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Inequality of Luck: Accident Compensation in New Zealand and Australia

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The romance and liberating effects of the rise of the modern transport and industrial systems have attracted more attention than how accident victims, and their dependents, coped. Every modern society has a system of dealing with "blood on the bitumen" and "coming a gutser" at work or elsewhere but New Zealand is conspicuous in developing a no-fault comprehensive accident compensation system. About the same time, Australia had draft legislation before its legislature that included sickness too. Only New Zealand, however, in 1974, overturned common law and other remedies to institute a radical law reform over "accidents." This paper considers the failure of policy transfer between New Zealand and Australia on this issue. More generally there has been relatively little historiographical interest in social experiments "down under," or the expansion in the late twentieth century welfare states, despite the current public policy debate over an Australian disability scheme. It is argued that such expansions of the welfare state, such as no fault accident compensation, are awkward developments for the dominant neoliberal model of the state undermining welfare.

With the Australian Labor government implementing its National Disability Insurance Scheme (2012), which will provide some people with disabilities care and support over their lifetimes, it is timely to consider earlier attempts, and failures, to implement wide-ranging compensation schemes. Most notably, Gough Whitlam's government attempted a national scheme in 1975 that followed the implementation in 1974 of the no-fault accident compensation scheme in New Zealand. In this article I consider the failure of antipodean policy transfer over this issue in the 1970s. I also consider why labour historians have neglected the topic of late twentieth century welfare state expansion of accident compensation.

Kinds of Compensation for Death and Injury

Injury and sickness are unlucky occurrences; impairment and death are as contingent as any human experience with far-reaching repercussions for the injured and their dependents. There has been a growing literature on "the people's" diseases, infections and mortality implicated in the modern demographic transition.[1] Modern methods of killing and injuring have attracted attention for the sheer numbers involved: the carnage associated with the two twentieth century world wars was most concentrated and visible.[2] Australasia had relatively high casualty rates of its armed forces during

* The author would like to thank the two anonymous referees of *Labour History* for their comments and suggestions.

1. F. B. Smith, *The People's Health, 1830–1910* (Canberra: Australian National University Press, 1979). Linda Bryder, *Below the Magic Mountain: A Social History of Tuberculosis in Twentieth-Century Britain* (Oxford: Clarendon Press, 1988). A. Hardy, *The Epidemic Streets: Infectious Disease and the Rise of Preventive Medicine, 1856–1900* (Oxford: Clarendon Press, 1993). G. Jones, *"Captain of All these Men of Death": The History of Tuberculosis in Nineteenth and Twentieth Century Ireland* (Amsterdam/New York: Rodopi, 2001).
2. George L. Mosse, *Fallen Soldiers: Reshaping the Memory of the World Wars* (Oxford: Oxford University

the wars: over 100,000 Australians and 30,000 New Zealanders were killed in the First and Second World Wars.[3] There has been some criticism, nevertheless, about the degree of emphasis of the wars in Australasian historiography.[4] By contrast many more Australasians were injured, incapacitated and killed in peacetime in road and workplace accidents than in the "overseas" wars in the twentieth century.[5] Production and locomotion deaths and injuries were diffuse in distribution, however, and their meaning has been rarely discussed in our historiography.[6]

Social policies on compensation for different kinds of death and injury have had separate histories, too. By World War I widows and injured soldiers were automatically compensated for death and injury.[7] Soldier welfare was a foundation stone of state welfare and has been relatively well surveyed.[8] Compensation for industrial and transport death and injury was neither as automatic nor comprehensive and has been underplayed in the analysis of the developing welfare states. While no modern society ignores the plight of those injured, incapacitated and killed by its production and transport systems, the public policy response, like the deaths and injuries themselves, however, has been mostly fragmented. Demands for systematic compensation for industrial and domestic injuries and deaths crested in the 1970s at the same time that numbers of work related and road accidents generally peaked in the Antipodes. Meanwhile the complicated three-part system of assistance for transport and industrial "accidents" victims, which had

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Press, 1990), 3–4. Joy Damousi, *The Labor of Loss: Mourning, Memory and Wartime Bereavement in Australia* (Cambridge: Cambridge University Press, 1999). Pat Jalland, *Changing Ways of Death in Twentieth Century Australia* (Sydney: University of New South Wales Press, 2006).

3. Patsy Adam-Smith, *The ANZACS* (West Melbourne: Thomas Nelson, 1978). During World War I for instance, 60 per cent of New Zealand's service personnel were casualties, killed or died of wounds; 65 per cent of the Australians who embarked were casualties, which was the highest rate of the allies in the war.
4. Marilyn Lake and Henry Reynolds, with Mark McKenna and Joy Damousi, *What's Wrong with Anzac?: The Militarisation of Australian History* (Sydney: New South, 2010), argue that Anzac has, unfortunately, become a sacred, untouchable element of the nation.
5. Records for road crash deaths in New Zealand commenced in 1921 and in Australia in 1925. There were 32,850 road deaths in New Zealand from 1921 to 2000 and 166,000 in Australia from 1925 to 2000. Ministry of Transport/Te Manatu Waka, *Historical Deaths since 1921* (Wellington: Ministry of Transport, 2011). Bureau of Infrastructure, Transport and Regional Economy, *Road Deaths in Australia 1925–2008* (Canberra: Australia Government, Department of Infrastructure, Transport, Regional Development and Local Government, 2010). It is more difficult to establish total figures for work-related death but over 2,000 Australians died from work-related causes in the 1990s. K. Purse, "The Evolution of Workers' Compensation Policy in Australia," *Health Sociology Review* 14, no. 1 (August 2005): 8–20.
6. An exception is I. B. Campbell, *Compensation for Personal Injury in New Zealand: Its Rise and Fall* (Auckland: Auckland University Press, 1996), 15. Most of the literature is about the integral nature of cars to modernity and urban life, see J. W. Knott, "Speed, Modernity and the Motor Car: The Making of the 1909 Motor Traffic Act in New South Wales," *Australian Historical Studies* 26, no. 103 (October, 1994): 221–41; and J. W. Knott, "The 'Conquering Car': Technology, Symbolism and the Motorisation of Australia before World War II," *Australian Historical Studies* 31, no. 114 (April 2000): 1–26. Graeme Davison, *Car Wars: How the Car Won our Hearts and Conquered our Cities* (Crows Nest: Allen and Unwin, 2004). S. Redshaw, *In the Company of Cars: Driving as a Social and Cultural Practice* (Aldershot: Ashgate, 2008). The exceptions include: Purse, "The Evolution of Workers' Compensation Policy in Australia"; P. Cowan, "From Exploitation to Innovation: The Development of Workers' Compensation Legislation in Queensland," *Labour History*, no. 73 (November 1997): 93–104; R. Webb, "Appreciable Injury to Health: Confronting Health and Safety in Australia's Workplaces During the First Half of the Twentieth Century," *The International Journal of the Humanities* 6, no. 10 (2009): 87–96. Humphrey McQueen, *Framework of Flesh: Builders' Labourers Battle for Health and Safety* (Canberra: Ginninderra Press, 2009).
7. See Melanie Nolan, "Widows and Grass Widows," in *Breadwinning: New Zealand Women and the State* (Christchurch: Canterbury University Press, 2000), 69–102.
8. Theda Skcopol, *Protecting Soldiers and Mothers: The Political Origins of Social Policy in the United States* (Cambridge: Belknap Press of Harvard University Press, 1992).

