# CLOSING DOWN A MEANS OF COLLECTIVE VOICE FOR WORKERS—VICTIMISATION OF UNION ACTIVISTS IN BRITAIN

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## ABSTRACT

This article examines the incidence and nature of employer victimisation of labour union activists in Britain between 1998 and 2009. It finds that the incidence is higher than is expected, shows signs of rising, and is mainly to be found in the public sector. This is explained by a series of general and specific factors. Victimisation is then discussed in terms of its relationship to the reassertion of the managerial prerogative and the fate of pockets of assertive workplace unionism within the overall environment of weakened labour unionism.

## INTRODUCTION

One of the most overt manifestations of workplace conflict between capital and organised labour is employer victimisation of workers who are lay union representatives (that is, representatives not employed by the union) and workplace union activists for their workplace union activities (Hyman, 1975). The most severe forms of victimisation comprise dismissal (sacking or redundancy) and suspension (which can lead to dismissal). For writers like Edwards (1985),

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victimisation is part of the structured antagonism of the employment relationship under capitalism. One example of this was the sacking of union convenor Derek Robinson (called "Red Robbo") by the then state-owned vehicle manufacturer, British Leyland, in 1979. This was a harbinger of the neoliberal political consensus among mainstream political parties that facilitated the state-orchestrated attack on labour unionism in the post-1979 period. The case of Manchester-based mental health nurse and Unison lay official, Karen Reissmann, is a more recent instance that attained similar national prominence (see Labour Research Department, 2009). Reissmann was sacked for opposing her health trust employer's implementation of neoliberal government health policy. Such employer victimisation of union representatives for being union representatives and workers for being workplace union activists represents a tool in employers' armoury in their effort to control or erode independent union workplace organisation, because, they believe, such organisation constitutes a significant obstacle to the realisation of employers' unfettered right to manage. Yet it remains the case that many employers will not conduct or contemplate actions of victimisation, either because they are not faced with the presence of what they regard as oppositional workplace unionism or because they are of a more liberal and pluralist mindset (and thus more inclined to strategies of incorporation and institutionalisation). However, this situation can change as employers deal with the dynamic realpolitik of employment relations. So while by no means all employers contemplate or take such action, victimisation, nonetheless, works because it has both physical and psychological dimensions: it deals with what is perceived to be a threat or obstacle posed to the employer by the representative or activists concerned; and it also sends out a message that others who may consider playing such representational roles will suffer similarly punitive action.

The article starts by reviewing the issues that need to be discussed in order to begin to understand the definition, context, and rationale for this form of worker victimisation. It then moves to discuss the methodological issues involved in obtaining the data that need to be generated on the frequency of incidents of victimisation and their characteristics before this form of worker victimisation can be set in some historical context. The main body of the article lays out the findings of the research carried out by the author and analyses them in terms of the nature and extent of victimisation and the outcomes and impacts.

## CONCEPTUAL AND CONTEXTUAL ISSUES

Although victimisation is a high-risk strategy for employers—given the possibility of its arousing a collective and combative backlash from the affected workers and being seen as an act of overt and political warfare—the rewards to be gained from victimisation potentially include the decapitation and pacification of workplace opposition and the reinforcement of the managerial prerogative. The victimisation tactic falls within the category of union suppression or "forceful

opposition" to unions and the use of the "iron fist" as against union substitution, "peaceful competition," and the "velvet glove" (see, for example, Bain, 1970; Blyton & Turnbull, 2004; Gall, 2004). However, in an era in which human resource management (HRM) is now believed to be the dominant means of managing employment relations in Britain (Kersley et al., 2005), and given HRM's attempt to win positive employee commitment through consent rather than coercion (via enlightened employment practices such as employee involvement, direct communication, and paternalism (see Keenoy, 2009; Ulrich, 1997)), it can be ventured that the frequency of victimisation of union representatives and activists should be close to nil because the use of such a practice should be deemed unnecessary (see, for example, Guest, 1987, 2001, for a flavour of this). Indeed, as overall union membership has fallen, to 6.8m and 27.4% density by 2008 (Barratt, 2009), and union workplace organisation has withered, as judged by the contraction of collective bargaining coverage to 33.6% of employees by 2008 (Barratt, 2009), victimisation should be all the more rare, for employers are far less likely to meet a workplace union presence, much less effective workplace unionism. The prevalence of partnership agreements between unions and employers (Bacon & Samuel, 2009) should also preclude acts of victimisation. So due to employers' chosen practices and the environment of union atrophy, very little evidence of victimisation should be expected. And while this article is unable to provide statistical evidence as to whether this is true, by comparing the pre- and post-HRM eras of employment relations in Britain, it suggests that the frequency of instances of victimisation is higher than would ordinarily be expected as a result of the ascendancy of HRM, union decline, and union-employer partnerships. This research, thus, casts new light on the issues of employer behaviour, union presence, and the interrelationship of the two. For example, it is possible that victimisation may be found to be part of the practice of HRM as a necessary means of making workers more susceptible ("softening them up") to HRM practices once they have been deprived of the protection of, and access to, independent workplace unionism (see, for example, Smith & Morton, 1993, on decollectivisation). Or, contrary to some assertions, there may be a "dark side" integral to some versions of HRM, in which the antiunion nature of HRM is most likely to be exhibited in unionised environments (Kelly, 1998).

