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Revisiting the Australia-New Zealand Comparison

MICHAEL BARRY and NICK WAILES¹

Abstract

Labour market regulation in Australia and New Zealand has proceeded along a similar trajectory, sometimes intersecting and other times appearing to take divergent paths. Interest in comparing both systems of labour market regulation peaked in the 1980s and early 1990s when there was a marked divergence. The structural divergence was highlighted by the abolition of compulsory arbitration and the introduction of the Employment Contracts Act in New Zealand. Since the early 1990s, there has been a re-convergence in the structures of labour market regulation. This re-convergence highlights a need to revisit the Australia-New Zealand comparison. This paper seeks to re-conceptualise the comparison by highlighting some of the limitations of the existing comparative literature and developing a broader framework that examines both the structures of labour market regulation and the functions that labour market institutions perform. In doing so, and in keeping with the earlier comparative literature, it seeks to contribute to the theoretical matrix within which cross-national industrial relations research is conducted.

Introduction

Australia and New Zealand share similar histories including similar patterns of economic development and labour market regulation. During the 1970s both countries were affected in similar ways by changes in the international economy and during the 1980s both countries elected labour governments who introduced market oriented reforms (see Castles et al, 1996). Despite these similarities, Australia and New Zealand appeared to take very different approaches to labour market reform in the 1980s and early 1990s. In Australia the Australian Labor Party (ALP) entered into a social pact, called the Accord, with the Australian Council of Trade Unions (ACTU). Under the Accord, changes in industrial relations were gradual and took place within the existing institutions of industrial relations. In contrast, in 1984 the New Zealand Labour Party (NZLP) initially eschewed a formal compact with the unions and New Zealand governments introduced a series of radical changes in industrial relations policy. The highwater mark of this divergence was reached in 1990. While the Accord partners were pursuing 'managed decentralism' through award restructuring in Australia, the newly elected National government introduced proposals in New Zealand that were to form the basis of the Employment Contracts Act (ECA).

This apparent divergence in industrial relations policy, in two countries with similar economic and political histories and similarly affected by changes in the international economy, created the conditions for the development of a vibrant and insightful

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comparative literature. While quite diverse, the main focus of this comparative literature was the role organizational and institutional variables played in producing industrial relations policy divergence in these most similar cases. In particular, this literature attributed much of the policy divergence to differences in the organization of unions and employers and the autonomy and capacity of the state. With its focus on the significance of institutional variables, the Australia-New Zealand comparative literature provided strong empirical support for what was to become the dominant analytical approach to the impact of globalization on national patterns of industrial relations in the broader comparative literature.

Since the early 1990s there have been a number of changes in both countries which suggest the need to revisit the comparison between the two countries and to reassess the conceptual and theoretical basis on which the original comparative literature was based. If industrial relations in Australia and New Zealand diverged during the 1980s, it has shown a tendency to converge during the 1990s (see Barry and Wailes, 2004). During the 1990s Australia experienced significant changes in labour market regulation - starting with the shift to enterprise bargaining and culminating in the introduction of the Workplace Relations Act in 1996 - which have brought it much closer to the pattern of labour market regulation in New Zealand under the ECA. This is likely to continue. The Howard Coalition government took control of both houses of the Australian Federal Parliament on July 1 2005 and has subsequently introduced legislation which further erodes the traditional institutions of arbitration. Meanwhile in New Zealand, the election of a Labour government and the introduction of the Employment Relations Act (ERA) in 2000 has seen some attempt to re-collectivise the labour market. This article argues that revisiting the Australia New Zealand comparison, and taking these recent developments into account, provides an opportunity to reflect on the strengths and limitations of the theoretical framework that informed the earlier comparative literature and may provide the basis for further theoretical development.

