that has to be considered. In the case of European countries, the development of the European Union means that there is a transnational dimension to be considered as well – the EU is not a ‘superstate’ and yet is more than an inter-governmental organisation, with a not inconsiderable competence in employment relations.

Historically, as Heyes and Nolan describe, two main schools of thought emerged, albeit with a number of variants. For many years, the ‘pluralist’ perspective was dominant. Essentially, this sees power within society being dispersed between different organised interests groups, each of which has the opportunity to pressurise the state to advance its interests. From this point of view, the state is seen as being largely neutral - its job is to hold the ring and try to balance the interests with which it is confronted as best it can within an overall constraint of maintaining law and order. In the early days of capitalist development, this meant largely responding to the interests of employers. With industrialisation, the emergence of a working class, and universal suffrage, however, things became more complicated, with policy becoming a product of more or less recurrent bargaining with and between employers and trade unions.

At first sight, the second school of thought appears fundamentally different. Its starting point is Marx's comment in The Communist Manifesto that the state is but the ‘executive committee for managing the common affairs of the whole bourgeoisie’. Far from being neutral,
in other words, the state is very much on the side of capital and is so because the basis of society is the economy. As Marxist theoreticians have argued in later works, however, this does not necessarily mean that the state reflects the immediately expressed interests of capital or a particular group of capital. The state’s ‘structural’ position in capitalist society means that its overriding concern has to be the long-run viability of a system of wage-labour relations rather than the interests of any one particular group - following Poulantzas, the state is said to enjoy ‘relative autonomy’\(^2\). The result is that the state can appear to assume the role of the power broker that it has in the pluralist perspective.

More recently, with the domination of neo-liberal thinking, economists' viewpoints have gained sway. For economists, the ‘market’ is very much the preferred form of governance, with the role of the state stripped to the ‘irreducible minimum’\(^3\). State intervention takes place (and, by implication, should only take place) in two main types of situation: first, where markets are deemed to be imperfect on account of natural monopoly; and, second, where markets lead to externalities, i.e. knock-on effects that create burdens for the wider society. Only in these cases is state intervention justified - in the first instance, to avoid the harmful effects of exercise of monopoly power by either employers or employees; in the second, to ensure that employers do not pass on unreasonable costs of their operations to society as a whole.

Arguably, all three perspectives are needed to help us to understand the role of the state: none of them is sufficient by itself. This is above all true because the issues that policy makers have had to confront have changed over time.

**A changing agenda**

As Chapter 3 emphasised, the employment relationship involves flexibility and security. Following Crouch, a useful way of conceptualising the state’s role is to think in terms of it having to manage the balance between employees’ need for security and employers’ requirements for flexibility\(^4\). Initially, the concern was to establish a stable framework within which the conduct of the employment relationship could take place. In this phase, the main emphasis was on achieving a sufficient level of security for employees
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– it was in doing this that effectively became ‘guarantor of the employment relationship’. From the 1980s, there has been more emphasis on employers’ requirements for flexibility, reflecting developments in globalisation discussed in previous chapters, along with the dominance of ‘neo-liberal’ thinking.

‘Guarantor of the employment relationship’

Initially, having established the conditions in which the freedom of contract could thrive, the issue was how to deal with the conflict that inevitably followed from the conduct of the employment relationship. Typically, this manifested itself in crackdowns on the emergent trade unions. Relatively quickly, however, the balance of concern shifted with the state being obliged to do something about the adverse effects of the asymmetry of power in order to have a stable framework. In some cases, such as the UK, it meant factory legislation, along with slow and grudging support for trade unions and collective bargaining, coupled with the introduction of machinery for resolving disputes. In others, most notably Germany under Bismark, a raft of social security measures was introduced in an attempt to offer employees an alternative to the increasingly influential socialist agenda.

