

## Another swing of the pendulum: rhetoric and argument around the Employment Relations Amendment Act (2018)

PETER SKILLING\*

### Abstract

2018's Employment Relations Amendment Act (ERAA) reversed many of the employment relations (ER) regulatory changes introduced by the preceding National-led administration. It, thus, continued the pattern of yo-yo policy-making that has held in New Zealand since 1991, where significant changes to the ER system have been made with each change of government. Regular pendulum swings in policy settings (where each government begins by reversing policy changes made by the previous administration) generate negative outcomes, including uncertainty and, most likely, a sub-optimal policy equilibrium. In order to understand and (hopefully) move past this impasse, this paper analyses the arguments made for and against this new Act. Texts drawn from parliamentary debates, the Select Committee process, and media coverage are analysed to show the linguistic and rhetorical means used by actors on either side of the debate to make their competing arguments appear legitimate and compelling.

The article notes the moments where the parties to this dispute failed or engage meaningfully with the arguments and evidence presented by the other side, and suggests that the "talking past each other" nature of the debate is related to the institutional forms and structures within which the debate took place. It concludes with suggestions for an institutional setting able to facilitate more constructive dialogue.

**Keywords:** discourse analysis, rhetorical analysis, unions, flexibility

### Introduction

Within its first 100 days in office, the new Labour-led coalition government introduced employment relations (ER) legislation that addressed issues of minimum protections for workers, and the role of unions and collective bargaining. To anyone with more than a passing interest in ER legislation in New Zealand, there was nothing especially surprising in any of the changes proposed. To a large extent, they simply reversed many of the changes introduced by the preceding National-led administration: changes that Labour, the Greens and (to a lesser extent) New Zealand First had strongly opposed (Skilling & Molineaux, 2017). The provisions of the Employment Relations Amendment Act, 2018 (ERAA) had been prefigured in speeches and documents released during the election campaign (Labour Party of New Zealand, 2017a; 2017b) and in the new government's statements of intent (Ardern, 2017). The ERAA does not represent the sum total of the government's ER ambition: further policy work will address issues of equal pay and of the "future of work". This Act, however, had been signalled and (being, in large part, a reversal of recent changes) had the advantage of being able to be introduced relatively quickly.

The 2018 Act can be read as the latest move in a pattern of yo-yo policy-making that has held since 1991, when the Employment Contracts Act (ECA) disrupted a long-established policy equilibrium (Rasmussen, 2009). In their turn, National MPs have stated their intention to reverse the provisions of this Act as soon as they are able to do so (Simpson, 2018; McKelvie, 2018). These pendulum swings

---

\* Department of Management, AUT, Auckland. Contact: [peter.skilling@aut.ac.nz](mailto:peter.skilling@aut.ac.nz)

with each change of government – reflecting what Foster, Rasmussen and Coetzee (2013, p.52) describe as “the on-going lack of a broadly-based consensus over employment relations” – are unsurprising in that they express historically, materially and ideologically entrenched differences. More than perhaps any other policy field, ER is an area in which the positions of the various parties are well-established and thoroughly institutionalised. These polarised positions, moreover, are reinforced and further entrenched by the institutional forms and structures within which the relevant policy debates take place.

In New Zealand’s Westminster-derived political system, a bill goes through three parliamentary readings and a select committee process that allows for public submissions on the bill and scrutiny of its clauses. While, on the face of things, this process appears designed to facilitate debate and engagement between competing perspectives, the analysis in this paper demonstrates that it does not compel competing parties to engage meaningfully with the arguments and evidence presented by the other side. In many cases, actors may choose to ignore those competing claims and continue to simply make claims that they believe will be resonant and convincing to a targeted public constituency. New Zealand’s unicameral legislature (its absence of an upper house) means that any bill simply requires a parliamentary majority at each stage to pass into law. Actors opposed to a bill may find more value in seeking to rally public and media opposition, in order to put pressure on the parties supporting the bill. In a proportional representation environment, where the government is typically comprised of two or more parties, this may amount putting pressure on one of the smaller parties to withdraw their support, or to demand changes.

The progress of any bill through the legislative process can be read as a situation of public dispute, in which a wide range of actors seek to have their perspectives heard and accepted. The logic of this situation dictates that all parties must present reasons for their position, and align those reasons with an appropriate conception of the common good (Boltanski & Thévenot, 2006; Thévenot, Moody & Lafaye, 2000). Indeed, both sides in this debate claimed that their proposals promoted a mutually-beneficial collective good, while describing their opponents’ prescriptions as merely the expression of narrow self-interest.

If we accept that regular pendulum swings in policy settings generate negative outcomes (uncertainty, but also, most likely, a sub-optimal regulatory equilibrium), we need to understand the rhetorical foundations of the arguments made on either side of the debate, and the way in which the nature of the debate reflects its institutional setting. This article briefly summarises the major changes contained in the ERAA (2018) before turning to an analysis of the arguments made on either side as the Bill progressed through parliament. The data for analysis is drawn from public texts (including parliamentary debates, submissions to and reports from Select Committee, and media coverage) associated with actors on either side of the debate. These data are subjected to discourse analytical techniques drawn from pragmatic sociology and rhetorical analysis (Boltanski & Thévenot, 2006; Gottweis, 2007). The analysis is critical in the sense that it seeks to show the presence and operation of power that makes certain partial and interested positions appear natural, neutral and necessary (Fairclough, 1992). Its attention to the ways in which the various actors exercise power within the debates foregrounds the various forms of capital available to the different actors, and the nature of the political-cultural context within which the dispute took place.

In the next section, methods of data generation and analysis are described. Following that, the article establishes the necessary context for its analysis: the main provisions of the ERAA (2018) are summarised and situated within a brief history of ER legislation in New Zealand and a brief outline of New Zealand’s political system. The subsequent Findings section identifies the linguistic and rhetorical means used by actors on either side of the debate to make their competing arguments appear legitimate and compelling. The most important findings are developed further in the Discussion

section, which focusses on the contestation in the debate over the key discursive node of “flexibility”. This section also considers how different institutional structures could better arrange these competing interests within a system that encourages and constrains them to seek shared ground. The Conclusion brings the main threads of the article together and suggests avenues for further exploration.

## Theory and Methods

The yo-yo pattern of policy change seen in ER regulation demonstrates the limitations of the rational-comprehensive model of policy-making (Simon, 1976), and its assumption that policy-makers can (or attempt to) provide ‘unequivocal, value-free answers’ to policy questions (Gottweis, 2007, p.237). It shifts our attention to the competing ideological bases of policy-making and the importance of “language and the process of utilizing, mobilizing and weighing arguments” (ibid.). This article addresses the question of the linguistic and rhetorical means used by competing political actors to make their competing arguments compelling to decision-makers and the public. It draws on Boltanski and Thévenot’s (2006) pragmatic sociology as a way of analysing the various arguments made during this policy debate, and of showing how different arguments offer different accounts of what is important, how it should be measured, and how human actors should be understood.

Pragmatic sociology offers a useful typology for analysing how arguments are made in the public sphere. It offers, more specifically, a framework to analyse “the struggles over legitimacy” (Cloutier & Langley, 2013, p. 360; see also Patriotta, Gond, & Schultz, 2011) that arise in situations of public dispute. According to Boltanski and Thévenot (2006), social life is regulated by multiple (but not infinite) “orders of worth”. Boltanski and Thévenot identify and outline six orders of worth (the *market*, *industrial*, *civic*, *domestic*, *opinion*, and the *inspired*), where each order of worth has its own standards for assessing the worthiness of actors, objects and arrangements.<sup>1</sup> These orders are explicitly moral: each grounds its claims by appealing to a conception of the common good that is widely understood and acknowledged. Boltanski and Thévenot (2006, p. 66) describe these orders of worth as “systematic expressions of the forms of the common good ... commonly invoked in today’s society”. The three orders of worth most relevant in this instance (*market*, *industrial* and *civic*) are summarised in Table 1 below.

