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Social dialogue and industrial relations during the economic crisis: Innovative practices or business as usual?

Richard Hyman

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Industrial
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Preface

The current global and financial crisis can be considered a touchstone for governments and social partners throughout the world. In June 2009 the International Labour Conference, with the participation of Government, employers' and workers' delegates from the ILO's member States, unanimously adopted a ''Global Jobs Pact'. This paper was one of those presented to the social partners during this historic event, as they considered the role that social dialogue and collective bargaining might play in addressing the effects of the crisis.

The author begins by examining the role of social dialogue in the pre-crisis period, before addressing its role in the context of the crisis. When the economic crisis first unfolded and its effects began to be felt by workers, European trade unions started to mobilize. The crisis appeared to provoke conflictual responses, such as strikes and protests. Prior to the crisis, social dialogue at the national- as well as at the company level had been a functioning part of the European Social Model. Once the crisis unfolded, negotiations and exchanges between the social partners at the national level proved to be difficult, as the examples in countries such as Ireland, Spain and Portugal show.

The author observes that at the company level, creative win-win strategies to address reduced demand as an opportunity to enhance employees' competences have been relatively rare. Collective bargaining has been defensive and where it has contributed to saving jobs, this has often been with the support of state measures. National differences linked to the institutional framework of industrial relations have also determined outcomes. In countries with weak social partners and more liberal traditions, firms adjusted to the crisis by laying off workers.

In considering the future of social dialogue and collective bargaining in Europe, the author argues that social dialogue in times of economic difficulty is likely to prove increasingly ineffectual unless there is greater coordination between the different levels at which dialogue take place so that collective bargaining and social dialogue are seen as part of a broader regulatory agenda.

I am grateful to Professor Hyman for undertaking this study and recommend it to all interested readers.

March 2010

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1. Introduction

"You never want a serious crisis to go to waste," Rahm Emanuel, President Obama's chief of staff, is reported to have said in November 2008. "Things that we had postponed for too long, that were long-term, are now immediate and must be dealt with. This crisis provides the opportunity for us to do things that you could not do before." Is the economic crisis indeed an opportunity as well as a threat, creating 'a sense of urgency' (Blankenburg and Palma 2009: 532)? Can it stimulate the industrial relations actors, at company and at national (and indeed also international) levels, to innovate in their approaches to the world of work? Or is the more likely response a desperate effort to achieve a rapid return to 'business as usual'?

In this paper I was invited to discuss how effective social dialogue has been in dealing with the labour market consequences of the financial and economic crisis. Since social dialogue is a western European invention, and my own area of specialist knowledge is primarily in this region, this will be my focus. Moreover, my expertise relates primarily to trade unions, so they will be my main object of attention. I start by commenting briefly on the industrial relations impact of the 2008-2009 crisis. Then I point to some indicators of a radicalizing, conflictual response to crisis. After this I look at the experience of social dialogue at national and company levels. Finally I consider what light the experience of the past year throws on the ambiguities of social dialogue and its prospects for the future. There is by now extensive literature describing the reactions of the social actors to the crisis, and my aim is not primarily to add to these. Rather, I seek to offer some critical reflections, in particular warning against the tendency to focus on the *process* of social dialogue while giving only secondary attention to its outcomes.

2. The crisis of 2007-2009 and its industrial relations implications

The financial crisis evolved in the summer of 2007 and exploded into a global economic crisis a year later. In the paper *The Financial and Economic Crisis: A Decent Work Response*, the ILO (2009a: 1) wrote that "the global economy is experiencing the worst crisis since the Great Depression. What began as a financial crisis when the housing market in the United States turned sour has now expanded into a global melt-down, wiping away trillions of dollars of financial wealth, putting the real economy at grave risk of prolonged recession, and causing significant job losses and widespread social hardship". As Table 1 shows, the overall OECD unemployment rate reached 8.6 per cent in July 2009, up from 5.6 per cent in July 2007 and six per cent in July 2008. Hence "a social crisis is looming large" (ILO 2009a: vii).

Table 1.
Harmonized unemployment rates

	July 2007	July 2008	July 2009
Australia	3.9	3.9	5.3
Austria	4.7	3.6	4.4
Belgium	7.5	7.7	8.3
Canada	6.2	6.3	8.9
Czech Republic	5.2	4.3	6.3
Denmark	3.9	3.3	5.9
Finland	5.9	5.2	7.7
France	8.0	7.3	9.2
Germany	8.3	7.3	7.7
Greece	7.9	7.2	..
Hungary	7.0	7.7	10.2
Ireland	5.0	6.5	13.3
Italy	5.7	6.1	..
Japan	3.5	3.8	5.4
Korea	3.2	3.1	3.7
Luxembourg	3.7	4.6	5.7
Mexico	4.0	4.2	6.1
Netherlands	2.9	2.4	3.2
Norway	2.7	2.6	..
Poland	9.1	6.7	7.9
Portugal	8.0	7.7	9.1
Slovak Republic	11.4	9.2	12.3
Spain	7.8	10.8	17.6
Sweden	5.4	5.8	7.9
Turkey	8.0	9.1	..
United Kingdom	5.5	5.9	..
United States	4.9	6.0	9.7
European Union	6.9	6.8	8.8
Euro area	7.2	7.2	9.1
G7	5.4	5.9	8.3
OECD - Europe	7.0	7.0	9.3
OECD - Total	5.6	6.0	8.6

It is widely accepted that the crisis reflects in part the lack of effective institutions to control extreme imbalances in the international economy, the deliberate fostering of unregulated financial markets and a general increase (again, the outcome of deliberate policy initiatives) in inequality with a declining wage share in GDP (Herr 2009; Keune 2008; Kyloh and Paget 2009) accompanying an exponential rise in the incomes of the rich. “This has placed an increased share of resources in the hands of those who, rather than consume it in the form of real goods and services, have used it to speculate on financial markets [while] the poor have been forced to expand borrowing in order to maintain living 'standards" (Watt 2008: 7). The 'sub-prime' collapse was one clear consequence of this trend.

