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# The Role of the State in Industrial Relations[*]

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## Abstract

This article examines the role of the state in industrial relations, which has been highly neglected in the literature. It examines the nature of the state and proposes a typology of four distinct roles of the state that affect industrial relations: (1) a third party regulator of labor relations; (2) a regulator of markets; (3) an establisher of the welfare system; and (4) its own employer and policy maker. In doing so, the article sheds light on the importance of the concepts of power and politics in industrial relations that have been unnoticed by industrial relations orthodoxy; that is, it attempts to clarify how each of the four roles of the state affects the power relations between labor and management.

Keywords: The state, Regulation, Policy, Labor markets, Welfare, Power relations, Industrial relations

## INTRODUCTION

The most widely adopted approach to the analysis of industrial relations was proposed by John Dunlop. He declared that an industrial relations system consists of three sets of actors: (1) managers and their organizations, (2) workers and their organizations, and (3) governmental agencies concerned with the workplace and the work community (Dunlop 1958). However,

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the main focus of Dunlop and most writers in the subsequent development of the field of industrial relations has been on the bipartite relationship between workers and management. The state, the third and equally important industrial relations actor, generally is neglected. Instead, assumptions about the nature, determinants, and implications of state involvement in industrial relations remain largely implicit, unexplored, and undefended (Edmund and Frege 2006; Giles 1989; Keller 1991).

This neglect creates serious analytical problems as all the systems of industrial relations always have been conditioned and shaped by state intervention at the moment of their formation and as they have expanded or declined (Bordogna and Cella 1999; Jacobs and Dixon 2003; Sturmthal 1973). The independent nation perspective, with a focus on the bilateral relationship, also underestimates the impact of international relationships in sustaining national elites and influencing their policies (Jessop 2002; Kelly 1998; Woo-Cummings 1997). Such a view clearly is untenable for most of the postwar period, dominated by the Cold War. Either the United States or the Soviet Union exerted considerable influence on the economic and political affairs of industrializing countries; that is, the competition between superpowers provided a critical contextual explanation for the role of the state and labor responses to authoritarian rule (Frenkel and Harrod 1995; Haggard 1990).

Industrial relations is a social and political invention. The role and organization of the state influence the range of choices made available to social groups including organized labor and management. Such limits on individual and collective choices are imposed by institutions, which not only aggregate and codify the sum total of individual power available in a polity, but also guarantee and reproduce the moral and legal guidelines that serve as the ethical foundations for the ordering of preferences in society (Buchanan 1995). Therefore, it is highly necessary to adopt the concepts of politics and power relations in explaining labor-management relations and the patterns of employment rules (Clegg 1979).

This article attempts to contribute to the field by filling the gap in the literature. First, the article defines the state and examines the nature of the state. Second, the article proposes a typology of four distinct roles of the state that affect industrial relations: (1) a third party regulator of labor relations; (2) a regulator of markets;

(3) an establisher of the welfare system; and (4) its own employer and policy maker. Among the four roles in the typology, the first role as a third party regulator of labor relations has been the main focus by writers in the literature, but this article goes further to analyze the other three roles of the state that have been highly overlooked by writers in the literature. Third, the article sheds light on the importance of the concepts of power and politics in industrial relations that have been unnoticed by industrial relations orthodoxy; that is, it attempts to clarify how each of the four distinct roles of the state both directly and indirectly affects the power relations between labor and management.

## WHAT IS THE STATE?

The state is referred to as a set of continuous administrative, legal, bureaucratic, and coercive systems, headed, and more or less well coordinated, by an executive authority (Evans, Rueschemeyer, and Skocpol 1985). The state is an endogenous player of an industrial relations system, interacting with the economic system as a coherent cluster of institutions rather than a neutral, omnipotent agent exogenously attached to the economic system with the mission of resolving its coordination failures (Aoki, Murdock, and Okuno-Fujwara 1997; Giles 1989). The overlap between the aims of state policy and the interests of any of the major social groups is both partial and contingent, since states rarely pursue economic growth and/or welfare for their own sake, but rather as a means to their own political and military ends. In any particular situation, states' interests are powerfully shaped, if not determined, by objective features of their social, economic, and geopolitical environments that define the constellation of threats and opportunities facing their rulers (Tilly 1985; Zeitlin 1985).

States must fulfill both functions of capital accumulation and of legitimacy as an agency of citizens, and this balancing act requires a certain autonomy and discretion on the part of the state. States vary enormously in their autonomy, coherence, and capacity to impose their will on their subjects since they are historically constructed organizations (Woo-Cummings 1997). The strength of the state depends on how effectively the state can restructure its relations to social groups, as well as relations among those groups. Since few

states are all-powerful, they normally need to collaborate with a variety of social groups (including employers and workers) in achieving their policy objectives. As such, the potential for conflict between the state and any of the major social groups always is present (Aoki 1997), and thus the state bears the burden of legitimizing its policies and actions that might be against interests of any of the major social groups.

The state can play a vital role in shaping economic and industrial relations systems, but this is particularly true in the early stages of economic development (Black 2001; Clegg 1976). When the economy is underdeveloped, the availability of intermediaries is limited, firms' capabilities are modest, and even the efficiency of markets is hampered by poor integration and the underdevelopment of property-rights arrangements in the economy. Under these circumstances, the ability of the private sector to solve challenging coordination problems is limited, and state policy may play a more significant role in facilitating development (Aoki 1997). By the same logic, there is a larger window of opportunity for the state to affect the pattern of industrial relations at the early stage of the collective bargaining era when, with rapid unionization, a national industrial relations system is being formed. As a certain type of an industrial relations system is institutionalized, it becomes increasingly difficult for the state to overturn the prevailing form (Jeong and Aguilera 2008).

