REGULATING COLLECTIVE BARGAINING IN DEVELOPING COUNTRIES: LESSONS FROM THREE DEVELOPED COUNTRIES

John Pencavel

Department of Economics
Stanford University
Stanford, California 94305-6072

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ABSTRACT

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What can developing economies learn from the experience of developed economies about how best to regulate unionism and collective bargaining? This paper addresses this question by offering four principles that should guide economic policy on unionism and collective bargaining and then by examining the record of three countries - Australia, New Zealand, and Britain - to illustrate the operation of these principles. Although these three countries share a common heritage, their approach to these issues has been quite different: Australia and New Zealand designed quasi-judicial systems that have intervened extensively in collective bargaining while Britain has followed a tradition in which the explicit role of law was small.

These characterizations have changed a good deal in the last fifteen years with the role of the law playing a larger part in Britain and with the systems in Australia and New Zealand undergoing substantial reform. I argue that, appearances notwithstanding, the changes in Australia have been meager while those in New Zealand have been much more radical. I argue also that the traditional characterization of Britain was never accurate and that the influence of the state on collective bargaining was indirect yet substantial. Clearly, industrial relations have changed considerably in Britain since 1979, but I suggest the changes in product market competition and the associated move toward enterprise bargaining have been the principal cause of the changes in collective bargaining and the diminished role of unionism.
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John Pencavel*

I. Introduction

How should developing countries regulate labor unions and collective bargaining? What can developing countries learn on this subject from the experience of the developed countries? These two questions are the topic of this paper.

I proceed by enunciating some general principles that should guide economic policy on labor unions and collective bargaining and then I draw on the experience of three countries to illustrate the operation of these general principles. The three countries I examine are Australia, New Zealand, and Britain. Of course, there are many countries whose experiences on these matters may and should be called upon. However, to make this paper of manageable length, it is natural to restrict the number of countries covered and these three countries provide some rich material.

All three of these countries share a common legal history and framework including a long record of respect for individual freedoms and representative democracy. Notwithstanding their similarity in these respects, their posture toward unionism and collective bargaining has been quite different and this is why a contrast of these three countries is so enlightening. For most of this century, Australia’s and New Zealand’s collective bargaining systems were extensively regulated by government with laws that gave

* This paper draws upon an earlier manuscript prepared for the World Bank (Pencavel, 1996). Very helpful comments on that paper by David Metcalf have improved the arguments expressed in this draft. I have benefitted from discussions with Nicola Acocella, Lewis Evans, James Heckman, Robert McMillan, Paul Ryan, and Bryce Wilkinson during the preparation of this paper. The views here are my own.
agencies of the state the power to impose wages on unions and employers and that, at
times, prohibited strikes. By contrast, Britain’s system of collective bargaining remains
largely unregulated (notwithstanding legal changes in the last fifteen years) and it is usually
offered as an example of a system where the law has intruded little into the organization
of unionism and collective bargaining. In fact, I shall argue that, on the contrary, the
British system does involve considerable intrusion by the state, but the intrusion is indirect.
In other words, Britain provides an excellent illustration of the support provided unionism
and collective bargaining through government policies in nonunion labor markets and in
product markets and through the state occupying a partisan position with respect to
collective bargaining.

From a review of these three countries’ experiences emerge lessons for policy
in developing countries, many of whom are facing problems in articulating and
implementing a coherent set of policies with respect to the regulation of unionism.¹ I shall
argue that the appropriate policy relies as much as possible not on an assortment of
mandates and constraints set down in a written legal code, but on markets to regulate
unionism and collective bargaining. The principles guiding this policy are set out in the
next section.

II Guiding Principles

A union is a society of workers that, at its best, is a means to help employees
choose their working environment. Effective participation in their workplaces may well
enhance their productivity. When they faithfully represent employees’ interests, labor

¹ For instance, in the last few years, Korea, South Africa, and Argentina have each
had difficulties in defining and executing a clear policy on collective bargaining.
unions are a natural expression of workers’ aspirations to participate in determining their conditions of employment and to help monitor management on behalf of the workers. Given the opportunities available to owners or managers to further their interests at the expense of rank-and-file workers, these employees have a legitimate case for an organization, a union, that represents their interests. The challenge for public policy is how these beneficial aspects of unionism can be enjoyed without bringing into being some undesirable features. There are two principal classes of undesirable features.

One follows from the monopolistic wage effects of unionism: when unions push up their wages, product prices tend to rise reducing the real incomes of consumers and encouraging a reallocation of labor that puts downward pressure on the wages of nonunion workers. Because the employer of unionized labor is trying to pass along his wage increases to consumers and nonunion workers, it is appropriate to think of this situation as one in which union workers and the employer of union workers are imposing costs on consumers and nonunion workers.²

The employer will try to offset the union-induced wages not only by raising prices but also by substituting (where possible) other factor inputs (such as supervisory

² If product markets were completely competitive and the unionized employer were unable to pass along to consumers his higher wage costs, then the union wage gains could be enjoyed at the expense of the employer's profits. However, this can only be a transitory situation as the lower rate of return on capital invested in this firm would encourage capital to move to nonunion employers and, in time, the unionized employer would go out of business. In other words, when a single firm bargains with a union, the union needs some element of imperfect competition in the product market or some nontransferable rent for its wage gains to be more than temporary. If all firms in a competitive industry are unionized, then product market competition and unionism are compatible. Here the union's wage increases are taken at the expense of the consumers' surplus. However, there are very few lasting cases of entire competitive industries being organized without the assistance of government supporting industry-wide unionism.
labor, materials, and physical capital) for union labor and by subcontracting certain separable activities to other firms. In response, the union may attempt to limit the employer's offsetting actions and thereby extend the provisions of the collective bargaining contract to cover such issues as the operation of machines and the work performed by nonunion labor. In this way, an initial contract restricted to wages becomes a device to regulate many of the firm's internal operations and productivity may suffer.

The second undesirable feature of unionism occurs when unions act in concert as a pressure group on democratic government and, by swaying public policy, extract benefits at the expense of those groups in society with little influence on government. The activities of unions as a pressure group are sometimes justified as offsetting - perhaps neutralizing - the pressure group activities of employers, but this supposes that the welfare of employers is set against that of unions. In fact, there are many areas of economic policy - such as government regulation of industry and the conduct of international trade - where the interests of employers and unions may coincide. Their common goal is to increase the rents to their firms and industries before determining how these rents should be split among the various groups of workers and owners.³

³ Not only in matters of national economic policy may the interests of labor unions and employers coincide. In multi-employer collective bargaining agreements, some employers may welcome and support the union principle of extending a common wage rate to all employers in the industry. That is, the practice in multi-employer collective bargaining agreements of imposing relatively high wage costs on potential competitors may act as a barrier to entry and serve the interests of entrenched employers as well as the existing workers as represented by their labor union. As Williamson (1968, p. 114) notes, ....if the unions in oligopolistic industries key their wage demands to the profit performance of the largest firms and insist on substantially identical terms from all members of the industry, wage barrier effects which reinforce the oligopolistic structure of the industry can result.
Every democratic country faces this challenge of designing a system to minimize the undesirable aspects of unionism and to maximize unionism’s potential as a constructive element in society. The degree to which the devised system is successful in nourishing unionism’s desirable features will depend upon many factors, but there are some general principles that should guide the design of an effective regulatory system. The purpose of the rest of the paper is to illustrate these principles from the experience of specific countries.

