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Building a ‘high road’ economy? The Employment Relations Act in an international comparative perspective

Colm McLaughlin

Introduction

New Zealand’s labour productivity growth has been below the OECD average for the last 30 years (Business New Zealand 2008a) and a consensus has developed between the social partners that this needs to be urgently addressed. Given that there have been two radical reforms of the employment relations framework since 1991, both of which have been presented as part of the solution to New Zealand’s poor productivity performance, this consensus is an admission that both frameworks have failed in delivering on a fundamental policy aim.

The Employment Contracts Act 1991 (ECA) was predicted by its supporters to deliver significant productivity growth. Central to these predictions was the belief that trade unions were the primary cause of New Zealand’s poor productivity performance by resisting labour-saving technologies or work reorganisation, introducing demarcations between jobs and engaging in industrial action. Even some union-friendly economic commentators (e.g. Easton 1996) suggested that union-instigated restrictive practices were significant contributors to low productivity and they therefore expected to see productivity growth under the ECA.

The Employment Relations Act 2000 (ERA) adopted a significantly different approach. Unlike the ECA, which was predicated on unions being part of the problem, the ERA is predicated on unions being part of the solution in relation to productivity. Hence, the increased rights for unions and strengthening of collective bargaining are intended to not only balance the perceived inequality of bargaining power in the employment relationship and the poor record on labour market equity under the ECA (e.g. Conway 1999, McLaughlin 2000), but also to raise New Zealand’s economic performance through promoting productive workplace relationships based on ‘good faith’ behaviour between employers and unions. Moreover, it is important to see the ERA as just one component of a wider strategic plan to build a high-skill, high-wage, and high-productivity economy (Wilson, M. 2004) – i.e. a ‘high road’ national competitive strategy. The emphasis on building productive relationships at workplace level is supported at industry and national level through a range of tripartite and consultative initiatives, and the ERA is embedded in a wider regulatory and policy framework aimed at delivering not only economic growth but also social equity. All these reforms are part of what Haworth (2004)
described as a shift towards a ‘social democratic’ model, a model where economic efficiency and social equity are not viewed as trade-offs, but as interdependent. Thus, in this approach, union organising and collective bargaining rights, strong employer–union relationships, and good employment conditions are seen to perform vital economic functions, provided they are embedded in a supportive institutional framework.

However, given the ongoing disappointing productivity growth, significant questions remain about both the effectiveness of the various policies implemented over the last nine years, and whether the right institutional changes were adopted. Granted, productivity growth is driven by a range of factors, such as investment in technology, research and development, the education system, and the national infrastructure (e.g. roads, utilities and broadband). Nonetheless, there is also general agreement that building high-trust workplace relationships and investing in workplace education and training are also important (Rasmussen et al. 2006, Harvey and Harris 2008). While there may be some disagreement about the relative weight of the various factors affecting productivity, there is some consensus that building a high-skill, high-wage economy is fundamental to improving New Zealand’s productivity performance. However, there is little consensus about the institutional mechanisms needed to achieve this, and indeed, there remains a significant ideological divide between the social partners about the way forward, and in particular, around the question of whether unions are part of the problem or part of the solution. The ERA exists to a large extent in the shadow of the ECA.

This chapter examines this ideological divide in an international comparative light. The first section examines some of the relevant theoretical debates and compares and contrasts the institutional and policy frameworks of Denmark and Ireland, two small open economies. In the Danish system, trade unions are very much part of the solution when it comes to building a ‘high road’ national competitive strategy. Denmark has the highest levels of continuous training in the OECD and unions play a fundamental role in this success through the array of employer–union ‘productivity coalitions’. In Ireland, unions have a much more ambiguous existence. They have been a central actor in the national-level social partnership model that is generally seen as having played a key role in turning around Ireland’s economy in the post-1987 period, and yet at workplace level anti-union employer attitudes are widespread. As a result, when it comes to building a long-term, sustainable high-productivity national strategy there is a reliance on voluntarist approaches, and institutional supports for ‘productivity coalitions’ are off the agenda. However, doubts are raised about the effectiveness of this approach.

The second section examines the ERA and related policy developments in New Zealand in light of the Danish and Irish experience. The argument is made that while the ERA has
improved rights for unions and strengthened collective bargaining, in retaining a largely
decentralised framework it has limited the potential to build effective industry-level
‘productivity coalitions’. Like Ireland, it too relies on voluntarist approaches to building a ‘high
road’ national competitive strategy in an ideologically divided context, and like Ireland, doubts
are raised about the effectiveness of this approach.

**Varieties of capitalism** and the comparative advantages of non-market co-
ordination

The institutional comparative literature has long emphasised the economic benefits of capital–
labour and inter-firm co-operation typical of many continental European economies. The
‘varieties of capitalism’ framework of Hall and Soskice (2001) reinforced this in drawing a
distinction between two broad patterns of economies, ‘co-ordinated market economies’ (CMEs)
and ‘liberal market economies’ (LMEs), arguing that in each type of economy firms deal with
the range of co-ordination issues they face in different ways. Countries such as Germany,
Belgium, Sweden, Denmark and Japan would typically be classified as CMEs, while countries
such as the UK, the USA, Canada, Ireland and New Zealand would typically be classified as
LMEs.

