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Australia and the system of arbitration in Singapore

Chris Leggett
James Cook University, Australia

Gordon Stewart
Central Queensland University, Australia

Abstract
The purpose of this article is to record and analyse the historical circumstances in which Singapore complemented its legacy of British-type collective bargaining with the compulsory arbitration system long practiced in Australia. It notes the role of Australians (particularly one Australian industrial relations scholar at the University of Malaya) in the inception and adoption of industrial arbitration in Singapore. It seeks to identify, analyse, explain and assess the extent of the subsequent divergence of Singapore's regulatory industrial relations regime from that of Australia since the 1960s. In doing so, it contributes to Asia-Pacific labour history and adds to the literature on international and comparative labour relations with its focus on cross-national influences on national industrial relations regimes.

JEL Codes: L5, N30, N45

Keywords
Australia, convergence/divergence, industrial relations, judicial arbitration, labour history, Singapore

Introduction

This article assesses the influence of Australia's compulsory arbitral system of industrial relations on the development of Singapore's industrial relations system. It records the role played by a Western Australian academic, Dr Charles Gamba, in the establishment of Singapore's Industrial Arbitration Court (IAC) and examines the influence of the

Corresponding author:
Chris Leggett, School of Management, James Cook University, Townsville, QLD 4811, Australia.
Email: Chris.Leggett@jcu.edu.au

Australian, in particular the Western Australian, conciliation and arbitration system on his thinking and actions. It concludes that measures other than compulsory arbitration have contributed to the development of the character of industrial relations in Singapore. The article adds to the literature on comparative labour law by raising for further consideration the question of the influence of individuals and institutions from one country on the institutions and laws of another.

The origins of Australia's compulsory arbitration system

The turning point in the early industrial relations history of Australia was in the first half of the 1890s with the pastoral, maritime and mining disputes (Turner, 1978: ch. 3). These industrial disputes convinced the colonial decision-makers who would become influential politicians in the young Commonwealth of Australia that 'a new province for law and order' (Higgins, 1922) was required to regulate the affairs of employers and unions in industrial matters. The supposed 'lesson of the armed camp at Barcaldine' in Queensland at the height of the pastoral disputes was that the state could provide the machinery 'to ensure a minimum wage, to conciliate and arbitrate in industrial disputes, and to regulate the hours of labour' (Clark, 1981: 88).

Therefore, an Australian conciliation and arbitration system would be a quasi-legal system that aimed at preventing social and economic disruption through the intervention of the state 'in the public interest' (Clark, 1981: 88; Macintyre, 1989: 186). In this type of dispute settlement system, the state established, through legislation, tribunals that were empowered to compel the parties to an industrial dispute to attend hearings at which the tribunal could assist them to resolve their differences by conciliation. Were this to fail or be deemed inappropriate, the industrial dispute could be settled by means of an arbitrated settlement that was 'handed down' by the tribunal in a legally binding document known as an 'award' (Stewart, 2011: 9–10, 21–23). Significantly, the compulsory arbitration system was based on the collective representation of the workforce by registered trade unions (Higgins, 1922: 15). The system gave unions legal status and protection and thereby enhanced their organisational strength, but at a 'price', the 'renunciation of the strike weapon' (Turner, 1978: 61–62).

The Australian version (New Zealand began its version in 1894) of compulsory arbitration was introduced at the federal level in 1904 and in the states of Queensland (1912), Western Australia (1900), South Australia (1912) and New South Wales (1901). The Australian systems established tribunals that were given 'compulsory powers' to make legally binding decisions and the legal authority to enforce these decisions, as well as the power to regulate the affairs of trade unions and restrict the use of direct action in pursuit of industrial claims (Deery and Plowman, 1991: ch. 5; Macintyre and Mitchell, 1989: 6–7). The philosophy that underpinned this system of state-sponsored tribunals was an Australian variation of British liberalism, in which the 'public interest' was the dominant concern when the actions of individuals 'threatened the welfare of others' (Clark, 1981: 62–89; Macintyre, 1989: 186). While the practical aim of the system was 'industrial peace' (Clark, 1981: 245), the philosophical aim was to strengthen 'the very basis of civilised society' (Deakin, 1904: 775) – an aim that was worthy of a nation-building agenda for 'an enthusiastic Australian-Briton' such as

Alfred Deakin (Clark, 1981: 72). *The Commonwealth Conciliation and Arbitration Act 1904* set the distinctive character of Australia's industrial relations for the next 80 or so years – until 1991 when centralised wage fixing was abandoned in favour of enterprise bargaining (Peetz and Bailey, 2011: 69).

