

Industrial & Labor Relations Review

Volume 59, Issue 3

2006

Article 83

”Moments Are the Elements of Profit”: Overtime and the Deregulation of Working Hours under the Fair Labor Standards Act

Marc Linder*

*,

mal sector *and* the informal sector via composition effects. This is important in assessing the results obtained by Jaime Saavedra and Máximo Torero and by Ricardo de Barros and Carlos Corseuil, who draw on reforms of employment protection in Peru and Brazil, respectively.

The country chapters provide valuable insights not only into the effects of employment protection, but also into the wage and employment effects of minimum wage legislation. These findings are particularly relevant because in Latin America, unlike in several OECD countries, the Kaitz index (the ratio of the minimum wage to the median wage) is fairly large, pointing to a potentially stronger effect of minimum wages on the wage distribution. As documented in particular by William Maloney and Jairo Mendez for eight countries (Argentina, Bolivia, Brazil, Chile, Colombia, Honduras, Mexico, and Uruguay), minimum wages not only generate spikes at the low end of the wage distribution, but also impart a rightward shift to parts of the wage distribution that are initially well above the minimum wage. The relevance of these spillover effects suggests that minimum wages can play a more important role than is generally posited by the theoretical literature. For example, minimum wages may strengthen the bargaining power of workers or indirectly increase social security contributions and taxes (as some benefits are indexed to the minimum wage). Maloney and Mendez's recognition of these effects is particularly notable given that most of the literature focuses just on local effects of minimum wages in the so-called "low-pay" segment. Surprisingly enough, the authors also find that minimum wages affect wages in the informal sector. This may be explained by measurement issues (it is notoriously difficult to identify informal sector workers using survey data) or by a "lighthouse effect" whereby minimum wages in the formal sector play a pivotal role in wage setting in the informal sector as well.

Overall, this volume suggests that we can learn much from Latin American and Caribbean countries' experiences with reforms of labor market institutions. Beyond providing answers, it raises important issues relevant not only for the region, but also for OECD countries. I hope it is widely read. I also hope it generates more research. Not only does the book make a convincing case that the effects of these institutions in Latin American countries are well worth investigating, but also it provides intriguing examples of the analytical uses to which imaginative researchers can put the

region's sources of firm- and worker-level data and the several "natural experiments" (institutional reforms) of its history.

Tito Boeri

Professor of Economics at
Bocconi University-IGIER, Milan

Economic and Social Security and Substandard Working Conditions

Three works by Marc Linder, all published by Fanpìhuà Press, Iowa City, Iowa: "*Moments Are the Elements of Profit*": *Overtime and the Deregulation of Working Hours under the Fair Labor Standards Act*. 2000. xvii, 524 pp. ISBN 09-6738-9933, \$15.00 (paper). *The Autocratically Flexible Workplace: A History of Overtime Regulation in the United States*. 2002. viii, 532 pp. ISBN 09-6738-9992, \$10.00 (paper). "*Time and a Half's the American Way*": *A History of the Exclusion of White-Collar Workers from Overtime Regulation, 1868–2004*. 2004. 1,342 pp. ISBN 09-7195-9412, \$20.00 (paper).

For more than 100 years prior to the passage of the Fair Labor Standards Act (FLSA) in 1938, the United States' labor movement had struggled to obtain both the 8-hour day and the 40-hour week. The Act somewhat protected each of these objectives of labor, in part by using the legislative stick of overtime pay (1-1/2 hours of pay for each hour worked over 40 per work week). In the years since the FLSA's passage, however, U.S. workers, unionized or not, have watched this workplace hope and protection slip away. "Just in time" inventory, globalized markets, temporary workers, and "free" trade notions have put the United States in fierce economic competition with other nations and left American workers laboring longer than their counterparts in all other advanced capitalist countries. It is no longer uncommon for American sociologists to tell us that any leisure time we may have is in steady decline. (In the early 1990s, Julia Schor's *Overworked American: The Unexpected Decline of Leisure* pointed this out; and as Linder discusses [*The Autocratically Flexible Workplace*, p. 7], more recent research indicates that in 2000 the average U.S. employee logged 1,979 hours at work.)

