Widening the ‘representation gap’? The implications of the ‘lobbying act’ for worker representation in the UK

Brian Abbott and Steve Williams

Brian Abbott is Senior Lecturer, Department of Management, Kingston Business School, Kingston University and Steve Williams is Reader, Department of Organisation Studies and Human Resource Management, Portsmouth Business School, University of Portsmouth.

Correspondence should be addressed to Brian Abbott, Department of Management, Kingston Business School, Kingston University, Kingston Hill, Kingston upon Thames, Surrey KT2 7LB; email: B.Abbott@kingston.ac.uk

ABSTRACT

The Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014 (the ‘Lobbying Act’) imposes tight restrictions on the campaigning and lobbying activities of civil society organisations in the UK, diminishing their capacity to represent the interests of working people and thus likely compounding the ‘representation gap’ within British workplaces. Along with austerity measures and employment law reforms, the legislation exemplifies the UK government’s attempts to shift the balance of power further towards employers.

INTRODUCTION

In countries like the UK, the United States and Australia trade unions have traditionally been considered the primary source of employee representation (Dobbins and Dundon, 2014). This representative model, however, has been in decline; increasingly workplaces are non-union, resulting in either an absence of representative structures, the creation of non-union mechanisms or a hybrid form of representation where union and non-union forms coexist (Gomez et al., 2011). Studies of worker representation, union and non-union, and employment relations more generally, often have a workplace focus. However, employment relations actors also operate from outside of the traditional boundary of employing organisations. Trade unions, in particular, have long attempted to influence public policy in areas that affect their members through the ‘method of legal enactment’ (Webb and Webb, 1920).

In the UK, for example, the Lobbying Act, which became law in January 2014, was the subject of intense lobbying from the Trade Union Congress (TUC), trade unions, charities and pressure groups. The Act contains three substantive components. Part One introduces a statutory register of ‘consultant lobbyists’ and a Registrar to enforce the requirements (House of Lords, 2013a). The third part, the focus of the concerns of many trade unions (e.g. UNISON and UNITE), reinforces the existing legal requirements obliging trade unions to keep accurate membership lists. Part Two of the Act, the focus of this article, regulates and restricts campaigning by non-political party bodies such as charities, trade unions and pressure groups during a ‘regulated period’ in the run up to parliamentary elections (House of Lords Library Note, 2013). This part of the Act has provoked widespread controversy, especially among civil society organisations (CSOs) and the TUC concerned that it will undermine their lobbying and campaigning activities on issues

affecting their constituents (House of Commons Library, 2014; House of Lords, 2013b).

The provisions contained within Part Two of the Lobbying Act also have potentially important implications for work and employment relations, principally by compounding the 'representation gap' (Heery, 2009; Towers, 1997) in UK workplaces. Given the decline in traditional sources of worker voice there is growing interest in the role new employment relations actors, such as CSOs—including single issue campaign bodies, pressure groups, charities and community organisations—play in representing the interests of workers (Abbott, 2006; Bellemare, 2000; Williams et al., 2011), often by attempting to influence government policies at the level of the state (Heery et al., 2012). By imposing tight restrictions on the campaigning and lobbying activities of CSOs, the Lobbying Act potentially diminishes their capacity to represent the interests of their constituents as working people. Along with profound austerity measures (e.g. Taylor-Gooby, 2012) and the reform of employment law (Hepple, 2013), it constitutes a third, and hitherto neglected, dimension of the UK coalition government's efforts to shift the balance of power in work and employment relationships further towards employers.

The purpose of this article is to explore the likely effects of the Lobbying Act on the lobbying and campaigning activities of CSOs, with regard to a number of key questions. How will the Lobbying Act affect the ability of CSOs to provide their constituents with representation and voice at the level of the state? How could the Act affect joint working between CSOs on issues of concern to their supporters? Given the tighter controls, contained within the legislation, on the activities of CSOs during a 'regulated period', will this weaken their role as employment actors? Finally, in what potential ways could the legislation compound the 'representation gap'?

CIVIL SOCIETY ORGANISATIONS AND WORKER REPRESENTATION

The dominant source of employee representation has traditionally been through trade unions (Gomez et al., 2011). Declining union membership and workplaces with a union presence have undermined this representative model (Van Wanrooy et al., 2013). The marginalisation of trade unions has led to growing interest in the emergence of a multiform system of worker representation and non-union forms of worker representation (Dobbins and Dundon, 2014; Heery, 2009; 2011). Although non-union forms of worker representation have remained stable in recent years there remains an absence of any representative arrangements in a large minority of workplaces, 37 per cent (Van Wanrooy et al., 2013: 66). In the 1990s, the decline of traditional workplace representative mechanisms led commentators (e.g. Towers, 1997) to highlight the emergence of a representation gap, an observation that remains relevant today.

