

# **The Emerging Anglo-American Model: Convergence in Industrial Relations Institutions?**

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## Abstract

The Thatcher and Reagan administrations led a shift towards more market oriented regulation of economies in the Anglo-American countries, including efforts to reduce the power of organized labor. In this paper, we examine the development of employment and labor law in six Anglo-American countries (the U.S., Canada, the U.K., Ireland, Australia, and New Zealand) from the Thatcher/Reagan era to the present. At the outset of the Thatcher/Reagan era, the employment and labor law systems in these countries could be divided into three pairings: the Wagner Act model based industrial relations systems of the United States and Canada; the voluntarist system of collective bargaining and strong unions in the United Kingdom and Ireland; and the highly centralized, legalistic Award systems of Australia and New Zealand. Indeed, such a historical perspective contradicts the idea that there has been a longstanding Anglo-American model of liberal market economic ordering as has sometimes been suggested, e.g. in the varieties of capitalism literature. However, looking at the current state of the employment relations systems in these six countries, we argue that there has been growing convergence in two major areas.

There has been a convergence in the area of labour rights toward private ordering of employment relations and away from the idea of work and employment being a matter subject to public ordering. By private ordering, we mean the idea that work and employment terms and conditions are primarily determined at the level of the individual organization, whether through collective bargaining between unions and employers at the organizational level, through individual negotiations, or through unilateral employer establishment of the terms and conditions of employment. The shift away from public ordering of work and employment is most dramatic in the cases of Australia and New Zealand, where the publicly established system of centralized Awards has given way to organizational level ordering of employment relations through workplace or individual level agreements. In the United Kingdom, the shift to greater private ordering is most evident in the breakdown of multi-employer collective bargaining, the weakening of industry wide standards enforced by strong unions, and the growth of nonunion representation at the enterprise level. By contrast, the much lesser degree of change in the labour rights area in North America reflects the historical situation that the Wagner Act model was from the outset a model built around the idea of private ordering. When we turn to the area of employment rights, we also see a convergence across the six Anglo-American countries toward a model in which the role of employment law is to establish a basket of minimum standards that are built into the employment relationship, which can then be improved upon by the parties.

Within these general trends, we do see some variation in the degree of convergence on these models of labour and employment rights regulation across the Anglo-American countries. The strongest degree of similarity in adoption of the private ordering in labour rights and the minimum standards basket in employment rights is found in four of the countries: Canada, the United Kingdom, New Zealand and, with recent legislative changes, Australia. Each of these countries has adopted labour laws that favour organizational level economic ordering, but with reasonably substantial protections of trade union organizing and bargaining rights, and a set of minimum employment standards that includes similar sets of minimum wage, basic leave entitlements and unfair dismissal protections.

The first outlier in this study is Ireland. The Irish employment relations system stands out as the only one that has continued to have a significant degree of central coordination and public ordering of employment relations. Although there is substantial coordination at the central level, at the organizational level, the Irish system resembles the other Anglo-American countries much more closely, suggesting that it has the potential to evolve in a similar direction. The other outlier is the United States. Structurally its system is similar to the other Anglo-American countries in emphasizing private ordering in labour law and the role of employment law as being to establish a minimum basket of basic standards. However, where the United States diverges from the other countries is that its system has involved a general favouring of the interests of employers over those of employees and organized labour in the implementation of the model.

## Introduction

It is commonly viewed that there has long been an 'Anglo-American' model of industrial and employment relations characterised by a liberal market ordering of the economy (Hall and Soskice 2001). Historically, however, this was not the case and there was considerable variation in the industrial relations systems among English speaking countries. Indeed, there were three distinct models: a voluntarist system (with implicit state support) shared between Britain and Ireland; a unique Award system founded on conciliation and arbitration which prevailed in Australia and New Zealand; and the legally regulated Wagner Act framework which was shared between the United States and Canada. While these models shared some underpinnings, such as their common law foundations, it was their distinctiveness which was most notable.