In CMEs, capital–labour and inter-firm institutional arrangements facilitate a significant
degree of non-market co-ordination over a range of industrial issues. The development of non-
market co-ordination mechanisms, or what are referred to elsewhere as ‘productivity coalitions’
(Rhodes 2001, Teague and Donaghey 2009), facilitate the provision of a range of collective
goods that the market alone might be unable to provide. Markets do not always deliver efficient
outcomes, and co-operation between firms and other actors allows for non-market solutions to
address issues of market failure. In LMEs, firms resolve their co-ordination problems primarily
through markets and hierarchies. The influence of organised labour within firms, or at industry
or national level, is minimal. There are low levels of inter-firm co-operation and little state
intervention in industry. While the state may legislate over some issues or provide quasi-public
agencies to support business, the lack of a wider institutional framework for inter-firm and
capital–labour co-operation limits the state’s ability to facilitate the provision of collective
goods that are provided through non-market co-ordination in CMEs (Hall and Soskice 2001).

The distinction between the two approaches is often illustrated using the issue of
employer-led training. In a market system, the need for training is high but the incentive for
employers to provide training is low as employers who do not train, but choose instead to poach
trained employees, incur lower costs. Thus, employers are encouraged to ‘free-ride’ rather than
invest in training themselves. It is the classic ‘prisoners’ dilemma’ situation. By co-ordinating their actions, employers could achieve a more effective outcome, but in a liberal market system there are few non-market co-ordination mechanisms. The state will often part-fund various training schemes, but without significant investment by employers the end result is insufficient levels of training and a shortage of skills in LMEs, which are then driven down the low-cost, low-wage, low-productivity route to competitiveness – to what Finegold and Soskice (1988) first called a ‘low-skills equilibrium’. In CMEs, these disincentives are overcome through the interaction of a range of non-market mechanisms. For example, comparatively high wages negotiated through the system of collective bargaining provide a strong incentive for employers to invest in training and retraining in order to ensure worker productivity matches labour costs.

In addition, strong employers’ associations place obligations on members to train their employees and to contribute financially to the vocational training system, and union involvement ensures that employers take a long-term approach to training (e.g. by preventing management from cutting training budgets during economic downturns). Thus, the institutional framework forces employers to compete on the basis of quality rather than cost-minimisation and drives them along the high-wage, high-skill, high-productivity route to competitiveness (Streeck 1992).

Thelen (2004) notes that this distinction around training between LMEs and CMEs is somewhat simplistic, and has been replaced by a more nuanced analysis that recognises the different skill sets that each type of economy produces. Nonetheless, in relation to the lower half of the labour market, there are still significant issues of market failure in LMEs in relation to training (Soskice 1999), and a far greater polarisation of skill levels has and continues to occur as a result of the weaker institutional framework (Crouch et al. 1999).

‘Beneficial constraint’ or voluntarism?

Many of the non-market co-ordination mechanisms in CMEs place certain limitations on the behaviour of the actors. Streeck (1997) argues that the actors will not choose a path that appears to go against their self interest. For example, he suggests that a system that limits managerial prerogative will not be chosen freely by organisations even though it may lead to more efficient outcomes. Similarly, he notes that if employers have the option to adopt a low-cost route to profitability, then self-interest will guide them in this direction. However, by restraining employers from taking what may appear to them to be rational action, society is in fact transforming their preferences by opening up alternative strategies – strategies they would not otherwise have considered. In the case of Germany, Streeck argues that employers only came to
appreciate the benefits of the co-determination system as a result of being forced into it. This is what he termed ‘beneficial constraint’, in that society and the economy can benefit from placing constraints on the strategic options available, and in doing so prevent the actors from wasting valuable resources on suboptimal strategies.

In a more liberal context, where employers do not wish to be coerced into adopting certain strategies, the idea of ‘beneficial constraint’ may not sit comfortably, even though the benefits of non-market co-ordination in addressing issues of market failure may seem attractive to policy-makers. Consequently, and given that public policy has shifted in a number of LMEs from extreme neo-liberalism, there has been a growing interest in voluntarist approaches to non-market co-ordination. Culpepper (2001), for example, in examining the issue of employer-sponsored training, argues that persuasion of actors by government using incentive-based public policy supports can be an effective way of bringing about certain employer behaviours. Thus, he advocates cajoling rather than coercion.

The logic underpinning a voluntarist approach is that the actors will be convinced of the economic benefits of certain courses of action through rational argument and empirical evidence. However, one of the limitations of this view is that it ignores ideology. Systems of employment relations are highly contested terrain and some actors may simply not wish to participate in certain institutional arrangements for ideological reasons (Visser 2001). For example, if employers believe that unions are bad for flexibility in that they limit managerial prerogative, could they ever be convinced by rational argument that the benefits to be gained by working with unions might outweigh any potential disadvantages? It seems highly unlikely that the majority could be cajoled into freely choosing to work with unions. However, if they were coerced into working with unions, they may come to see the benefits over time, provided the institutional arrangements in place were those that created co-operative, rather than adversarial, working relationships.