**Table 1: Summary of the six orders of worth**

|                              | <i>Market</i>                             | <i>Industrial</i>                 | <i>Civic</i>                           |
|------------------------------|---|-----------------------------------|--|
| <b>Mode of evaluation</b>    | Price, cost                               | Technical efficiency              | Collective welfare                     |
| <b>Test</b>                  | Market competitiveness                    | Competence, reliability, planning | Equality, solidarity                   |
| <b>Form of proof</b>         | Monetary                                  | Measurable: criteria, statistics  | Formal, official                       |
| <b>Qualified objects</b>     | Freely circulating market good or service | Technical object, method, plan    | Rule and regulations, welfare policies |
| <b>Qualified human being</b> | Consumer, seller                          | Professional, expert              | Equal citizens, solidarity unions      |
| <b>Time formation</b>        | Short-term, flexible                      | Long-term planned future          | Perennial                              |

Source: adapted from Thévenot et al., (2000, p. 241).

Worthiness within the *market* order, for example, is established by the market competitiveness of a freely circulating good or service, with market participants (the buyers and sellers of those goods and services) designated as the qualified evaluators of worth. This can be seen as the expression of a moral

<sup>1</sup> Subsequent work in pragmatic sociology has proposed additional orders of worth (Thévenot, Moody, & Lafaye, 2000) but these are not relevant here.

vision since the market's "invisible hand" is held to align the individual interests of market participants with the collective good by promoting economic efficiency and innovation. Meanwhile, worthiness is determined in the *civic* world not by the buyers and sellers of the market order, but by the collective will of equal citizens. The common good is assured here not through the pursuit of individual interests, but through the conscious pursuit of the "general interest" (Boltanski & Thévenot, 2006, p. 187). And in the *industrial* world, worthiness is based not on the short-term calculations of market actors, but on considerations of long-term productive efficiency. This order privileges strategy, data and the status of technical experts.

In practice, many situations are stabilised and legitimated through a compromise between two or more orders. Boltanski and Thévenot (2006, p. 325) refer often to workers' associations and workers' rights, observing that the figure of the worker, "supported by the arrangements of unionism and by the equipment of labor laws" originated in a compromise between *industrial* and *civic* worths. Historically, they argue, workers have been treated *both* as market commodities assessed according to their contribution to firm performance *and also* as citizens: members of a political society and possessed (therefore) of certain basic rights. More broadly, they also argue (2006, p. 332, and see also p. 194) that "the need to work out a compromise between an order governed by the market and an order based on efficiency [i.e. the industrial order] lies at the very heart of a business enterprise".

This typology of orders of worth is useful here because it foregrounds how different arguments base themselves on different understandings of the common good. As a result, they support different understandings of what and who is important and (therefore) different regimes of measurement (should we focus on the metrics of profits, economic growth and GDP, or should we measure the distribution of wealth and job satisfaction?) and different understandings of human actors (are workers most fundamentally units of labour power, human beings with specific physical and social needs, or political citizens possessed of inalienable rights and dignity?)

The data for analysis in this article are texts in which policy actors stated and offered justifications for their position on the proposed changes to a public audience. The specific texts for analysis include the transcripts of the parliamentary debates at the first, second and final readings of the Bill; selected submissions to the Select Committee process, and media coverage of the Bill. The Select Committee submissions included in the analysis were those associated by the most prominent voices on either side of the debate (on the one side, the Employers and Manufacturers' Association (Northern) (hereafter EMA); Business New Zealand (BNZ), Canterbury Employers Chamber of Commerce (CECC), the Auckland Chamber of Commerce (ACC) and the National Party; on the other side, the New Zealand Council of Trade Unions (NZCTU), FIRST Union, Unite! Union, E Tu, and the Labour, Green and New Zealand First Parties.

The data was coded based on the explicit arguments that were made in support of, or in opposition to the proposed changes. The arguments were analysed in terms of the different orders of worth that they appealed to, and the linguistic and rhetorical means by which actors attempted to make their partial, interested prescriptions appear natural, neutral and necessary.

## Context and Background

As we saw above, ER has been built historically on a compromise between the *market* order of worth (that positions labour as a market commodity whose value is determined by the price a willing buyer is willing to pay for it) and the *civic* order (that posts certain basic rights that workers possess due to their underlying status as equal citizens.) These compromises can be seen in the history of ER

legislation in New Zealand. The provisions of the Industrial Conciliation and Arbitration Act (ICAA 1894) established a “state-imposed system of conciliation and arbitration” in place of the informal approaches and laissez-faire policies that had led to widespread exploitation of labour (Rasmussen, 2009, p. 43). These provisions enacted a relatively stable equilibrium that shaped New Zealand’s ER system for almost a hundred years, “up to the passage of the Employment Contracts Act in 1991” (Rasmussen, 2009, p. 55). This equilibrium supplemented the compromise between the *market* and the *civic* orders of worth with the *industrial* order’s insistence on the importance of long-term planning and efficiency (Boltanski & Thévenot, 2006).

The principles and provisions of the ECA (1991) marked a sudden and marked shift to the terms of this compromise, with a great deal of additional weight given to the *market* order and its assessment of labour as a commodity whose value is determined not by collective institutions but by market actors (see Foster, Murrie, & Laird, 2009; Rasmussen, 2009). Employment relations were imagined as a realm of legal contracts between consenting and (formally) equal parties (Rasmussen, Foster, & Farr, 2016). Since workers were seen as rational agents capable of looking after their own interests in negotiation with prospective employers, the provisions of the ECA denied unions any privileged position. Rather, unions were positioned as self-interested vested interests. Ignoring problems of collective action, free-riding and the presence of public goods, unions, like all other parties, were returned to the market. Their fortunes under the ECA would be based on the *market* order’s criterion of their capacity to persuade willing buyers to purchase their services. As Foster et al. (2009) note, union density was reduced by a half within five years.

The changes contained in the ECA responded to calls by international organisations (notably the IMF and the OECD) and business lobby groups for more flexibility within the labour market (Rasmussen et al., 2016). The calls made in New Zealand were situated within a broader global movement in the 1980s (ibid.). The ECA was based on the objective of promoting “an efficient labour market”, and efficiency was held to arise from labour market flexibility (Brosnan & Walsh, 1996, p. 158). These changes marked a “radical departure” from the *civic* and *industrial* orders of worth embedded in the collectivist nature of earlier legislation and the “blanket coverage” of the award system (ibid., p. 158) towards a much heavier reliance on *market* signals and disciplines. Crucially, proponents of the ECA presented labour market flexibility as beneficial for all. In 1990, for example, the National Party (as cited in Brosnan & Walsh, 1996, p. 158) argued that flexibility would generate economic growth, “improved productivity, income and employment”.

The principles underpinning the ERA (2000) were diametrically opposed to this reading of the situation. The Act was explicitly designed to “acknowledge... and address... the inherent inequality of power in employment relationships” (New Zealand Legislation, n.d.) and its principles re-asserted the *civic* order’s core belief that human beings are marked by their fundamental equality *qua* citizens, not their inevitable inequality *qua* market actors (Brown, 2015). Fundamentally, they understood the labour market not as a realm of free and fair exchange between rational actors, but as a realm of power and domination. The provisions of the ERA, thus, offered protections to workers, restored certain powers to unions, and “sought explicitly to bolster collective bargaining and more ‘productive employment relationships’” (Foster et al., 2013, p. 52; see also Rasmussen et al., 2016). These provisions re-balanced the compromise between the *market*, *civic* and *industrial* orders of worth, but they did not amount to a return to the pre-ECA era of state-imposed arbitration and conciliation, or tripartite bargaining.

In the years since the introduction of the ERA, a series of amendments to its basic architecture have continued a pattern of yo-yo policy-making. Successive amendments under National-led governments from 2008 – 2017, while not as radical or as (obviously) ideological as the ECA, had the cumulative effect of weakening collective bargaining mechanisms and enhancing the flexibility available to

employers (Foster et al., 2013; Rasmussen et al., 2016). Discursively, these changes were legitimated through appeal to the *market* order's construction of the common good: that the invisible hand would ensure that each actor's pursuit of their own interest would promote the benefit of all; that workers, even (and especially) vulnerable and marginalised workers would benefit from laws that allow for firm flexibility.

