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No 3/2009

CLR News

Non standard employment and the erosion of workers' rights

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European Institute for
Construction Labour Research

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Note

from the editor

Jan Cremers,
AIAS-
Amsterdam,
10-07-2009

There is a ghost going round that says that we have made a soft landing and that what is needed now is back to business. And a second ghost is coming up with a new deregulation agenda, because basic labour standards and workers' rights only cost money and are no good for the recovery of our economies.

These voices are not (yet) the dominant ones but it is clear that they serve one goal: to reinstall the neoliberal agenda.

In the number 2 issue of CLR-News we included contributions that demonstrated that the financial crisis was and is not a natural thing but that it is based on political choices made during the last decennia that have lead to a deregulation of the financial sector and a weakening of the position of all the societal and company stakeholders but one, the capital owner.

In this issue we want to have a closer look at the erosion of the employment relationship that took place during these years. A reflection on the hierarchy of political priorities is extremely important in the years to come as an important part of the workforce is confronted with deteriorating working conditions and levels of remuneration, deregulated social security, and weakening of employment rights. Are we

in for another round of unequal distribution of wealth and income, for more flexibility of our labour markets at the expense of degrading working conditions?

After we have secured the revenues of investors and financial institutions, what about securing income maintenance for workers that risk redundancies, given the fact that the real decrease of employment is still to come and will stay for another 4-5 years? How to enforce the regulatory frame of basic labour standards, based on both labour law and collective bargaining? How to make an end to short term cashing?

These items will stay on our agenda for a while notwithstanding the fairy tales that the ghosts quoted above will come up with.

We received some extraordinary global contributions this spring dedicated to the working conditions of workers in non-standard employment relations. The content of these contributions made us decide to produce a complete issue of CLR-News on this subject.

First you will find a topical subject article on an attempt by Chinese students and scholars to defend the interests of peasant workers that serve as seasonal workers in the Chinese construction industry. Secondly we received an Australian contribution on the lack of decent regulation and the

efforts to make industrial action illegal.

In our discussion contributions we publish reports related to the vulnerability from different perspectives of workers in non-standard employment relations.

In this part of our Quarterly Regan Scott comes up with a provocative statement about the state of art in the academic world of industrial relations research as he examines three books. We warmly invite readers to react on that.

The reviews are linked up with the policies needed: the implementation of the ILO Decent Work Agenda, the perspectives on the labour market for the a-typical workforce and the need for improvement of their representation.

As always, we look forward for your critical remarks and feedback.

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Chris King-Chi Chan

The author is a post-doctoral fellow in joint Hong Kong Poly U-Peking U China Social Work Research Center. He is also president of the Beijing *Renjian* Cultural Development Center. This article reports research findings and collective reflections of members, staff and volunteers of *Renjian* in the past one and a half years in their engagement in the promotion of construction workers' rights

An Action Research for Construction Peasant-Workers' Rights in Beijing

On a midnight of early June 2009, 10 construction workers left a construction site near the China Agriculture University in Beijing with their luggage. The 9 men and 1 woman came from rural villages in *Henan* province in the Central China or *Guizhou* province in the Southwest China. In China, they are known as '*nongmin gong*' (peasant-workers). According to the national census in 2000, the number of peasant workers in the country reaches 120 million. In 2004, a research report from the All China Federation of Trade Unions (ACFTU), the official trade union centre, estimated that 40 million, or one-third of the peasant-workers were working in the construction industry (ACFTU, 2004).

Workers walked off the construction site where they had worked for around two months with very complicated feelings. They were excited that they just got paid after a struggle lasting for 10 days. They were very hungry as they had not eaten a meal in full after they stopped work on 1st June. Most importantly, they were very fearful of the physical attacks from the son of a subcontractor from *Hubei* province who they were working for. One of the workers sent a mobile message to a student researcher in Peking University: 'we are very scared. We have no place to go to. Can you help us?' The student called back the worker to gather together, walk away from the construction site as far as possible and dial '110' [the police hotline] to seek help. However, the workers explained that the police was unhelpful to them and 'stood on the side of the company'. In this construction site, students have successfully helped six groups of 50 workers to get back their wages since March 2009.

Research and Action for Construction Workers

The student is a member of the voluntary student network. The team is a loose network of students from 13 universities in Beijing named 'Safety Cap University Student Mobile Service Team'. The history of university students in Beijing assisting construction peasant-workers can be traced back to 1999, when a student society in the name of 'the Son of Peasants' was formed in Beijing Normal

University. Student activists from this society had a tradition of helping construction workers to ask for unpaid wage from their employers. Students' involvement in industrial conflict in the construction industry is a special phenomenon in post-socialist China. Workers are denied freedom of association. Most of the migrant workers are unorganized. Even though a workplace trade union is set up, it would be a branch of the official trade union and most likely to be manipulated by the management. Unlike many other countries where the trade union is the first port of call of workers' rights and interest protection, it is very rare for migrant workers in China to seek help from trade unions. The country's legal framework for industrial relations tends to protect workers' individual rather than collective rights. The Labour Law in 1995 protected a wide range of workers' rights including a minimum wage, an overtime pay and social insurance. However, in the construction industry it is not enforced at all. The 2008 Labour Contract Law further strengthened workers' legal rights by stating that workers can get double pay if the employer does not sign a labour contract with the employee within one month of the employment. Again, in the construction industry, there is no sign of enforcement. Migrant workers in the construction sector were highlighted as one of the 'marginal communities' deserving special concern.

The idea of involving students to service construction workers was revitalized in a research project under China Social Work Research Centre of Peking University and Hong Kong Polytechnic University. From the late 2007, researchers from these two universities conducted intensive fieldwork on construction sites in Beijing. The awful working conditions and abuse in the industry surprised students and their teachers. To provide support to workers and facilitate continual research, a construction workers service centre and a workers' canteen, named '*Renjian* (the people) - New workers', were set up in a migrant workers' settlement village in April 2008. The canteen is run as a social enterprise. Its profit will partially support the service centre. The service centre is acting as a base for social work placement, sociology and anthropology fieldwork, and student voluntary practice. The concept of 'new workers' tries to create a new identity for the group who are still understood as 'peasants'. The name of '*Renjian*' called for wider support for the marginal group whose legal rights are highly repressed by a special employment system and social relation. Activities in the centre combine social research with social action.

June is one of the high seasons for workers' wages demand as some of them have to go back home for agricultural harvest. During the month, while one group of students stayed in Beijing to help workers, another group went to visit workers who returned to rural villages for harvest and to provide legal training for other villagers who are also migrant construction workers. The other routine services of the centre and its attached student network are to visit construction workers' dormitories. In dormitories, students distribute labour law booklets, teach workers with labour law and labour rights and organize cultural events alongside interviews and observations for research purpose.

The Working Conditions of Chinese Construction Workers

Since late 2007, we paid regular visits to 13 dormitory settlements of 6 construction sites covering 11,900 workers. Following some of the core workers, we visited and delivered labour law and consciousness training in 10 villages in the provinces of *Henan* and *Hebei* where we contacted 2000 construction workers. A student campaign group in Hong Kong accused an estate property company of '10 offences' (*shi zhongzui*) for their labour practice in China based on their fieldworks in five Chinese cities (SACOM, 2009). Our intensive fieldwork and active engagement confirmed the findings in this report as general conditions of the building sector:

1. No labour contract

Almost all of the manual construction workers did not have a labour contract with their employers. The main aim of 2008 Labour Contract Law is to promote a formal written labour contact between employer and employee. In the construction sector, the law has little impact. Some companies do ask workers to sign a contract to satisfy the Labour Bureau monitor and strengthen up their own position during labour conflicts. But workers do not keep a copy as requested by the law.

2. Extremely long working hours

The average weekly working hours of workers range from 70 to 90 hours. Normally workers have to work seven days a week, 12 hours a day. A standard working pattern in the industry is 5:30am to 11:30am, an hour lunch break and then 12:30pm to 6:30pm. In busy periods, the daily working hours are as long as 15 to 16 hours.

3. *Wage arrears*

While the law requests wages to be paid at least on a monthly basis, most of the peasant-workers were paid on an annual basis. This means they can only get pay before they go back home for Chinese New Year (usually during January or February). Usually workers will be 'prepaid' (*yuzhi*) 100 to 1000 *yuan* (about 10 to 100 Euros) per month for living expenses. This causes a big problem of wage arrears before Chinese New Year or during June and July when some of the workers have to go back home for harvest. In 2007, more than 124,000 completed construction projects in China owed 175.6 billion *yuan* in unpaid wages to the peasant-workers. This means that every construction project owes 1.4 million *yuan* (*China Daily*, 9-July-2007; cited by Pun and Lu, forthcoming b). In 2003, Chinese premier Wenjiabao helping a construction peasant-worker from Sichuan to demand unpaid wages drew much public attention, highlighting the seriousness of the wage arrears problem in the industry.

4. *Detrimental living conditions*

Workers' dormitories are all provided by the company. The living environment is extremely simple, dirty, crowded and sometime very noisy. Usually the dormitories are located in the basement of semi-finished buildings, abandoned factory estates or some temporary settlements. Sometimes hundreds of workers live in one big hall. Usually 8 to 30 workers occupy one room. This also creates a problem for women workers. The number of women is very limited. There is no special dormitory room for females. Women have to live in a room full of men. Some married couples work on the same site. Their privacy is only 'secured' by a thin curtain covering their dorm beds. The companies or contractors run small shops and food service. Workers can pay for meals and daily provisions by vouchers provided by the company. The total cost of the vouchers will be deducted from workers' salaries. In some cases, the price in the company-run stores is 30% to 50% higher than the normal price. Workers have to depend on the company-run shops to consume as they do not have enough cash. Apart from the concern for wages, the food quality is always amongst workers' top concerns. Workers do not have tables or chairs to have their meals.

5. *Unpaid stoppages*

Workers are paid on a daily rate. When work is stopped as a result of bad weather or a lack of water or electricity supply, workers cannot get pay for the day or their wage is deducted by proportion. A special Chinese name, *wogong*, is designated to this arrangement. *Wogong*

exists also when some companies employ more workers than is basically demanded. It causes some workers to complain of not having enough working days to earn a reasonable income. For the company, no extra cost is needed except the daily wage which is dependent on a real working day. Since the current financial crisis, as the supply in the labour market is abundant, the problem of *wogong* is getting worse.

6. *Low social insurance participation rate*

'How can peasants have social insurance?' a manager told a student who was helping workers to ask for unpaid wages. The Labour Law clearly requests employers to contribute social insurance for their employees, covering pension, medicine and industrial injury. In reality, like the labour contract, no migrant worker on the construction sites we have visited participates in the social insurance scheme.

7. *Serious occupational disease*

In 29 March 2009, over 20 students from different universities in Beijing gathered outside a construction site with flowers in their hands. They came to support the daughter of a worker who died in the basement of the site to bargain compensation from the management. The 57-year old worker felt unwell when he was hammering a rock in the afternoon of 22 March. He started to cough at night. The next morning he could not get up for work as he was seriously ill. But he had only 1.35 *yuan* (1.35 cents in Euro) in his pocket, so there was no way for him to see a doctor. When his two brothers who were also working on the construction site came back to the dormitory at lunch time, he was nearly dead. With strong support from students, his daughter was 'lucky' to get a compensation of 64,000 *yuan* which was usually only 20,000 to 30,000 *yuan* as told by a manager. Pneumoconiosis, benzene poisoning and eye disease are common occupational diseases in the industry. 80% of the workers interviewed had some degree of respiratory tract infection and Tinnitus (SACOM, 2009).

8. *Lack of vocational training*

Before the 1980s, construction workers were employed by state-owned construction companies. Like other state-owned enterprise workers in socialist China, they were holding an 'iron bowl' with permanent employment, social welfare and occupational training. Today, almost all manual construction workers are peasant-workers. Little occupational training is provided by the company or the state.

For job positions, the common means of acquiring skills is through 'learning by doing'. Senior workers (*dagong*, referring to experienced worker) receive a higher pay than junior worker (*xiaogong*, referring to less experienced worker) of around 30%. A supervisor or contractor judges the skill and pay level of workers. According to the law, workers in some special job positions have to get occupational training and a license. However, many workers in these positions still do not get any formal training and qualification. Of 30 electricians working for a contractor, only one holds a license.

9. *Insufficient safety protection measures*

'The managers wear a safety cap of 20 *yuan*, but gave us one that only costs 10 *yuan*,' a worker complained. It is very common for companies to provide low quality or even no safety cap for the peasant-workers. Some companies deduct the cost of the safety cap from workers' wages. From interviews we found that some companies encourage workers to put away the safety belt in order to 'enhance efficiency'. The law requests that the construction company conducts proper safety training for new workers. In reality, the training is just a short briefing from their subcontractor or a safety officer.

10 *Illegal Penalty Fine*

As mentioned above, the workers' wage is usually paid on one-year basis. A common argument raised by the company, the contractor and the workers is about the quality of the work. Construction companies usually use the excuse of the low or substandard quality of the finished work to reduce the agreed project fee to their contractor. The deduction will be also passed to workers although they are working on a daily rate. 'It is an eating man (*chiren*) place! Even losing a hammer will be fined,' a brother of the man who died on the construction site complained. He also shared the information that the company charges 10 *yuan* for a card identifying their dorm bed place (*chuangtou ka*). In one of the worst cases in Shenyuan, the company posted up two disciplinary rulings. Among the 28 items listed, 24 involved penalty fines of between 10 and 2000 *yuan* (SACOM, 2009). As soon as a worker is found disobeying the rules, a record will be made and the penalty will be deducted from their wage. The money collected in this way is paid to the supervisors as 'subsidies'. This practice creates a conflict of interest between rank-and-file workers and their supervisors.

Chinese migrant workers conjure up the typical image of the sweatshop in the global south. In recent years, workers' struggles and NGO activism have helped improve working conditions in South China where export-oriented factories cluster, especially in the period from 2004 to 2007 (Chan, 2009; Chan and Pun, 2009). Six years after Premier Wen's initiative to help construction workers, there is no sign of a significant improvement in the construction industry. The findings of the ACFTU report in 2004 on construction industry, especially the wage arrear problem, are still evidenced in our research from 2007 (ACFTU, 2004).

