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British Business Strategy, EU Social and Employment Policy and the Emerging Politics of Brexit.

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Introduction

Leading sections of British business strongly advocated a 'Remain' vote throughout the EU referendum campaign. The Confederation of British Industry (CBI), business leaders representing some of the UK's largest firms and the chief executives of large international banks based in the City all stressed the risk which 'Brexit' posed to investment, skills and competitiveness. The shock 'leave' vote in June 2016 therefore represented a major defeat for the 'Remain' campaign and for large swathes of British capital. In the immediate aftermath of the EU referendum, the situation from the perspective of British business seemingly deteriorated further. As sterling fell to a thirty year low, the new Prime Minister, Theresa May, pivoted rhetorically towards an economic programme which was widely condemned as inimical to the 'business interest' (Sands, 2016).

In this uncertain context, one of the key questions for analysts of British politics is how British business might attempt to regain control of the domestic agenda and thereby shape the Brexit process in line with its perceived interests. However, two obstacles stand in the way of 'mapping' how British business might seek to achieve its objectives during the course of the Brexit negotiations and beyond. First, the politics of Brexit is a 'moving target' which is highly complex, evolving rapidly and embodies a wide array of competing social and political forces. Second – and more worryingly – the existing literature is ill-equipped to interrogate the emerging relationship between British business strategy and Brexit. This is because the British politics and, more surprisingly, British political economy literatures have tended to neglect the question of corporate power and business strategy within the UK. As such, no comprehensive study of the relation between business strategy, British politics and the EU has been conducted. Similarly, whilst both the mainstream and critical arms of EU studies have interrogated the relation between business groups and European integration, these studies have tended analytically to privilege the supranational scale of analysis and have thereby neglected the domestic contexts within which rival business interests are necessarily embedded (Bulmer & Joseph, 2015). A major conceptual and empirical lacuna therefore exists at the heart of the existing literature which seriously compromises our capacity to interrogate changing configurations of business power within the Brexit conjuncture.

This paper advances a distinctive conceptual and empirical account of British business strategy in relation to the EU in the period before the June 2016 referendum. The paper is organised around two core questions. First, in what ways has British business attempted to secure its objectives in the past within the EU? Second, how might Brexit problematise this strategic orientation? In order to answer these questions, the article focuses specifically on the area of EU social and employment policy (EU S&EP) and British business strategy in relation to this policy field. Through a documentary analysis of business submissions to the Balance of Competences review (a 2013 consultation led by the Coalition government on UK-EU relations) and of policy and strategy documents from the Confederation of British Industry between 2010 and 2016, the paper analyses how British business had attempted to secure its objectives within the EU in the recent past. The core argument is that British business has attempted to shape the formulation of EU S&EP and its transposition into domestic legislation through deploying the formal and informal power of the British state within the EU. The strategic priority of British

business was to ‘defend and extend’ a liberalising agenda at the supranational scale, an objective which, crucially, was to be achieved through utilising the UK’s position as a powerful member state inside the EU institutions. This analysis is suggestive of a series of dilemmas and opportunities which now face British business as the UK embarks upon the process of leaving the EU.

The paper proceeds as follows. Section one argues that the existing British political economy literature has neglected the question of how business organises itself as collective actor. Section two advances an alternative schema for conceptualising business agency within the UK. Section three turns to the question of EU S&EP between 2010 and 2016 and outlines how British business strategy has attempted to deploy the formal and informal power of the British state within the EU in order to limit the supranational upregulation of labour standards. The concluding section then outlines how the ‘leave’ vote has problematised British business strategy in a variety of different ways and argues that British capital now faces a range of novel dilemmas within the emerging politics of Brexit.

‘Capital as agency’: British politics and business representation

It is something of a truism that business is a powerful and privileged site of power within the advanced capitalist world (Crouch, 2004; Schmidt & Thatcher, 2013). Since the 1980s capital has consistently increased its share of overall economic output relative to labour across Europe (Bengtsson & Ryner, 2014; Stockhammer, 2016). Amidst this structural shift in favour of business, the UK’s liberal model of capitalism is commonly identified as a leading example of an economy which caters to the preferences of international capital. This is reflected in the UK’s comparatively low corporation tax regime, its openness to international capital flows, its limited employment protections and its highly restrictive trade union laws. However, while the political economy literature acknowledges the structural bias of UK policy towards the preferences of internationally mobile capital, this same literature has tended to neglect the ways in which business itself embodies a crucial – if complex and often contradictory – site of agency within the UK and further afield.

The absence of a theorisation of business agency can be seen throughout British politics and political economy scholarship. Across these literatures there is a strong tendency to conceptualise *the state* as a site of contestation, contingency and discursive struggle, whilst treating *capital* as an external factor which conditions the terrain within which politics takes place. For example, whilst advocates of the ‘statecraft’ approach have argued that the Coalition government’s economic policy was driven primarily by electoral considerations (Gamble, 2014a), this privileging of the ‘electoral’ sphere means that the question of how business power is organised and mobilised under conditions of austerity is not explicitly problematised. Similarly, whilst constructivist work has detailed how ‘ideas’ play an important role in shaping processes of social and political change within the UK and further afield (Baker & Underhill, 2015), these approaches overwhelmingly focus on ideational continuities and changes within formal policymaking institutions whilst neglecting the ways in which business attempts to organise itself as a collective political actor. Whilst the literature rightly points out that ‘external’ processes – such as ‘globalisation’ – can be constructed in a variety of different ways by state actors,

the organisation of these ‘external’ forces themselves is rarely subjected to critical enquiry (see Watson & Hay, 2003). This statist bias in the British political economy literature means that the question of business-government interactions in general and the question of corporate strategy in particular have been relatively neglected by contemporary British political economy scholarship.

