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The Enforcement of Minimum Labour Standards in an Era of Neo-Liberal Globalisation: An Overview

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Abstract

This article has three objectives. First, we examine what is meant by minimum labour standards, including the array of different standards and their procedural and substantive elements, in differing or even diverging regulatory jurisdictions. Examination of different areas of labour standards provides instruction in the dynamics of these protections and we give illustrative examples, from several countries. The second objective is to highlight the importance of enforcement of standards. We do this through a brief historical overview of the emergence of labour standards as well as of how the recent rise of neo-liberalism has shaped current debates over their development and application. The third element of the analysis is an examination of some contemporary debates, pointing to areas requiring further study as well as to positive examples both in research and in policy/regulation.

JEL Codes: J3; J8; L5

Keywords

China; decent work; labour standards enforcement; minimum labour standards; neoliberalism; occupational health; procedural rights; substantive union rights; vulnerable workers; working conditions.

Introduction

There is now a growing public policy debate and associated body of academic research on the question of minimum labour standards — including their enforcement. By minimum labour standards, we mean state-regulated social protection specifically addressed to setting an irreducible floor for working conditions. Labour standards include both procedural rights and substantive conditions. The most fundamental procedural rights are that workers can organise collectively, and have their organisations represent their interests, bargain and take industrial action. Substantive conditions include wages and hours of work, workplace health and safety standards and those affording compensation and other rights to injured workers and their families or dependents.

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We use the term 'labour standards' rather than 'employment standards' deliberately since minimum standards governing working conditions are not confined to employees or to the employment relationship. For example, occupational health and safety (OHS) legislation in many countries establishes protections for volunteers and self-employed subcontractors as well as for employees of principal contractors. Occasionally, such protections even extend to the industrial relations sphere where, in some jurisdictions, selected groups of workers are covered under collective determinations. In Australia, those covered include outworkers or home-based workers in the clothing industry and some self-employed truck drivers. Moreover, other laws — in the United States of America (USA), for example — seek to limit exploitation associated with the subcontracting or outsourcing of work by government agencies, a longstanding problem within industrial relations.

This article addresses both procedural rights and substantive conditions and highlights the interaction between the two. The next section focuses on these interrelationships, as well as on demonstrating the interaction of different fields of regulation. As OHS and workers' compensation are areas generating innovative system-oriented research, policy and practice attentive to other regulatory arenas, our analysis draws heavily on these areas as a lens to explore how such protections interact with a wider range of labour rights, and how, conversely, failure of protection in one area is likely to have compounding effects in other areas. The following section shifts the focus from regulation to enforcement, turning to questions of regulatory effectiveness, by issue and by type of approach, in the context of substantial changes to working arrangements. A subsequent section explores, historically, the emergence, and more recent patterns of erosion, of minimum standards in countries that industrialised early, and sets these alongside an introduction to the current situation in more recently industrialising countries. It highlights our earlier arguments regarding interactions between substantive and procedural rights in the improvement (or decline) of labour standards. We particularly look at the recent role of neo-liberalism, including both its dependence, and its influence, on China's dramatic economic growth. Before concluding, we briefly touch on the neo-liberal influence over standard-setting and enforcement in the context of the global financial and economic crisis since 2007, and on possible responses.

Interactions: Procedural Rights and Substantive Standards of Protection

Some substantive worker entitlements, like those relating to employment security and pay, are greatly shaped by the procedural rights to bargain and to make claims. For example, the existence (or not) of publicly funded health insurance/services and eligibility rules governing social security can affect the level of claims injured workers make for workers' compensation, and what happens to those workers unable to make claims (such as the self-employed) or to those whose claims are rejected or terminated (Quinlan et al. 2010; Cox and Lippel 2008; Sikka et al. in press). In the USA, healthcare insurance is still predominantly provided (voluntarily) by employers but its coverage has been narrowing, in part due to the growth of contingent work. For seasonal or other temporary workers in the

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USA, Canada and elsewhere, access to unemployment benefits — especially if it comes through contribution-based insurance — will affect their willingness to report illness or injury, make a compensation claim or take time off work. Similarly, eligibility for social security will also affect the proportion of older immigrant workers obliged to seek work, and consequent competition for work and inducements to evade labour standards (Borjas 2011).

Since workers' compensation claims data are the main source of official statistics used to evaluate or direct OHS prevention programs in many countries, gaps in these data — including a burgeoning one due to changes in work arrangements — have important policy implications (Quinlan 2004; Cox andand Lippel 2008). Further, gaps and inconsistencies in the implementation of workers' compensation entitlements, including those related to particular health complaints like stress and musculoskeletal disorders, or to particular categories of work, like home-based or domestic work, have significant gender implications. While Katherine Lippel (1999, 2003) and Hanley et al. (2010) have extensively documented these gender implications, they have been largely ignored by researchers concerned with gender equality at work.

Swelling the ranks of those discarded from work through work-related injury and disease have been those workers disadvantaged by weaknesses in the enforcement of job security and return-to-work provisions in workers' compensation legislation. Here again, enforcement difficulties have increased with the growth of the contingent workforce (Purse 2004; Underhill 2008). Further, prescribed minimum wages or average earnings are used as the reference point to determine compensation payments to injured workers unable to work. Time limits and discounting can also impose severe financial burdens on injured workers and their families, exacerbated for part-time temporary workers because payments are only proportional to hours worked prior to the incident.

These examples of interconnections are simply illustrative. Furthermore, the connections are often complex and can shift over time. For example, the United Kingdom (UK), Canada, Australia, New Zealand, Sweden, and Norway are among the countries in which both industrial relations and OHS legislation provide mechanisms for collective worker representation at the workplace. By the late 1980s, there were 50,000 employee health and safety representatives (HSRs) in Australia, where workplace OHS committees provided the single most important form of workplace participation (Bohle and Quinlan 2000). Union campaigns since the 1970s had provided the catalyst for the OHS legislation establishing these participatory mechanisms, and unions have subsequently provided critical logistical support to HSRs.

This example of the importance of participatory mechanisms in delivering substantive OHS outcomes is an instance of the degree to which substantive conditions depend on procedural rights. Extensive research into worker involvement in OHS by Walters and Nichols (2006) emphasises the effectiveness of representative forms of participation and the critical role unions play in this. However, declining union densities (in some countries), and the growth of precarious employment, have severely weakened participatory mechanisms that OHS laws may provide.