Over the past 25 years, however, there has been substantial convergence in the legal foundations of the industrial relations systems in these six countries as the voluntarist and award models have broken down and been replaced by new legal frameworks. A common 'Anglo-American' model has now emerged, premised on a private ordering of industrial and employment relations practices, rather than the public ordering which was an important dimension of the voluntarist and Award models. The shared mode of regulation is designed to assist managerial flexibility and facilitate a divergence in employment practices between firms. There are similar practices with respect to collective representation, in such dimensions as union recognition, non-union forms of representation, and strikes and lockouts. The collective model is underpinned by a common structure of 'fairness standard' individual protections on such issues as dismissal and minimum terms and conditions. Yet while there has been convergence, divergence remains. This is so in Ireland, where national partnership agreements play a significant role, and in the United States, where the interests of employers are paramount and neither collective nor individual protections as robust as elsewhere.

## Dynamics of Collective Representation Systems

Since the early 1980s there has been much turbulence and change in comparative systems of labour regulation and representation. This is most commonly associated with Thatcher and Reagan in Britain and the United States respectively, though has been at least as profound in Australia and New Zealand. In contrast to other countries, the framework of labour law in the United States and Canada has exhibited remarkable stability. In both countries, the system of industrial relations was firmly built around a private ordering of affairs, with representation and economic negotiations centred around the firm or enterprise.

In the United States, the National Labor Relations Act remains the statute enacted in federal Wagner Act of 1935 (as subsequently amended by the Taft-Hartley Act of 1947 and the Landrum-Griffin Act of 1959). While there has been some reinterpretation of the NLRA by the Reagan, Clinton and Bush appointed National Labour Relations Boards, arguable more important have been the uses made of existing provisions of the law in recent decades and the change in the perceived social contract that occurred during the Reagan administration. The change in practice is particularly noteworthy in the case of the permanent replacement of strikers, which was first facilitated by the 1939 US Supreme Court case of *NLRB v. Mackay Radio*. This decision had limited impact on industrial relations practice until the 1981 PATCO dispute and significantly the 1982 Phelps-Dodge mine strike, where the employer was able to use permanent replacement workers to eliminate union representation at the mine. This became a model for aggressive employer strategies in the 1980s and 1990s. While unionisation has been declining in the United States for decades, new employer attitudes have contributed to a decline from 22 percent in 1980 to just 12 percent in 2006 (Katz, Kochan and Colvin 2007). Although it has been half a century since the last major amendments to the NLRA, there are major labour law reform proposals currently under debate in the U.S. Congress. The ultimate form of these reform proposals, if they are passed, remains to be determined by the American political process. However, we can see the general focus of potential change in the three key elements of the main reform proposal, the Employee Free Choice Act. It would: strengthen remedies for unfair labour practices committed by employers during organizing

campaigns; permit certification of union representation on the basis of membership cards rather than a secret ballot vote; and provide for interest arbitration to determine first contracts if bargaining is at an impasse. While the specific provisions may be amended in the legislative process, the broad thrust is around an enhancement of protections for union organizing, but not a change in the fundamental structure of decentralized, mostly enterprise-level, private collective bargaining. In this respect, the proposed legislation would move the United States closer to a Canadian model of labour law, but without rejecting the basic Wagner Act framework.

The industrial relations system in Canada has also been stable and, as in the United States, is based on the Wagner Act. Although labour relations is an issue of provincial jurisdiction under the Canadian constitution, the Wagner Act provided the model for the initial federal law governing labour relations in the 1940s and subsequent provincial legislation in this area. The Canadian legislation incorporated key features of Wagner Act including: exclusive representation of bargaining units; majority union support required for certification; duties to bargain on employment related matters; and the availability of strike and lockout weapons to support bargaining.

At the same time, however, Canadian labour law has developed some distinct doctrines causing it to diverge from its neighbour, including: lack of a bar on employer dominated representation plans; use of card-check or snap elections to determine majority representation status; self-enforceability of labour relations board orders, use of interest arbitration as an alternative to strikes for first contracts; and greater limitations on the use of permanent replacement workers in strikes or lockouts. In general, these differences represent a more pro-labour slant to Canadian labour law compared to the United States. Although there have been a series of amendments to existing labour laws passed in the various Canadian provinces since the 1980s, these represent periodic shifts in power associated with changing provincial governments. However, these have occurred within a common general structure of regulation of labour relations, rather than entail a broader transformation.