There are parallels between Streeck’s notion of ‘beneficial constraint’ and theoretical developments in the field of ‘reflexive regulation’, where the argument is made that ‘hard law’ can at times be overly prescriptive and inflexible, and as a result may be ineffective in addressing the economic and social issues it is targeting. Conversely, ‘soft law’ – for example, cajoling and encouraging certain behaviours based on the ‘business case’ – may simply be ineffective if the parties are not convinced by the arguments or find them ideologically disagreeable. ‘Reflexive law’ is seen as a middle ground, whereby the law commits the parties to engage in certain processes rather than committing them to particular outcomes. In this light, the argument is not that all constraint mechanisms will be beneficial, but rather those that
commit the actors to engage in processes of social dialogue. The idea is that being forced to engage in dialogue opens up the possibility of meaningful deliberation and collective learning, which in turn might lead the actors to challenge their ideological presuppositions and redefine their interests (de Schutter and Deakin 2005, Deakin and McLaughlin 2008). (Good faith bargaining could be viewed as an example of ‘reflexive law’ in that it requires the actors to enter into a process of dialogue.)

The following subsections give a brief overview of some of the institutional arrangements in Denmark and Ireland in relation to building a ‘high road’ competitive national strategy. Denmark is an example of a CME that has well-developed non-market co-ordination mechanisms. Ireland is an LME that has implemented certain CME mechanisms, most notably social partnership. However, it relies primarily on cajoling and persuasion to diffuse the national-level vision of ‘best practice’ employment relations to the workplace. Anti-union employer ideology and the dependence of the Irish economy on foreign direct investment (FDI) mean that institutional constraints are off the agenda.

**<H3>Denmark**

Denmark is a country that illustrates the benefits of non-market co-ordination and ‘beneficial constraint’. It is also a country that is of increasing interest to both policy-makers and scholars of comparative employment relations. For some, this interest in the ‘Danish model’ of employment relations relates to the balancing of relatively low levels of employment protection with generous social protection, the so-called ‘flexicurity’ approach, which the European Commission (2007) has now been espousing for several years. For the International Labour Organisation (ILO), the interest in Denmark also focuses on the benefits of social dialogue in delivering ‘decent work’ and equitable social outcomes (Egger and Sengenberger 2003). For others, the interest relates to the training system and the complementarities delivered by its interaction with a range of other institutions (McLaughlin 2009), which delivers the highest levels of continuous training in the OECD (OECD 2006). Of all the Scandinavian countries, Denmark is perhaps the most relevant CME comparator for New Zealand given that it also is a small open economy with a predominance of small and medium-sized enterprise (SMEs).

The Danish system is underpinned by a strong degree of consensus between employers and unions. This is perhaps most evident in the central role played by collectively bargained agreements in regulating the labour market. Areas of working life that in most countries would be covered by government legislation, such as minimum wages, rules on working time or redundancy notice periods, are all dealt with in collective agreements. This voluntarist feature is
considered such a fundamental part of the system that outside intrusions – such as EU directives or unilateral government intervention – are viewed by the social partners as undermining the system.

While the Danish system is ‘voluntarist’, unions are very strong, with density levels of around 75 per cent (OECD 2005), and coercing firms to enter into collective agreements through secondary strike action is viewed by employers’ associations as a legitimate part of the system in that it creates a level playing field (McLaughlin 2006). Thus, strong unions play the constraining role on employer behaviour that in many other countries would be served by legislation. However, despite the coercive characteristics of the system, a key feature of the Danish model is a shared discourse between employers and unions about the legitimacy of their respective roles. They share a strong desire to jointly run the labour market, working through disagreements and issues themselves and arriving at negotiated solutions. Where legislation is necessary, the government generally consults with employers and unions, and closely involves them in the drafting and implementation. Consequently, the social partners talk of a ‘consensus principle’ that underpins the development of labour market policy (Due et al. 1997). There is also a shared consensus that Denmark is and should remain a high-wage, high-productivity economy, and should not get drawn into cost-minimisation approaches to competitiveness.

One of the major strengths of the consensual approach is the flexibility of the model. Because the rules and processes are negotiated between the social partners they can be modified to suit the changing economic and social context. For example, the process of bargaining has undergone a certain degree of decentralisation over time. Agreements are now struck at industry level with the peak organisations on both sides playing a co-ordinating role. In addition, aspects of the agreements are increasingly negotiated at enterprise level within parameters set at industry level. Thus, within the Danish approach, employers are able to achieve the flexibility they need to compete in a global economy, but it occurs in a gradual and negotiated manner. In return, unions have been able to achieve high wages, income equality and an expansion in the bargaining agenda to include pensions and generous levels of paid maternity leave.

The co-operative working relationships between unions and employers are also evident at workplace level, with 65 per cent of shop stewards in one survey reporting that they thought their managers had a positive attitude towards them, while managers have described shop stewards as their ‘sparring partners’ (Navrbjerg 2003). Rasmussen and Lind (2003) suggest that the close working relationship is firmly embedded and promoted as ‘best practice’ by employers. The reason for this is that employers see the benefits that dialogue with unions delivers, such as resolving issues at the workplace, delivering industrial peace and contributing
to economic performance (McLaughlin 2006).

One other major benefit that employers derive from working with unions is a highly trained workforce. The high levels of training are in many ways surprising, given that there are a number of strong incentives for firms not to train their employees. In particular, the Danish workforce is highly mobile as a result of the liberal employment protections, with around one-third of workers changing jobs each year (Aagaard et al. 2004). Additionally, SMEs dominate the Danish economy, and having staff away on training has a more significant impact on the operation of an SME than a larger organisation. These disincentives have been overcome by adopting a co-ordinated approach to training. Granted, the government makes a significant contribution to the funding of both continuous and vocational training, with the highest spend as a proportion of GNP in the OECD (Lundvall 2002), and this undoubtedly plays an important role. But it is the extensive non-market co-ordination mechanisms that ensure the potential ‘prisoners’ dilemma’ is avoided, and unions play a central role in the success of these mechanisms in a number of ways.