The article is structured as follows. The first section briefly reviews the main findings of the original Australia New Zealand comparative literature and its relationship to broader debates in comparative industrial relations scholarship. The second section reviews the limitations of the comparative literature and some of the theoretical concepts on which it was based. In light of these criticisms, the final section argues that while institutional factors are important in shaping industrial relations outcomes, comparative scholarship needs to take into account a broader range of variables and to be based on a more complex understanding of the form and functions of institutions.

The Australia-New Zealand Comparative Literature

The apparent divergence between two similar countries in the late 1980s and early 1990s created the conditions for the development of a lively and insightful comparative literature (for a review see Wailes, 2003: 135-206). One catalyst for this comparative literature was a research workshop held at the University of Sydney in May 1991. Papers from this workshop were subsequently published as *Economic Restructuring and Industrial Relations in Australia and New Zealand: a comparative analysis* edited by Mark Bray and Nigel Haworth (Bray and Haworth, 1993a).

As Bray and Howarth (1993b: 2) noted the development of a policy divergence between two ‘most similar’ cases provided a rare opportunity to identify sources of variation. Broadly speaking, it is possible to identify three separate but interrelated sets of explanations for divergence in the subsequent comparative literature. First, a number of authors noted differences in the institutional structure and organisation of the labour movement in the two countries. Specifically, they identified differences in the unity of the labour movement, the power of the trade union central and the links between the industrial and political wings of the labour movement in the two countries. Bray and Walsh (1993), for example, argued that while both union movements adopted a similar response to economic restructuring, the Australian labour movement was more successful in implementing a strategic response to economic restructuring because of the greater authority of ACTU in comparison with its New Zealand counterpart. As they note “[By the 1980s] the ACTU was more representative, due to mergers ... [and] it developed better organisational structures which more effectively bound federal unions to ACTU policy”. This meant that the ACTU was in a position to deliver wage restraint under the Accord and also play a role in policy development. In New Zealand, by contrast, Bray and Walsh (1993: 132) argued that there was

a belief by leading Labour politicians that the central union organisations - the Federation of Labour (FOL) and the Combined State Unions (CSU) - would be unable to deliver their side of an accord. The historical legacy of weak central union organisation continued to frustrate any hopes of significant union influence over national economic policy making.

The New Zealand Council of Trade Unions (NZCTU), a single trade union central, was formed in 1987. However, in part because some powerful blue collar unions did not affiliate, Gardner (1995) argues that it lacked the national authority and cohesiveness of its Australian counterpart and was unable to actively shape or participate in the national process of industrial restructuring (see also Bray and Walsh, 1995).

These differences in organisational capacity of the labour movements were reinforced by differences in the links between the industrial and political wings of the labour movement. This reflected both differences in the extent to which ministers in the incoming labour governments had union backgrounds and the formal institutional role played by unions in the policy development in the two countries. Castles et al (1996: 13), for example, note that “the formal organisational role of unions in the federal ALP is much more substantial than the NZLP: union affiliates normally control fewer than half of the votes in an NZLP annual conference, but significantly more than half in the federal ALP counterpart”. For them, the “attenuated links between the two wings of the New Zealand labour movement meant the virtual exclusion of a union role in policy formation, leaving the way open for the adoption of radical policies of market liberalisation”.

A second set of explanations for differences in patterns of industrial relations reform focused on organisational differences between employer bodies in the two countries. Plowman and Street (1993), for example, contrast the growing unity of employer opinion, about the need for dramatic labour market deregulation in New Zealand in the lead up to the ECA, with the continuing fragmentation of employer opinion about

the scope and nature of the change in the operation of the arbitration system needed in Australia during the 1980s and 1990s. During the 1970s, restructuring of employer representation in New Zealand led to the formation of single peak employer body, the New Zealand Employers Federation (NZEf) (Wanna, 1989). Similar attempts to form a Confederation of Australian Industry (CAI) in Australia during the 1970s failed (Mathews, 1991). Contributors to the comparative literature argued that this difference in organisational unity allowed New Zealand employers to have a much more significant impact on the development of policy, than was the case for their Australian counterparts (see, for example, O'Brien, 1994).