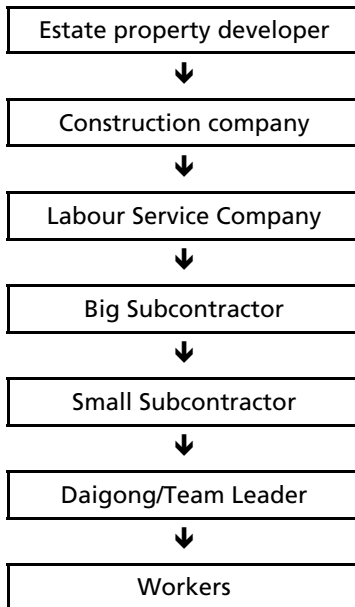
Barriers of Legal Enforcement in Construction industry

As discussed, the Chinese government has created a legal framework to regulate labour relations based on individual rights. The absence of the rights to organize, collectively bargain and strike remains a fundamental setback for labour policy in China. The interest nexus between capital and local state authorities may also impede the enforcement of labour regulations. However, compared to other industries, the construction industry is still at the lowest end of legal enforcement. For example, the one-year basis of the wage system and the related wage arrear problem cannot be imagined in either the other industries in China or the building industry in other countries. In our analysis, four barriers have impeded the enforcement of labour regulations especially in this industry. To highlight these points, I will come back to the case of the group of workers protesting about unpaid wage that I introduced at the beginning.

1. A multi-constructing system

The group of 10 workers was accompanied by their team leader from Guizhou province. The position of the leader is very vague. There were 21 workers working under his lead. All of these workers were 'brought' in by him. A precise Chinese name for this position is *daigong* (*dai* means 'bring' and *gong* means 'worker'). A *daigong* usually brings in workers from their homeland, but sometimes also takes workers from other provinces. A *daigong* works with the other workers but also plays a supervisor role. Therefore, in the management of the construction company, he also bears a formal name: *banzu chang* (team leader). This *daigong* and his team worked for a subcontractor from *Hubei* province called *xiaobao* (small subcontractor). This subcontractor provided labour service to another subcontractor from *Hubei* province which is called *dabao* (big

subcontractor). The big subcontractor was under a labour service company (*laowu gongsi*) whose owner is from *Jiangsu* province. The *Jiangsu* registered company is an agency providing casual agency workers to the Beijing based building company which is the main contractor of an estate property developer. As usual, the building company does not employ any front-line manual workers. This relation can be shown in the following diagram:



According to the Labour Law, only a registered body has the legal right to employ workers. For the construction industry, the Construction Law states that only a registered building company or the labour service company can contract for a construction project. In other words, both the big subcontractor and the small subcontractor shown in the diagram have no legal right to employ workers. In reality, a case like this is very common. Workers recognize unregistered subcontractors or even the *daigong* as their boss. This has created many problems for workers' solidarity and rights' protection. Many workers do not understand that it is the labour service company's responsibility to pay their wage. Even though in this case workers well understood this point, there is no material and organizational base to extend the solidarity. The

solidarity base is reduced to only the level of workers working for the same *daigong* or small subcontractor. In this case, while students successfully helped many groups of workers under different subcontractors to ask for wages, there is no overt material and organizational base for different group to act together.

2. *Unfinished proletarianisation*

Workers were driven out from their dormitories inside the construction site by the company after paying them wages at 1:00am. They found no place to go after leaving the construction site. In fact, they knew no local people except the student who kindly gave them a name card and some labour law pamphlets. The next morning, all of them went back home by train. Chinese migrant workers are experiencing a process of unfinished proletarianisation (Pun and Lu, forthcoming a), and construction peasant workers are at the lowest end of this process. The socialist regime guaranteed every peasant family a piece of farming land. This allowed peasant-workers to separate home from work. There is no slum in Beijing. All of the poor working class have to go back home. Our fieldwork in their home villages found that many construction workers have one or two children working in the factory in coastal China. Construction workers identify themselves as peasants more than their children's generation. Construction workers such as this group are called 'seasonal workers' (*jijie gong*) as they have to go back home to help the wheat harvest, while those who can stay for one year are called 'long-term workers' (*chang gong*). But either 'long-term workers' or 'seasonal workers' use 'returning to their farm at home village' as an alternative to escape exploitation and abuse. 'They will never come again,' workers said when they got back their salary after 10 days of struggle. Considering the high cost of the wage claims, 12 workers in the same team had in fact gone back home. The only way for them to request their wages is to come to Beijing again before the construction project finishes. If workers do not take any action, they will with luck be paid through their team leader or *daigong* at the end of the year. But no one can guarantee how much they can get. That is why there are so many unsolved disputes at the end of the year. In this case, as the team leader supported workers to claim wages immediately, his relationship with his upstream subcontractor broke down; there is no hope for workers to get their wages through their team leader.

3. *Lacking external organization support*

After the 10 workers got back their wages, their team leader was detained by the subcontractor for 3 days. The small subcontractor accused the team leader of claiming 26,700 *yuan* from them and only around 15,000 being transferred to workers as living subsidies. The team leader did not understand his rights to refuse this illegal detention. In fact, violence is a common way of resolving labour and business conflicts in construction industry (Pun and Lu, forthcoming b). This comes to the third characteristic of the construction workers. External organization support is extremely insufficient. Compared with factory workers, construction workers are older and so less educated. They stay in the city for a shorter time. As a result, they need more external support from government, trade union and NGO. The inspiration for our determination to set up *Renjian* in Beijing is that there are very few NGOs in Beijing or even in China specially working for construction workers in spite of their huge numbers and the most detrimental conditions. Most of the labour NGOs in China work for factory workers in South China. NGOs in Beijing have paid less attention to labour rights issues and do not adopt proactive ways of contacting workers, like paying regular visits to their dormitories and doing training in their home villages where hundreds of construction workers gather.

Policy Implications

In the light of this, we are calling for more state, trade union and NGO resources to support construction peasant workers in China. A compulsory direct employment relationship between the workers and the construction companies and a state coordinated vocational training policy are highly desirable. In the short term, the state authorities should use its administrative power to enforce the labour contract in the construction industry. Community-based NGOs can take a very prominent role in supporting construction workers, linking up with other stakeholders like students and consumers. Trade unions should also take an active role in protecting construction workers. But considering that employment relations are highly unstable, in the sense that workers working on a construction site will disperse to many different companies and sites after a construction project is finished, an industry or community based trade union is preferable to the enterprise based one laid down in Chinese Trade Union Law.

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Humphrey McQueen, is the author of *Framework of flesh, Builders' labourers battle for health and safety*, 2009, www.frameworkof-flesh.com.au

Australia's 'Construction Stasi' or the failure to dismantle the WorkChoices Act.

Dare Australia's *Labor* government gaol Adelaide builders' labourer, Ark Tribe?

Tribe's crime is that he refuses to attend a secret hearing of the Australian Building and Construction Commission (ABCC, aka the 'Construction Stasi'). His failure to appear renders him liable to six months in prison or a fine of \$22,000. Similar penalties apply if he turns up but refuses to answer, or if he answers but then tells anyone what the questions were. The power to coerce testimony also applies to passers-by whom the ABCC felt might provide evidence of wrongdoing by unionists, as happened to a Melbourne university lecturer subpoenaed in 2007 (www.arkstribе.blogspot.com).

Many Australians, on hearing about this regime, cannot believe that its provisions apply to anyone but terrorism suspects. Overseas observers will be no less amazed that a *Labor* administration in a liberal democracy is relying on star chambers to deliver, what it considers 'a safe, productive and harmonious construction sector'¹.

Had Tribe submitted, he would have been cross-examined about a

meeting he attended on a construction site at Flinders University to deal with safety violations, about which the official regulator later served two notices on the employer. Months afterwards, Tribe got a summons from the ABCC, which he refused to obey. While hundreds of unionists rallied outside a closed court on 8 June, a magistrate held over Tribe's case till 11 August, when it was adjourned till 30 October, but transferred to the Central Adelaide Court where even more protestors and media can gather.

The Construction Division of the Construction, Forestry, Mining and Energy Union (CFMEU) sent Tribe as a delegate to the triennial Congress of the Australian Council of Trade Unions where he was cheered and *Labor* deputy prime minister and Minister for Education, Employment and Workplace Relations, and for Social Inclusion, Julia Gillard, got heckled during her 'keep-the-cop-on-the-beat' speech.

By contrast, at the 2006 Congress, the unions and the *Labor* Party were combining to defeat the government headed by John Howard since 1996. Its latest round of attacks on working conditions, glossed as Work Choices, had widened and deepened his government's unpopularity. Mass rallies and millions spent on television advertising by the unions made 'Your Rights at Work' the central issue at the November 2007 elections, which *Labor* won and at which Howard lost his seat. The unions looked forward to the end of that era, promised for no later than February 2010.

The anger at Gillard's speech to the ACTU Congress among even delegates close to the government was fed by its failure to dismantle all of Work Choices. Instead, the Fair Work Act makes almost any industrial action illegal for workers throughout the economy. Stoppages over political questions such as the environment, wars or domestic repression are totally banned. Pattern bargaining of the type conducted by the Hollywood scriptwriters will be an offence. Professor Harry J. Glasbeek has spelt out the continuity between the two Acts².

And several unions are taking the government to the ILO over these provisions³.

When Work Choices became law in 2005, the then secretary of the ACTU, Greg Combet, promised to go to gaol if necessary to defeat its repressiveness. Instead, he went into parliament where, as a minister, he defends a law far worse than Work Choices.

Work Choices was by no means the most savage of the attacks on workers and their organisations. In 2000, the Howard government appointed a Royal Commissioner, Terence Cole, QC, to investigate the

Building and Construction Industry. Cole catalogued all the behaviours that employers deemed inappropriate and recommended that they be made offences, which the government did under the Building and Construction Industry Improvement Act (2005)⁴. Cole said that he had put allegations of criminal behaviour by unionists into a secret volume to preserve their right to a fair trial. No one has ever been indicted on the basis of that information.

The previous government set up the ABCC to enforce the avalanche of unlawfulness that Cole had created. Staffed from police forces, the ABCC began its investigations with a move against workers who had stopped for twenty minutes to take up a collection for a deceased workmate. The prime target, however, was the policy of 'deaths-in-industry' stoppages on full pay, which the Victorian Branch of the CFMEU had initiated to bring instant pressure on employers to improve safety. Under the ABCC, the union could be fined more for stopping after a fatality than the employer would be if ever convicted over the death. The unionists can be imprisoned: the employer could not. In 2008, a Victorian union official, Noel Washington, refused to attend an ABCC hearing about a union-sponsored barbeque held off-site and outside working hours. The ABCC suspended its charges against Washington after a campaign by union and community groups.

In June 2008, the *Labor* government appointed retired judge Murray Wilcox to report on whether there was any need to maintain special provisions for the building and construction once that industry was incorporated into the Fair Work regime, a modified version of Work Choices. Wilcox accepted that the Royal Commission and the consequent Act had been correct to criminalize all the behaviours that employers deemed inappropriate. He therefore had no difficulty in finding that significant areas of unlawfulness remained, and so recommended the retention of coercive powers.

On 17 June 2009, Gillard introduced a Bill for special provisions over the building and construction industry within the Fair Work system. The new arrangements promise changes: off-site work will no longer be covered, and penalties will become the same for all sectors. Nonetheless, the Bill sets up a Building Industry Inspectorate with the 'coercive interrogation powers' of the ABCC. However, the Inspectorate will be subject to limitations on the exercise of its powers by the Administrative Appeals Tribunal and the Ombudsman. Welcome as any oversight provisions must be, the prime beneficiaries will be lawyers. In a surprise addition, the Minister announced that, '[o]n projects that commenced on or after 1 February 2010 an

interested person will be able to make an application' to yet another tribunal - the Independent Assessor, Special Building Industry Powers – 'to have coercive powers switched off in relation to a specific project'. This concession allows the *de facto* immunity for tame-cat unions to be made *de jure*.

The Minister's second reading speech offered no instance of proven illegality by workers. Instead, she justified the coercive powers as necessary to combat 'high levels of unlawfulness as evidenced by allegations, investigations, prosecutions, audits and the like'. This definition of 'unlawfulness' includes Tribe's involvement with the on-site meeting over justified OHS (Occupational Health and Safety) concerns, and Washington's presence at a lunch-time barbeque in a neighbourhood park. Why does Gillard's evidence not mention convictions?

A feature of the Royal Commission, the 2005 Act and the ABCC has been the almost total absence of attention paid to offences by employers. This lack of balance applies to the new legislation. Gillard's speech did not let employers off the hook entirely, mentioning 'underpayment of wages or sham contracting', but this glancing blow pales against her repeated references to 'violence and intimidation' by workers. Much of what the employers told Cole was inappropriate had been behaviour by unionists in upholding laws that government agencies failed to enforce, whether in regard to OHS or the non-payment of wages and benefits. In 2007, the Tax Office reported that it had collected \$93m. in unpaid superannuation contributions, which the Deputy Commissioner admitted was only the tip of an iceberg.

Minister Gillard's determination to 'drive cultural change' in the industry is aimed against unionists, never at corporates with their history of price-fixing. A body with the powers of the ABCC is well placed to test how effective has been the Chinese Wall between the Hochtief-owned triad of construction giants – Leightons, Hollands and Thiess. A judicial inquiry into the Sydney casino found, in 1994, that Leighton's CEO Wal King was 'not of good repute, having regard to character, honesty and integrity', and that he did not 'truly accept even now that the practice of the false invoices was dishonest'. Indeed, King justified their use to conceal price-fixing as 'the culture ... and custom that had been long-standing in the industry that had been handed on for years'. Royal Commissioner Cole did not look into whether that culture persisted, a wise precaution given that a Royal Commission appointed in 1990 to nail the building unions had exposed the NSW Master Builders Association as the clearing house for collusive tendering. Four days after Gillard's speech, Prime Minister

Rudd demonstrated his government's double standards by attending a memorial service for a philanthropist, Richard Pratt, who had been fined \$36m. for price-fixing in the packaging industry. The founder of the construction giant, Transfield, and another arts patron, Franco Belgiorno-Nettis, told his official historian, that he had covered up his criminality with 'a veneer of civilisation'.

