THE DEVELOPMENT OF EMPLOYMENT PROTECTION LEGISLATION

THE DEVELOPMENT OF EMPLOYMENT PROTECTION LEGISLATION IN THE UNITED KINGDOM (1963-2018) AND SWEDEN (1971-2020)

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LAY ABSTRACT

This thesis examines how and why employment protection legislation developed in the United Kingdom and Sweden in the ways that it did from its early beginnings to the present period. It hopes to offer answers to questions about the initial impetus for statutory regulation, the number, content and impact of significant legislative changes and the preferences of key stakeholders with material interests in the policymaking process. It does this by drawing on a variety of both primary and secondary source materials, including employment protection databases, parliamentary records and research publications. At the same time, it assesses the explanatory merit of dominant theories in the political economy literature by testing them against voluminous empirical evidence and provides a multi-factorial account to fill the gaps in the existing body of knowledge.

ABSTRACT

Several interesting findings emerged from this study. First, strong labour movements still failed to successfully bargain for employment protections due to resistance from employers to encroachments on their institutionalized managerial prerogatives. Second, governments favoured a policy of abstentionism and acquiescence to the collective-laissez-faire tradition until the critical juncture of the 1960s and 1970s. Third, the increasing power resources of trade unions and a deteriorating socio-economic climate created a window of opportunity for bold government action to improve industrial relations, albeit without the consent of employers, and at first, unions. Fourth, contrary to the liberalizing pressures one would expect to find in an archetypical free market economy, the UK has implemented far more statutory protections than deregulatory reforms. Fifth, in contrast to its traditional non-intervention in industrial relations and reputation for worker-protective regulations, Swedish governments have enacted numerous statutes, both restricting and freeing managerial prerogatives in the hiring and firing process. Sixth, statutory employment protections became an independent set of institutional power resources for unions in the long run, serving their organizational and representational interests in important ways. Seventh, unions and left parties consistently defended and advanced the policy preferences of their core constituencies in secure employment by privileging the job security of regular contracts. Eighth, employers and parties on the right of the political spectrum consistently opposed restrictions on the managerial capacity to hire and fire at will, especially for small businesses. Nineth, to increase flexibility without threatening the stability of regular contracts, reforms over the years had to foster atypical forms of work, creating a regulatory gap between permanent and temporary employment, particularly in Sweden. Tenth, differences exist between job security in the statute books and job security in action, particularly in the UK where this gap pervades all aspects of the unfair dismissal system. These findings suggest employment protection legislation has developed in ways far more complex, dynamic and contradictory than is commonly assumed by prominent theories of comparative political economy.

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DEDICATION

To my father and truck drivers everywhere

If you bought it, a trucker brought it

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CHAPTER 1. INTRODUCTION

1.1. Literature Review

The employment contract has been relatively neglected in the industrial relations literature of Western European countries (Brown et al., 2000). In recent years, however, scholarly works have begun to pay more attention to the regulation of hiring and firing practices. Known as job security or employment protections, they were historically incorporated into work contracts, providing employees with rights, which could be enforced through the process of grievance arbitration or specialized labour courts, depending on the nature of the regulations stipulated in the relevant documents (e.g., collective agreement or labour law). For workers, these rights can lower the risks of being fired and offer compensation in the absence of proper protocol. As such, they can help ensure a situation of absolute dominance does not characterize the employment relationship, as it did in the past when the power of 'employment masters' was nearly unlimited (Kaufmann, 2013). For employers, they denote restrictions on the managerial capacity to fire employees in order to replace them, facilitate downsizing or use other forms of employment such as temporary work. For this reason, employment protections are sometimes seen as significant barriers to economic growth and job creation by researchers and policymakers, who claim they should be carefully considered (Skedinger, 2010) or minimized (Lindbeck, 1997) due to their undesirable distributional effects.

Job security constitutes one aspect of the flexibility-security nexus. Employees desire security given uncertainty around economic activity, and employers need flexible forms of work organization, particularly in the post-industrial modernization era. The regulation of job security entails limiting the ability of capital to dispose of labour mainly through articles of binding collective agreements or statute provisions in labour legislation. An unjust or wrongful dismissal

occurs when the employer has ended an employment relationship in violation of one or more of terms incorporated into the employment contract. For example, an employer might fail to provide a notice period in the case of a dismissal for economic reasons, thus the dismissal may be considered unfair, and the employee may claim compensation. Arbitrary dismissal occurs when the employer has terminated a contract for insufficient objective reasons, unrelated to the employee's personal conduct, ability to perform the job or the operational requirements of the establishment. In many countries, the employee would have the right to claim financial compensation or demand job reinstatement, depending on the regulatory details of the dismissal protection and circumstances surrounding the case. The other aspect of job security entails regulating the employer's ability to make use of temporary employment, that is, hire workers on contracts that end on a particulate date or upon the completion of a certain task, with or without the help of temporary work agencies (Emmenegger, 2014).

Employment protections should be distinguished from employment security and income security. Employment security refers to the employability of workers and the opportunities available for earning income, which can be increased through investments in job training or full-employment oriented macro-economic policies. Job loss, then, can be alleviated by employment security through the availability of other suitable jobs. Income security refers to expected income through labour market participation, either from work or social security benefits, which can cushion job loss through generous unemployment benefits or long benefit durations. Job security can be distinguished from these other forms of security through the protection of employees against the loss of income-earning employment. However, it has been argued that job security mainly benefits permanent employees and union members, while leaving out those more

marginalized in the labour market such as the unemployed, atypical workers, women and the youth (Esping-Andersen, 1999; Rueda, 2005).

Given such importance and controversy surrounding these regulations, we would expect to find sufficient research on why and how they developed in advanced capitalist countries, including the initial impetus for their introduction, the key actors committed to supporting or opposing them, the number and content of specific measures enacted over time and their practical impacts. However, that is not the case. Compared to other forms of labour regulation, there is limited research on the historical development of employment protections, particularly of the comparative variety that is both empirically comprehensive and theoretically anchored in one or more dominant perspectives. This lack of interest and research suggests the literature is missing a comprehensive inventory of job security regulations implemented in one more or countries and the absence of convincing theoretical accounts for their development. Dominant explanations in the comparative political economy literature, which are used to shed light on cross-national and temporal variations in social policy, were not formulated or discussed for the purpose of making sense of employment protections. Indeed, job security has always been a marginal topic in social protection analysis. Part of the reason for this may be the lack of data available and the difficulties involved in quantifying such regulations. The OECD employment protection legislation index, for example, lacks data for the years before 1985 when the first job security laws were passed. This presents problems for researchers interested in their long-term trajectory (Emmenegger, 2014). Questions have also been raised regarding the validity of OECD indicators. For example, the omission of the roles of enforcement procedures or private litigation as well as assumptions around labour laws costing employers or harming the economy. There is also the issue that job security can be regulated by means of collective agreements, which are

difficult to keep track of because they can be revised frequently or made at various levels (e.g., organization, industry, etc.) for different categories of workers (e.g., those performing a specific activity or working at a particular location). Others have argued that the lack of research on job security regulations has to do with the dominance of Anglo-Saxon and Scandinavian countries in the political economy literature. It is reasoned that Anglo-Saxon countries are characterized by less regulated labour markets, making employment protections somewhat non-existent or irrelevant in such economies. Meanwhile collective agreements are supposed to play the most important role in regulating employment contracts in Scandinavia, leaving little room for the statutory regulation of job protection (Kaufmann, 2013).

Whatever the real reasons are, this thesis attempts to contribute to the filling of this gap in knowledge by documenting the long-term development of employment protection legislation in two prominent Western European countries – the United Kingdom and Sweden – over a period of five decades or more. The focus is almost exclusively on job security laws, for reasons which will became apparent below. However, for the most part, the (limited) comparative literature also examines the statutory regulation of job security. While collective bargaining and informal norms are important for understanding employment protections, formal regulatory systems involving parliamentary democracy and the rule of law are arguably more central in maintaining micro-institutional patterns in the economy, which change according to policymaking processes (Emmenegger, 2014). Legislation is also probably the clearest available reflection of the prevailing national consensus, or informal constraint, over the need for employment protections, which is likely to be acted out by policy actors (Allard, 2000). In mapping out the development of statutory employment protections, it is also important to test popular theories in the scholarly literature that should be able to account for their origins, temporal and cross-national

development. These dominant theories have either been applied to the topic of job security directly (albeit in limited ways) or have not but should possess general applicability. Three dominant explanations from the comparative literature on political economy are described in detail below.

According to the 'expansion-retrenchment' thesis, the trajectory of the legal formalization of employees' contractual terms and conditions should largely mirror the pattern of welfare state expansion and contraction (Esping-Andersen, 1985; Clarke, 1991; Teeple, 2000; Korpi & Palme, 2003; Glyn, 2007; Streeck, 2009). This account emphasizes the comprehensive introduction and extension of social protections in the immediate postwar period, before stressing the role of economic crisis, neoliberalism and globalization in dismantling them. The overall shifting balance of power between capital and labour decisively in favour of the former is crucial for understanding this U-turn in social protection. This explanatory approach overlaps with (neo)functionalism insofar as policy outputs are explained by structural requirements, for example, retrenchment measures as deriving from the movement of business cycles, globalization, deindustrialization or new employment patterns. However, the two perspectives diverge on at least one major point: functionalist reasoning views policy outcomes as directly driven by need and so political actors or factors, if they have a role at all, are seen as intervening variables rather than initiating forces (Starke, 2007). The expansion-retrenchment narrative affords approximately equal weight to structural and political variables, although the latter may play a more determinant role in shaping outcomes in some analyses.

The crux of the theory is as follows: confronted with new needs and problems associated with capitalist development and distributive conflicts between capital and labour, modern nation states reacted by providing social protection to (mainly male bread-winning) employees through

statutory regulations such as employment protections. Unions were often considered to be at the forefront of pressuring states for improvements in the labour market and workplace, resulting in favourable legislative concessions for the working class, which reached their peak in the immediate postwar period. Economic instability starting in the 1970s, however, put an end to those gains, giving rise to new neoliberal orthodoxies and monetarist macro-economics. The new supply-side focus led many governments and employers to treat job security as a source of unemployment and inefficiency. In parallel, processes of globalization shifted the balance of power in favour of employers who reinterpreted the rules to maximize flexibility and profit. As a result, many European governments vigorously pursued neoliberal flexibility, including reforms that weakened protections for permanent and fixed-term workers, a policy promoted by the European Commission. During the early 2000s, for example, the European Commission urged reforms to regular contracts, claiming they were necessary to improve the ability of the marginally employed to make transitions into more secure forms of employment (Countouris & Freedland, 2013). In the aftermath of the 2008 crisis, many European governments sought to relax restrictions on the ability of employers to fire employees, an approach encouraged by the European Commission and the European Central Bank. This was based on the assumption that employment protections acted as constraints on employment and competitiveness, both of which were central concerns of the Europe 2020 growth strategy (Heyes & Lewis, 2015). From the neoliberal revolution of the 1970s to the 2008 recession, then, employment protections have been portrayed as being under intense scrutiny and political pressure for retrenchment or deregulation (used interchangeably here to refer to policies that abolish or lower the breadth and depth of job protections).

While the expansion-retrenchment thesis might offer a convincing explanation for the origins or trajectory of some labour law regimes, it is unclear whether it can adequately account for the development of employment protection legislation in the United Kingdom (UK) and Sweden. First, the notion that the state provided a high degree of job security to workers (who perhaps welcomed it or fought for it) may be problematic for several reasons. Countries with historically strong labour movements typically had the weakest statutory employment protections in the immediate postwar years (Emmenegger, 2014). This is because powerful unions tended to discourage government intervention, as they preferred to regulate job security via collective agreements instead because it allowed them to maximize their institutional control. Moreover, unions were ambivalent or hostile towards state legislation and the inevitably involved court system, which they accused of systematic bias in favour of employers based on their past experiences. Unions (and employers) were also skeptical of the ability of courts to properly understand the realities of industrial relations and make reasonable judgements about employment disputes. At the same time, the immediate postwar years were marked by high labour demand and full employment, which made the issue of job security less relevant. However, unions still tried to bargain for employment protections, albeit unsuccessfully due to the threat they posed to managerial prerogatives. Even when limited protection was obtained through negotiations, there were major gaps in coverage, poor enforcement and deviations from rules by employers (Emmenegger, 2014). With a booming economy, this was not much of an issue. Only in the 1960s and 1970s did the situation begin to change in the UK and Sweden as concerns over the effects of economic restructuring mounted, paving the way for the introduction of statutory regulations. However, the impetus for reform did not come from the union leaderships as often contended in the literature (see, for example Schmidt, 1977; Korpi, 1982;

Lindbeck, 1997). As will be shown in Chapters 2 and 3, it was governments that spearheaded the push for statutory rules, albeit in the face of considerable resistance from both sides of industry. A key question, therefore, is what informed those government beliefs and what were the reactions and reasonings of other stakeholders such as union and employer associations to the initial reform process?

Second, there are empirical questions concerning the validity of positing a deregulatory turn during the neoliberal austerity period. According to the Cambridge Centre for Business Research Labour Regulation Index, employment protection laws in 117 countries have steadily become more, and not less, protective since the 1970s (Adams et al., 2018). Comparing the findings of the above study with the OECD's employment protection index reveals some interesting insights. The OECD annually evaluates regulations on the dismissal of employees on regular and temporary contracts in various member states by assigning them employment protection scores for a given year, with higher numbers indicating stronger job security measures. These OECD indicators of employment protection are compiled using the Secretariat Office's own reading of statutory laws, collective bargaining agreements, case law, the contributions of officials from OECD member states and advice from country experts. Looking at its database, we see the UK's score for individual and collective dismissals affecting regular contracts has been either 1.35 (from 1985-1999 and 2013-2019) or 1.51 (from 2000-2012) between 1985 and 2019 (the years for which data are available), suggesting little or no legal contraction of employment protections since the mid-1980s. Concerning temporary contracts, the UK's score increased from 0.25 (1985-2002) to 0.38 (2003-2019) within the same time period (OECD, 2020a). These figures appear to raise some doubt over the deregulation narrative, especially regarding the flexibilization of temporary contracts in the UK. The retrenchment

literature, for example, sometimes emphasizes the growth in the fragmentation of work, flexibilization and atypical employment arrangements accompanying policy drives for managerial adaptability (Korpi & Palme, 2003; Streeck, 2009), but this is not reflected in the UK's legal regulations of time-limited contracts. When it comes to Sweden, its score for individual and collective dismissals has fluctuated between 2.64 and 2.45 since 1985, implying very little change in its law books. However, during the same period, Sweden's score for temporary contracts decreased from 4.08 to 0.81, which does seem to support some scholarly claims about rising flexibility in fixed-term employment.

For the most part, both the OECD and Cambridge studies show there has not been extensive relaxation of restrictions on hiring and firing practices in the UK and Sweden, especially in the area of regular contracts. However, neither database provides a comprehensive picture of how many employment protection measures have been deregulatory or protective in nature. As Chapters 2 and 3 will reveal, there have been more regulations benefitting employees in the statute books in both countries, thereby corroborating the above findings to a certain extent and contradicting the retrenchment narrative that employment protections have developed in an inverted 'V' pattern since the post-war period. Indeed, both countries continued to adopt protective measures all throughout the neoliberal period, alongside occasional deregulatory measures. However, these legal trends in favour of workers should not be confused with the existence of relatively stable and secure labour markets characterized by more job opportunities, employment guarantees and prospects for upward mobility. The mere fact that more protective measures exist in paper form does not necessarily preclude the possibility of the exact opposite in practice. More protections could simply be indicative of policy makers facing up to the necessity of ameliorating pervasive conditions of economic uncertainty and unrestrained

managerial powers. An important question, therefore, is whether these expanded legal rights have translated into meaningful benefits for workers? Based on the evidence presented throughout Chapter 2, it will become clear that the UK's large inventory of job security protections has not brought about substantial relief for workers. This is partly due to statutory exclusions and qualifying periods limiting coverage and many legitimate claims either not being filed in courts, or getting withdrawn, dismissed or receiving meagre financial compensation. As will be discussed in Chapter 3 (particularly section 10), the situation is better for workers in Sweden as over 90 percent of disputes are settled outside of courts, with employers paying modest amounts of financial compensation to dismissed employees.

Third, international organizations are said to influence the policies adopted by states by promoting flexibility measures aimed at lowering existing levels of protections for workers (Lee & McBride, 2007; Mahon & McBride, 2008). The OECD, for example, made subtle recommendations to deregulate dismissal rights in its 2019 Jobs Strategy. The past policy suggestions of the International Monetary Fund and World Bank reflect similar thinking (Blackett & Trebilcock, 2015). The European Commission has also collaborated closely with these expert bodies in the development of practical employment guidelines. In the past, for example, it argued "more and better jobs" could be achieved by lowering statutory employment protections in countries where they were high (EU Commission, 2007). However, it is unclear how influential the recommendations of these bodies have been relative to other sources of policy advice in legitimizing deregulation of employment protections in the UK and Sweden. As will be discussed later, retrenchment measures in the UK did not have any connections to wider European or global institutional policy developments. Rather it was the other way around: EU Directives prompted the British government to strengthen employment protections in 1975, 1995

and 2002. Meanwhile in Sweden, national policymaking remained relatively unaffected by any international policy body, with only one case of deregulatory action undertaken due to a decision of the European Court of Justice.

Fourth, traditional left parties that had been at the forefront of the construction of the European social model are said to have shifted closer to the political centre and played a role in implementing market-oriented policies, which they had initially campaigned against. But can this argument be adequately applied to the policy area of employment protections in the UK and Sweden? According to the historical record, the Labour Party retrenched dismissal protections once in 2002, while all remaining deregulatory measures (5) were introduced under Conservative governments. By contrast, the Social Democratic Party retrenched job security four times in 1997, with the remaining deregulatory policies (6) implemented under non-left governments in Sweden.

So far, we have outlined some issues and questions surrounding the expansion-retrenchment theory when it is applied to British and Swedish job security protections. This explanatory model has been used to describe the origins and long-term regulatory quality of various labour laws and welfare programmes, with the implication that it is generalizable to all country cases. However, there are two other prominent explanations in the literature that have been developed for the purposes of comparative examination involving two or more country cases. The varieties of capitalism and power resources theories have both been used to account for cross-national differences in the level and change of policies such as employment protections. They also happen to be two of the most influential treatments of the politics of labour market regulation (Emmenegger, 2014).

The varieties of capitalism approach was developed to explain the persistence of varying systems of labour market regulation, education, training and corporate governance across a range of countries. In the area of employment, it argues job security regulations help ensure a return on investment in firm- and industry-specific skills by placing restrictions on the ability of employers to dismiss their employees, signaling to the latter that they will remain in their jobs for a longer period. In this way, employment protections provide institutional safeguards with respect to returns on investments in human capital and make it more likely that employers and employees will invest in specific skills (Hall & Soskice, 2001). Industries relying on workforces with specific skills are said to benefit from job security regulations because they help lower or eliminate market failures in the area of skill provision. Specific skills are supposed to be dominant in coordinated market economies such as Sweden while more general skills are said to prevail in liberal market economies such as the UK (Estevez-Abe et al., 2001). Firms in coordinated market economies support statutory employment protections once they have been adopted (or imposed) and production strategies have been adapted to them, because they help solve collection action problems (Wood, 2001).

However, this explanatory model fails to adequately account for a few empirical facts. First, far from welcoming job security regulations in Sweden as one would expect, employers were vocal adversaries of them, both at the bargaining table and inside the legislature. In stark contrast to the varieties school of thought, at no point did employer associations support better protections against dismissals or other equally beneficial job security guarantees, even though they are supposed to be advantageous to firms in coordinated market economies. Second, the only time a government insisted statutory protections could increase investments in skills in the legislature was in 2013, and that was in the UK and not Sweden. Third, there are no obligations

on Swedish firms to educate their workers to a specific extent, level or according to a particular focus. Nor are there collective agreements in the private or public sectors that require employers to train every employee and engage them in skills development yet (Ulander-Wanman, 2012). Fourth, by the end of the 1970s, the UK was equipped with a relatively comprehensive system of dismissal protection, approximately on a par with that of Sweden's. But the varieties approach cannot account for this cross-country similarity in the level of unfair dismissal protection. It also fails to explain differences in the number of reforms over time, for example, why the UK adopted 18 protective measures and 6 deregulatory policies, while Sweden implemented 12 protective measures and 10 deregulatory reforms? According to the varieties thesis, it should be the other way around, with Sweden adopting many more protections. Altogether, the varieties school appears to suffer from the greatest shortcomings. It does not provide a convincing causal mechanism for the development of job security protections, which reflects its earlier standpoint that it is "not a study of origins" (Estevez-Abe et al., 2001, 147). When this view was abandoned and later works sought to inquire into the origins of production regimes, job security regulations were ignored (Emmenegger, 2014). Finally, when they were finally taken up, it was suggested that capital and labour had "incentives to develop a coordinated solution to specific skill formation and workplace cooperation" and that job security was one type of protection needed to secure firm- or industry-specific skills for employees (Iversen & Soskice 2009, 481). But employers in coordinated market economies were never explicitly linked to employment protections, even though, liberal market economies were directly associated with unilateral management control and flexible labour forces.

Then there is the more compelling power resources theory whose early strands drew on Marxist premises. It overlaps with the expansion-retrenchment thesis insofar as they both argue

distributive conflicts between capital and labour take place over employment protections, with each side using its unique capacities to push through its own preferences: full managerial prerogative (to fire and hire without restrictions) in the case of employers and long-term job security in the case of workers (Korpi, 1978; Korpi, 1983). The original power resources theory focused on actors and politics as the main determinants of welfare states, assuming a basic antagonism between social welfare and the market exists and interpreted social protection as a triumph of working-class interests over capital (Korpi, 1978). From this it follows different political actors and their constituencies want genuinely different things. Thus, firms should oppose employment protections because they can interfere with their right to exercise control in the workplace. For instance, job security regulations can curb numerical flexibility, undermine employee discipline, increase turnover costs, strengthen the role of unions, create administrative burdens and reduce competition between labour market insiders and outsiders (i.e., permanent and temporary workers). Workers should favour employment protections because they can slow down or prevent their flow into unemployment, provide financial compensation or reinstatement in the event of unfair dismissal, increase their bargaining power, provide a sense of stability and enable them to plan other aspects of their lives accordingly.

Trade unions are supposed to have strong economic and political reasons for supporting job security regulations because they can help protect union representatives and members from arbitrary dismissals, otherwise employers could simply fire them, and this would create disincentives to unionize since employees would think twice before forming or joining a union at the risk of losing their jobs. Employment protections therefore allow unions to organize at the workplace level and create incentives to join unions, especially if the benefits can be restricted to union membership or their enforcement is made dependent upon union mobilization. They can

also increase the role of unions in the management of the company by giving them an important part in the administration of dismissals such as the right to be consulted, the right to bargain over the selection of employees to be dismissed or the right to veto any dismissals (Emmenegger, 2014). Because they have strong representational and organizational interests in job security, unions constitute a major driving force behind their development. And because union members tend to be politically active and constitute the traditional constituency of the 'left', social democratic or Labour parties support their demands for employment protections (Rueda, 2005; Avdagic, 2010). Therefore, taking into consideration whether the political allies of unions (left parties) hold power in the government is crucial for the explanation of job security development.

Cross-national differences in the power resources of labour movements are supposed to account for the differential development of job security regulations in the UK and Sweden (Korpi, 1985). This is one of the major aspects distinguishing power resources accounts with expansion-retrenchment narratives. The former emphasizes different levels and models of social protection across countries according to the strength of labour movements and leftwing parties while the latter stresses general tendencies towards expansionary social protection in the postwar period and retrenchment in the neoliberal era across all countries. The former is more concerned with variations between countries while the latter emphasizes the same pattern of temporal development within countries. According to power resources arguments, we would expect the number and level of statutory employment protections to be more developed in Sweden because its union density has remained comparatively high, reaching over 80 percent in the 1980s and 1990s and never falling below 67 percent since 1970 (OECD, 2020b). Moreover, the political allies of Swedish unions – the Social Democratic Party – has been the dominant force in politics there since 1932, and in power for 27 years since 1982 (partly due to the absence of factionalism

within the Party). Conversely, we would expect British statutory protections to be lower in the long run because union density climbed from 40 to 50 percent between 1960 and 1980, before losing 10 percentage points each decade thereafter until it reached less than 25 percent (OECD, 2020b). Also, the political allies of British unions, the Labour Party, have governed for only 25 years (1964-1970, 1974-1979 and 1997-2010) since 1960 whereas the Conservatives have been in power for 33 years, suggesting fewer union means of obtaining political support for legal protections. Thus, significant differences should exist between Swedish and British job security measures according to the power resources theory. But are its predictions borne out by the empirical data?

In terms of the level of protections, the OECD's EPL index for both countries (as described earlier) goes some way toward substantiating the power resources thesis, at least comparatively speaking. But in terms of the number of protective and deregulatory measures adopted (as discussed above), the theory appears to fall flat, as the UK adopted more protections and fewer deregulatory reforms than Sweden. Thus, the correlation between labour movement strength and statutory protections appears to be somewhat weak. This gap cannot be rectified by suggesting that strong labour movements prefer to regulate job security through collective agreements instead (as that might explain why Sweden adopted fewer protective laws than the UK) because unions in both countries accepted statutory regulations only after failing to secure comprehensive job security for their members at the bargaining table. It would also not explain why employment protections were arrived at through legislation rather than collective bargaining in Sweden. And so here lies another issue with power resource approaches: they are not always clear about the source of regulation unions and left parties are likely to prefer. As will be shown, Swedish unions were at loggerheads with their political allies over the introduction of legal

measures in 1971, although they eventually came to accept government regulations in their favour. A related issue is that unions and left parties sometimes have divergent policy agendas. For example, the Social Democratic government adopted several deregulatory reforms in 1997, despite strong union opposition. There are also other anomalies such as why statutory protections were first introduced in Britain under Conservative governments rather than the Labour Party? Beside introducing notice periods and dismissal rights for part-timers in 1963, the Conservative Party also introduced the most important of all unfair dismissal system in 1971. Although not numerous, these examples can be useful for the testing and reformulation of theoretical models on job security.

The varieties of capitalism and power resources theories stress the functional role of employment protections in overcoming market failures through the provision of firm- and industry specific skills and the power resources of the labour movement, respectively. While power resources (and expansion-retrenchment) narratives tend to assume social protections were a direct function or reflection of the power of organized labour, the varieties of capitalism theory has pointed to the role of employer interests in driving their development. In contradiction to the claim that employers have always opposed de-commodification (Esping-Andersen, 1985; Korpi, 1983; Teeple, 2000) such as job security, proponents of the varieties approach have argued that employers in coordinated market economies such as Sweden depend on highly skilled workers with industry-specific training and low labour market mobility to preserve their comparative advantages (Hall & Soskice, 2001). Since workers have no incentive to invest money and time into specific skills training unless they expect a certain amount of stability of employment, firms will support a rather higher earnings insurance and employment protections. According to this view, social policy reflects an equilibrium more so than a conflict between capital and labour

(Estevez-Abe et al., 2001). Coordinated market regimes are supposed to respond to the needs of employers and unions of the main industrial sectors, insuring the core workforce against wage loss and creating an incentive system that supplies employers with the type of workers they need. This line of reasoning stemming from the varieties literature has been the most prominent answer to power resources and expansion-retrenchment arguments, which predict the dismantling of rights for workers in the modern context of higher unemployment, fading growth, transition to a service-based economy and budgetary constraints (Korpi & Palme, 2003; Glyn, 2007). Advocates of the varieties perspective have suggested that there has not been massive retrenchment of existing protections even if it were true that economic conditions have strengthened the hand of capital. Thus, job security protections can be complementary to existing institutions and in the common interests of employers (Mares, 2003).

While the interests of employers and workers are sometimes assumed in all three theoretical explanations to be contradictory or complementary, this thesis argues that they must be observed empirically in relation to job security regulations, and in ways that disaggregate capital and labour into meaningful categories such as specific employer and union associations, sectors and firms, as their interests may not always be homogenous across the economy. In Chapter 3, it will be demonstrated that the varieties approach fails to provide convincing causal mechanisms because the implementation of higher levels of job security in Sweden was always at odds with the expressed political preferences and observed behaviour of employers. It will also be shown that the theory fails to account for the prevalence of a large, growing inventory of employment protections in the UK whose institutional forms are assumed to render job security irrelevant. In contrast, power resources and expansion-retrenchment approaches can more persuasively explain why and how the labour movement (un)successfully struggled for job

security protections in both the UK and Sweden. However, as will be demonstrated in Chapter 2, the empirical evidence does not support a simple version of these approaches because the correlation between, on the one hand, the power of organized labour and an economic-political environment (un)conducive to worker rights and, on the other, the number or level of job security protections obtained, can at best be very weak.

1.2. Conceptual Framework

To a greater or lesser extent, the three explanatory models discussed earlier suffer from important shortcomings. First, there is very little evidence to support the varieties of capitalism approach. The empirical data presented in the following chapters lend more support to the expansion-retrenchment and power resources theories, which, however, have blind spots of their own. In contrast, my argument, which is based on but goes beyond those approaches (in an attempt to redress some of their flaws), is inspired by multi-factorial Marxist historical analysis. However, my theoretical argument is not entirely new. It is a combination of earlier and later formulations of power resources, expansion-retrenchment and Marxist accounts of capitalist development. It is based on an explanatory model that pieces together a set of complex causal mechanisms that are peculiar to specific moments in capitalist history by integrating economic, political and social concerns, which operate in an unpredictable but not undetermined manner to influence job security outcomes. This model involves examining multiple variables and understanding their relationships as always being partial during a given period because the composition of forces may change each individual causal power when taken alone. For example, different combinations of variables may be at work, whereby one of three factors may be constant and two are variables, or two are constant and one variable, or all three simultaneously variable. Upon discovering such relationships between two or more variables using details of

capitalist development during different time periods in each country, deductive reasoning is used to deduce the implications of their interactions and construct explanations for the empirical observations. Such arguments are not carved with exact mathematical precision or generalized across space and time. Neither are they statements of definite causation and predictability. Rather, they are descriptions and plausible explanations of historical-structural processes and relations via pertinent detail. They function analytically as an approximation of concrete reality and the bases for grasping the tendential development of British and Swedish employment protection legislation, its essential parts, interrelations and institutional configurations, all inductively created first and deductively weaved together afterward (see, e.g., Marx, 1967).

In the application of this model, the relations of production or class struggle (subjective conditions) and forces of production or structural factors (objective conditions) are emphasized as key conditions shaping policy outcomes, while leaving room for the possibility of countervailing tendencies to influence, impede or reverse their operation. Since the phenomena under examination are multidimensional with changing and contingent variables, no single factor can perfectly capture the same configuration of variables with the same explanatory significance. There always remains some openness about the processes that determine the characteristics of the phenomena in question. To understand the structure and dynamics of job security regulations, the historical preconditions and presuppositions that account for it must first be identified. This type of historical investigation involves identifying signposts that indicate change, unified with structural analysis, which point to the processes through which change often occurs. One investigates the relationship between class relations and structural forces and how new conditions may emerge and evolve, conflicts and contradictions may beset the capitalist system, and outcomes may be shaped by class dynamics in conjunction with contingent developments.

Each historical period has a configuration of tendencies, some tendencies it may share with others such as class struggle or economic conditions.

For example, the employer class is by far the most organized and powerful actor in society by virtue of its ownership and control over economic resources, workers and the labour process, providing it significant leverage in the political realm, particularly under business-friendly governments. However, the balance of power between capital and labour is somewhat fluid and can vary at times. Even though capital always has the upper hand, labour through its most organized representatives, has potential access to political resources via its traditional close relations with left parties, especially during critical periods when labour has the upper hand. This increases its influence beyond the economic realm, allowing it to extract concessions in the legislative arena, albeit only after all means of voluntary action have been exhausted. This is important to note because in countries like the UK and Sweden where there were no systematic civil codes, which gave a legal framework of contract law that could also be applied to work contracts, employment relationships were regulated via collective agreements rather than laws (Emmenegger, 2014).

However, the right to hire and fire was the key bargaining point for employers and the key concession by unions. Employment protections, therefore, were not subject to parliamentary debates until the 1960-1970s due to the lack of progress at the bargaining table and the limits of voluntarism. There were other related factors at play too, including economic restructuring, rising unemployment, industrial conflicts over dismissals, public discontent and the growing strength of the labour movement, which forced the hand of the state to intervene against the wishes of both sides of industry, marking a key turning point or critical juncture in the class struggle between capital and labour over job security. In one aspect, the state acted with relative

autonomy and felt justified in imposing the rule of job security law because class antagonisms and structural forces threatened the system's reproduction, compelling the state to play the role of 'guardian' by providing a third-party compromise response, albeit within the limits of the resources and forms of provision at its disposal (Clarke, 1991). The state continued to perform this function of mediating antagonisms and contradictions inherent in capitalism and producing similar policy outputs on that basis. In another sense, the policies of the state at a given point in time reflect the ideological agenda of the political party in power. Early examples include the British Conservative government introducing dismissal legislation to curb union striking activities and the Swedish Social Democratic government passing co-determination laws requiring employers to negotiate with their economic allies (unions) over business practices. Nonetheless, the important point to bear in mind is that while collective agreements required the approval of employers, statutory laws could be passed without it. Hence, job security could be obtained and extended without employers' (and at first unions') consent.

The interests of political parties and their constituencies are not always aligned. While centrist parties often represent corporations and voters from middle or lower management who are less keen on job security, it is possible for the political centre of gravity to temporarily shift to the left. This happened in the 1960s and early 1970s when the British Conservative government, despite opposition from employer associations, introduced statutory protections during one of those "rare moments of formative political intervention" (Streeck, 2009, 240). The power resources of the labour movement combined with structural factors and a climate of expectations, protests and strikes brought about a fundamental break with traditional forms of labour market regulation rooted in collective bargaining, inclining unions to 'ride the tiger' of discontent by accepting statutory protections that could not be won voluntarily. Many Western

European governments succumbed to this ‘red wave’ (Emmenegger, 2014), including the British Conservatives, who tried rather unsuccessfully to use the unavoidable reforms as part of their anti-union and public relations strategy.

While unions gradually came to accept the need for legal measures, contrary to benign and romanticized conceptions, some of the first employment protections were designed to increase labour market flexibility and encourage labour mobility. The UK’s Redundancy Payments Act, for example, made the termination process easier on employers by offering a financial incentive to employees to undermine their resistance to dismissal and curb any resulting strike activity. Similarly, notice periods were introduced in Sweden to facilitate smoother employment exits for older redundant workers. These seemingly unfavourable regulations were desired by unions (at the bargaining table and not from the state) given widespread technological displacement and the lack of a better alternative or choice for their members. To this day, they remain meagre measures in ameliorating the problems of laid-off workers.

Even when employment protections have provided some tangible benefits, their unintended consequences have been somewhat downplayed or ignored. For example, there is some research and anecdotal evidence to suggest that strict hiring and firing procedures and their associated costs are one reason why some employers do not recruit more workers (Adams et al., 2018). The impact of job security laws on overall employment, however, may be more ambiguous since they can both reduce job creation (unemployment outflows) by discouraging hiring, and job destruction (unemployment inflows) via strict dismissal procedures. Employment protections are contradictory in another sense as well. Like other labour laws and welfare programmes, they can perform crucial accumulation, legitimation and coercion functions within the framework of capitalism. For example, they can facilitate profit maximization by increasing

workers' motivation, human capital formation and productivity levels. They can also confine workers' struggles and aspirations within the wage-form, bolster the system's legitimacy and make the transition to a more egalitarian society seem unnecessary. At the same time, employment protections can serve many emancipatory functions as well. They can mitigate against the adverse effects of market failures, ensure a minimum level of security, curb the arbitrary exercise of management power, raise working-class consciousness, enlarge human needs in the workplace and lead to more radical demands. Conceptualized in this way, employment protections, like other social policies, are rather paradoxical (Teeple, 2000).

Interestingly, these initial statutory interventions had other paradoxical consequences: as job security became increasingly regulated via legislation rather than collective agreements, countries with relatively weak labour movements (such as the UK as compared to Sweden) ended up with a greater number of protective measures in the long run. Historically, unions served as the main instrument for improving the working and living standards of workers through their role in contract negotiations and collective bargaining. However, transformations in the organization of production and labour processes and associated labour market restructuring undermined the traditional bases of workers' collective action and organization in many developed countries. Macroeconomic factors, the composition of employment, neoliberal policies, employer responses and union behavior all contributed to the decline of labour's bargaining power in the negotiation of work contracts (Metcalf, 1989). Hard times characterized by globalization, business cycles, deindustrialization and new employment patterns created a role for regulatory legislation, at first to supplement, then gradually to replace, the role of collective bargaining in order to fill the gaps left by the latter's shortcomings and eventual decline. In the UK, economic conditions had worsened significantly by the 1960s and unions and employers

could not be relied upon to provide a framework for orderly industrial relations that could also achieve widespread protection coverage. This impasse paved the way for the introduction of the first job security laws by Conservative governments, then their extension by succeeding Labour governments with the support of unions. The growing reliance on legislation to regulate the employment contract stemmed from the refusal of employers to accept voluntary ceding of their managerial prerogatives and the decline of collective bargaining coverage and union density, which had traditionally provided a floor of mandatory protections aimed at ameliorating the asymmetry of bargaining power between the two parties. This partly explains why the UK adopted 18 protective measures and only 6 deregulatory reforms between 1963 and 2013.

However, the majority of British protective measures (12) were implemented before the neoliberal turn in 1979 with Thatcher's first Conservative government while all deregulatory policies were adopted afterwards. Taken together, these policy trends do conform to critical narratives of welfare state expansion and retrenchment insofar as the enhancement and deregulation of employment protections occurred before and after the late 1970s. But the UK does not have a greater number of deregulatory measures as is often suggested by these theories. Nevertheless, the level of employment protections in the country has remained relatively low as indicated by the OECD's EPL index, which also goes some way towards supporting retrenchment arguments. Similarly, Sweden passed most of its protective measures (10 out of 12) before the neoliberal period of the 1980s while all its deregulatory actions (10) occurred afterwards. These empirical findings also seem to validate the expansion-retrenchment thesis. However, contrary to its assertions, deregulatory reforms did not outnumber protective measures in the case of Sweden, even though it does have a relatively large number of regressive reforms

(10) vis-à-vis protective ones (12), which goes against the expectations of power resources theory.

Historically speaking, creating a political party and mobilizing its numerical majority in the party's organization was one way organized labour could further its own interests. But in the case of job security, even after changing its mind and supporting legislative efforts, labour was not always successful in obtaining more employment protections or fighting off deregulatory actions. High unionization rates, the organization of unions into a cohesive confederation and strong political influence may be necessary but not sufficient conditions for a country to feature a large number of statutory employment protections.

In the case of Sweden, the fact that unions administer unemployment benefits has been one of the most important reasons for joining a union. In circumstances of high unemployment, incentives to join an insurance fund grow, and since union and fund memberships are interconnected, unemployment does not result in a decrease in union density but rather reinforces the motivation to unionize (Timonen, 2003). Swedish unions are also organized by industry rather than craft, making them more cohesive. Their political allies have been a dominant force in the legislature for decades as well. However, Sweden adopted fewer protective measures and more deregulatory reforms than the UK, despite these advantageous institutional and mobilizational resources.

This anomaly can be explained in part by the Social Democratic Party's move closer towards the 'radical centre', indicating social democracy may be in flux and in general moving closer to the centre of party systems (Keman, 2017). In 1997, the Social Democratic government passed four deregulatory reforms, accounting for nearly half of all Swedish retrenchment measures. The other major reason is that stronger unions have been pressured to show a

willingness to compromise by allowing some deregulation of job security. A high degree of cooperation, negotiation and compromise is a basic requisite for the involvement of interest groups in policymaking. Where this willingness is lacking, organized interests such as unions could lose their privileged position. Thus, unions have been forced to accept flexibility at the margins of the labour force (fixed-term contracts) rather than see the deregulation of protections of their key constituencies – labour market insiders who represent the core workforce. This 'least-worst' option of stronger unions, two-tier labour market reform, has contributed to the growing labour market dualism between insiders and outsiders and might explain why deregulation of temporary employment has clearly been the name of the game in the last couple of decades in Sweden.

However, the Social Democratic Party has been careful not to risk alienating its core base because many of its supporters can find a credible alternative in the far left, former communist parties. This happened in 1998 when many of its trade union supporters, after four years of Social Democratic austerity, switched their allegiance to the Left Party, which they saw as representing their interests more. While in 1991 only 4 percent of members from the main trade union confederation (LO) had voted for the Left Party, nearly 20 percent of them did so in 1998. Conversely, the votes of members of the Swedish Confederation of Professional Employees (TCO) and Confederation of Professional Associations (SACO) are not as heavily concentrated on any single party like LO voters. Centre-right parties gain a higher share of votes among these two unions, although more TCO members tend to vote for the Social Democrats than SACO members (Timonen, 2003). After 1997, however, successive Social Democratic governments were careful not to incur another political backlash from their main constituency by deregulating job security again. Most recently, however, the Social Democratic government has prepared

proposals to extend exceptions from the ‘sacred’ rules of priority in exchange for greater employer responsibility for employees’ skills development unless the bargaining parties could implement the changes voluntarily, signaling a desire to return Sweden’s system of collective laissez-faire to its Saltsjöbaden basis. The pressure on the social partners to reach an agreement by themselves seems to have worked since a new agreement was concluded in 2020, making it the largest reform of employment protection legislation since 1974. However, some of the LO unions refused to enter into a signed agreement out of opposition to some of the employers’ demands, leading to a rift in the labour movement concerning appropriate trade-offs over job security.

These are just some of the things that must be considered when trying to bring different concerns to bear on the historical development of job security regulations in the UK and Sweden. Real historical events, variable degrees of change, multiple structural interrelationships, countervailing tendencies or undiscovered forces and interactions between class actors in both countries all combine to make the analysis and understanding of their employment protections incredibly complex. Variables may exhibit different characteristics at different times. These characteristics may change over time and change their relations to other variables and their overall causal impacts. Similar events may have different causes, different outcomes may have similar causes. Although all time periods under consideration share certain features (e.g., capitalist production or class relations or class struggle in general), what distinguishes them are their unique configurations (e.g., postwar voluntarism, economic cycles, political orientations of governments, policy preferences of unions or employer associations). Class relations and class struggle are intrinsic features of capitalist development in general, but the actual forms they take in specific times or cases are contingent processes. Given the different forms and intensities of

class struggle, the conditions of national and world economies, evolving political-economic institutions of power, varying relations between individuals, groups and organizations, nothing is guaranteed to happen. Job security laws are always contingent on many transforming circumstances in which legal action occurs.

The failure of existing dominant approaches to provide a more compelling explanation for the development of employment protection legislation results from the fact that many authors tend to adopt a very narrow focus, either directing their attention to a single aspect of policies such as expansionary protections in the post-war period or retrenchment measures in the neoliberal era, or to a single explanatory factor such as power resources, institutions, or economic-structural forces. Although the two dominant perspectives discussed earlier can account for a significant part of job security dynamics in the UK and Sweden, their interrelations are key in capturing the entire picture.

Policy outputs depend on the interplay of socio-economic forces, institutional supports and actors' preferences or strategies. Structural developments such as economic restructuring, unemployment and stagflation can create potentials for political conflict by challenging preexisting institutions. When there is a clash between such structural forces and stable institutions, the need for change and the reform of institutions arises. In the UK and Sweden, the impasse in collective bargaining over job security was at odds with the economic-structural developments of the 1960s, thereby creating tensions and necessitating a variety of potential policy reform options. This variety of policy outputs engenders different crosscutting conflict lines, with each splitting material interests in a unique way. For example, some conflict lines may contradict the preferences of organized capital and labour, as happened with the first job security laws imposed by governments against the desires of unions and employers who

preferred the voluntary route. Other conflict lines can divide groups according to economic sectors, firm size, skills or labour market status (e.g., insiders versus outsiders) as exemplified by Swedish unions' willingness to assent to the deregulation of temporary employment when under pressure in order to protect their core membership and institutionalized roles. Different interests and preferences determine a range of class and cross-class conflicts at the structural level and various socio-economic forces extend differently across the constituencies of political parties, unions and employer associations. Thus, a plurality of crosscutting conflict lines in the reform decision-making process can be expected sometimes, generating a multidimensional arena in which job security politics unravel. Finally, the factors conditioning reform possibilities translate into actual policy outputs. Here the multidimensional polity space generates possibilities for political exchange (Hausermann, 2010). The formulation and implementation of policy depend on the interests, strategies and interactions of political parties, labour and business groups, which in the parliamentary arena, have played the most direct and consistent role in shaping the content of employment protection laws for more than five decades now. This insight bears at least one implication, that if we were to only focus on single case studies of job security reforms, then we would fail to understand the underlying patterns at play. One example of this problematic approach can be found in the analysis of the shift of the UK Labour Party (or Sweden's Social Democratic Party) toward retrenchment in job security. If one were to examine only the Employment Act of 2002 in the UK, a misleading impression is created by the abruptness and scope of such an about-face policy shift, leading to arguments that do not hold much weight in the area of job security, such as the continuity between the retrenchment of Thatcher and Major governments and social policy under Blair. Only when this policy change is viewed in light of the four protective measures passed by 'New' Labour in the preceding years and the Blair

government's encompassing reform strategy that the larger picture of the 2002 Act emerges. Moreover, an analysis of a single reform might reveal the actors responsible for implementing it, but an explanation of why and how it arose, and why actors defended the policy preferences that they did requires a focus on the long-term structural basis of actor configurations, in addition to other variables.

Broadly speaking, the empirical and theoretical literature sees a number of potential outcomes of labour market regulation on the economy, depending on the assumptions made in the underlying framework. Neoclassical studies, for example, see labour protections as interfering with freedom of contract, and thus a distortion of market mechanisms and outcomes, leading to a number of negative effects such as involuntary un(der)employment and lower economic growth. By contrast, other analyses such as new institutionalist (e.g., varieties of capitalism) and post-Keynesian approaches see protections as benefitting workers by countering market failures, which are seen as inherent in the operation of labour markets, including asymmetric information and transaction costs deriving from the incomplete nature of employment contracts. They may also view protections as benefitting firms because induce employers to manage workers more efficiently by investing in labour productivity enhancements (Adams et al., 2017). This thesis does not assume at the outset that any one of these perspectives is necessarily more correct, in the sense of being more likely to be substantiated by empirical evidence. It treats these claims as hypotheses for testing, any of which could turn out to be supported by analysis of the one-way or possibly multi-way relationships, which can exist between job security regulations and economic variables. The assumption implicit in the design of this study is that laws regulating the employment contract and collective labour relations are capable of affecting labour market outcomes in various ways that could stand in contradiction

with each other simultaneously. The law, combined with related regulations such as collective agreements, is not only a filter or proxy for other social forces, but a partly independent causal agent, which has the potential to change the behaviour of actors and affect structural outcomes in the economy (Adams et al., 2017).

1.3. Methodology

Three empirical databases were relied upon to identify long-term changes in the statutory employment protection regimes of the UK and Sweden (Deakin et al., 2017; Duval et al., 2018; Allard n.d.). These sources use their own systematic criteria to identify job security measures implemented over the course of several decades. Two of these sources, namely Deakin et al. (2017) and Allard (n.d.), assign numerical scores to the measures they identify. Each score is typically a value between 0 and 1, with the former indicating no legal protection or the lowest amount of protection offered to employees and the latter indicating maximum protection or the greatest amount of protection offered. Scores are devised differently by both sources according to their own measurement scales and methodologies. They are intended to measure the substance of job security reforms since some may carry more weight in terms of their legal requirements. Of course, these scores are not to be confused with the practical effects of their corresponding laws in 'action.' Suffice to say only the job security measures identified by these sources have been noted throughout this thesis, and not their respective scores. This is because only two sources used scoring systems. The third source (Duval et al., 2018) makes no distinctions between the measures it identifies and treats them all as 'major' or 'significant' reforms. Also, providing such scores would have little meaning in the broader context of this research. However, it is worth pointing out that all the measures identified by the two sources that used scoring systems generated noticeable score changes. This means assigned values ranging from 0

to 1 increased or decreased by at least 20 percent, and in most cases, by as much as 33, 50, 67, 90 or 100 percent. Regardless of whether scores were assigned or not, the phrase ‘employment protection score changing measure’ has been devised by the author of this work to refer to the policy changes identified by the three sources and referenced herein. Each source uses a systematic methodology to identify most (but not all) employment protection measures enacted in the UK and Sweden since the 1960-70s. Thus, the policy changes identified by them may be considered rather significant, deserving of more special attention than those not mentioned.

Each source has categorized every single one of its measures as either protective (providing greater job security to employees) or deregulatory (providing less job security to employees). The former implies an increase in the country’s employment protection legislation index score while the latter implies a corresponding decrease in its score. Throughout this thesis, whenever there is overlap in identifying job security changes between these sources, for example, two sources identify the same measure for a particular year, then only one source is cited for that measure. If two sources are referenced, then each one identified different measures associated with the piece of legislation under discussion. It is important to note that the measures identified by these sources are synonymous with specific statutory provisions within existing laws. This means that for any given year in which an employment protection act was adopted, there may be one or more employment protection score changing measures associated with it. The UK’s Employment Protection Act of 1975, for example, contained five statutory job security measures. Instances of job security enhancement or retrenchment identified throughout this study refer only to the important measures identified by the three sources above, so any other examples of statutory job security regulations, which certainly there have been, are not identified or discussed herein. By bridging all three data sources together, it becomes possible to empirically

trace the long-term trajectory of the statutory employment protection regimes of the UK and Sweden. This is one of the main contributions of the present study.

The inventory of employment protection score changing measures created by Allard (n.d.) covers the period between 1950 and 2003. She identified job security policies adopted in the UK and Sweden (among 19 other countries) by reviewing the International Labour Organization's *International Encyclopedia for Labour Law and Industrial Relations*, online collections of legislation for some countries and the OECD *Jobs Study* and *Employment Outlook* publications and their annual *Country Reports* on specific countries. Once all the legislative texts had been obtained for the period under consideration, she reviewed them all and used a scoring and weighting procedure by taking into consideration 18 different aspects of job security (Gayle Allard, Personal Communication, February 2019; Allard, 2005). This extensive database in the form of excel documents has been generously shared with the author by Allard and is not publicly accessible. However, methodological information about her quantitative time-series indicator is available (see Allard, 2005). In her study of job security changes in 21 countries over a period of five decades, she observed sharp increases in protective regulation during the 1964-78 period, before the deregulation wave began immediately afterwards, gaining momentum following 1985 and lasting until 2000. However, it should be noted that her study period ends in 2003 so her research database cannot extend to the present date. Overall, Allard argued measures that increased job security predominated over those that reduced it between 1950 and 2003, with nearly two-thirds of all policy actions leaning towards stricter employment protection legislation (i.e., greater job security for workers) (Allard, 2005).

