

## **UCC EUROPE CONFERENCE**

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### **WHITHER NOW THE EUROPEAN SOCIAL MODEL**

At the outset I must acknowledge that from a social policy perspective Ireland's experience of the European Union has been very positive. In fact nearly every piece of progressive legislation for the last 35 years originated in an EU Directive – notwithstanding the occasional discomfiture of a number of our own Governments.

I am thinking here of the complaint which Congress had to take to the Commission in 1974 to secure the implementation of the Equal Pay Directive. I also have in mind that Ireland joined with Britain in opposing a case brought to the European Court of Justice (ECJ) about two years ago by the UNITE trade union on behalf of Marilyn Robins. Ms Robins applied successfully to have the UK Government establish a Pensions Protection Fund. Ireland joined with the UK Government in the action but, despite losing the case, and despite the British creating a PPF, Ireland never did so.

Last year Ireland was again backing Britain in opposing a directive to give temporary agency workers the same rights as full time employees. Happily an agreement was reached between the Government and the TUC which left Ireland isolated and unable to stop the directive becoming law. Interestingly, the agreement reached in Britain provides for equal wages and conditions to apply after 12 weeks. However, this will have to be the case from day one in Ireland.

To its credit, while the Irish Government initially sought a derogation from The Charter of Fundamental Rights similar to Britain, it subsequently abandoned this stance.

The Charter is an extremely important underpinning of human rights for EU citizens. It assumed the status of primary law on the passage of the Lisbon Referendum. In addition to its own direct provisions it requires the ECJ to have regard to the jurisprudence of the

European Court of Human Rights. Under the terms of the Lisbon Treaty the European Union acceded to the European Convention on Human Rights.

But what does this mean in practice? Consider Article 28 of the Charter which confers on citizens the right to engage in collective bargaining. This right does not exist in Irish law and the Supreme Court in an *Obiter Dictum* has said that the right cannot be legislated for<sup>1</sup>. If an Irish Government decided to legislate for collective bargaining rights, as Fine Gael and Labour have promised to do, then it seems reasonable to assume that they could do so as European Union primary law trumps our constitution. This could, therefore, transform the industrial relations landscape, depending on the detail of the legislation. This was the principal motivation behind Congress' support for the proposition in both the referenda on Lisbon.

I will return to the question of ECJ jurisprudence again later but I want to turn now to the nature of the European Social Model.

The most cited academic work in this field is that of Gósta Esping-Andersen<sup>2</sup>. He concludes that European countries cluster into three separate social models. The first is the Liberal Welfare States which provide modest social transfers, mainly via social safety nets to low income clientele. Ireland and Britain fall into this cluster. The second cluster embraces Austria, France, Germany and Italy which are regarded as having corporatist regimes based on a Christian Democratic polity with origins in Catholic social teaching. They reflect and uphold the family unit and are regarded as being underdeveloped in respect of services like childcare. Benefits are good and are based on work related social insurance contributions. The third cluster includes the Nordic countries which have universalist welfare regimes rooted in the social democratic tradition. They provide high quality public services for all (not just low income groups) and they are funded by high levels of taxation.

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<sup>1</sup> Ryan Air V Labour Court, Appeal No. 377/205

<sup>2</sup> Esping-Andersen, Gósta (1990) *The Three Worlds of Welfare Capitalism*. Oxford Polity Press

A somewhat similar classification is proposed by Jonas Pontusson<sup>3</sup>. He looks at OECD countries and groups them as follows:

Nordic Social Market Economies (SMEs) – Denmark, Finland, Norway, Sweden

Continental SMEs – Austria, Belgium, Germany, Netherlands, Switzerland

Liberal Market Economies (LMEs) – Australia, Canada, Ireland, New Zealand, UK, US.

The listing leaves out France, Italy and Japan because the author feels they cannot be classified properly with the Social Market Economy Model. This is mainly to do with an argument with the ‘Varieties of Capitalism School’ of comparative political economy. The latter uses the designation ‘Coordinated Market Economy’ but Pontusson argues that Japan, for example, cannot be compared with the Nordic countries because of the restricted role played in the economy by its trade unions.

But with both authors at the core of their analysis is the concept of the categorisations being based on the degree of decommodification of labour achieved by each welfare system. This is a concept first advanced by the Hungarian socialist Karl Polanyi in 1944<sup>4</sup>. Roughly it means the extent to which the welfare code allows a person to survive without being forced to participate in the labour market. In other words, if the welfare support is good enough a person can be more selective about the job and the terms and conditions of employment he/she accepts. The lesser the degree of decommodification the more power the employer has. Ireland, for example, has a rather poor decommodification rating.