The declarations issued by the International Trade Union Confederation (ITUC 2008, 2009a and b) before the Washington, London and Pittsburgh G20 summits have called for a major international recovery plan a new global structure of financial and economic governance, and a concerted attack on the crisis of distributive justice which had contributed to the economic meltdown. This international trade union recovery programme was elaborated by the Trade Union Advisory Committee to the OECD (TUAC 2008), while Herr (2009) on behalf of the ILO Bureau for Workers' Activities (ACTRAV) insisted that the decline in the wage share of GNP must be reversed in order to sustain demand and promote recovery. At regional level, the European Trade Union Confederation (ETUC 2008) called for a European Recovery Programme and insisted on the need for "preventing the domino of deflationary wages from falling"; while in its Paris Declaration (2009) it also stressed that "wage freezes and nominal wage and pension cuts are to be rejected. It is vital as demand collapses to protect purchasing power." The crisis, it argued, should provide an opportunity to strengthen social protection and workers' rights, regulate financial markets, reverse the growth of inequality and promote decent work. The ILO itself (2009a, 2009b) has called for a Global Jobs Pact which would make employment creation central to economic recovery, regulating financial institutions, promoting development and redressing inequalities both within and between countries. Reiterating these demands, in November 2009 its Governing Body insisted that they "deserve the same high level political priority that has been given to the rescue of financial institutions".

Yet as Wade (2008: 7) has noted, past cyclical economic crises have often inspired radical proposals for a change of policy regime, but recovery has always brought a return to 'business as usual'. On this occasion, the very severity of the crisis compelled radical initiatives, as governments were forced to bail out failing banks, insulate toxic assets, slash interest rates and boost consumer demand. Keynesian demand management seemed back in fashion after decades in which the philosophy of free markets held sway. Yet it is not clear that this heralds a long-term policy shift. Watt (2008: 1) has commented that many analysts "have pointed the finger at single actors – central banks and their 'easy money' policies, greedy Wall Street titans, sleepy regulators – implying that, once such incompetents have been removed, we can return to business as usual".

As key economic indicators begin to point to recovery, even modest proposals for tighter regulation seem to be losing urgency as the bonus culture returns. Yet economic recovery is not the same as employment recovery: the OECD (2009a) is predicting an overall unemployment rate of 10 per cent in 2010 (and in non-OECD countries one can expect far higher rates). Governments are under growing pressure to reverse the massive levels of debt incurred in recent rescue packages (Cerisier 2009) through cutbacks in public expenditure, which is likely to mean primarily downgrading public services and transfer payments to the poor and unemployed. Against all suggestions of the need to return to Keynesianism, the head of the European Central Bank continues to insist on the priority of price stability and the need to reduce labour costs (Trichet 2009a, 2009b) – despite the wide consensus that demand deficiency is one of the roots of the crisis. More recently, the OECD (2009b) called for a continued drive to market liberalization within the European Union. Pressures towards competitive wage deflation, against which the ILO (2009a: 57-60) has warned powerfully, are growing stronger (Schulten 2009). The continuing outcome of the crisis is thus likely to be growing inequality, an increase in social exclusion and a reinforcement of the structural imbalances which helped precipitate the original debacle.

3. Conflict and radicalism

Noi la crisi non la paghiamo! – we are not paying for the crisis! The slogan which first appeared in Italy in the autumn of 2008 began to figure prominently in translation at demonstrations across Europe in the spring of 2009. It expressed a high degree of public anger: the 'fat cats' whose greed and recklessness caused the crisis were still protected, being bailed out with huge sums of public money, while ordinary workers were suffering job losses, pay cuts and loss of pension rights and would be expected to pay the long-term bill to redress public finances.

Trade unions across Europe attempted to harness this anger. At the end of January 2009, all main French unions joined in calling a general strike to protest that the government was protecting businesses but not workers, an initiative repeated two months later. In February the Irish trade unions, despite their twenty-year support for social partnership, called a mass demonstration against the government for what they considered its inadequate response to the economic crisis and demanded a "fairer and better way" of proceeding. After months of deadlock, in September the Irish Congress of Trade Unions agreed "to organise a campaign of sustained opposition to Government inaction on jobs, the threat of cuts to public services and to ensure that the burden of economic adjustment is not borne disproportionately by working people and their families", and organized a second national day of protest on 6 November. Later the same month, the public service unions called a one-day general strike against pay cuts and job losses.

Also in February, the three Finnish trade union confederations threatened a general strike, forcing the government to withdraw its plan to impose an increase in the age of retirement. In Italy the main trade union confederation, CGIL, called a general strike in April, demanding a halt to dismissals, better financial support for the unemployed, job creation measures and a cap on top salaries (but the other main unions refused to support the action). In the same month, the two main Greek trade union confederations held a 24-hour general strike.