For the purposes of this article, victimisation is defined as composed of dismissals (sacking and redundancies), on the one hand, or of suspensions as a result of alleged serious disciplinary offences on the other, of union representatives such as shop stewards and branch secretaries or union activists who hold no formal union position. The basis of targeting is union activities no matter the superficial reasons given by employers for their actions here or the subterfuge in which employers engage. These victimisations are necessarily selective, rather than mass or blanket victimisations. There are other salient forms of victimisation, such as being passed over for promotion, refused other

jobs in the employing organisation, being transferred to other work, given unsocial shifts, and so on. Such victimisation is sometimes referred to as harassment. However, cases concerning the termination or suspension of employment are the more serious and more tangible, and consequently also more noteworthy and thus more likely to enter the public domain. Such instances are therefore more open to the process of identification. By contrast, instances of harassment are more likely to remain internal within organisations, to be more difficult to prove, and thus less likely to enter the public domain.

In Britain, the statutory position with regard to employer victimisation for union activities (as laid out above and as opposed to victimisation for the mere holding of union membership) is that it is unlawful. The legal framework here is set out by the Trade Union and Labour Relations (Consolidation) Act 1992 (TULR[C]A, sections 157, 158), the Employment Rights Act 1996 (sections 118, 125), and the Employment Relations Act 1999 (section 33). Such victimisation comes under the heading of unfair dismissal (subject to a qualifying period vis-à-vis length of employment with the concerned employer). Dismissal is automatically unfair under the TULR(C)A if the principal reason for it was that the employee "had taken part, or proposed to take part, in the activities of an independent trade union at an appropriate time." Such an employee may be eligible for interim relief. However, employers are lawfully permitted to dismiss employees for reasons such as misconduct at work, lack of capability, and redundancy, as long as the employers are in accordance with reasonable procedure as set out by the code of conduct of the state body, the Advisory, Conciliation and Arbitration Service (ACAS), and as long as the decision to dismiss falls within the range of reasonable responses open to an employer. The statutory body that adjudicates such disputes is an Employment Tribunal (called an Industrial Tribunal until 1998). The remedies available to the tribunal are reinstatement and (financial) compensation. But because reinstatement can only be recommended where it is practicable, in practice, compensation is the main award. Compensation can be considerably higher than in "normal" unfair dismissal cases and includes a minimum basic award as well as a compensatory award. However, the "special award" made where reinstatement is impractical (an award that was higher than other awards for unfair dismissal) was abolished in 1999.

Although blacklisting is a form of victimisation (Ewing, 2009; D. Smith, 2009) that has been used against union representatives, activists, and members, it is not surveyed here due to methodological difficulty. First, because blacklisting largely but not exclusively concerns the prevention of the commencement of employment by interfering with meritocratic selection. Thus, workers are not actually dismissed in this process. Rather, they are denied employment. Second, and consequently, the act of blacklisting does not generate evidence of victimisation that is identifiable in the public domain. Blacklisting before the commencement of employment may have affected several thousand workers in the last decade (BIS, 2009; Ewing, 2009). However, there are cases of dismissal using

blacklisting after employment has commenced, and these types of cases are—subject to the nature of the methodology outlined below—included in the working definition of victimisation used here. This means that the extent of victimisation established in this article is necessarily an underestimate (albeit by an unknown proportion), because the precommencement of employment use of blacklisting has occurred in the construction and offshore oil and gas industries since at least the 1970s, in an organised and conscious way throughout the employing organisations in these sectors (Ewing, 2009; Woolfson, Foster, & Beck, 1996).

The rationale for examining the most recent 12-year period is multifold. First, the White Paper *Fairness at Work* of 1998 provided the basis for the creation of the Employment Relations Bill of 1998, which became the Employment Relations Act 1999, signalling a process of legislative reform of employment relations to employers. The 1999 Act not only contained a provision outlawing blacklisting (which was not subsequently implemented due to alleged insufficient "hard" evidence) but also abolished the special award for dismissal for union activities with the effect of reducing the amount of financial compensation that was payable by employers in cases of dismissal for union activities. Thus, changes in law occurred at this point with regard to victimisation, creating a less punitive regime. Second, the 1999 Act created the statutory union recognition procedure that helped stimulate union attempts to gain recognition from nonunion employers (Gall, 2007). The relevance here is that in resisting a trajectory toward granting recognition to unions, some employers may have deployed the tactic of victimisation. Although the regulatory regimes governing the statutory process for gaining union recognition in Britain and the United States differ, there is sufficient similarity (Wood & Goddard, 1999) to warrant a comparison of effects. Thus, in the United States, the National Labor Relations Act 1935 has been revised through subsequent legislation and legal precedents in terms of interpretation, so that it now constitutes a considerable stimulus for employers to avoid unionisation and union recognition through suppression (for a summary, see Gall, 2010). This relates not only to opportunities for suppression but also to the consequences of suppression, that is to say, to a low punishment regime for "unfair labor practices," Thus, this article forms part of the literature concerning Britain that is parallel to that found in the United States, for it seeks to identify the scale of such suppression and the stimuli that lead to it. Third, the widespread availability of electronically stored data on the World Wide Web began around 1999, facilitating the identification of cases of victimisation. It is worth noting, though, that before and after the change in law in 1999, the proportion of employment tribunals determining that orders of reengagement or reinstatement be made after proven cases of unfair dismissal (for all reasons, including union activities) has been much lower than 1% (Renton, 2008). With the inability to enforce such decisions, employers choose to pay off the litigants. Consequently, the issue of financial compensation remains an important one in cases of victimisation.