A third set of explanations for policy divergence focused on differences in the autonomy and capacity of the state in the two countries. Australia is a federation with a written constitution and a bicameral parliament. New Zealand is a unitary state with an unwritten constitution and a uni-cameral parliament. As Boston and Uhr (1996: 64-65) note these differences mean that:

Australian and New Zealand governments operate in different constitutional environments. The dispersed powers that are basic to the Australian federal and bicameral system limit the capacity of a national government to transform governance... Australian national government has more of a brokerage character than that of New Zealand, where governments have greater capacity to impose new modes of and orders of rules.

For a number of contributors to the comparative literature these differences helped explain the more radical pattern of industrial relations reform that developed in New Zealand in comparison with Australia during the 1980s and early 1990s (see Mitchell and Wilson, 1993 and Bray and Neilson, 1996). This view is neatly summarised by Bray and Walsh (1998: 380), in an article which appeared in the prestigious journal *Industrial Relations* and in many ways represented the culmination of this comparative literature:

In New Zealand the absence of constitutional constraint enabled the governments to pursue rapid and radical change... in contrast, both Labor and Coalition governments in Australia were forced to make compromises because they shared power with state governments, and new legislation had to pass an upper house of review, in which the government did not necessarily have a majority. Change was consequently incremental, making Australian corporatism weaker, but also slowing the march of neo-liberalism.

Not only did the Australia-New Zealand comparative literature provide an explanation for the policy divergence between two most similar cases, it also provided strong support for what was to become the dominant criticism of the view that globalisation would produce convergence in national patterns of employment relations. As Hyman (2001: 25) notes "if there is a dominant analytical premise of recent Anglo-American research it is the principle that 'institutions matter'". This focus on institutional arrangements reflected the growing influence of the 'new institutionalism' in comparative politics on comparative industrial relations scholarship (Wailes, 2000). Locke and Thelen (1995: 26), for example, argue that, because institutional arrangements, like bargaining structures and patterns of union organisation, play an important role in shaping the policy preferences of actors, "international trends are *not*

in fact translated into common pressures in all national economies but rather are mediated by national institutional arrangements and refracted into *divergent* struggles over particular national practices". The Australia-New Zealand comparative literature suggested that quite small differences in institutional arrangements could produce significant differences in national responses to pressures associated with globalisation.

Limitations and Recent Developments

While the Australia-New Zealand comparative literature highlighted the potential significance of institutional arrangements in shaping the relationship between international economic change and national patterns of industrial relations, subsequent developments in the two countries and criticisms of some of the underlying assumptions on which this literature is based suggest the need for rethinking the comparison.

One set of criticisms focuses the significance that the comparative literature attributes to institutional variables. Thus, for example, many of the contributions to the comparative literature, either explicitly or implicitly, tend to assume that the institutions of arbitration played a similar role in shaping industrial relations outcomes during the twentieth century. A number of recent studies has questioned this assumption and argued that, despite similarities in arbitration, there are some important historical differences between the two countries which help explain the policy divergence that developed in the 1980s. Thus, for example, Ramia (1998) takes issue with Castles' (1985) highly influential view that the two countries shared a common pattern of social protection rooted in the institutions of arbitration. Ramia demonstrates arbitration played a much more important role in providing social protection in Australia than in New Zealand. Similarly Sandlant (1989) notes that, despite the similarities in the institutions of arbitration in the two countries, there were significant differences in the wages policies developed in the two countries- with Australia developing a broader and more generous pattern. He argues differences in wages policy help explain differences in the attitude of union movements in the two countries to arbitration and also played a role in explaining policy divergences during the 1980s in the two countries.