Union campaigns against the ABCC and the coming Inspectorate insist on 'One law for all'. That demand will not be met under the new Bill. Unequal levels of repression of building workers will continue under Fair Work. Moreover, the coercive powers will not be applied to the employers. The ABCC has punished a few employers - for behaving decently. Even if the coercive powers were abolished, there still would be one law for corporations and another for workers, notably in regard to OHS. Gillard's definition of violence does not extend to the tens of thousands of building and construction workers expected to die from asbestos-related diseases. No executive or director of James Hardie faces penal sanctions over that slaughter. Gillard acknowledged that health and safety issues were 'deliberately not included in Mr Wilcox's terms of reference'. That exclusion meant that Wilcox could not investigate one of the principal realms of illegalities by employers, or use that investigation to explain the levels of unlawfulness by workers defending themselves, as in the case of Ark Tribe.

Under the review's unbalanced terms of reference, would Tribe's conscience have allowed him to accept Wilcox's fee of \$326, 974?

The government justified the omission of OHS on the grounds that its policy had always been to retain the Office of the Federal Safety Commissioner. That body is distinguished for conducting reviews into its own effectiveness at checking the paper work about OHS around worksites. Its stated objective is to provide 'an audit to improve, not inspecting to enforce'. This application of manners gentle to violence and unlawfulness by employers is the reverse of that from the ABCC/ Inspectorate towards unionists attempting to protect life and limb, with fifty fatalities a year and thousands of injuries requiring four or more days compensated leave.

Unions fear that Gillard's proposal to impose a national OHS system in place of those in the States and Territories will deliver the lowest common denominator. An indication of employer expectations came in the submission from the Australian Industry Group in March when it opposed the inclusion of 'welfare' in the title to the new Act since it 'may invite unnecessary angst'.

A related source of concern for building workers are amendments to the Bankruptcy Act which will make it easier for small business to get on their feet again. Building and construction is rife with Dodgy Bros declaring bankruptcy to avoid paying entitlements, only to reappear under a new company name.

Why is the *Labor* government taking this hard-line? The answer is as multi-faceted as the interests of the players, but includes:

- to expedite its \$40 billion infrastructure spending to revive the economy during the global crisis;
- to acknowledge the tens of millions of dollars in donations from developers to *Labor* Party coffers;
- to advance Gillard's ambition of becoming prime minister by selling herself to the dominant Right-wing factions of the Party as no longer from its disintegrating Socialist Left;
- to deal with the peculiarities of disciplining labour-time on building and construction in contrast to process lines; hence, the need for the ABCC / Inspectorate as second-line foreman to fill in the pores in the working day to ensure maximum profit; in the national capital, Canberra, 'Construction Stasi' compelled employers to deduct four hours pay from workers late by five minutes;
- to break the last of the unions that see an irreconcilable conflict between capital and labour;
- to build up the Australian Workers Union and its grabbing of coverage at lower wages and worse conditions, as it has just tried on at Melbourne's Westgate Bridge, in cahoots with a Hochtief subsidiary, Hollands (in 1970, a section of the Westgate bridge collapsed, killing thirty-five workers.)

Threading through these interests is the ALP's retreat from equality. The refusal to restore even the façade of equality before the Law by abolishing the 'Construction Stasi' is one more instance of the abandonment under New Labour of the social equity articulated by R H Tawney and Richard Titmuss. Gillard's application of 'fair' to her watered down Work Choices is matched by her justifying grants of ever more money to the poshiest schools with the spin-line: 'every school can be improved', allowing Australia's Etons and Harrows to gold-plate their bell-towers.

The passing into law of the Gillard Bill is far from certain since the government needs cross-bench support to get legislation through the Senate. The opposition is using the limitations on the 'Stasi' to beat its drum about the government's being in the grip of the unions, and

will vote against. The Green Senators oppose both the old and new regimes as violating civil liberties. The best the government can hope from the two independents is that one will vote each way. For the moment, the Senate has referred the Bill to a committee for hearings. If the existing Act remains in force, the loss to the government will be the tactical one of having to uphold coercive powers, which it has accepted, are a touch excessive. Where next for the unionists? A Left remnant inside the Australian *Labor Party* raised the matter at the National Conference on 31 July, with no chance of overturning the policy since the numbers on every issue are stitched up by right-wing factions and the AWU. A motion affirmed that there is no 'on-going' need for the "Stasi", a weasel-wording which Gillard welcomed as endorsement for the five-year sunset clause in her Bill. That defeat leaves the Ark Tribe solution of making the law unworkable and using the protests around arrests and imprisonments to bring home to the public why employers deserve to face coercive powers about their OHS violations and other criminality.

1. See www.constructingfear.com.au
2. H.J. Glasbeek in *Dissent* no 29 Autumn/Winter 2009 <http://www.dissent.com.au/index.htm>.
3. See C. White <http://chriswhiteonline.org> on Australian Building and Construction Commission ABCC 29/3/2009
4. See C. White 'The Perth 107: the right to strike contest' www.aier.com.au

The erosion of workers rights in Australia

The Australian Howard government began limiting rights at work in its first year, 1996, but was constrained by its minority position in the Senate. On gaining an outright majority there in 2004, the government passed the Building and Construction Industry Improvement Act (BIIA) from 2005 that set up the Australian Building and Construction Commission. Shortly afterwards, the WorkChoices Act stripped all workers of almost all protections. WorkChoices widened and deepened the Howard government's unpopularity. Reaction to the latter was so intense that the government inserted a few more standard conditions amendments during the run-up to the 2007 poll. The Australian Labor Party has watered down WorkChoices into the Fair Work Australia, which took effect from 1 July, and is trying to do the same with the BIIA from 1 February. Fair Work makes almost any industrial action illegal for workers throughout the economy.

Decent Work, Decent Life

Civil society organisations and trade unions joining forces for social justice

2009 saw the worst economic crisis since World War II, hitting both developed and developing countries. A total of 210 million people will be out of work, with 77 million workers in developing countries pushed into poverty¹. Sustaining jobs and creating new jobs are currently at the centre of policy making, as a consequence of the economic crisis, in both developed countries and developing countries. In order to reach these objectives, governments are implementing, or are planning to implement, various economic stimulus packages.

One example is increased infrastructure investments in transport, energy, and water and sanitation in Latin America. A World Bank study estimates that infrastructure investments will create around 40,000 annual jobs per US\$ 1billion². As governments in Latin America are planning an additional US\$ 25 billion in infrastructure investments, it can be calculated that 1 million new jobs could therefore potentially be generated.

A second example is "Green Growth". Thirty OECD member countries plus five countries that are candidates for OECD membership (Chile, Estonia, Israel, Russia and Slovenia) signed a declaration on Green Growth at the 2009 OECD annual conference, bringing together economic, environmental, technological, financial and development aspects into one comprehensive framework as *the way forward* out of the current crisis³. For the occasion a discussion paper⁴ was developed that states the need for new investments in energy-efficient buildings and transport systems, alternative energy supplies and smart electricity grids, pollution control and investments in key environmental infrastructures.

In June 2009 the European Commission proposed a series of measures to tackle rising unemployment in a Communication entitled 'A shared commitment for employment'. €19 billion is planned under the European Social Fund to help people stay in work or move towards new jobs. The Commission also announced help to get the most disadvantaged back into jobs, for example, through the promotion of low-skilled job opportunities in household and care services.

Innovative investment strategies in sustaining jobs and creating new jobs are important to tackle the immediate social consequences of the

SOLIDAR

SOLIDAR is a Brussels based European network of 53 NGOs active in over 90 countries working to advance social justice in Europe and worldwide. SOLIDAR lobbies the EU and international institutions in three primary areas: social affairs (more social Europe), international cooperation (development cooperation) and education (lifelong learning for all). For more info www.solidar.org

economic crisis, but may not disregard the quality and sustainability of employment. **SOLIDAR's Decent Work, Decent Life campaign** focuses on this particular aspect. Since 2005, SOLIDAR has worked in alliance with the International Trade Union Confederation (ITUC), the European Trade Union Confederation (ETUC), World Solidarity, and the Global Progressive Forum to make access to Decent Work possible for all people in the world. Decent Work is a concept developed by the International Labour Organisation (ILO) in 1999, and brings together the quantity of employment with the quality of the employment created.

The ILO, which celebrates its 90th anniversary this year, has formulated under the slogan "90 years working for social justice" four strategic objectives for the Decent Work agenda⁵:

1. Promote and realise standards and fundamental principles and rights at work
2. Create greater opportunities for women and men to secure decent employment and income
3. Enhance the coverage and effectiveness of social protection for all
4. Strengthen tripartism and social dialogue

These four strategic objectives are more than valid while discussing new crisis "exit" strategies. Faced with the prospect of a prolonged global increase in unemployment, poverty and inequality and the continuing collapse of enterprises, the ILO adopted in June 2009 a decent work response to the crisis in the Global Jobs Pact⁶ – designed to guide national and international policies aimed at stimulating economic recovery, generating jobs and providing protection to working people and their families.

SOLIDAR builds further on this Global Jobs Pact, in alliance with our partners in the Decent Work campaign, on the basis of a comprehensive set of seven principles:

1. **Decent work:** All people have the right to work, to good working conditions and to sufficient income for their basic economic, social and family needs, a right that should be enforced by providing adequate living wages.
2. **Rights:** Workers' rights to form and join trade unions and to collective bargaining are fundamental to realising decent work, and all international organisations, governments and businesses must live up to their responsibilities.

3. **Social protection:** Strengthening and broadening of social protection coverage by ensuring access to social security, pensions, unemployment benefits, maternity protection and quality health care to all. These benefits should be available to everyone
4. **Trade:** Change unfair trade rules and ensure that trade agreements are used as an instrument for decent work, sustainable development and empowerment of the world's workers, women, the unemployed and the poor.
5. **Debt:** Ensure that the priorities of the international financial institutions incorporate social and environmental concerns. Particularly, loan and debt conditions that force countries to deregulate labour markets, reduce public spending and privatise public services at the cost of access and quality must be stopped.
6. **Aid:** Ensure that governments keep their commitment to increase the level of official development aid of rich countries to at least 0.7% of GDP. Adequate financing for development is imperative if the UN's Millennium Development Goals are to be reached.
7. **Migration:** Ensure that migrant workers are not exploited and enjoy the same rights as other workers by ratifying the relevant ILO Conventions and the 1990 UN Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

These principles find their shape in three ambitious projects: 'Decent Work in Europe', 'Decent Work and Migration' and 'Globalising Decent Work'. **Decent Work in Europe** starts from the current debate on European industrial relations and social dialogue and its core issues are: (a) the need to reinforce transnational industrial relations arrangements; (b) the need for joint analysis of the key challenges facing Europe's labour markets (e.g. undeclared work; health and safety at work; working time; temporary work; working poor; breach of ILO international standards) which will gain more importance due to the current economic crisis and related backwash effects on employment, industrial relations and social dialogue; (c) the need for coordinated efforts to address these challenges. The projects are of relevance in view of a better and more comprehensive inclusion of themes relevant to promote decent working conditions into social dialogue at European, national, sectoral and local level. We hope to generate knowledge on selected aspects of decent working conditions across Europe and of the role social dialogue can play to achieve or defend them. Based on policy monitoring and information material developed, it will create a space to compare challenges and identify

good practices of social dialogue, addressing challenges that might weaken social dialogue (e.g. precarious working conditions, working poor, temporary agency work, migrant workers) at the European, national, sectoral and local level. It is expected to highlight 'advantages' of a reinforced transnational dimension of industrial relations, also entailing an improved exchange of information and good practice.

The project **Decent Work and Migration** will highlight existing links between Decent Work, Migration and Development. The project intends to demonstrate that migration can have a positive impact on development through ensuring Decent Work to all workers independently of their origin and that Decent Work is an anchor point in coherence for development in order to achieve the Millennium Development Goals. Today, around 94 million people leave their countries of origin to look for a better life and this number is likely to increase as a consequence of the current economic crisis. Deficits in Decent Work are an important part of the driving forces in cross-border migration, while economic and social growth is considered to be able to reduce the root causes of migration. Following these two assumptions, ensuring Decent Work becomes of key importance in order to maximise the benefits of international migration in both hosting and origin societies. Furthermore, to prevent "brain drain" effects, increased coherence between the EU development, migration and trade policies is needed. The project aims at increasing awareness of the links between Decent Work, Migration and Development and promoting a better understanding among Europeans of the link between EU policies and living conditions in the South by collecting good examples from developing countries. Several policy recommendations will be formulated for key decision makers at national, European and international level.

The project **Globalising Decent Work** relates directly to the objective of poverty reduction through the global implementation of the internationally agreed Decent Work Agenda, which is included in Millennium Development Goals. Informal employment comprises about 65% of non-agricultural employment in developing Asia, 51% in Latin America, 48% in North Africa and 72% in sub-Saharan Africa⁷. This share would be significantly larger if informal employment in agriculture were included. Typically, informal economy workers are vulnerable and insecure, experience severe Decent Work deficits and often remain trapped in poverty and low productivity. They are overwhelmingly unorganised and lack channels

for representation and participation, with women, youth and the elderly disproportionately represented. The project will be implemented in cooperation with the Global Network⁸, a network of labour organisations in 34 countries throughout Asia, ACP countries, Latin America and the Mediterranean. The countries engaged have two common characteristics: (a) deficits of Decent Work, resulting in poverty, inequality and anti-globalisation sentiments, and (b) democratic deficits, a lack of mechanisms for civil society participation in decision-making affecting the attainment of Decent Work. The project aims to strengthen the capacity of civil society to act at the local, regional, and global level for a more just society through supporting local initiatives to engage in decision-making processes at all levels. It also aims to improve South-North and South-South coordination and partnerships and transnational exchange between civil society actors, including trade unions.

It is important that civil society organisations and trade unions join forces to tackle the immediate social consequences of the economic crisis and promote together high quality and sustainable social and economic growth. SOLIDAR and its partners are actively pursuing this objective in the Decent Work, Decent Life campaign in Europe and the rest of the world. You can join us by signing the call to action for Decent Work on www.decentwork.org.