Firstly, through the collective agreements unions have negotiated for annual training leave entitlements for employees to undertake training of their choice relevant to their career development. Additionally, they have bargained for several employer levies, the most recent of which is aimed at addressing the lower uptake of training among low-skilled workers. The unions accept that many of their less-skilled members will lose their jobs as a result of global competition and have adopted a proactive strategy aimed at raising skill levels in advance. Secondly, the unions are involved as equal partners with employers at national, industry and local level in the development and review of training policy and training courses. The involvement of the social partners ensures that the training offered is reviewed and modernised to meet the changing needs of industry. As a result, employers value the certification schemes, thereby promoting worker mobility and labour market flexibility. Thirdly, in some agreements the certification system has been embedded in the industry pay scales. This allows for wage outcomes to be closely aligned with training outcomes, which provides an added incentive for employees to undertake training. Finally, the involvement of unions acts as a countervailing force to the short-term cost pressures that employers face. While Danish employers recognise the benefits of Denmark’s highly skilled workforce, when it comes to negotiating the collective agreements, cost factors take precedence and unions have had to negotiate hard for any advances in the training agenda, despite the obvious benefits for organisations and the economy as a whole.

In summary, the Danish experience illustrates the potential economic benefits of co-
operation between employers and unions for small open economies facing intense international competitive pressures. In contradiction to the neo-liberal discourse on unions and productivity, the involvement of unions at workplace, industry and national levels contributes to productivity growth. Moreover, it is through the ‘beneficial constraint’ influence unions have over employers that the costs and risks associated with training are shared, thereby ensuring Denmark has high levels of training and a highly skilled workforce. Given the impact of the current recession being felt by businesses worldwide, the pressure to cut costs, including training budgets, will be immense. However, in CMEs like Denmark, unions are able to offer some resistance to what would be short-term solutions with long-term negative productivity impacts. It is clearly evident that in Denmark unions are part of the solution when it comes to addressing productivity growth and national competitiveness.

**<H3> Ireland**

Ireland is another relevant comparator from a New Zealand perspective given both its small size and the high levels of interest over the last decade from New Zealand policy-makers and the media in the ‘Celtic Tiger’ period of economic growth and the Irish social partnership model. The recent and dramatic deterioration in Ireland’s economic fortunes is no doubt also of interest, though a discussion of the causes is beyond the scope of this chapter. What is pertinent to this discussion, however, is that the current economic downturn has placed a significant strain on social partnership and at the time of writing it is not clear whether it will survive. It would be ironic if it were to fail at this point given that it was born in the last period of economic crisis and contributed to the national economic recovery. While a number of factors underpinned the dramatic turnaround in the Irish economy from 1987 onwards, it is widely accepted that the national-level social partnership agreements played an important role, particularly around building social consensus about the difficult decisions that needed to be taken in the first few agreements, in preventing the widening of income disparities that occurred in the UK (Hardiman 2002), and in achieving wage moderation during the economic boom of the late 1990s and early 2000s (Teague and Donaghey 2009). Whether social partnership survives the current crises or not, the preceding 20-year period nonetheless offers some interesting insights for employment relations scholars.

One insight is that, while significant levels of consensus and dialogue can be developed in adversarial and ideologically divided employment relations contexts, there are limits to this consensus without appropriate ‘beneficial constraint’ mechanisms. In many ways, the degree of consensus and co-operation that developed in Ireland through social partnership is quite
remarkable given its adversarial employment relations history, and yet at the same time it is highly paradoxical. Despite more than 20 years of co-operative working between the social partners at national level, partnership is minimal at industry level and almost non-existent at workplace level, and thus Geary and Roche (2002) talk of ‘truncated partnership’. Additionally, despite the responsible role that trade unions have played at national level, widespread anti-union employer attitudes are evident at workplace level in both foreign-owned and indigenous companies (D’Art and Turner 2005). This situation has not been helped by the lack of formal institutional supports for union recognition. While unions have advocated for this in several of the partnership agreements, the Irish dependence on American multinational corporations (MNCs), who have made it clear they wish to operate in a non-union environment, has meant that the institutional supports for collectivism at the workplace level remain fairly weak. It is also likely that the management practices of the successful non-unionised American companies are influencing the attitudes of indigenous Irish companies towards unions (Boucher and Collins 2003).

The lack of partnership structures below the national level has implications for building a ‘high road’ competitive strategy. A key area of concern over the last decade for social partnership was whether enough was being done to build a long-term, sustainable high-wage, high-productivity economy. From the outside this may seem surprising in that, until recently, Ireland was one of the five richest economies in the world as measured by GDP per capita. However, much of this success has been built on very high levels of FDI. In manufacturing, MNCs account for almost 90 per cent of exports (Teague and Donaghey 2009). Additionally, they have productivity rates significantly higher than Irish indigenous firms (Tansey 2005). The long-term goal of attracting FDI has always been to upgrade the ability of indigenous firms to compete internationally, so that when the inevitable occurs and MNCs leave (and some have already departed in search of lower-cost economies), Ireland can continue to compete on the same value-added basis. Currently, however, it is overly dependent on FDI and there is an increasing recognition that this can only be a transitional strategy.