## THIRD PARTY REGULATOR OF LABOR RELATIONS

States perform several distinct roles that affect industrial relations. Among them, this section analyzes the role of the state as a third-party regulator: (1) promotion of a legal framework that establishes general ground rules in the procedures for collective bargaining; (2) regulation of the use of union sanctions and management sanctions; and (3) involvement into alternative dispute resolution processes to handle or avoid an impasse in collective bargaining. This section also illuminates how this role of the state affects the power relations between organized labor and management.

### Establishment of the legal framework

A primary role of the state is to act as a third-party regulator

promoting a legal framework that establishes general ground rules or union-management interaction particularly in the procedures for collective bargaining. This typically involves defining the status, rights, and obligations of the actors and prescribing and enforcing the “rules of the game” (Bean 1994; Van Waarden 1995). The law specifies who may negotiate such agreements, often linking this to the registration or certification of trade unions and employers’ associations, and whether collective agreements apply only to firms (and indeed workers) that are members of the signatory organizations, or more generally. The law defines what the parties agree to and what they can expect from their contract, as well as the limits within which economic activity occurs and the range of acceptable practices. In many countries, the law also prescribes obligatory mechanisms for collective employee representation at the company or workplace level, imposing an obligation on management to consult the representatives over key business and personnel policies (Belman and Belzer 1997; Hyman 2008).

The extent of union density and collective bargaining is, to a large degree, a function of this legal framework. Union density may be affected by the way labor laws regulate employer opposition to unions, establish union recognition, and promote union security provisions. The decision to become a union member is the outcome of comparing the private benefits and costs anticipated, and these benefits and costs are influenced, directly or indirectly, by the attitude that the state takes toward unions. Where the state adopts an unequivocal policy of encouragement, union membership and collective bargaining expand, as it reduces employers’ ability to resist unions and thus lowers the costs of union membership (Offe and Wiesenthal 1980). Therefore, a low level of union density and limited practices of collective bargaining are the result, at least in part, of less than enthusiastic state support (Adams 1993).

Perhaps, the most obvious example of the encouragement effect is the Wagner Act, enacted in 1935 in the United States. With the rise of large-scale industry and giant trusts in the last part of the 19th century, the balance of power tipped substantially in favor of employers. The growth in company unions was staggering. Employers signed up more than a million workers in these artificial organizations. With a centralized administration, these sham organizations made policies covering a variety of important matters; and the illusion of employee participation gave the outward

appearance that employees had effective representation in these organizations. The apparent purpose of these sham organizations was to keep out autonomous unions that were attempting to organize employees (LeRoy 1998).

The U.S. government enacted the Wagner Act to support both the unions and the practice of collective bargaining to revitalize the depressed economy. It recognized that employer denials of the employees' right to organize and employer refusal to accept collective bargaining previously had led to strikes and industrial conflicts. It also acknowledged that inequality of bargaining power between employees and employers affected the flow of commerce and aggravated recurring economic depressions by depressing wages and purchasing power and thereby prevented the stability of wages and working conditions. Further, it recognized that protection by law of the right of employees to organize and bargain collectively would promote the flow of commerce, restore equality of bargaining power, and encourage friendly adjustment of industrial disputes (Holley and Jennings 1980). The act made illegal many of the tactics still used by employers to thwart unionization and company unions (Pencavel 2003).

In this new legal environment, there was a rapid unionization of workers and a dramatic increase in the practice of collective bargaining. From 1935 to 1947, union membership went from 3 million to 15 million, with some industries having 80 percent of their employees under collective bargaining agreements (Hardin et al. 2002). During the 1960s and 1970s the growth of public sector unionism likewise followed the spread of Wagner-like legislation covering government workers in many states (Heckscher 1988). If the Wagner Act did not stop employers from creating sham organizations, there would likely be fewer unions with many more company unions (LeRoy 1998).

The Wagner Act also shaped substantive outcomes on the form and character of labor organization that would thereafter prevail in the American labor movement. The organizational principles of the old AFL, which had sustained an autonomous movement in craft shops, were insufficient for the task of confronting the growing mass-production industries (Barbash 1984a). The Wagner Act's early support of inclusive units, however, undoubtedly advanced the fortunes of the industrial unions in their challenge to the craft union hegemony. The early decisions of the NLRB on bargaining

units favored industrial unions, comprising an entire factory of firm, over craft units that included only particular categories of workers (Sinyai 2006). The act set off the collective bargaining revolution in the mass-production industry, and in effect took responsibility for the survival of unionism; without it, the CIO would not have been possible (Heckscher 1988). Certifying unions on a plant-by-plant basis, it made the possibility of multi-employer bargaining very difficult in the United States, however (Adams 1995).