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Compounding these problems, particularly in Anglophone countries, have been changes to industrial relations (IR) laws seeking to de-collectivise or to restrict union rights and to weaken regulation governing, for example, working hours. IR changes have direct adverse effects on OHS (Quinlan and Johnstone 2009; Zullo 2011). Industrial relations mechanisms setting minimum wages and maximum hours establish an essential underpinning to health and safety at the workplace. Where public policy has largely removed IR from regulating working hours, these problems are shifted to the OHS sphere. One response has been a selective imposition of OHS regulatory regimes in several Australian jurisdictions to govern excessive working hours in the mining industry (Quinlan et al. 2009). There is nothing new about these connections. As Carson (1979) observed, the introduction of stronger factory legislation in the UK in the 1830s was also an attempt to offset rising worker mobilisation and the movement for shorter working hours (to ten per day!).

More optimistic are the advances in procedural safeguards of labour standards. During the past decade, Australia has introduced innovative supply chain regulation in the clothing and trucking industries. This makes use of both industrial relations and OHS regulatory frameworks to establish minimum standards on hours, pay and health and safety (James et al. 2007; National Transport Commission 2007). Unions and community groups have played a critical role in securing these interventions and, in the clothing trade at least, also occupy a critical role in overseeing enforcement. The notion of multiple duty holders — including those engaging contractors and parties beyond the immediate employer — found in OHS legislation (and especially the new supply chain regulations) has attracted interest in other countries, such as the USA. It also has broader relevance to industrial relations in an era dominated by outsourcing and the global supply chains that some companies use to evade labour standards regulation (see Rawling 2007). David Weil (1991, 1992, 2009) has written extensively on supply chain regulation, as well as on the role of unions in OHS enforcement.

Thus there is a need to draw together and examine the interrelationships among substantive minimum labour standards across a broad range of areas such as wages, hours, leave, equal pay, parental leave and the traditional sphere of industrial relations; OHS; and workers' compensation. There are also important lessons to be drawn from comparing and bringing together separate regulatory frameworks relating to different bodies of labour standards, as in the supply chain regulation example. Approaches to regulation are one issue, but it is equally important to consider the range of possible approaches to enforcement.

From Regulation to Enforcement

Enforcement in relation to industrial relations has largely been reactive — based on responses to complaints — especially in recent years. Yet, minimum labour standards and their enforcement faced general neglect by industrial relations and labour law researchers until recently. Notable exceptions were Roy Adams, and Laura Bennett. Bennett's (1994) work effectively described, analysed and prefigured many of these debates — including the effects of subcontracting and

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franchising — in a systematic fashion yet to be matched by current researchers. Now however, manifest problems of non-compliance associated with more individualised employment regimes are stimulating reconsideration of the traditional reactive approach.

Drawing on Bennett's (1994) work, Goodwin (2004) undertook one of the few sustained and historically-focused examinations of minimum labour standards enforcement. His study, which covers Australia's federal jurisdiction for much of the twentieth century, identified clear patterns of non-compliance by industry/work arrangements, and how restructuring the inspectorate and influencing its enforcement strategies reshaped outcomes (see also Maconachie and Goodwin 2011). In an article examining the inspectorate from 1986 to 1995 — coinciding largely with the first part of Australia's 'labour flexibility' era — Maconachie and Goodwin (2010: 419) concluded that employer 'evasion of workers' entitlements is arguably a calculated business decision, prompted or facilitated by intense competition, precarious employment (particularly female and youth), non-unionised workplaces and under-resourced enforcement agencies.'

Unions in industries like construction have long undertaken considerable informal monitoring and enforcement. Yet, researchers have neglected the impact of recent regulatory inhibitions on union workplace access on this activity. In contrast, there is a longstanding, rich and insightful body of research into the enforcement of OHS standards, and its interrelationships with different regulatory frameworks. Further, in a number of countries (including Australia) over the past 15 years, there has been a shift to 'proactive' enforcement — planned and targeted — although reactivity still occurs. Inspectorates also make use of a wider array of sanctions — from verbal directions and written improvement and prohibition notices, through to fines, enforceable undertakings and prosecutions — to secure responsive enforcement. That is, a sanction is selected to secure the best outcome and there is progressive 'graduation' of sanctions to reflect the gravity of violations and employer records of non-compliance. It is also worth noting that under OHS legislation in New South Wales (NSW), unions have the right to launch a prosecution where WorkCover NSW (the inspectorate) declines to. For example, union prosecutions of banks resulted in the erection of full-height security barriers to protect tellers (Mayhew 2000; Bunn and Guthrie 2003).

The shift to proactive and responsive OHS enforcement arose from recognition of the limitations of reactive enforcement — something industrial relations researchers could learn much from — and was influenced by the active engagement of OHS researchers like legal scholars Neil Gunningham and Richard Johnstone (1999). Nevertheless, as the comparative study by Walters et al. (2011) highlights, the shift to proactive enforcement has not been unproblematic. This is especially so where union density is declining, inspectorates are under-resourced or suffering funding cuts (as under Sweden's neo-liberal government) and where changes to business structures and work organisation are undermining working conditions, including OHS. Particularly sobering is the US case where, over the past decade, a weakening of and procedural barriers to effective enforcement has coincided with a serious deterioration in mine safety, highlighted by five mine disasters.

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In fact, there is a longstanding and extensive literature on what influences the effectiveness of enforcement in general. These factors include the regulatory framework, resourcing and strategic focus of the inspectorate and political interference (for example, Scholz and Wei 1986). In addition to affording a valuable comparator or guide to researchers examining minimum labour standards enforcement, research on 'regulatory failure' suggests a more basic point for our discussion. Where minimum labour standards are inadequate or inadequately enforced, serious social harm can occur, much of it unrecognised. Lippel (2006), for example, uses the notion of regulatory failure to examine precarious employment and OHS. We now discuss the need to examine the relative effectiveness of distinct regulatory spheres for labour standards, another area of relative neglect.