operated in the British world for most of the twentieth century, simply continued. Common law recourse in the courts – which developed in Britain from the time of the Industrial Revolution in the nineteenth century – was based on proving an employer's negligence and left large numbers unable to find someone to blame and, therefore, unaided by this system.[9] Workers' compensation legislation was enacted in Britain in 1897 with New Zealand and South Australia following suit in 1900, and acts progressively throughout Australian states and at the federal level.[10] Workers' compensation established that, regardless of fault, employers had to accept some part of the losses their workers suffered from injuries and accidents in their workplaces. While it avoided contention and delay, this system limited the duration and levels of compensation. Social welfare provided no compensation to victims or deterrence to inadequate workplace process but provided a basic subsistence, sickness or invalid benefit, usually conditional on victims satisfying a means test. This state provision, to a large extent, overpowered earlier friendly society and self-reliant insurance policies that had included sickness provision. These three kinds of compensation – common law, workers' compensation and state benefits – were variously funded by taxation and insurance premiums; and the same disabilities and needs could attract different levels of assistance.

Alternatives to this range of remedies, comprehensive no fault accident compensation or comprehensive disability benefits, were suggested. A number of major studies in the twentieth century proposed no-fault compensation legislation. Four reviews in three parts of the British world stand out for providing a powerful critique of the operation of the common law and other remedies. These were chaired by: William Ralph Meredith in Canada, 1910–13; William Beveridge in the UK 1941–42; and Arthur (Owen) Woodhouse both in New Zealand, 1966–67, and, also, in Australia in 1972–74.[11] Each commission was itself a major international comparative project.[12] Focusing on workers' compensation, Meredith recommended a

9. P. W. J. Bartrip, *Workmen's Compensation and Twentieth Century Britain: Law, History and Social Policy* (Aldershot: Gower Publishing, 1987).

10. South Australia, *Workmen's Compensation Act 1900*; Western Australia, *Workers' Compensation Act 1902*; New South Wales, *Workmen's Compensation Act 1910*; Tasmania, *Workers' Compensation Act 1910*; Victoria, *Workers' Compensation Act 1914*; Queensland, *Workers' Compensation Act 1905* and *Workers' Compensation Act 1916*. The Commonwealth introduced the *Commonwealth Workmen's Compensation Act 1912*; and ACT introduced the *Workmen's Compensation Ordinance 1951*. For a full account, see Safe Work Australia, *Comparison of Workers' Compensation Arrangements in Australia and New Zealand* (Canberra: Safe Work Australia, 2011).

11. Sir W. R. Meredith, CJO, Commissioner, *Final Report on Laws Relating to the Liability of Employers to Make Compensation to Their Employees for Injuries Received in the Course of Their Employment Which are in Force in Other Countries, and as to How Far Such Laws are Found to Work Satisfactorily* (Toronto: Government Printer, 1913), accessed March 2013, http://www.awcbc.org/common/assets/english%20pdf/meredith_report.pdf. *Social Insurance and Allied Services* (hereafter *Beveridge Report*), Cmd 6404 (London: HMSO, 1942). *Compensation for Personal Injury in New Zealand: Report of the Royal Commission of Inquiry* (hereafter *Woodhouse Report*), New Zealand Royal Commission of Inquiry into Compensation for Personal Injury (Wellington: Government Printer, 1967). *Compensation and Rehabilitation in Australia*, Report of the National Committee of Inquiry, July 1974 (Canberra: Australia Government Publishing Service, 1974).

12. Meredith "made enquiry as to the laws in force in the principal European countries, in the United States of America and the Provinces of Canada" and visited "Belgium, England, France and Germany." See Meredith, *Final Report*. As part of the 1967 Committee of Inquiry, Justice O. Woodhouse, H. L. Bockett and G. A. Parsons interviewed 167 people in Australia, Canada, Italy, Switzerland, Sweden, the UK, the USA; see "Persons interviewed During Commission's Visit Overseas," Appendix 2, *Compensation for Personal Injury in New Zealand*, 194–201. As part of the 1974 Committee of Inquiry, Justice Meares and the research staff interviewed 163 people from Austria, Canada, Federal Republic of Germany, Finland, Netherlands, New Zealand, Norway, Sweden, Switzerland, the UK and the USA, see "Persons Overseas Interviewed by Mr Justice C.

system providing security of payment to the victim based on a "no fault system" and collective liability administered by an independent agency.[13] Beveridge deliberately decided not to be constrained by past practice and advocated social security rather than social insurance. He argued for an universal social welfare scheme because the needs of the victim, widow or dependents were "the same, however the death" or the injury occurred, believing that a "complete solution" to accident compensation "to be found only in a completely unified scheme for disability without demarcation by the cause of disability." He went on to indicate why it could not be implemented in Britain in 1942, however, and recommended further inquiry.[14] In 1951 the International Labor Organisation also adopted a broader conception of universal social security, which was expressed in conventions to protect the income of accident victims.[15] By 1965 the Lord Chief Justice of England, Lord Parker Waddington, publicly supported Beveridge's "logic," proclaiming common law and its administration was "out of date, lacking in certainty, unfair in its incidence and capable of drastic improvement." It was a social problem, not a lawyers' problem, and he ventured to think it was "an urgent social problem of ever increasing extent."[16] So there was a far-reaching, and by the 1960s a well-rehearsed, critique of common law and piecemeal remedies to compensate for death and injury at work and on the roads.[17]

Woodhouse comprehensively reviewed the criticism of common law twice, in 1967 and 1974, arguing both times that "people falling victim to the hazards of modern living" should not battle along without assistance from the community, collectively, whatever the cause of their affliction and proposed a remedy based on no-fault.[18] Despite most contemporary and subsequent reviewers agreeing with Woodhouse's description that the common law system was "cumbersome, inefficient and capricious," proposals for no-fault compensation legislation were drafted and enacted only in one region, however, namely Australasia.[19]

Three questions suggest themselves: why did New Zealand implement this legislation; why did Australia not; and why is there so little historiography on these developments? These are significant questions because accident compensation is one of the conspicuous aspects of the Antipodes. Recently David Hackett Fischer compared New Zealand and the United States of America (USA) in this regard

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L. D. Meares or Members of the Research Staff," Appendix 3, *Compensation and Rehabilitation in Australia*, 338–44.