Capital is not merely a ‘structural constraint’ on policymakers’ action. It is also in an important sense an *agent* capable of organising itself collectively and making strategic interventions into social and economic relations (Streeck, 2016). This formulation of ‘capital as agent’ was advanced by Michal Kalecki in a seminal essay on the emerging postwar regime of ‘managed capitalism’ (Kalecki, 1943). Kalecki argued that, although demand management techniques made full employment a *technical* possibility, its realisation would also remove the threat of unemployment as a disciplinary force within society. In turn, this could undermine managerial control over the labour process and could lead to destabilising bouts of worker militancy. As such, capital would oppose full employment on *political* grounds, withdrawing investment from circulation at critical moments and engaging in speculative attacks on social democratic programmes (Block, 1981; Offe, 1985).

In what sense can we meaningfully speak of capital as an ‘agent’? Paradoxically, we must start by acknowledging that capital has no ‘pre-given’ or ‘substantive unity’ and that consequently there are a range of barriers which *limit* capital’s capacity to organise as a collective actor (Jessop, 1990). Capitalist enterprise is always internally divided and riven by the potential for conflict. Distinct ‘fractions’ of capital – embodied most obviously in financial and industrial circuits – are likely to hold divergent strategic priorities; intra-sectoral conflict is endemic, as firms vie for market position; firms which are oriented towards the international or domestic markets are also likely to display distinct strategic priorities. Despite these divergent ‘particular’ interests, there is common ground upon which a ‘general’ capitalist interest can be constructed. Strong managerial control over the workforce, an aversion to ‘excessive’ taxation, access to investment and the cultivation of a political climate which is amenable to enterprise, all make the possibility of business collaboration possible. Capital is simultaneously divided and driven to articulate a common political will (Moran, 2006a: 454).² As such, there is no guarantee that leading sections capital will be able to organise and mobilise as a collective actor; its political organisation must be constructed and organised by rival blocs of otherwise conflictual business interests (Van Apeldoorn, 2003). The implication is that the articulation of a ‘common’ programme is only ever likely to be provisional and subject to a complex variety of internal and external antagonisms.

Moving from these relatively abstract reflections to a more concrete level of analysis, we can identify three modalities through which capital can be organised into a relatively coherent political force.³ First, firms can develop their own internal ‘political arms’ – for example, by funding ‘in house’ lobbying units – which can attempt to shape the regulatory climate in line with the firm’s perceived interests. Informal connections between company directors or boards and government actors are another means through which individual firms can wield influence over the legislative process.⁴ Second, firms within a given economic sector might form ‘trade associations’ which represent the ‘general’ interest of the branch of industry to which they belong. Within the UK, the EEF manufacturers association, financial

sector lobby groups and agricultural groups such as the National Farmers Union fall into this category (Grant, 1993: 4). Third, firms drawn from different sectors of the economy may become members of ‘employer associations’ which attempt to articulate the general interest of the business community so as to shape government policy in line with its shared preferences (ibid). ‘Peak’ or ‘umbrella’ organisations such as the Confederation of British Industry, the Institute of Directors (IOD) or more regionally-focused business groups such as the Chambers of Commerce fall into this category. Although these organisational forms potentially allow divergent capitals to provisionally transcend ‘fractional’ interests, they cannot overcome intra-sectoral and intra-firm divisions indefinitely. We will return to this point in the concluding section. In what follows, it is the second and third forms of business organisation and representation – sectorally-specific trade associations and ‘peak’ employer associations – which form the core of the analysis of the ‘business-politics’ nexus in the UK.

The ‘business-politics’ nexus in the United Kingdom

The interaction between business and government has not always been neglected within British political studies. In the 1980s and 1990s, a body of literature interrogated the relation between employer associations, the Thatcher government and the restructuring of British capitalism (Coates, 1984; Farnsworth, 1998; Grant *et al.*, 1989; Grant, 1993; Leys, 1985; Moran, 2006). This literature advanced a number of core arguments relating to the business-government nexus in the UK, tracing the historical weakness of business representation in the UK (Leys, 1989; Moran, 2006b), the marginalisation of the CBI during the Thatcher years (Grant, 1993; Leys, 1985) and tensions between political parties and employer associations more broadly.⁵ Whilst this literature provides a useful blueprint for conceptualising the business-government nexus in the UK, it is undermined by two limitations, both related to the historical context out of which it emerged. First, its focus on employer representation was partly a reflection of debates on the nature of ‘Thatcherism’ and the status of the UK’s ‘flawed’ corporatist institutions in the 1980s and 1990s, which raises questions around its relevance today (Leys, 1990). Second, the literature did not treat the ways in which business strategy intersected with the acceleration of European integration throughout the 1990s and 2000s. Let us take each of these points in turn.

In a recent article, Hopkin and Alexander-Shaw have argued that British business groups have played a negligible role in sustaining the UK’s ‘Anglo-liberal’ model of capitalism since the concentration of power within the British executive insulates policymakers from business lobbying (Hopkin & Alexander Shaw, 2016). As a result, they argue that the ascendancy of financialisation since the 1980s in the UK is better explained as the result of the structural power of finance and the enduring salience of liberalising ideas held by policymaking elites (Hopkin & Alexander Shaw, 2016). However, it is important to note that Hopkin and Alexander Shaw’s comparative essay specifically seeks to chart the relationship between business lobbying and the growth of *income inequality* in the UK and US. It cannot be deduced from the evidence provided in their article that the question of business strategy in the UK should be discounted *in toto*. The enduring relevance of business power is particularly the case with respect to the relation between British business strat-

egy and the EU. There have been key moments, including in the transposition of the Working Time Directive (WTD) into UK legislation (Deakin & Wilkinson 2005: 340) and in the ‘social partner’ agreements necessary to drive through the agency worker directive in the EU and UK (Forde & Slater, 2016), where the CBI and other employer organisations played a pivotal role in shaping domestic UK legislation. Furthermore, even if we charitably accept the view that business strategy has had a negligible impact on the shape of contemporary British capitalism,⁶ within the Brexit conjuncture it is reasonable to propose that this proposition no longer holds. The preferences and strategic orientation of British business are now of huge political importance, a fact attested to by reports highlighting increased consultation and collaboration between the Department for Exiting the EU and British business representatives (Pickard *et al.*, 2016). At the very least, charting business strategy – even if this strategy turns out ultimately to be unsuccessful – provides us with a useful lens through which to conceptualise UK-EU relations in general and the emerging politics of Brexit in particular.