Underpinning the vision of an indigenous-based ‘high road’ strategy is a shared vision of the ‘workplace of the future’, which permeates all the national strategy documents (e.g. NCPP 2005). It is one based on developing a high-trust workplace partnership culture, where employee participation, collaboration and innovation are encouraged, and where there is significant investment in training. However, while there is agreement between the social partners about the strategic aims, there is little agreement about the institutional supports needed to diffuse this national-level vision to industry and workplace levels. For example,
discussions took place over the possibility of introducing paid study leave, but agreement could not be reached between the social partners, with employers resistant to such institutional solutions (McLaughlin 2006). Thus, documents such as the National Skills Strategy (EGFSN 2007) have plenty of targets in relation to training outcomes across the labour market, but there is little detail on how these targets might be achieved.

In Denmark, the diffusion of the ‘high road’ vision to industry and workplace levels occurs through the various ‘productivity coalitions’, and it involves a certain degree of constraint on the actors’ behaviour. Given the dependence of the Irish economy on foreign investment, such constraint mechanisms have not garnered much political traction, and the approach adopted has been a voluntarist one. Thus, various government and partnership agencies encourage firms to adopt ‘best practice’ progressive human resource management approaches, to invest in training, and to engage in workplace partnership. Over the last ten years there have been very significant levels of public funding to support this voluntarist strategy (Roche 2007).

Teague and Donaghey (2004) initially argued that this voluntarist approach, or what they termed ‘open co-ordination’, was best suited for Ireland given the reliance on FDI and the adversarial nature of Irish employment relations. They optimistically pointed to a range of experimental initiatives as evidence that cajoling and persuading can be an effective way to build voluntary collaboration and co-ordination. However, the evidence now shows quite conclusively that this voluntarist approach has had only limited success. Levels of workplace innovation, consultation and collaboration are low (EIRO 2004), and ‘exclusionary forms of decision-making’ dominate management practice (Roche and Geary 2000: 33). In many low-paying industries cost-minimisation strategies are predominant, and there is evidence that these industries are caught in a low-wage, low-skills, low-productivity equilibrium (McLaughlin 2006). Roche (2007: 65), in summing up the results of a survey of 5000 employees in Ireland, concluded that ‘less than 10 percent of the workforce in the private and semi-state sectors was employed in workplaces with multiple progressive, high-performance HR practices’. He suggests that, if anything, the ‘high tide’ of workplace partnership has passed, with employment relations in Ireland becoming increasingly fragmented and adversarial. In relation to job-related training, Ireland is a below average performer relative to other advanced economies (OECD 2006). Even Teague and Donaghey (2009: 64) now acknowledge that the success of this strategy ‘has not been impressive’. Given the sudden deterioration in the economy and the dramatic rise in unemployment (12.5 per cent in December 2009), it is likely that this situation will be exacerbated as employers seek to cut costs in response to falling demand.
In many ways the Irish experience neatly captures the problematic nature of institutional change in LMEs, particularly where it threatens management prerogative. While the consensus that has been achieved over the last 20 years at the national level is quite remarkable, the diffusion of this consensus to industry and workplace level has proved much more difficult. Without some form of ‘beneficial constraint’ this is unlikely to change to any significant extent, but while the Irish economy remains dependent on FDI such mechanisms are unlikely to be introduced, and encouragement and cajoling will remain the primary strategy.

**New Zealand in international perspective**

What then are some of the implications for New Zealand’s employment relations framework of this brief account of some of the features and trends associated with the Danish and Irish approaches? As noted earlier, Haworth (2004) makes the argument that the ERA and the wider regulatory and policy framework of the 2000s represents a radical shift to a ‘social democratic’ model. He points to the way in which the employment relations framework is linked to a wider reform agenda where greater social equity is viewed as inextricably linked to national economic competitiveness. Despite the lack of political consensus, he is generally optimistic given the breadth of the reforms undertaken. The focus in this chapter is limited to the role that employer–union ‘productivity coalitions’ can play in building a high-wage, high-productivity economy, and the conclusions reached here are slightly more pessimistic in light of the Danish and Irish experiences. Undoubtedly, the New Zealand institutional framework has been influenced by the experiences of social democracies. However, given the lack of institutional supports for effective ‘productivity coalitions’ and the existence of a deep ideological divide over the legitimacy of unions, the argument made here is that New Zealand is much closer to the Irish than the Danish model. New Zealand remains very much a liberal market economy.

In Denmark, good employment conditions, strong unions, and co-operative union–employer relations at workplace, industry and national level are seen as vital for building a high-wage, high-productivity economy. Unions are thus assumed to play positive social and economic roles. A similar logic has influenced the New Zealand approach, and the ERA is based on the assumption that unions have a positive social and economic role to play through improving the bargaining power of workers and in contributing to workplace productivity improvements. Thus, the ERA promoted collective bargaining and improved rights for unions and union organising, and legislated for good faith bargaining behaviour, in order to encourage the development of productive workplace relationships. In this regard, unions in New Zealand have far more rights at the workplace than their Irish counterparts.
However, while co-operative employer–union relations at workplace level are a feature of CMEs, they are only one element of the ‘productivity coalitions’ that play a role in driving firms and industries in the ‘high road’ direction. Missing from the ERA framework are the industry-level institutions that in CMEs prevent firms competing on a cost-minimisation basis and force them to engage in training. In retaining the decentralised nature of wage bargaining, an opportunity for developing effective ‘productivity coalitions’ similar to Denmark was passed over.