Assessing Effectiveness: Conceptual Gaps and Keeping Up with Labour Market Change

Failure to compare different regulatory regimes governing minimum labour standards and their enforcement creates other oversights. Exceptions in relation to bullying include Cox (2010) and Lippel (2010) and for disability and discrimination, Smith (2010) and Hewitt (2011). Such comparisons are essential if some important policy questions are to be addressed. For example, how effective has anti-discrimination legislation with its typically individualised complaint regimes been compared to more collectivist or semi-collectivist industrial relations and OHS regulatory regimes? Have female workers been better served by equal pay campaigns than by anti-discrimination legislation? How are inconsistencies in approach and overlaps between different regimes to be reconciled in a way that affords an effective level of social protection to the entire community?

It is not only the traditional sphere of industrial relations that has, until recently, neglected enforcement of minimum labour standards. With notable exceptions, such as Katherine Lippel, enforcement of worker entitlements to workers' compensation and rehabilitation has received remarkably little attention. Lippel's contribution is particularly valuable for exploring how gender influences workers' accessing their entitlements. She has also devoted considerable attention to the much contested area of claims related to mental health and the broader realm of regulating psychosocial conditions at work, whether related to OHS or workers' compensation.

Particularly useful for the approach we advocate, has been Lippel's work and that by Stephanie Bernstein and Eric Tucker (Bernstein et al. 2006; Bernstein 2006), on how different regulatory regimes — like workers' compensation, OHS, industrial relations, anti-discrimination — impact on specific groups, such as home-based workers. This multi-point, comparative approach allows identification of regulatory regimes' inconsistencies and gaps in protection (Montriel and Lippel 2003).

An illustration of the policy and social equity implications of regulatory failure is the role of immigration law in shaping the conditions of foreign workers, including undocumented or illegal workers. To what extent are extensions in regulatory obligations undermined by ineffective enforcement regimes or

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changes to the labour market and industrial relations context? In some countries, including Australia, the regulatory standards governing particular categories of foreign workers — many on temporary work visas and the like — are not identical to those of resident workers. Where workers have arrived without documentation or are working contrary to their visa conditions, entitlements to workers' compensation for injury sustained, for example, may be ambiguous. Indeed the question of these entitlements has been the subject of litigation in Australia, Canada and the USA (Guthrie and Quinlan 2005; Sikka et al. in press).

Whatever the ambiguities as to legal entitlements, they mask a far larger practical problem facing these and other vulnerable workers in accessing even those rights they are clearly entitled to. For example, a Chinese labour hire (leasing) firm providing temporary workers to Australia required them to sign a contract that precluded them from joining a union or 'political organisation'. This is a breach of Australian law but likely to remain undetected much less enforced (Toh and Quinlan 2009). In some countries, widespread use of temporary foreign workers has also led to calls by employers and employees for the formal establishment of two separate regulatory regimes or different levels of labour standards. Hwang, Wang and Chung (this volume) assemble arguments against succumbing to such pressures, not only from the perspective of labour rights and social impacts and labour rights, but from the perspectives of economic policy, trade and international relations.

Some research on vulnerable workers also highlights the role of geography in reinforcing the effects of inter-connected patterns of regulatory failure regarding minimum labour standards' enforcement. For example, studies of day-labourers, guestworkers and home-workers have pointed out that those workers are not only under-paid or worked beyond statutory hours (where these exist), but are also more likely to work in regional locations where OHS laws are routinely violated and, if injured at work, are less likely to receive workers' compensation (Guthrie and Quinlan 2005; Toh and Quinlan 2009; Sikka et al. in press). What we see here are multiple layers of vulnerability and how they interact with patterns of regulation (Sargeant and Tucker 2009).

The work of Katherine Stone, and the *Globalization and Labor Standards* (GALS) newsletter she developed, provides an example of the conceptual importance of a multi-faceted approach. GALS adopted a wide and encompassing definition of labour standards, providing regular updates of recent research on, for example, union bargaining rights, vulnerable workers (including women and immigrants), temporary employment agencies, OHS and work family-balance. Further, it adopted an explicitly internationalist approach, recognising the links between the litany of labour standards problems and processes of globalisation infused with neo-liberal assumptions.

Stone recognises that existing minimum labour standards do not cover some changes in working conditions, like those regarding work/family balance. Wahl (2011) makes a parallel point, observing that the problem in Norway is not — as it is in many other countries — the absence of a strong raft of minimum labour standards. Rather, it is that existing standards fail to address significant changes in work arrangements, including work intensification associated with outsourcing,

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privatisation and downsizing. In other words, employers' introduction of critical changes to work arrangements allows them to evade or bypass the existing regulatory framework (see for example Andrews 1914).

This is also evident in work intensification associated with discount operations in air, maritime and road transport where fragmentation of labour standards into distinct realms of regulation has assisted employers in their evasions (Blyton et al. 2001). Thus, the erosion of pay and lengthening of working hours in freight and passenger road transport have consequences for the safety of both workers and other road-users. Often all these factors act in combination. As an article in the *Washington Post* (21 June 2011) observed, the recent spate of bus crashes was not so much a 'fatigue' issue but a consequence of an unregulated discount bus industry in which intercity drivers were exempt from the overtime provisions of the *Fair Labor Standards Act*. Immediate results included low wages, long hours and drivers' taking second jobs to make ends meet. Even where regulation nominally covers changes in work conditions, it may not be enforced. For example, under OHS legislation in Australia and the European Union, employers are obliged, when making changes to work that could affect OHS, to undertake a risk assessment and consult workers in this process. However, there is little evidence of enforcement, at least in Australia (Quinlan 2007).

In sum, the challenge confronting those concerned with labour standards is not simply to ensure that existing provisions are made universal and enforced — though these requirements are essential. There also needs to be a refashioning of the scope of labour standards to meet emerging work practices and to ensure that the standards' critical role in social protection is not circumvented by stealth or omission.