The inventory of Duval et al. (2018) covers the period from 1970 to 2013. It was developed by compiling all the legislative and regulatory actions mentioned in all *OECD*

Economic Surveys published over the period 1970-2013 for 26 advanced economies. Among all those actions, only 'major' ones (whether protective or deregulatory in nature) were identified based on whether they met at least one of three alternative criteria: a) a narrative criterion based on the OECD's staff judgment regarding the significance of the action at the time it was adopted (i.e., staff used strong normative language to define action as 'important' or 'major'); b) whether the action was mentioned again in subsequent *Economic Surveys*, as opposed to being mentioned once when it was adopted (i.e., policy mentioned repeatedly across different editions of the *Economic Survey* and/or in retrospective summaries of key past policies); c) the magnitude of the change in the corresponding OECD indicator, if it was available (i.e., displays a very large change in the 5th percentile of the distribution of the cumulative change in the indicator over three years). It should be pointed out that unlike databases such as the International Labour Organization *EPLex* and the Cambridge University Labour Regulation Index, the OECD does not assume that legal texts are formally neutral on whether the impacts of labour laws are good or bad for employers. The data contained in the OECD database aim to measure the costs to employers of compliance with job security rules. This assumption is also reflected in the inventory of Duval et al. where protective measures are coded as 'counter-reforms' and '-1' (implying they are costly for employers) and deregulatory actions are coded as 'reforms' and '1.' Usage of these terms, along with 'strictness' and 'rigidity' in OECD and World Bank indices suggests job security measures have built into them the assumption that labour protections have harmful effects on the economy. Besides running the risk of assuming the truth of the claim, which the econometric analysis is meant to address (i.e., whether the effects of legal texts involve costs or benefits for any given employer or for employers in general), another drawback of the Duval et al. inventory is its reliance on laws. Indeed, job security is not always

implemented through legislation and laws establish an absolute minimum standard while collective agreements may be set at standards significantly more generous. Hence, changes in laws may have no real legal impact if they only update job security to reflect a situation that already applies to most workers covered in an agreement. But for reasons that will become apparent later these criticisms do not hold much weight, which makes this 'law-heavy' source quite reliable. It is also useful because it allows for the identification of significant legislative changes, as opposed to a long list of policy actions that had little or no legal bearing on macroeconomic outcomes, as found in the European Commission's *Labref*, ILO's *EPLex* database or the Fondazione Rodolfo de Benedetti-IZA database. The time series coverage of this database is also sufficiently long (Duval et. al, 2018). In all these ways, it is complementary to the other two sources. It may be worth mentioning that the Duval et al.'s database allowed its authors to use a local projection method to test the short- and medium-term effects of the policies they identified. They concluded that deregulatory reforms or lower job security in general have a sizeable positive and statistically significant impact on preserving or increasing employment during economic expansionary periods, whereas they reduce employment in a recessionary period. They argue during a recession, employers seek to fire more existing workers and hire less new employees than in a boom, but strict job protection partly discourages them from firing people, so relaxing that constraint can trigger layoffs, thereby increasing unemployment, weakening aggregate demand and delaying recovery (see e.g., Duval et al., 2018).

The inventory of Deakin et al. (2017) covers the period from 1970 to 2013 and identifies measures using a complex version of 'leximetric' analysis, defined as the process of translating legal materials, particularly texts of statutes into forms that can be used in statistical analysis, which involved consulting primary sources (retrieved from texts available in law libraries or

online), relevant databases of national laws and the ILO's NATLEX database (for coding methodology, see Adams et al., 2017). This new leximetric technique based on the Centre for Business Research Labour Regulation Index (CBR-LRI) was developed to be put in use in more complex, realistic, regression analyses, in order to generate a more nuanced view of the economic effects of labour laws. From a methodological standpoint, it can be contrasted with the OECD database because it challenges the repeated claim that labour laws in favour of workers harm economic development and growth, thereby hurting the interests of those they are intended to protect (Deakin, 2018). In this regard, it is worth mentioning that the authors of this source employed a time-series econometric analysis utilizing non-stationary panel data methods based on the CBR-LRI to show that the strengthening of job security laws was associated with a rise in labour's share of national income, rising labour force participation, rising employment and falling unemployment, although the observed changes were small when weighed against wider economic patterns (Adams et al., 2018). This empirical inventory of employment protections is useful because it not only considered statutory law but also administrative regulation, collective agreements and case law. However, in the case of the UK and Sweden, almost all regulatory measures were found to be statutory in nature. In terms of its theoretical assumptions, this database was not developed to measure costs, or the strictness of rules, nor their rigidity as other indicators were designed to do (e.g., OECD, World Bank indices). The authors coded for the "presence and qualities of publicly enunciated legal and regulatory norms" and did not assume they "always impose costs on firms" or that "labour laws are effective, in practice, in protecting workers" (Adams et al., 2017, 9).

There are significant differences in the way all three sources identify and code specific employment protection changes, although there is considerable overlap between them as well.

While Allard's database does not cover the post-2003 period, the other two sources do. Moreover, Allard accounts for the years between 1950 and 1970, which the other two sources do not. To account for the absence of data after 2013 (since the three sources together only cover the 1950-2013 period), the author of this thesis replicated the research methodology of one of the sources above (Duval et al., 2018) to identify any major employment protection changes implemented between 2014 and 2020 in the UK and Sweden, but none were found. The methodologies of the other two sources could not be replicated due to technical infeasibility.

It should be pointed out that a binary classification of employment protection measures as either protective or deregulatory may be problematic for several reasons. First, protective measures provided by statute books (or collective agreements and case law) could bring few if any benefits for employees in practice. This may be so for a variety of reasons, including legal exceptions that exclude many categories of workers from coverage, long qualifying periods that deny workers of rights, small share of aggrieved employees filing tribunal claims, very low success rates in securing redundancy payments, meagre levels of compensation awarded, few reinstatements for unfairly dismissed employees, etc. Consideration of the effects of policy changes 'on the ground' therefore can help shed light on whether and to what extent gaps exist between 'laws in books' and 'laws in action.' Second, the practical effects of any measure could be unknown or nonexistent, making it much less meaningful to classify a measure as protective or deregulatory. Third, a law could contain both protective and deregulatory provisions or have contradictory effects in practice such that it both benefits and harms workers and/or employers, making it a 'mixed bag' of sorts. Therefore, using the three databases above to determine the regulatory substance of various measures in a binary manner presents its own limitations. To help bridge these gaps, Chapters 2 and 3 sometimes provide additional details of all the legal

aspects pertaining to the employment protection score changing measures identified in order to further clarify their functional nature and intent. At the same time, these chapters provide insights about the significance, real life impacts and/or consequences of those measures on workers, employers, state institutions and/or the economy with the help of evidential sources available.

Another major source of data employed in this thesis consists of British and Swedish parliamentary records. These primary sources have been extensively referenced for the purpose of explaining why various employment protection measures were adopted and, where possible, to provide information about their impacts on the economy, workers, firms, state institutions, etc. These parliamentary records are particularly useful for revealing the policy positions and rationales of key actors with material interests in the reform decision-making process (e.g., employers, trade unions and major political parties). They also provide valuable insights into underlying economic and political developments that influence the preferences and actions of major stakeholders as well as contain information about various events or processes that have shaped policy agendas over time. In political science research, the positions of key policy actors are sometimes located on the basis of the preferences of their constituencies or with respect to expert judgements. However, the qualitative observation of policy positions on the basis of parliamentary statements or records comes closest to a representation of the genuine preferences of those who directly influence or enact job security laws. To this end, two specific data sources are utilized. First, the UK's Hansard is the edited verbatim report of proceedings of both the House of Commons and the House of Lords. Second, legislative proposals presented to the Swedish Parliament (Riksdag) in the form of government bills. These Hansard and Riksdag records sometimes include the findings of appointed inquiry bodies consisting of experts, public

officials and politicians who were assigned to operate independently of the government in setting out recommendations. Sometimes they also include the opinions of referral bodies such as government agencies, unions, employers, courts, regional or local government authorities and other central bodies whose activities may have been affected by the proposals. All Swedish records were translated into English by the author using Google Translate. While use of this program has its limitations, it is more than adequate to give readers the gist of the contents of any European language document. This was confirmed when the author shared several parliamentary transcripts translated by Google with two knowledgeable Swedish academics with expertise in job security to assess the quality of the transcribed material.

An inductive approach was employed using a thematic content analysis, which involves eliminating biases and establishing an overarching impression of the data rather than approaching or steering the evidence with a predetermined framework, gradually identifying common themes as the materials are systematically read and reflected upon organically (Krippendorff, 2018). The author systematically worked through each transcript, devoting an equal amount of attention to all qualitative data, electronically highlighting excerpts that spoke to why various measures were proposed, supported and/or opposed by major political parties, the expressed positions and rationales of union and employer representatives as well as any mention of historical, political, economic and institutional conditions (causal forces) that guided the behaviour of leading actors. Despite numbering thousands of pages of text, these government sources of data did not contain abundant relevant information as one would expect, thereby necessitating a need to privilege some data over others. Instead of prizing one explanation over another and ignoring or discarding contrary data, however, competing or alternative reasons (where they existed) have been noted in the empirical chapters. This helps avoid any slanted type

of data presentation, without affecting the dominant themes or patterns that emerged from the transcripts, which had enough supportive evidence to be substantiated. At the same time, it is intended to aid the multifactorial theoretical approach adopted and help depict a reality made up of multiple reciprocally interactive parts where mutual interconnections defined a policy outcome. Viewing relations and impacts from different vantage points aids in deducing conclusions about how outcomes can change if variable relationships change.

The secondary literature is the final source of data used in this study. It has been drawn upon where appropriate to provide information about why job security laws were adopted and their impacts or significance. Secondary data was obtained from a variety of sources such as books, articles and reports. The use of this wide range of existing data provided greater scope and depth in understanding the topic. Some of the information also filled in knowledge gaps left by primary sources and even helped support some primary data. Unlike the UK, however, there is limited secondary material available in English on Sweden. For this reason, this study had to rely more on Swedish transcripts of government legislative proposals.

As for the country cases, the UK and Sweden were selected to see whether they would show similar or different outcomes on the dependent variable, namely employment protection legislation. Convergence or divergence in job security outcomes, however, may be measured using at least three dimensions: the number and nature of policies adopted, the reasons for their implementation and their real life impacts or significance. The UK and Sweden are often contrasted in the varieties of capitalism and power resources literature as representing two opposite extremes in terms of their distinct economic and political systems. They are said to vary on important dimensions such as legal traditions, electoral systems, political party dominance, welfare provision, systems of industrial relations, power resources of their labour movements,

the prevalence of collective agreements, state-society relations, degree of reliance on market mechanisms, etc. According to the varieties of capitalism and power resources theories, it is far more probable for job security protections to be introduced and expanded in a country like Sweden, whereas a country like the UK should feature little or no job security, either as a result of policy inaction or retrenchment. By contrast, the expansion-retrenchment perspective expects both countries to display a common trend toward expansion and deregulation of job security over time. And, thus, if some of these propositions do not seem to carry over to these two country cases with these big general differences or similarities, then our confidence in them should decrease since they have not been borne out by the data, or at the very least, they should be revised in order to account for contrary evidence.

The case selection reflects in many ways the methodological approach, which emphasizes the analysis of co-variation, congruence and processes. The countries have been selected on the basis of variation of the independent variables, theoretical relevance and the ex ante likeliness with regard to the expectations of dominant theories. The UK and Sweden are also commonly analyzed in comparative welfare state and political economy research. In the varieties of capitalism (and worlds of welfare) literature, the UK is described as a liberal market economy (with a liberal welfare state) and expected to feature the least job security out of all regime types. By contrast, Sweden is defined as a coordinated market economy (with a social democratic welfare state) and expected to have the most job security. Often, they are regarded as two opposing ideal types or pure models, which account for "much of the institutional variation relevant to contemporary typologies of capitalism" (Hall, 2007). They have also been used as examples to explain the lack of interest in the development of employment protections since Anglo-Saxon and Scandinavian countries are supposed to be characterized by fewer or no

statutory regulations as compared to continental European countries (Ritter, 1991; Kaufmann, 2013).

Congruence analysis design is used to assess the explanatory merit of proposed explanations in the literature by testing them against the available empirical evidence using a very small number of country cases. To address case selection problems of geographic proximity and a small N, the analysis has been extended to cover a long historical period (Lijphart, 1975), thereby generating a multitude of observations, which in turn increases the strength of the empirical tests of different theories' predictions. These theoretically derived hypotheses from the literature not only identify variables that are argued to have a significant impact on the outcome (in this case the number and nature of statutory employment protections adopted), but they also describe the processes whereby those variables are thought to secure such an impact (Hall, 2006). This focus on processes allows for the analysis of the meanings that key policy agents associate with their actions, thus helping to determine whether a theory's assumptions about the motivations and perceptions of key actors or the influence of structural forces are true or false (Hall, 2013).

The focus of congruence analysis design is mainly theoretical in the sense that it aims to make contributions to theoretical debates by explaining specific cases. It allows for the exploration of within-case and cross-case variations and the privileging of observations that enable discrimination between different theoretical predictions. Lastly, this method can pave the way for theoretical generalizations by producing conclusions about the relevance of influential theories in scientific policy discourse. However, the population of cases corresponds to Western European countries with long histories of industrialization and democratization, so they cannot be applied to countries that do not share similar histories.

The four chapters that follow are each organized in such a manner. Chapters 2 and 3 trace the development of job security legislation in the UK and Sweden, respectively. They are further divided into subsections. The first subsection of both chapters places each country's initial period of legislative activity in a historical context by providing an account of key events and conditions of the preceding decades, mainly the first half of the 20th century. The remaining subsections describe, explain and assess all the employment protection score changing measures adopted in the UK and Sweden since the 1960-70s.

The subsections of these chapters follow a clear chronological sequence partly because this work is intended as a history of important changes in job security over a long period of time and partly because the order of these statutory regulations' appearance is somewhat important. Each subsection covers an explicitly identified year in which a job security law was passed, for which one or more employment protection score changing measures were associated with. For example, Chapter 2 on the UK contains 18 subsections for 18 different job security laws passed, which correspond to 24 employment protection score changing measures. Similarly, Chapter 3 on Sweden contains 9 subsections for 9 different job security laws passed, which correspond to 22 employment protection score changing measures. Subsections are arranged chronologically by Acts of Parliament. For easier reading, each subsection or Act is further divided into three subsubsections in order to provide: i) a legal description of one or more employment protection score changing measures implemented by the passage of the Act; ii) reasons for why the policy measure(s) came to be, including contributing social, economic and/or political factors as well as the policy preferences or political actions of employers' associations, trade union organizations and political parties; and iii) information on the practical impacts and significance of the measure(s) in question. These subsubsections are intended to provide as much descriptive and

explanatory information as possible about the important job security measures identified. Within most of the explanatory subsubsections (ii), there are also discussions and evaluations of the three dominant approaches vis-à-vis the empirical evidence presented. The final subsection of Chapters 2 and 3 summarizes the main empirical findings provided in the preceding subsections and evaluates the extent to which dominant theories in the literature can account for them.

Chapter 4 is a culmination of the evidence and arguments advanced throughout Chapters 2 and 3. The first subsubsection summarizes and analyzes the number and nature of British and Swedish employment protection score changing measures in a comparative perspective. The relative merits of dominant explanations in the literature are more systematically assessed in light of the empirical data uncovered. The second subsection focuses on the causes of those policy measures. I develop my own nuanced argument, which is based on but goes beyond the power resources and expansion-retrenchment approaches and demonstrate why it is more apt at explaining temporal and cross-national similarities and variations in job security dynamics using case descriptions of reforms. I substantiate my claims that power resources and expansion-retrenchment narratives are the right starting point for analysis because of their emphasis on the importance of structural conditions and conflicts or compromises between capital and labour over managerial prerogatives. But my arguments go beyond these theories by taking into consideration: the importance of the type of regulation (collective agreements versus legislation) in driving the first job security laws; the strategic and consistent considerations of policy actors (e.g., employers, unions and political parties) in reform decision-making processes; the role of job security as independent institutional power resources for unions; the impact of critical junctures in changing the balance of power in domestic politics, thereby influencing the direction of policy reform (e.g., expansion or retrenchment); the role of international regulatory bodies in

expanding employment protections and resisting deregulatory agendas; the significant gap (or lack thereof) between job security laws in the statutes books and those very same laws in action; the indirect role of unions in influencing the deregulation of temporary employment; the regulatory gap between permanent and temporary employment in driving the retrenchment of rights for permanent workers and/or the granting of rights for temporary workers; and the general resilience of job security in the face of hostile environments, which supposedly preclude any expansion or maintenance of job protections whatsoever.

Chapter 5 concludes by raising several key insights emerging from this body of research that are relevant for public policy researchers and comparative political economists as well as extracts some original conclusions and thoughts about the wider theoretical and political implications of this work.

CHAPTER 2. THE DEVELOPMENT OF EMPLOYMENT PROTECTION LEGISLATION IN THE UNITED KINGDOM (1963-2018)

2.1. Historical background leading up to the legislative period

For the first half of the twentieth century, collective bargaining was the principal mode of regulating the employment relationship in the UK, in part because unions were too suspicious of the law to accept any tight system of legal regulation (Lewis, 1976). Industrial action provided unions with sufficient bargaining power to obtain concessions for their members when negotiating collective agreements with employers. The 1906 Trades Disputes Act and the postwar settlement provided unions with immunity from tortious liability so long as they were acting 'in contemplation or furtherance of a trade dispute.' Picketing was also protected under such circumstances. Thus, this collective laissez-faire system (in Otto Kahn-Freund's famous formulation) was framed by a series of laws guaranteeing the ability of unions to strike, allowing them to collectively bargain to secure benefits and protections for their members (Knox, 2016).

The terms of collective agreements, such as pay, working hours, conditions and benefits, were incorporated into employment contracts and were legally enforceable by individual employees. But in practice, individual opportunities to enforce them were rather limited. Many disputes over employment terms had to be resolved through collective procedures, which on the whole, tended to exclude the courts from involvement. Moreover, most individual employees had few statutory rights until the 1960s. As such, the peculiar nature of the collective bargaining system of the UK, with its unregulated, informal, multi-layered and dynamic features, operated in ways that marginalized the individual employment relationship in favour of the collective laissez-faire philosophy, which emphasized industrial pluralism and minimal government interference (Brown et al., 2000).

Collective bargaining suited both sides of industry then, appealing to both employers who wished to return to a free market economy after the Second World War and unions who were confident of their bargaining power and striving for independence so they could gain concessions for their members via bargaining. Employment protection legislation, however, ran against the grain of this collective laissez-faire system because it involved the direct mandatory regulation of the workplace, removing from capital and labour the freedom to negotiate and settle the terms of employment and substituting in their place minimum legal standards, which required the intervention of courts. This appealed neither to employers, who preferred to hold onto as much control over the terms of employment as could be maintained through collective bargaining, nor to unions, who accused the courts of systematic bias (Collins, 1992).

Before the 1960s, regulations of employment set basic conditions below which workers were not permitted to fall. These minimum protections did not affect many workers after the Second World War because the terms and conditions of employment normally exceeded them. The collective laissez-faire system could be reconciled with the existence of minimum regulations in the labour market insofar as those who lacked effective collective bargaining could benefit from them. But the institution of employment protection legislation, by establishing mandatory security of employment and interfering in the prerogatives of management, represented a transgression of the traditional regulation of labour relations. Instead of a commitment to state abstentionism so that the protection of individual rights of workers could be secured through collective bargaining and grievance procedures, a new approach towards the regulation of the workplace, outside of the framework of collective bargaining arrangements, began to emerge in the 1960s when successive governments started to enact statutory rights,

which could be exercised by individual employees in specialized labour courts known as tribunals (Collins, 1992).

Employment tribunals started in the early 1960s as ‘industrial tribunals’, which were established to consider appeals by firms against long-forgotten training levies that operated during that time. Their jurisdiction was extended to consider individual employee cases under the first employment protection laws. These tribunals consisted of a legally qualified chair and two lay members, one with experience of employing people and another familiar with the experiences of the employee side, usually a trade union official. This structure reflected corporatist ideas, which were common when the tribunal system was created, the two sides of industry collaborating with the state to resolve employment issues (Shackleton, 2017).

2.2. Contracts of Employment Act of 1963

2.2.1. Description of employment protection score changing measures (2)

The legal formalization of contractual terms and conditions began with the *Contracts of Employment Act of 1963*, which provided employees with statutory employment protections for the very first time. The Act received royal assent on July 31, 1963, and entered into force on July 6, 1964. It contained two important protective measures for employees (Deakin et al., 2017). First, it gave part-time workers equal or proportionate dismissal rights to full-time workers, as long as a qualifying threshold of 21 weekly hours was met. The threshold was designed to exclude those for whom ‘the employment relationship’ was deemed not to be of ‘substantial importance.’ Second, the Act stipulated that at least two weeks’ notice of termination was required for any employee working continuously for two years for the same employer. Before 1964, the normal notice period for an employee in the manufacturing industry was about one week (Deakin & Morris, 2001). Continuity of employment would not be broken due to absences

through sickness, injury or temporary layoffs. However, provision was made for strikes to break continuous employment if they breached the employment contract. The Act also gave employees the option of waiving their right to notice for a payment and recognized the right of employers to dismiss in the event of misconduct (Wedderburn & Davies, 1969).

2.2.2. Reasons for policy measures

The 1963 Act formed part of a larger government programme of modernizing the economy, which began under the leadership of the Conservative government after 1945 and was carried forward by the Labour government. The reasons for its introduction must be sought in the UK's postwar economic decline rooted in low levels of productivity, poor training record, lack of unity between employers, uneven wage development, government mismanagement and high strike action (Davies, 2009). The UK was struggling to achieve its four major postwar goals, namely full employment, a consistent exchange rate, stable prices and economic growth, with priority given to the first two. However, it suffered from persistent levels of inflation, caused by low levels of growth and relatively high employment, resulting in the national currency coming under pressure several times in the 1950s, before a balance of payments crisis occurred in 1961, exhausting reserves of gold and foreign currencies, despite financial aid from a number of central banks in Europe under the Basle arrangements. The UK government responded with a series of measures aimed at increasing international competitiveness by strengthening productivity, restraining wages, cutting down on strike activity and increasing labour market mobility (Emmenegger, 2014).

It was within this context that the 1963 Act was proposed. The Conservative government argued the measures would improve the country's economic performance and make it easier for employers to secure terminations, which was crucial during this period because rapid

technological changes were generating mass labour redundancy. At the same time, they believed legislation would reduce industrial disputes by offering a financial incentive to undermine resistance to layoffs if employees accepted to waive their rights to notice for a payment (Davies & Freedland, 1993). This is interesting because part of the policy's initial intention stands in contrast to the popular notion that job security regulations are aimed at providing the greatest length of continuous employment service. It is sometimes overlooked (especially by the varieties of capitalism approach) that another aspect of 'employment protections' entails securing an orderly transition to unemployment through official notices of proposed separation or redundancy pay. This less intuitive aspect of employment protections also problematizes the conceptual dichotomy proposed by the creation of a 'protective' or 'deregulatory' binary in databases and the theoretical literature more generally. For example, it is unclear how a measure that encourages workers to cooperate in cases of economic restructuring by accepting the termination of their employment contract in exchange for a meagre sum of money can be considered a protective and beneficial employee right.

Suffice it to say the trade unions and employers' associations were not in favour of the new legislative initiatives. Their opposition had less to do with the content of the proposals, which signaled declining government support for voluntarism so characteristic of UK labour market policy and industrial relations before the 1960s (Hepple & Fredman, 1986). Instead, the main employers' association and trade union federation complained about the lack of consultation regarding the passage of the 1963 Act and opposed statutory regulation due to concerns over the use courts to resolve unfair dismissal cases. For more obvious reasons, employers were not in favour of statutory reform as it interfered with their managerial prerogatives. But unions were also against legal intervention, even though collective bargaining

failed to adequately provide job security and unfair dismissal protection for their members. The aversion stemmed from the main agenda of unions to gain favourable terms and conditions for their collective membership while ensuring the continuation of bargaining and striking activities, rather than secure unfair dismissal rights for individuals. The obtainment of individual job security through involvement of the law, and in particular the courts, was perceived as undermining trade union security, which hinged upon voluntarism in industrial relations (Howe, 2017). And so here lies one of the issues with the expansion-retrenchment and power-resource approaches, they are not always clear about the source of regulation unions are likely to prefer. Although unions eventually came to accept the need for statutory employment protections, they were initially at loggerheads with the government over their introduction, even though they stood to benefit and had been unable to obtain such rights voluntarily in a satisfactory way for their members (Howe, 2017).

A Conservative Member of Parliament (MP) claimed both the British Employers' Confederation (BEC) and Trades Union Congress (TUC) were approached by the government years earlier and asked to make progress at the bargaining table through voluntary means to deal with the issue of dismissals. But because the Conservative government tried that approach several times and after a decade found progress at the bargaining table 'miserable', it felt compelled to introduce legislation to lay down minimum standards, upon which unions and employers were encouraged to improve voluntarily. The same MP pointed out that thousands of employers were not members of any employers' association and millions of workers were not members of trade unions so even if the issues were left to organized labour and capital to sort out, a large section of the workforce would be left without employment protections. For example, a study prepared by the National Joint Advisory Council for the Conservative

government found an increase of over 50 percent between 1960 and 1963 in the number of company redundancy policies and in the number of employees in companies with such policies, with only 16 percent of workers in the manufacturing industries covered by such schemes. Moreover, the Minister of Labour claimed the great majority of the 15 million manual workers at the time only had a right to a week's notice, regardless of their length of service (House of Commons, 1963).

However, several Labour MPs criticized the Conservative government's proposals. One accused the Conservative Party of using job security as a 'public relations stunt' in order to appear more attractive in the eyes of working people in the run up to the general election. He suggested the Conservatives had done nothing on the issue of workers' rights since the publication of their Workers' Charter in 1947, which followed a reassessment of Conservative politics after Labour's victory in 1945. He also claimed the Bill was introduced because of pressure from Conservative back benchers who demanded action on unofficial strikes. Another Labour MP saw no real value in the proposal, suggesting employers did not want it and employees would treat it with suspicion. A third MP viewed it as a 'Conservative smokescreen' for targeting strikes. He also took issue with a provision in the proposal requiring employees to give two or more weeks' notice to the employer when they wished to leave their job. A fourth MP claimed the unions saw the Bill as an anti-trade union strategy, adopted by employers seeking to weaken union influence within an establishment. A fifth MP took issue with the exclusion of classes of workers employed for less than 21 hours a week. A sixth MP viewed the proposal as a piece of anti-strike legislation introduced through a 'backdoor method.' A seventh MP expressed concern that a 'minority of bad employers' would use the measure as an excuse to fire their workers under the pretense of misconduct, claiming 140,000 employees were dismissed

in 1960 for alleged misconduct, which prevented them from accessing unemployment benefits due to a provision in the National Insurance Act (House of Commons, 1963).

These criticisms of the proposal, along with the general opposition of the BEC and TUC, do not lend credence to the view that there was widespread consensus between political parties and interest groups over the desirability of statutory reform in 1963, as argued in the literature sometimes (see for example, Edwards et al., 1998). What is interesting too is that a Conservative government, rather than the political allies of labour, took the legislative initiative to introduce legally binding employment protections, against the wishes of their economic allies (BEC) and political and economic opponents (Labour Party and TUC). Power resources and expansion-retrenchment narratives would not expect this. The government's rationale also has important implications for the varieties of capitalism theory, which too narrowly focuses on the sets of institutions that determine skill formation, thereby treating the UK's 'low skill equilibria' as incompatible with government or voluntary action toward job security regulation. Even if we assume the UK's dominant product market strategy was based on general skills, technological changes in the 1960s, which were displacing employees with presumably more general skills, appear to have necessitated an institutional guarantee in the form of notice periods.

2.2.3. Information to assess impact and significance of measures

The 1963 Act was limited in scope, excluding from its provisions several million workers, including those employed on a casual or part-time basis and those whose continuity of employment with the same employer was less than thirteen weeks. Moreover, it was claimed that a worker receiving one, two or four weeks' notice would have ample time to search for alternative employment. But that was not possible since during the notice period the employee was still expected to work. The employer could excuse the employee to search for work but that

would involve a pay cut. There was no security for the employee in such a scenario. A strike in breach of contract could also break continuity of employment and therefore lead to forfeiture of any rights to notice provided by the Act (House of Commons, 1975a).

From 1965 to 1971, a total of 629 complaints were received by the industrial tribunals concerning the failure of employers to provide the particulars of contract of employment as required by the 1963 Act. Information on their outcomes were not made available by the government (House of Commons, 1975a). It is also likely many employer violations went unreported because they required employees to file complaints in tribunals, which allowed the government to keep track of such evasions.

2.3. Redundancy Payments Act of 1965

2.3.1. Description of employment protection score changing measure (1)

The Redundancy Payments Act of 1965, which received royal assent on August 5, 1965, and entered into force on December 6, 1965, contained one significant protective measure (Allard, n.d.). It provided payment by employers of lump-sums to their redundant workers, basically covering three situations: 1) employer ceases business; 2) employer ceases to continue business in a particular ‘place’; and 3) demand for work of a particular kind ceases or is reduced. The Act did not provide a general right not to be dismissed for arbitrary reasons and for compensation for such dismissal. The amount of lump-sum payment depended upon the number of years of continuous employment with the employer, up to a maximum of 20 years, with a maximum wage fixed at £40 per week in 1965. For each year of employment between the ages of 18 and 21, the employee would receive half a week’s pay, between 22 and 40 one week’s pay, and between 41 and 64 (or 59 for women) one and a half week’s pay. The cost of the payment fell on employers, who could claim a rebate from a Redundancy Fund, which was financed by

weekly contributions from employers (5d a week for male employees and 2d. for females). The Fund made payments to redundant employees whose employers could not fulfill that obligation. It also reimbursed employers for almost 60 percent of the costs of redundancy payments (reduced to 50 percent in 1969, and further reduced in subsequent years, before being abolished for all but small businesses in 1986, and completely eliminated in 1989) (O'Higgins, 1965).

2.3.2. Reasons for policy measure

Before the Act, severance payments were not common. One estimate showed fewer than one in six employees had any redundancy or severance pay, even though most were employed in the public sector. Another survey conducted in the late 1950s representing almost 10 percent of all companies showed the most generous employers offered no more than 12 weeks' pay for their longest serving employees (Root, 1987).

By passing the 1965 Act, it was hoped that workers who lost their jobs due to the introduction of new technologies in some of the more traditional industries would be more willing to find employment in sectors that had a labour shortage, and that working people, on the whole, would come to accept the idea of redundancy more. In this way, there was an efficiency rationale implanted into the measure, aimed at promoting flexibility and securing greater acceptance by workers of the consequences of economic and technological change. The Act was introduced after studies had shown that employers and unions were unable to negotiate redundancy agreements and that collective bargaining failed to adequately deal with the problems of industrial restructuring (Lewis, 1985). The authors of the Act also thought that a lump-sum payment would avoid disincentivizing reemployment, which could result from higher unemployment benefits (Root, 1987).

Introducing the Bill, the Minister of Labour claimed there was widespread support for statutory redundancy payments on both sides of industry, as consultations between the Labour government and the BEC and TUC had shown the main structure of the scheme to be 'broadly acceptable' to both groups. He argued the measure would help "encourage labour mobility" by "allaying fears of redundancy and resistance to new methods and economic change" (House of Commons, 1965a). Several Labour MPs also expressed their support for the Bill. One argued it was necessary in light of new machinery and computers taking away jobs, and because only a quarter of the employed in industry were covered by redundancy schemes. He suggested the shortcomings of voluntarism had to do with union preoccupations with obtaining higher wages since the end of the war, as they were devoting proportionately less time to seeking a wider range of fringe benefits such as redundancy payments. However, another MP argued unions never had the power to obtain redundancy payments, despite putting constant pressure on employers to get them and that is why the government had to bring forth such legislation. A third MP congratulated the Minister of Labour for obtaining the full support of the TUC in bringing the Bill before the House. A fourth MP pointed out that some industries faced an unpredictable degree of redundancy and therefore were reluctant to face the costs involved in negotiating a redundancy scheme with unions (House of Commons, 1965a).

Several Conservative MPs raised objections over certain aspects of the proposal. Three members complained about the heavy financial burdens imposed on employers in financing the scheme. A fourth member suggested a larger proportion of payments should be borne by the Fund (75 percent) and a smaller amount by the employer. One member welcomed the proposal and blamed unions for failing to obtain a similar redundancy scheme for their members. He cited a Ministry of Labour survey that showed only one other capitalist country (Italy) had legislated a

redundancy scheme, suggesting that unions in other countries were able to obtain one through collective bargaining (House of Commons, 1965a).

While two years earlier, unions had opposed government intervention in their favour, it appears Labour's victory at the polls and the shortcomings of voluntarism obliged them to change their policy position, although the TUC was concerned about the 1965 Act limiting the capacity for industrial action (Davies & Freedland, 1993). Their political allies in power had changed their minds about legislation as well. According to various Labour MPs, legislation was needed because of three major reasons: unions were overly preoccupied with obtaining higher wages, unions lacked sufficient bargaining power to obtain redundancy pay on their own and employers were reluctant to face the costs of negotiating redundancy schemes due to unprecedented layoffs in their industries. The varieties school neglects to take these factors into consideration again because of its conceptual tunnel vision in focusing so strictly on the skills of a nation's workforce in determining its policy preferences. Whereas the expansion-retrenchment and power-oriented approaches are better able to understand the roles of technological displacement, working-class political mobilization and class compromise in creating the impetus for job security regulations in the UK.

Interestingly, there appears to have been some consensus among political parties regarding the desirability of statutory reform insofar as the Conservative Macmillan government passed the 1963 Act while Wilson's Labour government passed the 1965 Act. These consecutive pieces of legislation following a long period of state abstention from regulating job security seem to indicate some bipartisan political will to address problems associated with labour mobility, productivity, strikes and collective bargaining. But the literature has been wrong to assume that consensus existed among political parties and interest groups around the need for statutory

reform in general or one Act in particular. In this connection, the power-resource and expansion-retrenchment models have some difficulty accounting for the early preferences of policy actors and their strategic choices. This is partly because of their underestimation of the historical legacy of regulating employment issues via collective bargaining rather than legislation, which played an important role in conditioning the possibilities for future developments in job security reform. Indeed, the lack of progress in negotiations over notice periods, redundancy pay, and dismissals was the primary reason for government interventions in the 1960s.

2.3.3. Information to assess impact and significance of measure

Statutory redundancy payments were introduced to encourage labour mobility. They were intended to reduce employee resistance to industrial innovations and increase an employee's willingness to move into another job nearby or encourage movement from one part of the country to another where work was available, which was appropriate in the context of a growing economy with low levels of unemployment. However, as unemployment increased, redundant workers found the loss of employment was not followed by new work, and payments were quickly exhausted. The redundancy payments were created as a form of labour policy, but as long-term unemployment increased, it become more associated with welfare policy, a role they were not created for (Howe, 2017). A study of statutory payments in the UK showed that they made redundancies easier for employers by reducing resistance from workers with the help of financial compensation. In this regard, the Act also changed the role of unions, from resisting redundancies to bargaining for larger payments, as some workers found the payments attractive enough to volunteer for redundancy. According to one study, 46 percent of employers and 79 percent of union leaders found the Act had curbed employee resistance to redundancies. Age-based redundancy payments also increased incentives for older employees to volunteer for

redundancy, whereas in the past seniority traditionally dominated redundancy selection (Root, 1987).

However, another study found 50 percent of those made redundant were not covered by the scheme, and compensation for those who received it was inadequate. Moreover, very few employees received negotiated payments over the statutory amounts. As a result, many who were made redundant either retired without re-entering the labour market or became unemployed (Lewis, 1985).

There were several other issues with the Act. It placed no limits on an employer's decision to achieve redundancy, effectively construing an employee's contract as implying flexibility in terms of tasks, location and hours. As a result, employees affected by restructuring processes who refused to accept the new changes were dismissed without being able to claim statutory redundancy payments. Several past court cases also imposed upon employees a far greater onus of proof than might have been expected, leaving them in a position of relative weakness and taking away the advantage, which the statute could have afforded them (Freedland, 1972). A number of firms also sought to evade the provisions of the Act by either dismissing their workers prior to its entry into force (House of Commons, 1965b) or changing the status of their workers to self-employed in order to avoid possible liability for payments under the Act (House of Commons, 1966a). The protection this legislation purported to offer was therefore minimal. Compensation received by those who lost their jobs was not enough, nor was occupational and geographical mobility encouraged to any significant extent (Fryer, 1973).

Between December 6, 1965, and September 30, 1966, a total of £17,330,000 in redundancy payments was made to 82,051 employees, arising from 27,040 notifications of redundancies made by firms, of which £4,251,000 was borne by employers and £13,079,000 by

the Redundancy Fund (House of Commons, 1966b). By April 1966, the Fund had a deficit of £350,000, running a loss of nearly £100,000 a week on average, resulting in government efforts to increase contributions, which drew protests from the Confederation of British Industry (CBI), the TUC and nationalized industries (House of Commons, 1966c). By December 1967, a total of £76,805,000 in redundancy payments was made to 380,476 workers, £19,098,000 of which was borne by individual employers and £57,707,000 was borne by the Fund, which had a deficit of over £11 million in April 1968 (House of Commons, 1968), before it was fully repaid in 1970, until it had a deficit of £5,897,000 again in 1972 (House of Commons, 1972).

2.4. Industrial Relations Act of 1971

2.4.1. Description of employment protection score changing measure (1)

The Industrial Relations Act of 1971, which received royal assent on August 5, 1971, and entered into force in stages from October 1, 1971, to February 28, 1972, contained one important protective measure (Deakin et al., 2017). It established for the first time a minimum qualifying period of two years of continuous employment to claim general unfair dismissal protection, provided the employee was under 65, or 60 in the case of women, or the normal retirement age, whichever was younger. The statutory test for fairness was whether there was substantial reason for the dismissal and whether the employer acted reasonably given the circumstances. A dismissal would be considered unfair or wrongful if the reason involved discrimination, either against union members or on grounds of sex, race, belief, etc. The dismissal otherwise had to be justified, based either on the employee's conduct, ability to perform, redundancy, statutory requirement or another 'substantial reason.' An Employment Tribunal was tasked with assessing the employer's reasons in the event the employee filed an official complaint of unfair dismissal, and if the dismissal was deemed to be unjustified, then a remedy such as reinstatement or

compensation would be provided. For fifty years, this procedure has formed the second pillar of the UK's job security framework: all employees have a right to reasonable notice first, second, a fair dismissal, and third, a minimum severance payment if they have been made redundant. All three basic rights were introduced by the Contracts of Employment Act of 1963, the Industrial Relations Act of 1971 and the Redundancy Payments Act of 1965 (McGaughey, 2019).

2.4.2. Reasons for policy measure

The 1971 Act was essentially a response by the British government to basic concerns about inflation and wage drift, which it blamed on industrial unrest. From 1966 onwards, the number of strikes and days lost increased dramatically, and about half were related to wage claims (Moran, 1977). In 1968, the Conservative opposition released the policy document *Fair Deal at Work*, favouring the adoption of legislation over voluntary action on the issue of dismissals in order to take a constant source of conflict out of industrial relations. This was justified on the basis that the UK was one of the few countries where dismissals were a frequent cause of industrial action. According to the International Labour Organization, the UK was one of seven countries, out of sixty-two, where dismissals were not regulated by law (Davies & Freedland, 1993).

Years earlier, the Labour Government had set up the Donovan Commission to investigate the country's economic problems, which the 1968 Donovan Report had blamed on the fragmentation of British trade unionism. In the UK, bargaining typically occurred between unions and employers' associations at the industry level. However, their agreements were later supplemented by informal bargaining between shop stewards and managers at the firm level. It was stewards, for example, who negotiated payments in addition to national rates, which contributed to wage drift. Also, few union members attended meetings, so their connection with

their union was mostly through their stewards. By the 1960s, shop steward organizations matched, and in a few cases even supplanted, official union organization inside workplaces. The unions had little control over shop stewards, who were blamed for a series of unofficial strikes. Thus, the Donovan Report blamed the increasing number of strikes, as well as the problem of wage drift on the gap between the formal and informal bargaining systems of collective bargaining in the UK (Davies, 2009).

However, the Report did not recommend statutory regulations, calling instead for the voluntarist system to be maintained but improved with clearer agreements, procedures and structures. The majority of the Labour cabinet expressed their disagreement with the voluntarist approach, proposing a much more interventionist stance in their White Paper *In Place of Strife*, which called for government power to secure 'conciliation pauses' in the event of strikes and to require unions to hold ballots on the issue of strike action. These proposals were vehemently rejected by the trade union movement, and although they were never statutorily enacted, they split the governing party up to the cabinet level. Partly as a result, Labour lost the general election of 1970.

During parliamentary debates, Conservative members expressed their support for the 1971 proposals. One argued "voluntary action must take place within a proper framework of law in tune with the needs of modern conditions." Figures were then cited to highlight the extent of the problem of strikes in the UK, which the measure sought to lower. Between 1959 and 1968, for example, there were 4682 strikes, with 6,795,000 working days lost (House of Commons, 1969).

Labour MPs were quick to criticize the Conservative government's proposals. One pointed out many powerful groups such as British Leyland had expressed the view that reform should come about voluntarily through negotiations between management and unions. Another suggested the measure was intended to strengthen employers' hands, thereby confirming the views expressed by the CBI that the Bill would allow industry to more effectively combat wage drift by curbing union powers (House of Commons, 1970). A third MP argued the more desirable facet of the Bill lay in its safeguards against unfair dismissals, but a complex law on the issue was perhaps unnecessary (House of Commons, 1971a).

In the end, the Conservative government sought to achieve 'industrial peace' by removing one of the primary causes of industrial action (unfair dismissals) through the introduction of a legal right not to be wrongly dismissed in the Industrial Relations Act (Howe, 2017). Only the unfair dismissal section of the 1971 Act was acceptable to the trade union movement, as over 15,000 individual unionists used and benefitted from it the next year (House of Commons, 1973). The General Secretary of the TUC, Vic Feather, expressed dissatisfaction with the 1971 Act "with the exception of the useful provisions on unfair dismissal" two years later (cited in House of Lords, 1974).

However, because both political parties were concerned that a lower qualifying period would allow too many individuals to access the tribunal system, which would collapse under pressure, a two-year qualifying period was established for the time being. In the House of Lords, a Labour member cited unfair dismissal cases as numbering somewhere between 30,000 and 100,000 a year, making it impossible for industrial tribunals to take on so many. He recommended excluding certain classes of employees in order to reduce the case load to something more 'manageable.' A Conservative member pointed out that without an exception

such as a longer qualifying period, the case load would be nearly a quarter of a million, and that 80 percent of them would arise in the first two years, meaning 200,000 cases would be brought by employees who had been employed for less than two years (House of Lords, 1971a), making the two-year qualifying period crucial for lightening the case load.

In 1963 the International Labour Organization had adopted recommendation no. 119 concerning termination of employment, which stated dismissals should be based on valid reasons such as the employee's capacity or conduct or the operational requirements of the establishment. This recommendation formed part of the 1968 Donovan Report as well as the 1968 *Fair Deal at Work* and 1969 *In Place of Strife* documents, which proposed adopting a similar statutory definition of unfair dismissal (Emmenegger, 2014). In 1961, an ILO report had also highlighted the absence of dismissal protections in UK law and collective agreements. The report argued unions were responsible for preventing many arbitrary or discretionary dismissals because employers were concerned about repercussions in the form of strikes (ILO, 1961).

By 1971, there was consensus among political parties regarding the benefits of statutory regulations. Both the Conservative and Labour parties were in favour of using legal employment protections to mitigate the inconvenience and loss caused by industrial disputes, but it appears the union movement disagreed with their political allies over certain regulatory details, which had negative ramifications on their institutional maneuverability. This is another murky area for power resources and expansion-retrenchment approaches because they pay insufficient attention to the differences between statutory and voluntary systems of regulation, and their implications for the success of interest group efforts. In an overly simplified but not entirely inaccurate description of these theories, both might consider the 1971 measure to be a win for labour and a

loss for capital but treating it as a zero-sum game may be oversimplifying and distorting historical truth.

First, the legislative allies of capital proposed the scheme, so contrary to the expectations of the above perspectives, Conservatives were in favour of unfair dismissal protection, along with the CBI, although British Leyland argued reform should come about voluntarily so there was a difference in opinion among factions of capital regarding the most desirable form of regulation. Second, the political allies of unions criticized the 1971 measures at first, and suggested they were intended to strengthen the hands of employers by combatting wage drift and curbing union powers, although they did recognize the value of introducing statutory safeguards against unfair dismissals. Third, unions saw value in dismissal legislation but believed legal solutions to an individual's job security disputes would not prevent them from escalating into a collective issue because if other union members were dissatisfied with the legal solution, then they would strike in solidarity with the affected individual. There was a strong sense that 'legislation begets legislation' and that the introduction of statutory regulations would result in increased legal intervention in industrial relations over time, thereby undermining the role and position of unions (Howe, 2017). So, more contradictions abound in the historical record than the above theories might suggest. Having said that, Marxist oriented versions of power resources and expansion-retrenchment approaches have recognized that labour laws can perform crucial accumulation, legitimation and coercion functions. Irrespective of which political party is in power, the state can intervene in order to protect the general interest of capital at a critical juncture by producing necessary policy outputs such as the 1971 dismissal measure. Also, sometimes individual employers, particular firms or specific sectors of capital can employ the

state as an instrument to maintain the integrity and reproduction of the system by bounding to a certain policy of compromise with the working class through their union representatives.

The 1971 measure represented the first policy intended to strengthen and secure an employee's existing contract and position within a company through the establishment of dismissal procedures, which would help protect employees from unfair treatment once improper conduct had been alleged by an employer. Previous measures sought to make terminations easier to secure for management without causing considerable disruption of production activity resulting from strikes.

2.4.3. Information to assess impact and significance of measure

The benefits of the 1971 Act were rather limited. One of the crucial effects of the Act was that it protected the freedom of employers to buy their way out of an award of reinstatement upon payment of a relatively small lumpsum (Howe, 2017). Moreover, labour courts were generally hesitant to question the soundness of a dismissal because many judges felt courts should not usurp a function properly belonging to management (Hepple, 1992).

Within four months of the statute coming into effect, some 2,500 complaints of unfair dismissal were filed, about 1,900 of which were processed, and less than half went to tribunals. The other 1,000 were settled or withdrawn at the conciliation stage. About 20 percent of the cases completed, whether by conciliation or following a hearing, resulted in either reinstatement or compensation. However, no complainant had been awarded the full compensation amount of £4,160. The majority of awards by tribunals had been about £500, comparable to average redundancy payments of £292 in 1971 (maximum of £2,100 was allowed) (House of Commons, 1972).

2.5. Contracts of Employment Act of 1972

2.5.1. Description of employment protection score changing measure (1)

The Contracts of Employment Act of 1972, which received royal assent on July 27, 1972, and entered into force on the same day, contained one significant protective measure (Allard, n.d.). It stipulated that at least one week's notice of termination was required for any employee working continuously for thirteen weeks (instead of twenty-six as previously) for the same employer. The right to notice, however, could be waived, or payment accepted in lieu of notice (Dunbar-Brunton, 1979).

2.5.2. Reasons for policy measure

The 1972 Act was proposed as a pure consolidation measure, bringing together the previous three Acts of 1963, 1965 and 1971. The ruling Conservative Party portrayed it as "substantially improving the security of employees and the help given to them when, alas, they are faced with the problem of redundancy" (Robert Carr, cited in House of Commons, 1971b). However, the Bill raised objections from Labour MPs who saw it as a "shabby, nasty, vicious attack on workers rights and on freely negotiated terms and conditions of employment" (cited in House of Commons, 1971b). Only the clause providing a one-week minimum period of notice was welcomed, bringing "unalloyed satisfaction" to Labour representatives who viewed it as an "admirable example" in the footsteps of their own Party (House of Lords, 1971b). This marked the last time the Conservatives willingly brought forward and implemented a protective measure for their own internal political reasons. From 1972 onwards, they would take a dramatic U-turn and oppose any proposals to extend job security protections, contrary to claims in the literature that there existed a broad consensus for most of the 1970s supporting unfair dismissal legislation (see for example Howe, 2017).

The 1972 Act echoed much the same objectives of the 1963 and 1965 measures. It was underpinned by a desire to make it easier for employers to restructure their workforces, above all by securing dismissals without inducing retaliatory strikes, although union repercussions typically stemmed from alleged arbitrary or discretionary dismissals. However, employers were given the right to ignore the right to notice by paying off the dismissed employee with a small sum, making the job security measure somewhat meaningless and contrary to its ostensible purpose. This exception embedded into the 1972 measure should call into question the oversimplified dichotomy of protection versus deregulation so prevalent in the empirical and theoretical literature on job security regulations. As this example shows, the legal details of laws can have contradictory effects, and so sometimes policies are mixed bags of various incoherent and potentially conflicting features, making it difficult to pigeonhole them into any one category.

2.5.3. Information to assess impact and significance of measure

The enforcement machinery of the Act was almost non-existent. It only entitled an individual to ask a tribunal to declare or adjust the terms of the employment contract contained in the section 4 statement. It is important to note that employers were obliged to provide a ‘unilateral’ declaration of the particulars of the contract, and not a written contract. A decision was never made by policymakers to ensure that all employees should be provided written contracts, ostensibly because of concerns of too high an administrative burden placed on employers and the civil service. But closer to the truth may have been the fear that employees would be unaware of the implications of what they were signing and would have found themselves bound by questionable terms of employment, either through ignorance of their rights or through lack of understanding their position (Leighton & Dumville, 1977).

A survey was conducted with employers, who hired 27,000 employees between them, to see how they were complying with the requirement of the Act to communicate the particulars of employment contracts with their employees. It revealed just over 80 percent of employers had complied with the law in some form. Nearly all of those who complied claimed to have provided each employee with full written particulars of the terms of their employment. This is an encouraging figure but many of those who participated were in the main considered 'good' employers. A similar survey conducted with the employees of the same employers revealed that 60 percent of them claimed to have received details in a written contract, thereby raising suspicions that not all employers were telling the truth. Also, some employers were found to be keeping to themselves the one copy of the document for the employee, which while not a breach of the legislation, was still an unsatisfactory practice because it meant employees would be unable to refer to their contract. Lastly, it was found that employees who were hired before 1963 and still working after 1972 had never received the particulars of their contracts (Leighton & Dumville, 1977).

2.6. Trade Union and Labour Relations Act of 1974

2.6.1. Description of employment protection score changing measure (1)

The Trade Union and Labour Relations Act of 1974, which received royal assent on July 31, 1974, and came into force on September 16, 1974, contained one significant protective measure (Deakin et al., 2017). It decreased the qualifying period for general unfair dismissal protection from two years to one year of continuous employment. A complaint could be presented to a tribunal within three months (instead of four weeks) of the dismissal unless it was 'not reasonably practical' to present the claim within the limitation period. The limit on compensation was raised from £4,160 to £5,200.