Following a wide range of national protests, notably on May Day, the ETUC convened European Action Days from 14 to 16 May 2009 with four Euro-demonstrations in Madrid, Brussels, Berlin and Prague. At the end of the month it held a two-day conference in Paris on the economic and social crisis, with the slogan "Fight the crisis – and win the aftermath" (ETUC 2009: 3). "How can we lay down the foundations of a fairer society and ensure that we will not make the same mistakes that led to this crisis? ETUC will not stand for a return to *laissez-faire* practices. Those who are not responsible, namely workers, cannot be made to foot the bill for this crisis. The sentiment of injustice that prevails today should be taken very seriously.... The European trade unions, which have long denounced casino capitalism, are more mobilised than ever to respond to the growing helplessness of whole sectors of the labour market." It should be noted that for European trade unions, reactions to the economic crisis coincided with growing anger at the implications of recent decisions by the European Court of Justice which ruled that market freedoms have priority over the protection of decent work by national law or collective agreement.

In a clear sign of a new radicalism in trade union discourse, in May 2009 the German DGB organised a 'Capitalism Congress' – using language which until recently would have been taboo – and its president warned of unrest on the streets unless jobs were more effectively safeguarded. One of the DGB leaders, Claus Matecki, insisted (2009) that it was important to talk of capitalism rather than using the conventional but bland term *soziale Marktwirtschaft* (social market economy), since only thus could trade unionists make clear that the existing economic order was historically contingent and founded on a fundamental inequality between workers and employers.

How seriously should this turn to mobilization and shift in discourse be regarded? There has been no follow-up to the *Kapitalismuskongress*, and the tide of mass protests across Europe seems to have subsided. Nevertheless, the crisis has surely delivered a challenge to the 'end of ideology', and has inspired a new radicalism of analyses and objectives which is unlikely to vanish.

In more fragmented ways, the crisis has provoked a variety of conflictual responses. One has been a spate of sit-ins against job cuts and plant closures, reminiscent of the struggles of the 1970s. In France this was given a distinctive character in the spring of 2009 with a number of episodes of 'boss-napping', when senior managers were held hostage by workers; in three cases in July, workers threatened to blow up their factories with gas cylinders. In Britain and Ireland (with little tradition of sit-ins and highly restrictive labour laws), Irish workers occupied the Waterford Crystal factory in Kilbarry for two months from January to March. In April there were sit-ins at the three UK plants of car parts manufacturer Visteon and at Prisme Packaging in Dundee, followed in July by an occupation at the Vestas wind turbine plant in the Isle of Wight.

Undoubtedly the most publicised British dispute against job losses began at the end of January at the Lindsey oil refinery in Lincolnshire, owned by the French multinational Total. The company subcontracted a construction project to an Italian firm which employed only foreign labour – displacing existing workers – on terms inferior to those specified in the British collective agreement for the sector. An unofficial strike quickly escalated, with sympathy action across the country. Though a settlement was soon negotiated, a similar dispute took place in June after management dismissed over 600 workers who had been involved in an unofficial strike on a separate project.

One question is whether populist nationalism underlies some of the militant reactions to rising unemployment. The slogan 'British jobs for British workers' – a phrase used two years earlier by the current UK prime minister – was prominent during the Lindsey disputes. However, the trade unions which negotiated a resolution to the conflicts (and had to walk a legal tightrope since they could not lawfully endorse the strikes) were successful in ensuring that the strikers' anger was focused on the divisive and discriminatory actions of the employers rather than directed against the foreign workers (Barnard 2009). It is notable that the general secretaries of the ETUC and most of its affiliated Industry Federations issued a declaration on the Lindsey conflict, insisting that "legitimate social claims of equality of treatment and of equal pay for equal work are consistently being smeared and branded as xenophobic and protectionist" (Monks et al. 2009). Yet undoubtedly, recession makes the boundary between legitimate protection of interests on the one hand, and protectionism on the other, increasingly difficult to define.

What is also apparent is that radical forms of action may not imply similar radicalism of objectives. In most cases it seems that sit-ins, occupations and other forms of direct action have been gestures of defiance and despair, with little belief that they will prevent announced closures or job losses. Rather, the aim has commonly been to limit the number of dismissals or to achieve improved redundancy packages. For this reason, such disputes have usually been relatively easy to resolve.

4. Responses to the crisis: National social dialogue

Social dialogue has often been a response to economic crisis and recession in the past. At national level, particularly in the past two decades, such dialogue at times resulted in formal 'social pacts' involving government, trade unions and employers, often covering a broad multi-issue agenda allowing trade-offs between the different interests of the participants (Avdagic et al. 2005; Fajertag and Pochet 2000). Typically these were exercises in damage limitation, with the important objective of enhancing national competitiveness – hence their characterization by Rhodes (2001) as 'competitive corporatism'. At company level, the co-management of restructuring was a frequent reaction, at times involving formal Pacts for Employment and Competitiveness'(PECs) (Freyssinet and Seifert 2001; Haipeter and Lehndorff 2009; Ozaki 2003; Sisson et al. 1999; Zagelmeyer 2000). Typically such PECs involved some form of guarantees of job security and perhaps investment in return for union agreement to a wage freeze or even reduction, and increased flexibly in working time and work organization. In this respect, PECs can be seen as an exercise in concession bargaining.

There are signs of similar patterns in the current crisis, though there are also important differences. In this section I examine national pacts, and in the following section turn to the company level.