The second limitation of the original business-politics literature is its under-theorisation of the relationship between business strategy and the EU. The second edition of Grant’s seminal work, *Business and Politics in Britain*, for example, was published in 1993 – a mere year after the Treaty establishing the EU was signed, whilst Leys’ study of the CBI took place prior to the signing of the Single European Act (Grant, 1993; Leys, 1985). The original business-politics literature is therefore somewhat outdated. In this regard, it is possible to draw upon a second body of literature – emanating from within both the mainstream and critical arms of EU studies – which does explicitly engage with the relationship between EU integration and business representation. Neo-functionalists and supranationalists have long argued that business is a key actor which drives forward EU integration processes (Haas, 1958; Sweet & Sandholtz, 1997). Supranational integration produces ‘spill-over’ effects, whereby integration in one policy sphere generates pressures for further integration elsewhere. For supranationalists, this process is not agentless. Corporate actors play a key role in pressurising the EU Commission and other supranational bodies for more extensive regulation and deeper integration in line with their commercial interests (Sweet & Sandholtz, 1997: 305). Similarly, Van Apeldoorn and other neo-Gramscian scholars have focused on the ways in which transnational business groups have articulated comprehensive programmes within the EU institutions in order to advance their interests (Van Apeldoorn, 2003; Cafruny & Ryner, 2003). In both cases, however, analytical primacy is accorded to business-EU relations at the *supranational* scale of analysis. The domestic mediation and articulation of business interests is thereby neglected in favour of an analysis which views the transnationalisation of business strategy as a functional response to the globalisation of production and exchange relations since the 1980s.

A significant lacuna therefore exists in both the British political economy and EU studies literatures which compromises our capacity to ‘map’ business strategy prior to and in the aftermath of the UK’s vote to ‘leave’ the EU. In order to overcome these limitations, it is fruitful to draw upon those accounts which have emphasised the ways in which EU integration represents the outcome of politics at the domestic scale of analysis (Bulmer & Joseph, 2016; Macartney, 2009). Bulmer and Joseph’s ‘critical integration theory’ is instructive in this regard (Bulmer & Joseph, 2016). In contrast to ‘deterministic’ supranationalist accounts of EU integration which em-

phasise how functional ‘spill-over’ drives the EU towards ever-deeper integration, Bulmer and Joseph argue that integration should be viewed as an emergent process which is strongly shaped by competing social and political projects embedded and organised within distinct domestic contexts. This focus on the domestic is justified on the grounds that whilst institutional and political barriers strongly delimit the capacities of supranational actors, ‘agency is much more strongly embedded at the national scale’ (Bulmer & Joseph, 2016: 8). MacArtney, in an earlier but complementary analysis, argues against the notion that EU integration has been driven forwards by a ‘transnational capitalist class’ embedded at the EU scale (Macartney, 2010). Instead, he insists that the domestic contexts within which distinct blocs of capital are embedded condition their strategic orientation and their interventions into EU politics. As such, Macartney refers to ‘transnationally-oriented fractions of capital’, represented for example by ‘Anglo-Saxon’ and ‘Gallic’ blocs of financial capital within distinct national contexts (ibid). The domestically embedded nature of capital has therefore conditioned the EU integration process in ways which analyses which privilege the ‘supranational’ scale of analysis cannot fully appreciate.

These accounts provide us with a good analytical toolkit through which to interrogate the relation between British business strategy and EU S&EP. Capital does not freely float in an unbounded, transnational space. It must ‘territorialise’ itself and become embedded within specific national contexts and regulatory environments. The preference formation of domestically ‘embedded’ capital is accordingly conditioned by these domestic factors. This helps to explain why, for example, German employer associations supported the Agency Worker Directive (AWD) on the grounds that EU harmonisation could lead to the levelling-down of employment protections in coordinated market economies (CMEs) whilst British employer associations vociferously opposed the legislation on the grounds that it increased ‘compliance costs’ for British firms (Forde & Slater, 2016). However, the ‘critical integration theory’ schema advanced by Bulmer and Joseph implicitly relies upon the identification of two ‘transmission mechanisms’ between the domestic and supranational scales which shape ‘emergent’ European integration process. First, ‘transnational’ pressures are mediated and reconfigured as these are encountered by domestic institutional complexes. Second, these domestic contexts in turn project pressures ‘outwards’ and ‘upwards’ onto the supranational scale. Of these, the second ‘transmission mechanism’ is only given a tentative treatment empirically by the authors. In what follows, I provide an account of how domestically embedded British business, represented by employer associations such as the CBI, ‘fused’ together with UK state power at the EU scale in ways which conditioned the shape of EU S&EP and its transposition into UK legislation.