2.6.2. Reasons for policy measure

In opposition, the Labour Party and the trade union movement had agreed on a 'social contract.' In exchange for wage restraint, the Labour Party agreed to repeal the anti-union legislation contained in the 1971 Act. When Labour won the general election in 1974, the Wilson cabinet delivered its promise by passing the 1974 Act whose first section stated: "The Industrial Relations Act 1971 is hereby repealed" (cited in Clegg, 1979). The 1974 Act contained many of the recommendations of the Donovan Report (paragraphs 563 to 567), which, even though it had recommended no qualifying period to claim unfair dismissal, the Labour government tried its best to minimize the period of service while not commanding a majority in the House of Commons (Emmenegger, 2014). There were amendments at the committee stage for the period to be reduced to twelve weeks, but the concern of the Labour government, again, was to protect the tribunal system from being overloaded with too many cases (Howe, 2017).

In the Upper House of parliament, a Conservative member warned the Labour government's 'payment' to the TUC would have wide-ranging and deleterious effects on businesses. Many companies, he suggested, could not afford to deal with the onerous obligations imposed on them under the preceding Acts, which went 'too far down the road', tipping the imbalance the other way (House of Lords, 1975a).

The power resources model and expansion-retrenchment approaches both recognize the capacity of workers and unions to obtain job security through links with political parties who support their interests, especially before 1979 when Labour was in power for 11 of the previous 15 years and cooperating with the union movement. However, it is not always appreciated by these theories that the inclusion of unions in the formulation of employment regulations has obliged them to make concessions to justify their position in the policymaking process. For

instance, unions agreed to a one-year qualifying period and a pay increase limit of five percent in order to assist the Labour government manage the economy. The unions were also forced to make other compromises because their political allies did not command a majority in the House of Commons and a number of amendments had to be accepted, for instance, that dismissal for union non-membership was unfair, even within the presence of closed shop agreements between unions and employers (Clegg, 1979).

2.6.3. Information to assess impact and significance of measure

Between October 1973 and September 1974, 908 awards of compensation were provided by industrial tribunals for unfair dismissals. The majority of awards were far below the maximum amounts: under £500 in 687 cases, between £500 and £1,000 in 114 cases, between £1,000 and £2,000 in 62 cases, between £2,000 and £3,000 in 29 cases, between £3,000 and £4,000 in 7 cases and over £4,000 in 9 cases (House of Commons, 1975b).

Between July and September 1974, there were 678 tribunal hearings of complaints of unfair dismissal. The majority were turned down, with 429 cases rejected (63.3 percent), 8 recommendations of re-engagement, 191 awards of compensation, 55 redundancy payment awards, and 10 other successful cases. Between October and December 1974, there were 921 hearings of complaints, with 554 cases rejected (60.2 percent), 21 recommendations of re-engagement, 283 awards of compensation, 73 redundancy payments awards, and 23 other successful cases (House of Commons, 1975c). Altogether, these figures suggest the benefits of unfair dismissal legislation for workers were far and few between.

2.7. Employment Protection Act of 1975

2.7.1. Description of employment protection score changing measures (5)

The Employment Protection Act of 1975, which received royal assent on November 12, 1975 and entered into force from June 1, 1976 to February 1, 1977, contained five significant protective measures. First, the legally mandated notice period was increased from two to three weeks. Second, the minimum qualifying period of service for general unfair dismissal protection was decreased from one year to a historical low of six months. Third, the hours threshold giving part-time workers equal or proportionate rights to full-time workers was decreased from twenty-one to sixteen hours a week, or between eight and sixteen hours, if employees had five years of continuous service with the same employer, making part-timers eligible for rights pertaining to redundancy compensation, a minimum period of notice, protection against unfair dismissal and reinstatement. Fourth, any employer proposing to make an employee redundant was obliged to inform and consult with a recognized trade union about that decision. Exceptions included crown employment, single non-renewed contracts for a fixed term of twelve weeks or less, and contracts for specific tasks lasting no more than twelve weeks. The timetable for consultation was 90 days before a series of dismissals involving 100 or more employees within 90 days and 60 days before a series of dismissals involving 10 or more employees within 30 days. The penalty for failure to comply with the obligation to consult was the obtainment of an award by complaint to an industrial tribunal by a recognized trade union. Fifth, the employer had a duty to notify the Department of Employment of proposed collective redundancies and had to show consultation had begun and exactly when (Deakin et al., 2017; Allard, n.d.; Freedland, 1976).

2.7.2. Reasons for policy measures

When the Labour Party secured a majority in the House of Commons in the second election of 1974, it passed the Employment Protection Act of 1975, which extended job security and removed most, if not all, anti-union stipulations from previous legislation. Given past Conservative attacks on union rights to organize and protest, the trade union movement was more concerned about the regulation of industrial relations than individual employment relationships. There was also a lack of clarity on the part of union leaders concerning the increasing role of employment law in regulating job security. The Acts of 1974 and 1975 in some ways represented the acceptance in principle by unions of the positive role of employment legislation, but also demonstrated the inability of unions to spell out in legislative terms what that role should precisely be (Davies & Freedland, 1993).

While the 1975 Act required employers to consult recognized unions in the case of collective dismissals, it did not provide them with the power to veto any dismissals. Part of the reason is because British unions did not lobby for industrial democracy due to many influential union representatives believing that the inclusion of unionists among the directors of firms would hinder the development of effective (i.e., conflictual and adversarial) collective bargaining, which they viewed as necessary for maintaining union power and security (Sassoon, 2010). Power resources and Marxist oriented theories underappreciate union preferences for voluntary compact to legislative enactment and the implications of these different regulatory systems on the ability of unions to create strong and viable institutions to maximize their control over employment matters without dependency on state support. While legislative activity seemed necessary because political parties, the public and some unions perceived the voluntarist system to be forestalling progress on the issue of job security, there were still mounting calls by some

union leaders for a return to free collective bargaining in the mid-1970s because union aspirations were increasingly clashing with Labour's policy promises and actions. For example, the 1974 Act was as a crucial fulfillment of Labour's end of the social contract, but it was neutralized by the Conservative opposition and workers hardly made a single positive gain, which infuriated the union movement and subsequently led Labour to make significant concessions with the passage of the 1975 Act (and the 1976 Trade Union and Labour Relations Amendment Act).

The significant measures requiring consultation with unions over redundancies had been promoted by several domestic sources in the UK since the second half of the 1960s. The Donovan Report recommended it for boards of companies. A 1968 guide entitled 'Handling Redundancies' prepared by the National Joint Advisory Council for the Department of Employment emphasized its importance for industrial peace. The Code of Industrial Relations Practice created under the 1971 Act encouraged employers to consult with employee representatives, in cooperation with the Department of Employment. The Department's Manpower Paper of 1971 concerning the reform of collective bargaining also supported the involvement of unions in redundancies. The Commission on Industrial Relations recognized union input in the disclosure of information pertaining to matters of redundancy. The TUC became increasingly interested over the years in consulting and negotiating redundancies as well. Its economic review in 1969 recommended any company proposing a merger or takeover ought to negotiate with unions over redundancy procedures. This theme reappeared in subsequent TUC publications, including its policy statement on industrial democracy. The courts also interpreted unfair dismissal provisions in the 1971 and 1974 Acts with special concern for procedures to deal with redundancies (Freedland, 1976).

The European Union was another source of pressure for the union consultation provisions of the 1975 Act. The movement to harmonize the collective dismissal laws of European Union member states had begun in earnest in 1972. During the first stage, the European Economic Community Commission prepared a report on the legislative provisions protecting employees in the event of dismissal in European Economic Community countries. It highlighted the disparity in national laws regulating individual and collective dismissal. The Commission presented its draft Directive on collective dismissals to the Council, which contained three proposals: compulsory consultation with workers' representatives regarding collective dismissals, compulsory notification of redundancies to state authorities, and state powers to postpone or prohibit dismissals in certain circumstances. From the first to the final draft there were significant disagreements between member states, both concerning the content of the proposals and the extent of desirable harmonization. The UK opposed part of the proposals requesting government powers to prohibit dismissals and in 1974 placed a temporary veto on all the proposals. The compromise that made the Directive on collective redundancies possible was reached in December 1974 when it was agreed that member states could optionally grant veto powers over collective dismissals to their Departments of Employment. While the UK government was influenced by the Directive, in implementing the 1975 Act it aimed more to deliver on its promise to extend employee rights and strengthen collective bargaining, which was somewhat different from the Directive's emphasis on the active intervention of public authorities over the labour market (Freedland, 1976).

No real concessions were made to employers in exchange for the obligations imposed on them, making the 1975 Act highly unpopular among firms. Many employers' organizations, including British Leyland and the CBI, complained to the Labour government about the Bill,

suggesting it was one-sided and unfairly biased against them, expressing concern about the additional costs it imposed at a time of economic difficulty (House of Commons, 1975d). While some employers supported statutory reform in 1965 and 1971, this was no longer the case and so from 1972 onwards, legislative demands for job security from workers or Labour would no longer be acceptable to the corporate sector or its political representatives. For their part, Conservative MPs claimed the proposal shifted power away from parliament and towards unions, referring to the scheme as the 'Trade Union Benefits (No. 2) Bill' or the 'Socialist Con-Trick Consolidation Bill', calling it another "bonanza for the unions with hardly one measure, which pleases any employer" (cited in House of Commons, 1975e).

These newfound policy preferences of employers and Conservatives align more with the expectations of power resources and expansion-retrenchment narratives. As traditional class struggle approaches based on the antagonism between capital and labour, they generally see both sides of industry as having conflicting sets of needs, interests and policy preferences. Although in many cases this viewpoint holds true when it comes to the development of job security regulations in the UK, this preoccupation would prevent them from seeing the extent to which employment protections can also be the product of the rational coordination needs of firms or the state rather than always reflecting the balance of power among economic actors. These coordination needs sometimes produce cross-class alliances around shared interests such as job security, rather than persistent class conflict over competing policy proposals. That would explain what otherwise would come as a puzzle to conventional understanding – that employment protections benefitting workers obtained the consent and approval of employers and Conservatives in certain rare historical moments. However, pressure to downgrade the unfair dismissal system to be more responsive to the needs of firms began to mount by 1975.

Introducing the Bill, the Minister of State claimed it was “the clearest possible evidence of the Government’s firm commitment to the social contact” which he argued was the only realistic way to contain inflation. He suggested the proposal would remove inequities between different groups of workers, by extending to many more people rights, which previously had been taken for granted by mostly while-collar employees. The government also claimed the measures would decrease industrial disputes, arguing many strikes occurred over dismissals connected to union membership or activity, resulting in loss of production. For example, results from a study carried out by the Department of Employment had shown dismissals of worker representatives had resulted in a more serious loss of production than other stoppages related to dismissals. Although worker representatives accounted for less than one-fifth of all strikes due to dismissal between 1966 and 1973, their share of working days lost through such stoppages increased sharply from 17 percent at the beginning of the period to over 40 percent at the end. The research also found that almost 90 percent of strikes over dismissals of worker representatives involved the dismissal of a single employee. The statistics were intended to support the view that the dismissal of a single shop steward often brought the entire workforce out on strike, leading to damaging loss of production, thereby necessitating the introduction of special provisions to minimize those very long and intense industrial disputes. The 1975 Act was also passed with small employers in mind, for example, the bricklaying yards and engineering workshops in Glasgow, which were called ‘rat pits’ by workers, as unions already had decent collective bargaining systems set up in the large engineering factories and shipyards (House of Lords, 1975b).

2.8. Employment Protection Act of 1978

2.8.1. Description of employment protection score changing measure (1)

The Employment Protection (Consolidation) Act of 1978, which received royal assent on July 31, 1978, and entered into force (with minor exceptions) on November 1, 1978, contained one significant protective measure (Allard, n.d.). It placed the burden of proof in dismissal cases on employers, which was only partially placed upon them under section 24 of the Conservatives' 1971 legislation. Previously, the employer had to prove the reason for dismissal but not necessarily that it was a fair one. This situation was clarified in section 57(3) so that employers had to convince the tribunal that they acted reasonably in treating the reason for dismissal as sufficient.

2.8.2. Reasons for policy measure

The Labour government continued to support the voluntary system through a series of measures aimed at strengthening the economic position of unions and individual employees. This included continuing the unfair dismissal system implemented in 1971 by the Heath government but enhancing the protections afforded under it by requiring re-employment as the primary remedy (1975 Act), adding a compensatory award for unfair dismissal to the basic award (1975 Act) and placing the burden of proof in dismissal cases on employers (1978 Act) (Howe, 2017).

During parliamentary debates, Labour MPs claimed it was necessary to introduce the 1978 Act because the British legal system was "geared to protecting the interests of capital without any requirement to look at the interests of labour." The 1975 Act was said to have "some loopholes and some flaws in it" arising from the "differing judicial interpretations of what the Act means" as well as from the "obstructive and unreasonable attitudes of some individuals and groups." It was argued that previous legislation was brought into disrepute by 'eccentric

litigants' and 'obstructive companies' such as Con-Mech, whose "unreasonable actions circumvented and prevented the fulfillment of the original intentions of the Employment Protection Act." Hence the 1978 Act was intended to "stop up two gaps before they became large enough to cause a lot of trouble" (cited in House of Commons, 1978b).

The Conservative opposition argued the unfair dismissal system was hindering job creation and business efficacy at a time when 1.5 million were unemployed. A survey conducted by the Small Business Bureau of the Conservative Party found that employment protection legislation, particularly unfair dismissal procedures, were limiting the number of workers being taken on, as reported by 77 to 87 percent of small employers. Conservatives also argued employers were being forced into tribunals too easily. They pointed out that the total number of unfair dismissal applications to tribunals had increased from 16,400 to 47,600 in 1976 alone and cases heard had risen from 6,857 to 19,234 in 1974. However, it was not mentioned that only 40 percent of dismissal cases were being heard and less than 15 percent were found to be valid. The National Chamber of Trade complained that applicants were eligible to receive up to £11,760 by making a claim for unfair dismissal, and on top of that, receive a 25 percent increase as a result of recent measures introduced by the Labour government. The average cost of meeting such claims for employers was estimated to be £1,000. Conservatives called the situation "an intolerable pressure on small business." The CBI, Smaller Businesses Association, the Union of Independent Businesses, the CBI Small Firms Council, and the Federation of Master Builders also complained about dismissal procedures making it more difficult to fire employees and take on more workers (House of Commons, 1978a). This was the first recorded incidence of this 'argument of principle' (Davies & Freedland, 1993), which would be repeated by employer associations and Conservatives many times over in the years to come as a way to justify

mechanisms for reducing job security and the protections tribunals offered. It was predicated on the notion that industrial justice included not only fair dismissal processes for workers but also justice for employers. Thus, a fairer balance of rights and responsibilities needed to be established, one that considered how they would be equally shared by employers, employees and the state, while taking into account the particular challenges of small business. Conservatives and employers framed the argument around protecting businesses from the perceived problems associated with the unfair dismissal system rather than protecting employees from the threat of unfair dismissal (Howe, 2017).

However, Labour MPs viewed them as an "ideological argument, part of the class struggle, which Tory Members consistently conduct in the House against working people who have the right to protection at law." They claimed employers who were unable to determine within 26 weeks' time whether a new hire was incompetent or lazy were at fault, as this was a problem with management and not the law or workers. They also insisted the unfair dismissal provisions did not make it difficult for some small businesses to operate as they applied to all firms, and not only some. As for burdening businesses, it was pointed out that 270,000 new business formations had been registered in 1977, representing a growth rate nearly twice that of 1976 and almost four times the 1963 rate (cited in House of Commons, 1978a). Labour resisted Conservative attempts to lower the qualifying period or to create exemptions for small firms as Conservatives tried to do with the Employment Opportunities (Small Business) Bill in 1979, suggesting the size of the business was irrelevant for mandating access to unfair dismissal protection and it would be unjust anyway as it would create a two-tier labour market (Howe, 2017).

2.8.3. Information to assess impact and significance of measure

Under the Consolidation Act, employers could still dismiss employees due to unfitness, misconduct and redundancy. They could also bypass regulation by hiring workers on a fixed-term basis. That way the contract would cease and there would be no question of layoff. The British Steel corporation, for example, was known to offer jobs for a fixed period of 25 weeks, thus avoiding the statutory provisions that applied once a person was employed for 26 weeks. Moreover, almost two-thirds of unfair dismissal cases had been in favour of the employer, and in 96 percent of the cases the tribunals had been unanimous. What is more, out of tens of thousands of cases, only 50 resulted in the maximum combination of compensation and basic awards amounting to £5,200. Many employers would pay out cash to employees to "get lost" and save them the expense and trouble of attending a tribunal hearing. Approximately 10,000 of such payments were being made every year (House of Commons, 1978a).

2.9. Unfair Dismissal Order of 1979

2.9.1. Description of employment protection score changing measure (1)

The Unfair Dismissal (Variation of Qualifying Period) Order of 1979, which received royal assent on July 30, 1979, and entered into force on October 1, 1979, contained one important deregulatory measure. It increased the minimum qualifying period to claim unfair dismissal from six months to one year (Deakin et al., 2017).

2.9.2. Reasons for policy measure

Labour's experiences in the late 1960s taught it that economic policy and pay restraint were only achievable through cooperation with the union movement. For a very short time, both sides delivered their ends of the bargain. As a result, there was less confrontation and inflation was brought under control. However, by 1978 the social contract was beginning to unravel due

to external pressures that forced the government to cut public expenditure and take demand out of the economy. Three years before, wages in manufacturing spiraled out of control and inflation reached 24.2 percent, necessitating another International Monetary Fund loan. In 1977, there were calls to return to collective bargaining because union aspirations were increasingly clashing with government counter inflationary measures (Emmenegger, 2014).

The union movement viewed the government as reneging on its promises, however, especially as Labour was unable to agree to an appropriate rate of pay increase with the TUC. In the autumn of 1978, the government sought a new electoral mandate to rescue the social contract, but it failed. Tensions grew with organized labour around pay policy, culminating in the winter of discontent when militant public sector workers joined in large scale strikes with their counterparts in the private sector (Emmenegger, 2014).

The Labour government's authority, already tenuous owing to the lack of a majority in parliament, crumbled. The public also viewed these events as more evidence that Labour was equally unable to create industrial peace and fix the economy. The subsequent parliamentary vote of no confidence, first in more than five decades, led to the fall of the Labour government. In 1979, a new Conservative government led by Margaret Thatcher came to power with the intention of gaining control over the economy and making the country internationally competitive by checking union power and scaling back the welfare state and labour protections. In the area of job security, the government began by extending the qualifying period of service. It used the procedure of an Order for reason of expediency, otherwise to do it by statute would have taken much longer (Emmenegger, 2014).

Conservatives claimed Labour's economic plan was only feasible in a growth-oriented boom, but totally misplaced after the rise in oil prices in 1973-74 when there was a rate of increase in unit labour costs, which was affecting the manufacturing industry and contributing to unemployment. The findings cited from surveys on job security regulations, however, were contradictory and inconsistent. According to a survey conducted by the Merseyside Chamber of Commerce, employment protections were a significant barrier in the recruitment of additional labour, particularly young workers. The British Institute of Management, however, indicated that most managers had come to terms with previous protective measures and did not want to see basic changes made to the unfair dismissal provisions (House of Commons, 1979a). Another survey by Coopers and Lybrand, carried out for the Wilson committee in 1978, found the great majority of companies expressed difficulty with adjusting the size of their workforces to fluctuations in market conditions and seasonal changes in demand, particularly because of employment protections, which had "strongly reinforced the trend towards inflexibility." But a survey by the Opinion Research Centre consulted 301 firms employing 50 workers or less and found only 7 percent of them had issues with unfair dismissal provisions (House of Commons, 1979b).

The TUC did not support the extension of the qualifying period but employers certainly welcomed the proposal. The small business committee of the CBI even recommended extending the qualifying period to two years, as one year was more adequate for large firms but insufficient for smaller ones. The Conservatives estimated that the 1979 measure would save the Treasury £2½ million and save industry about £10 million to £12 million. However, employers could insure themselves against dismissal cases at a small price (£8 per employee), covering themselves for any legal costs and for any compensation due (House of Commons, 1979b).

Both the expansion-retrenchment and power resources theories aptly trace the origins of Britain's deregulatory turn to the post-1979 Conservative government of Thatcher, which rhetorically used the fiscal crisis of 1979-80 to promote neoliberal practices. After abandoning the collective laissez-faire model in the 1970s, subsequent Conservative governments sought to weaken unions and deregulate the labour market, although successful legislative attacks on job security happened far less than the literature would have us believe. The above approaches have also not overlooked Labour's incapacity to deal effectively with the late 1970s crisis, which brought about a long Conservative reign. However, it should be noted that the power resources thesis tends to overestimate the role of the organized representatives of the union movement, including the Labour Party, while underestimating the role of the rank-and-file and their temporary radicalization of workers. The inability of the most organized sections of the labour movement to control their rank-and-file militants during the winter of discontent, for instance, ultimately cast the Labour Party in a negative light, as being inept and incapable of pacifying industrial relations, which paved the way for Thatcher's government to end the era of labour movement strength.

The UK under both Conservative and Labour governments expanded employment protections 12 times between 1963 and 1978. Altogether, these measures provided the country with a comprehensive system of dismissal protection by 1979, on the same level as other stringent labour law countries such as Sweden. This finding stands in sharp contrast to the expectations of the varieties of capitalism thesis, namely that employment protections within Anglo-Saxon countries are typically inferior to those found in coordinated market economies. It may also go against the predictions of the power resources theory, which assumes a country like Sweden would have higher levels of protection since its union density stood at 80 percent in

1980, whereas the UK's union density was much lower, ranging between 40 and 50 percent from 1960 to 1980. In this way, the power resources thesis is overly concerned with compulsory power such as union density while neglecting the role of job security institutions as independent power resources that not only protect unions in the workplace by prohibiting arbitrary dismissals but also award them an institutionalized role in the administration of dismissals (via consultation or veto rights, for example). The more unions get involved in these institutions through their structured political and economic actions, the more they can constrain the ability of employers to direct and distribute work. As a result, unions gain an organizational interest in protecting these institutional power resources. In this way job security regulations can be seen as both political legacies of historical struggles and independent institutional power resources. Such a two-pronged definition should complement power-oriented approaches insofar as political actors are seen as exercising control over institutions to pursue their own interests, and institutions condition and structure political action. Hence, job security laws, as independent institutional power resources, both function as weapons of redistribution and coercion, and as formal and informal structures that influence the behaviour of policy actors (Emmenegger 2014).

The British Labour Party was certainly keen on defending and extending statutory employment protections for its constituency as it relied more heavily on the votes of blue-collar workers, many of whom were in secure employment and benefitted from job security for permanent contracts. In 1964, for example, 70 percent of blue-collar workers voted for Labour. This group of workers accounted for 69 percent of the gainfully employed population in the UK in 1951, so the Labour Party enjoyed more favourable circumstances than any other party purporting to represent the interests of the working class in the postwar period. However, the Labour Party's share of blue-collar vote dropped to 55 percent by 1979 due to the decline of the

manual British working class relative to the electorate as a whole. This partly explains why Labour's popular vote went from 48.1 percent in 1966 to 27.6 percent in 1983 (Pontusson, 1990).

2.9.3. Information to assess impact and significance of measure

Fewer than 1,000 cases of unfair dismissal had reached industrial tribunals in 1979. Nearly 70 percent of all employees who went to tribunals lost (House of Commons, 1979b) because the employment protection laws were too weak to secure better outcomes for claimants.

2.10. Employment Act of 1980

2.10.1. Description of employment protection score changing measure (1)

The Employment Act of 1980, which received royal assent on August 1, 1980, and entered into force between August 1, 1980, and October 1, 1980, contained one significant deregulatory measure. It reduced the minimum length of a fixed-term contract in respect of which the right to complain of unfair dismissal could be excluded from two years to one (Deakin et al., 2017).

2.10.2. Reasons for policy measure

In the early 1980s, the Conservative government addressed inflation by attempting to control the money supply. Initially, this caused an existing international recession to deepen. The high interest rates and strong currency made it difficult for British industry to compete and reduced demand at home, causing employers to shed labour, which weakened the power of unions. Whether this was intended or not, a weaker union movement was a welcomed byproduct of economic policy in the eyes of authorities (Hodge, 1989).

During this time, the small business lobby was highly effective in promoting fears around unfair dismissal rights and therefore commanded the active sympathy and support of the

government (Howe, 2017). The 1980 Act was intended to reduce dismissal costs by: allowing employees on fixed-term contracts to waive unfair dismissal rights on the expiry of their contracts; ruling employers no longer carried the burden of proof for the reasonableness of dismissals; abolishing the minimum level of severance pay for redundancies; and introducing prehearing assessments for unfair dismissal claims, including the possibility that the costs of unreasonable dismissals could be awarded against applicants. The 1980 Act also repealed minimum standards that ensured employers paid the 'going rate' for an industry or occupation, rescinded statutory union recognition procedures and outlawed most forms of secondary action (Rueda, 2007).

Economic instability in 1979-80 and the rise of Thatcher spelled a wave of deregulation and privatization. Up until 1972, Conservatives were not opposed to statutory employment protections, and implemented notice periods and unfair dismissal procedures to resolve particularly recalcitrant industrial relations problems. However, after abandoning their support for job security enhancing measures, the Conservative Party sought to decrease 'burdensome' regulations on employers to achieve greater flexibility, efficiency and affordability, especially from 1979 onward. This break from the past was based on several considerations, which included rejecting political exchanges with unions as a means of encouraging more responsible wage bargaining, refusing unions any role in public policymaking by restoring the full authority and autonomy of the state as well as rejecting concertation because of the perceived inability of union federations to control affiliated members and ensure compliance. The Conservative government was still haunted by the fact that the last Heath cabinet (1970-1974) had fallen due to the 1974 miners' strike and had prepared strategies to effectively deal with any political threats from unions (Emmenegger, 2014). Therefore, it enacted a series of measures aimed at

disempowering the labour movement, which included the 1979, 1980 and 1985 measures that enhanced employers' freedom to dismiss workers.

2.10.3. Information to assess impact and significance of measure

Industrial tribunals had been operating for more than 15 years and with respect to claims for unfair dismissal, for 10 years. According to the Department of Employment, in that decade there had been roughly three million dismissals and only 40,000 claims of unfair dismissal, which was less than one percent. Also, 60 percent of those claims were resolved at conciliation, either because they were withdrawn or because a low cash settlement (of less than £200) was agreed. Additionally, of the claims that proceeded, 70 percent were dismissed and only 10 percent were deemed to involve unfair dismissal. What is more, 60 percent of the compensation awards were less than £500 and only 1 percent exceeded £4000. In short, in only 4 out of 10,000 (0.04 percent) of the cases filed, did employers have to pay substantial damages. A detailed empirical study of all the reported cases of those decisions between 1974 and 1980 revealed that the justifications of the Industrial Tribunals and the Employment Appeal Tribunals reflected an unwavering ideological support for managerial prerogatives (Marsh & Locksley, 1983).

2.11. Unfair Dismissal Order of 1985

2.11.1. Description of employment protection score changing measure (1)

The Unfair Dismissal (Variation of Qualifying Period) Order of 1985 (SI 782), which received royal assent on May 20, 1985, and entered into force on June 1, 1985, contained one important deregulatory measure. It increased the minimum qualifying period to claim unfair dismissal to two years (Deakin et al., 2017).

2.11.2. Reasons for policy measure

The Conservative government's statutory overhaul of 'stringent' labour legislation and its hold on power until 1997 was made possible due to several circumstances. First, the Thatcher government was able to capitalize on its popularity following the successful 1982 Falklands campaign. Second, the Conservatives exploited the Labour opposition's increasingly tense relationship with the union federation. Third, there was the relative weakness of the Labour opposition, which suffered from internal divisions between left and right camps, including the creation of the Social Democratic Party in 1981 by centrist Labour Party members (Emmenegger, 2014).

Thatcher enjoyed real ascendancy between the defeat of the miners in 1985 to the poll tax of 1989. During this time, she was committed to reduce government-driven paper burden on the private sector to "create a climate in which enterprise can flourish, above all by removing the obstacles to the working of markets, especially the labour market" (Department of Employment, 1985). The unfair dismissal system, although important, was only a sideline concern of the government's labour law agenda. Industrial reforms were primarily concerned with weakening the power of unions (Howe, 2017). Nevertheless, the government's policy document emphasized limiting 'over-burdensome' employment protections because they made "employing people not only expensive but also time-consuming and complicated," resulting in employers not taking on as many workers (Department of Employment, 1985). The 'most significant worry' was unfair dismissal claims leading to industrial tribunal proceedings, which created efforts to decrease access to and the quality of remedies for dismissals (Department of Employment, 1986).

The extension of the qualifying period to two years was justified on the basis that it would give a "fair balance between the genuine concern of employers about becoming too easily

embroiled in claims and maintaining full protection for all employees with any significant length of service" (Department of Employment, 1986). At the time, about one quarter of all unfair dismissal complaints were brought by employees with less than two years' service. There 39,959 cases in 1983 of which 16,649 proceeded to a hearing. So, the change was expected to quickly reduce the total number of cases with an equivalent impact on the number of hearings since unfair dismissals constituted 75 percent of tribunals' caseloads (R.W.B., 1985).

Years earlier, the UK government sought to lower the protective quality of international unfair dismissal law by trying to convince the ILO to exclude standards previously contained in the form of a recommendation in a binding convention. The government also tried unsuccessfully to convince the ILO that new provisions on burden of proof would be more appropriate in a recommendation than a convention. Not surprisingly, the government rejected the final convention (No 158) and recommendation (No 166) on the termination of employment when they were adopted by the ILO in 1982 (Howe, 2017).

The power resources and expansion-retrenchment approaches both account for the driving force behind Conservative industrial relations reforms in 1985. They correctly anticipate that it was driven by a desire to free the labour market from perceived obstacles created by unions and burdensome regulations on businesses, although the small employer lobby is rarely mentioned as a highly effective policy actor, which cemented the emergence of an argument against job security in the UK.

Interestingly, Conservative governments would not deregulate employment protections in a significant way until 2002, even though they seemed overly zealous in their attempts to lower job security protections after Thatcher entered office. Conservatives even adopted two protective

measures in the years following, although they were passed reluctantly due to pressure from domestic and international courts.

2.11.3. Information to assess impact and significance of measure

There was already a 70 percent failure rate of going to tribunals because the average employee was unable to produce evidence, as documents were in the hands of employers, and coworkers were reluctant to give evidence on their behalf out of fears of losing their own jobs. A huge percentage of people, especially managers and higher-level employees, also dared not to exercise their rights and go to tribunals out of fears of never getting another job. This is because they would have to give references from their previous employers who could potentially inform the interviewers that the applicants were suing them in an industrial tribunal. In 1982, costs were awarded against applicants in nearly 150 cases out of 15,000, with compensation averaging £55 (ranging up to £400). In 1982, a firm with employees could cover itself for the risks involved in a case that might cost up to £30,000 per employee for an insurance premium of £120 a year (House of Commons, 1985).

2.12. Polkey v. A.E. Dayton Services Ltd. of 1987

2.12.1. Description of employment protection score changing measure (1)

The House of Lords decision of 1987 (Polkey v. A.E. Dayton Services Ltd.) had a significant protective influence on employment protection legislation by reversing the rule that employers could avoid a court decision of unfair dismissal by showing that the lack of due process on their part would have made no difference in the outcome because the dismissal was substantively fair. A particular legal rule can be based on court decisions as well since they often produce a rule or norm, which can be as legally important as a statutory provision (Deakin et al., 2017).

2.12.2. Reasons for measure

The decision was based on Lord Mackay's conviction that in court rulings on the sufficiency of a reason for dismissal, the correct approach would be to consider the reasonableness of the employer's conduct according to the facts known at the time of the dismissal, and not the reason of the dismissal from the perspective of the employee. Lord Mackay also rejected the point of view that a tribunal should only consider the reason for dismissal, rather than the manner it was carried out since the two were interconnected. This meant a procedural failure could make a dismissal unfair (Napier, 1988).

The 1987 measure was one of the rare instances of job security enhancement during a post-1972 Conservative government. Although a rare occurrence, the theoretical literature on employment protections has overlooked the dynamic policy-creating role of the courts and their changing intervention positions over time. In the early 1970s, for example, the courts were hesitant to question the soundness of dismissals because many judges felt the courts should not usurp a role properly belonging to management. But this hands-off approach was abandoned by Mackay in his 1987 decision, motivated in part by increasing legislative attacks on worker protections and the low rate of tribunal claims and unsuccessful outcomes of applicants.

2.12.3. Information to assess impact and significance of measure

However, the decision failed to affect much on the ground because tribunals were legally expected to categorize a dismissal as unfair only if the employer's conduct fell outside the 'range of reasonable responses' which were open to the employer to define according to the particular circumstances of the case. There was nothing in the Polkey decision that directly challenged this, which significantly limited the impact of any procedural impropriety in industrial tribunals. On the other hand, if the tribunal evaluated the significance of a procedural error according to the

overall justice of the outcome as seen from the employee's perspective, then it would be seen as committing a clear error of law and would therefore be subject to correction on appeal (Napier, 1988).

The decision also endorsed the view that if the employee's misconduct was grave, but the dismissal was unfair as a result of procedural impropriety, then the measure of compensation could be reduced to zero. This reasoning was extended to cases of redundancy and economic dismissals, where the employee may not have been at fault at all, but the financial circumstance of the employer necessitated the dismissal regardless. In the case of immediate and inevitable plant closure, compensation could be reduced to zero. The result was that employers under economic distress were permitted to forego fair procedural justice with financial impunity (Collins, Ewing & McColgan, 2019).

2.13. Employment Protection Regulations of 1995

2.13.1. Description of employment protection score changing measure (1)

The Employment Protection (Part-time Employees) Regulations of 1995 (SI 31), which was laid before parliament on January 16, 1995, and entered into force on February 6, 1995, contained one important protective measure. It abolished the 16 hours threshold that gave part-timers equal or proportionate dismissal rights to full-timers (Deakin et al., 2017).

2.13.2. Reasons for policy measure

The measure was adopted in response to European Commission law, which led to the House of Lords' judgment in *R v Minister of State ex parte Equal Opportunities Commission.* The Commission argued British regulations (stemming from the Employment Protection Consolidation Act) were not in conformity with Community Law of Equal Treatment (75/207)

Directive because they discriminated between full-time and part-time employees with respect to the periods of continuous employment required to qualify for rights related to redundancy pay and compensation for unfair dismissal.

The majority of full-timers were men and the majority of part-timers were women, so the Commission believed this amounted to indirect discrimination against women, in violation of Article 119 of the European Community (EC) Treaty. The UK government had (unsuccessfully) argued the lack of rights for part-timers made them more attractive to employers and were objectively justifiable and in line with EC law. The House of Lords had remarked that the qualifying period was justified since the object of the 1985 Order was to encourage recruitment by employers, which was the "legitimate aim of the Government's social and economic policy." Evidence presented in parliament also showed that from 1985 to 1991, between 72 and 77.4 percent of male employees working 16 hours or more each week had fulfilled the qualifying service, compared to 63.8 to 68.9 percent for women. For every ten men who qualified to claim unfair dismissal against their employers, only nine women were eligible. On the face of it, it did not appear that a significantly smaller percentage of women than men were able to fulfill the requirement, but British law was still in violation of the European Directive. The Secretary of State was somewhat defiant, allowing nine months to pass before amending the old regulation. However, he added that it would likely result in job losses for part-time employees and promised to reverse the changes if that did happen (McColgan, 2003). The government's economic restructuring of the labour market, particularly in the public sector, had also been tempered by the constraints of EU law (Szyszczak, 1995).

Since the Labour Party and trade union movement were unable to mount effective opposition against the deregulatory initiatives of the Thatcher and after 1990, John Major

governments, the European Economic Community turned into one of main forces of resistance to the reform programme of Conservative governments. After the UK joined the European Community in 1973, it had to make specific policy changes to meet its obligations to protect employees' rights under the EC, which in many cases ran counter to its national regulations. This may be one reason why Conservative governments refrained from pursuing further deregulatory initiatives as they would have brought the UK into non-compliance status with European Directives. However, this did not prevent Conservative governments from resisting European legislation. In a 1988 paper *Employment for the 1990s*, for example, the Conservative government stated that it would "resist European Community regulations, which would make the operation of the labour market more inflexible" (cited in Davies & Freedland, 1993, 598). Such resistance included refusing to sign the Social Chapter of the Maastricht Treaty in 1991. The Major government (1990-1997) was only able to retrench job security once while it was in power. However, it waged a struggle against employee rights by turning a blind eye to changes in the labour market that increased part-time, temporary and casual employment. In this way, Major's government did not actively introduce policies that deregulated the labour market, but it did play a decisive role in preventing the further growth of the legislative socialization and juridification of the employment relationship (Davies & Freedland, 1993) through intensifying the precarious economic and social position of many labour market participants.

In the retrenchment theory literature, international organizations are often depicted as having a significant influence on the framing of national labour regulations through a range of mechanisms, with the end goal of persuading domestic policymakers to accept deregulatory measures to enhance their country's economic performance in favour of job creation, lowering unemployment and raising labour productivity (Teeple, 2000). However, the first recorded

incidence of an international body directly influencing the employment protection laws of the UK was in 1995 and that was when the European Commission obliged the British government to enhance job security, rather than roll it back, in order to ensure compliance with EU Directives. While international bodies such as the OECD made policy recommendations entailing the deregulation of employment protection legislation for permanent contracts for many years, British decision-makers, particularly Conservatives, never cited or discussed any examples of such international policy advice during their debates in the House of Commons or House of Lords or in their White Papers. This makes it very difficult to substantiate claims in the retrenchment literature about international institutions persuading decision-makers in the UK to deregulate job security protections.

2.13.3. Information to assess impact and significance of measure

The new law purportedly gave 750,000 part-time employees, with at least two years' qualifying service, immediate access to employment protection. Overwhelmingly occupied by women, these jobs in both the private and public sectors were much more likely to be poorly paid, low-skilled and unstable. Part-time employees constituted about 25 percent of the British workforce in 1996 (amounting to six million workers). According to a survey in 1994, female part-timers earned about 59 percent of full-time men's hourly wages and about 75 percent of full-time women's hourly rates, and most were not unionized, even though density figures had fallen to 33.9 percent and collective bargaining coverage had dropped to 36 percent by then (McColgan, 2003). The changes were also expected to impact business costs. A company in the manufacturing sector, for example, complained its costs increased by £33,000 a year as a result of the imposition of EC regulations, making it more difficult to compete in export markets (House of Commons, 1995).

However, the provisions of the measure remained subject to a justification requirement, such that employers could avoid liability if they demonstrated less favourable treatment was "justified on objective grounds" (regulation 5(2)(b)). While the law offered many British workers more protection than before, it still had many shortcomings, mainly because it had been drafted so narrowly and represented a very ungenerous interpretation of the EU Directive upon which it was based, excluding almost 90 percent of existing part-time workers from its scope. The main problem was the requirement of an actual full-time comparator (reg. 2(4)), given the segregated nature of part-time work (McColgan, 2003).

The number of tribunal applications associated with new employment rights and regulations was still relatively small, with those under the 1995 measure averaging around 120 a year or 0.1 percent of all applications from 2002 to 2005 (House of Commons, 2005). In 2003-04, there were 114,042 tribunal cases, 40 percent of which were still being dealt with from 1997 due to the part-time worker regulations in part-time worker pension cases. Litigation levels also remained low. A 1998 Workplace Employee Relations Survey discovered only one in ten employee dismissals went to an employment tribunal. Between 1992 and 1997, only 17 percent of employment problems with potential legal redress turned into a tribunal application. The Citizens Advice Bureau reported large numbers of workers, who even when informed of their rights, decided not to file complaints (Pollert, 2007). By 1994-95, the failure of governments to index the compensation limit meant that the maximum possible remedy for unfair dismissal was only £11,000 when it should have been nearly £28,000 (Howe, 2017).

2.14. Unfair Dismissal and Statement of Reasons for Dismissal Order of 1999

2.14.1. Description of employment protection score changing measure (1)

The Unfair Dismissal and Statement of Reasons for Dismissal (Variation of Qualifying Period) Order of 1999 (SI 1436), which was made on May 23, 1999, and entered into force on June 1, 1999, contained one significant protective measure. It decreased the minimum qualifying period to claim unfair dismissal from two years to one year (Deakin et al., 2017).

2.14.2. Reasons for policy measure

The UK's 'New' Labour Party assumed power in 1997 during a time of economic growth, falling unemployment and job upswing. Its pre-election promises were to carry on a number of the policy goals of the previous Conservative administration, including macroeconomic stability, public expenditure controls and labour market flexibility. New Labour sought to carve out a third way between American market liberalism and the social market model of western European states by presenting 'fairness at work' alongside 'labour market flexibility' as a top policy objective. This was done by retaining most of the 1980s industrial relations legislation, while enacting limited collective and individual employment rights. All these things were intended to serve as vehicles for strengthening worker commitment, flexibility and mobility between jobs and encouraging companies to compete on quality and price (Bergstrom & Storrie, 2003).

The 1999 measure, therefore, was part of New Labour's package to promote new labour practices. In 1998, the Blair government released its *Fairness at Work* paper, which justified the reduction in the qualifying period as compensation to workers in exchange for their cooperation in accepting a more flexible organization of the labour market during turbulent times. The change was intended to create a "better balance between competitiveness and fairness" so that as

the economy became “more dynamic” and “more frequent job changes” were needed, “employees would feel less inhibited about changing jobs and thereby losing their protection” (cited in Marinescu, 2008).

The new qualifying period was estimated to benefit between 135,000 and 270,000 employees a year who were being dismissed after one to two years’ service. It drew criticism from the chairman of the Federation of Small Businesses who complained that small firms were being over-regulated, making it too costly and risky for them to employ staff (House of Commons, 1999). However, the majority of respondents in the government’s consultation, including most employer representatives such as the CBI, seemed to agree that one year was a reasonable length of time for any employer to decide whether a new recruit was suitable or not. Moreover, almost 90 percent of companies already had written procedures according to a regulatory impact assessment. The measure was intended to encourage those without such mechanisms to consider introducing them (House of Lords, 1999a).

This marked the fifteenth protective policy adopted since 1963, next to only three deregulatory reforms at the time. In broad measure, the sheer number of protections appear to contradict theoretical expectations of retrenchment in the 1990s, when the third-way politics of New Labour embraced and shadowed the principles of neoliberalism. After jumping on board the new ‘legislation vehicle’ spearheaded by the Conservatives in 1963, the Labour Party consistently supported greater statutory employment protections for workers, even under the more centrist and moderate Blair government. However, New Labour refused to go any further in extending job security rights after 1999. In its 1998 policy document, it even emphasized the benefits and desirability of a liberalized free market economy as a source of competitiveness. Conservative governments since 1979 had successfully deregulated the labour market and

changed the political landscape by pulling the Labour Party away from the left on certain policy issues. In 1998, Blair even boasted that the country would continue to have "the most lightly regulated labour market of any leading economy in the world" (cited in Emmenegger, 2014, 210).

From at least 1965 onwards, Labour unequivocally supported the extension of statutory employment protections while in power or opposition with the help of trade unions, thereby opposing Conservative attempts to retrench or deny workers of individual employment rights, particularly after 1979. However, when Blair became leader between 1994 and 2007, New Labour began to distance itself slightly from trade unions and revised its employment relations policies following a series of election defeats. It came to retain some of the deregulatory, employer-friendly and anti-union measures pursued by Thatcher and Major's Conservative governments during the 1980s and 1990s, as part of a broader shift in its labour policy. However, set against this, Blair's calculated and limited extension of job security rights in 1999 and 2002 clearly distinguished New Labour's approach from that of its Conservative predecessors. It stressed the need for fairness inside the workplace but at the same time, emphasized the benefits of a flexible market because it was concerned that economic competitiveness would be threatened by employment protections that went beyond a minimum floor of rights. While the retrenchment literature is validated by the fact that New Labour's political centre of gravity shifted more to the right during the 1990s, one must be careful not to push this line of argument too far in terms of the employment protection policies it adopted. While it is important to acknowledge that New Labour's legislative programme marked a change in emphasis from the approach taken by previous Labour administrations, particularly Blair's retention of the bulk of anti-union legislation inherited from his Conservative predecessors, it also marked a change from

the approach taken by Conservatives. Indeed, New Labour took notable steps to re-regulate work relations, using legislation to expand job security and establish minimum employment standards (such as a statutory minimum wage), which does not represent continuity with the past policy of the Conservatives. However, from the middle of the 1990s, a notable change in the principal objective of job security legislation emerged as a dominant theme in government rhetoric. Concerns over industrial conflict and inflation from the 1960-70s had disappeared in favour of arguments concerning the improvement of competitiveness of firms so that they could survive in an increasingly global economic system. At its core, this suggested the facilitation and stabilization of flexible employment practices, which New Labour sought to achieve by removing or reducing market failures that prevented optimal outcomes and providing information about the best ways to organize businesses, as well as providing incentives such as tax breaks or subsidies, while channeling such regulations to satisfy other policies related to equality of opportunity and family-friendly working arrangements (Collins, 2001).

2.14.3. Information to assess impact and significance of measure

The New Labour government predicted that the new measures would encourage workers to change jobs, leading to greater flexibility in the labour market. However, quits and separations actually decreased. New Labour also believed one year was enough for employers to screen their employees, but according to data, firms changed their human resource management policies to limit the need for terminations past one year of employment. Moreover, employers were expected to adopt better employment practices, thus increasing productivity, which seems to have occurred since many firms were more careful about their new hires, trained their employees more and monitored some of their workers better. The new measure was also associated with a decrease in unemployment duration for workers searching for full-time jobs. The decrease in the

probationary period, however, was found to have hurt the employment prospects of those less than 26 years of age (Marinescu, 2008).

2.15. Employment Relations Act of 1999

2.15.1. Description of employment protection score changing measure (1)

The Employment Relations Act of 1999, which received royal assent on July 27, 1999, and entered into force on October 25, 1999, contained one important protective measure (Duval et al., 2018). It raised the maximum limit on compensatory awards from £12,000 to £50,000 to ensure the small number of higher-paid applicants impacted by the previous limit were normally fully compensated by the tribunal for their losses. It was also intended to ensure employers were not held liable for unlimited compensation.

2.15.2. Reasons for policy measure

Over time, governmental unwillingness to bring redundancy payments in line with inflation was continually criticized. The Blair government, therefore, sought to increase the unfair dismissal compensatory award limit, which had also been a victim of inflation over the years. The government's initial proposal was to abolish the upper limit on compensation, but it was dropped in the face of pressure from firms on the basis that it would generate too many new cases and discourage settlements (McMullen, 2011). The possibility of a fine of £50,000 was intended to force employers to think twice before dismissing someone unfairly. Employers such as British Steel reacted by warning that the rate of job losses would increase, and claimed the government was adding to their already high costs and undermining their competitiveness in a different, more global business environment (House of Lords, 1999b).

However, Blair's administration had explicitly stated that there would be no more job security enhancing measures in the 1998 *Fairness at Work* White Paper in which the 1999 Order

and 1999 Act were announced. While introducing the 1999 Act, the Secretary of State for Trade and Industry also explained there would "not be a continuous drip … of employment legislation throughout this Parliament. We have no plans to bring forward further measures" (cited in Emmenegger 2014, 209). Hence, the remaining measures of Blair and after 2007, the Brown government, did not increase job security protections. The exception was 2002 when the European Commission obliged the British government to conform its national regulations with the requirements of Union law.

2.15.3. Information to assess impact and significance of measure

The fourfold increase appeared to be a significant hike, but all it did was restore the value of an unfair dismissal compensatory award to its 1972 value. The amount of a week's pay for redundancy payments should have also undergone a similar increase but it did not (McMullen, 2011). The median award increased by only a small amount since the law came into force, falling very far short of the maximum. In 1997-1998, the median was slightly less than £2,500 whereas in 2001-2002 it was around £3,000. In 2001-2002, re-employment was awarded in only 11 cases. Unfair dismissal cases increased only slightly after the limit was raised, from 55,573 applications in 1999-2000 to 56,397 in 2001-2002 (Department of Trade and Industry, 2003). This dispelled claims from employers and Conservatives that a higher award would fuel a 'compensation culture' among employees.

2.16. Fixed-Term Employees Regulations of 2002

2.16.1. Description of employment protection score changing measures (2)

The Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations of 2002 (SI 2034), which were made on July 30, 2002, and entered into force on October 1, 2002, contained two important protective measures (Deakin et al., 2017; Duval et al., 2018). It

effectively removed the ‘waiver’ rules for fixed-term contracts, with effect from 2002. Additionally, a fixed-term employment contract was deemed to be permanent after four years of employment if there was no objective reason offered for limiting the term. This provision came into force in 2006.

2.16.2. Reasons for policy measures

The notion of fixed-term work only entered legal and policy discourse with the introduction of unfair dismissal laws in the 1970s. Fixed-term employment was subject to little regulation before then. Common law placed no minimum or maximum limits on the duration of fixed-term contracts and allowed for their renewal any number of times without considering them permanent. Contracts could be discharged upon completion of a particular task by both parties of an employment relationship. The 2002 Act made it necessary to define the non-renewal of a fixed-term contract as a dismissal rather than the end of a contract according to performance. The result was that an employee working under a fixed-term contract could claim unfair dismissal or a redundancy payment if the contract was not renewed. However, the employer could still argue the dismissal was fair, if for example, economic reasons could be demonstrated for the inability to provide permanent work.

The 2002 measure was mainly designed to implement the (1999/70/EC) Fixed-Term Work Directive of the European Union Council. It gave effect to an agreement concluded by the social partners, encouraging member states to prevent abuse arising from the use of successive fixed-term contracts (clause 5). The New Labour government selected four years as the point at which the retention of employees on fixed-term contracts would have to be justified by employers. After four years, if no objective justification was offered, the fixed-term contract

would be deemed permanent. The TUC criticized the choice of four years, arguing it would benefit few individuals, and should be reduced to two years or less (Koukiadaki, 2010).

Contrary to what is argued in the retrenchment literature about the deregulatory influence of international institutions, this policy adoption suggests that employment protections were actually strengthened due to pressure from EU-level policymakers (on three occasions). One of three protective measures implemented by New Labour between 1999 and 2002 was influenced by the need to comply with EU legislation. In general, Blair's government was more sympathetic towards EU regulation of employment relations than his Conservative predecessors. Upon entering office in 1997, for example, his administration signed the Social Chapter of the Maastricht Treaty. As a result, there was a significant increase in the scope of juridification of employment relations with EU laws concerning information and consultation rights for employees, new rights for part-time and fixed-term contract workers, as well as parental leave and equality and discrimination regulations in the workplace. Yet at the same time, New Labour often implemented 'transposed' EC Directives by using opt-outs from important provisions (e.g., Working Time Directive) or manipulating EU Directives in certain ways that would maximize the flexibility of employers (e.g., the four-year justification rule in the 2002 measure or its entry into force four years later). This minimalist approach of enhancing job security rights, whether it was inspired by EU Directives or New Labour's own accord, emphasized the appropriateness of a flexible, deregulated labour market, both as a way to improve economic competitiveness and maintain the goodwill of employers (Williams, 2020).