In a review of the experience in seven European countries, the ILO (2005) differentiates social pacts in terms of the extent of government involvement. In the case of tripartite pacts, "the government is heavily involved in the negotiation, signing, launching and sometimes the follow-up of social pacts". In the case of bipartite pacts, the signatories are employers' organizations and trade unions alone. However, the distinction is not always clear-cut. "For example, the representatives of government take part in [bipartite] negotiations. Sometimes the agreements were concluded with the support of or pressure from the government, with the government undertaking to implement necessary measures set out in the agreements." Conversely, one might add, some tripartite pacts primarily reflect bipartite initiatives, but involve the government since implementation requires legislation or financial support.

A different classification is proposed by Avdagic et al. (2005: 5), who distinguish between "four types of pacts with different scope and depth: shadow pacts, headline pacts, coordinated wage-setting, and embedded pacts akin to neocorporatist concertation". This taxonomy (see Figure 1) is based on two axes of differentiation: whether pacts cover a narrow (or single) set of issues or a broader agenda; and whether they are strongly institutionalized, involving continuous dialogue based on strong trust among the parties.

Figure 1.
Taxonomy of social pacts

		Range of issues/policy areas	
		Narrow	**Broad**
Degree of integration/ articulation	**Low**	*Shadow pacts*	*Headline pacts*
	High	*Incomes policies*	*Neo-corporatist concertation*

Source: Adapted from Avdagic et al. 2005: 44.

Given the centrality of government action to national responses to the crisis, macro-dialogue has inevitably been tripartite rather than bipartite. Given the emergency circumstances, the outcome has also typically involved ad hoc, narrowly focused agreements – if any. Rychly (2009: 12), adopting a global perspective, has argued that the current crisis has led to an acceleration of social dialogue, a conclusion supported in more detail by the ILO (2009c). Though social partners' involvement in the design and implementation of national measures [was] rather limited during the first stage (summer and fall of 2008), this changed considerably when the crisis deepened. But Rychly adds

(2009: 15-21) that the process has led to few "comprehensive tripartite agreements" and has often involved serious conflicts. Whereas in the 1990s economic adversity spurred social dialogue, resulting in comprehensive pacts in countries with little previous tradition of such concertation, the crisis of 2008-09 does not seem to have had the same effect. This may be in part a reflection of the speed and enormity of the crisis: where the necessary institutions were not already well established, the urgency of the situation provided little scope for their creation.

For the same reason, where peak-level agreements *were* negotiated, these were often narrow in focus: 'headline' or 'shadow' pacts, in the terms used by Avdagic et al. (2005). A key initiative in many countries was agreement on relaxation of the rules governing short-time working, often linked to government funding for short-time work schemes as an alternative to redundancy, so that loss of wages would be minimized or avoided altogether.

The problematic nature of social dialogue in the past year is confirmed by the experience in the seven European countries surveyed by the ILO (2005) as previous success stories. In some cases there seem to have been no serious efforts to obtain tripartite agreement on responses to the crisis; in others, such efforts have failed, or have provoked serious divisions among the parties involved. In Ireland, there was record union support for the November 2008 Transitional Agreement which amplified the Towards 2016 partnership pact, providing for a six per cent pay increase over 21 months. But the subsequent government crisis package resulted in a breakdown, particularly over its imposition of a pension levy which involved in effect a cut in public sector pay, and allegations that it was allowing employers to renege on the pay increases. A general strike was threatened but was called off pending further talks. Though little progress was achieved in pursuing the unions' 10-point plan for handling the crisis, the head of the ICTU insisted that a tripartite pact was still "the only show in town". "There is not really a crisis in the social partnership system, it is just that we cannot agree." As noted above, in September 2009 a new phase of confrontation occurred. However, the unions still hope for a negotiated outcome on the basis of their proposals for "a better, fairer way" to redistribute the costs of the crisis, and negotiations continue at the time of writing.

In Spain, national talks reached deadlock in January 2009. In Finland, as indicated above, government attempts to impose a higher retirement age provoked a general strike threat; subsequently the unions – and some employers – criticized the government budget package as an inadequate response to the rapid rise in unemployment. In Portugal, in the spring of 2009 the two rival union confederations each issued programmes demanding emergency measures to deal with unemployment, without success. In Slovenia, the government introduced a part-time working scheme, but the unions refused to endorse it because it did not provide adequate guarantees against wage reductions. In Spain, the country with by far the highest unemployment rate in Western Europe, attempts to renew the national social pact broke down in March 2009, and social dialogue contributed little to the government's recovery plan. In Italy, government initiatives split the unions, with CGIL (as mentioned above) calling a general strike in April 2009. The one 'traditional' pact among the seven countries was in the Netherlands; however, the agreement on a crisis package reached in May 2009 barely concealed fundamental differences: in particular the resistance of the main union confederation, FNV, to raising the retirement age. The agreement gave unions and employers six months to negotiate an alternative pension plan, but shortly before the deadline the employers broke off talks and the FNV organized a series of mass protests and strike actions on 7 October, the World Day for Decent Work.

