

Public Policy: Choice, Influence, Evaluation

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Abstract This symposium celebrates the entire policy-making process in the context of labor relations. The four contributions to the symposium are reviewed and their contributions are assessed.

Keywords Public policy · Labor policy

Public policy is a contested concept which involves anything about government choice and implementation, or the study of particular problems. Policy involves public problems—or problems so frequently bedeviling in the private domain that they cumulate into public concerns—and most public policy worthy of study can be enormously political. Though there have been concerted attempts from academics with a more empirical flair to rescue the field of public policy from its messy, chaotic, and inexplicably irrational elements by inserting more “rational” and “scientific” and “evidence-based” analysis, the human element cannot be avoided. Outcomes are not always assured, regardless of the merits of a particular proposal for change; and sometimes policies are adopted with almost no empirical analysis. Put simply, public policy can be a very frustrating field for academics.

The policy terrain is vast and can involve resource distribution (who gets what), and identity (us vs them), and policies are hotly contested especially when they involve fixed-sum scenarios. There also are issues of appropriate regulation, measurement of program targets and deliverables, and evaluation of outcomes. Sophisticated researchers also train themselves to investigate unintended consequences. Institutional, structural, and ideological barriers and opportunities have their effects along the way.

Policy-making is political and economic, and often produces paradoxical outcomes. Public policy analysis requires scholars to grapple with the elusive question “What matters?” and to capture sufficient data to produce a compelling and lucid account. And, as Diane Stone stated, even “analytical concepts, problem statements,

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and policy instruments [are] political claims themselves” and as such they should *not* be granted “privileged status as universal truths” (2002, p. xii).

This symposium celebrates the entire policy-making process, from the initial development of a policy problem, its recognition and framing as an issue, the gathering of resources to study it, the development of research, the selection of policy choices, and recommendations, implementation plans, and evaluation.

Consider now the four contributions to this symposium. Each study illustrates a different way of presenting policy and asks different questions, at different levels of analysis, in different countries by different disciplines. Here the intent is to applaud diversity. The home disciplines are economics (Gunderson), law (Estlund), history (Logan) and labor relations within business schools (Lansbury, Wailes, and Yazbeck). The authors have diverse nationalities, with quite an international contingent of scholars (Gunderson in Canada; Estlund in the US; Logan in the UK; and Lansbury, Wailes, and Yazbeck writing from Australia). And the topics are diverse, as is evident from the summary of each contribution below.

Morley Gunderson, both a leading scholar and a regular contributor of public policy analyses for various government commissions and task forces, reflects on the intersection between academics and public policy. The production and dissemination of research is a small, but critical, part of the policy process. Scholars are often frustrated that their rigorous academic work does not result in policy change or that less evidence-based arguments can influence the policy agenda. Why is that? Gunderson’s contribution allows scholars to reflect on, and situate their role as in a larger policy-making context. With his hallmark humor as well as penetrating insights, he views labor and social policy through a program evaluation framework. He concludes that it is difficult to determine the causal impact of such research on policy. He finds that academic research can have a modest to substantial impact on policy. Much depends on whether there is a policy “window” and a receptive audience. However, the onus also is on researchers to produce timely work of high quality in clear and simple language that can be readily understood by diverse audiences. As soon as I read Gunderson’s piece, I adopted it as a core reading for my PhD class.

Gunderson describes the tendency of academics to cloister themselves, develop their own esoteric jargon, and study issues that lack immediate policy salience. Everyone knows that there is no shortage of ideas, problems, or issues. Neophyte or naive academics have a certain joy in curiosity-driven research, or are obsessed by their need to disseminate their own fascinations. So often I hear academics—and perhaps disproportionately, economists—rail against the irrationality of the public policy process that went in a direction completely opposite to their well-documented empirical findings and recommendations. However, savvy academics assess the climate within which they study social problems and determine whether to bother putting a study onto the front or back burner, whether they have any capacity to influence the direction of change, and whether the time is auspicious to hand over their findings to credible policy champions who advance and defend the work. They operate in networks of influence, and they translate their work into plain language. They can be invaluable at each of the stages of problem identification, legislative action, policy adoption, and evaluation. But at each of these stages their work can be rendered inconsequential, their efforts can be derailed, and they can be cordoned off from power.

Gunderson also provides illuminating examples of why research is, and is not, influential. He examines the Canada's Macdonald Royal Commission, which was a feast for economists, particularly those interested in free trade issues. In the case of unemployment insurance, economists provided considerable research showing that the program had become a passive income-maintenance scheme and was creative adverse incentive effects that discouraged employment. Similarly, for workers' compensation systems, research supported a move towards less generosity and more emphasis on return to work. Labor relations innovations in Canada benefited greatly from scholarship, as well as from the appointment of scholars to run or participate in such initiatives.