British business strategy and EU social and employment policy

Since the relaunch of European integration in the 1980s, political groupings within the EU have argued that the development of the Single Market should be complemented by the cultivation of a ‘social dimension’ to EU legislation (Bailey, 2008). The need to enhance EU social and employment policy (EU S&EP) is typically justified on the grounds that a minimum floor of supranational employment standards is necessary to prevent ‘social dumping’ and competitive deregulation between member states (Cremers *et al.*, 2007: 525). The prospect of developing extensive

EU S&EP was ostensibly boosted under the Delors Commission, which extended EU competence over employment and industrial relations policy and introduced qualified majority voting across a broad range of social policy areas (Forde & Slater, 2016: 594). As a result, a range of EU employment directives and regulations – since the Amsterdam Treaty embodied in Articles 151 – 161 of the TFEU⁷ – attest to the emergence of a distinctive, albeit relatively weak, body of supranational social policy which seeks to establish a ‘minimum floor’ of labour protections across the EU.

The scope and effectiveness of EU S&EP should not be overstated. Despite the professed ambitions of European social democrats, profound institutional and political barriers prevent the emergence of a fully-fledged ‘Social Europe’ (Scharpf, 2010). ‘Negative’ (market) as opposed to ‘positive’ (social) integration has been the predominant form of EU development both before and after the signing of the Maastricht Treaty (ibid). The predominance of negative integration has in turn created a range of pressures on the welfare systems of CMEs whilst leaving ‘liberal market economies’ (LMEs) relatively intact (Scharpf, 2010). Nevertheless, it would be wrong to conclude that the limited development of the EU’s ‘social dimension’ has had no impact on the EU’s LMEs. In the case of the UK, since the Labour government opted-in to the ‘Social Chapter’, EU directives have had a significant impact on the form and content of UK industrial relations and employment law (Hyman, 2008). EU legislation covering working time, holiday pay, parental leave, workplace consultation rights, agency workers and acquired rights have all been transposed into UK legislation and have acted as a European ‘floor’ on UK employment rights.

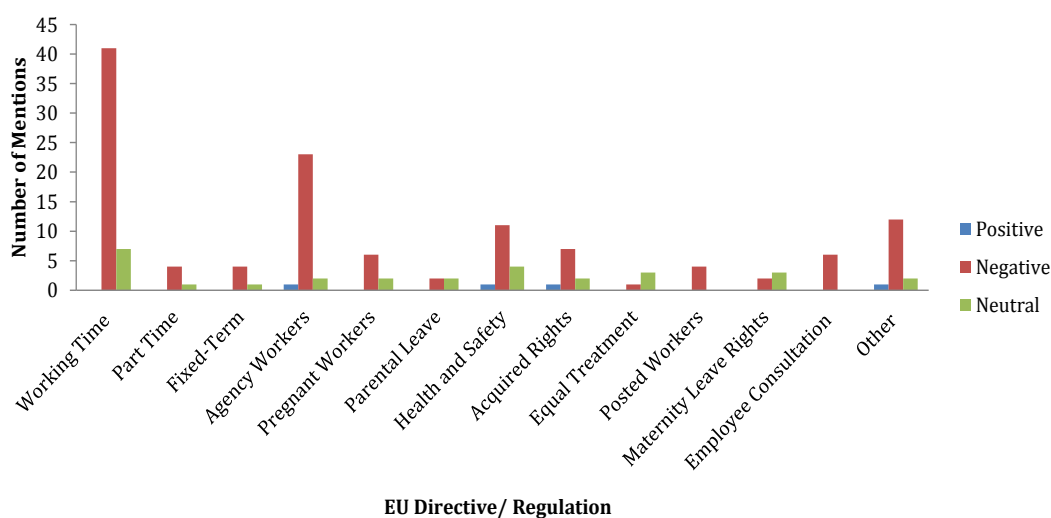
British employer organisations have historically adopted a hostile attitude to the development of EU S&EP. When New Labour announced it would ‘opt-in’ to the EU’s Social Chapter by 1998, leading employer organisations joined the Conservatives in opposition to this proposal. The CBI, for example, staunchly opposed the ‘opt-in’ on the grounds that it would increase the bureaucratic burden on British businesses and would result in legislation ill-suited to the UK’s economic model (Phillips, 1997). Ian Lang, President of the Board of Trade, claimed at the time that the ‘overwhelming view’ of industry was ‘that acceptance of the social chapter would seriously damage competitiveness and employment because it would allow the United Kingdom to be out-voted on measures imposing unnecessary burdens and costs on businesses’ (cited in Lourie, 1997: 19). In the event, business was unsuccessful in opposing the incorporation of the Social Chapter into UK law. As such, a primary concern for British employer organisations in relation to the EU since 1998 has been how to ‘defend’ the UK’s flexible labour market regime by limiting the scope and domestic impact of supranational legislation. The content of EU S&EP has of course evolved considerably since 1998 and British business strategy has evolved along with it. The following section therefore focuses specifically on the period between 2010 and 2016 and identifies (i) areas of EU S&EP which British business groups have identified as particularly egregious and (b) the broad strategy which British business has adopted in order to limit the domestic impact of this legislation.

In order to establish an indicative account of British business strategy in this field, a document analysis of the ‘Balance of Competences’ review was conducted. The BOC review was a large consultation exercise led by the Coalition government between 2012 and 2013 which sought to gather evidence on the EU’s impact on the UK economy. The review covered 32 policy areas and drew on over 2,300 submis-

sions of evidence from a variety of stakeholders (FCO, 2014). One specific arm of the review focussed on EU ‘social and employment policy’ and brought together submissions of evidence from a range of social actors, including trade unions, parliamentarians, business lobby groups, legal practitioners and non-governmental organisations (NGOs) (HM Government, 2014: 74). Business was well-represented in this section of the review, with submissions of evidence from the IOD, CBI and the Federation of Small Businesses (FSB) amongst a range of other employer organisations. In what follows, these submissions were analysed in order to establish some of the common concerns of British business in relation to the scope, content and implementation of EU S&EP in the period prior to the EU referendum.

