

Current issues in Labour's economic policy

2. Make work pay II: sector bargaining, strikes + worker directors

17 October 2024

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‘Work **shoulder to shoulder with trade unions...**
Repeal the Trade Union Act. Oppose Tory attacks on
the right to take industrial action and **the weakening**
of workplace rights.’

- Keir Starmer pledge 7.

'The **essential elements of the trade union legislation of the 1980s will remain**. There will be **no return to secondary action**, flying pickets, strikes without ballots, the closed shop and all the rest. The changes that we do propose would **leave British law the most restrictive on trade unions in the Western world**. **The scenes from Wapping, Grunwick or the miners' strike could no more happen under our proposals** than under the existing laws.'

- Tony Blair, 'We won't look back to the 1970s' (31 March 1997) The Times

(1) Fair pay agreements, and sectoral collective bargaining

(a) Pledges

(b) Why it matters, human rights

(c) Law at the moment

(d) International rank and data

(e) Options for reform

(f) Benefits and costs of reform

(a) Pledges

- ‘**Fair Pay Agreements... would be binding on all employers and workers in the sector...** [covering] pay and pensions, working time and holidays, training, work organisation, diversity and inclusion, health and safety, and the deployment of new technologies.... **preventing exploitative employers undercutting the many excellent employers in a sector...** **Labour will consult widely on the design and implementation of Fair Pay Agreements**, learning from those economies where they already operate successfully.’ - New Deal p.5
- ‘**We will start by establishing a new Fair Pay Agreement in the adult social care sector...** We will publish a full and transparent review of the agreement. We will also **assess how and to what extent FPAs could benefit other sectors and tackle labour market challenges**. A Fair Pay Agreement will **not be the best solution for many parts of our economy**, where labour markets are operating effectively or where existing collective arrangements at employer or sector level are already working well and are supported by trade unions.’ - Make Work Pay p.13
- ‘We will enhance partnership working across employers, workers, trade unions and government and **establish a Fair Pay Agreement in adult social care.**’ Manifesto p. 100

(b) Human rights

- For ‘the right to bargain collectively, the Parties undertake: to promote... **machinery for voluntary negotiations between employers or employers’ organisations and workers’ organisations**, with a view to... collective agreements.... and recognise: the right of workers and employers to collective action in cases of conflicts of interest, including the right to strike...’ European Social Charter 1996 art 6.
- ‘(c) The right of trade unions to function freely subject to **no limitations** other than those prescribed by **law** and which are **necessary in a democratic society** in the interests of national security or public order or for the protection of the rights and freedoms of others’ - ICESCR 1966 art 8(1)

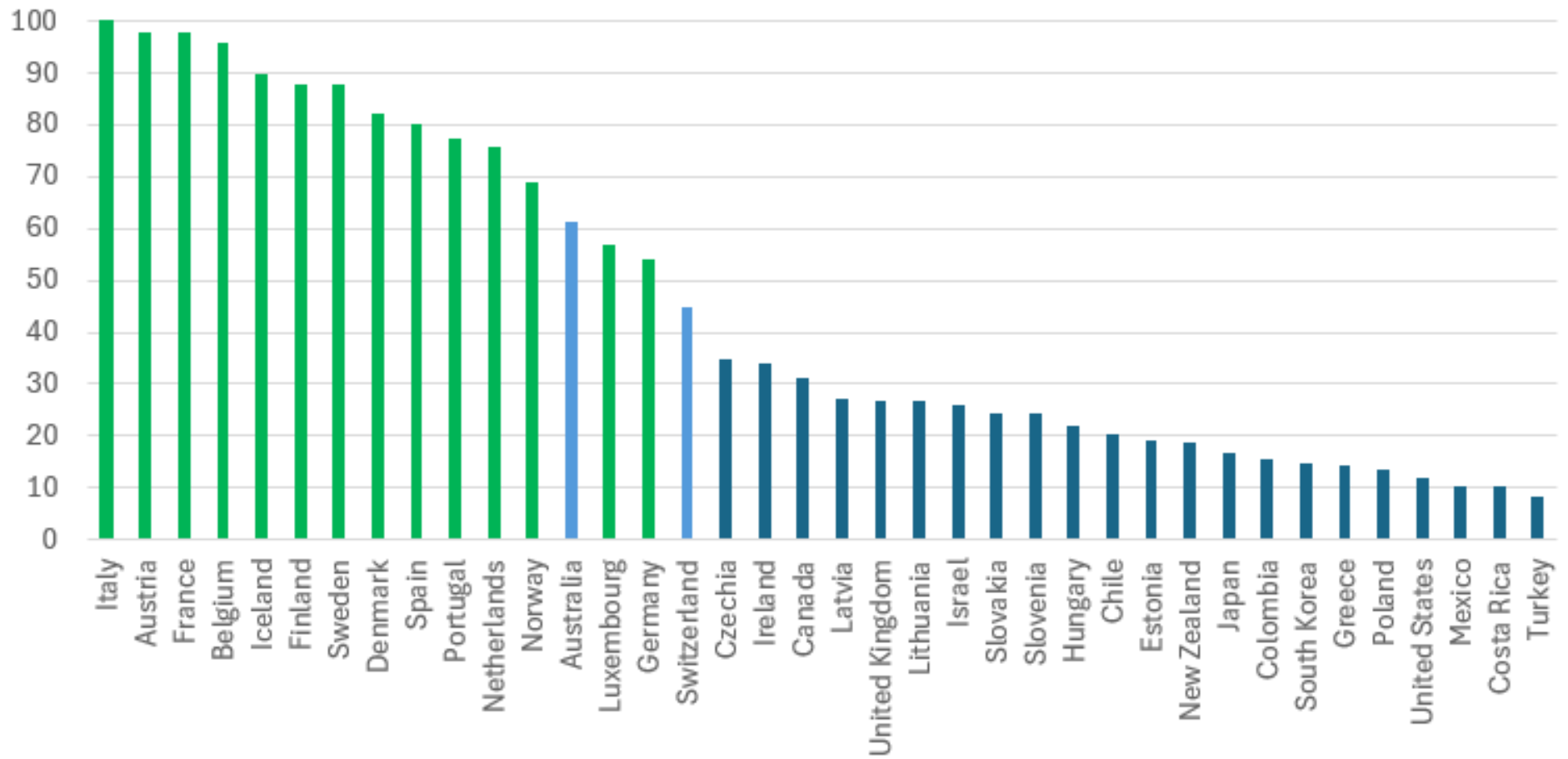
(c) Legal background

- **Unions** in the UK who represent ‘workers’ **can apply to the Central Arbitration Committee to declare the employer should ‘recognise’ them** for collective bargaining, if they win a **ballot with 50% support** in a workplace. This is only for enterprises, not sectors, and results in **no duty on employers to bargain or make a deal**: TULRCA 1992 Sch A1
- **UKSC held that Deliveroo riders were not ‘workers’**, and so no right to recognition, even though they lack any power, are controlled, low paid, wear the uniform, and work personally: *IWGB v CAC* [2023] UKSC 43
- EU Platform Work Directive articles 4-5 presume Deliveroo cyclists or competitor staff are employees: look at facts, not contract. Deliveroo left Spain, Germany, Holland, yet remains in France, Belgium, Italy, Ireland...
- EU Adequate Wage Directive art 4: **plans for 80% coll. agreement coverage**
- As Schedule A1 is long, costly + pointless. Workers’ **better option is to organise strike action** – as Deliveroo/Uber Eats riders did on 2nd and 14th of February 2024. **Deliveroo told restaurants to call police.**