Hence the crisis seems to have made peak-level dialogue very difficult in most countries with a tradition of national pacts. Perhaps the clearest exception is Belgium. Here, the crisis was severe: one of the main Belgian banks, Fortis, was partially sold to the French BNP Paribas, with the remainder nationalized. The two yearly national pay negotiations began in the autumn and were initially tense, with a 'day of action' (described by one of the unions as a general strike) in October. However, bargaining relations gradually improved, with government mediation resulting in an exceptional agreement at the end of December, given legal backing in March 2009. The unions, which complained that purchasing power had fallen substantially, agreed to a limited pay rise weighted towards the lowest paid, and to 'soft' increases (such as luncheon vouchers and travel subsidies) which added little to employers' labour costs. Benefits for the unemployed and pensioners were increased, while employers' taxes were reduced. A further agreement in February provided for the payment of 'eco-cheques' which workers could spend on ecological products. In April 2009 there was a tripartite agreement on crisis measures for white-collar workers: reductions in working time by a quarter or a fifth, if approved by sectoral or company-level agreements, would be partially compensated from public funds. More recently, however, dialogue has been under renewed strain, with the government indicating that it cannot afford to maintain its contribution to the settlement after 2009.

One aspect of peak-level negotiations during the current crisis is that social partnerships have been characterized by conflict within trade unions. One example was the Dutch agreement of May 2009: with the unions divided on whether to accept a higher retirement age, the decision in effect was merely deferred, leaving the government free to act unilaterally. In Italy there have been more serious divisions: CISL and UIL agreed to bargaining restructuring and wage moderation in the public sector, CGIL refused to sign and organized strikes and sit-ins against public sector job cuts as well as calling one general strike. In France, unity and disunity have both been evident in the trade union mobilizations. Inevitably, internal divisions among the unions have weakened their capacity to shape government responses to the crisis.

We should note that 'competitive corporatism' (Rhodes 2001) has for years reinforced the trend to a declining wage share of GDP, particularly in the eurozone (Keune 2008). This has occurred despite the formal commitment of European unions to a wage policy intended to reverse or at least halt this decline, by achieving increases at the level of inflation plus productivity growth. The pressures on peak-level dialogue in the crisis are calculated to further contradict these formal trade union aspirations, resulting in wage deflation and a continuing deficiency of purchasing power.

5. Company-level dialogue

The first detailed assessment of company-level Pacts for Employment and Competitiveness (PECs) was the study by Sisson et al. (1999). They view these as complementary to the spread of national social pacts in the 1990s, but also attribute their development in part to the EU employment guidelines agreed in December 1997. "The social partners are invited to negotiate, at the appropriate levels, in particular at sectoral and enterprise levels, agreements to modernize the organization of work, including flexible working arrangements, with the aim of making undertakings productive and competitive and achieving the required balance between flexibility and security. Such agreements may, for example, cover the expression of working time as an annual figure, the reduction of working hours, the reduction of overtime, the development of part-time working, lifelong training and career breaks" (European Council 1997).

PECs, they argue, should be viewed as a form of positive-sum or 'integrative' bargaining (Walton and McKersie 1965): economic adversity gave management and workers a common interest in enhancing competitiveness. The process could also be seen as part of a more general effort by governments to secure agreement by the social partners to contentious policy initiatives. But does this development, they ask (1999: 18), represent "concession bargaining by another name"? They argue that, in contrast to the

USA where the term originated, these agreements involve genuine offers by employers, notably in terms of job guarantees, that they occur only when companies are in real economic difficulties, and do not involve threats to derecognise trade unions. Nevertheless, the unions may feel obliged to negotiate under duress. Sisson et al. also note that intensified inter-firm competition through undercutting established standards may have negative aggregate consequences at sectoral or national level.

In their analysis they offer a number of categorical distinctions. One is between 'defensive' pacts designed to prevent or minimize job losses, and 'positive' pacts intended to increase employment. In a period of crisis, the former obviously predominate, and are "more likely to be imposed than genuinely negotiated" (1999: 35) Another distinction is between those whose main aim is to reduce labour costs, and those more oriented to improvements in product quality and delivery. They add that PECs are most likely in multinational firms, which can benchmark cost and performance indicators across sites (and thus impose coercive pressure at local level); that they make increased demands on local negotiators, intensifying the trend to decentralization of collective bargaining; and that they "are likely to create 'winners' and 'losers' among the workforce involved, which may pose particular challenges for employee representatives" (1999: 36).

In a follow-up study, Freyssinet and Seifert (2001) note significant variation in the concept and dynamics of PECs across countries. Implicit in their discussion is also the question of whether PECs can really be differentiated from 'normal' collective bargaining – since this is always conditioned by the economic circumstances of the employer, and commonly has an integrative or positive-sum dimension. It may be true that in some countries the wide-ranging, encompassing agenda of at least some PECs – covering for example job security, labour costs, working time and work organisation – is novel, but this is not universally the case. Nevertheless, there is evidence of a "general trend towards the dominance of approaches promoting productivity and structural change"; the shared characteristic of most PECs is that they are "geared mainly towards boosting internal and functional flexibility, which they encourage as alternatives to external and numerical adjustment" (2001: 40).

The parties to these agreements predominantly profess their effectiveness, but "it is paradoxical that very few technical assessments of their effects have been carried out or made public" (2001: 65). Freyssinet and Seifert (2001: 69-75) argue that PECs reflect the broader trends both towards the decentralization of collective bargaining and the devolution of state functions to the bargaining parties. They "have provided the chance to introduce new forms of employee representation and broaden their area of responsibility". But both trends have ambiguous implications. Decentralization can remove regulation from the coordination and standard-setting of the national actors, in particular trade unions: "if the unions are not involved, there is a danger of either purely formal negotiations, aiming to legitimise the policy of company management, or 'insider arrangements', reflecting insular concerns rather than a willingness to contribute towards the employment situation." They add that "on the one hand, PECs can complement governments' employment policy; on the other, they can replace it". As discussed below, governments may encourage social dialogue as an alibi for inaction in areas where they alone have the capacity to regulate effectively.