## METHODOLOGICAL ISSUES

Instances of victimisation of workers by employers are by their very nature contentious and controversial, and all the more so where victimisation for union activities is alleged to have taken place. The contention and controversy—as well as the victimisations themselves—reflect the underlying aspects of conflict of interests between capital and labour in the capitalist employment relationship, and this has ramifications for the research methods deployed. Given that the canvas upon which to measure union victimisation is the entire economy of England, Wales, Scotland, and Northern Ireland from 1998 to 2009, it was found unfeasible to conduct survey work through interviews or questionnaires with employers and unions to try to capture incidents of victimisation—assuming that respondents were willing to be frank as well as being able to accurately recall all such instances. Consequently, the approach of identifying "documented" cases through secondary sources was utilized. This came to mean cases in which unions identified victimisation for reason of union activity (as opposed to just union membership). And here, the sources were the unions themselves, through their membership magazines and press releases, and the radical left and progressive media (like the *Morning Star* and *Socialist Worker* newspapers and the labourstart and labournet Web sites) with some use of the liberal press (like the *Guardian*), the quality establishment national press (like the *Financial Times*), and the quality regional press through the Nexis electronic database of newspaper articles. Reporting on cases of victimisation was primarily carried out by professional journalists. The sources mentioned above were used consistently for each year in the 1998–2009 period in order to build up a database of cases of victimisation on an annual basis, making each year comparable to the others. The identification of individual cases was based on the victimisation of a named employee at a named employer, so that, on the one hand, no double counting arose, and on the other hand, no unnamed and unspecified cases were counted. This specification also allowed the characteristics of the context of victimisation (such as sectoral location) to be identified. Given this breadth of detailed investigation, it can reasonably be assumed that any changes in the number of incidents of victimisation by year (or other category) are real, especially because the degree of coverage by the sources has not varied over the period under investigation. The remainder of this section sets out the reasons for deploying such secondary sources in this way and then discusses the challenges involved in doing so.

Quite apart from the extremely high probability that many alleged cases of victimisation never reach the obvious source of independent verification, namely, Employment Tribunals, and that others are never adjudicated there due to pre-emptive out-of-court' settlements with confidentiality clauses, documentation and evidence substantiating allegations of instances of victimisation are often extremely difficult to come by for the aggrieved party. Secrecy and confidentiality are the watchwords of employers in these matters; moreover, proving intention,

motivation, and cause and effect means that the bar of proof is very high. Given this situation, it would be wrong to judge the number of cases of proven victimisation by relying solely upon such cases found in employment tribunal records. Something similar can be said about using the caseload of individual conciliations conducted by ACAS.

Therefore, without being entirely beyond reproach, the measure used in this article is a union's allegation that victimisation has occurred. Of course, the standard of proof here is lower than that of independent third-party verification, but it is the case that, on balance, where a union is prepared to publicly allege that victimisation for union activities has taken place, this is a reasonably good measure of the existence of victimisation, because the union will demand hard evidence from the aggrieved member before it is prepared to put its reputation and resources at the disposal of a such a case and its resolution. Thus, the use of the union as the method of quality control means that not all punitive action against union representatives or activists is necessarily seen as victimisation. In this way, notions of a left-wing conspiracy can be kept in check, for employer actions that look like victimisation to some may seem entirely justified to others. However, there are two senses in which the union threshold or bar is too high, for there are cases that unions believe are real but that cannot be proved beyond reasonable doubt, so that unions are not prepared to pursue these cases; there are also cases in which the union is prepared to collude with the employer to get rid of an "irritant" to both parties.

The reason why many media outlets cannot be relied upon as parties of independent verification is twofold. First, many media organisations (national, regional, local) are now not, in comparison with periods in the past, particularly interested in the issue of unions and so will not necessarily report on cases of victimisation. Second, and following from this, these media organisations are not prepared to expend the resources that are necessary to independently substantiate allegations of victimisation through investigative journalism, because this is an expensive activity in which there is intense pressure upon costs. Consequently, if media outlets cover stories of alleged victimisation, many of them are most likely to do so as a result of a decision to use union press releases or stories fed to them by unions. The most they do in these situations is to couch the story as an allegation rather than a fact and ask the employer for a comment. In other words, many media stories are replications of union information; thus, it is more useful to use the original source of material from the unions concerned. There are, however, two reasons why some media coverage has been used. First, the union-orientated and left-wing media (like the labourstart and labournet Web sites, and the *Morning Star* and *Socialist Worker*, respectively) are more predisposed than other media outlets to reporting on alleged instances of victimisation. Second, there are cases of victimisation that, for whatever reason, such as collusion with management against (internal) opponents, a union is not prepared to publicise. Here, such forms of media reporting can play a useful role.

