

TRACK 2

CHANGING CONTOURS OF THE EMPLOYMENT RELATIONSHIP  
AND NEW MODES OF LABOUR REGULATION

Rapporteur Paper

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## CHANGING CONTOURS OF THE EMPLOYMENT RELATIONSHIP AND NEW MODES OF LABOUR REGULATION

I have interpreted my task as rapporteur as being to give a flavour, rather than a comprehensive summary, of the papers. What I say is informed by my reading of the abstracts and first drafts of full papers submitted for this track, not only those being presented in workshops but space means that reference to authors inevitably will be selective. The content and approach adopted to some extent is constrained by the papers in that certain potential issues under this track received less attention than others.

### **1. Changing contours of the employment relationship.**

There is a general view that the nature of employment is changing, and contributors identify and focus on two broad aspects of change. The first is the growth of what are variously termed atypical, non standard, flexible jobs (by which is generally meant part-time work, temporary employment, including agency employment), and a growth in self employment, including 'pseudo' or dependent self-employment. The second is the rise of networked, boundaryless (sometimes virtual) organizations in which highly skilled, autonomous professional individuals, with occupational or portfolio careers rather than organizational careers, link together with others to work on a non hierarchical project basis. Crosscutting the two categories is the growth of SMEs, although the nature of these small firms varies by sector.

The first category of change is often associated with the growth of 'poor work', inferior, insecure contingent jobs and interrupted, discontinuous employment. It is associated with a shift of employment towards the service sector, and in some countries with increased female participation in the workforce. The second category tends to be linked to the growth of the so called 'new economy', the 'wired world', the 'knowledge economy', with generally positive connotations for those knowledge workers employed in high tech sectors such as ICT. The new organization models are seen as better able to exploit and operationalise knowledge intensive assets.

These associations are not exact and these two categories are not necessarily separate. Papers reveal the heterogeneity behind labels such as temporary or part time work, both within and across national boundaries; in the nature and quality of the work, in employer rationales for use of atypical forms and in the extent to which such work represents a positive worker choice. The two categories of change can also co-exist, with the high technology or ICT sectors, for example, not only involving high status employment but also generating a range of lower level precarious jobs. Contrast the stereotypical call centre employee with the professional software engineer.

Developments are widespread but the nature of change is not universal. Increased forms of flexibility in some Western economies, for example, may reflect what is more common practice in parts of Asia. Colleagues from Latin America and some parts of Africa draw our attention to the size and growth of the informal sector in those economies as the main challenge in terms of thinking about new forms of legal

regulation. Olivier, Kalula and Carolus, for example, indicate how labour market reform in Southern Africa has been focused on the formal sector and hardly any attempts have been made to develop regulatory links with the non-formal sector and broad based social protection strategies. They suggest an alternative integrated approach.

In the categories identified, the employment relationship differs in key respects from what is generally termed the 'normal', 'typical', 'standard' or 'traditional' form. This is generally conceptualised as a full-time, permanent (i.e. open ended) employment relationship between an employee and an employer, normally linked to a workplace with defined spacial and physical boundaries. In as much as regulation of employment reflects, assumes or underpins this typical or standard form of the employment relationship, characteristic of Fordist/Taylorist work organization, then changes in its contours raise questions about the extent to which regulatory frameworks 'fit' these changed circumstances, and suggests a potential need for new modes of legal and other forms of regulation. But this requires some assessment of change and of the way in which regulatory frameworks no longer fit. Issues of fit (misfit) and the need for adaptation to which this gives rise may also be relevant to our study of industrial relations.

### *Identifying and assessing change .*

It is not uncommon in industrial relations writing (as elsewhere) for change to be more interesting than continuity with the consequence that the scale of change may appear to be greater than it is.

Looking for example at the UK, one of the least regulated of the European economies, we find the proportion of the British labour force in full-time permanent employment has declined since 1980 by some 10% points; part-time employment (excluding those who are self employed) has risen to around 22% of the workforce. Almost 20% of the workforce are either employed on a temporary basis or are self-employed. Temporary work remained constant throughout the 1980s but rose in the 1990s to around 7% of the labour force (some 1.7million), of whom around one half are on fixed term contracts. Temporary agency work has shown the most consistent growth.

So there has been change, but there are also continuities. For example the Labour Force Survey for the UK labour market indicates that permanent employment remains central (4 out of 5 employees) and job tenure rates have remained almost constant. There has been stability or only limited growth from low bases in self-employment and temporary work.

