EXTRA-JUDICIAL SYSTEMS OF COLLECTIVE CONFLICT RESOLUTION AND THE LIMITS TO THEIR AUTONOMY: THE SPANISH EXPERIENCE.

Introduction

This paper examines the role of a relatively new system of third party intervention in Spain. The impact of the Spanish system is particularly interesting for two reasons. First, It was established in the country which had a high incidence of collective conflict with the highest strike rate (in terms of working days lost) during the 1990s (Rigby and Marco Aledo, 2001). Secondly the Spanish system reflects a new tendency for some countries in Europe to attempt to transfer the resolution of collective conflict from judicial to extra-judicial systems of intervention (Brown, 2004).

The paper first reviews relevant literature on third party intervention in collective conflict in general and on the Spanish system in particular. It then uses secondary data to examine the impact of the system on Spanish employment relations and qualitative data to examine the process of intervention in a regional case study.

Third Party Intervention in Collective Conflict.

Third party intervention in collective conflicts has typically taken one of three forms: conciliation, mediation and arbitration. Conciliation is the most passive form, seeking to bring closer together the parties to a dispute without necessarily making concrete proposals. Mediation is more active and may include the proposal of solutions to the conflict. In the case of arbitration the arbitrator takes a decision as to what should be the solution to the conflict and presents it to the parties. However in practice it is not always easy to distinguish between these different forms of intervention (Valdes Dal-Re, 2003). Conciliation and mediation are usually seen as more supportive of the collective bargaining process than arbitration.

Another important issue is whether the recourse to third intervention is voluntary or compulsory. This may depend on the type of conflict. Thus compulsory recourse is more likely when a strike has been called. There are also different national traditions. Third party intervention in the United Kingdom has been characterized by its voluntary approach in contrast to Australia and the United States where there has been a stronger tradition of compulsory arbitration (Salamon, 2000). The type of conflict can also influence the type of intervention. Conciliation and mediation tend to be used more in conflicts of interest and arbitration more in conflicts of rights and interpretation (Zack,1997) 1. Finally the characteristics of those responsible for interventions have also been a theme discussed in the literature. For Brown (2004),for example, it is important that they should be agents who are independent of the government if they are to have credibility with the parties to the conflict. In practice there is a considerable variety in European systems including judges, labour inspectors, independent agencies such as the Advisory Conciliation and Arbitration Service (ACAS) and nominees of the social partners.

Literature in the Anglo Saxon World of the last decade has shown less interest in the role of third party intervention in collective conflicts. This can be associated with a decline, from the 1990s onwards, in the number of days lost through strike action in many European countries. There has been a tendency for the number of cases involving third party intervention in collective conflicts to fall (in contrast to cases of individual conflict). For example, in the case of ACAS, in the 1970s the average number of cases being dealt with annually was 3000, while in recent years this has fallen to 1000 (Podro and Suff, 2009). The decline is magnified by the reluctance of public sector parties to use third party intervention, given that it is in this sector that collective conflict has been most

manifest (Podro and Suff, 2009). It has been suggested that as third party agencies have been less involved in helping to settle disputes so they have put an emphasis on developing an advisory function to avoid disputes (Brown, 2004).

In contrast to the decline in interest in third party intervention in collective conflict in the Anglo Saxon world, an increasing tendency to introduce new systems of third party intervention has been noted in European countries where traditionally the judicial system has had the primary role in resolving collective conflicts (Brown, 2004). In Mediterranean countries a number of new extra-judicial systems have been introduced. The new systems, normally based on agreements between the social partners, are seen as offering a number of advantages- cost savings, flexibility, greater speed of settlement, less of a 'winner takes all' element, and greater connection with the collective bargaining process. In addition the new systems tend to embrace a wider range of conflicts than the traditional processes - not being confined to issues of legal interpretation but also playing a role in interest issues. Their growth has been facilitated by the development of a more collaborative culture of employment relations and the allocation of state resources to fund their activities (Valdes Dal-Re, 2003). The emergence of these new systems can result in a quite complicated 'offer' of third party intervention – the new systems co-existing with traditional judicial systems and, often, legally established procedures administered by a public agency/ministry and involving labour inspectors (International Labour Office,2007;Welz and Eisner,2006).

