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# **Lobbying for Change: Labour Market Policymaking in a ‘Liberal Market Economy’**

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*Synopsis:*

*This paper concerns trade union’s political strategies in liberal market economies (LMEs), focusing on the case of the UK’s Trades Union Congress (TUC) and Tony Blair’s ‘New’ Labour in the mid to late 1990s. The paper argues that the TUC was successful in influencing the design and implementation of Labour’s industrial relations policy – effectively holding it to key elements of this which had been inherited from the pre-Blair ‘old’ Labour, which had foundered at the ballot box in four previous general elections. This was surprising because new Labour regarded the party’s previous closeness to unions as an electoral liability; moreover, its prioritisation of economic competitiveness committed the party to a pro-business orientation which negated a close relationship with unions. The paper offers an explanation for this puzzle by explaining how the TUC manoeuvred effectively to be in a position to pursue an ‘insiderist’ lobbying strategy, partially overcoming new Labour’s reluctance to deal with trade unions. By narrowing its objectives, adopting a ‘pro-enterprise’ rather than confrontational stance, and focussing its lobbying on key government departments and the prime minister the TUC was able to influence industrial relations policy in a pro-union direction, although employers were also granted numerous opportunities to blunt its edges. The paper therefore questions much of the Industrial Relations and New Institutionalist Political Economy literature, which assumes that ‘political unionism’ in LMEs is impossible. It has additional implications for the study of interest group politics and the interaction between a country’s economic and political institutions.*

**Keywords:** trade unions, new Labour, political economy, industrial relations, liberal market economy.

## **Introduction:**

'New' Labour's landslide election victory on 1<sup>st</sup> May 1997, ending 18 years of Conservative rule, afforded the UK trade unions an opportunity to try to influence the industrial relations policy of an ostensibly sympathetic centre-left government. This was a crucial moment for UK unions because the Conservatives had legislated to weaken their power by curbing their ability to organise, recruit and take industrial action. The peak union association, the Trades Union Congress (TUC) had prepared for this by positioning itself to push for pro-trade union policies via what McIlroy has dubbed an 'insiderist' lobbying strategy (McIlroy 2000: 2). Interest groups enjoying 'insiderist' status are those which cultivate close contacts with the executive and are, in turn, largely accepted by governments; an 'outsiderist' strategy, by contrast, eschews the inside track and relies on external pressure, such as unofficial strikes and protests (the TUC's previous strategy under the Conservatives arguably combined both approaches at different times).

This paper develops this analysis by considering to what extent the TUC was able to use its insider status to help shape new Labour's industrial relations agenda during its first term in office. The focus here is on Labour's first term because this was the period during which its election manifesto commitments were enacted, thereby directing attention to the TUC's ability to hold the party to a set of policies agreed prior to office. Obviously, the aims and strategies of the TUC are not the only causal variables determining policy outcomes. The paper therefore begins by considering two other factors: 1) the preferences and strategies of the Labour government itself and; 2) the system of interest representation by which interest groups (employers as well as unions) provide input into and exert pressure over policy formation. The second part of the paper then provides an analysis of two significant planks of Labour's industrial relations program on which the TUC expended most lobbying effort: the National Minimum Wage (NMW) and legislation providing a statutory route to union recognition.

These policies were drawn up by Labour, in consultation with the TUC (Taylor 2007: 218), while it was in opposition and were subsequently enacted when the party entered government despite the clear opposition of employers. They are considered here in depth for several reasons. Firstly, because they show that, despite its misgivings over the political costs of looking like it was doing the unions' bidding, Labour was still prepared to enact policies (such as on statutory union recognition) that were not merely 'pro-worker' but 'pro-trade union' as well. Second, going against the mainly free market grain of its economic and industrial strategy overall, Labour instituted other policies (such as the NMW) that were expressly anti-market as well as being strongly backed by unions.

Third, the evolution of these from manifesto commitment to practical implementation illustrates key features of the UK's 'pluralist' system of interest representation which underline the critical

importance of the TUC's insider strategy. Although the TUC probably still had a closer practical working relationship with Labour than the CBI while the party was in opposition (Blair's efforts to seek business approval notwithstanding), in government, on the other hand, the extensive consultation process allowed for policy/legislation furnished the CBI with similar insider status to the TUC and afforded it equivalent opportunities to influence its shape. Tracing this process reveals a series of battles for influence over key politicians in Downing Street and Whitehall, consistent with the UK's pluralist style of interest representation, which saw the TUC leadership come into its own as a strategic actor.

The paper therefore provides something of a counterweight to some of the gloomy prognoses for the position of organised labour in highly liberalised economies such as the UK contained in the political science and industrial relations literature (cf: Ferner and Hyman 1992, Kitschelt 1994, Piazza 2001, Ross 1999, Scharpf 1991). It also points to the limitations of the political economy literature on institutions in 'liberal market economies' (LMEs) which underplay the political determinants of actors' strategies, thereby challenging to some extent the 'varieties of capitalism' (Hall and Soskice 2001) view of the UK as a 'pure' LME.

## **1 New Labour's Economic and Industrial Relations Policy Preferences:**

New Labour relentlessly pursued a preference-accommodating strategy with voters in order to win power. Even before Blair the party identified its reputation for economic incompetence earned during the 1970s as a crippling electoral vulnerability. It sought to counter this through a twin strategy of developing a credible set of economic policies and seeking accommodation with employers to neutralise the suspicion of the median voter over its commitment to modernisation. Labour's employment relations policies should therefore be considered within the broad context of its overall economic strategy, and the main elements of this are outlined briefly below before examining their impact on industrial relations policies.

