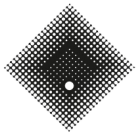
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Power and Scale: The Shifting Geography of Industrial Relations Law in Australia

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Sally Weller
Centre for Strategic Economic Studies
Victoria University
Level 13, 300 Flinders Street,
PO Box 14428
Melbourne 8001
Australia

Ph +613 9919 1125
Fax +613 9919 1350

sally.weller@vu.edu.au

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Sally Weller

Centre for Strategic Economic Studies, Victoria University, PO Box 14428, Melbourne 8001, Australia; sally.weller@vu.edu.au.

Abstract

In an increasingly complex literature exploring the geographies of socially constructed scale, interest has focused on the relationship between scale, power and the contested political terrains through which these relations are played out. In this paper, I argue that these interactions must be understood in specific contexts, where shifts in scale are inextricably linked to shifts in the sources and instruments of power. By applying a scale perspective to the analysis of recent industrial relations legislation in Australia, I show that the nature and direction of rescaling is 'fixed' by the powers of institutional actors and the scope of their jurisdictions. I then draw on the distinctively scaled relations of the Australian context to assess the extent to which Australia's national rescaling processes can be seen as representing a process of convergence toward universal 'spaces of neo-liberalism'.

Keywords: scale, industrial relations, neo-liberalism, legal geographies

Introduction

In November 2005, over 200,000 working people marched through the streets of Melbourne, Australia to express their anger at the Howard government's draconian labour market re-regulation, which abolishes many of the rights won by workers in the preceding one hundred

years of industrial arbitration. Whilst the public debate about these reforms has focused on their direct employment and labour market implications, this paper assesses them from a broader perspective with a view to illuminating the complex relationship between politics, scale and power. By locating the reform agenda in a historical and political-economy context, the paper aims to contribute to the identification of constructive avenues of resistance.

The paper portrays the revolutionary transformation of the Australian industrial relations landscape as a complex, multi-faceted and contradictory process in which the national government has drawn on new sources of power to wrest authority from the regional States and decentralize industrial relations practices to the workplace level. These changes have been justified as a necessary consequence of globalization (Howard 2005) and interpreted as superimposing neo-liberal policy settings on the Australian space-economy (Mack 2005). This analysis, in contrast, reveals the extent to which the Australian case diverges from Brenner and Theodore's (2002) international neo-liberal prototype. Rather than 'hollowing out' the national scale, the re-regulation of employment and industrial relations in Australia has shifted the locus of power *toward* the national scale by harnessing a previously untapped source of regulatory power: the 'Corporations' power vested in the Commonwealth by the Australian Constitution. The mobilization of this power potentially enables the national state to legislate in a wide range of matters relating to the governance of firms (corporations), to strengthen the depth and scope of its control over employment and industrial relations practices, and to rescale the *practices* of regulation to the enterprise, workplace and individual worker. As a consequence, geometries of power between capital and labour have shifted to the advantage of capital (as institutionalized in firms) and between the Commonwealth and regional States to the advantage of the Commonwealth. Unpacking the history of these changes highlights the need for a finer appreciation of the relationships between differently scaled modalities of power, legal jurisdictions and political forces.

The paper makes four arguments. First, whilst accepting the inextricable link between scale and power (Herod and Wright 2004), it sees the powers of contemporary actors—and therefore their potential agency in the reconfiguration of scaled structures—as both constrained and shaped by histories that were not of their making. This observation draws attention to the sources, scope and diversity of different expressions of state power and their relationships to legal and territorial jurisdictions. Second, therefore, the paper examines the interdependencies between political, economic and legal power within the Federal scale and illuminates the spatial repercussions of their shifting relations. Third, it considers the uneven durability of each form of power's spatial and temporal reach. Fourth, it highlights the national scale's continuing pre-eminence in regulatory, economic and political processes.

The discussion proceeds as follows. The next section critically examines scaled perspectives in contemporary geographies of labour. Section Three then details the history of industrial relations reform in Australia, describing it through the lens of rescaling and power geometries and stressing the connections between these processes and the rise of neo-liberal ideologies and policies. Section Four examines the implications of these changes, leading to the conclusion that national scalar fixes are not amenable to rapid reinterpretation or uncomplicated reconfiguration.

The Uses of Power In Labour Geographies

The literatures associated with the 'regulation school' have been influential in framing understandings of marketization, privatization and neo-liberal labour market reforms. Regulation approaches are attuned to the processes of uneven development that drive capitalist growth, are sensitive to the formative role of space and spatialities, and are alert to the processes of reterritorialization and rescaling that are inevitably associated with industrial restructuring (Brenner 1998). They also highlight the complex interdependencies and 'tangled

webs' of codependent relations that shape the reconfiguration of institutional structures (Boyer 1992). Swyngedouw's (1997) geographical extensions of regulation theory incorporate an appreciation of space, scale and power in a way that has particular resonance for the study of neo-liberal industrial relations reforms. He envisions the spatial outcomes of neo-liberal reforms as a process of glocalization: a dual shift from the national to both the global and local scales simultaneously. Here, scale is both the arena and outcome of contested social action.

Herod and Wright (2004) also draw on spatialized variants of regulation theory to explore the relationship between scale and power. They understand scale in relational terms, as comprising of dense networks of interpersonal and inter-institutional relationships that span and interpenetrate from the local to the global. Scale 'matters' to understanding the changing nature of industrial relations because unions and employers are both geographic and strategic agents engaged in social interactions that shape the spaces and institutions in which they interact. Their changing associational foci incessantly construct and re-construct scale. In this theoretical variant, since scale is socially constructed and malleable, so too is the arena in which contested political struggles are played out.

These approaches provide a framework from which to explore the changing power relations between unions, employer associations and the national regulatory structures that underpin neo-liberal re-regulation. They suggest that shifting power relationships and the processes of re-regulation must be theorized together and across multiple geographical scales in a manner sensitive to the shifting 'power geometries' between capital and labour (Berndt 2000; after Massey 1993). Comprehending Australia's contemporary industrial relations changes thus requires an appreciation of the multi-scalar nature of re-regulation and the complexities of the associated changes in power relations. It also requires teasing out how different modalities of state power influence the relationship between capital and labour (in their institutional expressions as firms, unions and employer groups). In addition, the analysis in this

paper extends and reworks existing understandings by incorporating three further considerations.

First, existing theorizations do not interrogate sufficiently how different sources and modalities of power shape actors' capacities for scale transformation, or how temporalities—the histories, timings and rates of change of continuing codependent relationships—influence processes of scale transformation. When Gibson-Graham (2004), for example, advocates greater emphasis on the inter-constitutive nature of scale and rescaling in specific contexts, they stress the malleability of scale and its dependence on the minutiae of everyday power relations between actors. Yet such an appreciation could just as easily highlight the durable nature of structural couplings and the inflexible scalar 'fixes' that bind groups of actors and institutions together in at least partially determined developmental trajectories. Although national states can alter their sources of power and adapt their regulatory structures to new circumstances, their transformative options are constrained by laws and histories that both underpin and maintain existing scaled structures.

