The Heckler

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Towards a democratic University

On May 6, 2010 we in Britain elected a new government. The process was rather messy and confused, which is not surprising given the nature of the British electoral system. Nevertheless, the election took place and a new government emerged. The turnout was up, which took some returning officers by surprise, but was generally regarded as a good thing, since it seems to be the prevailing attitude that it is our civic duty to exercise our vote. With the exception of a few very specific categories (peers of the realm, criminals in prison etc.) all adult citizens have the vote, a right which was very hard fought for over a long period in many campaigns (such those of the Chartists and the Suffragettes) but which is now taken for granted by more or less everyone. I know of no political party or pressure group or even significant individual which says openly that it wishes to rescind this basic democratic right, or even curtail it. What would one think of someone today who proposed the government should be appointed by the Queen (without any election) or by the House of Lords, or wanted to remove the right to vote from, say, women or working class people?

Pretty much the same applies to the United States, with the difference that there the people directly elect an individual as President and that on November 4, 2008 this produced the historic victory, by a landslide, of Barack Obama; this being especially dramatic as the right to vote for black people was still being fought for in parts of America as late as the 1960s. Again what would one think of someone who suggested that the right to elect the President should be taken away, either from the US citizenry as a whole, or American women or people of colour?

Why is it, then, that in this university we do not have the right to elect our Vice Chancellor (or our Board of Governors, or our Faculty Deans, or our Heads of Schools or Departments)?

My experience is that when I ask this question, it is generally assumed that I am joking, certainly not being serious. Everyone knows that's not possible: we just don't do things like that. If I put the question to people in positions of authority in the University they generally do not even deem it worthy of a response. Which is convenient because it is very hard to formulate a response which is not at the same time an argument against democracy in general—an argument against, for example, the right to elect the government.

For instance, the most obvious argument against electing the Vice Chancellor is that it would be likely to lead to the wrong person getting elected. The absurdity of this proposition becomes manifest the moment you apply it to British parliamentary or US presidential elections. If you are a supporter of either the Labour Party or the Conservative Party, the wrong party gets elected about half the time in Britain, likewise if you are a Republican or a Democrat in the US. If you are a Liberal Democrat or a radical Socialist, or a Green or a fascist, the wrong party or leader gets elected pretty much all the time. But unless you are a fascist this is not a reason for getting rid of elections.

Sometimes it is argued that the reason why the wrong people get elected is that the electors are not capable (too stupid, too uneducated, too immature, too fickle etc.) of making the right judgement. This, of course, was the kind of argument advanced against giving the vote to working people in the 19th century, to women before the First World War, to women under 30 between 1918 and 1928, and to black people in South Africa under apartheid. It is, however, a rather difficult argument to defend in a university.

Illustration: Ian Hunter

If, on the other hand, we actually had an election for Vice Chancellor, the 'incompetence of the electors' argument might come into play in determining the franchise in this election. Personally, I would favor voting rights only for male academics with PhDs. I joke; the important thing would be to restrict voting to academic staff and exclude the support staff who are mainly female, I mean less well educated. Or perhaps the white collar support staff could be included, so long as the really working class riff-raff like caretakers, canteen staff and cleaners were kept out. Actually, I suppose—if all that sounds a bit elitist, or sexist, or classist, or politically incorrect—all university employees could be allowed to vote, on one condition – no votes for students. Obviously students are too young, too inexperienced, too uneducated, and too volatile to be allowed to vote in parliamentary . . . I mean university elections.

In this context it is interesting to note that, just as the present parliamentary systems in Britain, the US and France all owe their existence to very unparliamentary wars and revolutions, so the present unelected Vice Chancellor actually owes his position, at least in part, to a vote namely the vote of no confidence that unseated his predecessor, Neil Merritt, in which every university employee had a vote. It is also worth noting that one section of the University community does govern itself relatively democratically, and does elect its leaders, locally and nationally, and that is the Students' Union.

I really hope that someone who is opposed to the idea of democratically electing the University's leading figures replies to this article—in fact I challenge them to do so— and in that reply I hope they explain why it would be wrong to elect VCs (and deans etc.) but is possible, nay mandatory, for the Students' Union to elect its President. Or perhaps they would like to argue that the student president should be appointed (by the Directorate perhaps, or maybe by the Board of Governors). But, of course, one of the ironies of the situation is that because those who run the University are not subject to any real democratic accountability, they do not need to justify their position in democratic debate, and can simply ignore these arguments, relying on their undemocratic power to preserve the status quo.

