

Theme 5: Legal regulation of the employment relationship

Making employment rights effective

Linda Dickens continues work on the project now called 'Making Employment Rights Effective', indicated in last year's report. The starting point is the enormous expansion of individual employment rights in the UK, particularly since 1997, as Labour governments attempted to provide a comprehensive framework of minimum employment standards and deliver 'fairness at work'. Fairness is a continuing theme espoused by the new Coalition government. The evidence, however, suggests that in some areas employment rights remain formal rights rather than impacting on employment practice. The project seeks to illuminate why this is and how it might be addressed. It goes beyond reform agendas concerned primarily with problems of costs and delay associated with the current major enforcement mechanism, the Employment Tribunals, to consider alternative enforcement approaches and also the way in which rights are mediated at the level of the organisation (helping explain differential impact). There is some administrative enforcement of rights through agencies and inspectorates but this approach is largely ad hoc and relatively under-developed in Britain and there has been relatively little critical consideration of the lessons which might be learned from the experience of such agency enforcement. Further, there has been little use or discussion of alternative, non judicial approaches to achieving the desired policy outcomes behind individual rights (e.g. use of procurement and levers such as corporate social responsibility), and the potential role of social regulation (e.g. through trade unions/collective bargaining) as a way of embedding rights and shaping workplace practice has been neglected. This project addresses these areas. Dickens has brought together a distinguished group of scholars from within IRRU and beyond to produce a book which she is editing, as well as writing chapters for. Contributors come from industrial relations, sociology and labour law, providing a multi-disciplinary perspective on issues of contemporary policy relevance as well as academic and practical interest.

The regulation of public service outsourcing in liberal market economies

Trevor Colling's work explores union roles in the development and enforcement of statutory employment standards in different national contexts and draws upon fieldwork developed in the USA during a visit to the Industrial and Labor Relations School at Cornell University during the Autumn. Outsourcing of public service work provides a critical test of these issues, leading potentially to the 'privatisation' of employment norms, where regulation is weak, or 'publicisation,' involving the export of standards from the public sector to the broader service economy, where regulation is stronger.

Employment standards tend to be most developed amongst large, sophisticated employers of the kind found in public service. Expectations of probity and good management are set out explicitly and overseen by the democratic process and layers of professional and industry regulation. Outsourcing potentially weakens these characteristics. Employment, and often specific workforces, are transferred from the public to the private or voluntary sectors, where very different employment norms prevail. Diverse but relatively cohesive public workforces are fragmented by changing organisational boundaries and competitive pressures. Adjustment processes may vary according to professional and organizational environments but cost pressures apply everywhere and in labour intensive services bear particularly on wage and benefit costs. Yet important resources may also be available to unions seeking influence over such processes. Public sector workforces are more likely to be unionised and their representatives play important roles in developing and enforcing statutory employment standards such as fair employment, equal pay and living wage mechanisms. Strong trade union organization may minimise the inclination to outsource at all, or draw negotiated concessions from employers where it proceeds. Workforces transferred to private providers may retain their 'unionateness', diffusing collective orientations in otherwise non-union environments.

Britain and the USA provide a rich comparative environment in which to explore these processes. They are grouped together usually as 'liberal market economies' and the role of the state in economic co-ordination has been rolled back further in recent years. The two countries have developed parallel reform programmes prioritising the transfer of public functions to the private sector. Yet the political and regulatory environments differ in important respects, with implications for the resources available to public service trade unions. There is important variation between the two countries in the scope, character, and coverage of public service collective bargaining; in the nature of statutory intervention in outsourcing processes and the legal institutions overseeing them; and in the structure of local and central government providing public services. Early findings suggest that 'partnership' approaches generating protections for employees tend to ease transfer to the private and third sectors. Where protections are limited or absent, however, union responses may be more adversarial with consequences for broader market dynamics.