Second, existing scale theory does not step inside existing jurisdictional scales to interrogate how the changing nature of state power—as the outcome of conflicts between social, economic and political objectives—shapes processes of rescaling. Regulation theories have been criticized for conceptualizing the state as somehow external to its object and as creating an overly artificial division between the state and the economy (Cox 2002). A parallel argument can be made with respect to the division between the state and the law. For Clark (1989:329) the links between the state and the law are 'indissoluble.' In Blomley's (1994:36) analysis, the law asserts an imagined and unifying social and cultural homogeneity and displays and a 'deep aversion' to the heterogeneity characteristic of actual social processes. As such, it functions as a 'territory' with 'closure' from political and economic concerns. In the regulation of the employment relation, however, where the law meets the imperatives of

economic management, maintaining judicial independence is always fraught: political changes that shift the state's internal configurations of power also stimulate reconfigurations in the relationship between the state and the institutions created by it to manage the relationship between capital and labour.

Third, existing theorizations of scale generalize patterns of neo-liberal restructuring and their associated transformations of scale without sufficient consideration of the unique trajectories and spatial logics of different national experiments. As a result, national differences tend to be explained as different timings in the diffusion of a neo-liberal script that inevitably moves each nation closer to a (US or trans-Atlantic) global form, rather than seeing them as distinctive, path dependent trajectories that reflect real differences in the foundational political, economic and legal structures of nations.

The following description of Australia's system of industrial relations regulation links the history of struggles over scales of jurisdiction to broader struggles over the social, political and economic direction of the nation. The discussion highlights the decisive role of the Australian Constitution in framing legal jurisdictions and defining the limits to the malleability of the power it confers on actors and their scales of activity. The distribution of powers set out in the Constitution were established in another time and from another worldview, and create structural constraints that are independent of—but nonetheless crucial to—the relational networks of contemporary political, economic and social relationships. Recent neo-liberal reforms to Australia's spaces of industrial relations regulation deploy a previously unused head of power—power over the activities of 'Corporations'—to rework scaled configurations of power over the employment relation. This has resulted in the up-scaling of power to the national jurisdiction and an intensification of the link between legal regulation, politics and economic policymaking.

Recalibrating Intergovernmental Relations

'Australia' is a federation created in 1901 by its constituent States. The Australian Constitution reflects the political desire, at Federation, to create a durable democracy based on the Westminster parliamentary model. The Australian Constitution defines the powers of the nation state (the Commonwealth) relative to regional governments (the States). It vests the national scale government with exclusive powers over inter-State matters, but preserves State authority over internal matters. This division of powers can be revised only by a national referendum or by a revised interpretation of the Constitution by the High Court. The capacity to 're-scale' states and federal powers is therefore greatly constrained.

At the national scale, the Australian Federal system has been structured by the 'Separation of Powers' doctrine: it vests legislative power in the Parliament, executive power in the (British) Queen, and judicial power in the High Court. This framework has defined the nation's internal power relations and shaped the character of the national state. By positioning the legal system as independent of the political system, it separates individual rights from political-economic realities. For Bowles and Gintis (1986) this separation is a fundamental condition of a democratic society. The separation of powers is replicated in each of the States, creating an ordered division of political and legal systems.

In industrial relations matters, the States and the Federal Government have concurrent powers – a situation that has created a regulatory landscape characterised by long-standing tensions between jurisdictions.[1] As a result, the industrial relations system has always been multi-faceted, comprising Federal and State (regional) and (sometimes) industry-based regulations as well as a plethora of informal workplace arrangements. However, every issue that arises in industrial relations is debated and resolved in a specific jurisdiction. The spatially situated and scaled social practices relating to industrial relations laws must therefore be understood in the context of the shifting history of the relationships between jurisdictions.

The development of Australia's industrial relations system can be understood as organized historically in three phases: first, as a negotiated reconciliation of the conflicting interests of capital and labour in the Keynesian Australian Settlement; second, as a hybrid structure intended to increase 'flexibility' while retaining distributional equity; and third, as an individualized and localized system weighted in favor of capital. The distinguishing characteristics of these phases are summarized in Table 1. In each phase, legislative frameworks have been underpinned by different heads of power and different strategies of accumulation: in turn, Keynesian, hybrid quasi-Corporatist and neo-liberal. The phases also demarcate the changing position of the labour market in the national economy and the changing position of the national economy in the global economy.

Put Table I about here

Since Federation, Australia's industrial relations structure has gravitated toward the national scale. Bipartisan political support for national regulation has reflected both an awareness of the inefficiencies of duplication and a perceived need to bring the scale of labour regulation into alignment with the already national scale of macro-economic and social security regulation (Creighton and Stewart 2005; Williams 1998). Changing power relations within the field of industrial relations reflect a wider trend to the centralisation of power at the national scale.

The Australian Settlement

In the early 20th century, Australia's distinctive and highly interventionist system of industrial relations regulation developed as the central re-distributive mechanism of the nation's strategy of accumulation. This set it apart from the industrial relations environment in other western economies (Macintyre 1989).

From Federation until the 1980s—or more precisely, from the *Conciliation and Arbitration Act (1904)* to the *Industrial Relations Act (1988)*—Federal intervention in the field of industrial relations relied on s. 51 (xxxv) of the Constitution, which gives the Commonwealth power over "conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of one State." In the early years of Federation, the extent of Federal power was constrained by the High Court's narrow interpretation of the wording of this section of the Constitution; in particular, its understanding of the words conciliation, arbitration, prevention, settlement, industrial, dispute, and the phrase 'beyond the limits of one State' (Williams 1998). In these early years, the High Court followed the principle of 'reserved State powers', which preserved the States' authority over wage setting—based on powers enshrined in their Constitutions—and restricted the Commonwealth's power to the determination of minimum standards in inter-State dispute settlement..

As the Federal system became established, new interpretations expanded the scope of its powers. Federal deference to State authority was modified in 1920 when the High Court found, under s. 109 of the Constitution, that in matters involving parallel jurisdictions the Commonwealth's authority would prevail.[2] Thereafter, State and Federal systems operated concurrently, usually in a spirit of cooperation, but with Federal leadership (despite the relatively weak basis of its authority). The scope of national industrial regulation continued to increase over time as unions developed a system of inter-state 'paper disputes' fabricated with the express purpose of triggering Federal intervention. Meanwhile the Commonwealth sought to increase its powers over industrial relations, but failed in four separate referenda (most recently in 1946) to gain public support for the necessary Constitutional amendment. Nonetheless, Federal ascendancy was consolidated in 1962 when the High Court ruled that the Constitution grants the Commonwealth a degree of immunity from State laws.[3] As successive

High Court decisions gradually reinterpreted the Constitution, the effective power of the national scale increased, as did the separation between Federal and State jurisdictions.