Working in the other direction, the U.S. government revised the basic labor law to restrict labor's power, and the Taft-Hartley Act of 1947 seriously harmed several strong unions (Burtt 1979). The Taft-Hartley amendments gave states the right to outlaw union shop requirements in collective bargaining agreements with what are euphemistically called "right-to-work" laws. In a state with a right-to-work provision, labor contracts that make union membership compulsory cannot be legally enforced (Feldacker 1990). In theory, a union in a right-to-work law state is severely handicapped because potential members can "free ride" (Olson 1968). Workers receive benefits from union activities without joining the union and bearing its costs because the Wagner Act prohibits treating otherwise equivalent non-union employees differently from members. Unions that operate in right-to-work states are less secure because large percentages of U.S. workers will not join unions unless they are compelled (Jacobs and Dixon 2003). Indeed, studies attribute the declining American union density to the lack of a labor law regime supportive of unionization (Allen 1994; Weiler 1990).

From a comparative perspective, Canadian unionization has remained stable in aggregate for the past decades despite various predictions that Canadian union density would follow the American pattern of decline. Though both countries have adopted certain common principles, significant differences were present at the outset or emerged over time. Despite its adoption of PC 1003 a decade later, the Canadian state acted more aggressively in regulating labor relations. The 1947 Taft-Hartley amendments caused some of the rupture in common approaches (e.g., enabling right to work, altering the structure and duties of the labor board), and provincial legislation subsequent to PC 1003 further advanced the discrepancies. These differences include the rapidity with which unions are certified, the ability of boards to impose certifications, guaranteeing rights to striking workers, and the philosophy

underlying the determination of employer unfair practices during union organizing drives (Godard 2002; Taras 1997). After all, the effectiveness of the administration of regulation rather than the adoption of the labor legislation itself matters in outcome measures, as observed by Commons and Andrews (1936: 448): “More important than the hasty enactment of additional laws is the adoption of methods of administration that will enforce them. It is easy for politicians or reformers or trade union officials to boast of the laws which they have secured for labor, and it is just as easy to overlook details or appropriations or competent officials that are needed to make them enforceable.”

### Regulation of union and management sanctions

Another primary role of the state is to regulate the use of union sanctions (e.g., picketing, secondary boycotts) and management sanctions (e.g., injunctions, lockouts). Collective bargaining is predicated on the recognition by a party of the existence and rights of the other party and on the corollary recognition that each party must at times compromise and adjust its position to the others in the face of the economic pressures of the market. If both parties to a dispute are unable to agree peacefully, a test of economic strength by strike or lockout will resolve the issue (Burtt 1979). Both parties to a dispute, however, have a strong incentive to avoid the occurrence of a strike, as each loses income. During a strike workers give up forgone wages. They try to make up for those lost earnings by possibly taking short-time jobs, while turning to union strike benefits, the earnings of a spouse, or savings to support themselves and their families. Firms lose forgone profits during a strike. They try to lessen the amount of profits lost through tactics such as bringing in replacement workers for the strikers, making sales out of any available inventories, or shifting production to an alternative site. They also rely on assets or the earnings from other lines of business to meet any financial obligations (such as equipment expenses) (Katz, Kochan, and Colvin 2008).

Beyond the impact on the parties directly involved in a dispute, strikes also affect the public more or less, depending upon the type of industry, the relative number of workers involved, and the strike’s timing and duration. In particular, strikes can have an immediate detrimental impact on the welfare of the public in industries whose

products are perishable (such as milk), essential to daily life (such as gas for heating and cooking), or vital to national survival (such as electric power). An industrial dispute involving a relatively large number of workers also is likely to be burdensome to the public. For example, when the dominant plant in a community is shut down, the loss of the weekly payroll can hurt merchants, suppliers, loan collections of financial institutions, and even the flow of tax funds to the community. Similarly, an industrywide strike can have great repercussions upon the economy as a whole. The longer a strike continues, the greater will be its effect upon the public (Burtt 1979). The state therefore regulates the use of both union and management sanctions.

State regulation toward unions and collective bargaining varies a great deal. The spectrum of state regulation toward unions and collective bargaining ranges from suppression through toleration to encouragement (Rimlinger 1977). It also varies according to the amount of regulation. At one end of the spectrum, the state may allow labor and management to work out their relations; at the other end, it may decide to specify in detail both the substantive and procedural rules of the employment relationship (Adams 1993). The strike is the key weapon of unions (especially industrial unions), and changes in law and court interpretations can narrow the permissible use of economic weapons by banning most sympathy strikes, slowdowns, and stoppages during the life of a contract. The net effect of these and other rulings is to confine the strike to a narrow channel making it highly formal and predictable. These rules tend to favor the employer that can prepare for such eventualities by stockpiling and moving work at the expense of workers, whose most effective weapon often is surprise. The promotion of peace therefore generally tends to unbalance the power relationship (Heckscher 1988).

For example, by enacting the national emergency provisions in the Taft-Hartley Act, the U.S. state curtailed its regulation of free collective bargaining. In examining the Bureau of Labor Statistics main survey of large work stoppages, LeRoy and Johnson (2001) found that the downward trend in strike activity in the U.S. that so often is attributed to Reagan actually began at the end of the period in which Taft-Hartley injunctions were ordered. Taft-Hartley orders were designed to motivate the vast power of the U.S. presidency to rally public opinion against a threat to the nation's health and

welfare—in this case, a labor union on strike for better pay and working conditions. Taft-Hartley injunctions seriously harmed several strong unions—most notably, those in the steel, longshoring, and maritime industries. In nearly every case, they lost their strikes, suffered losses at the bargaining table, and incurred a loss of good reputation.

