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Voluntarism is the regulation of Employment Relations (ER) by non-state actors who voluntarily agree on norms to be implemented without adjudication by courts and direct legal regulation by the state. The most prominent voluntarist activity is collective bargaining by labour unions and employer associations. Historically, the analytical concept of voluntarism captured how employer associations and labour unions constructed ER systems in environments featuring limited state guidance (Crouch, 1994). Although voluntarism has been less frequently used to analyse ER in recent years, we argue that the concept remains relevant through our identification and analysis of a new form in the United Kingdom (UK).

We argue that private voluntary regulation by Employer Forums (EFs) in the UK constitutes an employer-led form of voluntarism (Simons, 2004; Scott and Williams, 2014). EFs seek to improve labour and social standards for groups of workers, often by focussing on topics linked to equality and diversity. They unilaterally promote and raise labour and social standards in their member firms through instruments such as assessment tools, best practice certification, benchmarking, and social codes of conduct. Importantly, some forums seek to raise these standards over time, using regular assessments of practice within member firms to introduce more exacting requirements.

However, the voluntarism of EFs is independent of and differs from collective bargaining, as although both conform to the voluntary UK tradition that promotes the regulation of employment by private collective actors, EFs do not face pressure from worker representatives and do not bargain. Rather, EFs contribute distinctively to ER through private voluntary regulation. This regulation is a response to the juridification of ER, as the UK's once largely voluntarist system of job regulation gave way to a statutory approach (reference removed for peer review). Voluntary regulation through EFs is linked to statutory regulation but it often

seeks to supplement, forestall, or make the latter more effective. The existence of this new form means that voluntarism in UK ER is not in secular decline as has been suggested (Dickens and Hall, 2003b). Our research contributes to the literature on changing forms of employment regulation (Moran, 2010; references removed for peer review), for whom we identify a new form of voluntarism that differs from collective bargaining, but which is generating a new corpus of employment rules within the UK's regulatory space. Our identification of this new form has utility when examining private voluntary regulation and its enabling actors in the UK.

The remainder of this article is structured as follows. The next section examines traditional voluntarism, as expressed through collective bargaining. We explore this joint voluntarism across four dimensions, namely *origins*, *regulatory substance*, *scope*, and *the role of the state*. These dimensions serve the following analytical purposes; *origins* of EFs details the conditions that stimulated both types of voluntarism to be explored; *regulatory substance* details the characteristics of regulation being produced by each form, *scope* details who is covered by such regulation; and, exploring the *role of the state* details the nature of state influence on the development and implementation of these voluntaristic regulations. We then use these same analytical dimensions to examine the employer-led voluntarism by EFs in the empirical sections of the article. This consistent analytical approach enables the article to contrast the traditional form of voluntarism with the new form and identify the distinctive elements of the employer-led voluntarism practiced by EFs, before discussing and concluding.

Voluntarism in Employment Relations

Analytical categories and definitions of voluntarism in the ER literature are idiosyncratically rooted in specific country contexts such as the UK (Flanders, 1974). Nevertheless, voluntarism

can be defined as enabling non-state actors to privately regulate ER. Such regulation focuses on aspects of ER not regulated fully by the state, but where the state approves private regulation either tacitly or openly. Private actors target these regulatory voids to develop and implement standards and norms, which contribute to the wider regulation of ER. Crucially, voluntarist rules and contracts are not enforced specifically by courts or state. Their implementation depends instead on the capacity, intentions, and power of private actors.

But while the state appears to play a minimal role by abstaining from formal regulation, it acts implicitly or explicitly to legitimise voluntary action (Howell, 2005). The absence of formal institutional frameworks means that voluntarism can be sustained only when participating actors are committed to strategies and practices that reproduce voluntary patterns of ER. Moreover, actor rationales vary widely. The state may not want to regulate a complex or contested terrain, preferring instead to devolve such responsibilities to more informed and involved private actors. Such actors may believe that they are better suited to privately regulate their domain and prefer self-regulation over employment law that could be permanent, intrusive, and rigid.

Forms of voluntarism vary widely within and across countries. The most common form, however, is collective bargaining between employer associations and labour unions with minimal state interference. Nevertheless, the extent of such bargaining ranges from a narrow focus on wage setting to a far broader focus on social benefits and work organisation whereby voluntarist and corporatist approaches to regulation can co-exist. In Denmark, for example, government and unions bargain on pay and conditions with little state interference (Due and Madsen, 2008; Anderson, Kaine and Lansbury, 2017) while also conducting corporatist negotiations with the state over vocational training (Campbell and Peterson, 2007). It is striking

that Nordic unions have opposed recent proposals to introduce a European minimum wage on the grounds that such regulation undermines the roles of unions and voluntary bargaining systems (Furåker, 2020).

Moreover, voluntarism emphasizes the autonomy of collective actors to organize their own affairs as a precondition for joint regulation, including deciding on their organizational structure and internal governance (Dukes, 2015). The literature stresses how voluntaristic actors organize ER with minimal direct government, legal or court interference, although voluntarist actors in the UK have been increasingly subject to such oversight. As examples, collective actors such as employer bodies can carry out unilateral voluntary regulation within ‘employer-dominated voluntarism’ (Simons, 2004; Scott and Williams, 2014) while ‘organizational voluntarism’ in the US referred to the political neutrality of collective actors (Rogin, 1962). Nevertheless, while the literature has identified voluntarist principles operating within different national systems, voluntarist activities vary widely, and do not automatically manifest in common forms. Finally, studies identifying voluntarism are country specific.