An argument that might be used by an astute opponent is that elections would 'politicise' the running of the University and that it would be much better for the University to remain 'non-political'. This argument is superficially attractive because it appeals to popular (and entirely understandable) hostility to 'politics' and 'politicians' but in reality it is completely specious. First it relies on the very narrow, and false, definition of 'politics' as limited only to what goes on in the Palace of Westminster and City Hall, and 'politicians' as only elected MPs and councillors. Second it fails to recognise that the running of this and every other university is already deeply political and could not be otherwise. The ability to present decisions and institutional structures as non-political is really just testimony to their political hegemony, in the same way that the ability to present ideas as 'just common sense' as opposed to 'political' or 'ideological' is merely evidence of their deep political and ideological hold. For example, the belief that the free market is the best way to run society is presented by its adherents as 'common sense' but its acceptance as such represents a very important victory for a definite political ideology, namely right wing neoliberalism. A system of appointment, as we have at present, is every bit as 'political' as a system of election, it's just a different undemocratic politics. Finally, and I keep coming back to this, if elections equal politics and its good for things to be run non-politically why shouldn't the country (or the Students Union or Trades Unions) be run that way, i.e. as dictatorships.

In the end there is only one serious argument in favor of the undemocratic way the University is run, and it is an argument that all the senior officials in the University know in their bones but that none can state openly, namely that the University has to be run in a way that is contrary to the interests and values of the vast majority of its staff and students. That is, it has to be run first and foremost as an instrument of government and ruling class policy and as a business enterprise rather than meeting people's educational, scholarly and human needs. That is why the powers that be don't want democratic elections and precisely why I do want them.

In practice this stark contradiction is papered over with the device of 'consultation'. The decision makers 'consult' with staff and students and then go ahead, regardless of what is said, with what they wanted to do in the first place. I have lost count of the number of times I have been through this experience—being 'consulted' only to be ignored. What we need is not just more consultation but some democratic power. I therefore propose for the University of Portsmouth as a democratic minimum

1. The election by universal suffrage, i.e. by the whole university community, of the Vice Chancellor on a five-year, fixed-term basis.
2. The election by universal suffrage on a faculty-by-faculty basis of Deans for a four year term of office.

What's good enough for the White House is good enough for University House!

John Molyneux

22 May 2010

(John is retiring from our university but will remain a strong political activist.)

What is a strike but an expression of the right to withdraw your labour? What is the purpose of this? Do you know how, when or if you can go on strike? What are your rights as a union member?

Giving the union back to its members: employers and the courts should respect properly taken democratic decisions

In 1983 the Thatcher Government issued a Green paper entitled 'Democracy in Trade Unions'. The central thrust of this paper was that statutory rules needed to be introduced to force trade unions to be democratic and thus the unions would be handed back to their members. These rules were a major part of the Trade Union Act 1984 which included provisions on strike ballots. As a result of cases decided at the end of the nineteenth century, organization of strikes and virtually all other forms of industrial action are torts or civil wrongs. Rather than being provided with rights to strike (which is the norm in the rest of Europe and most other democracies) British law operates by giving statutory immunity from these civil liabilities to unions and their officials. Between 1980 and 1990 Tory Governments substantially reduced the scope of immunities, which date from 1906 and which the Labour Government had re-established in 1974, so that there are many circumstances where the immunities cease to apply and thus the liability in tort can be imposed.

As a result of the 1984 Act, one of these circumstances is where a union organises or supports industrial action without first holding a secret ballot. Individual trade union members and officials who organise industrial action without a ballot retain personal immunity from liability providing the action is in furtherance of a lawful trade dispute. However, where, for example, branch officers do this the union is 'deemed' to have authorised the action and must send out letters and notices of repudiation to avoid legal liability. (In passing it is worth noting, therefore, that it is not illegal to organise or participate in strike action called on the basis of a show of hands. However, to avoid being sued in tort the union must repudiate and therefore refuse to support its members. As the law stands today, employers are then free to dismiss at will any or all employees who continue to take unofficial action.)

Compared with the legal position today the law in 1984 was relatively straight forward, as unions complied with the law providing they first held a secret ballot. This could be organised on a workplace or postal basis. However, the provisions were always controversial in that they took away from union members the power to determine the constitutions of their own unions. Unions such as NATFHE (the National Association of Teachers in Further and Higher Education) and, I assume, the AUT (the Association of University Teachers) had constitutions requiring ballots prior to merging as the UCU, but in other unions members who preferred the flexibility of organising industrial action quickly, and thus often more effectively, on the basis of mass meetings lost the right to have union constitutions reflecting this preference. Most damagingly, since 1984, where union members spontaneously walk out because they have had enough of being treated in particular ways, their unions cannot support them. Rather, as above, the union must repudiate its own members, thereby forcing them to return to work or leaving them vulnerable to dismissal.

