

A HUMAN IS NOT A RESOURCE

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Abstract

The language of ‘human resource management’ treats people as a means to an end. Three core tenets of human resource literature are that it is desirable to have (1) labour ‘flexibility’ and ‘mobility’ in a peripheral workforce, (2) individual (not social) responsibility for employment searching, and (3) a manager’s right to manage, without collective accountability. This article explores the cutting edge evidence, which show human resource theory harms productivity and human development. It explores the effects of ‘HR’ in the UK, EU and international regulation on atypical work, full employment, and union voice. Where human resource beliefs have pervaded the most, the outcomes are the worst: lower productivity, higher unemployment, more inequality, less growth. To advance prosperity, economic risks must be distributed to the organisations best placed to bear them, people must have security to plan for the future, and people must have real votes at work through collective bargaining and corporate governance. Many people who themselves work in ‘HR’ strongly disagree with the essential elements of their discipline. They support equality, security and democracy at work. Just as international law once affirmed that ‘labour is not a commodity’, for social justice in the 21st century there must be a conviction that a human is not a resource. ‘HR’ must change in name and substance, to advance human development and human rights.

Key words: Human Resource Management, Labour Is Not a Commodity, Social Justice, Job Security, Full Employment, Trade Unions, Votes at Work, Productivity, Human Rights

JEL Codes: J01, K31, L21, L22, L52, P1, P16, F16

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1. Introduction

The conviction that ‘labour is not a commodity’ has been central to international law for nearly a century.¹ Peace, said the ill-fated Versailles Treaty, ‘can be established only if it is based upon social justice’,² and social justice requires that people are ends in themselves, not means for other people’s ends. Social justice is a creative justice. It does not only redistribute or correct what is already there.³ In a just society, human capacity expands through education, better health and sustainable prosperity.⁴ Human creativity is freed when people have voice in political and economic power, security to plan their lives, and material resources to fulfil their potential.⁵ If some are exploited like material resources, for the private gain of a few, this must always diminish total social prosperity. So long as social justice is a goal worth winning, like labour is not a commodity, a human cannot be a resource.

The phrase ‘human resources’ was often used in the early 20th century as a metaphor to cherish human capacity.⁶ Free and universal education would expand human potential, and democracy at work would advance economic fairness.⁷ But as many ideologies succeed in doing, words were appropriated to mean opposing things. For some human resources meant innate human talent contributed to society. For others it meant a source of labour exploited for profit. Human beings became ‘human resources’ or ‘human capital’.⁸ As the new language use took hold by 1961,⁹ the first *Human Resource Management* journal led with articles called ‘The anatomy of leadership’, ‘The maintenance of discipline’ and ‘How can a boss obtain favorable responses to his orders?’ In this conceptual frame, workers are viewed as ‘subordinates’. Their ‘feeling of mutual respect’ with a ‘leader’ only exists to ensure they follow ‘rules of conduct’ and ‘perform their duties efficiently’.¹⁰ This was manifested most clearly in politics in 1974, when US President Gerald Ford appealed for expanding ‘human resources’, by restructuring education around profitable labour, rolling back welfare and abandoning full employment.¹¹ Like these political shifts, human resource literature exhorted flexibility and mobility.¹² Around a core of managers, a peripheral workforce must respond to market demand. Individuals, not society, have responsibility for searching out their own full employment. The right to manage should not be questioned. The overriding goal is said to be economic efficiency, but this is inseparable from corporate profit.

The problem is, human resource theory can never achieve the aims it states. More evidence than ever – qualitative, quantitative and behavioural – shows that efficient, productive work means fair work through voice. When people are treated equally and fairly, when job security is universal, and when people can participate in their enterprise by unionising and voting, they are motivated to contribute more. The paradox is that a majority of people working in human resources do value equality, job security and voice at work. They do not want to perpetuate evidence-free Taylorist myths about what makes good business. Many human resource specialists are deeply uncomfortable with their own discipline and seek to challenge that very *status quo*.¹³ The problem's core is not any particular argument or policy, but the conceptual frame: that a human is seen as a resource to be managed, not a person with rights.

This paper shows how three essential tenets of human resource theory damage prosperity when put into practice. It uses examples in UK, other EU member states, the US and Japan. The essential tenets are the claims that (1) a firm's workforce should be seen as having a core, and then a periphery that must be flexible to meeting changing demand, (2) employment is not a social responsibility, because individuals are responsible for 'investing' in their own 'human resources', and (3) while workers may be entitled to consultation, the right to manage must not be questioned by unions, or people wanting voice at work. Again, these tenets are heavily contested. They are shared in economic theory, which is equally (if not more) contested. Many people working in "HR" are deeply ambivalent about their profession's core assumptions. This makes it even more important to isolate them, and assess the effects. The effects are seen in (1) the regulation of part-time, fixed-term, agency and other casual work, (2) the attitude to full employment since the 1980s, exemplified by the Europe 2020 agenda, and (3) policies toward trade unions and voice at work. The results are clear: when humans are seen as resources, there is lower productivity, higher unemployment, and greater inequality. Human resource theory damages economic prosperity and human development. This requires a fundamental conceptual change, to uphold human rights.

2. The Periphery and Atypical Worker Rights

A first tenet of human resource theory is that an efficient firm has a flexible labour force. Around core staff, there is a periphery of workers whose supply of labour can respond to changing market demand for the firm's product.¹⁴ The effects can be assessed by understanding the law on atypical workers in the UK and EU. Despite the law's apparent volume, vast numbers of casual workers are

treated unequally, especially workers with ‘zero hours contracts’ and at agencies. Three EU Directives are implemented in the laws of each member state, including the UK: the Part-time Workers Directive 1997, the Fixed-term Work Directive 1999 and the Temporary and Agency Work Directive 2008.¹⁵ Together, they might be seen as a comprehensive package of atypical work regulation with two ideal goals: (1) that workers of any contractual status must be treated equally compared to full time, permanent, or directly employed staff,¹⁶ and (2) that each type of worker could have the right to transfer to that ‘standard employment relation’.¹⁷ In addition, full time employees have a right to request part-time work, if this suits their individual needs.