The historical circumstances of Singapore's industrial relations in 1960

Charles Gamba (1959) informs us that as far back as 1952 the prospect of making Singapore's Industrial Court awards compulsory was under consideration and that Western Australia's *Industrial Arbitration Act 1912–1941* was studied. By whom it was studied he does not say, but possibly by colonial administrators, or conceivably by the young Singaporeans beginning to contend for political influence and office, three of whom – Lee Kuan Yew, Goh Keng Swee and Kenneth Byrne[1] – formed a Council of Joint Action in 1952 to protest against the privileged payments to expatriate officials (Turnbull, 1989: 247). But it was in 1960 that through the Colombo Plan, an Australian government legal officer was seconded to Singapore to draft industrial relations legislation (Gamba, 1963: 84).

The Colombo Plan was a framework established in 1950 for bi-lateral arrangements between member countries involving foreign aid and technical assistance for economic and social development as part of the struggle against communist movements in southeast Asia. Australia was a founding member; Malaysia became a member in 1957 and Singapore, in its own right after having left the Malaysian Federation in 1965, joined in 1966. Australia's relationship with southeast Asia in the 1950s and 1960s through the Colombo Plan has some resonance with its present alignment in the 'Asian Century'. In the 1950s, however, the British anti-communist campaign, called a 'state of Emergency', that ended in 1960, in the rubber and palm oil plantations of Malaya, was manifest as an industrial relations struggle in Singapore, where the communists had 'a huge following among the working classes' in spite of successful British-directed police action against them (Peng, 2003: 409). After some procrastination by the British Foreign Office over Australian involvement in Malaya, in 1950, the Royal Australian Air Force was operating from the Changi air base in Singapore, and some Australian ground forces were deployed in Malaya in 1955 (Peng, 2003: 253).

When the People's Action Party (PAP) won office in a full self-governing Singapore in 1959, its leaders were confronted by 'a multiplicity of related economic, social and political problems' (Tan, 1984: 190) that included its dependence on radically politicised labour. Newly elected Prime Minister Lee Kuan Yew was not optimistic:

> It was a victory but I was not jubilant. I had begun to realise the problems that we were to face – unemployment, high expectations of rapid results, communist unrest, more subversion in the unions, schools and associations, more strikes, fewer investments, more unemployment, more trouble. (Lee, 1998: 306)

With so many immediate problems facing them, Lee and his senior ministers had little opportunity to prioritise policies and solutions. In his account of his first 6 months in

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office having 'hit the ground running' the Prime Minister sequenced the policies laid down by his government as public housing, port administration, equal rights for women, the regulation of industrial relations, family planning, combating corruption and financing higher education (Lee, 1998: 343–346). Kick-starting economic development awaited a report of the United Nations Technical Assistance Board headed by Albert Winsemius, who was to advise the Singapore government on economic planning for the next 25 years. Internal security and the influence of the communists on the Chinese educated in the labour movement were major concerns requiring a subtler approach than that adopted by Malaya (Lee, 1998: 347–350).

A prescient observation in 1964 by a British industrial relations academic reads,

> The Singapore Government faces a difficulty in [respect of depoliticized unions practicing collective bargaining], since the attainment of a rate of economic development that will provide a solution for Singapore's growing unemployment is to a large extent dependent upon a closer integration with Malaya. [This] may well involve the removal of the communists and their sympathisers from the leadership of Singapore's most powerful unions. It is unlikely that this can be achieved without deliberate political action. (Roberts, 1964: 98)

The Communist Party of Malaya (CPM) had been active in building labour organisations before the Second World War (Roberts, 1964: 26), and its cadres retained a following within Singapore's trade unions in the 1950s. Leaders of the more militant 'Middle Road' (named for their addresses) unions had been detained, but Lee Kuan Yew, who had been a successful labour lawyer taking on the colonial authority in Singapore, had insisted on their release in 1959 before he took office. Among the detainees was CV Devan Nair, who, having shed his pro-communist credentials, and served a spell as a PAP member of parliament in the Federal Malaysian legislature, later reformed Singapore's PAP protégé trade unions while he was their Secretary-General in the 1960s and 1970s.

