

The employment relationship and public policy: From Donovan to Beecroft – parody and tragedy after 45 years?

Anthony Fenley - Centre for Employment Studies Research (CESR),
University of the West of England, Bristol



Anthony.fenley@uwe.ac.uk

This article examines the significance and implications of the Beecroft Report, a report on employment law and regulation published in May 2012, for the future conduct of the employment relationship in the 21st Century. Whilst many might regard the report's sixteen pages and the eighty or so unnumbered paragraphs as intellectually light weight, it has attracted considerable comment and attention within the political community and amongst leading players from the field of industrial relations. In addition it appears to have informed the Enterprise and Regulatory Reform Bill, either openly or surreptitiously, and has been a reference point for both Left and Right in the debate on that bill as reported in Hansard (11.06.12).

This article will contend that Beecroft is a reminder that the regulation of the employment relationship is central to political and social debate, and the historic conflict between Capital and Labour. It also serves to underscore the continuing significance of the ideological frameworks of unitarism and pluralism, and the neo variations of each. Furthermore, it reminds us that human resource management should not be seen in isolation, as simply a matter of professional expertise and competence, but as part of a wider political, social and ideological environment.

Ostensibly the Report's concern is to make a series of suggested reforms to aspects of employment law and regulation – e.g. 'no fault' dismissals, and the right of opt-out in respect of unfair dismissal where there are less than ten employees. However, it is the precepts of political economy on which these changes are mooted that generate controversy, not least because the claims on which they are based lack both intellectual rigour and empirical substance. The Report has to be seen not only within the epic context of contemporary debate, but also within the broad sweep of labour history. Beecroft is totally committed to supply side, or neo-liberal, economics and the belief that prosperity and recovery are driven by private sector employers who are able to recruit and deploy labour in a flexible way and hire and fire employees unfettered by 'unnecessary' regulation. Whilst this approach to economics is popular, it is not without its critics – which Beecroft omits to mention in spite of the significance and potential repercussions for working people of this premise. Beecroft tables only opinion and

Beecroft is totally committed to supply side, or neo-liberal, economics and the belief that prosperity and recovery are driven by private sector employers who are able to recruit and deploy labour in a flexible way and hire and fire employees unfettered by 'unnecessary' regulation.

hearsay: there is no hard evidence submitted to support his analysis. Indeed, there is no evidence supporting neo-liberal economic policies. However, it is on such claims of informed wisdom that he seeks to manifest, legitimise and sustain neo-liberalism. As far as workplace industrial relations are concerned it underscores the unitarist and neo-unitarist frameworks which aim to maintain labour as a subordinate and dependant source. Arguably, Beecroft represents a return to the 'blunt instrument' approach to managing labour, albeit one that has to address the legal and social evolution of the past half century. Although Beecroft recognises the political unacceptability of an absolute right to hire and fire, he advocates a series of changes to tribunal procedures, and introduces the concept of settlement agreements, all of which arguably would make it easier to dismiss workers.

There is an absence of any direct reference to trade unions as parties to the employment relationship. In this regard the report neglects the potential advantages and gains to *employers* of the neo-pluralist approach to workplace relations. The neo-pluralist framework posits that unions and labour increase their influence through acceptance of a managerialist agenda, incorporating new issues and new methods that either supplement or eclipse collective bargaining. The critique of this approach is that it further marginalises and neutralises the capacity of workers to have meaningful influence over decisions and outcomes within the workplace and within the organisation. Moreover, it also encourages workers to become compliant and willing parties in their own subordination. But even this degree of compromise is insufficient to meet the neo liberal agenda.

The Beecroft Report represents a significant break from, and a parody of, the public policy recommendations for regulating industrial relations made by the Donovan Commission over 40 years ago

The Beecroft Report represents a significant break from, and a parody of, the public policy recommendations for regulating industrial relations made by the Donovan Commission over 40 years ago (Donovan 1968). The Royal Commission was rooted in two principles

of social consensus. Firstly it recognised that the problems inherent in the workplace meant that the (then) existing systems of employment regulation were no longer able to deliver economic success and industrial stability. Secondly, membership of the Commission reflected the principles of both pluralism and tripartism, which recognised both the diversity and common interest of members drawn from business, the public sector, unions, academia and the media. The Commission was informed by largely empirically based research evidence, and submissions from interested parties, all of which were subsequently deposited in the public records office. This contrasts sharply with the Beecroft Report, carried out by a single 'wise man', drawn from the world of financial capital with alleged interests, *inter alia*, in pharmaceuticals and the privatisation of the NHS. It is not implausible or unkind to suggest that such a narrow and singular participation rate (of one) is likely to lead to biased outcomes, and amplifies concerns expressed elsewhere about systems of governance and enquiry within the UK by the Institute of Government. Such concerns are further amplified by those who note the influence of Cameron's inner circle in Beecroft's appointment, and his donations to the Conservative Party.