(d) UK's poor collective bargain coverage

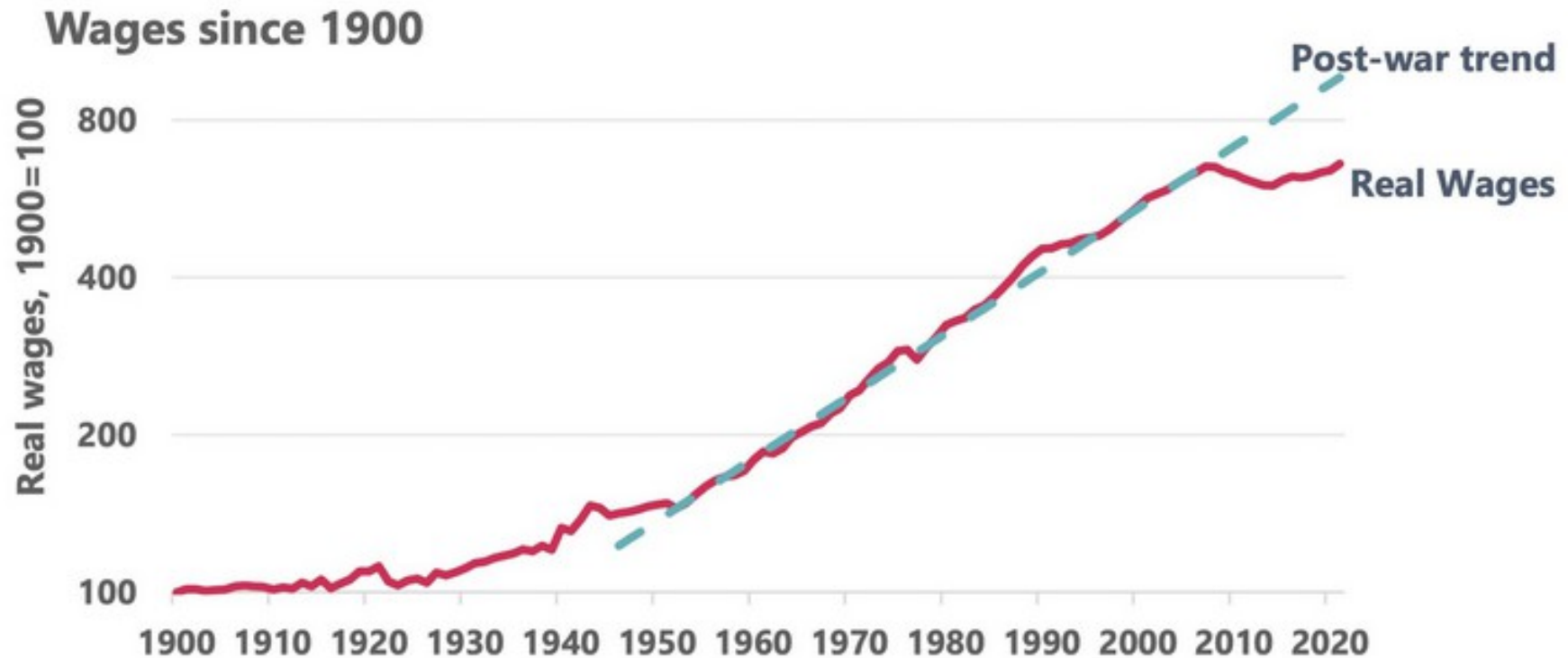
Collective bargaining coverage in OECD, %

Source: OECD Data explorer, Collective bargaining coverage, to 2021



- Mostly sector bargaining
- Hybrid
- Most enterprise bargaining

UK wages: falling and not recovered since the global bank crash, austerity, Brexit and Truss