**Conciliation, mediation, and arbitration**

Negotiations do not always yield an agreement. If you are buying a car and the dealer will not accept your highest offer, there is no sale. The same happens in collective bargaining when employers and unions cannot agree on terms of new contracts. The failure to reach agreement is called an impasse. Unlike a car purchase, unions are not free to find new employers to deal with, and employers still must be willing to negotiate with their employees' representatives (Fossum 2006). An impasse also may threaten the interests of the public. When the public fears that its interests are affected, or about to be affected, by a strike, some form of state intervention usually is demanded (Burtt 1979). Therefore, the state acts as a conciliator, mediator or arbitrator in conflicts between the social partners in order to handle or avoid breakdowns in collective bargaining in most countries.

Conciliation is an alternative dispute resolution process that helps the disputing parties resolve their dispute in mutual consultation. Mediation is another alternative method of resolution whereby a neutral and impartial third party, the mediator, facilitates dialogue in a structured multi-stage process to help parties reach a conclusive and mutually satisfactory agreement. Arbitration is another alternative dispute resolution process whereby the disputing parties present their disagreement to one or more arbitrators, who have the final binding authority. Mediation, for example, may be carried out at an informal level, with the state trying to get the top brass of the central organizations of employers and workers together to forge a social contract or intervening in strikes to encourage the parties to sit down and negotiate. Special mediation services also may be set up at a formal level. Such services are available in most countries, but their powers vary greatly, which is reflected in the extent to which the parties concerned are free to choose to go to mediation (Van Waarden 1995).

In summary, a primary role of the state is to act as a third-party regulator. It promotes a legal framework that establishes general ground rules in the procedures for collective bargaining, regulates the use of union sanctions and management sanctions, and acts as a conciliator, mediator or arbitrator in conflicts between the social partners in order to handle or avoid breakdowns in collective bargaining. This role of the state is significant in itself, but the importance of this role to industrial relations is enlarged when we consider its impact on the power relations between organized labor and management; it determines to a large degree substantive outcomes, such as the extent of union density and collective bargaining, the form and character of labor organization, and even the survival of organized labor.

## REGULATOR OF MARKET

A labor market is a distinctively artificial creation, and its character reflects structures, conventions, and practices that vary with time and place. State policy does much to explain this variation. The creation of the conditions under which labor power is sold thus historically has been one of the basic and unchanging functions of the state (Hyman 2008). This section examines this role of the state as a regulator of markets: (1) establishment of labor standards; (2) regulation of wage-price mechanisms; and (3) improvement of labor market institutions. In doing so, it elucidates how this role of the state affects the power relations between workers and management.

### Establishment of labor standards

In all countries, the state sets labor standards, such as working hours, minimum wages, health, and safety. With the rise of large-scale industry and giant trusts in the late 19th century, the balance of power tipped substantially in favor of employers. Within a given legal and economic context, the employer could do more than simply to hire workers and let them work as they please. The inequality of bargaining power between the individual worker and the employer was the fundamental source of labor problems. The purpose of legislated labor standards was to compensate for this lack of bargaining power by ensuring working conditions sufficient to afford

workers the accepted social standard of living (Bowles 1985; Burton and Chelius 1997).

The institutionalists were the earliest to systematically develop a theoretical rationale for employment regulation and were among the most active and prominent advocates of such legislation. Institutionalists argue that real labor markets seldom confirm to the way the neoclassical theory says they do, but instead are full of defects and imperfections that nullify the theory. Individual workers have little bargaining leverage unless they cannot be replaced. They also lack the knowledge of the market the theory presumes, and family obligations make them immobile. They are not atomistic, independent sellers of labor but interdependent members of ethnic, racial, and gender groups that are easily divided (Craypo 1997; Kaufman 1997a).

According to institutionalists, individual workers therefore face "competitive menaces" when sustained market expansion alters traditional employment relations and pits them against employers, who in turn compete by driving down labor standards (Commons 1909). The competition of the worst employers tends to drag down the best employers to their level through ethically and economically unfair trade practices, such as skimming on safety or sanity expenditures; and replacing skilled workers with impoverished immigrants or child labor. The inability of high-standard employers to resist the forces of unfair competition is called the "problem of the twentieth man"; that is, even when nineteen employers wish to increase the working standards in their plants, the recalcitrant twentieth employer, which refuses to go along, threatens the competitive position of the rest and prevents them all from doing so (Kaufman 1997a). The state therefore assumes a responsible interventionist role to create "a floor for employer behavior in the labor market" (Weil 1997: 430).

Beyond the function of establishing labor standards, the state also could set wage levels with less regard to the profitability, or external competitive position, of the individual industries concerned, as even in the case of consultations between labor, management, and the state, ultimate decision-making power is retained by the state. Arbitration as a method of centralized wage-fixing is to utilize social and equity criteria in terms of setting a structure of basic wages providing for minimum needs together with a superstructure of largely determined differential margins for skills (Adams 1993).

State regulation of certain minimum standards in areas such as occupational safety and health is common in all countries, but regulative legislation dealing with wages, working hours, and other major conditions is more uneven across countries. In continental European countries state regulation has played a greater part in determining wages, working conditions, and fringe benefits than in either the UK or the U.S. and therefore the political process has assumed a critical role. In Germany, for example, there has been an old tradition of state intervention and regulation in economic life. Statutory norms provide a floor of minimum standards for German workers including wages, hour, vacations, job security, and safety provisions that the unions have come to regard as a body of irreversible social rights (Bean 1994; Jackson 2003; Jacobi, Keller, and Müller-Jentsch 1998).