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1. ILO, *90 years working for social justice – Born into crisis: Rooted in the real economy, Responding today*, www.ilo.org.
 2. World Bank, *Crisis in LAC: infrastructure investment and the potential for employment generation, August 2009*, www.worldbank.org.
 3. OECD, [http://www.oecd.org/olis/2009doc.nsf/LinkTo/NT00004886/\\$FILE/JT03267277.PDF](http://www.oecd.org/olis/2009doc.nsf/LinkTo/NT00004886/$FILE/JT03267277.PDF).
 4. OECD, *Green Growth: Overcoming the Crisis and Beyond*, OECD 2009.
 5. http://www.ilo.org/global/About_the_ILO/Mainpillars/WhatisDecentWork/lang--en/index.htm
 6. ILO, *Recovering from the crisis: a global jobs pact*, www.ilo.org, June 2009.
 7. ILO, *Rolling Back Informality*, paper for the ILO's Asia Forum on Growth, Employment and Decent Work, Beijing, 13-15 August 2007.
 8. The Global Network is a worldwide network of civil society and trade unions working together for a fair globalisation. It was established in 2001 by SOLIDAR and the International Federation of Workers' Education Associations and is composed of regional networks in Asia, Africa and Latin America.

Discussion

Jan Cremers,
AIAS-
Amsterdam,
13-07-2009

Higher safety risks for temporary agency workers.

New data from the Netherlands and Germany.

In the spring of 2009 the Dutch Labour Inspectorate came up with new figures (based on 2007 statistics) dedicated to the health and safety risks of temporary agency workers. In these data the estimation was that agency workers' risks are three times higher than the occupational risks for direct labour. According to the labour inspectorate the main causes for these higher risks are the lack of experience with possible and potential risks and poor introduction and integration at the workplace.

In June 2009 the German sickness fund *Techniker Krankenkasse* (TK) published figures and data that go in the same direction. The TK-health report includes figures over 2008 and is based on a survey with up to 1000 respondents. The total amount of temporary workers in Germany has almost doubled between 2003 and 2008.

One of the findings is that the annual loss of working hours because of illness problems amounts for temporary agency workers to 4%; this is one third beyond the national average.

The German health report comes to the conclusion that risks are higher for muscular and skeleton diseases and that the chances for accidents and injuries are higher.

Remarkably, men are more often sick than women in the German temporary agency sector. This is the reverse of the overall figures for the whole economy. The authors see a clear relationship with the work executed: many temporary workers are serving as hod carriers and unskilled day labourers ("*Hilfsarbeiter*") in the logistics and distribution sectors. This is heavy work with manual loading, constant time pressure and unsafe workplaces.

This conclusion was confirmed by a spokesman of the German employers' organisation in the temporary agency sector: up to one third of the temporary workers are serving as unskilled labourers, whilst the normal percentage of these unskilled workers in the German industry is only 1%. So temporary workers are over represented in the lowest echelon of the workforce.

All in all these recent findings are in line with the results of a European research project (2009) that covered agency work in France, Sweden the Netherlands, Poland and the UK. The conclusion of this research is that temporary agency workers do not get the same level

of health and safety protection as permanent staff. One of the key issues is how to control and guarantee the legal obligations of the user undertaking. In most countries these latter are responsible for working conditions of agency workers during their assignment. There is an obvious risk that health & safety issues for agency workers fall between two stools. Representation of temporary agency workers via the classical workers' representation (local union representative's, works councils or health and safety committees) in work environmental and health & safety issues is often missing. This is even more a problem as temporary agency workers are more likely to be working in sectors or occupations where there are health and safety concerns and where their status as new workers, probably with difficulties in fully understanding the risks related to their workplace, may place them at danger. The idea is that these workers are used to carry out quite simple tasks and, therefore, training needed is usually only a couple of days.

The figures once again demonstrate the urgency to pay more attention to the health and safety conditions for temporary workers. Information about health and safety issues is crucial at the very beginning. Secondly, training and instruction on how to carry out work tasks in a safe and healthy way is needed. Thirdly, safety representatives should act on behalf of all people working in the workplace including temporary agency workers. Fourthly, inspecting bodies should be made more sensitive to the needs of temporary workers and especially vigilant as to observing health and safety rules in jobs carried out by these workers. And finally, legislation has to clarify the shared responsibility and liability between agencies and user firms.

Representation of Agency Workers, February 2009, by Kristina Håkansson, Tommy Isidorsson, Richard Pond, Els Sol, Christophe Teissier, Joanna Unterschütz and Fabrice Warneck.

George Fuller,
UCATT Member,
CLR-UK

Blacklisting in UK Construction.

At a joint University of Westminster and CLR seminar on construction labour in the EU around 2006 I raised the question of blacklisting with the UK Construction Confederation's speaker. He denied it took place. I wasn't convinced. How could 'social partnership' between unions and employers really exist in the UK when recently I'd been sacked from bricklaying jobs within a few days or even minutes of starting work? Was it just a coincidence that in the period prior to this, represented by my union UCATT, I - like others - had had a run of success at Employment Tribunals? The tribunals upheld my union's claim that those bogusly employed as 'self-employed' were entitled to Working Time Directive holiday pay in accordance with EU health and safety regulations.

I saw my tribunal claims as upholding workers' social protection. And, I thought that the type of jobs I had worked on did not lend themselves to blacklisting anyway. They were small 'packages' of large urban regeneration schemes or housing association projects lasting only a few months and contracted out to different small transient subcontractors from various parts of London and Essex. But, puzzled, I began reading articles and reader's letters in the trade press that pilloried 'self-employed' tribunal claimants as 'fraudsters'. Alongside were printed adverts from specialists in fighting 'self-employed' holiday-pay claims. On the Internet I found agencies offering investigations into potential employees' employment records. Did they also check for tribunal claims? Did the 'management' firms controlling the flow of 'packages' include blacklisting in the 'package'?

Then on the Internet I found 'Construction Blacklist, Manchester Electricians Tribunal', www.labournet.net/ukunion. It posted an employment tribunal statement by one Alan Wainwright, former managing director, in support of three electrician's claim of unfair dismissal from the multi-million pound Royal Manchester Infirmary project due to the blacklist.

The three electricians told the tribunal they had gained employment on the Manchester hospital site via a subcontractor called Logic during the 2005 Christmas break when the HR staff of Bovis - the main contractor - was away on holiday and blacklist checks not done. However when the HR staff returned after Christmas checks were made and Logic was instructed to remove the men. Logic's electrical

engineer refused, as he was happy with their work. But Bovis overruled him. The electricians held they were victims of a blacklist. In 2004 they had been sacked during a dispute over health and safety while employed on a site by Balfour Kilpatrick but subsequently won a tribunal unfair dismissal claim against the firm. Balfour Kilpatrick was now a subcontractor on the Manchester hospital site.

In his statement Wainwright said he had previously held three senior management positions within the UK construction industry. But in November 2006 he had brought an employment tribunal case against his former employer Haden Young for constructive dismissal based on the way he was treated after making protected disclosure about fraud and cover-up in the business. He now ran a website dedicated to exposing blacklisting in UK construction: www.blacklistedelectricians.blogspot.com.

He believed that certain UK construction companies operated a blacklist based on procedures he had undertaken in the workplace in his previous roles and information that had come to his direct attention. He joined Carrillion in 1993. In 1997 as National Labour Manager (mechanical and electrical) Wainwright was told by the senior HR manager that Carrillion used the services of an outside consultant, a Mr Kerr of The Consulting Association - in reality an entity set up by construction companies - to ensure that certain workers did not gain employment on their projects. This process was to be extended from the construction branch into Alan Wainwright's branch as employee recruitment and control of agency operatives had recently been centralised.

Wainwright met Consulting Association's Mr Kerr who explained that each subscribing company forwarded him a list of prospective employees or agency labour workers they were considering to engage. He would then check these names against the lists he had collated from the other member companies. Companies were charged per name checked and Mr Kerr reported back verbally any operatives that were not to be employed or supplied by agencies. To protect his identity, he would only ever communicate the results of his checks to one individual contact in each company, who was usually a senior HR person.

Wainwright's evidence was not contested by the employers. The electricians won compensation. The tribunal said: "Disgraceful though it is...a blacklist exists...in the industry...and the claimants

were all on the blacklist”.

But they were not reinstated. Two years later, they were still unemployed and blacklisted. With the support of local trade unionists they camped outside the hospital site demanding their jobs back and an end to the blacklist. Jim Sheridan MP raised the issue in the House of Commons.

When I phoned the electricians they were emphatic that blacklisting existed at the small subcontractor housing/refurbishment level I worked at. Given the disparity of size and value between our respective levels I still found this difficult to believe.

On 28/06/08 The Guardian newspaper published ‘Enemy at the gates’, an article by Phil Chamberlain who wrote that in the UK blacklisting is not technically illegal. Though a ban on blacklisting was in the 1999 Employment Relations Act, the New Labour government did a discreet U-turn and never brought in the regulations, avowing that blacklisting was not taking place. Chamberlain’s article told the full facts of the Manchester electrician’s tribunal and the Consulting Association. It also reported enquiry agency sources saying that the chances of being screened before employment have vastly increased in recent years. Their clients “did not ask about people’s political views but sometimes asked if someone regularly brought cases to industrial tribunals ...but it’s not something we can check”.

On 6/3/09 (about two years after the tribunal disclosures and nine months after the Guardian article) the Information Commissioner’s Office (ICO) raided the Consulting Associations offices. A secret database was discovered containing reports on 3,213 construction workers along with conclusive proof that over forty major construction companies were implicated. Companies paid a £3000 annual subscription and £2.20 per head for their informer network’s product. The ICO said Mr Kerr had committed a serious breach of the Data Protection Act because: “Not only was personal information held on individuals without their knowledge or consent but the very existence of the database was repeatedly denied”.

One of the blacklisted Manchester electricians was quoted saying: “I’m absolutely thrilled. I’ve been angry for so long. It affects your character and demeanour – it’s the fact it’s so blatantly unjust.”

After the raid the ICO announced a procedure for building workers to enquire if they were on the list and if so receive their file. My file - with bits blacked out (redacted) by the ICO - covered a period from 1990 to 1998. The companies using the informer network used code

numbers; in my case:

- 7001- Amec Building Ltd, 7013 – Laing O’Rourke (Laing Ltd), 3228 – Costain UK Ltd, 3280 – John Mowlem Ltd, 3283 – Wilmot Dixon.

Below are three examples of my twelve file entries.

- 1990 Dec: Organised a petition with UCATT over homelessness. Described as “bad news” by 7001 and 7013 Main contact.
- 1994 Jan 13: 3280 Main contact given details. Unable to confirm but possibly the same person who was on site with 3280’s subcontractor. Main contact alerted by his manner and the way he spoke to fellow workers. Confirmation or otherwise to follow.
- 1997 May 8th: Employed on 3228’s London site via subcontractor [...] Brickwork Co. Has been moved with two others (to avoid suspicion) onto another contract of this subcontractor. Source 3228 [redacted].

On 27/5/09 Contract Journal under front page headline “Blacklist firm’s urged to follow Skanska’s lead’ reported “UCATT claimed that Skanska ordered background checks on 12,783 workers last year at the rate of 35 a day. Skanska issued a statement saying it took the allegations of its involvement with the Consulting Association very seriously: “...is against the values and behaviour of the company. Skanska will ensure that it identifies its involvement and will take action as necessary”.

On 17/7/09 The Guardian reported that Ian Kerr, the Consulting Association’s front man had been fined £5000 at a Crown Court. The judge told Kerr: “It is unfair to put the blame entirely on you. You were clearly employed to run the organisation.” The Information Commissioner said he was only able to prosecute Kerr for failing to declare the existence of the database. Affected trade unionists said they were disappointed that companies which had wrecked workers’ lives appeared to get away with it. The forty high profile construction companies which had financed the Consulting Association to the tune of £600,000 in the last five years only got a warning of prosecution if they were caught with a new secret blacklist. And Judge Hugh Clarke said, “It is important that there is no question that secret lists are being operated without people knowing they are on the list.”

So the blacklist continues, very likely in an increasingly high tech form. Most comment has been at the level of the individual workers affected. But the blacklist must also have an effect at the institutional level: workers thinking twice before resort to employment tribunals; with site activists culled and workers to an extent intimidated the unions vital base in the workplace is weakened not only on site issues like health and safety but also in politics from constraining conversations in the site canteen up to the big contractors operating the blacklist having an advantage in making the political running at EU and UK government level as 'the voice of the industry'. Class discrimination - not social partnership.

Though referred to in media reports as 'employers' in reality denial of employer liability through labour-only subcontractors and labour agencies policed by deniable blacklist agencies are the blacklisting entity's business model. This model fits in with the prevalent disintegrative neo-liberal EU labour market where - in a change from the unifying Social Europe of the Delors era the strong protective laws and union collective agreements of the receiving state and the posting agreement are attacked: made subordinate to the sending state's weak laws with agencies supply labour as 'self-employed' - 'clean' of protective law.

Since the blacklist disclosures UK Prime Minister Gordon Brown has given a pledge in Parliament to act against it this autumn. According to a report in UCATT's *'Building Worker'* the Department of Business, Enterprise & Regulatory Reform says that a consultation is necessary to ensure that the new regulations take full account of developments since 2003 and that they are "up to date and fit for purpose." The prospects for progress are improved because increasingly union members and leadership through public campaigning have got union policy on a variety of legislative issues including blacklisting, gang masters, apprenticeships, and asbestos deaths into the media providing a very coherent 'Voice of the industry' to the public.

Contributions to the great TU debate ? A review of three British books about Britain, European trade union politics and global unionism

Regan Scott,
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Three new books of trade union analysis and theory provide a welcome opportunity to look at a whole period of industrial relations writing about what can be called the contemporary neo-liberal period. All coming from the British school of broadly left industrial relations academia, all professing supportive intentions towards unions and their acute problems, one deals with British experience under the New Labour Government elected in 1997, the second discerns a crisis in union relationships with social democratic parties in four typical European countries, and the third charts and assesses the contemporary work of global union federations (GUFs). These books are essentially British in orientation and experience. But they are of much wider interest for a number of reasons. Since neoliberalism is a political model and reality that has been global for some time, the books have wide application. They all evaluate in one way or another the pasts and futures of unions as historic partners in socialist politics, providing a focus which falls outside normal political science where it is only parties and electors who seem to determine who gets and loses political power. In a certain way, then, they seek to restore trade union movement life to the basic twin pillar concept of classical second international socialism. That's not, inherently, such a bad thing to try to do. On the other hand, addressing the full might of rampant neoliberalism, they also happen to be appearing at a crucial time, by accident, not design, when the global banking crisis offers the potential of a check, if not an actual reverse, to the forward drive of neoliberalism. What seemed a very powerful force now appears much less certain. This circumstance makes reading books whose basic assumptions were consensually 'left' a little bit more interesting and, in my case, more difficult than it might have been if neoliberalism was still swashbuckling – behaving like swaggering pirates - away across the globe.