Towers (1997) identified established workplace representative structures and cooperative union–management relations as important approaches to bridging the representation gap. There is, however, growing awareness among industrial relations scholars of the activities of 'new' employment relations actors (e.g. Abbott, 2006; Bellemare, 2000), particularly their role in representing workers' interests (Williams et al., 2011). For Kochan et al. (1994), the representation of workers' interests and interaction between traditional employment actors occur at three levels. The bottom level relates to the workplace and the policies affecting workers, managers and unions on a day-to-day basis; the middle level relates to collective bargaining and human resource policies; and the top level is associated with strategic decision making, including political strategies and the policies of the state (Kochan et al., 1994).

Building on this work, Bellemare (2000) analyses the importance of non-traditional employment relations actors by focusing on their activities at the level of the workplace, organisation and state. In addition, an actor's influence within the employment relations system can be gauged along two dimensions, instrumental and outcomes. The former refers to the extent to which an actor is active at the three levels, referred to above, and the latter, the ability to secure change by influencing other actors. Actors satisfying these two conditions—being involved in all three levels and able to institute change—are considered significant (Bellemare, 2000). Influencing the state is an important activity for actors to undertake, because legislative changes can filter down to the workplace level, shaping and regulating employer behaviour and providing actors with leverage to influence employers and provide workers with voice (Bellemare, 2000; Kochan et al., 1994).

Regarding the levels at which CSOs operate, Heery et al. (2004) characterise the activities of CSOs as being bifurcated, with one level relating to advising and representing individual workers and the other about representing workers' interests at the level of the state through lobbying and campaigning work. Policy and campaigning work are long established practices of many CSOs and forms an important part of their work (Heery et al., 2012: 66). A significant achievement for the National Group on Homeworking was securing the inclusion of home-workers in the 1999 legislation entitling them to the minimum wage (Holden, 2007). Less successful was the Fawcett Society's challenge to the coalition government's 2010 emergency budget on the grounds that it had disproportionately negative consequences for women (Conley, 2012).

The activity of CSOs in campaigning and lobbying to influence the work and employment relations policies of governments is thus a key element of the emergent multiform system of worker representation identified by Heery (2011). CSOs can act as an important representative vehicle at the level of the state, expressing the voice and interests of often vulnerable sections of the workforce, who may lack the capacity to organise themselves. Since 2010, however, the UK coalition government has pursued a highly ambitious deficit reduction programme, manifest in rapid restructuring and spending cuts with profound consequences for the delivery of welfare services (Taylor-Gooby, 2012), often with adverse consequences for such groups (e.g. Conley, 2012: 357; Grimshaw and Rubery, 2012: 105; Hepple, 2013: 207).

There is an emerging body of literature that critically assesses elements of the coalition's work and employment relations policies, generally highlighting the adverse consequences of the reforms for working people based on a neo-liberal ideological stance, which privileges removing burdens on business, diluting employment protection laws and tilting the balance of power towards employers (e.g. Hepple, 2013; Jameson, 2012). Among other things, the coalition government has introduced employment tribunal fees—markedly reducing the number of claims made (see Ministry of Justice 2014)—extended the qualifying period to claim unfair dismissal from one to two years and removed legal aid from employment law cases (Grimshaw and Rubery, 2012; Hepple, 2013; Jameson, 2012). The effect of these reforms has been to restrict workers' access to representation and to discourage them from pursuing tribunal cases (Hepple, 2013).

Whereas the legislation referred to above has an individual dimension, Part Two of the Lobbying Act has a number of potential employment implications for new and established actors. The tighter restrictions imposed by the Act may affect the ability of employment relations actors to undertake joint work, mobilise and organise their supporters to campaign and lobby against government policies. These are key tactics employed by

unions and CSOs to secure change and gains for their constituents; tighter controls in relation to these activities, however, may undermine their effectiveness and importance as employment actors. A further potentially damaging effect of the Lobbying Act is that it may compound the representation gap, as CSOs become more cautious about the nature of the issues that they campaign on, therefore limiting the issues on which they can give voice and representation to workers and the channels of support that workers can access.

THE LOBBYING ACT, PART TWO

The Lobbying Act came into UK law in January 2014, following a period of considerable political interest in the activities of lobbyists. An important motivation for further legislation was the concern that there was a lack of transparency in relation to lobbying activity (House of Lords Library Note, 2013). The pre-existing legal framework governing charitable organisations covered political lobbying and campaigning efforts by charities. They can engage in political activity, such as campaigning for a change in the law, as long as it is in furtherance of their charitable objectives, they maintain their independence and the campaigning does not become their sole interest (Charity Commission, 2008).