**Decentralization**

The first design principle concerns the focal point of collective bargaining: in general, at least in a society where a substantial segment of the work force is not unionized, the greater the extent of decentralization of unionism and collective bargaining, the greater the tendency for the desirable features of unionism to outweigh the undesirable aspects. Collective bargaining at the enterprise level is less likely to generate monopolistic wage increases than collective bargaining at the industry-wide level. Also, productivity-enhancing work arrangements at an enterprise are more likely to be reached when the union has the authority for bargaining over wages at that enterprise than when collective bargaining is at the level of the industry or higher. Furthermore, the leverage that unions exert as a pressure group on government is minimized if the locus of power in the union is at the local level,

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4 How are these principles derived? As in most normative economics, they derive from a mixture of abstract reasoning and empirical evidence. The empirical record by itself cannot provide normative judgments because the data speak to us only through some preconceived filter. I use economists’ conventional filter—neoclassical economics—to organize and interpret the facts. The latter part of the paper is designed to provide support for the principles prescribed in this section.
not at the economy-wide level.\textsuperscript{5}

The State’s Neutrality

The second aspect of responding appropriately to the challenge posed by unionism is that public policy should be limited to specifying even-handed rules of the game within which bargaining takes place. Government (in all its various guises) should not act in a discretionary manner. Such discretionary acts occur when government intervenes to help settle a strike or when it grants favors to one party. In these circumstances, once government has intervened, the probability exists that it will intervene again. This, in turn, affects the behavior of the union and management, one of whom will become more intransigent in bargaining believing that, at last resort, it may be able to call upon government authority for help. Moreover, when government goes beyond establishing and enforcing the rules of the game and becomes involved in particular bargaining contests, collective bargaining tends to become politicized with the consequence that bargaining outcomes become tied less to the economic circumstances of the bargaining setting and more to the political exigencies of the moment. To minimize this, government’s role should be to put in place a legal framework that favors neither party, to intrude upon their actions only when those not expressly represented in bargaining will suffer egregious harm, and then to be uninvolved and allow the system to work without interference.

The State’s Disengagement

A third principle in designing a system that maximizes the beneficial aspects

\textsuperscript{5} For an appraisal and rejection of the argument that more effective economic reforms can be undertaken when the locus of union power is embodied in a central confederation, see Pencavel (1997).
of collective bargaining is for government to leave as much as possible for the bargaining parties to determine rather than to specify the content and manner of bargaining. This is because the sort of agreements and procedures that suit one pair of bargainers may not be at all appropriate for another. Whereas an efficient system is likely to be characterized by diversity in collective bargaining structures, legislation is apt to prescribe one model or a few models of collective bargaining for all circumstances. Let the collective bargaining structure and the content of collective bargaining agreements conform to what each firm's workers and management find convenient and efficacious.

**Competitive Markets**

The fourth principle guiding the legal framework on collective bargaining concerns public policy with respect to all labor, product, and financial markets. An important argument in this paper is that the degree to which unions act in a constructive fashion depends not only - or even, not principally - on the regulations covering unions and collective bargaining, but on the manner in which nonunion labor markets, product markets, and financial markets operate. In other words, the most effective constraints on monopolistic wage practices by unions and monopolistic price practices by unionized employers are provided by a competitive market environment. Hence, we must look to rules and regulations throughout the economy and not merely in the unionized sector of the economy to produce a framework that maximizes the prospect for unions to be a productive force in the economy.

These four principles help guide the description and assessment of the industrial relations systems of Australia, New Zealand, and Britain below. It is important to realize, however, that the returns from complying with any one of these four principles
may be meager without also putting into effect the others. In other words, these principles are highly complementary and they yield their highest returns when applied together. Thus, the benefits from decentralized bargaining (the first principle) will be small if markets are non-competitive (the fourth principle) because, with non-competitive markets, even if collective bargaining takes place at the level of the firm, unionized firms can transfer monopolistic wage bargains to vulnerable consumers. Or the gains from a legal code that refrains from specifying what firms and unions may bargain about and how they may bargain (the third principle) will be undermined if the executive branch of government is inclined to intervene and influence collective bargaining outcomes (the second principle). In this instance, what is gained in the content of the legal code is lost by the activities of another arm of government. In fact, it may be difficult to determine whether the state is being neutral if it is highly engaged in the details of collective bargaining: one person may interpret one intervention by the state as favoring one party while another person may view that same intervention as abetting another party.

So the real advantages from applying these four principles are reaped when all operate and supplement one another. There is a greater chance of generating constructive unionism if these four principles are applied and a developing country seeking to fashion its laws regulating collective bargaining is likely to cultivate a better climate for industrial relations if it is guided by these principles.

We turn now to draw selectively upon the setting and circumstances of industrial relations in three countries - Australia, New Zealand, and Britain - to demonstrate the import of these principles.
A successful collective bargaining system is one that has procedural and substantive components: the procedural component is that the employers and workers should have the opportunity to participate in determining the terms and conditions of employment; the substantive component is that collective bargaining outcomes should reflect the productivity of the underlying resources and should encourage the growth in productivity. There is a very important role for the law in contributing to the design of a well-functioning collective bargaining system. However, as in other aspects of regulation of behavior in society, it is important to recognize that the law's general goal is to facilitate interactions between people, to set up the rules of the game within which the parties operate, and not to specify in detail how they should behave.

In industrial relations in particular, there is a tendency to believe that the law should regulate many detailed aspects of behavior. The origins of this belief are varied, but quite often they stem from the perception that collective bargaining between unions and management sometimes results in wasteful and ugly strikes that could be avoided by specifying an alternative mechanism for the resolution of disputes. The result is that, in some countries, a vast legal code has developed designed simply to define exactly how the parties should conduct themselves in various circumstances and what the content of collective bargaining agreements should and should not be. In these cases, the collective bargaining system has largely been co-opted by lawyers and civil servants with the result that rank-and-file workers are apt to feel totally removed from the system and that
collective bargaining outcomes often have little relation to the underlying productivity of the resources. Good examples are provided by New Zealand's and Australia's industrial relations systems which, until recently, encased both employers and trade unions in a centralized, highly legalistic and complex set of both substantive and procedural rules (Williams (1993, p.116)). Though this quotation is taken from a description of New Zealand's system, it applies to Australia's, too. Both countries' systems shared the feature of being extensively regulated by quasi-judicial bodies. I sketch some key features of each country's system before making some general observations.

The Old System in New Zealand

Until the 1980s, New Zealand's industrial relations system had a multi-layered bargaining structure, some bargaining at the national level covering entire industries and some at major enterprises relating to the pay of particular groups of workers. At its base, however, was a judicial system to which the parties could appeal to settle differences. These differences were resolved by a labor court (at one time called an Arbitration Court and at another an Industrial Commission) that was endowed with remarkably broad authority to set wage minima in a wide range of occupations in private industry.

The typical procedure was for the President of the Federation of Labor to file a case for a wage increase in the name of a union that had members in many different industries. This might be the carpenters' union or the metal workers' union. The court would hear the claim and the Executive Director of the Employers' Federation would then lodge a formal opposition to the claim. Expert witnesses would be drawn upon and typically the Government Statistician would be called upon by both parties, first giving
In 1979-80, the key occupation were the fitters in the metal trades. About 92% of workers receiving settlements had wage increases within one percent of the increase awarded the metal fitters.

The court’s decisions were binding on the parties without right of appeal.

The court’s decisions were felt throughout the economy because the union represented workers in many different industries. Moreover, the court’s decisions were guided principally by the notion of maintaining wage differentials among workers in different occupations so that soon the wage increase secured by the carpenters or metal workers was transmitted to all workers in the economy including the public sector. The result was that variations among workers in their wage increases were small. The court could and usually did extend its wage judgments to employers not originally listed in the case so that there were virtually no firms outside the reach of its decisions and, to a worker, there were few tangible benefits to union membership.