Given both the hostility of employers in the late 1990s to changes to the ECA and the highly individualised and enterprise-based bargaining context the ECA ushered in, it is perhaps politically understandable that the reforms of the ERA were largely limited to the workplace level. It may well have been felt that the ability to negotiate multi-employer collective agreements (MECAs) would deliver these sorts of benefits in a more organic and gradual manner, allowing employers to get used to the idea over time. However, with MECAs covering less than 1 per cent of the workforce in the private sector (Blackwood et al. 2007), if this was part of the strategic vision then it has not eventuated, nor is it likely to. In hindsight, the New Zealand Council of Trade Unions (CTU) realises that it aimed too low and used up significant political capital in achieving what it now sees as relatively minor changes. Thus, union officials describe the ERA as ‘the ECA with soft edges’ and the ‘ECA with access rights for unions’ (McLaughlin 2006: 139).

Thus, instead of creating industry- or national-level institutional mechanisms, the Labour coalition governments adopted a voluntarist approach with the development of a range of tripartite and consultative initiatives. There are similarities here to the voluntarist strategy of the Irish, though without the overarching and extensive national-level social partnership architecture. Given the proportional representation political system in New Zealand, and its tendency to deliver coalition governments requiring a complex array of negotiations, it is not surprising that the Irish approach of devolving some degree of decision-making power over economic and social goals to tripartite institutions was not adopted (Conway 2006). Instead, the government engaged in a range of bilateral consultation processes with the social partners on individual policy issues. Additionally, it set up a range of temporary tripartite initiatives to support the aim of building a high-wage, high-productivity economy. One initiative was the government-led Workplace Productivity Working Group. Another was the ‘Sector Engagement Strategy’, the aim of which was to support individual sectors in finding solutions for sector-specific issues, such as low investment, poor profitability, inadequate levels of training and poor employment relations. A third initiative is the Partnership Resource Centre, which is
funded by government to assist unions and employers to develop workplace partnership agreements. And more recently, the Skill New Zealand Tripartite Forum, which produced the New Zealand Skills Strategy (2008). Underpinning these forums is the assumption that many of these issues are complex and require a multi-pronged yet integrated policy approach involving a range of stakeholders.

However, as positive a development as the range of tripartite working has been, questions remain about how effective this approach will be in driving workplace productivity change. As in Ireland, reaching consensus about the broad strategic aims is much easier in an ideologically divided context than reaching consensus on how to achieve these aims. Given that institutional solutions involving constraint are off the agenda, the approach relies very much on voluntarist methods, such as promoting ‘best practice’ and cajoling firms to improve their employment relations, to invest in their employees, and to adopt a ‘value added’ product market strategy. Supporting this are increased levels of public funding and a range of public agencies providing advice and expertise. This approach could be described as a social partnership-driven, active industrial policy. Ultimately, however, the strategy relies on employers freely making the choices that will lead to higher productivity. The sorts of institutional mechanisms that exist in CMEs like Denmark, and which put pressure on employers to pursue high-productivity strategies, do not exist. And, as is the case with this voluntarist approach in Ireland, many employers simply do not respond to ‘cajoling’ to any great extent for a range of reasons, such as intense competitive pressures, cost-minimisation product market strategies, a lack of knowledge about how to make the transition, or they simply are not convinced about the need to change.

As this author argues elsewhere (McLaughlin 2006 and 2009), based on interviews with industry-level employer associations, a number of low-paid sectors in New Zealand are stuck in a ‘low-skills equilibrium’. The officials interviewed acknowledged that their members should invest in training given the severe skills shortages they have faced over the last decade, and they have been encouraging their members to do so and to adopt value-added competitive strategies. However, at the same time, the associations pointed to high staff turnover, intense competitive pressures, and poor profitability as reasons why so many firms were not taking their advice. It is in their rational self-interest not to invest in their workforce when they know that the staff they invest in will not stay long enough for them to reap the benefits – it is the classic ‘prisoners’ dilemma’ situation. As a result, cost-minimisation strategies predominate, and as industry association officials point out themselves, ‘too many treat labour as a cost to be minimised rather than as an asset’ (McLaughlin 2006: 158). In the current recession, while staff turnover may be declining, investment in training will be even less attractive for employers who
are facing far tougher market conditions. The only solution industry associations could offer was that they keep cajoling their members to invest in their employees and hope that the message gets through.

However, these are issues of market failure and unsurprisingly cajoling is not working, as a number of the associations themselves acknowledged. It will require some form of non-market co-ordination mechanism to spread the costs and risks associated with building a skilled workforce. The Industry Training Organisations (ITOs) are certainly one part of the solution, but only one part. Public funding to industry training has almost doubled since 1999, and as a result the numbers of people going through industry training programmes have increased significantly. However, even with the subsidies, employers are still required to contribute to the cost of any training programmes they utilise, and there are also the operational costs associated with having staff away from work on training. As one ITO reported to McLaughlin (2009), convincing small firms of the benefits of training, even with the subsidies available, is problematic. Thus, ITOs cannot resolve the ‘prisoners’ dilemma’.