The attempts to establish extra judicial systems have not been entirely smooth. In countries such as France and Portugal it has not been easy to reduce the role of the judicial system of conflict settlement to give space to the new approach (Brown, 2004). It has been suggested that the degree of success of the extra-judicial approach is related to the specific characteristics of the traditional system (Valdes Dal-Re, 2003). In those Mediterranean countries where the judicial system in question is a specialist one concentrating on employment issues the success of new extra-judicial approaches may be more limited. This is even more so when the members of the traditional system are not professional lawyers but are designated by the social partners because this helps to confuse the relationship between the two systems.

The Spanish Context

The Spanish employment relations context provided a challenging environment for third party intervention when a new extra-judicial system was introduced in 1998. Between 1990 and 1999 Spain lost significantly more working days per 1000 employees through strike action than any other EU country (Labour Market Trends, 2001). The country's history of third party intervention had not been encouraging. During the Francoist dictatorship compulsory arbitration by the labour authorities played an important role in labour disputes (Marco Aledo and Tamborero Sanjuan (2010). In reaction to this experience, during the transition to democracy, a strong emphasis was placed by the social partners on the autonomy of the collective bargaining process. During the first two decades following the transition two systems of intervention were introduced. The Royal Decree of 1977 established provision for compulsory arbitration to be imposed by the government in the case of strikes affecting essential services and public administration while a voluntary process was established involving the intervention of labour inspectors of the labour authority. The former mechanism has been used very rarely. The obligation to provide minimum services during disputes in essential services in any case ameliorates the impact of strikes in sectors such as transport. The system provided by the labour authorities suffered from the 'baggage' of compulsory intervention under the dictatorship. In the case of rights conflicts, as in the case of most heavily regulated Southern European countries, the specialist labour courts were the main avenue for settlement. Third party intervention before an issue reached a court hearing was the responsibility of the labour authorities.

It was in this context of relatively high levels of collective conflict and the absence of a respected system of third party intervention that the social partners signed in 1996 the Agreement on the Extra-judicial Solution of Labour Conflicts. The agreement established a national body, the *Servicio Interconfederal de Mediación y Arbitraje* (SIMA), to make available intervention in the case of disputes covering more than one region. At regional level similar agreements were negotiated. In most cases the system of intervention provided by the labour authorities continued to exist side by side with new systems. The parties to a dispute could decide which to use. The only government involvement in the extra-judicial systems, albeit an important one, was the funding of their activities. The regional systems process significantly more cases than SIMA (see Table 1).

The new institutions typically subsumed conciliation into mediation with mediators being nominated by the social partners (in this they were typical of most EU countries where conciliation lags far behind mediation (Welz and Eisner, 2006)). Arbitration was in all cases voluntary. In the case of SIMA and most but not all of the regional bodies, recourse to mediation was obligatory in the case of a strike being called. The social partner institutions also were to provide the mediation required before court hearings on rights cases.

Given the relatively recent consolidation of the new institutions it is perhaps not surprising that there is a limited literature on their development. A Spanish report which formed part of a European wide survey of collective dispute resolution (Perez Amoros, 2006) provided no data on the extent of involvement of the regional systems, largely concentrated on the involvement of the extra-judicial system in interest issues, and did not really reflect the variety of third party options to be found in Spain.

Two other studies considered the impact of the extra-judicial system but in both cases only considered its role in relation to strikes. Marco Aledo and Tamborero Sanjuan (2001) reached the conclusion that the new system had had little effect on strike activity. However the study's analysis ended in 1999, only three years after the signing of the agreement. Tuque et al. (2008) reached a more positive conclusion... Examining the relationship between the frequency of strikes and the various regional systems of intervention , the study established that, in the case of those systems where mediation was obligatory in the case of a strike being called, there was a positive downward effect on strike frequency. In the specific case of the Valencia Region the new system had contributed directly to the calling off of 37 strikes per year , the average number of strikes per year declining from 77 in the period 1986-1996 to 37 in the period 1997-2006.