Putting Minimum Labour Standards into a Comparative Historical Context

An understanding of the need to defend and extend existing labour standards is reinforced by recognition of the arduous path to their creation. Our historical discussion largely focuses on Britain — home of the first modern industrial revolution — and the countries that closely followed its lead. Early reforms sought to provide substantive protections to those most vulnerable to the evils of the early factory system; procedural rights came much later. Thus, the earliest modern minimum labour standards came with Britain's *Health and Morals of Apprentices Act* in 1802. Prior to this, labour legislation principally focused on the subordination of labour. Until the late nineteenth century, the principal mechanism regulating work was master and servant legislation, designed as a means to subordinate the growing category of wage labour by enabling employers to make legally binding agreements. Parallel bodies of law regulated merchant seafarers and indentured immigrants or foreign labour. Provisions within these laws allowing workers to pursue unpaid wages or to complain of harsh treatment hardly amounted to social protection. For example worker offences were deemed criminal offences while employer breaches were only civil offences. As shown by Goodwin and Maconachie, writing in this volume, over the nineteenth century, litigation increasingly involved employee complaints against their employers.

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This suggests that many employers failed to comply with the terms and conditions of employment that they themselves had essentially written.

The first British factory acts covered only limited categories of workers (children and women), addressed only some hazards, and lacked any effective enforcement mechanism. Indeed, actions relied on complaints to local magistrates who were often friends of factory owners. It was not until the mid 1830s, following social unrest and agitation, that the government established an inspectorate to monitor factories, investigate breaches and initiate prosecutions. Even then, according to Carson (1979), the level of enforcement — prosecutions launched, convictions recorded and fines imposed — effectively routinised and decriminalised serious offences by employers that had maimed and killed workers (including children). This 'light touch' approach to enforcement — which strongly emphasised cajoling employers to abide by the law — prevailed until the late twentieth century and was not confined to OHS (Carson 1989). Nevertheless, the appointment of government inspectors did serve as a model later adopted in other industries and extended to other minimum labour standards, such as minimum wages and maximum hours.

A different approach was evident in mining. From about 1890, coalmining unions in the UK, Australia and New Zealand secured the appointment of employee or worker inspectors in order to counteract the pro-employer bias or ineffectual efforts of mine inspectors in preventing the disasters that had claimed thousands of miners' lives. These initiatives proved only partially successful. Nonetheless, they provided a platform for unions to achieve union-nominated 'check inspectors' employed at each mine. This was a pioneering step for worker involvement in OHS.

Over the nineteenth century, legislation to prevent workplace injury (and to a lesser extent disease) spread to cover more work processes, workplaces and industries. From the 1870s, political pressures also brought forth Employer Liability Acts to ensure that employers paid compensation to workers (or their families) injured or killed at work. When these conspicuously failed, governments replaced them with no-fault workers' compensation laws based on the German model of the 1890s. Again, unions and their political representatives, together with repeated social mobilisations by religious groups, feminists, socialists and others, played pivotal roles in the introduction, revision and extension of these laws over a period of decades. Thus, for example, it was not until the 1920s that every state in Australia had an effective workers' compensation regime in place (Anderson and Quinlan 2008).

Similarly, legislative efforts to limit exploitation of workers through company stores (the truck system) began in the mid nineteenth century in the UK and were adopted elsewhere. So too were measures to protect employees against the failure of contractors to pay them their wages. Current parallels can be found in efforts to counter outsourcing, closures, relocations designed to produce an insufficiency of funds to meet worker entitlements, and the use of multiple business-listings in order to transfer workforce 'employment' to tailor-made, asset-less firms.

Achievement of procedural rights, and particularly legal recognition of unions' rights to organise, bargain and use industrial action, came only as par-

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liaments removed anti-union statute and common law provisions later in the nineteenth century. As unions gained strength, they were able to expand the scope of collective bargaining across working conditions, even if this meant only a de-facto and contingent recognition of union rights. A key objective was to establish — autonomously from the state — what the Webbs (1911) called the 'common rule' — a universal base rate of wages or conditions for a particular trade or occupation. Subsequent union initiatives to protect the common rule sought to prevent the undermining of bargained gains by workers receiving less for doing the same tasks.

Many unionists saw state regulation of minimum labour standards as one means of translating at least a floor of conditions to all relevant workers. The more astute unionists also saw the self-interest in ensuring that other groups of workers — especially the vulnerable — be organised and protected (Adams 1995). One example from Australia involved union attempts to introduce eight-hour day legislation from the late 1850s. These efforts began within four years of a successful campaign that brought an eight-hour working day to the building trades in Sydney and Melbourne.

The formation, in 1858, of the Victorian Eight Hours League sought 'a legal enactment defining a day's labour to consist of eight hours' (reported in *The Age*, 23 April 1883). In 1869, the National Short Hours League formed and began calling on the government to ensure that all public works were carried out under the eight-hour system, as well as seeking legislation making eight hours the legal working day in Victoria (*Age* 23 July 1869). The League's deputations and petitions to support James Casey MLA's bill for an eight-hour day (*The Age* 4 and 25 November 1869 and 3 September 1870) were unsuccessful, as were further attempts to introduce such legislation during the 1870s and 1880s and again after the 1890s' depression. Ultimately, enactment of the eight-hour day was piecemeal, through awards of Victorian wages boards in the first decades of the twentieth century rather than over-arching legislation.

Between 1880 and 1920, combinations of increased union organisation, broader political representation and allied social mobilisations brought substantial regulation of minimum labour standards, including both procedural and substantive standards, to northern Europe, North America and Australasia. This wave of reform occurred against a context of sharp economic cycles and emiseration in working and living conditions that spawned serious social dislocation, a trend made more dramatic by world war and its aftermath (Adams 1995).

Australia and New Zealand pioneered a number of these reforms including mandatory shop closing times in order to protect retail workers from overwork. The latter followed concerted union campaigning and social mobilisations and the failure, over 50 years, to achieve this voluntarily (Quinlan and Goodwin, 2005). More widely recognised were pioneering initiatives in minimum wages regulation. Compulsory arbitration began in New Zealand in the early 1890s and minimum wage setting by Victorian wages boards followed in 1896. The use of one system or the other — or combinations of the two — spread among the other Australian states, and the federal jurisdiction, in the 20 years of the new century (Macintyre and Mitchell 1989; Sheldon 2007). These innovations

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received keen attention in Britain and North America where official inquiries confirmed that, contrary to warnings from conservatives, the introduction of minimum wages had not led to a general collapse among employers. Instead, there was wide agreement that these were practical measures that had positive effects, including declines in child labour (Aves 1908; Collier 1915).