In this context, the industrial relations regulator, the Federal Arbitration Commission created a 'regulatory space' that functioned to referee the inherently uneven power relations between labour and capital. After taking the divergent perspectives of government, union and employer interests into account, its decisions set wages and conditions of employment (known as making an Award). The historic Harvester Decision of 1907 secured the enduring link between wages levels and the cost of living that underpinned Australian social life throughout the twentieth century.

Within this scaled division of power, then, the national system of 'arbitration and conciliation' developed, along with industry protection and migration, as a pillar of the Keynesian accumulation strategy known as the Australian Settlement. The system maintained industrial peace by balancing workers' needs for social protection with capital's capacity to pay for improvements to wages and working conditions (Macintyre and Mitchell 1989). The Arbitration Commission—and the powers under which it operated—assumed an adversarial relationship between capital and labour. The Commission adopted an inquisitorial approach to task of mediating between their conflicting purposes (Isaac 1994). Under the Separation of Powers doctrine, the Commission's decisions were largely independent of political influences and did not necessarily accord with the short-term policy objectives of the government.

By the 1960s, the minimum wages and conditions of most Australian workers were either set at Federal level in regular National Wage Cases or followed their lead in State-based Awards (Hancock and Richardson 2004). The Australian system was characterized by compulsory arbitration, a high incidence of multi-employer collective bargaining (Traxler 1996) and comprehensive Award coverage that extended regulation to issues that in other nations are covered by the social welfare system (Hartog and Theeuwes 1993). Needs-based basic

wage rates were modified using agreed skill-based occupational wage relativities, with the wages of a city-based (metals trade) fitter providing the benchmark (Macken 1989). The maintenance of occupational wage relativities brought stability to the nation's industrial structure. This system resulted in Australian workplaces having a high level of Award coverage (over 80% of all employees). The regulatory system facilitated the creation of a bargaining framework that institutionalised the role of trade unions. It enabled the most powerful unions to secure Awards that would then 'flow' to less strategically well-positioned sectors and industries. Over time, the system generated a complex mix of industrial awards, each with specific occupational, spatial and/or sectoral application.

The arbitral model relied on the political support of its constituent actors. It was supported by unions—although not without tensions (see Ellem *et al* 2004)—because it enabled wages to keep pace with the cost of living and sheltered weaker segments of the labour market. After the economic crisis of the 1931 Depression, it came to be supported by business, too, because stabilised the economy and moderated the incidence of direct industrial action. Wage regulation was effectively the *quid pro quo* for tariff protection (Plowman 1989). It was supported by government because it regulated the rate of consumption within the Keynesian accumulation strategy. The system's ordered relativities maintained a 'family' wage structure linked to the cost of living, whilst its redistributive function reduced inter-regional and inter-sectoral wage differences. At that time, the redistributive mechanism was important because much of Australia's wealth was generated in the rural agricultural sector (wool and wheat production).

The centralised system also empowered these institutional actors. It recognised, by registration, both the unions and employer groups that represented their constituencies in collective bargaining. It institutionalised their roles and encouraged them to direct their energies to the national scale. To improve the effectiveness of their bargaining both sides harnessed

specialist legal expertise. Legal intermediaries subsequently assumed a crucial role in defining the nature and scale of industrial relations practice (Teicher 2004). The structure also encouraged union and employer organisations to engage with political actors at both national and State levels to maintain the institutional structure and bend its practices to their objectives.

At the same time, the dispute-based structure allowed for (and assumed) local scale negotiations and agreements. Although individual workplaces were often governed by multiple unions and multiple awards, the structure preserved management prerogative and encouraged status-linked rights. It empowered those segments of labour that were positioned at critical points in the production processes—clickers in the boot trades, for example—who could exercise industrial muscle with immediate effect. This in turn encouraged the formation of small occupational (craft) unions. A handful of powerful unions often won over-award payments. Within most workplaces, however, union authority was underpinned by national wage regulation and compulsory unionism rather than by a culture of activism. Since interlocking federal and State Awards applied to all workers, regardless of individual union membership, the system succeeded in defusing local level wage disputes. As a result, according to Clegg (1976:66), workplace activism was weak: the role of workplace union representatives was typically restricted to "collect[ing] union dues and to report[ing] grievances to branch officers."

Overall, Australia's organised system of 'arbitration and conciliation' was more structured and more juridified than the systems that developed in otherwise comparable Western economies. Despite similarities arising from a shared origin in the Common Law, the generalised scope and re-distributive functions of the Australian system distinguished it from the institutionalised localness and spatial heterogeneity that persisted in other countries (Hartog and Theeuwes 1993).

Crisis and Reform

The economic crisis of the 1970s and the associated changes in the division of labour put the arbitral system under increasing pressure. In the late 1960s, unions had vigorously opposed the Arbitration Commission's attempts to stem wage increases. In 1975, under the short-lived leftist Labor Whitlam administration, the Commission introduced a Wage Indexation system that linked wage adjustments directly to cost of living increases. As wage rates escalated with the 'stagflation' crisis in the economy, stakeholders' support for wage indexation waned. The Commission consequently assented to the Fraser Liberal Government's 1981 proposal to 'Freeze' wages

The crisis of 1970s sharpened political divisions and united the union movement behind its peak organisation, the Australian Council of Trade Unions (ACTU) (Briggs 2004). The labour movement moderated its political stance and aligned more closely with the Australian Labor Party (ALP) and in 1981, the ACTU entered into a formal cooperative agreement with the ALP. At that time, the union movement was altering its complexion as the activist leaders of the previous era were being replaced by university-educated industrial relations professionals. At the same time, the structures of 'conciliation and arbitration' were struggling to adapt to the new social and economic realities. In 1983, for example, the High Court widened its interpretation of the word 'industry' to approve bringing the full range of white collar occupations into the arbitration system.[4] This new interpretation had the effect of altering power relations within the union movement as white collar and service unions expanded relative to craft and industrial unions.

After the 1983 federal election, the Hawke Labor government came to power. The Hawke administration was committed to structural reforms that would address the weaknesses in the Australian macro-economy. It embarked on a new accumulation strategy combining macro-economic reform and the liberalisation of industry, monetary, migration and wages policies with micro-economic reforms intended to revitalise the nation's workplaces. Soon after

taking office, it entered into the first of a series of Prices and Incomes Accords with unions. In this social pact, unions agreed to sacrifice direct wage increases in return for increases in the 'social wage' of state-provided benefits. In addition, the incoming government held a National Economic Summit to garner support for its policy agenda and created new consultative institutions such as EPAC (the tripartite Economic and Planning Advisory Council) that would coordinate economic planning, wages, employment and industry policy-making. These structures empowered peak bodies—the ACTU representing workers and Business Council of Australia representing employers—to deliberate on behalf of their constituencies. In turn, these changes concentrated political power in the hands of leadership elites and encouraged the hierarchization of power relations within the various institutions of labour and business (see Crouch 1982).