**Intervention of wage-price mechanisms**

Although the state's role in labor markets is most obvious in policies that structure the employment relationship or regulate specific practices and markets, product market regulation has equally great, albeit less direct, effects on workers as changes in product markets act on labor markets through derived demand. Macroeconomic policymakers' decisions on money supply and interest rates can have large effects on employment and wages throughout the economy (Belman and Belzer 1997). A tight monetary policy works against inflation by curtailing investment and consumer borrowing and expenditure, and affects unemployment and both the ease with which employers can attract and retain qualified employees and wages and working conditions. The ultimate effect is on union claims. For example, late in the Carter administration and during the Reagan years, high interest rates brought an inflow of investment funds, thus bidding up the dollar. Imports were subsidized, exports penalized, and American industrial strength was deeply impaired. The movement of industry to other countries was abetted, in fact subsidized. It was perhaps no comfort to unions that the situation was no less disastrous for employers (Galbraith 1994).

Conversely, discretionary fiscal policy offers a remedy for a deficiency in aggregate demand and can reverse an economic downturn. The impact of new money spent by governments for

public transit systems, housing, new energy sources, grants-in-aid to cities, or defense contracts will add immediately to someone's income, and as the income is spent and respent by the receivers, the aggregate effect will be larger than the original outlay. Similarly, a tax cut will add immediately to the disposable income of taxpayers and boost the aggregate level of layout and employment (Burtt 1979). "Full" employment and economic growth affect the balance of power within the labor market and also the margins for negotiation within collective bargaining (Hyman 2008). Low unemployment and active labor market policies (e.g., high unemployment benefits, generous training and relocation programs) create conditions conducive to a high-commitment sociotechnical systems approach (Godard 2002). Tight labor markets are associated with improvements in workforce quality and productivity because employers have a greater incentive to efficiently use labor and to reward human capital investments of workers though career ladders, internal training, development programs, and so on (Burtt 1979).

Competitiveness policies, which establish the scope and rules of competition, also are increasingly important to the performance of labor markets. Legislation on the extent of and access to markets—such as laws governing imports, exports, and immigration—and laws governing market conduct—such as those concerning dumping and anti-trust—establish the competitive position of firms and of their employees (Belman and Belzer 1997). Relaxed trade restrictions essentially render employers more mobile and hence may make the workplace more readily "disposable" so that employees become fearful of job loss and effectively are coerced to cooperate in workplace change programs, enabling employers to rely on a lower-cost "control" approach rather than a higher-cost "commitment" approach. Relaxed trade restrictions could also allow employers to engage in more aggressive practices toward unions, using this mobility to extract concessions from unions with regard to collective agreement provisions and from states with regard to labor law and standards (Godard 2002).

### Improvement of labor market institutions

Demand management of labor markets may be a necessary but insufficient means to "full" employment. Unless the supply and demand of different types of competence are in balance, there are

likely to be shortages of certain types of labor (or in specific parts of a country) while unemployment remains relatively high among some occupational groups or regions. State intervention into "supply-side" labor markets is seen as necessary to correct such imbalance (Hyman 2008). The state thus attempts to improve labor market institutions (e.g., training, education, employment services) that shape the capacities bought by employees.

Where efficiency requires investments and cooperation among employers, the price system creates strong incentives for firms to utilize the resulting industry benefits without paying for them. Without barriers to such conduct, free-riding firms will be able to provide goods and services at reduced prices. Over time, other employers are compelled either to forgo shared investment activities or leave the market. Faced with the threat of free-riding competitors, few employers are willing to invest in collective provisions. Only a collective actor who can prevent free-riding practices will be able to provide these services. The state can be one such actor, though the employees' associations and unions may also take on this role. This is why collective services have become an issue requiring regulation within the industrial relations framework (Belman and Belzer 1997; Olson 1968).

Vocational and educational training is provided on a free or subsidized basis by the state in many countries; alternatively or in addition, many states provide incentives to employers to undertake in-house training. Such measures obviously enhance a country's skills basis (Streeck and Schmitter 1985). In Germany, for example, the government, employers, and employees carry joint responsibility for basic vocational training (15- to 18-year-olds) and have developed a dual educational system. Besides practical training on the shop floor, students receive theoretical education at school, for which employers must give them time off. Once they have passed the compulsory school year, the large majority of pupils enter into an apprenticeship contract with a company. All participating companies are obliged to have staff who can teach students in the workshop available. The government's contribution consists mainly of financial support and some measure of statutory pressure. Companies are legally obliged to join an *Industriekammer* (Chamber of Commerce) or *Handwerkskammer* (Chamber of Trade). These chambers have public law status and their rights and duties are laid down by statute. Free riding is not an attractive option, since companies are

prohibited from hiring workers under 18 without offering them an apprenticeship contract (Katz, Kochan, and Colvin 2008; Streeck 1987).

In sum, one of the fundamental functions of the state is to regulate markets. The state sets labor standards and sometimes wage levels with less regard to the profitability of the industries to create a floor for employer behavior in the labor market. The state also regulates money supply and interest rates, and this function of the state has equally great, albeit less direct, effects on employment and workers as changes in product markets act on labor markets through derived demand. Faced with the free-rider problem among employers, the state invests into labor market institutions such as training, education, and employment services that shape the capacities bought by employees. The purpose of legislated labor standards is to compensate for the lack of individual workers' bargaining power. The other functions of the state to achieve "full" employment and economic growth affect not only employers' business strategies, human resource policies, and labor policies, but also the balance of power within the labor market and the margins for negotiation within collective bargaining.