The tendency to ignore historical differences between the cases in the comparative literature builds on existing historiographical tendencies in both countries, which largely attribute industrial relations outcomes to institutional arrangements. These assumptions too have come under scrutiny. One example is the trade union dependency thesis. This argument, that unions were dependent on arbitration and that arbitration fundamentally shaped their actions and behaviour, has been influential in debates about Australian unionism (Howard, 1977) but has its origins in New Zealand (Hare 1946) and has figured prominently in the Australia New Zealand comparative literature (eg. Bray and Walsh, 1993: 123; Hince, 1993). Australian academics have recently called this characterisation into question. Cooper (1996: 64), in a study of the Organising Committee of the New South Wales Labour Council from 1900-1910, argues that "the contribution of arbitration to union recruitment was ambiguous". Gahan (1996: 693), in a study of union action under arbitration, argues that "while arbitration influenced the behaviour and character of individual unions.... [this is] very different from the view that arbitration has made unions *dependent*". Both of

these studies suggest that while arbitration was important, it was not the only factor shaping union action and strategy. A related set of criticisms have also been made of Plowman's employer reactivity thesis (see Barry, 1995). The implication for the Australia-New Zealand comparative literature is that the shared institutional heritage of the two countries may not fully account for the behaviour of unions and employers and that it may ignore other important sources of difference in the two countries.

This theme is taken up by Barry and Wailes (2004), in their comparison of the impact of arbitration in Australia and New Zealand. They argue that, not only did arbitration historically play a different role in the two countries, but that the origins of the policy divergence that developed in Australia and New Zealand in the late 1980s and 1990s can be traced back to developments in the late 1960s. This earlier divergence, they argue, is a product of differences in the severity of the economic pressures that were brought to bear on the institutions of labour market regulation in the two different countries during this period. Indeed, they suggest that many of the organisational and institutional differences that are central to the Australia-New Zealand comparative literature, like differences in the organisation of employer opinion, have their origins in this earlier divergence. In an extension to this argument, Wailes *et al.* (2003) argue that the policy divergence that developed in the late 1980s and early 1990s was not only a function of institutional and organisational differences between the two countries, but also reflected important differences in the economic situation facing the two countries. While both countries faced similar economic pressures, the economic crisis facing New Zealand during the 1980s was much more serious than that which faced Australian governments. They argue that this difference in external economic imperatives shaped the extent to which employers and governments regarded the existing institutional arrangements as sustainable.

Taken together these criticisms of the Australia-New Zealand comparative literature, and some of the assumptions on which it is based, suggest that there is a need to re-examine the role and function that institutions play in shaping industrial relations policy and outcomes, and to take into account a broader range of variables, including those that are non-institutional in character. This view about the need to go beyond looking at institutions is reinforced if one compares the impact of labour market reform on labour market outcomes in Australia and New Zealand during the 1980s and 1990s. Despite important differences in the institutional arrangements that govern labour markets in the two countries, there are notable similarities in the labour market outcomes in Australia and New Zealand. During the 1990s both countries have experienced dramatic declines in trade union membership, collective bargaining coverage and significant increases in individual contracting. Furthermore both countries have witnessed significant increases in wage inequality (see Harbridge and Walsh, 2002; Barry and Wailes, 2004: 438-441). While many of these features are shared with other developed countries, and these changes have been more dramatic in New Zealand than in Australia, in international comparative terms Australia and New Zealand represent extreme cases (Campbell and Brosnan, 1999: 354). The original comparative literature's focus on institutions and policy outcomes, rather than the consequences of those policies, may therefore exaggerate the differences between the cases.

Furthermore, policy developments during the 1990s have significantly eroded differences in patterns of labour market regulation. Since the early 1990s there have

been a series of significant policy changes in Australia which have brought it much closer to its New Zealand counterpart (for a brief overview, see Lansbury and Wailes, 2004). Of particular significance, this policy convergence took place despite the continued existence of the institutional and organisational differences that the comparative literature regarded as so important in producing the policy divergence that developed in the late 1980s and early 1990s. While there is little doubt that the bicameral nature of the Australian federal parliament has frustrated the ability of the Howard government to introduce radical labour market reform, and that the pace of reform will quicken now that it has control of both houses, the process of reform was initiated by the Keating Labor government in the early 1990s. The 1993 Industrial Relations Reform Act, which amongst other things recast awards as safety nets and introduced non-union agreements in the Federal jurisdiction for the first time, represented an important rupture in the traditional pattern of Australian labour market regulation (Gardner and Ronfeldt, 1996). This suggests that, while institutional and organisational factors may play an important role in shaping policy outcomes, they are not the only thing that matter.