We can identify three broad areas of common business concern in the documents. First, there was strong tendency – identified across all the submissions of evidence reviewed – to suggest that EU S&EP has too often over-stepped the ‘minimalist’ threshold favoured by business. The employer organisations which were studied broadly acknowledge – at least on paper – the legitimacy of some degree of ‘proportionate legislation’ in the field of EU S&EP (CBI, 2013a; EEF, 2013: 2). For example, EEF, the manufacturers association, wrote that a ‘baseline of labour market regulation which prevents businesses from competing unfairly against each other’ is necessary at the EU level (EEF, 2013: 2). However, the reviewed submissions were consistent in arguing that these common EU labour standards should be kept as minimalist as possible. The EEF submission goes on to warn that ‘Europe’s businesses are competing with other global businesses which do not have the costs and associated administrative burdens imposed in Europe’, suggesting that restraining regulatory costs should be a top EU priority (*ibid*). More forcefully, the IOD questions the overall value of EU S&EP, claiming that attempts to impose minimum labour standards across the EU undermines competitiveness and drives employers to seek atypical labour from outside the EEA (IOD, 2013a: 3). The CBI in its submission similarly advocates cutting back on the costs of EU S&EP, claiming that 54 per cent of its members consider continued EU activism in this area to represent a ‘threat to UK labour market competitiveness’ (CBI, 2013a: 3). The prevailing consensus, then, is that some degree of EU S&EP is in principle permissible, but that the ‘reach’ of this legislation should be strongly curtailed. The employer organisations consistently claim that too often EU S&EP oversteps this ‘minimalist’ boundary, resulting in damaging regulatory outcomes for British business.

Figure 1: British Business Views: EU Social and Employment Policy



Source: Balance of Competences Review: Social and Employment Policy. Submissions from employer organisations and business associations.

Second, the employer organisations which were studied consistently identified a relatively narrow but specific set of EU directives and regulations which they considered to be unduly burdensome and in need of reform. Figure 1 outlines the number of mentions accorded to different EU directives and regulations within the reviewed submissions. In each case, the graph charts whether the EU directive is referred to ‘positively’ (i.e. that it is viewed as a ‘good thing’ for business which should be maintained or extended), ‘negatively’ (i.e. that it is viewed as burdensome on business and in need of reform, either at the EU or UK levels) or that it is viewed in a ‘neutral’ light. As the graph indicates, very few EU S&EP directives are viewed ‘positively’ by the British business groups surveyed. Two areas of EU S&EP are regularly highlighted as having a ‘negative’ impact on business: the ‘Working Time Directive’ and the ‘Agency Worker Directive’. These directives are commonly identified as creating large ‘compliance costs’ on employer organisations (Coulter & Hancké, 2016). For example, the IOD and FSB bemoaned the WTD’s requirement that ‘annual leave’ can be accrued during periods of absence (FSB, 2014: 6; IOD, 2013a: 4), whilst the British Hospitality Association highlighted the costs to small businesses of complying with the UK’s ‘opt-out’ from the 48 hour working week (BHA, 2013: 1). The threat of the UK losing its opt-out from the WTD is also frequently cited as a common concern amongst the business groups surveyed (BHA, 2013: 1; CBI, 2013a: 3; IOD, 2013a: 14; LCCI, 2013: 5). A shared range of concerns can also be identified with respect to the AWD (HM Government, 2014: 39).

A third area of commonality relates to the broad strategic orientation of the employer organisations which were studied. For instance, none of the employer organisations cited advocated either that the UK should leave the EU or that employment policy should be ‘repatriated’ to the UK (EEF, 2013: 16).⁸ Furthermore, the business groups surveyed advocate a similar range of broad objectives, including the need to secure ‘better’ – in other words more limited – EU regulation, to limit

‘gold plating’ and for the EU institutions to apply the principle of ‘subsidiarity’ more consistently (HM Government, 2014). In terms of more specific strategic objectives, there is considerable evidence of common ground across the business groups surveyed. In particular, there was a broadly shared concern amongst the employer organisations surveyed about the threat of EU actors and institutions extending their competence over employment policy too far in the future and thereby threatening the UK’s flexible labour market regime. For example, a number of the employer organisations voiced concerns around the UK’s ‘opt-out’ from the WTD’s 48 hour working week provision being repealed (HM Government, 2014). Similarly, a number of British businesses voiced concerns around the possible repeal of the AWD’s ‘Swedish derogation’ which allows client firms to avoid paying agency workers a wage equivalent to permanently employed staff so long as the agency worker in question is employed on a ‘permanent’ basis with an agency firm on a ‘pay between assignments’ model (Forde & Slater, 2016).

Rather than detailing the nuances of each business organisation’s stated priorities in the BOC review, it is instructive to focus on one ‘peak’ organisation as representative of British business strategy in the field of EU S&EP. In this regard, focusing on the strategic positioning of the CBI and its approach to EU S&EP is instructive. The CBI has a ‘hybrid’ membership structure (consisting of both individual members and trade associations) which means that the Confederation can claim to represent companies which together employ one third of the private sector workforce (CBI, 2015: 1; Mcrae, 2005: 14). This makes the CBI the UK’s largest employer organisation, representing over 190,000 businesses from across a broad range of sectors (CBI, 2015b: 1). Analysing the CBI’s position therefore provides us with a useful lens through which to interrogate the relation between British business strategy and EU S&EP in the period prior to the EU referendum. For the research, all publicly available policy documents released by the CBI between 2010 and 2016 were reviewed, with a specific emphasis on the Confederation’s approach to EU S&EP.