Moreover, the Political Parties, Elections and Referendums Act 2000 (PPERA), already controls third party spending and the activities they can undertake during an election period (Citizens Advice Bureau, 2013). Many of the provisions contained within PPERA have been incorporated into the Lobbying Act (see Table 1). It regulates 'controlled expenditure' by a 'third party' on 'election material' during a 'relevant period'. It is this system of control, within PPERA, which Part Two of the Lobbying Act amends, tightens and expands during the 'relevant period' before a General Election (House of Lords, 2013a). A 'third party' is defined in s85(8) PPERA as any person, or organisation, that campaigns in elections and undertakes controlled expenditure but are not standing as political parties or candidates themselves (House of Commons Political and Constitutional Reform Committee, 2014: 9). 'Controlled expenditure' by a third party means expenses incurred by, or on behalf of, the third party in connection with the publication of 'election material' made available to the public during a 'relevant period' that 'can reasonably be regarded as intended to promote or procure electoral success' [sections 85(2) and 87 PPERA]. Similarly, section 85(3) PPERA defines 'election material' as: 'material which can reasonably be regarded as intended to promote or procure electoral success' of a party or candidate at an election (House of Lords, 2013c; House of Lords Library Note, 2013: 17; Hutchins and Baston, 2014).

Table 1: Summary and comparison of PPERA and the Lobbying Act

Activity regulated	PPERA	Lobbying Act
Registration threshold	£10,000 in England; £5,000 in Scotland, Wales and Northern Ireland	£20,000 in England; £10,000 in Scotland, Wales and Northern Ireland
Controlled expenditure	Campaigning that can reasonably regarded to promote or procure electoral success of a party or individual. 'Immaterial' whether campaign mentions a party or candidate and whether the campaigns principal aim is political	No major change to the PPERA definition
Regulated activities	Written materials available to public, includes websites	Broader scope; written materials, but <i>also</i> market research, meetings, press conferences, events, public rallies, transport and staff costs
Spending limit-national	£793,500 in England, £108,000 in Scotland, £60,000 in Wales & £27,000 in Northern Ireland	£319,800 in England, £55,400 in Scotland, £44,000 in Wales & £30,800 in Northern Ireland
Spending limit-constituency	No constituency spending limit	£9,750
Regulated period	12 months for UK General Elections and four months for elections to Scottish Parliament, National Assembly for Wales and Northern Ireland Assembly and European Parliament	2015 UK General Election, period will commence from 19 September 2014 to 7 May 2015. For future elections the PPERA regulations apply.
Campaigning in coalitions	Each group is responsible for the total spending, regardless of their individual contribution	Organisations can become 'lead campaigners' and take responsibility for reporting spending on behalf or minor campaigners in the coalition
Reporting requirements	Reports of donations submitted after election	<i>Quarterly</i> reports submitted in the year before an election of donations and <i>weekly</i> reports after the dissolution of parliament

Source: Adapted from Hutchins and Baston, (2014).

The Lobbying Bill was criticised for the speed with which it was taken through Parliament, providing little opportunity for detailed pre-legislative scrutiny (House of Lords, 2013c; TUC, 2013). Although the government did institute a six-week pause to allow for wider consultation on Part Two, this did little to allay the concerns of the Bill's critics (Commission on Civil Society and Democratic Engagement, 2013a; House of Commons Political and Constitutional Reform Committee, 2014). CSOs were already concerned about the potential restrictions under PPERA. The prospect of further limitations, as manifest in the Lobbying Bill, particularly additional reporting requirements, reduced spending caps and the broadening of the meaning of 'controlled expenditure', exacerbated their anxieties (Citizens Advice Bureau, 2013: 2; Commission on Civil Society and Democratic Engagement, 2013b: 6; Oxfam, 2013: 1).

