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Institutions – the stuff of employment relations

Main tasks

- **Identify the core organisations, institutions and processes with which employment relations is concerned**
- **Emphasise importance of these institutions as the ‘rules of the game’, together with their role in promoting ‘path dependency’ and ‘isomorphism’**
- **Explain why employment relations institutions differ cross-nationally, highlighting ‘critical junctures’ rooted in different ‘varieties of capitalism’**
- **Review the forces driving change, the mechanisms involved and the direction of travel**

Summary

The ‘governance’ of the employment relationship involves a mix of internal and external institutions. Although work groups are important, the internal are largely the result of management decision making – these embrace not just the personnel policies and practice that are the standard fare of personnel management and HRM courses, but also work organisation and coordination and control structures. The external reflect the activities of trade union and professional associations, the results of collective bargaining (joint regulation) and decisions of the legislature and judiciary (legal enactment).

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Institutions are central to employment relations because they influence beliefs and actions, and so help to shape outcomes in the ways described in Chapter 2. Institutions constitute the rules of the game' – they are not only 'regulative', but also 'normative' and 'cognitive'; they make for behaviour that is 'path dependent', helping to explain why history is important in understanding their origins and development; and they encourage a strong tendency towards imitative behaviour, helping to explain within-country similarities. Cross-nationally, there are substantial differences in the institutions of employment relations. This is above all true of the external dimension, i.e. the structure of collective bargaining and legal framework, mainly reflecting 'critical junctures' in the development of the many 'varieties of capitalism'. There are major debates as there are in other fields of institutional analysis about the drivers of change and the balance between, on the one hand, 'markets' (e.g. the globalisation of capital and product markets) and, on the other hand, political developments such as the EU's 'social dimension'; the mechanisms of change – where the issue of the agency ('entrepreneurship') of management and the state is especially prominent, along with different types of adaptation or 'bricolage'; and the direction of change – whether common developments such as the process of economic globalisation, the rise of services and demographic changes are leading to greater convergence or, rather, 'converging divergences'¹, with developments characterised by 'increasing diversity within national systems but ... increasing convergence between them'².

Introduction

Institutions have always loomed large in employment relations studies. Indeed, some of the pioneers of the study, notably Commons in the USA, are regarded as seminal figures in the development of institutional analysis more generally. As in other areas, however, as time went by, there was a tendency to assume that the underlying importance of institutions could be taken for granted, along with their meanings for the different actors. The focus shifted onto the detail of the institutions of employment relations and the organisations involved – the workings of trade unions, the origins and development

of the structure of collective bargaining, and so on. The result was that employment relations increasingly came to share the ‘serious shortcoming’ associated with institutional studies more generally, i.e. it very often degenerated into ‘naïve empiricism and historicism’³.

Fortunately, as the institutional ‘turn’ has taken hold, things are changing, making it possible to begin to answer some of the main criticisms of institutionalist analysis⁴. One, that it does not do enough to tease out the links between behaviour and outcomes, was a feature of Chapter 2. Others, which are the subject of the present chapter, are that it does not identify the institutions that matter or explain why they do, why they existing configurations take their present form given very similar conditions and why and how they change over time.

Mapping the terrain

As Chapter 1 has pointed out, employment relations deals with two main types of institutions or ‘rule’. The substantive rules cover the ‘what’ of the employment relationship. The procedural deal with how the substantive rules are made, bringing in issues of process such as management decision making, collective bargaining or joint regulation and legal enactment. In each case, these institutions can be formal or informal. Most obvious are the formal rules that flow from management decisions, the rule books of trade unions and professional associations, collective agreements and legislation. Sitting alongside the formal rules, however, will be informal norms, expected patterns of behaviour and ‘custom and practice’. For example, the formal rules may be interpreted very differently from one unit to another in the same workplace – there may even be an informal rule that the formal rules will be ignored by managers and employees. Or work groups may develop their own codes of behaviour, which may parallel or substitute for the formal rules.

The main focus here is on the formal institutions and the task is to outline the core ones, along with the organisations and processes involved. As the overview in Table 4.1 confirms, there are a number of levels and a number of authors, helping to explain the increasing dominance of the term multi-level governance. At the risk of over-

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simplification, however, a distinction can be drawn between internal and external dimensions.

The internal dimension

The exercise of the residual control rights involved in managing the employment relationship entails a hierarchy-based ‘governance’ structure, i.e. institutions or rules, in which superordinates (managers) give instructions to subordinates (employees). As Table 4.1 shows, there are three main areas where the managerial hierarchy finds expression. Most attention focuses on personnel or HR policies and practice, which tend to be the centrepiece/standard fare of personnel management and HRM courses. Clearly, how people are recruited, trained, appraised, paid and disciplined are important, which is why they underpin concerns with the impact on businesses performance discussed in the previous chapter. Arguably, however, such policies and practices are only the tip of the iceberg. Decisions about the other two areas outlined in Table 4.1 are fundamentally important.

One is the nature of work organisation. As Chapter 2 explained, this is especially important because of its very considerable implications for health and personal development opportunities. Relevant here are the extent to which tasks are complex or simple and repetitive or varying; whether there is job rotation and team working; the nature of the constraints determining the pace or rate of work (whether, for example, there are ‘automatic’ constraints linked to the rate as which equipment is operated or a product is displaced in the production flow or ‘norm-based’ constraints linked to the setting of quantitative production norms; the nature and extent of the ‘hierarchical’ constraints linked to the direct control exercised by immediate superiors; and ‘horizontal’ constraints linked to way work rate is dependent on the work of colleagues; the degree of autonomy(methods used and the pace or rate at which work is carried out); the learning dynamics (whether the individual learns new things in work and whether the work requires problem-solving activity). the way quality is controlled (the use of precise quality norms and individual responsibility for the control of quality)⁵.