13. Meredith, *Final Report*. S. Hick, *Social Welfare in Canada: Understanding Income Security*, 2nd ed. (Toronto: Thompson Educational, 2007).
14. *Beveridge Report*. See also P. W. J. Bartrip, "Beveridge, Workmen's Compensation and the Alternative Remedy," *Journal of Social Policy* 14, no. 4 (October 1985): 491–511.
15. F. Pennings, *Between Soft and Hard Law: The Impact of International Social Security Standards on National Social Security Law* (The Hague: Kluwer Law International, 2006), 5–8.
16. Lord Parker of Waddington, "Compensation for Accidents on the Road: An Address," *Current Legal Problems* 18 (1965), cited by *Woodhouse Report*. See also P. Siegart, Chairman of the Committee of Justice Society, British Section of the International Commission of Jurists, *No Fault on the Roads* (London: Stevens, April 1974).
17. At the same time as *Woodhouse Report* similar schemes were proposed in the USA and UK; Marc A. Franklin, "Replacing the Negligence Lottery: Compensation and Selective Reimbursement," *Virginia Law Review* 53 (1967): 774–814. T. G. Ison, *The Forensic Lottery* (London: Staples Press, 1967), 54–67.
18. *Woodhouse Report*, 34. *Age*, February 28, 1973, from newspaper articles, ACTU Press Cuttings Workers Compensation 1971, 1973–74, N58/533 and N58/534, Noel Butlin Archives of Business and Labour, The Australian National University, ACT (NBABL).
19. See, for example, P. Bartrip, "No-Fault Compensation on the Roads in Twentieth Century Britain," *The Cambridge Law Journal* 69, no 2 (July 2010): 263–86.

– and more generally – to argue that these two open countries differed in regard to values or socio-cultural constellations: "fairness and natural justice" characterised New Zealand while the "dream of living free" operated in the USA.[20] New Zealand developed a culture of compensation and fairness in which its accident compensation system was conspicuous. In Fischer's view, history played out in an essentialist manner: the USA (Wisconsin excepted, perhaps) simply could not have adopted the New Zealand measure because it had developed a different culture. New Zealand's political leadership assiduously cultivated its foundational culture.

New Zealand, however, was very nearly not the only country that implemented a no fault accident compensation system. Indeed a draft act was being considered by the Australian Senate, which went further than the New Zealand scheme and would have compensated for all sickness and disability. The Prime Minister of Australia, Gough Whitlam, "borrowed" Woodhouse who had chaired the New Zealand enquiry to chair the Australian enquiry, too. The Australian Governor General, however, dismissed the Prime Minister and his government in 1974 and the bill was collateral damage to wider political developments. Given his career, it is significant that Whitlam later claimed that "[o]ne of the great disappointments" of his life was the "failure to institute a national rehabilitation and compensation scheme. On few political issues" he declared, "was I more consistent and more persistent."[21] When trying to explain the differing fate of accident compensation between New Zealand and Australia, however, and unlike between the USA and New Zealand, we are dealing with two countries that are said to share similar values of "fairness and natural justice."[22]

Foundational culture and political leadership might be necessary but not sufficient explanations for the antipodean differences in public policy. For one would be hard-pushed to find more intense co-ordination in social policy terms between two sovereign nations than over the introduction of accident compensation legislation in the 1970s between New Zealand and Australia. A number of historians have pointed to policy synchronisation and transfer across the Tasman Sea on a range of state experiments from the time of European settlement.[23] There are regional studies on the synchronisation within Australasia of suffrage, arbitration systems, equal pay and war memorials.[24] Unlike these other developments, however, New Zealand's accident compensation policies differed from Australia's.[25]

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20. David Hackett Fischer, *Fairness and Freedom: A History of Two Open Societies, New Zealand and the United States* (New York: Oxford University Press, 2012), 471–72.
21. Gough Whitlam, *The Whitlam Government 1972–1975* (Ringwood, Victoria: Penguin, 1985), 635.
22. Donald Horne, *The Avenue of the Fair Go: A Group Tour of Australian Political Thought* (Pymble, NSW: HarperCollins, 1997).
23. W. P. Reeves, *State Experiments in Australia and New Zealand* (London: Alexander Moring, 1902). S. Goldfinch and Philippa Mein Smith, "Compulsory Arbitration and the Australasian Model of State Development: Policy Transfer, Learning, and Innovation," *Journal of Policy History* 18, no. 4 (2006): 419–45. Francis Castles, *The Working Class and Welfare: Reflections on the Political Development of the Welfare State in Australia and New Zealand, 1890–1980*, (Wellington and Sydney: Allen & Unwin in association with Port Nicholson Press, 1985). Marian Sawer, *The Ethical State? Social Liberalism in Australia* (Melbourne: Melbourne University Press, 2003).
24. Stuart Macintyre and Richard Mitchell, eds, *Foundations of Arbitration: The Origins and Effects of State Compulsory Arbitration, 1890–1914* (Melbourne: Oxford University Press, 1989). Caroline Daley and Melanie Nolan, eds, *Suffrage and Beyond: International Feminist Perspectives* (Auckland & Annandale: Auckland University Press & Pluto Press, 1994). Melanie Nolan, "The State Changing its Mind? Australian and New Zealand Governments' Postwar Policy on Married Women's Paid Employment," in *Double Shift: Working Mothers and Social Change in Australia*, ed. Pat Grimshaw, John Murphy and Belinda Probert (Melbourne: Circa, Melbourne Publishing Group, 2005), 153–76.
25. Geoffrey Palmer, *Compensation for Incapacity: A Study of Law and Social Change in New Zealand and*

Historiographically, as well as in terms of social policy, New Zealand's accident compensation legislation is conspicuous. More generally, maintenance, let alone refurbishment, of welfare states in the late twentieth century has hardly been considered. Most studies concentrate on neoliberal reforms, the rollback of welfare and a shrinking state role. The story of the establishment and development of accident compensation "down under" cuts across a historiographical preoccupation and its implementation in hard economic times begs explanation.

Overturning Common Law Compensation for "Accidents" in New Zealand

Private, customary and charity mechanisms operated to compensate victims of "accidents" (or not) in the United Kingdom (UK) and in those countries with legal systems descendent from it but, increasingly during the nineteenth century, claims for compensation were tested in the courts. Coinciding with the UK Poor Law Amendment Act in 1834 and the "phasing-out of outdoor relief and giving loans," victims increasingly sought legal redress for disability resulting from "accidents." Common law compensation in regard to accidents developed as case law, or precedent based on the principle that there was "no liability without fault."[26] "Accident" is to some extent a misnomer, for common law was based on proving that someone else was to blame for a person's workplace disability. Tort was common law in civil cases (as opposed to criminal cases) involving compensating someone for a wrongful act, whether intentional or simply negligent, which resulted in a disability. Tort – civil liability and obligation rather than criminal liability – involved case law concomitant with compensation, restorative measures, corrective justice and deterrence.

Strict liability placed the victim in no worse position than before misfortune occurred, acted as a deterrence to future liability and also punished those at fault for causing, intentionally or otherwise, "accidents." Complications developed, however, around the simple principle that the common law legal system compensated those suffering disability. "Let-out" clauses developed. British judges effectively protected employers from a range of responsibilities by applying what has been described as an "unholy trinity" of defences:

i. A worker could not sue her or his employer if a fellow-worker caused the injury;
ii. If the worker's negligence in any way contributed to the injury, then this needed to be taken into account; and/or
iii. The principle of *volenti non fit injuria,* or the idea that there was a voluntary assumption of risk, in certain employments.[27]

While case law built up a complex precedent, legislation was introduced from the late nineteenth century to remedy the inadequacy of common law and to deal with the human carnage wrought by the Industrial Revolution and new transport systems. The German Chancellor, Otto von Bismarck's 1885 Imperial German Accident Insurance Law was enacted to undercut the appeal of the emerging Social Democratic

Australia (Wellington: Oxford University Press, 1979).
26. J. G. Fleming, *The Law of Torts,* 8th ed. (London: Law Books Co., 1992), 302–8.
27. *Ibid*., 7.