The explanation for the about face is that an approach grounded in ‘elite consumers’ and ‘insecure workers’, to borrow Crouch’s words, has major limitations. First there are potentially ‘long-term social control problems’ - economic conflict may threaten the stability of the overall system. An up-to-date example is that of China: the state is refusing to clamp down on protest over particularly low wages and insisting that employers recognise independent forms of employee representation for the purposes of negotiating over the terms and conditions of employment. Second, a totally 'free market' risks the state incurring the 'social cost' of labour, helping to explain why minimum wage legislation is so widespread. As Chapter 2 explained, human capital can be compared to physical capital in that it requires some 'minimum on-going expenditure for upkeep, repair and depreciation if the input is to be maintained for current production and replaced for future production'. Unlike physical capital, however, human capital is not something that employers 'own' and so there is little incentive for them to take on this responsibility. If pay falls below its social costs, therefore, it is society that has to pick up the
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bill, resulting in 'misallocation of resources and economic inefficiency'\(^7\). Another consideration is that some employers have wanted the state to intervene to prevent under cutting – indeed, the prevention of under cutting was one of the reasons Winston Churchill advanced in the UK in 1909 for introducing statutory minimum wages to be set by Trade Boards.

A third consideration reflects the development of a consumer society and the 'welfare state' in which the state and its agencies became a very large employer in their own right. On the face of it, developments here appear to confirm to the 'pluralist’ model of the state – policymakers respond to pressure from a growing working class, along with the trade unions and political parties which campaign on its behalf. It was not quite as straightforward as this, however. As Chapter 2 pointed out, a key consideration in the state becoming ‘guarantor of the employment relationship’\(^8\) was the need to ensure that employees would be able to achieve sufficient levels of purchasing power to be ‘confident consumers’\(^9\). Indeed, sustaining consumers who generate demand and hence profitability and growth became a core element of macroeconomic policy.

Developments went furthest in Europe, with the term ‘European social model’ acquiring widespread currency. At the risk of over-simplification, the model was predicated upon three fundamental principles\(^10\). These were the right to work, including commitments to full employment and active employment policies; the right to social protection, involving encompassing basic social security cover for the non-working population; and the right to civilised standards in the workplace, covering issues of employment governance or regulation. Two further common features that came to be associated with the model were a relatively egalitarian wage and income distribution and a high degree of interest organisation on the part of employers and employees\(^11\). Seemingly, it represented a settlement of sorts.

The ‘European social model’ became the one for countries to aspire to. Thus ILO developed a list of the different forms of employment security, which will be found in Table 10.1. While all seven dimensions are important, the ILO emphasised, two are essential for basic security: income security and voice representation security. The ILO goes on to explain that the initiative is dedicated to the achievement of what it calls ‘decent work’ or the ‘dream of helping to ensure that more people across the world find opportunities
to work in dignity, for the benefit of their families, communities and themselves.¹²

‘Flexicurity’

In 1980s the mood changed and with it the issues that policy makers had to confront. With the increasing dominance of neo-liberal thinking, the European ‘social model’ began to come under attack. Employment relations’ links with competitiveness came to dominate policy discourse – the balance between flexibility and security, it seemed, had gone too far in favour of the latter. In Bordogna and Cella’s words, employment relations became the ‘villain of the piece’¹³, the European model being unfavourably compared to the US equivalent. At the risk of caricature, key features of the former were seen as an emphasis on employee rights introduced by collective bargaining and/or legal enactment, leading to security of employment and relatively high levels of wages and conditions. But there were downsides - inflexibility, a lack of competitiveness and high levels of unemployment. The US model was deemed to be the opposite. There may have been considerable insecurity, lower levels of wages and poorer working conditions for many, reflecting weak employee protection and ‘hire-and–fire’ practice. Management was much freer of the restrictions of collective bargaining and legal regulation, however, supposedly leading to greater flexibility, improved competitiveness and a much lower rate of unemployment than in Europe.