Three areas of concern are consistently highlighted by the CBI throughout the documents. Its first ‘line of defence’ against EU S&EP is to challenge ‘gold-plating’ by the UK government (CBI, 2013b: 20). ‘Gold-plating’ refers to a situation whereby EU legislation is transposed into UK law in a non-minimalist manner, such that the provisions of the domestic regulations go over and above the minimum requirements of EU law (CBI, 2013; IOD, 2013; see also: HM Government, 2014). The CBI highlighted the AWD – which aimed to secure equal pay and conditions for agency workers with permanent employees working in an equivalent role⁹ – as one area which had a ‘damaging impact’, in part because the UK government had ‘gold plated’ EU legislation (CBI, 2011). The CBI’s analysis accords with that of the IOD, which in a separate study argued that the UK government had adopted an overly-expansive definition of ‘equal pay’ within the transposed legislation (IOD, 2013b: 11).¹⁰ Second, the CBI regularly criticises what it terms ‘one size fits all’ policies emanating from the Commission which it claims are ill-suited to the needs of the UK’s flexible labour market (CBI, 2015a: 3, 2016b: 4). As the CBI states in its response to a Treasury enquiry, 49 per cent of its members stated that over-bearing EU regulations had a negative impact on their business (CBI, 2016: 73). The AWD again represents a source of consternation in this regard. For example, in *Our Global Future*, the CBI argues that the objective of the directive was misplaced in the UK context, since agency workers already received 92 per cent of equivalent employees’ wages and because

no ‘unreasonable’ restrictions on agency work existed in the UK (CBI, 2013b: 73). As such, it argues that the AWD is an unnecessary piece of legislation which costs UK businesses £1.9 billion a year in compliance costs (ibid). Third, the CBI regularly highlights the threat of ‘mission creep’, whereby EU institutions overstep their ‘legitimate’ areas of competence and regulate in ‘areas that are best left to national governments’ (CBI, 2015a: 2). It cited the WTD as one area in which EU S&EP had legislated too extensively and, as we shall see below, regularly highlighted the threat to business if the UK lost its ‘opt-out’ as the result of activism within the European Parliament and European trade unions.

An underlying tension for the CBI can be identified within the documents. Since Cameron’s ‘Bloomberg Speech’ in 2013, the UK’s position within the EU came under increasing threat (Menon *et al.*, 2016: 175). Throughout this period, the CBI was consistent in its support for continued EU membership, citing the benefits to British business of having unqualified access to the single market, free movement and investment flows associated with the EU (CBI, 2013b). At the same time, one of its clear concerns was to ‘defend’ the UK’s flexible labour market regime from unsolicited encroachment by the EU institutions, not least because of serious concerns about EU competence in the field of employment law within the ranks of its own membership (CBI, 2013a: 1). The CBI therefore had to balance its support for the EU with mounting a defence of the UK’s ‘competitive’ labour market regime *vis-à-vis* EU S&EP. This conditioned the CBI’s strategic orientation in a number of ways. For example, whilst some pro-business groups advocated ‘repatriating’ social and employment policy to the UK, the CBI warned that this was ‘unrealistic’ and could even lead to the ‘exit door’ (CBI, 2013b: 163). With its hands tied, the principal means by which the CBI sought to ‘defend’ the UK’s labour market was not through ‘repatriation’ or through ‘exit’, but through by attempting to delimit and shape EU legislation at source; that is, by intervening in the EU’s legislative process itself. The CBI was thereby driven to ‘upscale’ its business strategy to the supranational level in order to defend the domestic interests of its membership (Coen, 2010).¹¹

This ‘upscaling’ of British business strategy involved three core elements. On the one hand – as predicted by neofunctionalist scholars – the CBI, along with other business lobby groups, sought to extend its influence ‘upwards’ in order to shape EU S&EP through supranational engagement. In this regard, its membership of the European-level lobby group ‘Business Europe’ and increasing engagement with the Commission, European Parliament and other EU institutions have all formed core components of the CBI’s engagement strategy. The rise of corporate lobbying at the EU level has been widely charted and does not form the object of analysis here (see: Coen, 2010). Rather, a second – equally crucial – dimension of the CBI’s EU strategy should be noted. This is embodied in its attempt to deploy the formal and the informal power of the British state within the EU in order to secure the interest of British business in the field of EU S&EP.

The importance which the CBI attached to the role played by the British state within the EU institutions is clearly evident throughout the reviewed documents. In its consultation with the Treasury Committee, for example, the CBI stated that the UK had ‘a powerful voice at the table, enabling us to have influence over the rules that business has to comply with and to achieve the reform of the European Union that the UK wants to see’ (CBI, 2016b). It continues: ‘by being round the table in EU in-

stitutions, the UK can help to shape the EU legislative agenda and ensure the Commission regulates only where necessary' (CBI, 2016b). UK membership of the EU was therefore not simply preferable because it provided business with 'access' to the Single Market; the capacity of the UK government to shape EU legislation was of equal salience to the CBI's European strategy. This perception of British 'strength' within the EU was key to CBI members' support of EU membership as well, with 72 per cent of them stating that they believed that the 'UK currently has a significant or very significant influence on EU policies that affect their business' (CBI, 2015b).

In the field of EU S&EP, there is evidence that the CBI sought to shape UK policymakers' preferences in order to secure reforms which would be to the (perceived) benefit of British business. For example, in the run-up to Cameron's 'renegotiation' of the UK's membership in February 2016, the CBI pushed hard for a 'moratorium' on EU S&EP that 'stifles the EU's competitiveness' (CBI, 2016a: 10). It also consistently pressurised the British government to make the UK's WTD 'opt-out' permanent (CBI, 2013b: 171; Gordon, 2015). The key to realising the CBI's EU objectives, then, was to shape the UK policymakers' orientation within the EU and thereby to make use of the UK's position as a powerful member state in order to further the British business agenda. For example, the CBI states: 'the UK has been effective in exerting influence. It has significant formal influence in the form of voting power at the European Council and European Parliament' (CBI, 2016b). In stressing the power of the UK within the EU institutions, it places a special emphasis on the capacity to build cross-country support for a liberalisation agenda. For example, in its report *Choosing Our Future*, it states: 'the UK is not alone in wanting reform and by working with our European partners ... we have the opportunity, right now, to achieve reform for a more outward looking, open and competitive European Union' (CBI, 2015b).

