Austerity, De-regulation and Employment Rights

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The EU Context: Austerity Agenda

- Responses to sovereign debt crisis 2010
- Deregulatory labour law reform as price of financial support from the 'Troika' (ECB, EU, IMF)
- Euro-plus Pact 2011- regulated labour markets as target of liberalisation
- Fiscal policy dictates social policy
- Unintended economic consequences for growth and employment ?

Euro Plus Pact 2011

- Participating member States to take all necessary measures to:
- **Foster competitiveness** – review wage setting arrangements & centralisation in bargaining
- **Foster employment-** labour market reforms to promote 'flexicurity'
- **Sustainability of public finances** eg align pensions to national demographics
- **Reinforce financial stability**

Austerity measures- Implications for labour

- Neo-classical response: reduce EPL as distortion to market -
- Comparison of unit labour costs
- Reduce & de-centralise collective bargaining
- Depress public sector pay and minimum wages
- Re-regulate employment contracts
- Diminish role of employment institutions
- De-regulate dismissal protection

Regulatory Models & Economic Crisis

- De-regulation model- flexible labour market – EPL obstructs market
- Pro-regulation- active labour market policy to reduce unemployment
- Effects of austerity measures?
- OECD, IMF and EU all develop competitive agenda i.e. labour market failure as result of supply side problems.

But

- –Wider economic causes of crisis ?
- -Effects of deregulation on economic growth?
- -Correlation between level of employment protection and ability to adjust to economic change?

UK response to crisis: reinforce neo-liberal agendas

- Neo-liberal agenda since 1979
- Coalition regulation agenda:

- ***Arculus Review*: *Enabling Enterprise* (2009)**

'One of the biggest regulatory burdens for small business is employment law.'

***Reducing Regulation Made Simple,* Better Regulation Executive (Dec 2010)**

'a level of regulation that promotes competition and stability without impinging on business'

Alternatives to 'command and control' : self regulation, co-regulation, economic incentives

Rationales for Change

- Comparative advantage over European competitors
- Cost and efficiency
- Managing staff flexibly
- Ease of hire (and dismissal)
- Reform of tribunal system
- Early dispute resolution

Source: **BIS 'Flexible, effective, fair**: promoting economic growth through a strong and efficient labour market (**Oct 2011**)

Beecroft Report, 2011

- ‘Much of employment law and regulation impedes the search for efficiency and competitiveness.’
- ‘ A crisis such as the one Britain’s economy faces demands radical changes to encourage employers to take on more staff. Some employee protections, (eg discrimination or health and safety) must be maintained. Others, which encourage people to take employment but discourage employers from offering it, must be changed, permanently or temporarily, to help the country out of its difficulties.’

Dismantling Job Security

- ` the whole concept of unfair dismissal where discrimination is not involved could be removed from UK law.'
- ` However, if it is felt to be politically unacceptable to simply do away with unfair dismissal, I strongly favour … a concept of Compensated No Fault Dismissal

BIS, Measures delivered re: Beecroft Report, 2012

- 1) Unfair dismissal qualifying period -**6 Apr 2012**
- 2) No fault dismissal- majority business not support
- 3) Small business exemption- no support
- 4) ET Process – compromise agreements, judges sitting alone, witness statements, cost award limits – **6 Apr 2012**
- 5) ACAS Conciliation, settlement agreements, amend unfair dismissal compensation cap, EAT judges alone **Enterprise and Regulatory Reform Bill 2012**
- 6) Cap on discrimination claims- not achievable- EU law
- **Source: BIS, Sept 2012**

Ending the Employment Relationship without Pain

- Mediation
- 'Protected Conversations'
- Settlement Agreements
- Early Acas conciliation
- Streamlined procedures & composition of tribunals
- Costs and deposit orders
- Qualifying Periods
- Remedies

Crisis in Employment Rights?

Reversing trends of juridification:

(aim = flexibility, not flexicurity)

- Reduce justiciable rights
- Increase 'soft law' regulation
- Reduce cost of rights
- Dismantle tripartism
- Privatise enforcement

Economic Justifications?

- 1.65 dismissals per 100 employees x 25 million employees = approx 400,000 dismissals per year (1% of employees) (***WERS, 2004***)
- 50,000 ET claims per year
- Approx 6.5% claims result in unfair dismissal claim (***SETA, 2008***)
- Costs for employer< £4,200 ET hearing;£3,300 conciliation; £3,700 average claim outcome
- Risk of ET claim following dismissal= 0.0625 (no. of claims/ no. of dismissals)
- Probability of success of ET claim = approx 8%
- Median award in 2010/2011 = £4591 (***HMCTS Annual ET/EAT stats 2010/11***)

Renorming the Employee Relationship ?

- Reduced performance management procedures
- Increased managerial discretion
- Reduced bargaining power of workers
- Risk of waiver and compromise ?
- Employer access to employee private interests?
- Internalised justice
- Issues of fact and law
- Autonomy of labour law

Concluding thoughts

- Social costs of austerity programmes eg precarity, segmentation,unemployment
- Can labour law still pursue non-market values eg fairness, voice, equality?
- Can de-regulated labour markets work without some fiscal stimulus and active growth measures?

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