In contrast to this pattern of stability in North America, in Britain unions faced a concerted attack from 1979-1997 under the Thatcher and Major governments. From the turn of the twentieth century the industrial relations system had been premised on a doctrine of collective *laissez faire*. At the same time, however, governments consistently provided implicit support for unions and recognised their place in the economic order. The result was a distinctive regulatory approach to relying on voluntary collective bargaining to achieve a particular normative outcome (Davies and Freedland 1993). The thrust of the Thatcher reforms was to transform the role of unions and collective bargaining within the economy and society. This was achieved through a rebalancing of power, with legislation on such issues as prohibiting secondary picketing, compulsory ballots before strikes, and the abolition of the custom or requirement to recognise unions. The redefined place of unions was not only to be on the margins of the economy, but also one of private ordering.

The Labour Party under Blair did not seek a reversal of this underlying philosophy and labour law has thus continued to be used to confine collective action to the private sphere of ownership as an end in itself and to achieve economic goals, with associated implications flexible outcomes. However, a softening of the extremes of Thatcherite legislation was introduced with the 1999 Employment Relations Act which provided unions with recognition rights. The 2004 Employment Relations Act also provided some protection against employers offering inducements to individual employees not to belong to a trade union, responding to the *Wilson and Palmer* judgments (2002). Individual employment protections were introduced with the minimum wage (1998) and limited extension of rights in areas such as unfair dismissal, working time, statutory holiday entitlement, parental leave, part-time rights and age discrimination. These actions, sometimes prompted by European Union directives, have been restricted in their scope.

Ireland has trodden a different path, despite its common industrial relations heritage with Britain. While the constitution gives a right to join a trade union, it does not give a corresponding obligation on employers to recognise or bargain with them. Nevertheless, the role of unions

within the public sphere was long accepted, with the 1946 Industrial Relations Act (and amendments in 1969 and 1976) having the promotion of harmonious industrial relations as a key objective (Kerr 1991). The voluntarist foundation of Irish industrial relations without collective bargaining rights has been retained and labour law has been comparatively stable. The 1990 Industrial Relations Act, for example, ultimately avoided introducing a positive right to strike, but retained the 'immunities' approach dating from 1906, though with the addition of pre-strike ballots. The 2001 Industrial Relations Act also avoided giving unions a right to recognition, even though it gave some rights to refer disputes on terms and conditions in non-union firms to the Labour Court.

What has been unique in Ireland has been the great expansion of the role of unions in the public ordering, though successive national level 'Partnership' agreements from 1987. These have established pay guidelines, addressed issues of public policy (such as taxation) and progressively expanded to broader social issues involving community and voluntary organisations. For unions, this has been regarded as a protection against Thatcherite neo-liberalism and providing union legitimacy. This public ordering has significantly facilitated Ireland's remarkable economic success (Baccaro and Simoni 2007). At the same time, however, the "truncated partnership" (Roche 2007) has seen tacit governmental support facilitating greater private ordering of employment practices at the firm level as a key route to attracting multi-national companies. There is no longer any suasion on firms to recognise unions, density has fallen to 34 percent overall and 20 percent in the private sector, and firms have substantial flexibility to construct their own affairs. There have, however, been 14 separate labour laws supporting individual rights, including a national minimum wage, protection of part-time employees, working time, and expanded maternity rights.

The arbitration and award systems that developed in the early 20<sup>th</sup> century in Australia and New Zealand were premised on an understanding of the legitimate public ordering of industrial relations extending into encouraging union membership (through union preference clauses), dispute resolution, and the settlement of terms and conditions of employment such that they were "fair and reasonable." In the 1907 Harvester case, Justice Higgins came to define this as meaning "the normal needs of the average employee regarded as living in a civilised community." Relating this to the humblest worker living in a household of five, this social dimension was evident. Progressively, the regulatory system expanded to include establishing norms on issues such as working hours, holidays, physical working conditions, periods of notice and the such like. All such employment practices were deemed to be central to the public ordering of industrial relations. In both countries, the system was supported by high trade tariffs.