## WELFARE STATE

This section investigates the role of the state as an establisher of the welfare regime, while illustrating how this role of the state influences the position of workers both individually and collectively in industrial relations. The role discussed here comprises welfare provisions and protection of individual employment rights.

### Welfare Provision

The state provides social insurance against such risks as illness, disablement, unemployment, poverty, and old age. Social insurance is made necessary by the fact that private markets do not provide adequate protection at a reasonable cost for many types of employment-related risks. The reason is due to two market failures known today as "moral hazard" (people have an incentive to purposely engage in the risky behavior in order to qualify for benefits) and "adverse selection" (the people most likely to suffer the

risk are the ones most likely to buy coverage). If workers are to have access to employment-related insurance, then it falls on the state to establish and operate the program (Kaufman 1997a).

The role of the state in creating (either actively or by abstention) a regime of welfare provision, and a broader conception of citizenship, shapes the basis on which workers enter the labor market. Any significant system of "decommodification"—the institutional protection of the labor force from total dependence for survival at the discretion of the employer—strengthens the position of workers both individually and collectively, facilitating the emergence and stability of collectivized industrial relations. For this very reason, in some countries early trade unions (particularly of skilled workers) provided their own "friendly benefits" in order to shield members against the contingencies of their working lives. In general this function was displaced by the rise of the welfare state, but as part of this process the trade unions in some countries (sometimes together with employers) obtained a key role in the administration of public welfare (Hyman 2008).

The welfare regime takes very different forms in different countries, not only in terms of the balance between public and private provision but also in the nature and extent of integration between its governance and the industrial relations actors. Outside Europe, state provision often is extremely limited. In Japan, major firms often provide extensive welfare benefits. The Unites States also is notable for the existence of relatively generous provisions by individual employers, often the outcome of collective bargaining. But such benefits, being company-based, recently have been under widespread attack, and their coverage has declined in parallel with trade union membership (Inagami and Whittaker 2005; Jacobi 2005).

In recent years, established welfare systems have been under challenge in many countries, as a result of demographic changes, constrained public finances and an ideological shift toward liberation and "activation" (Lind and Møller 2006). The welfare state reduced employment by offering incentives to older workers to leave the labor market for early retirement, affecting trade unions whose membership gradually grew older on average. Since early retirement programs and disability pensions are paid out of contributions of those employed, unit labor costs increased while wages remained stagnant. As non-wage labor costs began to make

national economies non-competitive, employers and governments sought massive productivity increases, which often resulted in even more publicly-funded early retirement. Where welfare has been an accepted part of the industrial relations agenda, this has imposed serious challenges to the stability of the whole industrial relations system (Ferner and Hyman 1998; Streeck and Hassel 2003).

**Individual Employment Rights**

The law generally conceives of the employment relationship as a contract between employer and employee. This is coupled with the notion of freedom of contract (based on the assumptions of perfect rationality, foresight, and information on the part of both employer and employee), as well as the assumption that both parties have equal bargaining power. These assumptions are particularly influential in the context of individual aspects of law, but it usually is only in the context of collective action that these assumptions can be more directly addressed, and mitigated. It is unreasonable to assume that an individual employee can bargain equal terms with an employer that may well be a giant corporation (Deakin and Njoya 2008). Therefore, the state has the right and indeed duty to define standards that must be observed in all employment contracts to prevent unequal bargaining power resulting in unreasonable conditions.

Employment law covers all rights and obligations within the employment relationship (whether current employees, job applicants, or former employees). Because of the complexity of the employment relationship and the wide variety of situations that can arise, employment law involves issues as diverse as discrimination, wrongful termination and retaliation, fair working hours and compensation, workplace safety, harassment of all types, privacy, defamatory references, and credit or background check (Oppenheimer 2004; Walsh 2004). These issues are governed by applicable state law or contract law (when the employment relationship is based on a valid contract entered into by the employer and the employee), but the most significant is equal employment opportunity laws.

Equal employment opportunity laws attempt to correct social problems of interest to particular groups of workers, called protected classes. A protected class consists of individuals who share some

characteristics in common, such as their race, color, religion, sex, national origin, age, or disability status. These individuals are protected from discrimination because of the characteristics they have in common. The laws influence all of the HRM functions, including recruitment, selection, performance appraisal, training opportunities, promotion, and compensation (Bohlander and Snell 2007; Kelly, Holmes, and Hayward 2005).

In the United States, the broadest and most significant of the antidiscrimination legislation is the Civil Rights Act of 1964, amended by the Equal Employment Opportunity Act of 1972, the Pregnancy Discrimination Act of 1978, and the Civil Rights Act of 1991. The act bars discrimination in all HR activities. Other major federal laws cover each of the protected classes. The Pregnancy Discrimination Act of 1978 protects women from employment discrimination. The Age Discrimination in Employment Act prohibits employment discrimination against job applicants and employees aged over forty. The Vocational Rehabilitation Act of 1973 requires employers that have federal contracts of $2,500 or more to take affirmative action toward qualified handicapped individuals. The Americans with Disabilities Act of 1990 prohibits discrimination on the basis of disability in hiring and in all terms, conditions, and privileges of employment (Fisher, Schoenfeldt, and Shaw 1996; Kelly, Holmes, and Hayward 2005).