Also important are the wider arrangements for the coordination and control encapsulated in the term ‘organisation structure’. Thus activities can be organised around products or functions or some combination of the two (i.e. a ‘matrix’ organisation). In the case of the large multi-establishment enterprise, there can also be considerable differences in the extent to which decision making is centralised or decentralised reflecting the variety of products and services. In single business businesses (so-called ‘critical function’) organisations such as a car manufacturer or retailer, decision making tends to be highly centralised, with individual establishments being seen largely as cost centres. In multi-business (‘multi-divisional’) organisations, by contrast, strategy and investment decisions are decided centrally, but responsibility for operating management is much more decentralised with individual establishments being treated like profit centres subject to a variety of ‘key performance indicators’ (KPIs). In recent years, as later chapters will elaborate, in both cases there has been a considerable shift in emphasis from the management by task characteristic of traditional organisational structures to management by financial performance with the consequences for the fragmentation of the employment relationship discussed in Chapter 3.

The external dimension

As Table 4.1 also makes clear, management decision making is not the only rule-making process involved in the governance of the employment relationship. There are other processes that involve external agencies/organisations, helping to explain why the employment relationship is a multi-level phenomenon. Thus, almost invariably, trade unions and professional organisations have emerged to represent their members’ interests at the level of the occupation and/or sector. Looking at the left hand column, many occupations are to a great or lesser extent subject to decisions and norms of trade unions and professional organisations. Indeed, historically, it was out of this unilateral regulation, and the ‘closed shop’ that was effectively involved, that collective bargaining often developed. Even with the banning of the ‘closed shop’ in most countries, the requirements of entry, the length of the training programme, and codes of conduct help

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to make employment what it is for many of the ‘professional’ groups involved in finance, health and the law. Training programmes, for example, typically involve arrangements that gradually and selectively induct new members into the network and up the social hierarchy. There has also been an increase in the workforce subject to some form of occupational licensing – in the UK it is of the order of 13.5 per cent and in the USA almost 30 per cent⁶.

Paralleling unilateral regulation has been the collective bargaining shown in Table 4.1 (1). This process, as the next chapter explains in more detail, is not just about setting wages or the other conditions of employment. A more appropriate term is ‘joint regulation’. Collective bargaining, in other words, describes a process of making and administering the rules that govern the employment relationship. Crucial here is the structure of collective bargaining, where four main dimensions have to be highlighted. One is the level of the negotiations – whether, for example, the negotiations affect one or all the workplaces in a company and, even more importantly, whether they affect just the single employer or many employers. A second is the unit of negotiations – whether an entire occupation or sector is covered or just an individual employer. A third is the scope of collective agreements – to take the extremes, there can be an emphasis on procedures to deal with any of the substantive issues involved or there can be an attempt to deal comprehensively with specific substantive issues. A fourth is the form of collective agreements, the main feature of which is their legal status: in most countries, collective agreements are deemed to be legally enforceable contracts, whereas in the UK they are binding in honour, unless the parties stipulate otherwise; in most countries where multi-employer bargaining is the dominant form, they also have the effect of compulsory codes and supplementing or replace legal regulation. As Chapter 2 showed, the structure of collective bargaining and in particular the levels at which it takes place are linked to issues of inequality, social capital and economic performance.

The ‘governance’ of the employment relationship does not just involve a private system of rule-making, however. As previous chapters have emphasised, the nature of employment relationship obliges the state to intervene. In most countries, employment law

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intervenes directly or indirectly to help shape the contract of employment at the heart of the employment relationship. As well as procedures for resolving disputes, the state intervenes in two main ways. The first is in setting mandatory standards. Most attention focuses on individual employment rights dealing with discipline and dismissal, equality, minimum wages, health & safety and so on. It is not to be forgotten, however, that the expectations of and obligations of employees are also covered. The second main way in which the state influences the employment relationship is by introducing procedures making possible variations in the terms of the employment relationship to the employee's advantage. Most notably, there are the provisions under which trade unions are to be recognised and collective bargaining practised. In many countries, there are also provisions for employee 'voice' in the form of statutory works councils with powers of information, consultation and (in some countries) co-determination.

The role of the state is also fundamentally important in setting the framework of corporate governance of the business in which the employment relationship is conducted. Again, this can be directly in the form of legislation or indirectly in the form of codes of principles very often overseen by a financial services authority or its equivalent. Crucial issues include the function and purpose of the company, the role and composition of boards of directors, the audit process, the interests of the different stakeholder groups and merger and acquisition (M&A) activity.

As Chapter 10 discusses in more detail, the motivation for the state assuming the role of what has been described as the 'guarantor' of the employment relationship⁷ is complex. It is not just a matter of 'holding the ring' as many studies assume. Equally, it is not just about dealing with market failure, which is the starting point for economists. Basically, the state intervenes in the attempt to maintain a balance between employees' need for security and employers' requirements for flexibility⁸.

The other main source of public rules is the judicial system ranging from local employment tribunals or their equivalent through to the European Court of Justice. In the UK, where the common law system prevails, much employment regulation reflects the decisions of

Employment Tribunals and the judges. At EU level, there have been some landmark decisions of the European Court of Justice with a fundamental impact. For example, the decision that health and safety should be considered as part of the move to the Single European Market, and therefore subject to majority voting, was a major catalyst for developments in the 1990s. Similarly, the Court has come up with landmark rulings on pensions.

The significance of institutions

The reason why these institutions are a major focus of employment relations study is that they give effect to the employment relationship. The generic features of the employment relationship discussed in the previous chapter do not exist in a vacuum. They are embedded in institutions and it is these that help to explain why conduct of the employment relationship can differ from one occupation and workplace to another.

In formal terms, the institutions involved in the governance of the employment relationship are an intervening or mediating variable as well as a dependent one, meaning that they have effects as well as causes. Crucially, as Chapter 2 argued, employment relations holds that these governance structures have a very significant effect on key outcomes – notably on the quality of working life, the economic performance of business and a country's 'social capital'.

In terms of its approach, all three types of institutionalism mentioned in Chapter 1 are to be found⁹. If there is a dominant tendency, however, is that of 'sociological' and 'historical' institutionalism. Crucially, the influence of institutions is seen as not just constraining and/or enabling actions, as it is in the case of 'rational choice' treatments but also shaping individual preferences as well. In Scharpf's words, 'institutions ... define not only what actors can do, but also their perceptions and preferences - and thus what they will want to do'¹⁰. As he goes on to summarise: whereas the logic of action for 'rational choice' institutionalists is one of 'instrumentality', for their 'sociological' and 'historical' counterparts it is 'appropriateness'.