Other accounts, for example analysis of Eurostat Labour Force Surveys (by Hoffmann and Walwie 2000), reports from the ILO (e.g. on job tenure 1997) and OECD indicate that the picture of change but also continuity applies elsewhere in the world too. OECD studies show that the shift away from the standard employment relationship has been exaggerated but they also confirm the moveable nature of the boundary between employment, self employment and other forms of contract. In 1999 nine-tenths of employees in advanced industrial economies were still employed as employees on open

ended contracts. In Korea, however, Lee informs us that the proportion of ‘non regular’ employees has increased to more than half of employees in 2000, a dramatic rise since the 1997 economic crisis in that country.

What we take as our starting point of course will influence our perception of any change. There is sometimes reference to the notion of the standard employment contract as ‘traditional’. Use of ‘traditional’ as a label can be problematic - as in talking about a move away from the ‘traditional 40 hour week’. Some writers do not seem to look back very far and may extrapolate from a relatively limited set of reference points (the employment patterns of the advanced economies in the 1950s – 1970s). Longer perspectives may reveal that change is itself an aspect of continuity.

How the ‘normal’ or ‘standard’ employment relationship is understood will influence the extent to which it is seen as continuing or being eroded. I earlier indicated commonly referred to features of the standard or typical or established employment relationship, but what is actually meant by this varies. Some definitions of the standard employment relationship appear to reflect particular country specific conceptualization. In Germany the term tends to be capitalized as Standard Employment Relationship with particular meaning and significance not as apparent in other countries. The existence of a number of different ‘standard employment relationships’ is noted by Bosch in his paper, who argues that employment relationships are becoming more differentiated. As has been observed (Wager 2000 quoted by Bosch), the more stringent and detailed the definition of the standard employment relationship is, then the greater will be evidence of its disintegration.

There is also the question of whether the descriptors ‘normal’, ‘standard’ ‘typical’ are understood in a quantitative sense (referring to the most common form of employment relationship) or more qualitatively, in the sense of providing the template or model for employment relations and their regulation. Often, of course, these overlap but it is possible for a form of atypical work (for example part-time work) to be the most common or typical form of employment contract quantitatively in certain sectors or for certain groups of workers i.e. women, while full-time employment still remains the template (the standard form) for employee rights and protections, and for engagement with the social security system etc. The labels and dichotomous relationship of typical/atypical, overlapping the common division of male and female work are not unproblematic (Hansen 2002:193).

A further observation concerning assessing change is that some changes are more readily revealed than others in statistical data. If, for example, the *quality* of jobs (as indicated by such things as training, access to good pay and other benefits such as pensions) is seen as part of the standard employment relationship then erosion in this respect may not be picked up by data on job tenure or form of contract.

Looking at changes in the form of contract may neglect the way in which conditions for those within the normal or standard relationship may also be deteriorating. Hegewisch and Latta make this point in their paper to the congress based on the 3<sup>rd</sup> European

Foundation Survey on Working Conditions. They note that employment conditions are increasingly worsening for considerable sectors of the workforce irrespective of contractual status and argue that contractual status is becoming less of an independent explanatory factor for working and employment conditions, and more of just another facet of work intensification and insecurity.

Change may be widespread but the composition and direction of change may differ. In terms of composition, within a general but uneven move towards more 'flexible' forms of employment contract, the relative use of different forms of flexible contract can vary. This is the case with temporary as opposed to part-time working as a way of obtaining numerical flexibility within Europe. In Spain for example there has been a sharp increase in temporary employment so that 32% of employees have a fixed term contract. Elsewhere, for example in Germany, it is part-time employment which has increased rapidly.

It is clear from the evidence that part-time working has increased in many countries but not everywhere. In Denmark for example it has declined. In their paper Rasmussen, Lind and Visser compare developments in part-time work in New Zealand, Denmark and the Netherlands to explore the reasons behind the rather different patterns and nature of part-time work in those countries. They argue that the impact of regulatory models, collective bargaining and social norms can clearly be detected in the diverse developments.

As their paper, and others, demonstrate, what is meant by common terms like part-time work can vary, not least in the extent to which it is precarious employment, or work on inferior conditions to standard employment. It may also be in some contexts that the practical distinction between full time and part-time work has less to do with hours worked than status and conditions. Some of the case studies presented in Congress papers reveal the heterogeneity of practice and experience behind common labels. For example, employment on a temporary basis may be a forced choice for low skill workers taking jobs on inferior conditions to regular workers, or, by contrast, a positive choice by a highly skilled portfolio worker with considerable labour market power providing specific expertise to, say, a small software company which has only limited need for it.