The Accord was renegotiated on seven occasions between 1983 and 1996. At each renegotiation, the federal scale grew in influence and the industrial relations system was brought into closer alignment with economic and social policy concerns. This process was assisted by a 1985 inquiry into the industrial relations framework that highlighted the inadequacies of the dispute-based 'arbitration and conciliation' apparatus (Commonwealth of Australia 1985). The inquiry found that the system had delivered wage stability and employment benefits to full- time male workers but had also exacerbated the deeply gendered segmentation of the Australian labour market (see Kirkby 1989). The system could not regulate the growing incidence of non-standard employment arrangements (managers, marginal workers, and those engaged in various forms of quasi-employment) or regulate with confidence in areas beyond the scope its core powers, such as the employer-employee relation (such as employment insecurity and unfair dismissal) or relationships internal to the workplace (such as harassment and discrimination). These failings were attributed primarily to the Constitutional limits on Federal power.

To address these deficiencies, the federal Labor government turned to Constitutional experts to identify means by which it could extend its range of effective powers. In the 1980s, the Labor government experimented with previously untapped powers, deploying the Commonwealth's Constitutional powers over 'external affairs' (s.xxix), 'corporations' (s.xx), and 'interstate and overseas trade' (s.i) to matters relating to the regulation of employment. The 'Corporations' power proved to be the most efficacious. It enabled the federal Parliament to legislate with respect to "Foreign, trading and financial corporations formed within the limits of the Commonwealth," and granted the Commonwealth jurisdiction over a wide range of activities of incorporated bodies. Progressive new laws governing equal opportunity, anti-discrimination, unfair dismissal, training and redundancy drew on these newly-harnessed sources of power in addition to the 'conciliation and arbitration' power. But these reforms were not without their critics. Legal commentators began to raise concerns about 'juridification' or the increasing density and complexity of the law. They also questioned the appropriateness of some international treaties to Australia's circumstances (see Mitchell 1998).

Meanwhile, business interests became increasingly concerned about the costs of compliance and the intrusions on managerial prerogative that had been created by the extension of employment regulations. As legislation proliferated, the business sector—now led by the powerful Business Council of Australia (BCA), a group dominated by large, export-oriented firms with transnational links—became increasingly vocal in its demands for labour market reform. It advocated greater workplace 'flexibility', understood as the decentralisation of the wages and incomes system (BCA 1988, 1991). At the same time, union support for the Accord was coming under increasing stress as the material benefits of economic restructuring failed to trickle down to workers despite soaring business profit rates. The ACTU was finding it increasingly difficult to maintain the support of those unions powerful enough to secure wage increases outside the Accord structure (Dabscheck 1995). In this politically-charged context,

each of the major stakeholders in the arbitration and conciliation system came to support the partial decentralisation of wage determination.

The decentralisation process began with the 1986 National Wage Case (Accord III), after which, in 1987, a 'two-tier' system of wages determination was introduced. It linked second tier wage increases to productivity improvements (that is, to evidence of workplace restructuring and work intensification), a move that necessarily involved negotiation at the workplace scale. This concept was extended in 1988 and 1989 via the 'Structural Efficiency Principle' – an innovation that further promoted workplace restructuring (Accord IV). It preserved the Accord structure but freed it from automatic 'flow-on' wage increases. A series of landmark reinterpretations by the High Court enabled non-wage benefits such as superannuation to be incorporated into the Award structure as a substitute for direct wage increases.[5] The *Industrial Relations Act (1988)* (C'th) (IRA) responded to the Hancock Report's recommendations. It permitted certified collective agreements without the need for a dispute to animate the discussion, thereby shifting some aspects of industrial regulation to the enterprise level. It also altered the structure of the industrial court (Mitchell and Rimmer 1990). The IRA drew extensively on the Commonwealth's 'Corporations' power to make demands on employers that would have been of doubtful legality under the 'conciliation and arbitration' power.

In 1990, under Accord Mark VI, the ACTU shifted ground to accept and recognise the increasing incidence of enterprise-level bargaining, effectively relinquishing its exclusive powers over multi-employer bargaining (Bell 1991). In 1991, the complexion of the federal government changed when Paul Keating—a Labor politician sympathetic to neo-liberal ideologies—replaced Bob Hawke as Prime Minister. His government's acceleration of product market liberalisation in May 1991 resulted in rapid increases in unemployment as many domestic firms failed. In October 1991, at the peak of the 'recession that Australia had to have',

the Commission also recognised the shift to enterprise scale bargaining when it reluctantly established Enterprise Bargaining Principles, a set of procedures for collective bargaining that encouraged enterprise level negotiation within a centrally managed framework. Further amendments to the IRA in 1992 then permitted Enterprise Bargaining without reference to the Commission's Principles. After the Keating government was re-elected in 1993 it introduced further liberalisations in The *Industrial Relations Reform Act* (1993) (C'th). These provided for both union and non-union collective agreements, made awards subservient to workplace agreements, and effectively demoted the Award structure to the role of 'safety net.' This legislations also drew on the federal 'Corporations' power to impose direct obligations on employers in the areas of minimum wages, equal pay, termination of employment, discrimination and parental leave. At the same time, it curtailed strike action and limited the power of unions by effectively preventing multi-employer bargaining. The powers of the Commission were also further diminished. This legislation foreshadowed the end of Australia's 'arbitral model' of industrial regulation and tilted the balance of power toward employers.

Thus, in the crucial years between 1988 to 1993, the federal industrial relations system reconfigured into a hybrid structure blending arbitration with enterprise-level bargaining, but establishing a trajectory in which enterprise-oriented reforms became the accepted solution to the contradictions of national regulations. These reforms were made possible by the deployment of the 'Corporations' power, the use of which was validated by the High Court in 1989 in respect of a limited range of industrial relations matters.[6] These changes strengthened of the depth and scope of the federal jurisdiction, shifted the balance of power toward the Federal scale and diminished the separation between the law and economic and social policy-making. They increased federal power because they did not require the existence of a dispute to animate intervention; there was no necessity for collective agreements to settle disputes; and there was no need to 'recognise' the institutional power of unions and employer groups. As

the institutions of the arbitral model and the philosophy of negotiated settlement were sidelined, institutional power relations changed in ways that weakened the voice of organised labour and employer groups.

Neo-liberal Roll-out

The Labor Government was defeated in the 1996 federal election after losing the support of business interests. The Howard Liberal administration came to power with a commitment to implement even more radical reform in the labour market. Its *Workplace Relations And Other Legislation Amendment Act 1996* (C'th) (hereafter WRA) promoted further decentralisation and de-collectivisation of labour regulation (Mitchell 1998). The WRA relied primarily on the 'Corporations' power and largely abandoned the use of both the 'conciliation and arbitration' and the 'external affairs' powers.