Party and, with the support of the business community, was an attempt to garner working-class support for the German Empire.[28] It was backed up with insurance, "Public Pension Insurance," which provided a stipend for workers incapacitated due to non-job related illnesses and social welfare, "Public Aid" provided a safety net for those who were never able to work due to disability. The condition was that workers could not also seek compensation through the courts, too. The English Workmen's Compensation Act of 1897 is regarded as a similar "Tory" response to undercut the Liberals' appeal to workers by reforming the employers' liability legislation from 1880. For whatever reason, by the turn of the century, 40 countries had some form of statutory protection for workers, including New Zealand and Australia.[29]

Dependents could recover some breadwinners' earnings under the English Acts 1854, the Fatal Accidents Act 1846 (Lord Campbell's Act). The Deaths by Accident Compensation Act 1880 and the Employers Liability Act 1882 shifted the onus of proving negligence from worker to employer. New Zealand passed an Employers Liability Act in 1882, a copy of the British Act, which only allowed compensation to workers who were killed or injured "by reason of (company) defect, negligence, omission" and provided compensation according to a schedule with benchmarked rates for the loss of a finger, a limb or a life. An employer who could not establish workers' negligence was required to pay some compensation. A number of employers then began to insure themselves privately against damages for which they might be liable under the Act. An insurance-based system of compensation developed as growing numbers of employers began to take out joint insurance contracts with their workers to provide compensation if there was an "accident."[30]

Death rates from workplace accidents and violence in New Zealand in the 1890s were higher than in England and, at 95.7 per 100,000 population, higher than in some Australian states.[31] Coalmines were the worst workplaces.[32] Richard John Seddon, then local Member of Parliament for the Hokitika and Minister of Mines, Defence and Public Works in the Ballance Liberal Government, championed the 1891 Coal Mines Act which resulted in a levy imposed on coal production to provide limited assistance to injured miners. The 1896 Brunner Mine disaster killed 67 miners and, in 1898, the widows sued the employers successfully until the decision was overturned on appeal. The mine was closed and the dependents were awarded a small lump sum compensation.[33] It is probably not surprising, then, that the New Zealand Workers Compensation Act in 1900, following the 1897 British legislation, required employers in dangerous trades to insure their employees against death or injury with private insurers. Employers were liable for accidents at work but the worker also had the option of claiming damages caused by the personal negligence or wilful act of the

28. I. Mares, *The Politics of Social Risk: Business and Welfare State Development* (Cambridge: Cambridge University Press, 2003), 79–104.
29. Campbell, *Compensation for Personal Injury in New Zealand*, 12.
30. Report of the Department of Labour, New Zealand, *Appendices to the Journals of the House of Representatives* (*AJHR*), H-6 (1895), 7–8.
31. Margaret Tennant, *Paupers and Providers: Charitable Aid in New Zealand* (Wellington: Allen & Unwin and Historical Branch, Dept. of Internal Affairs, 1989), 164. Stevan Eldred-Grigg, *New Zealand Working People 1890 to 1990* (Palmerston North: Dunmore Press, 1990).
32. Len Richardson, *Coal, Class and Community: The United Mine Workers of New Zealand 1880 to 1960* (Auckland: Auckland University Press, 1995), 65.
33. *Ibid*., 78.

employer. Under the arbitration system, its compulsion unique to Australasia, the New Zealand Arbitration Court sat as Court of Compensation for disputed cases.[34]

At best, the 1900 Workers Compensation for Accident Act provided worker's compensation, which supported widows and dependents for only a few years. Despite Seddon's wishes, the maximum compensation had a time limit and would only keep a family for three years, although part-payment could stretch it out for six years. The minimum was raised, as was the maximum to £500 in 1908 and £750 in 1920, but the compensation principle of three years' breadwinning remained.[35] Workers who were partially or totally incapacitated could receive 50 per cent of their wages weekly, up to a maximum payment of £300. The rough guide to compensation for partial dependents was three times the value of what they had received in the year before the accident. Widows might apply for a pension after 1911, but this did not help those whose breadwinners were "merely" incapacitated.

The union movement continually advocated further reform of workers' compensation.[36] The issue was discussed annually at the Trades and Labour Council conferences between 1900 and 1911. In 1905, for example, the conference adopted the following remits: that workers (male and female) injured or incapacitated "receive full wages from the date of their accident to their full recovery, at the rate of pay they received at the time of the injury; and that claimants be able to receive a lump sum compensation rather than a weekly allowance."[37] By 1908, the conference wanted full compensation for all those rendered incapable of earning their living either through accident, sickness, or natural infirmities.[38] The Miners Federation was more radical, wanting the state to provide "not only for full compensation for the widows and orphans of workers who may be killed, but also for workers who are injured, as well as workers who may be suffering from disease."[39]

In the Antipodes there was a gradual undermining of common law, as indeed occurred elsewhere, but that it was more marked "down under," particularly in New Zealand. There were significant public policy debates as the courts reconsidered liability; the legislatures weakened it; and people themselves sought to insulate themselves from misfortunate. Over a quarter of the New Zealand population and as much as 30 per cent of the Australian population were covered by some form of friendly societies at the turn of the twentieth century at a time when fewer than one in ten (2.5 per cent of the total population) was a trade union member.[40] The friendly

34. J. Harris, *Private Lives. Public Spirit* (Oxford: Oxford University Press, 1993). V. Markham Lester, "The Employers' Liability/Workmen's Compensation Debate of the 1890s Revisited," *The Historical Journal* 44, no. 2 (2001): 471–95. A. C. Giles, "Railway Accidents and Nineteenth-Century Legislation: 'Misconduct, Want of Caution of Causes Beyond their Control?'" *Labour History Review* 7, no. 2 (August 2011): 121–42.
35. *Workers' Compensation for Accident Act, 1900*, No. 43 Second Schedule s1 (1) (a); *Workers' Compensation Act, 1908*, No. 248, s4; *Workers' Compensation Act, 1920*, No. 52, s3.
36. *New Zealand Transport Worker*, January 1, 1924, 6–7; March 1, 1924, 4–5; April 1, 1924, 5.
37. *Trades and Labour Council of New Zealand: Report of Annual Conference Held at Wellington, April 1905* (Wellington: Trades and Labour Councils of New Zealand, 1905), 10–11.
38. *Trades and Labour Council of New Zealand: Report of Annual Conference held at Wellington, 20–26 July 1908* (Wellington: Trades and Labour Councils of New Zealand, 1908), 9–10.
39. J. Anstey, "Workers' Compensation Amendment Bill," *New Zealand Parliamentary Debates* (*NZPD*) 148 (1909): 1404.
40. D. G. Green and L. G. Cromwell, *Mutual Aid or Welfare State: Australia's Friendly Societies* (Sydney: George Allen & Unwin, 1984). Estimates of friendly society membership range; most suggest around 20 per cent of the UK population in the 1890s. See S. Horrell and D. Oxley, "Work and Prudence: Household Responses to Income Variation in Nineteenth Century Britain," *European Review of History* 4, no. 1 (April 2000): 27–58. D. Weinbren and B. James, "Getting a Grip: The Role