In assessing change, there is also the question of time frame. Do changes identified in the contours of the employment relationship mark a shift, a long term structural change in employment, or are they reactions to short term cyclical developments. A number of contributors note it is necessary to distinguish transient or time limited developments from those which are longer term. In their case studies exploring the use of agency work in the UK, Purcell et al raise the question whether the extension of contingent employment (notably temporary agency work) reflects cyclical socio-economic trends and/or specific labour market pressures, rather than representing a move from contract to network as predicted by various theorists. They conclude that it is still likely that the reason for the use of temps is the long standing one of employers getting short term replacement for staff absences but they point to the clear emergence of a new type of agency work. This consists of large scale agency resourcing where client companies

contract with one or more agencies for volume provision of temps on regular basis. They indicate this is especially evident in finance and ICT and the telecommunications part of the latter.

In terms of change and continuity in the second category identified at the start, some of the rhetoric of the virtual organization, the knowledge economy and the 'wired world' does seem to run ahead of the reality. Despite talk of the death of Fordism, mass production still accounts for a substantial part of industrial employment around the world and we still have large bureaucratic, physical organizations. Nonetheless there is an emerging fluidity in organisational, sectoral and occupational boundaries. It can no longer be assumed that work organizations and establishments will exhibit relatively firm, empirically verifiable boundaries, defined by location, plant and workforce (Purcell 2000).

New, different jobs are emerging or increasing in importance. But even in de-industrialised economies such as the UK it is employment in the service sector rather than the knowledge economy as such which has risen. The fastest growing occupations in the UK in the 1990s include software engineers and management and business consultants but other occupations outstrip their growth. Employment growth has been concentrated in occupations (such as hairdressers, sales assistants, education and health workers and care workers) that are not in the main associated with the shift from an old to new economy (Nolan and Slater (2003)).

Such observations, however, caution against overstating change rather than deny it is occurring. Empirically grounded studies – including some at this congress - help to provide some better identification and evidence of what is going on, leading to criticism of the more sweeping predictions (discussed by Nolan and Wood (2003)) which have depicted an emerging revolution in employment and work relations. Change is taking place but it is perhaps more partial and uneven than often depicted. It is likely that the future shape of the employment relationship will be characterized by continuing diversity and complexity and points of continuity with the past.

To help assess the extent to which currently observed trends will continue we need to consider the forces underpinning and driving change or stability in employment relationships and the stability or otherwise of the broader context. This is something Bosch does in his paper. He notes that the model of the SER for men was based on mass production and the traditional domestic division of labour. Changes in these areas, together with other factors (the combination of education/training and work, rising educational levels; the employment situation and regulation/deregulation of the labour market) are presented as significant in predicting the continuation or decline of the SER. He makes the valid point that, in as much as some developments reflect social norms or institutional frameworks which may change, the future cannot simply be extrapolated from any current trend.

Part of any consideration of the forces driving change or underpinning continuity is the perceived continuing utility of the typical or standard employment relationship. Some

contributors argue that the standard or established form of employment relationship has proved itself valuable and adaptable and that moving towards flexible forms of contract, for example, can be dysfunctional for employers (and not simply potentially disadvantageous for employees). Fuchs, for example, argues that an organization which relies heavily on (numerically) flexible workforces will lose its ability to bind, retain and attract its skilled and most important idiosyncratic workers. He sees secure, long term, employment relations as a necessary condition to develop sustainable competitive advantages based on the tacit and intangible knowledge embedded in the heads and hands of the workforce.

Marsden has noted certain advantages of the employment relationship (governed by an incomplete, open ended contract) which could underpin its continued use and helps account for its popularity. It provides firms and workers with a flexible method of coordination and a platform for investing in skills; enables management to decide detailed work assignments after workers have been hired and delimits managerial authority and protects against opportunism. In his paper to the Congress, he considers the challenges posed by the rise of the 'network economy' to established methods of regulating the employment relationship, noting that its underpinning elements (which he sees as the intersection of psychological, economic and legal 'contracts') fit uneasily with new patterns of project-based work. He argues that unless we see the development of functional equivalents of the safeguards that underpin the mainstream employment relationship, it is likely that further development of project-based employment will be restricted. The paper examines a number of cases to see how they attempt to tackle the problem of engendering cooperative behaviour in an environment where opportunistic behaviour is likely.

## **2. Labour regulation**

The title of the track connects the changing shape of the employment relationship and modes of labour regulation. Arguably the connexion works in both directions. Changing contours of employment may require adaptation in the modes of regulation which no longer 'fit'. But, also, labour regulation may be part of the explanation for the changing contours of the employment relationship and the composition of employment.