The parties that comprise the current government (the Labour, Green and New Zealand First Parties) were united in their opposition to almost all of the changes introduced under National (Skilling & Molineaux, 2017). Further, Labour's ER policy going into the election (Labour, 2017a;b) included promises to reverse many of National's changes, including the 90-day 'fire at will' law, provisions around rest and meal breaks, remedies in cases of unfair dismissal, and union powers and access. The ERAA, signed into law in December 2018, contained 16 main provisions (summarised in Table 2, below) designed to enhance protection of workers' rights and to encourage collective bargaining and enhance union rights (Lees-Galloway, in NZPD, 1 February 2018).

**Table 2: Major provisions of the ERAA (2018)**

| <b>Changes in effect from 12 December 2018</b>  | <b>Changes in effect from 6 May 2019</b>  |
|---|---|
| Union representatives can now enter workplaces without consent, provided the employees are covered under, or bargaining towards, a collective agreement | The right to set the number and duration of rest and meal breaks will be restored   |
| Pay deductions can no longer be made for partial strikes  | 90-day trial periods will be restricted to businesses with less than 20 employees   |
| Businesses must now enter into bargaining for multi-employer collective agreements, if asked to join by a union   | Employees in specified 'vulnerable industries' will be able to transfer on their current terms and conditions in their employment agreement if their work is restructured, regardless of the size of their employer |
| Employees will have extended protections against discrimination on the basis of their union membership status   | The duty to conclude bargaining will be restored for single-employer collective bargaining  |
| If requested by the employee, reinstatement will be the first course of action considered by the Employment Relations Authority                         | For the first 30 days of their employment, new employees must be employed under terms consistent with the collective agreement  |
| Earlier initiation timeframes have been restored for unions in collective bargaining  | Pay rates will need to be included in collective agreements   |
| New categories of employees may apply to receive the protections afforded to 'vulnerable employees'   | Employers will need to provide new employees with an approved active choice form within the first ten days of employment and return forms to the applicable union   |
|   | Employers will need to allow for reasonable paid time for union delegates to undertake their union activities   |
|   | Employees will need to pass on information about the role and function of unions to prospective employees   |

(Employment New Zealand, 2018).

As noted above, there is nothing particularly surprising in this list. Most of these changes are instances of the new government reversing changes made by the previous administration. For their part, National MPs have promised to reverse its provisions as soon as they can (Simpson, 2018; McKelvie, 2018). What has been more interesting is the way in which the progress of the Bill through the legislative process has revealed some of the tensions within the coalition government. In the period 2011-2017, New Zealand First consistently voted against National's proposed ER amendments and its position on

ER aligned more logically with the centre-left than with the centre-right (Skilling & Molineaux, 2017). Specifically, New Zealand First had supported higher minimum wages, longer paid parental leave, more protections for casual workers, and the abolition of ‘starting out’ wages. During the progress of the Employment Relations Amendment Bill (ERAB) 2018 through parliament, however, it was New Zealand First who argued for retaining 90-day trials for workplaces with less than 20 employees, for allowing some businesses to not opt in to multi-employer collective agreements (MECA), and for placing some restrictions on union access to workplaces (Mitchell, 2018).

## Findings

The brief historical overview presented above demonstrates the constant pendulum swings that have marked ER legislation in New Zealand since 1991. In order to move beyond the impasse created by these regular changes, it is necessary to understand the logic of the arguments associated with the two established sides in these policy disputes.

### *Arguments against the Bill*

Arguments against the ERAB were built around five major themes. These arguments, associated primarily with the opposition parties, business lobby groups and some industry associations, presented, *firstly*, a positive assessment of the status quo. Arguing that the changes made by the previous National-led administrations had led to positive labour market outcomes, these groups held that the Bill’s proposed changes were at best unnecessary, at worst willfully destructive. *Secondly*, the proposed changes were held to be bad because they reduced the flexibility that firms need to remain competitive. *Thirdly*, the previously existing flexible ER system was seen not as a zero-sum game of conflicting interests, but as affording mutual benefit, where gains accrued not just to firms but also to workers (including, and especially those workers most weakly attached to the labour market). The obverse argument claimed, *fourthly*, that the Bill was designed to benefit some groups (unions and – especially – union officials) at the expense of firms and, ultimately, the collective good. At its most extreme, this critique extended to impute corrupt motivations for the Bill, describing it as pay-back for unions’ financial and political support of the Labour Party. *Fifthly*, arguments against the Bill described it as a return to the past (and specifically the “bad old days” of the 1970s), at odds with the needs of a fast-changing labour market.

### *A positive assessment of the status quo*

Unsurprisingly, this theme was most commonly associated with National Party MPs, who took it as a chance to promote their sound political and economic management. Steven Joyce claimed (in NZPD, 1 February 2018) that “we have the highest rate of employment, ... the highest rate of job creation, ... the highest rate of wage growth, [and] some of the best-performing statistics of our labour market in the developed world”. These positive aspects of the status quo, he concluded, set “a very high bar for change”. This argument was repeated with minor variations by several National MPs, including Sarah Dowie and Paul Goldsmith (in NZPD, 1 February 2018). Seeming to argue causation from correlation, the National Party (2018, p. 1) held that low unemployment figures and increasing wages showed that “the system is working as intended”. Phrasing things a little more cautiously, the CECC (2018, p. 1) stated their belief that the “incremental changes to the [ERA] introduced by former governments” have “generally helped to create conditions in which business can grow and provided the flexibility needed to respond to changes in market demands” (see also Campbell, 2018; Nicholls, 2018; McKelvie, 2018; Business NZ, 2018a).

### ***The importance of flexibility in the ER system***

Opponents of the Bill agreed that ‘flexibility’ is an unalloyed good in the ER system. The EMA (2018, p. 4) emphasised “the need to be highly flexible, responsive and nimble in a very competitive market place”, while the CECC (2018, p. 1) endorsed existing policy as providing “a flexible and easy structure that encourages employment”. These groups opposed the Bill precisely because they held that it would reduce flexibility. According to the National Party (2018, p. 1), the Bill would “return our framework to a rigid, overly prescriptive requirement”; the EMA (2018, p. 3) held that the Bill entails “more compulsion ... more regulation [and] less flexibility” (see also Mackenzie, 2018). Meanwhile, the CECC (2018, pp. 1, 3) argued that the Bill would unhelpfully re-introduce “rigidities” and “an unacceptable level of bureaucracy” into the employment environment’.

### ***The widely-shared benefits of the existing ER system***

An important thread that runs through the first two themes is the insistence that the flexibility established by the status quo is good *not just* for firms *but also*, more broadly, for workers and for economic growth. Flexibility, said National (2018, p. 4) allows employers to “boost productivity” and this leads “to greater rewards to employees”. The proposed changes, by contrast, would put these widely shared rewards at risk. Nikki Kaye (in NZPD, 1 February 2018) held that these changes “will lead to a loss of jobs” and to additional “costs for businesses”, meaning that “some of our most vulnerable workers [will not get] the opportunities that they deserve”. As such, the existing ER system, according to National MPs was not just good for workers generally (giving them, as Goldsmith (in NZPD, 1 February 2018) said, the “dignity and respect” that comes with “getting a job”) but especially good for workers who find themselves marginalised in the labour market (see also Campbell, 2018).

Underlying this theme is the more fundamental assumption that the employment relationship is a mutually beneficial arrangement between more-or-less equal parties. This denial of any inherent inequality of power in the employment relation is seen in National’s (2018, p. 2) claim that the Bill’s proposals are “patronising to employees by pretending they cannot negotiate with their employers for a fair outcome”, and in Amy Adams’ (in NZPD, 1 February 2018) insistence that workers “are grown up, so deserve the right to decide for themselves whether they want to join the union”. In the same speech, Adams contrasted National’s treatment of workers as “adults who can actually work out for themselves what makes sense”, with Labour’s approach of “infantilising the workforce”. In an opinion piece, Mike Hosking (2019) characterised the ECA as giving workers a choice whether to “back yourself, or stick with collective deals negotiated on your behalf by unions” and concluded that “most chose to back themselves”.