There are five main features of the Lobbying Act Part Two:

1. **Regulated period:** This refers to the time period that pre-election campaigning rules apply, for example in relation to national spending limits. The Bill originally proposed a 12-month regulated period for the May 2015 general election. However, during the Bill's Report Stage in the House of Lords, the government shortened the regulated period for the May 2015 general election so that it starts on 19 September 2014 rather than 23 May 2014 (Hutchins and Baston, 2014). See Table 1 for a breakdown by nation state.
2. **Controlled expenditure and regulated activities:** Controlled expenditure specifies the activities that could influence the outcome of an election for a party or a candidate. Schedule three of the Act expands the list of regulated activities, beyond those in PPERA, that count as 'controlled expenditure' during the 'regulated period' when incurred by third parties for election purposes (Compact Voice, 2013; House of Lords, 2013a; House of Lords Library Note, 2013). 'Controlled expenditure' now extends to not only include written material made available to the public but also public rallies, public meetings, market research, advertising, press conferences, transport and some staffing costs (Compact Voice, 2013; House of Lords Library Note, 2013; Hutchins and Baston, 2014).
3. **Registration threshold:** This relates to the amount of money that a CSO can spend before it has to register with the Electoral Commission. Reflecting the broader definition of 'controlled expenditure' clause 27(1) was amended to increase the registration threshold, for example in England, from £10,000 to £20,000 (Hutchins and Baston, 2014). See Table 1 for a breakdown.
4. **National and constituency spending limits:** Clause 27(2) limits the amount that can be spent nationally and in a particular constituency during the regulated period. The Act reduces the total amount that non-party campaigners can spend on 'election material' during the regulated period prior to a UK General Election from £988,500 to £450,000 across the UK (Commission on Civil Society and Democratic Engagement, 2013b; Hutchins and Baston, 2014). See Table 1 for a breakdown by nation state. Similarly, Clause 28 of the Lobbying Act introduces a constituency spending limit restricting the amount that can be spent campaigning in a constituency to £9,750 during the regulated period by non-party campaigners (Commission on Civil Society and Democratic Engagement, 2013b; House of Commons Political and Constitutional Reform Committee, 2014).

5. Reporting requirements: The Lobbying Act also introduces additional administrative and reporting requirements for third party campaigners. Under PPERA campaigners were required to report donations towards regulated spending after polling day. However, Clause 32 of the Lobbying Act now requires a registered third party to provide quarterly reports of donations over £7,500 in the year before a UK parliamentary election covered by 'controlled expenditure'. After the dissolution of Parliament registered third parties also have to provide weekly reports on donations over £7,500 (Commission on Civil Society and Democratic Engagement, 2013b). Breaches of the legislation, for example failure to register or submit a report, can result in criminal or civil penalties (Hutchins and Baston, 2014).

The Lobbying Act has parallels with, for example, the employment legislation of the 1980s in that it has a collective dimension and is motivated by a concern to increase transparency and accountability regarding the internal affairs of employment relations actors. Similarly, it also attempts to restrict the activities of organisations representing the interests of working people by tightening controls over their actions, imposing additional administration and the threat of sanctions for breaches of the law. A likely effect of the Lobbying Act is that CSOs will become more cautious, so as not to breach the law, regarding their activities, an outcome that has been documented in relation to the effects of the 1980s legislation on trade union activities (Gospel and Palmer, 1993).

A key distinction between the union legislation of the 1980s and the Lobbying Act is that the former targeted the activities of trade unions. The current legislation has much wider employment relations implications as it encompasses the activities of traditional and non-traditional employment relations actors. This is potentially even more damaging for worker voice given the weakness of the labour movement; many workplaces are non-union, resulting in workers becoming more reliant on non traditional employment actors. However, the activities of these new employment actors are also affected by the Lobbying Act; the likely impact being a compounding of the representation gap, as established and new actors find their activities increasingly regulated.

METHODS

For the purpose of this article, secondary data-collected in 2013–2014 were amassed using desk-based methods. The purpose was to ascertain the effects of Part Two of the Lobbying Act on CSOs' ability to represent their constituents' interests at the level of the state. To begin with the websites of CSOs with a history of campaigning and lobbying, such as Oxfam, Citizens Advice (CAB) and the National Council of Voluntary Organisations (NCVO) and labour movement organisations, such as the TUC and individual unions (e.g. UNISON and UNITE), were accessed. Website searches using keywords such as 'lobbying' and 'transparency' were undertaken to identify relevant documents relating to the legislation.

Searches of union websites revealed the leading role played by the TUC in opposing Part Two and Three of the Bill, whereas the focus of individual unions' opposition to the Bill was Part Three. Unions were particularly concerned about the additional reporting requirements placed on them to maintain accurate membership lists by Part Three of the Bill and the threats this posed to the privacy of their members. This requirement coincided with the revelations of blacklisting of union members, which may explain their focus on this aspect of the legislation (TUC, 2013).