The point of this discussion of the relevant methodological issues is that the data in this article are reliable by virtue of their ability to capture the vast majority (but not all) of the victimisations of lay union representatives by employers. Consequently, a catalogue of victimisations has been created with information on the key characteristics of each example (see below). The 12-year period 1998–2009 was chosen for reasons concerned with both historical appropriateness and the reliability of the data. While 12 years is arguably not a particularly long period of time in which to identify trends, it should provide a sufficient length of time from which to make a tentative analysis.

## THE RECENT HISTORICAL CONTEXT

Before proceeding to examine its contemporary incidence and nature in Britain, it is useful to situate union victimisation in a wider historical context in order to appreciate its salient popular and historical dimensions. For those public commentators and analysts of a liberal persuasion, (substantiated) victimisation of union representatives and activists constitutes an unacceptable face of employer and management practice. Victimisation by management and employers is seen as inhumane, unfair, uncaring, and thus unacceptable. It is this liberal concern, rather than the concern of labour unionists and those of a left-wing persuasion, that primarily explains why examples of victimisation have become issues within the local or national body politic since the late 19th century in Britain. Nonetheless, this liberal concern is buttressed by the concern of unions, social democrats, and socialists, who are more likely to situate victimisation as being symptomatic of wider extra-workplace injustice emanating from a significant imbalance of power and resources between different social groups and classes. And having attained the standing of something akin to minor political "hot potatoes," employers come under political pressure, which has economic ramifications through damage to their reputation and brand, to amend their behaviour by, for example, reinstating those who have been dismissed or dropping disciplinary proceedings. In other words, there are some costs associated with victimisation as a result of public values, even if these are not large costs and they are not outweighed by the benefits.

However, in the period between 1975 (when Margaret Thatcher was elected leader of the Conservative Party) and 1997 (when "new" Labour came into office), liberal concern, in terms of both its extent and its impact, was reduced as a political force because of the rise of political and industrial Thatcherism, with the result that victimisation lost much of its previously unacceptable political status. The example of Derek Robinson is illustrative of the sea change and the broader scope for victimisation. In the short period that Robinson was convenor at the Longbridge factory in Birmingham, from 1978 to 1979, he was alleged to be "behind" some 523 disputes (BBC, 2000). Yet he was dismissed by the "macho-management" under Sir Michael Edwardes for putting his name to a

pamphlet that criticised the senior management as inept and incompetent. The significance of this is that the company succeeded in sacking Robinson by an opportunistic act and faced no strike to gain his reinstatement. This trajectory of "changed times" with regard to victimisation was strengthened and extended by the dismissal of union activists during the 1984–1985 miners' strike. Yet since 1997, with "new" Labour in office, some of the former liberal concern has reasserted itself, but not to the extent that the impact of the 1975–1997 period has been undone. The point of this historical sketch is to embed the issue of victimisation in the changing hegemonic narratives and discourses of the times.

One caveat is necessary here, in order to properly contextualise instances of victimisation. This is that historically, while some of the most famous causes célèbres of the labour movement in Britain have concerned such cases of victimisation, the highest-profile of these cases have centred on punitive measures taken by the state against strikers where unlawful activity has taken place during strikes. These concern acts of picketing like those of the Pentonville Five dockers and the Shrewsbury Three building workers in the early 1970s (see Hain, 1985). In these cases, the action of the state against union activists in times of stormy, overt conflict has generated a level of politicisation unseen in other cases. The politicisation results particularly from the widespread political belief that that the state's actions have transgressed its mandated democratic role and spurned its required neutrality by openly siding with employers. The absence of such state action in the decades after the 1970s—as a result of lessons learnt by politicians and state apparatchiks—indicates again the nature of the changed terrain upon which the practice of victimisation should be seen.

## THE NATURE AND EXTENT OF VICTIMISATION

This section examines the nature and extent of the incidence of victimisation identified in the data that were gathered for this project. In doing so, it also begins to lay out an explanation for the context and causes of victimisation. Over the period under examination, namely, 1998 to 2009, 310 cases of victimisation were identified.

The most common (73%, $n = 226$) immediate context for victimisation was the situation in which the act of dismissal or suspension was related to an industrial dispute between the employer and the workplace union. Here, acts of victimisation took place in the run-up to, during, or after the dispute and in cases where industrial action was taken. The remaining contexts for victimisation were political disputes involving "whistle blowing" (in which management wrongdoing is exposed) or allegedly bringing the employing organisation into disrepute by campaigning publicly against the employer (although these contexts are never entirely separate from industrial disputes). Although a definite connection cannot be proven (because managers were not interviewed and

relevant documents were not obtained research), it would seem that the acts of victimisation came about as a result of challenges to employer actions and policies, challenges that the employer wished to repel. Even in cases of victimisation that took place quite some time after disputes ended, there still appeared to be connections of this nature, whether these involved new information coming to light or changed labour market conditions. Yet seldom were cases found of employers engaging in "vindictive" victimisation when they had "lost" an industrial dispute, a fact that most likely reflects the current balance of power between capital and organised labour.