First, there is broad agreement among scholars that Labour's overriding objective was the achievement of macro-economic stability (Glyn and Wood 2001: 50). Economic mismanagement had been responsible for collapses in public trust both in Labour's 1974-79 government after a series of sterling and balance of payments crises, and the Conservatives after the debacle of the UK's expulsion from the Exchange Rate Mechanism in 1992. Stability was to be achieved by making low inflation the priority – ahead of employment or growth – under the control of an independent central bank. Fiscal policy was also restricted via a set of rules on borrowing and debt.

Second, there was an acknowledgment that globalisation imposes severe constraints on an open economy such as the UK (Giddens 1998: 30). New Labour has taken this further than other

governments in its strong endorsement of free trade and dogged pursuit of FDI (Coates and Hay 2001). Blair regularly argued: '*We live in a global economy. We compete in this or we fail.*'<sup>1</sup>

Third was a preoccupation, inherited from the Conservatives, with supply-side reform. The main theoretical underpinning of new Labour's supply-side approach was provided by 'new growth theory', which highlights the importance of endogenous drivers of growth such as innovation and human capital formation. The most cogent policy statement on this is contained in a Treasury paper: *Productivity in the UK: The Evidence and the Government's Approach* (HM Treasury 2000: 32-33). The document lists five key drivers of productivity: investment, skills, innovation, competition and enterprise. A number of scholars have also noted new Labour's eagerness to work with, rather than against, the grain of the market-oriented institutions of the UK economy (Howell 2004: 17-18; Casey 2007: 3, 5-10). Blair's government prioritised flexible labour markets and legislated to enhance product market competition by beefing up the powers of regulators. Vocational training remained the responsibility of the firm and individual, rather than the state, and there were no significant moves to encourage intra-sectoral coordination of training (Glyn and Wood 2001: 65).

How did new Labour's economic agenda shape its approach to industrial relations? Several observations can be made. In general, the priority accorded to stability and the acceptance of globalisation places severe constraints on various policy levers which had been the traditional purview of left governments. As well as ruling out a return to Keynesian demand management, which would have been problematic anyway in the absence of encompassing labour market institutions, the monetarist framework enacted in its place denied unions their erstwhile role in macro-economic steering via negotiated wage restraint. The tight fiscal rules also limited the government's scope to foster 'social justice' through high public spending, although these could be fudged. Meanwhile, the government's inability, or unwillingness, to control international capital flows prevented it from re-energising manufacturing, which would have been a boon to unions' recruitment as manufacturing tends to be heavily unionised.

Yet it was the attention given to 'flexibility', particularly in labour markets, which had the biggest impact on the design of industrial relations policies. The pursuit of flexibility sprang from new Labour's analysis of the competitive challenges posed by globalisation as well as its decision to accommodate the preferences of business, which were to operate with minimal restrictions on their ability to respond to rapidly changing markets. Flexible labour markets provide few institutional niches for trade unions.

New Labour's industrial relations policies therefore represented a compromise between a real, albeit constrained, willingness to act to shore up trade unions' declining membership and presence in the workplace, and its counter-veiling concern not to undermine the competitive position of UK

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<sup>1</sup> Speech to IPPR conference, London, 21<sup>st</sup> January 1997.

industry or alienate employers generally. This had several consequences for its industrial relations agenda. First, it was not a purely industrial relations agenda at all, but was also directed towards harnessing progressive unions in a drive to boost firms' productivity. The ability of UK firms to compete in world markets became the priority, not issues of 'fairness' or 'industrial democracy'. Workers and unions might get improved rights to representation and a limited say in company affairs. But there was a reciprocal obligation on them to use this access to suggest ways to improve the performance of the enterprise, rather than simply agitating for better pay and conditions.

The second thing to note is that new Labour preferred to rely on state action to improve the workplace bargaining environment, rather than creating the conditions for unions to produce these outcomes themselves. There was minimal institution building and the government's preferred approach to bargaining was individualistic rather than collective.

These aspects will be seen in the detailed analysis of specific policy strands which follow in sections 3 and 4, but before that it is necessary to consider how political institutions to do with the UK's system of interest representation interacted with new Labour's economic and industrial strategy to produce industrial relations policy.

#### *New Labour's Policymaking Process.*

How was industrial relations policy made under the new Labour government? What part did interest groups play? Before looking in detail at the enactment of Labour's industrial relations program I will briefly outline and attempt to explain the government's policymaking structure. This section illustrates how the UK's pluralist political institutions shaped interest groups' lobbying efforts and the importance of acting strategically.

Under 1960s/70s corporatism the TUC was automatically accorded 'insider' status and was able to access policymaking circles under governments of both parties via a wide range of formal institutions (Middlemass 1979: 309). Unions had also enjoyed privileged access to Labour governments in particular because of the formal and informal institutional ties linking them with the party. But corporatism was dismantled after Margaret Thatcher came to power in 1979 and unions responded with an 'outsiderist' strategy of strikes and campaigns (McIlroy 2000: 3). 'New Unionism' after 1994 mandated a return to a primarily 'insiderist' strategy based on behind the scenes lobbying supplemented by cultivating public opinion through the media.

This time, however, the TUC was unable to access policymakers via corporatist institutions as these no longer existed. Unions' formal influence over Labour's internal policy process was also heavily curtailed following extensive reforms to party structures between 1987 and 1994 under leaders Kinnock, Smith and Blair. As it looked forward to Labour's virtually inevitable return to government

from the mid 1990s onwards the TUC was therefore now faced with much narrower avenues for influencing labour market policy. What were these?