These differences are also reflected in the treatment of organisations. In 'rational choice' treatments, organisations are usually excluded from definitions of institutions. The 'players' have to be separated from the 'rules', in North's words, in order to maintain the notion of rational actors making decisions within an institutional environment¹¹. In 'sociological' and 'historical' institutionalism, there is not this clear-cut distinction. In keeping with this approach, employment relations views organisations as structures of rules and rule-making processes. Furthermore, it does not assume a community of interest so far as these rules and the processes involved in their making are concerned.

The remainder of this section singles out three concepts that help to understand why employment relations holds institutions matter so much: the significance of institutions as the 'rules of the game'; their importance in promoting 'path dependency'; and their role in explaining why there is such a strong tendency towards imitative behaviour on the part of those who run work organisations.

The 'rules of the game'

The phrase 'rules of the game' is increasingly used to capture the significance of institutions. Institutions are regarded so because they establish both rights and obligations - from one point of view they constrain behaviour; but from another they enable it¹². They also do so both directly and indirectly - even if individuals do not always strictly obey the rules, the way they adapt their behaviour is affected by them. Moreover, rules are deemed to be especially important in situations where actors are involved in co-operative endeavour involving uncertainty and concerns about the enforcement of any agreement. The employment relationship is perhaps the extreme case for the reasons quoted the previous chapter.

Yet it is not just a case of being able to read off standard behaviour from a particular set of institutions. Much depends on the way that people relate to rules. Here it is useful to distinguish between the three main dimensions or, following Scott¹³, 'pillars' of institutions. The first is 'regulative'. Institutions can cause individuals to make certain choices or perform certain actions because they fear

punishment. For example, employees may see little point in a particular management rule, but they conform because managers have the power to impose sanctions on them if they do not. Similarly, employers may strongly object to a particular piece of employment protection, but go along with it to avoid a claim before an Employment Tribunal or its equivalent.

The second pillar is normative. In Hay's¹⁴ words, 'institutions are normalising in the sense that they tend to embody shared codes, rules and conventions, thereby imposing ... value systems which may constrain behaviour'. A good example would be the norms governing the behaviour of particular groups of employees with common beliefs and values. People act out of a sense of duty or an awareness of what one is 'supposed' to do – things are done because this is the right way or proper way to behave. For example, professional employees such as doctors or nurses may have expectations about appropriate behaviour that reflect the acculturation that takes place during the long period of their training and development.

In the case of the third or 'cognitive' pillar, the reaction to rules is likely to be largely unconscious. Essentially, the norms are shared conceptions that individuals have internalised. In Scott's words, 'compliance occurs in many circumstances because other types of behaviour are inconceivable; routines are followed because they are taken for granted as 'the way we do these things'¹⁵. Not only that. 'Institutions serve to embody sets of ideas about what is possible, feasible and desirable and the means, tools and techniques appropriate to realise a given set of policy goals'¹⁶. Such is the force of the routines and associated ways of thinking, in other words, that people seem to be unable to 'think outside the box'. It is in this way that conceptual frameworks and policy paradigms can become 'self-fulfilling'¹⁷. A good example is that of neo-liberalism raised in the Preface – the more dominant this ideology became, the more difficult it became for policy makers to think in terms of pragmatic solutions to problems, let alone conceive of alternative ways of thinking about them.

Several points are worth emphasizing. The first involves the legitimacy of the three different 'pillars'. 'Regulative' rules that are obeyed simply because of the fear of sanctions tend to enjoy less

legitimacy in the eyes of those subjected to them than those that are 'normative' and 'cognitive'. The result, very often, is that employees do what they have to and no more. It is this reaction that many managers are highlighting when they refer to a lack of engagement – the reluctance to go the extra mile. The second is that there is very considerable potential for conflict between the 'regulative' pillar, on the one hand, and 'normative' and 'cognitive' pillars, on the other. Examples of the clash between the 'regulative' and 'normative' pillars are to be found in the health sector. The stringency of managers' budgets can sit very uneasily with strong notions of professional ethics of doctors or nurses or care workers. The 'regulative' and 'normative' pillars can similarly collide. The desire of managers to raise productivity may come up against employees' long standing notions of what constitutes a 'fair day's work'. This is above all true where such notions are long standing and have been informally condoned by previous generations of managers.

The complexity and multiplicity of the formal and informal institutions typically in play can also pose problems. A good illustration involves bullying and harassment at work, which are recognised to be an increasing problem. Conventional management wisdom sees this as largely a matter of individual behaviour. Some people doubtless get pleasure from hurting others. There is a growing body of evidence, however, to suggest that most bullies are a product of circumstances rather than personality. Most bullies are managers. Many managers, it seems, cannot distinguish strong management from bullying. Many believe that they are simply conforming to the 'command and control' model of management that their senior managers promote. Others are encouraged to believe that the 'stick' is more effective than the 'carrot'. Being under pressure themselves is another common characteristic. In short, bullying and harassment are largely a product of the structure of rules, formal and informal, within which managers work. The remedy involves a combination of high profile procedures, i.e. formal countervailing rules, and intensive training that is designed to deal with informal as well as formal behaviour

It is sometimes suggested that the coming of the 'knowledge organisation' changes things. True, the setting changes - workplaces

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tend to be smaller and the boundaries of work organisations more blurred; collectivism and collective bargaining are usually less important; and there is more emphasis on culture, i.e. informal institutions, than formal rules. Even though they may be different, ‘rules of the game’ there undoubtedly are. ‘Knowledge organisations’ have hierarchies; recruitment and selection processes; job descriptions; training and development routines; posting and transfer arrangements; performance management systems; disciplinary processes; and so on – all of which have a significant influence.