The compulsory arbitration system was designed originally as an alternative to strikes. That is, unions that registered under the Industrial Conciliation and Arbitration Act of 1894 renounced the right to strike and, until 1987, could be prosecuted for striking. In practice, prosecutions were uncommon and strikes occurred as frequently as in other economies. According to the data in Table 1, in the 1975-84 decade (in the fifth column) before the economic reforms of the past twelve years, New Zealand’s strike record was not

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lower than countries where the eradication of strikes has not been a major goal of the regulations governing unionism and collective bargaining.

A principal purpose of the system as originally conceived was, therefore, not accomplished. The unions themselves found the source of their authority derived from their statutory rights, not from an active and involved membership. Trade union membership was made mandatory for most workers in 1936 so unions were not required to tailor the services they provided workers by the need to compete for new members. Furthermore, the law explicitly required unions to attend to the issues of wages and work hours and prohibited unions to undertake social, welfare, or educational services for their members. The principal actors in the system were not the workers and the employers, but lawyers, civil servants, and academics.

The Old System in Australia

Australia's labor arbitration system may be traced to the Conciliation and Arbitration Act of 1904, one decade later than the legislation that founded New Zealand's court. To replace what was described as the barbarous expedient of strike action, a

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7 From its inception [by the 1894 Industrial Conciliation and Arbitration Act], this system was hostile to strikes. The concept of the right to strike was fundamentally at variance with the principal aim of the legislation; the resolution of industrial conflict by compulsory third party legislation. Although the legislation never totally prohibited strikes, strikes by unions registered under the Act were unlawful in almost all circumstances...it soon became evident that attempts to enforce a prohibition on strikes were largely self-defeating (Anderson (1994), p. 125).

8 A registered union claiming membership of at least fifty percent of the potential membership in a sector could seek and would be granted the right of exclusive coverage and representation of a given occupation with no right accorded any competing group to represent the same workers.
The minimum wage rates are often justified as providing a safety-net function. In fact, they are ill suited to this task. There is not a single safety-net, but a multitude because of the complex interlocking of industry awards and occupation awards. Moreover, the minima are much higher for some workers than for others so they do not apply simply to low paid workers.

The compulsory arbitration system was devised in Australia that imposed wages and other conditions of work on workers and firms even though they may not have been in any dispute! There were two elements of compulsion: one arose because the decisions of the tribunals were legally binding; the second element came about because the employers or the unions (usually the latter) could oblige the other to address a range of issues through the tribunals and all that was required to have these issues addressed was to present them to the relevant court. One party was obliged to bargain if the other wanted it to; transacting was not a voluntary matter.

The system was complex with a layer of federal tribunals interacting with state and even industry tribunals. In effect, the courts set minimum conditions for work and these conditions might embrace not merely wages, but other aspects of the employment contract including work hours, hiring and firing rules, vacations, and procedural issues pertaining to the manner in which grievances are settled. In many cases, the courts granted the unions closed shop arrangements. As the courts decisions (or awards) specified only necessary terms of employment, a second tier of bargaining to raise wages above these minima (sometimes called over award payments) emerged in certain industries. Indeed, through this second tier of bargaining, a gap emerged between the wages of workers in unionized plants and those in nonunionized plants. Kornfeld (1993)

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estimated this gap to be about 7-10% in the mid-1980s. The courts’ awards often came in the form of elaborate tables that made fine distinctions among detailed occupations.

A union had to register with the arbitration body so that it had access to it and so it might enjoy the privileges accompanying registration. One such privilege was that, once registered, a second union could not be registered if there already existed another to which employees could conveniently belong. Evidently, existing unions were largely protected from competition from new unions. In general, a registered union operated in an environment where the dominant controls came from above, not below: that is, once registered, a union did not have to show support among the employees it represented nor did it need the recognition of its members’ employers to represent these workers; on the other hand, the law strictly regulated many of the union’s internal operations including its finances, any proposed merger with another union, and the rules governing the election of officials. The result was that the typical union looked first not to its members and the workplace as the source for its authority, but to regulatory bodies dominated by civil

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10 The 1904 Act provided a considerable stimulus to union membership, therefore.

11 In fact, a union could ask that a government official monitor an election of its members in which case the election costs were financed from public funds. In keeping with the dominant belief in Australia that shortcomings in industrial relations require more intervention by the law, jurisdictional disputes between unions have been addressed by legislation encouraging union to merge. (Does this replace inter-union disputes with intra-union disputes?) The threshold defining an authorized union was raised from 100 members to 1,000 in 1988 (by the Industrial Relations Act) and then further to 10,000 members in 1991 (by the Industrial Relations Legislation Amendment Act). After complaints were filed with the International Labour Organization that these higher minimum numbers contravened the ILO’s precept of freedom of association, the government reestablished the original 100 member threshold.
servants and lawyers. The system did not engage a plant's union and employer in the joint resolution of ongoing problems at the workplace, but pitted the union and the employer as adversaries in litigation.

The 1904 Act not only stimulated the growth of unionism, but also led to the creation and spread of employers' associations. There was little incentive for an employer to avoid belonging to such an association as non-membership conferred no advantages. In submitting claims to the tribunals, a typical union's practice would be to serve very many employers and this tactic automatically made these employers a party to the claim whether they wanted to be involved or not. Expressed differently, the Act's stimulus to unionization also provided an impetus to cartelization among employers whose effects are unlikely to have been restricted to the labor market, but probably manifested themselves in more product market cartel-like agreements as well.

12 A 1991 survey illustrated this by documenting that only one quarter of all unionized workplaces exhibited meaningful union activity (such as having officers engaged in union work or holding regular meetings). See Davis and Lansbury (1993).

13 In most countries, unions emerged as an expression of worker discontent. However, one view of twentieth century unionism in Australia is that it is a creation of the state's arbitration system. Thus, Howard (1977) writes, The Australian Trade union can be regarded in general as an institution called into existence by a bureaucratic mechanism (the arbitration system) to enhance the functioning of that mechanism. Unions generally have not succeeded in carving out for themselves an industrial role that is independent of the arbitral system, and the efforts they have made in this direction have not been sustained. Only slightly different is Scherer's (1983, p.175-6) view: It is no great revelation to observe that union principals have captured the arbitration tribunals. The tribunals were established not to control unions but to encourage them....The existence of the tribunals makes long strikes unusual and makes it unnecessary for unions to acquire large reserves and a disciplined approach to strike action. Thus an attenuated form of [State] syndicalism lives on in one of the most bureaucratically regulated trade union movements in the Western world.
As in New Zealand, the fraction of workers who belonged to unions understated the reach of unionism.\textsuperscript{14} This was because the wage decisions reached in National Wage Cases diffused quickly throughout labor markets as other courts applied the same wage increases to the workers (whether unionized or not) in their jurisdiction. The courts were attracted to the principle of maintaining prior wage differentials. When the courts were asked to certify a prior agreement between unions and employers associations, they often applied an extension to a wage decision so that it covered all firms in an industry.

The express purpose of Australia's 1904 legislation (as was New Zealand's a decade earlier) was to design a system that made strikes unnecessary. Indeed, for many years, strikes were categorically forbidden and (on paper, at least) subject to specific penalties. Nevertheless, these penalties were rarely applied and the various regulations covering strikes were enforced infrequently. As a result, Australia has been characterized by a large number of strikes. Though frequent, the strikes are usually short as they are intended not to extract concessions out of recalcitrant employers, but to make a statement to the arbitration commission. (See Table 1.) This statement may take the form of exhorting the commission to bring forward a pending case or of protesting a recent decision of the commission. The original intent of the legislation - to replace strikes with quasi-

\textsuperscript{14} The OECD (1994) reports the fraction of workers belonging to unions in 1990 was 40.4 percent in Australia and 44.8 percent in New Zealand. On the other hand, the coverage rates (the fraction of workers whose wages are directly affected by union activity) were 80 percent in Australia and 67 percent in New Zealand. Among public sector workers, the coverage rates were 98 percent and 94 percent, respectively.
judicial procedures of dispute resolution - has long been forgotten and, perversely, the system promotes the use of brief strikes to publicize complaints.  