In the theoretical literature on comparative government the UK is said to have a ‘majoritarian’ constitution (Lijphart 1999: 181) and, following corporatism’s demise, a pluralist system of interest representation. Majoritarian systems tend to produce single-Cabinet governments possessing a high degree of executive autonomy; interest groups also tend to be kept at bay by the lack of formal mechanisms for consultation which exist in corporatist systems. This encourages them to act ‘strategically’ by pursuing a limited and achievable set of objectives, formulated with an appreciation of the likely strategies of other actors with opposing goals and focussed on lobbying a narrow set of policymakers at the summit of government. Under New Unionism the TUC’s lobbying strategy was to counter its loss of influence following the dismantling of tripartite labour market institutions by refocusing links on Whitehall and Parliament (TUC 1994b: 3; TUC 1996d: 4).

However, contact with ministers and the prime minister were considered of particular importance. Historically, the TUC had been stronger in parliament than in Whitehall, whereas the reverse was the case with the CBI, and the aim of the TUC leadership was to change this.<sup>2</sup> Empirical research for my thesis, including elite interviews, has found that labour market policy was formulated almost exclusively at the prime ministerial/Whitehall level with next to no input from the legislature, vindicating the TUC’s strategy of focusing lobbying on the most senior levels of government. Additionally, within the executive ministers in Whitehall enjoyed overall control over the details of policy, but with the prime minister retaining veto powers. In the next two sections I consider the policy outcomes of the TUC’s lobbying.

## **2. The National Minimum Wage**

The Blair government’s early move to institute a national minimum wage (NMW) – the first ever in the UK – is noteworthy for several reasons. Firstly, it was an explicitly anti-market measure by an administration supposedly committed to a mainly pro-free market agenda (Hill 2001: 80). As such it was initially strongly opposed by employers. Second, its implementation involved setting up the first genuinely tripartite institution (the Low Pay Commission, which adjudicated on the rate of the NMW) in the UK since the 1970s.

In other respects the process surrounding the creation of the NMW exhibits many of the characteristics of labour market policymaking by a centre-left government in a liberal market economy. Most obviously, it reflects the complex series of trade-offs encountered by social-democrats in implementing a market-correcting employment policy in the face of employer hostility. Electoral

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<sup>2</sup> Interview with John Monks, 23/10/2007.

considerations, particularly its nervousness about seeming anti-business, placed tight constraints on the ability of the Blair government to pursue its core social justice agenda, of which the NMW formed a key part. Compromises were therefore made over the implementation of the NMW which saw social justice motivations conjoin with a more instrumental rationale to do with enhancing firm productivity.

Although the direction of policy was still contrary to the preferences of most firms, the UK's pluralist system of interest representation permitted employers' organisations to lobby to exert a degree of influence over the process and outcome of what had been an important trade union demand. Moderate trade unions, however, led by the TUC, chose to view these compromises as a strategic opportunity, rather than a betrayal. They sought to demonstrate their pro-competitiveness outlook by supporting Labour's proposals in general, while lobbying vigorously over the detail.

### *From Social Justice to Productivity Lever*

Both Labour and the trade unions had for a long time been hostile to the idea of a minimum wage on the grounds that it clashed with the voluntarist principles that formed part of the DNA of the British industrial relations system, and could undercut bargaining across the pay spectrum (Hill 2001: 75-6). Scarred by the disastrous experience of the Social Contract in the 1970s they feared it might be the thin end of the wedge for a return to a statutory incomes policy. Moreover, the experience of many unions with Wages Councils (short-term institutions designed to underpin collective bargaining in low paid sectors) had been un-satisfactory.

During the 1980s this position shifted. The Thatcher government had withdrawn from the ILO convention on wages, which mandated some minimum wage protection, and its 1986 Wages Act removed Wages Council protection from those aged under 21. High unemployment also put downward pressure on previously negotiated wage rates. By 1986 both Labour and the TUC had pro-NMW conference policy. A TUC/Labour Party Liaison Committee joint policy statement called for a minimum wage compatible with voluntarism, arguing for an: *'effective fair wages strategy ...based on the twin pillars of collective bargaining and legislative support.'* (TUC/Labour Party 1985: 5). However, a split developed between unions organising low paid workers, such as NUPE, and the AEEU, representing skilled engineers who wanted to preserve differentials. As with its support for EMU, the TUC leadership sided with one faction against another – this time with NUPE against the AEEU.

Prior to Tony Blair's election as party leader in 1994, the Labour/TUC argument for a NMW was partisan and social democratic, centring largely on low pay as an issue of social justice. In the 1992 General Election unions and the Labour party campaigned jointly for a NMW fixed, arbitrarily, at 50% of male median hourly earnings, rising 'in time' to two thirds of the hourly rate (Labour Party 1992).

Opposing arguments, including those deployed by employers, sprang from the neo-classical analysis of labour markets which viewed a minimum wage as a market rigidity. A rise in the price of labour would increase firms' costs and reduce demand for workers in the sectors affected, producing a self-defeating increase in unemployment. The CBI's core objection was that: '*... even a low minimum wage would reduce job opportunities and create major problems for wages structures in a variety of companies*' (CBI 1995). The CBI also pointed out that employers with experience with Wages Councils were particularly opposed to the NMW (CBI 1995: 6). It was argued in other quarters that poverty was better tackled through the benefits system, and that a NMW would reduce competition between workers with different skills.