This narrow partisanship and this approach to informing public policy making explains, in part, reactions to the report. This reflects not only a lack of consensus, or indeed lack of engaged dialogue between representative bodies of labour and capital, but also divisions within and between different employers and management bodies. Within the Coalition government there are reported differences of support and approach. The TUC and the Unite union have each issued well measured criticism of the Report. It also appears that the Confederation of British Industry

the Institute of Directors and the British Chamber of Commerce support Beecroft, whilst the Chartered Institute of Personnel, the Federation of Small Businesses and the Engineering Employers Federation have expressed reservations of various kinds. Such schisms may be a reflection of historically chartered distinctions between the interests of finance capital and industrialists. It may also reflect differences between medium and large size businesses. It is true to say that Beecroft pays a great deal of attention to micro and small businesses, with regulations presented as impediments to growth and the acquisition of new staff.

What lessons can be drawn from the Beecroft Report and its potential influence? As far as contemporary political debate is concerned there has to be serious reservations that what may be significant employment and legal architecture with far reaching consequences is being built on the flimsiest of foundations. This is likely to have both negative and unintended consequences, and adds weight to those who have serious concerns about the UK's systems of governance with regard to policy making.

The Beecroft Report covers sixteen separate issues, and makes a considerable number of recommendations. As briefly noted above, much has been made of apparent divisions within the governmental elite, within the Coalition, between the 'Cameronites' and the 'Cableites'. However whilst Cable may disparage some of the more outlandish rhetoric in the proposals of Beecroft, his comments elsewhere suggest a sharing of the neo liberal economic analysis and remedies to the UK's problems. A document issued by the Department for Business Innovation and Skills indicates that there are seventeen proposals that the Department is taking further or considering, and only six that it is not.

This is worrying in itself but there are concerns that aspects of the Beecroft report have influenced the content of the Enterprise and Regulatory Reform Bill. These include a mandatory requirement for tribunal applicants to use ACAS conciliation without any indication that ACAS's resources will increase. More importantly, it gives the Secretary of State power to impose a cap on unfair dismissal compensation. The maximum is specified to be at some point between median earnings or three times median earnings, which at the moment would be in the range of £26,000-£78,000. Alternatively the limit can be a maximum of one year of an applicant's earnings. It is estimated that this will have a disproportionate impact on professional and managerial workers, but it will also allow exemptions for certain other (unspecified) categories of employees. The latter again provides evidence of a strategy that is supportive of privatisation, and aimed at sectors where the intent is wholesale restructuring of employment. There are also suspicions that the report will shape, as yet unspecified, amendments to the Bill to further facilitate this strategy.

The term 'Beecroft' resonates with serious lessons and implications for those involved in the regulation of the employment relationship (human resource and line managers, union representatives, academics and public policy practitioners), and its consequences for economic well being and social stability within the workplace. The most important of these is the need to be conscious and aware of those who seek, under the guise of economic enlightenment and public policy initiatives, to manipulate the management of the employment relationship in the interests of a

The term 'Beecroft' resonates with serious lessons and implications for those involved in the regulation of the employment relationship (human resource and line managers, union representatives, academics and public policy practitioners), and its consequences for economic well being and social stability within the workplace.

partisan ideology and a neo liberal view of political economy. This is where meaningful regulation and State protection for workers is to be disparaged on a series of false premises. This need for caution is compounded by the absence of empirical evidence – which is, at best, inconclusive. There is a need for UK trade unions and the Labour Party to be alert to the wider implications of the Report, and the dangers of decollectivisation by stealth. Keith Ewing, professor of labour law, amongst others, has noted that the Report also poses threats to discrimination cases, flexible working, and redundancy situations. The possible erosion of rights relating to discrimination and whistle blowing may represent a pre-emptive attempt to scupper those workers who seek to use such rights as an alternative to dismissal rights. The specific proposals on undermining rights in respect of dismissal, and the systems for applying them, will resonate not just in individual cases that are brought forward, but in the management of discipline and conflict and the application of control in all employment relationships.