This paper seeks to examine the success of the new Spanish system in establishing an autonomous dispute resolution role, given the traditionally judicial avenue for resolving collective conflicts in Spanish employment relations. In focusing on this question it seeks to overcome some of the limitations mentioned in relation to existing literature by giving due emphasis to the role of the regional arrangements which process the majority of collective conflicts and by considering both interest and rights issues. Additional significance is given to research in this area because of the increased role envisaged for third party intervention in collective conflict by the recent government decree reforming collective bargaining (Boletin Oficial del Estado, 2012).

Methodology

The paper is based on two sets of data:

First, secondary data from SIMA and the various regional systems are discussed. These data focus on the outcomes of the intervention process. The fragmentation and diversity which has

occurred as a result of regional decentralization, in third party intervention, as in other areas of employment policy, does make it difficult to present a full national picture, either because they are not available or are based on different criteria or systems (see Sala Franco and Alfonso Mellado, 2001). This is made evident where appropriate in the presentation of the secondary data.

Secondly qualitative data from interviews with participants in the Valencian regional system are presented. The choice of Valencia was influenced by it having a procedural regime similar to SIMA in respect of data collection, thus facilitating comparability (not all regions for example differentiated settlement rates for strikes as compared with other types of cases). In addition the Valencian system is more established than many of the other regional systems, being one of the first regional systems to be established, around the same time as SIMA in 1997.

In the Valencia Region (consisting of the Provinces of Alicante, Castellon and Valencia) the following interviews were held:

-Two focus groups with mediators and workplace union representatives from the two recognized trade unions (Union General de Trabajadores (UGT) (6 participants) and Comisiones Obreras (CC.OO) (3 participants). In the case of the UGT the participants were a mixture of union mediators and works council representatives who had been involved in mediation from Ford Motor Company, Boluda (the company providing tug boat services in the port of Valencia) , and EMT (bus company). In the case of CCOO the participants were mediators.

- Nine individual interviews as follows:

Two lawyers who worked regularly representing employers in collective dispute resolution.

A mediator employed by the regional employers' federation

A mediator employed by the UGT

The Human Resource Manager of EMT (Bus Company)

A union representative from EMT.

Two interviews with the Director of the regional intervention body – the Tribunal for Labour Arbitration (TAL)

An arbitrator who also had worked for SIMA.

In addition, to help triangulation, two interviews were held with representatives of SIMA, the director and a trade union representative on the Council of SIMA

Areas covered in the interviews included:

- origins and characteristics of the system
- role of the system in the case of both strike and rights cases
- employer and union perspectives/strategies regarding use of the system
- reasons for failure to agree.
- The further development and improvement of the system

Secondary Data

Table 1 summarizes the development of the extra-judicial system since its inception and compares it with other the other systems for collective conflict resolution in Spain. Both the national system (SIMA) and the regional systems have dealt with an increasing number of cases, with those dealt with in the regional systems far outnumbering those passing through the national system. The Valencian system alone in the period 2007-10dealt with more cases than SIMA.As the extra-judicial system expanded the declining importance of the intervention system offered by the labour authorities is evident. However no similar decline is evident in the respect of the labour courts. On the contrary the number of cases going before the labour courts in 2007-10 was almost double that of the three years immediately following the establishment of the extra judicial system.

Table 1.Average number of cases considered annually 2007/2010 compared with 1998-2000

	1998-2000	**2007-2010**
SIMA -	89	249
Regions	1705	4724
Labour Authority	1324	864
Valencia	245	371
Labour Courts	1254	2475

Tables 2 and 3 consider the types of conflict processed by the extra-judicial systems and the process employed. Comparable statistics for all regions are not available for the type of conflict processed but the data for both the national system and the Valencian system suggest that rights conflicts are by far the most common followed by intervention in strikes. The typical issue being therefore an attempt to mediate in the case of a conflict over the interpretation of a collective agreement (which in Spain has legal status) before the case goes before the relevant labour court. Arbitration would seem to play very little role in the extra-judicial system of intervention.