The WRA added also an additional scale of regulation in the form of individual contracts called Australian Workplace Agreements (AWAs). It restricted the number of 'allowable matters' in industrial Awards in the Federal jurisdiction and thereby constrained the scope of issues over which the Commission could act—restricting it to the supervision of enterprise agreements and the certification of individual agreements. The WRA's recognition of non-union agreements further undermined the power of unions and impeded the ACTU's capacity to represent its affiliates' interests (Ellem *et al* 2004; McCallum 1997). In practice, the WRA created an additional level in an already multi-scalar regulatory structure. Thus, it increased the complexity of industrial relations law, extended the process of juridification and expanded the law by increasing its density and differentiation across a range of scales. As a result, a sole employee could theoretically be governed by multiple and perhaps competing mechanisms (see Mitchell 1998).

After its re-election in 2004, the Howard Government gained control of both Houses of Parliament, enabling it, for the first time, to pass legislation without the support of the minor

parties in the Senate. This consolidation of federal political power enabled a new round of reform to labour and industrial relations regulation. The deceptively named *Workplace Relations Amendment (WorkChoices) Act 2005* (hereafter *Workchoices*)—abolished all but the most basic employment standards and introduced sanctions that curtailed the activities of unions and other advocates.

- The number of 'allowable matters' in Federal industrial awards was reduced to five (specifying minimum conditions for wages, ordinary hours, and leave entitlements). Only three apply to casual employees. Issues no longer 'allowable' in awards include notice of termination, long service leave and superannuation, restrictions on the use of part-time or contract labour, and negotiations over skill-based career paths.[7]
- The Arbitration Commission has been effectively replaced by a politically appointed Australian Fair Pay Commission charged with determining 'fair' minimum wages. These are now defined as wages that encourage productivity, maintain low inflation and promote international competitiveness. The cost of living is no longer a criterion in wage setting. The 'no disadvantage' test that had limited the negative impacts the 1996 WRA was abolished.
- Individual employment contracts (AWAs) formalize Common Law associations and override collective agreements and Awards. AWAs extend the penetration of formalized regulation by bringing aspects of the employment relation previously governed by the Common Law in the contractual framework. This devolution of regulation to the individual level actually increases the relative importance of common law employment contracts and reinvigorates a master-servant relationship in which power is intrinsically weighted to the employer's advantage (Mitchell and Fetter 2003).
- Employers are not obliged to 'recognize' or otherwise acknowledge unions, which means that Australians effectively no longer have a 'right' to engage in collective

bargaining. Industrial action, already curtailed in 1996 except in a narrow range of 'protected' actions, has been further restrained by onerous administrative requirements including secret ballots. Other union activity—including the right of entry to premises—has been severely curtailed. Unfair dismissal laws now apply only to large employers.

- *Workchoices* shifts bargaining to the individual scale but relies increasingly on surveillance, sanctions and the criminalization of union activity. Unions requesting that unfair dismissal remedies, trade union training, or job security be included in collective agreements now face criminal sanctions.
- Via its grounding in the 'Corporations' power, *Workchoices* over-rides most State level employment and industrial relations legislation.

In sum, the strengthening of Federal powers over employment matters has enabled the conservative Howard government to introduce harsh regulations at the national scale, to shift the *practice* (but not the power) of industrial relations regulation to the local and individual scales. These reforms reduce the labour movement's political influence and its capacity to organize: they have actively empowered capital and disempowered labour.

Implications

This changing landscape of industrial relations demonstrates that sites of practice and sites of power are not necessary the same, and that the surface process of 'glocalisation' can conceal a deeper process of national empowerment as the state seeks to bend its population to the perceived imperatives of market-led globalization. The central thrust of these reforms is not simply deregulation but de-collectivisation through the deliberate exclusion of collective bargaining within and beyond the workplace (Cooper 2005). Therefore, these changes must be interpreted as an extension of (draconian) federal power rather than as the devolution of responsibility to the workplace. As Gamble (1988) argued, a 'free' and decentralized market economy requires the intervention of a strong state.[8] The reforms have abolished the

redistributive function accorded to wages policies in the Australian Settlement and consequently resulted in increasing wage inequalities and declining employment security.

Rescaling the State

As well as reconfiguring the power relations between the state, the union movement and employers, the changes threaten autonomy of the regional States. It is often the case in Australia, given the structure of its electoral and parliamentary systems, that the national government faces politically hostile State administrations. This structure is generally defended on the basis that it provides a degree of political stability by acting as a protection against radical change at either scale. Most States retain significant powers over and interest in the employment relationship. Their opposition to the Federal expansion under *Workchoices* is a 'States rights' as well as a 'workers' rights' issue. In 2006, the States combined forces in a High Court challenge to the constitutionality of use of the 'Corporations' power in the *Workchoices* reforms. This was not successful, as expected, given the now conservative majority in the High Court. Other strategies are developing. For example, in a show of cooperation, the States have entered into a corporatist agreement with peak manufacturing industry groups and unions (www.nationalmanufacturing.org). The Victorian State Government has considered the introduction of Human Rights legislation, which, among other things, will protect the right of Victorians to join a union. Legal research centres are examining further options for State and local intervention to protect workers' rights.

Opposing the *Workchoices* reforms is important for the States because Federal empowerment under the 'Corporations' power creates a precedent that could undermine the States' jurisdictions in a wide range of regulatory applications. However, the extent of Federal empowerment remains uncertain. Although the High Court has rejected a narrow view of the Corporations power, which would see its application restricted to 'trading' activities, it has not embraced a broad interpretation in which any or all activity of a corporation can be regulated

(Williams 2005).[9] McCallum (2005) argues that the Corporations power could not be used as the basis for universal labour regulations, such as the setting of a minimum wage, because it applies only to 'corporations' or persons engaged in conduct with 'corporations'. According to Williams (1998), the contemporary changes are creating a regulatory vacuum that will promote the devolution of responsibility back to the State level. The Corporations' power does not apply to unincorporated businesses and there is uncertainty about its application to public instrumentalities – organisations that together employ perhaps 20% of the Australian workforce. Since the ACTU will continue to seek direction from State-level arbitrators for these segments of the workforce, some form of State level arbitration will continue to exist (Combet 2006).

Rescaling and Labour Organisations

The *Workchoices* reforms reinforce a trajectory of worker disempowerment that coincides with Australia's new market accumulation strategy and the Corporation-based shift in Commonwealth power. The Accord years increased the ACTU's power to act in the industrial and political arena and increased its power relative to individual unions. But this undermined the authority of State-level Trades and Labour Councils and weakened State- and city level union activism. Under the productivity-related objectives of the Accords, unions had agreed to substantial workplace and Award restructuring. Union amalgamations between 1989 and 1999 reduced the number of unions affiliated to the ACTU from 299 to 52 as unions amalgamated and moved from a craft- to industry- to sector-based structure.