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<sup>3</sup> Pontusson, Jonas (2005) *Inequality and Prosperity: Social Europe vs Liberal America*. New York. Cornell University Press

<sup>4</sup> Polanyi, Karl (1944) *The Great Transformation*

So, we can see that even within the original 15 EU countries there are at least 3 and perhaps 4 social models based on different value systems. Clearly the Nordic Social Market Model is superior to the rest and it is the great tragedy of our country that we failed to emulate it. It is a measure of the vision of Sean Lemass that he greatly admired the Nordic countries<sup>5</sup>.

Lemass also admired their approach to labour market issues and this was at least partly the cause of our evolution towards Social Partnership. In fact Jacques Delors, as President of the Commission, enshrined social dialogue as the way for Europe to handle industrial relations in the Single European Act of 1986. Ireland's genius was to take social dialogue to a much higher level. Arguable it became seen as one of our comparative advantages as a country. But that is in the past now.

Returning to the question of the jurisprudence of the European Court of Justice, it is not an overstatement to say that four judgements – Lavall, Viking, Ruffert and Luxemburg – have caused great anxiety in trade union circles across Europe. It would be beyond the scope of this paper to go into details of each case but suffice it to say that the judgements are all seen as privileging the right of freedom of establishment over labour rights. The common link between them is the Posted Workers' Directive which governs the conditions under which a worker can be posted to another country with the firm employing him/her. The ECJ appears to be interpreting the right of countries to protect their labour market in a very minimalist way.

The solution to this problem is generally held to be a protocol (or 'Monti Clause') to guide the Court, (which contains no industrial relations experts) or a revision of the Posted Workers' Directive. Neither seems politically possible at this time because of opposing viewpoints between 'Old' and 'New Europe'. If this is indeed the case then social policy has hit the barricades.

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<sup>5</sup> Roche, William K (2009) 'Social Partnership: From Lemass to Cowen'. *The Economic and Social Review*, Vol. 40, NO. 2, Summer 2009: 183-205

Where does this leave us? Well if the further advance of social policy in one direction has been halted that does not mean that the corpus of policy in existence is less relevant. The hope for Europe of many on the social democratic side of politics is that it can contain the excesses of globalisation and preserve a civilised kind of working life.

A great deal has changed in the last year that will affect all of us for a long time. Quiet apart from the global financial crisis and the recession it precipitated there had been a feeling that an end to ‘Boom and Bust’ economic cycles had been achieved – what Bernanke called ‘The Great Moderation’. This was predicated on three conditions, viz:

- The availability of cheap credit;
- The deflationary impetus of China’s exports;
- A change in the balance of power between capital and labour caused by the addition of 1.5 billion workers to the world labour market when China went capitalist and the Soviet Union collapsed in 1991.

We now know that the era of cheap credit is over and the deflationary influence of China is transitory. Only the enduring conflict between capital and labour remains intact – like the dreary steeples of Fermanagh and Tyrone. It may take some years for this to resolve itself<sup>6</sup>.

So, to come back to the question ‘Whither Now The European Social Model’?. – it is hard to answer without knowing the answer to ‘Whither Now Europe’ or ‘Whither Now The World’.

The process of globalisation – which is interchangeable with neo-liberalism in popular parlance – began in the 1970s with the deconstruction of the New Deal. The liberalisation of capital markets, including Bill Clinton’s eventual revoking of the Glass Stegall Act, sowed the seeds for the unwinding of the process.

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<sup>6</sup> Mason, Paul (2009) *Meltdown: The End of the Age of Greed*. Verso

Last week we saw the withdrawal of Google from China. Hopes that China and Russia would move towards liberal democracy have not been realised. Concern with jobs in America, which manifested itself in the defeat of the Democratic candidate for the Senate in Boston, will put pressure on President Obama in his dealings with China. As Gideon Rachman put it in *The Financial Times* last week:

“...protectionism seems to be becoming intellectually respectable in the US in ways that should worry China”<sup>7</sup>.

We have to remember that this is not the first period of globalisation. It happened before, between 1870 and 1913 before dissolving into the conflagration of the Great War.

Keynes once made the point that there is a distinction between risk and uncertainty. Risk we can try to mitigate, uncertainty is always with us.

EU social policy, although underdeveloped, can help us to mitigate the risk of unemployment, of exposure to the ravages of capital, of poverty and marginalisation. In an uncertain world it is better to be a European.

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<sup>7</sup> Rachman, Gideon (2010) ‘Why America and China Will Clash’. *The Financial Times*. 19 January, 2010:13