A radical attack on the system occurred in New Zealand in 1991 with the Employment Contracts Act transforming the system to one of private ordering, leading to a collapse of union membership and density and the determination of conditions at the firm level. The 2000 Employment Relations Act represented a rebalancing of power, facilitating union recognition in particular, though very much operating within the a regime of private ordering.

In Australia, the transformation was more gradual, occurring with the 1993 Industrial Relations Reform Act and 1996 Workplace Relations Act progressively decentralising industrial relations to enterprises and allowing individual contracts, though both occurring within a framework of protections established by the Award system. Strikes and lockouts were legalised. In 2005, however, Australian legislation shifted dramatically to an extremely private ordering of employment relations with Work Choices Act. While phasing out award provisions, it also provided unions no right to recognition or access to the workplace, removed the right for workers in companies with fewer than 100 employees to seek redress for unfair dismissal and, remarkably, explicitly prohibits the use of pattern bargaining. As an extreme imposition of a private ordering model, bargaining has to reflect the circumstances of the individual enterprise and unions are obliged to respond to the specific proposals of any employer. Furthermore, bargaining over a range of issues is prohibited, as distinct from the distinction between mandatory and permissive subjects in the United States. These include union involvement in the workplace, additional unfair dismissal protections, and the hiring of agency or contract

workers. While minimum wage legislation replaced the award system, the legislation imposed significant constraints on the ability of unions to strike while allowing offensive lockouts.

With the defeat of the Howard government in the 2007 federal elections, where industrial relations reform was a major issue, Australian industrial relations policy underwent another shift. In 2009, the Rudd-led Labour Party government passed the new Fair Work Act, which reversed some, though not all, of the changes that been enacted under the previous Work Choices Act. Most notably, it abolishes statutory individual contracts (the AWAs) and returns the focus to collective bargaining as the primary mechanism for establishing terms and conditions of employment (Landsbury 2009). The legislation includes a mixture of expanded rights for unions and some continued limitations. Employers will be required to bargaining in good faith with unions, there will be a strong 'no disadvantage' test for all agreements (relative to general employment standards), and union representatives will have rights of access to workplaces, including workplaces where they do not have existing members. On the other hand, restrictions on secondary boycotts are maintained and the legislation allows for non-union collective bargaining (though from the perspective of industrial relations theory we question to what degree it is accurate to classify a group of workers bargaining collectively with their employer as "non-union" rather as an unaffiliated or independent union). Overall what the new legislation does is to strengthen the position of unions compared to the nadir of the Work Choices Act, but in a framework that with its emphasis on private enterprise-level bargaining much more closely resembles the North American Wagner Act model.

The pattern of labour law changes has led to a decline in the public ordering of industrial relations and a convergence in the realms of collective labour rights and individual employment rights. There do remain, however, differences across the countries examined. Union recognition is now the norm, though there are operational differences. While Canada has the potential for card check and snap elections, the slow process and campaigning in the United States inhibits the ability of the unions to gain bargaining rights. The British system represents a hybrid while in New Zealand rights have been restored. Ireland and Australia stand apart in not having recognition rights. The preservation of the voluntarist model in Ireland has occurred in spite of continuing declines in union membership and the national partnership agreements. The dramatic change under the Work Choices Act to curtail recognition or good faith bargaining rights in Australia was extreme, though was ultimately not sustained following the change in government and enactment of the Fair Work Act of 2009. While the United States prohibits non-union collective representation through 8(a)2 of the NLRA, this is allowed in other countries. In Canada non-union collective representation is allowed by the absence of an equivalent to the 8(a)(2) ban in Canadian versions of the Wagner Act model and in Australia the Fair Work Act of 2009 expressly provides for legal recognition of non-union collective bargaining.