The overall context was set by the widespread shift of emphasis of macro-economic policy from the demand to the supply-side. To paraphrase Wilhagen, four main factors can be highlighted: the fast pace of international economic integration - the creation of the Single European market and the single European currency was especially important here; the rapid development of new technologies, particularly in the information and communication areas; the demographic ageing of European societies, together with relatively low average employment rates and high long-term unemployment, which put at risk the sustainability of social protection systems; and the development of segmented labour markets in many countries where both relatively protected and unprotected workers coexist (so-called ‘insiders’ and ‘outsiders’).¹⁴
Policy makers responded by seeking to shift the balance between the security associated with the traditional model and the greater flexibility that employers were deemed to require. In the UK, the talk was of ‘fairness and flexibility’ and finding a ‘third way’. In continental Europe, the term 'flexicurity', which originated in Denmark, became the watchword. Although there have been different interpretations, a broad consensus emerged about the four basic components involved:

- **Flexible and reliable contractual arrangements from the perspective of the employer and the employee.** In the case of 'employees', however, it is not just a matter of 'insiders', i.e. those who were already in employment, but also 'outsiders', i.e. those potential employees who were being denied opportunities because of the privileges enjoyed by 'insiders'. The main instruments were modern labour laws, collective agreements and the reform of work organisation allowing for the reconciliation of employment and family responsibilities,

- **Comprehensive lifelong learning strategies.** Here ‘employability’ became the watchword. In other words, training and development were to be designed not just to ensure the continual acquisition and upgrading of competencies and skill of workers in their existing organisations, particularly the most vulnerable, but also to make it easier for them to find employment with other employers in the future.

- **Effective active labour market policies.** These were to help people cope with rapid change, reduce unemployment spells and ease transitions between different ‘labour market’ situations (from school to work, from one job to another, from unemployment to work and from work to retirement),

- **Modern social security systems embracing unemployment benefits, pensions and healthcare.** Here the emphasis was to be not just on adequate income support, but also on the encouragement of employment and labour market mobility. This includes broad coverage of social protection provisions, including those that help people combine work
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with private and family responsibilities such as childcare.

As previous chapters have explained, public policy put a great deal of emphasis on the ‘supply’ side of the employment relationship, reflecting the increasing dominance of ‘neo-liberal’ thinking. In many countries, there were reforms of employment protection legislation making it easier for employers to hire and fire. As Chapter 5 outlined, there were also important changes in pensions and social security provisions, along with those of training. At sector and company levels, as Chapters 5 and 9 pointed out, there was a shift in emphasis in collective bargaining from ‘distribution’ to ‘integration’, with the agenda more and more dominated by employers.

By contrast, relatively little was done to influence the ‘demand side’ – in the language of the debate in the EU it was more about promoting ‘activation’ than ‘capability’. The European Commission’s 1997 Green Paper, Partnership for a New Organisation of Work, which had advocated wide ranging changes in work organisation, was quietly forgotten. Similarly, little came of the recommendations of the Commission’s Higher Level Group report on restructuring, which included that all companies with more than 100 employees should produce a management of change report in consultation with employees and their representatives. In 2001, the European Commission drew up the list of indicators of ‘job quality’ that were to be the basis for national benchmarking. Here, too, however, the main emphasis was on the ‘supply’ rather than the ‘demand’ side. Significantly, issues such as ‘intrinsic job quality’, ‘work organisation and work-life balance’, and ‘social dialogue and worker involvement’ also did not become subjects of the ‘open method of co-ordination’. If anything, the situation was even bleaker in the UK. In 1997, the incoming Labour Government agreed to incorporate the chapter in the EU Treaty in important respects, little changed. Thereafter, however, Labour Governments not only consistently opposed further developments in the social dimension, including the information and consultation Directive and the inclusion of the Charter of Fundamental Rights in the EU Treaty. But they also put themselves at the forefront of articulating the alternative neo-liberal vision to the European ‘social’ model based on making labour markets ‘work’ more effectively. At home, they introduced a workplace-based statutory procedure for trade union recognition, but
otherwise did little to increase the ‘legitimacy power’ of trade unions or collective bargaining. Indeed, as Appendix 1 argues, they missed opportunity after opportunity to deal with what might be described as the UK’s institutional ‘gaps’.