Source: TUC analysis, BoE, ONS AWE/CPI

UK wages, 1900-2022

<https://www.tuc.org.uk/research-analysis/reports/raising-pay-everyone>

Low wage economy in the UK 2014

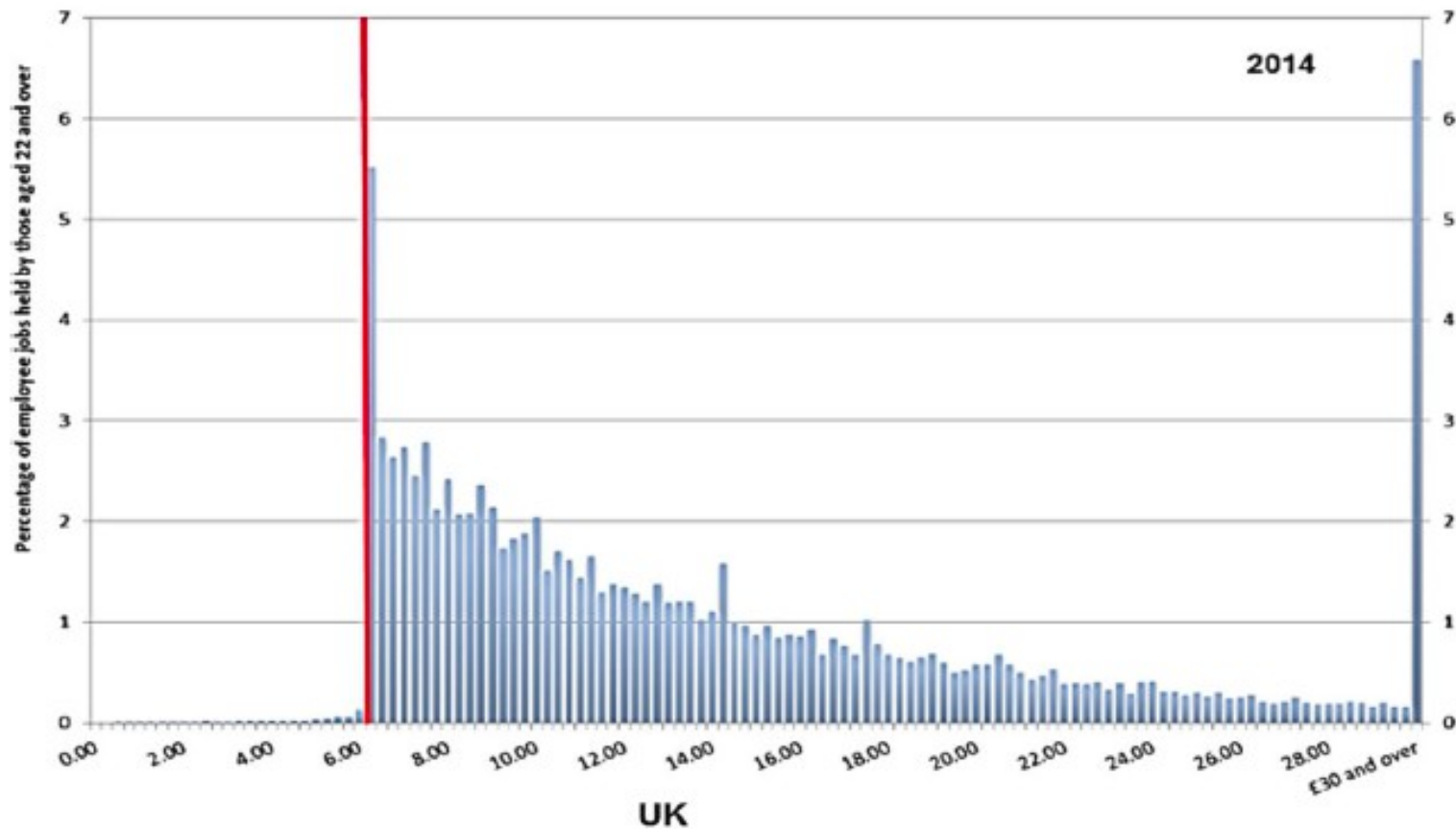
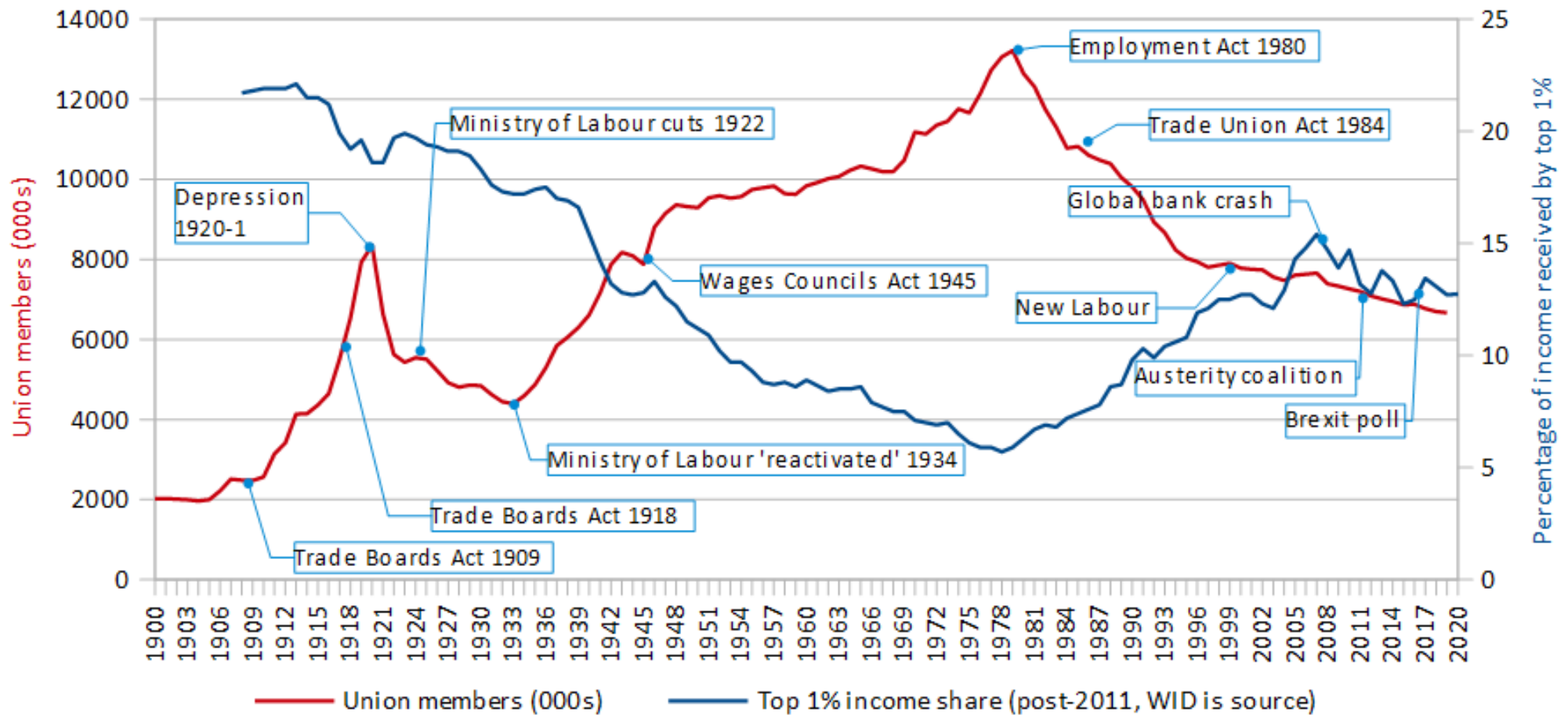


Figure 3.

Source: Richard Dickens and the Low Pay Commission (median around £12 p/h \approx £24k pa).

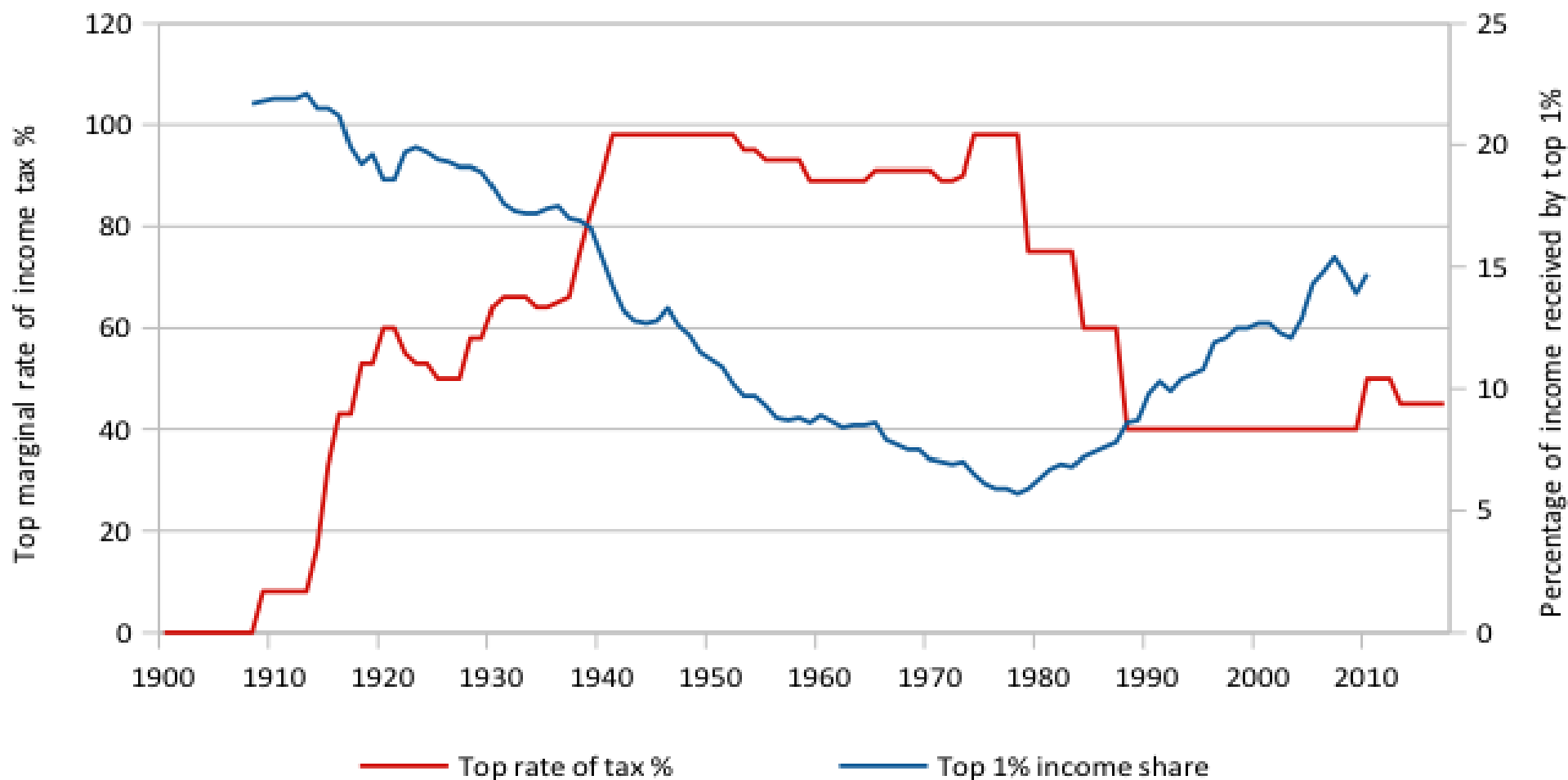
UK union membership and income inequality 1900-2020