After Blair became leader the party's economic policies, including the NMW, were overhauled to address Labour's perceived anti-business image. New Labour's concerns with the NMW were twofold. Firstly, that during the 1992 election the rigid formula for half median male earnings had enabled the Conservatives to quantify, and thence to exaggerate, its economy-wide impact on inflation and employment. Even though Labour's endorsement of the NMW was not unpopular with the electorate the Conservative Party had still managed to turn its opposition to the policy into electoral advantage by painting Labour as anti-market (Coats 2007: 23). Second, its pursuit of the median voter required the party to solicit the support of business to allay voters' fears over its likely handling of the economy. However, firms, particularly SMEs, were still emphatically opposed to any diminution of their discretion to set pay rates according to commercial conditions. Pre-election briefings with union leaders revealed new Labour's private nervousness about the impact of the NMW on the economy. For instance Ian McCartney, the shadow DTI minister told the public sector union, Unison, that: '*While the NMW had been introduced in Europe successfully this had been done in circumstances where there had not been the handicap of a deregulated market and a benefits system which needed to be overhauled simultaneously*'. (Unison 1996: 6).

Accordingly, although Labour's commitment to the NMW was retained the half male median earnings formula backed by the unions was dropped in favour of a rate to be negotiated at a future date between unions and employers in a bargaining environment mediated by a Low Pay Commission (LPC). The advantage of this arrangement was that it would allow the Labour leadership to retain maximum room for manoeuvre over the scope of the NMW, as the LPC would merely propose a figure for the NMW to the government for its consideration. Moreover, the LPC was a genuinely tripartite body which met TUC objectives to institutionalise partnership between employers, unions and the state.<sup>3</sup>

In addition, the entire rationale of the NMW was reworked in an attempt to placate employers' concerns. New Labour's position on the NMW began to strongly emphasise the potential benefits for

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<sup>3</sup> Interview with 'senior TUC official', 30/7/2008.



employers, in terms of improved productivity, alongside the social justice element for workers on low wages.

The most influential of a number of policy submissions by left-leaning think tanks in the mid-1990s was the report of an 'independent' Commission on Social Justice (CSJ), set up by the Labour leadership under the auspices of the Institute for Public Policy Research. The CSJ was tasked by Labour with setting out proposals for welfare and labour market reforms which could be incorporated into party policy. The CSJ argued that low pay, far from being a symptom of a lean, mean enterprise, actually hindered potentially innovative firms from investing in new technology and their workforces. It suggested that a NMW: '*...set with care, can be a force for social justice and economic efficiency in the UK*' (CSJ 1994: 205). A NMW would, the CSJ added, give employers: '*...an incentive to raise productivity through increased investment in training and equipment and improve work practices, as a result of which the cost of production may actually fall.*' (ibid: 203).

This dual approach contrasted starkly with Labour's earlier emphasis on social justice alone. The party began to develop a 'business case' for the NMW, making it clear to employers that they would be consulted over its implementation (Labour Party 1997b:7). This was made easier by empirical evidence emerging at that time from the US suggesting that labour markets operated imperfectly and that any employment impact of a NMW tended to be small (cf. Card and Krueger 1995). In the 1997 General Election campaign Labour stressed that: '*Every modern industrial country has a minimum wage, including the US and Japan*' (Labour Party 1997a). Ian McCartney, Labour's Trade and Industry Minister, argued that the NMW addressed UK firm's problems of low product quality and deficient training: '*A minimum wage encourages firms to train and enhance the skills of their workforce, in order to compete in terms of quality and not simply on cost.*'<sup>4</sup>

The NMW was also linked explicitly with increasing the labour supply by 'making work pay' (Finn 2005: 23). Labour's second Budget, in March 1998, bracketed the NMW with other proactive labour market measures to incentivise work. These included a new set of in-work tax credits, and reforms to national insurance contributions (HM Treasury 1998: para 3.05). The NMW was therefore portrayed as offering broad public policy benefits. It hindered 'bad' employers from exploiting their monopsony position to pay wages below the market rate in order to benefit from a top-up from the state in the form of in-work benefits or tax credits for the affected employees (Coats 2007: 40). Curbing this had obvious implications for the government's ability to reduce borrowing and debt, with the implicit promise that more room could thereby be made for tax cuts.

Nevertheless, employers remained resistant to what they saw as unwarranted intrusion into the operation of labour markets, so a private meeting was arranged with CBI leaders to try to win them over. Labour offered them a deal whereby, if the CBI supported the policy, or at least abandoned its

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<sup>4</sup> Letter to the Independent, June 25<sup>th</sup> 1997.

outright hostility, it would be given a significant role in setting its level (Edmonds 2007: 21). The CBI accepted this deal and was largely silent on the NMW during the 1997 election campaign. This strategy was based on a pragmatic acceptance that Labour's huge lead in the opinion polls rendered the party's victory, and therefore a minimum wage, inevitable, so it might as well focus its efforts on damage limitation through insiderist lobbying over the details of its design (Coats 2007: 27).

The moderate trade union faction led by the TUC had an overriding and consistent goal over this period, which was to hold Labour to its pledge to implement the NMW if it won a general election. However, their tactics changed as new Labour's rapprochement with employers and change of strategy over the NMW became apparent.

A key problem for the TUC was that the union movement was divided over a wage-setting policy that directly contradicted unions' cherished tradition of voluntarism. Its support for the NMW engendered a split between unions organising low paid workers, such as the public sector union, NUPE, which supported it, and those representing skilled engineers, such as the MSF and AEU, which were concerned about preserving differentials.