In the following, we discuss traditional voluntarism in the UK, considering its *origins*, *regulatory substance*, *scope*, and *the role of the state*. The *origins* of voluntarism lie in the historical experiences of ER actors. The state was once uniformly hostile to workers’ organisations whose activists could be fined, imprisoned, and deported. However, anti-union laws were repealed in the late 19th century and unionisation prompted employers to countervail unions through associations. In contrast to continental countries, unions did not lobby for positive labour rights. Instead, they preferred voluntary collective bargaining for two reasons. One was to avoid entanglement with judges given their tendency to make anti-union judgements under common law (White, 1978), while the other was to forestall the emergence

of regulatory bodies that could reduce their salience, and hence their attractiveness to members. Meanwhile, employers appreciated an absence of legislation constraining their freedom to manage (Dickens and Hall, 2003a; Tolliday and Zeitlin, 1991). These dynamics meant that voluntarism was shaped by laissez-faire ideology, with Kahn-Freund (1954) arguing that free economic exchanges between market actors paralleled free negotiations between independent collective actors.

The *regulatory substance of* voluntarism was characterised by employer associations and unions bargaining collectively over wages and working conditions but using informal agreements without direct legal status. Implementation depended instead on employment relationships and arbitration mechanisms, with both underpinned by relative actor power and the actual or threatened use of forcing strategies such as strikes and lockouts. A dual system emerged in the UK in engineering and other key industries where shop floor bargaining co-existed with more formal multi-employer collective bargaining. Shop floor bargaining was ‘largely informal, largely fragmented and largely autonomous’ (Flanders, 1970: 169) allowing employers to withdraw concessions if circumstances changed. Meanwhile, employers aimed to ‘neutralize the workplace from trade union activity’ (Sisson, 1987: 13) through multi-employer bargaining. This approach coincided with the interests of unions in extending bargaining to limit labour market competition. Shared interests prompted multi-employer collective bargaining to emerge, initially at district levels and then nationally. Finally, voluntarism also included the ability of unions and employer organisations to regulate their internal affairs autonomously, although a degree of state oversight was often present.

When considering *the role of the state*, many researchers attributed a minimal role as governments did not create a comprehensive, formal ER framework. Strictly defined legal

'rights' to organise and strike were absent while a legal duty on employers to recognise unions or bargain collectively was never enacted, although the law did provide occasional incentives to bargain through procurement and extension provisions. Legislation focussed instead on areas beyond the remit of collective bargaining such as minimum wages in industries with low union densities, and social security (Clegg, 1979). The state, however, was not absent. It endowed unions with immunity from civil cases during industrial action and used non-legal mechanisms to construct ER institutions through creating commissions and bodies that contributed to regulation, providing legitimacy and support for voluntarism (Howell, 2005).

The *scope* of traditional voluntarism can be measured by the percentage of the workforce covered by collective bargaining, and the limitations of such coverage. Coverage rose steadily from 20% of the workforce in 1906 to 51% in 1939, peaking at 73% in 1973 (Milner, 1995) although sectoral collective bargaining became less important as plant-level bargaining grew from the 1960s. Overall collective bargaining coverage subsequently declined to 26% of all employees in 2016 (Office for National Statistics, 2019). Even during its heyday there were, however, limitations to joint voluntarism. One was that the narrow focus on pay excluded wider labour standards, social benefits, and work organisation. Another was that while bargaining was firmly established in male-dominated and relatively well-paid industries such as metal manufacturing, it was less prominent elsewhere to the detriment of female workers and the low waged.

After 1979, the Thatcher Governments withdrew state support and industry bargaining in much of the private sector collapsed. Meanwhile, the government restricted legal immunities protecting unions from prosecution and intervened systematically in internal union governance. In this changing regulatory space (Moran, 2010), some large companies enhanced their

sophisticated human resource management strategies as bargaining dissipated, and actors beyond labour unions emerged to influence ER in new ways (reference removed for peer review). Notably, civil society organisations lobbied governments for new laws, mobilized existing laws and proposed voluntary regulation over ER. EFs contributed to this changing landscape of private and public regulation as the following empirical sections demonstrate.

Methods and Data

We used qualitative and quantitative research methods to examine EFs. We identified EFs through applying three selection criteria to a longlist of employer membership organisations identified from searches in practitioner journals, web-based sources, and qualitative interviews. First, EF membership had to consist primarily of employers. This excluded other organisations with a different composition such as Stonewall or the Ethical Trading Initiative. Stonewall, for example, does not offer general membership to employers; they may instead join one of many support programmes, such as ‘Diversity Champions’. Second, members had to pay a membership fee, with this criterion excluding informal organizations or think tanks that generally rely on external funding sources. Third, the selected organisations must focus primarily on private voluntary regulation, excluding traditional employer associations that rely on other forms of ER regulation such as collective bargaining. The application of these three criteria enabled the identification of nine UK-based EFs active in 2019 (see Table 1).

Table 1 about here

Data were gathered through documentary analysis and qualitative interviews across three strands. The first was based on a mixture of opportunity and snowball sampling, where we

conducted, recorded, transcribed, and analysed 47 interviews with representatives from EFs. The second comprised an examination of EF websites to gather information from posts, articles, newsletters, and reports. We also collected brochures, magazines, leaflets, and other materials from EFs when conducting interviews. The final strand involved the collection and analysis of data from the Financial Analysis Made Easy (FAME) database formed from statistical data on UK businesses, and EF websites, to quantitatively assess the characteristics of EF member companies.

Origins

The purpose of EFs is to contribute towards the regulation of employment relationships. Their foundation was driven by a collective employer response to maintain profitability. But the context of employer response changed over time, even if their foci on social issues within ER remained constant.