Rethinking institutions

In a recent contribution, Godard (2004) has argued that if industrial relations academics are to account for continued diversity in national patterns of employment relations, they need to incorporate the insights of the new institutionalism. The comparative literature on Australia and New Zealand draws heavily on the new institutionalism and therefore provides a good opportunity to reflect of its strengths and weaknesses. This section argues that the new institutionalism needs to focus on a broader set of variables. In particular, the Australia-New Zealand comparison implies the need for comparative industrial relations scholars to go beyond thinking solely in terms of convergence or divergence and to develop models which make it possible to explain similarities and differences within the same conceptual framework. In order to do this, there is a need for industrial relations scholars to incorporate a role for interests and ideas (as well as institutions) and, thus, examine the importance of agency in shaping labour market outcomes. It also suggests that it is important for industrial relations scholars to consider the complementarities between labour market institutions and the other institutional arrangements which characterise national capitalisms. Finally, we argue that the Australia-New Zealand comparison suggests the benefits of IR scholars adopting a more explicit regulatory lens with which to view the role of labour market institutions.

Beyond Convergence and Divergence

Concern with issues of convergence and divergence have long been a key animating theme of comparative industrial relations scholarship (see Bamber *et al.*, 2004: 12-26). Much recent debate in industrial relations scholarship has focussed on whether changes in the international economy, associated with globalisation, are producing convergent or divergent pressures in national patterns of industrial relations (eg. Katz and Darbishire, 2000; Traxler *et al.*, 2001). The Australia-New Zealand comparative literature, however, highlights some of problems of such a framework. Whether developments in Australia and New Zealand are characterised as convergent or

divergent is in part a function of what is considered to be the dependent variable and over what period of time the comparison is taken. Thus, for example, if we were to take the existence of arbitration to be the dependent variable, then Australia and New Zealand clearly demonstrate divergence. However, if labour market outcomes are the dependent variable, it is less clear that Australia and New Zealand have diverged markedly. Similarly a comparison of developments in Australia and New Zealand from the mid 1980s to the early 1990s is likely to yield different conclusions from a comparison which considered developments from the late 1960s until the present day.

Institutionalist analyses tend to focus on sources of divergence between countries. Pontusson (1995) suggests that this tendency is not just a reflection of methodological choices. Rather it is more deeply rooted in the theoretical concerns of the institutionalist project. In particular, he argues that institutionalists tend to attribute analytical primacy to polity centred institutional variables (like constitutions) and to downplay or ignore the significance of other non institutional variables (like economic structure). The result is that institutionalists “focus almost exclusively on the nature and sources of variation between advanced capitalist countries, ignoring what these political economies have in common” (Pontusson, 2005: 164). Pontusson rejects this view and calls for the development of analytical frameworks, which go beyond a simple convergence/ divergence framework and make it possible to explain both the similarities and the differences between capitalism economies.

Interests, ideas and agency

Pontusson’s argument suggests that if comparative industrial relations scholarship is to provide insight into the complex nature of change taking place in national patterns of industrial relations then it needs to compare countries across a broader range of variables and reconsider the role of agency in shaping labour market outcomes. This is not to argue that institutional frameworks are not important. Rather it is to suggest that they are not the only factors that matter. As was noted in the previous section, differences in the interests of employers and unions appear to have played an important role in producing different policy responses in the two countries from the mid 1980s until the early 1990s (see Wailes, 2000).