Even so, timing and context also continued to be fundamentally important in helping to explain unfolding developments - ideology was not everything. An excellent example is the development of the EU's social dimension and its implications for the 'juridification' of the employment relations in the UK. For three decades or more, ‘neo-liberalism’ has reigned supreme in the UK and the balance of power between capital and labour has changed considerably. The decline in membership and the coverage of collective bargaining means that trade unions are no longer the pressure group they used to be in former times. By contrast, capital has grown considerably in influence reflecting its globalisation – policy makers, it seems, have become terrified of offending the 'markets'. Meanwhile policy responsibility for employment relations has become extremely fragmented, with no single focus and few people of experience and expertise responsible for it. Yet it is during this period that the UK has experienced a vast increase in legislation dealing with employment relations. In part, as Chapter 3 explained in discussing the process of ‘juridification’, one of the great ironies is that privatisation and deregulation do not automatically bring about a reduction in the role of state as proponents expect - the uncertainty which such developments bring is a potential source of conflict leading to further regulation. In part, as Chapter 4 explained in discussing the importance of ‘critical junctures’, it reflects the contested nature and timing of the introduction of the Single European Market - ‘social Europe’ was a by-product of 'economic Europe' and the relative lack of legal regulation of the employment relationship meant that UK had to play ‘catch up’. To illustrate this point, and the complexities of the issues involved, Table 10.1 gives an overview of some of the many considerations that were involved.

Public sector reform

The reason for singling out the public sector is that the state employs either directly or indirectly something between a fifth and a quarter of the workforce in most countries – the wages bill is a very considerable
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element in public expenditure. Public sector employment is also distinctive in several respects. As well as employing a relatively high proportion of professional workers, above all in sectors such as health, social services and public administration, it has many employees in relatively low paid jobs. The proportion of women employees is also higher than that of the private sector. Last, but by no means least, the setting of the terms and conditions of employment tends to be highly centralised in the interests of mobility and consistency.

In these circumstances, and because of the potential impact of strikes, public sector employment relations have a high profile. For much of the post-world war 2 period, there was a widespread consensus that state should be ‘model employer’ setting the example for employers in the private sector. This is true of both the substantive terms and conditions of employment and the procedures and processes by which they were established. The following description of the situation in the UK could be applied to the other countries included in the comparison:

From 1945 onwards, public sector employment in health, education and social services grew rapidly as part of the development of the welfare state … the state was a ‘model employer’ setting an example to the private sector by endorsing principles of fairness, involvement and equity in its treatment of its workforce. These principles were associated with the encouragement of trade union membership, support for centralised systems of collective bargaining and other forms of workforce participation which encouraged the expression and resolution of grievances.

This manifested itself in relatively generous pension arrangements and other terms and conditions. The pay of lower paid employees also tended to be higher than those in the private sector. As the previous chapter has shown, levels of unionisation were much higher in the public than the private sector and collective bargaining greater in its coverage. Public sector bodies were also to use their control of contracts to disseminate good practice more widely, for example, in the area of equality and diversity.

The 1980s saw two major developments that have changed very considerably the ‘model employer’ status with implications for the conduct of the employment relationship more generally. One was a
programme of privatisation. Some privatisation reflected domestic government agendas, most notably in the UK, where it affected the nationalised utilities such as gas, water, electricity and telecommunications. Others were because of wider considerations. In the case of EU member countries, for example, some privatisation resulted directly from policies promoting the rationalisation of sectors such as steel or the opening up of previously closed markets to European-wide competition, as in energy, telecommunications and airlines. In any event, the result was that considerable numbers were transferred from the public to the private sector and exposed to wider commercial pressures discussed in Chapter 9.

The other development was the ‘new public sector management’ (NPM) approach encouraged by the OECD, the World Bank and the International Monetary Fund. In Heyes and Nolan’s words, ‘The central principle of NPM is that systems of public administration can be strengthened through the adoption of micro-management practices associated with the private sector’\(^20\). The ‘divisionalisation’, ‘budgetary devolution’ and ‘marketisation’ that featured in Chapter 8 are important here. They make it possible to put ‘greater emphasis on measuring the performance of government departments and non-departmental public bodies … through setting targets and evaluating outcomes, improved accountability and coordinated policy development and service delivery’\(^21\).

The upshot is that the main principles that Bach identified above were over-turned. The public sector was no longer to set the trend. Rather the reverse was the case: ‘marketisation’ meant that terms and conditions of employment were to reflect those in the private sector. In the UK, as Chapter 8 suggested, centralised and detailed targets, very often reflecting short-term political pressures, were introduced with little or no serious consultation with trade unions or their members, undermining the legitimacy of collective bargaining and social dialogue.