Where regulation provides protections for standard workers, employers' desire for certain forms of flexibility (including disposability) may encourage the creation of jobs outside the regulated area, either in forms such as temporary work, or self employment, which do not enjoy same level of protection as standard work, or resort to the informal, unregulated sector. Strict legal protection against the dismissal of permanent workers in Spain, for example, is usually given as one reason why companies there make such extensive use of fixed term and temporary agency workers. Papers from various countries including Korea, point to legal protection for standard workers having this kind of impact. Thus, as Lucena observes in relation to Latin America there can be 'modernism and backwardness': sophisticated regulatory schemes in the modern (formal) sector of the economy but at the same time exclusion and informality.

In some contexts employers' use of non standard workers, rather than seeking to meet particular flexibility needs, may be based on the fact that cost and other advantages accrue from their being excluded from higher levels of legal and social protection. But explanations for growth in certain forms of non standard work, and differences as between countries cannot be reduced to differences in regulation. Part-time work did not decrease in the UK, for example, as part-time workers there increasingly gained the legal protections previously confined to full time workers, although the argument that the creation of part-time jobs would be hit was part of the case made against extending protections, such as that against unfair dismissal, to workers with low weekly hours. The improved position of part-time workers in the UK came mainly from the need to comply with European law. The fact that women form 80% of part-time workers in the UK enabled some protection to be afforded through discrimination legislation since inferior treatment of such workers constitutes unlawful indirect sex discrimination. European judgments to this effect led to changes in both UK national law and employer practice. Protection for part-time workers qua part-time workers was provided by the need to comply with European Directive on Part-time work. More recently, influenced by the work-life balance or 'family friendly' agenda, a legal right has been introduced in the UK for working parents of young children to request flexible working hours.

Contentions that legal protections underpinning employment relationships inhibited desired change necessary to meet changing conditions in the face of global competition, and were linked to labour market inflexibility and unemployment formed part of the arguments for deregulation which were widespread in many countries in the 1980s and 1990s (and are still echoing, despite lack of empirical support for such causal relationships). Such arguments were made strongly in the UK despite there being few restrictions on employer freedom in contract formation and only minimal legal protections for even permanent full-time workers (Dickens 2002).

In the papers we have examples of how legal regulation can help shape employer strategies towards non standard work but this may be only at the margins, for example (in Purcell et al ) not whether to employ workers on fixed term contracts (a decision driven by business needs) but the length of such contracts (offering contracts of a length insufficient to qualify for legal entitlements). As this indicates, it is possible to over estimate the role of law in shaping employment decisions, particularly where these are decentralized to company level. Among the mediating influences is an organization's HR strategy.

Colvin provides a comparison of management flexibility and workplace dispute resolution in organisations in US and Canada. His analysis of data from an establishment level survey in three industries indicates how the influence of law is filtered through and influenced by the organisation's own strategic orientation in regard to its employees. He concludes that, although there is some evidence for the effect of differences in the legal environment on how flexibility and fairness were balanced at the workplace, employer human resource strategies, in particular the adoption of high commitment strategies, had equal or greater effects.



Case studies of Yuhan Kimberly and Samsung Electronics Co. in Korea presented in H-S Lee's paper show that although at macro-level in Korea the focus is on numerical flexibility and cost reduction, at organizational level there can be implementation of high road HRM strategies, which he argues are more appropriate for competing in an increasingly globalised knowledge based digital economy.

In their paper, Fine gold and Frenkel note that in knowledge organizations, where people are the primary if not the sole driver of value creation, one would expect strategic human resource management of the high commitment, high-road type which Lee describes. Their exploratory study of bio-technology firms in the USA and Australia, however, found that there was often an absence of any HR function and, if it existed, there was no strategic role.

A rather different argument concerning how legal regulation might shape the contours of the employment relationship is that improving the conditions of atypical work will make it more likely that workers will accept such contracts constructed to meet business needs. In this way legal regulation can encourage numerical flexibility and/or promote employment through encouraging atypical or non standard work. This view is reflected in the EU approach of improving the position of part- time, fixed term and, more recently agency workers through a series of Directives. This can be seen as an attempt to find some balance between security and flexibility, attempting to enhance the employment position of non standard employees while also serving to enhance the flexibility of labour markets, and work organizations.

As Wilthagen and colleagues discuss in their paper, flexibility is seen as necessary by member states of the EU and the EU itself to reinforce the competitive performance of companies, sectors, countries and the EU as a whole. On the other hand there are concerns with respect to social exclusion, segmentation, employment and income security. This is what they call the 'flexibility-security nexus'. Their exploratory paper looks at this nexus in various EU countries, seeking examples of, and preconditions for a balancing of flexibility and security which they term 'flexicurity'. This is defined as 'a policy-strategy that attempts synchronically and in a deliberate way, to enhance the flexibility of labour markets, the work organization and labor relations on the one hand, and to enhance the security – employment security and social security – notably for weak groups inside and outside the labour market on the other hand. They explore the different emphases put on forms and levels of flexibility (external numerical, internal numerical, functional and wage) and security (job, employment, income, combination of paid work and other social responsibilities) and the particular trade-offs made in Germany, Belgium Denmark and the Netherlands. They suggest that the Dutch and Danish cases indicate that important preconditions for the introduction of 'flexicurity' are co-ordinated decentralization and flexible multi-level governance in national industrial relations systems.