A focus on the interaction between interests and institutions seems to be particularly relevant given that much of the change that industrial relations scholars are interested in involves changes to institutional arrangements themselves. As Hall (1998: 183) puts it “to the degree that the core institutions are subject to change, the focus of analysis must shift (away from institutions) towards the socioeconomic or political coalitions that underpin them and toward more dynamic theories of institutional determination”.

The importance of interests, especially those of employers in particular labour market arrangements, has become an increasing focus in the broader comparative literature. Pontusson and Swenson (1996), for example, argued that employer interests played a significant role in the collapse of centralised bargaining in Sweden in early 1990s. More recently, Thelen (2000) has argued that German employers have resisted wholesale decentralisation of bargaining because the benefits they gain from the current system outweigh those that might be expected from such a change.

While the role of interests in shaping and sustaining particular institutional arrangements has received increasing attention, there has been less explicit attention paid to the role of ideas in shaping patterns of labour market regulation. Anyone familiar with recent industrial relations developments in Australia and New Zealand over the past decade or so will be aware of the role that ideology has played in shaping labour market regulation. Thus, for example, many of the features of the ECA can be traced back to views of Hayek, an Austrian economist, and Epstein, a US professor of law and economics, about how to structure labour regulation in a way that maximises a particular type of individual freedom. In the New Zealand case, these views were strongly expressed by Penelope Brook (1990), a researcher working for the New Zealand Business Roundtable at the time. The legislation recently introduced by the Howard government in Australia also reflects a particular world view, which amongst other things questions the legitimacy of unions.

There is a growing body of literature on the relationship between ideas, institutions and interests. Campbell (2002), for example, argues that ideas can take a number of different forms which affect policy making in different ways. These include programmatic ideas which “help actors devise concrete solutions to policy problems”. Thus, for example, Campbell notes that policy prescriptions based on supply side economics took root in the US in the late 1970s because they offered what appeared to be clear solutions to the economic problems facing the country at the time. However, for Campbell (2002: 173), ideas can also take the form of public sentiments, which reflect “broad based attitudes and normative assumptions about what is desirable or not”. He demonstrates that supply side policy prescriptions in the US in late 1970s resonated with generally held beliefs about the wasteness and corruption of government. While he acknowledges that the institutional framework and the pattern of interests played a significant role in shaping how these ideas were put into practice, his analysis nonetheless suggests that ideas may have an independent impact on policy direction (see also Hall 1998). According to Blyth (2002: 11), “economic ideas also act as blueprints for new institutions. In sum, ideas allow agents to reduce uncertainty, propose a particular solution to a moment of crisis, and empower agents to resolve that crisis by constructing new institutions in line with these new ideas”.

Taken together these arguments suggest that comparative industrial relations scholars need to look beyond the role of institutions in producing national diversity and to examine the interaction between institutions, interests and ideas in particular national economies. They also suggest that industrial relations scholars need to be much more attentive to the role of agency in shaping labour market regulations and outcomes. Institutionalists tend to view institutions as constraints on action. Some even suggest that institutions shape what actors see to be in their interests (Hall and Taylor 1996). However, if we accept that institutions are not the only thing that matter, then we need to allow for the possibility that agency is not completely constrained by institutional context.

Institutional complementarities

For scholars interested in industrial relations developments in Australia and New Zealand over the last 20 years, it is difficult to consider developments in labour market regulation separately from other changes in the economy. For example, many Australia and New Zealand IR scholars would accept that pressures for decentralisation of bargaining are closely related to the erosion of tariff protection and the development of independent central banks with control over monetary policy settings. This points to the need to consider not just interests and ideas but also a broader range of institutional variables.

One of the most important recent developments in institutionalist thinking has been the growing focus on how institutions relate to one another. The most influential version of this is Hall and Soskice's (2001) varieties of capitalism (VOC) approach. Hall and Soskice distinguish between two broad types of capitalism - liberal market economies (LMEs) and coordinated market economies (CMEs) - and argue that each possesses institutional complementarities which give them comparative advantages. LMEs, such as the US, are those in which market mechanisms mediate the relationships between firms, between firms and their employees and between firms and their investors. CMEs, like Germany, tend to use non-market and relational modes of coordination in the dealings between firms, between firms and employees and also between firms and investors.