Table 2.Type of conflict. (2007-10)

	Strike call	**Rights issue**	**Other**
SIMA	**14%**	**82%**	**4%**
Valencia	**32%**	**66%**	**2%**

Table 3. Type of process (2007-10)	Mediation	Arbitration
SIMA	**99%**	**1%**
Regions	**99%**	**1%**
Valencia	**95%**	**5%**

Tables 4 considers data on the outcomes of extra-judicial intervention at regional and national level. The proportion of successful outcomes is much higher than the service offered by the labour authorities. The average settlement rate for the regions is higher than that for the national system (SIMA) and the Valencian regional system. This is not surprising because the regional success rate is inflated by the minority of regions which have a voluntary system of intervention. Voluntary systems of intervention tend to have higher settlements rates because the parties approach the process of intervention with a greater willingness to compromise. Thus in the case of one of the voluntary regional systems, the Galician, the settlement rate averaged more than 80% in the period 2007-9. [2]

Table 4. Result of intervention (2007-10)*

	Agreement	Others
SIMA	**32%**	**68%**
All Regions	**35%**	**65%**
Valencia	**25%**	**75%**
Labour authority	**7%**	**93%**

*The table tends to underestimate the positive outcome of intervention because the 'other' category includes cases where mediation did not take place i.e. where mediation was initiated by one of the parties but the other party did not attend, cases where mediation began but both parties withdrew and cases where the initial application for mediation was withdrawn**.**

In conclusion the available secondary data testifies to the growing importance of the new extrajudicial system as the most used third party option in Spain and its significant role in helping to resolve conflicts of both interest and rights, supplanting the role of the labour authorities. However the labour courts continue to play a significant role in resolving collective conflicts, with an increasing number of rights cases going before them.

The Valencian System

Main characteristics

The TAL was established in 1997 by an agreement of the social partners- the Regional Employers' Confederation and the two representative unions, the UGT and CCOO. The agreement provides for both mediation and arbitration in the case of collective disputes in the private sector only (as in the case of SIMA) and covers those social partners subscribing to it. The administrative costs of the system are funded by the regional government. The mediators are nominated, employed and funded by the social partners, typically spending only part of their time on mediation. However an annual payment is made to each social partner by the TAL according to the number of cases in which they have been involved and the results achieved. For example in 2010, 303,000 euros were paid in total to the social partners (50% to the employers´ confederation and 25% to each of the two main unions. In each case of mediation there will be 4 mediators, two provided by the employers' confederation, one by the UGT and one by CCOO. Employer-nominated mediators tend to be lawyers employed by the confederation. Union nominated mediators are full time officials.). The absence of 'independent' mediators tends to be typical of the various extra judicial systems in Spain. Even if not drawn directly from the social partners they tend to be drawn from lists nominated by them.

There is no sign of the Valencian system moving significantly beyond mediation and arbitration into advisory and consultancy services, on the ACAS model. The only limited step in this direction has been the establishment in 2009 of a team of work measurement specialists, employed on a consultancy basis, who will prepare a report to facilitate the mediation process in relevant cases. This reluctance to move beyond mediation and arbitration was articulated by the president of SIMA:

People talk a lot of preventing conflict but that happens before the conflict- the 'before 'is not our business- we don't want to complicate our role-it is difficult to be an advisor and mediator at the same time

By far the majority of the interventions by the TAL involve mediation. It was decided from the beginning not to seek to distinguish conciliation from mediation. It was felt that the distinction was difficult to make and would slow down the process, creating two stages. Mediators are expected to put forward solutions and argue for them. In this respect their behaviour is more similar to that of the Labour Inspectors nominated as Joint Committee Presidents in France than the more passive approach which tends to be reflected in Anglo Saxon literature (Grima and Paillé, 2011)

The provision under the system for voluntary but binding arbitration is rarely used (only in 5% of cases, 2007-2009). The most important reason given was the reluctance of the parties to lose their power over the settlement. However, in the case of rights issues parties preferred the decision of a judge rather than an arbitrator. First one could always appeal against a court decision. In addition arbitration might provide a resolution too quickly, if a delay was seen as advantageous by one of the parties (often the employer). Unions tended also to prefer a judge because of a feeling that they were more likely to give emphasis to the need to protect the workers. However TAL's procedures were not felt to facilitate arbitration because arbitration was only possible after a dispute had already passed through a process of mediation.