societies covered sickness as well as injury and death. The average friendly society member around 1900 was likely to be sick or incapacitated for 1.4 weeks every year, with rates increasing with age. So, most workers suffered an uncompensated loss of wages as a result of injury or sickness, which meant serious deprivation for their families.[41] We do not know the extent of industrial widowhood – the number of women whose breadwinners were incapacitated, injured or dead. The New Zealand Department of Labour published statistics on accidents and deaths in factories only. These showed a rising rate of industrial accidents, from 6.67 per 1,000 workers in 1903 to 11.07 in 1911. Most were classified as "slight" or "moderate." Only "serious" and "fatal" accidents were held to affect a worker's permanent earning capacity.[42] The Accident Underwriters Association of New Zealand estimated that its 22 member companies (including State Insurance) each averaged 600 claims for incapacity in 1910. On this estimate there were 13,200 accident claims in total, representing three per cent of the 454,117 breadwinners in the 1911 Census (although of course some workers may have claimed more than once).[43] Some of the three to five per cent of workers registered as unemployed in the censuses between 1896 and 1921 would also have been incapacitated or invalided. We do not know the exact extent of "industrial" widowhood, but the number of affected families would have been far from small.

Friendly societies were the subject of internal reforms and government changes around World War I. Friendly societies slowly adopted commercial methods and embellished their insurance functions. While a number of friendly societies were financially unsound in the nineteenth century, Jennifer Carlyon and Erik Olssen have revised the earlier dismissive view of friendly societies.[44] By 1911 the Friendly Society Amendment Act prevented the registration of any society or lodge unless it had adequate contribution scales. Carlyon argues, "just because they could not meet the needs of the working class as a whole does not mean they should be dismissed as irrelevant."[45] The proportion of members was maintained (from 41,236 in 1901 to 113,708 by 1938) representing about 11 per cent of the population but, when dependents are taken into account, probably extended benefits to a fifth of the population. The establishment of the National Provident Fund in 1910 was seen as aggressive state competition but friendly society membership did not collapse

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of Friendly Societies in Australia and Britain Reappraised," *Labour History*, no. 81 (May 2005): 87–104.

41. *Dominion*, April 2, 1918. Figures given by the Provincial Deputy-Grand Master of the Manchester Unity, Independent Order of Oddfellows, the largest New Zealand friendly society.
42. Annual Reports of the Department of Labour differentiated between: (1) slight accidents necessitating little loss of employment and no permanent injury; (2) moderately serious loss of employment over 14 days and no permanent injury; (3) serious loss of limbs and worker's earning-capacity, with permanent effects; (4) fatal accidents. In 1911 the number of accidents in each category was 538, 145, 77 and 12 respectively – a total of 872, and a rate of 11.07 per 1,000 workers.
43. Charles Ewen, Accident Underwriters Association of New Zealand to the Labour Bills Committee, Workers' Compensation Amendment Bill, *AJHR*, I-9A, (1911): 14–15; see also H. N. Liardet, Ocean Accident and Guarantee Corporation, *AJHR*, I-9A, (1911): 15–18.
44. Jennifer Carlyon, "Friendly Societies 1842–1939," *New Zealand Journal of History* 32, no. 2 (October 1998): 121–42. Erik Olssen, "Friendly Societies in New Zealand 1840–1990," in *Social Security Mutualism: the Comparative History of Mutual Benefit Societies*, ed. M. Van der Linden (Berne: Peter Lang, 1996), 177–206. David Thomson, "Colonial Thrift," *History, Now* 3, no 1, (1997): 8–13. David Thomson, *A World Without Welfare: New Zealand's Colonial Experiment* (Auckland: Auckland University Press with Bridget Williams Books, 1998), 40 ff. See also R. Nobbs, "The Development of Friendly Societies and Life Assurance in Australia," *Journal of the Institute of Actuaries* 110–13 (1983): 457–66.
45. Carlyon, "Friendly Societies 1842–1939," 121–42.

until the 1930s after state social welfare or the adopting of popular social insurance methods.

The war also led to benefits to soldiers and their dependents becoming the benchmark benefits to which other groups aspired. Civil, industrial and "grass" victims, widows and dependents began to agitate for the same benefits extended to military veterans and dependents. The New Zealand Social Security Act 1938 and its amendments provided for those who were not covered by workman's compensation provided that they can meet the means test. Income was not earnings related – unlike workers' compensation. There was no compensation where a person returned to work even though their earning capacity and enjoyment of life had been diminished.

Meanwhile, between 1900 and 1974, New Zealand's workers' compensation legislation was amended 41 times.[46] "Compo" loomed large in a "wage earners welfare state" that emphasised the male breadwinner wage.[47] The state loomed large too. An accident branch of the State Insurance Office, established in 1901 specially to cover occupations that private companies would not handle, transferred its business to the State Fire Insurance Office in 1925 and, in 1947, employers were required to insure with the State Insurance Office.[48] In 1951, a non-labour government reprivatised the scheme permitting employers to insure with private insurance companies. At the same time a Workers Compensation Board took over from the Compensation Court to moderate profits made by private insurers through statutory oversight, to protect workers by being empowered to recover costs from delinquent employers who had neglected to insure themselves, to mediate compensation disputes and also to consider injury prevention of accidents and workers' rehabilitation.[49] A National Safety Association was established in 1953 to offer training in occupational health and safety. In 1956 the weekly compensation principle was increased to 80 per cent of pre-injury earnings payable up to six years. In 1959 Ian B. Campbell, Secretary of the Workers Compensation Board, undertook a study tour to assess tort claims in Great Britain, Europe and North America. He concluded that the

> line of demarcation between a successful claim and an unsuccessful one [under common law] is extremely tenuous and not infrequently due to the plaintiff's luck with witnesses, even to the extent of their veracity. If such a right were replaced by a pension on a sound and worthwhile basis, I consider workers generally, would be better off. It should not place any more cost on industry for the cost of common law claims here is already becoming increasingly high.[50]

Calls for reform mounted and, in 1966, Woodhouse, a Supreme Court judge, accepted the government's invitation to chair the New Zealand Royal Commission

46. Hazel Armstrong and Rob Laurs, *When the Going Gets Tough: What Happens to Worn-Out Workers?* (Wellington: Hazel Armstrong Law, 2007).
47. Castles, *The Working Class and Welfare*.
48. New South Wales introduced compulsory insurance in 1926 and, at the same time, established a (competitive) government insurance office; Queensland introduced compulsory insurance in 1916 and also established a State-owned monopoly; Western Australia introduced compulsory insurance in 1925; Tasmania in 1927; the Australian Capital Territory and the Northern Territory in 1931 and South Australia in 1932.
49. It awarded a scholarship, for instance, to S. V. Paris to study spinal treatments abroad in Europe and the United States for two years in 1960 and 1961.
50. I. B. Campbell, *Compensation for Personal Injury in New Zealand: Its Rise and Fall* (Auckland: Auckland University Press, 1996).