### ***A critique of the Bill as promoting the sectoral interests of unions***

If arguments against the Bill held that the existing ER system worked to the shared benefit of all, they also claimed that the Bill represented a zero-sum game: imposing additional costs on firms while offering enhanced powers and protections to unions and – especially – union officials. Joyce (in NZPD, 1 February 2018) argued that the Bill will “shift the balance in favour of union officials”, before pointedly adding “not workers—nothing to do with workers”. Business NZ (2018b, p. 2), meanwhile, held that the Bill would “create extra work and compliance costs for employers where the primary beneficiary of the extra work is unions”. This theme developed, at times, into the stronger claim that the Bill was designed as “Labour Party payback for the great union support that they got at the election” (MacIndoe in NZPD, 1 February 2018, see also Joyce, in *ibid.*; MacKelvie, 2018; Hosking, 2019). Kaye (in NZPD, 1 February 2018) also noted union involvement in selecting Labour Party leaders, implying that any prospective or existing Labour leader is constrained to respond to union interests. These and similar accusations prompted warnings from the Speaker (based on page 49 of Speaker’s



Rulings) that MPs “cannot imply that a Government is funded from an organisation that is influencing what they're doing” (NZPD, 1 February 2018. See also, however, the second reading (NZPD, 27 November 2018) where the ruling was applied less consistently).

### *A critique of the Bill as an (undesirable) return to the past*

In stressing the external pressures of a rapidly changing global market, opponents of the Bill claimed that it was not fit for the challenges of the future. Rather, according to Amy Adams, the Bill “will take New Zealand backwards” and result in “more strike action, the likes of which we haven't seen in this country for many years”. More specifically, it was claimed that the proposed changes would take New Zealand back to the “the regular industrial disruptions of the 1970s” (MacIndoe, in NZPD, 1 February 2018). This reference to the 1970s was echoed in Joyce’s accusation (in *ibid.*) that the Bill was “harking back to 1970s-style trade unionism”, and Dowie’s claim (in *ibid.*) that it was based on “the bad old days” of “the 1970s”. By the second reading, Scott Simpson (in NZPD, 27 November 2018) expanded on this theme to refer to the militant trade unions who “used to bring this country to its economic knees” in the 1970s. The twin scare-phrases “militant” and “1970s” subsequently became a regular feature of media and online opposition to the Bill, especially (but not only) by National MPs (see MacKelvie, 2018; Nicholls, 2018; Hosking, 2018; Mackenzie, 2018).

### *Arguments for the Bill*

On the other side of the debate, arguments in support of the ERAB (2018) were built around five diametrically opposed themes. They presented *firstly*, a negative assessment of the current situation. While acknowledging positive outcomes in terms of economic activity and employment, these groups stressed that these headline numbers hid serious inequalities in terms of how the benefits of economic growth were shared, and the conditions faced by many workers. These negative outcomes were held, *secondly*, to flow from the unequal nature of the employment relationship. As a consequence, changes to the ER system were required in order to level the playing field and ensure that the benefits of work are fairly shared. *Thirdly*, the trope of “flexibility” was critically assessed in the argument that it often refers to flexibility for employers, often at the expense of security and stability for workers. It was claimed, *fourthly*, that the proposed changes would benefit not just workers but also firms and the broader economy, since workers who feel themselves to be secure and well-rewarded are likely to be more motivated, productive and innovative. *Fifthly*, arguments for changes to the ER system held that the Bill provided the necessary framework for the future, as opposed to the backwards-looking and regressive changes made by the preceding National-led government.

### *A negative assessment of the current situation*

While it was acknowledged that recent years had seen “economic growth” (Lees-Galloway, in NZPD, 1 February 2018) and record “labour force participation rates” (NZCTU, 2018a, p. 59), the governing parties and unions insisted that the system had not distributed the benefits of growth and jobs fairly. During the election campaign, Labour (2017b) argued that “after nine years of National, working people’s share of the economy is falling (see also FIRST Union, 2018). Less than 40 per cent of economic growth under National has gone into working people’s wages”, and (Labour, 2017b) that “low wages, little say on rosters or hours of work, and an erosion of conditions” mean that “for too many Kiwis, the current employment relations system is failing” (see also Lees-Galloway and Logie in NZPD, 1 February 2018). The NZCTU submission (2018a, pp. 3, 7, 59) added that the changes introduced by National had resulted in “poor wage growth”, in poor quality jobs, and in a situation where “all the increase in income in the economy ... has gone to the highest income 10 percent of households”. National’s positive assessment of the status quo, it was claimed, was simply a result of selecting metrics that hid the important issues of under-employment and the distribution of incomes

(Mitchell, in NZPD, 1 February 2018; Lubeck, in *ibid.*; NZCTU, 2018a, pp. 30, 59. See also MBIE, 2017, p. 6).

### *Negative outcomes for workers reflect the unequal nature of the employment relationship*

Those arguing in support of the Bill held that these negative results were predictable: that the ER landscape is not a level playing field populated by rational actors with roughly equal amounts of power, but a realm of asymmetric power relationships. As Jan Logie (in NZPD, 1 February 2018) put it, “an employee can't fire their boss, they can't cut or change their hours, and they can't send their employer into an unsafe situation”. Specific changes enacted by National, such as the 90 day ‘fire at will’ law, had the effect not of enabling employers and workers to negotiate towards mutually-beneficial outcomes, but of shifting “cost and risk from employers onto a group of vulnerable workers” (NZCTU, 2018a, p. 41). The 2018 Bill was presented as a recognition of “the imbalance in the employment relationship” (Lubeck, in NZPD, 1 February 2018) and the “start of fixing [the current unbalanced system] to make sure that the people who are actually creating the wealth get a ... fair share” (Logie, in *ibid.*) Mutual benefit, in other words, is possible, but it does not occur automatically. Rather, it requires policy settings that counteract inherent inequalities of power.

### *Contestation over the trope of flexibility*

While opponents of the Bill represented flexibility in ER as good *for everyone*, proponents of the Bill contested this, insisting that it is always necessary to ask “flexibility for who?” Unions and the governing parties argued that flexibility in the ER system often means increased freedoms for employers at the expense of worse conditions and less security for workers. The NZCTU (2018a, p. 57) quoted an OECD (2017) report to argue that the

downside of flexible labour market regulations is that the costs of economic restructuring largely fall onto individual workers’ and that ‘in the absence of sound bargaining and representational arrangements, all forms of “flexibility” will be imposed and can be used to repress wages, working conditions and job security.

Clayton Mitchell (in NZPD, 1 February 2018; see also Lees-Galloway, in *ibid.*) agreed that the goal of an ER system should be to balance employers’ need for flexibility with employees’ need for ‘job stability, safe working conditions, and good remuneration packages.’

### *The widely shared benefits of the proposed changes.*

As we have seen above, business groups and the National Party argued that their preferred ER system (a system providing maximum flexibility for employers) promised widely-shared benefits to all, since successful firms would provide more and better-paying jobs. Arguments in support of the Bill (arguments, in a sense, for a “less flexible” ER system) reversed the direction of the causal arrows. Unions and the parties of government argued that workers who feel secure and well-compensated are likely to perform better for their employers: to be more engaged, productive and innovative. Such arguments were put most clearly in the NZCTU (2018a, p. 20) submission, where collective bargaining was said to “improve the quality of the employment relationship between workers and firms, leading to more efficient allocation of resources, greater motivation and ultimately productivity” (see also FIRST Union, 2018, pp. 5-6). Further, the NZCTU (2018a, pp. 18, 20, 65) claimed that “collective bargaining”, “workers’ voice” and “rising wages” tended to “make labour markets function more efficiently”, to “reduce conflict” and to enhance “engagement, co-operation and innovation from workers”. Indeed, “excessively flexible labour laws” carried perverse outcomes: workers who feel

themselves to have low job security will likely “see little point in gaining sufficient firm-specific knowledge to develop and improve processes” (NZCTU, 2018a, p. 68).