In practice, the law falls far short of these ideal goals. First, to bring a claim against discrimination, part-time and fixed-term employees must find a real (rather than a hypothetical) comparator to show they were less favourably treated. This makes their claims harder, because whole workforces may be ‘flexible’. Second, agency workers only have rights to equal treatment based upon working time and pay.¹⁸ This limited scope reflects that the Temporary Agency Work Directive 2008 as a whole took around 10 years longer to pass than its part-time and fixed term counterparts, largely because of opposition from the UK government while Tony Blair remained as Prime Minister. Blair appears to have taken the view that flexible labour markets were essential, and was prepared to allow agency workers to be treated worse to achieve that end.¹⁹ In particular, equal treatment in job security rights may be lacking, so that the ‘periphery’ is more easily dismissed than the ‘core’. Third, agency workers may have to wait up to 12 weeks before they have any right to equal pay or working time.²⁰ This encourages agencies to shift workers to avoid the threshold. Whenever the law does not require equal treatment, there is an artificial regulatory subsidy for precarious work. People are forced into flexible contracts, not because it makes economic sense, but for firms to evade labour rights.

A fourth and general problem is that the rights to a ‘standard employment relation’ are very soft indeed. Part-time workers merely have a right to request a change in their contract, but not to get it.²¹ An employer must give written reasons for refusal, and these have been judged strictly,²² but the substantive reasoning is not challenged. Fixed-term employees only have the right to a permanent contract after four years, and even then employers may provide an ‘objective justification’ for fixed-term contracts to persist. In practice, objective justifications are not litigated, and so employers use fixed term contracts regardless of the law.²³ Agency workers merely have the right to be informed about direct job opportunities,²⁴ and so may remain outsourced indefinitely,

particularly as agencies restrain employers from direct hiring with punitive fee agreements. The result is that the law allows widespread use of atypical contracts, letting firms establish a ‘core’ and ‘periphery’ workforce.

Fifth, legal protection does not extend to large numbers of casual workers, particularly those with ‘on demand’ or ‘zero hours’ contracts. In *Wippel v Peek & Cloppenburg GmbH & Co KG* Ms Wippel, from Austria, claimed she was protected by the Part-time Work Directive 1997.²⁵ Ms Wippel usually worked around three days a week, and her contract stated her working hours could be varied by the employer. She claimed she should be treated equally to full-time workers, who had fixed hours of work. Could employers put in contracts a unilateral discretion to vary their part-time workers’ hours, but not full-time workers? Can employers shift the risk of downward demand onto workers in every individual contract? The European Court of Justice held that employers could do so freely under EU law. In the court’s view, a variable hours contract has a different ‘subject-matter and basis’, so there was no free standing claim for equal treatment. In the UK particularly, the lack of statutory protection has meant an exponential growth in zero hours contracts. There is some common law protection against variation of hours, which undermine an employee’s reasonable expectations of stable work.²⁶ But this standard is hard to enforce, because it requires litigation in Employment Tribunals over every contract. Conversely the pressure for the growth in zero hours contracts is strong. In 2014, the Conservative-led government stated it would deny Jobseeker’s Allowance (unemployment insurance) to people who did not take zero hours contracts.²⁷ Zero hours contracts multiplied, and a whole generation of people are growing up with precarious work.

Even when legal protection does extend to casual workers, there may be chronic under-enforcement of the law. This has been particularly true in the UK. First, after a 2013 Order by the Conservative-led government until July 2017, it cost the average claimant £1200 each to bring a claim to an Employment Tribunal. The Supreme Court held these fees were incompatible with the Act they were made under, because they undermined the rule of law and access to justice.²⁸ Second, the tax authorities may turn a blind eye to large corporations who are giving sham self-employment contracts to their staff. This has been a particular problem among ‘gig-economy’ corporations, such as Uber, Deliveroo or CitySprint, where workers receive instructions through a software application. These companies are taking the ‘core-periphery’ model to its extreme. Uber denies any of its drivers are employees at all, despite being one of the biggest employers on the planet.²⁹ While employees do not have the resources to

litigate, and government is not pro-active, the massive use of sham-self-employment has spread.

What is the social cost and the empirical impact of the current regulation? There is no doubt that being forced into a flexible, insecure contract damages people's health. One recent study at University College, London found that 25 year olds who are on zero hours contracts suffered more psychological distress, and were twice as likely to suffer mental illness.³⁰ Another study from the University of Cambridge on supermarket chains in the UK and US found that all kinds of flexible contracts 'cause widespread anxiety, stress and 'depressed mental states' in workers'.³¹ This research confirms what is obvious to anyone who has done a casual job: it is deeply worrying to be unsure whether you can pay the bills and the rent next week.

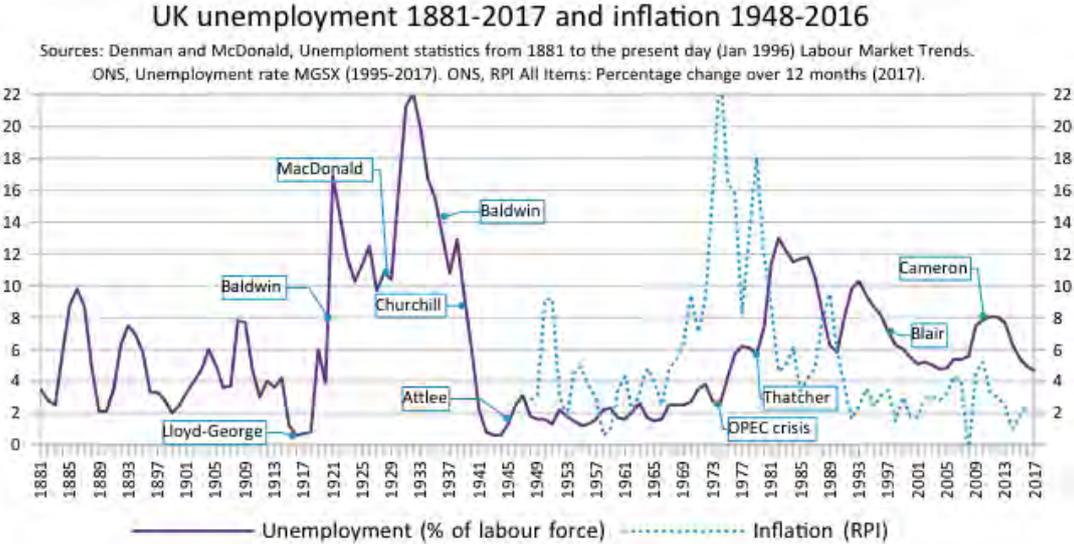
But what about the economic impact? Could 'flexible' work be good for the economy, despite the cost to people's health? The answer is 'no'. In the first paper to use regression analysis and a credible legal database developed at Cambridge University's Centre for Business Research, it was found that stricter regulation of atypical work across 117 countries leads to lower unemployment, higher productivity, as well as an increased labour share of income.³² The positive effect on productivity of more equal treatment rights is particularly significant. The method used in econometrics or 'leximetrics' is to assess how protective for workers each country's laws are on a range of indicators. For instance, one indicator asks: do part-time workers have the right to equal treatment with full time workers? Another asks: is there a maximum duration for fixed-term contracts? If the country's law is as protective as possible, it is given a '1'. No protection scores a '0', less protection a '0.33', or '0.5', and so on, for points in between. Once this is done, these numbers are compared to economic data, like changes in productivity or employment. Through regression analysis (using 'pooled mean group estimation'), it is assessed whether changes in employment correlate closely or not with changes in law. If the relationships are very close, and controlled for other factors that might also affect the economic outcomes, this gives strong evidence about the causal relation of law and economic outcomes. In essence, the first credible econometric data shows that human resource theory is completely wrong: a 'flexible' work force leads to lower employment and lower productivity.