This is perhaps because what is certain in these uncertain times is that the left and trade unions do not seem to be gaining much ground from the evident global financial and real economy crisis. So

perhaps the books will help us understand why this might be case, and where the legacy evolution in the trade union and labour movements of the neoliberal years has left matters.

A lesser but substantial interest is that they all take the European Union venture and its social dimension as a key site for the politics of neoliberalism. That's what posh theorists might call conjunctural or contingent relevance. The books are predictably Eurosceptical in cast, but no more than is fashionable in the English speaking world.

At a political level, they have common relevance too. The three books assume that unions as a whole, at national, European and global levels, have failed, quite independently of other severe pressures, to really seek to sustain a proper socialist politics. There is a hardly concealed message that somehow unions have underperformed as the guardians of true socialism for the broadly defined working classes. The explanations for this are part critical of policy stances, and part sympathetic, recognising neoliberalism's highly adverse circumstances for unions' proper functions. But there is a sense that part of trade union decline has been a culpable failure to pursue proper working class politics, however difficult that may have been. It comes through in, for example, the view that partnership politics – and especially the UK Third Way type, and corporate integration of the European type, and socially responsible corporation type partnership at a global level were all freely chosen alternatives sought by unions who have only themselves to blame for their blindness about the results. I may be over-interpreting, but these are very politically committed books, quite magisterial in judging unions and their politics and strategies, for all the heavy cloaks of academic citation, survey results and lists and tables. That's not a criticism: but a more direct formulation of the political questions and more forthright presentation of argument might have made a clearer contribution to the issues under debate.

The Britishness of the books matters in other ways, especially to European and American and some global readers. Third Way politics and statecraft has been globally pioneered and developed systematically by the UK's New Labour Government. This government has continued the pre-existing Thatcherite encirclement of unions with a deeper political entrapment, under the mantra of 'neither fear nor favour', and a reality of pathetic favours for collaborative leaders and political exclusion for the classical work and aspirations of unions and the interests they represent. Should that

politics survive, or become embedded, it would spell slow doom to unions in other countries, especially where the longer secular trade union decline problem has emerged. Dark UK union prospects might then become – if they haven't already through transnational employers and rightist government collusions - the model for other national and international unions. Not simply because the forces causing this decline are the same. It is also because the traditional trade union political model itself would be severely compromised. This is the explicit theme of the openly political book on Social Democratic Trade Unionism.

UK unions used to dominate the labour movement and Labour Party in a deep constitutional settlement which served as an ideal type for wider socialist politics. UK unions were also an ideal type of unionism and union structuring too- only one ideological centre, the TUC, and a freely chosen corporate politics developed through tripartite voluntary settlements, and mass membership reflecting all of the prisms of class and labour market experience. In international work, lots of leading institutions have been historically and remain today staffed by 'Brits', the ETUC was initiated by my former union, the TGWU in the 1970s and is currently British led as is the international trade union federation. There is a single line representation system – no works councils – and a history of effective legal personality in a free market system. And, more closely to the subject of these three books, a domination of industrial relations academia, and a uniquely developed tradition of labour history. It is, or was, a mighty firmament, but it may be no more, or may not be like this again. That's been the emerging, if subterranean subject of debate and angst in the union world for some years. Well before neoliberalism became the common label, the European TUC was publishing decline debate papers in its research institute bulletin. And for academic commentators and theorists, it is the underlying imperative too. So the question today must be up front: how do these books really help us to understand what is happening, and what could happen? Do they tell us anything new and useful, do they shed valuable lights? That's how I've looked at them, and given the importance of British industrial relations academia, I think it's fair to ask for high standards. Surely all of this heritage and intellectual fire power should be able to offer some guidance through the dark forests of union decline.

The first book, both a chronicle and a political analysis, implies that

union recovery is possible but only on condition that social partnership politics is rejected, and there is a return to adversarialism and a recognition of the bitter fruits of neoliberalism. But it also signals that pragmatic conflict and organisational consolidation are going to require immense efforts, and will not of themselves produce revitalisation. That requires change in the state (government) and broader political change.

The second book, overtly political and about unions and their political parties, is a case study survey of four countries which suggests that unions can somehow remake a true socialist democracy and generate 'alternative futures'. Its central subject is the idea that trade union politics in Europe is essentially, naturally, organically social democratic. I think this needs to be looked at more closely.

The third book records the contemporary work of international trade union organisations under the common title of federations. It judges their strategic choices to seek international framework agreements as limited and misguided, and suggests an educational remedy. The flavour of the textual references suggests that education is really political education, in the classical labour movement sense of struggling through agitation, education and organisation. I'm puzzled by the strength of the education not bargaining argument, but I can see where it is coming from.

If I've got the essential messages right, I have to say from the outset that several aspects of these books leave me unconvinced that the authors really have their fingers on the key buttons, and that the way they are seeing the evident problems of union revitalisation, recovery of organisational capacity and politics is not as sound and sure footed as they make out. This is not a matter of rejecting the political motivations of the authors, or not being respectful of their prodigious efforts – at least in the two major books. In truth, they need to be congratulated for their ambitions, because there is hardly a rich literature about the matters they examine. My reservations, if shared, might serve as incitement to other authors to step into the breach. It needs as many brains as can be mustered, for sure.

My sense is more that the intellectual authority of leftist academics needs to be exercised differently: researching issues defined by reality and experience, not conventions created for different purposes, looking behind facades of policy and institutions rather than just at them (this relates especially to accounts of the works of union centres

and leader postures and proclamations), employing methodologies of enquiry and discovery, relying on the authority of argument and audience rather than peer authors and their cited works. It comes across as monochrome, not polychrome, as uni-directional, not problematically poised between risk and promise, dream and reality. So perhaps it is time to dig more deeply into some of the issues. And if these books are, as I think they, accurate expressions of a classical left tradition in industrial relations academia, maybe it is time to 'call time' on it. If the old maps, however updated, don't seem to work, there's a time honoured tradition in socialist culture of critical revisionism. This is how I want to view these books, because in many respects I think they have severe weaknesses: weaknesses of omission, of understanding, of political orientation, of periodisation, of the core model of trade unionism, of social scientific methodology and more broadly, of intellectual authority in the chosen field of industrial relations as a worker and socialist friendly practise.

That's quite a menu to deliver, but the starting fact is clear: these books must be welcomed, read and debated, rather than being set aside, though the mode of writing invites that a bit.

It's a fair observation, I think, because of the fundamental political purpose of the books. What I mean here is not an accusation, or simply a reformulation of Gramsci's dictum about optimism of the will and pessimism of the intellect. A review of the recent biography of Raymond Williams, the literary and socialist activist reminds us of a useful formula: 'to be truly radical is to make hope possible rather than despair convincing'. A sense of the unreality of much of the academic debate and obsessive citations of these books can be had from a quite different source. I got the feeling that it is only because the academics writing the books have confirmed that the neoliberal era's deal for unions has been severely bad that now unions must do something about it. I think the problems have been glaringly obvious for some time, and that the solutions are not a matter of free choice alternatives. I didn't get much of a sense of struggle or frustrated and blocked struggle, political defeat and the search for break out, of counter trends and possibilities from these books. There is a reality of course, but only a limited statistical and surveyed and research-citationed reality. Political books, I think, have to argue politics by political means, not stretch restricted academic traditions and protocols to serve different ends.

What do I mean? When early modern architecture was pursuing the concept of organic architecture and creativity, Louis Sullivan in 1900 came up with a powerful formula: he said the organic in creative life was 'the ten fingered grasp of reality'. And for my sense of the inadequacies of political insertion in these books, can I cite one of my better former bosses at the TGWU. When debate raged loud and confusingly, he always warned against 'the brave sounds of distant music' in battle, and enjoined 'facing the gate'. As much a greyhound and horseracing as a military metaphor I think. But if sympathetic books recommend large scale alternatives from the sidelines, they need to be pretty good and convincing. As to theory and intellectual authority, I can't quote the author – he or she is perhaps 'organic' – but I like the one that says 'theory should be a good servant, not a bad master.' But, for the moment, let's see what each books is saying.

Trade Unions in a Neoliberal World- British Trade Unions under New Labour, edited by Gary Daniels and John McIlroy, published in the Routledge Research in Employment Relations series, is a substantial set of essays. About 350 pages long, the first half of the book is an analytical survey by the editors of British unions and their history leading to an assessment of their specific experience under New Labour since 1997. It covers their strategies for revitalisation – a turn to New Unionism presumably applying the 'new'-ness of New Labour, and social partnership strategy. It examines their organisational and structural problems.

These are long, serious, panoramic essays, fairly described I think as a left leaning story of trade unions misled in their politics in the past, and disoriented by the neoliberal, post-Keynesian world. That world was corporatist, involving unions in governance as a legitimate social voice and actor for working people. The second half of the book is thematic, with several authors looking at seven 'issues', namely employment law, industrial relations partnership as the union strategy feeding into third way politics, a decade of organising experience, skills and training experience, strikes and industrial conflict, and finally unions and Europe.

It is an ambitious canvass, well annotated, lots of tables and summary information on its chosen areas. It will have shelf life as a chronicle and reference work, but aspires to be much more. I am certain about its literature review function, but less happy about both its selection and treatment of themes and its political orientation.

Re the thematic cover, there are key absences. I'm puzzled that wages and conditions trends and unions' bargaining policies – defensive and aspirational – do not figure prominently and in their own right, as the bread and butter products of unions. This absence of cover is important for two reasons. First, the fact of the matter is that with a few honourable exceptions, mainstream union wages policy was subordinated to a political strategy of political dependency on New Labour, a dependency which few who experienced or read any public debate or discourse could have believed would produce much in the way of quid-pro-quo for union status and recovery. The sad spectacle of a financial and asset boom and a service led economy dependent on credit and personal consumption was supported by the least aggressive possible central wages strategy: that is, the formula of 'inflation plus'. With little inflation in any case, except in asset values and debt at all levels of the economy, there wasn't much keeping up with prices, or much push on the wages 'plus' side to share in profits and aid overall income redistribution. What was argued at the time was that the historic break into a statutory minimum wage was a price worth paying, especially for low paid women, for periphery workers and young workers, largely unskilled, seeking what Europeans call their first 'insertions'. There was also a legacy guilt – in my view wrongly held – that if unions are effective they will inevitably cause inflation and create competition problems for the national economy, in this era worsening the workforce's exposure to global market forces. That was the narrative of mainstream unionism as it entered the Blair era. It begs to be unpicked, chronicled and treated as an explanatory variable in union decline, if I can use the jargon.

The concomitant of structural restraint in bargaining was the broad policy of pursuing 'minimum standards' in social bargaining with employers and government. 'Minimum standards' contrasted with 'best practise', i.e. seeking to achieve leading edge standards and then spreading them widely. This position sent strange messages to different sections of organised workers and workers in general. It said those who were strong could get on with exercising market power. That those at the bottom of the various labour market and social heaps could expect only low levels of protection, not social solidarity or real change. That unions could not really change very much, even if they wanted to, since markets were too powerful. It was a dismal and lazy and frightened prospectus. It took really bitter experience of a centre left collaborationism with

Blair and Brown in my own union, the TGWU before UNITE, to eventually win a new leadership whose mantra was 'don't fight, can't win'.

Alongside this canvass of bread and butter union activity, with the TUC best seen as a press office, not a leadership institution, a vital landscape needs to be drawn and examined about social change and union responses to it. This needs mainstreaming, not weaving in. After all, the benchmark period for union power, representivity and political success, the seventies, was a period of cultural and ideological change, a period of massive workforce change with unskilled workers becoming semiskilled, white collar work expanding dramatically at production, technology and back office levels, secular technological change, gender change to two income households, the growth of core and periphery working, domination by transnational companies and life style decoupling from both education and work and income. The Nuffield Studies of the 80s charted much of this. The preceding 60s studies by Lockwood and Goldthorpe delineated the old and the new instrumental working class segments and their differential outlooks and politics. Today we have mass immigration at various skill and income levels, a-typical work amounting to perhaps 40% of the workforce, steady and substantial unemployment and heavy disguised unemployment at a mass level through disability exclusion. We have de-industrialisation as a national economic strategy, flexible working of attractive and mostly appalling types across most sectors and dimensions of employment, geographical commuting at a height, repeat experience of redundancy and hopeless retraining and re-insertion: what a landscape! Perhaps a second, follow-up book can look at some of this. It needs charting, evaluating: my sense is that there is a story of errors and misunderstandings, collusions and complexities, efforts and advances which need to be told.

It would not just be a matter of charting social change: union responses, especially at a coordinated if difficult European level in this long period sought restraint on employer freedom in restructuring, in contracting out, in flexibisation; unions formulated shorter working time and working hours and working lifetime policies. There was an explosion at European level of the employment protection revolution achieved in the 1970s in the UK by union power. The fact that these developments do not fit neatly into the New Labour / neoliberal periodisation should not exclude them. Neoliberalism is, after all, only the political formula for a more

longstanding and rampant capitalist globalisation. This all came from the political strategy of positive engagement with official Europe in the Delors period, a natural turn in European union politics of left and right, and an essential if difficult turn by the left in the UK. It all needs to be more fully appreciated and factored into British and European country level analysis, especially since in many respects Britain was catching up with Europe in that period, despite British unions retaining their credibility across the water.

I feel the same about the 'issue' of the media and public opinion, the efforts of unions to engage in public debate and to adopt modern communications techniques. Not exciting or, from what I know, very impressive, but essential, especially if it is remembered that a huge part of the 60s and 70s expansion of British unions was to do with their modernisation of bargaining aims and scope, organisation and structure, political style and communications.