This is not to argue that the ‘cajoling’ strategy is totally ineffective. For example, research shows some improvement in workplace consultation (Haynes, Boxall and Macky 2005), and an increase in employer investment in training (Szeto and McLoughlin 2008). However, severe skills shortages in New Zealand, low wages relative to Australia, and the concomitant ‘brain drain’ have been regular themes in the media throughout the 2000s (Rasmussen 2009, Rasmussen and Ross 2004), suggesting that these issues will not be overcome through a voluntarist approach alone.

Thus, the New Zealand situation mirrors the Irish situation to some extent. While there is some consensus among the social partners about the strategic aims, there is little consensus about how best to achieve them. And, as in the Irish case, underpinning this lack of consensus is an ideological divide between the social partners, which essentially rules out any new institutional mechanisms that might act as ‘beneficial constraint’.

For the employer community, the current legislative framework already goes too far. They see it as undermining flexibility, holding back productivity growth, and generally weakening New Zealand’s competitiveness (Business New Zealand 2008b). In relation to productivity, they see the relationship between wages and productivity as linear and one-way. Whereas the ‘high road’ approach views this relationship as more interdependent, with wages both reflecting and driving productivity by providing incentives for employers to avoid the cost-minimisation route to competitiveness and to compete on a value-added basis, employers in New Zealand reject this view. As Business New Zealand (2005) argues, ‘pay increases
without productivity increases just means more cost to business and they become less competitive – not good for business or workers’.

This view of Business New Zealand ignores two fundamental issues. The first is that whole industries may be stuck in a low-wage, low-productivity, low-skills equilibrium, with no obvious solutions to the ‘prisoners’ dilemma’ issues they face. Upward pressure on wages through collective bargaining mechanisms can act as an incentive for firms within an industry to adopt a value-added product market strategy, provided there are a range of other institutional supports to facilitate the transition, as is the case in Denmark (McLaughlin 2009). This is why the CTU has been advocating for some time for a return to industry bargaining mechanisms, at least for certain sectors. The CTU points to the road transport sector as an example of how decentralised bargaining can lead to a ‘lowest common denominator approach’ with negative implications for skill development and employment conditions (Wilson, R. 2004: 185). They see industry bargaining as one way of addressing the chronic skills shortages, by linking wages with training outcomes. The Danish case outlined earlier, where effective industry-level ‘productivity coalitions’ help to bring about a highly trained workforce, adds weight to the CTU argument.

The second issue that the Business New Zealand view ignores relates to bargaining power and whether the direct link between productivity and rewards implicit in the Business New Zealand statement exists in highly competitive industries. A survey conducted by the Retail ITO (2006) of those employees who had undertaken certified industry training found that while 60 per cent reported the training had increased their productivity and motivation, only 29 per cent reported that they had received a pay increase as a result of the training. Similar survey results were cited by another ITO to this author (McLaughlin 2009). In the context of severe skills shortages and high staff turnover, it seems remarkable that having made the investment in training, more employers were not protecting that investment through higher remuneration. Without a clear link between training and higher rewards, the incentives for these employees to stay in these industries following training, or to undertake training in the first place, are low. Industry wage bargaining that was linked to industry training schemes would, however, be far more transparent in this regard and would provide incentives for employees to engage in training.

For employers, however, the suggestion of industry bargaining conjures up images of the old award system and adversarial employment relations. In the lead-up to the 2008 General Election, Business New Zealand (2008c) criticised the Labour Party employment policy in relation to the promotion of multi-employer collective agreements. They pointed to the high
levels of industrial action during the 1970s and 1980s as ‘evidence’ that large MECAs would lead to the ‘economic destruction’ of the past. Apart from the fact that numerous factors underpinned the decline in industrial action from the late 1980s onwards, of which the decentralisation of bargaining was but one (Deeks and Rasmussen 2002), there is also no acknowledgement here, as one union official noted, that the union movement might now be more sophisticated and any new mechanisms might be more connected with the competitive needs of industry (McLaughlin 2006). There is also no reason why any new industry bargaining mechanisms could not be designed so as to encourage more ‘reflexive’ behaviour and consensus-building between the parties, rather than the legalism and adversarialism encouraged by the award system.

Underpinning this aversion to a return to some form of industry bargaining is a paradoxical attitude towards working with trade unions. On the one hand, there is no doubting that the relationship between the peak organisations, Business New Zealand and the CTU, has improved significantly over the past nine years. Indeed, it was Business New Zealand that made the first approaches to the CTU about working together on improving workplace productivity, which then led to the Workplace Productivity Working Group being formed. This shows how far things have changed given that it was its predecessor organisation, the New Zealand Employers Federation, which had in 1990 described unions as organisations controlled by power, prejudice, and unpublished agendas, and bound by rules and inflexibility that inhibited better employment relations (Dannin 1995). In approaching the CTU, Business New Zealand was acknowledging that unions could make a positive contribution to workplace relations and to productivity growth. There has also been some, albeit limited, flow-on to industry-level collaboration between unions and industry associations through the Sector Engagement Strategy. Thus, the degree of union–employer collaboration has come a long way since the employer community threatened a ‘capital strike’ in response to the introduction of the Employment Relations Bill.