3. Job Security and Europe 2020

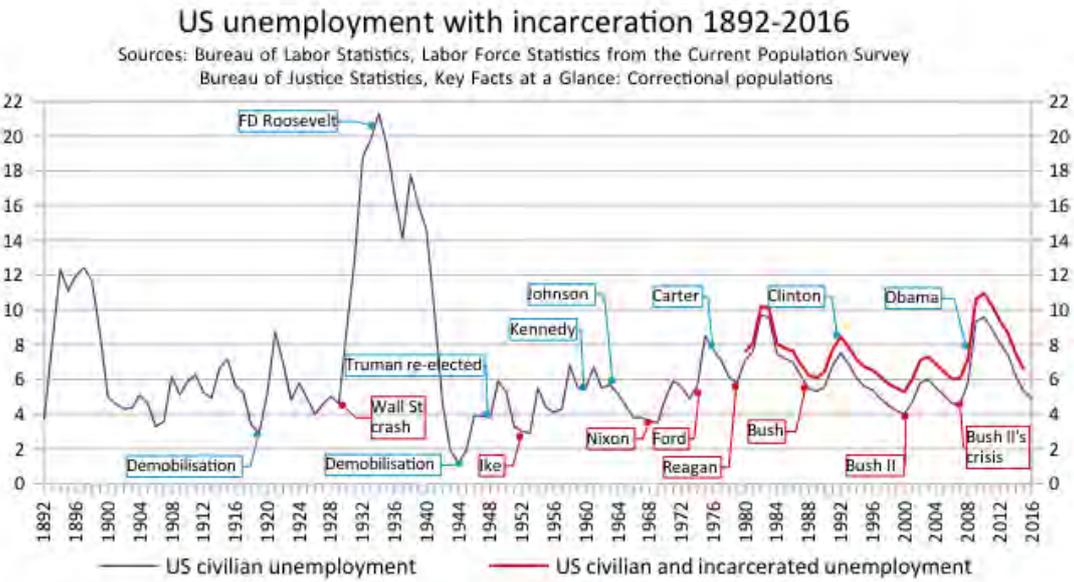
A second tenet of human resource theory is that employment is not a social

responsibility: the individual has responsibility to invest their own ‘human resources’ to improve their chance of a job. Government’s role is not to create full employment through fiscal, monetary and trade policy, but instead to ‘activate’ unemployed people to ‘search’ more effectively for jobs.³³ By definition, when there is not full employment, the jobs many people search for simply do not exist, but according to HR theory that does not matter. The Austrian economist, Friedrich von Hayek, once argued that if government created enough demand to pay for ‘the kind of services... the unemployed offer’ its spending would have to be ‘of such a magnitude as to produce major inflationary effects.’³⁴ This became the theory of a ‘non-accelerating inflation rate of unemployment’ adopted by Gerald Ford’s administration in 1974. Some people were not worth employing at all, and so full employment is neither a possible or worthwhile goal.

The problem with that theory is there was full employment, in all countries that pursued it, from the post-war period until the 1970s.³⁵ In the UK, unemployment was between 1 and 2.7 per cent from 1945 to 1971. This was full employment in a free society.³⁶ It was maintained by government spending money on infrastructure, funded through capital taxation, to counteract irrational cycles of private business and international trade.³⁷ Capital that businesses are not using productively was taxed to ensure it was brought to the market. Business had a tacit obligation not to hoard capital at the cost of employment, wages and aggregate demand.³⁸ But after the Organization of the Petroleum Exporting Countries raised petroleum prices, causing a global recession, there was a shift in political values. Since 1979 the UK unemployment rate has never reached below 4.7 per cent.



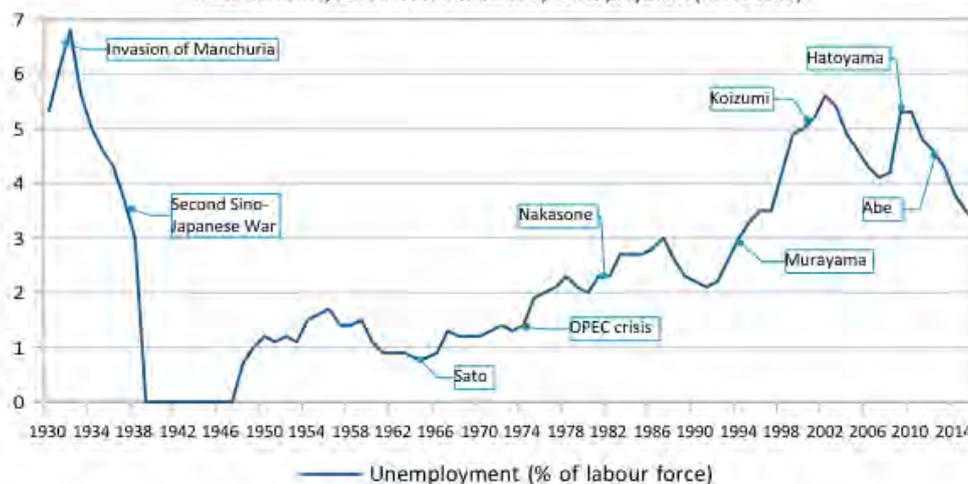
In the United States the picture is more mixed, simply because of its political extremities.³⁹ Republican Presidents always left the White House to a Democratic President with far higher unemployment, and Democrats always left unemployment lower. Cumulatively, from Eisenhower to Trump, Republicans increased unemployment by around 14 per cent, while Democrats reduced it by 12 per cent. The idea that unemployment is natural is false: it is an inherently political choice. Furthermore, from President Reagan on, the US has become unique for the mass incarceration of its own population, disproportionately working class and poor people. Unlike any other democratic country, this non-working prison population (or sometimes working for less than minimum wage) adds around 1.3 per cent to total unemployment.