**The challenge of ‘casino’ capitalism**

The financial crisis that swept the world in 2007-9 has heightened considerably the policy dilemma at the heart of the ‘flexicurity’ debate. The origins of the crisis, which lie in the growth in financial intermediation and the activity of the financial sector, also emphasise
the fundamental nature of the problem. One is the globalisation of economic activity following the liberalisation of finance and financial markets in the 1980s. In Wolf’s words writing before the crisis,

Over the past quarter-century … almost all … regulations have been swept away. Barriers between commercial and investment banking have vanished. Foreign exchange controls have disappeared from the high-income countries and have been substantially, or sometimes even completely, liberalised in many emerging market economies as well. The creation of the euro in 1999 accelerated the integration of financial markets in the Eurozone, the world’s second largest economy. Today, much of the global financial sector is as liberalised as it was a century ago, just before the First World War22.

The other consideration is the revolution in computing touched on in Chapter 8. In Wolf’s words again,

This has permitted the generation and pricing of a host of complex transactions, particularly derivatives. It has also permitted 24-hour trading of vast volumes of financial assets. New computer-based risk management models have been employed across the financial sector. Today’s financial sector is a particularly vigorous child of the computer revolution23.

Also important were the implications of the resulting shift in the distribution of income from labour to capital raised in Chapter 2. Wage earners were encouraged to increase their debt to maintain the standard of living. But reliance on ‘house price Keynesianism’24 or ‘privatised Keynesianism’25 was only likely to be a temporary answer as events proved it to be. It was in the housing mortgage market in the UK and the USA that the financial crisis was immediately triggered.

Arguably, the underlying problem is that the extent of the flexibility capital expects/requires poses a fundamental challenge to employment relations as they had developed as the basis of the economic system. In Crouch’s words, ‘A modern market economy based on mass consumption … requires the majority of workers to have enough sense of certainty in their economic lives to be confident consumers26. But the developments in financial markets since the liberalisation of the 1980s make this increasingly difficult. One
consideration is the speculative behaviour of a relatively small group of organisations such as hedge funds, which have little interest in ownership of a particular share. Rather they take advantage of share trading systems which allow them to buy and sell in a Nano second to speculate. Indeed, a widely used practice is that of ‘short-selling’, where the hedge fund effectively bets on a decline in the price of the shares that it borrows with a view to buying them back at cheaper price and so on. As Chapter 8 explained, an important side-effect was clearly illustrated in the case of the Kraft takeover of Cadbury, the confectioner manufacturer in 2010. Cadbury’s fate was effectively sealed by fewer than less than a third of its shareholders, leading to charges from ministers that traditional institutional shareholders such as pension funds and insurance companies were acting, in the words of the then city minister, Lord Myners, like ‘absentee landlords’27. Another has been the emergence of private equity groups with the ability to borrow (‘leverage’) substantial sums of money on the basis of future returns. In this case, the debts that are incurred can destroy the business. In the words of John Moulton, who is himself a major player in the private equity industry, some deals are tantamount to ‘betting jobs against shareholder returns’28. A third consideration, underpinning these developments, has been a change in the role that the banks have played. No longer, it seems, is their prime objective to lend to businesses to produce goods and services. Rather it is to maximise the returns from the development of business involving other financial institutions. Central to this has been a raft of instruments that policy makers, let alone members of the public, are only just beginning to become aware of. Perhaps the most notorious are the 'credit default swaps' that started out as a form of insurance against the possibility that an individual or company would renege on debt. Trading in these ‘derivatives’ became a business in its own right, leading to the development of a ‘shadow’ banking system where no one knew the risks being taken. Ironically, in the process, the divisions of the banks involved – notably the investment banks – have come to resemble a form of workers’ cooperative discussed in Chapter 6. In Kaletsky’s words,

The peculiarity of the banking business … is that boards of directors, instead of representing the interests of shareholders, have maximised the earnings of the employees. Banks, perhaps
because of the partnership culture in the hedge funds with which they must co-exist, have increasingly been managed as worker cooperatives, in which the interests of the workers came first and those of outside providers of capital were treated as an afterthought'.