Several respondents pointed out that official data on extra-judicial intervention, including arbitration, tended to understate its importance because they did not include interventions carried out as a result of sectoral collective agreements. As indicated out earlier, in some sectors, agreements included provision for joint disputes committees or nominated mediators from the

sector to be involved in resolving collective conflict. Such agreements also often provided for arbitration to be available:

For example in the textile sector when a new job classification system was introduced it was agreed that all related disputes would be dealt with by arbitration. A sectoral intervention system functions quite well in the chemical sector as well whereas in other sectors, such as construction, it does not function at all (Arbitrator).

Collective disputes where a strike has been called according to the agreement of the social partners have to be subjected to mediation via the TAL before the strike can legally take place. The decision to make mediation compulsory in the event of a strike was taken because it was felt necessary to establish a culture of recourse to third party help which the system offered by labour inspectors had failed to do. Rights disputes [3] have to be subjected to mediation before they can be considered by a specialist Labour Court. As table 2 indicated, the vast majority of cases fall into these two 'obligatory' categories.

In most cases recourse to the TAL is in relation to disputes in individual companies (90% in 2009) and is initiated by trade unions (97% in 2010)(TAL, 201) suggesting the employer ambivalence about third party intervention identified by Jefferys et al. (2010).In the case of rights disputes, it is usually the union initiative seek to progress a dispute via judicial channels which triggers the mediation process, it typically being the employer which is perceived as not having implemented an agreement. In many cases, given weak union organization at enterprise level, particularly in the small and medium sized firms which dominate the regional economy, the judicial channel is the only way unions can make progress in a dispute:

'through the system (TAL) on many occasions worker representatives are able to achieve what never takes place in their company - sit down with the employer. A lot of conflicts reach mediation because there is no communication between the parties in the enterprise.'(TAL official)

The reference of a dispute to mediation can be made either by the worker representatives of the enterprise (works council or worker delegate, in the case of companies with less than 50 employees) or by the regional organization of one of the unions which can reduce the possibly of recrimination against individual worker representatives for the action taken. Thus of the cases initiated by the unions in 2008 and 2009 45% were in the name of a regional union organization.

In the case of the mediation process being triggered both parties are obliged to co-operate in the process. However in a minority of cases one of the parties declined to participate, very often small firms which had no association with the employers' confederation. In such cases the labour court judge can impose a fine on a party for non-co-operation if the issue proceeds to court but in practice this option did not seem to be applied universally:

It is obligatory for the company to attend but often they don't – they are not worried about a decision being delayed –they are happy with the status quo and see the union as weak and unable to apply any pressure- if a case continues to the labour court, even if the decision goes against the company, that does not mean to say it will be implemented quickly (UGT Mediator)

The Valencian system, as suggested by Luque et al, 2008, seems to play an important role in reducing the number of strikes in the region. Forty per cent of strikes referred to the system in 2007-9 were avoided by agreement this compares with 29% in the case of SIMA. If the impact is considered for 2009, 36 strikes of pre-determined length potentially involving 99,950 lost working hours were called off, valued at 1.76m euros. In addition another 9 strikes of indeterminate length were called off. This role was recognized by respondents and was attributed to the obligation to take part in mediation and the seriousness of the situation which meant the parties tended to

attend and take part in good faith. In most cases mediation took place when a date for the strike to begin had already been fixed; this concentrated the minds of the participants on the need to work for a settlement.

In the case of rights issues, although the settlement rate is not very different from that in the case of strikes (25% in Valencia and 31% in SIMA), given that the former represent the majority of cases processed by both systems , this would appear to indicate a weakness in the role of the extra – judicial systems. Perceptions of this are considered in the next section.

Perceptions of rights issues in the extra-judicial system

There was a common view that TAL was less effective in the case of rights issues and that if a case depended entirely on the interpretation of a regulation in an agreement or employment legislation the mediation process was often little more than a formality which the parties had to go through before the case reached the labour court.

The fact that recourse to mediation is obligatory in rights cases means that the parties involved might have little interest in settling before reaching the labour court – there is not the imminence of strike action to concentrate the minds. TAL had replaced a compulsory system of mediation provided by the labour authorities prior to rights issues going to court which had had a very low success rate. Accordingly expectations of the impact of mediation in these cases were therefore low.