Path dependency

The second key concept anticipates some of the later discussion about change. Most immediately, it helps to explain why there is so much attention to historical development in employment relations. It is widely assumed that not only do actors have considerable ‘strategic choice’ in what they do, but also that their decisions reflect the demands of the immediate situation – it is as if they take a snapshot of the ‘market’ and technological situation confronting them and proceed accordingly. More often than not, however, these considerations take second place. It is institutions that ‘lock’ actors into a particular course from which they find it difficult to deviate and the ‘evolution of institutions is conditioned by path dependency’¹⁸. The more institutions become embedded in routine and convention, in other words, the more influence they exert - today’s decision reflects yesterday’s decision, which reflects the decision the day before and so on. It is these past decisions about institutions that set actors on a particular course that they find it difficult to deviate from even if the situation might seem to demand it. Indeed, actors are unlikely even to consider the full range of options that might be available to them. To go back to the discussion of the importance of context in Chapter 1, the notion that the status quo reflects a process in which the ‘natural selection of market forces weeds out inferior institutions’ is far from being the case¹⁹.

Three considerations are particularly important in explaining why people can become locked into a particular path, helping to explain the enduring features of institutions. One is the costs associated with

change. Celebrated examples include the QWERTY keyboard – although the development of electronic keyboards allows more effective layouts, QWERTY remains the standard because of the costs that would be involved in changing.

The second is that ‘the density of the existing institutional fabric in given social or political context renders established practices process and tendencies difficult to reform and steer.’²⁰ Here public services reform in the UK offers good example. Time and time again policymakers have sought to make major changes on a piecemeal basis, failing to recognise that the individual changes they wish to make are significantly affected by a raft of other issues.

The third is that the process of institutional development gives some a position of privilege and strength to fight for the maintenance of the status quo. Scharpf, who is one of Germany’s foremost policy process analysts, puts it nicely in discussing the immense difficulties of changing long-established pension and social protection arrangements in EU countries. It is the ‘path-dependent constraints of existing policy legacies’ and the ‘institutional constraints of existing veto positions’ that deserve our attention in understanding why things happen or do not happen²¹.

The concept of ‘path dependency’ is useful not just in understanding national level frameworks. To illustrate its wider potential, a strong case can be made for suggesting that ‘path dependency’ is fundamentally important in helping to explain what has been described as one of the great ‘conundrums’ of employment relations namely why, despite the evidence and exhortation, there has been so little movement in the direction of ‘high performance working’²². Arguably, each of the three considerations is in play. The costs of changing are likely to be considerable, above all in terms of training and learning. The existing institutional framework also represents a major problem. For example, the introduction of ‘serious’ team working has significant implications for almost every aspect of personnel policy, ranging from recruitment and selection, through training and development to appraisal and reward. Finally, there is the importance of vested interests. Very often managers themselves represent the biggest barrier to changes in work organisation. Major changes in the direction of team working, for example, not only have

implications for skills of individual managers, but also their numbers, privileges and status.

Isomorphism

The language and concepts of our third consideration come most immediately from the ‘organisational’ strand of institutionalism. The underlying sense, however, has deep roots in employment relations analysis as will be shown below. Basically the argument is that, because organisations operate in an environment made up of institutions, survival does not just depend on being successful economically, but also on the legitimacy of the ways in which they conduct their business. One key way in which those in control seek to achieve legitimacy is to adopt ‘accepted’ practice, i.e. behave like other organisations undertaking similar activities. But the more people behave like one another, the greater the expectation that they will do so. In Marsden’s words, ‘Predominance feeds on itself’²³.

‘Isomorphism’ is the term used to describe this tendency²⁴. There are two main types – ‘competitive’ and ‘institutional’. The first, ‘competitive isomorphism’, is informal and assumes a system of economic rationality presupposing market competition. The second, ‘institutional isomorphism’, is what concerns us here. Essentially, it involves three political mechanisms, which can be formal or informal:

- ‘coercive’, in which actors come under pressure to conform to particular policy or practice
- ‘mimetic’, in which there is a strong tendency for actors faced with common constraints to respond to uncertainty by copying others
- ‘normative’, in which policies and practices become ‘professionalised’ and assume the status of accepted standards.

In the first case, for example, managers may find themselves constrained to commit themselves to programmes of corporate social responsibility, which may include community activities as well as arrangements to protect the environment and be ‘good’ employers. The more companies become involved in these kinds of activities, the more pressure on others to follow suit. In the second, managers may

embark on significant benchmarking exercises with a view to legitimizing the need for change in the eyes of employees and uncertain management colleagues. They may target close competitors and/or companies well known for expertise in particular functional areas. The widespread promotion of Japanese ‘lean production’ methods in the 1980s is a very good example²⁵. In the third, managers may feel that they have to adopt the policies and practices that have come to be incorporated into the prescriptions of consultancy and professional organisations, thereby attaining normative status. In the UK, for example, achieving *Investors in People* status is a way of demonstrating an organisation’s commitment to the development of its employees.

Although the language of ‘isomorphism’ is relatively recent, the underlying ideas have long been a feature of employment relations analysis. Thus it is widely accepted that fairness plays a key role in shaping employee expectations and fairness depends on comparisons. Runciman’s three types of reference groups, ‘membership’, ‘comparative’ and ‘normative’²⁶, which are helpful in understanding the varying intensity of comparisons, are very similar to DiMaggio and Powell’s three types of ‘institutional isomorphism’. Or, to quote another example, it was Ross who originally coined the term ‘orbits of coercive comparison’ as long ago as 1948 in emphasizing the importance of institutions in wage determination. Following the ‘pattern’, suggested Ross, enables employers and trade unions to reconcile the former’s competitive constraints with the latter’s need to achieve fairness:

The ready-made settlement provides an answer, a solution, a formula. It is mutually face-saving ... it is the one settlement which permits both parties to believe that they have done a proper job, the one settlement which has the best chance of being ‘sold’ to the company’s board of directors and the union’s rank and file²⁷.

Such tendencies appear to be an enduring feature that cut across the boundaries of national institutions. Thus, in recent years, there has been a very considerable convergence in the rates of change of wages across EU member states. This rarely results from a formal process of

co-ordination, however. Rather it reflects the more informal process of ‘isomorphism’ discussed here²⁸.