Sources: N Brownlie, Trade Union Membership 2011 (DBIS 2012) 22-23. ONS (May 2022)
 T Piketty, Capital in the Twenty-First Century (2014) Tech App, Table S9.2. World Incomes Database (2011-2020)



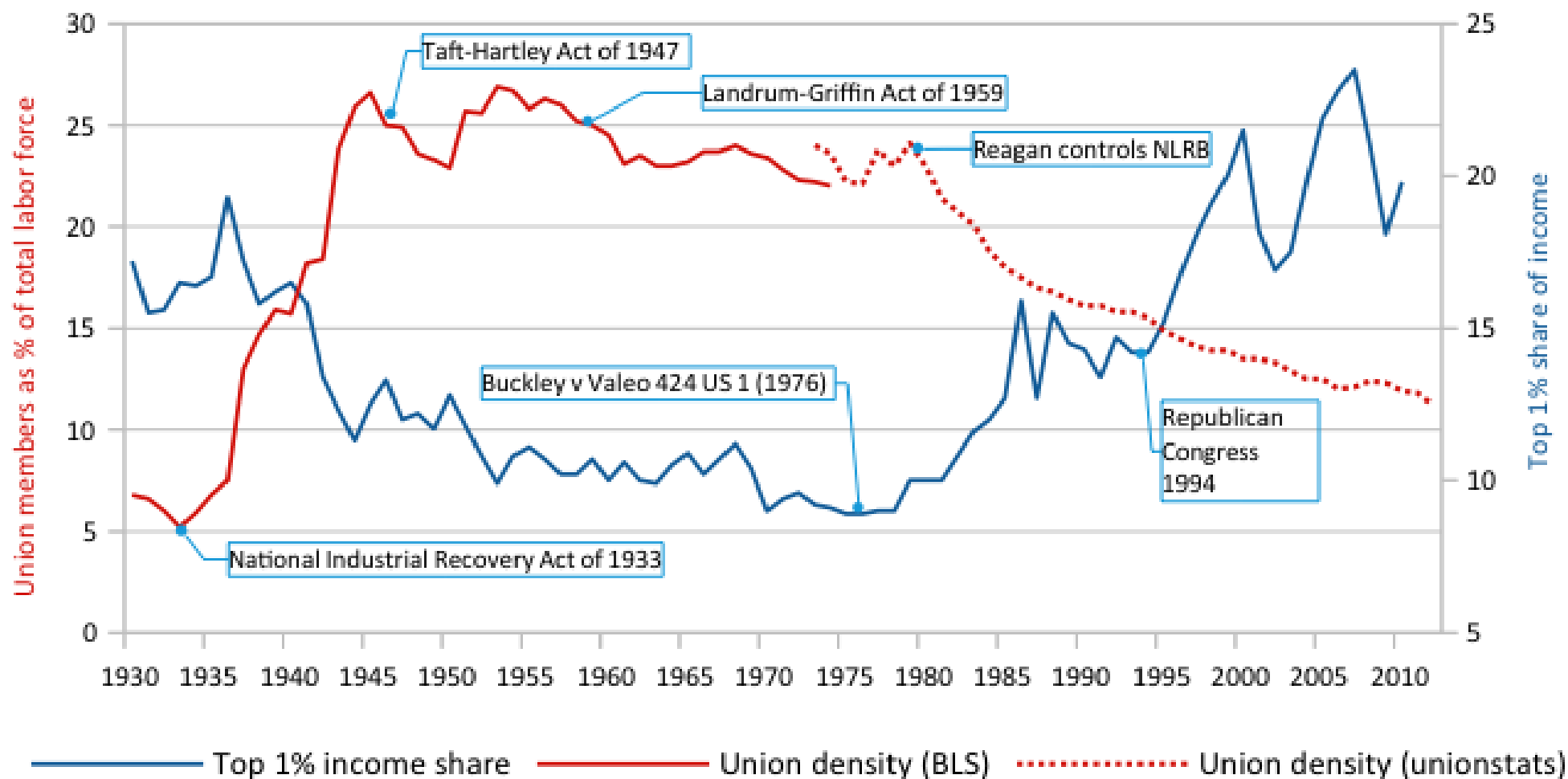
UK top rate of income tax and inequality 1900-2017

Source: T Piketty, *Capital in the Twenty-First Century* (2014) Technical Appendices, Table S9.2 and S14.1