In Japan, it is clear many of the political extremes seen in the UK or US have been absent. Nevertheless, during the 1970s, it was accepted that a rate higher than full employment was acceptable. This reflects a global shift with the rise of human resources following the OPEC crisis. It was as if government lost the idea that it had a duty to ensure full employment.

Japanese unemployment 1952-2016

Sources: BR Mitchell, *International Historical Statistics: Africa, Asia and Oceania 1750-1988* (1995) 107 (1930-1967).
OECD Statistics, *Labour Force Indicators, Unemployment* (1968-2016).



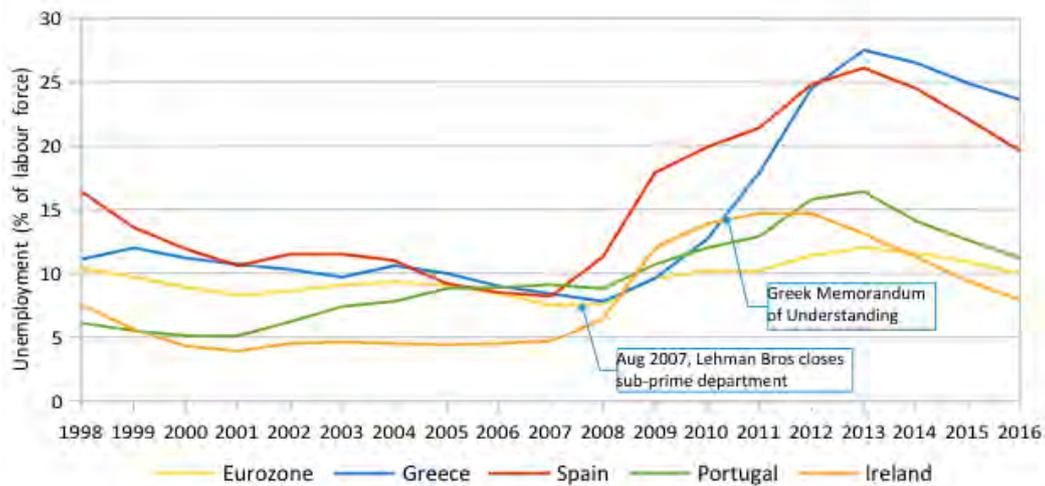
Since 1997, the most concrete expression of legal policy toward employment has been the Europe 2020 strategy.⁴⁰ This is a set of non-binding, but influential guidelines found in a ‘Recommendation’ and ‘Decision’ by the European Council.⁴¹ The present eight guidelines say nothing about fiscal, monetary and trade policy to create work. Instead it states a need for ‘regulatory predictability and openness and transparency of [a member state’s] financial sector’.⁴² Its main preoccupation is with ‘structural reforms’, ‘competition-enhancing reforms’, ‘social security reforms’ and ‘labour market reforms’, to ‘reduce the barriers business faces in hiring people’.⁴³ It continues that governments should give unemployed people ‘active support for return to the labour market’,⁴⁴ but not an actual job. Member states should ‘increase employability by investing in human capital’ and social protection’s goal is likewise to support ‘investment in human capital’.⁴⁵ Although the Treaty on European Union itself, in article 3(3), requires the EU to be ‘aiming at full employment’, in Europe 2020 government’s role is to facilitate, but not to achieve.

Although Europe 2020 is not itself binding on member states, the ideas behind it were imposed in the *Memorandum of Understanding* between the European Central Bank, the European Commission, the International Monetary Fund and Greece in 2010 to secure loans during the post-financial Eurozone crisis. This demanded that Greece cut its minimum wage for young people, reduce the minimum wage by deflation, cut everyone who works for less than a year out of unfair dismissal protection, cut severance payments, and cut collective dismissal protection to ‘facilitate greater use of temporary contracts and part-time work.’⁴⁶ Just as it made it easier for employers to make everyone unemployed, it cut unemployment insurance.⁴⁷ Judged by the evidence, the Europe 2020 strategy

for Greece has been an abject failure.

Eurozone unemployment 1998-2016

Source: Eurostat, Total unemployment rate



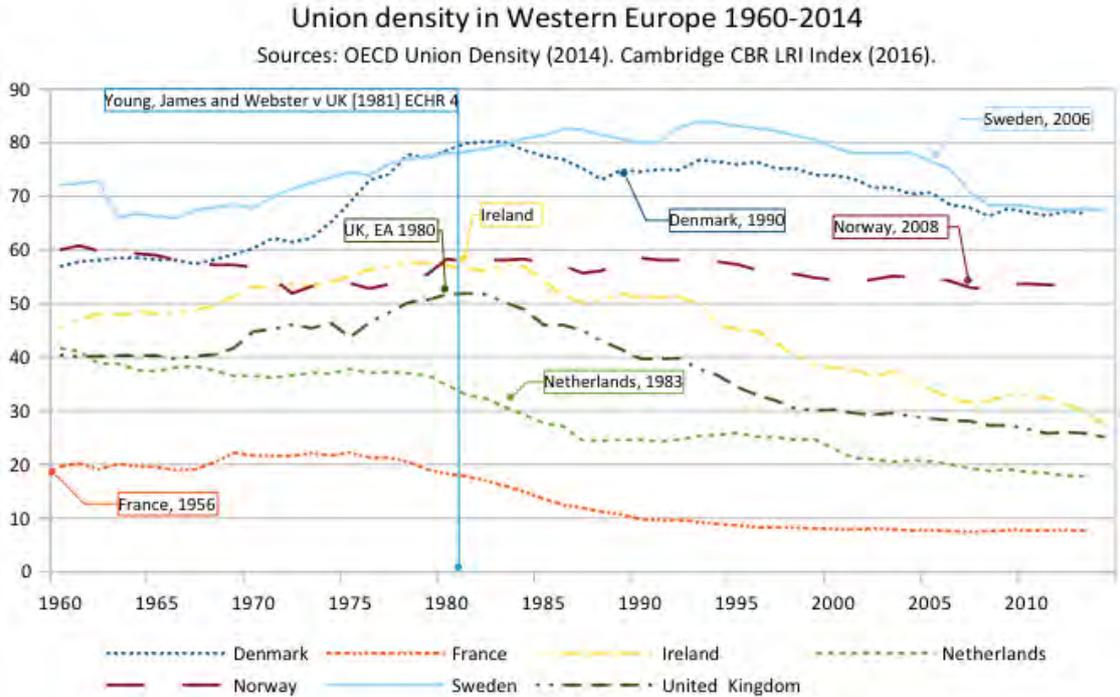
Even more than this, the first credible evidence from the Centre for Business Research on the relationship between job security rights and unemployment shows that there are positive effects: if it is easier to make people unemployed, then there will probably be more unemployment. Moreover, job security rights are strongly connected with lower inequality, higher productivity and increased labour market participation.⁴⁸ The rejection of full employment, and the witch doctor economics that says job security is the problem, has caused untold damage to economic development. Full and fair employment works best.