Efforts to alter or amend the substance of the FLSA, often to water down its protections, are

not new. Recently, the Bush Administration successfully amended certain of the FLSA's rules so as to offer overtime opportunities to many who were previously ineligible, but also with the effect of exempting from the Act's overtime protections millions of America's hardest-working mid-level managers who truly need the statute's overtime safeguards.

Even as the five-year political fight over these recent rules changes was taking place in Washington, Marc Linder wrote three works powerfully challenging various ideas, long accepted by both the popular press and many experts and intellectuals, about the FLSA and the value of overtime as a positive labor market regulator for America's workers. In essence, he argues that requiring employers to pay overtime for hours worked beyond 40 in a week is no sanction at all, and may do more harm than good. Linder believes that the FLSA approach simply permits employers to work their workers harder without offering employment to the under-employed and unemployed. Debate about the employment ramifications of such laws was, in fact, central to early political battles—battles that seem to have been forgotten.

Linder's three books written over the five-year period, *Moments Are the Elements of Profit*, *The Autocratically Flexible Workplace*, and "*Time and a Half's the American Way*", are so comprehensive that they equally assist the specialized interests of the labor lawyer, labor market economist, and labor historian/archivist. The first two volumes, although they overlap to some extent and even share (with modifications) some of the same chapters, are easily able to stand on their own: *Moments* highlights the historic background behind and legal explanations for the workplace aberrations of "working off the clock" and other forms of involuntary overtime, whereas *Autocratically* offers fascinating and not very well known early twentieth century stories of how territorial Alaska, and the states of Pennsylvania and Montana, made efforts to *prohibit any overtime* as a way to ensure the 40-hour week.

Also in *Moments* and *Autocratically* Linder chronicles the rise of premium pay as the legislative solution to workers being forced to work too much. He details how this "construct" became the legislative and workplace standard or remedy for overtime hours worked. Linder regretfully recounts union and legislative failure to prohibit or criminalize employers' imposition of excessive work schedules on employees. The result of the premium pay solution, he argues, is that workers "choose" to work an enormous amount of overtime in order to make

a middle-class income, and might even steer clear of unionization because they fear contractual restrictions on their ability to work overtime.

Linder's criticisms of employers, organized labor, and mistaken intellectuals, plentiful in the earlier volumes, sharpen in *Time and a Half's* focused explanations of why and how white-collar managers' exemption from FLSA overtime protection has hurt them economically. Throughout this book, Linder makes clear—sometimes by suggestion or implication, sometimes explicitly—his belief that organized labor often acquiesced in the creation of the statutory and rule-made exemptions that excluded America's mid-level managers from the FLSA's overtime protections. Linder documents the origin and continuation of this political mistake in his provocative exegesis of labor's rearguard role in the national legislative debates.

Still, Linder's work here is not primarily to assign blame, but rather to help the archivist, historian, or economist understand how the ideological error of excluding white-collar workers originated and continued. Gradually, learning from the great many surprising anecdotes the author shares with us, the reader arrives at the understanding that this group of working Americans, because they were clearly identified with neither labor nor capital, lacked the lobbying muscle to be real players in shaping the legislation's protections.

Much of *Autocratically* details various legislative struggles that yielded state statutes or state constitutional provisos (or both) that, initially, better protected a worker's 8-hour day or 40-hour week than the FLSA did. Several hundred pages of this book detail efforts by workers in the territory of Alaska, and the states of Pennsylvania and Montana, to obtain these important goals before President Roosevelt signed into effect the compromised FLSA. Linder captures, in a number of these battles, the day-by-day maturation (or unraveling) of the legislative processes. These descriptions were compelling to me, but I grant that they may be tedious to non-labor historians.

In all three books we learn how, early in the struggle for basic worker rights, domestic, agricultural, and white-collar workers were excluded from protection in many state (and then federal) jurisdictions. Linder's descriptions of the ideological struggles over the appropriate economic configuration of overtime, both pre- and post-FLSA, will surprise many sociologists and progressive labor economists and, perhaps, stimulate some of them to take stock anew.