In many Western European countries, one response to high levels of unemployment since the 1980s has involved relaxing job security, and allowing wider use of fixed-term contracts, in the belief that employers would recruit more readily. The job creation effects of such a policy are

disputed, but in the UK, where dismissal is relatively easy to achieve, fixed-term contracts have been used much less than in other places.

2.16.3. Information to assess impact and significance of measures

The four-year justification rule only came into force in 2006 so service prior to its implementation did not count. Moreover, the 2002 measures did not regulate the first use of fixed-term contracts, nor did they require justification for their use. This meant a five-year initial contract would not be considered illegal. They also allowed workers the possibility to opt out from the protection.

The 2002 law only applied to ‘employees’ and not to the wider category of ‘workers.’ This was intentional as the government argued the scope of the Directive was determined by national law and therefore the 2002 regulations should apply to people who were traditionally entitled to employment rights in the UK, namely employees (Department of Trade and Industry, 2001). The government had claimed it would be more costly to cover workers than employees given the number of people who would fit in the former category. As a result of the restrictive definition, those operating in a semi-autonomous manner and casual workers were excluded from coverage. The regulations also excluded several groups, including those who were receiving training, working under contracts of apprenticeship, engaging in work experience placements of one year or less, temporarily working through schemes financed by the UK government or European Social Fund, serving in the armed forces and agency workers (who accounted for 20 percent of temporary workers) (Knight and Latreille, 2001).

In 2001, the TUC estimated 1.7 million workers in the UK, or seven percent of the workforce, were employed on fixed-term contracts, or as ‘casuals’ or agency workers

(McColgan, 2003). Fixed-term contracts were quite common in higher education, applying to 84,000 workers (or 42 percent of the workforce in higher education) because contract work was the only form offered or available to them (House of Lords, 2002a). The agreement on fixed-term work reached by the social partners in March 1999 expressed the need for a similar agreement related to agency workers but negotiations between the social partners proved impossible, so the Commission issued its own draft Directive on agency workers.

Evidence showed that the volume of unfair dismissal claims filed with British industrial tribunals (renamed 'employment tribunals' in 1998) was rising in light of recent legislative relation of criteria for filing claims. According to the data, 37 percent of dismissal cases were being settled through conciliation, another 30 percent were withdrawn by complainants, and most of the remainder, approximately one-third, were settled following a full hearing involving arbitration. The settlements were reached somewhat quickly, with 52 percent of all dismissal cases dealt with within 12 weeks and 92 percent resolved within 26 weeks of their receipt by tribunals (Knight & Latreille, 2001).

2.17. Employment Act of 2002

2.17.1. Description of employment protection score changing measure (1)

The Employment Act of 2002, which received royal assent on July 8, 2002, and entered into force in October 2004 (at the least the provisions dealing with dispute resolution), contained one significant deregulatory measure (Deakin et al., 2017). With effect from 2004, it reversed the Polkey decision but only if employers could show that they had complied with a minimal obligation to hold a hearing before a dismissal. The latter requirement was significantly below the threshold of procedural fairness, which typically applied to unfair dismissal law.

2.17.2. Reasons for policy measure

The Act essentially revived the old rule that dismissals in breach of procedure would not be unfair if fair procedure would have made no difference to the outcome. The New Labour government adopted the measure because it felt too many cases were being taken to tribunals, and many of them were based on procedural unfairness, i.e., where the employer had good cause to dismiss but mishandled it, thereby wasting tribunal time. Between 1981 and 2001, the jurisdictions of tribunals to enforce individual rights had more than doubled from 32 to 70 and in the same period the coverage of bargained or statutory collective procedures had more than halved from 83 to 35 percent of the workforce (Deakin, 1999).

Between 1988-89 and 2001-02, claims had risen from 29,000 to more than 130,000. The Act was therefore intended to reduce the caseload of tribunals by 23 to 31 percent or 30,000 to 40,000 applications per year. As such, it privatized enforcement through management-controlled procedures rather than independent public tribunals, which was in line with the government's strategy to "provide further incentives for businesses to raise productivity" and "strengthen UK competitiveness" by creating "the right regulatory framework" to "avoid costs for the employer and to protect public funds" (cited in Wedderburn, 2002). This paralleled measures in other European countries intended to make restructuring cheaper.

In 2001, the costs of tribunals to taxpayers were estimated at £51.7 million. Taxpayers were expected to save £14 to £19 million while employers expected savings of £65 to £90 million. The government wanted to introduce a fee for applications and hearings to recoup some of the costs, which was supported by the Federation of Small Businesses, the Institute of Directors and the majority of those who responded to a Forum Business Survey, but soon abandoned it in the face of opposition from back benchers and unions. The government also

permitted the reduction of up to 50 percent of awards to employees who failed to follow the new minimum procedures and barred access to tribunals to employees who failed to use statutory grievance procedures. It also allowed tribunals to order a party to make a payment to any other party for preparation time and to order the representative of a party to pay any wasted costs. It was estimated that these tribunal reforms would have financial benefits for employers (Hepple & Morris, 2002).

The CBI blamed employees for failing to resolve problems with their management, resorting to litigation to address workplace disputes, something some employers termed a 'compensation culture.' At the Grand Committee stage, there were proposed amendments to introduce more obligations on employers seeking to dismiss staff, but the government was more committed to a streamlined dismissal procedure, which meant no requirement was imposed that multiple warnings be provided or that an employee be given an opportunity to improve performance or that employers had any obligations to provide training (Howe, 2017).

The average cost to an employer of responding to a tribunal application was around £2,000, and a rough estimate revealed the total cost to businesses in 2001, when there were 130,000 tribunal cases, was roughly a quarter of a billion pounds. New Labour claimed the Bill had the general support of the British Chambers of Commerce, CBI, TUC and Unison (House of Lords, 2002a). However, it appears the TUC fundamentally disagreed with the proposal that tribunals should disregard a procedural mistake by an employer if it made no difference to the outcome. It is unclear why New Labour would suggest otherwise when parliamentary records clearly show the expressed opposition of the TUC to the government's proposal. Judge Prophet, the president of the tribunals service in England and Wales, referred to the 'no difference test' as

a potentially disastrous clause as it distorted the operation of employment protection legislation in important ways (House of Lords, 2002b).

The 2002 Act marked the first and only time the Labour Party decreased job security protections. Its actions were justified using similar pro-business rhetoric and policies of previous Conservative governments who waged an 'argument of principle' against the perceived inefficiencies of tribunal resolutions of unfair dismissal complaints. The New Labour government did not wish to dismantle the unfair dismissal system in its entirety, although that may have been the desire of past Conservative governments (1979-1997). Rather, New Labour repeated the same argument against the tribunal system in terms of the perceived problem of 'vexatious litigation' and 'burdensome regulation.' New Labour presented its retrenchment measure under the guise of achieving a better balance between economic efficiency and social justice, but in substance the 2002 reform amounted to a willingness to be persuaded by employer dissatisfaction with the tribunal system.

While this represented a substantial change in Labour's policy position, critical theories that assume traditional left parties have moved towards the political centre have to be careful not to exaggerate this tendency when it comes to British statutory employment protections. The historical record makes it clear that New Labour has been very careful not to risk alienating its core base by agreeing to, or pushing for, deregulation in the area of job security. In the preceding years, for example, New Labour even improved the quality of the unfair dismissal system by reducing the qualifying period (1997) and increased the compensation award limit (1999). However, employment relations policy under New Labour did become slightly more informed by neoliberal beliefs through the desirability of sufficient employment flexibility, while ensuring

the activities of unions were restrained in some ways. For this reason, New Labour's relations with unions became tense during this period (Williams, 2020).

In sum, the coherence of Labour's approach to employment relations policy should not be overstated as there was some continuity with the approach taken by Conservatives in the 1980s-90s but also some significant differences. Under New Labour, there was increased juridification of employment relations, such that employment protections depended increasingly upon legal rights more than collective organization through unions. But New Labour's distinctive approach was underpinned by a belief that the main goal of state regulation is to enhance business performance, rather than correct the imbalance of power between capital and labour. Thus, any aspirations towards higher employment standards should always be reconciled with and subordinated to maintaining a light regulatory environment in which union powers were checked and employers enjoyed significant leeway to determine the nature of work and employment contracts (Williams, 2020).

2.17.3. Information to assess impact and significance of measure

Despite New Labour's attempt to limit the number of claims, case law between 2004 and 2008 shows tribunals were increasingly willing to assess whether compliance with the code was genuinely achieved, which led to more litigation after the introduction of the legal grievance procedure. Within two years, the law was reviewed and determined to be a failure due to its unintended consequences, resulting in its repeal. It was found that the number of cases proceeding to tribunals had not decreased as intended, and anecdotal evidence suggested the new procedures had created 30 percent more cases. The review also found employers and employees were over-burdened with red tape, which was particularly onerous on small businesses with smaller human resource management systems. Moreover, because the grievance procedure was

complex, it would drive parties to seek legal advice, resulting in more complications and an escalation of disputes (Howe, 2017). The Act's reversal of the Polkey decision also meant that human resource managers could get away with not following procedures by arguing that their laid off employees would have been dismissed anyway (House of Lords, 2002a).

The government subsequently carried out the repeal of the statutory dispute resolution procedure through the Employment Act of 2008, which restored the Polkey rule albeit only formally because any right to compensation in the event of a 'made no difference' procedural breach was removed as well in 2008, so in substance the law remained unchanged.

Registered applications had dropped by 14 percent in 2001-02 to 112,227 from 130,000 per annum in the decade to 2000-01. The number of registered appeals had also fallen. Nearly 35 percent of applications were settled before a hearing, 32 percent were withdrawn, 12 percent were successful at the tribunal system and the remaining were either dismissed or disposed of. Unfair dismissal compensation also exceeded £15 million in total, with the median award at £2,563 and the maximum at £61,134. Information about the users of tribunal systems revealed that over 60 percent of applicants were men, aged 35 or over, and the vast majority were in permanent full-time positions. One-third of applicants worked in firms with fewer than ten people. Applicants were also three times as likely to have no representation, with unions or the Citizens' Advice Bureau serving as the main source of guidance. Only one quarter of applications proceeded to a full hearing, of which less than half were successful. Applicants were also found to face serious short-term stress problems, long-term unemployment spells and worse employment opportunities. The average cost per application was £2,000 (McMullen, 2011).

2.18. Unfair Dismissal and Statement of Reasons for Dismissal Order of 2012

2.18.1. Description of employment protection score changing measure (1)

The Unfair Dismissal and Statement of Reasons for Dismissal (Variation of Qualifying Period) Order of 2012 (SI 989), which was made on March 30, 2012, and entered into force on April 6, 2012, contained one important deregulatory measure (Deakin et al., 2017). It increased the minimum qualifying period to claim unfair dismissal from one year to two years, the longest within the OECD countries.

2.18.2. Reasons for policy measure

David Cameron became Conservative leader in 2005 and his Party tried to modernize itself by formulating policies that would appeal to a wider range of voters to secure more electoral support. This political strategy included abandoning to a certain extent the neoliberal emphasis on free markets and deregulation. However, after the onset of the global recession in 2008, Conservative modernizing efforts were overshadowed by the growing dominance of a more conventional deregulatory agenda in the area of employment relations, which became obvious in government complaints about how employment protections were reducing the speed of adjustment to structural changes, stifling job growth, burdening state resources and holding back recovery.

The UK was hit harder by the global financial crisis than many developed countries. Its private sector was the most indebted in the world by 2008, and recovery was sluggish due to the euro area sovereign debt crisis and subsequent recession. In such a climate, the case that businesses (especially small and medium sized employers) made in favour of deregulation gained considerable traction among the ruling Conservative government. In 2010, the UK Office for Budget Responsibility lowered its 2011 growth forecast from 2.3 to 2.1 percent and predicted

a pessimistic view for 2011. By 2012, the economy was emerging from the recession with high public and private debt and unemployment. The government claimed it was necessary to pursue a necessary and wide-ranging programme of structural reforms and fiscal consolidation aimed at increasing growth and rebalancing the economy (Purcell, 2012).

But its rationale for increasing the qualifying period and proposing to introduce a fee regime for access to tribunals did not make sense in light of the latest published statistics for tribunal outcomes for the year 2010-11. The measures were ostensibly needed because businesses complained that dismissal rules were a major barrier to them taking on more staff. But the government's own 175-page impact assessment never provided an estimate of how many jobs the change might create. It merely claimed the benefits to employers would outweigh the disadvantages to almost three million workers. It was estimated that the new law would prevent 2,000 unfair dismissal claims and save employers £6 million. This despite the fact that the latest tribunal figures showed that between 2009-10 and 2010-11, the number of claims had fallen from 57,400 to 47,900, a drop of 9,500 or 16.6 percent, nearly five times the number of claims estimated to be saved by taking away dismissal protection from millions of workers. The dramatic decline in the number of claims apparently did not rebut the government's justification for increasing eligibility requirements. Moreover, out of 49,600 dismissal claims that tribunals dealt with in 2011, 12,300 were withdrawn by the claimants, 5,400 were dismissed by the tribunals without a hearing and another 1,400 were struck out at preliminary hearings. A further 20,500 made it to a conciliated settlement, leaving 9,000 cases to go to a full hearing, of which 4,800 were dismissed and 4,200 were successful. This meant that employers had a 73 percent chance of winning cases that were not settled or withdrawn. These figures indicate that unfair dismissal law was heavily weighted against employees, especially since the tribunal was not

allowed to find a dismissal unfair simply because it found it to be so, as established in case law (e.g., *London Ambulance Service NHS Trust v Small* [2009] IRLR 563 (CA)). It was thus irrelevant if the evidence against the employee was insufficient to convince the tribunal, if according to the standards of a 'reasonable employer' the investigation and conclusion were reasonable. Tribunals could only find the dismissal unfair if they concluded no reasonable employer would have dismissed given the circumstances (termed "the range of reasonable responses test") (Ewing & Hendy, 2012).

Furthermore, out of 4,200 successful cases, compensation was only awarded to 2,608 of them. The median award of unfair dismissal compensation was a sum of £4,591, with the average around £8,924. There were 437 cases where compensation was less than £1,000 and 283 where it was over £20,000. Only eight reinstatements were made in the previous year as well, meaning only 1 out of 500 successful cases resulted in a reinstatement or reengagement order (0.19 percent), or nearly 1 in 5,000 of all unfair dismissal claims dealt with. The statistics also revealed that out of 2,001 appeals made in the previous year, 1,638 were withdrawn, rejected or dismissed without a full hearing. Of the 363 appeals (190 by employees and 173 by employers) that went to a full hearing, employees' appeals were less likely to succeed (39 percent) than employers (54 percent). Thus, it was clear the lack of workers' success at tribunals was not ameliorated by appeals to the Employment Appeal Tribunal (Ewing & Hendy, 2012).

The change was expected to remove dismissal protection from three million workers in order to deny approximately 100 of them to compensation of what in most cases would have amounted to around £4,500. These rates of failure and the meagre levels of compensation cast doubt on employer or government claims that unfair dismissal legislation discouraged firms from employing more workers. Estimates also showed that out of 2,091,000 young people aged 18 to

24 years who had unfair dismissal protection, 724,000 (22.6 percent) would lose those rights by the change of the qualification period. It was also expected to hit harder migrants and women who worked part-time and changed their jobs more frequently than men because of the pressures of domestic responsibilities (Ewing & Hendy, 2012).

The government acknowledged that "some people would be dismissed simply because their employer did not like them" but it believed "it is a price worth paying for all the benefits that would result from the change," which included attracting inward investors from other countries (David Cameron cited in Ewing & Hendy, 2012). The CBI, Institute of Directors, Chambers of Commerce and Federation of Small Businesses all repeated the same line that unfair dismissal law was one of the main 'regulatory burdens' on employers and they welcomed reform. Employers claimed that it was not possible for them to fully comply with all regulations imposed. They complained about the volume and complexity of rules, the frequency of changing them and the high level of subjectivity involved in interpreting the law. However, this was contradicted by the findings of a British Chambers of Commerce 2011 survey of small firms, which found dismissal rules were the least greatest concern to businesses employing more than five employees and that firms were far more preoccupied with regulations of health and safety, discrimination, flexible working, sickness and training (House of Lords, 2012).

For its part, the Labour opposition was quick to cite the government's own impact assessment, which stated it was "unable to infer causality between unfair dismissal claims and changes in the qualifying period." The government's survey of firms from the previous year had shown that only 6 percent of small- and medium-sized businesses had complained that employment protection legislation had prevented them from taking on more staff. Most firms in the survey cited the health of the economy as their biggest challenge (45 percent), followed by

obtaining finance (12 percent), then taxation, cash flow and competition. Moreover, Labour MPs pointed out that since the qualifying period was lowered from two years to one in 1999, more than 1,750,000 extra jobs had been created in the UK. The Labour opposition argued greater flexibility would reduce incentives on the part of employers to invest in and train their employees, which would contribute to the skills challenge and lower levels of UK labour productivity, rates that were declining in relative terms already (House of Lords, 2012).

Labour had introduced a basic but limited floor of employment rights for individual workers between 1997 and 2010 with an eye towards preserving economic competitiveness and employer flexibility. However, the coalition government argued the UK was overregulated and even more flexibility and deregulation were needed to improve performance. It believed government should abstain from regulating employment contracts and only keep the "core of fundamental employment protections", which was never specified. By shifting the system of employment relations towards fewer protections for employees and even less means of enforcing them, the 2010-15 coalition government consolidated the UK's preexisting neoliberal policy paradigm, which had been established during the 1980s and 1990s by the Conservatives and left fundamentally unaltered by Labour between 1997 and 2010 (Williams, 2020).

2.18.3. Information to assess impact and significance of measure

The government also decided to introduce filing fees, so that individuals would consider more carefully whether a claim was meritorious and likely to succeed before proceeding (Howe, 2017). Fees for filing claims for unpaid wages or redundancy pay cost £160 and £230 if the claim goes to hearing. For more complex claims such as unfair dismissal, the cost is £240 and £950. Fees for appeals are higher. However, the charges are means-tested so some claimants do not pay. Nevertheless, the fee regime seemed to have led to a drop of almost 70 percent in the

number of claims in an entire year. This is worrying as many claims have been found to be based on statutory violations by employers, and thus legitimate. However, the fee regime seems to have deterred many employees from filing complaints. Unfortunately, even when such claims are successfully pursued, there are a substantial number of employers that do not pay up, as the House of Commons Justice Committee has documented (Shackleton, 2017).

The flexibility of the labour market, achieved in part through relaxation of restrictions around the use of fixed-term contracts, came at the price of under-employment and lower wages, particularly for low-skilled workers. These conditions contributed to the widening income gap between full-timers and the increasing share of the workforce on time limited contracts, who occupy insecure and low-paid jobs. This came at a time when income inequality in the UK was already high and rising before the 2008 crisis. In fact, the UK has one of the widest income growth gaps in the OECD, exceeded only by Sweden in 2013 (although Sweden remained a low inequality country) (OECD, 2013).

2.19. Enterprise and Regulatory Reform Act of 2013

2.19.1. Description of its employment protection score changing measure (1)

The Enterprise and Regulatory Reform Act of 2013, which received royal assent on April 25, 2013, and entered into force on the same day, contained one important deregulatory measure (Deakin et al., 2017). It reduced the obligation to inform and consult over collective redundancies of 100 or more employees from 90 days to 45 days before the first dismissal takes effect, bringing it closer to the EU minimum of 30 days. Fixed-term contracts that reached their agreed termination date from collective redundancy obligations were also excluded. Employees made redundant could be entitled to compensation if they had been continuously employed for at least two years. Payments would equal at least one week's pay for each full year of service, up to

a maximum of £450 per week in 2013 (0.5 week's pay for those under 22 and 1.5 weeks' pay for those over 40).

2.19.2. Reasons for policy measure

The Coalition government's employment review claimed the new measures had the purpose of "improving the functioning of the labour market" by promoting 'flexibility' (encouraging job creation), 'effectiveness' (enabling employers to manage staff productively) and 'fairness' (allowing firms to compete on a level playing field while providing workers with protections) (Department for Business, Innovation and Skills, 2013). The review was led by the Department for Business, Innovation and Skills under a Liberal Democrat Secretary of State and Liberal Democrat Under-Secretary for Employment Relations. The main justification for diluting rights of workers' representatives to information and consultation was that they were 'burdens on business.' The same rhetoric was used by the Department of Trade and Industry in the 1985 report *Burdens on Business*, which singled out unfair dismissal laws and wage councils as well as statutory sick pay and health and safety regulations as reform targets. Yet, at the same time, the government's review also acknowledged that the OECD had found the UK already had the most business-friendly labour laws in the developed world, only after the US. According to the Global Competitiveness Report of the World Economic Forum, the UK was ranked fifth in terms of labour market efficiency and eighth with respect to global competitiveness (Hepple, 2013).

The government's deregulatory measures were not based on independent impartial research but anecdotal evidence and statements from business organizations that had an interest in the results. It had commissioned the venture capitalist and Conservative Party donor Adrian Beecroft to write a report about how employment laws could be changed to boost businesses and cut red tape. Beecroft believed "British workers should be banned from claiming unfair dismissal

so that firms and public sector bodies can find more capable replacements." However, he understood scraping such laws was 'politically unacceptable' so he recommended a replacement regulation called Compensated No Fault Dismissal, which would allow employers to dismiss 'unproductive employees' with basic notice and redundancy pay. But rather than adopt Beecroft's impractical recommendations, the coalition government decided to consult firms about their views on employment law and the changes they wished to see (Hepple, 2013).

Following the lead of Beecroft (described by The Independent as a multi-millionaire who 'made a career out of cutting jobs'), employer associations all argued employment law was one of the main 'regulatory burdens' on firms, weighted too heavily in favour of employees. The director of Employment and Skills Policy at EEF, a manufacturers' organization, stated employment rights were a "serious issue for employers of all sizes" who operated in a global marketplace where flexibility among the workforce was vital for them to retain their competitiveness. He suggested retrenchment measures would help improve employer flexibility, the UK's global position, encourage growth and lead to more jobs since firms could "plan for their workforces of the future" (House of Commons, 2012). Similarly, the chief policy director of the Confederation of British Industry claimed 67 percent of employers surveyed had viewed employment regulation as a threat to the UK's competitiveness. The Head of Regulatory and Parliamentary Affairs at the Institute of Directors also agreed that employment law was "the most significant area of regulatory concern" among firms and that many of the deregulatory actions endorsed by businesses were "actually measures that slightly counterintuitively incentivize employment on the part of employers, they are not measures to try to reduce the size of work forces or to arbitrarily dismiss staff" (House of Commons, 2012). The policy chairman for the Federation of Small Businesses welcomed the deregulatory reforms, claiming the

“legislative burden from employment legislation and other regulatory burdens has a hugely disproportionate impact on small businesses” but suggested the changes did not go far enough to initiate growth. The director of policy at the British Chambers of Commerce believed businesses should not spend a quarter of a year consulting on how to restructure their companies, describing it as ‘unnecessary, frustrating and disastrous.’ While the 45-day minimum brought the UK closer to many of its EU competitors, he suggested a 30-day period was needed to truly level the playing field (House of Commons, 2012).

For their part, union organizations and Labour opposed the government’s proposals. The Director of Legal and Affiliated Services at Unite claimed “legislation should be there to balance inequality of arms between employers and employees, not to promote employers going down the line of bad industrial relations.” The Head of the Equality and Employment Rights at the TUC expressed regret there was no consultation or stakeholder discussion on such a big piece of legislation. The Labour opposition claimed the changes would not achieve any of the above stated goals and unnecessarily deprive workers of essential protections (House of Commons, 2012).

The power resources and expansion-retrenchment narratives both adequately account for the policy positions of the Conservative government and employer associations on the one hand, and those of the Labour opposition and union organizations on the other. As they would expect, the former advocated the relaxation of statutory protections while the latter did not. These same policy preferences existed in the past with few exceptions, so the above theories hold up against the historical record for the most part.

2.19.3. Information to assess impact and significance of measure

A study based on interviews and case studies with a representative sample of employers commissioned by the government in 2013 found employment regulations had little impact on the human resource practices of firms. They were also viewed as morally right and necessary to ensure fairness in the workplace. Moreover, some small- and medium-sized businesses were concerned about tribunals rather than the impact of regulations on daily practices, believing laws were sometimes too complex and changed too frequently, thereby making it difficult to maintain a solid understanding of legal obligations. The authors of the study concluded that regulations described as burdensome were a poor indicator of the actual cost or impact of firm compliance, and that some employers' fears about being taken to tribunals when dismissing staff were exaggerated, based more on perception than reality. The research highlighted specific areas of concern for some employers around dismissal litigation. But in reality, only 6.5 percent of dismissals resulted in a claim. Where one was lodged, employers faced an average £3,700 cost in terms of time and legal representation. Only 5 out of 100 of those who made a claim actually succeeded, and the median compensation had been around £4,000–£5,000 since 2007. The government acknowledged that the impact of reducing employment protections could be ambiguous, and that there was evidence to suggest protections could increase investment in skills and incremental innovation, which can contribute to productivity and economic growth (Hepple, 2013).

The UK reported 13,838 job losses and 3,528 new jobs in 2014. The most cited reasons for collective dismissals were internal restructuring and bankruptcy. Most of the bankruptcy/closure cases were in establishments employing up to 250 people. Cases of outsourcing, offshoring or relocation accounted for a very small percent of all collective

dismissals in this period. Moreover, the rise in dismissals contributed to the marginalization of certain classes of workers. Almost 15,100 people, for example, were at risk of poverty or social exclusion in 2013. Evidence also revealed that restructuring processes and dismissals contributed to higher rates of poor health (such as depression or anxiety), particularly among the unemployed, suicide attempts, mental disorders, higher rates of absenteeism and increased incidence of harassment or bullying at the workplace (Countouris et al., 2016).

Nevertheless, the UK government credited its structural reforms to labour (and product) markets as one of the reasons for its strong performance as compared with past recession episodes. Real GDP exceeded the pre-crisis peak and GDP growth in 2014, at 2.6 percent, was the highest among the G7 countries. The overall employment rate in 2013 was back at its pre-crisis high of 74 percent. However, it appears this strong performance was accompanied by a drop in productivity, which goes against the pattern seen in past recessions in the UK. This became known as the productivity puzzle, which led to debates over its root causes and effects. One of the reasons for the employment performance of the UK over the last crisis period was the high flexibility of the labour market, owed to a long series of reforms dating back to the 1980s. One result of this was that real wages dropped significantly during the 2008 crisis, encouraging employers to limit layoffs, especially of skilled workers. The threat of higher unemployment, however, persuaded workers and unions to change their bargaining positions so they could trade off lower real wages for greater job security. Only in 2015-16 did real wages increase again, reversing the long trend of weak or negative wage growth. Changes in working hours between 2008-12 also cushioned the effects of falling labour demand on employment (De Geus et al., 2016).

2.20. Good Work Plan of 2018

The two-tier labour force in the UK means many in low-skilled, low-paid and time-limited contracts have no job security rights, particularly those in the gig economy who are estimated to number up to 4.7 million (Powell & Ferguson, 2020). Preoccupation with Brexit has meant legislative attention to the problems of gig workers like Uber drivers has been left wanting. Slow growth and economic uncertainty since the EU referendum created unmitigated reliance on flexible practices and tolerance of extreme precarious conditions. However, May's Conservative government (in office between 2016 and 2019) recognized the problems caused by unbridled neo-liberal policy emphasis. In 2017, her government commissioned an independent report entitled *Good Work: The Taylor Review of Modern Working Practices*, which made a number of recommendations for reform to offer more protection to those who do not work in standard employment relationships. The majority of the 53 recommendations made by Matthew Taylor (a former Labour Party policy advisor) subsequently informed the government's 2018 'Good Work Plan', which contained several proposals for increased job security. The government labelled the proposals "the largest upgrade of workers' rights in a generation" (Department for Business, Energy & Industrial Strategy, 2018).

One of these upgrades requires employers to provide employees and workers (including dependent contractors, zero-hour workers, casual workers, etc.) who started work on or after 6 April 2020 a written statement of the main terms of their employment from day one. The list of information must include the following: normal working hours, working days of the week and whether hours and days may vary; any forms of paid leave or employee benefits including in kind or financial; probationary periods (length and conditions); and details of training provision and requirements. Agency workers (who numbered up to 950,000 in 2018) are also to be given

key information regarding the type of contract they are employed under, the identity of their employment business, minimum rate of pay, how they are to be paid, any deductions or fees, an estimate or example of their take home pay and details of annual leave entitlement. The government also quadrupled tribunal fines to £20,000 for employers showing malice, spite or gross oversight (Department for Business, Energy & Industrial Strategy, 2018).

Other upcoming job security changes announced for the next Employment Bill include: the extension from one week to one month the consideration of the relevant break in service for calculating the qualifying period for continuous service. Previously, one week 'ending with a Saturday' was required between two contracts of employment to break continuous service, which prevented casual employees from accruing the length required to claim for protection against unfair dismissal. The extension to four weeks makes it easier for them to add together service from one period to another when they are re-hired quickly after their last contract ends. The creation of a new naming scheme for employers who fail to pay employment tribunal awards and penalties for those who have previously lost similar cases. The right to request a more fixed working pattern contract for all workers (including agency workers and those on zero-hour contracts) who have been with the same employer for at least 26 weeks. The extension of redundancy protection to cover pregnant employees from the date they notify their employer of their pregnancy and for a period of six months after the end of their pregnancy. The introduction of a single enforcement body to ensure vulnerable workers are informed of their rights and support employers in compliance (Department for Business, Energy & Industrial Strategy, 2018). Some of these future proposals will merit inclusion as employment protection score changing measures if they are put into legislation (Simon Deakin, Personal Communication, 2021).

It is worth mentioning that the review by Taylor entirely ignored the role played by unions in protecting and advancing employee rights, thereby neglecting to consider the expansion of unionism and joint regulation in implementing these initiatives, particularly in sectors marked by poor working practices (Williams, 2020). Aside from this, it is unlikely the regulations will offer much benefit to the labour force. Precarious workers who are most vulnerable to violations of labour law are the least likely to file claims in tribunals (Powell & Ferguson, 2020), making these newly acquired rights untenable since they rely on already underutilized and paltry mechanisms of enforcement. The lack of employer compliance with preexisting regulations may have contributed to and be implied from the introduction of these measures, particularly the new employer fines, naming scheme and enforcement body. More could be said about some of the other proposed actions. For example, one offers only the right to ask for a more adaptable working schedule, which will likely translate into a right to be turned down by the employer.

2.21. Conclusion

The three dominant theoretical explanations cannot adequately account for the lack of job security regulations in the UK before the 1960s. The varieties of capitalism thesis expects employment protections to be less relevant in the UK but the Labour Party and British unions were clearly interested in introducing and extending job security rights for their constituencies. The power resources and expansion-retrenchment narratives struggle to explain why the union movement and Labour Party did not take advantage of their access to government to implement far reaching protections against dismissal after World War II when working class power was arguably at its peak. During this time, British unions were still negotiating with employers' associations over the regulation of job security in collective agreements, despite a combination of

historical factors that strengthened their bargaining position vis-à-vis employers. These transient factors are commonly mentioned in the expansion-retrenchment literature as responsible for the emergence of the Keynesian welfare state, new political rights and high levels of social protection in the immediate postwar years. They include: the need for the state and capital to compensate the working class for the human suffering caused by the Great Depression of the 1930s; to make up for labour's efforts and sacrifices during WWII; to provide Western capitalism with a more 'human' face in light of the popularization of revolutionary ideas, labour protections won in Comecon countries and the widespread appeal of socialism (given the existence of the Soviet Union, revolutions in China, Korea, Vietnam, Cuba and struggles in Africa, Asia, and Latin America); the extension of universal suffrage and limited access to political power giving sections of the working class some leverage over public policy; and wartime advances in science and technology, growing productivity, high labour demand and expanding domestic and foreign markets, which ushered in a period of rapid capital accumulation, providing the financial basis for higher levels of social protection without encroaching on the profits of employers too much (Teeple, 2000; Sassoon, 2010). Yet this strengthened period of labour movement strength cannot explain why the codification of job security in collective agreements and legislation lagged behind in the UK. This is because the power resources and expansion-retrenchment theories fail to appreciate the strong interest unions had in retaining as much control over the regulation of job security matters within their historically institutionalized collective bargaining channel because it maximized their long-term interests.

Unions could have pushed their political allies in the government to legally enact these desired regulations. Afterall, the British labour movement was among the most politically

influential in Western Europe in the first half of the twentieth century. But this did not happen in the UK. The trade unions, Labour Party and employers all considered the regulation of employment protections to be the policy domain of negotiations between the two sides of industry. For this reason, they all opposed the Conservative government's Contracts of Employment Act of 1963, which contained the country's first statutory employment protection measures. The Act was passed to address economic problems that collective bargaining had failed to bring about agreements to remedy. A booming economy in the immediate postwar years made this less of an issue but government concerns over the effects of economic restructuring and strikes had outgrown the state's traditional 'hands off' stance. Employers not only opposed state interference in industrial relations but also took issue with the legislative protections given to employees because they interfered with managerial freedoms to hire and fire. And while unions stood to benefit from these regulations, they did not welcome the government's proposals because they preferred to gain such favourable terms for their membership through the continuation of bargaining and striking activities. There was a strong sense among union leaders that reliance upon the state and legislation for protections would undermine the role and position of the labour movement in the long run. The fact trade unions and their political allies would openly oppose such beneficial job security rights is a curious anomaly, which cannot be adequately explained by these dominant theories. An appreciation of the importance of regulating employment relationships via collective agreements helps bridge this gap in understanding.

Moreover, the objections to the 1963 measures contradict claims in the job security literature about any widespread consensus among political parties and interest groups over the desirability of statutory reform. If anything, there was more consensus around voluntarism. What

is more, the Conservative Party spearheaded the legislative initiative to confer certain rights onto employees, much to the chagrin of employers, trade unions and the Labour Party. This is perhaps another surprising finding, which the theoretical approaches in the literature are unable to wholly account for. This is because they tend to attribute the implementation of job security laws to unions and their political allies, without entertaining the possibility that other interest groups may have a material stake in them as well, even if only temporarily under conditions of major crises or emergencies. In this case, the Conservatives forcibly introduced employment protection legislation because employers and unions could not be relied upon to use bargaining as a strategy to resolve their problems (and by extension, the country's). In a sense, what was needed was autonomy for the capitalist state (independent of all political ideology) to deal with the economic pressures that were spiralling out of control by channeling the conflict between capital and labour from the sphere of production into the political realm for the sake of preserving the system (Clarke, 1991). Second, power resources and expansion-retrenchment narratives overlook the historical legacy of regulating employment relations via collective agreements in the postwar period and the consequence of this type of regulatory system on the development of statutory employment protections in the UK. The inclusion of job security in collective agreements required the consent of employers, which they were reluctant to give, and unions were also not happy about obtaining such rights politically by maneuvering around the collective bargaining process – their mainstay for decades. The impasse continued and economic conditions worsened, forcing the hand of the state to intervene by introducing legislation against the desires of major interest groups. In this way, the Conservative government acted outside of its own political ideology to some extent by looking after the general interests of capital (the national interest). Third, Conservative Party support for the reform of industrial relations via job security

legislation was based on a desire to create a new era of more responsible unionism closely regulated by the state. For example, the introduction of a statutory unfair dismissal scheme in 1971 was aimed at achieving industrial peace by reducing discipline-related strikes, which fit into the Conservative vision for a state-supervised system of union activities.

Another interesting feature of these first statutory protections was their rationale, namely: to facilitate orderly transitions from employment to unemployment, undermine employee resistance to layoffs and curb union striking activities. This stands in contrast to the popular conception that employment protections are intended to solidify the worker's position in a job by providing the greatest length of continuous employment service. It should also challenge existing binary classification systems that pigeonhole job security regulations as either protective or deregulatory in the empirical literature. This shortcoming also applies to dominant theoretical approaches because they fail to see how labour protections are not always benign as their rationales or effects can go against the true interests of workers sometimes. However, Marxist accounts tend to provide a much more fluid and nuanced understanding than other approaches, for example, by conceptualizing worker protections as embodying two sets of complementary and conflicting interests. According to this view, employment rights can serve crucial accumulation and legitimation functions within capitalism. They can also act as the means and markers of class struggle over the distribution of the total value created in society. In other words, worker-protective measures reflect the interests and needs of employers and workers (complementary aspect). They also serve as economic and political weapons wielded by each side in pursuit of their own interests (conflictual aspect). This critical framework is particularly valuable for understanding employment protection legislation because it goes beyond a purely reformist and purely confrontational (labour vs capital) conception by incorporating both their

pure coordination and zero-sum game aspects into one analysis. However, some job security measures do not seem to fit the description of a compromise response equally beneficial to capital and labour, nor can they be seen as a zero-sum game mostly in favour of labour. For example, the 1965 Act not only offered meagre financial incentives to undermine employee resistance to dismissals in order facilitate transitions out of work, but also contained provisions that strictly regulated the behaviour of employees upon receipt of notice of dismissal, including the forfeiture of a whole or part of the redundancy payment if employee conduct was deemed unacceptable (Davies & Freedland, 1993). The substance of various labour protections, therefore, should be subject to more critical examination in the theoretical literature where they are assumed to be play an almost exclusively social protection function (e.g., Rueda, 2005; Esping-Andersen, 1999; Bonoli, 2003).

Nevertheless, new statutory acts on job security in the 1960s brought about a fundamental break with traditional forms of labour market regulation that privileged collective agreements over legislation. The government was responsible for spearheading efforts to lay down minimum standards upon which employers and unions were encouraged to improve upon voluntarily. However, job security was obtained without capital and at first labour's consent. A greater consensus only emerged in 1965 when the Labour administration abandoned its hands-off position and introduced statutory redundancy payments with the purported blessings of both sides of industry, who had apparently changed their minds about legislation as well. The Labour government's reason for departing from the traditional policy of non-interference with collective bargaining was similar to that of their Conservative predecessors. In general, the historical legacy of regulating employment relations through collective agreements rather than laws played a crucial role in conditioning the possibilities for future policy developments in the UK. Because

it was the lack of progress at the bargaining table over job security matters that ultimately persuaded Conservative and Labour governments to intervene in industrial relations by introducing employment protections in the 1960s and 1970s.

According to expansion-retrenchment accounts, many governments in Europe had invited union and business representatives to participate in the formulation and implementation of social and economic policy decisions. During this period of postwar compromise, Keynes' and Beveridge's recommendations justified a greater coordinating role for the state to manage the economy against old laissez-faire arguments. Tripartite coordination was considered particularly effective in promoting growth and employment (Clarke, 1991; Teeple, 2000). The evidence in the UK, however, suggests the government was hesitant to introduce job security legislation in the 1950s. Instead, it unsuccessfully pressured unions and employers for many years to negotiate employment protections in collective agreements in order to take a constant source of conflict out of industrial relations. So, while there was increased government involvement insofar as the Keynesian paradigm shift had allowed the British government to assume greater political responsibility for managing the economy by forcibly passing the 1963 and 1965 Acts, trade unions and employers were not willing participants in the policy formation or implementation process at first. Thus, there was no strategic cooperation between the state, capital and organized labour on this particular issue. The TUC was against the state interfering in the regulation of employment contracts in 1963 and questioned the benefits of the 1965 Act, even though both entailed the expansion of standards of social protection in favour of union members while capital preferred the voluntary route because it could continue rejecting union demands for job security.

Unfair dismissal legislation was enacted in 1971 by Conservatives who sought to address the ever-growing problem of inflation and wage drift, which they blamed on industrial unrest

caused by dismissals. The UK was one of few countries where dismissals were a frequent cause of strikes, and collective bargaining had hitherto failed to resolve the issue. With the exception of the useful provisions on unfair dismissal, the 1971 Act was criticized by the Labour opposition and trade unions who saw it as an anti-union piece of legislation intended to undermine union powers and activities. Interestingly, a minority of influential employers expressed the view that reform should come about voluntarily via negotiations so there were still differences in opinion regarding the most desirable way of regulating employment relationships in 1971. But perhaps most surprisingly, the Conservatives and some employers were in favour of providing statutory safeguards against unfair dismissal, partly because inflation and wage drift were getting out of hand, necessitating a concession and legal remedy. The 1971 measure was the first employment protection intended to enhance and secure an employee's existing contract and position within a firm through the establishment of dismissal procedures, which would help protect employees against unfair treatment. The fact that the first significant restrictions on the rights of employers to fire came from a Conservative cabinet seems to contradict the expectations of power resources and expansion-retrenchment theories. But the 1971 Act, as a whole, contained several anti-union clauses that were aimed at restricting union rights to organize and protest. This makes more sense according to these approaches since the policy preferences of centre-right parties are usually counterposed to union interests. However, these theories again pay insufficient attention to the importance of the mode of regulation (collective agreements versus legislation) in the 1960s-70s, which causes them to overlook the fact that the inclusion of dismissal protection rights in the 1971 Act by the Conservatives was partly intended to relocate a controversial issue at a standstill from collective negotiations into the political domain in order to contain industrial action. By 1976, the trade union movement successfully removed the anti-union stipulations

from the 1971 Act with the help of their political allies, while at the same time accepting the value of new statutory employment protections and pushing for their extension since collective bargaining failed to deliver those expected gains.

The last time Conservatives willingly brought forward and implemented a protective job security measure was in 1972. The Labour opposition welcomed the clause providing a minimum notice period but expressed opposition to other provisions of the Act, which were viewed as legislative attacks on workers' rights. The 1972 measure echoed the same objectives of previous acts (1963 and 1965 in particular). In the following years, Labour governments would comprehensively extend job security (in 1974, 1975 and 1978) and repeal any anti-union legislation passed by their Conservative predecessors as part of their social contract with the trade union movement in exchange for wage restraint. Keynesian economics increased the bargaining power of unions because the government was dependent on union cooperation to implement demand side interventions while moderating wage increases. The Labour government had no choice but to create incentives for their economic allies to cooperate by offering compensation such as increased institutional support, welfare expansion and enhanced legal protections against dismissal. However, some parts of the labour movement were quite dissatisfied with the post-war settlement as they had hoped for more change, a larger share of the total social product and a greater role in the management of the workplace. While the postwar order was sufficiently different from the pre-war period, insofar as unions were free to act and left parties could participate more freely in governments, the managerial authority of employers went uncontested. Even the less radical sections of the labour movement felt workers should enjoy the benefits of persistent economic growth and have a say in managerial decisions more. The labour movement had little interest in moderating wage demands over the medium- or long-

term and used its power resources to challenge the economic and political elite. In the 1960s and 1970s, there was a rapid increase in nominal wages, in part due to low unemployment rates and employers looking to fill all their vacancies, which increased the bargaining hand of unions (Emmenegger, 2014). Between 1971 and 1978, the labour movement was successful in obtaining nine job security measures, including protections against dismissal and control over the administration of dismissals. These policies were only made possible after unions mobilized and radicalized their demands for change. They were also the product of the labour movement's break with its strict voluntarist stance by accepting legislative initiatives that removed some of the problems that union members and collective agreements suffered from previously because employers would not consent to union demands.

By this time, the Conservative Party and employers were seeing eye to eye and were no longer in favour of, nor considering the possibility of, accepting more statutory job protections. Both groups condemned Labour's bargain with unions and complained about the country's job security laws becoming too one-sided, especially at a time of economic difficulty when job creation and business flexibility were seen as paramount. Questions concerning the desired mode of regulating employment relations (voluntarism versus legislation) became less of an issue. The debates focused more on the content of proposed regulations. It is also in this period when the 'argument of principle' waged by Conservatives and employers against protective measures first appears. It was predicated on the notion that a fairer balance of rights (for employees) and responsibilities (for employers) needed to be established, one that considered how they would be equally shared by capital, labour and the state, while taking into account the particular challenges facing smaller employers who purported had informal flexible approaches and insufficient resource management systems to deal with 'over-burdensome' restrictions. This argument would

be repeated by employers and Conservatives in the years to come as a way to justify mechanisms for reducing job security and the protections tribunals offered. It was not based on independent impartial research, a comprehensive or coherent body of data, but rather anecdotal evidence and statements from businesses and governments that had an interest in reducing 'regulatory burdens' and 'vexatious litigation.'

The period of labour movement strength was coming to an end in the late 1970s. All Western European countries were struggling to cope with the effects of the 1973 oil price crisis, amplified by the second crisis in 1979, which generated persistent unemployment, runaway inflation and low economic growth. Keynesian macro-economic policies had proven inadequate to deal with these problems and Labour's social contract with unions was unravelling as tensions grew over pay policy, culminating in large-scale strikes and Labour's electoral defeat in 1979. A new Conservative government led by Thatcher sought to regain control over the economy through monetarism and then other neoliberal ideas, which did not award unions any role in the management of the macro-economy. The adoption of monetarism combined with the oil price crises of 1973 and 1979 led to a significant increase in unemployment. As a result, the two most important sources that had empowered and materially benefitted the labour movement in the postwar years – Keynesian macro-economic management and low unemployment – were no longer possible. Thatcher's monetarist government identified labour market 'rigidities' such as employment protections as causes of poor economic performance, stifling growth and job creation. Under these pretenses, the Conservatives embarked on a largescale campaign of deregulation, which included retrenching dismissal protections in 1979, 1980 and 1985, to ostensibly aid economic recovery. However, recessionary conditions (i.e., two or more consecutive quarters of negative growth) rarely overlapped with deregulatory reforms (OECD,

2021). But that did not matter. As it would turn out, regardless of the state of the economy, deregulation would always be on the policy agenda of Conservatives whose power bloc was based on employer interests and extended into the managerial and professional middle classes. However, contrary to theoretical expectations, Conservatives did not succeed in overturning or diluting the large number of job security measures (12) that had been adopted up until then. The new economic orthodoxy of the neoliberal period and the declining power resources of the labour movement did not directly translate into policy changes in favour of the employer class per se.

In the 1980s and 1990s, the Labour Party and trade unions could not offer formidable opposition to employer demands for flexibility and deregulation. Instead, the European Union turned into one of the main forces of resistance to the reform agenda of Conservative governments in this period. Since the UK had joined the European Community in 1973, it had to ensure that its laws and policy considerations conformed to EC regulations. This is one reason why Conservative governments refrained from enacting more deregulatory measures as they would have brought the UK in violation of European Directives. The Labour Party also became much more sympathetic towards the EU by the 1990s, as EU regulations and Directives enhanced employment protections to a greater extent than the laws passed by parliament under Conservative governments. When New Labour assumed office, it cautiously introduced incremental improvements to job security on one occasion due to the EU's 1999 Directive on fixed-term work, although it exploited the Directive's provision that allowed member states to postpone enactment up to one year due to 'special difficulties.' In general, due to pressure from EU-level policymakers, British job security laws were strengthened on at least three occasions (1975, 1995 and 2002). In light of this, power resources and retrenchment theories have

overemphasized the deregulatory influence of international organizations, assuming a race to the bottom regarding welfare provision and labour standards was to be expected (Korpi & Palme, 2003). However, the empirical evidence shows that while job security measures were continually changing, they cannot, even during the Thatcher years and the period of common membership in international institutions, be described as retrenchment at all. Despite dual pressures from globalization and Europeanization, which are supposed to subordinate economies to an increasingly unified economic and political process (Teeple, 2000), the UK has not deregulated job security across the board. On the contrary, employment protections have been strengthened and expanded since the 1970s as a result of the country's subsumption in larger units such as the EU. However, this does not mean those protective measures, or any other ones that had domestic origins, have considerably benefitted British workers, as assumed by the literature sometimes. What the power resources and expansion-retrenchment approaches do not sufficiently entertain is the possibility of a large and growing inventory of job security measures that are somewhat empty of content, offering limited benefits to workers. The gap between laws in the statute books and laws in action must be acknowledged in order to explain this empirical anomaly and aid in the rescue of these theoretical approaches, which are most capable of explaining the historical development of job security in the UK, albeit with a few sources of corrective wisdom.

After New Labour's electoral victory in 1997, trade unions used their decreasing power resources to fight deregulation initiatives and influence labour market policymaking under strained relations with their political allies. Following a series of electoral defeats, the Blair government distanced itself from trade unions and revised its employment relations agenda. It retained some of the employer-friendly policies pursued by Thatcher and Major in the 1980s and 1990s, which caused renewed tensions with unions. But New Labour also extended job security

protections four times (in limited and calculated ways) between 1999 and 2002 in the face of opposition from Conservatives and employers. By then, the UK had 18 protective measures next to only three deregulatory reforms in the period under examination. However, Blair's government went on to relax general unfair dismissal protections on one occasion using very similar pro-business rhetoric of previous Conservative governments. While this represented a significant change in its policy position, it was the only time the Labour Party decreased statutory employment protections since their introduction in the 1960s. More recent power resources and retrenchment approaches have argued left and social democratic parties have partly abandoned their traditional roles of defending the interests of unions because electoral pressures force them to consider the political preferences of other voters. The same body of literature has suggested left parties not only increasingly leave the defence of labour protections to unions more, but they even endorse market-oriented policies (Keman, 2011; Keating & McCrone, 2013). But the evidence presented in this chapter does not support this hypothesis. Instead, it shows trade unions and their political allies were often able to pass protective measures and block deregulatory reforms initiated by the Conservatives and employers, sometimes with the help of EU regulatory bodies and domestic courts.

The 2010-15 Coalition government sought to consolidate the UK's pre-existing neoliberal policy paradigm established in the 1980s and 1990s, which had been left fundamentally unaltered by New Labour between 1997 and 2010. New Labour had tried to complement the country's basic but limited floor of employment rights with new protections without impeding economic competitiveness or the flexibility of employers. However, the Coalition government believed the UK's economic recovery from the 2008 crisis was hindered by too many regulatory burdens that went beyond the core of 'fundamental protections', which

were left unspecified. Despite opposition from a weakened union movement and Labour opposition (partly because of faltering leadership), the Coalition government decreased job security in 2012 and 2013 when the UK economy was performing more strongly than before, with the fastest employment growth since 1989, surpassing even the pre-crisis peak. The Coalition government's policy stance represented continuity with that of past Conservative governments calling for fewer protections for employees and less means of enforcing them.

Yet altogether the UK adopted 24 important job security measures between 1963 and 2013, with 18 of its policy actions providing more protections to workers in the statute books while six reforms scaled back employees' contractual rights. Surprisingly, opposite to the liberalizing pressures one would expect to find in an archetypal market economy, the UK has been characterized by far more protective measures than deregulatory reforms.