At a secret meeting in July 1994 of the 'Contact' Group, the loose Labour-TUC grouping which replaced the earlier and more formal Labour/TUC Liaison Committee, the TUC leadership extracted a commitment from Blair that the NMW would be preserved as a central plank of party policy for the next election. However, the price for this was that the party would drop the burdensome 'half male median earnings' formula.<sup>5</sup> Agreeing to this, however, pitted the TUC leadership against its public sector unions (including UNISON, the TUC's largest with 1.4m members), which were committed to the maximum possible level for the NMW, as well as the skilled engineers which continued to reject the entire policy. Further trouble was caused by the GMB union whose leader, John Edmonds, tried to use his position on Labour's economic policymaking committee to get the party to pledge full employment in exchange for union support on the NMW.<sup>6</sup> Left wing unions, including the FBU and UCATT, also broke ranks to press for a figure significantly over £4, reached through the half male median earnings formula<sup>7</sup>. They were backed in this by the TGWU as well as UNISON.

However, the TUC leadership was determined not to allow the issue to drive a wedge between the unions and new Labour. At the 1995 TUC conference John Monks, the TUC's general secretary, joined with Blair to implore delegates not to vote to commit the TUC to a specific figure which would bring unions and party into conflict. The outcome was that TUC policy was fudged. Although the vote was lost, meaning that the TUC would campaign for a figure of over £4 an hour, calculated according to the half male median earnings formula that Labour had just abandoned, it was emphasised subsequently in campaigning literature that this formula could also produce a figure as low as £3.60 if various

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<sup>5</sup> The Guardian, September 4 1994

<sup>6</sup> The Guardian December 5 1994

<sup>7</sup> During the 1997 election campaign UNISON, UCATT and the FBU called for a rate of £4.42 an hour.

assumptions made about pay, overtime and hours of work were relaxed (TUC 1996: 23). Moreover, the £4 plus figure would provide only a 'reference point' for identification of the TUC's target figure for the wage, whose exact rate would still ultimately be determined by the government (ibid: 23).

Statements by TUC leaders on the benefits to employers of the NMW also closely mirrored those of Blair. Wage levels were expressly linked with firms' productivity (TUC 1998: 5). Monks argued the NMW would play a part in: '*...the achievement of a high productivity economy under globalisation*'. (TUC 1996: 2). In its 1997 election campaigning document, 'Partners in Progress', the TUC also committed itself to the institutional setup proposed by Labour and moved to dampen expectations among the NMW's strongest proponents so as to head off potential clashes with Labour after the election: '*The TUC recognises that the minimum wage will need to be set following discussions with the social partners and in line with the economic conditions at the time. The TUC looks forward to the discussions in the Low Pay Commission*' (TUC 1997: 20). This contrasted sharply with the views of unions backing a strict formula. Unison's election campaigning literature, for instance, made absolutely no mention of the benefits to firms of a pay floor. '*The main purpose of a minimum wage is to put more money into the pockets and purses of the low paid...The introduction of a minimum wage can also be considered an instrument of social policy, providing a safety net through which no-one shall fall.*' (Unison 1997: 7).

### *Negotiating the NMW*

Within a month of entering government new Labour unveiled details of the Low Pay Commission it was setting up to adjudicate over the terms, scope and rate of the NMW. This kept promise was a welcome vindication of the TUC's political strategy, and it scored a further lobbying victory when it managed to block the appointment of Whitbread chief executive Peter Jarvis as chair of the LPC in favour of a pro-union London Business School academic, George Bain (Anderson, Mann 1997: 304). The Bill put to parliament contained strong legal sanctions against employers defying the legislation. It also ruled out any variation in the minimum rate according to region, sector, occupation or company size, in what was seen as a victory for Ian McCartney, the trade and industry secretary and the main focus of the TUC's lobbying effort (Taylor 1998: 298). On the other hand employers successfully argued for younger workers aged 16-25 to be covered by a separate, and lower, rate.

Commentators have disagreed over whether the LPC was a genuine institution of social partnership (Coats 2007: 44), or a model of technocratic management, hamstrung by weak social partners (the TUC and CBI) and an absence of corresponding partnership institutions in the workplace itself (Metcalf 1999:177). Clearly, the LPC was designed by new Labour with political imperatives in mind. It was entirely *de*-politicised, containing representatives of both sides (three from the unions, three from business, as well as two independent experts), but not dominated by either of them. A

number of senior union leaders had asked to serve on the LPC but were turned down in favour of lower ranking figures.<sup>8</sup> Recognising the importance of the NMW as a bridge for social partnership the TUC supported this de-politicisation, agreeing that: ‘...a politically contested NMW which is met with employer resistance is unlikely to be successful.’ (TUC 1997d: 2). The LPC was also only empowered to make recommendations, reserving for the government the final say over the level of the NMW.

The adult rate that was eventually put to the government, and accepted by it - £3.70 an hour, to be introduced in June 2000, with an interim rate of £3.60 from April 1999 (LPC 1998) – was below what most unions had campaigned for. However, the LPC’s chairman, George Bain pointed out that, consistent with the TUC’s 1996 analysis outlined above, this was only very slightly adrift of the figure for half male median earnings once certain assumptions were applied (Bain 1998: 20).<sup>9</sup> Bain also described the £3.65 an hour figure as a ‘first step’, implying that it would be raised.<sup>10</sup>

### 3. Trade Union Recognition

Getting government action on union recognition was possibly the TUC’s principal and most realistic objective. Labour campaigned in the 1997 General Election with a clear pledge to implement a statutory procedure for trade union recognition for the purposes of collective bargaining. This was a long-standing commitment which first appeared in Labour’s 1992 election manifesto. The 1997 Manifesto stated: ‘People should be free to join or not to join a union. Where they do decide to join, and where a majority of the relevant workforce vote in a ballot for the union to represent them, the union should be recognised.’ (Labour Party 1997a: 17). Labour’s employer-friendly ‘business manifesto’ made a similarly-worded pledge (Labour Party 1997b: 11).