In 1959, the CPM supported the election of the PAP under Lee Kuan Yew's leadership. Its guerrilla leader, called by Lee, who had met him secretly in 1958 the 'Plen' (for plenipotentiary), later recalled,

> I cannot, with any degree of accuracy, place a figure on the numbers of people we controlled among the Singapore voting public in 1959. But I can certainly say that most of the island's workers sympathised with the left-wing trade unions and members of these unions well appreciated they were under the control of the CPM. The pro-government unions then functioned in name only. Our supporters, sympathisers and fellow travellers went on to provide Lee's grass roots electoral support. (Peng, 2003: 409)

The PAP government's first step towards a new regulatory regime for Singapore labour was to amend the *Trade Unions Ordinance 1940* in order to empower the Registrar of Trade Unions to cancel the registration of 'irresponsible' unions, disqualify 'undesirable' officials and to refuse to register a union where workers were already represented (Tan, 1984: 191). Its second step was to pass the *Industrial Relations Ordinance 1960* (Government of Singapore, 1960)[2] to regulate collective bargaining and establish IACs (initially two but later just one) to adjudicate industrial disputes referred to them. Its third

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step – to unify the labour movement in a single non-communist federation – was resisted by trade unionists (Turnbull, 1989: 269) and although a National Trades Union Centre was set up in 1961, it was not registered as the National Trades Union Congress (NTUC) until 1964. A schism in the PAP in 1961, ostensibly over Singapore's future as part of the Malaysian Federation – within which Singapore was merged with Malaya, North Borneo and Sarawak in 1963, and from which it was forced to secede in 1965 – was mirrored in the labour movement. A breakaway Barisan Socialist (Socialist Party) supported the pro-communist Singapore Association of Trade Unions (SATU) and the PAP supported the NTUC. After 1968, when the NTUC organised 70 per cent of Singapore's trade union members, the ailing SATU simply withered away.

The powers of the Registrar of Trade Unions are defined in all the British colonial trade union ordinances (first enacted in India and Burma in 1926), although they were wider in scope in some countries than others – extensive in Burma (International Labour Office, 1962: 32). As we have recorded above, the first step of the newly elected PAP government towards its projected regulation of industrial relations was to widen the Registrar's powers. Neither was its second step unique among the former and current British colonial territories: India, Ceylon, Ghana and Aden each had provisions for compulsory arbitration coupled with restrictions on the right to strike, but they were 'quite different from one another' and not modelled so closely on the industrial relations system of Australia (Roberts, 1964: 324). As for the third step, in 1960, most national trade union movements in these territories, as in Singapore, were politicised by their relationships with independence movements with their different aspirations for their post-colonial societies.

The PAP government did not discard the British colonial-type regulation of industrial relations. Most of Britain's colonies had had native employment ordinances that were generally unfavourable to labour before the colonial office under Sydney Webb began urging colonial governors to legislate trade union rights, as they did, initially, in India and Burma in 1926. Singapore's *Trade Unions Ordinance 1940* was modelled on the Ceylon *Trade Unions Ordinance 1936*. It conformed with and emulated Britain's principles of freedom of association and embodied immunity from prosecution for a trade union whose objects were in restraint of trade. However, it differed from Britain's legislation in that trade union registration was compulsory, there were restrictions on affiliation and a political levy was not allowed. Other constraints were provided by the *Criminal Law (Temporary Provisions) Ordinance 1955*, which listed essential services in which industrial action was unlawful and those for which a period of notice was required, and the *Trade Disputes Ordinance 1941*, which regulated picketing. Although the *Industrial Courts Ordinance 1941* made provision for arbitration and conciliation, arbitration, as in Britain, was not compulsory and was not a key institution of industrial relations except perhaps in the public sector. Similarly in Malaya, the *Industrial Court Ordinance 1948* was modelled on the United Kingdom's '… concept of voluntary arbitration whereby the Industrial Court derived its jurisdiction to determine a trade dispute from the consent of the disputing parties' (Wu, 1982: 112). Although Singapore's PAP government amended some of the provisions of the inherited British legislation, it, unlike the Malaysian government in 1967 (Wu, 1982: 112), did not repeal it wholesale but rather complemented it with the new and subsequent legislation.