As Godard notes the VOC approach has a number of implications for industrial relations scholarship. Specifically he argues it "demonstrates that economic and technological developments do not impose an immutable logic on economic and IR systems... Rather, the extent to which they matter, and the way that they come to be reflected in IR practices is largely a function of the institutional arrangements characteristic of these systems" (Godard, 2004: 245). To some extent, this is reflected in the growing literature on the connections between financial market structure and firm IR practices. The contributions to Gospel and Pendelton (2004), for example, demonstrate that differences in the structure of national financial systems affect the ways in which firms finance their operations and that this can, in turn, affect the types of employment relations practices they adopt.

Both Australia and New Zealand fit firmly in the LME camp and an understanding of the institutional complementarities of LMEs may help account for some of the growing similarities in labour market outcomes that have been observed between the two countries since the early 1990s. The Australia-New Zealand comparison, however, also points to the dangers of applying the VOC approach too generally. Simply characterising the two countries as LMEs misses some of the important differences between the countries and also makes it difficult to account for the significant amounts of change experienced by the two countries over the last two decades. Thus, the Australia-New Zealand comparison suggests that while it is important for IR scholars to understand the interconnections between institutions of labour market regulation and other institutional arrangements, there is a need for this analysis to be more fine grained than that advocated by the VOC approach.

Towards a regulatory lens

One way for industrial relations scholars to develop a more sophisticated means to compare institutional arrangements is to shift away from focussing on the *form* that institutions take and examine the *functions* that they play. This approach to institutions has its proximate origins in the work of Polanyi. Polanyi (1957) claims institutions become embedded in social relations because the key factors of production – land, labour and money – cannot be traded as commodities. For Polanyi, any movement towards a self-regulating market, in respect of the key fictitious commodities, is met by a protective societal response to re-embed market exchanges in social relations through institutions. Polanyi refers to this as the “double movement”. Thus, according to this perspective labour market institutions are created to ensure that the consequences of commodifying labour, through the operation of a self-regulating market, are avoided.

In recent labour law scholarship, Polanyi’s approach has informed the development of a ‘regulatory’ lens on changes in labour law. Howe (2005) and others have criticised the characterisation of recent changes in labour law as one of deregulation.

The rhetoric of labour market deregulation often masks extensive legal re-regulation and juridification of social and economic systems or spheres to suit prevailing political objectives. This rhetoric is based on a rather narrow definition of ‘regulation’ and its purposes when it comes to the exchange of labour in the economy (Howe 2005: 1-2).

Legal regulation highlights the importance of viewing public (statute) and private (contract) law as overlapping and interacting rather than separate and distinct systems of regulation (Collins, 1999). In a longitudinal study, Johnstone and Mitchell (2004) examine the relationship, or “collisions”, between these two systems of regulation over several centuries. Contrary to the popular view of the emergence of the regulatory state in the twentieth century, they argue that state instrumental regulation has been the dominant form of labour regulation for centuries. For these authors, the significance of “regulatory” labour law during the twentieth century was not that it supplanted “contract” law as a basis for regulating the employment relationship but that it developed an important protective function, in the provision of minimum wages and terms and conditions of employment.

We would argue that this focus on the regulatory role of institutional arrangements is particularly useful for examining recent changes in industrial relations in Australia and New Zealand. In particular, the decline of the structures of arbitral regulation in Australia and New Zealand has not heralded the introduction of so called “at will” contracting but, rather, has coincided with the creation of alternative employment institutions, which in some cases perform similar regulatory functions to the previous institutional structures. In New Zealand, an Employment Tribunal and Employment Court replaced the Arbitration Court in 1991. These institutions solidified the transition from collective to individual bargaining by strengthening and extending the protection of individual rights. Under the ECA, any employee could file a personal grievance if they unfairly suffered a disadvantage in any area of employment. The transition from collective to individual rights was reflected in both the marked decline in recorded industrial disputes and the marked increase in personal grievance claims

during the 1990s (Harbridge, Crawford and Kiely, 2000). Under the Employment Relations Act (ERA), a Mediation Service and Employment Relations Authority replaced the Employment Tribunal by splitting its functions across two agencies. The ERA represents, then, an attempt not to re-regulate the New Zealand labour market as is often assumed but rather an attempt to re-collectivise it by the provision of specific protections for collective bargaining and unionization.