My other candidates for 'omissions' can only be set out briefly: some are whole issues, others where the 'issues' chapters are incomplete. The law chapter is too narrowly focussed on union's institutional rights (or lack of them), and needs to deal with the infrastructure of employment law culture. The erosion of joint control of workplace discipline associated with industrial tribunalism eroded union authority and legal servicing costs rocketed. European induced legal work for unions was often badly handled, suffering defeats that were unnecessary, while emancipated workers in better jobs and professions did well, especially in gender discrimination fields. The messages these developments sent to ordinary workers need to be tracked and assessed. And, of course, the labour law profession's work and politics – seen easily through the work of the Institute for Employment Rights, for example – deserve collegially recognition. Hard policy choices about union legal futures were routine, and important. Union finances did not only decline because union membership declined: the minimum wage held down union subscription levels as servicing and organising costs rose. On strikes and industrial activity, I missed cover of indirect indices of workplace discontent – the Italian literature is, I think, a model, and cover of important but untraditional protests that brought the country near to crisis. I have in mind the two fuel protests which connected to rural and social discontents. Finally, politically, there were and are many cross currents of opinion which need not be recorded with venom or disrespect. Print union leadership which

having lost its closed shops and been devastated by new print technology and major defeats became New Labour apologists within the centre Left and held some sway, in my book, unwisely. The deep complex legacy of the miner's strike and Arthur Scargill's unique brand of leadership and industrial conflict strategy changed psychology and opinion in very complex ways: former militants became reluctantly moderate, realists who saw it as a botched near miss took courage and became the awkward squad of anti Third Way leaders. 'Old' Left supported leaders collaborated with New Labour and got into the House of Lords. Within the parameters of a book about neoliberalism and union responses, it all needs to be chronicled for its damage and its promises.

Coverage of the TUC needs commentary too: the TUC has not been the TUC of the all powerful general council for many, many years. Its tripartite corporate privileges melted when its Bridlington inter-union disciplinary functions ended under anti union legislation. Its turn from industrial electoral college to automatic representation for unions eroded its authority, and its economic moderateness sidelined it in harsher times. Its economic and industrial work atrophied into press releases which no-one bothered to read. Its leadership in the period under review was not unaware of the drift and the problems: I miss cover of Monk's attempt to get a big bang protest going about union rights under Blair. The citation of his much later recantation about overestimating partnership is welcome, but there is both an untold TUC story to tell, and an overrated TUC story to modify.

I have a final beef: on union organisation and membership, the truth is that this was always a moveable feast, a history of lots of failures and occasional key successes- the state never helped, the legitimacy always followed achieving organised power, rather than being preceded by it with moderate and responsible approaches. That did work occasionally, producing nominal, phoney unionism, which of course hollowed out rapidly under pressure. The big question is not therefore – as recorded here – what did the TUC Organising Academy do ? But why weren't most unions doing it already and normally, how had they become so dependent on trickery state processes, so conned by corporate commercial practise that they could sub-contract to specialist organisers the classic, core task of all officials, full time and lay, of keeping organisational mobilisation alive. I recall proud organising budgets of miniscule per cents of revenue being pitted against mighty employers whose product marketing budgets alone were multiple per cents of anything envisaged by unions.

The Crisis of Social Democratic Trade Unionism in Western Europe -The Search for Alternatives by Upchurch, Taylor and Mathers, published by Ashgate. About 200 pages long, this book involves some overlap of authors with the first book, and can be usefully seen as from a similar stable. The academic style and broad political assumptions are very much of the small contemporary UK industrial relations school who have worked hard against the odds to maintain UK industrial relations research and teaching in the bad years. They have also established a more labour movement oriented and overtly left contribution to understanding the problems and potential of unions and their political relationships. In these three books, that work and mini tradition has produced in the 'neoliberal era' an additional aim: to search for political alternatives. In this aim it is quite distinct to the classic Oxford/Warwick British industrial relations school which crafted a large part of the great 1970s settlement for unions in the UK.

The book studies the dominant political relationship of the unions in the UK, Sweden, Germany and France, characterising the unions themselves as somehow inherently social democratic and therefore deeply caught up in the evident crisis of social democracy itself, both despite and because of the Third Way post-socialist politics common to contemporary social democracy. There is a long historical essay on social democracy and unions, centred on the notion of a corporate settlement created for the post war world (WW2) and then, much later, the relatively recent emergence of neoliberalism. Four country chapters follow, with a European chapter and a conclusion on the search for alternatives for union politics. This comes under the broad heading of social movement unionism. This book could be seen as taking the thrust of the first book from the axiomatic British experience and writing it larger and more politically to European socialism and trade unionism. Certainly the modes and authorities are common.

The book's ideas and mechanisms can speak for themselves. The central reference is a grand acronym, the DPUN- the dominant party union nexus. This is a 'defining feature of social democratic trade unionism'. Keynesian social democratic settlements involved 'the statisation of society', and were followed by a very belligerent neoliberalism which encouraged 'the opening up of civil society'. This process of opening up civil society presents trade unions with three principal avenues of strategic and ideological re-orientation.

'These are the (full) embrace of the third way of neoliberalism, to seek to restore social democracy to its classic roots', and finally they can 'liberate themselves from the institutional and ideological fetters of the Keynesian welfare state in order to re-establish themselves as 'autonomous movements in civil society'.

The analysis then proceeds to two interrelated processes – one the extent to which strains build up in the DPUN, the other the extent to which new union identities emerge based on 'social movement unionism' or 'new labour internationalism'. Three important variables are then isolated to help chart which outcome (sic) comes out: first is the ability of unions to re-politicise their party and government relations, the second is also an 'ability' to open up union procedures and modes, and the third is the willingness of union members to engage in new ways.

This is heady stuff, running very fast and perhaps knocking aside some rather well established modes and tenets of classical social and political analysis. But the approach has the merit of being systematic. The last chapter is flagged as follows: 'we develop alternative future identities for trade unions within the Western European context' and, additionally, spanning from alternative 'reformulations' of social democratic trade unionism, to radicalised political unionism. If the aim is borne out in any meaningful way, this could truly be an important book. But sadly, you won't find much substance attaching at the end of the book to either social movement unionism or new labour internationalism, or pictures of the new identities, or actual new radical fronts, or reformulations. This doesn't undermine the value of the book in itself: perhaps it is more a necessary clearing house, a preliminary to later political map making ?

Here I have to suggest a note of caution because analytical clearance needs itself to be clear, however rich the terrains surveyed. This applies especially in the realm of ideas and social theory, of which there are many and is much. For example, Marxist classics appear, as they should , but I'm not sure how they are being used. Gramsci's concept of civil society is used to argue a need 'to' open up' society, while under neoliberalism the same society (societies) have been 'emptied out'. Opening and emptying may, of course, be compatible processes, but the apparent confusion is not explored, nor easy to tie down to lived experience or example.

I found too that political choice and strategy – this is how alternatives

presumably get pursued - co-exist with a lot of 'path dependency'. Nothing inherently wrong with that, if in imagining the political processes involved one can envisage some people who just follow internal (endogenous) logic and go nowhere politically, while perhaps a different kind of people (epistemologically different) somehow come to reject path dependency and choose alternatives. Having been prompted to think about Gramsci, my mind went to his useful distinctions between organic and traditional intellectuals in political formations, and wondering if I could apply path dependency and alternative-seeking propensities to them.

In the final straits of the book, it is suggested, no doubt as an ideal type, that a 'hybrid identity' might be assumed or developed by, for example, the European TUC by embracing social movement politics. Even assuming we know what such an embrace would involve in terms of different behaviour, it sounds a bit voluntarist especially for such a complexly peaked and specialised and quasi-legislative social partner. And if the seeds of change already exist, surely they could be delineated. The battle against the Bolkestein Directive, mentioned in the book, and participation in the European Full Employment movement might count. But I doubt that these acts would need to be re-categorised as social movement alternatives to be recognised for their value.

The routine analysis of union decline and political dilemma – which underlies these books as the core problem and 'problematic' (my term) - ascends to heights of circularity and pomposity. Richard Hyman's extended generalised works on European unions are cited – from his 2001 book, as follows: 'While the increasing distance between New Labour and the unions can be clearly identified, the causes and effects of this distancing on union political strategy are complex. Hyman (2001:106) locates such distancing as a product of trade unions (no apostrophe) declining membership and economic effectiveness. Hence unions are less able to influence LP policy'. Truly, friends, I think we are in a political toy town here: the obvious is posing as wisdom, spinning academic webs in post-modern disco lights to the beats of supportive friends. Or maybe some of this quotidian reality is not actually obvious? If so, to whom?

Stepping to a field I know reasonably well, I can't really subscribe to the story line adopted for France. 'The current period of neoliberal globalisation has served to strengthen the social

democratic wing of the labour movement that has had the clearest strategic response to it'. One assumes this is the CFDT and perhaps the FO too. Very debatable, depending of course on the precise period and whether strategy includes action and protest or something else like positive influence over government. And in the context of the book, the 'strengthening', certainly hasn't transposed across to the French Socialist Party in recent times.

Turning to Europe, the chronicle of the ETUC deserves quotation: under a section on European Works Councils, we read, 'This complicity in the degradation of the social dialogue – the European Employment Strategy – suggest that the ETUC has been ideologically subordinate to the Commission in the development of a vision for the European industrial relations system'. EWCs then come in for a knocking. As someone involved with them wide and far for ten years, practically, politically and as a participant, I think the authors' rush to judgement is rather unwise, and certainly not securely based. They also miss a big real politics within European unions, namely the politics of the mandate, an example of a deep structural political problem at the heart of the unions' side of social Europe.

And, en passant, for the record and about full employment and European left politics, the work of my colleague Ken Coates and the European Full Employment Conventions might be usefully looked at too, not the least because they and other projects presaged the European Social Forum movement with its important but narrow promise.

Global Unions, Global Business, by Richard Croucher and Elizabeth Cotton, published by Middlesex University Press with 146 pages is more of a monograph than a full book, but that does not restrain its ambition. A useful case study of the International Chemical, Energy and Mineworkers Federation helps to concretise what the authors mean when they propose more strategic investment by international union organisations in education work, partly because the global climate is deemed to be not conducive to distributive bargaining. The materials in the book are a valuable collation, but I think more emphasis on the differences between international union organisations' structures, aims and experience would help to set the policy polemic on surer grounds. The authors reject the model established in the 1970s – the era of the MNC which became the TNC (multinational company, transnational company). This was largely American led, both in terms of actual companies and

also unions. It was more substantial and variegated than recorded in the book, taking the form of coordination through world company councils, and common policy representation through formal organisations like the IMF (International Metalworkers Federation), and tripartite lobbying for the older period organisations like the ITF (International Transport Workers Federation). Their records in terms of solidarity and organisation and regulatory capture would show as much diversity. When we come to the current realities, I think the same holds, and there are missing dimensions in the analysis of some centrality.

Re Europe and global organisation, this is a richer and more interesting pattern than portrayed. Some internationals kept tight 'regional' control of emerging European industry union organisations, others saw equal and joint development, with a lot of strain around EWC formation. Older world industry federations went for global codes with sectors where international structures existed, rejecting the new company agreement approach. I think this applied with the textile industry with its tradition of regulated trade. Where there was direct coordinating power, traditional solidarity mechanisms could come into play with great force, without involvement in global code politics. The ITF and the airlines is an obvious example. And new approaches to affiliation and membership produced a more classic, varied and interesting type of global union activity: that was certainly the aim of Swiss based UNI, spanning the globe with key technical public service members and skilled blue and white collar sections. So I'm sceptical that there is a single solution or perspective which can be so easily commended, even if in its own right it is persuasive.

There is then a whole international governance dimension missing from this work: it is much more than the legacy and current life of the ILO and OECD codes. It concerns their application and incidence through trade social clauses, and their status within the World Trade Organisation. This is a heavy and highly legalistic arena, crucial as a potential limit on any forms of contract delivery in the global economy. That process of cross border, transnational and international legal action on social issues (basic human rights in the employment and income and social standards world) has evolved, to my knowledge, most rapidly through the global human rights NGOs. The WTO and 'social clauses' are not indexed at all.

This paints to me a different panorama of three streams, all of them employing classic modes of agitation, education and organisation, with legal enforceability as a central sanction. That's a form of 'agreement' or contract: I can't see anyone involved in the many ways being pursued by transnational trade unionism giving up this aim and seeing any form of education – whether consciousness raising or mobilising or just plain learning – as a substitute for or rival to the classic priority.

Debating the political direction ?

These books have a pedigree in two important volumes of historical assessment with some authors in common. They cover first the post world war II period, 1945 to 1966, when the trade union settlement so destroyed by Thatcher and subsequent neoliberalism was established. A second book follows with a study of the 1964 to 79 period. The flavour of these antecedent works can be had from the titles: *The Post War Compromise*, edited by Campbell, Fishman and McIlroy, and *The High Tide of British Unionism*, same editors, both published by Merlin Press. Together they add up to a mini tradition of analysis, coming after the famous Oxford/Warwick school which charted and articulated the high tide settlement of British unionism and its politics.

The differences are, however, stark, but no-one's fault, of course. Industrial relations academia was absorbed into the British establishment when the ruling class needed it: when union power waned, industrial relations was marginalized, given no chance for engagement except, I think, during the European opening of the Delors period. This opening was taken, understandably, more by labour lawyers and centrist industrial relations academics who stayed with the Oxford/Warwick tradition. The reason for explaining this is that I feel the books under review – if not the previous two histories – dismiss Europe too easily, not because they misjudge its promise of a social Europe, but because they do not see how many of the problems of social Europe stem from European unions themselves.

Perhaps another book needs to be written. It would feel different to, but would be targeted around similar issues to those in the books reviewed. And since this is a personal review, and I'm not bound by academic protocol, for European level union politics and problems in the long period after Delors, can I suggest reading Huzzard, Gregory and Scott, *Strategic Unionism and Partnership: Boxing or Dancing ?*, Palgrave/Macmillan 2004. On Sweden and actual EU industrial

relations in particular, it might provide a firmer base than that given in the second book under review. Between the lines, it suggests in some respects a different politics for European unions, without seeing social movement unionism as a substantial 'alternative' to social democratic/union politics. Maybe unions have to sort out their own industrial and economic and bargaining politics first, work out how far their organisational remit runs with their members as electors and working class electors in general, as opposed to chasing party leaderships and playing peak power politics. Or occasionally sending some of their socialist cadres to social forum conferences – an excellent thing in itself, but not a heavy, historic 'strategy'.