The PAP had prepared for office with a plan:

> to 'erect an independent Labour Court for the solution of industrial disputes, and any trade union will be able to opt whether it wishes this Labour Court to arbitrate in an industrial dispute. When a union so opts the employer will automatically be brought within the Court's jurisdiction'. (People's Action Party, 1959)

But, once in government its *Industrial Relations Ordinance 1960* established an IAC to adjudicate the proliferation of industrial disputes that had dogged the two previous limited self-governing administrations. A second IAC was established in 1962 but later closed as caseloads declined. In the words of the former Deputy President of the IACs at the time, Tan Boon Chiang,

> In 1960, the Industrial Relations Act placed collective bargaining, for the first time, on a legal footing and established the Industrial Arbitration Court which would handle all disputes whether over rights or interest with unlimited jurisdiction, to supplement the existing ad hoc procedures for settlements of disputes already available to some extent developed over the years by commercial practice. (Tan, 1979: 197)

The modus operandi of Singapore's IAC

The President of the IAC was to have the status of a Supreme Court judge (s. 4) who, depending on the case, would sit with a member selected from each of an employer and employee panel by the parties to the dispute (s. 6). An IAC was not bound to act in a formal manner nor according to the *Evidence Ordinance*, but it should 'act according to equity, good conscience, and the substantial merits of the case without regard to technicalities and legal forms' (s. 60). Parties to a dispute could be represented by a union officer or an employers' association officer, but not by an advocate or a solicitor or a paid agent, except in the case of contempt of court (s. 64). However, the IAC could refer questions of law to the Attorney General (ss. 65). An IAC would have cognisance of a trade dispute where one or all the parties requested the minister (until 1997, 'of Labour', thereafter, 'of Manpower') by notice or the Yang di-Pertuan Negara (the President of Singapore after 1965 when Singapore had seceded from the Malaysian Federation) by proclamation had approached it for arbitration (s. 31). A specific request relating to the transfer of employment might be made by a trade union or an employer. Where the dispute related to employment in the service of the government, the President of the IAC was to inform the Yang di-Pertuan Negara (later President of Singapore) and only with their approval might the IAC perform its functions over that dispute (s. 33). In determining a trade dispute the IAC might have regard 'to the interests of the community as a whole and in particular the condition and economy of Singapore' (s. 34).

The Industrial Relations Ordinance 1960 set out the rules for the commencement, duration, succession, extension, setting aside, suspension, cancellation, interpretation and variations of awards, and on whom awards were to be binding – 'all parties to the trade dispute who appeared or were represented before the Court' (ss. 37–59). The content of an award need not be confined to the demands of the parties to the trade dispute. An award, unless the Court thought it inappropriate, should contain provision for the

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settlement of disputes arising from the operation of the award, including the provision of a referee from the names of people appointed by the minister and published in the *Gazette* (s. 43).

As well as introducing compulsory arbitration, the *Industrial Relations Ordinance 1960* was to regulate the processes of collective bargaining (ss. 16–30). Where an employer had not accepted an invitation from a trade union to negotiate, either party might notify the commissioner for Labour, who, after consultation with the parties, if he decided there was a refusal, notified the minister and, unless the minister otherwise directed, the Registrar of the IAC that a trade dispute existed. The Registrar was to bring trade disputes to the notice of the IAC President (s. 20).