### ***Problems of fit - legal regulation***

*'Changes in the concepts of the workplace, firm, factory, employer and related organizational developments such as downsizing, outsourcing, subcontracting, teleworking, net working and joint ventures are it is argued bringing new dimensions to the world of work for which traditional labour law provisions do not appear to have adequate answers'. CEC Green Paper Partnership for new organization of work COM (97) 128 final Luxembourg para 42.*

As in the quotation, the issue is often expressed as one of inadequate fit between labour law and changed employment. Legal regulation (and social insurance systems) is shaped around a notion of the employment relationship (the normal, standard, typical) which is changing. Thus it also needs to change. The rationale for change may be to ensure that developments such as the rise of the network economy and project work are not hampered (the issue Marsden addresses), to ensure that legislation serves rather than undermines competitiveness in a global and knowledge driven world by 'legislating for trust, cooperation and flexibility' (Collins 2001:35), and/or to ensure that those working in forms of employment which deviate from the standard are not disadvantaged, adjusting the scope of protection to meet changes in the contours of employment. The state may also have an interest in including atypical workers within social security regimes to ensure their continued funding.

The norm for legal regulation (and social security arrangements) is often the typical or standard worker; so the growth in atypical forms raises issues of fit as people fall outside protections and coverage. One aspect of this is the question of who is an 'employee' (and so entitled to rights, protections and obligations accompanying that status). This is an issue which has exercised courts and legislatures in relation to the rise of dependent self-employment (Pedersini 2002). A recent legislative change in Britain (Employment Act 1999) gives the Minister power to confer statutory employment rights on categories of worker previously excluded by the definition of employee. Similar extension to include 'employee like' workers within protective regimes can be seen elsewhere (for example in Italy and Germany). Another question which the changing contours of employment throws up is who is the employer. This arises in what are often termed triangular relationships (between an agency worker, the user company and the supplier agency). J- JR Ko discusses this question in relation to labour dispatching in Taiwan) and Davidov explores the way the issue has been addressed in Canada, the UK, elsewhere in Europe and in Israel. Davidov's rationale for adjustment in legal regulation is to ensure those in need of protection obtain it, and that the growth of this form of non-standard work is not at the expense of those performing it. Drawing on the legal models he proposes a 'joint employer' solution.

In employment in the new knowledge economy, standard legislation designed to provide worker protection may be seen as establishing a poor fit with changing organizations, managerial approaches and also worker preferences. There are two aspects here. One is that usual regulation frameworks are based around Fordist work organization and managerial command and control approaches and not the high trust, high commitment

approaches to managing employees argued to be more suited to organizations in this sector. The other is that workers in these organizations with different orientations to, and understandings of work, workplace and working time may view labour standards legislation as a constraint on their freedom and preferences rather than as desired protection.

Working time regulation standards and controls were taken as a focus by some contributors to discuss this. Dupre and Lallement highlight the tension between working conditions in SMEs in the ICT sector in France and that country's national working time regulation which aimed to reduce working hours (Aubry laws). The laws, they argue targeted big companies with Tayloristic organization, whereas this sector has a large number of SMEs, network organization and highly qualified employees working non hierarchically on a project basis with close links to customers. They provide a detailed look at the negotiations around working time at sector and company level in a sub sector of the ICT sector and explore how the SMEs they investigated took account of the new rules elaborated at sector level. Not surprisingly, they feel, given the need to work out the implementation of the laws at sector and enterprise level there was a gap between the spirit of the law and its effective impact (particularly in respect of job creation), and also some unexpected consequences.

One issue which emerged in their research concerned the blurred boundaries between work time and leisure time as software engineers were able and wished to play video games on the high powered machines they used for work. Some enterprises introduced in the agreement a distinction between working time and opening time of the firm to accommodate the fact that long hours at the workplace were something desired, notably by young unmarried male employees who played sometimes through the weekend and through the night. This caused tensions between such workers and those older engineers more concerned with keeping a balance between professional and private life.

As this suggests working time issues are different for different workers. Hsu and Liu explore issues of work-family conflict for parents in dual income families in Taiwan. They note that economic and business globalisation has made the issue of work family balance increasingly important in developing countries. Taiwan is shifting from the traditional single income family to double income one. They are concerned to explore the explanatory effect of gender, gender role attitudes and managerial support on work-family conflict and they elected to research this in high tech industry specifically because it was seen as a sector where because of fierce competition and rapid change in technology such work-life conflict is manifest.