of Inquiry into Compensation for Personal Injury.[51] The Commission had been set up to report on the law since its last review in 1956 and to address complaints that the existing insurance-based system and its payments were inefficient and inadequate. Ralph Hanan, the Minister of Justice, Dr J. L. Robson, the head of the Justice Department, and the Chief Justice, H. R. C. (Richard) Wild, all complained that the system needed reform.[52] The Minister of Labour, Tom Shand, like Campbell, was on record suggesting that the common law action for work accidents ought to be abolished and a better system be put in its place.[53]

The 1950s and 60s are often assumed to have been a fallow time in New Zealand socio-political life and yet the Commission duly came down with far-reaching radical recommendations specifically the replacement of common law actions for damages for personal injury, as well as workers' compensation – and the need for insurance – by a comprehensive national scheme of compensation recompense regardless of fault or the cause of the injury (except self-inflicted). It summarised all the problems of the fragmented common law system, above all the failure to compensate large numbers of accident victims. There was considerable waste involved in the system in that much of the money was chewed up in legal and administrative expenses. There was much disagreement, much investigation and lengthy delays in delivering benefits, even to those who secured them. Common law emphasised personal blameworthiness and negligence law required individuals to meet the community average standard; systematic "[r]eprehensible conduct can be followed by feather blows while a moment's inadvertence could call down the heavens" as the Woodhouse Report put it. The court found it very difficult to calibrate non-pecuniary loss, pain and suffering; it was also difficult to determine lump sums and to take into account future inflation.[54] An assessment of damages in one lump sum involved guesswork and speculation and tended to over-compensate less serious injuries. The process of adjudication was little more than a lottery. When a court finally heard a case, witnesses had to relate memories three or four years beforehand in what was described as the "forensic lottery."[55] Liability insurance blunted or removed the deterrent effect of tort law. Jane Stapleton has shown "during the 1960s and 1970s, socio-legal research exposed the clear and widespread influence of liability insurance on the operation of tort law." This resulted in torts only being considered worth bringing against insured defendants.[56] The system neither prioritised rehabilitation of injured people nor accident prevention.

Following the Meredith and Beveridge reports, the Woodhouse report also set out five principles upon which its proposed arrangements were based: community

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51. *Woodhouse Report*. Woodhouse chaired three-man commission including H. L. Bockett, the retired Secretary of Labour (1946–64) and G. A. Parsons, Public Accountant.
52. J. E. Martin, *Holding the Balance: A History of New Zealand's Department of Labour 1891–1995* (Christchurch: Canterbury University Press, 1996), 326.
53. *Christchurch Star*, September 25, 1964.
54. Harold Luntz, *The Assessment of Damages for Personal Injury and Death* (Chatswood, NSW: Butterworths, 1974). J. O'Connell and R. J. Simon, *Payment for Pain and Suffering: Who Wants What, When & Why?* (Los Angeles: Insurors Press, 1972).
55. Ison, *The Forensic Lottery* and Franklin, "Replacing the Negligence Lottery."
56. Jane Stapleton, "Tort, Insurance and Ideology," *The Modern Law Review* 58, no. 6 (November 1995): 820–45. She cites the Pearson Committee that estimated that 88 per cent of personal injury claims representing 94 per cent of the total value were against insured defendants: Royal Commission on Civil Liability and Compensation for Personal Injury (Great Britain), *Royal Commission on Civil Liability and Compensation for Personal Injury: Report*, vol. 2. *Statistics and Costings* (London: Her Majesty's Stationery Office, 1978), para 509.

responsibility, comprehensive entitlement, complete rehabilitation, real compensation and administrative efficiency. However, Woodhouse proposed a comprehensive no-fault remedy. The committee acknowledged the logic of including sickness unemployment and other causes of income loss but decided its recommendations were sufficiently radical. The National Government commissioned a White Paper to scrutinise the implementation of the 1967 recommendations, especially its cost which was considered, in turn, by a select committee of both parliamentary parties.[57] Late in 1972 a bill was enacted by unanimous vote, albeit being subject to various amendments, before it came into operation on 1 April 1974. The most significant change was that the Labour government extended coverage from motor accident and workers' injury to non-earners, including housewives.

The New Zealand Accident Compensation Act 1972, and its amendments, established an Accident Compensation Commission (ACC) administering the provision of compensation to victims of incapacity of a range of kinds. Every New Zealander who was injured at home, at work, on the road or on the sports-field was entitled to no-fault earnings-related compensation as well as social and vocational rehabilitation geared towards returning them to the workforce. It was a veritable revolution: "the most comprehensive reform of the tort system in the common law world."[58] Just as the arbitration system ended tipping in Australasia, the compensation system ended suing in New Zealand. The removal of the right to sue in courts in respect of such injuries has been described as "an unparalleled event in our cultural history, the first casualty among the core legal institutions of the civilised world."[59]

Failure of Antipodean Policy Transfer?

There was a great deal of interest in the "big experiment in no-fault accident compensation" in New Zealand, not least from Australians.[60] Clyde Cameron, an Australian Labor Party (ALP) frontbencher, had written to Woodhouse about the ideas contained in the 1967 report soon after it was published.[61] During the 1930s Cameron had worked as a shearer throughout Australasia, including stints in New

57. New Zealand Department of Labour, *Personal Injury: A Commentary on the Report of the Royal Commission of Injury into Compensation for Personal Injury in New Zealand* (Wellington: Government Printer, 1969). G. F. Gair *et. al*. (Gair Committee), *Report of Select Committee on Compensation for Personal Injury in New Zealand* (Wellington: Government Printer, 1970).
58. Geoffrey Palmer, "Compensation for Personal Injury: A Requiem for the Common Law in New Zealand," *American Journal of Comparative Law* 21 (1973): 44; and "The Nineteen Seventies: Summary for Presentation to the Accident Compensation Symposium," *Victoria University of Wellington Law Review* 2, no. 2 (June 2003): 239–40.
59. "A Word from the Editor," *American Journal of Comparative Law* 21, no. 1 (1973), cited in Palmer, *Compensation for Incapacity*, 9. W. Pfennigstorf, "Accident Compensation in New Zealand: How Does it Work?" *American Bar Foundation Journal* 6, no. 4 (Fall 1981): 1153–66.
60. For example, see interest by lawyers, medicos and insurance: T. G. Ison, ed., *Accident Compensation: A Commentary on the New Zealand Scheme* (London: Croom Helm, 1980); James A. Henderson, "The New Zealand Accident Compensation Reform," *University of Chicago Law Review* 48 (1981): 781–801, W. C. Hodge, "No-Fault in New Zealand: It Works," *Insurance Counsel Journal* 501 (1983): 222–31. R. Smith, "Compensation for Medical Misadventure and Drug Injury in the New Zealand No-Fault System: Feeling the Way," *British Medical Journal* 284 (1982): 1457–59. C. Brown, "Deterrence in Tort and No-Fault: The New Zealand Experience," *California Law Review* 73 (1985): 976–1002. E. Deutsch, "Medical Malpractice and Medical Misadventure in New Zealand: Public Insurance in Lieu of Private Liability as Administered by the Courts and the Accident Compensation Commission," *Medicine and Law* 1 (1982): 345–54. L. West, "Comprehensive No-Fault in New Zealand: A Model for Ontario?" *Journal of Law and Social Policy* 10 (1994): 241–61.
61. Palmer, *Compensation for Incapacity*, 132–33.