The answers lie, I think, more in the politics of the union base itself, rather than top led alternatives, especially now that neoliberalism is severely scarred by its financial crash.

I'm sceptical about the broader intellectual and theoretical and ultimately political underpinnings of these works because they show a scattergun approach to big and complex traditions of debate and understanding in the socialist movement. Gramsci gets cited alongside Lukacs, as if their contributions are equal and obvious and compatible for the matters discussed. The continuous influence of American politics in the post war and current trade union movement hardly figures. Classic socialist history is not properly understood: European socialist democracy and union politics stem from the second international and the twin pillars doctrine. In the German socialist party, social movementism was deeply embedded – read Schorske – but when the socialist MPs voted for the German WW1 war credits, it all fell apart, despite the coops and socialist beer halls and financial clubs. So perhaps those who commend social unionism should look at its history. In the GUFs book, the communist union organisation RILU is cited and welcome that is. But RILU has a bigger significance that would have been good to see fielded in analysis. Its key debate was about communist union cell organisation in the workplace or community. Not so far, surely, from the idea of social movementism as serious, sustainable organisation ?

Then there is the matter of the origins of unions – it was British, of course, if you forget about guilds and journeymen in Europe, but like the industrial revolution, a bit of clarity about periods is always helpful. So I can't accept as so simply axiomatic what Upchurch,

Taylor and Mathers assert (p 158): 'In Western European societies, the origins of social democratic trade unionism were located in the mobilisation of labour as a social movement. The power of organised labour was institutionalised economically and politically through intimate connections between the "politics of production" and the "politics of politics". This defined the trade union identity of political economism that dominated Western European societies in the post war period (Hyman 1996)'. I'm not at all sure on close reading what is being said here in any case, and doubt if it is correct or useful, really. It's abstraction as master, not theory as servant. I'm even less sure what Hyman's 'political economism' really means: there's the higher discipline of economics, that's 'political economy', and there's Lenin's trade union 'economism', sometimes formulated as 'trade union consciousness'. It may have internal academic stature, but it does not translate to politics and history.

My route map says it is union's own politics, industrial, party, constitutional, organisational and social which need unpicking and analysing out. And, incidentally, not necessarily on a 'lump of clay' common model of unions as integrated institutions. They are very different, they are mature and complex institutions, and they do have internal political lives which I'm sure academics could access and research. Sadly, then, I feel these books don't really get much beyond surface appearances, though as chronicles they make a contribution.

At the same time, we do all have to welcome the commitment represented by their publication at a time when unions are in need of intense debate, both within their ranks - I think there is more than many outsiders suspect, within the broad intellectual communities of the labour movement and in public policy debate.

Reports

Jörn Janssen

Understanding and Comparing Wages in the Construction Industry

Seminar of the European Federation of Building and Woodworkers, Berlin, 24-26 June 2009

This seminar presented the preliminary results of an EFBWW research project on 'Wages in the Construction Sector' of the European Union, funded by the European Commission. The research, covering 9 countries, was carried out by Ernst-Ludwig Laux in 2008-9. The explicit aim of this comparison was to improve the coordination of sectoral wage bargaining between trade unions in EU member states.

This is a renewed attempt to resolve the contradiction between, on the one hand, the single labour market and national diversity within territorial demarcations and, on the other transnational employers and national trade unionism.

The EFBWW had invited their member organisations to discuss the country reports as well as possibilities of coordinating annual collective bargaining. The participants represented 15 EU member states: Austria, Belgium, Bulgaria, Check Republic, Denmark, Finland, France, Germany, Hungary, Ireland, Italy, Netherlands, Slovenia, Spain, and Switzerland. Additionally a few experts were invited. It may not be without significance that Great Britain and Poland, whose reports were presented, remained absent.

The structure of the seminar was conceived so as to ensure a critical reception of the results, to encourage contributions for amendments, to discuss transnational wage bargaining coordination and, finally, practical steps for the near future.

After introductory remarks by Dietmar Schäfers (deputy head of IG BAU), John Kerstens (president of the EFBWW construction committee), and Walter Cerfedo (ETUC secretary) a panel introduced the discussion about the 'impact and influence of irregular employment on collective bargaining in the construction sector'. The reports from France (René Defroment), Belgium (Rik De Smet), Germany (Dietmar Schäfers), Netherlands (Gijs Lokhorst), and Italy (Romano Baldo) painted a panorama of omnipresent employment conditions covered neither by collective agreements nor statutory regulations. The discussion only confirmed that the jungle between illegality and quasi-legal evasion is

hardly penetrable by existing forms of control. This is a threat across the European labour market not only to the collective regulation of wages and conditions but also to the social security systems.

It was against this background that Ernst-Ludwig Laux presented his analyses of the legal and collective frameworks in 9 EU member states, culminating in the comparison of wages paid at the workplace, per hour, per month, and per year. In each case he distinguished 5 wage categories.

The first day ended with a discussion on how the national bargaining experts might better coordinate their policies. A panel opened this session: Gyula Pallagi (Hungary) Joanis Parteniotis (Bulgaria), John Kerstens (Netherlands), Herbert Aufner (Austria), and Fergus Whelan (Ireland). It became all too obvious, that each country has its peculiar conditions, established ways of policies and bargaining. Recent years – or two decenniums - have pushed trade unions into a defensive position which hardly gives them breathing space to conceptualise transnational strategies. One may even detect competitive attitudes between unions of different countries. A constructive proposal, however came from André Kaufmann (Switzerland), reiterating the call for EU minimum wage coordination, put forward already at a *Thinknet* seminar in 2005 (CLR-New 3-2005).

The second day gave experts from the respective countries a chance to rectify mistakes and add further information to the reports. Of the nine countries from which reports had been submitted, only 5 were represented. In addition Herbert Aufner from Austria and André Kaufmann from Switzerland contributed about the conditions in their countries. The British and Polish unions, whose country reports were included, had not sent any participant to the seminar. This was perhaps the clearest testimony of the importance attributed to a project on wage coordination by the trade unions across the member states. Unfortunately, this general impression was largely underlined by the interventions and ensuing discussions which covered most of the day. This was the opportunity to comment on the comparison and pinpoint opportunities as well as impediments for coordination. Instead most of the contributions focussed on isolated characteristics of disparate systems of wage policy and respective legal and collective frameworks, if not on the latest events in bargaining. Piece work in Finland and task work in Denmark, negative wage drift in Germany, high level of undeclared work in the Netherlands, illegal employment in Austria were some of the features distinguishing the national labour organisations from each other.

The concluding discussion about 'future challenges of union negotiators at the bargaining table' chaired by Massimo Trinci (deputy president of the EFBWW construction committee) turned around the question of what to do on the basis of the final report. Keeping the comparison permanently updated is a major job which would need funding. Would such a database really contribute to the coordination of wage bargaining? Werner Buelen warned that the EFBWW office does not have the means to maintain the data up to date. Trinci suggested the case be submitted to the EFBWW General Assembly, which will be in 2011. Ernst-Ludwig Laux meanwhile will include the data from most of the remaining EU member states and submit his final report.

The seminar was closed early because many participants departed the same day. But also, there were no proposals for wage bargaining coordination on the table.

The existence of the EU single market coincides with that of the European Institute for Construction Labour Research. The enactment of the Directive for the Posting of Workers, "an important landmark against the increasing social dumping"¹, in 1996 was an attempt to prevent transnational competition in the sale of labour. How this has been ditched finally through the European Court of Justice has been described in detail by Hans Baumann in CLR-News 2/2009². In the absence of effective collective and statutory protection of employment conditions within national boundaries, transnational regulation is imperative for maintaining and improving standards. It is almost incomprehensible for an outsider to observe the reluctance of the EFBWW membership even to discuss a common strategy.

We will pin our hopes on the response to the final report and its recommendations.

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1. Hans Baumann, *Worker protection of freedom to provide services?* CLR-News 2/2009, p. 19.
 2. *Ibid.* pp. 18-25.

Reviews

Jan Cremers,
AIAS-
Amsterdam,
09-07-2009

Gudmund Hernes, Jon Erik Dølvik, ***From Financial Crisis towards a Coherent Agenda for Decent Work and Sustainable Globalization.***

Fafo-report 2009:25. Oslo. ISBN 978-82-7422-683-8.

Last year **Fafo**, the Norwegian research institute, prepared a report *Pathways to Decent Work in the Global Economy* for a conference organised by the Norwegian Ministry of Foreign Affairs, the Norwegian social partners and the Financial Times in September 2008. Now the institute has produced a paper that follows up key points of the earlier report. The aim is to sketch out the main challenges of the Decent Work Agenda, focusing on the need for greater coherence.

First the authors provide background information on the uneven nature of globalisation. Although important new emerging economies (Brazil, India, China) have been included in the global market system, billions of people in developing countries are left behind.. Therefore the income gap has widened between countries. In the industrialised world too the working class experienced in many instances deteriorating wages and living conditions (see the “working poor” studies reviewed in CLR-News 3-2008).

The authors continue with what they call “the increasing incongruence between the inherited institutions of global governance and political power relations, and the evolving structure of economic exchange, interests, and interdependencies”.

The renewal of the political institutions of global governance is necessary as different aspects or values of fair trade and decent work are embedded in different institutions, backed up by different or parallel organisations and by policy contradictions and stalemate in negotiations.

The ILO reaffirmed with the 2008 Declaration on Social Justice for a fair Globalisation that “labour is not a commodity” and formulated strategic objectives of the Decent Work Agenda:

- securing jobs by creating a sustainable economic environment and macro-economic coordination,
- developing and enhancing social protection measures,
- promoting and enforcing fundamental rights and principles,
- developing social dialogue and tripartism.

The creation of decent work is regarded as essential for economies to recover and markets to flourish in a sustainable way. So far national rescue packages have been concentrated on the provision of safety

nets for finance, banking and sensitive industries. Now there is need for income protection for the workers hit by the crisis, with as much as 80% of the global workforce uncovered by unemployment insurance.

After criticising the “quandaries of Summits and Seminars” Hernes and Dølvik provide a two dimensional matrix of a level field (decision to apply core labour standards *and* respect of international rules of trade) between countries. Defecting countries will earn unwarranted short term competitive advantages with, in the end, “laggards not pioneers setting the pace of progress towards decent work and a more fair trading system”.

Finally the authors ask for reflection on the hierarchy of values underlying the priorities pursued by international agencies. Whilst much attention is paid to securing the revenues of investors, to subsidies that may distort trade, to risks for consumers from tainted products or environmental damages, less attention is given to the rights for those who produce the goods or to the fight against degrading working conditions that may have the same effects.

Although just a small document, the authors seem to confirm that it is not only necessary to analyse the global economy, but also to work for real change.

Béla Galgóczi, Janine Leschke, Andrew Watt (eds.), ***EU Labour Migration since Enlargement - Trends, Impacts and Policies***, Ashgate Publishing Limited, 2009, www.ashgate.com

Jan Cremers,
AIAS-
Amsterdam,
07-07-2009

The ETUI published recently a Working Paper (2009.03) that presented the findings of intensive research, including national case studies, on patterns and dimensions of labour migration after the 2004 enlargement. This synthesis can be found on the ETUI website, see: <http://www.etui.org/research/content/download/6506/31692/file/WP200903EN.pdf>

The final results are now published in a book with empirical findings at the national level.

The aim of the project was to shed light on the characteristics, the impact, and the attitudes and policy responses of governments and social partners in selected sending (Hungary, Poland, Latvia) and receiving (UK, Austria, Germany, Sweden) countries.

In the first chapter the editors present background information to frame the national-level analyses that follow in 14 country chapters. They discuss overall migration flows and migrants' characteristics and assess the synthesised national findings. Basic idea is that cross border labour took a new dynamic after May 2004.

In seven country reports quantitative trends in migration flows are presented based on country of origin, demographics and skill levels. For the same seven countries the policy chapters summarise the policy and public debates on cross-border mobility.

Methodologically seen some of the choices made can be criticised:

- The focus is on legal migration. However, posted workers are excluded. The argument is that these workers are difficult to trace in statistics. This can be true, but from other studies we know that falsely and genuinely posted workers, in construction, food processing, agri- and horticulture constituted the bulk of migrant workers in the 1990s.
- The same argument goes for two other categories of workers. The role of agency workers is not completely neglected, but again because of statistical reasons not taken on board as a crucial part of the analysis. Self-employment, whether genuine or bogus, has been another possibility to bypass the restrictions in receiving countries but is left out as well. The lack of data is obvious, but other attempts have been made to estimate the impact and there is evidence that since the fall of the Berlin Wall self-employment has increased remarkably.
- Earlier research indicated that data related to the coordination of social security, applicable since accession for temporary working abroad, are incomplete as there is a lack of control and of cooperation in and between Member States.
- The authors admit the lack of survey or administrative data. The problem however, in that case is how to give evidence to the idea that there is a watershed between pre- and post-enlargement? The time horizon is now limited to the period 2003-2008.

All in all, the question is whether the fundamental contradictions between the free movement of people and the free movement of workers are adequately tackled. The question whether May 1st 2004 is really relevant is not fully answered. It could be that migrant workers were already present in receiving countries before the restrictions and transitional measures in some of these countries were abolished. Perhaps workers used the free movement as such, not the free movement as a

worker, and therefore they did not figure in statistics. This could perhaps also explain why in the German case there is a remarkable decrease after 2004 of so-called 'programme workers' that mainly work as seasonal workers.

There is some evidence that registration before enlargement was poor both in sending and receiving countries, that the measures with regard to work permits to enter the labour market were completely ignored, and enforcement and control were weak.

So how representative are the remaining official data?

A broader scope and the use of a longer background of economic recession and recovery from the early 1990s till now would have been useful. In the Austrian figures this longer perspective can be seen. The overall share of foreigners within the employed population rose sharp in a few years time from about 5% in the late 1980s to almost 9% in 1991. After this wave of immigration the percentage increase slowly and more steadily to 12% in 2007. Interesting in the Austrian figures is also that the largest inflow of workers between 2000 and 2007 is coming from Germany, resulting in a total number of workers with a German nationality that is only slightly lower than the total of workers from all new Member States.