US union density and income inequality, 1930-2012

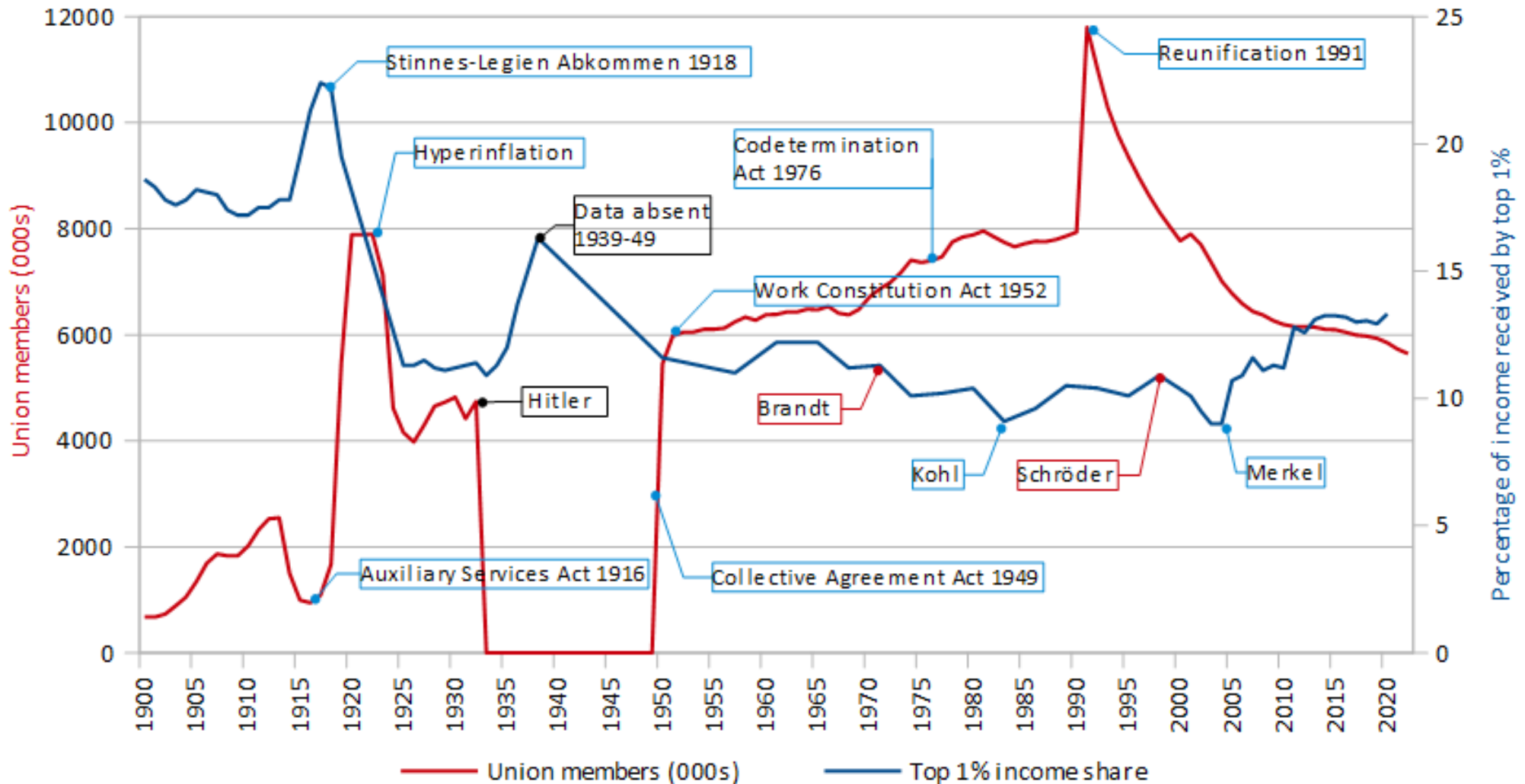
Bureau of Labor Statistics, 1930-1974 Unionstats.gsu.edu/All-Wage-and-Salary-Workers.htm 1973-2012
T Piketty, Capital in the Twenty-First Century (2014) Technical Appendices, Table S9.2



With strong codetermination laws, inequality is insulated from union density change (it depends on who's in government)

German free union membership and income inequality 1900-2021

Sources: DGB (2022). T Piketty, Capital in the 21st Century (2014) Table S9.2. WID.world (2011-2021)



CBR

- CBR Indicator 26, right to collective bargaining
- CBR Indicator 28, extend collective agreements

(e) Models and options

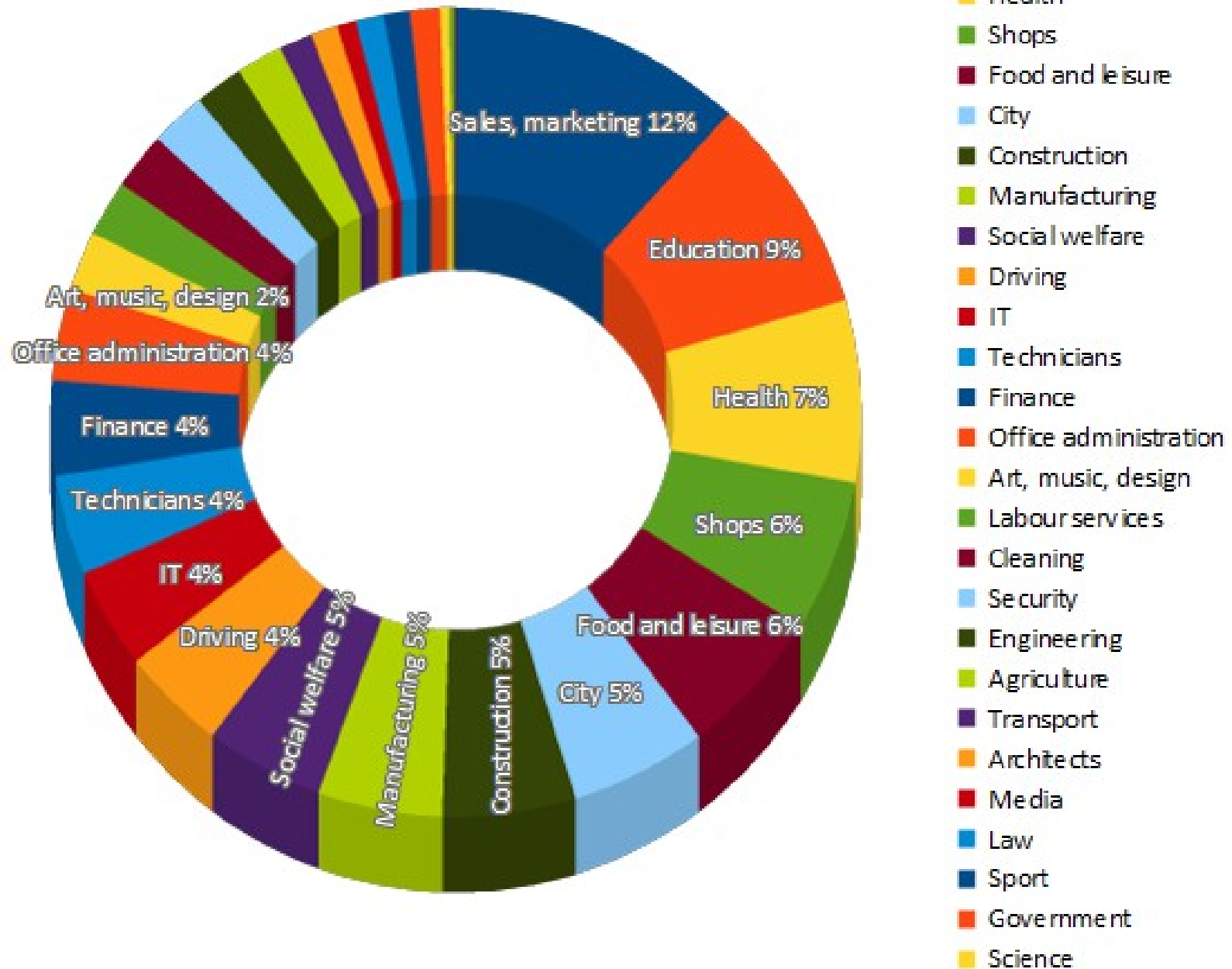
- Employment Rights Bill, on adult social care, will cover 1.5m workers, 4% of UK workforce:
 - s 29, SS can establish ASC Negotiating Body by regs
 - s 30, NB remit = pay, terms, ‘matters relating to employ.’
 - s 31(2) social care = 18+, age, disability, illness, childbirth
 - s 34 if unions/employers fail to agree, SS can resolve
 - s 34(2)(c) SS can require NB to follow its decision
 - s 35, SS has power to ratify agreements
 - s 36, ratified agreements replaces all contract terms
- Australia’s Fair Work Act 2009 structures 150 sector-based awards, with minimum pay scales.