Zealand. He had been an Australian Workers Union (AWU) organiser (1938–41), state secretary then president and federal executive member (1941–56) who had taught himself industrial law as the union's industrial advocate (1943–48).[62] He had been Secretary of the Industrial Sub-Committee of the Federal Parliamentary ALP from 1956 until Whitlam made him Shadow Minister for Employment in 1969. In January 1970 Cameron went on a boat cruise with Whitlam, which involved calling into a New Zealand port. As arranged, Woodhouse met the boat in Auckland and took Cameron home to discuss accident compensation with Whitlam joining them.[63]

The conversation between a judicial and political elite in Australia and New Zealand was clearer and more direct than for other social policy initiatives in the twentieth century. There was a common Antipodean concern which Whitlam referred to in 1972 as the desire to "reduce the hardships imposed by one of the great factors for inequality in society – inequality of luck."[64] There were similar high rates of motor and industrial accidents in both countries and similar calls for systematic and generous compensation for such accidents.

Whitlam claimed a long-standing interest in "workers compensation": "[f]or 23 years – from 1954 to 1977 – I campaigned against the great inefficiencies and inequities of the existing system."[65] His initial proposals were directed towards compensation for victims of motor accidents, however. Whitlam's familiarity with Woodhouse's proposals converted him to a "broader vision" of a "comprehensive national compensation scheme for accidental injuries," that is "no fault" "protection against the consequences of accidents of every kind."[66] Collecting accurate and uniform statistics was part of the social reform problem: it was estimated that a quarter of a million Australians were killed or maimed on Australian roads and in its workplaces each year by the early 1970s: 3,600 were killed and 90,000 suffered "injury requiring medical or surgical treatment" on Australian roads and about "five times as many" Australians were injured in work accidents.[67]

In October 1971 Whitlam, as Opposition Leader, announced a new plan to representatives of the motorcar industry road-safety organisers and employers at a one-day ALP seminar on road safety at Terrigal, NSW.[68] Workers' compensation would replace third-party insurance, which was "slow, wasteful and inefficient."[69]

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62. D. Connell, *The Confessionals of Clyde Cameron 1913–1990* (Sydney: ABC Enterprises, 1990). B. Guy, *A Life on the Left: A Biography of Clyde Cameron* (Adelaide: Wakefield Press, 1990).
63. Whitlam, *The Whitlam Government*, 636.
64. Australian Labor Party, 1972 National Campaign, *It's Time: Speaker's Notes* (Canberra: ALP Federal Secretariat, 1972). "It's Time" policy speech written by speechwriter Graham Freudenberg for the Australian Labor Party, delivered by Gough Whitlam for the 1972 Federal elections, at Blacktown Civic Centre in Sydney, 13 November 1972.
65. Whitlam, *The Whitlam Government*, 635.
66. Harold Luntz, "Looking Back at Accident Compensation: An Australian Perspective," *Victoria University of Wellington Law Review* 34, no. 2, (June 2003): 279–83.
67. National Rehabilitation and Compensation Scheme Committee of Inquiry (Australia), *Compensation and Rehabilitation in Australia: Report of the National Committee of Inquiry July 1974* (Canberra: Australia Government Publishing Service, 1974), 1. Luntz, *The Assessment of Damages for Personal Injury and Death*, 6–7. The ACTU in its submission argued that a survey conducted by the Australian Bureau of Statistics in 1968 showed that about 2 million people or 23 per cent of the population covered by the survey suffered from at least one chronic illness, injury or other impairment, *Australian*, March 19, 1974.
68. E. G. Whitlam, "Traffic Injury Compensation," (ALP Seminar on Traffic Collisions, Terrigal, NSW, 31 October 1971) reported in the *Melbourne Sun*, November 1, 1971. See earlier statement *Melbourne Sun*, October 15 1971.
69. *Age*, November 1, 1971.

He wanted compensation to be part of welfare planning rather than an expression of retribution or deterrence. Under the new scheme, injured workers would receive guaranteed regular payments equivalent to what they were receiving before injury. Whitlam noted four out of ten victims of road accidents received no third-party compensation whatsoever, a third of every pay-out lined lawyer's pockets, while "thousands of Australians were being beggared every year because the response to their predicament was determined not by need but by fault."[70]

The ALP announcement to replace third party insurance and workers' compensation with national compensation at the end of October 1971 needs to be placed in the context of rising union strike action. Harold Souter, Acting Secretary, Australian Council of Trade Unions (ACTU), 1956–57 and Secretary, 1957–77, reckoned that "[o]ne of the facets of activity which is often afforded little publicity is the support given by the Trade Union Movement to workers who sustain injuries or disabilities in the course of their employment."[71] The Western Australian Trades and Labour Council was typical. In 1963 it set up a sub-committee to consider proposals to analyse the inadequacy of the state's accident compensation and began advocating reform systematically and increasingly pressed the issue.[72] As Mervyn Rutherford, an industrial officer for the AWU in early October 1971, noted, the "accident pay issue had caught both the imagination and to some extent the ire of the union's members."[73] Reviews were overtaken by industrial action, starting in NSW in 1970 with the NSW Builders Labourers Federation's (BLF) "Margins Strike" for an increase in their wages as well as industrial recognition of their skills.[74] The union's strike committee decided to form what it called vigilante groups – flying pickets – to go out to work sites and talk to the workers about conditions and the employers' use of "scab" labour. After five weeks, the builders' labourers won the principle that with increasing technological change, the gap between tradesmen and labourers was closing and this should be reflected in their wages. Emboldened, in May 1971, the BLF, led by Jack Mundy, joined forces with the Building Workers Industrial Union, led by Pat Clancy, over the issue of workers receiving full accident pay.[75] They fought for building workers suffering an injury under the terms of the *Workers Compensation Act*, 1926 (NSW) to have weekly sums added to payments so as to make up those payments to the level, which would be due to the employees under the arbitration award, for a period of six months. Prior to this, workers would only receive half-pay if injured on the job. Building workers were granted an 80 cents weekly loading to finance an insurance scheme to cover the difference between compensation payments and award rates.[76] All the building unions comprising 35,000 building workers went on an 18-day strike to secure full accident pay. On 21 May, the NSW Industrial Commission awarded compensation on full pay for injured workers.[77]

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70. *Melbourne Sun*, November 1, 1971.
71. H. J. Souter, Secretary ACTU, 29 September 1971, N68/685, NBABL.
72. Trades and Labor Council of Western Australia, Report of Compensation Subcommittee Proposed Amendment to the WA Compensation 1912–63, N684–687, NBABL.
73. *Australian*, October 9, 1971.
74. McQueen, *We Built This Country* and McQueen, *Framework of Flesh*.
75. Report of Accident Pay, Working Sub-Committee, 16 March 1971, Master Builders Association of NSW, N58/533, NBABL.
76. *Australian*, August 26, 1971.
77. Various papers about the Building Trades Dispute re Pay of Injured Workers, Industrial Commission of NSW, Master Builders Association of NSW (1971) N58/533, NBABL. For a coherent discussion of the issues, see Verity Burgmann, *Power and Protest: Movements for Change*