The large number of protective measures raises the question of their significance in practice. In this regard, the benefits of job security rights in the UK should not be exaggerated. This is partly because their implementation and enforcement are located at the workplace and tribunal levels where capital has a considerable power advantage over labour. Not surprisingly, we find protective measures have failed to offer many tangible benefits to British workers. Statutory exclusions and qualifying periods limited coverage. Many otherwise eligible applicants simply did not make use of their rights by filing legitimate claims in employment tribunals. Of those who did, many of their claims, including appeals, were either withdrawn, dismissed without a hearing, or struck out at preliminary hearings. The small number of claimants who were successful received meagre levels of compensation, far below the maximum amounts. Very few ever received recommendations of re-engagement. Tribunal applicants suffered from negative employment records for taking their employers to court. There were also insufficient

resources in place to make laws effective, including, for example, limited enforcement procedures, which were designed to lower costs for employers and taxpayers. So, while numerically there were far more protective measures than deregulatory ones, the law has been heavily weighted against employees, too weak to secure better outcomes for them.

When workers feel they have been disciplined or dismissed without good cause, or their grievance has not been handled appropriately and fairly, the only external mechanisms available to them to resolve their workplace disputes and give them redress are employment protections, and specifically, employment tribunals, the specialist arms of the legal apparatus dedicated to addressing disputes between workers and employers in the UK. The tribunal system there has evolved since the 1960s, however. They were originally relatively informal forums where capital and labour could resolve disputes cheaply and quickly without the same formalities that characterized traditional civil court systems of law. These tribunals deal with a large and growing number of jurisdictions, including not only unfair dismissal claims or fee arrangements (the most common) but also complaints concerning sex, race, disability discrimination and failures to pay the national minimum wage.

Worker grievances are usually redressed in the form of compensation, it is very rare for them to be reinstated. Many employers over the years have complained about the perceived burdens of the tribunal system. They claim it imposes substantial costs on firms, not only to hire or pay lawyers, but also in the amount of time and resources spent in responding to and contesting claims. Employers typically prefer to offer a financial settlement before a claim even reaches a hearing in order to lower costs, although such behaviour may also be indicative of the weakness of their cases against their employees. Small firms in particular complain about the tribunal system's lack of understanding concerning their resources and circumstances, including

their more informal flexible approaches to management. Successive Conservative governments from the mid-1970s onwards became increasingly sympathetic towards employers and pro-business interest groups who complained about the nature and growth of the tribunal system as stifling employment generation and growth. On a few occasions, even Labour was in favour of designing certain measures to reduce tribunal claims, taxpayer expenses and legal costs for firms. Efforts were made in the 2000s to weed out alleged weak claims, rejecting them early on before a hearing or reducing the number of claims through higher qualifying periods or providing incentives to encourage the internal resolution of claims within the workplace at an earlier stage in order to decrease dependence on tribunals. Policies that lengthen the qualifying period or emphasize the resolution of disputes internally potentially limit the access of workers, who have been treated in a harsh or arbitrary manner by their employers, to justice.

These efforts rested on questionable assumptions and evidence, including ideas around employees as keen on pursuing unwarranted claims against employers for financial compensation (termed ‘compensation culture’). Much of the growth in tribunal claims came about because of the growth in individual employment rights and the violation of those legal protections by employers, particularly in the private services sector where the unilateral exercise of managerial prerogative is common, and unions are weaker. In 1980, there were 41,000 tribunal claims but by 2000-01 the number had increased to over 100,000 and by 2009-10 to almost 240,000 (Gilmore & Williams, 2013). The expansion of individual employment rights over the years can be partly attributed to the increasing desire of the state to control industrial relations outcomes directly (Howe, 2017). In the past, British governments favoured a policy of abstentionism, acquiescing to the collective laissez-faire tradition. But the 1971 Act broke the taboo on the use of the law to regulate employment relations, paving the way for new labour

legislation, an essential component of which involved statutory rights not to be unfairly dismissed. The 1971 Act that resulted in the substantial juridification of industrial relations was partly influenced by ‘phantom draftsmen’ who were imbued, above all else, with the doctrines of individual rights, and often disregarded the shop-floor problems of collective bargaining (Wedderburn cited in Howe, 2017). Gradually new individual employment law became more readily accepted, allowing new ideas for labour law to be considered, which involved a direct role for national governments to regulate industrial relations. The rise in claims also reflects the growth of discontent at work and with the management of employment relations, which is often carried out in an arbitrary manner. While employers have consistently complained about the burdensome nature of the tribunal system in order to convince policymakers to curb individual employment rights, perhaps the most surprising fact is that there are actually very few tribunal cases, and not as many as contended by employers and Conservative governments. Employees who are unorganized face special difficulties in bringing claims since union members can more easily receive advice and guidance. There are community legal services and other external sources of support, but they tend to be scarce, overstretched and underfunded. Other factors disincentivize claims as well, including the lack of awareness around employee rights, the high cost of legal representation, the lack of knowledge to navigate the complex tribunal system, the lack of time or resources to prepare a case or even attend a hearing, the fear of taking an employer to court and general pessimism about the prospects of success. Changes to the tribunal system to make it less burdensome have negatively affected the ability of more aggrieved employees to assert their statutory rights. Workers rarely file claims and when they do their chances of success are extremely low. Indeed, only one sixth of tribunal claims make it far enough to a hearing, with the majority being withdrawn or settled before then. The main

shortcoming of employment protections, therefore, is that they are reliant on the tribunal system, which fails to deliver much effective redress to workers (Gilmore & Williams, 2013). Also, collective bargaining agreements that deviate from statutory provisions are not widely used in the UK (Jones & Prassl, 2019), which makes legislation an even more important source of employment contract regulation through the establishment of minimum standards. This may be why the Conservative government in 2018 conducted a review of job security legislation and announced plans to introduce “the largest upgrade of workers’ rights in a generation” after coming to terms with the dismal state of the labour market for millions of workers triggered by years of ineffectual measures that gave employers wide leeway to hire and fire.

CHAPTER 3. THE DEVELOPMENT OF EMPLOYMENT PROTECTION LEGISLATION IN SWEDEN (1971-2020)

3.1. Historical background leading up to the legislative period

In Sweden, the 'December compromise' between the National Trade Union Confederation (LO) and the Swedish Employers' Association (SAF) in 1906 established long-term relations between labour and capital. This compromise meant that the employer side recognized the right of workers to organize and to negotiate wage and employment conditions through their representatives in centralized bargaining. Employers, on the other hand, reserved the right by virtue of their ownership of the means of production to lead and distribute the work, including to hire and fire at will. The principle of this exclusive right took its place in the statutes of the SAF, where it became known as Article 32 (Riksdag, 1975/76).

When it came to the possibilities of employers terminating employment relationships, there were significant differences between the public and private sectors. In the public service, there were far-reaching restrictions on the employer's right to terminate. This was not the case in the private sector. In 1932, the Labor Court (established in 1928 with the aim of resolving disputes related to collective bargaining and promoting industrial peace), as a general legal principle, held that employment contracts concluded indefinitely could be terminated in both sectors without giving reasons, unless applicable collective agreements contained provisions, which limited this right. For large groups of workers, some protection was granted against unjustified dismissals through the 1938 Saltsjöbaden (Basic) Agreement between the LO and SAF. The employer side was obliged to state the reason for the dismissal and redundancies could become a pretext for central and local negotiations and a small investigation could be taken up by the Labor Market Committee. The committee's decision, however, would not be binding, and would only have the nature of a recommendation (Riksdag, 1973). The Labor Court, a tripartite

body consisting of judges with judicial backgrounds and members from both sides of industry, acted as the Supreme Court in labour law disputes, dealing with disputes only after local and central negotiations had been conducted and failed.

During the Saltsjöbaden period (1938-1970), both sides of industry preferred to keep legislation and legal disputes to an absolute minimum. The trade unions in LO preferred bargaining over statutory regulation in matters such as workers' co-influence, unfair dismissals, redundancy, prevention of damaging industrial action, etc. even though union demands stood a decent chance of being accepted by the reigning Social Democratic Party. An overwhelming majority of disputes were resolved via negotiation rather than the Labor Court as well. In 1964, the protection against unfair dismissals was further strengthened by changes in the main agreement between the social partners. The Labor Market Committee was given the authority to oblige employers to issue damages. In 1965, a main agreement of similar content was reached between the SAF and LO. Similar contract regulations to protect unauthorized redundancies came to apply to workers employed by most firms outside of the SAF, corporate employees and government employees. In May 1972, a security agreement was concluded for salaried employees in state-owned companies, placing significant restrictions on the employer's ability to terminate certain older workers with long periods of employment due to the lack of work (Riksdag, 1973).

Beginning in the 1970s, however, things began to change dramatically. Sole reliance on the collective laissez-faire system was gradually supplemented by the introduction of industrial relations legislation. However, statutory initiatives came from the Social Democratic Party, and not the trade unions as the literature contends (see for example Schmidt, 1977; Korpi, 1982; Lindbeck, 1997). The myth of the change in the mode of regulating job security (by means of

legislation rather than collective agreements) as stemming from union influence likely originated from political rhetoric and it was easy to believe statutory reform reflected the wishes of workers and their organizations. The real origins of legislation were not very evident in the media coverage either. Hence this gave way to the view of politicians as mere instruments of the unions. Perhaps not coincidentally, this myth reflected the ideology of the older generation of Swedish union leaders, who were quite proud of the fact that their hard-won rights, including union recognition, an impressive system of collective agreements and the influence of organized labour in Swedish society, were all achieved by workers and their representatives, and therefore were not gifts bestowed by the government (Nycander, 2002).

3.2. Employment Protection Act of 1971

3.2.1. Description of employment protection score changing measure (1)

The 1971 Employment Protection Act (Swedish Code of Statute or SFS: 1971, 199), which was adopted on June 6, 1971, and entered into force on July 1, 1971, contained one important protective measure. It established for older employees notice periods, of at least two months for those aged 45, four months for those aged 50 and six months for those aged 55, subject to a two-year qualification period. It did not apply to employees whose employment was limited to a certain period or type of work (e.g., seasonal or domestic). Employees with rights to a termination notice were to be paid during the notice period even if the employer could not offer work (Allard, n.d.).

3.2.2. Reasons for policy measure

The central confederation of blue-collar trade unions (LO) was initially against the introduction of statutory protections. The LO even argued that seniority, to take an example from the Act, should be given less emphasis than was stipulated in collective agreements, referring to

the importance of job reallocation for structural change and growth. This is clear from a report issued by LO in 1971 (Nycander, 2010). The reason for union preferences for collective bargaining over legislation was twofold. First, the possibility of negotiations with capital over employment matters (the 'voluntary' channel) opened up to unions first, so they became accustomed to bargaining without government interference for many years after winning the rights to organize and engage in negotiations. Second, regulation through collective agreements allowed unions to maximize their institutional control in policymaking and management of the macro economy. Indeed, a significant part of union power depended on their hold on a set of institutions, and it was in the organizational interests of unions to protect these institutional roles (Emmenegger, 2014).

However, unions were unable to significantly restrict employers' discretionary rights to hire and fire through negotiations, despite having union density rates of 70 percent or more, partly because the SAF interdicted its members from signing any agreements that would restrict managerial prerogatives. According to the SAF, every agreement had to include the following article: "Reserving the observance of other rules in the agreement, the employer is entitled to direct and distribute the work, to hire and dismiss workers at will, and to employ workers whether they are organized or not" (cited in Emmenegger, 2014, 87). Unions tried to challenge the inclusion of this provision in agreements, but employers were not willing to concede, viewing such rights as inalienable and non-negotiable. Employers were supported by the labour courts, which ruled employers had such prerogatives as legal rights due to ownership. Hence, unions had very limited influence in regulating employment contracts while employers enjoyed considerable flexibility until the end of the 1960s.

Things began to change in the late 1960s: industrial restructuring rapidly increased, while the recession of 1966-67 led to company closures and deteriorating working environments. Meanwhile, a skills-related labour shortage the need for wage restraint empowered unions at the bargaining table. Years of full employment had increased worker expectations and dissatisfaction in some parts of the labour movement, which had hoped for a greater share of the total social product (Emmenegger, 2014). Restrictive fiscal policy along with active labour market measures and solidaristic wage formation (i.e., a collective, centrally controlled regulation of wages to counter the market's tendency towards wage differentiation) intensified pressure on low productivity sectors and encouraged labour mobility. The high level of centralization in collective bargaining also meant unions were unable to consider the specific challenges and complaints of some of their members. Indeed, union leaders were often criticized for neglecting issues other than wages and for not restraining employers' discretionary rights in hiring and firing. The most vocal dissenting workers were based in the LO's traditional strongholds, the manufacturing and mining sectors, where employment stagnated and several restructuring initiatives were imposed. Worker dissatisfaction resulted in wildcat strikes and a radicalized union movement. In response, the LO and other unions tried to negotiate for job security again, but employers were unwilling to concede. This is when the trade union movement developed programmes to introduce more industrial and economic democracy, and finally turned to the political arena where their political allies had been trying to get them to cooperate to pass legislation. In 1961, LO had stated that job security matters could only be addressed through the voluntary method. Supported by the TCO, it shifted its position by 1971, with an eye toward capitalizing on its short-term situational power based on its capacity to mobilize members to extract legislative concessions. Overall, the political climate in Sweden had also shifted to the

left as there was widespread consensus about the need for statutory reform, which induced the centrist parties to support more job security and even radicalize their own political agendas. This further incentivized unions to switch from their strictly voluntarist position to a complementary electoral stance and demand legislation on employment protections. Their political allies were willing and able to find a parliamentary majority in favour of job security legislation (Emmenegger, 2014). Hence, a window of opportunity opened in the early 1970s for increased legal protections such as notice periods for older workers.

At the time, the lengths of notice periods varied greatly in the Swedish labour market. Those in the private sector had six or fourteen days, while those in the public sector usually had one month. Statistical data also suggested that those aged 45 were experiencing difficulties with finding a new job and that the length of unemployment was 27 weeks or longer for a significant number of the unemployed who were aged 55. Employers were also less likely to employ older workers. It was against this background that it was suggested a statutory notice period not to be shorter than six months for that age group (Riksdag, 1971).

In December 1969, experts were appointed to undertake a comprehensive investigation of job security. The first stage of the inquiry focused on the question of whether unemployment supports for older workers needed to be supplemented by statutory protections in order to improve their situation. The experts were expected to complete this preparatory work and make their recommendations in 1972. The government considered it necessary to wait for the experts' proposals before adopting any significant measures. It also expected to enact a substantial package of reforms to improve the job security of the larger workforce based on the inquiry's final proposals within a couple of years. In view of the growing difficulties of older workers in

the labour market, however, state authorities recommended adopting certain measures to improve their employment in the meantime (Riksdag, 1971).

During the referral (consultation) process, valuable feedback was provided to the government by private and public bodies whose activities were affected by the government's proposed measures. The government argued most referral bodies were in favour of its proposals, particularly the three main organizations on the employee side as well as the representatives of the public sector employers. Criticisms of the proposed scheme came mainly from the employers in the private sector, to which the government did not concede (Riksdag, 1971).

The main features of the government's proposal were endorsed by a number of organizations and bodies, including the National Labor Market Board (AMS), National Agency for Government Employers, the Swedish Municipal Association, Swedish County Council, Swedish Trade Union Confederation (LO) and Swedish White-Collar Employees Central Organization (TCO). However, the proposal received a negative response from different factions of capital such as the Swedish Employers' Confederation (SAF), Board of Swedish Banks (BFO), Forestry and Land Employers' Association and Employers Association in Cooperatives (KFO) (Riksdag, 1971).

The AMS suggested older workers, including the middle-aged, faced more problems entering work than younger workers and that the number of older unemployed people had increased considerably over the years, despite counter policy measures implemented to counter that trend. The LO felt structural changes in industry, combined with technical and organizational developments, were creating difficulties for older workers and that employers needed to be more responsible for improving these workers' employment opportunities in the

private sector. The TCO also expressed concerns about long-term unemployment rates among older workers and the rising costs of unemployment funds supporting them. The Swedish Local Government Association supported special measures to address the issue, provided they did not lead to the labour force being divided in such a way that the private sector would consist mostly of young people, since many older and disabled workers were employed in the public sector. Similar comments were made by the Swedish County Council (Riksdag, 1971).

The SAF argued older workers were particularly hit hard in parts of the country affected by industrial changes and organizational restructuring, including the move to assemble of cars outside of Sweden in places such as Canada (Halifax), Belgium (Ghent) and Malaysia. The SAF claimed government business measures and trade union wage policy were primary causes of employment difficulties. It proposed all deliberations be discussed between the social partners, in consultation with the government, to arrive at a voluntary solution to increase employment opportunities for older workers. The SAF and KFO preferred that the issue of notice periods be settled through negotiations between the social partners as well. The Forestry and Land Employers' Association viewed legislation as a serious obstacle to long-term sustainable solutions for corporate labour policy. The KFO doubted that the proposed law would bring older workers back to production in any significant way, arguing the unemployed were largely concentrated in regions where few companies could recruit (Riksdag, 1971).

The LO argued long-term unemployment spells did not differ in any significant way for those in the 50-54 age group compared to those 55 or older. It therefore wanted to lower the age limits and increase the notice periods to two months for those aged 40, four months for those aged 45 and six months for those aged 50. Similar proposals were made by the Swedish Factory Labour Union, Swedish Transport Workers Union, Swedish Metalworkers' Union and Swedish

Construction Workers Union. The SAF and KFO both wanted the age ranges to be 50, 55 and 60 years. The LO, Swedish Construction Workers Union and the Swedish Factory Workers Association all wanted a qualification period of at least 17 months during the last three years of employment as well. The Swedish Industrial Workers Union and the Swedish Transport Workers Union proposed a qualification period of two years. The SAF argued for a five-year qualification period and a maximum notice period of four months (Riksdag, 1971).

Power oriented and expansion-retrenchment theories aptly identify the policy positions of unions and the Social Democratic Party (as supporting the introduction of employment protections) and those of employers (as opposing and trying to dilute job security proposals). However, they may not anticipate that the political centre (Liberal People's Party and the Centre Party) was also in favour of increased economic and industrial democracy during this period. The reason for this was because discontent with the shortcomings of the Swedish model was widespread and managerial prerogatives were viewed as a major part of the problem. Indeed, there was a clear parliamentary majority in favour of circumscribing managerial prerogatives. Even the conservative Moderate Party approved of the highly politicized reform project (Asard, 1986). The TCO, which represented the growing group of middle-class swing voters, also expressed its political support for legislative change and was accommodated by centrist parties. Normally middle-class voters were not open to policies that could undermine economic performance and centrist parties tended to represent the interests of both white-collar employees and employers, so they rarely supported divisive measures that were rejected by the business community (Przeworski & Sprague, 1986). But in the early 1970s, the political centre of gravity temporarily shifted to the left, creating a critical juncture that emboldened the Social Democrats and socialists to bring about radical economic change in the interests of trade unions and

workers, which opposition parties could not prevent (Emmenegger, 2014). In the following years, the LO weighed in with other proposals such as industrial democracy, which focused on co-determination in management and worker representation on company boards as well as wage earners' funds. Under normal circumstances, such proposals can be politically risky for left parties to pursue because the logic of electoral competition and coalition formation means they cannot cater exclusively to the interests of the working class since that might prevent them from wining a majority of the votes.

The 1970s, however, was one of those 'rare political moments' (Streeck, 2009) where the power of the labour movement temporarily exceeded the power resources of employers, allowing policy makers to set the country on a new regulatory path. The culmination of the post-war economic boom in the 1960s and early 70s, which was an exogenous development that caused a temporary spike in labour movement strength, contributed to this critical juncture, thereby opening a window of opportunity for significant statutory reform and deviation from collective laissez-faire. In a similar manner, both World War I and World War II can be considered critical juncture periods or exogenous events that temporarily shifted the balance of power in favour of the political left and unions in some ways. For example, after the First World War, the Social Democrats entered government as junior partner of the Liberal Party from 1917 to 1920 and led a minority government until October 1920, before leading several minority governments between 1921 and 1936. After the Second World War, unions and employers concluded the 1946 Joint Council Agreement, which aimed to solve workplace problems and increase rationalization at firms or plants. The Saltsjöbaden Agreement was also revised in 1947 to include some new labour protections (Emmenegger, 2014). Exogenous events such as economic booms and wars had powerful effects by strengthening the bargaining hand of unions and their political allies in

certain ways, otherwise labour is typically in a much weaker position than capital (Korpi, 1983). Unions and the political left emerged from these exogenous events with a vastly improved position, especially considering workers had fought for their countries and Social Democratic parties had entered war cabinets, with many Social Democrats and communists dying at the hands of fascists as well. Thus, the two world wars and the postwar economic boom were harbingers of radical social change endowing the political left and unions with enough power resources to extract concessions from unwilling employers and opposition parties. In this way, consideration of power resources and the enduring impact of choices made during critical junctures help explain the central role of unions and their political allies in the creation of a first job protection regulatory regime. The statutory regulation of employment protections during critical junctures also implies that these institutions are foundational conflicts of interest and are always politically contested.

Interestingly, trade union preference for collective bargaining meant organized labour initially rejected the offers of its political ally to introduce job security laws. This finding stands in contrast to the views of Schmidt, Korpi, Lindbeck, Hasselbalch and others, who have pointed to the warm hand of welcome from Swedish unions towards statutory reform from the get-go. The unions' initial rejection of beneficial legal measures also runs contrary to the expectations of power resources and expansion-retrenchment approaches, which fail to recognize the importance of the mode of regulation on the origins of job security measures in Sweden. The ratification of collective agreements on the issue of employment protections required the consent and support of employers, which they were reluctant to give. However, statutory laws could be enacted without their permission. This is how job security regulations were first established in Sweden, without the approval of employers, otherwise the deadlock in collective bargaining would have

failed to produce any substantial progress. The above theories have generally paid insufficient attention to the type of regulation unions and employers prefer and the implications of different regulatory systems on shaping policy formulation and outcomes. Similarly, the varieties of capitalism approach suffers from an assumption that employers in coordinated market economies benefit from job security regulations and therefore support their implementation. If that were the case, then Swedish employers should have already consented to longer notice periods and dismissal protections during negotiations with unions before the 1970s, which would have made legislative efforts unnecessary. Also, employer representatives in parliament should have supported the government's 1971 proposals but this was clearly not the case.

The first job security law implemented in Sweden was not aimed at extending the continuous employment service of older workers, but rather facilitating their exit from their workplaces that were closing, shedding labour and reorganizing due to structural changes. In a sense, the law was assisting mass redundancies in an era when employment tenure and seniority wages were a significant cost factor in downsizing and restructuring decisions. This aspect of employment protection tends to blur and challenge traditional understandings of it as ensuring the future permanence of an employment relationship or providing a perceived or real level of stability and continuance in a job. In some ways, regulations that encourage and facilitate transitions into unemployment could fit the definition of job insecurity since the future of employment is made unstable and at risk. As such, the degree of continuing employment inside the same job that such regulations are assumed to provide should be more carefully examined in the literature.

3.3. Employment Protection Act of 1974

3.3.1. Description of employment protection score changing measures (8)

The 1974 Employment Protection Act (SFS 1974: 13) was presented on May 25, 1973 and entered into force on July 1, 1974 (when the previous Act of 1971 ceased to apply). The 1974 Act contained eight significant protective measures. First, it provided notice rights on an age-related sliding scale: two months if 25 years old, three months if 30, four months if 35, five months if 40 and six months if 45 or older. Before 1974, rules regarding notice periods were based on tenure in most collective agreements and only employees over the age of 45 had a legal right to receive notice. Under the 1974 Act, employees were entitled to pay and other benefits during the period of notice and were not to be suspended from work for reasons other than dismissal for special reasons. Second, fixed-term contracts were only allowed for specific reasons. Previously, regulation of fixed-term contracts was left to collective agreements. But in 1974, they were only allowed under the following circumstances: in the case of probationary periods of a maximum of six months, for a period after the employee had reached the age of retirement, for the temporary replacement of an absent employee, for specific tasks whose nature required a fixed-term contract and for a specified period before the employee had to start military service. Third, procedural constraints were imposed in the form of formalities, which were sanctioned by compensation, not by nullity of the dismissal. Fourth, a ‘just cause’ standard, left undefined in the Act, was set up with case law identifying two general categories: circumstances related to the business and those concerning the employee, including misconduct and neglect of duties. Fifth, in cases where just cause could not be established, available remedies included reinstatement (except in very special circumstances) and financial compensation. Sixth, notification also had to be given to an employee’s union. Seventh, seniority was mandated as a relevant criterion for redundancy. The Basic Agreement of 1938 had set out capacity and

suitability before seniority and age as the criteria for redundancy. Eighth, rules on priority rights were established. An employer who intended to create a new job was required to offer the appointment to a redundant employee who had priority for re-employment, provided qualifications were met and the employee was able to work when the employer wanted. The 1974 Act allowed employers to deviate from its regulations only so long as local unions consented (Deakin et al., 2017).

3.3.2. Reasons for policy measures

In Sweden, as previous discussed, the late 1960s were turbulent times. There was widespread discontent among workers, caused by unequal conditions in the labour market, disregard for employee input in the workplace and unrestricted managerial prerogatives. Around 30,000 workers were involved in strikes during this period, resulting in 352,000 working days lost (Thornqvist, 2007). Competitive pressures on businesses to maximize their returns and falling levels of production were affecting growing numbers of workers. The closure of companies, particularly in the manufacturing sector, forced a sizable segment of the labour force into unemployment, including many older workers, people with less qualifications and women. As a result, the number of job seekers had increased to almost 100,000 by 1971 from 31,500 in 1960 (Ulander-Wanman, 2012).

This general social deterioration, which threatened the country's long-term stability, was a condition that collective bargaining could not ameliorate, and the government could not sustain, so political reform was initiated. In December 1969, the Swedish parliament unanimously approved a Social Democratic Private Members' Bill concerning a broad legislative reform to workplace environments, which was to be prepared by a government commission. The Social Democratic government of Olof Palme also appointed a different commission to propose

a new law on unfair dismissal protections in the same year. Both issues had previously been relegated to the bargaining table for the purpose of discussion and negotiation, but no real progress had been made so the government stepped in to remedy the situation. It felt that special measures were needed to improve job security in the labour market (Nycander, 2002). The government commission was not expected to complete its full investigation and present its findings and recommendations until a few years later. In 1971, provisional legislation for the older workforce was introduced with the intention that it would be replaced by a future package of reforms improving job security for the larger working population (Riksdag, 1973).

The government commission completed its investigation with the help of new experts in 1973. During the referral process, a majority within the AMS endorsed the government's proposals, which were partly based on the recommendations of the committee. The chairman of the Labor Court also expressed support for increasing employment protections for permanent workers. In some contract areas and, above all, outside collective agreements, he believed there was a need to increase protections for unfair dismissals and extend notice periods in particular (Riksdag, 1973).

New rules on notice periods were proposed by the investigation committee and government for several reasons. First, prior to 1974, notice rights were based on tenure (i.e., length of continuous service) and this was seen as detrimental to the labour mobility of older workers because they would lose their seniority capital if they changed jobs. So, the 1974 Act sought to base layoffs on the 'last in, first out' principle to provide protection for older workers. However, the seniority capital accumulated by them could not be transferred to a new employer (Heyman & Skedinger, 2016). Second, notices provided ahead of time were one of the most important sources of information for authorities in their quest to ameliorate the problems of laid-

off workers. The notification reports, which would be regularly submitted to the AMS, provided important information to assess labour market conditions and could be used as a basis for the planning of employment policy. Third, even though voluntary agreements had certain advantages when it came to regulating notice periods, they had failed to provide any guarantee that all employees would enjoy employment protections. In fact, there were several documented cases in which companies had failed to comply with prescribed notification times in collective agreements. This was largely because of the absence of sanctions for any breaches. For this reason, the Social Democratic government felt a penalty for the violation of notification rules was necessary. Lastly, the notice periods in collective agreements were not long enough to prepare labour market authorities for large-scale redundancies (Riksdag, 1973).

However, the Director of the SAF, Gunnar Lindstrom, made several criticisms of the government's proposals. He argued they were weighted heavily in favour of workers and paid insufficient attention to the serious problems they would cause firms. One consequence of the legislation, he suggested, was that companies would carefully re-consider the people they wished to hire. The law would therefore have effects contrary to the ones they were intended to achieve, namely to increase employment. Lindstrom pointed to several flaws in the proposed scheme. First, he believed its scope was too extensive, and should exclude those not employed for six months. Second, he rejected the proposed rule that a dismissal, which may be objectively justified, could not take place without the employee being offered another job with the employer. Third, he felt notice periods should be based on the period of employment within the company and that employees should also be obliged to provide longer notice periods to their employers when they intended to leave their jobs. For example, if the employment had lasted less than five years, then he suggested two months' notice for both parties. But where the employment had

lasted five to fourteen years, then he recommended three months' notice for the employee and four months for the employer, and where the employment had lasted fifteen years or more, then three months for the employee and six months for the employer. Fourth, he found it unreasonable that an employer would not be allowed to remove a worker from the workplace in the event of a dismissal for justified reasons. Fifth, the rules on turnaround raised the most serious concerns for him because a company had to be able to use the workforce that was most suitable for the job. However, the proposal did not allow firms to consider skill and suitability in the event of downsizing due to operational restrictions. Sixth, he argued the right to re-employment should apply only for six months and only for employees who have been working for their employer for at least 24 months over the past three years. Seventh, he found the rules regarding employment protection in the event of a dispute were difficult to interpret and unreasonably harsh in the way they penalized employers. Eighth, he suggested when the notice period had expired, the employment relationship should end, and the employee should only be able to receive damages, even if the employer had acted erroneously. Special damages due because the employer refused to follow the court's order to re-instate a dismissed employee were also unreasonable according to Lindstrom (Riksdag, 1973).

In its referral response to the government's proposal, the SAF pointed out that the number of disputes over dismissals were genuinely small in Sweden. It also cited the declaration of the Second Law Committee in 1968, which stated legislation should not be considered until the voluntary path was no longer deemed reasonable. The SAF felt only two reasons could be provided for statutory reform, the fact that all employers were not in collective bargaining arrangements and that unorganized workers would receive the same rights as those organized. However, the SAF suggested these reasons provided an insufficient rationale, and that legislation

would disrupt the relationship between the social partners. It claimed negotiation arrangements at the local and central levels were far superior to the method of allowing courts to intervene in labour market matters, especially when it came to them interpreting the law in connection to economic issues such as operating restrictions, which they would not be qualified to do. The SAF felt the proposals would have disproportionate negative effects on youth as well as small- and medium-sized enterprises (Riksdag, 1973).

Many other employer organizations expressed their opposition to the government's proposals. The Employers Association for Companies in Joint Ownership (SFO) questioned the legality of trying to solve job security issues through far reaching and detailed legislation as it interfered with the relationships of the social partners developed over many years. According to the SFO, the social partners should be given an opportunity to address the relevant issues through negotiations, while using the government's proposal as a framework. Similarly, the Federation of Crafts and Small and Medium-Sized Companies (SHIO) believed the proposals caused serious problems for all businesses, particularly labour-intensive small firms and very large enterprises. The Swedish Industry Association opposed the imposition of re-instatement rules in the event of dismissals. The Building Industry Employers Association believed the government failed to consider the consequences of the proposals on companies in different business categories, including the effects they would have on productivity and operational costs. Other referral bodies that expressed a negative attitude towards the proposals were the Forestry and Land Employers Association, the Banking Institutions Employers Organization and Shipowners Association (Riksdag, 1973).

The referral bodies on the employee side were mostly in favour of the proposals. The LO, for example, welcomed them, while acknowledging that it had over a number of years presented

demands for increased job security at the bargaining table, in hopes that the issue of the right to work and security in employment could be solved by unions themselves. The LO maintained that statutory employment protections alone were not sufficient, and that it was in the interests of workers and society that unions be given opportunities to have a strong influence in workplace matters by building upon the minimum standards proposed by parliament through voluntary means. The TCO believed the proposals satisfied employees and represented an improvement over the 1971 Act, especially in light of rising unemployment risks among salaried employees. The Swedish Association of Professional Associations and National Federation of Government Officials (SACO) believed legislation was necessary to fill gaps in security agreements and that the proposal significantly strengthened job security without interfering in the labour market too much. Other referral bodies also expressed a positive attitude towards the proposals, including a majority within the National Insurance Agency, National Agency for Government Employers, State Employees Union, the Municipal Association, County Council Association, Construction Workers Union, the Transport Workers Union, Farmers Union Association and Agricultural Workers Union (Riksdag, 1973).

Confronted with a clear parliamentary majority in favour of these proposals, employers saw the writing was on the wall, while unions were excited to contemplate the far-reaching implications of institutionalized circumscription of managerial prerogatives for their influence in the workplace. The trade unions would have preferred to retain institutional control over the regulation of job security via collective agreements, but this had been frustrated by employers' resistance up to the 1970s. As a result, dissatisfaction mounted within the labour movement and parliament, leading to demands for far reaching public legislation on job security to fix the country's problems (Emmenegger, 2014).

Overall, Swedish unions had a strong interest in creating, protecting and advancing institutionalized practices of job security. Since union membership is typically skewed towards workers in permanent jobs, securing dismissal protections for open-ended contracts have always been a top priority for unions and privileged by them (over other types of contracts such as temporary employment). These protections allow unions to protect their delegates against dismissals and represent dismissed employees in courts. As representatives of their members' interests, unions view dismissal protections as particularly important because they afford them a role in the administration of hiring and firing practices, a function that offers them considerable power to influence management decisions. Once established via collective agreements or legislation, job security procedures make employers dependent on the cooperation of unions during workforce reductions or unfair dismissals. Employment protections also allow unions to extract concessions from employers in exchange for their cooperation on particular issues (Emmenegger, 2014). Unions can also allow employers to deviate from any job security regulations in exchange for certain benefits. For example, the last in, first out rule can be negotiated away by unions, placing them in a strong bargaining position to demand things like greater redundancy pay or training measures for their members.

While the 1974 Act represented a break with Sweden's long tradition of agreement in preference to legislation, it was intended to complement and strengthen the bargaining position of unions and encourage employers to negotiate with them on matters of job security, especially using deviations from the Act as an incentive for striking agreements. The establishment of statutory employment protections was partly due to the ability of unions to mobilize their members (compulsory power) through their primary power resources (union density), which were not entirely dependent on the state or capital's willingness to grant unions involvement in

decision-making processes. However, unions always needed the cooperation of employers during the Saltsjöbaden period (1938-1970) to maintain their privileged position within the economy as well as state support to pass legislation on job security in the 1970s.

Power oriented theories tend to emphasize the importance of primary power resources because secondary (institutional) power resources are generated and defended using the 'logic of membership' (union density) and are dependent upon the state's approval. But once unions were able to institutionalize their roles in hiring and firing practices through the 1974 Act, these newly derived or secondary institutional power resources became partly independent of union compulsory power, such that they could even increase it by making unionization more attractive or by rewarding actors' veto power in decision-making practices. These institutional power resources can also increase in importance if other sources of union power, particularly the ability to organize and mobilize members for political or industrial ends, declines.

In 1974, the assurance of job security was asserted at the European ILO conference, which emphasized the need for forms of job protection and giving greater impetus to deepening workplace reforms. However, there is no empirical evidence to suggest that the ILO had inspired or influenced Sweden's 1974 Act (ILO, 1981).

3.3.3. Information to assess impact and significance of measures

Swedish employers did not sit idly by after the 1974 Act was implemented. The original Section Five of the Act described temporary employment as work that was defined by a specific period, season or job, or that involved a trainee or a temporary replacement. The different types of temporary arrangements allowed were restricted to prevent abuse by employers. However, by characterizing some of their workers as temporary, employers could bypass limitations and

regulations imposed on their discretion by dismissal legislation. Employers could also renew the contracts of certain employees based on arbitrary reasons. This led to parliament passing legislation in 1976 asking employers to report any job vacancies to the public employment agency. According to the AMS, about 376,047 jobs were reported in 1979. It was revealed that nearly 48 percent of those jobs were categorized as temporary employment. The fact that half of the job vacancies entailed employment relationships that provided minimal employment protections mandated by statutory regulations drew the effectiveness of the 1974 Act into question. Moreover, while the Act improved the working environment for employees and secured unions access to corporate information, it merely codified existing employee participation as practiced in larger firms. The reforms did not challenge managerial prerogatives to a significant extent and ultimately proved to be disappointing for unions (Larson, 1986).

The 1974 Act had different effects on the careers of older workers. The last hired first fired rule reduced job mobility among older workers in two ways. Since the length of tenure protected them from being laid off in times of downsizing, workers had more incentives to remain with their firm, especially older workers. Also, mobility may have been restricted by the fact that the older workforce with shorter but double counted tenure were in a better position in the layoff order than younger workers with more tenure. But the effects of the law on job and employment mobility were weakened by the possibility that employers and unions could deviate from its main principles, meaning the priority listing rule could be set aside via agreements (Emmenegger, 2014).

3.4. Co-determination in Working Life Act of 1976

3.4.1. Description of employment protection score changing measure (1)

The 1976 Co-determination in Working Life Act (SFS 1976: 580), which was proposed on March 18, 1976, and entered into force on January 1, 1977, contained one significant protective measure. It established the employer's duty to negotiate and consult with the trade union on changes in the activities of the enterprise and on major changes affecting the company and labour-management issues (Deakin et al., 2017).

The new law provided employees with greater opportunities to bring about a democratization of working life. Negotiations, be it in the form of a 'primary duty to negotiate' (on behalf of the employer) or at the request of a union, became a normal part of decision-making processes within enterprises, and in the majority of cases, employers were obliged to postpone making or implementing 'important decisions' until they had fulfilled their negotiation duties. Only in exceptional circumstance would failure to do so be excused. The employee side was also given a right to receive copies of documents referred to during negotiations, and furthermore, provided access to more general information related to the development of the firm. Where a union had established a collective agreement relationship with the employer, it would be allowed to request an additional agreement, providing rights of joint regulation over issues of significance related to the functioning of the firm. There was also a 'priority of interpretation rule' whereby in disputes over the interpretation or application of a collective agreement concerning the duty of employees to perform work, the interpretation advanced by the union would generally prevail until the dispute was resolved. Failure to fulfil the duty to negotiate was sanctionable, as with other actions contrary to the new law and/or any breaches of collective

agreement, through damages, and with the union allowed to bring action against the employer (Neal, 1976).

3.4.2. Reasons for policy measure

By the mid-1970s, the attitudes of unions had changed. They became maximalist, abandoning their earlier reservations and making more radical demands. The LO congress of 1976, for example, adopted a programme for gradual collective ownership in the private sector under the term ‘wage earner funds’, a scheme intended to eliminate the free-market capitalist sector in Sweden (Nycander, 2002).

The LO was critical of Article 32 of the SAF’s constitution, which gave the employer the right to “manage and distribute the work … and to dismiss at will,” along with a number of employer prerogatives derived from old rulings of the Labor Court, especially those relating to ‘priority of interpretation.’ Article 32 gained influence through its incorporation in collective agreements, with legally enforceable features, while the provision related to ‘priority of interpretation’ meant that in disputes over the terms in a collective agreement, and the employee’s duty to carry out work under that agreement, the employer’s view concerning the correct interpretation was given priority, and thus imposed until the dispute was resolved. These advantages were viewed by unions as giving employers powers that were not justified in light of modern industrial conditions and societal expectations. The SAF had also sought to contain the growing powers and influence of the LO and TCO in bargaining processes, closely watching their ties with the governing Social Democratic Party (Neal, 1976).

In December 1971, the government commissioned experts to review the laws of the country governing the relations between workers and employers and to submit proposals for legislative measures to give workers’ organizations the support they needed to bring about a

democratization of working life. The proposed laws were intended to apply to the entire labour force. The experts adopted the name ‘Labour Law Committee’ and reported their findings at the beginning of 1975. The committee agreed that employee influence should be obtained primarily through collective agreements. But no such agreement was reached between the social partners regarding the meaning or desired effect of co-determination measures. The committee’s proposal also did not meet union expectations. LO and TCO had over 200,000 members submit their views to the committee. Employers' organizations had argued that all employees should be entitled to co-decision solely in matters of work management. Against this, LO and TCO argued such a limit should not be drawn because opportunities for influence over workforce management issues would be severely limited if workers could not establish co-determination agreements in business management matters as well (Riksdag, 1975/76).

The committee suggested that workers should have primary negotiation rights only at the local level. It did not consider that the law should allow work rules to proceed to central-level negotiations. The committee also felt employers should be exempt from primary bargaining obligations if it caused them or others a substantial risk. Unions felt the issues that fell within the primary negotiation area were so crucial to employees that they needed strong guarantees to be involved in the decision-making process. They also felt they should be given the opportunity to negotiate on their own initiative in matters, which did not fall under the primary negotiation obligation. Unions demanded a right of access to information about the business so that they could adequately exercise the right to negotiate and properly pursue their members' interests. The committee, however, argued employers should be able to refuse to disclose information if they considered it posed a risk to the firm (Riksdag, 1975/76).

Trade unions argued employers should be obliged to inform the local collective bargaining committee about the economic development of the company and the guidelines for the company's personnel policy. They also felt worker representatives should have a right to access their company's books, accounts and other documents, so they could properly assess the firm's financial position and development. In addition, unions wanted employers to assist with such investigative work within reasonable limits. They argued in principle these demands corresponded to the rights contained in a recent agreement between SAF and LO and the Private Employee Cartel. The committee also wanted to remove restrictions on monetary damages of illegal strikes imposed on workers but the LO and TCO opposed this. Moreover, the committee proposed imposing a statutory ban on political union strikes (which had increased considerably in the 1970s), but the LO and TCO felt such matters did not need legal regulation. The committee's proposal to name the new measure 'Law on Negotiations and Collective Agreements' was also rejected by workers on the basis that it failed to reveal the essential purpose of the law. LO and TCO believed it should be called the 'Co-determination Law' (Riksdag, 1975/76).

The unions argued increased power for employees was a means to boost efficiency and production and that no one was in a better position to help with workplace decisions than those who actually performed the work. The LO adopted the language of the labour theory of value, arguing work was the basis for all welfare and that capital was the product of labour's efforts. LO wanted legislation to be made 'spacious' to the needs unions so that it paved the way for continuous development towards ever-increasing employee influence. This would be achieved by placing traditional union methods, collective bargaining through negotiations, at the centre, which would guarantee the free and independent development of the labour movement.

According to LO, the new law should allow unions to more effectively assert their interests vis-à-vis employers rather than regulate the influence of unions in detail (Riksdag, 1975/76). Several referral bodies, including LO, TCO, SACO and county boards of Gävleborg and Västerbotten, also wanted the new law to entail a need for general information activities and the training of union representatives, who would be the enforcers of the new measures. Moreover, they felt employers should bear those expenses (Riksdag, 1975/76).

The SAF argued efficiency in business was the basis for economic progress and good working conditions, serving to preserve and develop corporate democracy within the country. It wanted the law to take into account fundamental efficiency requirements. This entailed, among other things, continuous production regardless of the fact that in specific cases, different opinions might apply to a certain matter or to the interpretation of a particular contractual provision. Rules of influence in favour of employees had to be linked to corresponding rules of responsibility, according to the SAF. The law should also be designed to apply to smaller companies without causing them difficulties. The SAF viewed the legislative proposal hardly compatible with the basic requirements of businesses. It failed to impose corresponding obligations onto unions in return for increasing their influence. The employers' association wanted a balancing factor in cases where a company's interests were damaged as a result of local unions acting on their right to co-influence, so that the employer could claim liability in the form of damages. The SAF viewed as positive the proposal's desire to safeguard collective agreements and develop employee influence on that basis. But it found it objectionable that law makers were jeopardizing the fundamental preconditions for the Swedish labour market system by not restricting union influence more. These views were supported by the Forestry and Landlords Employers

Association, the Bank Institute's Employers Organization and the Swedish Newspaper's Employers Association (Riksdag, 1975/76).

The SFO felt the involvement of employees and their trade unions in corporate management functions would lead to uncertainty regarding their roles and responsibilities within the company. The SFO pointed out that the trend towards increased democracy in the workplace was taking place along several lines in the country. One line of development was the strengthening of employees' influence through extended bargaining and contract law in accordance with the proposal. Another line was represented by the ongoing experimental activities with employee members on company boards and a third seemed to be on the way through investigative initiatives regarding so-called employee funds, which could lead to the employees gaining more influence in a more traditional way via ownership roles. From a more long-term perspective, the SFO felt it was necessary to take a position on whether any of these development lines should take precedence. It argued the best results in corporate democracy would be achieved through company-adapted systems, which would incorporate employee influence at agreed points in the company's normal decision-making process. SFO believed this method of naturally integrating employees and their local trade unions at different levels into the company's regular decision-making system offered significant benefits both in terms of employees' potential for real influence and in terms of company efficiency. Similar views were expressed by the Faculty of Law at Uppsala University (Riksdag, 1975/76).

Many other referral bodies expressed reservations about the proposals as well. The KFO argued the committee failed to seriously consider the economic and administrative effects of such a co-determination law. It felt certain parts of the proposal would have a disruptive impact on production and productivity, which in the long run would cause difficulties for workers'

organizations. The Swedish Post Agency similarly raised questions about the effects of the proposals, for example, risks of increased staffing requirements with consequent increased administrative costs. It argued special solutions would be required for commercial enterprises, particularly the Post Office with its geographically widespread organization. Others felt the proposal was not suitable for small or medium enterprises, which required a high degree of competitiveness and efficiency. According to the Industry Association, the only advantages of small and medium firms were their flexibility and rapid adaptability, which would be lost to a large extent if the bureaucratic and regulated form of cooperation imposed by the proposal was introduced. Sweden's Merchant Association and Employers Association of Insurance Companies expressed similar views. However, several employee representatives from the Workers Union, Farmers Union and Association of Real Estate Employees argued the development of working life democratization had to be similar in both large and small companies (Riksdag, 1975/76).

Others argued there was a risk of conflict between the employee's interest in influence and other stakeholders' claims to be able to set the direction and objectives of certain activities, even outside of the public sector. This issue of greater involvement of employees and unions in corporate management functions and the transformation of the traditional roles and responsibilities of the contractual parties was raised by the District Court of Stockholm, the County Administrative Board of Älvsborg County, KFO, SFO, LO and SACO. Examples of areas where such conflicts of interest would likely arise included the cooperatives, public sector companies, mass media and community-owned firms that were run in joint-stock form (Riksdag, 1975/76).

The appended minority reports by trade union members of the Labour Law Committee wanted a fundamental shift in the balance of power in industrial relations. The Municipal

Association, for example, argued the committee's proposal did not do enough to change the imbalance in the power structure between workers and employers. The Port Workers Union felt the contents of the proposal affirmed the employer's power. The minority view was eventually adopted by the government as the basis for its actual bill. This incited political controversy in parliament, which was evenly split between the governing Social Democratic/Communist coalition and the opposition, with tied votes resolved via the drawing of lots. However, there was all-party support for labour law reform, although seven issues created a tied result, after which the opposition won six of the lotteries. After a long debate, another two government motions were lost because tired members were pushing the wrong voting buttons (Neal, 1976).

Overall, there was widespread consensus in Sweden for increased job security in the mid-1970s as a result of exogenous events that temporarily shifted the power balance in favour of unions and their political allies. The left was in a particularly strong position and employers could at best only hope to forestall or water down statutory protections.

Even the Moderate Party was not in favour of a totally 'hands off' approach. The communist parties had agitated against the Social Democratic compromise by supporting wildcat strikes, while in the political arena, the Liberal People's Party, the Centre Party and the TCO took up the issue of industrial democracy and began radicalizing their demands. The Social Democratic Party and the LO acted strategically to neutralize both the communist political threat and avoid being overtaken by centrist parties on left issues (Emmenegger, 2014). They used the presence of a majority in parliament in favour of more job security to pass the second most important employment protection law in Sweden's history. At the same time, legislation was introduced granting a permanent trade union right to place nominees on boards of directors with 25 or more employees, and a law allowing the government to nominate a board member to a limited number

of firms, which operated on a large scale or were owned by parent companies of Swedish origin. The new Joint Regulation Act was part of the new era of industrial relations, and ahead of similar developments in most industrial countries (Neal, 1976).

The 1976 Act enhanced workplace cooperation but did not introduce council systems similar to the German ones. Swedish unions considered German style works councils to be appropriate for countries with weaker labour movements because they believed legal intervention served to discourage unions from developing their own co-determination procedures in the long run. They preferred the democratization of the workplace to happen via the traditional voluntary route. The Acts of 1976 and 1974 were similar to the state-supported, union-led unemployment funds of Belgium's Ghent system insofar as they were designed to help unions build up and strengthen their membership by facilitating recruitment (Emmenegger, 2014). But they were also designed to expand the scope of collective bargaining, promote a more advantageous and stimulating climate for discussing all aspects of the employment relationship and help reach collective agreements by providing more legal possibilities for derogation to benefit unions and employees. Theoretical approaches in the literature sometimes underappreciate this complex interplay in Sweden between legislation and collective bargaining as a continuous process of delegating regulatory functions from the statute books to agreements. Thus, while legislation and agreements are two different modes of regulation, they can be complementary instruments to fill voids in workplace governance (Howe, 2017). In sum, Swedish labour law was based on a centralized collective bargaining system, which gave unions better control over their rank and file and increased their bargaining power until the late 1970s. Despite a significant number of statutory reforms, collective agreements remained a well-integrated component of Sweden's economic and political system, which strongly emphasized

collective solutions based on agreements between the social partners, clear division of powers and flexible procedural tools to adapt to changes.

By 1976, Sweden had made 10 job security enhancing policies and no deregulatory reforms. This means 83 percent of Sweden's protective measures (10 out of 12) were implemented before the neoliberal turn of the 1980s, which corroborates power oriented and expansion-retrenchment theories that associate the postwar period with a high proportion of socially progressive policy changes. The 1970s produced a short lived Social Democratic offensive in industrial policy and economic democracy that represented a departure from the corporatism of the postwar period and the historical compromise between capital and labour. This period of radicalization, however, opened the door to monetarist economic ideas and neoliberal thought, causing a political shift decisively to the right in the 1980s when the international rise of neoliberalism became truly hegemonic. What was intended as a step further on the social democratic road to socialism in the 1970s would end up as a recognition and triumph of free market capitalism in the decades thereafter. This interesting turn of events, with employers regaining strength due in part to a changing economic environment, has also been aptly captured by the literature (Teeple, 2000; Gyln, 2007; Streeck, 2009).

3.4.3. Information to assess impact and significance of measure

The 1976 Act failed to specify legal sanctions in case of noncompliance by employers. It only required employers to consult local unions on various issues, but not to reach an agreement with them. As a result, there was disagreement regarding its effectiveness. Some viewed it as challenging capitalist relations of production while others saw the unions as unable to change employers' decisions inside workplaces. Employers were also able to curb the influence of the new law by obstructing decentralized negotiations (Emmenegger, 2014). Still, it should be noted

that even with the passing of the Act, the most important rights and obligations of employers and unions were established and maintained through voluntary agreements rather than legal codes (Nycander, 2002). The implementation of this Act via collective agreements took until 1978 in the public sector and 1982 in the private sector to complete.