Diversity issues

There is much that is common cross-nationally about the institutions involved in employment relations. The employment relationship has given rise not just to managerial hierarchies, but also to trade unions and professional associations; and the state has intervened both directly in the form of legislation and indirectly via agencies to deal with specific issues such as the resolution of disputes and some form of collective bargaining. At the same time, however, in each of these areas, there are considerable differences even allowing for very similar technology and market structure. This is even true of the managerial hierarchies. As Chapter 2 has shown, these can differ considerably in their nature and extent from one country to another – organisations are said to be ‘heterogeneous’²⁹, reflecting the ‘visible hand’ of managerial decision making, as Chandler famously suggested, rather than the ‘hidden hand’ of market forces³⁰. Clear too is that these differences are not just filters for the impact of wider forces – they make a difference to outcomes as Chapter 2 has shown.

Most obviously, there is the balance between the different processes of rule-making - unilateral and joint, public and private – reflecting the ‘varieties of capitalism’ discussed in Chapter 3. It is the external dimension where the most obvious difference are to be found, for example, in the balance between internal and external regulation and in the structure of collective bargaining and legal framework. First, individual rights tend to be more extensive in co-ordinated market economies’ (CMEs) than ‘liberal market economies’ (LMEs), helping to explain the position of the USA and the UK in the OECD’s employment protection legislation ranking discussed in Chapter 2. Second, the universal rights to representation for the purposes of employee information, consultation and, in several cases codetermination, are greater CMEs than LMEs, reflecting the formal ‘voice’ rights accorded to employees as stakeholders in ‘insider systems’. Thus, works councils or equivalent trade union bodies have,

for example, the right to be informed of – and in most cases consulted over – major changes to the company.

A third distinguishing feature is the structure of collective bargaining. In the CMEs the predominant multi-employer structure of bargaining, in which collective agreements are deemed to be not just compulsory contracts but also compulsory codes, means that collective bargaining is more inclusive than in the LMEs, where single-employer bargaining is the norm. Consequently, the benefits of employer association–trade union negotiations are in practice extended throughout a sector or across a country and are not just the preserve of the well organised. Such a structure also enables the participation of employers’ organisations and trade unions in macro-level dialogue with governments over economic and policy. Many features of the overall employment relations systems are affected, including the membership density, structure and organisation of trade unions and employers’ associations, along with the role of the state in wage bargaining, which also has implications for the degree of centralisation of trade unions and employers’ organisations.

These features are refracted in corporate governance arrangements. As Chapter 3 suggested, there has been a tendency to distinguish two main types: the ‘outsider’ system characteristic of the LMEs and the ‘insider’ systems found in the CMEs. In the first, the legal framework gives overwhelming priority to shareholder interests, whereas the second emphasise those of a wider range of ‘stakeholders’ including employees.

There is a broad consensus that the different ‘varieties of capitalism’ are grounded in the prevailing economic and political context at the time of industrialisation. At the risk of oversimplification, two sets of variables stand out. First, state and legal traditions were a critical component. For example, in the so-called ‘Latin’ countries (France, Italy and Spain), the Napoleonic tradition of the all-powerful state was deeply embedded. The way the state dealt with issues such as trade policy and protection crucially affected the strategies and behaviour of enterprises and so the emerging business system. By contrast, state traditions in the UK and USA were much more *laissez-faire*.

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Closely related were legal traditions. A key implication of the ‘legal origin’ hypothesis is that one of the main influences on national business systems is one or other of the principal legal families, namely the English ‘common law’, and the ‘civil law’ in its French, German and Nordic variants³¹. In brief, countries with a ‘common law’ background are said to have found it easier than their ‘civil law’ counterparts to develop rules for the ‘governance’ of the business enterprise. One reason is that systems of the ‘common law’ are more adaptive than ‘civil’ ones to changing economic conditions because of differences in the ‘political channel’ of influence. Another is that the ‘common law’ provides fewer opportunities than the ‘civil law’ for rent-extraction by ‘insiders’. In each case, the basis for the claim is the association of the ‘common law’ with contract and self-regulation and of the ‘civil law’ with centralised state control.

The second set relate to the emerging business system in which organised labour emerged. A key factor here was the timing and pace of industrialisation: in countries that industrialised early, such as the UK, craft production exerted a strong influence; in countries industrializing later, mass production technology tended to be more predominant. The significance of such variables as the patterns of ownership and control, the financial system and the stock market has been mentioned above. Also important was the size of firms. Other things being equal, the larger firms found it easier to resist the challenge of trade unions using company unions and the like. Smaller firms, by contrast, found it more difficult to go it alone, helping to explain different resort to employers’ organisations.

The extent of concentration was also important. In countries such as the UK, where was a greater concentration of firms in industries such a metalworking, powerful sector employers’ organisations emerged; in others, such as Sweden and Italy, where the business structure was more diverse, multi-sector employers’ confederation quickly came to prominence. Making a link with state traditions, the ability of employers to withstand trade unions reflected not just the nature of the market, but also the degree of protection the state afforded them. In some cases - Sweden is an example - relatively small firms operating in competitive export markets were constrained to reach a compromise with trade unions relatively early in the process

of industrialisation, albeit it with an important co-ordinating role for the peak employers' confederation. In others - Germany is the obvious case - the large firms operating in protected domestic markets were able to withstand the pressure for much longer.

Important though the political and economic context of industrialisation was, they do not provide the complete explanation for unfolding developments. Also important were 'critical junctures' involving the emergence of organised labour with the ability to cause problems in the form of strikes and other demonstrations. In the UK and Sweden, for example, the critical developments took place in engineering in 1998 and 1906 respectively. In most other European countries the die was cast in the periods following the two world wars. In the USA, the period of Roosevelt and the 'New Deal' confirmed the emerging pattern. In Japan, it was the period immediately after World War 2 and US occupation that did the same³².

Important to note is that, with the exception of Germany and Japan, where arrangements were drawn up by the allied powers, there was no grand design. Rather the institutions that emerged were borne of conflict, negotiation and compromise. Sometimes employers imposed the compromise; sometimes the state did. Far from being the 'self-balancing equilibrium' that they may appear today, the compromises were much contested and essentially reflected a truce rather than a final settlement. Moreover, few of the parties were happy to let matters rest; most looked for opportunities of shifts in the balance of power to improve their relative position³³. Take multi-employer bargaining. For trade unions, the sector agreement was the beginning of the process of seeking influence over the employment relationship; for employers it was the end - the neutralisation of the workplace involved helped to uphold managerial prerogative.