Adding insult to injury is the difficulties that governments are having as the result of the sovereign indebtedness incurred in helping the banks to recover. Triggering this phase of the crisis was the situation in Greece and other Eurozone countries in 2010. The whole basis of public finances has come to be questioned, with austerity measures being introduced in country after country to cut budget deficits and appease the bond markets. In effect, critics say, governments are being asked to accept the ‘privatisation of gains’ and the ‘socialisation of losses’.

Initially, there was some recognition of the wider issues involved, with questions being asked about the supremacy of politics or ‘the markets’. This is above all true of continental European countries, where it was widely recognised that the crisis represented a fundamental threat to the ‘European social model’. Very quickly, however, the main emphasis turned to fixing the system/ getting back to business as usual as quickly as possible. Most attention focuses on the situation of the banking sector and the ‘shadow’ derivative markets. Along with new forms of taxation on bank profits and bonus payments, proposals for reform include the break-up of the big banks, the separation of retail banking from capital market banking, restrictions on proprietary trading and ownership of hedge funds by banks, and raising the level of capital that banks are required to hold. Greater transparency is also being demand, with derivatives and other features of ‘shadow banking’ being moved on to exchanges.

A second group of proposals target the process of ‘financialisation’ and the operation of the ‘casino economy’. They include more stringent controls over the activities of hedge funds and alternative investment fund managers such as private equity companies, along with practices such as 'short-selling' and ‘leveraged buy-outs’. In the UK, the ‘Takeover’ panel is currently considering these. Much greater transparency of behaviour is also likely to be required. In the EU, for example, there is a directive dealing with alternative investment fund going through the system as this text was in preparation.
A third group deals with company stewardship and corporate governance. In the UK, reflecting the Cadbury experience, specific proposals include a short-term capital gains tax for shareholders who take early profits from selling their shares; making takeovers subject to more stringent criteria so that the opportunity for unlocking short-run shareholder value is more difficult; putting a stop to ‘leveraged’ takeovers – the emphasis should be on equity rather than debt; stripping short-term holders of voting rights and raising the acceptance level required for takeovers; and reducing the time table. There are also proposals to allow a ‘public interest’ defence in the event of hostile takeovers.

As the crisis has gone on, there have also been calls for another look at the purposes of companies. In the UK, in a speech at the Chartered Institute for Securities & Investment conference in London on 19 June 2010, Hector Sants, Chief Executive of the Financial Services Authority (FSA), suggested that greater intervention was needed from regulators to ensure decisions made by firms deliver the outcomes society expects:

Historically regulators have avoided judging culture and behaviour as it has been seen as too judgemental a role to play. However, given the issues we continue to see over time, I believe this one-dimensional approach has to be questioned. Every other aspect of the regulatory framework is under scrutiny and we should not shy away from debating the culture question …

I would strongly advocate intervention in the UK through changing the Companies Act framework for directors, for example. The current requirement for directors is to promote the success of the company. This is often interpreted in terms of shareholder value. Whilst this does include the need, for example, to ‘have regard to' the impact on the community, I do not believe that is sufficient. There must be a stronger and more explicit obligation to wider society. There must be clear recognition of the need for institutions to contribute to the common good.

The last time there was an active debate about the relative merits of the 'stakeholder' and shareholder' models in the UK was in the mid-90s. Proponents of the 'stakeholder' model like Hutton argued that 'The great challenge – after the experience of both state socialism and
unfettered free markets – is to create a new financial architecture in which private decisions produce a less degenerate capitalism ... The triple requirement is to broaden the area of stake-holding in companies and institutions, so creating a greater bias to long term commitment from owners, to extend the supply of cheap long term debt, and to decentralise decision making\textsuperscript{31}. Ironically, among the many opponents of stake-holding was Adair Turner, then Director-General of the CBI and now, Sants’ Chairman at the FSA. Referring to 'stake holding', Turner wrote in 2001,

> It all sounds rather attractive. But as a guide to practical policy it is at best a cul-de-sac, at worst dangerous. It sounds attractive to ask corporations to think through the social ‘balance sheet of gains and losses’ but in practice it is an almost inoperable principle. Corporations can just about imperfectly identify the complex set of actions which will maximise their own profit within given constraints, but they are ill-equipped to calibrate the second and third and nth order social consequences of their actions and lack the legitimacy to make the trade-offs involved\textsuperscript{32}.

