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Christopher J. Albertyn

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Book Reviews

Labor Standards in the United States and Canada

by Richard N. BLOCK, Karen ROBERTS and R. Oliver CLARKE, Kalamazoo, Michigan: W.E. Upjohn Institute for Employment Research, 2003, 175 pp., ISBN 0-88099-236-0.

This short work has the potential to be rather important. It is a seminal effort to systematically compare the labour standards of two countries. There is a lot of material on the labour standards of particular countries given, for example, by the ILO, but this is an attempt to measure and quantify the labour standards of two countries. The book appears at a time when the transfer of jobs from the U.S. to other countries, mainly in the third world, is a political issue in the coming U.S. presidential election. Opposition to the loss of jobs has taken two forms: reactionary and progressive. The reactionaries assert nationalist interests, wanting American jobs to remain in America. The other, progressive view, which also questions the flight of jobs to third world countries, is more sophisticated. Its advocates do not necessarily oppose free trade, they say that trade must be fair. They don't claim that jobs should remain in America because they belong to American workers, as the reactionaries do. They say the countries, which take the jobs, should have equivalent, or fair, labour standards. Where labour standards are low, trade becomes unfair and the transfer of jobs to those countries is arguably unjust. The linking of labour standards to trade, the demand for fair trade rather than free trade, is the progressive response to the loss of manufacturing (and increasingly, service)

jobs to countries of the third world. The political debate of these issues needs a reliable empirical method to compare labour standards. This book offers such a method.

In the early part of the work, the authors provide a background and literature review of models and texts which try to address the complex link between trade and labour standards. They make reference to the available research and they explain "the lack of theoretical and empirical consensus on the relationship between labour standards and trade" (p. 32). They talk of the sources of labour standards and the methods of their application.

We tend to accept the notion that third world countries, which are soaking up the jobs we lose in North America, have lower labour standards. No doubt this is probably true, but we reach this conclusion on the basis of some general conception we have of the conditions under which the workers of different countries work. Our comparison of the labour standards of different countries tends to be based on a random assortment of information of the differences. The comparison is neither rigorous nor scientific. What this book does is to make a first, I think important, step of trying to define standards of evaluation which may be used generally and systematically to compare the labour standards of one country against another. Rather than

relying upon our 'gut feel' evaluations, the authors endeavour to define a set of parameters and measures for assessing the relative labour standards of different countries. They do not suggest that they have arrived at a definitive set of measures and indices; they see themselves as starting a dialogue among comparative labour relations researchers, aimed to hone and refine the evaluative standards which should be used to compare the labour standards of one country against another. They offer some reliable measures for making the comparisons: empirical measures, which can themselves be tested.

The authors are not too ambitious. After defining the labour standards which are the subject of the study, and explaining the sources for the standards, the authors develop their paradigm of the appropriate evaluative benchmarks, and they then explain the weighting to be applied to each of the measures they use. Once they have done so, they apply the method to a set of labour standards in the U.S. and Canada. They determine which of the two countries has the better labour standards.

For the purpose of the study, the labour standards have four components: (1) the standards are created and enforced by governments (the standards are mandatory, they have universal coverage, and legal sanctions result from non-compliance); (2) the standards are designed to primarily affect workplace transactions (health care is not a workplace issue in Canada, so is excluded from the study); (3) the purpose and administration of the labour standards are generally comparable; (4) the standards could reasonably be, or they have been, adopted. They divide labour standards into two broad categories: those which require employers to make monetary payments (minimum wage, overtime pay, pay for time off, contributions to employment insurance and workers' compensation); and those

standards which constrain employers in their management of the workplace (no interference in union representation, providing equal employment opportunity and employment equity, preventing unjust discharge, providing occupational safety and health, and providing notice of plant closings or large-scale layoffs).

The authors follow four steps to compare the labour standards of the U.S. and Canada: firstly, they analyse the substance of the labour standard; next, they determine a method to measure the nature and extent of the enforcement of the standard; then, they develop what they call a basic index of the strength of the labour standard in a jurisdiction "by weighting the various statutory provisions and enforcing efforts for each standard"; finally they deflate the weighted standards by an estimate of the percentage of the extent of the labour force covered by the standard (the deflated index). In this way, the authors endeavour to produce an authentic comparison of the impact of the labour standards in the two countries.

The authors take account of what might affect on the enforcement of a labour standard: for example, if there is a right of appeal (as is commonly the case in the U.S., much less so in Canada), they say this weakens the enforcement mechanism. This is probably generally true, particularly if judicial appeals are available, but there are circumstances where the assumption is not valid, and where a right of appeal should not be discounted. In Ontario, an aggrieved party may appeal an order (or the failure to issue an order) of an Employment Standards Officer to the Ontario Labour Relations Board. The Officer's order is not suspended, though, pending the appeal. An employer must pay the amount ordered into trust as a condition of the appeal. In these circumstances, an appeal should not be discounted. The enforceability (or,

alternatively, the suspension) of an order pending the outcome of an appeal is a more critical index, in my view, than is the right of an appeal. There are factors not considered by the authors, e.g. an upper limit on an enforcement order (in Ontario, the upper limit on an order is \$10,000), which should detract from the effectiveness of the standard. But, overall, the weighted factors considered by the authors are relevant to an evaluation of the effectiveness of a particular labour standard.