In Europe, a clear trend of tighter regulation for equal treatment also has been since the 1980s. The principle of equal treatment has been extended to more and more aspects of employment and to all forms of employment contracts. More recent aspects of equal opportunities policy are positive action and protection from sexual harassment. Furthermore, measures that aim at better coordination of private and professional life (e.g., parental or child care leave) have been introduced (Falkner and Emmerich 1994).

All states define some individual employment rights that limit the parameters of individual contracts, but there is great variation in the scope of such regulation and the rigor of its enforcement. Divergence across labor law systems is in part the legacy of the common law/civil law divide, but it also reflects variations in the timing of industrialization, the forms of worker organization, and the nature of industrial enterprise in different countries (Deakin and Njoya 2008).

In short, the state provides individual workers with social

insurance against employment-related risks to collect market failures ("moral hazard" and "adverse selection") and sets all rights and obligations of individual workers within the employment relationship. In particular, equal employment opportunity laws attempt to correct social problems of interest to particular groups of workers, called protected classes. This role of the state to protect the labor force from total dependence for survival at the discretion of the employer not only influences all of the HRM functions, but also strengthens the position of workers both individually and collectively, facilitating the emergence and stability of collectivized industrial relations.

## EMPLOYER AND POLICY MAKER

Lastly, the state is a contracting party itself in its capacity as employer of public and semi-public servants. In most countries, the state is by far the largest single employer, and deals with organizations representing its employees: civil servants and employees working in the military, law enforcement, the subsidized sectors, and state companies. The role of the state as employer depends on several aspects of governance, including questions regarding the functions of the state, the organizations through which the state operates, and the adopted management approach. The specific model of governance a state chooses to undertake affects the scope of its employment both directly and indirectly. The state decides how it manages its workforce, selecting a model of staffing, compensation, and employee involvement that it wants to follow. Over the years, it has introduced an ever-increasing number of rules determining the legal position and terms of employment of its own employees (Van Waarden 1995).

"Social" or "moral" sanctions are at least as effective as the threat of legal compulsion (Kahn-Freund 1954). States serve as exemplars through their own employment policies, establishing the cognitive and normative rules that undergird employer decision processes, the broader economic and social context within which employers act, and ultimately, the relations of authority constituting the employment relation itself with important implications for employer orientations and practices (Kochan and Osterman 1994).

A notable example would be the impact of Reagan labor policy

during the 1980s in the United States. Ronald Reagan forcefully argued that the nation's social and economic problems had been exacerbated, not ameliorated, by growing government intervention in the economy. Reagan effectively turned public dissatisfaction with high inflation, eroding industrial competitiveness, and declining standards of living into an attack on the New Deal ideology by persuading a substantial portion of the electorate that the best antidote to these problems is greater reliance on free markets and less reliance on government and other forms of employment regulation (e.g., collective bargaining). These new priorities played themselves out during the Reagan and Bush presidencies of the 1980s and early 1990s (Barbash 1984b; Kaufman 1997b). This political "take-away and give-back" strategy, from the union viewpoint, fostered not only a tax-free, but also a regulation-free and, as part of that, a union-free environment to encourage business to invest. Reagan spokesmen argued, however, that these policies would eventually redound to the union advantage by encouraging a favorable investment climate and, as a consequence, a favorable employment condition (Barbash 1984a; Keller 1991).

In reality, public policy toward collective bargaining certainly turned hostile, evidenced by the events such as the Reagan administration's hard-line stance in the air traffic controllers' strike, administration opposition to striker replacement legislation, and a series of important pro-management rulings by the NLRB. Rhetoric against "big government" also intensified, including attacks on various regulatory programs in the labor area, such as affirmative action, unemployment compensation, the minimum wage, and the Davis-Bacon Act (the setting of "prevailing wages" in government construction projects). In this context, the business community certainly rose in stature and gained new power and influence, resulting in the growth in employer anti-union practices during these years. Unions suffered political defeats in the past, but never before had they felt as totally excluded from the centers of government power as they were. While no pro-labor statuses were repealed outright, an equivalent effect, without the political turmoil, was accomplished through administrative regulation and the appointment process (Dubofsky 1994; Kaufman 1997b; Shostak and Skocik 1986).

As its counterpart in the United States, the British government played a significant role in shaping the fate of trade unions, in

periods of both strength and weakness (Howell 1995). Despite the absence of extensive legislation, the policy of British governments has not been neutral, as the policy of voluntarism is sometimes interpreted to imply. In fact, British policy has been to encourage collective bargaining. It has done so by notifying all public servants that collective bargaining is the preferred means of establishing conditions of work, by requiring government suppliers to recognize the freedom of their workers to join unions and encourage collective bargaining, and by intervening directly in many disputes in order to pressure intransigent employers to recognize unions and to negotiate with them (Adams 1993). Many observers thus often credit government normative support for collective bargaining for union density levels of approximately 57 percent by the late 1970s, despite a lack of effective statutory protections in the United Kingdom (Howell 1995; Katz and Darbishire 2000).