3.5. Employment Protection Act of 1982

3.5.1. Description of employment protection score changing measures (2)

The 1982 Employment Protection Act (SFS 1982: 80) was adopted on November 12, 1981, and entered into force on April 1, 1982. It contained two significant deregulatory measures (Deakin et al., 2017). First, it introduced a probation period of six months to qualify for dismissal protection. Prior to 1982, there was no qualifying period. Second, it relaxed the law around the use of fixed-term contracts. Under the 1974 unjust dismissal law, fixed-term contracts were only allowed for specific reasons, including a temporary peak in the employer's workload (but not exceeding a total of six months during a two-year period). The 1982 law applied to all employees, in the private and public sectors, from the first day of employment. Small firms were not exempted (Ronnmar, 2010). Employers, however, were able to categorize as temporary those looking for holiday jobs (mostly students), waiting to start compulsory military service, undergoing probationary employment (up to six months), at obligatory retirement age (or sixty-five years if no age was set) and required to compensate for temporary accumulations of work. The employer could determine whether a temporary overload of work existed and when it had ended (Larson, 1986).

3.5.2. Reasons for policy measures

The strength of the labour movement had declined in the second half of the 1970s. A non-socialist coalition won the 1976 election after 40 years of Social Democratic rule. The

Centre-right Party won the popular vote by championing an anti-nuclear energy position. It formed a coalition with the Liberal People's Party and the Conservative Moderate Party. However, the coalition was politically divided. It was also conscious that its victory had little to do with popular dissatisfaction over past reforms pushed through by the Social Democrats. For this reason, it spent considerable energy during its campaign denying that it would roll back the welfare state and labour rights. By 1982, economic conditions had changed, and Swedish employers had regained their power and launched a counterattack, which ultimately led to the decentralization of the Swedish model of labour relations. Industry was increasingly investing abroad because of perceived unfriendly business policies at home, resulting in underinvestment and lagging GDP, including 1.2 percent negative growth in the third quarter of 1982. The government responded to this capital flight with more market-oriented measures. Employers had also been demanding greater labour market flexibility, so the Centre-right coalition carried out a minor reform of the 1974 Act. The 1982 law covered the same issues as its predecessor, but it was largely designed to disempower union influence over dismissals. Employers had been lobbying to reform the system of priority listing provided by the 1974 law, but the government was too concerned about reforming such a crucial statutory rule. Instead, it opted to reform the regulation of temporary employment, which strengthened the position of employers (Emmenegger, 2014).

A parliamentary employment protection committee was established in 1977 to conduct a general review of existing job security regulations. It was also tasked with examining whether rules on the possibility of entering into collective agreements on probationary or temporary employment had worked satisfactorily and if this was not the case, to consider legislative changes. Another key issue for the committee was the protection of employment in lay off

situations and other cases of downsizing. It would also review co-ordination, co-determination and dismissal procedures and damages (Riksdag, 1981/82).

From the employer side, particularly associations and individuals representing small and medium enterprises, there was an urgent need for longer probation periods and more temporary employment. These firms argued the collective agreement route had failed to offer a solution after the 1974 law entered into force. Moreover, many smaller companies did not have agreements so they could not try and hire a temporary workforce. Where agreements existed, contractual provisions were often too restrictive according to employers. Municipalities had also faced similar challenges. Another criticism concerned the rules on turnaround in the event of termination. When trying to save a business in crisis in the interests of both the company and its employees through various restructuring measures, employers argued it was necessary to retain certain workers, for example, specialists in a particular area or highly qualified and efficient employees in general, even if they had shorter working hours than others. The opportunities available to achieve this, through negotiations and agreements with workers' organizations, proved unconstructive to employer interests (Riksdag, 1981/82).

Unions argued opportunities to abuse employment contracts increased exponentially with the use of time-limited agreements. They viewed the proposals as an attack on employment protections. They conceded there may be grounds for allowing probationary employment in certain areas or under certain conditions, but the law should not allow employers a general opportunity to choose and revoke employees. The risks of abuse and circumvention of the law were too obvious, according to employee representatives. Through the solution of allowing the parties in the various areas of the labour market to reach collective agreements on different matters, the unions felt they had been given the opportunity to gain insight and control over

companies' employment and personnel policies. They argued there was no evidence to show that this solution had not worked before deciding to make a change under the assumption that statutory employment protections were failing for the overwhelming number of employees (Riksdag, 1981/82).

When the committee convened, its members were divided in three different directions. Five members felt no change should be made to the current rules. The other seven advocated an amendment to create more space for probation and temporary employment. Of those seven, four wanted to allow probationary employment for a maximum of three months and under certain conditions, while permitting temporary employment for a maximum of three months. The remaining three members felt the law should allow fixed-term employment for a maximum of six months without any conditions (Riksdag, 1981/82).

Moreover, the most extensive and developed survey, which was conducted as part of the committee's work on the collective agreement solutions that existed at the time, and the actual application of the rules and companies' views on the importance of employment protection policy, failed to produce clear and unequivocal results. The government, therefore, felt it necessary to consider independent research, including a report by the ILO, which found the Swedish Employment Protection Act, after seven years of practical application, was far more protective – interpreted as 'restrictive' by the government – than the corresponding laws of other countries (ILO, 1981 cited in Riksdag, 1981/82).

The committee also estimated that around 30 percent of the private sector workplaces that employed workers lacked collective agreements and that the corresponding figure in the field of civil servants was about 50 percent in 1977. Within the committee, therefore, two different

solutions were devised as alternatives to employee's and unions' demands not to change the 1974 Act. According to one, employment contracts would be allowed if the probationary period was not more than three months and if one of two conditions were otherwise met: the work required special qualifications, which the employee could not show at the time of employment or because of medical or social reasons it was uncertain whether the worker could perform well. Moreover, temporary contracts for a certain period would be allowed if there was a temporary work congestion expected to last no more than three months. The second alternative was that fixed-term contracts would be permitted for no more than six months regardless of the circumstances. The clear difference between the two solutions was the time limit of three months and six months. The government felt the first solution allowed for too short a period and the conditions for temporary employment were too indefinite and likely to lead to disputes. They also excluded certain cases in which temporary employment could be justified. On the other hand, the government felt the second solution did not go far enough in limiting the justifications for the use of temporary employment (Riksdag, 1981/82).

The first alternative was supported by a majority within two municipal unions as well as the State Labor Market Committee, State Employers Agency, Labor Court and State Industrial Works Agency. The second alternative was supported by state employers, minorities within two unions, the National Telecom Agency and the Domain Office. The Swedish Post Office argued sections 5 and 6 of the 1974 Act should not be changed (Riksdag, 1981/82).

Several referral bodies offered their opinions. Many employer associations, including the SAF, SHIO and Enterprise Association were satisfied with the proposals to relax employment protections, although some believed they did not go far enough. The SAF, Newspapers

Employers Association, Cooperatives Negotiating Organization, SHIO, Business Associations and Industry Association recommended a general right to employ fixed-term workers for a maximum of six months. The State Industrial Works Agency considered opportunities for probationary employment could increase mobility in the labour market, thereby increasing opportunities for workers. However, the State Office did not believe an increased number of fixed-term contracts would improve recruitment or mobility in the labour market in a positive way. Similarly, LO, TCO and SACO thought the amendments amounted to a deterioration of employment protections for workers. Several LO unions questioned the need for a review and considered there was no real justification for the criticisms from employers. Similar views were expressed by SACO and Factory Workers Union. LO argued the investigations conducted by the committee failed to provide evidence that youth unemployment had its basis in the absence of a law permitting probationary periods. Moreover, LO pointed out that adjustments to prevailing industrial conditions had been made largely by collective agreements, which together covered the most predominant section of the labour market (Riksdag, 1981/82).

For its part, the Centre-right coalition government made reference to the surveys carried out by the Stockholm Chamber of Commerce in January 1978 regarding youth unemployment in the Stockholm region, and by Lund University at the beginning of 1978 on behalf of the Swedish Enterprise Association, showing that the lack of opportunities for probation and temporary employment were perceived by companies as inhibiting their recruitment. Along with factors such as poor economic conditions, credit difficulties and high new employee salaries, small companies had experienced little or no expansion. Their competitive advantages, mainly the flexibility and speed of making decisions, had been relatively reduced. Orders and production had ended up abroad instead of with Swedish subcontractors, and small companies had been

forced to focus on safe and stable production rather than expansion. The government pointed out that collective bargaining opportunities for probationary and temporary employment were limited because they required advanced approval from local unions and because of union 'propaganda' against both types of employment, which made negotiations difficult. State employers generally designed their referral responses on the basis that six months be allowed for fixed-term employment and three months for probationary employment. The National Board of the Disabled and the Central Committee of the Disabled had both rejected the proposal to reform the Employment Protection Act due to the growing difficulties of the differently abled to obtain employment in the open labour market and the lack of success in efforts to reverse this trend with available funds and policies, including the Promotion Act (Riksdag, 1981/82).

For reasons discussed earlier, the Centre-right coalition was not in a position to change the system of priority listing. Employers had lobbied for deregulation because statutory rules prevented them from firing any employees of their choice for economic reasons. Firms could only deviate from the rules if unions agreed, and they would only do that in exchange for concessions. This statutory regulation had tipped the balance of power in favour of unions at the bargaining table considerably. Instead, the government chose to relax restrictions on the use of temporary contracts. Similar to the priority listing rule, which had placed employers in a disadvantaged bargaining position, the 1982 measure permitted the use of fixed-term contracts that were previously the subject of negotiations and collective agreements. This left unions in a slightly more difficult bargaining position than before. Since employment protections for permanent workers were strong and aggressively defended by unions and Social Democrats, the only remaining course of deregulatory action was relaxing restrictions on time-limited contracts, which would decrease employers' incentives to hire indefinitely or convert fixed-term contracts

into permanent ones and increase their incentives to hire temporarily because it was easier and cheaper.

The parliamentary record clearly shows unions were vocal opponents of the government's proposal to increase flexibility at the margins of the labour force. But it seems probable that when unions are under pressure to show compromise, they are more likely to assent to the deregulation of temporary employment than open-ended contracts. After all, they could not realistically oppose all demands for more labour market flexibility, especially during a time when the tables had turned, and capital was in the driver's seat. Doing so would threaten their privileged position in the formulation of policy, their institutional involvement in the administration of dismissals and the interests of their core membership in permanent contracts. Complete opposition to flexibility measures would place unions at the centre of attention, and if they were perceived as the main obstacle to reform, then political attacks could target their role before refocusing on other policies, as happened in the UK. Indeed, Swedish unions were well aware of Thatcher's attacks on unions and job security rights in Britain, where events led to labour movements across Western Europe to conclude that unions should compromise if they did not wish to share the same fate as their British counterparts. Given this risk aversion, unions chose a more cooperative strategy in light of a shifting balance of power relations in order to preserve their central role (especially in neo-corporatist countries where they are afforded more influence). Such a compromise strategy could also have the advantage of being able to influence the direction of change. Hence, the 'least-worst' option of unions became compromise by allowing more flexible provisions for temporary employment while maintaining stronger protections for labour market insiders, which in the long-run would contribute to the development of a two-tier labour market in Sweden. This finding presents some problems for the

power resources thesis since despite having an exceptionally powerful Social Democratic Party and high levels of union density, the deregulation of temporary employment by a minority coalition government was not averted. Part of the issue is that the power resources thesis overemphasizes cross-national differences in power resources, while neglecting the importance of temporal differences in power resources. It also fails to conceive of job security regulations as independent institutional power resources. The shift that took place in Sweden starting in the 1980s forced unions to make concessions on employment protections in order to preserve their long-term positions of power, particularly their institutional role in regulating open-ended contracts.

Moreover, those on temporary contracts are considered labour market outsiders while labour market insiders constitute the main constituency of the labour movement and the Social Democratic Party. Outsiders do not compete with insiders for jobs, nor can they replace them. They do not work in the same sectors, nor have the same skills. Sometimes they even lack citizenship. Socio-economically they tend to be very heterogenous. The implication is that outsiders are unlikely to undermine the privileged position of insiders, the core of the union movement. They also tend to be less likely to join unions, vote in elections or be politically active, which means insiders get to exercise a disproportionate influence on labour market policymaking. For these reasons, deregulation of temporary employment relationships has been easier to achieve in Sweden (Emmenegger, 2014). Power resources and retrenchment theories correctly predict Sweden's labour movement and Social Democratic Party coming under increasing pressure from employers and the political opposition to accept greater levels of labour market flexibility starting in the 1980s. But they cannot adequately explain why the less vital area of temporary employment became the prime target of deregulatory efforts, leaving

protections for permanent contracts untouched. Consideration of the organizational interests of unions in protecting job security for their core members in open-ended contracts, which constitutes an independent institutional power resources for the labour movement, helps fill this explanatory gap. Job security protections for permanent employees (who also happen to be the core constituency of left parties as discussed below) serve the organizational and representational interests of unions. For example, they allow workers to organize at the workplace level, create incentives for employees secure in their employment position to join a trade union, shift the balance of power inside firms in favour of workers, increase the role of unions in management decisions, create a wage penalty for the unemployed helping to insulate unions from competition in wage bargaining, facilitate the mobilization of working class votes during elections and provide opportunities for unions to influence legislation (Emmenegger, 2014). As such, job security regulations can be viewed as an independent source of institutional power because they offer unions the opportunity to exert influence and extract concessions independent of their primary power resources. The above theories neglect to consider this because they are too concerned with compulsory power (union density) or deregulation in general without paying attention to its specific forms.

In Sweden, the Social Democratic Party receives a large share of votes from manual wage-earners in secure employment who benefit from job security protections for open-ended contracts. In 1964, 72 percent of blue-collar workers voted for the Social Democrats while 66 percent voted for them in 1979 (Korpi, 1983). While during this period the Social Democratic Party increased its share of white-collar votes from 8 percent to 20 percent at the expense of blue-collar votes, the trade-off was not steep. The left's hold on the blue-collar vote has never been seriously challenged in Sweden. Moreover, unions affiliated with the LO have played a

crucial role in mobilizing the blue-collar vote for the Social Democratic Party, so there is a definite correlation between union membership and left party voting among the blue-collar strata (Pontusson, 1990). By virtue of their reliance on the blue-collar vote, the Social Democrats must ensure their policies enhance the organizational resources of their economic allies (unions) and satisfy their base of political support in permanent jobs. The varieties framework has little or no predictive power when it comes to understanding job security deregulation (whether for temporary or permanent contracts) because it is at odds with the empirical fact that employers and Centre-right governments were vocal advocates of retrenching employment protections. This is partly because non-left parties are obliged to oppose Social Democratic initiatives to promote the interests of their core constituencies (Pontusson, 1990)

3.5.3. Information to assess impact and significance of measures

When the Social Democrats regained power in 1982, they did not repeal the 1982 Act, despite their campaign promise to do so. One of the reasons for this was because the re-regulation of temporary employment was achieved largely through collective agreements, making legislation unnecessary. Also, there were more pressing issues in other policy areas to deal with. However, a 1984 amendment of the 1974 Act allowed regional employment boards to prohibit employers from dismissing employees 57.5 years and over in cases where employees were fired under collective agreements that deviated from legal rules on priority listing in the event of dismissals for economic reasons. Employers and unions usually agreed on such deviations from the seniority rule because older employees could count on unemployment benefits until 60 years of age and early retirement benefits afterwards (Emmenegger, 2014).

Employers had grown increasingly hostile towards the policies of Social Democrats during the 1970s and 1980s, particularly co-determination and wage earner funds because they

threatened managerial prerogatives and private ownership. They were also critical of centralized wage bargaining for not bringing wages under control. All these policies triggered a reaction from the corporate sector that was leading to the breakdown of the traditional Swedish model. By the end of the 1980s, employers had staved off wage earner funds, weakened co-determination in the workplace and decentralized wage bargaining despite opposition from Social Democrats and unions. These developments reflected a wider European trend towards restructuring and retrenchment of labour market laws. Prevailing economic conditions and employer lobbying significantly impacted political competition in Sweden. They reunited the Centre-right against unions, while creating divisions between different sections of the labour movement. Some unions became divided on the issue of wage earner funds, while the largest private union supported employer demands for decentralized wage bargaining. The Social Democrats became increasingly aware of the fragility of the old class compromise and by the end of the 1980s were increasingly paralyzed to present a strong common front with their traditional allies against employers and other parties (Emmenegger, 2014).

3.6. The 1993 Law Amending the 1982 Employment Protection Act

3.6.1. Description of employment protection score changing measure (1)

The 1993 Act on Private Job Placement and Hiring out of Labour (SFS 1993: 440), which was issued on May 27, 1993, and entered into force on July 1, 1993, contained one important deregulatory measure. It removed controls on private employment agencies, which were prohibited up to 1992, except for musicians and theatrical performers working abroad and for specific head-hunting (Deakin et al., 2017).

The 1993 Act referred to contracted-out labour as the process whereby one supplier of personnel places employees in the hands of an employer for the purpose of performing work at a workplace at an agreed price. Section 6 of the Act stated that a job seeker or an employee should

not be charged any fees for services provided by an employment exchange agency and that violations would result in penal sanctions. Importantly, the new Act also did not stipulate restriction requirements for temporary work agencies or allow a public body to monitor their activities (Eklund, 2002).

3.6.2. Reasons for policy measure

The Social Democrats lost the election in 1991 and were replaced by a Centre-right coalition government that was very different from the previous one that ruled from 1976 to 1982. While the previous Centre-right government was careful not to alienate Social Democratic voters, this new one chose to break from its earlier stance. It began a large supply side programme to stimulate new economic sectors with government support for risk capital formation, scaling back unemployment benefits and reforming co-determination in the process. It appointed a commission in 1992 with the goal of developing proposals for a new economic plan. The commission was chaired by an economist, Assar Lindbeck, who had written about the insider-outsider theory of employment and unemployment. He recommended several policies to increase flexibility in the labour market. Among many proposals, his commission promoted the deregulation of temporary employment, the restriction of the right to reemployment and the restructuring of the system of priority listing in the event of dismissals for economic reasons. However, more moderate changes were adopted by the government in the final law. They were not employment protection score changing measures, but nevertheless allowed employers to exempt two employees from the last in first out rule. Additionally, the maximum duration of fixed-term contracts in case of probationary periods and temporary peaks in employers' workload was increased from six to twelve months. Employers and the Moderate Party wanted to adopt a more sweeping reform, but the government went with a more modest approach because the Minister of Labour at the time was more pragmatic with respect to labour market policy,

seeking reforms that would benefit the Centre Party's constituency of small companies, such as the exemption of the two employees rule. Also, the Minister was concerned about the reaction of the unions if it did away with the last in first out principle. More flexible regulations were implemented for temporary work agencies, but it is important to remember that it was the Social Democratic government that began the liberalization process of employment agencies in 1991 (Emmenegger, 2014).

The partial deregulation of the hiring out of labour in Sweden in 1991 was seen largely as a corrective solution to the problems caused by previous legislation dating back to 1942. An old Swedish Act of 1935 on the Ban of Private Employment Exchange, amended in 1942 to prevent impresario practices in entertainment, viewed the hiring out of labour as constituting employment exchange. After several attempts to reform the system in the 1960s and 1970s, and under pressure from the decision of the European Court of Justice to comply with the decision of the *Hofner and Elser v. Macrotron GmbH* case, the Social Democratic government finally lifted the prohibition in 1991. Hofner and Elser provided recruitment services for Macrotron in Germany and sued for their fee, but the latter refused to pay, arguing that another entity (Bundesanstalt fur Arbeit) had a legal monopoly over the provision of such services and the contract with Hofner and Elser was therefore void as it violated that monopoly. Ultimately the European Court of Justice decided the monopoly violated Community Law. The 1991 law made only minor changes to the ban on for-profit employment services but clearly distinguished between private employment services and temporary work agencies. Temporary work agencies were legal but subject to restrictions, the employee could be hired out to a client employer for work that arose due to a temporary need and only for a maximum of four months (Emmenegger, 2014).

A further step was taken in 1993 by the Centre-right government when the Swedish state monopoly of employment exchange was eliminated in light of the Lindbeck Commission's suggestion that labour market flexibility and competition should not be discouraged. The 1993 changes abolished all restrictions on the content of work and the duration of assignment. Private employment agencies could operate in the free market and make profits. This was important because some employers used temporary employment agencies as a cheaper recruitment tool to find permanent employees as it allowed them to avoid recruitment costs and certain responsibilities (Eklund, 2002).

The ILO convention on fee charging employment agencies (No. 96), which Sweden had ratified in 1950 and enforced in 1951, was denounced by the Centre-right government in June 1992 and ceased to apply one year later. Before then, a committee was set up in Sweden to look into the matter. It found ILO member states were increasingly not complying with the provisions of the convention. However, the LO and TCO were against any decision to terminate the international agreement, arguing it would impair the functioning of the labour market and the effectiveness of labour measures. They claimed for-profit employment agencies would segregate job seekers, especially in the case of any deteriorating employment situation, and in the long term affect the conditions necessary to maintain certain requirements in unemployment insurance. If the government questioned the feasibility of the convention, they argued, then it ought to request a revision of the convention instead of pulling out of it which would hurt Sweden's credibility and reputation (Riksdag, 1992/93).

However, the ILO's Board of Directors decided not to put the issue of employment agencies on the agenda of the ILO conference planned for 1993, opting to list two other topics instead (part-time work and technical assistance activities), which led the Swedish government to

believe it would not lose credibility if it chose to terminate the convention instead of requesting a review of it. An ILO report reviewing the application of the convention in 25 member states also found throughout the 1950s and 1960s, the majority of countries were in favour of the principle of employment services monopoly, but the years thereafter were marked by increasing deviations from that principle. The ILO report also noted a judgment by the European Court of Justice in 1991, which ruled that the national employment agency monopoly in Germany, as far as executive recruitment was concerned, was not compatible with the competition rules of the Rome Treaty and noted that this verdict was likely to accelerate the softening or even abolition of the principle of employment agency monopoly. The report also noted many countries showed a trend towards declining dominance of public services and a gradual development of private services. The committee set up in Sweden pointed out that Convention 96 could be terminated within a one year period at the end of consecutive ten year periods, calculated from the date the convention first entered into force, which meant the convention had to be terminated by Sweden during the period from 18 July 1991 to 17 July 1992, otherwise, Sweden was bound for another ten-year period. When the ILO Convention No. 96 was replaced by Convention No. 181 on Private Employment Agencies (and Recommendation No. 188) in 2001, Sweden did not ratify it, even though there were no legal obstacles to doing so (Riksdag, 1992/93).

Justifying the 1993 Act, the government noted two main reasons for the initial ban on private employment services. First, employers had abused employment services and authorities found it difficult to rectify them in the past. Second, the government had come to carry an increasingly extensive, regulatory and supportive function to gain more in-depth knowledge of the labour market, and it was considered desirable to gather mediation activities in as few hands as possible. The government pointed to the emergence of strong unions and comprehensive

labour legislation as sufficient guarantees against the maladministration of the kinds that existed in the past when the ban was adopted. With rising unemployment, employment service efforts were also viewed as becoming even more important. For the government, then, there was a general demand for differentiated services, and in the labour market, as in other public areas, increased diversity and competition meant greater flexibility and adaptability, which would contribute to an overall better functioning of the labour market. The Left Party and the Social Democratic Party, however, both rejected the government's proposal to terminate the convention. The Social Democrats argued the government was wrong to adopt a new law before gaining experience from the 1991 Act, which should have been given some time before changes were considered. The Left Party suggested the government's rationale was primarily ideological and that there were no factual reasons behind the proposals. Both parties unsuccessfully called for a rejection of the government's bill in their response motions (Riksdag, 1992/93).

While Sweden only became a member of the EU in 1995, the decision of the European Court of Justice in 1991 regarding the monopoly of public employment agencies was one of the reasons for the 1993 Act. Another similar European Court decision followed in 1997 (*Job Centre coop. Arl*). In both judgements, the Court argued a public placement office could be categorized as an operation for the purpose of Community competition rules. An operation with a legal monopoly could be viewed as maintaining a dominant position via the interpretation of Article 86 in the EC Treaty. The European Court had established in case law the precedence of European Community law over national law (Eklund, 2002). This became one of the rare instances of (deregulatory) reform in Sweden as a result of a ruling by an international policy body. While the power resources and retrenchment literature tend to overestimate the deregulatory influence of European bodies on national labour law systems, they have raised

awareness around the challenges that unions face in operating within changing national labour markets, which can be structured by European requirements for more flexibility and the approximation of legal standards across member states. This dynamic creates difficulties for unions as the example of the 1993 Act demonstrates, but it can also open opportunities for them to cooperate transnationally in order to come up with solutions to their common problems. However, such campaigns have been slow to develop and difficult to successfully carry out.

By and large unions were opposed to temporary work, but they were forced to adapt to it. They tried to influence the sector by concluding agreements with employers in order to obtain as good working conditions as possible for temporary employees at the same level as their core membership. They even lobbied for a government working group to survey working conditions for hired-out workers. The working group was established in 2002 and tasked with creating a list of problems in that sector with input from unions and employers (Riksdag, 2020). Because unions and their political allies tend to prioritize the interests of their main constituencies on open-ended contracts, deregulation advocates such as the Centre-right or employers turn their attention to temporary employment as a second-best strategy. Facing significant pressure to consent to some flexibility, the political left and unions are forced to accept numerical flexibility imposed on labour market outsiders on atypical contracts. However, this does not mean that deregulation or the flexibilization of temporary work are driven by unions and their allies, or that they sit idly by while their opponents relax worker protections. As the evidence shows, both groups tried to oppose the deregulation of fixed-term contracts, temporary work agencies and other forms of precarious work during parliamentary debates in hopes of forestalling such reforms or influencing their direction. For example, despite being unable to prevent enactment of deregulatory proposals related to temporary work in 1993, unions tried to re-regulate the sector

by lobbying the government for a working group in 2002. Similar developments were happening at the European Community level. The partial monitoring and re-regulation of this sector through the actions of unions in cooperation with employers and the government also explains why further protective legislation (repealing the 1993 Act or re-regulating temporary work agencies) was not required.

3.6.3. Information to assess impact and significance of measure

Although there were no restrictions placed on the ability of private temporary work agencies to employ workers on fixed-term contracts, most agencies hired individuals on open-ended contracts. This was because the activities of work agencies were strictly regulated by collective agreements, which limited their ability to resort to fixed-term contracts and obliged them to provide basic monthly wages independent of assignments (Emmenegger, 2014). This was one of the reasons why the Social Democrats could liberalize hiring procedures without incurring the wrath of unions and why the new Social Democratic government did not repeal the 1993 measure upon assuming office. Generally speaking, there is no tradition in the country's labour history to legislate where the social partners can provide a voluntary solution.

The abolition of the ban on private employment services in 1993 (which facilitated the activities of staffing companies) contributed to the relatively large gap in the legal regulation between fixed-term and permanent employment in Sweden. However, despite its rapid growth, temporary agency work remains a small phenomenon in Sweden's labour market. Agency workers account for only 1.6 percent of all employees. For the most part, longer contract periods are still the norm and almost all assignments last a month or longer. Nearly 70 percent of all assignments are longer than three months. Still, 50 percent of all Swedish workplaces with a minimum of 100 employees use agency workers. Working conditions in the agency industry are

regulated through collective agreements as in other sectors. For example, the 2016 collective agreement between Swedish Staffing Agencies and the 14 blue collar unions of LO allowed for an hourly wage that corresponded to the average hourly wage for comparable groups at the client firm. It also provided the right to pay between assignments for temporary agency workers, with the compensation payment approximately 80 to 90 percent of the regular salary. It is estimated that union density is significantly lower in the temporary staffing industry and that it is difficult to organize activities since members are assigned to different tasks at various workplaces. The number of workers in the temporary agency industry rose from 5,000 in 1994 to 76,000 in 2016. While agency hiring is a marginal phenomenon, the effects of the industry on the labour market should not be underestimated, as work organization in client firms is typically adjusted in response to the use of agency employees, meaning the use of a small number of such workers affects many more employees. Conclusions drawn from surveys and studies also led to discussions about stress and demanding work environments for ordinary workers performing the same job as temporary employees, which was one of the reasons for high absenteeism (due to illness) among regular workers. Streamlining processes led to many low-skilled service sector jobs being outsourced. Those permanent workers who remained were expected to carry out administrative and other tasks alongside their regular assignments. By comparison, temporary workers are only expected to perform tasks for which they were trained, thus the extent of their engagement in workplaces is more restricted. Research has also indicated that many temporary employees liked their job, but their average employment lasted only for a year, mainly because of economic insecurity, although wage security had increased significantly. For instance, in 1996 nearly 35 percent of temporary employees had some form of wage guarantee, which was typically 50 percent of normal pay. In 1998, the majority had 75 percent of normal pay when not

hired out and in the 2000s, a majority had full or almost full pay whether or not they were hired out (Riksdag, 2020).

3.7. The 1993 Law Amending the 1982 Employment Protection Act

3.7.1. Description of employment protection score changing measure (1)

The 1993 Law Amending the 1982 Employment Protection Act (SFS 1993: 1496), which was issued on December 16, 1993, and entered into force on January 1, 1994, contained one important deregulatory measure. It increased the minimum qualifying period of service for a normal case of unjust dismissal from six months to twelve months (Deakin et al., 2017).

3.7.2. Reasons for policy measure

The committee set up to investigate the Centre-right government's proposal to increase the probationary period suggested that it should remain at six months, with the possibility of the employer and employee agreeing on the extension of the probationary period to a maximum of nine months if there were any special circumstances. Several referral bodies argued special reasons should not be required for an extension of the qualifying period, including Malmo District Court, Samhall AB (one of Sweden's largest service providers), the Confederation of Social Insurance Offices and the Swedish Bar Association. A few bodies argued for a longer trial period, including the Stockholm District Court, the SAF and the Industry Association. The Labor Court believed the proposed regulation was overly complicated and recommended setting the maximum permitted trial period at nine months without the possibility of automatic renewal. The AMS, Swedish Enterprise Agency and Swedish Prison and Probation Board proposed a period of twelve months. However, the LO, SACO, and Disability Association's Co-Operative Body saw no need for a longer probationary period than six months and therefore rejected the proposal. The

SAC believed the opportunity for probation should be abolished or limited to a maximum of three months (Riksdag, 1993/94).

The Centre-right government, however, argued a probationary period gave the employer an opportunity to assess the performance of the employee without immediately assuming the responsibility that a permanent position entailed. At the same time, it gave the employee an opportunity to assess the job. However, the probationary period had to be long enough to provide sufficient opportunity for such assessments. The government felt the committee's proposals to qualify longer probation periods with special circumstances were not easy to apply because they would have to be tried in courts and whether parties had the right to conclude such agreements would likely give rise to disputes. The government also pointed to the AMS's suggestion that a longer qualifying period of twelve months would help younger people in smaller companies transition from internships to regular jobs as supportive of its proposal (Riksdag, 1993/94).

The Social Democrats accused the government of submitting to the demands of the SAF by waging a war against job security laws on its behalf. They pointed out that provisions in the law that made collective agreements concluded between the social partners invalid if they conflicted with the new rules were against the normal principles for legislation in Sweden as stated by the Law Council. The Social Democratic Party also made reference to the UK as an example of a country with a very small, regulated labour market, which had one of Europe's highest unemployment rates, contrasting it with Portugal, which had a strongly regulated labour market with one of the lowest unemployment rates in Europe. The Left Party considered six months' probation period as sufficient and noted that most EC states had rules limiting the length of the period between two weeks and six months. The New Democracy Party believed the government did not go far enough by extending the probation period to 18 months because it was

concerned about incurring the wrath of the labour movement. The Liberal People's Party agreed with the government's approach (Riksdag, 1993/94).

Power resources and retrenchment theories recognize that left parties share trade union interests in job security protections. However, according to some accounts, the logic of electoral competition and coalition formation make the unabated pursuit of such policies politically risky for the left (Hausermann, 2010; Keman, 2011; Emmenegger, 2014). This means the Social Democrats would struggle to win the majority of votes during elections by exclusively catering to the needs of their working class (unionized) supporters and voters. For political reasons, then, they should consider the preferences of other voters such as the middle-class who are more likely to reject policies that ostensibly undermine economic performance and dissatisfy firms. While there may be some grain of truth in this, it is clear the Social Democrats and other left parties in Sweden consistently opposed deregulatory proposals initiated by the Centre-right and never once supported flexibility enhancing measures during parliamentary debates (except in 1997). The empirical evidence, therefore, does not suggest any explicit support on their part for job security deregulation.

3.7.3. Information to assess impact and significance of measure

The increase in the qualifying period incentivized some employers to fire their employees even if they were productive, since otherwise they would have become permanently employed insiders, with higher firing expenses. This may have led to an excess of employee turnover and higher unemployment, which would undermine any advantages gained via increased flexibility for firms. While the increased managerial prerogative, which a higher qualifying period provides can boost productivity, at the same time, productive workers may be dismissed too early and such arrangements may discourage more vulnerable workers to invest in firm specific skills.

Their work effort may also be determined by the likelihood of their contracts being converted to a permanent one. Thus, there may be fewer incentives for them to work hard and productivity may suffer as a result (Skedinger, 2010).

3.8. The 1994 Law Amending the 1982 Employment Protection Act

3.8.1. Description of employment protection score changing measure (1)

The 1994 Law Amending the 1982 Employment Protection Act (SFS 1994: 1685), which was adopted on October 20, 1994, and entered into force on January 1, 1995, contained one important protective measure. It decreased the minimum qualifying period of service for normal case of unjust dismissal from twelve months to six months (Deakin et al., 2017).

3.8.2. Reasons for policy measure

In 1990, the year before the Centre-right coalition came to power, the employment rate in Sweden was 81.5 percent while unemployment was 1.8 percent. In 1994, the year the coalition government was voted out, the employment rate had decreased to 70.2 percent, while unemployment had jumped to 9.8 percent. Sweden's recession was part of a worldwide trend towards stagnant economic performance, but its severity was largely homemade, with a long list of problems that plagued its economy since the early 1990s. The 1986 lifting of capital flows control created the basis for a bubble economy, of real estate speculation and financial gaming, and after a number of devaluations, the government was more focused on inflation and the exchange rate than employment threats. The bubble burst and the economy plunged, leaving the new bourgeois government of 1991-94 helpless (Timonen, 2003). The Social Democrats won the 1994 election due to a widespread belief that the previous administration had failed to effectively deal with the country's economic crisis. The downturn also forced the Social Democratic Party to reconsider its policy options with respect to the labour market. When it regained power in

October 1994, it repealed most of the previous year's deregulatory reform (SFS 1993: 1496), as well as repealed the extension of the maximum period of fixed-term contracts and the employer's right to exempt two employees from the priority listing system (Riksdag, 1996/97).

The committee set up to examine the probation period had suggested six months was enough time for employers to test their new employees. The Left Party supported the measure but believed further changes unrelated to probationary periods were needed to improve the situation of workers. The Centre Party, Liberal Peoples' Party, Moderates and Christian Democrats rejected the new government's proposals. Ann Wibble, the Minister of Finance in the previous Centre-right government (1991 to 1994) claimed the LO was responsible for pressuring the Social Democratic government to reverse the 1993 measures dealing with the qualification period. Wibble suggested that the new Minister of Finance had previously found the changes in the 1993 Act to be quite reasonable but soon changed his mind after the LO reacted angrily to his position (Emmenegger, 2014).

If this is true, then it has interesting implications for power resources and retrenchment arguments. First, it would validate notions that strong (Swedish) unions tend to mobilize their power resources to influence their leadership and that Social Democratic governments must consider unions as negotiation partners in policymaking processes. However, it would seem odd the Social Democrats would deviate from the political preferences of their economic allies and main constituency by accepting (in principle) the 1993 deregulatory reform enacted by the previous Centre-right administration. At the same time, this anomaly goes some way toward supporting claims about left parties trying to cater more to the interests of non-working-class groups in order to manage economic challenges or appeal to other voters. Indeed, the Social Democrats administered a very high unemployment economy from 1994 to 1998, making large

cuts in welfare programmes, including unemployment benefits, and even cooperating with the Centre Party, which disappointed many of their traditional voters, particularly labour market outsiders. So, there was some continuity of measures taken by both Centre-right and Social Democratic governments in the 1990s to fight the severe economic crisis, partly because they were all minority governments and also because some parts of the Swedish model had to be adjusted to become more efficient in reaction to external pressures. The main cutbacks of the Centre-right government were not repealed by the Social Democrats when they assumed power and some austerity measures were even tightened for fiscal reasons. The Social Democrats also sought to fulfill the expectations of the electorate for crisis management problem solving during those turbulent times.

However, the protective measure passed in 1994 casts some doubt on economic-driven retrenchment narratives. After all, the country was recovering from one of its most difficult periods since World War II and there were uncertainties regarding the pace of recovery in light of the low levels of confidence among the social partners and financial actors. If there was ever a time for scaling back job security, this was it. Nevertheless, the numerous deregulatory reforms to job security that would occur in 1997 under the Social Democrats, in combination with their cuts to social spending in this decade, support the case that arguments about the overarching neoliberal design of efficiency-oriented policies in the post-1980s are still relevant to understanding the politics of job security reform in Sweden.

3.8.3. Information to assess impact and significance of measure

In many cases, the probationary period was shortened even further through collective agreements, and in several industries, unions were able to veto temporary employment and the use of probationary trials. According to one study, the probationary period was less than six

months for nearly one-third of private sector blue-collar workers in the LO-SAF area (Riksdag, 1996/97).

It was not clear whether aggregate employment was affected by the 1994 protective measure. The OECD argued the increase in self-employment, still low by international standards, may have been encouraged by the desire to circumvent the new regulations through sub-contracting. The rapid growth in the use of fixed-term contracts since the mid-1980s (to more than 13 percent of total dependent employment in 1994) also may have meant employers viewed job security provisions applying to permanent contracts as too costly. Another possible indication of the high costs of such protections in the eyes of employers was the sharp increase in the use of overtime during Sweden's upswing despite overtime wage premia of 50 to 100 percent (OECD, 1995).

3.9. The 1997 Law Amending the 1982 Employment Protection Act

3.9.1. Description of employment protection score changing measures (5)

The 1997 Law Amending the 1982 Employment Protection Act (SFS 1996: 1424) was adopted on October 24, 1996, and entered into force on January 1, 1997. The Act contained one significant protective measure. It decreased the maximum duration of fixed-term contracts allowed from two years to twelve months over a three-year reference period (Deakin et al., 2017). However, the Act also contained four notable deregulatory measures. First, the length of notice periods was to be determined on the basis of tenure and not of age. Second, employers' rehiring obligations vis-à-vis laid off workers were to expire after nine months instead of twelve months (Duval et al., 2018). Third, an employee with three years' service was entitled to notice of two months instead of an average of four months (Deakin et al., 2017). Fourth, 'agreed' fixed-term contracts were permitted for twelve months with no restrictions concerning the nature of the

work performed, with all firms allowed to hire up to five such contracts at one and the same time, and enterprises with previously no employees who wished to hire were allowed to extend the duration to 18 months (Duval et al., 2018).

3.9.2. Reasons for policy measures

The views among legislators concerning advance notice for older workers had completely changed by 1996. Notice periods based on age appeared counterproductive for older employees and shorter advance notice (as employers had argued for many years) was considered to increase the likelihood of employment of older workers. One reason for the shift in thinking was the rise in unemployment among older persons starting in the 1990s and declining unemployment rates among youth starting in 1993. The reforms were therefore aimed at encouraging employment of older workers by lowering their periods of notice from six months to one month (Heyman & Skedinger, 2016).

The Social Democratic government appointed a commission consisting of representatives of both capital and labour in 1995 to investigate ways of establishing a new balance between the job security and flexibility needs of workers and employers respectively. However, the commission could not establish an agreement on labour market reform. It even appointed a mediator group to help the social partners seek an agreement. Neither side welcomed the meditator group’s participation in the initial negotiations. The government stressed that labour laws needed to be appropriately designed to strike a reasonable balance between workers' needs for protection against arbitrary and discriminatory decisions and companies' needs to continuously adapt their organization and workforce to changing conditions. In the state sector, a principal agreement had been reached in August 1996 between the social partners. But the parties were not able to agree on issues in the private sector. Employers demanded the removal

of the last in first out principle, which unions rejected, in part because of the rates of unemployment approaching ten percent and what the system of priority listing meant for union power (Riksdag, 1996/97). Seniority and dismissal rules in general concern a large number of 'insiders' with political power so the cost of changing them are very high for unions.

Given the standstill, the Social Democratic government decided to implement reforms itself. At first, it considered changing the last in first out rule, but the unions reacted angrily by demonstrating against the government and threatening to withdraw financial support for the Social Democrats, which forced the government to drop the system of priority listing from its reform options. The trade unions believed seniority and dismissal rules were much more central to their long-term interests and even though they did not embrace fixed-term employment, they understood those contracts were fewer in number and most fixed-term employees were not even union members. Thus, the political cost of reforming fixed-term contracts was lower for any political party wishing to implement labour market flexibility. The government, therefore, proceeded to pass other reforms, including one that de-regulated temporary employment. While it went against the desires of trade unions, it did not cross their red lines. From the government's perspective, deregulation of temporary and permanent contracts was called for if the social partners could not agree on certain reforms themselves (Emmenegger, 2014). The Social Democratic government was also in close cooperation with the Centre Party in 1997, although the latter was not formally part of the government. It may be that the 1997 measures were part of logrolling between the two parties (Per Skedinger, Personal Communication, September 2019).

The Social Democratic government justified its deregulatory actions by pointing out that prevailing employment protection rules were introduced in the early 1970s. Since then, however, the Swedish economy and labour market had undergone considerable changes. Companies and

their employees operated in an increasingly competitive environment. The free movement of capital, people, services and goods were dramatically transforming the Swedish labour market and regulatory system. The working methods, organization and technologies of both private companies and public administration were significantly different from the past. Against this background, the government found it desirable to change employment protection rules in order to adapt them to prevailing conditions (Riksdag, 1996/97). The government's reform project was unambiguously rooted in neoclassical and neoliberal assumptions of protective labour laws interfering with freedom of contract and distorting market outcomes, thereby contributing to involuntary unemployment and a number of other negative effects stemming from the misallocation of resources.

Several referral bodies weighed in on the government's proposals. The Labor Court had no objection in principle to them. The SAF, however, considered the proposed changes completely insufficient to improve the conditions for growth and new employment in companies. The Entrepreneurs National Organization (FR) agreed with the SAF's criticisms. The Municipal Association believed there was an imbalance in the proposals as they mainly accommodated private employers, while the increases in job security would lead to considerable problems for municipal employers. According to the LO, several of the proposals entailed serious deterioration in employment protection and those offered to strengthen the position of employees largely lacked real content. The amendment of the dismissal rules, the abolition of the requirement for a central agreement or central approval and the introduction of the new form of employment combined meant that employment protections were seriously eroded. The TCO felt the proposal as a whole did not meet the requirements of progressive labour law. However, it considered other parts of the proposal as satisfactory. The SACO argued opportunities to achieve

lower unemployment were not hampered by existing labour regulations. Despite that, it recommended that sections 5 and 6 of the Employment Protection Act be replaced with a general right to fixed-term employment regardless of reason, for a maximum of twelve months (Riksdag, 1996/97).

The new form of employment introduced, 'agreed' fixed-term employment, received several responses from referral bodies. The SAF welcomed it as a positive change, especially for medium-sized and large companies. However, it asked for the removal of the restriction of five employees or for the number to be increased. It also requested time limits be increased to 18 and 24 months and a possibility of canceling fixed-term employment. LO argued such contracts lacked employment protection and would be exploited by employers to legally hire the same employee for up to eight years. TCO believed it would erode the job security of small firm employees (Riksdag, 1996/97).

All referral bodies endorsed or had no objection to the proposal to base notice periods on tenure rather than age, except FR (Riksdag, 1996/97). As for the reform to preferential rights to reemployment, SAF wanted the rules to be abolished altogether, or for the time to be reduced to six months. SAF rejected the proposal that the period during which preferential rights could be acquired be extended from two to three years. LO, TCO and SACO rejected the proposal to shorten the time, arguing it would lead to a weakening of employment protection and make it easier for employers to circumvent the rules on the substantive basis for dismissal (Riksdag, 1996/97).

The Moderate Party argued the reforms did not go far enough in order to enable the creation of more jobs. The Left Party argued the proposal was a concession to SAF's ideological

myth that labour laws make hiring more difficult. It believed a new parliamentary inquiry was required to strengthen and modernize labour law in order to capture the legitimate needs of workers for job security. It pointed out that more than 75 percent of those employed during the first half of 1994 were employed for a limited time. Among young women, temporary jobs were becoming the most common form of employment. The Christian Democrats saw the proposals as doing little to stimulate growth and contribute to increased flexibility in the labour market. They suggested 24 months was a more reasonable time frame for fixed-term contracts. They also agreed with the proposition to base notice periods on tenure. The Green Party believed the government's approach was incorrect and that reducing job security for some sections of the workforce was not the answer to creating new jobs (Riksdag, 1996/97).

3.9.3. Information to assess impact and significance of measures

In virtually all contract areas, the turnover of workers increased as a result of the costs of dismissals decreasing. The risk of separation depended on the employee's expected firing cost and where the employee was ranked in the distribution of dismissal costs of all employees within the company. The effects were more pronounced among workers with shorter notice periods than those with longer ones. However, while separations increased, there were also positive effects on hiring. This may be explained by the design of the reforms, which gave extensive protection to workers remaining with the company. However, the reforms may have discouraged voluntary separations among workers since job mobility would involve less employment protections for these types of employees. And as the number of older workers under the new rules increases over time, this feature of the reform is likely to decrease in importance (Heyman & Skedinger, 2016).

Exceptions to the rules of priority also make employers more likely to hire individuals with a weaker foothold in the labour market and this can affect productivity since employers become less selective in employment decisions by lowering the thresholds for hiring someone when the costs or regulations of dismissing employees decrease (Butschek & Sauermann, 2019).

While the 1997 deregulatory reforms gave firms more flexibility, the last in first out rule remained the basic principle in Sweden and the length of probationary periods stayed more or less the same. A decentralization of powers from the central organizations at the enterprise level was impossible to achieve for proponents of downgrading job security provisions. For some issues, such as fixed-term contracts, the scope of the last in first out rule and rehiring obligations, it was left to labour market organizations to decide at which level powers should be located. Due to union resistance, there were no signs that the 1997 reforms had helped shift decision-making downwards to the firm level (OECD, 1998).

3.10. The 2007 Law Amending the 1982 Employment Protection Act

3.10.1. Description of employment protection score changing measures (2)

The 2007 Law Amending the 1982 Employment Protection Act (SFS 2007: 389) was adopted on April 3, 2007, and entered into force on July 1, 2007. It contained two important deregulatory measures. First, it increased the maximum duration of fixed-term contracts allowed from twelve months to twenty-four months within a five-year reference period. Second, it widened the scope for fixed-term contracts and simplified their regulation. A long catalogue of fixed-term contracts was replaced by a new type of fixed- term arrangement – general fixed-term employment – supplemented by temporary substitute employment, seasonal employment, fixed-term contracts for employees over 67 years of age and probationary employment. As a result, the legal scope for fixed-term contracts was made broader (Deakin et al., 2017).

3.10.2. Reasons for policy measures

In 2002, the National Institute for Working Life proposed a flexible regulatory framework for fixed-term employment. In a report commissioned by the Social Democratic government, it recommended allowing one form of fixed-term contract, which would not require any justifications and would last up to 18 months (Emmenegger, 2014). A multi-party motion by Moderates, the Liberal Party, Christian Democrats and Centre Party in 2005-06 emphasized that permanent employment formed the foundation of Swedish working life, but that fixed-term employment also played a very important role, particularly during temporary work peaks. The motion described temporary employment as a bridge into working life for young people and others with little work experience. The parties pointed to the need for fixed-term contracts in certain industries such as tourism and agriculture, which had large seasonal variations. The multi-party motion called for a time limit of 24 months over a five-year period, instead of the Social Democratic government's proposal of 14 months. The Alliance for Sweden also believed 24 months was more reasonable to provide entrepreneurs and employees greater employment opportunities (Riksdag, 2005/06).

In 2006, the Social Democrats lost the election, partly as a result of failing to reconcile the interests of labour market insiders and outsiders. They had faced contradictory claims from outsiders who wished to preserve their benefits, and insiders who were supportive of the Centre-right message of lower taxes for those employed, financed via reduced benefits for the unemployed. A similar situation happened during the 1998 election when many trade union voters, tired of four years of austerity measures imposed by their political allies, switched their allegiance to the Left Party. They were joined by labour market outsiders who bore the brunt of spending cuts enacted by Social Democrats during the turbulent 1990s. In 2006, the Social

Democrats tried to cater to outsiders more by offering to preserve generous transfers for the jobless and inactive, which allowed the Centre-right to appeal to insider voters who previously supported the Social Democrats. The Social Democrats became marginally more popular among outsiders, but they lost a significant amount of support from insiders, ultimately paying the political price. This electoral loss should not be interpreted as a rejection of social democracy in Sweden. Rather, the Centre-right proved exceptionally successful in running a sophisticated campaign that outshone the Social Democrats by convincing the electorate that it would be the best defender of the Swedish Social Democratic system, while at the same time modernizing it to make it more efficient (Lindvall & Rueda, 2012).

The new Centre-right coalition 'Alliance for Sweden' government (2006-2014) continued liberalizing the Swedish economy, particularly through small annual tax cuts and increasing the share of private providers (especially in the primary care sector). In the area of job security, they had promised to reform regulations on open-ended contracts, particularly the last in first out rule during their election campaign but they decided against that, much to the disappointment of employers' organizations.

When the Centre-right government laid out its 2006-07 proposal to allow fixed-term contracts for two years over a five-year period, half the referral bodies in the private and public sector viewed it favourably. These included the National Police, Disability Ombudsman, Lund University, Linköping University, Banking Employers Association, Entrepreneurs Association and the Association of Local Authorities and Regions. KFO believed the proposal was moving in the right direction, but argued some businesses required longer-term employment arrangements, including companies engaged in international projects. Other bodies viewed two years as too short, including the Employer Alliance, Association of Employers for Non-Profits, Forestry and

Land Employers Association, Stockholm University, Municipal Companies Organization, Performing Arts, Swedish Business, Technology Companies, Hotel and Restaurant Companies and Newspaper Publishers. The AMS had no real reservations about the proposals (Riksdag, 2006/07).

However, the referral bodies on the side of employees claimed two years of fixed-term employment was excessive. These included the LO, Municipal Workers Union, SACO, TCO, Association of University Teachers, Journalists Association, Ombudsman Against Ethnic Discrimination, the Equal Opportunities Ombudsman and the Youth Board. LO, the Municipal Workers Union and TCO argued the proposal risked discouraging permanent employment relationships and making time-limited employment the main rule in the labour market. SACO and the Association of University Teachers believed a maximum of 18 months should be allowed, while TCO recommended 14 months (Riksdag, 2006/07).

