

Legal rights in the context of declining trade union influence

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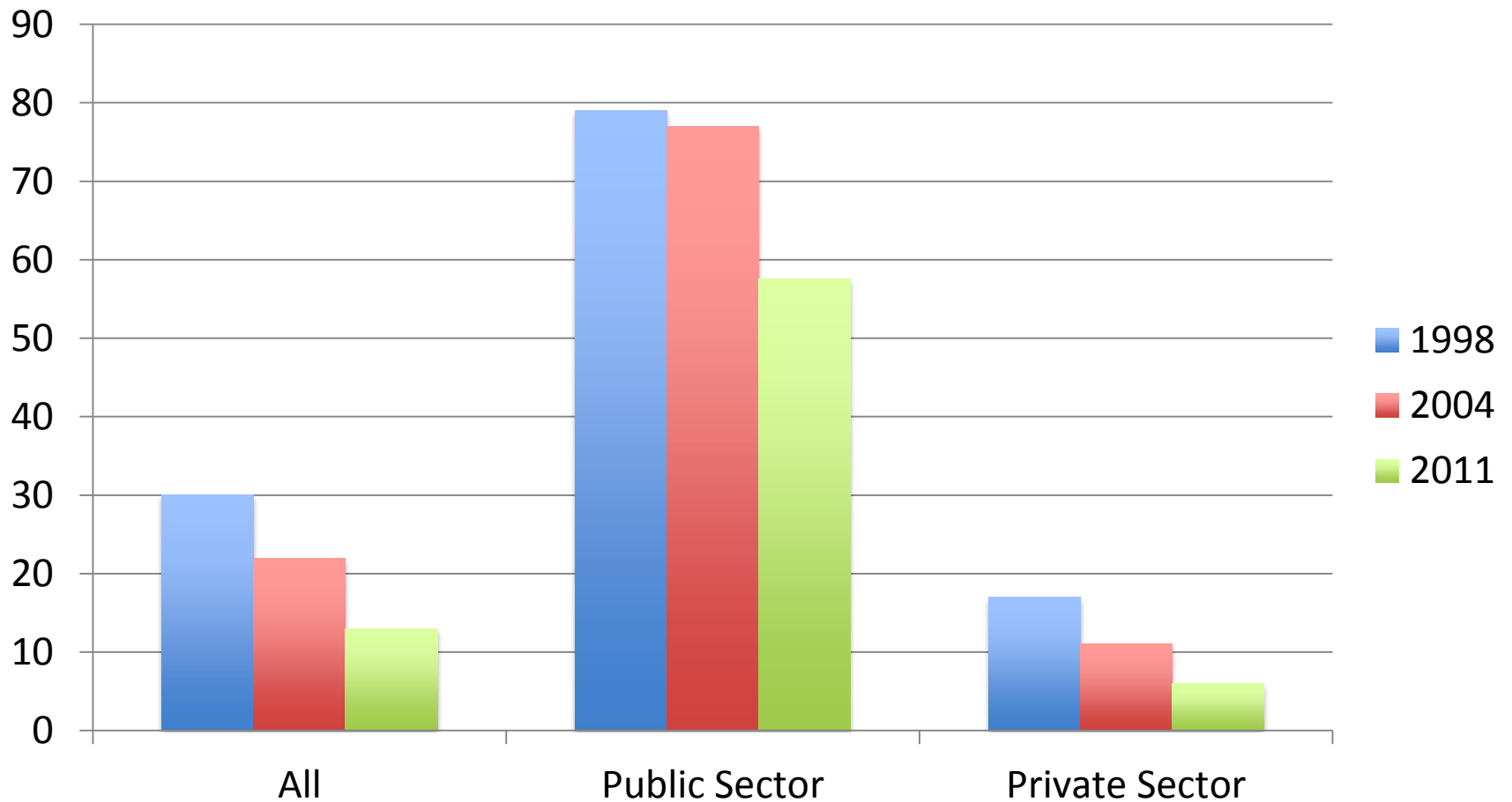
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The UK's voluntarist history

- Until 1980s, historical dependence on collective bargaining to regulate employment
- Legal provision to provide protection against most severe exploitation (Factory Acts, H&S)
- But general preference for collective bargaining
 - Supported by both employers and unions
 - Supported in principle and practice by State mechanisms e.g. ACAS
- Establishment, enforcement and extension of worker rights rested on strong (workplace) unions

BUT...

The decline of collective bargaining



Why?

- Some technical reasons about measurement
 - Changing composition of public sector (inc. finance)
 - NHS restructuring
- Economic restructuring: decline of employment in unionised manufacturing sector
- Managerial rejection of CB over other forms of pay setting and engagement
- Failure of union organising in new sectors of the economy
- Shift of political ideology of both Conservatives and Labour away from active support of CB

Individual legal rights: crowding out or filling in?

- Crowding out thesis: has the increase in legal rights caused less of a demand for unionisation?
- Unlikely – indeed both EU and Labour argued they legislated to ‘fill in’ gaps left by the decline of CB
 - Many rights originate in EU regulation where the agenda and assumptions were/are very different
 - Most legal regulation provides minimal floor of rights: weak compared to most countries (Deakin et al 2007)
 - Union representation helps enforce minimal rights
- More plausible that there is mutual reinforcement of trade unionism, collective bargaining and legal rights (Brown et al 2000)

Union enforcement *and extension* of legal rights

- Note: significant change of attitude and approach by UK unions wrt collective and individual legal protections
- Individual casework: enforcement and extension of individual rights linked to collective representation
- Using the law to organise new workplaces: esp. health and safety
- Legal mobilisation (Colling 2009)
- Extending legal minima through collective bargaining

Sectoral variation

- Unsurprisingly there is significant sectoral variation reflecting:
 - Union presence and influence
 - Scope and coverage of bargaining agreements
 - Priorities and policies of unions, officers, reps
- Compare, for example:
 - University sector: fixed-term contract regs
 - Justice for Cleaners: basic rights, NMW, WT

Enforcement of rights in the absence of unions

- A central challenge in contemporary employment relations (Dickens 2012)
- Complexity of enforcement mechanisms causes problems esp. NMW, TUPE
- Unlikely to get easier with rising ET fees, removal of legal aid, and reduction in access to CABx and LCs
- Union membership allows effective and specialist enforcement mechanisms both individually and collectively

Why is the decline of CB a problem?

- Narrows the agenda to the statutory minima
- In the absence of unions, enforcing protections is likely to become increasingly dependent on financial resources
- Most legal rights individual
 - Little opportunity to address collective issues
 - Encourages all parties to resolve issues individually
- Gives mgmt little indication of problems prior to threat of legal action
- Extending rights dependent on management

But collective bargaining is not a panacea

- Tendency to focus on issues that affect the widest number of members – issues can slip off the agenda
- Public sector equal pay fiasco: Allen v. GMB opens unions to litigation over CB decisions
- Unions have often helped individual members sign non-disclosure clauses ('gagging' clauses) in compromise agreements
- Enforcement and extension of rights relies on effective workplace union presence