The legislation had been expected to concentrate on union recognition. In fact, when the White Paper, ‘Fairness at Work’, was published in May 1998, it ranged widely, offering a number of new individual, as well as collective, rights at work, along with reforms to aspects of trade union law and ‘family-friendly’ policies. However, this section concentrates on the ‘pro-union’ collective rights contained in the White Paper and the subsequent Employment Relations Act 1999, rather than the accompanying set of individual rights which were merely ‘pro-worker’<sup>11</sup>. These were of most concern to unions as well as being particularly contentious to employers.

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<sup>8</sup> Interview with John Edmonds, former general secretary of the GMB, London 3/4/2007.

<sup>9</sup> This analysis is based on using data from the Office for National Statistics, rather than the New Earnings Survey, a parallel measure which Bain argued gave an inaccurate indication of low pay. Using ONS data the rate for half median male earnings was not UNISON’s figure of £4.78 for 1999, but £4.07. Removing those components (such as overtime) not included in the NMW as calculated by the LPC reduced this figure to £3.85, and could be cut further if other elements (such as regional allowances and waiting time) could be separately identified and removed.

<sup>10</sup> The Guardian, September 16<sup>th</sup> 1998

<sup>11</sup> While unions often campaign on issues, such as welfare reform, where the benefits of a success lobbying effort are non-excludable they tend to reserve particular effort for areas which strengthen collective bargaining via strong unions.

The evolution of Fairness at Work and the 1999 Act illustrates several of the main themes of this chapter. First, their successful campaign for statutory rights at work ultimately indicates the weakness, not strength, of unions in a liberal market economy. After the Conservative's anti-union onslaught they had to turn to the state to enact a set of positive legal rights to shore up collective bargaining in the face of hostile employers. As with the NMW, union recognition reflected the abandonment of the negative rights embodied in voluntarism in favour of 'positive' legal rights.

Second, the features of the UK's system of interest representation determined the strategies available to unions pursue this goal, as well as their chances of success. Thanks to its position as the main credible interlocutor between new Labour and trade unions the TUC was able to hold the government to its pre-election pledge to legislate on union recognition. However, having indicated on coming to power that this would be granted, new Labour also sought to mollify intense opposition to it from employers by allowing a long period of consultation. Lobbying by both the TUC and employers over the details of the Bill was tightly focused on the prime minister and the key ministries. As with the NMW, the legislation was vigorously contested by employers, who were nevertheless able to influence the progress of the legislation at the consultation stage in order to water down key proposals.

#### *'Fairness at Work'*

The template for the Fairness at Work White Paper was provided by two earlier pieces of legislation: the 1971 Industrial Relations Act and the 1975 Employment Protection Act (House of Commons Research Paper 1998: 32). Both had offered trade unions a statutory recognition procedure in return for curbs on industrial action, although the terms of the 1975 Act passed by the 1974-79 Labour government were far more favourable to unions than its Conservative predecessor (Howell 2005: 112, 115-16). However, both largely foundered on union and employer indifference and non-compliance and were quashed by the provisions of Margaret Thatcher's 1980 Employment Act, which restored collective bargaining to the exclusive purview of the market.

In the meantime the balance of power in the workplace had changed. When unions had been strong, for instance during the 1970s when membership peaked at over 13m by 1979, positive rights to recognition had been felt by unions to be unnecessary as their numerical strength was normally sufficient to induce employers to bargain with them. Union numbers, however, plummeted to 8m by 1995 through a combination of the Conservative government's legislative onslaught and structural changes in labour and product markets (Brown 1997). The drastically deteriorating circumstances for the labour movement prompted a strategic rethink about the options for pursuing a trade union agenda in an increasingly marketised economy (Heery 1998: 348-50). Organisation and recruitment became a priority, and motions calling for employment rights were passed at the 1986 TUC Conference and Labour Conferences onwards.

The TUC took exclusive charge of the recognition agenda. It set up a Task Group in 1994 which called for a universal right to representation, consultation rights and automatic trade union recognition where a majority of those voting in a ballot, or in some other means of surveying opinion in a bargaining unit, called for it. The latter would ideally be mediated by a new 'representation agency' (TUC 1995a: 7). It was also noted that such provisions were already mandated by the European Works Council Directive (ibid: 21). Exploratory talks on union recognition were held with the CBI (TUC 1997b: 7) and there were more detailed discussions with Labour's shadow trade and industry and employment teams (Taylor 2007: 218).

The TUC's careful lobbying appeared to bear fruit as Labour's pre-election 'Road to the Manifesto' document dealing with labour market reform (Labour Party 1996), set out broadly similar proposals for early legislation which were then endorsed at the 1996 TUC Congress (TUC 1996b). Belying the TUC's nervousness about Blair's personal commitment to Labour's employment rights programme the only policy that was cancelled during this period was Labour's pledge to protect short-service employees against dismissal. In a clear quid pro quo the TUC pumped £1m of its own money into its pro-Labour election campaign with the blunt slogan: '*Put a cross in the wrong box and you can kiss employee rights good-bye*' (TUC 1997c). The TUC was quite open that this was about making an election issue of employee rights (TUC 1997b:2).

On coming to power, however, New Labour appeared nervous that immediate action on union recognition would look like 'payback'. Moreover, Labour's Business Manifesto had promised the CBI an opportunity to influence the shape of any legislation (Labour Party 1997b:11). Before the details of the White Paper were finalised, therefore, the CBI and TUC were ordered to hold joint talks to try to thrash out a common position. The employer and union perspectives on recognition were clearly incompatible, however, with the CBI - unlike the TUC - still in favour of voluntarism, reflecting the greater economic power of employers.<sup>12</sup> A joint CBI-TUC statement was agreed on 4 December 1997, but the gulf between the two sides was reflected in a raft of disagreements centring on: the voting threshold needed for recognition, the definition of the bargaining unit and whether small firms should be excluded (TUC 1997e).