Employers, however, were still not satisfied with the reforms to temporary employment and wanted the Centre-right government to also relax job security for open-ended contracts. However, the government declared it had no intention of doing that and so employers invited the unions to negotiate over a new agreement. The employers had two requests, first the restriction of union rights to sympathy action in the event of industrial conflict and second the abolition of the system of priority listing in the case of dismissals for economic factors. They were prepared to offer more support for laid-off workers and to negotiate over the Laval case, a decision by the European Court ruling EU firms that posted workers from their country to carry out work for a limited period in Sweden were not obliged to observe Swedish collective agreements. The formal negotiations began in 2008, with unions proposing a ‘delay mechanism’ regarding sympathy action but it soon became clear that they considered any major changes to the last in first out rule

to be out of the question, which is when the employer side withdrew from the negotiations and repeated its calls for government reforms (Emmenegger, 2014). Unions considered job security regulations as central to their institutional power resources, which allowed them to serve their long-term organizational interests, in this case influencing collective bargaining outcomes and the policymaking process. But they understood their long-term positions of power depended on their ability to defend protections for their core membership, namely regular workers (particularly the last in first out rule), which explains why they consistently rejected employers' demands.

Fixed-term contracts play an important role in Sweden, which is otherwise characterized by longer job tenures and highly regulated permanent contracts. The public sector in Sweden has a particularly marked interest in fixed-term contracts. Although rights to offer fixed-term contracts are somewhat heavily regulated in Sweden, these contracts are frequently used, as one out of five organizations had more than 10 percent of their workforce on fixed-term contracts. Fixed-term work tends to be more common among the foreign born. A typical example of a fixed-term worker is a woman substituting for someone on leave in the public health sector. The probability of being fixed-term doubles if one is a female and six times more if aged 16-24. In 1990, about 10 percent of all employees were on fixed-term contracts, as compared to over 16 percent in 2008. The growth in the number of fixed-term contracts over the years is a policy response to macroeconomic and structural conditions, as well as employer demands for more labour flexibility, especially since regulations of permanent contracts remain 'rigid' and strongly protected by unions. In 2007, the share of dependent employees on fixed-term contracts in the central government amounted to 16 percent. The corresponding figure in the local authorities was 18.5 percent and 16.4 percent in the private sector. The higher incidence at the local

(municipal) level is related to the greater share of women in this sector and the need for substitutes to different forms of legal absenteeism, particularly parental leave (Riksdag, 2006/07).

Power oriented and retrenchment arguments sometimes exaggerate the differences between public and private sector employers in terms of their treatment of employees in providing good conditions of service such as high levels of job security. It is overlooked that fixed-term contracts, often viewed in a negative light and as serving the interests of private firms, are a public sector phenomenon too, with state agencies across all sectors relying on temporary and fixed-term employment to operate. This dependence is due to several factors, including budget constraints, cost reduction, full-time recruitment freezes, high turnover rates, uncertainty over the outcome of reorganization processes, purchaser provider contracts, parental leave, holidays, sickness and other absences. The crucial long-term need among public sector employers to hire staff for a limited period has often put them at loggerheads with union preferences to limit the scope and duration of fixed-term contracts. Historically, unions were hostile towards atypical forms of employment, including in the public sector where union density was higher (84 percent) than any other sector in 2007. In the past, unions mistrusted and disapproved of atypical forms of work because they did not conform to the traditional breadwinner model and were seen as undermining the employment prospects of men. Some unions even preferred a reduction in full-time working hours for everyone rather than the creation of non-permanent jobs. More recently, they are concerned about fixed-term contracts violating labour law and collective agreements, especially occupational health and safety regulations. Moreover, dishonest practices such as tax evasion are said to be common, particularly in the case of undeclared work in the subcontracting domain, which according to the

Swedish Tax Authority, 18 percent of the labour force (more than 800,000) were engaged in (Riksdag, 2020). The interests of such a growing fraction of workers are not easily represented by unions and the conflicting demands between protected insiders and unprotected outsiders represents a real challenge for Swedish unions, whose policy preferences sometimes conflict with the interests of irregular workers, particularly in their defence of open-ended contracts, and assent to deregulation of temporary employment under pressure to compromise behind the scenes. Nevertheless, Swedish unions have tried to organize workers covered by fixed-term contracts. Union organization rate among fixed-term employees in 2008 was about 50 percent as compared to 70-75 percent among permanent employees. They have also been vocal critics of further increases in labour market flexibility at the margins of the workforce. According to parliamentary records, unions and various public sector employers disagreed on the direction reforms on fixed-term work should take in 1982, 1997 and 2007. They also disagreed on the maximum probationary period to claim unfair dismissal in 1993. However, both sides saw eye-to-eye in 1974, likely due to widespread support for increased job security during the 1970s.

3.10.3. Information to assess impact and significance of measures

In general, fixed-term employment is associated with a number of less favourable conditions when compared to permanent jobs. People with higher qualifications and high socio-economic status are less likely to accept fixed-term employment, while those with lower skills and who have been unemployed accept this form of work to a greater extent. Not having a permanent job can also lead to difficulties establishing oneself in the labour market and society. For example, it can make it hard to obtain a bank loan or buy a home or car. The uncertainty of fixed-term employment has also been found to negatively affect the health and well-being of individuals (Riksdag, 2020).

In 2007, TCO disgruntled with the 2007 reform of the regulation of fixed-term employment, which allowed vast scope for time-limited contracts with any need for objective reasons, filed a formal complaint to the European Commission regarding the Swedish state's failure to conform its regulations to clause 5.1 of the Fixed-Term Work Directive in order to prevent abuse arising from the use of successive fixed-term contracts. In 2010 the European Commission formally notified the Swedish government regarding the inadequate implementation of the Directive. The government, for its part, put forward three different legislative proposals to resolve the apparent violation. The most recent one included a new provision by which general fixed-term contracts would be converted into indefinite employment relationships in more cases than was possible before (Ronnmar, 2017).

The downside of the deregulatory reforms was that it further entrenched insider-outsider problems, thereby increasing labour market dualism. The incidence of temporary contracts had been increasing in Sweden since the early 1990s when restrictions on fixed-term contracts and temporary work agencies were eased. As a result, over half of all youth employment in the country was based on temporary work, compared with around a quarter in Norway and Denmark and even less in the UK. The high unemployment rates during the deep crisis of the 1990s may have contributed to this trend, even though temporary contracts accounted for a larger share of youth employment in the 2000s than in the 1990s, indicating other structural changes were at play. There was evidence that employers were resorting to temporary employment relationships to bypass strict rules on regular contracts, obliging more and more people to accept a series of fixed-term contracts rather than seek or transition into a permanent one. A review of labour market transitions also revealed that the most common destination for the unemployed was temporary work, with very few going directly into regular employment. During downturns like

the 2008 global financial crisis, those on temporary contracts, particularly the youth, are the most likely to bear the brunt of terminations for economic reasons as they are the least difficult and expensive to discharge (OECD, 2008).

In 2011, the Centre-right government appointed a commission to carry out a survey of how dismissal disputes are handled in practice. This included disputes concerning summary dismissal because the rules are closely related to those regarding ordinary dismissal. The survey also included disputes settled in court and those settled outside of court. The commission was assisted by LO, TCO, SACO, SAF, Företagarna, SKL and the Swedish Employers' Agency (among other actors and specialists). The government commission's goal was to propose how employers' costs in conjunction with disputes could be limited (without significantly changing job security regulations) in order to promote employment. The survey covered a large number of judgements, both relating to invalidity of dismissals and damages, during the period 2005-10. The commission's report in 2012 showed that the vast majority of terminations and dismissal disputes, probably over 90 percent, were settled without the dispute being brought to court. The common solution was that the parties agreed the employment ends on a certain date, and the employer pays compensation to the employee. The commission calculated a total of about 600 dismissal disputes brought to court each year. Every second dispute tried by the Labor Court took more than 17 months from the dismissal until the judgement. If the dispute was tried by a District Court (e.g., of Stockholm, Jonkoping, Sodertorn, Skelleftea, etc.) it took slightly longer. Every second trial before a District Court that was appealed to the Labor Court took more than 35 months from the dismissal to the final judgement of the Labor Court (Riksdag, 2012).

The average duration is shorter among cases where the employee claims invalidity of dismissal than in those where the employee only claims damages. The survey also showed the

Labor Court, on average, declared three ordinary dismissals invalid per year. In approximately seven out of ten District Court rulings, the Court confirmed a settlement between the parties. In the Labor Court, the proportion is just over one in ten. Termination and dismissal disputes where employees claim invalidity must be dealt with promptly by the courts. Processing times are also shorter for disputes concerning annulment. The court process works as follows: an employee usually applies for a lawsuit, before the court issues a summons, it must check the application is complete and request additional information if necessary. After summons is issued, the other party, employers usually, are instructed to submit a written defence, as it is the employer who must prove there were reasons to dismiss. This document is often extensive and there may be reasons for further correspondence before it is time to call the parties to a meeting for oral preparation. At the sitting there is a judge who together with the parties clarifies the case and examines the conditions for reaching a settlement. If the case continues after that, it may take several months before the final evidence has been received and there is time for a main hearing (Riksdag, 2012).

According to statistics, the Labor Court concluded about 450 cases in termination disputes between 2005-10. This corresponds to almost 80 cases per year. Additionally, a large number of cases were initiated in District Courts, estimated at over 800 disputes per year. The average case takes about one and a half years from termination or dismissal until a judgement is made by the Labor Court. At a District Court it takes a little longer. Unlike the process in a District Court, the process in the Labor Court is always preceded by a negotiation procedure between the parties. The commission was unable to determine, which kinds of employers were involved in disputes but according to a review of 27 cases tried by the Labor Court in 2010, the

employer was in two cases the state, in five cases a municipality or county council and in fifteen cases smaller companies (Riksdag, 2012).

The SAF also reported to the inquiry about a survey they had conducted in which 600 randomly selected member companies of all sizes answered questions regarding dismissals. According to the survey, six out of ten companies had laid off one or more employees during 2009-2012. About 26 percent of the companies that initiated redundancies ended up in a redundancy dispute, while 39 percent of the companies whose redundancies did not lead to any dispute chose to pay extra compensation to the employee in addition to what was prescribed by law or agreement in order to avoid a dispute. Among the companies that had been involved in disputes one or more times, 15 percent stated that they had resolved one or more disputes through contacts with the employee without the need to negotiate with any trade union, 60 per cent that they had resolved one or more several disputes through local negotiation and 21 percent that they had resolved one or more disputes through central negotiation. Furthermore, six percent of the employers had resolved disputes through a settlement after the dismissed person had sued the company in court and one percent had disputes resolved through a judgment (Riksdag, 2012).

Settlements reached at the negotiation stage vary from case to case. The most common situation is that the employee leaves the job for a financial compensation. When the amount is negotiated, several factors are important, including the risk of losing the dispute in court, what that would cost and the other party's ability to pay. According to employers, the levels in section 39 of the LAS (Employment Protection Act) are often included in discussions, even if the compensation may eventually end up on everything from one or a couple of monthly salaries (which can correspond to around SEK 56,800 or approximately USD 6,500) to the levels in section 39 (between 16 and 32 monthly salaries or between SEK 450,000 and SEK 900,000).

There is no lower or upper limit of compensation. The employee side believed the levels in section 39 were important for settlements because they gave employers incentives to settle, but that the level of compensation reached at the negotiation stage was significantly lower than those stated in section 39. The level varies between industries and groups of workers. According to the workers' side, it is common for settlements in local negotiations to be two to four monthly salaries. In others, the levels may be much higher (Riksdag, 2012).

According to the Swedish Insurance Inspectorate, just under 1,000 individuals each year were subject to a sanction when they applied for unemployment benefits after being dismissed due to misconduct. However, these figures did not cover everyone who was dismissed for personal reasons, such as those who were laid off but did not apply for unemployment benefits. Additional statistics indicated that almost 800 people who were dismissed or dismissed for personal reasons applied for unemployment benefits each year. The corresponding figure for people who had been made redundant due to lack of work was almost 65,000 (Riksdag, 2012).

As for how disputes were settled, between 2005-10 the Labor Court decided around 180 dismissal disputes by a judgement, which either meant it tried the case or that it approved a voluntary settlement reached between the parties in the case. More than 150 judgements belonged to the former category. About half of the cases concerned redundancies and dismissals. The workers were in about 70 percent of the cases men and in about 30 percent of the cases women. About two-thirds of workers demanded the dismissal be annulled, while the rest only claimed damages. One in five workers who claimed that a dismissal should be annulled was successful (Riksdag, 2012).

A survey among members of the SAF revealed 62 percent of companies regarded the costs associated with termination disputes as an obstacle to their growth. When companies were asked if they would be more willing to hire if costs were reduced, 29 per cent answered that they would to a large extent and 33 per cent answered that they would be to a certain extent. On average, companies wanted costs to be reduced by 60 percent in order to affect the willingness to hire (Riksdag, 2012).

3.11. 2020 Inquiry into a Modernized Labour Law

In the years following the global financial crisis, Sweden adopted marginal policies as compared to the radical reforms it implemented decades before, especially in the 1990s. In 2009, Sweden's budget deficit was 0.7 percent of GDP, and remained below 2 percent until 2018. There was a comparatively small rise in unemployment as a result of the 2008 crisis, whereas in the 1990s, it rose to over 10 percent from an average of 3 percent. While unions consented to temporary layoffs to save jobs and the government adopted minor policies to improve labour market conditions, no major reforms to the country's employment protection system were considered (Davidson, 2018).

According to the OECD, Sweden has relatively strong employment protections for permanent employees due to long notice periods and protocols employers must take to avoid dismissal. Where Sweden stands out most clearly is the cost of termination for personal reasons because if a dismissal is declared invalid then the employer is obliged to pay extensive compensation, relative to other countries. On other measures, Sweden has weak employment protection, for example, the lack of a statutory obligation to provide pay severance and the relative short time an employee has to make a request that a dismissal be declared invalid. Sweden is also noted as having one of the least restrictive regulations regarding fixed-term

employment. Characteristic of Sweden is that people with labour force participation are overrepresented in fixed-term sectors and jobs, including the young, foreign born, less educated and low qualifications or skills. The proportion of fixed-term employees in the country amounted to 16 percent in 2017 and has largely been constant over the last ten years (Riksdag, 2020).

In a survey conducted by Statistics Sweden in 2014, it emerged that just over 70 percent of fixed-term workers (corresponding to 390,000 employees) had been employed by the same employer for less than two years. Just under 50 percent (or 265,000 people) of fixed-term employees stated they had several jobs with the same employer. About 20 percent had several jobs with breaks in between, while 30 percent had several fixed-term jobs without breaks. A joint report by the SAF and LO provided details about the length of contracts reported by fixed-term employees who were non-full-time students. In the private sector, 12 percent had a contract that lasted for less than one month, 47 percent had a contract that was valid for 1-2 months and just over 10 percent had a contract that lasted for more than one year. It also emerged that 25 percent did not know how long their current contract lasted. A report from Sweden's Labor Market Policy Council 2017 stated that a significant difference in the strength of regulation between permanent and fixed-term employment could have negative consequences. For example, employers' incentives to hire for a limited time could increase at the expense of hiring indefinitely, as it is simpler and easier. Moreover, employers would be less inclined to convert fixed-term contracts into permanent ones because the latter is associated with higher termination costs. Thus, employers' demand for fixed-term employment increases if employment protections for permanent workers remains relatively strong (Riksdag, 2020). Additionally, less stringent regulations on fixed-term employment were found to have boosted productivity and real wage

growth in all segments of wage distribution in Sweden (Per Skedinger, Personal Communication, March 2021).

Against this background, the coalition government consisting of the Social Democrats and the Green Party decided in 2019 to have a special investigator submit proposals on how labour law could be modernized in the country and adapted to today's labor market while maintaining a basic balance between the social partners (Riksdag, 2020). The Minister of Justice, Gudmund Toijer was appointed as investigator and many experts assisted with the inquiry. The investigator's proposals entailed making the largest revision of employment protection legislation since its comprehensive introduction in 1974. The plan was to liberalize some elements of statutory employment protections in return for more demands on employers to provide employees with training opportunities. Specifically, the inquiry was tasked with preparing proposals for clearly extended exceptions from the rules of priority and for a stronger responsibility from employers for the skills development and adaptability of employees (with six months or more employment). This responsibility would also apply to fixed-term employees, which was designed to result in smaller regulatory differences between fixed-term and open-contract workers. A greater priority right to open-ended employment for employees on fixed-term contracts would also be provided, thereby increasing job security through promoting transitions from fixed-term contracts to open-ended contracts. The inquiry was also asked to submit proposals, which entail, especially for smaller firms, lower and more predictable costs in the event of dismissals while at the same time maintaining legal certainty and protection against arbitrariness. The inquiry was designed to be most relevant to smaller firms, whose organizations were more vulnerable because they were not party to collective agreements and so regulation was expected to have the greatest impact on them. Also, small and medium enterprises

contributed significantly to employment growth in the economy even though there are relatively few employees hired by small firms. In fact, just over 10 percent are employed by firms with 5-19 employees, which corresponds to just under 610,000 employees in Sweden. Those under 25 years of age and those 65 and over are overrepresented among small firms, while those aged 25-54 are slightly underrepresented. The majority of employees, just under 2,700,000, work for firms with 200 or more workers. Finally, the inquiry was to consider amendments to create a better balance in employment protection for employees with different work conditions (Riksdag, 2020).

The report entitled ‘A modernized labor law’ was finalized in the wake of the spread of COVID-19 when Sweden’s labour market was exposed to major challenges, including large number of layoffs and redundancies. It was prepared by compiling and reporting on relevant economic and labour law research, particularly OECD data, taking into account the needs of the labour market, and with special focus on the situation of smaller firms. The commission argued its proposals were compatible with EU laws and Sweden’s international commitments, including certain provisions of the EU Charter of Fundamental Rights (Article 28), the Council of Europe Social Charter (Articles 5 and 6), a number of ILO conventions (Nos. 98, 154, and 87) and the EU Working Conditions Directive (2019/1152) (Riksdag, 2020).

The proposals were intended to reduce the cost for employers of adapting their firms to economic change. They would ostensibly provide possibilities for employers to retain the necessary skills when there is a shortage of work and facilitate terminations with notice when there are objective grounds. This reduction in costs would mean the risk involved in hiring new employees would decrease at the same time. The change would increase employers’ propensity to recruit. This would have a particularly great impact on individuals with no or limited work

experience, especially where employers face uncertainty when recruiting. Examples include young people and those who have been unemployed for long or with no experience in the labour market. The proposals were also designed to result in greater mobility in the labour market, such that resources could be moved more easily from industries and sectors that are cutting back to organizations that are expanding. However, clear effects on the level of aggregate employment and unemployment were not expected (Riksdag, 2020).

Employees in smaller firms who had long periods of employment would not be protected to as great an extent by the order of selection rules. At the same time, the risk of termination with notice may decrease for those with shorter periods of employment. The report stated “job security will be based to a greater extent on skills, the possibility of finding a job and the possibilities of obtaining lasting employment than on seniority.” This was apparently needed to adapt employment protection to how the labour market has developed and changed since the Employment Protection Act was adopted. One of the main purposes of the Act was to protect older workers, and studies had shown that the rules of priority mainly protected older workers as well as low-wage employees. Consequently, extended exemptions from the rules of priority could be expected to entail an increased risk for the elderly and low-paid to lose their jobs in the event of a shortage of work. However, this was said to mainly apply to those employed by small firms. A long period of employment would continue to protect in the event of redundancies due to lack of work in cases where many employees are covered by the rotation. In such a situation, it would mainly be those with short, but not the shortest employment times, who receive poorer protection. The fact that the period of employment, which can be considered an objective criterion, has a reduced significance for the employment protection of certain employees could risk leading to an increased risk of arbitrary dismissals. However, the period of employment

would still play an important role in the protection of jobs, and employees would still be protected against arbitrary dismissal through the requirement of a factual basis in the event of dismissal by the employer and through the Discrimination Act as well as other labor law (Riksdag, 2020). But it was announced that the proposals would not be implemented in January 2022 if the bargaining parties could agree on substantial changes voluntarily, which resembles the situation before the Saltsjöbaden agreement.

Media coverage of the report left a great deal to be desired. All the focus was on the political ‘game’, which side had ‘won’ and almost nothing on why Swedish statutory employment protections had to be reformed in the first place. There are clear rationales for such protections in economics, including market failures in the form of incomplete insurance markets and the presence of negative externalities. Before 1974, Sweden already had a well-functioning system with collective agreements handling these issues. But for many observers, employment protection legislation seemed like a meddlesome attempt to ‘solve’ a market failure that in effect was already adequately addressed by unions and employer organizations (Nycander, 2020). This could be described as a political failure if anything, although there no clear definitions of this concept in economics. Unions and employers started negotiating in the fall of 2020 and unless they were to agree on something, new legislation would be enacted in 2022 (Per Skedinger, appointed expert in the public investigation committee, Personal Communication, June 2020).

The inquiry’s proposal was met with harsh criticisms from all trade unions. In their responses to the consultation, LO, TCO and SACO argued the changes would “significantly alter the balance of power between the employer and the employee and negatively affect employment protections.” Some unions argued the proposals meant the requirement of a factual basis would

in principle disappear in shortage of work situations. The responses of employers in the private and public sectors were much more positive (Riksdag, 2020).

Much of what is known about Swedish employment protection legislation has been overturned by the recent agreement between Kommunal (Municipal Workers), IF Metall (Metal Workers), PTK (cartel of private sector white-collar unions within SACO and Unionen), and the confederation of Swedish Enterprise (Svenskt Naringsliv), a major private sector employers' organization. Since white-collar unions have already signed an agreement covering both private and public sectors, this means nearly 75 percent of employees in the private sector will be covered by the terms and conditions of this agreement, which differs in some important ways from those in the report of the government commission. However, the idea behind the commission was to place pressure on the social partners to reach an agreement by themselves, which they seem to have done. For example, concerning dismissal due to lack of work, unions have agreed to expand liberalization of the last in first out rules, from two employee exemptions for firms up to 10 employees to three exemptions for all firms regardless of the number of employees. No new exceptions may be made within three months with the same employer. Concerning dismissal for objective reasons, employers are required to take less restrictive measures before dismissing their employees. In this regard, they will be deemed to have fulfilled this obligation through an offer of relocation. But if the worker continues to substantially breach his or her duties, then relocation does not normally need to be offered. As for disputes for annulment, the employment relationship ends at the end of the notice period, even if there has been a dispute concerning the validity of the termination. This means the employer will not have to pay a salary during an ongoing dispute over dismissal. However, if a court annuls the dismissal, wages must be paid for the period of the dispute. There will be increased damages in

the event of an unfair dismissal by the employer. A worker who disputes the validity of a dismissal will not be suspended from the right to unemployment benefits. Concerning the 'general fixed-term employment', which could last up to 24 months without special reasons and was the basis of the TCO's complaint to the European Commission, it has now been replaced by 'specific fixed-term employment.' It will last up to 12 months only now. The period between several short-term contracts in specific fixed-term employment during the same month shall be counted as a cohesive period of employment. The employer must inform in writing when such employment has concluded. These rules are meant for the contract to be more quickly transferred to a permanent position. However, they are still negotiable and deviations can be made through collective agreements. For example, the Association of Swedish Engineering Industries (Teknikföretagen), which represents employers of multinational engineering and manufacturing firms and is a member of the confederation of Swedish Enterprise, has stated that the old rules will continue to apply for its member companies. Concerning temporary agency workers, employers who have hired them for at least 24 months over a period of 36 months are expected to offer them permanent employment within their companies. If the offer is accepted, then the employees' employment with the temporary work agency ceases. As an alternative to offering permanent work, the company can offer the employee compensation equivalent to two months' salary (Per Skedinger, Personal Communication, April 2021; Teknikforetagen, 2021).

This new agreement between the social partners will render some previous statutory employment protections as irrelevant and will be transferred to legislation in due course. Many of the objectives of the 2020 investigation committee discussed above, which were very loosely formulated, have largely been achieved by the new agreement. When it is codified into law, it will state that many of the new regulations, concerning for example, fixed-term employment, can

be renegotiated in collective agreements, which will mean less flexibility for firms without collective agreements than for those with them, as was the case with the old statutory regulations (Per Skedinger, Personal Communication, April 2021). These new legal rules will most likely be considered employment protection score changing measures when they are codified into law. There are some parallels here to the Saltsjöbaden agreement, which was reached under threat of legislation and which some of the LO unions did not sign (approximately the same ones that have not signed the one above today). One could interpret these developments as showing the endurance of the collective agreement model when 'under fire.' All in all, this is leading to the largest reform of employment protection regulations since 1974. A new ministry report will soon consider how current legislation should be changed in order to incorporate the new agreements.

The 2020 proposals and agreements have interesting implications for the varieties of capitalism thesis, which assumes stronger employment protections in coordinated market economies help ensure a return on investment in firm and industry specific skills. Increased job security is said to help protect employees against any risks that their skills would become redundant once they cease to work for a particular firm or industry in the event of job loss. The bottom line is that employers and employees are supposed to benefit from greater employment protections because they help eliminate or lower market failures in the area of skill provision. But the recent reforms in Sweden suggest that increased employment protections do not necessarily incentivize occupational skills acquisition. On the contrary, the changes involve extended exceptions from the rules of priority in exchange for stronger statutory responsibilities from employers to provide employees with reasonable skills as part of their employment. Overall, the purpose is to give employees more possibilities to change tasks within a certain firm, thus enabling them to also remain with the same employer when there are organizational

changes. Enhanced skills were claimed to make it easier to find a new job should they become unemployed. Normally, an employer's operations benefit from skills development of employees but there is also a direct cost for employers. Many employers already offered workers continuous skills development, and there were agreements for sections of the labour market that regulated the responsibility of employers for providing skills training (Riksdag, 2020).

3.12. Conclusion

In the UK and Sweden, job security laws were first introduced under very similar circumstances. These included: mounting economic pressures, the increasing power resources of the labour movement, rank and file protests and strikes, lack of progress at the bargaining table, union and employer preferences for voluntarism, large section of the labour force completely uncovered by any potential collective agreements and the creation of a statutory floor upon which agreements could improve upon. Overall, conditions in both countries created a window of opportunity for bold government action to improve industrial relations in ways that could complement and hasten collective bargaining. The first protections in both countries also took the form of statutory minimum notice periods, which were partly designed to facilitate orderly transitions into unemployment during a time of economic restructuring and mass redundancy.

The power resources and expansion-retrenchment theories both adequately account for these sources of pressure for statutory reform in the 1960-70s. However, they are not always clear about the mode of regulation unions preferred in the postwar period and why they expressed a strong preference for the extension of voluntary procedures that were leading nowhere. They also fail to appreciate how the building of momentum to confer more statutory

rights onto individual employees ended up strengthening the bargaining position of unions in the long run, instead of completely undermining the voluntarist tradition.

It is obvious employers in both countries did not want their governments to confer job security upon workers because that would erode their managerial prerogatives. In this regard, the varieties of capitalism approach fails to explain the opposition of Swedish employers to job security protections, which in theory should complement their comparative institutional advantage. Employers preferred the voluntary route because they could continue to deny unions of key demands at the bargaining table since the conclusion of collective agreements required their consent. However, the achievement of full employment in the postwar period meant job security was not seen as an urgent issue to warrant statutory regulation by the state. After a sufficient amount of time, the deadlock between capital and labour in negotiations combined with economic pressures forced the British and Swedish governments to impose legislation without the support of employers.

However, it is interesting that British and Swedish unions were also opposed to state regulation at first, even though they stood to benefit from it. The dominant theories are unable to explain this anomaly because they pay insufficient attention to how unions perceived their institutional longevity to be connected to their ability to gain favourable terms for their collective membership through bargaining and striking activities. As such, the core agenda of unions was not to secure unfair dismissal protections for individuals but to obtain favourable terms and conditions for their collective membership, while ensuring they could bargain and strike as part of a system of collective bargaining. Both labour movements believed voluntarism strengthened their position in collective bargaining, while limiting the involvement of the law and courts in particular.

This was because the voluntary path opened up to unions first, so they were accustomed to collective bargaining without government interference for many decades after winning the rights to organize and negotiate. Regulation via agreements allowed unions to maximize their institutional control, role in policymaking and/or management of the macroeconomy. The staunch support for bargaining over job security was based upon not so much distrust of labour law in general but the court system in particular. Unions (and employers) were skeptical of the ability of courts to make an impartial and informed decision regarding industrial relations matters. Unions were also deeply suspicious of courts because judicial legal interventions in the nineteenth century were inimical to organized labour, as it was judges who repeatedly declared unions, their leaders and activities as criminal in the past.

By the 1960-70s, unions came to accept the growing willingness among policymakers to chip away at the voluntarist tradition in industrial relations via legislation, exhibited by the first job security measures. Unions proved unsuccessful at securing the extension of more rights through their preferred method of collective bargaining thereafter, leading them to rely on the state to fill this regulatory gap for them. They were initially concerned about employment rights becoming legalistic, at the expense of their own institutional autonomy and role as the backbone of working class power. But in many ways, the reverse turned out to be true: statutory individual employment rights strengthened the hand of unions at the bargaining table, benefitting their collective organization and membership with other favourable terms and conditions of employment.

Once job security protections were introduced and extended over the years through legislation, they became an independent set of institutional power resources, serving the organizational and representational interests of unions and their political allies. The power

resources literature usually emphasizes the role of primary power resources such as union density at the expense of secondary power resources such as job security regulations. Doing so overlooks the fact that once unions were able to institutionalize their roles in hiring and firing practices via legislation, their bargaining hand increased, providing them with significant leeway to allow employers to deviate from any regulations in exchange for certain benefits. These newly derived institutional power resources helped increase the primary power resources of unions (membership) and rewarded unions veto powers in decision-making processes by making unionization more attractive, particularly in Sweden. It also granted unions a greater voice in management decisions. The ability of unions to exert influence and extract concessions in this way, independently of their primary power resources, becomes particularly important in the context of the long-term decline in union membership. This further incentivizes unions to defend their institutional roles in regulating job security (Emmenegger, 2014).

In sum, the dominant approaches fail to see the roundabout way in which the postwar preferences of capital and labour for voluntarism led to the impasse in collective bargaining over job security, creating the impetus for initial statutory reform against the desires of unions who felt the achievement of long-term union security trumped the obtainment of legal employment protections. This was based on a strong belief that the most effective method of addressing the disadvantaged contractual position of individual workers was through collective organization and action under the voluntarist tradition. There were also suspicions that adjudicating job security disputes in the courts would undermine the long-term position of unions as the exclusive representatives of workers, not to mention speculations that courts were class-biased and would side with employers. The strong commitment to promoting collective-laissez faire was also backed by successive governments in both countries, so any legislation to protect individual

employment rights was introduced at first only where there was perceived to be a pressing case for state intervention because restructuring processes and persistent industrial conflict were seen as damaging economic performance. This legislative interference in industrial relations aimed at achieving the national interest, however, was conceived by the government and eventually accepted by unions as part of a voluntary industrial relations system geared towards extending and complementing collective bargaining practices.

There are some parallels between the protections adopted in the UK in the 1960-70s and those enacted in Sweden in the mid-1970s. In the UK there was increased bipartisan support for the 1965, 1971 and 1972 measures. The Labour government abandoned its previous position of non-interference and introduced redundancy payments in 1965 with the general support of the Conservative opposition. The 1971 and 1972 measures introduced by Conservative governments were also welcomed by the Labour opposition. In Sweden, there was widespread political support for the introduction of comprehensive job security in 1974 and 1976, with even the Moderate Party, Liberal People's Party and Centre Party favouring a more 'hands on' approach. The opposition parties even radicalized their own political agendas to compete with the left parties on such issues as industrial democracy. Overall, conditions and events in both countries had temporarily shifted the balance of power in favour of unions and their political allies. A rapidly evolving economic landscape combined with the power resources of the labour movement as well as a growing climate of expectations, protests and strikes brought about a fundamental break with sole reliance on traditional forms of labour market regulation rooted in collective agreements. This inclined unions to join their political allies in 'riding the tiger' of discontent by demanding more statutory protections that could not be won voluntarily. Even non-left parties succumbed to this 'red wave', including the British Conservatives and Swedish

opposition parties, which temporarily supported statutory reform in order to improve economic performance and appear more attractive in eyes of a frustrated electorate. Both countries exhibited the same trend of passing their most comprehensive package of employment protections during this time. The 1974 Act was passed by the Social Democratic Party with the full blessings of the labour movement and the 1975 Act was implemented by the Labour Party with the support of trade unions. What is more, oft-repeated corporate arguments against job security, as 'regulatory burdens' or 'vexatious litigation' emerged in Sweden around the same time (1974) as they did in the UK (1978) in response to the large number of protections passed in this period. This line of reasoning was based on anecdotal evidence and statements from business organizations and employer-based surveys, which would be repeated by firms and non-left parties many times over in subsequent years.

Traditional power resources approaches have trouble accounting for the fact that governments and political parties of different complexions all supported statutory reform to a greater or lesser degree in this initial period. Political parties ideologically opposed to left and labour-based parties did not object to the introduction and/or extension of job security protections when left tendencies had become influential and political actors were competing for the popular class vote in the 1970s. The engendering of these norms by differing political persuasions can be considered a critical juncture or branching point from which the development of statutory job security rights moved onto a new path. This led to a wide-spread acceptance of the norm of legislation and committed policy actors to pushing for change in a wider range of sub-policy areas related to job security reform.

The protections implemented in the UK and Sweden before their respective turns to deregulation in the 1980s diverged in two minor ways. First, bipartisan support for expanded job

security ended in the UK when Conservatives no longer proposed or consented to statutory protections after 1972, whereas a parliamentary majority in favour of job security still existed in Sweden until the end of the 1970s. Another difference is that the European Commission was partly responsible for the UK's comprehensive 1975 Act whereas no international body directly influenced Swedish legislation in the 1970s.

The first retrenchment measures in both countries were carried out by the political allies of capital after the legislative supporters of unions – the Labour and Social Democratic Parties – were voted out of office. The period of peaking labour movement strength came to an end and low macroeconomic performance created a suitable climate for deregulation, which employers lobbied for. There was a noticeable trend in both countries towards extending the minimum qualifying period to claim unfair dismissal, thereby accommodating employer demands for more labour market flexibility and opportunities to test new recruits.

Moreover, there was limited leeway in political choice in Sweden to downgrade job security for open-ended contracts because unions strongly defended the rights of their main constituency and protected their institutional involvement in the administration of dismissals. The Centre-right government was also aware that its electoral victory had more to do with its anti-nuclear energy stance and little to do with popular dissatisfaction with the policies of their predecessors. It was careful not to incur the wrath of unions or the public by changing crucial statutory rules. It also did not embark on a systematic programme of union reform as Thatcher's government had done. The most viable course of deregulatory action in Sweden became the relaxation of restrictions around the use of fixed-term contracts whereas Thatcher's government had more power to lower job protections for permanent workers and restrict union rights. The Conservative Party also alleged that employers were becoming too easily embroiled in unfair

dismissal claims and this was negatively affecting employment growth by dissuading firms from taking on more staff. Additionally, it claimed public funds were being wasted on fending off too many frivolous complaints at tribunals. For these reasons, the UK passed more measures in the 1980s increasing the minimum qualifying period than Sweden under the pretense of saving firms and taxpayers millions of pounds and creating more jobs. Concerns over large caseloads and publicly expensive proceedings were not a factor in Sweden because the overwhelming majority of disputes were settled outside of courts. The high rates of unionization, collective bargaining coverage and strong voluntarist tradition allowed contracting parties to resolve complaints through negotiations and settlements without the need for an extensive and disparate tribunal system to arbitrate as was the case in the UK.

We see that in both countries, trade unions and their political allies adamantly opposed the deregulatory reforms of their political opponents, which were welcomed by employers' associations. This trend has continued since the 1980s with only one single exception. The pattern of expected party conflicts emerging from the empirical record corroborates the expectations of power resources and expansion-retrenchment narratives regarding the policy preferences of unions and employers on the one hand, and their respective political allies on the other. The evidence also does not support the findings of recent electoral research on changing patterns of party support, which claim electoral constituencies of left parties have diversified in the post-industrial period, making the Social Democratic and Labour Parties dependent on a very heterogenous coalition of classes. This is supposed to present them with specific dilemmas in economic and social policy reforms regarding the choice of the constituencies in whose interests they propose policies (Timonen, 2003; Hausermann, 2010; Emmenegger, 2014). The empirical record, however, shows that these parties have been and still are decidedly traditionalist in their

job security preferences, with unions and left parties favouring protections and employers and non-left parties opposing them.

There was significant divergence in the rationales of the 1993 deregulatory measures adopted in Sweden and the protections passed in the UK from 1987 to 2002. In the UK, economic conditions were not as dire and policy constraints were less of a factor. New Labour was in power to implement protections in 1999 as part of its 'fairness at work' package to promote new employment practices. These measures reflected Labour's broader shift in employment relations policy, which put them at odds with trade unions on certain issues. Also, British protections passed in 1987 and 1995 were one of those rare instances of job security enhancement during a sitting Conservative government, although they were more the product of external pressures (i.e., House of Lords decision and European Commission law). Indeed, job security protections introduced in the UK under Conservative governments (along with other worker rights) were required in one way or another by EU law, which also applied to Sweden, but the latter had already complied with those requirements. The 2002 protective measure passed by New Labour was also designed to implement a European Directive. In a similar manner, the 1991 decision of the European Court of Justice was one of the reasons Sweden's Centre-right government removed controls on private employment agencies in 1993. However, the influence of European law contributed to the deregulation of job security in Sweden whereas in the UK the European Commission turned into one of the main forces of resistance to the retrenchment agenda of Conservative governments, and even obliged the UK on a few occasions to ensure that its laws and policy considerations conformed to EC protective regulations. Thus, theories that predict countries have been influenced towards accepting deregulation through their contacts with various international organizations must be careful not to overshoot the mark in

generalizing this to the policy area of job security legislation. These institutions can exogenously structure the political decision-making process and therefore remain relevant to the explanation of reform outputs. But they do not always favour deregulation (as the UK exemplifies) or exert significant influence (as Sweden shows).

In 1997, the Social Democrats carried out the single most extensive deregulation of job security in Sweden's history. They claimed these deregulatory actions were intended to help raise productivity and international competitiveness in a changed global environment. This was the first and only time that the Social Democratic Party overtly proposed, supported and/or enacted deregulatory reforms. The varieties of capitalism framework claims large firms in high skilled sectors of coordinated market economies support job security rights as an incentive for their employees to specialize in specific skills. This is in contrast to conventional assumptions that capital will always opt for the lowest levels of social protection. However, the evidence shows there was a unified front of employers' associations in favour of retrenchment in 1997, even though the measures affected the most skilled and valuable sections of employers' workforces. In fact, business organizations complained that the deregulatory reforms did not go far enough in relaxing the last in first out rule for open-ended contracts. Thus, the evidence in Sweden concerning job security matters does not point to a conflict between sectoral employer organizations with a clear profile in terms of their size and skill (e.g., large, medium or small, banking, construction, machine industry, retail trade, hotels, etc.). Almost all employer organizations in Sweden, including several state bodies such as universities, supported less job security and opposed the extension of protections. In the UK, the Labour Party deregulated dismissal protections for the first and only time in 2002 using the same kind of pro-market rhetoric used by the Social Democrats in 1997. Together their policies and rationales marked a

broader shift to the right by left parties, representing a departure from their normal politics and expressing the profound change in class power relations that had taken place since the 1960-70s. Industry negotiations and political debates that once served to create standard national macroeconomic parameters were less relevant in the neoliberal era when demand for policies to improve productivity and competitiveness routinely took precedence over considerations of job security, and even infiltrated the policy agenda of left parties. However, as the literature has rightfully argued before, deregulatory actions in times of austerity are most difficult to implement under left parties because the benefits of job security for their economic allies are so vital to the long-term interests of unions that retrenchment will generate strong counter mobilization and carry significant electoral risks.

From 1997 until now, the Centre-right government in Sweden relaxed restrictions on fixed-term contracts twice with the support of private and public sector employers who over the years increasingly relied on temporary workers to operate. The regulatory gap between regular and temporary employment has existed in Sweden because demands to deregulate regular contracts often met fierce resistance from unions and were therefore abandoned or repealed as happened with the 1994 Act. Attention then shifted to the deregulation of temporary employment. Resistance to deregulation was considerably weaker and the result was the dualization of labour markets. Regular employment remained strongly protected, while temporary employment became more flexible. By contrast, protections for open-ended contracts in the UK could be more easily retrenched without the need to resort to the second-best strategy of deregulating temporary contracts, which are used much less. This is partly why British policymakers could scale back job security rights for permanent workers in 2002, 2012 and 2013

without risking too much of their political capital. However, dismissal is relatively easy to achieve in the UK, so these measures had less bite than if they were enacted in Sweden.

Although there is limited data on the impacts of statutory employment protections in Sweden vis-à-vis the UK, some comparisons can still be made between the two cases given the evidence that is available. As shown in Chapter 2, significant gaps exist between protective regulations in the statute books and protective regulations in practice in the UK. Indeed, British employees did not derive nearly as much benefit from job security protections as the literature sometimes suggests or labour rights can create the impression of. In many cases, the form of regulations prevails over their substance. This is the major shortcoming of political deliberations preceding legislation and contemporary labour law discourse writ large, namely a fixation on legal critique on questions of form, while losing sight of questions of content/substance, thereby ignoring the real, lived effects of policies as well as the limits and potential of law as a mode of protective regulation. However, statutory employment protections appear to be much more beneficial to workers in Sweden where the overwhelming majority of disputes are settled between the social partners outside of courts, with employers usually paying decent financial compensation to employees.

For these reasons, the two countries have diverged significantly in terms of the benefits of their job security protections since the 1960-70s. In broad terms, the evidence suggests differences in outcomes were connected to the power resources of trade unions and their institutional positions in regulatory frameworks, relationships with political allies, membership bases and coverage by collective agreements. The strength of these power resources differed across the two countries as did the ability of unions to leverage their resources. This is most clearly the case in Sweden with its comprehensive bargaining institutions and high union density

in public and private sectors, which support representation and regulation through supply chains. For example, the coverage ratio of collective agreements (90 percent) is higher than the degree of union organization (70 percent) because unorganized employees in companies with collective agreements for similar employment are also covered (Riksdag, 2020). The favourable circumstances of the Swedish labour movement have also been linked to other historical, legal and economic factors, including: preindustrial class cleavages, proportional representation, the manufacturing basis and organizational cohesion of Swedish capital, the timing and pattern of industrialization (facilitating the institutionalization of class compromise) and the wider economic margins for social reforms by virtue of its greater international competitiveness (see, e.g., Pontusson, 1990).

The exceptional economic performance of Sweden is primarily due to its high rates of public-sector employment. By international standards, Sweden's public sector (consisting of the central government sector and the local authorities) remains very large and reflects the country's strong tradition of political and public involvement in the provision of social services, which has contributed to the economy's good employment record and expansion of female labour supply. In 1965, private sector employment accounted for 85 percent of total employment while public sector employment accounted for the remaining 15 percent. In 2010, the corresponding shares were about 68 percent (private) and 32 percent (public central and local authorities). The shift in proportions of public and private sector employment stemmed largely from demographic changes, which boosted demand for the expansion of services and resources in the public sector. For example, Sweden became the oldest country in the world in the 1980s when 18 percent of its population was above 65 years of age. As a result, the need for health, geriatric care and childcare increased and this expansion was facilitated with the help of more women entering the

workforce. The central government is organized in several agencies and includes parliament, governmental authorities such as policy, defence, judicial system, education, infrastructure and administration. The local government consists of municipalities and county councils, in control of education (childcare to secondary school), healthcare and the care of the elderly and disabled. Since the mid-1990s, there has been a greater tendency towards retrenchment and restructuring of the public sector and increased competition, leading to a marginal decrease in public employment but the share of public workers remains one of the highest in the OECD. The deep economic crisis of the early 1990s led to a decline of employment in the public sector, a reduction of nearly 300,000 employees between 1991 and 2007 or 17.7 percent, which was attributable to liberalization and downsizing measures. In 2010, about 250,000 people (5 percent of total employment) were working for the central government while more than one million (24 percent of total employment) were working in municipalities and county councils. Employment in public enterprises amounted to about 5 percent of total employment (Riksdag, 2020).

It should also be pointed out that the Swedish labour market model relies on non-intervention by the government for the most part, especially in wage formation. For example, there are no statutory minimum wages. So, in one sense, employment protection legislation is alien to the Swedish system (Nycander, 2002). Much of current statutory employment regulation is also optional, they can be bargained away by employers and unions in agreements at the central or local levels. Indeed, a distinguishing characteristic of Swedish employment protection legislation is its semi compelling nature, allowing for deviations, both to the advantage and detriment of workers, from the statutory provisions through a collective agreement entered into by unions and employers. In this way, adjustments to accommodate the needs of specific sectors and industries or companies are possible. But while it is true that collective agreements can

deviate from the letter of the law, most elements of the law are not deviated from and some cannot be deviated from. For instance, the all-important requirement that dismissals should be for just cause. Deviations mostly concern advance notice and fixed-term contracts and never dismissals for personal reasons, which are strictly regulated by statutory law. So, employment protection legislation is a fair approximation of actual practices within Sweden (Per Skedinger, Personal Communication, May 2020). Yet, deregulation of temporary employment has been the name of the game in the last couple of decades. A comparison of the rules for hiring someone on a fixed-term contract between 1985 and today reveals a world of a difference. However, most types of employment in Sweden remain relatively protected, so there is little space available to employers to seriously abuse even non-standard forms of employment in preference of others. In countries such as Sweden, then, employers sometimes best achieve flexibility not through the deregulation of job security, but rather, in other different ways, including increasing productivity levels, lowering working hours, raising operating times, etc. (Skedinger, 2010).

CHAPTER 4. IMPLICATIONS OF EVIDENTIARY RECORD ON BRITISH AND SWEDISH EMPLOYMENT PROTECTION LEGISLATION

4.1. What the Number and Nature of Policy Measures Tell Us

Altogether, the UK adopted 24 employment protection score changing measures since 1963. Eighteen of its policy actions have provided more protections to workers in the statute books while six reforms have deregulated employees' contractual terms and conditions. These empirical findings suggest at least three theoretical perspectives have underestimated the prevalence of job security laws in the UK.

According to the varieties of capitalism thesis, we should not expect this many statutory regulations interfering in 'free' employment relationships in an archetypical liberal market economy, let alone a large number of measures preventing employers from exercising significant prerogatives in hiring and firing their employees. The varieties school sees employment protections as somewhat irrelevant in liberal market economies, where more general skills are said to prevail, and employers are supposed to be less interested in investing in specific skills and retaining their employees. However, the UK enhanced job security eighteen times between 1963 and 2002, and twelve of those changes occurred in less than two decades (1963-1978). As a result, the UK had a relatively comprehensive system of dismissal protection by the 1980s, roughly on par with Sweden's, which the varieties approach does not see any reason for given its assumptions about the lack of investments in firm and industry specific skills in liberal market economies. It assumes unilateral management and a flexible labour force preclude any possibility or desirability of a growing statutory employment protection regime, as if the two are incompatible or inconsistent, rather than mutually reinforcing.

In a similar manner, the expansion-retrenchment approach fails to capture some salient characteristics of British employment protection legislation. Job security regulations in the country have steadily become more, and not less, protective since the beginning of the 1970s 'neoliberal revolution.' This is evident both in terms of the number of protective measures adopted since 1963 (18 out of 24 policies as discussed in Chapter 2) and the level of protection afforded to regular and temporary contracts (see OECD, 2020a; Adams et al., 2018). So rather than develop in an inverted 'V' pattern as some expansion-retrenchment narratives suggest, British employment protections have actually increased or remained consistent over time according to the evidence. In an archetypal neoliberal country like the UK, this seems like a surprising finding. However, to the credit of theoretical expectations of retrenchment, most protective measures (12 out of 18) were implemented before the era of welfare contraction that took shape in the wake of the oil shocks of the late 1970s and all deregulatory policies (6) were indeed imposed in and after the 1979 neoliberal turn. But the UK is not characterized by a higher number of deregulatory reforms as critical perspectives would have us believe, even though the era of neoliberal austerity has been a much more extended time period than the postwar 'golden age', meaning way more policy opportunities have existed for deregulation.

Another finding is that only three out of twenty-four measures specifically targeted fixed-term contracts (with two actions enhancing job security and the other one decreasing it), while all remaining changes affected open-ended contracts. Newer literature on job security regulations has focused a great deal on the deregulation of fixed-term contracts as a way to explain the dualization of labour markets and the increasing share of temporary employment since the 1980s (Rueda, 2007; Emmenegger, 2014). Similarly, the retrenchment literature often assumes the growth and prevalence of precarious non-standard forms of work, often prompted through

various policy changes facilitating atypical employment relationships, particularly in neoliberal style market economies. But in terms of specific policy actions in the area of employment protection, there have been few instances of fundamental deregulatory reform to fixed-term or temporary contracts in the UK. This empirical finding does not invalidate the literature, but merely shows a relative absence of (de)regulation of non-standard contracts in a country said to be long characterized by the variety and growth of atypical employment (see Jones & Prassl, 2019). In general, achieving dismissal is comparatively easy in the UK and fixed-term contracts are used much less than other countries.

Likewise, the power resources theory performs well in some respects but less so in others. As far as the number of protective and deregulatory reforms is concerned, the theory is less compelling because the UK features many more statutory protections (18) than deregulatory reforms (6), despite having a more fragmented working class and a weaker and highly decentralized labour movement. However, in a different way the theory is validated by the large number of job security increases made during a period of relative union economic and political strength. This is because 12 protective measures were adopted at a time when union density remained somewhat high, ranging from 40 to 50 percent (1960-1980) and when the Labour Party was in power for almost a decade (1964-1970, 1974-1979) and therefore able to pass legislation with less difficulty. Union density is significantly related to greater political support for employee rights, so with more union members, the working class can be more influential in the legislative process (Esping-Andersen, 1985; Francia, 2006).

But from 1979 to 2013 when the remaining 6 protections and 6 deregulatory measures were passed, union density fell by at least ten percentage points per decade and Labour was in office for only 13 years. It is difficult to say whether these findings substantiate or challenge the

power resources interpretation. On the one hand, it makes sense that all deregulatory actions corresponded to a period of declining union density and mostly Conservative Party rule (except for one deregulatory reform passed by Labour). On the other hand, during this period of shrinking union power we see that one third of all protective measures (6 out of 18) were adopted by Labour governments (except for two policies passed by Conservative governments due to external pressure). These observations do not fit very nicely with each other from a power resources perspective because a weaker and more fragmented union movement is not supposed to translate into increased political support for job security. Using the same logic, we should also expect a steady decline in employment protection levels since the 1980s, given the massive fall in union density over the years. But the UK's employment protection score for regular contracts has remained relatively constant, either 1.35 (from 1985-1999 and 2013-2019) or 1.51 (from 2000-2012) (OECD, 2020a), and never dropping below.