4. Right to Manage and Voice at Work

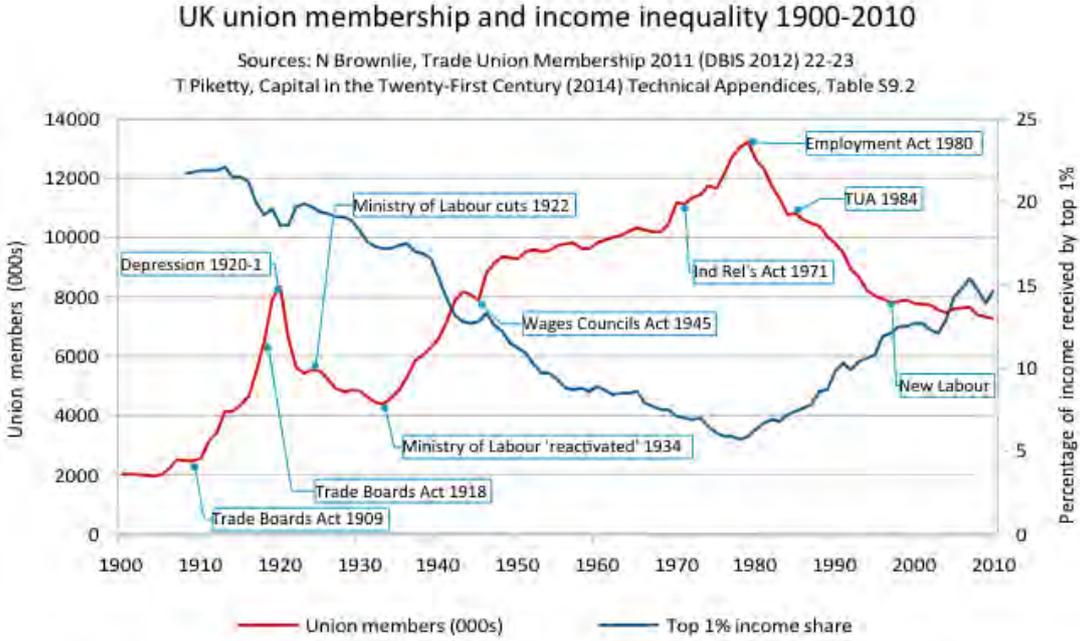
A third tenet of human resource theory is that the right to manage must not be infringed. Workers might be consulted to improve management decisions, but workers need have no binding voice at work. Management, it is thought, is a 'science' that can be learned and deployed.⁴⁹ Collective voice, either through unions or votes for boards of directors, interferes with that scientific management.⁵⁰ It also runs against the ideal of individuals building their own human resources and capital: there is 'no real point' in joining a union.⁵¹ Instead of a body of people with systemic conflicts of interest, whose bargaining power must be balanced by collective voice, management is the fount of good workplace relations. A good faith trade dispute, leading to a strike, should not happen.⁵² Successive political leaders have espoused these ideals in a way that consistently delegitimises collective voice, from Reagan during the air traffic control strike, to Thatcher in the miners' strike. The politics was inseparable from the theory behind it.

In the most extreme example of the Greek *Memorandum of Understanding*, from 2010 collective agreements were cancelled in the public sector, trade unions were derecognised, and wages were cut for the foreseeable future. As the 2010 Memorandum put it, there had to be a ‘simplified remuneration system covering basic wages and allowances’ as ‘part of an overall reform of Human Resource management’ so that apparently ‘remuneration reflects productivity and tasks.’⁵³ This, the sharp end of human resource theory – which the majority of HR specialists would probably oppose – exists because of the conceptual frame. Consultation without participation. Being seen without being heard. When a human is a resource, there is no point in democracy at work.

No single measure has decreased union membership and density by itself, but there can be little doubt that legal change, reducing labour rights, is the most significant cause. The most important factors are the end of the closed shop, the withdrawal from sectoral collective bargaining, and withdrawal of state support for unionisation. Where some dispute this, it is frequently because their theories are evidence-free, or they simply do not understand the law or their subject matter.⁵⁴ The result in most (but not all) European countries since 1980 has been a slow attrition of union members, and a decrease in the density of the unionised labour force. In 1980, a majority decision in the European Court of Human Rights in *Young, James and Webster v United Kingdom*, over powerful dissent, held that the pre-entry closed shop was unlawful.⁵⁵ As closed shop countries implemented the ruling, union density went into attrition.