Conservative Governments, 1979 – 1997

The first EF, Business in the Community (BITC), was founded in 1982 amidst economic and societal transformation as the Thatcher Governments deregulated markets, strengthened management discretion, and thwarted collective actors such as labour unions. The ensuing economic restructuring contributed to mass unemployment and unrest, prompting concern from some business leaders as to social impacts and the potential for business to lose legitimacy. In response to this first driver, BITC focused initially on assisting state supported local enterprise agencies that aimed to regenerate deindustrialising areas, while BITC members supported these agencies through seconding staff and providing financial assistance. Business

leaders argued that the quid pro quo for a smaller state was a more activist business community (Grayson 2007: 14). Neoliberalism and BITC's corporate social responsibility co-evolved, whereby businesses leaders voluntarily addressed some social consequences flowing from neoliberal reforms but simultaneously enjoyed greater economic freedom (Kinderman, 2011).

By the 1990s, turbulence had generally subsided while many employers focused on attempting to prevent formal regulation through developing self-regulation. Such attempts were prompted, for example, by social activists raising the profile of disability in the workplace, lobbying the government to introduce anti-discrimination laws. This led BITC to raise awareness amongst businesses on this topic and to organize a new EF, the Business Disability Forum in 1992. The new EF aimed to improve standards in member companies. At the same time, legislation responding to European Union directives became more influential within gender and race equality, while NGOs and social movement organizations raised the profile of these topics. However, governments were reluctant to 'interfere' in market processes above thresholds required by European directives, and instead encouraged business to take voluntary action. In response, BITC initiated the membership networks Opportunity Now, focussed on gender equality, and Race for Opportunity, focussed on race diversity (Grayson, 2007).

During and after the Labour Governments

The post-1997 Labour Governments strengthened employment law and were more willing to engage with the European Union than their predecessors, symbolised by retracting the opt-out from the Maastricht Social Chapter negotiated in the early 1990s (Dickens and Hall, 2003a). Greater engagement with the European Union spurred legislative changes across ER. Within equality, for example, European Union directives prompted UK legislation to tackle

discrimination based on sexual orientation, religion or belief, and age (Dickens and Hall, 2006). Most importantly, the widening coverage of worker protection contributed to an increasing number of legal challenges against employers, often in the context of disabled and lesbian, gay, bisexual, and transgender communities demanding equal treatment within the workplace (Smith and Morton, 2006).

While voluntary action by EFs once attempted to ‘obviate the need for formal regulation’ (Grayson 2007: 9), subsequent activity responded to regulatory challenges. For example, the Working Families EF was established by a 2003 merger between New Ways to Work and the Working Mothers Association. The new EF focussed on flexible working for families, recognizing that European Union Directives on working time, pregnant workers, parental leave, and part-time work impacted significantly on employers. Similar dynamics prompted the establishment of two other EFs, Employers for Childcare and Employer Forum for Carers, both focussing on work-life balance.

Finally, the 2008 financial crisis and the unification of anti-discrimination legislation into a single Equality Act in 2010 were a further impetus for EFs. One EF manager argued that after the financial crisis, there was ‘a change around the perception of business and the relationship of business with society and individuals [...] businesses are now more woke to the fact that [corporate responsibility] matters’ (Interview with EF representative, 17.01.2018). The Equality Act also prompted members of two EFs focusing on age and belief to argue that the remit for both organisations needed expansion to enable adaptation to regulatory change. As a result, both EFs merged in 2011 to form the Employer Network for Equality and Inclusion to focus on characteristics protected by the Act. Similarly, Inclusive Employers was founded as an EF in 2011 to provide services linked to the Act.

Regulatory substance

This section discusses the substance of employment regulations and how they were created. EFs generally advanced a ‘business case’ argument (Dickens, 1999; Özbilgin and Tatli, 2011) arguing that raising workplace standards benefited individual member firms through: enhancing their reputation in consumer facing markets; motivating employees (including disabled employees and those with caring and family responsibilities) to perform better; and, reducing legal risks and costs. EFs aimed to secure these benefits through influencing the behaviour of member businesses through four elements, namely (1) guidance and setting standards, (2) direct engagement with member firms and (3) assessing and evaluating employer practice (see Table 2).

Table 2 about here

Guidance and Standard Setting

EFs possessed specialist knowledge on their foci, such as domestic violence for the Corporate Alliance Against Domestic Violence, or disability for the Business Disability Forum. All EFs shared their knowledge by providing members with documents such as research publications, reports, newsletters, case studies, toolkits, guides, and charters. Interviewees argued that these documents aimed to inform, raise awareness, normalise issues, and disseminate best practice standards (Interview with EF representative, 2.8.16). Importantly, toolkits and guides were more than purely informative documents, aiming instead to help members create new internal policies or adapt practices by offering policy templates for member use. One interviewee

argued that providing templates was effective as members were often searching for guidance, to avoid ‘starting from a blank sheet’ (Interview with EF representative, 2.3.15).

EFs often offered ‘resource packages’ to members, including ‘tools’ to help them implement improvements. Some used so-called charters, comparable to codes of conduct used by traditional employer organisations (Sobczak, 2006). As examples, both BITC Northern Ireland and Mindful Employer encouraged members to sign a soft, voluntary, charter but interviewees argued that such charters prompted employers to change their practices: “we get them to sign up to a charter to say, ‘we will commit to do this, this, this, and this’” (Interview with EF representative, 1.6.15).