There is room for improvement of the factors, which the authors identify as either advancing or retarding the value of a labour standard, as the authors candidly acknowledge. For example, regarding occupational health and safety, the authors place most emphasis on the size of the fines which may be imposed on employers for violations of standards in this area. Certainly the scale of fines is important. But a factor which contributes greatly to improving workers' health and safety is the presence of a union in the workplace. The authors apply weighting if an occupational safety committee or representative is required, but, in my view, they don't sufficiently credit the importance of union participation in such a committee. Similarly, in their consideration of standards concerning plant closures and mass layoffs, the authors' focus is around notice requirements, when the most important limitation on an employer's freedom of action in this area is the obligation to consult with a union on the decision to layoff, and on alternatives to layoff, as is common in European enterprises. These obligations are far from common in North America, but they are much more potent in protecting workers' rights than are notice requirements. Also, I think the amount of severance pay due to workers on layoff is somewhat undervalued as a factor.

The authors apply a numerical value to the factors they say either advance

or impede the realization of the standard. Much of the book is taken with explaining and justifying the statistical assumptions. I am not a statistician so I cannot assess the statistical methods used, but, in general, the weighting applied to the different factors, which might influence the enforcement of a labour standard, seems sensible. The authors explain in each case why they choose the particular value, and they hold open the hope of some debate with other scholars concerning the weighting they apply.

I have some quibbles with the weighting applied concerning the restraints on employers with respect to union organizing and collective bargaining. Statutory protection for organizing is not rated separately from statutory protection for collective bargaining, when, I think it should have its own index, and the latter index is insufficiently weighted, in my view. What should weigh significantly, and is not factored, is the entitlement of unions to urgent interim relief for employer interference with union organizing campaigns and collective bargaining. The authors give substantial weighting to "conciliation rights". This should be weighted, but not so highly, and is much less important than an effective, prompt remedy for unfair labour practices. The authors give some weight to the factor, "election not required". For them, a card-based system of certification is more union friendly than a vote-based system. This may be true from their experience of American representation votes, but it is not generally true. In Ontario, for example, where representation votes are now mandatory for union certification, the votes are held within five working days of the union's application for certification, and this requirement is no worse than a card-based system of certification. What should be factored, in my view, is a delayed representation vote. That certainly impedes bargaining rights.

The authors' statistical method, their statistics and their results can be found at www.upjohninstitute.org/BlockRoberts. The authors invite comment, criticism, and debate from colleagues. The authors want the data to be treated as raw material for ongoing work by other researchers to "improve and refine" their measures. In their words, "this availability will permit researchers throughout the world to use the data to replicate our results, to change the assumptions underlying our results, or to apply specific standards that may interest them and analyze their impact on trade and trade-related phenomena" (p. 11).

After the method of analysis is explained, the book gives its conclusions as to whether Canadian labour standards are better than those in the U.S. are. The date of the comparison is December 31, 1998 and it is done on a province by province and state by state basis. Not surprisingly, the conventional wisdom that workers in Canada have superior standards to those in the U.S. is borne out, with some qualifications. As an overall comparison of the labour standards of the two countries, "the sums of the employment-weighted indices are 50.23 and 64.20, respectively, for the United States and Canada". Canada ranks significantly better than the U.S. on the following standards: unemployment or employment insurance, workers' compensation, collective bargaining, unjust discharge, and advance notice of large-scale layoffs. The U.S. ranks significantly better than Canada on: minimum wage, overtime, and occupational health and safety (bearing in mind that the health and safety evaluation is founded mainly on the fines imposed for violation of standards in this area). There is no significant difference between the two countries in the ranking of equal employment opportunity or employment equity. In reaching these conclusions,

which are statistically verified in the study, the authors express certain caveats, including the assumption that each standard is equally important when, as the authors point out, some standards clearly have greater impact than others. For example, the minimum wage affects the labour-intensive employer far more than the capital-intensive employer, who will likely be more affected by hiring constraints, such as equal employment or employment equity. Also union organizing and collective bargaining rights are likely to have much greater impact on terms of employment than any other individual labour standard.

The book is well written, with a minimum of jargon, with little repetition. The outline of each section and the conclusions reached are clearly set out and explained. The importance of this book, in my view, is that it gives a scientific basis for measuring labour standards in different countries. It puts an end to the suggestion (by some apologists of free trade) that labour standards in different countries are incomparable because of the cultural and institutional differences that exist between countries. There is perhaps room for improvement in the authors' method, as I have noted, but they have taken an important first step to describe and define a touchstone, which can be used as the basis for comparative studies. Should the fair traders begin to win the political battle against the free traders (in the WTO and other international bodies), and should trade agreements begin to incorporate labour standards (e.g., by allowing tariffs on imported goods relative to the exporter's labour standards ranking), then this book will be an important source for the common yardstick to measure the different labour standards.

CHRISTOPHER J. ALBERTYN
Ontario Labour Relations Board