It also follows that, although they set countries on a particular course, the compromises were not as fixed or immutable as may appear from a present day perspective. This is especially true of employment relations' external institutions. Further 'critical junctures' punctuated any 'equilibrium' that may have seemed apparent. In the UK, developments in the 1920s such as the engineering lockout of 1922 and the failure of the Mond-Turner talks following the 1926 General Strike help to explain why the parties stayed on the path of

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‘voluntarism’ – employers were in the ascendancy and saw no good reason to disturb the status quo; in Sweden, by contrast, growing industrial conflict led to the passage of the Collective Agreements Act and Labour Court Act in 1928 and the long-standing desire of Swedish employers to confirm the legal status of their substantively-based collective agreements.

More generally, following Thelen, two main mechanisms can be also identified through which institutions are transformed. One is ‘institutional layering’, which involves the ‘grafting of new elements onto an otherwise stable institutional framework’ – in the UK, the extension of collective bargaining to sectors where it previously had not existed, (e.g. the chemicals industry) following the Whitley Committee report at the end of World War 1 would be an example. The other is ‘conversion’, where the ‘adoption of new goals or the incorporation of new groups into the coalitions on which institutions are founded can drive a change in the functions these institutions serve or the role they perform’ – Thelen quotes the example of the German trade unions, who initially saw the training arrangements as a major threat, but who were subsequently incorporated into their operation to become major champions³⁴. Briefly put, change is largely seen in terms of ‘punctuated evolution’, in which ‘periods of comparatively modest institutional change are interrupted by more rapid and intense moments of transformation’³⁵

Space does not allow accounting for every single institution that is involved even in the external framework of employment relations. One of the most important is the structure of collective bargaining and whether the negotiations are single or multi-employer. Table 4.2 therefore seeks to account for the differences, with Chapter 9 updating developments in multi-employer bargaining in the light of recent pressures.

Change issues

Change looms increasingly large in employment relations analysis because of the particularly destabilizing impact associated with developments in globalisation. Three major dimensions predominate. The first revolves around the drivers of change and the balance

between economic and political forces. The second involves the mechanisms of change. The third issue is the direction of change and the extent to which this involves greater convergence and, if so, what is involved.

As Chapter 1 has emphasised, these issues have raised a number of fundamental philosophical issues that are the subject of debate across the social sciences. One revolves around the balance between structure and agency in accounting for outcomes and largely boils down to a question of how much choice actors have. Following Hay³⁶, two extreme positions can be identified. At one extreme is ‘intentionalism’, i.e. the tendency to account for outcomes purely in terms of the agency of actors. At the other is ‘structuralism’, i.e. the tendency to reduce outcomes to the operation of institutions or structures beyond the control of actors. A key issue is how structure and agency are connected and how they influence each other.

A second issue concerns the role of ideas in helping to bring about change. Here, again, Hay³⁷ is helpful in summarising the main positions that can be identified. In the first, ‘idealism’, ideas are held to have an independent influence on outcomes – it is not just a question, in other words, of rational actors operating within material structures. In the second, ‘materialism’, ideas are accorded little or no influence and/or are regarded themselves as a product of material conditions. In the third, ‘constructivism’, it is the interaction between ideas and material conditions that are emphasised. Outcomes cannot be read off of the ideas or material conditions. Instead, they are ‘a product of the impact of the strategies actors devise ... to realise their intentions upon a context which favours certain strategies over others and does so irrespective of the intentions of the actors themselves’³⁸.

The third issue goes to heart of the differences between the three strands of institutionalist analysis discussed earlier. The key distinction turns on the assumptions made about actors and their preferences. ‘Rational choice’ institutionalists start from the proposition that actors have standardised and stable preferences defined by their personal or organisational self-interest. As in economics, these actors are assumed to act rationally in their self-interest. ‘Organisational’ and ‘historical’ institutionalists, by contrast, emphasise that the attitudes, expectations and interaction of individual

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actors reflect different contexts and different experiences – hence the emphasis on a logic of appropriateness rather than a logic of instrumentality. In Ackers words, individuals are social rather than economic beings 'living in real time and places They are products not only of their own histories but also those of the institutions within which they live and work'³⁹.

As the remainder of the chapter will try to show, although some of the terminology may be different, most of these issues have figured in employment relations analysis, along with an awareness of the underlying philosophical debates. Most obviously, the issues of the drivers and direction of change have been a live debate for a half a century. Until recently, the mechanism of change had received less attention. Such is the pace of change popularly associated with 'globalisation', however, that topic is receiving increasing attention.

The drivers of change

As long ago as 1958, Dunlop asked whether the main drivers of change were 'technological and market considerations' or institutions generated by the interaction of social actors and reflecting the 'locus and distribution of power in the wider society' typically expressed in the form of public policy⁴⁰. In discussing the main drivers of employment relations change, most recent commentators emphasise the impact of globalisation. Two sets of trends have to be distinguished. First are the developments that are integral to a process of economic globalisation. These include the removal of trade barriers and the expansion of international markets for products; the spatial extension of international competition as new market economies, such as China and central and eastern Europe, have emerged; the sectoral extension of international competition as economic activities previously conducted within national boundaries and/or on a non-market basis are opened up, through market deregulation, privatisation and/or marketisation; the liberalisation of financial markets and the development of a world-wide capital market; and the internationalisation of production and market servicing through the operations of MNCs whose growth the other developments have encouraged⁴¹. It is these that most commentators seem to think lie

behind changes such as the role reversal of management and trade unions and the changing policies of the state.

Arguably, however, it is the second set - the trends that are essentially global in incidence – that are just as if not more important. Here three main ones may be identified. First, the new technologies and revolution in information processing facilities made possible by the microchip and associated software developments, which are not only affecting the way operations are performed and products delivered, but also leading to the creation of new economic activity. Second is the seemingly inexorable rise of the service sector. Both have important implications for the size and location of workplaces, the occupational and gender composition of the workforce, the nature of employment contracts and trade union membership. Many of the emerging new economic and service activities are also out with the established structures of collective bargaining. Third are the demographic changes affecting the industrialised countries. Key trends have been low birth rates and a decline in the working life – reflecting a fall in youth participation rates and an increase in the proportion of older workers withdrawing from the workforce before official retirement age.