Direct engagement with employers

Some interviewees argued that EFs’ direct engagement with employers was one of their central activities. For example, one argued that events facilitated members to inform and educate one another regarding the advantages and disadvantages of implementing internal employment policies, enabling more members to change their ER practices (Interview with EF representative, 8.8.16). Moreover, EFs’ training and consultancy services tended to be bespoke with content and delivery tailored to member needs: “Your small business is going to need something different to your huge business [...] they have a different need and a different budget” (Interview with EF representative, 30.8.16). The focus of consultancy varied widely with some EFs, for example, targeting issues such as those related to the Equality Act 2010. However, EFs’ legal advice was mostly informal except for Working Families. In addition, EFs focused on conflict mediation (e.g., Inclusive Employers), coaching (e.g., Inclusive Employers) or reviewing or designing new policies (e.g., Corporate Alliance Against Domestic

Violence). Four of the nine EFs also offered online training sessions, and one representative argued that drama-based sessions were particularly helpful in dealing with intricate ER issues (Interview with EF representative, 8.8.16).

Circular process of self-assessment, evaluation, and revision of employment standards

Central to the private voluntary regulation carried out by EFs was a circular process of self-assessment, evaluation, and revision of employment standards. The first step was for member firms to voluntarily self-assess their own employment standards against those set by the EF, before self-assessments were checked and evaluated by EF staff. The EF population used different processes, including performance-based benchmarking (Sisson, Arrowsmith and Marginson, 2003), ranking members, and recognition of standards through awards and certificates. Importantly, member firms were given feedback that incorporated guidance on how to improve practices in the next evaluation cycle. Some EFs also enhanced their standards once most members met them, creating a circular ‘stretching exercise’. One example was the Business Disability Forum developing a disability standard for its members, enabling member firms to self-assess against the standard and gather supporting evidence for submission, before having their submission and evidence checked by the forum. The forum then sent tailored feedback to each member including suggestions for improvement, while the highest scoring performers received awards. Meanwhile, the forum carried an overall assessment of member performance, and if most members performed well, the standard was raised.

Nevertheless, the robustness of the self-assessment processes offered by seven of the nine EFs varied. For example, the Business Disability Forum examined its standard through questioning members across ten dimensions: commitment, know-how, adjustments, recruitment, retention,

products and services, suppliers and partners, communication, premises and, information and communication technology (Business Disability Forum, 2020a). While the Business Disability Forum had only one assessment, BITC offered those including the Responsible Business Tracker and the Diversity Intelligence performance management diagnostic (BITC, 2020a, 2020b). Meanwhile, the Corporate Alliance Against Domestic Violence assessment examined if members could identify cases and adjust for victims, while Inclusive Employers and the Employers Network for Equality and Inclusion assessed organisational policies and practices in relation to characteristics protected by the Equality Act.

Three of the seven EFs offering self-assessment relied on participating companies to carry out audits. Other EFs went further and required members to submit supporting evidence for checking by EF staff or panels. Evidence was detailed and extensive for processes controlled by BITC and the Business Disability Forum but was less onerous for Inclusive Employers and the Employers Network for Equality and Inclusion. However, these EFs also relied on interviews and site visits to complete assessments, especially for large members paying substantial membership fees. BITC Northern Ireland was the only EF that annually visited all members to assess practice and discuss improvements.

EF evaluations led to three types of outcomes. First, six EFs benchmarked or ranked firms. Scores attained by high performing companies were generally made public, while those scoring poorly remained confidential. As examples: the Business Disability Forum provided differentiated awards to companies scoring more than 90%, 80% and 70% within its Disability Standard; Working Families highlighted the top 10 and top 30 employers; and, BITC's Corporate Responsibility Tracker awarded members a score benchmarked against other companies. Second, five EFs had annual award ceremonies to recognize high performers.

Employers for Childcare, for example, offered awards differentiated across company size and type, as well as public and private employers, to recognise those “who go above and beyond legal requirements” (Employers for Childcare, 2021). The third outcome was generating competition between businesses, as explained by an interviewee: “A professional services firm had seen that another professional services firm had achieved a silver [...]’. And they rang us and wanted to know how they could make sure they got at least a silver too.” (Interview with EF representative, 11.8.16).

Six EFs provided tailored feedback to their members following each evaluation cycle. Companies were advised how to improve their performance, and EFs sought to offset disappointment by emphasizing opportunities and improvements often linked to instruments and services offered by the EF. Evaluation cycles were sustained by firms’ continued participation in the annual or biannual process. Some EFs revised standards once most companies performed highly as pointed out by a one representative: “The moment members start to score in the nineties, we know we’ve got a problem, because it’s meant to be a stretching best practice standard” (Interview with EF representative, 7.7.15). Overall, member firms used evidence of high performance, such as awards and scores, to promote their social commitment to employees, customers, and other companies. However, poor performance typically remained confidential as “companies are very reluctant to expose themselves to embarrassment and that’s not its purpose. Its purpose is to tell you where you are and help you to figure out where to go” (Interview with EF representative, 7.7.15).

Role of the state

We examine the role of the state by exploring EFs' relationship to government policy and laws, as well as the importance of government sponsorship and encouragement.

Government policy and law

Government policy and law loom large in EFs' subject areas. Hence, EFs prioritise shaping government policy and law through responding to government and parliament consultation, joining government working groups and task forces, and lobbying and campaigning for policy and legislative change. The most common method of influencing governments is submitting expert opinions to national and devolved parliaments and governments. The Business Disability Forum, for example, was heavily involved in the legislative domain. Activities in 2019 included submissions to the: Department for Work and Pensions, and Department for Health and Social Care on proposals to reduce job losses prompted by ill-health; Women and Equalities Parliamentary Committee on Men and Mental Health; and, the National Institute for Clinical Excellence Workplace Health Advisory Committee on workplace adjustment passports (Business Disability Forum, 2020b). Other EFs also submitted evidence to parliament and government inquiries, though with a lesser frequency.