From Table 1, it can be deduced that the preferred method of victimisation has been dismissal (83%, $n = 256$), rather than suspension (although suspension can lead to dismissal). This suggests, on balance, that employers believe it is preferable to act quickly, in order not only to remove a representative or activist from a workplace (as can be done with suspension) but also to expedite the matter by ending the individual's employment rather than having to deal with the consequences of suspension through an internal process. The number of victimisations by dismissal has shown a broadly upward trend since 1998. Some of this can be attributed to workplace battles over the implementation of, and resistance to, government policy in the public sector, while factors such as the confrontational nature of industrial relations in a small number of specific sectors (see below) would also seem to have a significant influence. However, the apparent "step change" from 2004 onward to a significantly higher level of victimisation appears to be the result of the coming together of a number of specific trends. One is related to the attempt to secure new union recognition among contract cleaning and security firms. Another is the renewal of widespread industrial conflict in sectors with existing union recognition (the postal service, the London Underground, education, and construction). Underlying these is the continuing level of victimisation in local government and the civil service. The year 2008 stands out not only for a higher number of individual cases of victimisation but also for the inclusion of a number of cases in which small numbers of activists were victimised together and simultaneously. This raised the number of victimisations by nearly 20 cases over and above previous years, in which such clustering of small-scale acts of collective victimisation was uncommon. One explanation for the notably higher frequency of such victimisation in 2008 and 2009 relates to employers using the alleged need for redundancies in a recession to get rid of union "troublemakers" (Labour Research Department, 2009). Another explanation is that it relates to particular attempts to gain union recognition at businesses run by a small number of nonunion employers (the aforementioned cleaning and security contractors). This interpretation reflects the suggestion that the optimum period for victimisation is often a period of slack labour markets. This is suggested not just because of employers' perceived financial need in times of recession or contraction in the economy (in which union resistance or opposition can be calculated as a cost) but also

Table 1. Victimisation by Year

| Year | Dismissal | Suspension | Totals |
|------|-----------|------------|--------|
| 1998 | 11 | 2 | 13 |
| 1999 | 10 | 2 | 12 |
| 2000 | 18 | 1 | 19 |
| 2001 | 12 | 1 | 13 |
| 2002 | 17 | 4 | 21 |
| 2003 | 14 | 6 | 20 |
| 2004 | 16 | 1 | 17 |
| 2005 | 24 | 5 | 29 |
| 2006 | 27 | 2 | 29 |
| 2007 | 18 | 2 | 20 |
| 2008 | 56 | 6 | 62 |
| 2009 | 33 | 22 | 55 |
| Totals | 256 | 54 | 310 |

**Note**: Suspension is differentiated from dismissal where suspension did not lead to dismissal.

because it is believed that a robust response from the union and workers concerned is less likely in times of reduced bargaining leverage.

The total number of victimisations, 310 over a 12-year period, is of some significance for a number of reasons. First, there is hardly any more dramatic action that an employer can take against a union representative or activist than termination of employment, given that this jeopardises the representative or activist's livelihood and future employment. Second, one can venture that the more victimisations of union activists there are, the greater their effect will be. These victimisations are likely to deter other union members from taking on activist roles, because a consideration of personal costs is likely to outweigh any consideration of the potential benefits to the group. Third, 58% of all victimisations have taken place within the public sector/services (including the state-owned Royal Mail postal service and the London Underground transport network). Given that historically the public sector has been a far more supportive environment for labour unionism than the private sector has been, the number of victimisations in the public sector reveals the effects of government policy in terms of changing state traditions, and specifically the effects of the importation of private sector management practices into the public sector (see below). Fourth, and given the paucity of union activists after many years of decline in their

numbers as well as the fact that the launching of "union organising" to renew and expand labour unionism is dependent upon lay activism (Gall, 2009), unions face a serious problem with regard to the destruction of their most valued resource, namely, lay activists in workplaces where union members are located.

Union representatives and activists have faced victimisation in the context of both the attempt to gain union recognition from employers and the attempt to operate within existing union recognition agreements (see Table 2, which shows that 71% of cases occur in situations where recognition agreements already exist, and also Heery & Simms, 2003, 2006). The fact that the large majority of cases occur in the context of already existing agreements is indicative of the relatively small number of campaigns run by unions to gain recognition and the upward trend among employers to try to undermine existing recognition (see also Gall, 2004, 2007; Gall & McKay, 2001). It can also be ventured that there are other potential, possibly better, means open to employers to deter union recognition campaigns, such as threats to all workers' employment and union substitution techniques. This would help to explain the lower incidence rate of victimisation in cases where employers wish to resist granting union recognition. However, dealing with existing union recognition and workplace unionism provides relatively less leeway to employers, as these agreements are already in existence and clearly represent a potential obstacle to the managerial prerogative, with the result