Yet, unionists in Australia and New Zealand were well aware that compulsory arbitration might oppress as well as protect employees and sought safeguards to minimise that risk (Bennett, 1994). Critical features of the resulting systems included formal recognition of unions — although subject to state oversight — and relatively wide union access to workplaces. State encouragement of collective organisation was both direct and indirect as employer refusal to negotiate did not hinder a tribunal from making a determination. Tribunal determinations established minimum labour standards beyond wages, including hours of work, shift rosters, breaks, meal and other allowances; a wider array than those legislated in most other countries.

By the 1970s, even a simple award would contain 60 or more enforceable conditions. In New Zealand and Australia's state jurisdictions, there were also legislated entitlements, including both recreation and long service leave. Yet, schooled in Anglo-American mental models, Australian and New Zealand industrial relations academics largely ignored the significance of the arbitration system's provision of a broader set of minimum labour standards until the neo-liberal agenda, from the mid 1980s, contributed to their narrowing or even removal.

Other countries had toyed with the idea of compulsory arbitration but most opted for the introduction of more or less voluntary collective bargaining framework. By 1930 in some western European countries, parliaments had given statutory recognition for collective agreements reached, essentially producing relatively comprehensive minimum labour standards for those working in those industries or trades. The development of 'extension clauses' in western and southern Europe, particularly after the Second World War, to spread bargaining gains to non-unionists and to firms not party to agreements made those standards near universal on an industry basis, akin to awards in Australia. As well, in a number of the 'collective bargaining' countries, governments also established legislative mechanisms to set minimal conditions — mainly minimum wages and maximum hours — for employees unable to protect themselves collectively (Adams 1995; Bamber, Sheldon and Gan 2010). Thus, by the mid-1980s, the sorts of substantive and procedural minimum labour standards enjoyed by employees in much of Europe and in Australasia, and the level of access to them, were perhaps less different than the institutional industrial relations frameworks that had the responsibilities to deliver them (Bean 1985).

Crucially, the emergence of three distinct realms of labour standards regulation — industrial relations, OHS and workers' compensation — was a historically contingent outcome. Different bodies of legislation (and often distinct enforcement agencies) formed the basis for parallel divisions in policy debates. Academic research did not question these divisions by rather perpetuated them. Yet, the distinction was always an artefact (Carson 1989). Indeed, those engaged in the

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reform struggle a century ago recognised this interconnectedness of minimum labour standards.

An understanding of the social context of regulation is of great contemporary relevance. Plowman and Perryer (2010: 17) argue there is evidence that Adam Smith — that purported doyen of neo-liberalism — would support the mandating of minimum wages in contemporary industrialised societies. They conclude that such mandating is a necessary but insufficient condition to ensure living wage outcomes, because these require continual re-assessment from a societal perspective. Notwithstanding some positive developments (such as equal pay), the overall trend in the past 30 years has been to unravel this connection as well to weaken mechanisms for implementing such standards.

The International Labour Organisation (ILO), at its 26th Annual Conference in 1944 issued a declaration reaffirming its fundamental principles, notably that labour is not a commodity; that freedom of association is essential to sustained progress; and that poverty anywhere threatens prosperity everywhere (cited in Hepple 2005: 32). While clearly shaped by contemporary experiences of global depression and world war, this reaffirmation also reflected policy lessons learned over the previous century. During this post-war period, the rise of unions and collective bargaining, the expansion of social protection and welfare legislation and the adoption of Keynesian economic approaches by most wealthy countries were broadly consistent with ILO principles.

Despite some attempts, there was no analogous level of attention paid to addressing global social and economic inequities. Stark international inequalities — for example between 'north' and 'south' — made it easier, from the mid 1970s, for the rising practical influence of multinational corporations (MNCs) and the emerging intellectual dominance of neo-liberal ideology to fuse in ways that had governments unravelling even modest protective frameworks. Most spectacular was the emergence of China within the international division of labour over the last 25 years, a subject we discuss in a later section after sketching the impacts of neo-liberalism.

Neo-Liberalism: Forward to the Past?

Neo-liberalism — the idea that competitive private markets provide optimal outcomes in all spheres of social activity and that the ameliorative roles of government should be minimised — has increasingly dominated policy making. Its assumptions now pervade the public as well as private sector, international as well as national institutions (Harvey 2005: 2–3). The rise of finance capital and neo-liberalism has entailed an assault on every avenue for civilising capitalism — avenues that were the outcome of over two centuries of social dislocation and struggle. At the national level, key neo-liberal policies include income tax cuts, particularly for those on highest incomes and consequent redistributions of income and wealth. This generates negative effects for public health and welfare provision as 'new public management' approaches have meant changes to resourcing and tighter fiscal control climates, while operational practices like outsourcing and competitive tendering have marketised state provision of public services (Fairbrother et al. 2011).

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In the labour market, neo-liberalism, in philosophy and practice, returns workers to being factors of production and their labour to being merely a commodity. Its assumptions make the logic of enterprise — read employer — profitability dominant while constraining worker choice through the individualising effects of neo-classical economic dogma and (anti-union) ascendancy of the use of common law. Neo-liberal impacts have been uneven success across countries. Arguably however, the Australasian systems' dependence on statute-based tribunal systems made the legitimacy of unionism, collective bargaining and labour standards most readily open to organised employer attack (Sheldon and Thornthwaite 1999; Katz and Darbishire 2002). Kaufman (2004: 554–55) notes that the return of neo-classical approaches to labour markets (as neo-liberalism) has been explicitly antithetical to minimum labour standards and the longstanding role of the ILO in promoting them.

In rich countries, 'freeing-up' the labour market usually means the replacement of collectivist and generally protective labour laws and institutions by those that de-collectivise and fragment the labour market through individual contracts, weakening union input and excluding the self-employed from protection. This urge to impose 'contractualist' legal regimes has brought the promotion of 'flexible' work arrangements and the growth in informal work arrangements (the 'black economy') (Quinlan and Johnstone 2009).

In the European Union (EU), there has been a failure to prevent the movement of people, capital goods and services from undermining labour standards, notwithstanding EU Directives on OHS, working time and the like. For example, in road transport, employers have paid drivers from Eastern Europe 'Flag of Convenience' level wages to drive down payments and have done this 'under-the counter' to breach formal collective bargaining agreements in countries like Sweden. Companies have shifted their operations to cheaper and low regulation havens — a process that has also occurred in other industries, like manufacturing, especially after the enlargement of the European Union (Woolfson 2006, 2007; Woolfson and Calite 2007, 2008).