Another route for shaping policy is participating in government or parliamentary bodies, groups, or committees. Employers for Carers, for example, represented their interests to members of parliament in the All-Party Parliamentary Group on Carers (Interview Employer for Carers representative, 2.3.15). Meanwhile, Employers for Carers collaborated with government departments to revise the National Carers Strategy, and the Business Disability

Forum was part of the Disability Rights Taskforce that revised the Disability Discrimination Act (Interview with EF representative, 7.7.2015).

Almost all EFs engaged in the political process, but fewer lobbied and campaigned directly. One surprising finding was that some EFs, including Employers for Carers and Working Families, lobbied for stricter employment regulation. This stands in contrast to a common criticism of voluntary bodies: business “ideology [is that] government intervention is basically undesirable and is warranted only if self-regulation fails” (Kaplan 2015; 150). However, EFs must balance representing the interests of groups they want to help, such as disabled employees or those with caring responsibilities, with the need to placate their member businesses. One EF representative argued that it wanted to influence the government to improve working conditions for its targeted group, but “we have to be a little bit careful to draw the balance when things are going to cost employers money” (Interview with EF representative).

Finally, EFs advised members on the implementation of laws and compliance issues by employing specialist staff to respond to individual members who were uncertain about legal issues and wanted to avoid associated risks, although EFs did not generally provide formal legal advice (except for Working Families). EFs informed members about legal issues through other channels including social media and events with a legal focus. These activities contributed to a greater knowledge and awareness of government regulation, driving greater compliance, prompting governments to involve EFs in the implementation of their initiatives.

Government sponsorship and encouragement of EFs

Governments often encouraged the formation of EFs and supported their regulation-creating role. One method was to grant access to policy making as discussed above. The other was providing financial support, enabling governments to advance their agenda by using the specialized expertise and organisational capacities of EFs to deliver programmes. Such collaborations generated income for EFs and often prompted them to align with the government agenda. Alignment went furthest in the case of BITC, which worked on government initiatives including the Thatcher Governments' Urban Regeneration Strategy in the 1980s, the Blair Governments' focus on education after 1997, and the Coalition Governments' focus on employability after 2010. More recently, the Welsh Government collaborated with Employer for Carers and funded the creation of their Wales Hub, tasked with supporting businesses to become more carer-friendly and assist companies develop policies for the 223,000 employees in Wales with caring responsibilities. In a similar vein, Employers for Carers collaborated with the Scottish Government to develop a benchmarking scheme, Carer Positive, which recognized and promoted positive organisational practices for employees with caring responsibilities.

Nevertheless, EFs were aware that government funding had drawbacks. One representative of an EF that accepted government funding argued that 'the issue with government versus private is [that] public money comes with a lot of restrictions. There is a risk that you end up chasing money and the money ends up determining what you do' (Interview with EF representative). Because of such constraints, the Business Disability Forum did not pursue government funding, but, significantly, was the only EF not to seek such income.

Scope

This section explores the scope of EFs' private voluntary regulation, detailing the coverage of such regulation through an examination of EF membership, sectoral distribution, and workforce density.

First, EF members tended to be larger than typical UK firms: one interviewee observed that “over a hundred of [our members] are multinationals” (Interview with EF representative, 11.8.2016). Based on FAME data, turnover of member companies was 58 times larger than the average UK business, and they employed 44 times more people. Positive and statistically significant correlations existed between members of EFs and the size of the company ($r^2=0.279$), the number of employee ($r^2=0.274$), and remuneration ($r^2=0.395$). One representative confirmed these findings, arguing that “it’s larger employers who have got the money to join” (Interview with EF representative, 3.3.2015). In addition, large companies possessed human resource management departments resourced sufficiently to facilitate the implementation of improved employment standards, with an Employers for Carers member survey finding that: “medium and large size employers were considerably more likely to offer flexible working (92% and 91% respectively) compared to 61% of micro and 74% of small employers” (Employers for Carers, 2013: 3).

Second, the greater financial resources possessed by larger companies were one factor prompting their membership of several EFs. On average, members each joined 2.51 EFs. One representative argued that “many of [our members] will be in membership of other employer organisations that focus on equality and diversity” (Interview with EF representative, 3.3.2015). EF membership concentration was often also driven by their ‘highly visible global

brands' (Vogel, 2010) where, for example, Business Disability Forum members included Deutsche Bank, IKEA, Roche, BP and Airbus. Such members were interested in avoiding reputational risks and enhancing their brand through higher social and labour standards.

Third, the industrial distribution of EF membership was diverse. The most prominent industries were public services and defence (17.85%), professional services (13.30%) and financial and insurance services (10.36%). Less represented were construction (1.46%), manufacturing (5.10%), and transport and storage (3.10%). One explanation for this over-representation of human-capital orientated industries is that employees have stronger bargaining powers because of lower employee retention rates, prompting companies to establish more diverse and inclusive workplace cultures to boost retention.

Finally, general data on EF density were not available, and only two EFs provided data. The Business Disability Forum suggested that its "300 members now employ around 15% of the UK workforce and range from FTSE 100 companies and central government departments to transport providers, construction companies, retailers, higher education providers and public services" (Business Disability Forum, 2020c). Meanwhile, BITC Northern Ireland's membership covered 37% of the Northern Ireland workforce. These examples suggest that the member firms of EFs employed a significant proportion of the UK workforce. However, the EF's private voluntary regulation only targeted groups of employees, and thus the actual number of affected employees was lower than these figures suggest.

Comparative Assessment

This section compares the traditional and new forms of voluntarism, focusing on their *origins*, *regulatory substance*, *scope*, and *the role of the state* to explore similarities and differences.