The Human Resource Management (HRM) profession also needs to be vigilant against Beecroft's approach to the management of HRM

The Human Resource Management (HRM) profession also needs to be vigilant against Beecroft's approach to the management of HRM. Some have suggested that, for personal reasons Beecroft has a dislike of HRM. There is, it must be said, an almost disparaging and begrudging

acceptance of the competencies and skills that HRM professionals bring to addressing the complexities of people issues in larger organisations. However, and somewhat ironically, there is a denial by Beecroft of the need for such administrative skills in micro and small organisations. "Many successful owners of small businesses may have great skills related to their trade but have a limited aptitude for the type of administrative tasks that are needed to comply with regulations" (Beecroft 2011, p.5). This contrasts with his views about overcoming the difficulties in 'removing an employee' whose performance is no longer acceptable or where there are "changes in the demands of the job....as the company grows" (*ibid* p.4). This is quite clearly a case of dual standards. Moreover, he candidly admits that simply to do away with the concept of unfair dismissal would be unacceptable, but instead advocates the principle of 'no fault' dismissal. This is where the employer simply states that they are not happy with the employee's performance, then consults, gives notice and pays a defined level of compensation which is linked to the employee's salary and length of employment. Beecroft says that such compensation would be that specified in redundancy situations and would be known as 'No Fault Dismissal' (*ibid*. p.4). The Chartered Institute of Personnel's adviser on employee relations, Mike Emmott, is reported as saying:

"There is no evidence that no-fault dismissals would make a positive contribution to economic growth in the UK by encouraging the smallest firms to recruit more employees. Indeed, by increasing job insecurity and reducing employee engagement it would be more likely to damage growth." This reflects concern that the Beecroft initiative would undermine neo-unitarist policies on commitment and engagement.

Even amongst small businesses there are well expressed reservations. One example was raised by the Secretary of State in the parliamentary debate who noted that, "one of the problems the small business sector often highlights is that it does not wish to be regarded as a second-rate tier of employment that is colonised by cowboy employers. It makes it very clear that it is small businesses that resist segmentation of the labour market" (Hansard 2012, *ibid*). Small business are also concerned that 'no fault' dismissal would make it more difficult to recruit skilled and productive workers who would resent the potential difficulties of obtaining credit where their employment was insecure (*ibid*. p.32).

Arguably it is a very specific group of employers and organisations who stand most to gain from both the content and ethos of the Beecroft proposals. These are the ones who will gain most from rolling privatisation, and providers and supporters of outsourcing. Whilst some of these may be small businesses, arguably advocacy of the protection of the micro sector is largely a decoy and smokescreen. It is big business who have the most to gain from mythologising the impact of employee and social protection and seeking to place responsibility for the causes of the recession and the impeding of recovery at the feet of workers and labour. Indeed, Beecroft symbolises and represents the hijacking of employment issues by parts of the political elite not only to legitimise their own positions in government, but to sustain the ever changing needs of capital. A stage has been reached whereby the functions and services once quite legitimately provided, and monopolised, by the State, for both sound moral and economic reasons, are now seen as the fertile ground for new forms of profitability. These functions are education, social care, health, law and order, and national security.

Conclusion

I make no excuses for the fact that this article has been written from a pro-Labour Party and Pro-trade union perspective. From this perspective, the process of 'ideological overreach' which characterises Beecroft should be seen by the Labour Party and trade unions as an opportunity for demystifying and exposing the current and evolving system of political economy, and the partisan and naked ambitions of the political elite personified in the Cameron government. Increased immiseration in terms of reduced wages and incomes, greater job insecurity, diminished dignity at work, and the removal of employment 'safety nets' represented by the Beecroft phenomena should act as a catalyst for enhancing labour solidarity both within the workplace and politically. But even those who may not share this article's radical perspective need to be wary. Even from a pro-business and pro-managerial perspective, the Beecroft initiative, and the climate that it will create, will totally undermine established systems of employment regulation as well as the trust and confidence of all parties that sustain them. The overall result is likely to be uncertainty and instability. Industrial relations has come a long way since the pioneering work of the Donovan Commission, in the Beecroft we witness not only parody but also tragedy in the making of public policy.

References

Beecroft, A. (2011) 'Report on Employment Law', available from:

<http://news.bis.gov.uk/imagelibrary/downloadmedia.ashx?MediaDetailsID=5551>

Department for Business Innovation and Skills, 'Adrian Beecroft report on employment law: issues the government is taking further or considering, or not taking forward', available from:

<http://bis.gov.uk/assets/biscore/employment-matters/docs/a/12-830-adrian-beecroft-report-issues-government-is-considering>

Donovan (1968) Royal Commission Report on Trade Unions and Employers' Associations 1965-1968, Cmnd 3623, London, HMSO.

Hansard (2012) available from:

www.publications.parliament.uk/pa/cm201213/cmhansrd/cm120611/debtext/120611-0002.htm