EU Directives on labour standards purport to set a level playing field but there have always been substantial inter-member country differences in enforcement activity. These divisions have been accentuated, both by EU enlargement and by the recent impact of the economic crisis on low wage and low regulation EU regions. These include the new Eastern European 'tiger economies' — like Estonia, Latvia and Lithuania — which have made widespread cuts to their already deficient regulatory apparatuses (Woolfson and Calite 2008). There are obvious parallels in the USA to the role of the southern 'right to work' states, and of outsourcing to central and southern America.

Far more substantial has been the impact in developing countries where the informal sector can account for over 50 per cent of the workforce (Benach et al. 2007). While the World Bank has portrayed this growth as a response to 'regulation', Kucera and Roncolato (2008) find no support for this contention. In these countries, failure to implement labour standards has cascading effects throughout the community. There is the impact of poverty and work-related disablement on families, the inter-generational effects of child labour, and the

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effects of contingent work and reduced staffing levels on public health in hospitals and transport (Benach et al. 2007).

At the global level, production and service delivery are increasingly organised via international supply chains that effectively erode or bypass the most basic labour standards. Rich countries, and those becoming rich, also make growing use of temporary foreign guestworkers — an explicit commodification of labour (Castles 2006). The ILO has had no formal representation let alone enforceable standard-setting power with regard to the framework governing international trade, effectively having been pre-empted by the World Trade Organisation (WTO). The WTO promotes trade agreements in which labour standards are effectively undermined, while stating that labour standards should be left to an ILO that is marginalised and toothless (Benach at al. 2007; Kaufman 2004).

Financial assistance packages to poor countries from the International Monetary Fund and World Bank have been conditional on the adoption of neo-liberal (and anti-labour) policies (Chorey and Babb 2009). Although the World Bank and United Nations have also endorsed corporate social responsibility (CSR) policy models, these are voluntary, lack comprehensive coverage or sanctions. At worst, they bolster neo-liberal attempts to negate genuine social protection measures (Lock et al. 2007; Blowfield 2007). For example, the United Nations Global Compact on corporate citizenship is essentially a voluntary exercise. It formally targets forced and child labour but does not address gender inequality in developing countries where women make up a disproportionate share of precarious and informal employment (Kilgour 2007).

In sum, the rise of neo-liberal policies has run counter to the intent of the ILO's 1944 declaration and 100 years of progressive social policy development. There is now extensive documentation of the adverse global effects of inequalities in employment conditions associated with neo-liberal policies which register in health, wages/earnings/income and other indices (Benach et al. 2007; Bolle 2008; Anner 2011; Lemieux 2011).

Table 1 provides an overview of broad shifts in social protection and labour standards, union presence and vulnerable groups of workers since 1880. It highlights the substantial changes to social protection made in rich countries between 1880 and 1970 and the erosion that has occurred since. Moreover, as the table implies, each element in the first column must be seen as interconnected.

For the older industrialised countries, the early 1970s may have represented a peak in the application of conventional labour standards amid their post-war long economic booms. Subsequent erosion of the collectivist context that supported these standards has been uneven also within countries so that some areas of standards have not only survived but have enjoyed expansion or improvement. Most notably, these have come in OHS and workers' compensation (now both under attack), equal pay, parental leave and anti-discrimination legislation (Romeyn et al. 2011). While the newer industrialising countries have made some improvements in recent decades, their labour standards' situations (see Table 1) has never approached that in the long-time industrialised countries and, in practice, often appear closer to that of the industrialised countries in the early twentieth century.

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Table 1: Work, the state and social protection — industrialised and industrialising countries 1880–2007

	Industrialised countries			Industrialising countries
	1880	**1970**	**2007**	**2007**
Employment security and contingent work	No regulated job security and substantial contingent work	Secure jobs norm (except women)/small contingent workforce	Decline in job security and growing contingent workforce	No regulated job security — large/ growing informal sector
Minimum labour standards and union recognition/ bargaining laws (wages and hours)	No minimum wage or hours laws (except children) and limited union recognition	Universal minimum wage and hours laws and union recognition and collective regulation	Minimum wage and hours laws — some erosion	No or ineffective minimum wage and hours laws, little collective regulation
Extent of union membership and collective bargaining	Union density low (<10%) and limited collective bargaining	Union density 25->50% and extensive collective bargaining	Substantial decline in union density and collective bargaining	Union density low, declining and limited collective regulation
Extent of vulnerable groups of workers	Extensive exploited vulnerable groups (women, immigrants, home-workers, young and homeless, old)	Still vulnerable groups (women, immigrants and home-workers) but more circumscribed and now regulated	Vulnerable groups expand (women, home-workers, immigrants, old and young — child labour re-emerges)	Highly exploited vulnerable groups (children, women, immigrants, homeless, indentured labour)
Extent of occupational health and safety law	Limited OHS law (factories, mines) and poorly enforced	Expansionary revision of OHS laws initiated	Expanded OHS law but under indirect threat	Little OHS law and little enforced (only in formal sector)
Extent of workers' compensation system	No workers' compensation system	Mandated workers' comp/ injury insurance system	Workers' compensation/injury insurance — some erosion	Limited workers' compensation (only in formal sector)
Extent of public health infrastructure (water, hospitals, sewerage etc)	Little public health infrastructure sewer, (hospitals, water)	Extended public health infrastructure/ health insurance	Public health infrastructure — some erosion	Little public health infrastructure or being cutback in ex socialist
Social security safety net (sickness, age and unemployment benefits	No age pension, social security, unemployment benefits	Age, pension, social security, unemployment benefits	Age, disability, unemployment benefits — some cutback	No age pension, social security, unemployment benefits
State activity in utilities, education and transport	Limited state involvement in education and transport	Wide government involvement in education, transport, utilities	Privatisation, competitive tendering and social capital erosion	Limited state activity except ex socialist. Subject to privatisation, and social capital erosion

Source: Anderson, G. and Quinlan, M. (2008). Reproduced with permission of Labour History.