Table 2.  Victimisation by Institutional Context

| Year | No union recognition | Existing union recognition | Totals |
| --- | --- | --- | --- |
| 1998 | 7 | 6 | 13 |
| 1999 | 7 | 5 | 12 |
| 2000 | 7 | 12 | 19 |
| 2001 | 7 | 6 | 13 |
| 2002 | 7 | 14 | 21 |
| 2003 | 5 | 15 | 20 |
| 2004 | 3 | 14 | 17 |
| 2005 | 4 | 25 | 29 |
| 2006 | 10 | 19 | 29 |
| 2007 | 8 | 12 | 20 |
| 2008 | 15 | 47 | 62 |
| 2009 | 8 | 47 | 55 |
| Totals | 88 | 222 | 310 |

that victimisation in this context is preponderant. Furthermore, given the very low levels of derecognition (called "decertification" in the United States) in Britain from 1998 onward (such cases never numbered more than 11 per year compared with more than 30 per year in the earlier years of the 1990s), Gall (2007) suggests that to the extent that some employers seek to confront labour unionism, they seek to do so using a tactic they believe is less likely than derecognition to generate a confrontation with all the union members at hand. Moreover, the choice of alternatives to derecognition is also likely to have been influenced by the availability of the means of gaining statutory union recognition since 2000 under the Employment Relations Act 1999. It is interesting to note that almost no cases (2%, $n = 6$) were identified of employers trying to derecognise individual union representatives so that more compliant ones could then emerge, an act that might constitute one means of attempting to change the nature of workplace unionism. It can be deduced from this that employers did not believe that such a change would actually be forthcoming, and so victimisation as a sharper tool offered more possibility for the attitudinal restructuring of workplace unionism.

Table 3 provides a basic picture of the sectoral distribution of extant victimisation. There is a notable overall preponderance of victimisation in parts of the public sector/services, notable particularly as the public sector by numbers

Table 3.  Public and Private Sector Distribution of Victimisation

| Year | Public sector | Private sector | Totals |
|---|---|---|---|
| 1998 | 5 | 8 | 13 |
| 1999 | 8 | 4 | 12 |
| 2000 | 11 | 8 | 19 |
| 2001 | 9 | 4 | 13 |
| 2002 | 10 | 11 | 21 |
| 2003 | 15 | 5 | 20 |
| 2004 | 15 | 2 | 17 |
| 2005 | 21 | 8 | 29 |
| 2006 | 13 | 16 | 29 |
| 2007 | 9 | 11 | 20 |
| 2008 | 32 | 30 | 62 |
| 2009 | 34 | 21 | 55 |
| Totals | 182 | 128 | 310 |

employed is a quarter of the size of the private sector. This preponderance may seem surprising given the historical but still living legacy of the public sector, which resulted from the fact that state policy after the postwar settlement had compelled the different organs of the state (like local authorities) to act like a model employer with regard to the promotion of labour unionism, encouraging union membership, granting union recognition, and engaging in collective bargaining. However, two factors related to the clash between the forces of continuity and the forces of change explain this phenomenon. The first factor is that the public sector is the locus of much strong workplace unionism (supported by higher union density, consisting of some 60% compared to less than 20% in the private sector in the period under study). Indeed, it is the locus of a (numerically) disproportionate amount of strong workplace unionism in comparison with the private sector, this being in large part attributable to the state's policy of promoting labour unionism. Moreover, if HRM practices are antiunion, one would expect the public sector to be the place where labour unionism is most capable of resisting HRM because labour unionism is strongest here and because it represents a significant obstacle to the implementation of HRM, so that the greatest clash would take place here, expressed in the form of victimisation. The second factor is that despite all this, it is now evident that the notion of the model employer no longer holds as much sway in the public sector as it used to do. Rather, we see the ascendancy of "new management techniques" or private sector management/HRM practices under the guise of "new public sector management." The change in the employer perspective on the way the labour-management relationship should be conducted has accompanied the change in the way the public sector is run. Both reflect wider changes in the ideology underpinning the employment relationship and the purpose of the public sector. The cases of victimisation in the public services overwhelmingly concern union representatives and activists campaigning industrially and politically against employer policies of marketisation (and the effects associated with it). Thus, it may be suggested that the marketisation of the public services under the guise of "modernisation" as a result of government policy under "new" Labour (see P. Smith, 2009) has resulted in conflict at the level of the workplace. However, marketisation has taken different forms and has been implemented in different ways and according to different managerial styles across the public services, so it cannot simply be concluded that marketisation per se has led to victimisation. This is not least because marketisation has not uniformly led to overt conflict, and overt conflict has not uniformly led to victimisation. For example, many public sector employers have emphasised partnership working. Nonetheless, victimisation is a response to workplace unionism that regards the impact of marketisation on workers' terms and conditions of employment as deleterious and acts accordingly.