It may well be the case that new modes of legal regulation are required for 'commitment' models of employment rather than compliance based ones and protection of the kind embodied in many legal regimes may be less desired by the new networked high skilled autonomous employee. Collins (2001:25) argues 'the standard model of employment as a relation of subordination requires significant adjustment to fit the needs of a knowledge-driven economy'. However there is reason to be cautious about the extent to which commitment models are securely in place (rather than espoused), and the extent to

which subordination is no longer the mark of the employment relation (although its form may have changed with more internalized control). Also, as some of the papers referred to above indicate, there are diverse workers interests to take into account even within a knowledge driven economy.

In their contribution to the Congress, Bhaskar and colleagues indicate arguments by the IT industry in India for different labour regulation in that sector based largely on the different situation of workers in the industry compared to industrial workers in terms of nature of work and work environment, working hour preferences, scarcity of skills, career choices, individualized employment relations and contingent compensation arrangements. But they note some of the arguments are based on a particular tight labour market and the consequent labour market power of the professional employees in the sector. This is liable to change – indeed in many areas has changed already with the failure of the dot.com business; shifting of operations to other locations etc.

Although it appears rather unfashionable now, it would seem premature to come to the view that the role of labour law as protecting the worker (as the weaker party in the employment relationship) is no longer needed, even if there is also a need to rethink how this objective might be best achieved in ways which provide a better fit with the changing contours of employment. Worker protection of course can be presented as contributing to social objectives rather than as an end in itself. ‘Protecting the weaker party’ can be reconceptualised as about citizenship and individual rights in the workplace, and combating social exclusion and workers’; legal rights can be presented as a way of improving the functioning of labour markets. Although many labour law interventions are motivated by considerations of social justice and equality rather than economic efficiency, ‘legislating for competitiveness’ need not be at odds with the protective function of law (e.g. Deakin and Wilkinson 1994).

### *Supra national regulation*

Cross national economic integration and economic internationalism places strain on national systems of regulation, for example coercive comparisons may undermine national regulatory regimes. Regulation may need to cross national boundaries to match new transnational (or boundaryless) organizational forms and employment patterns. In the knowledge economy national boundaries can be easily and speedily crossed.

In Dupre and Lallement’s research in the ICT sector in France the close and immediate cross national company-client relationships facilitated by the technology put legislative working time controls under strain. Additional rest days were instituted in the SMEs studied to reduce total hours as required by law, but an American client found it hard to understand why the French had so many days off.

Olivier and colleagues see the need for regional action in Southern Africa to address issues of poverty. Their paper focuses on the need to develop a distinct social paradigm in the Southern African Development Community (consisting of 14 member states in one of the world poorest regions) and the need to link labour market regulation to the

development of co-ordinated social security systems in the sub continent. This need, they suggest, is most clearly demonstrated in the position of migrant workers in the region, and here they see a potential model in the social security provisions of another supra-national entity, the European Union.

### ***Problems of fit - collective regulation***

Just as legal regulation may need to adapt, so too regulation through collective bargaining. Both kinds of changes indicated at the start (growth of atypical jobs; the rise of the knowledge economy) have posed challenges for trade unions in many countries since they constitute moves away from areas of established trade unionism and collective agreements, towards sectors which may be difficult to organize and towards workers who do not necessarily find trade unions attractive nor collective bargaining relevant.

Kleeman discusses the individualization seen as inherent in teleworking where work undergoes a process of dis-embedding from the organisation in terms of space and time. (Telework, or telecommuting, is done by 4.1% of the labour force in 10 EU states according to a 1999 survey cited in the paper by Klaveren and Tijdens, with penetration highest in the Nordic countries). Contrasting forms of telework in Germany are discussed in Kleeman's paper, each type supporting different personal circumstances in terms of individual work-life balance and career orientations as well as different functions for the company in its use of labour power. In such circumstances, Kleeman finds at least some segments of the workforce tend to prefer more individual modes of negotiation of their individual working conditions over collective agreements that secure common standards both in terms of wages and (collective) working conditions.

Changes in the contours of employment have occurred at a time when in many countries collective bargaining has been under threat also from state or employer driven decentralisation and individualization of employment relations. In Anglo Saxon countries such trends have weakened the position of trade unions (also weakened by legal changes) but in other countries organized (rather than disorganized) decentralization, (to use Traxler's terms) has had different outcomes. (Decentralisation presumes a move away from national bargaining structures. In Korea, as Lee notes, with a system of company unionism there has been some centralization of collective bargaining structures. However bargaining still remains more decentralized than in Western countries).