We now move away from the particular intersection of scholars and policy-makers towards a topic that addresses the whole of the policy-making process. There are many hypotheses about why US union density has fallen and the union movement has suffered such extraordinary misfortune in the US relative to other industrialized democracies. The two contributions—first from Cynthia Estlund, then from John Logan—explore the reasons for gridlock over any reform to the obviously ailing US collective bargaining system. Industrial relations scholars are familiar with explanations involving the ferocity of employer opposition; labor economists have demonstrated structural change in the economy; and many have bemoaned the adversarialism that seems to form the bedrock of labor relations. Employees may not be attracted to this type of relationship, and a distaste for conflict, in tandem with the nonunion default position of all workplaces, is a recipe for union decline.

In the midst of trying to fit all these explanations into a grander, and confusing picture, I stumbled across a marvelous article by Cynthia Estlund (2002) in the *Columbia Law Review*. She proposed an additional type of analysis, calling her article the “Ossification of American Labor Law.” Her explanation has been widely cited and is becoming quite influential among legal scholars. Her treatment is perhaps novel to industrial relations scholars who do not have a firm training in law and public policy. Her piece makes a considerable contribution in a direction that most of us could not articulate. I contacted her and begged her to contribute an abbreviated version to this symposium.

Estlund argues that labor law is unique in its lack of innovation. There is a longstanding political impasse at the national level that has prevented any reform since 1950. We knew about that, but what few of us appreciate, and what she so starkly lays out, is that the basic text of labor law creates built-in obstacles to change. She points to that hot issue of employer-sponsored nonunion representation [which was the topic of an earlier symposium in this journal that I co-edited in the Winter 1999 issue with Bruce Kaufman (vol. 20, no. 1), so I presume interested readers can obtain that symposium as well as other work on the topic]. What I had not seen argued before was that the channeling of labor disputes to a specialized tribunal system of justice, which we so often praise, might actually be a barrier to innovation. The absence of a private right of action by aggrieved individuals in the collective bargaining setting might have halted any development of an energetic private plaintiff bar, creative role of the courts, and the spillover of substantial jury awards including punitive damages. These all have fostered vitality in the employment law regime, particularly in anti-discrimination claims. (I feel compelled to interject that this is a strangely positive spin on the weirdly litigious US system, but maybe Estlund is correct because the system is simultaneously litigious and effective, at

least for the expansion of the individual-rights regime.) Employers have not had the upper hand in employment law, as they have in labor law.

She also discusses the broad implied federal preemption of state and local laws, which effectively block both experimentation at the state and local level in collective bargaining matters. Furthermore, labor law has been insulated and become almost impervious to constitutional scrutiny which has extended significant protections for free speech and other forms of nonunion protest, and remade the law of public employment. Oddly, federal law has insulated itself from international law as well.

Estlund documents the stubborn structural reasons why wholesale policy reform has proven impossible, and why even minor incremental reform has been elusive. After reading her contribution, I understand why she proposes an argument that reform attempts will actually need to “steer clear of the large and durable roadblock that labor law creates.”

For both conventional and novel reasons, Estlund declares that our patient, labor law reform, is dead—or is so ossified as to be immobilized and bedridden. Logan then performs the autopsy, based on an analysis only of the Clinton years. He proposes that the Clinton administration may have been labor’s last, and best chance, but that for political and ideological reasons, the various initiatives were perhaps stillborn from their inception.

Logan examines the environment within which the Dunlop Commission and other labor reform initiatives were situated during the Clinton administration. The backdrop includes a defensive and fragmented labor movement, employer offenses against collective bargaining, and inhospitable treatment by legislators. Logan’s discussion reveals President Clinton’s relative lack of interest in labor relations compared to his intense preoccupation with health care reform, free trade, and economic prosperity. Secretary of Labor Reich wanted to move the US towards a high-involvement, high-performance vision, without clarity as to the role of unions as a vehicle to achieve this vision. Logan carefully documents the importance of the composition of Congress as change initiatives were brought forward, particularly in the Senate, where the addition or subtraction of only a few senators could make all the difference. The President’s veto power, and the power of the Senate to undo it also comes into play. Logan also describes the use of the filibuster as an aggressive means of frustrating reform.