The key missing explanatory factor is the conscious agency of local management under decentralised systems of industrial relations, where managerial

choices are made about what kind of labour unionism is found to be preferable and the way to deal with extant labour unionism. It should not be assumed that policies of victimisation or instructions to engage in it are necessarily determined at board level, for senior management seldom engages in such a level of detailed intervention. Even where "get tough" policies with regard to unions are promulgated by senior management, as in the postal service (see Gall, 2003), this seldom leads to explicit instructions to victimise. Rather, the policies are interpreted by local managers as not precluding victimisation or even as encouraging it.

The article's rationale for taking oppositional workplace unionism as a given in cases of victimisation is that workplace unionism that is not oppositional but rather accommodative and pragmatic, for whatever reasons of ideology or weakness, will be unable and unwilling to engage in attempts to resist the emboldened managerial prerogative. The construction of this rationale is based on an examination of studies of workplace unionism by an array of authors (for a summary of these, see Gall, 2003). Workplace unionism that is not oppositional will not present the employer with an obstacle and, therefore, is extremely unlikely to be a potential candidate for the choice of victimisation as an appropriate tactic. So the key variable represented by the agency of local management may also lead to explicit partnership approaches, tactics of incorporation, or working accommodations in response to a perceived need to deal with oppositional workplace unionism. Indeed, anything other than an analysis based upon a contingent configuration of factors is likely to lead to a mechanical and determinant analysis that ignores the complexity and diversity of socially constructed and socially contingent processes and outcomes.

Consequently, and following the aforementioned rationale, the areas of local government, the civil service, and education (primarily nonhigher education) stand out, in comparison with the NHS or the fire and rescue service, for example, as accounting for the bulk of cases of victimisation in the public services. Local government and the civil service have for several decades had a plethora of union branches that have been capable of generating oppositional workplace unionism, while the political left has also been a significant player at the grassroots level in the unions which organise in the former areas. In the NHS formal partnership working is practiced, and both workplace unionism and the influence of the political left have been less developed. The influence of the left at the workplace level in the aforementioned unions in local government, the civil service and education may have increased in recent years (or certainly not diminished as expected), because the declining number of workplace activists and the decline among them of union activists from the mainstream of the Labour Party have meant that more hard left activists, often from outside the Labour Party, now hold lay union positions and are more influential even if they do not hold union positions. Throughout the public services, the most common dynamic giving rise to victimisation has been the clash between "old"

public sector expectations and "new" private sector "demands" in which costs are more emphasized and opposition to management is seen as more illegitimate and deviant.

Areas in other sectors that stand out with significant clusters of victimisation are the railways (overground, underground) within transport; the postal service within media and communications; and manufacturing, construction, and cleaning and security within private sector services. In the postal service and rail transport cases, a heavily contingent analysis is required to explain the motivation behind victimisation. First, the main railway workers' union has pursued an assertive form of collectivism, and its strike action has an immediate and disproportionate impact where this form of transport is not readily substitutable (Darlington, 2009). Second, management is likely to have become accustomed to acting in equally robust ways. Something similar could be said with regard to the postal workers' union and the state postal company (Gall, 2003). However, the difference between the railways and the postal services is that the former's actions are more nationally led, whereas the latter's stem from workplaces themselves. In the engineering construction sector, where there are financial penalties attached to project delays, the prevalence of unofficial action suggests that the situation here is akin to that in the postal service with regard to workplace unionism (see Eaglesham, 2009).

This brief discussion highlights that management's moral or political hostility to oppositional unionism is a necessary factor but insufficient on its own to generate victimisation, for the oppositional unionism must also be an effective form of unionism that is capable of disrupting the process of production, distribution, and exchange. Indeed, one can go further and suggest that there is little to be gained (and possibly more to be lost) by management's victimising lay union representatives or activists in situations where workplace unionism is neither oppositional nor effective. Here, the contrast between Britain and the United States is very clear. The most extensive and extreme opposition to labour unionism, as evidenced by victimisation, is found in the private sector in the United States (see, for example, Bronfenbrenner & Juravich, 1998; Kleiner, 1984, 2001). This can be explained by a number of factors. First, in Britain, unlike the United States, the vast majority of the resources provided for "union organising" have not been provided in the private sector in an attempt to gain new union recognition agreements. Unions have concentrated far more on "in fill" recruitment and organising where they already have recognition, that is, primarily in manufacturing and the public sector. Consequently, the extent of employer resistance in the private sector, especially in the private services part of it, has been far less than in the United States, because nonunion employers are not being challenged by attempts to curtail their managerial prerogative. Second, the size of the public sector in Britain is far greater than in the United States, owing to the postwar domination of a social democratic consensus. Within this context, the tradition of state support for labour unionism has also been far greater than in the United States. This makes the introduction of neoliberalism and marketisation

to the public services more contested and contestable. Third, the lawful right to strike is more curtailed in the United States than in Britain. For example, postal workers in the United States are subject to compulsory arbitration to resolve their grievances, while railway workers (federally) and teachers (in various states) are prohibited from striking. The importance of this is that a broader ability to strike is a necessary (though not sufficient) stimulant to workplace unionism, and it is workplace unionism that is the most effective challenge to the managerial prerogative.