As well as seeking to deploy the *formal power* of the British state within the EU, the documents also reveal that CBI was highly attentive to the ways in which UK policymakers could wield *informal* influence over EU legislation in order to shape EU S&EP in line with the interests of British business. For example, it states that 'the UK also has notable informal influence in the EU legislative process and has, for example, leveraged its ability to build alliances and use British expertise to help shape the agenda' (CBI, 2016b). At various points, the CBI explicitly argues that informal influence of this form should be strengthened. For example, in its submission to the Treasury Committee, the CBI (2016b: 14) argued that:

The potential for influence in the European Parliament is considerable when considering the power Committee chairs and rapporteurs have over the text of legislation. British MEPs must step up engagement in the law making process and represent the interests of British business. To boost UK informal influence in the EU, the UK must do more to ensure it has personnel in key positions to help frame the debate. The UK has 10% of senior management and top cabinet positions in the European Commission (the second highest), but is underrepresented in staffing across the European Parliament and European Commission generally. Despite making up 12.5% of the EU population, in 2013 UK nationals represented only 4.6% of EU Commission staff, 5.8% of staff in the EU parliament and 4.3% in the Council of the EU.

As the above evidence suggests, ‘access’ to the economic benefits of the Single Market was not the only consideration of the CBI in relation to its EU engagement strategy. Ensuring that UK policymakers enjoyed formal and informal influence over the shape of EU legislation was also a key concern. We can therefore identify, at the core of the CBI’s European strategy, a key underlying objective: to deploy the formal and informal power of the British state within the EU institutions in order to ‘defend’ the UK’s flexible labour market regime and thereby to further advance a liberalising agenda.

This synthesis of domestic business strategy and British state power has broader implications for how we might view the nexus linking together capital, the state and the EU. As argued previously, Bulmer and Joseph’s ‘critical integration theory’ provides a compelling account of how EU integration is best thought of as an *emergent* outcome of underlying political ‘projects’ which are typically formulated within distinct domestic contexts (Bulmer & Joseph, 2016). Their analysis, however, does not explicate the ‘transmission mechanisms’ through which these projects might be projected ‘upwards’ and in turn shape EU integration. The argument advanced above provides one – by no means complete – account of how leading blocs of capital within the UK context sought to secure their interests through deploying state power within the EU institutions. In this regard, EU S&EP is not simply the outcome of a ‘functional’ integrationist logic or merely a concession granted by transnational actors in order to sustain a particular ‘hegemonic project’ at the EU level (Van Apeldoorn, 2003; Sweet & Sandholtz, 1997). Rather, the development of EU S&EP has in an important sense been conditioned and delimited by the strategic orientation of rival blocs of capital operating within different domestic contexts. The CBI’s attempts to secure British business interests in relation to EU S&EP through deploying its ‘host’ state’s power therefore represents one empirical case which adds to both the British political economy and the nascent ‘critical integrationist’ literature.

Conclusion

The politics of Brexit is hugely complex and only just emerging. The UK’s negotiations with the EU will be subject to an array of conflicting social and political pressures and ‘hypotheticals’. What can be said with certainty is that Theresa May’s government will have to navigate an highly complex and potentially volatile domestic terrain as her government engages in the ‘exit’ process. In this regard, one key – and potentially very powerful – domestic constituency with which the Conservative leadership will have to contend is the British business community. It is a contention of this paper that an analysis of British business strategy in relation to the EU in the recent past provides a lens through which to conceptualise the various dilemmas and opportunities which British business will be likely to face in the UK’s ‘Brexit future’. This concluding section draws upon the above analysis of British business strategy in relation to EU S&EP and points towards some potentially fruitful future avenues of research in this area.

One central conclusion we can draw is that British employer organisations did not merely support EU membership because it provided unqualified ‘access’ to the Single Market. One implicit precondition of this support was that British business could rely upon the UK government’s capacity to shape EU policy in line with its

perceived interests. As the documentary analysis of the CBI reveals, this tendency to appeal to the formal and informal power of the UK state *within* the EU was a core element of its strategy to limit the supranational up-regulation of labour standards. In the field of EU S&EP, the principal concern of British businesses was to *defend* the UK's deregulated labour market regime whilst at the same time balancing this with qualified support for EU membership. However, this objective represents only one dimension of the European strategy of British business. A second core objective of British business – beyond the scope of this paper – was to *extend* the UK's liberalised model of capitalism into the EU in order to open up markets, particularly for the UK's large business and financial services industry. British business strategy can therefore be characterised as organised around a logic of '*defend and extend*' which sought to both limit the scope of 'excessive' EU regulation and to project outwards a liberalising dynamic into the framework of European capitalism.