If an agreement was not reached within 14 days of the service of notice, the commissioner might authorise a conciliation officer (from among public officers appointed by him and published in the *Gazette*) to help the parties reach one (s. 21). If an agreement did not look likely, the commissioner notified the minister, and unless the minister directed otherwise, the Registrar, that a trade dispute existed (s. 22). The minister might authorise further conciliation in the form of a compulsory conference (s 23). Collective agreements were to be delivered as a memorandum to the Registrar of the IAC for certification by the Court. The Court might refuse to certify a memorandum if it was of the opinion it was not in the public interest, did not set out the terms satisfactorily or adequately and did not comply with the duration requirements of 2–3 years. If the minister was of the opinion that there were special circumstances by reason of which the matter would not otherwise be satisfactorily regulated by collective agreements or an award made under the Industrial Relations Ordinance, he could appoint a Board of Inquiry (ss. 74–77).

The extent to which individual Australians may have influenced Singapore's adoption of compulsory arbitration is not entirely clear. According to one observer of the early years of the IAC, 'Singapore turned to Australia for guidance [and] it was the legislation of the state of Western Australia, rather than the Commonwealth legislation, which was used by Singapore as a basic model' (Kleinsorge, 1964: 552). The Western Australian *Industrial Arbitration Act 1912* was, with amendments, the principal industrial relations legislation in Western Australia until the *Industrial Arbitration Act 1979* took effect. Both Acts provided the legislative framework for a compulsory arbitration system (Deery and Plowman, 1991: 133–137).

The Western Australian *Industrial Arbitration Act 1912* and Singapore's Industrial Relations Ordinance 1960 are remarkable in the similarity of their drafting. Singapore's Industrial Relations Ordinance 1960 (s. 11) and the Western Australian *Industrial Arbitration Act 1912* (s. 42) each established a three-member Court of Arbitration with essentially one union and one employer-nominated member and a President, who was a Supreme Court judge. The President of Western Australia's Court was empowered under s. 120 (1) to convene compulsory conferences of the parties 'whenever in his opinion it is desirable for the purpose of preventing or settling an industrial dispute …', but under Singapore's *Industrial Relations Act 1960* (s. 22), it was the prerogative of the minister to call a compulsory conference 'where he considers it possible that any trade dispute may be settled by conciliation …'. The *Western Australian Industrial Arbitration Act 2012* s. 63 (4) placed prohibitions on legal representation primarily without the consent

of the parties to a dispute. Under s. 64 (1) of Singapore's Industrial Relations Ordinance 1960, a party 'shall not be represented by an advocate and solicitor or paid agent except' in the case of contempt of court.

A final point of comparison between the Western Australian and Singapore legislation is the requirement under s. 64 (1) of the *Industrial Arbitration Act 1912* and under s. 60 (1) of Singapore's *Industrial Relations Ordinance 1960* that 'the Court … shall act according to equity, good conscience, and the substantial merits of the case without regard to technicalities or legal forms …'. Indeed, the jurisdiction of the Western Australian Court of Arbitration is quite broad: s. 64 (2) provides that 'the Court shall not be restricted to the specific claims made or to the subject matter of the claim' and, under s. 64 (1), the President or the Court 'shall not be bound by any rules of evidence, but may inform its or his mind on the matter in such a way as it or he thinks just', word-for-word the same as under s. 60 (1) of Singapore's *Industrial Relations Ordinance 1960*.

As noted in the quotation from Lee Kuan Yew's *Memoirs*, the first President of the IAC was Charles Gamba, an academic economist, not a lawyer, and an Australian from Perth, Western Australia. At the time an academic at the University of Malaya in Singapore, he had become something of an expert on Malayan industrial relations. In particular his *The Origins of Trade Unionism in Malaya: A Study in Colonial Labour Unrest* (Gamba, 1962) became a seminal work on the labour history of the region.

Lee Kuan Yew recalls,

> [In 1960] … we legislated for an Industrial Relations Court, based on the Australian model, and appointed Charles Gamba, professor of economics at the University of Malaya, as its president. As the arbitrator in the Hock Lee bus strike [1955],[3] he was known to be sympathetic to labour, but was not likely to kill off the employers. (Lee, 1998: 346)

When the second court was established in 1962, Tan Boon Chiang (quoted above), a lawyer and a judge, was appointed Deputy President. In 1964, Tan Boon Chiang succeeded to the presidency of the IAC, a position that he held until 1988.