Do the Courts Make a Difference?

Some research has found that wage differentials in Australia and New Zealand are broadly comparable with those in economies lacking such intrusive wage-fixing tribunals. The wage structures are not identical, but there is sufficient similarity for academics to pose the question of whether the arbitration methods in Australia and New Zealand were simply expensive window-dressing. According to this argument, the tribunals were the vehicle for delivering the same wage structure that would have obtained in their absence. This argument is sometimes accompanied with the observation that, in many instances, the courts ratified agreements that were already reached by unions and employers’ associations so, it could be argued, the courts followed rather than guided industrial relations.

This reasoning is unpersuasive. It would be equivalent to the argument that, because a majority of legal cases are resolved by the plaintiffs and defendants themselves before they are tried in court, the law has no effect on out-of-court settlements reached. The fact that an unresolved dispute will be handled by the courts has important consequences for the content of the out-of-court agreements reached. Similarly, in the old New Zealand and Australian industrial relations systems, at the last resort, judicial authority may be introduced into the bargaining between the parties and impose settlements covering many workers without regard to the circumstances of particular firms

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or the productivity of the particular workers. The negotiations that take place prior to or separate from the arbitration system may be described as bargaining in the shadow of the law. This means that the substantive content of the collective bargaining agreements (in addition to the very fact that agreements were reached) is determined in part by (1) the knowledge that, ultimately, one or other party could take the dispute to arbitration and (2) each party’s expectations of how arbitration would settle the dispute.

In those cases where a second tier of bargaining over pay took place over and above the wage level stipulated by the courts, an economic analysis of this bargaining would interpret the award wage or court-determined wage as the union’s threat point or security level. Without the involvement of the courts, the threat point would almost certainly have been lower. Most bargaining solutions have the feature that each party’s share of the payoffs is a positive function of its threat point. Therefore, the fact that wages may exceed the court-prescribed minima does not mean that the court’s awards are irrelevant. Far from it, by providing the union with a floor or fall-back position in wage bargaining, the courts play a key part in raising wage levels.

This means that the Australasian system’s effects on the wage structure was secondary to its effects on the wage level. The recourse that unions had to the courts to press their claims made wages the fixed point in the system to which all other prices and quantities had to adjust. Instead of being on a Gold Standard, Australia and New Zealand

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16 I use deliberately the evocative phrase of the admirable article by Mnookin and Kornhauser (1979) on divorce settlements reached outside of the courtroom.
were on a Labor Standard. For good reason, a principal arbitration judge described himself and his colleagues as the economic dictator of Australia.

One should expect at least two types of adjustments to the wages set by this Labor Standard. One is a tendency for cheaper imports to substitute for higher priced domestic products. To counteract this tendency, high tariff barriers and other import controls were needed to protect Australasian manufacturing. A second consequence of the Labor Standard was for unemployment to rise as consumers substitute away from products with high labor content. These unemployment-increasing consequences were negated by expansionary monetary and fiscal policies whose undesirable side-effects were countered by foreign exchange restrictions, budgetary deficits, and economy-wide controls on prices, interest rates, and rents. In short, the Labor Standard fostered an economy buffeted by

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17 The label comes from Hicks (1955) description of British labor markets. It is, in fact, a more accurate characterization of the Australasian labor markets than of Britain's. Hicks wrote, "...the world we now live in is one in which the monetary system has become relatively elastic, so that it can accommodate itself to changes in wages, rather than the other way about. Instead of actual wages having to adjust themselves to an equilibrium level, monetary policy adjusts to the equilibrium level of money wages so as to make it conform to the actual level. It is hardly an exaggeration to say that instead of being on a Gold Standard, we are on a Labor Standard" (p. 391).

18 This quote is taken from Dabscheck and Niland (1987, p. 162).

19 By 1970, Australia, after its neighbor New Zealand, had clearly the most highly protected manufacturing sector amongst the industrial countries. The high Australian manufacturing protection in 1970 was strongly biased towards labor-intensive industries. This was partly a reflection of the motives of income redistribution towards labor, and employment creation or preservation, in Australian protection decisions. It also reflected the strength of the protectionist ideology in Australia, which at times supported protection to any level necessary to secure the commercial viability of an industry: protection had to be highest for the labor-intensive goods in which Australia's comparative disadvantage was strongest. (Garnaut, 1983, p. 321).
government controls, regulations, and protection in most markets - financial, product, foreign trade.

IV. Labor Relations Reform in Australasia

The Need for Reform

This system attenuated the growth in New Zealand’s and Australia’s standard of living. In 1938, New Zealand’s GNP per capita was 92 percent of that of the U.S. By 1950, it had fallen to 70 percent and, by the beginning of the 1980s, to about 50 percent. At the turn of the century, Australia’s GNP per capita was the highest in the world; it stood at 174 percent of that of the U.S.A. By 1976, the ratio of Australia’s per capita GNP to that of the U.S. was 79 percent. And the comparison here is not with an economy that was growing fast! By the 1980s, the need for reform was evident. The two Australasian countries reacted differently: New Zealand’s reaction was to initiate a series of radical reforms that together constitute the most comprehensive economic reforms by any economy over the past fifteen years; Australia proceeded at first in the opposite direction.

Australia’s Reforms

In Australia, the rise in unemployment and wage inflation at the beginning of the 1980s induced an agreement (the so-called Accord) between the Labour Party and the ACTU (the union federation, the Australian Council of Trade Unions) to coordinate their economic policies. Soon after, the Labour Party became the governing party and the unions became a dominant force in the formulation of government economic policy. The pre-1980 industrial relations model was amended to allow for wage increases at the enterprise level that were tied to productivity gains, but other than this the key features of
the Australian system - centralism and uniformity - were retained.

The Australian industrial relations system came under increasing criticism for being inflexible and, impatient with the pace of reform at the federal level, the state of Victoria introduced changes in 1992. Victoria's Employee Relations Act specified that it was no longer automatic that employees be represented by unions in representations to the labor tribunals or in collective bargaining. The reaction of the unions was to flee the jurisdiction of the state of Victoria's labor tribunals and to register their awards to the federal tribunals.

The federal government responded with an attempt at reform in the form of the Industrial Relations Reform Act of 1993 (which came into effect in March 1994). The stated goal was to reduce the influence of the arbitrated National Wage Cases and to increase the importance of plant-level agreements by allowing for enterprise-flexibility agreements that modify the general awards to suit the particular circumstances of the plant. These agreements need not involve any union. However, the enterprise-flexibility agreements must be approved by the Commission before becoming legal and a registered union may present a case before the Commission regarding a particular agreement even if the union has no members at the workplace.

Although the Act favored decentralization of collective bargaining agreements, it left in place the Commission's ability to set minimum employment conditions and, therefore, retained the Commission's influence on the content of collective bargaining.
Specifically, the 1993 Act established two branches within the Commission. One was an award branch that continued the traditional arbitration functions of the past. The other was a bargaining branch that endorsed agreements negotiated between unions and employers and that promoted bargaining between workers (whether unionized or not) and employers. What guidance did the Act provide the Commission in setting minimum wages? The Commission was to consider “...so far as possible and appropriate to Australian practice and conditions... (a) the needs of workers and their families, taking into account the general level of wages in Australia, the cost of living, social security benefits and the relative standard of living of other social groups; and (b) economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment.” It might have been more useful to specify what the Commission need not consider in setting minimum wages.