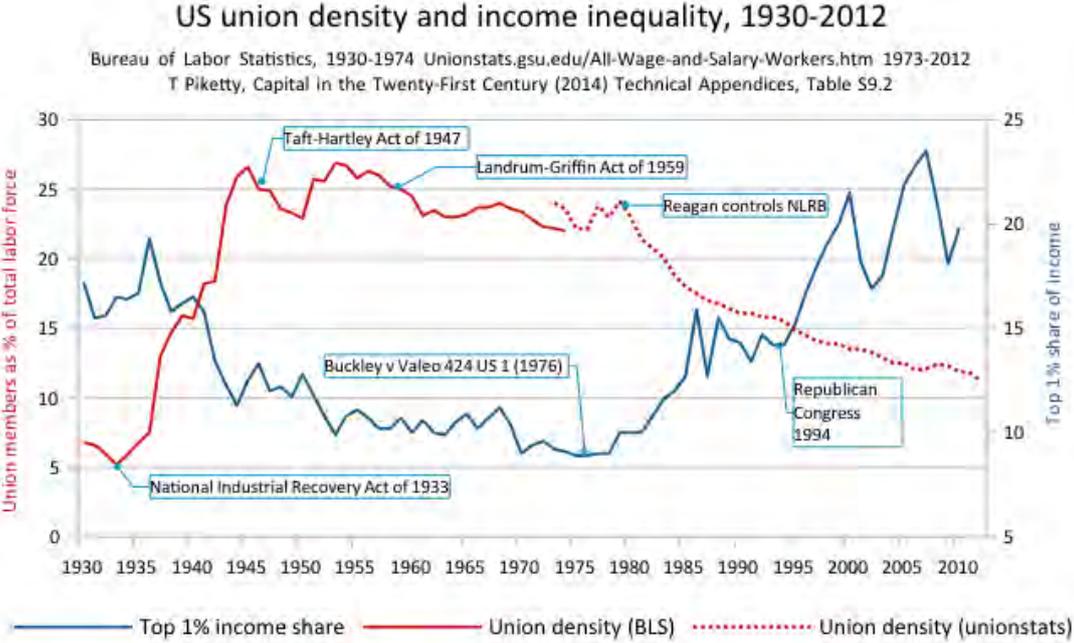


Country by country, declining union membership or density frequently mirrors increasing inequality. Every country’s web of legal rules differs. Like pulling the bottom thread of two different spider’s webs, isolated rule changes in different systems have different results. Yet the trends are clear. In the UK, the rise and fall in union membership is symmetrical with the fall and rise in inequality. Correlation does not necessarily mean causation. But the UK’s case is clear, attrition of union membership was the main pre-tax cause of rising inequality. Trade unions had been the single channel for most people to have a voice at work. Only a few specific sectors, such as universities and some nationalised industries, enable employees to vote for their organisation’s board of directors or governing body.⁵⁶ When there is no union, individual workers have very few options and very little bargaining power to achieve fair wages. The product of companies is taken disproportionately by people with managerial power, while the pay of almost everyone else stagnates or deflates. When the closed shop was ended in 1980, and government turned hostile to union organising, people lost their voice at work. Income inequality soared.

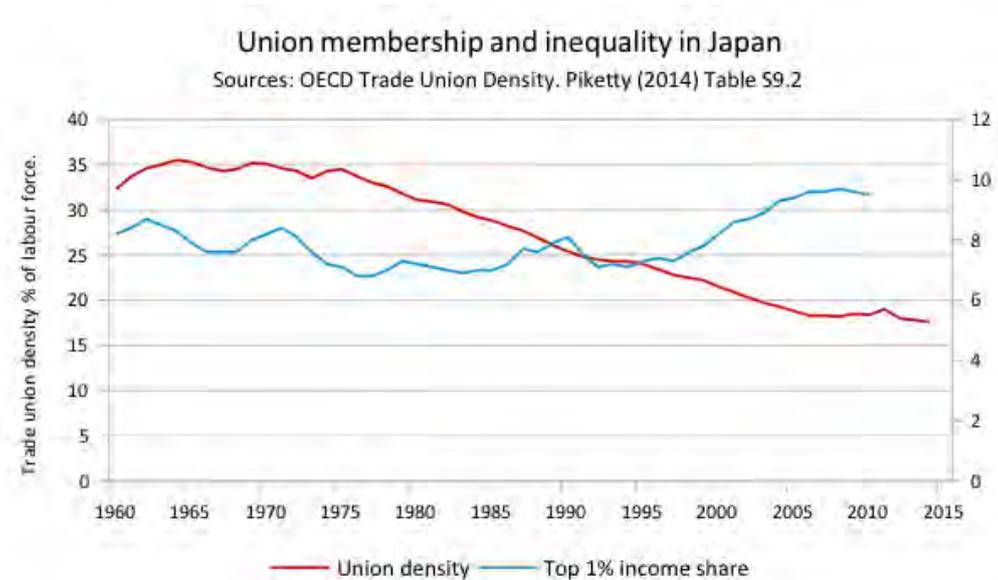


In the United States, a similar picture emerges. State support for union organising began with the National Industrial Recovery Act of 1933, and solidified under the National Labor Relations Act of 1935. Union membership took off. Together with higher taxation on top earners, this was the major cause of decreasing inequality. However, the Taft-Hartley Act of 1947 banned the pre-entry closed shop, and enabled states to further to prohibit employers making ‘union security agreements’, where employees become union members after 30

days.⁵⁷ As more state governments came under Republican control, more stopped the closed shop. The decisive change, however, was the US Supreme Court’s decision in *Buckley v Valeo* to allow unlimited political expenditure by candidates, and then corporations.⁵⁸ Their next President, Ronald Reagan, signalled his commitment to a hardline ‘free enterprise’ philosophy by dismissing all air traffic control staff during a labour dispute when he took office in 1981. In the US, the result has not only been a rise in income inequality, but a process of de-development. By 2017, the median American man earned less money than 40 years before.⁵⁹



Does a similar picture emerge in Japan? From 1976, union membership was put into decline under Prime Minister Takeo Miki. However the relationship to inequality is more ambiguous. Unlike the UK or US, one possibility is that in many sectors a strong culture of employee consultation could function as a replacement for collective bargaining, at least for a while. The growth in inequality from 1997 is most closely associated with Ryutaro Hashimoto’s changes to welfare and financial regulation, compounded upon the precarity of people’s voice at work.



Although the reasons for changes in inequality differ slightly from country to country, there can be no doubt that trade unions play a decisive role to ensure fairer wages. Yet inequality is not just an issue of fairness. It also matters for human development and economic efficiency. First, with more inequality, growth becomes irrelevant for most people, because all of the gains go to the top.⁶⁰ Second, inequality within firms harms productivity, because people who are treated unfairly and are underpaid lose the motivation to work.⁶¹ Third, inequality harms productivity even among the overpaid, because those people invest more time in lining their pockets than working hard.⁶² When one human being is another person's resource, the social costs outweighs any private gains.

5. Conclusions

Whenever the essential tenets of 'human resource' theory have been put into practice most fully, the outcomes for prosperity have been the worst. In the last 40 years developed societies have moved into a phase of lower productivity and growth, higher unemployment, and higher inequality. This all adds up to a lower rate of human development. These changes have not, mostly, been any part of a conscious plan, but a state of mind. It is written in textbook titles, and corridor signs, a part of daily terminology. A corrosive ideology: a human is a resource.

Of course, it could be argued that language does not matter. Perhaps it is possible to use the term 'human resources' in its original sense, to extol the boundless capacity of people to improve themselves and contribute to a better society. Can 'human resources' survive, to become compatible with human development and human rights? The answer is not clear. Words do matter. Words

carry meaning. If “HR” can focus on the rights of people at work in its substance, it may not need to change in form. But whatever the label is, the conviction must hold: a human is not a resource.