According to Gamba, before his appointment to the IAC he had the confidence of Singapore's new nationalist leaders. As he recorded,

> Over a number of years this writer had the opportunity to meet intimately each one of the PAP leaders and to co-operate with them in a variety of ways. In particular, he met at close quarters Lee Kuan Yew and Kenneth Byrne during the preparation of labour cases to be presented before arbitration boards and courts of inquiry. (Gamba, 1959: 182)

Nevertheless, in an article on 'Judges, Independence, Labour and Definitions' Gamba states that after he became President of the IAC, it was hinted to him that he adjudicate cases with political expedience in mind. As he recalled,

> During the early months following his appointment to an Industrial Court, this writer was visited by a well-known political personality. As he left, that person remarked: '…oh well… all you have to do from now on is to spit on your finger, open the window and find out how the wind blows …' and burst out in laughter. This, one was repeatedly told, was the practical, the pragmatic, the realistic way to approach industrial cases in particular. (Gamba, 1974: 209)

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Writing at the end of Gamba's term of office, Kleinsorge (1964) suggests that political pressure may have been put on Charles Gamba, but that it did not affect his judgements:

> One of the most serious weaknesses of the system is the short term (four years) of the tenure given to the President of the court. Under such circumstances, political pressure may be placed on an incumbent to slant his decisions in a certain direction if he desires reappointment. There is no indication that such pressures have been effective as far as the first president is concerned. Although his decisions have been criticised on various grounds, there is no convincing evidence of a political bias. (p. 565)

Gamba was not re-appointed. He did, however, have some prescriptions for trade unions, employers and government in industrial relations in Singapore, and on the impartiality of action by any tribunal. For example,

> The trade union movement must be rallied around the ideal of loyalty to the state of Singapore, but it must not be made to feel that it is being forced into a straight jacket. The employers must be brought to accept fully the principle of collective bargaining and to recognise organised labour as the other partner in the process of national production. But if the government must intervene in industrial relations, even though it will be known that its sympathies will be very much with labour, it will nevertheless have to act with due impartiality and any statutory body dealing with labour and employers will have to show this impartiality in action. (Gamba, 1959: 190)

A comparison of Australia's and Singapore's industrial arbitration

Common to both Australia at Federation and Singapore at full self-government was the imperative to lessen the confrontational quality of industrial relations. In Australia's case, the rationale for a compulsory conciliation and arbitration system was famously put by Henry Bournes Higgins, President of the Australian Court of Conciliation and Arbitration for 14 years:

> … the process of conciliation, with arbitration in the background, is substituted for the rude and barbarous processes of strike and lock-out. Reason is to displace force; the might of the State is to enforce peace between industrial combatants as well as between other combatants; and all in the interest of the public. (Higgins, 1922: 2)

Macintyre and Mitchell (1989: 15–16) argue that the industrial conflicts of the 1890s were concerned less with wages and working conditions and more with the rights of employees to organise in unions that would represent them and negotiate and bargain collectively with employers on their behalf. Therefore, according to this view, the legal recognition, registration and conferral of rights on unions were central components of the Australian conciliation and arbitration systems in their quest for 'industrial peace'. Higgins (1922) stated that 'The system of arbitration adopted by the Act is based on unionism. Indeed, without unions, it is hard to conceive how arbitration could be worked' (p. 15).

Furthermore, while Higgins was writing with respect to the federal conciliation and arbitration system, the Western Australian conciliation and arbitration system was 'similar to the federal system' (Deery and Plowman, 1991: 133), at least until the 1990s when the state and federal systems were reformed (Stewart, 2011: 23). Unsurprisingly, Oxnam (1963) notes the wide jurisdiction of the Western Australian Court of Arbitration covering 'the regulation of union affairs, settlements of industrial disputes, determination of standard wage rates and nominal hours of work, regulation of apprenticeship and the enforcement of its awards and other determinations' (p. 59).