Data collection was assisted by the creation, in September 2013, of the Commission on Civil Society and Democratic Engagement, which was established in response to the lack of government consultation and concerns relating to Part Two of the Lobbying Bill. The Commission, chaired by Lord Harries, consisted of over 150 prominent charities, campaign groups, community groups and online networks (Commission on Civil Society and Democratic Engagement, 2013a; Hutchins and Baston, 2014: 3). It sought responses, written and oral, from CSOs on the likely effects of Part Two of the Bill on their lobbying and campaigning activities. Thirty-two CSOs gave written evidence to the Commission in total during October and November 2013.

At the same time, a series of meetings around the UK was convened with between 8 and 18 CSO representatives attending each event. They were chaired by a representative of the Commission, who facilitated discussion on the likely impact of the Lobbying Bill on the activities of CSOs. The written and oral evidence covered the type of lobbying and campaigns that CSOs typically undertake during election periods but would be unable to perform under the new legislation. Other areas covered related to the effects of the spending limits and the monitoring and registration requirements on CSOs. The evidence submitted was collated and written up in two reports, which were published in October and December respectively. These were put in the public domain. Along with the written and oral submissions mentioned above, and the transcript of the fore-mentioned meetings, these reports were accessed by the researchers via the Commission's website. Analysis of the material focused on identifying and categorising key themes, including the greater legal uncertainty, the burden of the additional administrative duties and the implications of lower spending limits, which emerged from the data.

CSOs providing the Commission with information included organisations campaigning on a range of issues including: employment, environmental, mental health, poverty and the rights of women. These issues are often interconnected with employment; poverty is intricately connected to low pay, gendered and precarious work. Some CSOs, such as the NCVO, were umbrella organisations with over 10,000 members representing the interests of large, established CSOs; and small voluntary and community groups involved at the local level. In this respect, the evidence submitted, and the associated reports, are based on a wide constituency of CSOs, not just those attending meetings or submitting evidence themselves.

Oral evidence was also given to Parliament by Members of Parliament and the House of Lords during October 2013, as well as by representatives of the voluntary sector. The transcripts of these presentations were accessed via the Commission's website. The authors also monitored the legislative progress of the Lobbying Bill as it passed through the various stages in the House of Commons and House of Lords. Transcripts of parliamentary debates relating to the Lobbying Act were downloaded and analysed, as were reports relating to the Bill produced by various parliamentary committees, such as the Joint Select Committee on Human Rights.

REGULATING LOBBYING AND CAMPAIGNING: CIVIL SOCIETY RESPONSES TO THE LOBBYING ACT

One important theme in CSO responses to the Lobbying Act was that government concerns about the nature of the problem were misplaced, as there was little evidence of non-party campaigners influencing the outcome of elections. In this respect, the point was made by a representative from the Association of Charitable Foundations that:

The Government has failed to produce any concrete evidence that the current regime concerning non-party campaigning is inadequate, and particularly that there has been undue influence from the charity sector . . . or from other civil society organisation.

This kind of response echoes the criticisms of the Conservative government's trade union reforms in the 1980s and the coalition government's employment law reforms, which is that legislative changes are based not on empirical evidence, but the perceptions and anecdotes of employers (e.g. Hepple, 2013; Wedderburn, 1985). That said, the main concerns articulated by CSOs about the Lobbying Act relate to the potentially adverse impact of greater legal uncertainty, lower spending limits, lengthy regulated periods, and additional monitoring and reporting requirements, all of which are anticipated to inhibit their ability to represent the interests of ordinary people, at the level of the state, through their campaigning and coalition working.

1 Legal uncertainty

The lack of consultation over the legislation contributed to widespread uncertainty and confusion among charities and campaigning groups about the Lobbying Act, in particular which activities would be regulated during an election period. There is considerable uncertainty around Part Two, which focuses on non-party campaigning; for example the meaning of 'election material' and 'controlled expenditure', given the broad and ambiguous wording of the Lobbying Act (Compact Voice, 2013: 1). The effect of extending the activities considered to be 'controlled expenditure' is that almost anything a CSO does in relation to advocating policies during a regulated period can be considered as potentially affecting the success or failure of particular parties or candidates. According to guidance provided by the Electoral Commission this could include: a leaflet identifying candidates that have adopted a particular policy position, a campaign calling for legislation to be repealed and a long-term campaign on a policy issue, such as the living wage, subsequently adopted by a political party. All of these activities could be interpreted as supporting a particular party or candidate. According to a CSO campaigning for disability rights:

. . . the ambiguity that this legislation creates makes it virtually impossible for us as an organisation to determine whether or not activities during an election period could be argued to fall within the scope of the new regulatory framework.