Important though these considerations undoubtedly are in driving change, public policy also continues to matter reflecting Dunlop's 'locus and distribution of power in the wider society'. Thus, while many policy makers see European integration primarily as a market phenomenon, others see it as offering new opportunities to deal with the multiple challenges confronting existing employment relations systems, helping to explain why the EU has developed a not inconsiderable social policy competence. In the UK especially, this has had a profound impact. In many other EU countries, criticism of the EU's so-called *acquis communautaire* comes predominantly from those who think it has not gone far enough. This is because, in most cases, extensive regulation already exists either in the form of national legislation or multi-employer agreements. In the UK, however, where there has been a lack of comparable regulation reflecting the tradition of 'voluntarism', the *acquis* has touched on virtually every area of employment relations other than association, industrial action and wage determination – not to mention human rights. Listing only those

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areas where there has been major legislation gives us freedom of movement of workers; equal opportunities in terms of age, disability, gender, race, religion and sexual orientation; health and safety; collective redundancy and business transfers; working time; the proof of employment; information and consultation – both national and cross-national; maternity and parental leave; equal treatment for part-time and temporary workers (with agency workers to come); pensions; employment agencies; data protection and corporate governance. The result has been a fundamental shift in emphasis from collective to individual rights with an increase in ‘juridification’ in the sense of the involvement of the law and the courts in employment relations matters.

The contrast also nicely illustrates the battle of ideas that is taking place. To paraphrase Salais and Villeneuve⁴², EU social and employment development is seen as being at the crossroads between ‘activation’ and ‘capability’ routes, reflected in debates about which of the two Treaty ‘titles’ is to be accorded priority: *Title VII* dealing with ‘Employment’ or *Title XI* on ‘Social policy, education, vocational training and youth’. The ‘activation’ approach (arguably, another term for ‘neo-liberal’) is about ‘activating’ people into jobs, the main instrument being welfare regulation reform. By contrast, the ‘capability’ approach seeks to improve living and working conditions, along with social protection, both as an end and a means to an end: what matters is what a person can do and be, given the appropriate resources. Similarly, a firm’s competitiveness resides not in cost minimisation, but in its capacity to innovate, learn from and cooperate with others. Consequently, rather than deregulating labour markets, government intervention should be designed to improve capabilities – of firms, sectors and territories as well as individual citizens. Herein is the basis for endogenous development that emphasises specialisation in products and services reflecting Europe’s specific advantages.

The mechanisms of change

Historically, most commentators emphasised the agency or ‘entrepreneurship’ of trade unions and the state in bringing about change, with management receiving little more than perfunctory

attention. Thus, it was the policies and approaches of the state and trade unions, for example, which were seen as largely shaping the development of collective bargaining and the legal framework. More recently, there has been a considerable shift in emphasis from the role of trade unions and the state to that of management, helping to explain the emphasis on human resource management. A key turning point was the publication of *The Transformation of American Industrial Relations* by Kochan and his colleagues in 1986. Here management is seen as a 'strategic actor' or agent of change in determining the main changes taking place in employment relations, reflecting the pressures of business strategy to be pursued. Faced with intensifying international competition, above all in key manufacturing sectors such as aircraft manufacturing, autos and steel, US management was said to be confronted with the choice of pursuing a strategy of either quality or low cost. Both routes involved making radical changes in existing industrial relations arrangements and, in particular, in the provisions for collective bargaining of the 'New Deal' system dating back to the 1930s.

As for specific mechanism of change, it will be recalled that Chapter 1 outlined the 'actor-centred' institutionalist approach. Visser and Hemerijck use of this to analyze developments in Dutch employment relations shows how actors are able to make changes notwithstanding the constraints of 'path dependency'. In particular, they highlight the role of three types of adaptation or 'bricolage'⁴³. In the first, 'patching up', additional rules and procedures are grafted onto existing institutions and processes. An example, which Chapter 9 will expand on, is the increasing flexibility built into multi-employer agreements in France, Germany, the Netherlands and Sweden. In the second, 'transposition', institutions established for a particular purpose are put to different uses. Here perhaps the clearest example is that of collective bargaining itself. In most countries, collective bargaining has been seen primarily as a vehicle for improving on the legal status of employees. In recent years, however, as the next chapter will show, it has added a wider range of functions: it has become an instrument of adaptability as the bargaining agenda is oriented towards questions of competitiveness and employment; and it has also assumed or re-assumed a key role in macro-economic

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management as many national governments have responded to the adjustment pressures under European Monetary Union (EMU) by seeking cross-sector national agreements with employers' organisations and trade union (so-called 'social pacts') embracing wage moderation, greater labour market flexibility and reform of social protection systems.

The third mechanism is 'social learning' – the creation of situations where actors are exposed to a range of fresh influences whose implications they have to discuss and debate in a 'public regarding way'⁴⁴. Again, a good illustration is the negotiation of 'social pacts to deal with the implications of the EMU – an example of 'Europe learning from Europe' in Teague's words⁴⁵. The process of EMU itself did not involve European-wide mechanisms for handling the implications of a single market and a single currency. It did nonetheless put a figure on the external constraint in the form of the convergence criteria for monetary union, along with a clear timetable for its achievement, both of which sharply focused attention on the need for action. The European Commission's 'policy entrepreneurship' in encouraging of an all-round view of policy-making (on wages, employment, social protection, fiscal and macroeconomic policies) also played a part: 'The Member States' joint experience in these areas has been harnessed and exchanged at European level ... This pooling of European experience has undoubtedly contributed towards a broader perspective on national views and deeds'⁴⁶. Especially significant was that social pacts were consistent with the approach being advocated at EU-level and were a cross-national phenomenon – it was this that helped to give them considerable legitimacy. Even though member states had willingly entered into EMU they were able to present it in the national arena as an 'external constraint' helping to justify far-reaching reform.

*The direction of change - convergence **and** diversity?*

The direction of change has been a recurring theme in comparative employment relations analysis. Kerr and his colleagues laid down the gauntlet a half century ago (1960) in their *Industrialism and industrial man*. Not only were the main drivers of change held to be markets and

technology. They were also supposedly leading to a convergence of approach that would slowly, but surely, supersede the essentially idiosyncratic arrangements, reflecting different historical development, patterns of industrialisation and business systems. The presumption was also of convergence towards the US model, based on internal labour markets and company-based collective contracts.