In these ways, all three theories miss some interesting dynamics at play when it comes to the development of statutory employment protections in the UK. The varieties thesis, however, explains the least, while the other two theories are better able to account for some of the major empirical findings presented.

In the case of Sweden, these same explanations appear to both support and contradict the evidence produced, namely that 22 employment protection score changing measures have been adopted since 1971. Twelve of these policies have improved the job security of workers while ten reforms have rolled back employee contractual rights.

The varieties school claims coordinated market economies such as Sweden benefit from job security because they rely on workforces with industry- or firm-specific skills. This is

supposed to help ensure returns on investments by dissuading employers from dismissing employees, signaling to the latter that they will stay in their jobs longer. As institutional safeguards, they are also supposed to help solve collective action problems, which occur when employers and workers face choices in which the maximization of their short-term self-interests yield outcomes leaving both sides worse off than feasible alternatives (Emmenegger, 2014). Thus, job security is human capital and protected by employers from going to waste through undesirable flexibility practices. Turning to the evidence, we see that Sweden has indeed implemented a good number of employment protection measures (12) over time, which appears to validate the varieties thesis to some extent, however, we also see an almost equal number (10) of deregulatory reforms. If job security regulations are so advantageous to countries such as Sweden, then we should not see so many measures doing the exact opposite of what employment protections are intended to do, namely flexibilizing employment relations and permitting employers to increase or diminish their workforces and reassign or dismiss employees with greater ease.

It is also worth pointing out that since 1974, six policy measures have targeted fixed-term contracts, of which two have been protective and four have been deregulatory in nature. Further flexibilizing temporary employment has been the trend in Sweden for the last couple of decades as any comparison of the rules for hiring someone on a fixed-term contract between 1985 and today reveals. Unlike in the UK, the use of fixed-term contracts was more difficult to achieve in Sweden due to union opposition. Also, employers' demands for fixed-term employment have increased since employment protections for regular contracts remain relatively strong. Lastly, the 2020 reforms via collective agreements between unions and the Swedish Enterprise suggest industry or firm specific skills and job security do not simply have complementary and mutually

reinforcing predispositions, since the latter has been downgraded in exchange for the the former. Altogether, the above findings do not bode too well with the varieties perspective and raise some doubts about its predictive power.

The expansion-retrenchment approach can predict the large number of deregulatory reforms (10 in total) adopted in Sweden since its move towards neoliberalization in the 1980s and 1990s. It can also account for most of the protective measures (10 out of 12) implemented before the end of the so-called golden age – the era of macroeconomic structures that guaranteed constant rates of profit and growing levels of social protection. A minor quibble may be that it fails to explain why slightly more protections (12 in total) have been adopted as compared to 10 deregulatory reforms, especially two job security enhancing measures during Sweden's most 'neoliberal moment' in the 1990s when its public finances were highly unstable and its government embarked on a programme of deregulation, leading some analysts to proclaim the end of the Swedish model then. Moreover, the above theory does not entirely explain why Sweden's OECD employment protection score for regular contracts has fluctuated between 2.64 and 2.45 since 1985, which implies little to no deregulation has taken place. However, given the four deregulatory reforms to fixed-term contracts during the same period, it makes sense that Sweden's OECD protection score for temporary employment has gone down from 4.08 to 0.81. These numbers appear to lend some credence to retrenchment narratives about increased flexibility and the dualization of labour markets since the 1980s.

The power resources model fails to explain why Sweden adopted nearly the same number of deregulatory reforms (10) as it did protective measures (12). Despite it having one of the world's strongest union movements characterized by high union density, which reached over 80 percent in the 1980s-90s and has never dropped below 67 percent. Sweden's Social Democratic

Party has also assumed the helm of government consistently with very few exceptions, giving it ample room to work with its core union constituency to oppose many deregulatory actions and extend job security. However, the ratio of the numbers of protective and retrenchment policies do not seem to support such an interpretation. A gap in the power resources argument exists even when the 'stringency' of job security regulations is considered. According to the OECD, Sweden's score for regular contracts has fluctuated between 2.64 and 2.45 since 1985, meaning the qualitative stringency of job security in the country has not increased. This is despite high union density combined with a relatively powerful organizational structure and a Social Democratic Party that has dominated the political system, functioning as a tool to advance the interests of its deep union-based clientele.

This shortcoming in power-oriented approaches aside, it does make sense that nearly all of Sweden's protective measures (10) were implemented between 1971 and 1976 when the Social Democrats were in power and their strong union allies were increasingly accepting of legislation as an extension of collective bargaining and pushing for more job security (among other things). It also makes sense from a power resources perspective that six deregulatory reforms passed from 1982 to 2007 were carried out by Centre-right governments and not the Social Democrats. It may come as a surprise to the more political version of the power resource thesis (Sassoon, 2010) that 4 out of 10 deregulatory measures were implemented by the Social Democratic government in 1997, in the face of significant opposition from their economic allies, which leaves the above theory open to criticism given its assumptions about hierarchically organized unions facilitating the creation of pro-labour policies by supporting their political allies to be part of a coalition in power. The 1997 deregulatory reforms targeting regular

contracts suggest the Social Democrats did not always act in line with the interests and preferences of their strongest political backers.

Sweden's plummeting OECD score for temporary workers, dropping from 4.08 to 0.81, also raises questions about power resources assumptions around strong union movements achieving or maintaining the highest levels of social protection by blocking or reversing flexibility measures. The power resources theory correctly highlights unions' quasi-institutional role in the formulation of job security regulations, but it over emphasizes cross-national differences in power resources, at the expense of temporal differences, thus missing the shift in the balance of power that occurred between capital and labour in Sweden over time, which forced unions and their political allies to make some concessions on job security given the discursive dominance of the market-liberal perspective. So, despite having record high union membership levels and a long-reigning Social Democratic Party, Sweden like other countries, had to adapt its position on the labour market by not opposing all economic demands for more flexibility. Thus, under pressure, unions and Social Democrats had to make a compromise by allowing some deregulation, in this case to temporary employment rather than open-ended contracts, because the latter negatively affects their core members and supporters more as well as undermines the long-term organizational and representational interests of the trade union movement and Social Democratic Party.

Since the 1960s, a significant number of employment protection score changing measures have been adopted in Sweden (22) and the UK (24). The two cases are similar in this respect and converge in terms of their number of policy outputs. However, the UK passed many more protective measures (18) than Sweden did (12). The UK also had less de-regulatory reforms (6) than its Nordic counterpart (10). In this way, they diverge in terms of their protective to

deregulatory policy ratios. These findings are not fully supported by any of the theoretical perspectives in the literature. The varieties school, for example, would not expect 24 employment protection measures to exist in the liberal market economy of the UK, let alone 18 regulations offering greater job security to employees who are said to have general skill sets, which their employers can easily find substitutes for in the labour market, making firms less interested in retaining their employees and thus employment protections useless. The varieties approach would also struggle to explain why the coordinated market economy of Sweden has nearly the same number of deregulations (10) as it does protections (12), which does not make sense because it is supposed to benefit from increased job security due to the prevalence of specific skills, and employers being more interested in retaining their employees, making deregulatory policies undesirable. In a comparative context too, the varieties model is contradicted by the more numerous protective policies of the UK vis-à-vis Sweden. Similarly, some versions of power resources theory would not expect the UK's policy inventory to consist of 18 protections and only 6 deregulatory reforms, despite labour's dwindling resources in recent decades. The same criticism applies to retrenchment narratives, which would expect the UK to have regressively reformed job security many more times than it actually did. The UK is often cited as the birthplace of deregulation and at least forty-years have passed since the 1979 turn towards market-oriented labour policies, providing ample opportunity for retrenchment to occur. But the empirical evidence does not support this interpretation when it comes to job security laws.

During the so-called golden age of capitalism, dated roughly before 1980, the UK adopted 12 protective measures, while Sweden implemented 10 protections. These trends support power resources and expansion-retrenchment theories insofar as the expansion of job

security occurred before the proliferation of neoliberalism accompanying the economic crises of the 1980s and 1990s in both countries. Also, the years prior to 1979 account for 66 percent and 83 percent of all job security enhancing measures adopted in the UK and Sweden respectively. This empirical finding corroborates the above theories. Altogether, the two country cases converge in at least four different ways. First, they both generated a similar number of policy outputs in the area of employment protection legislation before 1979 (UK: 12; Sweden: 10). Second, they both adopted a similar number of protective measures then (UK: 12; Sweden: 10). Third, they both passed the majority of their protective policies during that time (UK: 12 out of 18; Sweden: 10 out of 12). Fourth, they both passed almost half of their total job security laws before 1979 (UK: 12 out of 24 or 50 percent; Sweden: 10 out of 22 or 45.45 percent).

However, from the early 1980s onwards – a watershed period in political and economic regulation in which Keynesian welfare states were gradually remade into more neoliberal competitive markets according to the literature – the UK adopted six more protections while Sweden only passed two. This finding does not fit nicely into power resources accounts. For example, it is strange that Sweden, the archetypical example of a strong trade union movement (with over 80 percent union density in the 1980s and 1990s) and a strong Social Democratic Party (in power for 27 years since 1982), would only be able to pass two measures enhancing job security for workers during a forty-year period (1980-2020). Meanwhile, the UK with its labour movement regarded as relatively weak in power resources and sometimes viewed as the complete opposite of the Swedish model, somehow ended up with three times more protective measures (6) during the same period. This shortcoming of power-oriented formulations is overcome by arguments that generalize about programmatic retrenchment and the lack of pro-labour policies in the neoliberal period as far as Sweden is concerned. But the same retrenchment

argument falls short when it is applied to the UK. The adequacy of a theory must be measured by its ability to explain both cases, not just one, so in this sense, both the power resources and retrenchment models struggle to account for the number of protective policies passed in the UK and Sweden since the 1980s.

As for deregulatory reforms adopted over the neoliberal period (1980 to present), the UK implemented six measures retrenching job security while Sweden passed ten such policies. It is difficult to say whether the two countries diverge in this regard. The number of policy outputs in each case can be said to be different and slightly similar at the same time. Comparatively speaking, Sweden's more numerous regressive policies does not seem to make sense from a power resources perspective. Its labour movement and left parties should have been able to fight deregulation initiatives and influence job security laws much more effectively than their colleagues in the UK. But this is not reflected in the number of deregulatory reforms passed in both countries, with Sweden leading the way. On the other hand, the retrenchment argument can account for the large number of job security decreases (6) in Sweden, which was almost on par with its protective measures (10). However, the same argument fails to explain why the UK passed an equal number of deregulatory reforms (6) and protections (6) during the neoliberal period, ending up with an imbalanced ratio of 18 protections versus 6 retrenchment measures.

Most of Sweden's deregulatory measures (6 out of 10) were passed in the 1990s when it was experiencing its worst economic crisis since the 1930s. Its remaining deregulatory actions (4) were made in the years 1982 (2) and 2007 (2). The UK de-regulated its employment protection regime three times from 1979 to 1985 and another three times from 2002 to 2013. Overall, these results indicate divergence and convergence in the way regressive reforms were tied to specific periods. For example, the UK did not retrench job security more times during any

decade like Sweden did. However, they both undertook deregulatory actions during the 1980s and 2000s. Additionally, in the UK, three policy actions (out of 24) targeted fixed-term contracts, with two of those measures enhancing job security and the other decreasing it while in Sweden six policies (out of 22) affected fixed-term employment, with two of them being protective in nature and the other four classified as de-regulatory measures. Thus, the two countries diverge in this regard. In Sweden, twice as many policies targeted fixed-term contracts. Also, the majority of them (4) were deregulatory whereas in the UK most reforms (2) were aimed at strengthening the rights of fixed-term workers (which does not include the 2018 proposals to extend protections for this group).

So far, comparative discussions have focused on the number of employment protection measures enacted and their regulatory nature using a dichotomous classification of either protective or de-regulatory. Another way to analyze and compare measures involves first categorizing each country's employment protection inventory into distinct forms or sub-types of job protection, such as notice of termination, redundancy pay, proceedings for unfair dismissal, notification and consultation over layoffs.

In the case of the UK, its 24 employment protection score changing measures can be categorized under 10 different types of job security regulations. It is important to note that a certain type of regulation could have been introduced once and never re-appeared again (e.g., change to compensation award limit) or it could have been subsequently strengthened and/or deregulated in future reforms (e.g., general unfair dismissal protection). In what follows, 10 different types of job security are listed, along with the years in which specific measures corresponding to them were enacted and their regulatory nature ('+' for protective and '–' for de-regulatory). Those policy areas with the highest frequency are listed first.

1) general unfair dismissal protection (1971+, 1974+, 1975+, 1979–, 1985–, 1987+, 1999+, 2002–, 2012–);

2) part-timers have equal dismissal rights (1963+, 1975+, 1995+);

3) notice of termination (1963+, 1972+, 1975+);

4) fixed-term contract dismissal protection (1980–, 2002+, 2002+);

5) redundancy pay (1965+);

6) inform and consult trade union over any redundancy (1975+);

7) employer must notify government department over collective redundancies (1975+);

8) burden of proof of dismissal falls on employers (1978+);

9) compensation award limit (1999+);

10) notify and consult over collective redundancies (2013–);

As shown above, general unfair dismissal protection was a type of job security regulation that gathered the most measures (9) within the UK's employment protection catalogue, and this was followed by three other types of job security, each of which gathered three measures: part-timers have equal dismissal rights, notice of termination and fixed-term contract dismissal protection. The six remaining types of job security each gathered only one measure.

In the case of Sweden, 22 of its measures can be categorized under the following 8 types of job security regulations:

1) general unfair dismissal protection (1974+, 1974+, 1974+, 1982–, 1993–, 1994+)

2) allowance of fixed-term contracts (1974+, 1982–, 1997+, 1997–, 2007–, 2007–)

3) notice of termination (1971+, 1974+, 1997–, 1997–)

4) priority rights to re-employment (1974+, 1997–)

5) seniority as relevant criterion for redundancy (1974+)

6) consult trade union over any redundancy (1974+)

7) consult unions on business and management practices (1976+)

8) controls on private employment agencies (1993–)

As shown above, general unfair dismissal protection and allowance of fixed-term contracts were the two types of job security regulation that gathered the most measures (namely 6 each) within Sweden's employment protection catalogue, and this was followed by two other types of employment protection, namely notice of termination (4 measures) and priority-rights to re-employment (2 measures). There were four remaining types of job security that each gathered only one measure.

A comparison of the types of job security regulations adopted in the UK and Sweden reveals more differences than similarities between the two countries. For example, the UK features seven types of job security that do not even exist within Sweden's inventory of employment protection laws. These include: part-timers have equal dismissal rights, redundancy pay, employers notifying a government department over collective redundancies, burden of proof of dismissal falling on employers, fixed-term contract dismissal protection and consultation over collective redundancies. Similarly, Sweden features five types of job security that do not exist within the UK's inventory of employment protection legislation. These are: allowance of fixed-term contracts, priority rights to re-employment, seniority as relevant criterion for redundancy, consultation of unions over business and management practices, and controls on private employment agencies. In this sense, there seems to be little overlap between the types of regulations adopted in both countries. These national differences stem in part from the two countries' contrasting histories in terms of their power resources and institutional legacies. For example, trade unions and the Social Democratic Party have figured more prominently in

Sweden, which has significantly benefited their core constituencies – labour market insiders – who have obtained rather important job security protections in the form of priority rights to reemployment, seniority rules for redundancies and workplace democratization. By contrast, British trade unions and their political allies have been comparatively weaker and less successful at obtaining as many significant institutionalized roles in the administration of dismissals as their counterparts in Sweden. This has contributed to the less stringent and more toothless nature of statutory protections in the UK and might explain why it has had to confer unfair dismissal rights upon part-timers and fixed-term workers to improve their vulnerable positions as well as impose greater burden of proof upon employers in courts because of the poor outcomes of applicants claiming unfair dismissal.

There are only three policy areas that appear in the employment protection catalogues of both countries, namely general unfair dismissal protection, notice of termination and notification/consultation of trade unions over redundancies. The UK passed 13 policies that fit into one those categories, while Sweden passed 11 such measures. Specifically, the UK adopted 9 measures affecting general unfair dismissal protection (5 have been protective and 4 were de-regulatory) while Sweden adopted 6 such regulations (4 were protective and 2 have been de-regulatory). The UK also adopted 3 measures related to notice of termination (all of them were protective in nature) while Sweden adopted 4 such policies (with 2 being protective, and 2 being de-regulatory). Lastly both countries adopted one protective measure requiring trade unions to be consulted or notified over any redundancies.

In sum, an analysis of the number and nature of job security laws implemented in both countries reveals a mixed bag of divergent and convergent trends, with perhaps more prominent instances of differences than similarities between the two cases.

4.2. What the Causes of Policy Measures Tell Us

Three dominant theories in the comparative political economy literature cannot adequately explain why employment protection score changing measures were adopted in the UK and Sweden. There is almost no supporting data to substantiate the varieties of capitalism thesis. The empirical evidence presented in Chapters 2 and 3 lend greater credibility to the power resources and expansion-retrenchment approaches, which, however, have shortcomings of their own. For example, they fail to acknowledge the importance of the mode of regulating employment contracts (collective agreements over statutory laws) before the 1960-70s. Moreover, the power resources approach underestimates temporal differences in power resources within the UK and Sweden while overemphasizing their variations. Meanwhile the expansion-retrenchment thesis generalizes about cross-national similarities in structural forces and power resources, incorrectly deducing that job security has developed in an inverted 'V' pattern within both jurisdictions over time. Furthermore, both theories disregard the important role of employment protections as independent institutional power resources. They also have trouble accounting for the two-tier labour market reform trajectory in Sweden or the lack thereof in the UK. In contrast, my argument, which is based on but goes beyond these explanations, can help fill some of their theoretical blind spots. Power resource and expansion-retrenchment approaches are the right starting point for the analysis of the historical development of job security. But they require tweaks and additional complementary variables to provide a more accurate and richer comparative analysis of labour law dynamics.

Recent versions of power resources approaches overemphasize the role of political parties over unions in policymaking processes. This is mainly due to the assumption that unions have lost a significant amount of their influence in the economic and political domains

(Emmenegger, 2014). However, unions have played the most crucial role in the development of job security laws since their introduction, despite their decreasing power resources in recent decades and the fact that political parties were responsible for the initial impetus to establish statutory dismissal rights. For obvious reasons, trade unions (more so than any other policy actor) have an interest in restricting managerial prerogatives to hire and fire. Job security, therefore, is an important source of social protection and bargaining power for unions whose historical instrument of choice was collective agreements because it allowed them to maximize their role and influence in regulating employment relationships. If they lacked the power resources to oblige employers to negotiate over job security, unions still had the plausible option to obtain protections through their political allies and the government via legislation. In the case of job security, the dynamic between collective agreements and labour law was pivotal because it conditioned the possibilities for future developments.

Trade unions were initially against the idea of regulating job security by means of a statutory unfair dismissal system, even though they stood to benefit from it and the alternative was continued bad faith bargaining with employers. The reasons for this ambivalence towards seemingly beneficial legislation were multi-fold. First, there were no established systematic civil codes in the UK and Sweden that could have also been applied to employment contracts, so the regulation of employment relationships and job security in particular were primarily subject to collective bargaining. Second, the voluntary method opened up to unions first, so they were more accustomed to bargaining with employers over a range of issues and used to limited state interference in industrial relations. Third, unions doubted the ability of courts to make impartial and informed decisions concerning employment matters. They were also deeply suspicious of courts and accused judges of systematic bias and persecution based on their past experiences.

Fourth, the older generation of union leaders were quite proud of the fact that their most hard-won rights had been achieved by workers and their representatives, so they were reluctant to accept government offers to implement protections that they had hitherto been unable to voluntarily obtain themselves. Fifth, the achievement of full employment in the postwar period meant employment protections were not seen as an urgent enough issue by unions to accept statutory protections from the state. Sixth, the main goal of unions was less the obtainment of statutory dismissal rights for individuals and more the bargaining and striking of favourable terms for their collective membership with only auxiliary support from the state. Unions believed the position of workers would be best strengthened through higher unionization rather than through statutory individual rights.

The desire to maximize institutional control is key to understanding why unions in the UK and Sweden were keen to collectively bargaining for job security even when the level of dismissal protection in their own countries fell behind those in states that had obtained such desired regulations through legislation (Emmenegger, 2014). It also helps explain why unions gained an organizational and representational interest in the introduction and extension of job security laws.

First, it is necessary to conceptualize collective bargaining and statutory employment protections as historical institutions, as the political legacies of historical struggles, which also structured and conditioned political actions. This view complements power-resources and expansion-retrenchment narratives in many ways. Unions and employers were political actors who attempted to exercise control through their traditional voluntarist method to pursue their own interests, often at the expense of each other. The traditional power structure existing within the voluntary system operated as a strong disincentive to legal change because unions and

employers perceived their positions and power threatened by it, and as a result lobbied for the status quo. The existing institutional environment of collective bargaining, however, influenced the possibilities for radical institutional change (statutory reform) by creating an impasse over job security, obliging governments to impose legislation against the desires of both sides of industry during a critical juncture (a period when significant political change was needed to address a mounting belief in a socio-economic crisis). Previously, successive governments in both jurisdictions had acquiesced to the traditional voluntary system through a policy of abstentionism in industrial relations.

This changed with the first job security laws, which resulted in the creation of a direct role for national governments to regulate industrial relations, the juridification of labour law and statutory protections against unfair dismissals as part of a new individual employment law (Howe, 2017). Once employment protections were created into a new statutory regulatory regime, unions began to play a central role in defending and expanding them in the face of opposition from employers. In this way, job security legislation became a new historical institution, which again conditioned and structured future political action. The employment protection laws introduced in the 1960-70s were formal and informal structures that influenced the behaviour of policy actors, including political parties. They also served crucial legitimation and accumulation functions (by reflecting the interests of the state, capital and labour) while simultaneously acting as the means and markers of class struggle (by serving as economic and political weapons wielded by labour and capital over the distribution of the social product). The more unions were able to extend employment protections and involve themselves in the administration of dismissals, the more they were able to use those institutional powers to influence the ability of employers to direct and distribute work. As a result, unions gained an

organizational and representational interest in the protection of statutory job security rights, which became independent institutional power resources for them in the long run.

Conceptualizing employment protections as institutional power resources also allows us to identify the strategic considerations of unions when they are under pressure to accept flexibility, as they have been since the neoliberal turn. This point is particularly relevant in the case of Sweden where deregulation of temporary employment has occurred more frequently. Swedish unions have assented to flexibility at the margins of the labour force because that allows them to compromise with other policy actors to maintain their privileged position in decision-making processes and institutional involvement in dismissals. Above all, this strategy allows them to protect the interests of their core members in open-ended contracts (labour market insiders) who continue to make up a significant share of Social Democratic voters. By reluctantly accepting two-tier labour market reforms, unions have been able to reduce political pressures for the retrenchment of job security rights for their own members. This strategy is economically and politically safer for unions because of the differences between unionized and temporary workers in the economy. The latter are much less likely to join unions, compete with permanent workers for jobs, work in the same economic sectors as them, receive the same pay or have the same skill sets. They are also less politically active and less connected to the Social Democratic Party. Indeed, in the early 2000s the Social Democrats continued to secure over 60 percent of the blue-collar workers' votes. While this figure dropped to 40.8 percent in 2019 (Salo & Rydgren, 2021), partly due to the Sweden Democrats competing with them over the working-class vote more, the class profile of the Social Democratic Party remains blue-collar workers in secure employment who have interests in job security protections for open-ended contracts. As a result, temporary workers are unlikely to undermine the privileged position of permanent workers who exercise

much more influence on labour market policies (Emmenegger, 2014). All this makes deregulation of temporary employment easier to accept from the standpoint of Swedish unions and the Social Democratic Party. However, employers and non-left parties have consistently advocated for the relaxation of crucial statutory rules such as the last in first out system, which unions consider out of the question because it affects the core interests of their constituency. The second-best strategy of employers and opposition parties, then, has been the deregulation of temporary or fixed-term employment relationships. Only recently have employers' pressures to relax the system of priority listing for open-ended contracts succeeded in Sweden.

Since job security rights shift the balance of power in favour of unions, employers have consistently opposed their introduction and extension. So why, then, did the UK and Sweden implement 18 and 12 protective measures respectively, especially after the period of labour movement strength had ended? Critical junctures provide the first answer. The 1960-70s was a relatively short period of time during which a confluence of socio-economic factors combined with the increasing power resources of the labour movement caused a political shift decisively to the left, creating a critical juncture that emboldened political parties to bring about radical statutory reform that departed from the regulatory status quo in the interests of unions. Indeed, it was before 1980 that most protective measures in the UK (12 out of 18) and Sweden (10 out of 12) were implemented.

But two other variables are needed to answer the puzzle of why the UK adopted so many more protections than Sweden, particularly in the post-deregulation era of Thatcher of dramatically reduced union and Labour Party strength. First, the UK adopted six more protections than Sweden but half of them (3 policies) were required by EU law. The UK's job security regulations did not conform to EU minimum standards so Conservative and Labour

governments were obliged to implement further job security enhancing measures to ensure their country's compliance. EU regulations and Directives were also instrumental in resisting the deregulatory agenda of Conservative governments in the 1980s and 1990s, otherwise the UK would have passed more deregulatory reforms than it did. By contrast, Sweden's job security legislation already complied with EU requirements, so it did not need to enact more job security enhancing measures like the UK. The toothless nature of statutory protections in the UK provides the second answer to the puzzle of abundant job security rights in one of the most archetypal liberal market economies. There is a significant gap between laws in the statute books and laws in action in the UK. This is partly because of the nature of job security enforcement and outcomes at the workplace and tribunal levels where employees are at a significant disadvantage, particularly in light of a fragmented union movement and low union density. By contrast, Sweden with its comprehensive bargaining institutions, high union density and 90 percent coverage rate of collective agreements, which support representation and regulation through supply chains, generates much higher equitable and solidaristic outcomes for workers in terms of job security. This significant gap in the level of dismissal protection between the two countries also explains why the UK recently announced "the largest upgrade of workers' rights in a generation" while Sweden plans to make the largest deregulatory revision of its employment protection legislation.

Because job security was imposed on employers through legislation without their consent, they looked for ways to circumvent those 'regulatory burdens.' This was done principally through two methods. First, employers' associations across all sectors of the economy and their political representatives (mainly the Conservative Party in the UK and the Centre-right Party in Sweden) expressed opposition to all proposals for the extension of job security while

advocating for the retrenchment of existing legal protections. Second, employers exercised discretion in the interpretation and enforcement of statutory rules at the workplace level in their attempts to regain much of their lost freedom to hire and fire. In this case, the rules remained formally the same but their impact on the ground changed as a result of shifts in external conditions, namely employers taking advantage of their discretionary powers inside the workplace to achieve numerical flexibility. This situation is not in the interest of the proponents of job security such as unions, so they look for ways to respond to such deviations. Indeed, trade unions took advantage of the critical juncture of the 1960-70s to enforce new regulations that left as little as possible to the discretionary judgement of employers by creating for themselves an important role in the administration of dismissals, which they used to monitor employers' behaviour at the workplace level. The UK's Employment Act of 1975 and Sweden's Employment Protection Act of 1974 implied that the labour movement had used its increasing power resources during a critical juncture to decrease the level of discretion available to employers by obliging them to inform and consult them over any dismissals, for example. This became an independent institutional power resource that was fed by unions' interest in job security and the administration of dismissals. But in the long run, it served as a complement for traditional collective bargaining by allowing unions to influence and extract concessions from employers through negotiations independently of their primary power resources (union density). These job security rights not only helped protect union representatives from arbitrary dismissals, but they created incentives for employees to join unions and granted union delegates veto powers in management decision-making. Importantly, they strengthened the bargaining position of unions by allowing them to use deviations from statutory job security regulations as bargaining chips that could be traded away to employers in exchange for concessions. In Sweden, for

example, some unions recently bargained away their core job security rights by expanding the liberalization of the last in first out rules in exchange for more training opportunities from employers and additional restrictions on employers' use of fixed-term contracts.

A similarity between the UK and Sweden is that special legal entities (e.g., employment tribunals and Labor or District Courts) prevail to resolve disputes relating to unfair dismissals. However, the overwhelming majority of disputes are resolved at an early stage by agreement between the parties outside of courts in Sweden. Evidence indicates that less than 10 percent of termination disputes, around 600 disputes, are taken to court each year, which is a relatively small number when compared to the UK where a total of 130,000 labour disputes go to court every year (Riksdag, 2012). A key difference between the two countries resulting from their disproportionate reliance on courts is that several reforms to job security in the UK can be attributed to a desire to achieve more efficiency in the administration of employment tribunals since many disputes are not settled voluntarily. There has been considerable pressure since the Thatcher years to resolve disputes quickly, easily and with minimal cost to the parties or state, even if that entails denying cases of hearings. However, a similarity between the two jurisdictions is that governments and employers have both expressed concerns about the associated costs and the legalistic and time-consuming nature of disputes. But in the UK much more than in Sweden this led to reforms to the composition of tribunal bodies, their ability to hear claims and procedures for accessing them. For this reason, the British dismissal claim system was modified to require substantial filing fees, hearing fees and fees for appeals. This is ironic since one of the original justifications for the existence of tribunals was that it would serve as a low-cost alternative to the common law courts (Howe, 2017).

Reforms to the tribunal system over the decades seem to suggest less concern with the need for specialist labour courts, which has rendered them more like civil courts and suggested unfair dismissal law in the UK has converged toward an employment at will model (allowing employers to dismiss for any reasons and without warning so long as the reason is not illegal or discriminatory). There has been considerable pressure and renewed efforts to eliminate the need to resolve disputes through legally binding tribunal resolution via the pre-claim conciliation stage in the UK. This process involves encouraging employees and employers to arrange mediation in the workplace to settle the dispute early voluntarily. This way, many unfair dismissal applications can be prevented from ever reaching a court, as is the norm in Sweden A conciliation officer plays a role in promoting such a settlement between the parties but has no duty to ensure that it is fair to the employee. The emphasis and reliance on conciliation generally signals British policymakers' efforts to resolve disputes as cheaply and quickly as possible while deterring applicants from proceeding to the seemingly more legalistic, time consuming and costly process of arbitration. However, conciliation is not mandatory and either party may refuse to participate. Nevertheless, the UK believes promoting conciliation can reduce the total number of claims and increase the share of claimants (approximately one-third in 2013) who typically attempt conciliation before proceeding to a tribunal (Howe, 2017).

A similar theme in contemporary political debates on job security in both countries is the need to minimize so called 'regulatory burdens' on businesses, particularly small or medium enterprises. This is predicated on the controversial belief that such laws impede economic growth, employment and national prosperity. Arguments against job security from employers and their political representatives emerged in the UK and Sweden early on and around the same time the Labour Party and the Social Democratic Party enacted comprehensive packages of

employment protections during the mid-1970s. The idea that job security can deter employment and business expansion is connected to the obligations imposed on employers to manage the risk of unfair dismissal claims in the context of global economic uncertainty and competition. This view corresponds to many neoclassical approaches that treat government regulations as interfering with the efficient operation of labour markets. Assumptions that job security is onerous on businesses are even reflected in the data produced by the OECD, World Economic Forum and World Bank. Negative macro effects are said to be caused by such 'vexatious litigation' because job shedding is made more expensive and time consuming for firms, thereby lowering the overall demand for employees. Critics sometimes suggest job security laws may lead employers to hire contingent workers that are not covered by labour laws (Howe, 2017).

These beliefs have influenced unfair dismissal reforms in the UK and Sweden. In the former, Thatcher's government extended the qualifying period from six months to one year in 1979 and then increased it to two years in 1985. Similarly, the introduction of filing and hearing fees for unfair dismissal applicants was justified as a way to decrease business burdens and the overall number of claims. In Sweden, the Centre-right government introduced a probationary period of six months to qualify for dismissal protection and this was extended to one year in 1993. In both countries, employers' organizations routinely complained that strict dismissal procedures and the threat of high awards made them reluctant to take on more staff. The small business lobby was particularly proactive in seeking to relax dismissal laws and create exemptions for small firms. Indeed, these groups of employers, who are rarely mentioned as highly effective policy actors in the theoretical literature, promoted fears around dismissal protections and commanded the active support of non-left parties in cementing an argument against unfair dismissal in both countries.

A key justification for their stance was that employment protections cannot be suitable for smaller firms because they undo the only advantage they have to maintain competitiveness and efficiency in the economy, namely flexibility, speed of making decisions and rapid adaptability to market conditions. According to this view, job security has disproportionate negative effects on smaller employers whose informal flexible operations and insufficient resource management systems make it difficult to deal with complex, ever changing and strict regulations. Although for the most part unions and left parties were successful at blocking the attempts of small firms to dilute dismissal laws or include exemptions for employers with less than 100 employees, the recent reforms in Sweden indicate even the Social Democratic Party's acceptance of the need to accommodate small business and decrease regulatory burdens of unfair dismissal laws overall. Indeed, the 2020 inquiry focused particularly on the situation of smaller businesses and claimed they often have poorer financial resources and less opportunities to resolve dismissal disputes, which supposedly make it risky to employ certain people, particularly the young and new arrivals. The government framed its proposals for scaling back the system of priority listing as reducing "employers' insecurity in new hires" (Riksdag, 2020). Similarly, small business in the UK has responded to the Good Work Plan to strengthen job security for precarious workers by demanding more flexibility than the regulations stipulate, for example, by allowing smaller firms to issue a statement of the main terms of employment to their employees within a month (rather than on day one) and to do away with the naming scheme of violators (FSB, 2018). If pressure continues to mount, particularly in light of the major challenges posed by COVID-19, then small firms may finally succeed in their ambition to inoculate themselves from these announced job security laws.

Despite the general tone of contemporary job security reform revolving around deregulation during the past few decades, it should be pointed out that in both jurisdictions, legislation has proved somewhat robust. There is support for the existence of unfair dismissal law from both sides of the political spectrum and among certain public employers, albeit to varying degrees. In the UK, statutory employment protections have survived the threats of abolition. For example, Thatcher's announced intention to do away with the unfair dismissal jurisdiction in 1986 was never followed through, although a new argument of principle against job security did take its place. Instead, Thatcher and subsequent governments sought to reduce access to and the quality of rights to unfair dismissal during their years in office. Similarly, the Cameron government had commissioned the Beecroft Report, which called for replacing the regulatory framework and enforcement of unfair dismissal law with a system of monetary payments, which employees would receive upon termination. After the Report was leaked to the media, the government distanced itself from its anti-regulatory ideology and stated that the complete termination of unfair dismissal law, as some business interests had asked for, would not be considered, as it would have negative effects on employee protections (Howe, 2017). Even the government's deliberation of a compensated no-fault dismissal scheme for smaller firms employing 10 workers or less was rejected due to significant political opposition, and only limited support from employers' associations. Both the Thatcher and Cameron governments reversed their intentions to radically scale back or eliminate unfair dismissal practices, opting for a policy compromise of limited deregulation instead. Thus, job security has proven fairly resilient and continues to develop as an enduring addition to the corpus of British labour legislation since the 1960s with some level of support across the political spectrum and within industry.

This is much more the case in Sweden. Despite recent plans to reform crucial statutory rules by relaxing the system of priority listing, unfair dismissal remains relatively strong and defended as a staple institution. Introduced in the 1970s, job security laws received multipartisan political support under extraordinary circumstances. However, even when those conditions changed, Centre-right governments still did not try to abolish or significantly deregulate the unfair dismissal system when they had an opportunity to do so after their electoral victories in the 1980s, 1990s and 2000s. Instead, they deregulated temporary employment and reduced access to the unfair dismissal system through a combination of extending qualifying periods and exemptions. Unlike the UK, Sweden's job security schemes did not have to escape a full-frontal assault. Indeed, there has been no turn to a political agenda of doing away with employment protections or seriously eroding them, although debates continue over the most desirable form of regulating job security (by means of collective agreements or legislation), which speaks to the endurance of Sweden's voluntarist model. Even the 2020 proposals for clearly extended exceptions from the rules of priority acknowledged "employees must continue to be protected against arbitrary dismissals" (Riksdag, 2020). This provides a clear normative basis in favour of unfair dismissal law and means it is unlikely to be subject to significant retrenchment during the remainder of the coalition government's third cabinet or as part of its re-election platform. Thus, in both the UK and Sweden, there appears to be some support for job security legislation, even if there is disagreement about the level of protection statutory rules should afford or how differently they should be designed to strike a reasonable balance between the employers' need for flexibility and the employees' need for protection. This reflects the basic understanding in both jurisdictions that there should be some independent check on the ability of employers to fire and hire at will.

It is suggested that there are three ‘victories’ that a claimant can hope for in exercising the right to claim unfair dismissal: first, the vindication from the tribunal or court that the dismissal should never have happened and was unfair; second, the opportunity to return to the job, and third, compensation for economic losses incurred since the termination (Renton, 2012). Given the very limited nature of remedies in the UK, neither of these victories are achieved in any great measure. Barriers to access are considerable, fewer claims end up reaching tribunals and success rates for applicants are lower. In Sweden, the situation is different and requires some elaboration. The great majority of cases are settled without proceeding to a court and are handled within the framework of dispute or conciliation negotiations, with employers paying modest amounts of compensation to employees. During the period 2005-10, the Labor Court decided around 180 dismissal disputes by a judgement, which either meant that the court tried the case in substance or that it upheld a settlement between the parties (i.e., that it approved a voluntary agreement reached by the parties in the case). More than 150 judgments belonged to the former category. About half of the cases concerned redundancies and dismissals. About two-thirds of the workers demanded that the dismissal be annulled (and they be subsequently reinstated), while the rest only claimed damages. One in five workers who claimed a dismissal should be annulled was successful in their claim. In the district court cases concerning dismissals, a slightly smaller proportion of the employees – about half – demanded annulment. Of these, one in ten succeeded in their claim. One explanation for the fact that significantly fewer employees succeeded in claiming invalidity in dismissal disputes in the district courts than in the Labor Court may be that a significantly larger proportion of district court judgments upheld a settlement between the parties – about seven out of ten judgments compared to just over one in ten in the Labor Court. Importantly, three quarters of all district court disputes are settled in another way, usually

through a depreciation decision when the parties have withdrawn their action after reaching a settlement voluntarily (Riksdag, 2012). A recent inquiry also found that the courts annul only a small number of dismissals during an average year (Riksdag, 2020). In light of these figures, reinstatement is very rare in Sweden, making the only victory possible compensation or 'go-away' money. The primary strength of Sweden's model is therefore the quality of its monetary remedies.

Given this perhaps one of the biggest differences between the UK and Swedish dismissal systems is that only the third victory can be hoped for in latter, although there is also the potential in both jurisdictions for some acknowledgement by an independent body that the employee should never have been fired in the first place. This provides some satisfaction to the claimant and an opportunity for a remedy, however insubstantial, thereby providing an incentive for employers to follow a fair process and proper protocol in dismissing their workers. Without any job security, an employee could be dismissed for no good reason at all and in any manner and be powerless to challenge such abuse of power. The mere presence of legal constraints makes some difference to the ongoing power relation between employers and workers, and not just at the time of hiring or firing. Indeed, dismissal protections are not just about remedies for those wrongly dismissed, but they also serve powerful educative functions, impacting the behaviour of employers during the existent employment relationship. The presence of such regulations provides checks on managerial prerogatives and affords workers a greater sense of security about their jobs. Statutory employment protections are vital given the worker's vulnerability to the whims of the employer. After all, the worker's livelihood is on the line, whereas an employer can easily replace one employee with another (Howe, 2017). It is therefore more useful to think of job security measures as providing some protection against arbitrary

dismissal and the abuse of non-standard contracts according to a spectrum rather than an either or/binary. However, in neither country is contemporary employment protections realizing their normative vision of providing industrial justice. Real and important differences, therefore, continue to exist between the original, theoretical and normative conceptions of job security legislation and its practical operation, which need to be recognized.

CHAPTER 5. CONCLUSION

This thesis bears several insights that are relevant for public policy researchers and political economists interested in labour issues. It is important to consider socio-economic conditions and agents' responses in their given class or politico-ideological positions in understanding the changing nature of employment laws in a consistent way as part of the process of modern development, especially during hard times characterized by globalization, deindustrialization, business cycles and new employment patterns. In this regard, this study suggests statutory employment protections are possible to maintain in the context of neoliberal austerity so long as European trade unions continue to defend and utilize them as institutional power resources with the help of their political allies and EU Directives. While unions have become increasingly fragmented since the 1960-70s due to the changing composition of the workforce, the growth of white-collar unions and the expansion of women's employment (Kaufmann, 2013), they continue to remain homogenous and indivisible on the issue of job security. Propositions for retrenchment throughout the years have been met with significant opposition by labour movements because they are keen to safeguard the acquired protections of their core constituency in secure employment out of absolute necessity in helping to ensure their survival. In this context, the unity of union confederations in terms of organizational structure, coordination and speaking with one voice has been an asset for mobilizing resistance to heavy deregulation efforts. This necessarily implies the importance of class, class consciousness and class struggle as casual factors in policy analysis. Facing similar objective conditions, unions have presented a single, coherent and coordinated response to their lived reality, which entails divisions of labour and associated hierarchies interlocking with them and politico-ideological practices and institutions. Thus, agents' responses that interact with objective conditions, rather than the presence of some teleological logic, make processes of struggles, compromises and

policymaking indefinite, distinctive and irreducible to any single economic necessity or simple causation generally.

As I have shown, cross-class alliances and intra-class heterogeneity, which may be inherent in post-industrial class structures, are somewhat inconsequential for job security reform. While labour markets have become more differentiated in terms of vertical stratification and horizontal segmentation along the lines of work and sectors, this differentiation has not dramatically altered reform dynamics in the policy field of job security. In the post-war period, left parties and unions supported each other and mobilized the same electoral constituencies, namely blue-collar workers on permanent contracts favouring job security. In more recent times, white collar professionals have become a second constituency of left parties (Timonen, 2003). Be that as it may, any opposing policy preferences between these two constituencies on the basis of skill levels, labour market status and values has not resulted in a significant split between unions and left parties over job security issues. Both continue to promote the interests of permanent workers by defending unfair dismissal rights. At the other end of the spectrum, employers and their political representatives, including new conservative or market-liberal parties, continue to converge in their economic policy propositions in favour of deregulation. Hence, there has not been significant heterogeneity of the left-wing or right-wing sections of society concerning post-industrial job security politics. In sum, configurations of actors and alliances do not always dramatically cut across old class cleavages as may have happened in other policy fields (see, e.g., Hausermann, 2010). Thus, each policy area can follow its own specific postindustrial reform trajectory.

By looking at the interactions between structural forces, key actors and institutions, it becomes possible for us to identify a set of reform dimensions that are available for political

mobilization in the arena of job security policymaking. These reform dimensions divide workers and employers into sets of winners and losers according to their specific interests rooted in the limitations and pressures exerted on one side by capital and on the other by labour. The old class conflict between capital and labour points out winners and losers over the direction of job security (i.e., enhancement or retrenchment); labour market status (e.g., insider or outsider) delineates winners and losers in the regulation of permanent or temporary contracts; and skill level, sector or firm-size bear strongly on the interests of key actors concerning the targeting and recalibration of policy settings. These dynamics can be expected to play out in all Western European economies undergoing modern structural changes. However, each country can develop in different directions as structural challenges are filtered through the lenses of national politics and institutions. Thus, similar challenges can produce different results in different countries. As demonstrated in Chapters 2 and 3, decades of reforms have transformed the employment protection regimes of the UK and Sweden into two seemingly different directions. Sweden's unfair dismissal system has been redesigned to become more flexible for temporary contracts (outsiders) because protections for permanent workers (insiders) remain strongly defended by unions. However, crucial statutory rules are under increasing pressure to reform. Whereas in the UK, policy changes or proposals to strengthen protections for temporary workers have increased in recent years even though dismissals for permanent contracts are relatively easy to achieve and fixed-term contracts are used much less. These trends may certainly be interpreted as modernization attempts of job security rights by Western European governments. In the UK, labour market outsiders – the least privileged class of workers engaged in atypical forms of employment – appear to be the winners of recent reforms while in Sweden they have been the actual losers in some ways.

Confronted with economic difficulties and non-cooperative employers, left parties and unions increasingly face difficulties defending the job protections gained in the 1970s. While unions are still the driving forces of employment protections, they have assented to the deregulation of temporary employment when pressured to compromise on the issue of flexibility. In the end, reforms have been adopted that largely exempt from the cutbacks the rights of insiders, negatively impacting the job security of atypical and younger cohorts of workers. This situation has led to a growing regulatory gap between open-ended and temporary contracts, partially creating the impetus for the recent reforms in Sweden (2020) and to a lesser extent, the UK (2018). The fact fixed-term employment has developed into a secondary section in the Swedish labour market despite relatively strict restrictions on its use points to the importance of non-political factors. Obviously, this trend has been shaped by regulatory dynamics, but it also stems from the way temporary contracts are used. The persistent dependence on fixed-term employment should be interpreted against the background of national institutional legacies. Procedures for achieving dismissals in permanent employment are very strict in Sweden due to the role and interests of unions, making alternative contracts particularly attractive. Even if somewhat heavily regulated, fixed-term contracts provide an important source of external flexibility to employers, especially concerning the youth, migrants and the formerly unemployed who experience difficulties obtaining permanent positions. The situation of outsiders has been further worsened through lower benefit levels and stricter eligibility rules for the unemployed and cutbacks in social assistance (Riksdag, 2020). Thus, to increase flexibility without threatening the stability of regular employment, reforms over the years have had to foster atypical forms of work, resulting in a persistent or growing share of politically and economically marginalized outsiders.

However, given the rising importance of adapting labour laws to changing labour market conditions and narrowing the regulatory gap between permanent and temporary employment, there will likely be slightly less insider security, more outsider protection and a still high level of vertical stratification (institutionally enforced) going forward. Modern conditions have created a range of new employment risks such as being a single mother and atypically employed as a low-skilled worker. For these groups, there appears to be an orientation towards providing more minimum protections to improve their vulnerable position. These improvements matter even if we consider simultaneous cutbacks in their rights. But of course, the key question will be whether the level or enforcement of protections will be enough and whether these disadvantaged groups will have opportunities to improve their labour market status in the long run. Recent reforms offer some potential. The 2020 proposals in Sweden, for example, sought to increase the job security of temporary workers by promoting transitions from fixed-term contracts to permanent positions. Similarly, the UK's Good Work Plan seeks to offer more legal protections to those who do not work in standard jobs. The great majority of these workers are poorly paid in contracts that offer precarious benefits and employment rights. But certainly, the answer to this question will not only depend on reforms to job security but also activation policies (labour market and education), social security schemes, childcare, etc. as well as the pivotal position of organized labour towards reform. In this regard, institutional legacies will continue to be particularly important supply side constraints on national politics and policy choices, as they shape the allocation of resources in favour of the needs and demands of insiders.

To some extent, recent job security policies have been directed towards outsiders who are particularly weak in terms of power and political representation. They are underrepresented in political parties and unions and being a very heterogenous group makes their mobilization

difficult and more unlikely. The constituencies of key actors such as major unions, left parties, mainstream right parties and small firms have hardly any reason to mobilize in their favour. Yet despite their disadvantaged status, their needs have taken on acute political relevance in the context of neoliberal austerity lately, which supposedly precludes any expansion in protections whatsoever. While the unequal distribution of labour market risks between permanent and temporary workers has created what has been termed the insider-outsider dilemma (Lindvall & Rueda, 2012), there is no evidence to suggest that solidarity among unions, left parties and outsiders is impossible to uphold on the issue of job security. While unions and their political allies continue to struggle to defend the narrow interests of their overlapping constituencies, they have not opposed reforms that benefit other risk groups such as outsiders. The evidence shows they have consistently opposed the deregulation of temporary employment and lobbied for greater restrictions on the use of fixed-term contracts. This is partly because unions are concerned about non-permanent contracts becoming the norm in the labour market, thereby threatening permanent employment relationships, as well as worried about flexible practices violating labour laws and collective agreements, particularly occupational health and safety regulations. Additionally, the share of unionized temporary workers has hovered around 40 percent in Sweden and 15 percent in the UK (Emmenegger, 2014), providing unions with more reasons to promote solidaristic policies that do not always involve trade-offs between the interests of insiders and outsiders. This means unions are still able to extract collective goods for all, including non-core workers, so long as they have strong coordinated leadership and continue to speak with one voice, regardless of whether they represent a large proportion of outsiders or not. Thus, the policy preferences of insiders and outsiders should not be seen as diametrically opposed, particularly when it comes to employment protections, as some have argued to the

contrary (see, e.g., Rueda, 2005). It follows that left parties do not necessarily face a complex dilemma of having to betray their traditional solidarity with insiders if they wish to remain more flexible with regard to pro-outsider policies, so long as they do not conflict with the interests of their constituency, as happened in Sweden in the second half of the 2000s. Hence, reform packages in today's context of austerity, similar to the industrial era of economic growth, still tend to give rise to a single left-right conflict dimension, with blue collar workers and insider unions expressing a material interest in the job security of outsiders to some extent. However, the differentiation of class interests are still clearly observable and the main trade unions that represent insiders are not always interested in more redistribution, leading them to adopt skeptical stances at times regarding the granting of rights to the atypically employed, especially when it comes at their own expense, as the new collective agreements reached in Sweden in the face of opposition from some LO unions demonstrate.

While statutory job security rules are a key source of formal protection, they do not always live up to their founding promise of providing a minimum floor of employment rights for individual workers. This is partly because of the existing gap between laws in books and laws in action (which is true to a greater extent in the UK). This gap pervades almost all aspects of the unfair dismissal system: the reactive; the individualized complaints system, which can do little to prevent violations and remains out of reach for most employees; the under-resourcing of employment tribunals or courts; and limited use of penalties for employers who violate regulations. There are also structural barriers that prevent employees from knowing or exercising their rights (e.g., feminization, racialization, citizenship/residence status, ableism and other power imbalances). Many workers simply take no action out of fears of losing their job, damaging their career prospects or suffering other forms of retribution. They are also poorly

informed about grievance options available to them. However, if they knew more about the poor outcomes of similar claimants and the expenses of exercising their voices, they might well be deterred from pursuing their cases in the first place. Of those who take action, they are under constant pressure to withdraw their claims or settle. In the UK, the small share of workers who do act face a high probability of agreeing to settle for much less than they are owed through the pre-claim conciliation process. Even a new scheme introduced in 2016 to penalize employers for not paying awards resulted in a mere 483 warnings out of a total of 512 notifications, suggesting additional government measures to reduce breaches of rights do very little to improve compliance, let alone deterrence. A system introduced in 2014 to deter employers from intentionally repeating egregious offences resulted in the imposition of a mere 20 penalties, which amounted to £54,400, of which only £17,700 was actually paid since 2018. To counter deficiencies of the current system and ensure more effective protections in the area of job security, particularly in the UK, employees need strong, independent collective organizations that are vigorously integrated into enforcement strategies in meaningful ways, well-resourced to undertake the work, and able to both mitigate the power of employers and navigate government-regulated institutions (Vosko, 2020).

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