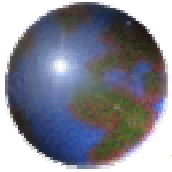


Chp. 3: ER in the 1990s

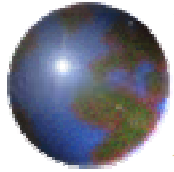
✦ Overview

- ✦ 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

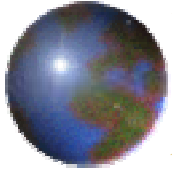
- ✦ Arbitration system assumed that the employment relationship was special
 - ▣ Different from a market exchange of goods
- ✦ A new view of ER – the market view – was gaining currency prior to the ECA
 - ▣ A private contractual relationship
 - The state should refrain for interventions, except for support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



The shift in ER philosophy - II

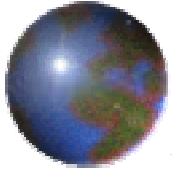
✦ The market view

- ✦ 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



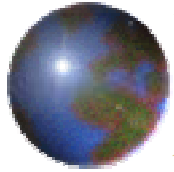
The ECA tensions

✦ 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

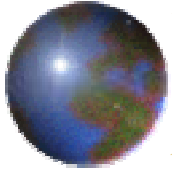
✦ Promoting individualism

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



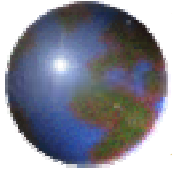
ECA outcomes: evaluation issues

- ✦ 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!



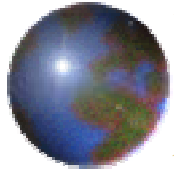
Decline in collectivism

- ✦ 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



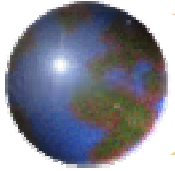
Disputes: individual solutions?

- ✦ 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



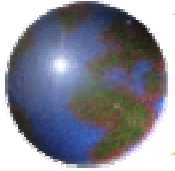
Bargaining outcomes

- ✦ 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



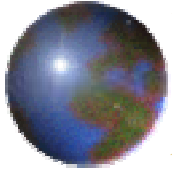
The productivity conundrum

- ✦ 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