British business attempts to 'extend' the UK's liberalised model of capitalism 'outwards' can be seen in recent developments around 'Capital Markets Union' (CMU) (Quaglia *et al.*, 2016). Documents from financial sector lobby groups and international banks based in the City reveal the key strategic importance which these businesses attached to this fledgling Commission-led development. CMU, launched in 2014 by the Juncker Commission, sought to address the concern that many European firms' financed their loans excessively through 'bank-based' lending. CMU sought to develop EU equity markets and the market for hedge funds. Since the bulk of hedge funds and private equity is based within the City, the development of CMU presented a key opportunity for the UK's financial sector. Accordingly, the UK government became a 'pace-setter' within the EU on the 'capital markets' initiative (Quaglia, 2016). Crucially, City-based firms played a key role in driving forwards the CMU agenda. A quarter of responses to the Commission's consultation were from British-based stakeholders whilst the then-Commissioner for CMU – UK national Jonathan Hill – convened regularly with the UK financial industry on the topic (*ibid*). The fusion between British political influence within the EU and the strategic orientation of City-based firms was, again, closely intertwined. In line with the argument of this paper, one key question for the British financial sector after Brexit is therefore not only to consider if it has access to the single market in services but also to judge whether it can rely on the agency of the British state within the EU to *shape* Single Market legislation in the ways it has done in the past. The answer to this question is of course likely to be negative.

In the sphere of EU S&EP itself, a number of conclusions can be drawn. In particular, policy documents released by the CBI in the aftermath of the EU referendum reveal that the group's top priority is to achieve a 'barrier free relationship' with the Single Market (CBI, 2016c: 4). In order to aid this objective, the CBI advocates 'regulatory harmonisation' with the EU in order to ensure that non-tariff barriers are kept to a minimum (CBI, 2016c: 18). However, the existing models which guarantee this relationship – for example, Norway's membership of the European Economic Area (EEA) – includes not only *product* market harmonisation but also compliance with EU S&EP. If British business pushed for an existing model of 'regulatory harmonisation', it would find itself having to implement EU S&EP but without having influence over its content. Interestingly, this prospect has been anticipated by the CBI. In its recent post-Brexit report, it states:

Business and government must work together to agree how to secure long-term regulatory cooperation between the EU and UK markets after the UK leaves ... [however] It is not in the UK's interests to be a rule taker. In areas such as social and employment regulation in particular, it would not be acceptable for the UK to implement laws over which it has had no say (CBI, 2016c: 18).

This underscores the key link between British business strategy and British state power *within* the EU in the past and the extent to which Brexit fundamentally re-configures this relation. The question of influence, rather than merely the degree of 'access' to the Single Market, will therefore be a key question for British business throughout the Brexit process.

As noted earlier, the capacity for business to construct a 'collective' form of representation capable of articulating its 'general' interest is always a fraught process which can only ever be achieved in a provisional sense. Conflict between rival 'fractions' of capital – for example, between those oriented more towards the 'domestic' or 'international market' – is an ever-present and latent threat within advanced capitalist societies. Business representative organisations – particularly 'peak' associations such as the CBI – are driven to navigate this potentially fractious terrain. In relation to EU integration, rival firms across different sectors have always had distinct preferences and strategic priorities in the past. For example, large multinationals have generally been more able to cope with regulatory 'compliance costs' than the small business sector. When the UK's membership of the EU seemed relatively settled, intra-firm political conflict could be displaced and even side-lined. However, the broader politicisation associated with Brexit means that this temporary truce between rival fractions of capital is unlikely to hold. The 'deal' struck between the UK and the EU is likely to – quite explicitly – favour certain sectors and firms operating within those sectors over others. In this context, conflict between firms over the UK's future status is likely to intensify. The 'Leave' vote arguably represented the first defeat for British capital on a question of major constitutional importance in the post-war period. A key intellectual and political question going forward is therefore to ask how rival fractions of British capital might seek to 'take back control' over the UK's domestic agenda and thereby shape the Brexit process in line with their increasingly divergent interests.

Notes

1. To take one example, within the financial services sector large international banks tend to prefer a stable political and regulatory environment, whilst 'hedge funds' tend to 'capitalise' on disequilibrium and exchange rate instability.
2. This is particularly true at times where the collective power of business comes under severe political threat, for example from the organised working class during the crisis of the 1970s (Gamble, 2014b; Grant, 1993). If Brexit represents a severe threat to leading sections of British capital – and there are good grounds for supposing that it does – then the critical importance of studying business representation and business strategy within the Brexit conjuncture is once again underlined.
3. The political power, organisational form and strategic priorities of these different modalities of business representation will of course vary historically and across different national contexts.
4. The recent example of the 'Nissan deal' which secured continued investment in the company's Sunderland plant after undisclosed 'guarantees' from the British government in the aftermath of Brexit represents a good example of this form of business power.
5. For example, it outlined how business representation has been historically weak in the UK, partly as a result of the historical subordination of industrial capital to the 'City-Bank-Treasury' nexus (Anderson, 1964; Ingham, 1984) and partly because a widely held ideological commitment to 'firm autonomy' prevailed across both the business community and government (Moran, 2006a). The literature also charted how the Thatcher government increasingly sidelined the CBI – partly because it was viewed as an archaic vestige of post-war corporatism – in preference for other business groups such as the Institute of Directors, which displayed a more ideologically pure commitment to its New Right project (Grant, 1993; Leys, 1985). Finally, the literature emphasised how the strategic priorities of employer associations could frequently conflict with political parties – interestingly more so with the Conservatives than Labour – as they party leaderships sought to reconcile a favourable investment climate with internal political and electoral considerations (Farnsworth, 1998; Grant, 1993).
6. A concession which is, in any case, unnecessary.
7. Treaty on the Functioning of the EU.
8. As was advocated by some pro-business voices at the time.
9. This would be subject to a 12 week qualifying period in the UK.
10. The AWD sought to establish 'equal pay' between temporary and permanent workers employed in similar roles within in an organisation. In the UK case, this was subject to a 12 week qualifying period. However, as the IOD argued in a subsequent publication the UK government's definition of 'pay' was overly-expansive, for example unnecessarily including unnecessarily bonus payments in its definition (IOD, 2013b).
11. This process was of course taking place long before the period studied here. Nonetheless, its need to advocate a 'reformed' EU became increasingly salient after Cameron's pledge to hold the EU referendum.

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