Although the move toward plant level bargaining is desirable, Australian

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20 Specifically, the 1993 Act established two branches within the Commission. One was an award branch that continued the traditional arbitration functions of the past. The other was a bargaining branch that endorsed agreements negotiated between unions and employers and that promoted bargaining between workers (whether unionized or not) and employers. What guidance did the Act provide the Commission in setting minimum wages? The Commission was to consider “...so far as possible and appropriate to Australian practice and conditions... (a) the needs of workers and their families, taking into account the general level of wages in Australia, the cost of living, social security benefits and the relative standard of living of other social groups; and (b) economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment.” It might have been more useful to specify what the Commission need not consider in setting minimum wages.

21 See Coulthard (1996) on the opportunities available to unions to become involved in wage-setting in the non-union sector and on the reasons for the small numbers of non-union contracts.
industrial relations remains a system where legal regulation is much too intrusive. This encourages the politicization of bargaining and disputes and results in a tendency for bargaining outcomes to bear only a loose connection to the actual conditions at workplaces. Many Australians believe the changes in the last decade have been profound. In fact, by leaving the courts as the key element of the system, the changes in the collective bargaining framework have been half-hearted.\textsuperscript{22}

\textbf{New Zealand's Reforms}

New Zealand's reforms have been much more thorough and radical than Australia's. Prompted by a foreign exchange crisis in 1984, a new Labour Government initiated a sequence of remarkable measures throughout the economy. Labor market reform was postponed. The 1987 Labour Relations Act introduced some mild reforms. Restrictions on what unions could do were lifted; unions were now permitted to carry out any legal services on behalf of their members. Workers were also given the opportunity to change their advocates so that, in principle, the market for worker representation could be contested.\textsuperscript{23} Unions (though not employers without union agreement) were allowed to

\textsuperscript{22} In 1996, a new Liberal/National Party coalition government declared that reform of industrial relations was a high priority. A Workplace Relations Act (1996) addressed the determination of wages in nonunion (or close to nonunion) plants. In these circumstances, an employer may reach agreements with his employees either individually or collectively, but there is a requirement that the wages so negotiated are not less than those established by an award (unless the business is in crisis conditions). A newly established state agent, an Employment Advocate, would check to ensure this requirement is satisfied. In other words, the role of the awards as a floor on wages remains. The 1996 Act also made illegal employment preferences for union members and compulsory unionism. All in all, the Act does no more than tinker with the basic features of the system.

\textsuperscript{23} This change was clearly intended to actively encourage unions to raise the quality of their services to members, and to throw away their unfortunate image in some quarters
operate outside of the arbitration award system. Amalgamations of unions were encouraged by prohibiting unions of less than 1,000 members. Industrial strike activity was legalized. It was widely recognized, however, that, in deference to its traditional electoral support, the government had not tackled reform of the labor market with the same zeal and imagination that it had reformed other sectors of the economy.  

The 1991 Employment Contracts Act

New Zealand’s 1991 Employment Contracts Act (ECA) represents a more drastic reform. At its heart, its goal is to allow workers and employers in a particular establishment to choose their bargaining method. The Act introduced the notion of a bargaining agent. This agent could be a labor union or it could be any other entity or person selected by a worker or it could be the worker himself. The intent is to inject competition in the market for representation of workers in bargaining. Union membership is, therefore, no longer compulsory. An employer is required to bargain with the agent a worker has chosen for himself although no contract is allowed that would establish a preference for or against union workers.

An Employment Court and Employment Tribunal are empowered to address

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As Brook (1990) writes, The Labour Relations Act was in no sense an attempt to break the mould established by the Industrial Conciliation and Arbitration Act of 1894. In particular, it retained an emphasis on the role of unions as primary protectors of workers interests, and a view of the employment relationship as an employer-union, rather than employer-worker, matter (p. 76).
In the past, union membership was a necessary prerequisite for access to these types of courts that dealt with complaints over the operation of employment contracts. The new courts removed this requirement.

There are no worker separation restrictions in New Zealand's statutory law comparable to Europe's job protection legislation though there is nothing preventing an employer and the worker's (or workers') agent from negotiating such a restriction. However, the Employment Court's decisions have granted dismissed employees considerable rights. Apart from matters covered by statute (such as nondiscrimination rules, minimum holiday entitlements, and minimum wages), employment contracts may embrace any issues.

The consequence of the Act has been a growth in enterprise-level bargaining. Union membership has fallen although in some sectors of the economy (such as the public sector and in large firms) collective bargaining remains the dominant method of determining the terms of employment. It is significant, however, that an important nonunion sector is emerging that will operate to discipline wage-setting in the union sector without the need for government controls or offsetting measures. The coverage of collectively bargained contracts fell from over 70 percent in the late 1980s to about 40 percent in 1994. There has been a sharp fall in the extent of strike activity as is evident...
from Table 1: in the first half of the 1990s, New Zealand had about one-fifth the days lost through strikes that it experienced in the last half of the 1980s. More disputes have been resolved at the level of the enterprise.

Whereas at one time there was little variation among workers in their wage increases, there has been a noticeable increase in the range of wage increases with some workers in the recession years of 1992-93 receiving zero or even negative wage increases, while other workers have enjoyed substantial raises. This is one manifestation of a greater variation in work and compensation arrangements. For instance, there has been a growth of contracts specifying workweeks shorter than the traditional forty hours and there have been more performance-related compensation schemes. Employment has risen by 14 percent in the four years from December 1991 to December 1995, the unemployment rate has fallen correspondingly, and labor productivity has risen (see Evans at alia (1996)).

Because all sectors of New Zealand’s economy have been the subject of reform over the past decade, it is impossible to determine the particular contribution made by the Employment Contracts Act. Indeed, as has been emphasized in the arguments above, the positive impact of any labor market reform such as the ECA will depend upon the degree of competition in other markets so that, in the presence of such complementarities, it is inherently impossible to parcel out the separate effects of different types of reform.²⁸

²⁸ This is why I find Kasper’s (1996) evidence of the effect of ECA unconvincing. He contrasts New Zealand’s labor market performance from 1990 to 1995 with that of Australia and claims that New Zealand’s faster growth in employment and in real GDP ....offers fairly convincing evidence that decentralized labour markets yield more employment, growth, and, over time, wage income than a regulated, centrally coordinated industrial order (p. 49). While I agree with Kasper’s views regarding the benefits of
However, surveys of employers identify the ECA as responsible for a significant positive impact on productivity.\(^{29}\)

**Lessons**

The argument here is not that the Employment Contracts Act of 1991 is a great and wonderful piece of legislation deserving of emulation. The immediate indications are that it will inspire unions to be more responsive to their membership, it will foster different types of employment contracts reflecting the wide variation in the preferences and interests of both workers and employers, and it will effect outcomes that are conducive to the growth of productivity. However, much more time needs to elapse before more confident statements about the Act are warranted.

New Zealand’s and Australia’s experiences provide several lessons.

First and most obviously, recent events in New Zealand attest to the fact that there is nothing immutable about the legal structure within which labor markets operate. Here is a country that followed one pattern for some eighty years and then changed that decentralized labor markets, I am skeptical that the experience of the two economies over the expansion phase of their business cycle testifies to the ECA alone. Even if no other aspects of New Zealand’s economy had been reformed, four years of a business cycle recovery hardly constitute fairly convincing evidence of the effects of one piece of legislation. Also, it should be remembered that New Zealand (unlike Australia) still has a national minimum wage. In 1996, it stood at a little over 40% of average earnings. Maloney and Savage (1996) also draw inferences about the ECA from a comparison of New Zealand’s and Australia’s experiences. They seem more equivocal about the effects of the ECA on productivity growth and wages.