Such uncertainty, combined with criminal sanctions for non-compliance, is likely to deter CSOs from campaigning on public policy issues, therefore making it difficult to represent the interests of their constituents (TUC, 2013). According to a representative of a CSO representing students' interests, the effect is likely to be:

. . . a kind of chill factor, where people are on the side of caution all the time, to the point where they are well within the right to be doing what they are, but they are not doing it and failing their members, their membership organisations; failing the interest that they represent.

Legislation in the 1980s designed to control the activities of trade unions in relation to industrial action had a similar effect in that it made unions more circumspect about engaging in disputes, so as to avoid exposing their funds to possible sequestration (Gospel and Palmer, 1993).

2 CSOs and lobbying

Participating in the political process by campaigning and advocating policy changes to influencing government policy, at local and national level, is a vital part of the work of CSOs (Heery et al., 2012; Williams et al., 2011). Many CSOs expressed concern that the Lobbying Act will jeopardise their ability to represent constituents' interests by deterring them from engaging in dialogue with government bodies during a regulated period on issues of concern to their constituents (Citizens Advice Bureau, 2013; Commission on Civil Society and Democratic Engagement, 2013b; Oxfam, 2013). A CSO campaigning for the rights of disabled people suggested that a consequence of the new regulatory regime would:

. . . be to diminish the participation of voluntary sector organisations . . . in the democratic process and threatens our ability to represent disabled people.

Other CSOs described campaigns that they had previously undertaken, such as encouraging MPs to make a pledge on a particular policy issue, and how they would be difficult to replicate on the same scale in the new regulatory environment. A CSO campaigning on environmental issues acknowledged that:

As more activities involved in this campaign would count towards 'controlled expenditure' and the thresholds are lower, it is likely that under the new proposals the same campaign would be subject to regulation and we would need to drastically scale back on this activity, reducing its impact.

Similarly, the TUC (2013) expressed concerns that the new regulatory environment would undermine their ability to organise national events, such as the national demonstrations against pension reforms and the coalition's austerity measures. The concern was that such activities would be considered as third party campaigning and that the costs associated with organising such national events would breach the spending limits. Arguably of greater concern is the view that CSOs, and trade unions, would become more precautionary, wary of campaigning on more controversial issues. According to one organisation:

All of our campaigning would be made more difficult . . . We would be particularly concerned about work on contentious policy areas such as support for human rights which would undoubtedly divide candidates in a constituency.

By campaigning in favour of human rights legislation, in a situation where some politicians are in favour and some against, this could be interpreted within the legislation as supporting politicians, or parties, advocating stronger human rights to the disadvantage of those with opposing views.

In oral evidence, provided in Parliament to the Commission on Civil Society and Democratic Engagement, Baroness Mallalieu suggested that in government there is:

a weariness of dealing with pressure from pressure groups; [a] feeling that charities should not be campaigning, but dealing with their charitable purpose.

This is consistent with the work of Hilton et al. (2013) who argue that the coalition government distinguishes between CSOs that simply engage in volunteering, perhaps helping to fill the gaps brought about by government spending cuts and thus viewed as benign, and those more critical campaigning and rights-based CSOs, which engage in the political process, holding politicians to account.

3 CSOs and coalition working

A key tactic employed by CSOs to influence public policy debates is working in coalition. Indeed, CSOs and trade unions have an established history of joint working on employment issues (Abbott, 1998). However, CSO representatives expressed concerns that the Lobbying Act will deter them from working in coalition and campaigning for policy changes during regulated periods. This is because of uncertainty around whether or not their activities fall within the scope of the new regulations and therefore possibly breach the law (Citizens Advice Bureau, 2013; Commission on Civil Society and Democratic Engagement, 2013b: 11; Compact Voice, 2013: 2). The high level of interaction between CSOs when engaged in campaigning activity—in the form of coalitions and partnerships—has been documented by Heery et al. (2012). Given the importance attached to joint working by CSOs, any restrictions on this activity seem likely to impinge on their ability to represent their constituents' interests.

Under PPERA, organisations campaigning and working in coalition on the same issues are liable to contribute to one another's spending limits. This has been retained within the Lobbying Act, meaning that each constituent member has to account for the full amount spent for the joint campaign, regardless of their individual contribution, as the total amount spent counts towards the individual spending limit of each campaigner (House of Commons Library, 2014: 5). In effect, the new legislation treats coalitions as single campaign bodies rather than a collection of multiple entities. This could result in organisations exceeding the national and constituency spending limits, which would be a criminal offence. The concern of CSO representatives, and the TUC, is that this could result in the break-up of coalitions, or the silencing of groups, particularly smaller groups, during an election period, given that they may opt not to engage in lobbying and campaigning activities for fear of falling foul of the administrative and financial requirements contained within the legislation (TUC, 2013).