The shift away from craft-based unionism altered workplace power relations and disempowered those occupations that had previously held leading roles in the arbitration-based structure. Accord's real wage cuts undermined support for unionism, stifled workplace activism and accelerated the decline of union membership, but the latest reforms have now also weakened the ACTU and exposed its power as an artefact of the regulatory structure (Berndt

2000). Macdonald *et al* (2001) argue that the introduction of formal bargaining at the enterprise and workplace scales has actually reduced the amount of informal, cooperative negotiation happening in workplaces. There is increasing evidence that Workchoices is having a negative impact on productivity as the loss of worker voice inhibits innovation and as employees' declining sense of mutual obligation jeopardises firms' capacity to manage effectively (ABC 2007 see also Peetz 1998; Callus and Lansbury 2002).

The new framework creates an incentive for labour to organise at the workplace scale, where the practicalities of enterprise-level bargaining favour the formation of one-union sites and firm-based unions. The changed circumstances are inducing unions to reach down to their constituencies and to purposefully build autonomy from state institutions so that in the future their power will be less reliant on institutional recognition. They also encourage unions to organise outside the workplace and turn to grass-roots political organising that unites the workplace with the community (Cooper and Ellem 2006). However, while this localisation of union strategy brings the Australian union movement closer to the strategies of unions in the United States and Europe, these innovations are being introduced to a context largely unfamiliar with workplace-based activism.

Spaces of Neo-Liberalism?

As these changes have unfolded, Australia's structures of industrial relations regulation are transforming in ways that echo the experiences of neo-liberal reform in other places. The relationship between business interests and federal government has become a more direct and more structural coupling as the national state and firms pursue common and complementary strategies. Both are now buying policy advice and anti-labour strategies from the same consultants and neo-liberal think-tanks (Kelly 2005). Union strategies too are increasingly influenced by the United States' experience (Combet 2006). This has led some Australian commentators to view Australia's reforms as an example of the importation of neo-

liberal policy strategies to the Australian context (Mack 2005). Certainly the underlying faith in market processes is similar to Thatcherist or Reaganite reforms. There is no doubt, moreover, that the idea of increasing Federal powers by harnessing the 'Corporations' power was linked an awareness of the broad interpretations that the American Supreme Court has adopted to the 'Commercial' clause of the US Constitution (Williams 2005:205).

However, the unique aspects of Australia's reforms make it impossible to view them as simply an example of 'fast policy' transfer (Peck 2001). First, the individualization of Australia's employment relations goes further than other jurisdictions toward commodifying labour (power) in the marketplace. The contractual formalisation of master-servant relations is in many ways the antithesis of market liberalisation, instead return to a classical relationship. Second, the Corporatist basis of the Australian reconfiguration shifts the very basis of state power, so driving reform deeper than Brenner and Theodore's (2002) 'spaces of neo-liberalism'. Briggs and Buchanan (2005) argue that Australia's changes cannot be viewed as a local variation on the theme of trans-Atlantic labour market deregulation because the shift to individual contracts represents a qualitative shift in the form of regulation, rather than simply an intensification of existing regulatory mechanisms. Third, the discourses that motivate the Australian version of neo-liberalism are unique in the way they separate economic and political concerns, recognise firms and employees as *economic* actors but redefine unions as *political* actors. This creates the basis for the de-legitimisation of unions as the subjects of regulation. In effect, these changes recast the relationship between labour and capital by denying their relevance as valid subjects for analysis, intervention or coordination (Mack 2005). Fourth, Australia's labour market reforms are also underpinned by a different relationship between national and global capital, compared to the United States or United Kingdom. In Australia, capital's ascendancy in the labour market is predicated on the largely unspoken threat of exit by trans-national corporations. McCallum (2005) sees the contemporary shifts in power over the labour market

as reflecting the fact that the nation state now effectively shares power with large trans-national corporations (via organisations such as the Business Council of Australia and the HR Nicholls Society). The influence of global markets is explicit in new regulations that permit employers to defuse wages pressure by importing guest labour from overseas.

In sum, whilst the changes in Australia resonate with many aspects of Brenner and Theodore's (2002) 'spaces of neo-liberalism', there are also important differences. In Australia, as in other places, the shifting structures of regulation—what Brenner and Theodore (2002) call the 'recalibration of intergovernmental relations'—are reshaping the wage relation and labour market institutions in the interests of capital. But in contrast to other places, they are achieving these reforms by centralizing industrial relations *powers* at the national scale in a manner that enables the localization of industrial relations *practices*. In stark contrast to Swyngedouw's (1997) 'glocalization' thesis, the 'localization' of the sites of industrial relations *practice* is made possible by the use of stronger legislation that increases the authority of the nation scale. The empowerment of the national scale is at odds with the idea that the nation-state is 'hollowing out' under neo-liberalism.[10]

Scales of Justice

The Australian case also highlights the contradictory and power-laden nature of the politics of rescaling. In the years of the Australian Settlement, when the Australian political economy was framed by the doctrine known as the 'Separation of Powers', the decisions of the legal system could be based on universal principles of justice and fairness. Institutional structures and mechanisms were organized to neutralize the unequal power relations between the institutions of capital, labour and the state. Recent history reveals an increasing interdependence between the law, its regulatory interventions and economic policy frameworks. The result is the subordination of fairness to efficiency. When the law becomes an instrument of policy in a context in which state policies are inextricably embedded in the process of capitalist

accumulation, it becomes more difficult to uphold notions of justice and fairness (Mitchell 1998). This breaking down of the separation or 'closure' of the legal system from the messy business of politics (Blomley 1994) has enabled labour market law and regulation to be captured and dominated by economic considerations to the exclusion of social interests, the imperatives of social reproduction, or the maintenance of political legitimacy.

Thus, changes in the industrial relations system can be interpreted as having placed limits on the scope of the law and altered the basis on which its deliberations rest. Depending on your understanding of democracy, this represents either a victory or threat. Prime Minister John Howard's populist view of democracy advocates parliamentary sovereignty underpinned by the common law and does not see a need for judicial oversight (Kelly 2005). Nonetheless, when basic rights are under threat, the legal system's aspatial preoccupations with universal values such as justice, equity and fairness may be one of the few avenues through which an effective opposition can be developed. The independence of the judiciary provides a long term protection for democratic processes even if it makes it more difficult for progressive governments to enact reform.

Concluding Remarks

Different regulatory systems produce different geographical strategies and alter the practices of workers, unions and employers (Herod 1998). These are intertwined, such that upheavals in labour market regulation are both a cause and an effect of changing structures and changing power relationships in the labour market and economy. Because processes of rescaling are constituted spatially, shifts in regulation and its associated practices produce shifts in the constitution and articulation of geographical scales. These shifts are inseparable from shifts in geometries of power.