\(^{29}\) Evans *et alia* (1996) refer to a survey of employers that classifies 80 percent reporting improvements in productivity since the ECA and a third singling out the Act as the most important cause of this increased productivity.
pattern discontinuously. The change did not require the collapse or evasion of democratic methods and institutions. New Zealand's way of doing things in labor markets meant one thing in 1976 and means something quite different in 1996. Even though observers within countries are apt to believe that their institutions and conventions are fixed and unchangeable, New Zealand's experience shows there is nothing unalterable about the legal framework of a country's labor relations. Democratic countries have options when it comes to defining the legal structure of employment contracts.

Second, Australia's and New Zealand's old systems of dealing with collective bargaining involved the state intruding heavily into the operation of employment contracts. The intrusion took the form of extensive rules and regulations that covered workers in diverse types of employment and with different concerns in a variety of situations. By their very nature, such broad edicts do not reflect the particular circumstances of an employer or the particular preferences of a worker. The system was determining the terms and conditions of work for the vast majority of workers regardless of their productivity or their wishes. Decisions that are naturally left to the employer and the individual worker (or the union) to determine were usurped by the agencies of the state. This sapped the enterprise of the union movement and stultified the growth in productivity.

Third, it is important to recognize the limits of the law in open societies. In New Zealand and Australia, under the pre-1980s system, even though many strikes contravened the terms of the law, they took place and this defiance of the law brought it into disrespect. The fact is that, when a sufficient number of people in society believe a law is fruitless or unwise, it will tend to be disobeyed even if it remains on the statute
books. Legislation that runs counter to a large section of society's wishes will simply be slighted and the law will tend to be disdained. This makes it especially important not to legislate on matters that cannot be enforced.

The notion behind New Zealand's original 1894 legislation and Australia's 1904 legislation was to substitute mandatory arbitration for strikes. A better posture for the law emerges if we first ask why the law should be involved in labor disputes at all? The law should certainly insure that a dispute should not cause damage to a person or his personal property, but beyond this, if two parties choose to disagree over the terms of an employment contract, then this is their affair and not the state's. It may be regrettable that they disagree, but the state's task is not to resolve disagreements (even if the state could), but simply to establish a framework within which the parties themselves should forge a settlement.

The exception to this occurs when the costs of the dispute are borne not merely by the parties themselves, but also by outsiders. Thus, when all fire-fighters go out on strike and there are no alternative non-striking fire-fighters, the principal losers are those consumers whose property goes up in flames. In other words, when monopolistic services are struck, the costs are borne in part by consumers who are not represented in the dispute. There is a case, therefore, for the state to legislate in matters involving disputes of monopolistically produced goods and services, but even this legislation should set up rules for the parties to follow; it should not involve the state in discretionary behavior such as occurs when politicians involve themselves in disputes.

Note that this argument does not identify disputes in sectors producing
essential goods or services as candidates for distinctive treatment by the law. The consumption of food is about as essential as anything to our livelihood, but if the production of food occurs in competitive conditions then there is no reason why consumers should suffer if one producer's output is suspended because of a strike.

V. Britain: Unregulated Collective Bargaining?

Britain's Voluntary System

While New Zealand and Australia provide examples of systems where (until recently) collective bargaining was extensively regulated by the state and where the state's arbitration mechanisms underpinned wage determination throughout the economy, Britain forms something of a contrast - a system which, except for some critical issues, has evolved largely independent of regulation by the state. It is often described as a voluntary system in that employers and unions have found it in their interest to reach agreements without the law compelling them to do so. Consequently, it is sometimes argued that Britain's collective bargaining system provides an example of what happens to industrial relations when little is regulated by the state.

The labor union movement, the collective bargaining arrangements, and the internal management of unions have developed with little statutory regulation. There is no

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30 There was a brief period in which the law was more intrusive. In 1971, the Conservative Government passed an Industrial Relations Act that made collective bargaining agreements legally enforceable contracts unless the parties specified otherwise. This was, in fact, what happened: contracts routinely inserted disclaimer clauses of the form this is not a legally enforceable agreement. The Act was largely inconsequential because it was boycotted by most unions and it was repealed by the Labour Government in 1974. See Kahn-Freund (1983).
law obliging private employers to bargain with unions nor anything that makes collective bargaining agreements enforceable in a court. These contracts are usually brief documents, many not even specifying their duration. There is no statement in law giving workers the right to strike. Some collective bargaining agreements cover all workers in a particular industry while others are restricted to a group of workers within a particular plant. Some unions represent workers in a large number of different industries while other unions are small and are restricted to a small number of workers. The general position taken by the law on these issues is that they are best determined by the parties concerned and there is little need for regulation by the state.

Although there are some sound reasons for accepting the proposition that Britain’s system of industrial relations illustrates what can happen when the state adopts a hands-off posture, it is better to view the British system as one where the influence of the state has been indirect, not direct. We shall argue that Britain’s system illustrates the critically important role of indirect regulation of collective bargaining and unionism by the state and the consequences of the state occupying a partisan posture with respect to collective bargaining. In particular, by discouraging product market competition and by frustrating the competitive workings of nonunion labor markets, the tone of British legislation is by no means neutral or hands-off when it comes to collective bargaining. That is, the ability of unions and employers in unionized markets to raise prices and divide the rents between themselves is constrained by the degree of competition in the product markets and by competition from nonunion labor markets. In practice, the rent-seeking potential of unions and unionized employers has been enhanced by a host of government
policies.

Indirect Regulation

First consider labor markets. Until recently, there have been rules that required non-union firms with government contracts to pay prevailing wages which, in practice, meant union-negotiated wages. Given the extensive role of government expenditures in the economy, these rules affected a number of employers. Industry-specific minimum wage regulations were common in industries employing predominantly unskilled workers where collective bargaining was poorly developed.

Moreover, successive governments were not neutral in their posture toward unionism: governments actively encouraged collective bargaining and the unionization of its work force and of private employers work forces. Successive governments implemented incomes policies in attempts to reduce the pace of wage and price inflation.

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31 The extension of collectively-bargained wages to workers not covered by the collective agreements was effected by arbitration by the Ministry of Labour between 1940 to 1959. The same principle was enshrined in the Terms and Conditions of Employment Act of 1959. (See Royal Commission (1968), pp. 60-1.) The Employment Protection Act of 1975 set up the Central Arbitration Committee which had the power to oblige employers of nonunion labor to observe those terms of employment obtaining in similar unionized activities or in the same district. This was rescinded in the 1980 Employment Act.

32 For instance, consider the following conclusion from the classic study of white-collar unionism in Britain: ...most white-collar union recognition in private industry has come about, directly or indirectly, as a result of government policies and the favorable climate they created for trade unionism......[these] were also the major factors bringing about the recognition of white-collar unionism in the public sector of the economy....The industrial strength of white-collar unions, as determined by the size of their memberships and their willingness and ability to engage in industrial warfare, has generally not been sufficient in itself to force employers to concede recognition. This has also required the introduction of government policies which have made it easier for unions to exert pressure for recognition and harder for employers to resist it (Bain (1970), pp. 181-4).
and, in operating these policies, they frequently induced union cooperation by granting the unions various favors. The result was that the scope of unionism in the economy was encouraged while the competitiveness of the nonunion labor market was compromised, providing little check on the monopolistic practices in the unionized market.  

Perhaps more important has been government policy with respect to competition in product markets. Since approximately the First World War, successive governments have been suspect of competition in product markets and have actively supported the monopolization of markets. In the 1920s, under the label of rationalization, governments encouraged mergers among competitive firms believing the resulting firms would be more successful in international markets. After the Second World War, a whole gamut of industries were placed under public ownership so that, until the 1980s, major industries were state monopolies including coal, gas, electricity, railways, urban transport, airlines, telecommunications, and (for much of the period) steel. The nationalization of these industries was vigorously supported by the labor unions who recognized that public ownership tended to politicize collective bargaining. Government ministers often found themselves embroiled in disputes over wage negotiations where collective bargaining outcomes were frequently removed from the financial performance of

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33 Roy Adams (1993, p. 295) expresses it well when he writes, "Despite the absence of extensive legislation, the policy of British governments in the 20th century has not been neutral, as the policy of voluntarism is sometimes interpreted to imply. In fact, British policy has been to encourage collective bargaining. It has done so by notifying all public servants that collective bargaining is the preferred means of establishing conditions of work, by requiring government suppliers to recognize the freedom of their workers to join unions and engage in collective bargaining, and by directly intervening in many disputes in order to pressure intransigent employers to recognize unions and to negotiate with them."
the industries and were much closely tied to preserving relative wage differentials regardless of the productivity of workers.