While Britain and Ireland have retained a basic structure of 'immunities' as opposed to a right to strike, the introduction of a system of rights to strike in aid of collective bargaining in Australia and New Zealand (which was contrary to the arbitration and award system in theory, if not in practice) has meant a formal convergence with the North American model that has always contained this explicit legal support for the right to strike in support of bargaining. Some differences remain in this area as well. In Britain, Ireland, Australia and New Zealand, authorisation for strikes requires ballots of differing degrees of complexity though such requirements are absent in the United States and Canada. Permanent replacement of strikers is permitted in the United States, while this is true in Canada only for temporary replacements and in Britain from 2004 onwards workers on strike have received protection from dismissal for 12 weeks. Overall though, in the recognition and regulation of strikes as the primary economic weapon of unions in support of collective bargaining, we see a general trend of convergence across the Anglo-American countries, paralleling the convergence in other areas of labour law and collective representation.

### **Individual Employment Rights**

As in the area of collective labour representation, when we look at individual employment rights regimes there has been a substantial shift in the structure of regulation in some of the countries

examined but less so in others. We will focus our comparison here on three basic areas of individual employment rights: minimum wage and hours laws; general benefits and leave entitlements; and unfair dismissal.

Minimum wage and hours laws have been a basic component of employment standards regulation in the North American countries since the mid-twentieth century. In the United States, the Fair Labour Standards Act of 1938 establish a national minimum wage and entitlements to overtime pay (time-and-a-half of regular pay) for work in excess of forty hours in a week. This minimum set of terms of employment has been a stable part of U.S. employment standards law since that time, with periodic adjustments to the value of the minimum wage and to the definition of the categories of workers entitled to overtime (exempt, mostly managerial and professional, versus nonexempt, typically nonmanagerial, workers) pay. The Canadian provinces enacted similar minimum wage and overtime pay regimes relatively soon after the U.S. These employment standards laws in Canada have stayed relatively stable in the areas of minimum wages and overtime pay, however with some expansion to include additional minimum terms of employment such as minimum vacation leave entitlements.

Employment law in the United Kingdom and Ireland traditionally lacked any provision for a minimum wage. In the U.K., a similar function was partly served by the system of wage councils. Under the Labour government of Tony Blair, however, the U.K. moved for the first time to enact a national minimum wage. The National Minimum Wage Act of 1998 established the Low Pay Commission to advise the government on minimum wage levels, which was established in 1999 at an initial level of £3.60 and by 2007 had risen to £5.52. Ireland similarly established its first national minimum wage law in 2000, which currently stands at €8.65 per hour.

In Australia and New Zealand, the centralized Award systems traditionally obviated the need for minimum wage laws by establishing generally applicable terms and conditions of employment, including standard pay levels. With the demise of the Award systems, both countries have moved to establish minimum wage laws. Reflecting the continued influence of the former Award system, the Australian federal minimum wage is a relatively high AU\$13.47 (US\$12.50). However, changes enacted in conjunction with the Howard Government's Work Choices legislation raised concerns that there would be a gradual deterioration of this high minimum wage level through limited adjustments for inflation or rising general wage levels. The Rudd government's new Fair Work Act partly reverses these changes by providing for a basic set of 10 national employment standards that will be monitored and enforced by a new federal government agency called Fair Work Australia. The new national employment standards provide an expanded basic set of protections in areas such as hours of work, vacations, and redundancy pay, but they are also structured on the model of providing a basket of general minimum employment standards, as opposed to the old award system model of comprehensive centrally determined terms and conditions of employment. In New Zealand employment law also now is structured around a set of basic employment standards, albeit similarly the minimum wage level is relatively high by international standards at NZ\$11.25 an hour. Although these minimum wage and other employment standards levels are relatively high compared to their North American counterparts, the significant change to note in both countries is the shift in mechanism for wage regulation away from the establishment of general wage levels and towards a system of minimum wages with most employment relationships typically involving the establishment of higher wage levels, either through direct employer wage setting or collective or individual negotiations.

Most of the Anglo-American countries also provide some basic entitlement to parental leave. In Canada, a combination of 15 weeks maternity and 35 weeks paternity leave paid through the unemployment insurance system provides up to close to a year of paid leave after the birth of a child. The United Kingdom provides for 52 weeks maternity leave, of which 39 weeks are paid leave. Ireland provides for 26 weeks paid maternity leave and an additional 16 weeks unpaid parental leave. New Zealand provides for 14 weeks paid maternity leave and an additional 38 weeks unpaid paternity leave. Australia is more limited in this area in providing for one year of unpaid parental leave. The United States, however, standards out for having by far the most limited benefit, with only 12 weeks unpaid leave being provided under the Family and Medical

Leave Act, which is further limited to larger employers and as a result only covers around 40% of the workforce.