Burgess and Strachan link the decentralization and fragmentation of Australian industrial relations to the growth of non standard jobs. They describe two parallel developments in Australia. The first is decentralization of industrial relations, with the end of the centralized judicial arbitration based system and growth of enterprise, workplace bargaining, including non-union and individual bargaining. Similar developments have occurred in New Zealand. Employment relations have become more fragmented, non-standard and individualized with shrinking coverage of the centralized award system from some 80% of the workforce in 1990 to around a quarter now. Lansbury and Baird also deal with this rise of 'individualised contractualism' in Australia and consider it imperative to consider alternative forms of regulation and protection. They note calls for

positive legal rights and legislative terms and conditions for all workers. But the second development Burgess and Strachan describe shows the Australian federal state moving in a different direction in the way it deals with one area of legal rights, namely equal employment opportunity. Burgess and Strachan's research shows that EEO policies are not being codified in Australian enterprise agreements. The move they describe is towards a 'soft law' approach, operating an EEO programme based more on voluntary codes than previously. Soft law and 'light touch' regulation rather than 'hard' statutory prescription is also the approach currently favoured by the government in the UK (Dickens 2002:627), where it is seen as a way to lighten the regulatory burden on business while providing a minimum rights structure. This approach may offer flexibility and the possibility of responsive tailored implementation of legislative intentions to suit organizational circumstances, but there needs to be structures and agents to ensure intentions are translated into realities. Collective voice structures and agreements at the workplace could perform a valuable role in this but these are often absent. Where worker participation mechanisms are found, as Kowalczyk's paper reminds us, they often assume permanent or long term employment.

De Leede and colleagues explore how nine large companies in different sectors in the Netherlands have dealt with a move to more individualized employment relations. In this context, individualised means a process of articulation of expectations of both the employer and the employee about the employment relationship on the individual level, for example over performance standards or working time. The Dutch attempts to tailor employment relations to both the organization and employees develops within a framework set by the collective labour agreement (CLA). Individualism here, therefore, does not mean, as it is understood in the UK for example, abandoning collective voice and regulation through collective bargaining. De Leede and colleagues suggest the potential emergence of a 'third contract', formed by the codification of such individual understandings, alongside the CLA and the individual formal contract drawn up on entering the company.

As Dupre and Lallement note in their paper, the ICT small firm sector is generally seen as inhospitable for trade unions and union membership is low. But they found in their research that individualization in work relations did not mean an absence of resistance against the employer, including some taken collectively (as with a protest over coffee breaks).

The extent and nature of union decline varies across countries as does the range of possible responses. However, faced with the changing contours of employment not all have clung to their diminishing terrain but have sought to adapt. This can be seen for example in changing union attitudes towards atypical workers from hostility and opposition to (varying) attempts at inclusion; a growing recognition that they need to attract and retain groups on the labour market, including women, whom in the past they have marginalized and that this will require union to change; in trying to find ways of appealing to workers in ICT sectors (for example offering opportunities for professional networking), and those in small firms. There are a number of issues here which will be debated more fully in another track of this Congress.

Holtgrewe and Kerst discuss one case where they feel unions and employers are learning to translate the specifically German patterns of IR into new flexibilised fields, namely call centers populated by part-time women workers, with collective interest representation being re-established at plant level. Hertenstein considers how union provision of training in new technology use may be one means to respond to challenges and looks at collaboration between plumbers and plumbing industry council in US Midwest.

In his paper, van Velzen explores training of temporary workers in the construction industry in the Netherlands and the USA indicating how the regulatory frameworks (collective agreements and legislation) differ in providing incentives for temporary work agencies to provide training. Although unions are traditional providers of training in the US construction industry van Velzen finds that American unions do not reach out sufficiently to flexible workers. In the US the regulatory framework provides few incentives leaving low skilled flexible workers in a training limbo. He contrasts this with the Netherlands where recent legislation relating to flexible workers has been influential and where training for construction workers is embedded in the industry's various collective agreements (subject to extension by the state) which also cover temporary workers.

As indicated, the development of ICT and the consequent changes in the contours of employment can pose a threat to trade unions. However Green and Kirton's paper looks at the *opportunities* which the new era of ICT opens up for unions, in particular remote participation, drawing on some examples which point to possibilities. They consider that ICT could facilitate participation and activism among those considered to be atypical employees, including the off site worker, the home or teleworker for whom the workplace cannot be the locus of activism. They highlight some problems, but argue that extending communication channels to the domestic (or other non-work) domain through ICTs can widen opportunities for activism of groups previously under-represented in trade unions such as women, part-time and temporary workers and assist unions in responding to and articulating the previously neglected concerns of such groups. Participation via the internet is a way of breaking down time and space barriers and can de-gender or de-racialise participants with the potential for furthering equality of participation. As Green and Kirton point out, they are talking about a new understanding of what might constitute activism.