Philosophically, the Thatcher government in the UK was very close to that of Reagan in its belief that "market forces" should be able to operate with a minimum of constraint. The objective of the anti-union legislation introduced by the Thatcher government in the 1980s was to provide business executives with greater flexibility so that they could respond more effectively to labor-market signals (Adams 1993). The state initiated political provisions towards gradual "deregulation" of parts of the existing industrial relations system, as employers initiated their strategies of flexibilization. The state downsized the public sector, introduced contingent employment arrangements, and contracted out to reinforce the adoption of low-cost policies in the private sector, while promoting a shift in employer attitudes away from a more paternalistic and voluntaristic orientation that included a role for labor, toward one emphasizing an enterprise culture in which there was not only little role for labor but also an erosion of the principle of comparability that had been important to wage-setting processes under preceding regimes (Godard 2002). The state used its influence in state-owned industries to attempt to undermine the powerful position of the trade unions by setting an example; British Leyland and the National Coal Board adopted a thoroughly uncompromising stance against the trade unions and their employees (Van Waarden 1995). The state deregulation policies in the 1980s and 1990s definitely reinforced management initiatives for more "flexibility," eroding unions' bargaining power and political strength (Bordogna and Cella

1999; Keller 1991).

Under the normative cultural approach, states attempt to shape cognitive and normative rules that guide employer behavior and hence employer beliefs about what constitutes rational and desirable behavior, while defining the status of labor in the polity, the economy and society as a whole (Kochan and Osterman 1994). This in turn alters the power relations between labor and management in industrial relations and even defines the fate of unions.

The state as employer varies widely in function, organization, and management across countries. Diverging patterns of culture, history, and ideology contribute to the variation evident in policy and practice (Bordogna 2003; Masters et al. 2008). State policy also shifts back and forth in response to political and economic developments and does not always have the consequences intended. Since state managers, like the rest of us, must make do with partial and incomplete economic and social theories, there can be no guarantee that their policies, even if implemented effectively, will produce the intended results. Policymaking continues to be an art rather than a science (Adams 1993; Bean 1994; Zeitlin 1985).

## SUMMARY AND CONCLUDING REMARKS

The state performs four distinct roles that affect industrial relations. First, the state acts as a third-party regulator. It promotes a legal framework that establishes general ground rules in the procedures for collective bargaining, regulates the use of union sanctions and management sanctions, and acts as a conciliator, mediator or arbitrator in conflicts between organized labor and management in order to handle or avoid breakdowns in collective bargaining. This role of the state is significant in itself, but the importance of this role is enlarged when we consider its impact on the power relations between organized labor and management; it determines to a large degree substantive outcomes, such as the extent of union density and collective bargaining, the form and character of labor organization, and even the survival of organized labor.

Second, the state sets labor standards and sometimes wage levels with less regard to the profitability of the industries to create a floor for employer behavior in the labor market. It regulates money supply

and interest rates that have significant effects on employment and workers as changes in product markets act on labor markets through derived demand. Faced with the “free-rider” problem among employers, the state invests into labor market institutions such as training, education, and employment services that shape the capacities bought by employees. The purpose of legislated labor standards is to compensate for the lack of individual workers’ bargaining power. Other functions of the state to achieve “full” employment and economic growth also affect not only employers’ business strategies, human resource policies, and labor policies, but also the balance of power within the labor market and the margins for negotiation within collective bargaining.

Third, the state provides individual workers with social insurance against employment-related risks to collect market failures (“moral hazard” and “adverse selection”) and sets all rights and obligations of individual workers within the employment relationship. In particular, equal employment opportunity laws attempt to correct social problems of interest to particular groups of workers, called protected classes. This role of the state to protect the labor force from total dependence for survival at the discretion of the employer not only influences all of the HRM functions, but also strengthens the position of workers both individually and collectively, facilitating the emergence and stability of collectivized industrial relations.

Fourth and finally, the state is a contracting party itself in its capacity as employer of public and semi-public servants and is by far the largest single employer in most countries. The state decides how it manages its workforce, selecting a model of staffing, compensation, and employee involvement that it wants to follow. Through their own employment policies, states shape cognitive and normative rules that guide employer behavior and hence employer beliefs about what constitutes rational and desirable behavior, while defining the status of labor in the polity, the economy, and society as a whole. This in turn alters the power relations between labor and management in industrial relations and even defines the fate of unions.

There have been several notable trends in the economy since the 1980s: globalization of the enterprise; technological revolution; deregulation of economic activity; excess capacity and supply of basic goods; and changing demographics and attitudes of people (Schneider 1997). In this environment, international trade no

longer is a positive-sum game; it has became a battlefield in which each country fights for a greater share of the markets, eroding the fundamental condition of macro-corporatism where the state involves management and labor in the process of socioeconomic decision-making. Liberals predict that national economies and industrial relations systems will converge toward the neoliberal model, which weakens state control over employers and enhances employer power and authority, to survive tough international competition (Broad 1995; Marshall 1994; Strange 1996, 1997). Yet, there are significant continuities in state regulation both qualitatively and quantitatively despite some visible changes in several subfields of social policy (Benson and Gospel 2008; Boyer 2004; Carter 2006; Erikson and Kuruvilla 1998; Traxler 1996), and the diverse systems of industrial relations largely can be attributed to differences in the nature and extent of state intervention and the varying roles of the state in industrial relations across different countries.

The author believes that the typology proposed in this article significantly enhances our understanding of the role of the state in industrial relations and hopes that it also aids in studying the diverse systems of industrial relations across different countries. Due to the space limitation, this article could not go further to include a systematic historical analysis of each of the distinctive roles of the state in shaping the diverse systems of industrial relations, however. Future research should explore the validity of the proposed typology through systematic comparative studies.

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