Today, not only does this position remain the case, but the law on ballots and pre-ballot and pre-strike notices has become incredibly complex. Since 1990, the essence of the law has been that ballots must be fully postal, which in itself makes balloting more expensive for a union and delays the taking of industrial action. Further delays are built into the process by the fact that the union must give the employers at least seven days notice of it is intention to ballot and details of the members to be balloted. Similar notice must be given after the ballot before the industrial action, voted for by the union's members, can be taken. It is for these reasons that it typically takes a union the best part of 2 months from the start of a dispute to call industrial action. This, of course, gives employers plenty of time to put strike-breaking plans in place. Moreover, case law has shown that these procedures have nothing to do with ensuring trade unions act democratically and have everything to do with making it very difficult to organise lawful industrial action.

The first main case demonstrating this involved NATFHE as a result of Blackpool and The Fylde College securing a court injunction because NATFHE had not given the employer sufficient information as to which of the College's lecturers were being balloted and called upon to take industrial action. The answer to this was of course all lecturers employed by the college who were union members. The court decided, however, that the employer needed to be able to identify which of its lecturers were in the union and thus was effectively requiring NATFHE to hand over its membership list.

When it was first elected the New Labour Government promised to simplify the law in these regards and to enable employees to choose to keep their union membership confidential. The statutory changes that were actually introduced have in fact made the law even more technical and thus even more complex. The only context in which it is relatively easy for unions to satisfy the technical statutory requirements is where the whole of a workforce in a union pay their union subscriptions under the check-off system, where employers deduct the subscription at source and pass the money on to the union. The practical problem is that, as a result of other legislative changes, this is no longer the main method by which union members pay their subs - the norm is now for payment by direct debit.

In a case decided several years ago the Metrobus company secured an injunction against UNITE on two main grounds. One of these grounds was that UNITE had failed to supply the employer with details of members to be balloted who did not pay by check-off. The court decided that the union must give the employers the numbers of such employees, their descriptions and geographical workplaces. These are of course very difficult procedural hurdles over which a union must jump before it can implement the democratic will of its members to call industrial action; and as in the NATFHE case may mean unions still find the best way of complying with the law is to hand over its membership lists in that particular employing organisation.

The second ground on which the injunction was granted was even more technical. The law requires the union as soon as is 'reasonably practicable' to inform the employer of the ballot result, and this is before the union itself may have decided on when the industrial action will start and what specific form it will take. In this case the court decided on the evidence that the union was two days late in supplying the company with the ballot result. Again this obviously has nothing to do with union democracy or even giving the employer notice of the date of the proposed action, but is just one more technical hurdle unions must overcome. It is worth noting that in this case one of the judges in the Court of Appeal, Lord Justice Maurice Kay, echoed sentiments expressed by many British judges over the ages that in this country there is no right to strike. He described such rights as a 'slogan' or 'legal metaphor' without legal substance. In fact rights to strike are recognised as human rights in international and European law, but in Britain are seen by judges as 'privileges to engage in law-breaking'.

The injunction secured against UNITE by British Airways in December 2009 once more revealed just how technical the law has become. The 'error' committed by UNITE was to ballot employees of BA that it knew would be redundant by the time any strike action took place. The ballot result in favor of strike action was based on an 80% turnout with 92% of members voting in favor. The redundant workers could have been added to those who voted against the strike and the majority in favor of strike action would still have been massive. The courts refused to adopt this common sense interpretation of the statute, and instead ruled the ballot was invalid as these errors, although of no practical significance, were nevertheless not accidental.

On similar technical bases injunctions have recently also been granted against the RMT and the NUJ. BAs most recent attempt to secure an injunction of course failed. It proved too much even for the judges in the Court of Appeal to accept that a ballot could be rendered invalid simply because the union failed to tell its members of the details of a small number of spoilt ballot papers. However, this remains just one common sense decision amongst a flurry of decisions based on technical requirements that make it extremely difficult for any union to organise lawful industrial action. By comparison, the breaches of democracy witnessed in the recent general election where thousands were locked out of ballot stations were clearly much more serious that anything trade unions have failed to do.

Union members need to draw the obvious conclusions. Current law on strike ballots and procedures are not about union democracy and ensuring the union members genuinely back industrial action. They are all about employers being able to use their lawyers to scrutinise how a ballot was conducted to identify technical reasons for enabling the employer to go to court and obtain an injunction, so that the union has to go through the whole balloting process all over again (or ignore the wish of their members to take action by deciding not to hold a new ballot at all). Yes, unions do need to be given back to their members by repealing these anti-democratic statutory provisions (ideally, all the anti-union laws should be repealed but this is a separate argument.) The ConDem government will of course not do this unless it is forced to. My personal view is that where courts overturn democratically authentic strike ballots then union members should simply take matters into their own hands and walk out anyway.

Roger Welch

Roger Welch will be retiring from our University and will cease to be a departmental rep. He will remain active in the branch and his knowledge of employment law will still be available to the branch and its officers and to individual members who consult branch officers over workplace issues and problems.