Other sectors?

- Universities (already sectoral bargaining) 240k staff + PT, FT, agency
- Teachers 641k, FE colleges 204k, nurseries 259k
- NHS, 1.7m (already sectoral bargaining) including 37k GPs, 17k GP nurses, 134k doctors, 348k nurses and midwives, 18k ambulance
- Agricultural workers – AWA 1948 till 2013, now only Scotland+Wales: 481k, 1.4%. Water 213k staff.
- Construction 2.1m (incl. multi-employer National Agreement for the Engineering Construction Industry (2024) and Joint Industry Board for Electrical Contracting, (2024))
- Rail 102k (62k in TOCs + 40k in NR), Buses 87k, TfL 28k, Cabs 313k. 600k delivery vehicle drivers.
- Retail, hospitality, warehousing, cleaning services...

UK workforce 2016

Source: ONS, Table EMP04



New Zealand's experience

- Fair Pay Agreements Act 2022 was passed to roll out sectoral agreements across the economy. Repealed in December 2023 by conservative government.
- Michael Wood, Workplace Relations Minister (June 2024) 'once in place **they will benefit many, many workers**, they will **become part of the social fabric, people will see the value of them**, and they will therefore become **politically durable**. So **move with some speed and confidence and get them implemented**... Having done a **trial run as UK Labour is proposing** I think these will prove popular, they'll prove effective, **more people will want them, and that will mean that this is a policy which can endure** into the long term and becomes **difficult for future conservative governments to unpick**'.

(f) Benefits and costs of reform

- IMF Staff, 'Inequality and Labor Market Institutions' (2015) lack of unions drives inequality, especially at top end of income distribution
- S Deakin, 'Economic significance of EPL... 117 countries' (2019) 158 ILR 1, higher productivity, employment and labour share of income, lower unemployment found with better collective bargaining, union and other labour rights
- Higher employment = **£billions p.a.** in extra tax receipts
- **Reduction of £8.9 billion p.a. working and child tax credit bill**, (generally for people working less than 40 hours a week on the minimum wage, or with children or disabilities) if pay is not minimal, but the government succeeds to "make work pay".

(2) Strikes

- (a) Balloting + notice before action
- (b) Solidarity action + sector bargains

(a) Pledges

- ‘ensure that **UK law complies in every respect with the international obligations** ratified by the UK, including those of the International Labour Organization and the **European Social Charter**’. New Deal, p.11
- ‘Conservatives have consistently attacked rights at work, including through the Trade Union Act 2016, the Minimum Service Levels (Strikes) Bill and the Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2022 – **all of which Labour will repeal... Labour will allow modern, secure, electronic balloting and workplace ballots**, as political parties and listed companies use....’ Make Work Pay, p. 15

(b) Human rights

- ‘the Parties... recognise: the **right of workers and employers to collective action in cases of conflicts of interest, including the right to strike...**’ European Social Charter, art 6.
- ‘The States Parties to the present Covenant undertake to ensure... (d) The **right to strike, provided that it is exercised in conformity with the laws of the particular country.**’ ICESCR 1966 art 8(1)(d)