## Outcomes, Impacts, and Union Responses

Given that victimisation is potentially both a high-risk and a high-profile form of action to take, it is important to examine whether employers and managers have achieved what they sought to achieve in taking such action. In almost all cases of dismissal (86%) in the present study, employers were able to completely and successfully remove the representative or activist from their employ, even if this meant agreeing to a confidential settlement prior to Employment Tribunal judgments, after an employment tribunal judgment that ordered reinstatement, or without regard to any employment tribunal process. Because of nondisclosure clauses in confidentiality agreements, the numbers of dismissals resolved in this way and the sums of money involved are not known. Nevertheless, it is apparent that many employers choose to pay their way out of trouble in this regard. In cases of suspension that did not lead to dismissal, a temporary rather than permanent pushing back of the workplace union was often achieved, in which suspension led to some form of disciplinary action. A similar outcome appears to have been generated in cases of dismissal. Thus, the workplace unionism did not collapse or wither away (although few cases of workplace unionism appear to have been revitalised or renewed by the stimulus of responding collectively to victimisation). In only a small minority of cases (9%) did collapse or withering take place, and these were cases in which workplace unionism was only nascent and attempting to gain union recognition. This suggests that victimisation was ill conceived if the objective was to rid the employer of the union "problem" permanently. However, if the objective was the lesser one of dampening down the ability and willingness of workplace unionism to oppose management, then in a significant minority of cases this was achieved, although it was not a permanent gain.

## DISCUSSION AND CONCLUSION

The evidence for the period 1998–2009 suggests that victimisation of union representatives and activists can be viewed as a significant and potentially growing problem for unions in Britain. This should concern unions because it is one form of grievous attack on a key human resource at the foundation of unionism itself. It is not possible to tell how the level for 1998–2009 compares with that of

the decades before, although it would seem that it was probably higher in both absolute and relative terms before 1998, given the higher levels of open conflict between unions and employers and the greater workplace presence of lay union representatives and activists. Nonetheless, government policies of marketisation of the still large public sector have led to an increased scope for victimisation—albeit not in a simplistic fashion. And, moreover, as unions in Britain have continued to weaken, such victimisation is proportionately a greater danger to them now than it was before. However, we must acknowledge that victimisation remains a minority pursuit among employers in Britain.

It may seem odd to argue for the significance of victimisation at a time when some aspects of employment relations in Britain are more regulated in the post-1997 era, and when, as a result of this, employees have more individual rights at work than before. Several factors provide an explanation for this apparent contradiction. One is that employees have been granted individual rights (including whistle blowing and protections against discrimination and harassment) that do not pertain to union status or activity, so they have no specific bearing on victimisation. Second, the collective regulation of employment relations and labour markets has arguably declined, particularly regulation through union-based means, or it is carried out in a minimalist fashion in terms of scope of application, enforcement, and penalties (see D. Smith, 2009; P. Smith & Morton, 2006). The minimum wage and the regulation of gang labour are examples of this. But the example of statutory union recognition provision is a better one, for the Central Arbitration Committee, the body that adjudicates applications for recognition, is without powers to act against employers who engage in acts of union suppression designed to prevent unions from attaining the thresholds needed if their applications are to be accepted. Third, new statutory means of employee representation, like European works councils and regulations on informing and consulting employees, have not significantly marginalised workplace unionism for reasons of union colonisation or low employee take-up.

But there is also another sense in which there is an odd juxtaposition of the argued significance of victimisation and the present and continuing weakening of labour unionism in Britain. Following the logic of an earlier argument, there would seem, overall, to be no pressing need for employers to engage in victimisation. Indeed, it would make sense for employers to let workplace unionism wither on the vine without providing it with stimuli that lead it to revitalise itself. But when the spatial dimensions—the geography—of the victimisations is examined, it can be seen that not all workplace unionism has declined either to the same degree or in a uniform manner. In other words, there remain pockets of strong, oppositional workplace unionism, and this remains an affront and obstacle to emboldened employers who seek to extend and reinforce their managerial prerogative. Moreover, the implementation of HRM and "new management techniques" and the effect of changes in the political

economy (like marketisation) appear to have stimulated the construction and reconstruction of strong and oppositional workplace unionism.

But no matter how bad victimisation is in Britain, it fades into insignificance in comparison with the situation in the United States, where (on average) a worker is fired every 23 minutes of every day, in every year, for union activities (American Rights at Work, 2005). And while the labour force in the United States is more than five times larger than that of Britain, it still seems that the difference in political culture and regulatory environment between the two countries is significant in making victimisation less politically acceptable and, thus, economically less worthwhile in Britain. Nonetheless, one way to deal with the current problem as it exists in Britain would be to reinstate the "special award" to workers dismissed for reasons of union activity, an award that specifically penalized employers. This could be coupled with much higher fines than were levied in the past when the special award was in force. Moreover, the right to reinstatement or reengagement could be made an actual, enforceable right. Such actions would not only help reconfigure the balance of power in the workplace but also remove the incentive for employers to engage in victimisation.

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