Being monopolies, strikes in these nationalized industries imposed heavy costs on consumers. After a winter of extensive and damaging strikes in 1978-79, an unhappy electorate returned to power a government committed to denationalizing many of these industries and, indeed, some of these industries were privatized in the 1980s. However, privatizing industries is not the same as ensuring a competitive environment so that strikes against private monopolies have the same opportunity for imposing costs on consumers as strikes against public monopolies. Moreover, a number of these industries are still in the state’s hands so the unions in these sectors retain considerable leverage.

Does the degree of competition really matter for collective bargaining? Stewart (1990) has provided evidence that it does by showing that, in Britain, where firms operate in competitive product markets, wages paid to union workers are little different from those paid to nonunion workers. On the other hand, in firms with product market power and especially where there exists a pre-entry closed shop (i.e., where union membership is a prerequisite for application for the job and for employment), union-nonunion wage differentials are as high as 19 percent. His conclusion is worth reporting: ....of the establishments in which unions are found to have been able to achieve wage differentials over non-union pay levels, only 5 percent face generally competitive product market conditions. The vast majority of the establishments face only limited competition and hence possess some degree of market power. It is this monopoly power in the product market on the part of the firm that provides the main source of rents of which
unions are then able to bargain a share (Stewart (1990), p. 1136). 34

Changes in the Past Seventeen Years

Therefore, although there may have been little explicit regulation of collective bargaining and unionism in Britain, indirectly the state has been far from neutral and has lent its considerable authority to support unionism. This changed upon the assumption of power of the Conservative Government of Margaret Thatcher in 1979. Her administrations reduced the state's indirect support of unionism and collective bargaining by denationalizing a number of industries, by eliminating minimum wage floors in specific industries, and by suspending the rules extending union wage scales to nonunion employers.

Curiously, although Thatcher's administration declared itself supportive of laissez faire, it introduced new regulations in the union sector. Foremost among these new regulations were rules concerning strikes. Until 1906, a union in Britain could be sued by an employer for damages resulting from a strike. By the Trade Disputes Act of 1906, a union was determined to be immune from such legal action. Thatcher's administrations qualified this legal immunity from damages: a union became liable for damages if striking against a secondary employer; an employer could sue a union if the strike was not over

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34 The data in his study cover semi-skilled manual workers in private establishments. Also, note these are estimates of the gap between the wages of union and nonunion workers. These are not estimates of the increase in wages that unions have secured for their members over what would have prevailed in the absence of unionism. In the United States, comparable findings are reported by Mishel (1986) who concludes, "...union wage gains are greater where entry barriers, concentrated markets, and low import competition give employers discretionary pricing power....A centralized bargaining structure enhances a union's ability to exploit employer product market power in non-competitive industries, but does not provide any appreciable advantage in competitive industries." (p. 103).
industrial relations issues that the employer could address, but over, say, political issues or inter-union feuds that the employer had no control over; and a union would lose its immunity if the strike had proceeded without first secretly balloting its members and obtaining the support of a majority for strike action.

In those circumstances where the union lost its immunity, its financial liabilities for damage were proscribed by law. In instances where the union undertook strike action without first balloting its members and ignored court injunctions to desist, the union’s funds can be sequestered - as, indeed, happened with the National Union of Mineworkers in 1984. As indicated in Table 1, the number and importance of strikes in Britain over the past thirteen years has fallen considerably and it is tempting to attribute this decline in strike incidence to these legal changes. However, there are many competing explanations for this change and it is difficult to determine the particular contribution of the law.

The Conservative Governments since 1979 also changed the law to make closed shops more difficult to maintain. In particular, the 1988 Employment Act prohibited firms from dismissing workers (at the behest of the unions) who were not union members while the 1990 Employment Act made it illegal to deny a nonunion worker access to employment. In addition, laws were introduced strengthening the rights of rank-and-file union members in dealing with their own organization. It was stipulated that direct, secret, elections of union officials must occur within every five years while every ten years ballots must be held to approve any political expenditures the union makes. Union members were given rights to examine their union’s accounting records.
There is wide agreement that, since 1979, the arbitrary power of unions in Britain has fallen and part of the increased growth in productivity over the past seventeen years or so has been attributed to a decline in the obstructionist power of unions. However, it would be more interesting if we could identify those particular public policy changes that have contributed most to the growth in efficiency. On this, the legislation against closed shops is likely to have been of moot relevance as closed shops are a symptom, not a source, of union strength. Similarly, the union democracy legislation may be thought desirable to make the unions more accountable to their members, but it is difficult to imagine how the legislation could have enhanced workplace productivity.

More important is likely to have been the efforts to denationalize major industries and to introduce more competition in product and labor markets. In other words, the legal changes that have contributed most to the growth in productivity have probably been not those dealing in particular with the union sector and with collective bargaining, but those concerning all labor markets and product markets. On this, it is relevant to note, among workers covered by collective bargaining agreements, there has

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35 This is also the judgment of Brown and Wadhwani (1990) who conclude, ...the driving force behind changes in industrial relations practices in the 1980s....has been increased product market competition, precipitated by a variety of circumstance, which has obliged employers to put their own houses in order (p. 68). Similarly, Dunn and Metcalf (1996) judge that ....unemployment, including two deep recessions, and stiffer product market competition remain of paramount importance in weakening unions and stimulating management.....where we can pinpoint the law’s impact, legislative intrusion does not automatically bring the expected economic changes. Notably, when management eliminated closed shops in favour of merely recommending union membership, some economic consequences of compulsory unionism survived. (p.93). I read Brown, Deakin, and Ryan’s (1997) recent assessment as also consonant with my evaluation.
been a notable increase in the fraction of workers covered by agreements negotiated at the plant level and a decrease in multi-employer agreements.\textsuperscript{36} This tends to make bargaining agreements more sensitive to the particular circumstances of the employer and the plant and to increase the likelihood that pay increases will be linked more rigorously to changes in productivity.

\textbf{Multi-Unionism}

Because the role of the law in directly fashioning Britain’s collective bargaining system has been minor, there exists a considerable variety of institutions and conventions in British industry. In principle, this allows us the opportunity of ascertaining whether there are obvious benefits to particular arrangements by comparing establishments characterized by one structure with establishments using another. For example, consider the question of whether multi-unionism (i.e., the presence of more than one union at a place of work) increases bargaining costs, reduces productivity, or increases the incidence of strikes.

The research suggests that, where management bargain separately with each of the unions - a so-called fragmented bargaining structure - the firm’s financial

\textsuperscript{36} By the 1990s, multi-employer agreements represented about one-quarter of all collective bargaining contracts. There has also been a decrease in the fraction of workers whose wages are covered by collective bargaining agreements. In 1970, the wages of about 70\% of employees were covered by collective bargaining agreements. This had fallen to 64\% in 1985 and to 47\% in 1990. The fraction of employees who are members of unions fell from 39\% in 1989 to 32\% in 1995. In other words, there has been a steady erosion in the extent of unionism and in union-negotiated agreements in the economy. Legal changes contributed to this decline although there are other very important factors at work: the effect of two sharp recessions, the growth in product market competition, and the change in general attitudes toward employment contracts in general.
performance suffers and there is a greater incidence of strikes. However, where the unions form a single bargaining committee and management bargains with this committee around a single table, these unfavorable outcomes are not evident. In other words, where management insist on the unions joining together for purposes of bargaining with them, there are no untoward effects of multi-unionism. This is an important finding as there is a long history of groups of workers wanting to preserve their identity in separate organizations and in finding it more effective to pursue their aspirations in their distinct associations. The British evidence suggests there are no unfavorable bargaining consequences for management of such multi-unionism provided the unions band together just for the purposes of establishing a collective bargaining contract with management.