In the current crisis, a dominant cross-national response has been short-time working (or in some cases, temporary lay-offs), often with partial pay compensation from public funds. At times this has involved company negotiations to enhance compensation above statutory levels. In some cases this has led to inter-union conflicts, notably in countries where white-collar workers enjoy stronger statutory protections than manual workers; though there are also episodes (as in France) of solidaristic agreements involving pain-sharing. Another demand pursued successfully in some countries, primarily at company level, is for temporary periods of slack demand to be used for vocational (re)training rather than resorting to lay-offs. Again, this may be facilitated in some countries by state subsidies.

In an initial review of current experience, Rychly (2009: 21) concluded that “it is too early to identify general trends or major changes in crisis-related enterprise or sectoral collective bargaining.” However there seemed to be widespread experience of wage moderation, with employers in some cases pressing for downward renegotiation of existing pay agreements. Negotiations over restructuring and job reductions, with the aim of agreeing on some form of ‘social plan’, were common. Haipeter and Lehndorff (2009) amplify this analysis, with particular reference to Germany, with a focus on what they term ‘deviant collective bargaining agreements’ at company level which – whether or not permitted by ‘opening clauses’ – undercut sectorally agreed standards. PECs, they argue (2009: 27), “are increasingly becoming instruments allowing for unspecified or restricted undercutting of standards agreed at industry or national levels”. Typically they involve a local trade-off in which job losses are avoided or postponed in exchange for concessions on pay or work organization.

In a survey of responses to the crisis in ten European countries (evenly divided between east and west), Glassner and Galgóczi find widespread agreements in western countries on ‘partial unemployment’ or short-time working – though they note (2009b: 10) that in the banking sector “many believe that the current crisis is often being used by employers as a pretext for laying off staff sooner than originally planned.” In the east there is far less evidence of negotiated responses to cushion the crisis, with firms instead imposing large-scale redundancies. In some cases they note what they term as “forced voluntary redundancies” (2009a: 5) – for example eliminating transport services provided for long-distance commuters, and then offering supplementary payments to those who resign their jobs. In her seven-country analysis of responses to the crisis in the banking sector, Glassner (2009) likewise identifies a diverse range of trade union action, often reflecting a combination of collective mobilization and negotiation and dialogue.

Three broader conclusions emerge from the literature. The first is that creative, positive-sum strategies to use reduced demand as an opportunity to enhance employees’ competences are relatively rare: as Haipeter and Lehndorff put it (2009: 41), “the ‘high road’ is not too busy”. The second is that there are nevertheless important national differences linked to the institutional framework of industrial relations and the constraints and opportunities which this creates for national actors. “There is a clear divide in Europe between the coordinated and the more liberal market economies in their responses to the economic crisis,” notes Bosch (2009: 9-10). In countries with high levels of employment protection and strong unions and/or works councils, firms are likely at least initially to prefer internal to external flexibility. By contrast, “in the liberal economies like the UK and Ireland but also many Eastern and central European countries dismissals are less costly [and] unions are fragmented.... Therefore companies rely mainly on dismissals.” The third conclusion, in some respects related, is that multinational employers possess opportunities for strategic choices which are not open to workers and their organizations. Thus, for example, differences in national industrial relations regimes enable multinational companies to make the most stringent job cuts in countries where this is a low-cost option. For analogous reasons, the growing use of temporary and agency workers in many countries, including (and perhaps particularly) those with strong protections for ‘permanent’ employees, has enabled employers to dismiss sections of staff with minimal obstacles.

6. The future of collective bargaining and social dialogue

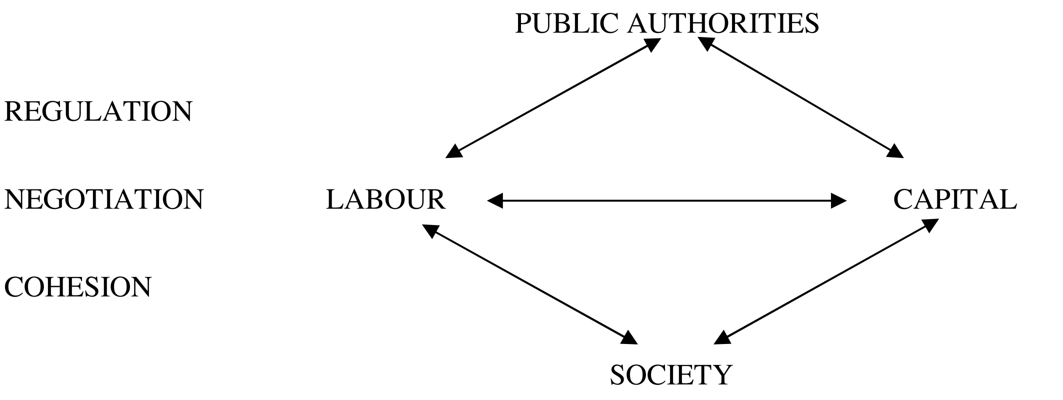
Management by agreement is preferable to management by *Diktat*. Negotiation is more democratic than unilateral imposition. Hence collective bargaining and social dialogue are the most appropriate means of regulating employment relations, a principle which has been widely reasserted in the current crisis. “Especially in times of heightened social tension, strengthened respect for, and use of, mechanisms of social dialogue, including collective bargaining, where appropriate at all levels, is vital. Social dialogue is an invaluable mechanism for the design of policies to fit national priorities. Furthermore, it is a strong basis for building the commitment of employers and workers to the joint action with governments needed to overcome the crisis and for a sustainable recovery” (ILO 2009b: 5). “The European social dialogue is acknowledged as an essential component of the European model of society and development.... European social dialogues, alongside European social legislation, are regarded as driving forces of successful social reform” (ETUI/ETUC 2009). “As a driving force for modernisation of the European economy and the European social model, the social dialogue holds a crucial, unique position in the *democratic governance* of Europe” (European Commission 2002: 6).

