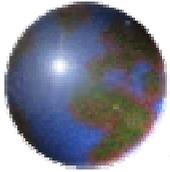


## *Chp. 3: ER in the 1990s*

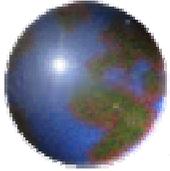
### ✦ Overview

- ✦ Shift in employment relations philosophy
- ✦ Employment Contracts 1991 – brief comments
- ✦ Bargaining outcomes & labour market trends
  - Evaluation & information biases
  - What was the impact of the ECA on key changes?
  - The productivity conundrum
- ✦ Employment law – important concepts
  - Legal precedent in the 1990s



## *The shift in ER philosophy*

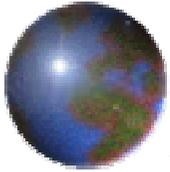
- ✦ Arbitration system assumed that the employment relationship was special
  - ▣ Different from a market exchange of goods
- ✦ A new view of ER – the market view – was gaining currency prior to the ECA
  - ▣ A private contractual relationship
    - The state should refrain for interventions, except for support of market exchanges & individual choice
  - ▣ Individual choice & freedom to be promoted



## *The shift in ER philosophy - II*

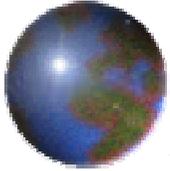
### ✦ The market view

- ✦ Employer-employee power imbalances?
  - Employee choice & 'agent' support overcome imbalances
- ✦ In a market situation, would 'employment-at-will' situations become prevalent, as in the USA?
  - Similar to individual agreements prior to the ECA
- ✦ This would impact positively for highly skilled, high in-demand employees. Was this okay?
  - Could provide market incentives for upskilling



## *The Employment Contract Act*

- ✚ What was the Act fundamentally about?
  - ▣ See the long title (p. 40)
  - ▣ 'An efficient labour market', freedom of choice & freedom of association
- ✚ A short Act, with six important parts
  - ▣ Tension between bargaining regulation sections versus sections on individual rights & employment institutions
    - From collectivism to improved individual rights



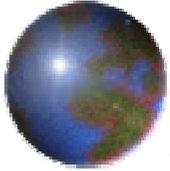
## *The ECA tensions*

### ✦ Curtailing collectivism

- ✦ Reduced unions to 'bargaining agents'
- ✦ Made collective bargaining more difficult
  - Access & authorisation procedures, strike rules
  - Biased in favour of employer choice of contract type

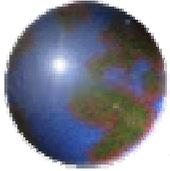
### ✦ Promoting individualism

- ✦ Both individual & collective bargaining are covered
  - Personal grievance option for all employees
- ✦ Contractual terminology points to individualism



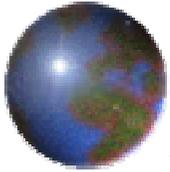
## *ECA outcomes: evaluation issues*

- ✦ Did the predictions match the outcomes?
- ✦ To what degree was the ECA a crucial factor or just one of many major economic & social reforms influencing outcomes?
- ✦ Frequently parties talk past each other
  - ✦ Lack of solid, detailed information
  - ✦ Selective use of information
- ✦ The debate is far from over!



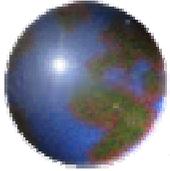
## *Decline in collectivism*

- ✦ Union membership declined strongly
  - ▣ Indicate dissatisfaction amongst some members
  - ▣ Union density fell even further (see table 3.1)
    - Employment growth highlighted weak recruitment
  - ▣ Many private sector workplaces without unions
- ✦ Sharp shift: coll. to individual bargaining
  - ▣ Prior awards: nationally agreed industry or occupational awards with blanket coverage
    - That is, awards also covered non-members of unions



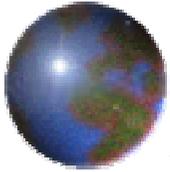
## *Disputes: individual solutions?*

- ✦ Drop in the number of strikes
  - ▣ Impact of both ECA & a weak labour market
  - ▣ Public sector strikes: more of a funding issue
- ✦ Rise in personal grievance claims (table 3.5)
  - ▣ Higher than expected but is the actual number high in terms of NZ workplaces & employees?
  - ▣ What factors drove this increase?
    - Unjustifiable dismissals & 'procedural fairness'
    - Media reported exceptionally large pay-outs



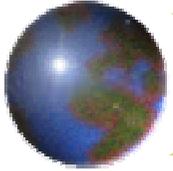
## *Bargaining outcomes*

- ✦ Diversification across employee groups
- ✦ 91-96 period saw few gains, on average
  - ▣ Impact of fewer penal rates & overtime payments are unclear, though crucial in certain sectors/jobs
  - ▣ On average, employees regain ground post-1996
- ✦ Working time bifurcation
  - ▣ Longer working hours approach gains ground
  - ▣ Rise in part-time, casual & self-employment



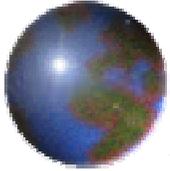
## *The productivity conundrum*

- ✦ ECA was expected to increase productivity
- ✦ Labour productivity was dismal under ECA
- ✦ It is unclear why this happened but it signals that a 'cheap labour' strategy may hamper productivity
  - ▣ Possible explanations:
    - Limited impact of restrictive work practices?
    - Lack of infrastructure investments?
    - Reform 'fatigue', insufficient support to MSEs & other growth sectors, insufficient investment in upskilling?
  - ▣ Or was it just the wrong reform strategy & pace?



## *Employment law in the 1990s*

- ✦ Focus on emp. contracts – key elements
  - ▣ Contract, statutory entitlements, customs & practice, implied terms (general norms)
- ✦ Possible empl. contract content (table 3.3)
  - ▣ Is the list complete or are YOU interested in incorporating other areas/clauses?
- ✦ Contracts for or of services distinction
  - ▣ Important as work patterns changes (table 3.4)
  - ▣ Who makes the choice & what are the advantages associated with the various choices?



## *Legal precedent*

- ✦ Non-prescriptive, radical nature of ECA made legal precedent crucial & unavoidable
  - ▣ Increased the burden of legality & litigation
- ✦ What were the key areas of legal precedent?
  - ▣ Partial lockouts
  - ▣ Redundancy: entitlement & payment levels
  - ▣ Fixed-term employment contracts
  - ▣ Holidays: entitlements & payment