Notes

- 1 Treaty of Versailles 1919 [art 427](#).
- 2 Treaty of Versailles 1919 [Part XIII, Section 1](#).
- 3 cf Aristotle, *Nicomachean Ethics*, [Book V](#), who appeared to think justice was reducible to arithmetic or geometric equations.
- 4 cf Plato, *The Republic*, Book IV, Part V, 139, translated by D Lee, ‘the worst of evils’ that ‘spells destruction to our state’ is ‘interchange of jobs’. When each class ‘does its own job and minds its own business, that is justice and makes our state just.’
- 5 e.g. T Paine, *The Rights of Man* (1792) Part II, ch 3, ‘There is existing in man, a mass of sense lying in a dormant state.... As it is to the advantage of society that the whole of its faculties should be employed, the construction of government ought to be such as to bring forward, by a quiet and regular operation, all that extent of capacity which never fails to appear in revolutions.’ S Webb and B Webb, *Industrial Democracy* (9th edn 1926) [Part IV, ch 4, 847-849](#), ‘We ourselves understand by the words “Liberty” or “Freedom,” not any quantum of natural or inalienable rights, but such conditions of existence in the community as do, in practice, result in the utmost possible development of faculty in the individual human being.... When the conditions of employment are deliberately regulated so as to secure adequate food, education, and leisure to every capable citizen, the great mass of the population will, for the first time, have any real chance of expanding in friendship and family affection, and of satisfying the instinct for knowledge or beauty.’ AA Berle, *Power Without Property: A New Development in American Political Economy* (1959) 133, ‘the economic system shall give direct available opportunity – which is the real meaning of social justice – to all individuals. Averages and statistical aggregates are no longer enough.’
- 6 e.g. J Dewey, ‘Internal Social Reorganization after the War’ (1918) [8\(4\) Journal of Race Development 385](#) (this journal’s sad name meant countries, not eugenics, but became ‘Foreign Affairs’ in 1922) and FD Roosevelt, *Second Fireside Chat* ([7 May 1933](#)).

7 e.g. BA Weisbrod, 'Investing in Human Capital' (1966) [1\(1\) Journal of Human Resources 5](#).

8 e.g. TW Schultz, 'Investment in Human Capital' (1961) 51(1) *American Economic Review* 1 and GS Becker, *Investment in human capital: A theoretical analysis* (1962).

9 See [Google ngram book search](#), charting the use of the term 'human resources'. The first instances appeared during World War One, another spike began at the start of the Great Depression, a third in World War Two, and a fourth from 1960.

10 See EE Jennings, 'The anatomy of leadership' (1961) 1 HRM 2, ER Bramblett, 'Maintenance of discipline' (1961) 1 HRM 10, and P Pigors, 'How can a boss obtain favorable responses to his orders?' (1961) 1 HRM 15.

11 G Ford, *Remarks at Ohio State University, Columbus, Ohio (30 August 1974)* 'I will do everything in my power to bring education and employers together in a new climate of credibility--an atmosphere in which universities turn out scholars and employers turn them on.... For your Government as well as you, the time has come for a fusion of the realities of a work-a-day life with the teachings of academic institutions.... It is my judgment that we must make extraordinary efforts to apply our know-how, our capital, our technology, and our human resources to increase productivity at a faster rate. Unfortunately, inflation is creating a national state of public anxiety. Productivity, yours as well as mine, must improve if we are to have less of an inflationary economy.' *64 - Annual Budget Message to the Congress, Fiscal Year 1976 (3 February 1975)* 'The rapid growth of human resources programs in recent years has brought about many improvements in the well-being of the American people. Benefits under Social Security, Medicare, Medicaid, Supplemental Security Income, food stamps and veterans programs have increased substantially.... Our present welfare system is inefficient and inequitable. It is wasteful not only of tax dollars but, more importantly, of human potential.' Regrettably this ideology appeared in the ILO Human Resources Development Convention 1975 ([c 142](#)). This Convention is characterised by its unusually poor drafting, and imprecision.

12 e.g. J Atkinson, 'Manpower Strategies for the Flexible Organisation' (August 1984) *Personnel Management* 28.

13 e.g. C Hendry and A Pettrigrew, 'Human resource management: an agenda for the 1990s' (1990) 1(1) *International Journal of Human Resource Management* 17.

14 e.g. RA Noe, JR Hollenbeck, B Gerhart, PM Wright, *Fundamentals of human resource management* (6th edn 2016) ch 2, 52, 'A flexible workforce is one the organization can quickly reshape and resize to meet its changing needs. To be able to do this without massive hiring and firing campaigns, organizations are using more alternative work arrangements.' This does not acknowledge that using 'flexible' contracts can be the same as a perpetual 'firing campaign', cf ERA 1996 [s 95\(1\)\(b\)](#).

15 PTWD 1997 ([97/81/EC](#)), FTWD 1999 ([99/70/EC](#)) and TAWD 2008 ([2008/104/EC](#)) respectively.

16 PTWD 1997 cl 4, FTWD 1999 cl 4, TAWD 2008 art 5.

17 PTWD 1997 cl 5, FTWD 1999 cl 5-6, TAWD 2008 art 6.

18 TAWD 2008 art 3(f).

19 See E McGaughey, 'Should agency workers be treated differently?' (2010) [LSE Legal Studies Working Paper No. 7/2010](#).

20 See the UK Agency Workers Regulations 2010 regs 3 and 5-7.

21 PTWD 1997 cl 5(3) and ERA ss 80F-G.

22 *Commotion Ltd v Ruddy* [2006] IRLR 171, where Mrs Ruddy succeeded in her claim after being denied the possibility to shift to part time work because management said it would affect 'team spirit'. That is not a valid reason under ERA 1996 s 80G.