After the election the TUC had held talks with the DTI Ministers and Blair. TUC negotiators pressed their case on several issues: the initial trigger for an application for recognition; the definition of the bargaining unit; the majority required in a ballot; whether recognition should be automatic where membership was over 50%; whether small firms should be included; whether individuals should be able to agree on their own terms and conditions; and sanctions for non-compliance (TUC 1998b: 4, 5; TUC 1998e: 3). Alarmed by press reports that the government was preparing to come down on the side of the CBI John Monks wrote to Blair in early April 1998 warning that it would campaign against widespread

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<sup>12</sup> See CBI letter to the Financial Times, March 18 1997.

concessions to employers (TUC 1998b: 5). This was the only time the TUC confronted the government directly over this issue. In all other respects its lobbying campaign focussed on direct persuasion of key ministers, although this was backed up by a publicity and lobbying blitz on the media and Labour MPs.

While the exposure of 'bad bosses' was a key feature of this campaign the TUC was also careful to make it clear that these were a minority (TUC 1998e: 3). A 'partnership' document, 'Take Your Partners – the Business Case for a Union Voice' (TUC 1997d) was launched to coincide with the 1997 CBI conference where the TUC took an exhibition stand. The document pointed out to employers that 44 of Britain's top 50 companies recognised trade unions, but it also reiterated the TUC's belief in the need for negotiated compromise (ibid: 4).

Yet, in a clear sign of the TUC's strategic role, this emphasis on points of interest with business was at odds with the views of some of the major unions, who rejected any accommodation to the views of employers. For instance Bill Morris, the general secretary of the TGWU, in rebutting Blair's speech at the 1997 TUC Congress where he had called for discussions on recognition with employers, cautioned that: '*...there was never a hope of us reaching agreement with the CBI- that was not the purpose of the exercise...The CBI represents a different interest, and a different agenda.*' (TGWU 1998). Pressure was also exerted on the TUC's leadership not to give ground through the TUC General Council.<sup>13</sup> Unison and the TGWU led calls for an emergency session of Congress, which was resisted by the TUC leadership because of fears this would provide a focus for attacks on the government.

The White Paper, 'Fairness at Work', was published on 21 May 1998. It proposed two clear routes to union recognition: automatically, where more than 50% of employees were already union members; and, alternatively, via the approval of a Central Arbitration Committee (CAC) which would adjudicate if a majority of those voting and 40% of all employees in a bargaining unit eligible to vote were in favour (DTI 1998: para 4.18). Overall, this was a defeat for employers' organisations, who remained flatly opposed to statutory recognition. However, the TUC had also given ground<sup>14</sup>. It had wanted the voting threshold to be 30% and complained that 40% would impede collective bargaining (TUC 1998d: 1). The TUC was also forced to accept the exclusion of some small firms, although the proposed threshold of 20 employees was lower than the CBI's target of 50, as well as Blair's figure of 30.<sup>15</sup> On the other hand, the CBI's demand that firms themselves should define the bargaining unit was quashed, as the CAC would ultimately decide this (DTI 1998: para 4.18). The TUC also won concessions on individual rights to do with unfair dismissal and union representation at disciplinary hearings (ibid: para 4.29). The Institute of Directors attacked the White Paper as representing: '*...a significant swing towards the employee*'.<sup>16</sup>

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<sup>13</sup> Independent, April 20 1998.

<sup>14</sup> Press reports indicate that TUC concessions was seen in Downing Street as a crucial gesture of good faith (Observer, May 24 1998).

<sup>15</sup> Guardian, May 14 1997.

<sup>16</sup> 'The Spectre of Worker Power', Tim Melville Ross, IoD Director-General, 'The Director', June 1998.

Having come off worse at the White Paper stage the CBI upped its game as the Bill was finalised with an intense lobbying offensive aimed at key ministers in the DTI. The CBI tabled a broader range of amendments to the legislation, proposing, among other things: to restrict voting to employees who had been union members for over a year; ruling out the 50% route to automatic recognition where workers were members of more than one union; and forcing union members to sign an undertaking that they wanted to be represented by a union<sup>17</sup>.

Meanwhile, the TUC made a priority of getting the government to backtrack over the 40% voting threshold for recognition (TUC 1998e: annex 3). As well as further representations to ministers it continued to lobby ministers and Number 10 indirectly via the large group of Labour MPs who were members of trade unions. The TUC claimed that internal polling showed 96% of Labour MPs favoured the TUC's demand for recognition to be granted automatically on a simple majority (TUC 1998b: 4). Press reports also indicated that 13 out of 22 Cabinet Ministers were opposed to the 40% minimum.<sup>18</sup> However, no rebellion took place, illustrating how limited the avenues available were to the TUC to exert direct political pressure, even over a Labour government.

The Employment Relations Bill was published on 28 January 1998. It largely endorsed the union recognition procedures suggested in the White Paper, but with a couple of 'refinements'. The most important of these was that the automatic right to recognition where more than 50% of workers were union members was removed in what was seen as a significant victory for the CBI. Instead, the CAC would have discretion to order a ballot in certain circumstances (House of Commons Research Library 1999: 8). A new clause was also inserted allowing workers to apply for *de*-recognition of a non-independent union (*ibid*). On the other hand, the CBI's demand for a minimum period of trade union membership as a condition of union recognition rights was rejected. The TUC put on a brave face, despite the loss of the automatic recognition procedure, and placed the legislation in the context of its drive to replace confrontation with union-employer partnership, calling the Bill: '*The most significant advance in employee rights for a generation... giving a real boost to the partnership at work that is the real secret of competitive success.*' (TUC 1999).