CSOs also reported that many larger organisations may be deterred from coalition working because in joining too many they may soon reach their spending limit, particularly with the inclusion of staff costs, which make up a large proportion of spending. Recognising this, a CSO working in the area of international development reported that:

At the moment expenditure by coalitions is aggregated (this means that each member has to account for the full amount spent for the joint campaign, regardless of their individual contribution). This requirement is already problematic for many organisations and as a result of the lowered spending threshold will force the larger organisations to leave many joint campaigns, while also deterring smaller charities and voluntary organisations to work together for fear of dealing with the financial and administrative burden.

The problem with aggregating coalition costs is that it makes it very difficult to monitor the spending of other organisations, as each organisation has to take responsibility for the overall amount. The administrative framework required to do this, and the associated costs, may dissuade CSOs from participating in coalition work. In addition, smaller CSOs often benefit from the support of larger organisations, with their greater resources, to advance their objectives. Given the wariness of larger CSOs to engage in coalition under the new regulatory regime, it could result in the voices of already marginalised groups in society going increasingly unheard. Recognising this, an international CSO tackling the effects of poverty indicated:

There are a lot of organisations in the coalition which would not alone be able to campaign, they wouldn't have the resources. So the bigger organisations take the lead. The concern would be that the smaller organisations would be even less relevant than they currently are.

CSOs may increasingly be obliged to work in isolation, undermining their effectiveness when it comes to campaigning to influence policy makers and representing constituents' interests, given the likely lower breadth of support gained from joint working.

Therefore, CSOs may become more circumspect and selective around the campaigns they support. This could lead to reluctance to campaign on a particular issue for some, or all, of the regulated period before an election, therefore limiting their ability to represent the interests of constituents on key policy issues. According to evidence provided by a CSO representing the interests of pensioners the effect of the Lobbying Act:

Could be that, despite our determination to represent the interest of pensioners, especially during election campaigns, our national officers and national council will consider this to present so many problems and be such an onerous extra duty on the part of our staff that it would be best to withdraw from campaigning during such election campaigns, for we know that the Registrar can take legal action against organisations which are late with returns.

The effectiveness of CSOs' coalition working, and their constituency campaigns, is likely to be undermined given that compliance with the spending regulations, particularly monitoring and reporting, will reduce their capacity as resources will be directed to meeting administrative requirements rather than representing constituents' needs. A concern is that the considerable administrative burdens that the legislation imposes on CSOs will have a deleterious effect on their ability to engage in campaigning activities. According to Oxfam:

Many of these organisations are quite small and have limited administrative capacity. Some of them are concerned that the time taken to work out the potential costs of a campaign or action and whether they'd need to register would prohibit them from undertaking that action in the first place. . . . They feel the administrative burden might be too high and may restrict their activities in order to avoid registering.

Supposedly to alleviate such concerns the Lobbying Act allows CSOs to register with the Electoral Commission as 'lead campaigners' enabling them to take responsibility for reporting spending on behalf of minor campaigners who are part of the coalition, providing that the minor campaigner does not exceed the spending limit (Hutchins and Baston, 2014).

4 Regulated period and regulatory burdens

Elections, with increased levels of media and public interest, provide CSOs with leverage to pressure key decision makers to establish a position on a particular issue, such as the living wage and the privatisation of public services. CSOs are well placed to influence, and engage in, public policy debates as they have considerable expertise based on research evidence gained from providing services and working directly with constituents (Williams et al., 2011). Although the regulated period has been shortened for the May 2015 UK General Election there are concerns that organisations will be forced to limit campaigning activity over extended periods. This is problematic given the potentially uncertain timings of elections and referenda are not definitely fixed, meaning that:

. . . an overly extended regulatory period could leave some charities and civil society organisations in a perpetual state of uncertainty and have a chilling effect, restricting their ability to pursue their charitable objectives [Association of Charitable Foundations].

Therefore, the lobbying and campaigning activities of CSOs are likely to be increasingly intermittent, due to the staggering of referendums and elections (national and devolved), further diluting their continuity of action in the sphere of work and employment relations

which, as Bellemare (2000) has argued, is important to secure change and determine the importance of an actor. Even if elections proceed as planned, between 2014 and 2020, the time periods contained within the Lobbying Act will mean that campaigning restrictions will apply in 35 months, nearly 60 per cent of the time (NCVO, 2013).