### **3. Changing contours of employment and the study of IR**

The papers for this track, in various ways, implicitly point to the way in which the employment changes they discuss have implications for our study of industrial relations: what and how we research and with what conceptual tools. The study of industrial relations, as with regulation, has tended to focus on the standard, typical employment relationship, the 'old economy', large enterprises, unionized employment and Fordist production. Concepts (as with what constitutes activism) and analytic categories (e.g. work organization) developed in that context will need rethinking.

Haunschild's paper explores the extent to which a particular theory (Marsden's theory of employment systems, referred to earlier in relation to addressing opportunism in the employment relationship) assists in understanding and explaining employment relations in the 'atypical' context of not for profit repertory theatres in Germany where contingent work arrangements predominate. Marsden's framework is used to try to identify the employment rule predominating in the theatres (the training approach or the production approach); to explore the role of training, employability and task assignment and to explain the form of labour regulation in German theatres. Haunschild finds the theory is a fruitful tool for analysing 'atypical' industries, but that there are some limitations in seeking to apply the theory to atypical employment systems which lead him to raise questions concerning the assumptions of the theory. Haunschild argues that in services depending on professional or craft skills, or creative or artistic jobs, that is where a certain role is more suitable because of the characteristics of production, the production and training approach are not real alternatives and the explanatory power of the theory fades.

Benkert and, separately, Pariente are concerned with the extent to which existing economic theories or literatures may be found wanting in the face of changed circumstances. Benkert questions the adequacy of efficiency wage models and insider-outside theories given virtualization of labour relations and project oriented working. In his paper Pariente seeks to provide a theoretical model to explain both skill bias technical and organizational changes taking into account some empirical and theoretical limits which, he argues, have not been sufficiently taken into account by much of skill-based technical change literature. These limits relate to the rise of a knowledge economy and organizational changes.

Various papers submitted to the track draw our attention to lessons which may be drawn by researching sectors not commonly referred to in industrial relations literature. Amman's paper for example looks at American unions attempt to organize high tech workers, the 'new media' professionals, drawing lessons from the film and TV industry where the union role in provision of additional skills and professional training, and professional networking means membership of unions is still important.

The contribution by Down and Taylor is concerned with organizational boundaries – 'spacial frontiers' - and suggests the need to reconsider also the boundaries to industrial relations research. Their study of a small owner managed company finds that although the workspace is the primary spacial area of workplace relations, other locations (domestic and social) also serve as key sites of organizational socialization, practice and control. They describe what they term the leakage of organizational dynamics into nominally neutral, non-work spaces and develop a concept of 'proximate space' to add to the 'internal' environments of built workplace. The inclusion of this so-far neglected locale, they suggest, can add to our understanding of management of space-time boundaries in the context of changing organizations. As Down and Taylor's work suggests, the 'private' social world of family and home and the 'public' world of work and organization have been blurring, undergoing transformation. If the organization



(jobs) spill over into social and domestic locales so, arguably, should industrial relations research.

Down and Taylor acknowledge that there are other bodies of work which have considered aspects of proximate space, including that concerned with the gendered nature of work/non work and public/private domains. The development of this literature, however, generally has taken place outside the industrial relations mainstream, which has tended to 'stop at the factory gates'.

Traditional IR research and writing has taken the male worker and male patterns of employment as the norm, the standard, the typical, in much the same way as much labour regulation has done. Men have provided the (implicit) model for the universal worker (see for example Forrest 1993:225; Dickens 1998:35; Wajcman 2000). There has been a neglect of women, women's work, and, more importantly and fundamentally, of the gendered nature of institutions and processes of industrial relations. There has been a shift in the focus of IR research from studying men in manufacturing (largely reflecting shifts in the composition and structure of employment), and increasingly work in IR recognizes the importance of women (if not always of gender). Nonetheless, the understandings, concepts and the theorization developed from past (male centred) research often remain the normal or standard points of reference (Rubery and Fagan 1995; Hansen 2002). This is so despite their gendered nature; and despite the potential explanatory power of other approaches and the insights which research into gender could contribute to the understanding of key industrial relations phenomena (Pocock 2000:11). (Just one example here would be the work of Fagan and O'Reilly (1998) on developing a model of a gendered social contract to explain different patterns internationally in part-time employment and labour market participation.) Such criticisms of IR research have been made often and over a long period (see the work referred to in Hansen 2002). The recognition that there may be problems of fit between our established IR theorization and research and the changing contours of the employment relationship could be a catalyst for change here also.

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