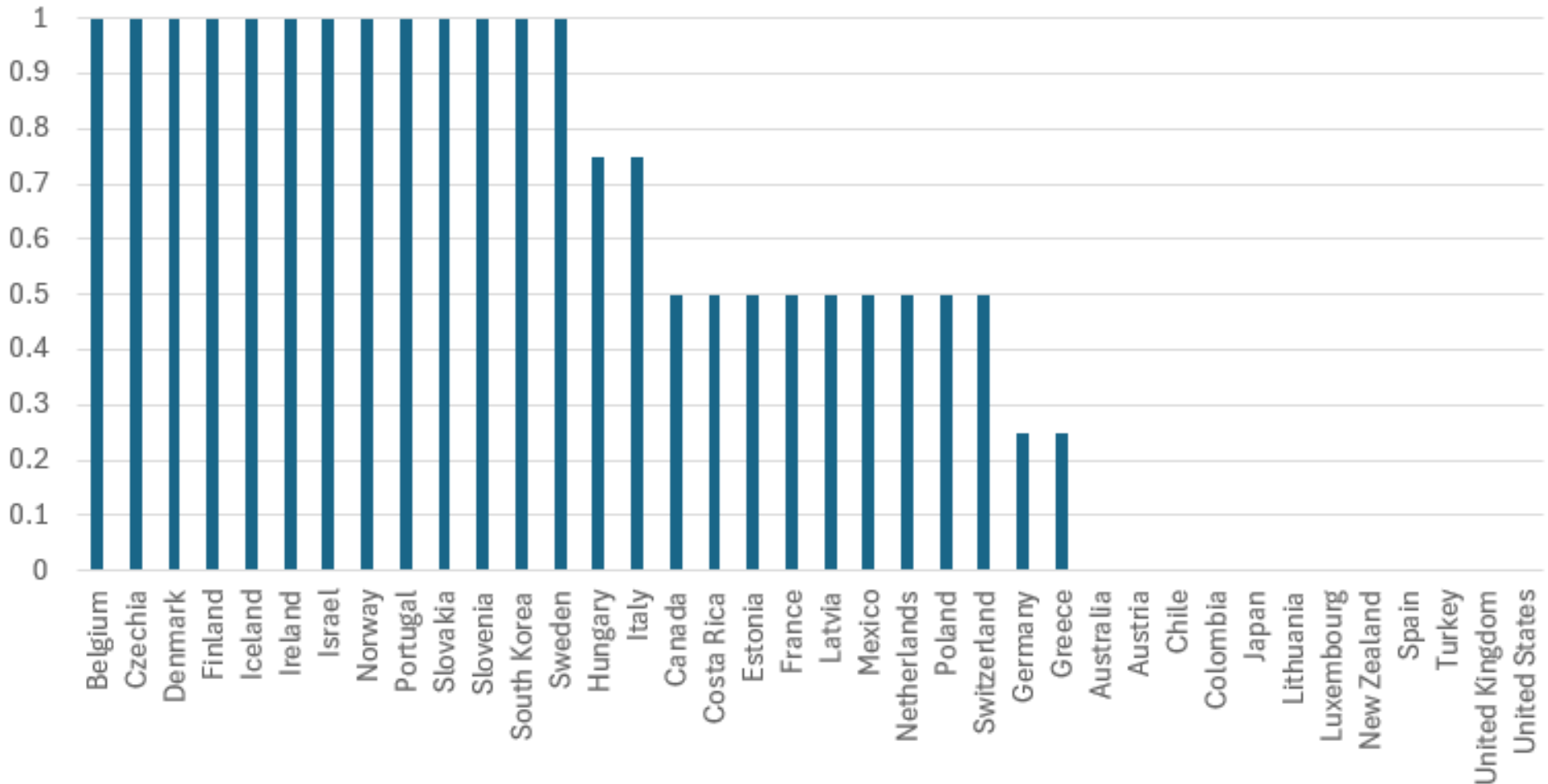
(c) Legal background

- Unions must ballot before strikes and get 50% turnout, more in public services, give 2 weeks notice to employers, and all must be done by post: TULRCA 1992 ss 226-234
- If unions slip up they can be sued to the hilt, even though the rules are to benefit workers: TULRCA 1992 s 219
- Secretary of State can enable electronic ballots at any time, but refused to do so far: Employment Relations Act 2004 s 54
- Strikes can only be against the contractual employer not others in a corporate group, or competitors, even if the aim is to get a sector-wide agreement: TULRCA 1992 s 224
- *R(ASLEF) v SS for Business* [2023] EWHC 1781 held 2022 Regs on allowing agency workers to strike break were unlawful, as there was no required consultation: EAA 1973 s 12(2)

(d) UK has the worst rules in OECD

OECD members, Right to Solidarity Action, E.34

Source: Cambridge Centre for Business Research, Labour Regulation Index (2023)



UK requires the longest notice to employers,
discouraging any collective bargaining

- CBR Indicator 37, notice periods

(e) Models and options

- Employment Rights Bill
 - s 54, removes 50% ballot turnout threshold (TULRCA s 22(2)(a) (iia)) and 40% threshold in public services gone (2A)-(2F)
 - s 56, SS may use power in ERA 2004 s 54 for e-ballots
 - s 57, notice to employers reduced to one week
 - s 59, protection against detriment for workers for industrial action: a new s 236A
 - s 60, statutory protection against dismissal for industrial action is still only for employees: s 238A
- For the purpose of a collective agreement, strikes are lawful against corp. groups and competitors (Sweden, Germany, etc)

(f) Benefits and costs

- 'Collective bargaining without the right to strike is collective begging.'
- More strike rights correlate with stronger unions and higher pay.

(3) Workers on boards

(a) Sector codetermination

(b) A general worker director law

(a) Pledges

- ‘ensure that **UK law complies in every respect with the international obligations** ratified by the UK, including those of the International Labour Organization and the **European Social Charter**’.
New Deal, p.11
- ‘**Labour will also explore new business and governance models for Royal Mail** so that **workers and customers** who rely on Royal Mail services can have a stronger **voice in the governance and strategic direction of the company**.’ Manifesto p. 33

(b) Human rights, and comparisons

- ‘the Parties undertake to adopt or encourage measures **enabling workers or their representatives**, in accordance with national legislation and practice, **to contribute: to the determination and the improvement of the working conditions, work organisation and working environment**’. European Social Charter art 22.
- Majority of EU countries, Brazil, India, China all have workers on boards in law and/or constitutions

(c) Legal background

- Companies must have directors, but no requirement for worker directors: Companies Act 2006 ss 154-6
- UK company **directors choose directors**. Rarely a general meeting (typically all shareholders) chooses the board, but may fire: Model Articles article 20. CA 2006 s 168
- Listed co's should have **board nomination committee** and may choose 3 worker 'engagement' options or ignore entirely: UK Corporate Governance Code 2024 s 1(5)
- **NHS** foundation trusts and ICBs have **up to 1/3 staff-elected directors**: NHS Act 2006 Schs 1B, 7.
- Some **uni's require staff-elected governing bodies**: e.g. Cambridge Statute VI. Higher Ed Gov (Scot) Act 2016 s 10