Following publication of the Bill both sides continued to lobby parliamentarians for further amendments at the Report and Committee stages, although the TUC was told that the government now regarded the Bill as a 'done deal' (TUC 1998e: 2\*). Employers' reaction to the Bill was less hostile than their response to the initial White Paper; the CBI's human resources director, John Cridland, complaining that the proposals were: '*...workable, if not wholly welcome*'.<sup>19</sup>

Because the CBI successfully pushed for the union recognition procedures to be watered down, and because the Act ultimately offered only tepid support for collective bargaining, it is often seen as a

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<sup>17</sup> Guardian, November 18 1998

<sup>18</sup> *Ibid*

<sup>19</sup> Guardian 29<sup>th</sup> January 1999.



victory for employers over the TUC (Howell 2005: 182-4; McIlroy 2000: 6-9). A less damning verdict, however, would note that the Act still offered unions a firm platform from which to rebuild their strength, and that intense lobbying by the CBI at every stage failed to deliver its overriding objective of blocking any legal route to union recognition. Far from being neutral over whether individual or collective rights at work should be prioritised, Fairness at Work had offered several indications that the *collective* representation of individual rights could be the best method of ensuring that individuals were treated fairly, along with a recognition that the balance of power between firms and workers was not always even (DTI 1998: 4.2). Moreover, as Crouch has pointed out, the Act was more ‘social democratic’ than anything enacted under previous Labour governments, which had accommodated unions’ voluntarist preferences for winning rights through economic struggle rather than government intervention (Crouch 2001: 102).

#### **4. Conclusion**

The overall argument of this chapter is that new Labour’s first term industrial relations program was more than a token gesture towards collectivism by a government hemmed in by the structural constraints imposed by the UK’s system of liberal capitalism. Although far from enjoying a revival of the intimate policy concertation between unions and party which had existed under corporatism the TUC was still able to play an active role in persuading Blair to enact what was in many ways an ‘old’ Labour industrial relations program from the early 1990s.

On the other hand it is equally clear that viewing these policies as being shaped unproblematically through direct pressure from new Labour’s trade union backers is also an oversimplification. Several general points are therefore worth making.

Firstly, Blair’s government operated, or behaved as if it operated, with strictly limited room for manoeuvre over industrial relations policy. In general, it took great care to respond to the demands of employers that policy should be compatible with the UK’s system of flexible labour markets. The fact that the NMW and Fairness at Work were enacted at all, despite the intense opposition of the CBI and others, therefore represents a considerable victory for trade unions. Of particular note is the fact that it was the least market-friendly measures (the NMW and Fairness at Work, rather than the TUC’s ‘social partnership’ agenda, which is included here for comparison) which had the greatest impact (see Fig 1 below).

**Fig 1. Comparison of the processes and outcomes of the NMW, Unions Recognition and Social Partnership**

<b>Policy</b>	<b>National Minimum Wage</b>	<b>Union Recognition</b>	<b>Social Partnership</b>
<b>Method employed</b>	Tripartite institution	Statutory legislation	‘soft’ persuasion
<b>Purpose</b>	Social justice + firm productivity	Social justice + rebuilding union strength	Firm productivity + rebuilding union strength
<b>Market friendliness</b>	Low	Medium	Medium
<b>Impact</b>	High	Moderate	Low

Second, that the TUC was able to achieve these goals is largely testament to its ability to function strategically by positioning itself close to Labour ideologically in its simultaneous embrace of social justice and firm competitiveness. The TUC’s 1994 re-launch (‘New Unionism’), which had streamlined the organisation, facilitated this considerably. But it also required a willingness on the part of the TUC’s leadership to go against the entrenched views of large sections of the union movement which remained wedded to a more adversarial industrial relations system.

Third, the UK’s pluralist system of interest representation, in which interest groups such as unions and employers are kept at arms’ length by the state and must earn the right to contribute to policy debates, channelled the lobbying efforts of both groups towards frantic attempts to persuade key politicians of their case. Again, the crucial importance of being seen as a credible and reliable actor is apparent. One surprising observation from the analysis contained in the this paper was how relatively successful the TUC was in blocking wrecking amendments from employers.

Fourth, comparison of policy outcomes reveals the limits, as well as the opportunities, for unions operating in highly liberalised labour markets, in particular their reliance on the state to create the conditions necessary for them to thrive. The collapse of union power during the 1980s fostered an appreciation of the need to replace adversarial voluntarism and its reliance on legal immunities with a set of positive rights, provided through the legal system, to organise and recruit. The TUC also realised the importance of guaranteeing these rights through the creation of ‘high-trust’ labour market institutions under the umbrella of social partnership to encourage dialogue with employers and prevent them agitating for government to impose further curbs on unions.

New Labour, however, was only willing to go so far in providing these. It signed the EU Social Chapter, legislated for a NMW and provided a statutory route to union recognition. But in other respects it left outcomes to the market, ignoring what unions claimed was an imbalance of power in the workplace. In particular, Blair’ government was unwilling to go beyond soft persuasion in getting firms to bargain with unions, as opposed to recognising them, even on terms largely favourable to employers. Because social partnership was underpinned neither by legislation (as with union recognition) nor the creation of new tripartite institutions (the NMW) it eventually foundered on the

non cooperation of most employers, whose labour market preferences were to ignore unions so as to preserve the maximum room for manoeuvre to respond to commercial pressures (although a number of unions were also opposed).

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