It is somewhat ironic that the Act was originally intended to bring about greater transparency to the lobbying sector. However, the legislation adopts a narrow definition of lobbying, confining it to the registration of consultant lobbyists, which it is estimated will only cover 1 per cent of lobbying meetings (House of Lords, 2013a; House of Lords Library Note, 2013; TUC, 2013). The view was expressed that focusing on the lobbying activities of CSOs was misplaced as:

Transparency is not just an issue in relation to third-party campaigning. The question should focus upon the influence of lobbying more generally and the role of large multinational corporations and how they influence government . . .

In this respect, the legislation shifts the power in the employment relationship further in favour of the employer by doing little to make corporations more accountable for lobbying, by leaving them largely untouched, while placing restrictions on those organisations that seek to represent the interests of the vulnerable.

CONCLUSION

The marginalisation of trade unions has resulted in increased interest in non-union forms of worker representation, particularly internal non-union representative structures operating at the level of the workplace and organisation (Dobbins and Dundon, 2014). This interest has expanded to include non-union representative mechanisms external to organisations, which are principally active at the level of the state (Heery et al., 2012).

This article offers two key insights into what the Lobbying Act portends for the 'representation gap', within an emerging 'multiform' system of worker representation (Heery, 2011), in which CSOs have become increasingly prominent. First, it highlights the importance of viewing the Lobbying Act within the context of the UK coalition government's broader efforts to rebalance work and employment relationships further towards employers. Existing work has already focused on the adverse consequences of austerity measures for working people (e.g. Conley, 2012; Taylor-Gooby, 2012), and the deleterious implications of the neo-liberal programme of employment law deregulation, which has been pursued by the coalition (e.g. Hepple, 2013).

Our research, though, highlights a third dimension of the coalition's efforts to reform the system of work and relations in the UK. The combined effects of the Lobbying Act, such as restrictions on campaigning, and the coalition's other reforms, including the removal of employment from the scope of legal aid and the introduction of employment tribunal fees (Hepple, 2013; Ministry of Justice, 2014) will further limit the channels of voice and representation that workers can access. Therefore the Lobbying Act seems likely to compound the difficulties workers face in trying to advance their interests. CSOs generally lack the capacity to organise and mobilise workers within an employing organisation; they are reliant on the 'leverage' that legislation provides to regulate employment practices (Bellemare, 2000: 398; Kochan et al., 1994: 18). Where employment protection is eroded and tighter controls are placed on the ability of CSOs to provide their constituents with voice and representation, this leverage is weakened.

Taken together, the Coalition's programme of employment deregulation and tighter regulation of CSOs' activities, through the provisions of the Lobbying Act, undermine the capacity of CSOs to represent workers at the level of the state. Not only do they make it more difficult to protect workers' interests through the 'method of legal enactment' (Webb and Webb, 1920), but also they diminish the capacity of workers to assert their rights at work. This points to the second main contribution of the article, which is to show how the Lobbying Act, by imposing greater restrictions on the campaigning and lobbying activities of CSOs, seems likely to exacerbate the representation gap in UK workplaces.

In the context of Bellemare's (2000) framework, the Lobbying Act seems likely to erode the effectiveness of CSOs, and thus diminish their importance as industrial relations actors as they will find it increasingly difficult to satisfy the instrumental dimension (active at all three levels and continuity of action) and the outcome dimension (securing change). The legislation undermines the representative capacity of CSOs, quelling the voices of those who would otherwise benefit from their interventions, such as employees working in non-union firms. For these workers CSOs provide an important source of voice and representation. Whereas the legislation of the 1980s targeted and made it more difficult for organised labour to represent members' collective interests (Gospel and Palmer, 1993), the Lobbying Act mirrors this approach by imposing and extending tighter controls on campaigning and coalition working of established and emerging channels of worker voice. Part Two of the Lobbying Act in all likelihood will deter CSOs from engaging in coalition working and from operating at the level of the state, both of which are important channels they use to exert pressure and secure policy changes supportive of working people (Heery et al., 2012; Williams et al., 2011). Similarly, the lengthy 'regulated period' prior to an election, and associated administrative costs, will discourage CSOs from engaging in public policy debates and campaigning for policy changes over extended periods of time. Where they continue to engage in campaigning and lobbying efforts at national level they are likely to be fewer in number, more cautious and more desirous of avoiding contentious issues to ensure compliance with the new regulatory regime. As their interventions in relation to work and employment relationships become ever more intermittent, levels of engagement will diminish, as will continuity of action. Overall, these outcomes seem likely to have a pronounced adverse effect on worker representation.

Clearly, further research into how the new law is working and its effects on employment actors, post-2015 general election, needs to be undertaken to consider the implications of changes in the legislative and policy frameworks and how they influence the ability of CSOs to campaign and lobby on matters relating to work and employment relations.

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