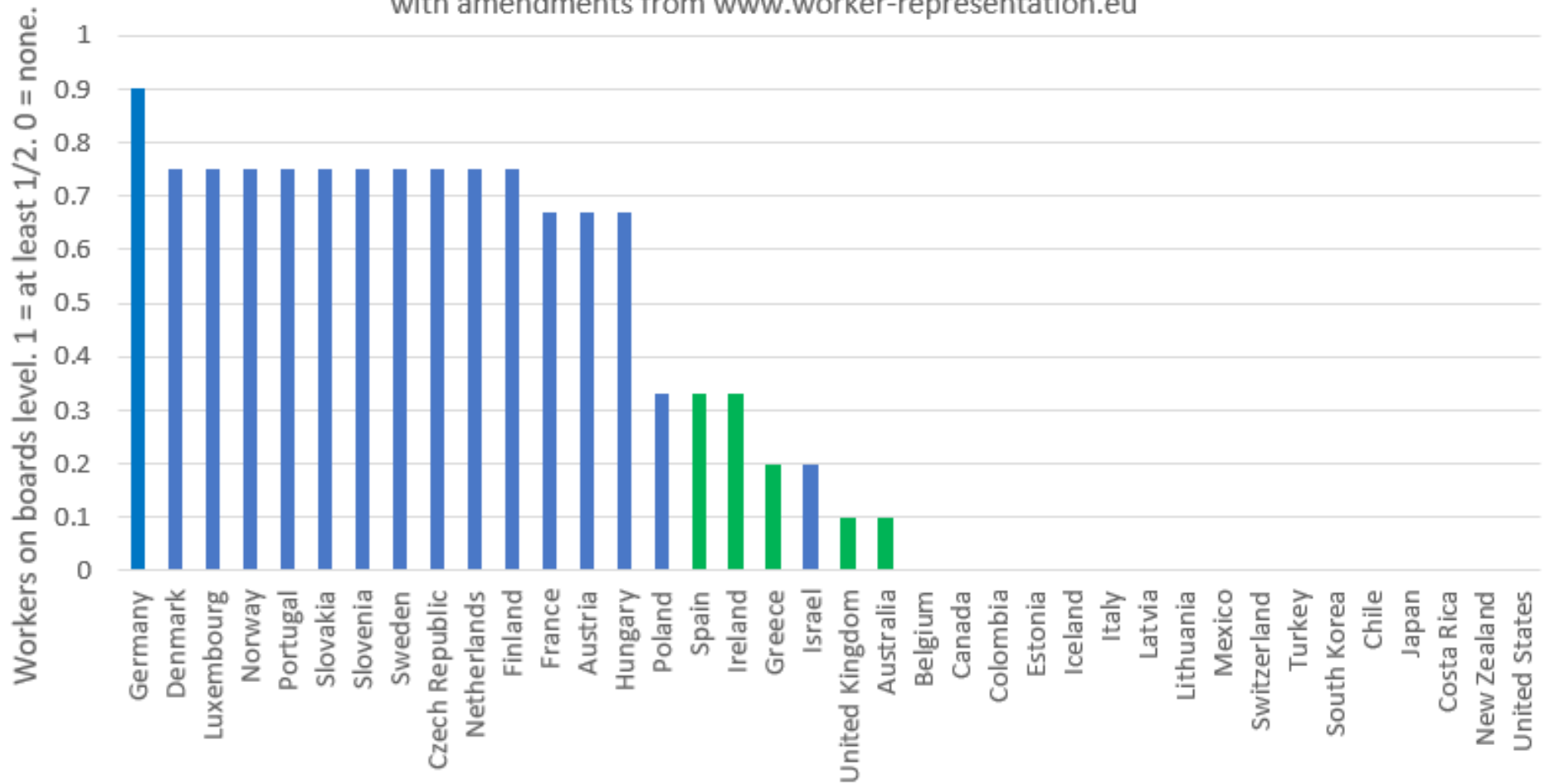
Royal Mail's experience

- Post Office Act 1977, 19 directors, 7 union, lasted 2 years (with little training) yet found to have worked well: Hansard HL Deb (12 December 1979) vol 403, col 1160, Lord Ponsonby quotes
- Sir William Barlow, annual report, "The experiment is still in its early stages, but so far **I have been impressed by the way in which the Board has dealt with matters of policy and has already contributed much to the major decisions** that have to be taken about the future of this massive organisation and its rapidly expanding range of services. Although this is a radical departure, it is an extension of the Post Office's rich history of participation through extensive consultative arrangements at all levels, built up over many years."

(d) International rank and data

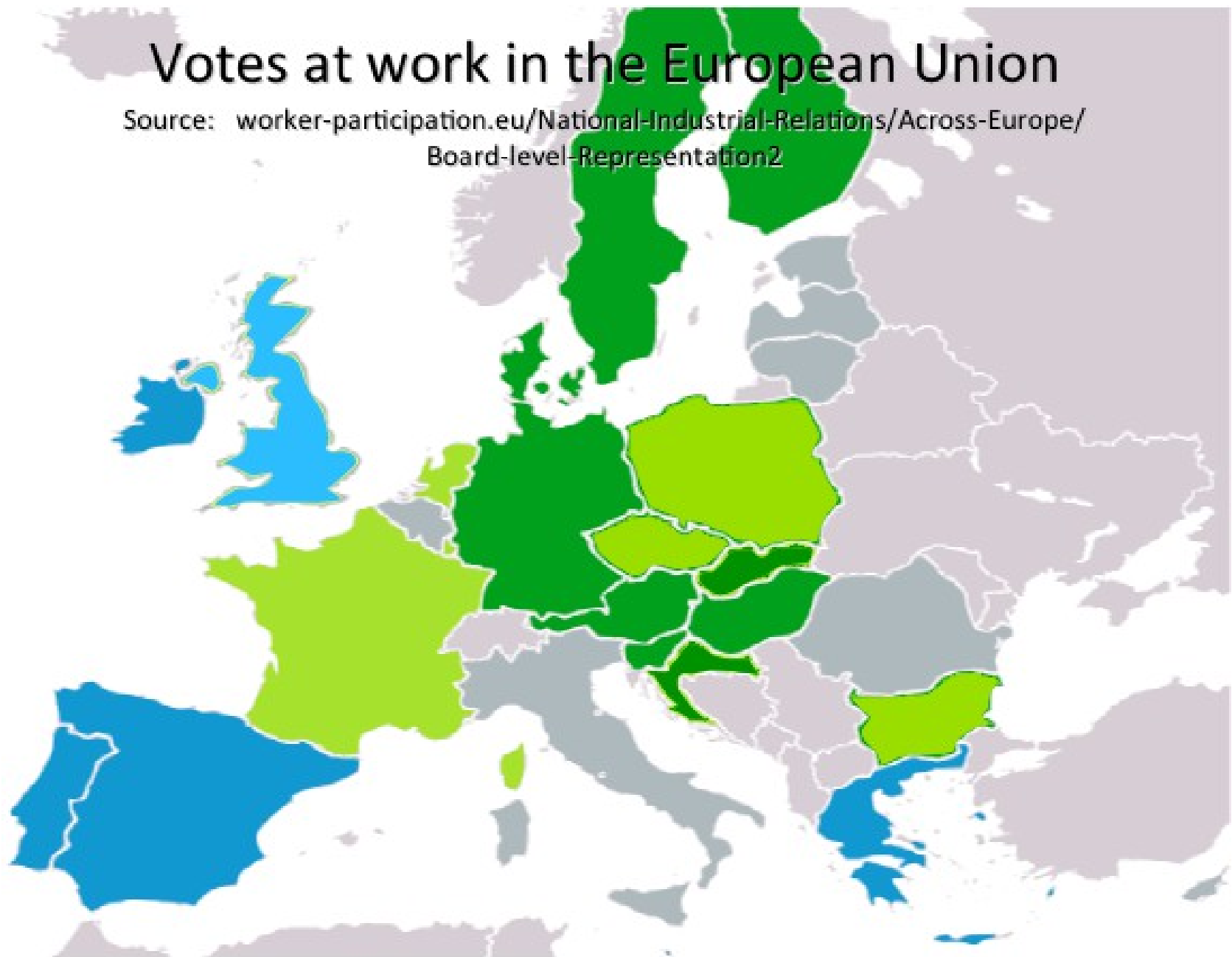
OECD members, codetermination rank, D.30

Source: Cambridge Centre for Business Research, Labour Regulation Index (2023)
with amendments from www.worker-representation.eu

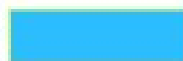


Votes at work in the European Union

Source: worker-participation.eu/National-Industrial-Relations/Across-Europe/Board-level-Representation2



Third or more board seats



Proposed



No rules yet



Minimum board rights



Public sector



Not currently EU

(e) Models and options for reform

- At least $\frac{1}{3}$ to $\frac{1}{2}$ workers on boards, Denmark or Germany
- Proposals for two-tiers boards not needed
- Cambridge Uni Statute
- NHS Act 2006
- Pensions Act 2004 ss 241-243

(f) Benefits and costs of reform

- S Jaeger et al, 'What does codetermination do?' (2021) NBER, up to 1.5% increase in wages, reduces involuntary layoffs, increases in subjective job satisfaction. May have small positive effects on capital formation, productivity, and profitability.
- S Deakin, 'Economic significance of EPL... 117 countries' (2019) 158 ILR 1, higher productivity, employment and labour share of income, lower unemployment found with better labour rights
- VV Acharya, 'Labor laws and innovation' (2013) 56(4) JLE 997, more innovation/patents with board codetermination etc rights
- Herbert Simon, Participation hypothesis, Mayo experiments
- Productivity, share prices etc
- Reducing strikes, main rationale of German law...

Discussion questions

1. If over 80% collective agreement coverage is desirable, how is that best achieved?
2. What further changes to strike laws are needed to reach European and international standards?
3. What are the desirable reforms to corporate governance to improve worker voice?