Those involved in the study or application of law in the workplace will also find these books valuable and provocative. In his treatment of Supreme Court decisions interpreting the FLSA, Linder deploys penetrating legal analysis and skillfully interwoven arguments for his belief that the premium pay statutory sanction has been pernicious. He argues throughout for legislation banning or criminalizing employer-imposed overtime. In addition, he tells us fascinating legal stories suggestive of “what could have been.” For example, a remarkably progressive Nebraska law that required, in overtime situations, the doubling of the previous hour’s pay, then the doubling of the first overtime hour’s wage, and so on, was declared unconstitutional in an 1894 case due to its “paternalistic interference with contracts.”

Finally, since *Autocratically* and, to a lesser degree, *Time and a Half’s* provide us with considerable documentation of how this problem is dealt with both in the Canadian province of Ontario and in the European Union, the comparative scholars among us also will value Linder’s scholarship. He reminds us that EU worker representatives have been more successful than we have been in preventing employers from imposing extensive mandatory overtime, with some countries imposing monthly or annual ceilings. Still, he cautions that the European Union’s regulation of overtime is more timid than mandatory, and, not surprisingly, the United Kingdom’s overtime regulations are more like the United States’ than are those of any nation on the Continent.

A fair criticism of these books is that they are at times repetitive, duplicative, and too detail-laden. It is easy to avoid these problems to a large extent, however, by pairing *Time and a Half’s* with either of the other two volumes, rather than both. The books are sold through a low-price publisher, and all three together cost approximately \$60.

The books’ value far outweighs their drawbacks. With entities as disparate as Merrill-Lynch (white-collar stockbrokers), Nassau County (correctional officers), and Wal-Mart (sales personnel and contractors) all facing major overtime violation charges and penalties in the past 12 months, understanding the FLSA’s history and its application to today’s workplaces is critical to the work of a wide range of academics and practitioners.

These three volumes compel the careful student of labor history and workplace rights to rethink what is the precise value and import of overtime in U.S. workplaces. Policy-makers,

labor lawyers, and union bargainers are among the many who would benefit from such a reconceptualization. I believe these works are of significant intellectual and practical value. They remind us, again, of the real limitations of even America’s most progressive worker protection laws.

Lee Adler

Senior Extension Associate
School of Industrial and Labor Relations
Cornell University

Welfare-to-Work: New Labour and the US Experience. By Andreas Cebulla, Karl Ashworth, David Greenberg, and Robert Walker. Aldershot, England, and Burlington, Vt.: Ashgate, 2005. viii, 165 pp. ISBN 0-7546-3775-1, \$89.95 (cloth).

For the many readers who do not know much about the British New Deal, *Welfare-to-Work* will be of value. This welfare program, the BND, introduced in 1997, is the child of the British New Labour party and has nothing in common with the American New Deal program of the 1930s except the name. The BND program employs elements of welfare-to-work programs that have been tested in various U.S. states. These adopted program elements, the history of the BND program, the political background, and comparisons to U.S. programs are the subjects of *Welfare-to-Work*. (The experience in Europe outside Britain is dismissed as non-comparable, as the continental European concept of social insurance differs markedly from that of the United Kingdom). The two principal foci of the book are a history of the BND and an evaluation of similar programs.

The reader should note that much of the current research findings on welfare-to-work are summarized in an Eric Digest report by Kimberly Peterson, “Welfare-to-Work Programs: Strategies for Success”; in Rebecca Blank’s *Journal of Economic Literature* article, “Evaluating Welfare Reform in the United States”; in a Joyce Foundation report, “Welfare to Work: What Have We Learned?”; and in a Manpower Demonstration Research Corporation report by Gayle Hamilton, “Moving People from Welfare to Work: Lessons from the National Evaluation of Welfare-to-Work Strategies.” All four of those works, however—which we hereafter refer to collectively as PBJH—were published in 2002, and are therefore already somewhat dated. (The