In Singapore's case, the rationale was later put by Tan Boon Chiang, Singapore's second and longest serving President of the IAC:

> When Singapore shifted its economic emphasis from traditionally entrepot trading to industrialisation, it became apparent that the relationship of employer and employee should, at the same time, be refined to provide for a meaningful balance between the interests of labour and capital. The decision to switch to industrialisation was in retrospect a wise one, having regard to the fact that the greatest asset of the country was its manpower potential and the capability of developing the skills of its people. There were no natural resources and the Republic's strength rested in its ability to muster the ingenuity of its community towards skilful pursuits to meet the needs of industry. (Tan, 1979: 197)

A significant difference between industrial relations in Australia and in Singapore is that in Singapore they are not regulated largely by one comprehensive statute, as has been the case in Australia at state and federal levels, but by several separate yet complementary statutes, passed and amended at different stages in the development of Singapore's political economy. Having several statutes has enabled the government to tinker with and incrementally change the system of industrial relations without the potential shock to the system – and the publicity – that might result from the repeal and re-enactment of an all-inclusive statute. Even quite a system-changing amendment, such as that to the *Trade Unions Act* in 1982 that redefined trade unionism, are reported matter-of-factly in Singapore and are rarely subject to critical appraisal in the press or journals, at home, abroad or in such forums as the International Labour Organisation.

Trade unions (and employers' associations) are regulated by the *Trade Union Ordinance 1940*, amended as the *Trade Unions Act* in 1982 to redefine trade unions as agents of productivity and industrial harmony. The *Trade Disputes Ordinance 1941* makes intimidation illegal and regulates picketing and, by an amendment in 1960, makes sympathy strikes, strikes pressuring the government and strikes inconveniencing the public illegal. The *Criminal Law (Temporary Provisions) Ordinance 1955* makes strikes and lockouts illegal in some essential services and places procedural restrictions on a periodically reviewed list of others.

While *Singapore's Industrial Relations Ordinance 1960* regulates conciliation and arbitration procedures, and make industrial action unlawful once the IAC had cognizance of a dispute, its amendment in 1968 made it unlawful for a trade union (as defined in the *Trades Unions Ordinance*) to raise issues of management prerogative for collective bargaining, and the *Employment Act 1968* made it unlawful for a collective agreement (as defined in the *Industrial Relations Ordinance 1960*) to contain conditions more favourable than the minimum conditions set out in Part IV of the *Employment Act*. The

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effect of this legislation on the NTUC was for it to hold a symbolic conference in 1969, in which it eschewed confrontational industrial relations and sought to retain and benefit its members through managed business cooperatives.

Perhaps, however, more than any of the above constraints on collective bargaining, the establishment of a National Wages Council (NWC) in 1972 reduced the scope for disputation. The legitimacy and authority of the NWC's annual wage and provident fund recommendations derive from its tripartite constitution and constitute a de facto incomes policy for Singapore that is considered in the deliberations and determinations of the IAC.

An assessment of Australia's influence on Singapore's industrial arbitration

While it is important to note the danger of simplistically asserting that legal concepts, principles or structures can be 'transplanted' from one system to another (Kahn-Freund, 1974; Teubner, 1998), it is also important to acknowledge the influence of the labour laws of countries such as Britain and states such as Western Australia on countries such as Singapore, however imperfectly they may be applied in practice (Cooney et al., 2002). Indeed, it is the influence of the Australian Charles Gamba as a practitioner that is of some interest in this article.

Gardner and Palmer (1997) have argued that 'Australian industrial relations is the history of the making and unmaking of the arbitral model' (p. 15). This tribunal-based model for the compulsory conciliation and arbitration of industrial disputes represented an attempt by the state to prevent direct action being taken by unions and employers. The fact that the conciliation and arbitration system inevitably failed to eradicate industrial disputation does not diminish its significance within the Australian industrial relations system. It is the fact that the tribunal systems attempted 'to prevent lock-outs and strikes in relation to industrial disputes' (Deery and Plowman, 1991: 96, 114–117) and that to do so, the legislators who established them made an effort to incorporate trade unions within these systems that provides a useful point of comparison with Singapore (Leggett, 1993: 126; Macintyre and Mitchell, 1989: 15–19). Indeed, DW Oxnam (1963) claims that

> It is a distinguishing feature of industrial relations systems in Australasia that the internal and external affairs of trade unions are subject to a greater measure of regulation and direction than is the case in any other system in the free world. (p. 59)

Nonetheless, it cannot be argued, as Levine (1980: 78) in a comparison that included Australian and Singapore industrial relations does for Singapore, that the behaviour of trade unions in Australia is government orchestrated.