However, the extent of co-operation and consensus that has developed over the last decade should not be overstated. Some employers’ associations continue to question the legitimacy of unions to be involved at any level and actively discourage their members from engaging in collective bargaining (McLaughlin 2006), while survey evidence shows high levels of employer antipathy towards working with unions (Foster et al. 2006). Moreover, despite the positive relationship that Business New Zealand have developed with the CTU, they have also lobbied the new National-led government for significant reforms to the ERA (Business New Zealand 2008b), reforms that would undermine the unions’ current ability to engage in
collective bargaining. And, as noted above, they also publicly imply that the same union movement that they are willing to work with on productivity, skills, workplace partnership and other issues, in order to improve New Zealand’s economic performance, would bring about ‘economic destruction’ if given the chance. This paradoxical behaviour from Business New Zealand perhaps reflects the diverse opinions of their membership base that they need to carefully balance. Arguably, however, they have some responsibility in educating their members about the potential benefits of developing positive relationships with unions, just as the CTU has taken a lead in educating their affiliate unions and membership about improving workplace productivity through the Workplace Productivity Education Project.

Given the hostility from employers and their associations to the sorts of institutional reforms the CTU has suggested, the CTU approach has been to build positive relationships around issues where they can find common ground with employers’ associations, while promoting their right to be involved as legitimate partners on economic and social issues that affect workers. They have also encouraged member unions to do the same at industry level, with the hope that further down the track they might be able to achieve compromise over employment relations issues that are important for progressing the interests of workers. As Haworth (2004) notes, the CTU has had to balance these long-term strategic aims with pressures from member unions for more immediate action over specific issues, and its leaders have been quite adept at managing the tensions within the union movement. However, if the new National-led government winds back some of the union rights contained within the ERA then the pressure from individual unions for stronger action over specific issues might be more difficult for the CTU to contain. It might also undermine the limited and somewhat fragile consensus that currently exists.

**Conclusion**

One of the strategic aims of the ERA and the wider employment relations framework is to build a high-skill, high-wage, high-productivity economy. Underpinning this strategy is a belief that unions have a positive role to play. Rather than being part of the problem, the legislative and policy framework is based on the assumption that unions can be part of the solution. Hence, the ERA strengthened various union rights with the hope that unions and employers would develop co-operative and productive workplace relationships, while a range of voluntary tripartite initiatives attempted to build similarly productive relationships at industry and national levels. Much of the focus of the chapter has been on employer–union co-operation at industry level, or more specifically on the benefits of building ‘productivity coalitions’. This was because, as the
Danish case clearly illustrates, it is through such coalitions that issues of market failure can be addressed and overcome. In Denmark, strong unions act as a ‘beneficial constraint’, limiting certain employer strategies while encouraging others. Through industry bargaining mechanisms, unions have been able to negotiate for paid training leave and various employer levies so that the costs and risks of investing in training are shared across an industry. Thus, the ‘prisoners’ dilemma’ associated with training is largely overcome and the end result is high levels of continuous training and a highly skilled workforce. While the system works because of the constraints on employer behaviour, it is nonetheless underpinned by dialogue, consensus-building and co-operation.

The Irish case shares some similar characteristics with New Zealand. Both countries have attempted to move against the grain of neo-liberalism to some extent by adopting labour market policies more commonly associated with continental European countries – Ireland through national-level social partnership and New Zealand through the ERA and other policy initiatives. In both countries, the national-level social partners have expressed a willingness to work together, and there is some consensus that developing high-trust employment relations and investing in workplace education and training are essential for building a ‘high road’ national competitive strategy. However, in both cases, there is a deep ideological divide between the actors below the national level, and this has meant that many of the institutional mechanisms found in CMEs like Denmark, which enable issues of market failure to be addressed, are not on the political agenda. Instead, the social partners have attempted to build co-ordination through voluntarist approaches. Thus, cajoling rather than coercing is the order of the day in diffusing the national-level vision. However, the impact of this approach is limited because in relation to issues like training it does not overcome the ‘prisoners’ dilemma’ issues that firms face, particularly in the case of sectors that are caught in a low-skills equilibrium.

In this light, it seems that the ERA did not go far enough if one of its aims was to build a high-wage, high-skills, high-productivity economy. While the approach adopted is understandable given the political climate in the early 2000s, some form of ‘beneficial constraint’ mechanisms will be needed to address what are essentially issues of market failure. The CTU suggestion, therefore, of a return to some form of industry bargaining has merit, at least for sectors with skills shortages, low pay and poor productivity. It offers the chance to link the training system with wage bargaining, thus providing incentives for both employers and employees to engage with the training agenda. It would also provide a platform to negotiate some form of industry-wide fund so that the costs and risks associated with industry training could be shared. And it could act as a forum for developing industry-level social partnership...
and consensus-building around industry issues. In short, it would offer the potential for developing industry-level ‘productivity coalitions’.

With the recent change of government and strong employer opposition, such institutional mechanisms are unlikely to be developed in the foreseeable future. However, it is hard to see what the alternatives are, other than the current approach of cajoling underpinned by various government supports – and this is clearly not very effective. Ultimately, if New Zealand’s poor productivity performance is as urgent as many commentators are suggesting, then all options should merit serious consideration.

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