These are powerful claims: yet what is really meant by ‘social dialogue’? In its most diffuse and general usage, it seems little more than another term for industrial relations, involving collective bargaining and other means of pursuing agreement between employers and representatives of workers. In a second meaning, it is distinguished from collective bargaining, indicating an exchange of information and viewpoints which may ultimately facilitate successful negotiation but is not itself a negotiating process. In a third sense, it indicates a particular institutional configuration designed to encourage consensual or positive-sum interaction. Fourthly, it may denote a normative orientation towards ‘social partnership’ and the avoidance of conflict.

A related issue concerns the nature and basis of social dialogue. One perspective sees dialogue as a means of generating consensus. This is, I think, the foundation of current attention within the ILO to social dialogue as an institution and as a process. The discussion of social dialogue in *Decent Work* treats it as an instrument of consensus-building (ILO 1999: 38-9); the one clear definition of the term in the volume *Towards Social Dialogue* adopts the Latin American conception of *concertación* as the highest stage of tripartite cooperation involving the pursuit of consensus (Hernández Alvarez 1994: 347; Trebilcock 1994: 4). Yet this imposes a difficult, perhaps utopian model of dialogue; if it implies that conflicts of interests can simply be dissolved through discussion, then it is misleading and may encourage an over-optimistic approach to institutionalized relations between the different social actors. In my view, effective social dialogue entails a *bias towards compromise* which does not however dissolve fundamental differences of interests and objectives. To employ a distinction proposed by Therborn (1993), it typically represents not the “institutionalisation of consensus” but the “institutionalisation of conflict”.

The meaning of social dialogue seems to vary cross-nationally. “The exact role and position of *different forms of social dialogue* (consultation, joint agreements, bargaining, negotiation) very much depends on the specific national labour relations background (e.g. constituent role of collective bargaining in the Nordic Model, the German/Austrian notion of ‘social partnership’ or a still very much state centred model in France” (European Foundation 2009b: 83). In this context, a French attempt to analyse the diverse meanings of social dialogue is illuminating (ENA 2004: 4-6). This identifies three distinct functions, involving different constellations of actors (see Figure 2).

Figure 2.
Three functions of social dialogue



Source: Adapted from ENA 2004: 6.

The function of negotiation denotes the traditional terrain of industrial relations narrowly conceived: the bilateral bargaining relationship between unions and employers. This has both a procedural dimension (enabling employee participation and managing conflict) and a substantive one (distributing gains, improving working conditions and work organization). The function of regulation represents a trilateral relationship with government, defining a social space for interest representation, elaborating the rules of the game and controlling labour market competition. The third function, cohesion, is (at least in my view) more diffuse. It includes involvement in the management of social welfare institutions (note that this is an analysis developed in France), integrating workers within society, and increasing the legitimacy of the socio-economic model (more on this below).

The reference to societal cohesion might seem to imply that social dialogue generates social (and political?) consensus. However, as argued above, reality is more complex: what seems to emerge from analysis of successful initiatives in social dialogue is that the core basis of effectiveness is not so much consensus as trust. There has to develop a mutual understanding between the interlocutors in which each can appreciate the concerns and objectives of the others without abandoning the commitment to protect and advance – forcefully if necessary – the interests which they exist to represent. What is involved has been termed a ‘procedural’ rather than a substantive consensus (Fox and Flanders 1969). Such a procedural bias typically derives in part from a recognition that too conflictual a relationship carries the risk of unacceptable reciprocal damage, in part from a commitment to seek negotiated solutions to differences, in part from a belief that positive-sum outcomes may be possible, in part from an expectation that others will not risk long-term cooperation through short-term opportunistic behaviour. Dialogue of this type requires ‘strategic learning’ by the participants, an iterative process in which the rules of the game are developed interactively as the nature of the game itself evolves.

Yet there is a risk that procedural bias can lead to a kind of fetishism of process over outcome. This is exemplified by a remarkably frank statement by the former general secretary of the ETUC: “in this culture of partnership, the process itself, that is to say negotiating agreements for the sake of negotiating agreements, prevails over the content of the agreements. To confirm one’s status as a central actor and be recognised as such, one has to produce agreements, ultimately whatever they are” (Gabaglio 2003: 51). Conceived in this way, however, social dialogue is talk without substance. “I hear what you say" is a familiar, but chilling phrase: the unspoken corollary is: "I will take absolutely no notice." It is common to advocate employee 'voice' as an expression of industrial democracy. In principle this is correct, but unless voice is effective – unless it yields concrete results – it is no more than window-dressing for employer unilateralism. Here, the suggestion (ENA 2004) that one function of social dialogue is to increase acceptance of 'the socio-economic model' invites cynicism. If the whole process is not to be a mere facade designed to encourage employees to accept their subordination – and in current circumstances, their increasing insecurity – it must yield substantive benefits. This is hard enough in 'normal' times, given the inherent inequality of the employment relationship. It becomes far more so when "globalisation... intensifies the power imbalance between employees and employers [and] destroys the possibility that social dialogue can create mutual gains.... For employees the issue becomes less maximising their gains than minimising their losses" (ENA 2004: 10-11). Globalization plus crisis inevitably compounds this imbalance and makes 'win-win' outcomes far harder to envisage.