A similar pattern holds in the area of minimum standards for vacation or holiday leave. Most of the Anglo-American countries have generally similar basic minimum vacation entitlements enacted in employment law: 4.8 weeks in the United Kingdom; 4 weeks in Ireland; 4 weeks in New Zealand; and 4 weeks in Australia. In Canada, the amount varies by province, with two weeks being a common minimum entitlement, though in some provinces this rises with years of service, e.g. 2 weeks initial and then 3 weeks after 5 years of service in British Columbia and Alberta. The major exception is again in the United States, where there is no minimum vacation entitlement in employment law.

In the area of unfair dismissal, we find across most of the Anglo-American countries the establishment of some basic protections against wrongful termination of employment. In the United Kingdom, employees since the 1970s have had legal protections against unfair dismissal, enforceable through the Employment Tribunals system. Ireland and New Zealand similarly provide protection against unfair dismissal in their employment law system. Until recently, Australia could also have been described as providing general protections against unfair dismissal. However, one of the major features of the 2005 Work Choices legislation was the removal of unfair dismissal protections for employees of employers with fewer than 100 employees. Restoration of unfair dismissal protections for this class of employees is one of the key changes to the Work Choices legislation contained in the new Fair Work Act. North America presents a contrast in this area. Canadian employment law provides for protection against unfair dismissal through a combination of employment standards legislation and common law rights against wrongful dismissal. Rather than reinstatement, however, the standard remedy for unfair dismissal in Canadian employment law is damages equivalent to lost salary or wages for a period equal to what the employer should have provided in reasonable notice before dismissal (Colvin 2006). This can be a substantial amount, as much as one month per year of service under common law rights. The United States is an outlier in the area of unfair dismissal. The general employment law in the U.S. continues to be employment-at-will, under which an employer may dismiss an employee for “good reason, bad reason, or no reason at all”, without any requirement of notice or severance pay. The most important exception to this rule is that U.S. law does prohibit discrimination in employment. Employment discrimination claims can be pursued through the general court system, commonly involving jury trials with the potential for much larger damage awards than found in other countries. The result of concerns about major damage awards if an employment decision is found to be tinged by discriminatory motives is that American employers tend to exercise a degree of caution in dismissal decision-making that does not reflect the seeming high degree of flexibility inherent in the employment-at-will rule (Colvin 2006).

## **Analysis and Conclusions**

If we had conducted a similar comparison of the six countries examined in this study in 1980 at the outset of the Thatcher/Reagan era, the story we would have told would have emphasized the significant variation that existed across the Anglo-American countries. We could have divided the countries into three pairings: the Wagner Act model based industrial relations systems of the United States and Canada; the voluntarist system of collective bargaining and strong unions in the United Kingdom and Ireland; and the highly centralized, legalistic Award systems of Australia and New Zealand. Indeed, such a historical perspective contradicts the idea that there has been a longstanding Anglo-American model of liberal market economic ordering as has sometimes been suggested, e.g. in the varieties of capitalism literature (Hall and Soskice 2002). However, looking at the current state of the employment relations systems in these six countries, we argue that there has been growing convergence in two major areas.

There has been a convergence in the area of labour rights toward private ordering of employment relations and away from the idea of work and employment being a matter subject to public ordering. By private ordering, we mean the idea that work and employment terms and conditions are primarily determined at the level of the individual organization, whether through

collective bargaining between unions and employers at the organizational level, through individual negotiations, or through unilateral employer establishment of the terms and conditions of employment. The shift away from public ordering of work and employment is most dramatic in the cases of Australia and New Zealand, where the publicly established system of centralized Awards has given way to organizational level ordering of employment relations through workplace or individual level agreements. In the United Kingdom, the shift to greater private ordering is most evident in the breakdown of multi-employer collective bargaining, the weakening of industry wide standards enforced by strong unions, and the growth of nonunion representation at the enterprise level. By contrast, the much lesser degree of change in the labour rights area in North America reflects the historical situation that the Wagner Act model was from the outset a model built around the idea of private ordering. The system of primarily enterprise level union organizing and collective bargaining is premised on the idea the individual organization is the appropriate level for determination of work and employment conditions. The areas where we have seen change in North America, such as the breakdown of multi-employer and pattern bargaining, reflect a deterioration of a superstructure of partial public ordering built on top of the basic Wagner Act model during the 1950s through the 1970s.