Arguments for the mutual benefits promised by the Bill often looked to Scandinavian models (and, most often, the Danish model) for inspiration and to provide evidence of the link between fair wages and conditions and increased productivity. A report (Salmon, 2015) published by Labour’s Future of Work Commission praised Denmark’s active approach to the labour market and advised that New Zealand seek to replicate it. Finance Minister, Grant Robertson (2017), endorsed the report and argued for the benefits of ‘Active Labour Market policies’. While the NZCTU (2016, p. 17) welcomed “the interest the Commission is showing in the Danish model of flexicurity and industry development”, they also sounded a note of caution. Replicating the Danish model in New Zealand, they argued, would require attention to the underlying factors that allowed it to work in Denmark: a much stronger role for unions and collective bargaining, a greater acceptance of co-ordination of the market, and a genuine sense of a social partnership between business, labour and the state.

### ***The proposed changes are the best fit for the labour market of the present and the future***

This theme was essentially a direct riposte to the critique that the Bill represented a return to 1970s-style industrial disruptions. Marja Lubeck (in NZPD, 1 February 2018) described such claims as “scaremongering” and characterised the proposed changes, instead, as “a sign of us being a very modern Government, because they will give us an opportunity to improve, modernise, and innovate the workplace” (see also Logie, in *ibid.*, Tinetti, in *ibid.*) Indeed, it was said that it was National’s changes to the ER system that had been “a backwards leap ... towards the failed paradigm of the 1990s” (NZCTU, 2018a, p. 3; see also Willie Jackson, in NZPD, 1 February 2018).

The core assumption of these arguments was that National’s changes (2008-2017) had swung the balance of power in favour of employers (Logie, in NZPD, 1 February 2018; NZCTU, 2018a; NZ Police Association, 2018). For proponents of the Bill, the status quo gave undue weight to the *market* order of worth, positioning workers as market actors responsible for maximising their own value proposition within a competitive labour market, and firms as market actors responsible primarily for maximising their own competitiveness. The Bill, committed also to the *civic* order’s insistence on the fundamental equality of citizens, held that workers needed further protections, and unions further powers in order to allow employers and workers to interact fairly. And, in keeping with the *industrial* order’s emphasis on long-term productivity and efficiency, it held that economic activity required intervention and planning rather than the *laissez-faire* approach of leaving things to the short-term decisions of self-interested market actors.

## **Discussion**

Most of the key findings presented above can be understood as dimensions of a fundamental dispute over the meaning and relative importance of the key discursive node of flexibility. This contestation offers a particularly clear expression of the underlying ideological disagreement: business groups and the National Party construct flexibility in terms of the central importance of negative freedom (Berlin, 2017): freedom *from* state coercion. In keeping with the *market* order of worth, the common good is supposed here to be generated through the operation of Smith’s “invisible hand” (Boltanski & Thévenot, 2006), whereby market actors’ pursuit “of their own advantage naturally, or rather necessarily, leads [them] to prefer that employment [of their capital] which is most advantageous to society” (Smith, 1999, p. 30). On the other side of the debate, unions and the government understood flexibility in ER as a zero-sum game where employers’ freedom *from* regulation comes at the expense of workers’ positive freedom *to* determine the conditions of their work. As Bourdieu (2003, p. 58) puts

it, the label “flexibility” is often used in neoliberal contexts to hide the reality of “the inflexible demands of one-sided employment contracts”.

This section considers how, in their constructions of the meaning and role of flexibility, the competing parties (a) consciously invoked and leveraged emotional language, (b) elided or inserted human actors, and (c) were able to ignore the arguments and evidence presented by the other side.

The tradition of rhetorical analysis (Gottweis, 2007) reminds us that arguments become persuasive through multiple means: not just through the rational coherence of their claims but also through the force of their emotional appeal and through the status or character of the speaker. Business groups and the National Party did not typically construct their arguments for flexibility in a rational (*logos*) register. They seldom explained explicitly why more flexibility was desirable, beyond simply stating that it “encourages employment”, productivity and so on. They certainly never acknowledged the arguments and evidence presented by unions as to the potential long-term benefits of certain “rigidities” within the system (NZCTU, 2018a; Acharya, Baghai, & Subramanian, 2010), or that New Zealand’s ER system is already considered one of the most flexible in the world (NZCTU, 2018a; Vamvakidis et al., 2010; OECD, 2008). Their arguments reflect research by Foster et al., (2013, p. 62) showing that New Zealand employers “are still of the opinion that the legislation is fairly evenly balanced or may even be in favour of employees”. Despite their success in advocating for more flexibility, New Zealand employers “still regard their flexibility as being [unduly] constrained” (Rasmussen et al., 2016, p. 901).

Arguments against the Bill operated more in the emotional (*pathos*) mode, relying on the intuitive interpretation of flexibility, agility and dynamism as good; rigidity, prescription and compulsion as bad. In everyday usage, the term flexibility carries a set of positive connotations: it is widely accepted that it is better to be flexible than tight, rigid or sclerotic. Critics of the Bill evoked these positive connotations: business groups and the National Party articulated a set of positively-coded synonyms (dynamic, innovative, agile, responsive) set in explicit opposition to a set of negatively-coded antonyms (rigidity, compulsion, prescriptive, bureaucratic.) These opposing lists mirror the broader neo-liberal narrative of individual rights and freedoms threatened by an over-bearing and oppressive state (see Kelsey, 1997). Given the cultural dominance of the neo-liberal insistence on the immutability of the market (Skilling, 2018) it was rhetorically effective for these groups to state that “we support flexibility” and “they (i.e. the government) favour compulsion and bureaucracy”, even in the absence of any demonstration that a flexible ER system really did offer widely-shared benefits.

The other key move in these groups’ construction of flexibility was their refusal to specify the relevant actors, let alone the different ways in which different actors are impacted by flexibility. There was only one instance within the data where it was stated *who* flexibility is for, and in this case it was “flexibility of employees *and* employers” (National Party, 2018, p. 2.) In other instances, flexibility was decidedly agent-less. Existing policy settings, it was said, provide “a flexible and easy structure” and “the flexibility needed to respond to changes in market demands” (CECC, 2018, p. 1), and the Bill will mean “reducing this flexibility” (National Party, 2018, p. 4).

While it is possible to infer from some of these quotes that flexibility is primarily necessary for firm competitiveness, the absence of agents implies that flexibility is good for all. This reflects the Party’s position of almost 30 years previously, which held flexibility to lead to “improved productivity, income and employment” (National Party, 1980, cited in Brosnan & Walsh, 1996, p. 158). Bill Birch, Finance Minister at the time, argued that “[w]orkers and employers alike are being inhibited by laws, regulations and restrictions” (cited in *ibid.*). When we hear that flexibility is “needed to respond to changes in market demands” (CECC, 2018, p. 1), it is constructed as necessary, and as neutral between actors. The linguistic act of removing human actors from this construction of flexibility is an act of de-

problematization (Stone, 1989) in that it moves ER out of the realm of human actions (where problematic outcomes are caused by the decisions of actors who can, thus, be held responsible) and into the realm of “accident, nature and fate” (p.281).

Proponents of the Bill responded by consistently re-inserting actors into their construction of flexibility, and noting the asymmetric power of those actors. Flexibility, they maintained, granted privileges to some (employers) in a way that imposed burdens and liabilities on others (workers), as in the argument that the “downside of flexible labour market regulations is that the costs of economic restructuring largely fall onto individual workers” (OECD, 2017, cited in NZCTU, 2018a, p. 37). Returning actors to the equation was an insistence that ER regulation is fundamentally about balancing the conflicting interests and needs of the two parties. Employers naturally desire “to have flexibility in how they run their businesses”, but that flexibility needs to be balanced in “an effective ER system” with the valid desires of workers for security, stability, safety, dignity, and decent terms and conditions (Lees-Galloway, in NZPD, 1 February 2018). It was not – as National (2018) and business groups claimed – the case that flexibility for firms would automatically and necessarily lead “to greater rewards to employees” (p.4).