Another problematic question has already been mentioned: how does the essentially voluntary process of social dialogue interconnect with mandatory regulation by government? The two most powerful arguments for social dialogue are those of efficiency/effectiveness and democracy. The first insists that those who are directly affected by an industrial relations issue – as employers, employees and their representatives – have the most direct understanding of the circumstances on the ground and hence of the need for regulation, and are best placed to monitor its implementation and in particular to respond to any unintended adverse consequences. The second is related, and involves the principle of 'subsidiarity' or 'industrial self-government': regulatory responsibility should be devolved from the potentially 'overmighty' state to the actors in civil society. These are powerful arguments, but their cogency is undermined unless the 'social partners' possess the will and capacity to regulate effectively.

Experience in the past two decades in the European Union (EU) – where social dialogue was arguably invented and certainly most highly developed – shows this clearly (Keller and Bansbach 2000). As Falkner puts it (2003: 26), "listening to the social partners and bringing them together is now a central component of 'good governance' in the EU." Social dialogue was strongly promoted in the 1980s by the Delors Commission as a precursor – or perhaps an alternative – to EC legislation. A new Article was added to the Treaty of Rome by the Single European Act of 1986: "the Commission shall endeavour to develop the dialogue between management and labour at European level which could, if the two sides consider it desirable, lead to relations based on agreement."

A key development in the process was the *social partners' agreement* of October 1991, on the eve of the Maastricht summit, which led to Treaty revisions which boosted the role of the social partners: as well as being guaranteed consultative input during the framing of Commission legislative proposals, they acquired a new right to opt to deal with an issue by means of European-level agreements which could in principle result in EU legislation. Since then, only three such agreements have been implemented as directives: on parental leave (1995), part-time work (1997) and fixed-term contracts (1999). Subsequently there have been framework agreements on telework, work-related stress and harassment and violence at work, but in none of these cases were the employers willing that they should be the basis for legislation. Many sceptical observers argue that UNICE/BusinessEurope – the peak-level employers' representative – has only been willing to negotiate seriously under the 'shadow of the law', on the principle that if the political balance within the EU is likely to result in a directive on a given issue, it is preferable to shape the terms through social dialogue. Yet since the mid-1990s, and particularly following enlargement in 2004, this political balance has shifted firmly against social legislation. Hence this shadow is fading, and the Commission and Council have turned increasingly from binding directives on employment issues to the more voluntarist 'open method of coordination' involving bench-marking and peer pressure rather than mandatory norms.

Joint regulation by the 'social partners' confronts the issue not only of the potential unwillingness of one party to agree to effective rules but also of collective action problems. Even if the national (or cross-national) representative organizations on each side can agree, to what extent can their agreements be effective in standard-setting? Even in Western Europe, in many countries trade unions and employers' associations cover only a minority of the labour market; in Eastern Europe the proportions are in most cases smaller still, and in other continents usually significantly below European levels. How are the regulatory gaps to be filled? This is necessarily a task for government. In some countries, agreements may be given *erga omnes* (or generally binding) effect; in others (as for example is typically the case in Belgium) they may provide the basis for legislation. But unless governments are prepared to give statutory backing to bipartite agreements – and indeed, to promise (or threaten) legislative action in the absence of an appropriate agreement – the devolution to voluntary action by the 'social partners' may simply be a recipe, perhaps deliberately so, for inaction.

The collective action problem is compounded when 'subsidiarity' involves the devolution of regulatory authority to company or workplace level. Here, the broader macroeconomic framework of competitiveness has to be taken as a given: establishment-level bargainers are obliged to pursue survival in a process which may leave no option to competitive concessions. Multi-plant and multinational companies can be expected to exploit this process in order to drive down employment standards. Here too, the only safeguard requires higher-level regulatory mechanisms.

My final point is that the concept of social dialogue may usefully be counterposed to that of economic democracy. At the height of the economic crisis, much discussion focused on deficiencies in existing systems of corporate governance, particularly in those market economies where 'shareholder value' had become the overriding corporate goal. One of the central assumptions of the 'European social model' is that companies are not merely the private property of the shareholders, because other stakeholders have a legitimate interest in their goals and policies. The systems of 'codetermination' which are institutionalised in much of Europe are an expression of this assumption. Attempts to establish *collective* employee ownership of part of the profits of corporate success – most notably, the demands of Swedish unions in the 1970s for 'wage-earner funds', but more widely the role of workers' representatives in the management of pension funds – also reflect the view that employees should be represented in controlling the application of the resources which they have produced. Economic democracy may be seen as a more concrete expression of some of the values underlying the idea of social dialogue. But in times of economic adversity, its existing institutional expressions have obvious limits. Most notably, primarily enterprise- or establishment-based mechanisms are forced to accommodate to the externally imposed imperatives of intensified global competition, and may be unable to do more than underwrite managerial priorities.

In times of economic crisis, the overriding challenge is therefore to interlink bipartite subsidiarity and decentralization with higher-level authoritative norm-setting, creating new links between different levels of regulation and different issues on the regulatory agenda. Without this, social dialogue in hard times is likely to prove increasingly ineffectual.

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