However additional reasons were given for the testimonial nature of the mediation process in many rights cases. Union respondents and the representative of TAL emphasized the negative impact of lawyers upon the likelihood of settlement. Employers tended to take lawyers with them to the mediation to present their case which made it more difficult for dialogue to be developed between the parties. On occasions proceedings were so dominated by lawyers that mediation came to be seen as part of the judicial process. There also existed a feeling that lawyers tended to want mediation to fail and the case go to the courts to extend their involvement, and therefore, income.

It was also stressed that in the case of rights issues the parties had also adopted particular legal opinions on the issue at stake from which it was difficult to move during the mediation process. This was particularly the case if no 'figures' were involved:

If the interpretation of an agreement is about numerical or economic, it is possible to mediate , and in most cases with success, but if the dispute is purely and simply about what a rule or regulation means then the process can become a mere formality. (Employer mediator)

Sometimes it might not be in the interest of employers to reach an agreement during mediation. Taking an issue through to the final court stages maintains the status quo for a longer period of time (around three months) which can work to the employer's advantage, given that it is normally the union which is seeking a change.

Not surprisingly, legal professionals, although agreeing with the difficulty of mediating successfully in the case of rights case did not agree with other respondents on the reasons. Denying their own responsibility for the failure to reach agreement more often, they pointed to a weakness in the mediation process itself and the behaviour of the unions. In the case of rights issues (the only ones of which they had experience) they suggested that mediation was a perfunctory process:

' Typically the chair opens the proceedings, the two parties state their positions and the matter ends there. Rarely do the mediators make much effort to encourage the parties to reach an agreement …… they could spend more time on it and not do things so quickly (normally the mediation lasts ten or fifteen minutes)' (Employment Lawyer I)

A second employment lawyer suggested:

'*Unions and employers have more confidence in the judge than the mediators. The mediators try to reach a decision of Solomon but the parties don't see them as neutral because they are nominated by the social partners. The parties prefer to try the judge who is more neutral and makes a decision founded in law. It is not worth reaching an agreement before going to court. (Employment Lawyer II).*

For most respondents the circumstances in which unions had recourse to mediation were part of the explanation for the low rate of agreement. The unions tend to turn to mediation either because they are too weak to make progress at enterprise level or because the issue is not significant enough to enable them to develop an effective campaign. This inevitably conditions the mediation process. The employer sees no reason to make any significant concession and it is therefore likely that the case will proceed to court.

Additional factors make rights cases more difficult to resolve via mediation in the few larger companies in the Valencia region.. Union representatives acknowledged that in some cases unions use the mediation process instrumentally, with their eye more on union competition and portraying an aggressive image to their worker constituency than on resolving a dispute. The public transport sector typified this. The regional bus company faced 5 unions competing for credit in the works council elections. Its Head of HRM claimed they had to go to mediation almost every week but had only resolved one issue via this avenue in seven years:

'Sometimes I believe the union representatives put on a show in the Senda de Senent (Office of the TAL) and then, with the paper certifying a failure to agree, cross the river to the Labour Court.' (Head of HMR, EMT)

In the case of Ford, which employs 7000 workers at its Valencia plant, the very effectiveness of internal procedures and the characteristics of the actors mean very few cases reach the TAL. An internal rights committee deals with disputes arising from the collective agreement. The actors are seen as more capable. Therefore when a case does reach the TAL it is very difficult to resolve before reaching the labour court because considerable effort has already been exhausted on it within the company. This difficulty in making an impression in the case of some larger companies was also emphasized by SIMA representatives.

However the generally down beat view of the role of the extra-judicial system in rights cases held by most respondents was criticized:

The success rate of the system is very high compared with the level of agreement reached in rights cases under the old system (1%). They are too optimistic about the level of agreement they should be achieving because they are aware many disputes could have been solved with a bit more effort, that they don't get credit for agreements reached later and that many cases should not go before the judge (Arbitrator) .

SIMA representatives interviewed confirmed this latter view; *We know our impact is not limited to what happens here*. (Director, SIMA)

Data would tend to support these latter views. Although the rate of agreement in rights cases in is only 25% (Valencia) and 31% (SIMA), by no means all of the cases in which there has been no agreement, proceed to the courts (60% in the case of Valencia and less than 30% in the case of SIMA).