The fundamental point of contention here was the way in which workers were understood. Groups opposing the Bill drew on the *market* order of worth to construct labour as ‘just another’ factor of production and (therefore) primarily as a cost to be minimised (Sikka, 2015) in firms’ pursuit of competitiveness. On the other side of the debate, the government and unions drew on the *civic* and *domestic* orders to stress that workers were, more fundamentally, citizens and human beings. What was important here was the insistence on workers as socially embedded (New Zealanders “should have the job security they need to live a decent life, buy a house and raise a family if that is what they want to do” [NZCTU, 2018a, p. 3]) and as irreducibly biological beings (rest breaks should be scheduled based on workers’ “rest, nutrition and psychosocial needs” (NZCTU, 2018a, p. 43; FIRST Union, 2018). Stressing the obvious but crucial point that workers are human beings stands against the *market* order’s assessment of workers as units of labour within a market. While other factors of production can be traded within a market, workers have civic rights, biological needs, emotional attachments and psychological make-ups that mean that they must be treated differently. The human nature of workers means that they *cannot* be endlessly flexible.

Where opponents of the Bill based most of their arguments on the positive emotional resonance of terms related to flexibility, union groups (most notably the NZCTU) grounded their construction of “flexibility” through empirical argument. They presented evidence, firstly, to show that New Zealand’s ER system is already among the most flexible in the world (OECD, 2017; NZCTU, 2018a). They also presented evidence to show that this degree of flexibility carries certain negative effects for workers. Data and examples showed that, even in the presence of high levels of employment, many workers currently remained under-employed, and many workers (NZCTU, 2018b; FIRST Union, 2018) were experiencing low wages, and a lack of security, stability and dignity in their workplaces. The previously existing flexible system, moreover, was held to be differentially bad for workers. In contrast to National’s assertion of strong wage growth, the NZCTU (2018a) showed that almost all of the gains had been captured by those near the top of the distribution, while wages nearer the bottom were stagnating.

Developing this theme, the NZCTU (2018a) argued that an overly flexible system can, paradoxically, lead to greater rigidities within that system. In an ER system where workers do not have security and certainty (a system where taking a new job would leave a worker vulnerable to dismissal without explanation during the first 90 days, for example) there is an incentive to remain in an existing job, even if that job is not the best match for a worker’s skills. In a system where workers feel disempowered and insecure, they are less likely to experiment, to take risks, to innovate, or to raise

important concerns. In a system where wages are suppressed, workers are less likely to be fully engaged, motivated and productive. At the firm level, FIRST Union (2018) argued that introducing certain rigidities such as the “establishment of base terms and conditions” would benefit firms and the overall economy, since employers would be “incentivised to compete by increasing productivity” rather than simply by “driving down wage costs” (pp.5-6).

Such arguments draw on the *industrial* order of worth, with its preference for long-term planning, rather than the short-term time horizon of the *market* order. Within the industrial order, wages and conditions are not seen primarily as costs to be minimised, but as a long-term investment in enhancing productive efficiency. Just as business groups presented their prescriptions as promoting the best interests of workers, here, union groups presented their prescriptions as promoting the best long-term interests of New Zealand firms and the overall economy.

Pragmatic sociology holds that public disputes cannot be reduced to a play of deception and coercion. Participants in public disputes, it assumes, are constrained by the public nature of the process, to engage in good faith. Such participants are held to be motivated not by a desire to “win” the debate (Annisette & Richardson, 2011) but by the desire to arrive at a mutually acceptable outcome (Boltanski & Thévenot, 2006). While these assumptions have been severely criticised for their weak analysis of power (Wagner, 1999), they seem to be aligned with the institutional structure for this particular dispute. The processes of formal parliamentary debates and select committee hearings are intended to provide a setting in which disputants can put forward their respective perspectives, presenting and demanding reasons and evidence in the pursuit of the best outcomes. In the findings presented above, however, we see many instances where actors did not engage with the arguments or evidence presented by the opposing side. Opponents of the Bill, for example, never responded to the NZCTU’s presentation of evidence on the downsides of excessively flexible ER systems. Rather, they continued their initial insistence that flexibility was necessary for the productivity of firms, and for job opportunities for workers.

We might argue, then, that the primary audience for many of the arguments analysed here was not those on the other side of the debate, or the other members of parliament, but rather a targeted public audience of stakeholders (business owners, workers, employer groups, and unions) and prospective voters. Contrary to the assumption of pragmatic sociology that parties to a dispute will engage in good faith, in the findings above we see many imputations of bad faith: the Labour Party, for example, was accused of designing the Bill not in the interests of New Zealand firms and workers, but as “pay-back” for their paymasters in the union movement (MacIndoe in NZPD, 1 February 2018): a morally questionable ‘quid pro quo’ made by a ‘conflicted’ Labour Party (Joyce in *ibid.*; Kaye in *ibid.*). One problem here is that the legislative process has no institutional mechanism to force the parties into a constructive dialogue with each other. The political incentive structure of the process encourages actors to make the most extreme argument that a certain segment of the population will find persuasive, and to disparage (rather than engaging with) the arguments and evidence presented by the other side.

It is salient here that the business groups and the National Party both started advertising and online campaigns that deliberately by-passed the parliamentary process, and directly addressed the public in seeking to rally opposition to the Bill. The four “members of the Business NZ family” joined forces in the #fixthebill campaign: “an advertising campaign using outdoor billboards, press and digital advertising [that asked] Government MPs to “Please Fix the Bill”, at the same time encouraging its members to ask the same of the coalition Government”<sup>2</sup> The National Party, meanwhile, launched the ‘Protect NZ Jobs’ campaign, using a wide variety of video-based and other online content to ‘explain’ how the “proposed changes will have far reaching effects on business and employees”, leading to

---

<sup>2</sup> The fixthebill.co.nz website has since been deleted

“increased cost to business and reduced job opportunities and wage growth” (Upston, 2018). Rather than engaging with evidence that the existing ER system was not working for all New Zealanders, this campaign, repeated to a public audience the claim that “all the evidence shows New Zealand's employment settings are some of the best and most successful in the world”, before asking rhetorically “what exactly is the Labour-led Government trying to fix?” (English, 2018).<sup>3</sup>

The ERAA (2018) continues an established pattern of significant changes being made to ER policy settings with each new government. This pendulum pattern of policy making generates negative outcomes, including uncertainty and, most likely, a sub-optimal policy equilibrium. It makes it difficult for the various parties to work together towards a mutually beneficial system that allows for New Zealand firms and workers to create a high-value, high-productivity situation that could deliver benefits to everyone. One way to move beyond this current impasse would be to develop institutional forms and structures that would require and incentivise parties to the debate to genuinely engage with the arguments presented by the other side. This could potentially involve creating a deliberative forum such as a citizens' assembly (Warren & Pearse, 2008; Farrell, O'Malley, & Suiter, 2013; Fischer, 2009) or a citizens' jury (Smith & Wales, 2018), where the various sides would present their arguments not to each other, or to their political supporters, but to a panel of representative citizens. These citizens would then be given the time, the impetus and the information to make a comprehensive evaluation of the competing arguments. An institutional setting like this (where its recommendations, whether binding or simply advisory, were well publicised) would give the parties to the dispute a strong incentive to prepare persuasive arguments, and to respond substantively to the arguments and evidence presented by the opposing side.

## Conclusion

This article has presented the changes contained in the ERAA (2018) as the latest swing of the ER policy pendulum. Suggesting that regular and substantial changes to the ER system are less than ideal, it has analysed the arguments that have been presented on either side of the political dispute that attended the progress of this legislation through parliament. This analysis has shown a fundamental contention over the meaning of the key discursive node of “flexibility”. Arguments *for* the Bill insisted that flexibility in the ER system typically means flexibility for employers at the expense of the security and stability sought by workers. Arguments *against* the Bill almost always elided the presence of human actors: a flexible ER system was simply presented as self-evidently good and as offering benefits to everyone. Critics of the Bill were thus driven to ignore any evidence that suggested that flexibility is damaging to workers and (potentially) to the long-term interests of business.