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China and Minimum Labour Standards

The rise of China as the 'the world's factory' has contributed substantially to the enormous practical success that neo-liberal agendas have recently achieved in many western societies. It has been the major embodiment of the enduring, overseas, low-cost, competitive labour-market threat that helps employers and their political supporters drive down domestic wages, conditions and the notion of standards; it has been the preferred haven for 'off-shoring' (outsourcing) production; the key pole of attraction for MNCs wishing to further stretch lean, global supply chains; and the benchmark for those promoting a discourse that individual and collective labour rights have no place in successful economic development. Within China itself, the Communist Party-state had, until very recently, increasingly embraced neo-liberal industrial relations, albeit with Chinese characteristics. We thus briefly examine the question of labour standards in China as it shifts through its dramatic and largely successful transition processes.

The party-state maintains its ideological and political centrality — including as rhetorical guarantor of workers' welfare — but it has spawned two apparently countervailing political-economic trends that together produce important implications for the quality of employees' working lives and life chances. One is the country's economic re-organisation on the basis of factor markets — including markets for labour — heavily tied into the competitive global economy. The second, is a substantial devolution and hence decentralisation of much of the country's legislative, judicial and public policy arrangements to provinces, regions, cities and towns. The idea is that the necessary working detail for much economically-oriented legislation and administration should fall to local authorities and it should reflect local conditions and, in particular, local levels of economic development. Together, these two trends have produced particular patterns influencing the question of minimum labour standards and their enforcement within a generalised widening of social and economic inequalities that reflect residential origin, location, gender and age (Cooke 2011; Hendrischke 2011; Tang 2011).

In the decades since Deng Xiaoping inaugurated his 1978–79 reforms, the Party-state has prioritised the interests of capital over labour in its haste to modernise and revitalise the nation's economy. Central objectives have included attracting high levels of foreign direct investment, privatising large swathes of the previously dominant state-owned sector, and encouraging indigenous private entrepreneurship. Devolution of political and administrative functions — within broad, generalised frameworks from the national level — has the purpose of encouraging and nurturing those economic objectives, from below. Local authorities therefore face contradictory impulses when it comes to providing protective labour regulation — and enforcement — for their local labour market. Mirroring the national-level priority, they compete to attract and retain investment, to encourage economic development and to thereby increase the local public revenue base. Thus, they too have tended to privilege employer concerns and interests at the cost of their legitimating roles in worker protection (Cooke 2011; Hendrischke 2011).

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Protection of employees from exploitation, danger, insecurity and indignity at work thus largely avoided official attention until the debate provoked by the design and passage of the 2008 *Labour Contracts Law* (LCL). Untold millions of Chinese workers have paid heavy prices for the startling economic successes that have brought ever greater rewards to many within the new generations entering its urban labour markets (Tang 2011: 83–85). Most brutally, there are those killed at work in their tens of thousands in (mostly illegal) coalmines (China Labour Bulletin 2008 :2–3). Less dramatic, but affecting many more, has been the growth of informal employment marked by job and income insecurity. Cooke (2011: 261) has estimated that there are at least 150 million people in informal employment in urban areas. These mostly come from the millions of former employees of defunct state-owned industries and the tens of millions of workers who migrate from rural areas to factories and construction sites in booming cities. China's (internal) migrant workers suffer all the indignities, insecurities and disadvantages facing unregulated or under-regulated employment of cross-national labour migrants in other countries, albeit with particular Chinese characteristics (Cooke 2011; Tomba 2011).

More generally, harsh factory regimes with their long working hours — whether under local or foreign-invested enterprises (FIEs) — have brought allegedly high rates of employee suicides such as those at the factories of major electronics contractor Foxconn during 2010 (Hille and Mitchell 2010). In recent years too, there have been a number of major and heavily publicised strikes including at Honda and Toyota plants, also during 2010, as well as 'many tens of thousands of labour protests, mostly unofficial … as recorded by the State authorities' (Sheldon et al. 2011: 1). Otherwise, disaffected Chinese workers have also engaged in heavy levels of turnover wherever local labour markets are tight.

They have, however, had little support from either the officially-recognised union movement, or protective legislation. The former is subordinate to the Party-state at the national level and to company management at the enterprise level. Nevertheless, some activists at the locality level have attempted to develop more autonomous and more member-focused orientations, objectives and practices, including collective bargaining (Liu et al. 2011). Legislation has had very patchy effects, in part because of the very diverse regulations that local authorities have developed under it and in part because, committed to the cause of encouraging local investment and in the absence of union activism, those authorities have also been variably lax in implementation and enforcement. The LCL does provide substantially increased employee protections, particularly in relation to employment and income security compared to previous legislation. This is also evident from vociferous employer hostility to its enactment and strategic attempts at evasion subsequently. However, pro-labour critics again point to its virtual silence on the question of autonomous union activism, including industrial action (Hendrischke 2011).

Nevertheless, the LCL's passage amid increasing high-level Party-state pronouncements prioritising 'a harmonious society' within China's free-wheeling economic boom suggest a partial retreat from official commitment to unbridled neo-liberalism for China's labour market (Warner 2010). This, together with im-

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provements to Chinese manufacturing wages and conditions may, in the next few years, help release the asphyxiating hold that neo-liberal ideas and consequent practices exert over minimum labour standards elsewhere.

Contemporary Debates about Minimum Labour Standards

There have been recent challenges to the crisis in social protection created by neo-liberalism. The World Health Organisation (WHO) has produced a wide- ranging series of reports on poverty, education, healthcare infrastructure, urbanisation, children, gender equity, migration, fair financing/markets, political empowerment and global governance. The final overview report of its Commission on Social Determinants of Health argued that global health inequalities (both between and within countries) were overwhelmingly socially determined and that social justice was not just a policy option but, 'a matter of life and death. It affects the way people live, their consequent chance of illness, and their risk of premature death' (CDSH 2008: preface).

This WHO report draws on the concept of 'decent work', along with the social and political empowerment essential to securing it. The ILO too has developed a campaign around decent work (Kaufman 2004), which entails a notion of the minimum requirements for wages, hours, security, health and safety, work intensity, rights and dignity that moves beyond the fragmented and compartmentalised realms of trifurcated labour standards. Unfortunately, while not without effect, these efforts have failed to gain traction in a context where even social democrat/labour governments remain firmly wedded to neo-liberal policy discourse.