Despite the low expectations in relation to rights disputes, respondents felt the settlement rate could be improved. Establishing clearer criteria for the kind of issues that could proceed to the labour court was considered to be important. Too many conflicts which had little legal content went on to the labour court. If the legal avenue was excluded in these cases, mediation would be more successful. Cases involving work life balance issues or decisions as to whether a company should escape the obligation of implementing a collective agreement because of its financial problems had no place going to court according to the arbitrator interviewed. Making arbitration more readily available by removing the need to go through mediation first would also benefit the settlement of rights disputes. Union respondents felt that more pressure would be put on the parties to reach agreement if the TAL mediators issued a public report on each case transmitted (a procedure already followed in SIMA which was considered effective).

There was little consensus on the role of mediators. The representative of TAL, reflecting the views of Rodriguez Fernandez (2003), felt it was important to move towards creating a more professional corps of full-time mediators, albeit from lists nominated by the social partners, following the model of SEMA. This would enable mediators to distance themselves sufficiently from the organization which had nominated them and increase mediators' standing considerably in the eyes of the parties to the process. However other respondents, while agreeing mediators needed more training to enable them to distance themselves from the social partners, felt that in Valencia the mediators benefitted from a better understanding of the context of disputes compared with their more professional counterparts in SIMA. There was not however any interest in reverting to a system involving labour inspectors who it was felt did not have the time or commitment to play a useful role (contrasting with the image of labour inspectors in France (Grima and Paillé,2011)).

Discussion and Conclusions

Taking together their performance in both strike and rights cases, the Spanish extra-judicial systems would appear to be making a significant contribution to collective dispute resolution. They have taken over from the services offered by the labour authorities as the main option for third party intervention and are achieving a much higher settlement than the traditional system offered by labour inspectors. Since their establishment there has been a decline in industrial action from 316 days per 1000 employers (1990-99) to 48(2000-20009). Although a complex of factors have contributed to this decline, among them the role of the extra-judicial system has been significant (Luque et al., 2008).

The Spanish systems do however reflect the difficulties identified by Brown (2004) of reducing the role of the judicial avenues of dispute settlement. The Spanish extra judicial systems have a hybrid character, functioning as agencies independent of the judicial process in providing mediation where strikes have been called but acting as adjuncts to the judicial system in the case of rights issues, providing a compulsory mediation stage before cases reach the labour court. This is relatively unusual. Rights and interest disputes are normally regulated differently with the extra-judicial systems concentrating on interest cases (Welz and Kauppinnen, 2005). Both the Valencia and SIMA data reflect this dual role and the difficulties in reducing the role of the judicial system. The legal nature of collective agreements in Spain and the extension mechanism obliging all companies to implement them establish a central role for judicial processes in Spanish employment relations. The existence of specialist labour courts adds credibility to this role (Valdes Dal-Re, 2003).

As a result, in respect of rights issues, extra-judicial systems are constrained and conditioned by a judicial system, which still enjoys credibility.

Nonetheless it is important to recognize that the extra-judicial systems still prevent a significant number of rights cases reaching the labour court, either through agreement in the mediation process itself or as a result of the subsequent impact of the mediation process. Therefore, while we have found some support for Brown's concerns about the co-existence of the new extra-judicial systems with labour courts, it is important to keep these concerns in proportion. The introduction of some of the changes advocated above by respondents and other commentators could increase this contribution still further. For a full discussion of the impact of possible changes, see Alfonso Mellado (2006).

There appears to be little appetite in the Spanish extra-judicial systems for the development of advisory/consultancy services, a trend identified by Brown in Anglo-Saxon systems. The absence of fully professional staff probably contributes to a reluctance to become involved in activity which it is feared could result in a loss of focus in the mediation role.

Drawing conclusions from the Spanish experience of third party intervention more widely is complicated. This is in part because the diversity found in other systems and in the institutional and cultural contexts in which they are located. The description of collective dispute resolution systems in Europe as an 'eclectic mix' (Welz and Eisner, 2006) could well be extended to non-European countries as well. It is also recognized that the general decline in the number of strikes is unlikely to make policy makers receptive to innovation in this area. However in three respects the Spanish experience can be instructive.