Both sides in this policy dispute presented data, statistics and other forms of evidence that, they said, grounded their arguments. There was, however, no engaged process by which competing arguments and competing forms of evidence were tested and evaluated. At the end of the debate, none of the key actors had changed their position due to the presentation of evidence that challenged their starting position. As noted above, this is unsurprising. The key actors in the debate represent well-established blocs of ideology and interest. This policy dispute problematises any belief that public policy is developed in a “rational comprehensive” way that provides (or that can provide) “unequivocal, value-free answers” to policy questions (Gottweis, 2007, p. 237; Simon, 1976).

It is unlikely that policy disputes in the ER field will ever be determined on the basis of which side has the strongest evidence on their side. There is the more fundamental question of what it is that a given society decides to value and promote. What would constitute success in ER policy? What are “we”

---

<sup>3</sup> The protectNZjobs.co.nz website has since been deleted, though many of the image- and video-based content remains online.

trying to achieve, and how is “we” to be defined? Answers to these question will determine which forms of evidence (and, therefore, what measures and metrics) are seen as important. The analysis presented here demonstrates that the two sides disagree fundamentally about the appropriate measures for success. Opponents of the Bill privileged measures of firm competitiveness and economic activity, arguing that success on these measures would generate benefits for all, including (and especially) workers. Supporters of the Bill privileged measures that focussed on the experience of workers (wage growth across the distribution, and job satisfaction, for example) arguing that success on these measures would enhance the long-term performance of firms and the overall economy.

These differences derive from a fundamental disagreement over power asymmetries in the employment relationship, and over the figure of the worker. Are workers to be seen as commodities in the labour market whose value is to be determined by the price that willing buyers are prepared to pay; as citizens possessed of a fundamental equality and certain fundamental rights; or as partners in the long-term productive efficiency of firms? It is argued that the existing process by which ER policy is made (a process where competing actors, seeking to persuade a time-poor public, are incentivised to use emotive language and already-existing tropes, and to ignore evidence that challenges their position) is ill-suited to the task of resolving these difficult questions. Given the entrenched and polarised positions that mark this policy field, the article suggests that ER policy could benefit from a system where these fundamental differences could be surfaced and addressed in a deliberative process.

## References

- Acharya, V., Baghai, R., & Subramanian, K. (2010). *Labor laws and Innovation* (NBER working paper 16484). Retrieved from the National Bureau of Economic Research website: <https://www.nber.org/papers/w16484.pdf>
- Annisette, M., & Richardson, A. J. (2011). Justification and accounting: applying sociology of worth to accounting research. *Accounting, Auditing and Accountability Journal*, 24(2), 229-249.
- Ardern, J. (2017, November 8). *Speech from the Throne*. Retrieved from <https://www.beehive.govt.nz/speech/speech-throne-2017>
- Berlin, I. (2017). Two concepts of liberty. In D. Miller (ed), *Liberty Reader* (pp. 44-57). Routledge.
- Boltanski, L., & Thévenot, L. (2006), *On Justification: Economies of Worth* (C. Porter, Trans.), Princeton University Press: Princeton.
- Bourdieu, P. (2003). *Firing back: Against the tyranny of the market 2* (Vol. 2). London: Verso.
- Brosnan, P., & Walsh, P. (1996). Plus Ca Change...: The Employment Contracts Act and Non-standard Employment in New Zealand, 1991-1995. *Labour, Employment and Work in New Zealand*, 157-166.
- Brown, W. (2015). *Undoing the Demos: Neoliberalism's Stealth Revolution*: MIT Press.
- Business NZ. (2018a). *Employment Relations Amendment Bill Closing*. Retrieved online <http://business.scoop.co.nz/2018/03/29/employment-relations-amendment-bill-closing/>
- Business NZ. (2018b). *Submission by Business NZ to the Education and Workforce Committee on the ERAB*. Wellington, New Zealand: Author.



- Campbell, K. (2018, June 25). 'Them' and 'us' no good for industrial relations. *New Zealand Herald*. Retrieved from [https://www.nzherald.co.nz/business/news/article.cfm?c\\_id=3&objectid=12077007](https://www.nzherald.co.nz/business/news/article.cfm?c_id=3&objectid=12077007)
- CECC [Canterbury Employers' Chamber of Commerce]. (2018). *Employment Relations Amendment Bill 2018 – Submission by Canterbury Employers' Chamber of Commerce Inc*. Retrieved from [https://www.cecc.org.nz/files/ADVOCACY/The\\_Chamber\\_Submission\\_ERA\\_Bill\\_March\\_2018.pdf](https://www.cecc.org.nz/files/ADVOCACY/The_Chamber_Submission_ERA_Bill_March_2018.pdf)
- Cloutier, C., & Langley, A. (2013). The Logic of Institutional Logics Insights From French Pragmatist Sociology, *Journal of Management Inquiry*, 22(4), 360-380.
- EMA [Employers and Manufacturers Association] (2018). *Submission by EMA to the Education and Workforce Committee on the DRAFT ERAB*. Retrieved from <https://www.ema.co.nz/resources/EMA%20Reports%20and%20Documents/Advocacy/Submissions/2018/EMA%20Submission%20Triangular%20Bill%202018.pdf>
- Employment New Zealand (2018). *Employment Relations Amendment Bill 2018*. Retrieved from <https://www.employment.govt.nz/about/employment-law/employment-relations-amendment-act-2018/>
- English, B. (2018). *Protect NZ Jobs*. Retrieved from <https://www.facebook.com/watch/?v=10156238050933982>
- Fairclough, N. (1992). *Discourse and Social Change*. Cambridge, Mass.: Polity Press.
- Farrell, D. M., O'Malley, E., & Suiter, J. (2013). Deliberative democracy in action Irish-style: The 2011 We The Citizens pilot citizens' assembly. *Irish Political Studies*, 28(1), 99-113.
- FIRST Union. (2018). *Submission of FIRST Union on the Employment Relations Amendment Bill 2018*. Auckland, New Zealand: Author.
- Fischer, F. (2009). *Democracy and Expertise: Reorienting Policy Inquiry*. New York, NY: Oxford University Press.
- Foster, B., Murrie, J., & Laird, I. (2009). It takes two to tango: Evidence of a decline in institutional industrial relations in New Zealand. *Employee Relations*, 31(5), 503-514.
- Foster, B., Rasmussen, E., & Coetzee, D. (2013). Ideology versus reality: New Zealand employer attitudes to legislative change of employment relations, *New Zealand Journal of Employment Relations*, 37(3), 50-64.
- Gottweiss, H. (2007). Rhetoric in Policy Making: Between Logos, Ethos and Pathos. In F. Fischer, G. Miller, & M. Sidney (Eds.), *Handbook of Public Policy Analysis: Theory, Politics, and Methods* (237-250). London: CRC Press.
- Hosking, M. (2018, November 28). Winston Peters to the rescue on Labour's ropey union law. *New Zealand Herald*. Retrieved from [https://www.nzherald.co.nz/nz/news/article.cfm?c\\_id=1&objectid=12167387](https://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=12167387)