However, the fact that changes to Australia's system of employment regulation were produced, at different times, by quite different configurations of state power—from both progressive and conservative 'sides' of parliamentary politics—suggests that studies of rescaling need to look beyond the social construction of contemporary power structures to consider the factors that underlie their changing forms. Although contemporary geometries of power combine complex mixes of relationships that span multiple dimensions and scales, the legal frameworks in which they operate retain considerable rigidity. It is this lack of flexibility—in which Australia's arbitral model of regulation could not be adapted to the needs of the new regime of accumulation or its configurations of power and influence—that led it to being sidelined. Changes in structures and jurisdictions were slow until the new Corporations-based source of power tilted the entire 'tangled mesh' of interactions onto a new trajectory. This experience shows that scale 'jumping' strategies developed for short-term political ends can have unintentional long term implications.

Recent analyses of relational socio-spatial interactions have theorized scale relations as fluid and changeable, and as having the capacity to realign as the powers of constituent actors change. Thus, Swyngedouw (2004:133) argues that 'spatial scales are never fixed, but are perpetually defined, contested and restructured in terms of their extent, content, relative importance and interrelations.' This study has nevertheless shown that the extent and time horizons of changes in scaled geometries of power are often constrained. The force of the law—and the limits imposed on it by the Constitution—anchor socio-spatial scales to the extent that their configurations are never entirely the contingent outcome of short-term political struggles. In this paper's example, power at different spatial scales was fixed by the Constitution until a new source of power was identified. The consequent shift in the mechanisms and apparatus of state action facilitated a re-ordering of scale and a realignment of powers and relationships, which have in turn profoundly reorganized the power geometries

between labour, capital and the state. In the absence of Constitutional amendments, however, these should be seen as temporary and reversible.

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Endnotes

[1] In Australia, local governments have virtually no role in respect of industrial relations, social security or taxation.

[2] In *Amalgamated Society of Engineers vs. Adelaide Steamship Company Co Ltd* (1920), 28 CLR 129. Throughout this paper, I rely on Williams (1998) for legal references.

[3] In *Commonwealth vs. Cigamatic Pty Ltd (in liquidation),* 108 CLR 372.

[4] *R vs Coldham; Ex parte Australian Social Welfare Union (CYSS Case),* 153 CLR 297.

[5] In 1985, in *Finance Sector Union of Australia; Ex parte Financial Clinic (Vic) Pty Ltd)* the High Court extended the powers of the Industrial Court to superannuation.

[6] *Quickenden vs. O'Connor and Ors* (2001) 109 FCR 243. In the same year, the Court also reinterpreted the phrase 'beyond one State' in the 'Conciliation and Arbitration' power to enable the Federal scale to intervene in a wider range of industrial matters, but restricted the Commonwealth's power to legislate on matters relating to 'external affairs' to the enactment of international treaties.

[7] Other legislation now covers superannuation, effectively removing it from the industrial arena.

[8] I am grateful to one of the anonymous referees for drawing this reference to my attention.

[9] *Dingjan; Ex parte Wagner (1995)* 183 CLR 323.

[10] Note however Peck's (2001:447) nuanced definition of 'hollowing-out' as 'not the state *per se* but a historically and geographical specific institutionalization of the state, which in turn is being replaced, not by fresh air and free markets, but by a *reorganized* state apparatus,' which avoids understanding 'hollowing-out' as an evacuation of the national scale.

References

ABC (2007). Managers Flay Morale Issues Over IR Legislation, AM Program, 24th February. At http://www.abc.net.au/am/content/2007/s1856008.htm.

BCA (1991). Developing Australia's national competitiveness, Business Council of Australia, Melbourne.

—— (1988). Towards more flexible working time arrangements. *Business Council Bulletin,* 40: (February).

Bell, S. (1991). Unequal Partner: Trade Unions and Industry Policy under the Hawke Government. *Labour & Industry*, 4(1): 119–35.

Berndt, C. (2000). The rescaling of labour regulation in Germany: from national and regional corporatism to intrafirm welfare? *Environment and Planning A,* 32: 1569–92.

Blomley, N. (1994). *Law, Space and the Geographies of Power*. New York: Guilford Press.

Bowles, S., and Gintis, H. (1986). *Democracy and Capitalism: Property, Community, and the Contradictions of Modern Social Thought*. New York: Basic Books.

Boyer, R. (1992). *Labour Institutions and Economic Growth: A Survey and a 'Regulationist' Approach*. Paris: CEPREMAP.

Brenner, N. (1998). Between fixity and motion: accumulation, territorial organization and the historical geography of spatial scales. *Environment and Planning D: Society and Space,* 16(4): 459–81.

Brenner, N. and Theodore, N. (2002). Cities and the geographies of "actually existing neoliberalism". In N. Brenner and N. Theodore (eds), *Spaces of Neoliberalism: Urban Restructuring in North America and Western Europe*. Malden, MA.: Blackwell. 2–32.

Briggs, C. (2004). The end of a cycle? The Australian Council of Trade Unions in historical perspective. In B. Ellem, R. Markey and J. Sheilds (eds), *Peak Unions in Australia: Origins, Purpose, Power, Agency*. Sydney: The Federation Press. 236–60.

Briggs, C. and Buchanan, J. (2005). Work, commerce and the law: A new Australian model? *The Australian Economic Review*, 38(2): 182–191.

Callus, R. and R. Landsbury (eds) (2002). *Working Futures: The Changing Nature of Work and Employment Relations in Australia*. Sydney: The Federation Press.

Clark, G.L. (1989). The geography of law. In R. Peet and N. Thrift (eds), *New Models in Human Geography*, London: Unwin Hyman. 310–337.

Clegg, H. (1976). *Trade Unions Under Collective Bargaining*. Oxford: Basil Blackwell.

Combet, G. (2006). Keynote Address, 20th Conference of the Association of Industrial Relations Academics of Australia and New Zealand (AIRAANZ), Adelaide, 3 February.

Commonwealth of Australia (1985). Australian Industrial Relations Law and Systems: Report of the Committee of Review (Hancock Report). AGPS: Canberra.

Cooper, R. (2005). Life in the old dog yet? deregulation and trade unionism. In J. E. Isaac and R. D. Landsbury (eds), *Labour Market Deregulation: Rewriting the Rules*. Annadale: The Federation Press.

Cooper, R. and Ellem, B. (2006). Union power: space, structure and strategy. In M. Hearn and G. Michelson (eds), *Rethinking work: Time, space and discourse*. Melbourne: Cambridge University Press. 123–43

Cox, K. R. (2002). "Globalisation," the "Regulation Approach," and the politics of scale. In A. Herod and M. Wright (eds), *Geographies of Power: Placing Scale*. Oxford: Blackwell. 85–114.

Creighton, B. and Stewart, A. (2005). *Labour Law*. 4th Edition, Sydney: The Federation Press.

Crouch, C. (1982). *Trade unions: the Logic of Collective Action*. London: Fontana.

Dabscheck, B. (1995). *The Struggle for Australian Industrial Relations*. Melbourne: Oxford University Press.

Ellem, B., R. Markey and J. Sheilds (eds) (2004). *Peak Unions in Australia: Origins, Purpose, Power, Agency*. Sydney: The Federation Press.