For Turner, capital-market pressures drive economic efficiency; the good society has to be achieved by other means. Indeed, a particular danger of pursuing the stakeholder approach, he went on to suggest, was that it would divert attention from ‘those specific interventions - redistribution, collective-goods provision, or regulation - which will make capitalism more humane\textsuperscript{33}.

At the time of writing towards the end of 2010, it remained unclear how robust the response to the challenge of ‘casino capitalism would be. Some commentators seem to think that sufficient measures will be introduced in the areas discussed above to ensure that the worst effects of ‘financialisation’ will be curbed. But there are as yet few signs that the threats to the traditional model of the employment relationship are being understood, let alone a serious debate taking place about the ‘specific interventions’ needed to deal with them. In the UK, as the CBI’s \textit{The next 10 years} report mentioned in Chapter 8 suggests, there seems to be a recognition by senior managers of the need to move away from the short-termism fuelling ‘permanent restructuring’. It is extremely doubtful, however, whether they will be willing to contemplate the type of change in company objectives that
Sants calls for. The same is true of proposals for increasing employee rights under acquired rights and collective redundancy legislation in ways that considerably raise the costs of behaviour that has potentially damaging consequences for employees and their local communities. Equally, although the idea of worker cooperatives has resurfaced, there is little discussion of how these or other alternative models of business organisation might be promoted on any sizeable scale.

The problem is that the best of times is also the worst of times. Trade unions are too weak to promote anything like the level of crisis that the banks have. The HRM function does not have the clout necessary to promote a serious debate and its energies are likely to be absorbed in dealing with the redundancy and insecurity following the financial crisis. Looking at government, there is no evidence that the lessons from the financial crisis are being read across to employment, let alone a recognition that there are major implications for its role as ‘guarantor of the employment relationship’ – with the recession biting, the main emphasis is on reducing the budget deficit, which means cuts not only in employment, but also in its terms and conditions. In the circumstances, the most likely outcome is a further worsening of the returns to labour. Coupled with the further development of an ‘hour glass’ economy, in which the middle is increasingly hollowed out by technological change, the prospect is of a society in which ‘only the elites [will be able] to confidently consume, while workers work flexibly and can hardly afford to consume beyond subsistence levels’.

It is also a recipe for continuing instability in financial systems as well as demoralisation and lack of engagement. Pessimistic as these conclusions will read, they are difficult to avoid.
Table 10.1 How ‘economic’ Europe contributed to ‘juridification’

There are two main views about the reasons for what has been described as a ‘fundamental asymmetry’ between the economic and social dimension of European integration. One sees the asymmetry as flowing from the essentially economic nature of European integration: in Delors’ words ‘L’Europe de la nécessité’ rather than ‘L’Europe de l’idéal’. A second view contends that economic integration was ‘deliberately underdeveloped’. For the monetary authorities and employers’ organisations especially, a process of market-led harmonisation was precisely what was attractive about EMU’s construction. It would be impossible as well as undesirable to regulate social policies at supranational level. To remain competitive, however, countries would have to restructure their domestic economies in order to get rid of inefficiencies in their national welfare states and labour markets.

Trade unions and their political allies were well aware of this thinking. There were worries that ‘economic Europe’ would deliver a ‘nightmare’ rather than a ‘dream’, that the European Central Bank, in seeking to fulfil its remit to maintain price stability, might set an unduly restrictive monetary policy thereby triggering deflation. If so, the burden of the subsequent adjustment would fall on wages and employment along with social protection systems. The same would hold in the face of asymmetric shocks, given the absence under EMU of the adjustment mechanisms available in other currency zones. Much as they have during the global financial crisis, governments would have to squeeze public expenditure, including that on social protection, while employers and trade unions would come under pressure to reduce labour costs in exchange for sustaining employment.