The *origins* of traditional voluntarism stem from how collective worker organization faced suppression and prosecution before legislation provided some immunities against prosecution. Workers then unionized, prompting employers to create associations. Subsequently, both sets of actors preferred voluntary collective bargaining that enabled them to negotiate wages and set working conditions with minimal interference from the state. But private voluntary regulation by EFs was a response by employers to drivers prompted by two sets of challenges. One was social problems during the 1980s and after the 2008/2009 financial crisis, prompting greater employer concern as to business legitimacy. The other was attempting to obviate state regulation through self-regulation, influencing new legal initiatives through lobbying, and assisting members with implementation of laws to avoid legal and reputational risks.

Regulatory substances differ across both types. The cornerstone of traditional voluntarism is free collective bargaining between unions and employer associations. Unions pursue compliance and enhancements through strikes and other forcing strategies. In contrast to such collective voluntarism, private regulation by EFs is a type of unilateral or employer-led voluntarism (Simons 2004; Scott and Williams 2014) that depends on the freely chosen adoption of social and labour standards by member firms. EFs use different instruments including benchmarking, codes of conduct, awards, and business case arguments to encourage higher standards in member firms. Importantly, some EFs raise standards over time, transforming their benchmarking and certification into ‘stretching exercises’. However, there

is no voice for elected employee representatives when standards are developed, implemented, and certified. EFs' regulatory approach differs from non-union voice systems that feature elected or nominated employee representatives (Dundon et al, 2004), and from traditional voluntarist systems with their union presence. The absence of such representation means that EFs lack the external oversight or counter-pressure that could help ensure greater employer compliance.

The *scope* of traditional voluntarism through collective bargaining peaked, when assessed by workforce coverage, in the 1970s. Bargaining, however, weakened subsequently amidst the increasing juridification of ER and coverage declined rapidly from the 1980s. Nevertheless, pockets of collective bargaining continued, most notably in the public sector. Meanwhile, the new form of EF employer-led voluntarism emerged and expanded. It is entirely separate from traditional voluntarism as its actors do not bargain over wages. In addition, EFs focus solely on groups of workers and while collective bargaining agreements often contain measures targeting diverse groups, their overall focus is broader. Finally, while voluntary collective regulation is now concentrated in the public sector, EF memberships are concentrated in human-capital focussed industries, and in consumer facing companies with a sensitive brand image given the potential offered by participation to protect and enhance consumer and labour market image. Smaller companies, located at the base of supply chains, or those in labour-intensive industries, are less likely to join EFs.

The *role of the state* varies across both forms. In traditional voluntarism, the state avoids direct regulation over collective bargaining although it is not fully absent, supporting and defining the voluntary system through administrative rulings and guidance (Howell, 2005). In the new form, the state also encourages and supports EFs through a variety of facilitating actions. But

the relationship between EFs and the state is more direct. EFs take part in government programmes and initiatives, aiming to receive funding and influence policy. In return, governments draw on EF expertise, capacities, and networks for policy development and implementation. EFs lobby to influence legislative processes, but they simultaneously self-regulate to avoid state regulation although exceptions exist: one EF lobbied for new legislation to improve conditions for targeted employees despite the risk of incurring higher costs for their members.

Conclusion

This article contributes to the literature by identifying a new form of voluntarism, private voluntary regulation by EFs that has generated a new corpus of employment rules, making a distinctive contribution to the changing ER landscape of the UK. While the scope, scale, and impact of new and traditional voluntarism diverge, both are characterized by the voluntary regulation of ER by non-state actors. This suggests that voluntarism is not in secular decline, but instead continues through the emergence of new forms such as that identified in this article. Our comparison between employer-led voluntarism and traditional joint voluntarism highlights key issues within each dimension.

First, and in relation to *origins* the governance and oversight of labour standards is more robust in traditional voluntarism, as the context within which such voluntarism emerged helped prompt a system where unions can push independently for improved standards and oversee their implementation and compliance. No such employee voice, employee representation or external oversight exists in employer-led voluntarism given its origins in a very different context.

Second, the *regulatory substance* of traditional voluntarism encompassed formal agreements between employers' associations and unions setting more quantitative elements within the employment relationship, such as pay and conditions. However, EFs do not negotiate such agreements. They rely instead on nudging member firms through regular assessments, benchmarking, and certification to implement and adhere to labour standards, often of a more qualitative nature embodied by human resource policies within member firms. However, compliance with EF labour standards is voluntary and ranges from members that excel in the benchmarking, certification and awards processes and meet standards exceeding legal regulation, to those that are less engaged.

Third, while the *scope* of traditional voluntarism targets all workers, the private voluntary regulation developed by EFs targets specific groups of workers, such as BAME or female workers or those with caring responsibilities. However, EF membership tends to be concentrated in professional services where recruitment is more competitive and in image sensitive, consumer facing companies, while those sensitive to labour costs and without direct consumer interaction often lack the resources and motivation to join EFs. Notwithstanding such limitations, our data suggest that EFs improve working lives and working standards for targeted groups of workers and contribute to a greater effectiveness of existing equality and diversity laws by assisting member firms in implementing legislation.

Finally, the emergence of EFs highlighted the extent to which *the role of the state* has changed; the UK's once essentially voluntarist system of job regulation has been largely superseded by one of statute as juridification transformed ER. But although this transformation has weakened traditional voluntarism, it created an opening for the new form, under which employers organised collectively through EFs to obviate legislation through private voluntary regulation,

influence legislative proposals, and minimise legal, financial, and reputational risk. Importantly, Howell (2005) argued that the state influenced traditional voluntarism as an effective but distanced means to regulate labour markets. Similarly, we argue that the state also played an important role in stimulating and supporting EFs within the new form of voluntarism, while again allowing them to act autonomously.