Contemporary debates need to be placed in the context of the historical trends discussed above. With the growth in labour market 'flexibility' and de-collectivisation there has been a renewed interest in low-paid workers — those whose wages are almost entirely determined by regulatory requirements and then only if these are enforced to some degree (Weil 2002; Evesson et al. 2011). It is not coincidental that the winding back of labour standards occurred during a period when governments abandoned Keynesian policies and the mixed economy, encouraging and reinforcing employer offensives (Bennett 1999; Sheldon and Thornthwaite 1999). Nor is the rise of the finance sector of capital and the simultaneous decline of organised labour coincidental (Peters 2011).

Debates over minimum labour standards are now couched within government responses to the current economic crisis, itself the product of neo-liberal policies and regulation regimes. Increased government debt, a consequence of the costly bail out of the finance sector and neo-liberal erosion of the public sector revenue base, provides the excuse for more cost-cutting and erosion of services and renewed attacks on basic working conditions and labour standards across rich and poor countries (Stiglitz 2009). The crisis has also become the pretext for abandoning any pretence at dealing with inequalities in health and social opportunity even in realms like the EU where these are enshrined in formal policy objectives with agreed outcome targets (McKee 2011).

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In the USA, the low level of minimum wages — effectively below subsistence level — has meant that substantial numbers of workers needed to rely on social security benefits (or tips in hospitality, taxis), effectively providing a state subsidy to some large and very profitable employers. In road freight, for instance, companies have exploited the North American Free Trade Agreement to substantially cut driver wages, practices that appear to be in breach of anti-discrimination and immigration legislation (Judge 2009). In an assessment of the enforcement of state minimum wage laws in the USA, Meyer and Greenleaf (2011) note that a substantial increase in the number of low paid workers is likely to translate into more wages and hours violations, stretching already under-resourced enforcement agencies. Evidence of similar trends is apparent in other countries. Demands around the concept of a 'living' wage have re-emerged, echoing campaigns a century earlier.

The economic crisis has emboldened neo-liberals as well as more traditional anti-union forces in their attempts to further wind back both procedural and substantive labour rights. This has included efforts in a number of US states (such as Wisconsin[1] and Indiana) to restrict/prohibit the bargaining rights of public sector unions — one of the few remaining bastions of union membership in the USA — and to cut costs and de-unionise through privatisation and outsourcing. The 'reformers' have also sought to reduce pension and other entitlements (such as healthcare) of public sector workers (or increase the level of contributions they must make), alleging that these workers are 'over-compensated' despite evidence to the contrary (Keefe 2010). Their impulses are largely ideological since states that have long prohibited public sector bargaining are also experiencing severe budget difficulties (Kochan 2011).

Not surprisingly, these moves have sparked a vigorous union and community response as well as debate in policy and academic circles. They appear to be the culmination of a series of regulatory efforts since the early post-war period to circumscribe employee collectivism in the USA. Those efforts included emasculating the National Labour Relations Board's potential for protecting unionism and collective bargaining from insistent, widespread employer aggression. As Roy Adams has observed, policy debates in the USA conspicuously ignore the implications of that country's longstanding ILO membership, although it must be said that it has only ratified two of the eight ILO core labour standards. One notable omission is the right to organise and collectively bargain (ITUC 2010). In echoes of the nineteenth century, some aggrieved workers have turned to mainstream judicial avenues for redress. In 2010, there was a class action for gender discrimination on behalf of 1.5 million current and former Wal-Mart female employees. Indeed, class action lawsuits relating to basic employment conditions, like minimum wage violations and failure to provide rest breaks, have become increasingly common in the USA (*GALS Newsletter*, Vol.9 No.8).

While the overall trend is largely negative there are some positive signs. For example, in June 2011, the Australian (Labor) government announced it would ratify the P155 Protocol of 2002 of the 1981 ILO OHS Convention on the right

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of employees to report OHS incidents without fear of victimisation. The government indicated it would also ratify three other conventions dealing with asbestos, maritime labour and part-time work. Mandatory supply chain regulation in a number of Australian industries was mentioned above. Examples of supply chain regulation are also emerging in other countries, the product of a complex array of factors including contradictions within capital, social mobilisations and concerns over security, the environment and public safety (Quinlan and Sokas 2009; Belzer and Swan 2011). While not a universal solution, this is one means of applying labour standards to complex networks of contracts which undermine existing regulatory regimes — and a mechanism that has the potential to operate across international boundaries.

Another potentially critical development has been the introduction of 'anti-social dumping' regulation in Norway as well as the somewhat earlier emergence and campaigning, in that country, of a social movement to defend the welfare state (Wahl 2011). What both developments highlight, alongside the importance of broader social mobilisations to protect and extend these protections, is the importance of a revitalised and integrated approach to regulating labour standards where the interconnections among wages, hours, OHS and the like are recognised and where, ideally, the chief beneficiaries of evasive practices are targeted.

Conclusion

The growing debate about minimum labour standards and their enforcement is part of a broader debate about the regulation of work — a debate that is not just relevant to policy makers but questions the dominant trajectory of policy development in the last 30 years. This debate also has implications for academic fields such as labour law and industrial relations not only in terms of what should be researched but how, indeed, these fields should be conceptualised (Mitchell 2011). While paid work is a pivotal activity within capitalist societies, the forms that work takes and its contribution to society and those who undertake it or depend on it, is largely left to the market in which power dynamics mostly greatly favour capital. Work is only regulated at the fringes in terms of minimum socially-acceptable conditions and even here, as this special issue will show, regulation is often deficient, eroding and poorly enforced. Policy debates mirror this marginalisation. We would argue that the nature of work — both its economic and social roles — should occupy a central part of policy deliberations at national and international levels. The establishment and enforcement of effective minimum labour standards should occur as part of a broader agenda of improving the equality and quality of work.

Notes

1. The attack in Wisconsin has substantial symbolism as that state was the base for John R Commons (progressive and author of the first major history of the US union movement), the first state to recognise public sector bargaining, and in the early twentieth century, one widely seen as *the* progressive social laboratory within the USA.

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