Notwithstanding these critical remarks, the book provides important and useful background information on the recent massive migration and its impact on the sending countries in particular is illustrated in a clear manner. In Poland, for example, the number of people residing 'temporarily' in another EU state reached almost 2 million people in 2007 with giant demographic, social and economic effects. The Polish figures indicate two fundamental changes after enlargement: first migration from Poland that was far greater than forecasted with an increase over three years from 1 to over 2 million Polish nationals temporarily residing in other EU countries, secondly the shift from the main target receiving country, Germany in the 1990s to the UK in the years after enlargement.

However, for other countries similar shifts are less prominent.

Important is also the information regarding the labour market position of (young) migrant workers. Though in many cases well qualified, they perform routine manual work requiring little training and skills. It takes quite some time before upward mobility comes within reach.

The analysis of migration drivers and labour market dynamics is based on comparative research that can be seen as one of the first attempts to analyse labour migration in a group of sending and receiving countries.

Ian Fitzgerald,
University of
Northumber-
land, Newcastle

The studies confirm the decisive role of employment opportunities, labour demand and wage differentials in driving migration flows. According to the authors the mere existence or absence of formal transitional measures are not a good guide as regards the order of magnitude of migration flows. A final conclusion to be drawn is that the displacement or substitution effect is relatively small and in particular concerns 'domestic' ethnic minority groups.

Håkansson, K., Isidorsson, T., Pond, R., Sol, E., Teissier, C., Unterschütz, J. and Warneck, F.:

"Representation of Agency Workers: The representation of agency workers in Europe at national and local level in France, Netherlands, Sweden, Poland and the UK". 2009, 149 pp.

(Available at http://www.av.gu.se/digitalAssets/1272/1272406_Final_RAW_report_090325_w_publisher.pdf accessed June 2009.

This is a timely piece of work given the growing prominence of the temporary agency worker (TAW), who at one time may have seemed an intrusion that trade unions could ignore but is now a significant part of many workforces. This final report and recommendations are from a co-financed EU project to investigate the representation and support for TAWs in five EU countries. Its main focus is trade union representation and support in the key areas of working conditions, health and safety and vocational training. The main report is only in English, although, there are short summary and policy recommendations in the partner languages of Dutch, English, French, Polish and Swedish. The project also has a welcome, informative short film in all languages apart from Polish.

The main report's introduction is clear in identifying the project's ambitious aims which are to promote knowledge in the area of TAW representation and support, including exploring the reality of trade union representation at the workplace level. The report's international literature review provides a very good and concise discussion, which is useful not only to those new to the subject but also those more familiar with this area. It details the scope and development of agency working providing general and country specific information. Its *integration and agency work* section builds on the idea of the flexible firm by introducing theory and discussion of

the core-periphery model and leads the reader into notions of labour market segmentation. Finally the *representation and agency work* section is a timely reminder of why trade unions have to re-orientate outmoded strategies if they want to effectively engage with often-excluded TAW groupings in the labour market.

What follows are a series of country national reports of temporary agency working which give some indication of the situation of the TAW in the labour market in each country, including the legal and regulatory regime and trade union engagement. There are also corresponding case studies of the realities of trade union engagement at the workplace. Unfortunately, in places the report can sometimes be difficult to read, with some poor English and formatting. But the country accounts are worth persevering with and provide an important addition to our understanding of agency working and trade union engagement in an expanding Europe.

In more detail the French account reports a growing level of legal and trade union regulation, including the principle of equality for the TAW at the user company. But it is honest in highlighting a TAW fear of victimisation if equal rights are sought. Concluding that few TAWs are unionised as they are often young, mobile and isolated – the answer perhaps is again that unions need to be structurally more flexible to develop suitable engagement strategies. With the case study, the author is initially honest in noting that the methodology is limited but the account is informative in detailing how French legal and trade union regulation operates with regard to the equality principle at a workplace level. However, the author again underlines that many TAWs ignore their rights and that few are unionised, concluding that there needs to be closer trade union engagement with agency workers.

The Swedish national discussion is again informative and importantly highlights at an early stage that TAWs do not fit into the prevailing system of trade union representation. Significantly it is also revealed that there is a lack of specific legal regulation supporting the TAW. This is portrayed well in the case study, where good integration between permanent and TAWs does not translate into adequate trade union representation and TAWs are again fearful of victimisation. In conclusion it is highlighted that it is difficult to organise a TAW at an agency employer in the traditional Swedish way due to the static nature of Swedish workplace organisation. Local trade union representation rights only allow for representation of user company employees and not the TAW, creating a clear distinction between these two sets of employees though they may be undertaking the same work at the same workplace.

The Dutch country and workplace reports provide an in-depth and

informative discussion of agency working. Nationally, it is identified that this type of work began to thrive in the latter part of the 1960s. Although unions campaigned against its growth, an informal agreement was reached with employers which allowed the sector to develop. Finally legal and collective agreements covering the agency sector were introduced. However, significant challenges are again highlighted for TAW representation, not least being the low level of TAW membership of trade unions, with many again not aware of their rights. Recently, the situation has worsened with the rise in the type of dubious agencies identified elsewhere in Europe, often supplying exploited central and eastern European workers. The workplace case study emphasises from the outset that union engagement with TAWs is likely to be only through formal structures such as works councils, rather than via workplace trade union representatives. However, it is stated that, following workshops and interviews, positive strategies of engagement with TAWs were identified and that some of these have now been enacted.

The Polish country national report again provides an interesting discussion of agency working in Poland. In particular it details the legal provisions that cover agency working, whilst identifying the challenges of agency working for Polish unions. The workplace case studies and additional interviews with NSZZ Solidarnosc interviewees provide an informative account of workplace agency activity. Again the author emphasises that trade unions do not in reality engage with the TAW, one potentially important reason for this highlighted in the national report is that, as with Sweden, unions have no legal rights to do so. However, the workplace case studies reported that TAWs are informally offered equal representation in some union workplaces and are supported even though they are not union members. The overall issue is of course that, as elsewhere in Europe, union workplaces are not as prevalent as they once were.

The UK country report provides an overall account of agency working in the labour market, the institutional framework covering TAWs, and the main challenges facing agency workers. There is discussion of the recently introduced UK Gangmasters Licensing Act and the then impending EU Agency Workers Directive. Interesting examples are given of major trade union TAW organising campaigns. The workplace case studies are informative but could have been laid out in a much clearer way. They provide important examples from the often discussed food processing sector and an established UK multinational in the IT sector. The conclusion, as with other country reports, is that trade unions still find the organisation of TAWs a challenge, although this could also be said of other groups in the UK labour market.

Following the country reports there are two further chapters before the final conclusions. The first covers representation of TAWs at a European cross border level. Here three distinct levels of activity are identified. The *interprofessional level* covers the main social partners and their European dialogue, which has eventually secured the introduction of the European Directive on temporary agency working. This should have a positive impact for a number of TAWs in Europe. The second level is what is termed the *branch level* which essentially relates to the European Industry Federations; again discussion revolves around the new Directive. Finally, there is the *company level* and discussion is based on the only two multinational agency employers that have been involved in social dialogue at a European level. A brief background is given on each company.

The second chapter is on migrant agency workers and, although only based on the UK experience, is a very useful account of developments, mainly since the accession of the central and eastern European countries in May 2004. As well as noting the development of the UK Gangmasters regulatory body for food processing. It also provides a number of examples of union engagement with migrant agency workers, in particular highlighting the use of free language training in the community for migrant workers. This has allowed union organisers to build trust with new migrants and importantly show that unions can provide important services for migrants, an altogether more subtle approach to membership gain.

Finally, the conclusion combines and contrasts the widely different national industrial relations systems of representation and regulation. What is particularly good is the use of concise national examples of engagement based on the report's main areas of regulation of working conditions, health and safety and vocational training. Even though there are sometimes very different regulation regimes at a national level the central conclusion is that in practice these are not seemingly reproduced at a workplace level, with very poor trade union engagement in all countries. However, the report makes clear that a significant change in trade union attitude towards the TAW has occurred over the last decade. All partner country trade unions are now positive with regard to engagement with the TAW. The central issue, though, remains that this has not been translated into more flexible trade union structures suited to engagement with the often young and mobile TAW. The recommendations identify some country specific changes that can be introduced into agency and user employers to support the TAW. Also important are examples of initiatives that can prompt increased union engagement with TAWs and provide the opportunity for more flexible union structures.

Calendar of events



MANCHESTER



CLR



Research workshop on the Economic Recession and Migrant Worker Employment: exploring the intersections and impacts social science can make in this area

Venue: Faculty of Business, Dublin Institute of Technology
(Room 3073, Aungier Street)
Day/Date: Friday 11 September 2009 (10am to 4:30pm)

We are pleased to announce a British Council funded research workshop on the Economic Recession and Migrant Worker Employment. Supported by the European Institute of Construction Labour Research (CLR), Dublin Institute of Technology, Northumbria University and the University of Manchester, this workshop seeks to bring together social science researchers to debate and discuss on how the recession has impacted upon migrant worker employment trends across Europe, and the consequences these might have on employment relations in general. The workshop will explore contributions social science researchers can make in policy making in this area. The workshop will also address the plurality of social science research methodology and how intersections of methods can help advance our understanding of the issues relating to the economy and migrant worker employment. There is not a sector-based approach in this workshop, although empirical discussions will be drawn from the construction, manufacturing and financial services industries. The workshop is most likely to centre the attention on Europe, emphasising particularly the experiences from Ireland, Sweden, Poland and the UK.

Internationally, migration remains a politically sensitive issue. There is increasing (if ungrounded) fear, especially in developed nations, of unprecedented levels of immigration. Across Europe, for example, attempts are being made to strengthen borders to curtail immigration, and in particular clandestine immigration, from outside the European Economic Area. Immigration is a complex issue. Yet the diversity of migrant populations in terms of legality, routes to entry, length of stay and purpose of migration etc. can often be ignored in public discourse on immigration. Instead, popular views of immigration can confuse migrant populations as homogeneous and tend to militate against further immigration flows. Consequently, governments across the world have responded by embracing some form of managed migration. The current economic recession has seen governments taking on a somewhat nationalistic, protectionist approach to regulating labour markets, further reinforce the 'no outsider' mentality that can often prevail in debates on migration.. At the same time, migrants from the recent accession states in the EU have been reported to return eastwards. This raises interesting questions about the dynamics of employment relations and future developments in the economy, including the following:

- What is the relationship between developments in the global economic situation and the state of migrant worker employment? How has one led to the other and vice versa?
- How has employment relations been shaped by the rise and fall of migrant worker employment?
- What are the impacts of these phenomena in the wider social context?
- What are the governmental and corporate policies that are relevant in these areas and how will possible interventions influence future directions in this area?
- How can social science research and methodological considerations advance our understanding of the complex dynamics surrounding the economy and migrant worker employment?

If you are interested in attending this workshop, or even participating in the proceedings, please contact Dr. Paul W Chan on paul.chan@manchester.ac.uk or telephone +44 (0) 161 275 4319 for more information. For more information, please visit the URL on DIT's website: <http://www.dit.ie/news/archiverecurrentyear/workshopontheeconomicrecessionandmigrantwor/>.

Programme on Friday 11 September 2009

Time	Description	Speaker
1000 – 1015	Welcome	Matt Burney British Council Ireland
1015 – 1050	Theme 1: Setting the context The political rhetoric of Managed Migration: Experience from the United Kingdom	Paul W Chan University of Manchester
	Migration dynamics in the context of boom and bust	Professor Jane Hardy University of Hertfordshire
1050 - 1100	<i>Coffee/tea on the run</i>	
1100 – 1300	Theme 2: Current research Institutional perspectives of managed migration: connecting the global and local through the regions	Ian Fitzgerald Northumbria University
	Social development and the Polish transformation	Marcin Fronia Warsaw School of Social Sciences and Humanities
	Labour migration and the Irish construction industry	Torben Krings Trinity College Dublin
	Migration dynamics: experiences from Northern Ireland	Stephen McPeake Ulster University
1300 – 1400	<i>Lunch</i>	
1400– 1445	Theme 3: Methodological considerations Moral panic and discourse theory: potential application to migration research	Rafal Smoczynski Linköping University
	Statistics and data mining tools: migration research application	Agnes Maciocha Dublin Institute of Technology
1445 – 1500	<i>Coffee/tea on the run</i>	
1500 – 1630	Theme 4: Future of migration research and policy	
	Plenary discussion and identification of possible areas for future research proposals	All Discussion panel includes: Peter Finnegan, Dublin City Council Jan Cremers, CLR

If you are interested in attending this workshop, or even participating in the proceedings, please contact Dr. Paul W Chan on paul.chan@manchester.ac.uk or telephone +44 (0) 161 275 4319 for more information. For more information, please visit the URL on DIT's website: <http://www.dit.ie/news/archivecurrentyear/workshopontheeconomicrecessionandmigrantwor/>.

Labour Policy in Response to the Financial Crisis

The workshop planned for October (CLR-News 2/2009) will be postponed. 22 January 2010 has provisionally been set as a date with a division into three themes:

- The welfare state and social security
- VET and changing occupational boundaries (JK and DV)
- The distortion of public and private spheres (HB)

In addition a preparatory workshop will be organised by John Grahl at the University of Middlesex 20th November 2009 under the title 'Global Finance and Social Europe'. This workshop will discuss papers about the situation in different European countries as a basis for a strategic debate planned to take place in January. These papers are to be written according to the outline below.

European Construction Labour in Crisis

1. Immediate impact of the economic crisis: declining output in construction – residential, infrastructure, business; impact on large and small enterprises; declining employment – numbers and impact of falling employment on wages and conditions, on training, on recruitment of women and minorities.
2. Government action and inaction: attempts to sustain construction activity; policy priorities; quantitative and qualitative effects of intervention; policies to support and requalify the unemployed – expenditures involved; further initiatives under discussion.
3. Responses by employers and firms: policy positions of construction sector associations; training strategies of large and medium firms; patterns of investment, diversification and/or retrenchment.
4. Trade union responses: representation issues; positions adopted vis-à-vis the employers and government; positions on social tensions within the workforce; programmatic positions.
5. A wider response: priorities for construction – social, environmental and developmental needs; employment priorities – improving employment relations, training and inclusion; finance of construction during the downturn; future role and structure of the construction industry.
6. The European dimension and the crisis in member states: competition rules and tensions around posted and migrant workers; differential effects of the crisis on the member states; patterns of migration of construction workers in Europe; impact of European investment policies and priorities.

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