It is intriguing that employers collectively organized in a new type of organization in the context of weakening labour unions and the deregulation of product markets and collective rights. But the turbulent and prolonged transformation of the UK economy and society challenged businesses in new ways. Individual rights were given force through statute as juridification proceeded, civil society organizations mobilized sections of the workforce, while economic crises and related social turbulence undercut business legitimacy and prompted calls for new regulation. Employers responded through collectively organizing in EFs, using their membership to argue that businesses can address social problems, while maintaining existing business models.

Our research was a first exploration into a new topic and as such focussed on the nine identified EFs. One limitation of our research was that we did not directly interrogate the consistency with which members implemented EF standards. Future research could interview member representatives to examine in-firm governance and implementation procedures, and interview employees to find out how and to what extent the employment standards promoted by EFs affect their working lives. A further strand of future research could be comparative. But although the literature has identified voluntarist principles as operating within varied national systems, voluntarist forms vary widely, and comparative studies have yet to feature in the literature.

One starting point for future comparative research could be an exploration of the extent to which bodies resembling EFs have emerged elsewhere, as national systems featuring voluntarist principles may sustain employer-led voluntarism of the type we observe in the UK. Such a study could complement research exploring how patterns of ER vary across different national systems (Kaufman et al, 2020), potentially offering a proxy measure to assess the extent to which employers feel compelled to respond to non-market threats to profitability. Other research (e.g., Baccaro and Howell, 2017) has argued that employers' preference in Britain, France, Germany, and Italy was to liberalise ER, through a combination of reducing the salience of collective regulation and extending self-regulation and management prerogative. Self-regulatory forms are central to the EFs identified in this article, signifying a general shift from collective to employer centred voluntarism that may be apparent elsewhere.

A broader conclusion of our research is that the analytical concept of voluntarism continues to have utility for ER research. Further research on voluntarism might identify additional forms of voluntarism and analyse differences and similarities between different types of voluntarism within and across countries. Such research could focus on the varying types of labour standards addressed, differences in the governance and implementation mechanisms, the role of employee voice and representation and variation in the effectiveness of such voluntary regulation.

References

Andersen SK, Kaine S and Lansbury R (2017) Decentralised bargaining in Denmark and Australia: Voluntarism versus legal regulation. *Australian Bulletin of Labour* 43(1): 45-70.

Baccaro, L., & Howell, C. (2017). *Trajectories of Neoliberal Transformation: European Industrial Relations Since the 1970s*. Cambridge: Cambridge University Press.

BITC (2020a). Business in the Community, Responsible Business Tracker. [online] <https://www.bitc.org.uk/the-responsible-business-tracker/> [Last accessed: 17 November 2020]

BITC (2020b). The Responsible Business Tracker. [online] <https://www.bitc.org.uk/the-responsible-business-tracker/> [Last accessed: 27 February 2020]

Business Disability Forum (2020a) *Disability Standard* [online] <https://businessdisabilityforum.org.uk/our-services/disability-standard/> [accessed on 17 November 2020]

Business Disability Forum (2020b) Our Policy Work [online] <https://businessdisabilityforum.org.uk/policy/> [accessed on 17 November 2020]

Business Disability Forum (2020c) About Us [online] <https://businessdisabilityforum.org.uk/about-us/> [accessed on 17 November 2020]

Campbell J and Petersen O (2007) The Varieties of Capitalism and Hybrid Success, Denmark in the Global Economy. *Comparative Political Studies* 40(3): 307-332.

Clegg H (1979) *The Changing System of Industrial Relations in Great Britain*. Oxford: Basil Blackwell.

Crouch C (1994) *Industrial Relations and European State Traditions*. Oxford: Oxford University Press.

Dickens L (1999) Beyond the business case: a three-pronged approach to equality action. *Human Resource Management Journal* 9(10): 9-19.

Dickens L and Hall M (2003a) Labour law and industrial relations: A new settlement? In: Edwards, P. (ed) *Industrial Relations, Theory and Practice*. (pp. 124-156) Oxford: Blackwell Publishing.

Dickens L and Hall M (2003b) 'Labour law and industrial relations', in P. Edwards (ed.), *Industrial Relations: Theory and Practice*, Oxford: Blackwell.

Dickens L and Hall M (2006) Fairness – up to a point: Assessing the impact of new Labour's employment legislation. *Human Resource Management Journal* 16(4): 338–356.

Due J and Madsen JS (2008) The Danish model of IR: erosion or renewal? *Journal of Industrial Relations*. 50: 413-29.

Dukes R (2015) Wedderburn and the theory of labour law: building on Kahn-Freund. *Industrial Law Journal* 44(3): 357-384.

Dundon T, Wilkinson A, Machington M and Ackers P (2004) The meanings and purpose of employee voice, *The International Journal of Human Resource Management*, 15:6, 1149-1170.

EFC (2013) Employers Business Benefits Survey. [online] <https://www.employersforcarers.org/resources/research/item/809-employers-business-benefits-survey> [Last accessed: 17 November 2020].

Employers for Childcare (2021) Family Friendly Employer Awards <https://www.employersforchildcare.org/employers/family-friendly-employer-awards/> [accessed on 18 May 2021]

Flanders AD (1970) *Management and Unions, The Theory and Reform of Industrial Relations*, London: Faber.

Flanders AD (1974) The Tradition of Voluntarism. *British Journal of Industrial Relations* 12(3): 352-370.

Furåker B (2020) The issue of statutory minimum wages: Views among Nordic trade unions. *Economic and Industrial Democracy*, 41(2): 419–435.

Grayson D (2007) *Business-led Corporate Responsibility Coalitions: Learning from the example of Business in the Community-An Insiders Perspective*. Harvard, Kennedy School of Government.