Conclusion

Singapore's equivalent of Australia's 'new province for law and order' in industrial relations was not reached as a result of the establishment of compulsory arbitration by

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the *Industrial Relations Ordinance 1960* alone, nor immediately, but by its regulation of collective bargaining plus amendments to the legislation on trade unions and strikes inherited from the colonial administration, by the legislation of 1968 that severely curtailed what could be collectively bargained for on behalf of most manual workers and by the authoritative determinations of the NWC from 1973. In fact, the number of strikes rose from 45 in 1960 to 112 the following year, but then fell annually to 10 in 1967. The last strike in Singapore 'without the tacit consent of the government' (Pang, 1981: 486) was in 1977, when the union involved forfeited its right to bargain under the amended *Industrial Relations Act* by challenging a management prerogative. In the first 7 years of its existence, the IAC made 398 awards and registered and certified 1440 collective agreements (IAC, 1978: 6). The IAC' s contribution to Singapore's strike-free industrial relations and low collective dispute rate derives from the awareness by the parties that an industrial action is illegal once the IAC has cognisance of the dispute (Krislov and Leggett, 1985: 23). In 2010, the IAC had cognisance under the *Industrial Relations Ordinance 1960* of seven disputes and of 9 applications to vary a collective agreement. It routinely scrutinised, registered and certified 369 collective agreements (Republic of Singapore, 2013). Thus, important as the role of the *Industrial Relations Ordinance* and the IAC have been in Singapore's industrial relations, the Ordinance in itself did not have the regulatory scope of say the Western Australian legislation, or for that matter the current Australian federal legislation, the *Fair Work Act 2009*.

Indeed, it has been argued that arbitration within the Singapore and Australian systems failed because the incidence of strikes and lockouts was not eradicated, although in the Singapore case, the NTUC Secretary-General and Minister of Labour Ong Teng Cheong had made it clear that the need to resort to conciliation was 'an unhealthy state of affairs in industrial relations' (NTUC, 1984: 1). In Singapore, strikes were all but eradicated by 1977, yet, in 1985, by not referring a dispute to the IAC, Ong tacitly allowed a strike to take place, seemingly to rebut with action a repetition of the claim that legal strikes were virtually impossible in Singapore (Wilkinson and Leggett, 1985). However, a dispute in 2012 involving foreign workers, specifically Chinese nationals employed as bus drivers, was not referred for conciliation and arbitration because the bus drivers had organised an illegal strike. The more active of the strikers were deported and the *Criminal Law (Temporary Provisions) Act* was invoked to prosecute the alleged ringleaders, who were gaoled and deported (*China Labour Bulletin*, 2 April 2013).

Nonetheless, and in spite of subsequent changes to both the Australian and Singapore systems, each represents a genuine attempt by the state to manage industrial conflict within a quasi-legal process of courts and tribunals, and as such the study of arbitration systems continues to be relevant.

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Notes

1. Later, in 1960, as minister for Labour and Law, Kenneth Byrne introduced the Industrial Relations Ordinance.
2. In 1965 with independence Singapore's 'ordinances' became 'acts' and are referred to as an act or an ordinance in this article according to the time of their reference.
3. In May 1955 students and workers converted a strike at the Hock Lee Bus Company into a violent demonstration which led to a night of terror and death. Ignoring the [British] Governor's advice, Marshall [Chief Minister] refused to call in troops to restore order, and the strike resulted in triumph for the Singapore Bus Workers' Union and its Singapore Factory and Shop Workers' Union allies. (Turnbull, 1989: 255)

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Author biographies

Chris Leggett is an Adjunct Professor in the School of Business, Faculty of Law, Business and Creative Arts at James Cook University. His research interests include industrial relations in the Asia-Pacific region.

Gordon Stewart lectures in Employment Relations and Human Resource Management at Central Queensland University. His research interests include industrial relations in Australia.