When we turn to the area of employment rights, we also see a convergence across the six Anglo-American countries toward a model in which the role of employment law is to establish a basket of minimum standards that are built into the employment relationship, which can then be improved upon by the parties. Again, the shift has been particularly dramatic in the cases of Australia and New Zealand, with the previous Award model involving the direct establishment of general terms and conditions of employment being replaced, in part, by employment laws that establish minimum wages and other basic standards for employment. In the United Kingdom and Ireland by contrast, the shift has been toward a greater formalization of minimum standards of employment through expanded employment laws, such as the minimum wage, in contrast to the earlier system of voluntarism. Again change in this area has been less significant in North America because the system of employment regulation was historically based on the concept of employment law as establishing a minimum basket of employment standards, through the Fair Labour Standards Act in the U.S. and its Canadian counterparts.

Within these general trends, we do see some variation in the degree of convergence on these models of labour and employment rights regulation across the Anglo-American countries. The strongest degree of similarity in adoption of the private ordering in labour rights and the minimum standards basket in employment rights is found in three of the countries: Canada, the United Kingdom, and New Zealand. Each of these countries has adopted labour laws that favour organizational level economic ordering, but with reasonably substantial protections of trade union organizing and bargaining rights, and a set of minimum employment standards that includes similar sets of minimum wage, basic leave entitlements and unfair dismissal protections. Australia had moved toward a similar set of labour and employment laws up until the 2005 Work Choices legislation, which moved its employment relations system in a significantly more pro-employer direction through major labour law restrictions on trade union activities and removal of unfair dismissal protections for employees of small to mid-sized employers. However, the new Fair Work Act legislation passed by the Rudd-led Labour Party government moves Australia back into line with the other three countries. One interesting indicator of the degree of convergence across these four countries is the relative similarity between them in union representation levels. Whereas in 1980 union representation varied between 30-35 percent in Canada and over 50 percent in the Australia, New Zealand and the United Kingdom, current overall union representation levels in all four countries is around 20-30 percent, with similar private sector union representation levels of 15-20 percent.

The first outlier in this study is Ireland. The Irish employment relations system stands out as the only one that has continued to have a significant degree of central coordination and public ordering of employment relations. This may be explainable in part by the remarkable success of the Irish economy in recent years and the desire of all parties to continue the conditions that have led to the rise of the "Celtic tiger". The question for the future is whether this central coordination between labour, employers, and government will continue if the Irish economy hits a downturn. Although there is substantial coordination at the central level, at the organizational

level, the Irish system resembles the other Anglo-American countries much more closely, suggesting that it has the potential to evolve in a similar direction.

The other outlier is the United States. Structurally its system is similar to the other Anglo-American countries in emphasizing private ordering in labour law and the role of employment law as being to establish a minimum basket of basic standards. However, where the United States diverges from the other countries is that its system has involved a general favouring of the interests of employers over those of employees and organized labour in the implementation of the model. In the area of labour law, this can be seen in areas such as the relatively weak enforcement of the right to organize and the limitation of the right to strike through the ability of employers to hire permanent replacement workers. In the area of employment law, a similar emphasis on employer interests can be seen in the continued use of the employment-at-will rule barring most actions for unfair dismissal and in the limited extent of minimum employment standards, such as the lack of paid sick leave or vacation entitlements. If some version of the Employee Free Choice Act is enacted into law, the United States may move closer to the other Anglo-American countries in its regulation of collective representation. As of yet however, there is less indication of a move toward substantial reform of the American system of much more limited employment laws and standards than found in the other countries. Absent such a change it is possible that in coming years, it will be in the area of employment standards rather than labour law that we see American exceptionalism as being the most notable variation within the general Anglo-American model.

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