For American unions, Logan argues, framing the debate as more than simply a union issue was critical; rather, labor relations matters had to be positioned as significant to all American workers who had rights that were being violated. Otherwise, reform would be trivialized as merely a “special interest” campaign. Control over framing was virtually impossible to achieve in the face of employer opposition, which cleverly crafted a “Keep Americans Working” counter-campaign. Caught between these two positions, the Dunlop Commission’s task became extraordinarily political, perhaps impossible, and almost certainly a painful experience for its appointees. Unions lost their two campaigns for striker replacement legislation, failed to block the North American Free Trade Agreement (NAFTA), and made no headway whatever in reforming the laws that would assist union organizing. The Dunlop Commission has been widely labeled a failure. Certainly it resulted in nothing of consequence other than raising the cynicism of unions to near-paralytic levels.

So we have gridlock in the USA, that much is abundantly clear, with nothing but pessimism about future prospects. But during this same period Logan and Estlund describe, astonishing levels of public policy change were occurring in New Zealand and Australia. Of course, they were not in the direction desired by unions, and perhaps this is the key. Policy reform in Australia and New Zealand is the topic of the paper by Russell Lansbury, Nick Wailes, and Clare Yazbeck.

Good public policy analysis sets the stage for comparison and evaluation and satisfies an intellectual need for comparative approaches. Alexis de Tocqueville said, “Without comparisons to make, the mind does not know how to proceed.” In this spirit, I began wondering about developments in both Australia and New Zealand. In labor relations circles, there has been some considerable curiosity about New Zealand’s move towards individual bargaining and the developments that promote individual contracts of employment as the defining characteristic of employment relations. There also have been incremental, but significant, policy changes in Australia. Even with Internet access, keeping abreast of these developments is difficult, and so I commissioned an article that updates us, summarizes sweeping changes, and provides some evidence as to the effects—both intended and unintended—of the new policies.

Lansbury, Wailes, and Yazbeck begin their briefing by pointing out the common heritage of Australia and New Zealand, including their state-sponsored conciliation and arbitration, and their highly centralized approach to labor market regulation. In recent years, however, they have taken sharply different approaches to reform. New Zealand’s *Employment Contracts Act* of 1991 attracted immediate attention throughout the world, from policy makers, scholars, and practitioners from unions and management. The *Act* was considered a shocking departure from the international consensus among developed countries that collective bargaining was to be, if not supported, then at least tolerated. By lauding the freedom of contract between the employer and individual employees engaged in a purely economic relationship, the role of unions as bargaining agents was effectively demolished. The authors urge us to take a longer range view of what seems to be an abrupt change. They argue that the conditions leading to the new policy had been taking place over a 40-year period from the 1950s. They also summarize the effects of the *Act*: There was a decrease in industrial action, but a corresponding increase in personal grievance claims. Importantly, the state was unable to withdraw from employment matters because it had to step up its role in the management, interpretation, and adjudication of individual employment contracts, even as it slipped away from its historic role as a major actor in collective relationships. The authors then summarize the provisions of the *Employment Relations Act* of 2000, which tried to rebalance the wild pendulum swing unleashed by the 1991 initiatives. Unions were given exclusive bargaining rights, and a statutory duty of “good faith” was given to help guide the parties towards a less adversarial relationship. However, on the issue of union security, New Zealand endorsed only voluntary union membership.

Turning to Australia, Lansbury, Wailes, and Yazbeck discuss the pressures to decentralize the system of wage fixing. The policy emphasis shifted to one of greater decentralization and enterprise-level bargaining, especially via the provisions of the *Industrial Relations Reform Act* of 1993. Now unions and employers would bargain over Enterprise Flexibility Agreements. Importantly, the state endorsed an approach

(similar, in fact, to the Canadian approach), that bans industrial disputes except during a bargaining period. The 1996 *Workplace Relations Act* then moved bargaining from the industry level to the individual workplace or enterprise and heightened the importance of individual dealing. Employers could negotiate either a nonunion collective agreement, or a nonunion Australian Workplace Agreement covering an individual contract of employment. Amendments in 2005 offered a comprehensive system of labor relations that would replace, or graft new structures onto, the old model.

In both Australia and New Zealand, the jury is still out as to whether the changes have made the respective systems simpler or more complex. Much academic work needs to be done to measure the effects of public policy changes. These countries provide extraordinarily fertile ground for scholars interested in examining both the “before and after” and “between countries” relationship between policy and practice. As the authors point out, despite their differences, it is significant that both countries have converged towards hybrid systems that incorporate collective bargaining strategies with a new individualistic approach that minimizes the role of unions.

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