Lessons

In general, notwithstanding the changes introduced by the Conservative Governments between 1979 and 1996, the direct impact of the law in shaping British collective bargaining remains modest. This has many benefits especially in that it has permitted a variety of different institutional responses to dissimilar situations. In effect, the system lets managements and workers determine the particular type of representation and contracts that suit them without obstacles created by the law. This means also that new firms are able to craft the system that best suits them and their workers without the need to tailor the structure to existing law.

A good example is provided by the experiences of the new plants set up during

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37 See, among others, the results reported by Machin, Stewart, and Van Reenen (1993).
the past fifteen years in Britain by certain Japanese corporations. Typically, the new plants have specified a single union to represent all the workers and an important aspect of the agreements has consisted of the promise by the union not to strike but to settle all disputes during the operation of a contract by final-offer arbitration. And preliminary evidence suggests that final offer arbitration has worked well in discouraging impasses (Metcalf and Milner (1992)). Such innovations in collective bargaining are easy to introduce in British collective bargaining and it represents one of the strengths of the system. I have argued that the principal shortcomings have been and remain the consequence of indirect effects of the legal framework that tilt the system toward one of non-neutrality in collective bargaining.

VI. Conclusions

Labor unions have the potential of being a productive force in society. At a most basic level, they are a mechanism permitting workers to participate in determining their working environment and there are reasons to believe that participation does not harm - and, more likely, enhances - productivity. The problem is that accompanying these desirable aspects of unionism are some unwelcome effects having to do with the wage consequences and the pressure group consequences of unionism. Public policy in all countries has recognized this predicament and has decided that unionism and collective bargaining need to be regulated. The fundamental issue is not whether to regulate or not to regulate, but rather how is this regulation best effected.

There are two general approaches to regulate unionism and collective bargaining: one is to invoke the legal sanction and specify in law an array of rules and
prohibitions that unions and collective bargaining must conform to; the other approach is to allow competitive markets to provide the regulation and to use statutory law as little as possible. As in other parts of the economy, in the absence of externalities, a policy of letting markets supply their own discipline on workers, employers, and consumers has much to recommend it. This is the principal message of this paper. This is not a policy of unbridled laissez faire because the government has an extremely important function in specifying a balanced framework within which the system works. But, once that important responsibility has been undertaken, the best role for the government is not to be involved and to keep collective bargaining apolitical.

A policy of relying on competitive markets does not necessarily prevent a competitive industry from collaborating with an industry-wide union to set the terms of employment for all firms in the industry and, indirectly, to extract surplus from the unorganized consumers. Although it is unusual for an entire competitive industry to be unionized, this possibility provides a reminder that there are occasions when the interests of unionized workers and employers are coincident rather than opposed. For example, the fact that business interests and unions often collaborate to oppose the reduction of tariffs on an industry protected from foreign competition signals their common interests on such matters. This is why the principle of decentralization is an important component of a sound policy on unionism and collective bargaining. The consequence of this policy is to

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38 Another example is provided by the Federal minimum wage in the United States. Both labor unions and northern manufacturers have advocated increases in the minimum wage, the latter to reduce competition from manufacturers in low-wage states.
locate the source of authority in the union at the firm or plant level, not at the industry-wide level, and this reduces the effectiveness of unionism as a pressure group on government.\textsuperscript{39}

In Section II of this paper, I offered four principles to guide the role of the state in collective bargaining and, in the subsequent sections, I analyzed unionism and collective bargaining in three countries to illustrate the operation of these principles. Until very recently, the systems in Australia and New Zealand violated all four of these principles: wages were set at highly aggregative levels, the agencies of the state were partisan, the role of the law in collective bargaining was extensive, and markets were monopolized. The result was a seriously defective situation in which the inflexible working of the Australasian labor markets sapped the countries' economic growth potential. New Zealand appears to

\textsuperscript{39}The point raised in this paragraph identifies, perhaps, my principal disagreement with Brook's (1990) position on labor law reform. She writes, In employment relationships, the crucial freedom is the freedom of workers and employers to contract with one another, by whatever means and towards whatever outcomes they consider to be of mutual benefit. This does not necessarily imply a system based on individual contracting; in many situations there will be benefits to both workers and employers in collective bargaining, the use of a union to assist in arbitration on grievances, or union involvement in supplying social services to employees. In such cases, again, the guiding principle will be one of freedom of contract between unions and their members, and freedom on the part of employers in deciding whether or not to enter a relationship with a union (p. 162). I am in full agreement with this. I would simply point out that this does not eliminate the possibility that, within an industry, employers might join together to bargain with the union at the industry level (as does, for instance, the underground bituminous coal industry in the United States) to set wages and other employment terms that embrace all employees in the industry. In this instance, the employers and union collaborate to extract gains at the expense of the unorganized consumers. Thereby a cartel of employers is created that, together with the industry union, can operate as a pressure group on government. This is why I believe Brook's policy prescriptions would be more effective if augmented with an active policy of decentralization of collective bargaining.
have recognized this and has undertaken some bold reforms. Australia appears not to have come to this awareness yet.

Britain provides an illustration of the non-satisfaction of the second and fourth principles: in many different ways, the state encouraged unionism and was not neutral in promoting collective bargaining; and, at least until recently, many product markets were monopolized (usually in the form of state ownership) so that union monopolies were not confronted with the discipline of competitive markets.

What would unionism look like in an economy that followed these four principles? My guess is that only a minority of workers would be covered by collective bargaining contracts. This is because some workers dislike labor unions and because some employers are averse to bargaining with them. However, in the system I envisage, the strength of unionism would come from below, from the members themselves, not from above and from non-members. ⁴⁰ Established unions would not be protected by the state from competition in the market for representation services. The result will be a narrower but much more vigorous union movement, one whose energies will be directed to its members' workplaces and not to the legislature. I would expect the unions to return to activities that they once undertook to meet their members' needs - for instance, supplying unemployment, illness, and accident insurance as well as retirement benefits - and that have

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⁴⁰ I take it as axiomatic that authority within a union will be closely tied to where and at what level collective bargaining negotiations are conducted. As Clegg (1976, p.41) observed in his review of union government in six countries, union constitutions vary almost infinitely, but in most instances the distribution of power within unions can be read off from the structure of collective bargaining.
been partly usurped by the state. But I would also expect, in some instances, powerful workers organizations that strike tough (i.e., lucrative to the workers) bargains with employers. Where rents exist, workers should have the opportunity to appropriate them.
References


Table 1

Strikes: Working Days Lost per 1,000 Employees in Certain OECD Countries, 1975-94

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The sources for these data are U.K. Department of Employment, *Employment Gazette*, Vol. 94, No. 6, July 1986, pp. 266-69 and U.K. Department of Employment, *Labour Market Trends*, Vol. 104, No. 4, April 1996, pp. 153-59. Because the coverage of the strike statistics varies across countries - and, indeed, varies within a country over time - little should be made of small differences. For instance, in 1981, the United States revised its data so that only those strikes involving more than 1,000 workers are covered whereas most other countries have a very much lower threshold (such as ten workers in Britain and Germany). France and Portugal exclude public sector strikes. Japan excludes unofficial strikes. Numbers in parentheses are averages based on incomplete data.