First it is argued that the effectiveness of the Spanish systems of dispute resolution does point to the need for further research on the relative merits of voluntary versus compulsory intervention systems. Currently voluntary systems of dispute resolution seem to be in the majority. For example although 14 of 26 European countries have been characterized as having compulsory systems (Welz and Esiner,2006), in only a small number of cases do these systems have general applicability e.g. Finland and Poland. It is more typical that compulsory systems are only activated in a narrow range of circumstances e.g. if the relevant ministry decides it is expedient (Cyprus). Even the Australian system, traditionally associated with compulsory third party intervention, has seen this aspect diluted by the Work Choices Laws in recent years, a situation which has not been significantly changed by the Fair Work Act (Thornthwaite and Sheldon, 2011).

The arguments typically advanced for voluntary intervention systems are three in number. It is argued that if the parties go willingly into the dispute resolution process they are more likely to respond constructively (Podro and Suff, 2005). Secondly it is suggested that voluntary systems should be retained because they fit the culture of the employment relations system. Thus Podro and Suff (2009, p2) emphasize the' long tradition of voluntarism in the UK'. Finally it is argued that a compulsory system would impinge on the role that collective bargaining plays.

The Spanish experience does contribute to the debate in relation to each of these three arguments. Despite the compulsory nature of mediation in Spain at the dispute stage, two earlier voluntary stages, the signing of the initial agreement by the social partners and then the adhesion of particular sectoral social partners separately to the agreement, emphasize its essentially voluntary character and encourage a sense of ownership by the parties to a dispute which reduces initial hostility to external intervention. In relation to cultural fit it can be argued that the culture of employments relation systems in many countries has changed with a new power equilibrium. Perhaps a system which establishes stronger obligations on employers and trade unions in relation to dispute settlement is more appropriate for societies in which collective bargaining coverage and trade union density are in decline. Finally there is no evidence in Spain that the extra judicial

systems, though compulsory, have weakened collective bargaining, confirming the findings in relation to other compulsory systems (Kochan et al, 2010; Slinn and Hurd, 2011).

Secondly the Spanish experience emphasizes the enigma which exists in relation to public sector dispute settlement. The lack of participation by the public sector in the Spanish systems, formally justified by the different levels of government not being party to the agreements setting up the systems, resonates with what has been characterized as the 'public sector puzzle', the public sector reluctance to use ACAS services (Podro and Suff,2009,p6). Where provision does exist for public sector dispute resolution this is often narrow and restrictive associated with limits to the right to strike of particular groups (Welz and Esiner, 2006). Even where this is not the case third party intervention systems are more likely to be employed in private rather than public sector disputes (Labour Research Department, 2010; Dawe and Neathey, 2008). Given the growing preponderance of public sector strikes in national statistics, a tendency being accentuated by current austerity measures, the exclusion, formal or *de facto*, of the public sector from using extant dispute resolution systems is an area which should be of concern to policy makers and social partners. This exclusion leads inevitably to the politicization of disputes and to the emergence of calls for further restrictions on strikes (EIRO, 2011).

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Finally the complicated economic context currently faced by many western governments may result in an interest in extending the role of third party intervention as has happened in Spain. The recent reforms to collective bargaining introduced in 2011 and 2012 to help satisfy financial market and international agency pressure for structural reform in the Spanish economy envisage a wider role for extra-judicial systems in the resolution of collective conflicts with an emphasis on compulsory arbitration in an increased range of circumstances. Such 'panic' measures introduced rapidly and strongly opposed by both trade union and employer bodies may have unintended consequences - strengthening the will of the social partners to make collective bargaining and mediation work so as to avoid the 'lottery' of an arbitration process outside of social partner control.

Notes

1. Disputes of rights are categorized by their direct relation to a particular labour agreement, arising over the interpretation or fulfilment of rights defined by an existing contract. Disputes of interests arise over opinionated differences with respect to the conclusion or revision of a collective agreement (Valdes Dal Re, 2003).

2. A comparison of Spanish settlement rates with the ACAS system in the UK, also voluntary, is instructive in this context. ACAS dealt with far fewer cases than the Spanish system (930 on average 2007-9) but had a much higher success rate (80%) in the same period.

3. Rights disputes are defined under clause 151 of the Spanish Labour Process Law as disputes which involve the interpretation of State legislation, a collective agreement, or a decision or practice of a company.

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