An alternative view, appropriately dubbed the ‘diversity approach’, developed in response. One variant was the ‘societal approach’ of Maurice and his colleagues⁴⁷. There were key enduring cross-national differences, they argued, that resulted from the structural interdependencies peculiar to each society, involving interactions between the training, production and industrial relations systems. Another was the ‘national business systems’ approach, which argued that persistent differences in capitalist organisation reflect distinctive national development paths along the lines discussed earlier⁴⁸. Both variants have contributed to the view that has become central to employment relations analysis, namely that institutions are not simply the shells and transmission belts for economic and technological forces. Rather institutions are generated by the interaction of social actors at critical historical junctures and persist over time, creating ‘path dependency’.

Most recently, the so-called ‘dual’ or ‘co-convergence’ thesis has become prominent. Thus, in distinguishing the two main ‘varieties of capitalism’ introduced in Chapter 3, Hall and Soskice suggest that convergence within each type is accompanied by divergence between them⁴⁹. Traxler arrives at a not dissimilar position, although in this case ‘path dependency’ rather than convergence is the dominant force. His main thesis is that the ‘way in which industrial relations systems accommodate to external changes is self-referential’ - the prevailing structure of collective and legal framework ‘guide the direction of adaption by defining the possibilities for renewing the compromise between capital and labour under changed conditions’⁵⁰. On this basis, a fundamental distinction is to be drawn between the countries with multi-employer bargaining and legal frameworks supportive of collective bargaining (which roughly correspond with the CMEs) and those with single-employer bargaining and less supportive frameworks (which fit the LME category).

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In a further development a strand of comparative analysis has emerged that underlines the ‘interdependency’ inherent to the processes of convergence and divergence reflecting differences in the speed, form and spatial ‘reach’ of developments at the various levels⁵¹. Much depends, in other words, on the level of activity, recalling the discussion of ‘multi-level governance’ in Chapter 1. The cross-national diversity so evident at national level can hide significant similarities at sector and company level, reflecting the need to confront common problems as Dunlop himself suggested in *Industrial Relations Systems*⁵². It is not a question of convergence *or* diversity, but of both convergence *and* diversity. Growing international integration may prompt convergent developments within sectors, and in particular within MNCs, *across* national systems, which may result in increased diversity between sectors and companies *within* national systems. Surveying developments across seventeen European countries in the 1990s, Ferner and Hyman conclude that: ‘... the (somewhat paradoxical) picture that emerges is one of increasing diversity within national systems but of increasing convergence between them’⁵³.

EMPLOYMENT RELATIONS MATTERS

Table 4.1 Core processes and structures (1)

Organisational structure

- product or business or area based
- task and/or performance controls
- tiers of managers/ spans of control
- target-setting/ resource allocation processes
- budgetary controls

HR policies and practices

- recruitment & selection
- training & development
- appraisal
- reward
- participation & involvement
- discipline & dismissal

Work organisation

- nature of tasks (repetitiveness/monotony/complexity)
- degree of autonomy (methods used/ pace of work/ responsibility for quality)
- ‘hierarchical’ constraints (direct control by supervisors/targets/budgets)
- ‘horizontal’ constraints (extent of dependency on colleagues)
- opportunity for on-the-job problem-solving
- opportunity for on-the-job learning

Table 4.1 Core processes and structures (2)

The legal framework: corporate governance

- business function & purpose
- balance between shareholder and employee rights
- board composition
- codes of conduct
- merger and acquisition

The legal framework: employment

- health & safety
- individual employment rights
- TU recognition and collective bargaining
- employee representation
- dispute resolution
- role in pay determination

Professional regulation

- entry standards
- training & development
- promotion
- role in pay determination

Collective bargaining

- level – multi-employer or single employer; multi-industry or single industry; company or workplace
- unit – coverage in terms of occupation (single or multi-occupation)
- scope – coverage in terms of subject matter
- form – voluntary agreements or legally enforceable contracts/codes

Table 4.2 The structure of collective bargaining⁵⁴

For the most part the recognition of trade unions did not occur in a piecemeal and *ad hoc* fashion, with individual employers weighing up the advantages and disadvantages of such a decision; the structure of collective bargaining was not the result of employers or, for that matter, trade unions or governments making a rational choice from a number of possible options. Rather both recognition and the structure of collective bargaining are deeply rooted in an historical compromise which reflects the impact of industrialisation, in particular in the metalworking industries. In the UK and Western Europe, multi-employer bargaining emerged as the predominant pattern largely because employers, above all, in the metalworking industries were confronted with the challenge of national unions organised along occupational or industrial lines. In Britain, the procedural bias of multi-employer has its origins in the engineering industry's 'Provisions for Avoiding Disputes' of 1898 and implicitly recognised that craft trade unions, such as the Amalgamated Society of Engineers, had already established a firm foundation in the workplace and its district committees had the power to impose their own regulations. In Sweden, the national agreement reached in engineering in 1905 was, by contrast, rooted in the substantive terms and conditions and reflected the relative weakness of employers at local level and the apparent centralisation of the trade union movement. In France and Germany, where the crisis in the years immediately following the First World War was on a much larger scale, the government being involved as well as employers and trade unions. In both cases, the compromise was underwritten by compulsory rules - government and trade unions were anxious lest the large metalworking employers, who hitherto had been able to resist trade unionism with little difficulty, would revert to their previous position once the immediate crisis was over.

Only in the USA and Japan did single-employer bargaining emerge as the predominant pattern in the metalworking industries. By the time legislation was introduced requiring employers to recognise trade unions in the 1930s and 1940s respectively, the relatively large individual employers that had emerged at an early date in

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industrialisation in both countries had already exerted a profound influence on the trade union movement. In the circumstances, employers and governments did not come under strong pressure to introduce multi-employer bargaining and most employers opted for dealing with trade unions at enterprise or establishment level - largely out of the desire to maintain their internal systems of job regulation and, especially in Japan, to deny the trade unions the platform from which to push for more effective national unionism.

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