23 A Fazackerley, 'Why are many academics on short-term contracts for years?' (4 February 2013) [Guardian](#).

- 24 Agency Workers Regulations 2010 reg 13.
- 25 (2005) [C-313/02](#).
- 26 *Borrer v Cardinal Security Ltd* [2013] [UKEAT 0416 12 1607](#) (*ad hoc* court control of zero hours) and E McGaughey, ‘Are Zero Hours Contracts Lawful?’ (2014) [DBIS Submission](#).
- 27 ‘Benefits risk to jobseekers refusing zero-hours contracts’ (6 May 2014) [BBC News](#).
- 28 *R (UNISON) v Lord Chancellor* [2017] [UKSC 51](#).
- 29 See E McGaughey, ‘Uber, the Taylor Review, Mutuality, and the Duty to Not Misrepresent Employment Status’ (2018) [Industrial Law Journal](#), forthcoming.
- 30 ‘Being on a zero-hours contract is bad for your health’ (5 July 2017) [UCL News](#) also reported in S Marsh, ‘Zero-hours contracts affect young people’s health, study finds’ (5 July 2017) [Guardian](#).
- 31 T McVeigh, ‘Supermarket shifts ‘cause anxiety and insecurity’’ (19 April 2014) [Guardian](#).
- 32 Z Adams, L Bishop, S Deakin, C Fenwick, S Martinsson and G Rusconi, ‘The Economic Significance of Laws Relating to Employment Protection and Different Forms of Employment: Analysis of a Panel of 117 Countries, 1990-2013’ (2018) CBR Working Paper No. 500, March (<http://www.cbr.cam.ac.uk>).
- 33 e.g. RA Noe, JR Hollenbeck, B Gerhart, PM Wright, *Fundamentals of human resource management* (6th edn 2016) ch 14, 427, saying the US Social Security Act of 1935 ‘provides payments to offset lost income during involuntary unemployment, and it helps unemployed workers find new jobs.’ This assumes government has no role in creating employment. cf KVV Stone, ‘A Right to Work in the United States’ in V Mantouvalou (ed) *The Right to Work* (2015) ch 15, and E McGaughey, ‘Will robots automate your job away? Full employment, basic income and economic democracy’ (2018) CBR Working Paper.

34 FA Hayek, 'Full Employment, Planning and Inflation' (1950) 4(6) Institute of Public Affairs Review 174.

35 E McGaughey, 'Will robots automate your job away? Full employment, basic income and economic democracy' (2018) CBR Working Paper.

36 See W Beveridge, *Full Employment in a Free Society* (1944).

37 See White Paper, *Employment Policy* (May 1944) Cmd 6527.

38 AA Berle, 'A New Look at Management Responsibility' (1962) [1\(3\) Human Resource Management 1](#), 3, corporations 'ought not to hoard when expenditure is needed; perhaps they ought to slow down under some conditions.'

39 Since 1971 in particular, see E McGaughey, 'Fascism-lite in America (or the social ideal of Donald Trump)' (2018) [British Journal of American Legal Studies](#).

40 While the aim of full employment is stated in many legal instruments, modern articulation of methods to achieve it are rare.

41 Economic Policies Recommendation (EU) [2015/1184](#) and Employment Decision [2015/1848](#). While this began with the European Employment Strategy in 1997, it formalised much of the thinking that had emerged from the 1970s and 1980s.

42 Guideline 1. Also Guideline 4 says there should be 'control over the deficit and debt levels', but makes no mention of taxation which could achieve this, and that receipts would increase if full employment existed.

43 Guidelines 2 and 5

44 Guideline 6

45 Guidelines 7 and 8

46 *Memorandum of Understanding on Specific Economic Policy Conditionality* (3 May 2010) in DG for Economic and Financial Affairs, *The Economic Adjustment Programme for Greece* (May 2010) Attachment II, 68.

47 *Memorandum* (2010) 71.

48 Z Adams, L Bishop, S Deakin, C Fenwick, S Martinsson and G Rusconi, 'The Economic Significance of Laws Relating to Employment Protection and Different Forms of Employment: Analysis of a Panel of 117 Countries, 1990-2013', n 32. This is based on the CBR, Labour Regulation Index ([2016](#)).

49 The concept of 'scientific management', like human resources, has a dual history. It is popularly associated with FW Taylor, *Principles of Scientific Management* ([1919](#)) 40, who mocked his workers as being slightly less competent than an 'intelligent gorilla'. However, scientific management was equally advocated in a very different sense by Louis D. Brandeis in 1910 before the US Interstate Commerce Commission. See O Kraines, 'Brandeis' Philosophy of Scientific Management' (1960) [13\(1\) Western Political Quarterly 191](#). If management decisions could be predictable and accountable, industries, like railways, could be improved. This could constrain the arbitrary exercise of power, when put together with trade unions.

50 e.g. BE Kaufman, 'Human resources and industrial relations Commonalities and differences' (2001) 11 *Human Resource Management Review* 339, 366-9.

51 D Torrington, L Hall, S Taylor and C Atkinson, *Human Resource Management* (8th edn 2011) 48-50, asserting people have stopped joining unions because they see 'no real point', and not because of anti-union laws (they claim union membership fell everywhere: it did not) and unionised workplaces have an insignificant wage premium (again, inaccurate).

52 An absence of discussion is common. HRM authors who discuss unions and strikes are most ambivalent (and enlightening) about their subject: M Marchington and A Wilkinson, *Human Resource Management at Work* (3rd edn 2005) 58-9 and RA Noe, J Hollenbeck, B Gerhart and PM Wright, *Human Resource Management: Gaining a Competitive Advantage* (8th edn 2012) 624-7.

53 *Memorandum of Understanding* (May 2010) 70.

54 e.g. D Torrington, L Hall, S Taylor and C Atkinson, *Human Resource Management* (8th edn 2011) 49 and 56, arguing union membership declined even in countries ‘which had governments favourable’ to unions, citing ‘Vissa 2002’. In fact, the author’s name is ‘Visser’, and in ‘Why fewer workers join unions in Europe: A social custom explanation of membership trends’ (2002) [40\(3\) British Journal of Industrial Relations 403](#), 424, he argues (contrary to Torrington et al) that the impact of market forces ‘is mediated by labour market institutions.’

55 [1981] [ECHR 4](#).

56 See E McGaughey, ‘Votes at work in Britain: shareholder monopolization and the ‘single channel’’ (2017) [46\(4\) ILJ 444](#).

57 29 USC [§158\(a\)\(3\)](#).

58 See E McGaughey, ‘Fascism-lite in America (or the social ideal of Donald Trump)’ (2018) [British Journal of American Legal Studies](#).

59 US Census, ‘Income and Poverty in the United States: 2014’ ([September 2015](#)) 10, Figure 2.

60 See the United Nations Development Programme, *Human Development Report 2010, 20th Anniversary Edition. The Real Wealth of Nations: Pathways to Human Development* (2010).

61 A Cohn, E Fehr, B Herrmann and F Schneider, ‘Social Comparison in the Workplace: Evidence from a Field Experiment’ (2014) 12(4) *Journal of the European Economic Association* 877.

62 AA Berle and GC Means, *The Modern Corporation and Private Property* (1932) 114.