Gamble, A. (1988). *The Free Economy and the Strong State: The Politics of Thatcherism*. Basingstoke: Macmillan.

Gibson-Graham, J. K. (2004). Beyond global vs local: economic politics outside the binary frame. In A. Herod and M. Wright (eds), *Geographies of Power: Placing Scale*. Malden, MA, Blackwell. 25–60.

Hancock, K. and Richardson, S. (2004). Economic and social effects. in J. Isaac and S. Macintyre (eds), *The New Province for Law and Order: 100 Years of Australian Industrial Conciliation and Arbitration*. Melbourne: Cambridge University Press. 139–54.

Hartog, J. and Theeuwes, J. (1993). *Labour Market Contracts and Institutions: A Cross-National Comparison*. Amsterdam: North-Holland.

Herod, A. (1998). The spatiality of labor unionism: a review essay. In A. Herod (ed), *Organising the Landscape: Geographical Perspectives on Labor Unionism*. Minneapolis: University of Minnesota Press. 1–35.

Herod, A. and Wright, M. (eds) (2004). *Geographies of Power: Placing Scale*. Oxford: Blackwell.

Howard, J. (2005). Reflections on Australian Federalism. Address to the Menzies Research Centre, April 11, 2005. At http://www.pm.gov.au/news/speeches/speech1320.html .

Isaac, J. E. (1994). Australia, In A. Trebilcock (ed) *Tripartite Cooperation in National Economic and Social Policy-Making,* International Labour Office: Geneva. 67–100.

Kelly, P. (2005). Re-thinking Australian Governance - The Howard Legacy. Occasional Paper 4/2005, : Canberra: Academy of Social Sciences in Australia.

Kirkby, D. (1989). Arbitration and the fight for economic justice. In S. Macintyre and R. Mitchell (eds), *Foundations of Arbitration: The Origins and Effects of State Compulsory Arbitration 1890-1914*. Melbourne: Oxford University Press. 334–51.

Macdonald, D., Campbell, I. and Burgess, J. (2001). Ten Years Of Enterprise Bargaining In Australia: An Introduction. *Labour & Industry*, 12(1): 1–25.

Macintyre, S. (1989). Neither capital nor labour: the politics of the establishment of Arbitration. In S. Macintyre and R. Mitchell (eds), *Foundations of Arbitration: The Origins and Effects of State Compulsory Arbitration 1890-1914*. Melbourne: Oxford University Press. 178–202.

Macintyre, S. and R. Mitchell (1989). Introduction. In S. Macintyre and R. Mitchell (eds), *Foundations of Arbitration: The Origins and Effects of State Compulsory Arbitration 1890-1914*. Melbourne: Oxford University Press. 1–28.

Mack, A. (2005). Class Ideology and Australian industrial relations. *Journal of Australian Political Economy*, 56: 156–171.

Macken, J. J. (1989). *Award Restructuring*. Sydney: The Federation Press.

Massey, D. (1993). Power geometry and a progressive sense of place. In J. Bird, B. Curtis, T. Putman, G. Robertson and L. Tickner (eds), *Mapping the Futures: Local Cultures, Global Change*. London: Routledge. 59–69.

McCallum, R. (2005). The Australian Constitution and the shaping of our Federal and State labour laws. *Deakin Law Review*, 10(2): 460–469.

—— (1997). Crafting a new collective labour law for Australia. *Journal of Industrial Relations,* 39: 405–24.

Mitchell, R. (1998). Juridification and labour law: a legal response to the flexibility debate in Australia. *The International Journal of Comparative Labour Law and Industrial Relations,* 14(2): 113–35.

Mitchell, R. and Fetter, J/ (2003). Human resource management and individualisation in Australian labour law. *Journal of Industrial Relations,* 45(3): 292–325.

Mitchell, R. and Rimmer, M. (1990). Labour law, deregulation and flexibility in Australian industrial relations. *Comparative Labor Law Journal,* 12–21.

Peck, J. (2001). Neo-liberalising states: thin policies/hard outcomes, *Progress in Human Geography*, 25(3): 445–68

Peetz, D. (1998). *Unions in a Contrary World*. Cambridge: Cambridge University Press.

Plowman, D. (1989). *Holding the Line: Compulsory Arbitration and National Employer Co-ordination in Australia*. Cambridge: Cambridge University Press.

Swyngedouw, E. (2004). Scaled geographies: nature, place and the geographies of scale. In E. Sheppard and R. B. McMaster (eds), *Scale & Geographical Inquiry: Nature, Society and Method*. Malden MA, Blackwell. 129–53.

—— (1997). Neither global nor local: "glocalisation" and the politics of scale. In K. R. Cox (ed), *Spaces of Globalisation*. New York: Guilford. 137–66.

Teicher, J. (2004). Industrial relations and the law: the new industrial relations (issues). *Labour & Industry,* 15(2): 113–25.

Traxler, F. (1996). Collective bargaining and industrial change: a case of disorganization? A comparative analysis of eighteen OECD countries. *European Sociological Review,* 12: 271–87.

Williams, G. (2005). The Constitution and a National IR regime. Paper presented at 'Fair Go or Anything Goes?' A Conference hosted by Australian State and Territory Governments, Sydney, 13th July 2005, http://www.iceaustralia.com/ir/

—— (1998). *Labour Law and the Constitution.* Sydney: Federation Press.

Table 1 Australia's Changing Industrial Relations Regulation

	Australian Settlement (1904-1988)	*Hybrid Quasi-Corporatist (1988-1996)*	*Neo-Liberal Roll-out (1996-)*
National Political-Economy Context	Keynesian demand management.	Restructuring for 'international competitiveness.'	Open market-oriented economy.
Objective of Wages Policy	Redistributive.	Means to stimulate workplace reform.	Reactive to global market forces.
Wage Setting	National and State Awards based on cost of living.	National Awards increasingly linked to productivity.	Minimum wage based on business conditions.
Mode of Regulation	Collectivist, multi-employer.	Enterprise-level bargaining superimposed collectivist structure.	Individual Contracts superimposed on Enterprise-level agreements.
Constitutional Source of Federal Power	'Conciliation and Arbitration' power.	Multiple powers.	'Corporations' power.
Institutions of Regulation	Australian Conciliation and Arbitration Commission. Largely independent of political power.	Australian Industrial Relations Commission. Increasingly subject to political influence.	Australian Fair Pay Commission. Subject to political imperatives.
Federal-State Relations	Increasing Federal influence over State jurisdictions.	Federal ascendancy in cooperative structure.	Federal authority over State jurisdictions.
Capital-Labor-State Relations	Institutionalisation of Capital and Labor relation. State as umpire.	Quasi-Corporatist,. Institutionalised. State as stakeholder.	State works to stimulate the market for labor.
Spatial Effects	Policies promote regional equality	Marketization, but with compensations for disadvantaged regions.	Policies promote regional and social inequalities