Even so, most trade unions supported the EMU project. Alongside interests in the economic benefits, Foden identifies two main considerations. One might be labelled ‘the Europeanisation of economic policy making’. Individually, Euro zone countries would find it difficult to take action to promote the expansion of their domestic economies to create jobs – ‘Keynesianism’ was no longer possible in one country, it was argued, whereas the prospects looked much brighter if Europe became more of an entity. The other lay in the possibility of exerting influence over the wider political agenda: ‘In essence, the ETUC has been a supporter of, and in part, an actor in, the strategy of building ‘economic Europe’ as a means of promoting ‘political Europe’, and in particular, social Europe’. ‘Political’ and ‘social’ Europe, in other words, were expected to be ‘spill-over’ effects of ‘economic’ Europe.

In the event, the outcome was an uneasy compromise: there was more ‘social’ Europe than many employers would have liked, but much less that
the ETUC wanted. But for the UK, which was in a unique position because of the tradition of ‘voluntarism’, even the codification and extension of measures already available in most other countries meant that the so-called _acquis_ touched on virtually every area of employment relations other than association, industrial action and wage determination. Listing only those areas where there has been major UK legislation gives us freedom of movement of workers; equal opportunities in terms of age, disability, gender, race, religion and sexual orientation; health and safety; collective redundancy and business transfers; working time; the proof of employment; information and consultation – both national and cross-national; maternity and parental leave; equal treatment for part-time and temporary workers (with agency workers to come); pensions; employment agencies; data protection and corporate governance. Policy makers in other countries might have been opposed to the advanced social model that the ETUC was seeking, but they were not prepared to allow the UK to benefit from its inferior employment protection. As well as the free movement of labour, a single market and a single currency needed a level playing field in areas such as working time, health and safety, and so on.
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Table 10.2 Types of employment security

**Income security** denotes adequate actual, perceived and expected income, either earned or in the form of social security and other benefits. It encompasses the level of income (absolute and relative to needs), assurance of receipt, and expectation of current and future income, both during working life and in old age or disability retirement. Income security protection mechanisms include a minimum wage machinery, wage indexation, comprehensive social security, and progressive taxation.

**Representation security** refers to both individual representation and collective representation. *Individual representation* is about individual rights enshrined in laws as well as the individuals’ access to institutions. *Collective representation* means the right of any individual or group to be represented by a body that can bargain on their behalf and which is sufficiently large, sufficiently independent and sufficiently competent to do so. Independent trade unions with the right to collectively bargain over wages, benefits, and working conditions as well as to monitor working practices and strike have been typical forms of granting representation security.

**Labour market security** arises when there are ample opportunities for adequate income-earning activities. It has a structural component, in that it represents the types and quantity of opportunities. Furthermore, it has a cognitive side, as it also features expectations that opportunities are or will become adequate. Policies aimed at enhancing this form of security have included full-employment oriented macro-economic policies, the creation of employment agencies, and other placing services.

**Employment security** is protection against loss of income-earning work. Employment security exists in organisations and countries, in which there is strong protection against unfair or arbitrary dismissal and where workers can redress unfair dismissal. For the self employed, it means protection against sudden loss of independent work, and/or business failure. Typical forms of enhancing employment security have been protection against arbitrary dismissal, regulations on hiring and firing, and imposition of costs on employers for failing to adhere to rules.

**Job security** signifies the presence of niches in organisations and across labour markets allowing the workers some control over the content of a job and the opportunity to build a career. Whereas employment security refers to the opportunity of a worker to continue working in an enterprise, job security refers to the worker’s ability to pursue a line of work in conjunction with his or her interests, training and skills. Protection mechanisms have consisted of barriers to skill dilution such as craft boundaries, job qualifications, restrictive practices,
Work security denotes working conditions in organisations that are safe and promote workers’ well being. Classic “occupational health and safety” provisions shielding workers from occupational hazards, diseases, and injuries are an integral part. Work security goes beyond this, though, in addressing the modern scourges of stress, overwork, absenteeism, and harassment. Protections include provisions and insurance against accidents and illness at work, and limits on working time.

Skill reproduction security denotes workers’ access to basic education as well as vocational training to develop capacities and acquire the qualifications needed for socially and economically valuable occupations. Ways to further skill reproduction security include policies to generate widespread opportunities to gain and retain skills through education, apprenticeships, and employment training.
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