Howell C (2005) *Trade Unions and the State: the Construction of Industrial Relations Institutions in Britain, 1890-2005*, Princeton: Princeton University.

Kahn-Freund O (1954) “Legal Framework.” In *The System of Industrial Relations in Great Britain*, edited by A. Flanders and H. Clegg. Oxford: Oxford University Press.

Kaplan R (2015) Who has been regulating whom, business or society? The mid-20th-century institutionalization of ‘corporate responsibility’ in the USA. *Socioeconomic Review* 13(1): 125-155.

Kaufman BE, Barry M, Wilkinson A, Lomas G and Gomez R (2020) Using unitarist, pluralist, and radical frames to map the cross-section distribution of employment relations across workplaces: A four-country empirical investigation of patterns and determinants. *Journal of Industrial Relations*. Published online before print.

Kindermann D (2011) ‘Free us up so we can be responsible!’ The co-evolution of Corporate Social Responsibility and neo-liberalism in the UK, 1977-2010. *Socio-Economic Review* 10, (1): 29–57.

Milner S (1995) The coverage of collective pay-setting institutions in Britain, 1885-1990. *British Journal of Industrial Relations* 33(1): 69-91.

Moran M (2010) The rise of the regulatory state. In: Coen, D., Grant, W. and Wilson, G.K. *The Oxford handbook of business and government*. Oxford: Oxford University Press, pp. 383-403.

Office for National Statistics (2019) Labour Market Economic Commentary February 2019. [online]. Available at: <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/articles/labourmarketeconomiccommentary/february2019> [Last accessed: 2 March 2021]

Özbilgin M and Tatli A (2011) Mapping out the field of equality and diversity: Rise of individualism and voluntarism. *Human Relations* 64(9): 1229-1253.

Rogin M (1962) Voluntarism: The Political Functions of an Antipolitical Doctrine. *ILR Review* 15(4): 521-535.

Scott P and Williams S (2014) The Coalition Government and employment relations: accelerated neo-liberalism and the rise of employer-dominated voluntarism, *Observatoire de la société britannique* 15: 145-164.

Simons P (2004) Corporate Voluntarism and Human Rights: The Adequacy and Effectiveness of Voluntary Self-Regulation Regimes. *Relations industrielles / Industrial Relations* 59(1): 101–141.

Sisson K (1987) *The Management of Collective Bargaining: An International Comparison*. Oxford: Basil Blackwell.

Sisson K, Arrowsmith J and Marginson P (2003) All Benchmarkers now? Benchmarking and the ‘Europeanisation’ of industrial relations. *Industrial Relations Journal* 34(1):15-31.

Smith P and Morton G (2006) Nine years of new labour: neoliberalism and workers’ rights. *British Journal of Industrial Relations*, 44(3): 401-420.

Sobczak A (2006) Are Codes of Conduct in Global Supply Chains Really Voluntary? From Soft Law Regulation of Labour Relations to Consumer Law. *Business Ethics Quarterly* 16(2): 167-184.

Tolliday S and Zeitlin J (1991) *The Power to Manage? Employers and Industrial Relations in Comparative Historical Perspective*. London, Routledge.

White PJ (1978) Is Voluntarism in Decline? *Industrial Relations Journal* 9(3): 34-43.

Vogel D (2010) The Private Regulation of Global Corporate Conduct. *Business and Society* 49(1): 68-87.

Table 1: Overview of UK Employer Forums

Employer Forum	Legal entity	Number of members	Staff	Founded	Focus
1. Business in the Community	Charity	>800	>100	1982	Vulnerable employees & CSR
2. Business Disability Forum	Charity	282	30	1991	Working with disabilities
3. Working Families	Charity	88	21	2003	Working as parents and carers
4. Mindful Employer	Trust of National Health Service	[802] Charter signatories	11	2004	Working with mental health conditions
5. Corporate Alliance Against Domestic Violence	Charitable company limited by guarantee	Unknown	3	2005	Domestic violence
6. Employers For Childcare	Charity and social enterprise(s)	240	30	2008	Working parents
7. Employers for Carers	Subsidiarity of charity 'Carers UK'	105	3	2009	Working as carers
8. Employers Network for Equality and Inclusion	Charity	221	10	2011	Diversity, equality & Inclusion
9. Inclusive Employers	Company limited by guarantee	65	6	2011	Diversity, equality & Inclusion

Source: Authors' compilation based on EF websites and FAME.

Table 2. Employer Forum regulatory substance

	Guidance and Standard-Setting			Direct engagement with member firms			Assessing and evaluating employer practice					
	Guides	Toolkits	Charter	Advice/ Consultancy	Training	Membership events	Audit or measurement	Direct role by EF	Ranked or benchmarked evaluation (including certification) Excellence awards for best performer	Certification	Feedback	
Regulatory substance												
Employer Forum												
Business in the Community	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes?	Yes
Business Disability Forum	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes?	Yes
Working Families	Yes	Yes	No	Yes	No	Yes	Yes	No	Yes	Yes	No	Yes
Employers Network for Equality and Inclusion	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes
Mindful Employer	Yes	Yes	Yes	Yes	Yes	Yes	No	No	No	No	No	No
Corporate Alliance Against Domestic Violence	Yes	Yes	No	Yes	Yes	Yes	Yes	No	No	No	No	No
Employers for Childcare	Yes	Yes	No	Yes	Yes	Yes	No	No	No	Yes	No	No
Inclusive Employers	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes?	Yes
Employers for Carers	Yes	Yes	No	Yes	Yes	Yes	Yes	No	Yes	No	Yes?	Yes
Total	100%	100%	22%	100%	100%	100%	78%	44%	67%	56%	44%	67%