Although it has been constrained by opposition in the Senate in the past, recent electoral gains have made it possible for the Coalition Government in Australia to introduce a new wave of industrial relations “reform”. The Workplace Relations Amendment (Work Choices) Act (2005), amongst other things, extends unfair dismissal exemptions to include organisations with up to 100 employees, introduces secret ballots for union industrial action, further strips award entitlements to comply with a new set of minimum standards, and attempts to streamline the process for individual agreement making by removing the no disadvantage test.

On the institutional front, the Act will further emasculate the Australian Industrial Relations Commission (AIRC), but, in doing so it will strengthen or create alternative institutions to continue its pervasive regulation of the labour market. Under the changes, the Government will strengthen the Office of the Employment Advocate by enabling it to certify collective agreements. The Government will also relieve from the Commission its role in determining wage adjustments for low paid workers but will establish a Fair Pay Commission so as to preserve this important institutional function. The Government will also continue its campaign to “reform” industrial relations in the building and construction industry by giving further powers and a much increased budget to the Building Industry Taskforce, a specialist industry regulator it created in response to recommendations from Cole Royal Commission into the industry. These changes highlight a pattern of regulation reminiscent of that which occurred in Britain during the 1980s and 1990s where, “paradoxically in a period when deregulation has been claimed to be the driving force of public policy under the influence of the neo-liberal strand of New Right ideas, more new central regulatory agencies have been created than ever before” (Baldwin, Hood and Scott, 1998: 6).

It is not our intention to argue an institutional regime based on individual bargaining is likely to produce the same social protections as one based on collective regulation of employment. However, we would argue that a regulatory lens, which focuses on the role that institutions play, provides a framework for thinking about changes in patterns of labour market regulation and rethinking similarities and differences across countries.

Conclusion

This article has reviewed some of the main features of the comparative literature on industrial relations reform in Australia and New Zealand from the mid 1980s until the early 1990s. This literature attributed the apparent policy divergence between these two most similar countries to differences in the organisation of labour and capital, and to differences in the autonomy and capacity of the state. In doing it drew attention to the importance of institutional arrangements in accounting for diversity in national

patterns of industrial relations. Thus it pre-empted what was to become the dominant theoretical approach to examining the relationship between globalisation and industrial relations in the broader comparative literature.

Criticisms of the Australia-New Zealand comparative literature and recent developments in the two countries, suggest that there is a need for comparative industrial relations scholars to rethink the focus on institutional arrangements. In the final section of this article we outlined four ways in which the institutionalist approach needs to be improved if it is to account for contemporary patterns of industrial relations. These include developing conceptual models that go beyond attempting to establish whether countries are converging or diverging and which focus on similarities and differences between cases. Central to this is shifting from an analytical framework which privileges institutional variables to one which examines the interaction between institutions, interests and ideas. It also involves broadening the focus of study away from labour market institutional arrangements and considering the complementarities between institutions across national capitalisms. Finally, we argued that industrial relations scholars are likely to benefit from an approach which focuses not just on institutional structure but also considers the functions that institutions play. Therefore just as the literature which compared industrial relations developments in Australia and New Zealand, in the late 1980s and early 1990s, had implications for the broader comparative literature, we would argue that the contemporary comparison of industrial relations developments in these two countries have a number of important lessons for industrial relations scholars who are interested in explaining continuity and change in national patterns of employment relations.

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