- Hosking, M. (2019, January 29). This Government's about to muck up workplace laws. *New Zealand Herald*. Retrieved from [https://www.nzherald.co.nz/nz/news/article.cfm?c\\_id=1&objectid=12197694](https://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=12197694)
- Kelsey, J. (1997). *The New Zealand Experiment: A World Model for Structural Adjustment?* Auckland University Press, Auckland.
- Labour Party of New Zealand. (2017a). *Backing fair pay and conditions*. Retrieved from <https://www.labour.org.nz/workplacerelements>
- Labour Party of New Zealand. (2017b). *Workplace Relations Policy*. Retrieved from [https://www.labour.org.nz/workplace\\_relations\\_policy](https://www.labour.org.nz/workplace_relations_policy)
- McKelvie, I. (2018, 27 September). Fighting bill tooth and nail. *Whanganui Chronicle*. Retrieved from [https://www.nzherald.co.nz/wanganui-chronicle/opinion/news/article.cfm?c\\_id=1503423&objectid=12132374](https://www.nzherald.co.nz/wanganui-chronicle/opinion/news/article.cfm?c_id=1503423&objectid=12132374)
- Mackenzie, D. (2018, March 28). Be heard on employment Bill – EMA. *Otago Daily Times*. Retrieved from <https://www.odt.co.nz/business/be-heard-employment-bill-ema>
- MBIE [Ministry of Business, Innovation and Employment]. (2017). *Briefing for the Incoming Minister for Workplace Relations and Safety*. New Zealand Government: Wellington.
- Mitchell, C. (2018). New Zealand First celebrates passing of employment relations bill. Retrieved from New Zealand First website: <https://www.nzfirst.org.nz/new-zealand-first-celebrates-passing-of-employment-relations-bill>
- National Party of New Zealand. (2018). *Submission on the Employment Relations Amendment Bill*. Wellington: Author.
- NZCTU [New Zealand Council of Trade Unions]. (2016). *Submission of the New Zealand Council of Trade Unions Te Kauae Kaimahi to the Labour Party Future of Work Commission on the Future of Work*. Retrieved from <http://www.union.org.nz/wp-content/uploads/2017/10/160216-The-Future-of-Work.pdf>
- NZCTU [New Zealand Council of Trade Unions]. (2018a). *Submission of the New Zealand Council of Trade Unions Te Kauae Kaimahi to the Education and Workforce Committee on the ERAB, Part I*. Retrieved from <https://www.union.org.nz/wp-content/uploads/2018/04/NZCTU-Employment-Relations-Amendment-Bill-2018-Final.pdf>
- NZCTU [New Zealand Council of Trade Unions]. (2018b). *Making work better together: Stories from working people about how employment law can be simpler, safer and fairer for New Zealanders*. Retrieved from [https://www.parliament.nz/resource/en-NZ/52SCEW\\_EVI\\_76257\\_2373/377f58fb366e9c428a333dc0c8e20181ef9cf61d](https://www.parliament.nz/resource/en-NZ/52SCEW_EVI_76257_2373/377f58fb366e9c428a333dc0c8e20181ef9cf61d)
- New Zealand Legislation. (n.d.). *Employment Relations Act (2000)*. Retrieved from <http://www.legislation.govt.nz/act/public/2000/0024/latest/DLM58323.html>
- New Zealand Police Association. (2018). *Submission of the New Zealand Police Association on the Employment Relations Amendment Bill*. Wellington, New Zealand: Author.

- NZPD [New Zealand Parliamentary Debates]. (2018, February 1). Employment Relations Amendment Bill - First Reading (Hansard Debates). Retrieved from [https://www.parliament.nz/en/pb/hansard-debates/rhr/combined/HansD\\_20180201\\_20180201](https://www.parliament.nz/en/pb/hansard-debates/rhr/combined/HansD_20180201_20180201)
- NZPD [New Zealand Parliamentary Debates]. (2018, November 27). Employment Relations Amendment Bill - Second Reading (Hansard Debates). Retrieved from [https://www.parliament.nz/en/pb/hansard-debates/rhr/combined/HansDeb\\_20181127\\_20181127\\_28](https://www.parliament.nz/en/pb/hansard-debates/rhr/combined/HansDeb_20181127_20181127_28)
- Nicholls, V. (2018, September 5). Many reasons to say no to Mecas. *Otago Daily Times*. Retrieved from <https://www.odt.co.nz/opinion/many-reasons-say-no-mecas>
- OECD. (2008). OECD indicators of employment protection. Retrieved from <http://www.oecd.org/employment/emp/oecdindicatorsofemploymentprotection.htm>
- OECD (2017), *Back to Work: New Zealand: Improving the Re-employment Prospects of Displaced Workers*, Back to Work, OECD Publishing, Paris, <https://doi.org/10.1787/9789264264434-en>
- Patriotta, G., Gond, J. P., & Schultz, F. (2011). Maintaining legitimacy: Controversies, orders of worth, and public justifications. *Journal of Management Studies*, 48(8),1804-1836.
- Rasmussen, E. (2009). *Employment relations in New Zealand* (2<sup>nd</sup> ed). Melbourne: Pearson.
- Rasmussen, E., Foster, B., & Farr, D. (2016). The battle over employers' demand for 'more flexibility': Attitudes of New Zealand employers. *Employee Relations*, 38(6), 886-906.
- Robertson, G. (2017, July 4). *Speech by Grant Robertson: The Future of Work and Labour's Economic Vision*. Retrieved from [https://www.labour.org.nz/speech\\_by\\_grant\\_robertson\\_the\\_future\\_of\\_work\\_and\\_labour\\_s\\_economic\\_vision](https://www.labour.org.nz/speech_by_grant_robertson_the_future_of_work_and_labour_s_economic_vision)
- Salmon, Kinley (2015). Education and Training –Lessons from Denmark (Background paper for the Future of Work Commission). Retrieved from <https://pdfs.semanticscholar.org/99da/9d730860306f384f9bc6e80018b4292ad0ef.pdf>
- Sikka, P. (2015). The hand of accounting and accountancy firms in deepening income and wealth inequalities and the economic crisis: Some evidence. *Critical Perspectives on Accounting*, 30, 46-62.
- Simon, H. A. (1976). *Administrative behavior: a study of decision-making [processes in administrative organizations]* (3<sup>rd</sup> ed.). New York: Free Press.
- Simpson, S. (2018). *Employment Relations Amendment bad for NZ*. Retrieved from National Party website: [https://www.national.org.nz/employment\\_relations\\_amendment\\_bad\\_for\\_nz](https://www.national.org.nz/employment_relations_amendment_bad_for_nz)
- Skilling, P. (2018). Why can't we get what we want? Inequality and the early discursive practice of the sixth Labour government. *Kōtuitui: New Zealand Journal of Social Sciences Online*, 13(2), 213-225.
- Skilling, P., & Molineaux, J. (2017). New Zealand's minor parties and ER policy after 2017. *New Zealand Journal of Employment Relations*, 42(2), 110-128.

- Smith, A. (1999). *The Wealth of Nations: Books IV-V*. In A. Skinner (Ed.), *Book IV*. London: Penguin Classics.
- Smith, G., & Wales, C. (2000). Citizens' juries and deliberative democracy. *Political Studies*, 48(1), 51-65.
- Thévenot, L., Moody, M., & Lafaye, C. (2000). Forms of Valuing Nature: Arguments and Modes of Justification in French and American Environmental Disputes. In M. Lamont & L. Thévenot (Eds.), *Rethinking Comparative Cultural Sociology: Repertoires of Evaluation in France and the United States* (pp. 229-272). Cambridge, U.K.: Cambridge University Press.
- Upston, L. (2018). National launches the 'protect NZ jobs' campaign. Retrieved from [https://louiseupston.national.org.nz/national\\_launches\\_the\\_protect\\_nz\\_jobs\\_campaign](https://louiseupston.national.org.nz/national_launches_the_protect_nz_jobs_campaign)
- Vamvakidis, A., Vitek, F., Nkusu, M., Darius, R., Thomas, A. H. & Vidon, E. (2010). *Cross-Cutting Themes in Employment Experiences during the Crisis* (Staff Position Note No. 2010/18). Retrieved from <https://www.imf.org/en/Publications/IMF-Staff-Position-Notes/Issues/2016/12/31/Cross-Cutting-Themes-in-Employment-Experiences-during-the-Crisis-24270>
- Wagner, P. (1999). After justification: Repertoires of evaluation and the sociology of modernity. *European Journal of Social Theory*, 2(3), 341-357.
- Warren, M. E., & Pearse, H. (Eds.). (2008). *Designing deliberative democracy: The British Columbia citizens' assembly*. Cambridge: Cambridge University Press.