This decision flowed on to other industries. 85,000 employees of the Metal Trades Federation of Unions in NSW decided to set a 14-day deadline on a claim for accident pay.[78] The Waterside Workers Federation in 21 July 1971 lodged a claim for increased workers compensation payments on behalf of 18,000 members.[79] The union claimed "average pay": the standard wage rate plus an average of overtime earnings for all workers engaged on the job. In October 1971, 10,000 members of the AWU threatened strike action if the NSW Industrial Commission did not awarded full pay for workers compensation.[80] In August 1971, the remark by NSW Liberal Chief Secretary and Minister for Labour, Eric Willis, that people who would most benefit from compensation generated full pay for injured workers were "bludgers" was against the current of opinion. He was forced to apologise for his remarks.[81]

Industrial action followed state by state. There were "10 different systems paying 10 differing sets of benefits that reduce or increase not because of the loss or need but in terms of geographical boundaries."[82] In 1956 Cameron had told Albert Monk, the ACTU President, that that the Industrial Sub-Committee of the Federal Parliamentary ALP had "favoured a uniform code on workers' compensation to take the place of the respective State Acts."[83] Following the popular response to the 1968 edition of its publication entitled "Your Rights to Compensation in New South Wales," the Labor Council of New South Wales collated all the rates under the various compensation acts in force as at 1 January 1969 and published it in an accessible special number of its *Compensation and Research Bulletin*.[84]

As part of the election campaign in 1972, Whitlam set out a plan for a national compensation scheme promising, "[w]e will establish a National Compensation scheme to reduce the hardships."[85] One of his first acts upon being elected Prime Minister was to telephone his counterpart, the New Zealand Labour Prime Minister Norman Kirk, asking that Woodhouse be released from his judicial duties in New Zealand in order for him to head an inquiry in Australia. The newly elected Labour Government under Kirk had no hesitation in making a fraternal gesture by making the judge available and "lending" him to Whitlam.[86] In January 1973 when Whitlam was visiting New Zealand as part of the regular Australian-New Zealand dialogue, he met with Woodhouse to discuss the terms of reference of an inquiry,

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in Australian Society (Crow's Nest, NSW: Allen and Unwin, 1993), 302. Meredith Burgmann and Verity Burgmann, *Green Bans, Red Union: Environmental Activism and the New South Wales Builders Labourers Federation* (Sydney: UNSW Press, 1998), 110–17.

78. *Australian*, May 25, 1971.
79. *Ibid*., July 22, 1971.
80. *Ibid*., October 9, 1971.
81. *Ibid*., August 7, 1971.
82. Department of Works, *Conspectus of Workers' Compensation Acts in Australia* (Melbourne: Department of Works, 1955–68). This became 11 main workers' compensation systems. Eight Australian States and Territories developed their own workers' compensation laws while the Commonwealth developed three schemes for: Australian Government employees; seafarers; and defence personnel.
83. C. R. Cameron to A. E. Monk, 18 June 1956, N21/881, NBABL.
84. Labour Council of New South Wales, *Compensation and Research Bulletin*, series 1/69 (28 February 1969), N68/1300, NBABL. The Department of Works published the conspectus of workers compensation from 1955 to 1968; the Department of Labour and National Service from 1969 to 1975; the Australian Department of Social Welfare from 1976 to 1992; the Victorian Workcover Authority from 1993 to 2005; the Australian Safety and Compensation Council, on behalf of the Heads of Workers' Compensation Authorities, 2006 and 2007; and Safe Work Australia from 2008.
85. "It's Time" policy speech, 1972.
86. *Age*, February 28, 1973; *Australian*, March 9, 1973.

and whether to include sickness as well as injury.[87] Woodhouse then visited Australia in early February to discuss the organisation of the Inquiry with the two ministers most concerned, Cameron, the Federal Labor Minister, and Bill Hayden, the Social Security Minister, and to meet future colleagues.[88] Woodhouse took up his duties as Chair of the Australian National Rehabilitation and Compensation Committee of Inquiry in March 1973, together with Mr Justice Meares, judge of the Supreme Court of NSW, chairman of the NSW Law Reform Commission and of the Expert Group on Road Safety (and P. S. Atiyah, law professor at the Australian National University although he left for the UK before the inquiry was complete and was not a signatory). Woodhouse remained on the payroll of the New Zealand judiciary but the Australian government provided him with a travelling allowance from March 1973 until July 1974.[89]

Woodhouse also requested that Geoffrey Palmer, Professor of Law at Victoria University of Wellington (and future New Zealand Prime Minister), accompany him as Principal Assistant to the Inquiry.[90] Woodhouse had met Palmer when the Judge was visiting seven countries during 1967 to study workers compensation. Woodhouse's travels took him to the University of Chicago where legal academics Walter J. Blum and Harry Kalven were based and disputing with Yale University's Guido Calabresi about what would happen if common law was abandoned over accident compensation.[91] Palmer – an international student enrolled for a doctorate – impressed the Dean of the Law School, Dr P. C. Neal. On the basis of Neal's praise, Woodhouse sought out Palmer, and became his lifelong mentor.[92] In 1969 Woodhouse had recommended the New Zealand Government retain Palmer to draft the White Paper on Woodhouse's 1967 Royal Commission. Subsequently Palmer had written most of it, with the assistance of Department of Labour staff, before taking up a position at the University of Iowa.[93] When insurers opposed the proposals in submissions to select committees, Palmer responded from afar to them in support of the 1967 Report. So, on Woodhouse's recommendation, Palmer became principal assistant to the 1973–74 Australian inquiry, organising a team of 40 statisticians, lawyers and other specialists.[94] Palmer and his family moved to Sydney for a year from May 1973. Woodhouse and Palmer met Whitlam in December 1973 to suggest that the proposal was expanded to include sickness in the inquiry. Whitlam duly extended the terms of reference for the enquiry to cover sickness in February 1974.[95]

87. 'Canberra Pact' (the Australia-New Zealand Agreement) 1944.
88. *Australian Financial Review*, March 5, 1971.
89. *Compensation and Rehabilitation in Australia*.
90. Raymond Richards, *Palmer: The Parliamentary Years* (Christchurch: University of Canterbury Press, 2010), 58–73.
91. W. J. Blum and H. Kalven, *Public Law Perspectives on a Private Law Problem: Auto Compensation Plans* (Boston: Little, Brown and Co., 1965); W. J. Blum and H. Kalven, "The Empty Cabinet of Dr Calabresi: Auto Accidents and General Deterrence," *University of Chicago Law Review* 34, no. 2 (Winter 1967): 239–73. Guido Calabresi, "Fault, Accidents and the Wonderful World of Blum and Kaven," *Yale Law Journal* 75, (1965): 216–32; Guido Calabresi, *The Cost of Accidents: A Legal and Economic Analysis* (New Haven: Yale University Press, 1970), 24–33.
92. Richards, *Palmer*.
93. New Zealand Department of Labour, *Personal Injury*.
94. Geoffrey Palmer, Submission to the Parliamentary Select Committee on Compensation for Personal Injury in New Zealand, 1970, 1-41, Accident Compensation Corporation, Head Office (AACT), series 946, Accession W2978, Box 9, Workers Compensation Act: Comprehensive Compensation for Personal Injury, Select Committee hearings (1970), Archives New Zealand, Wellington.
95. Harold Luntz, *Compensation and Rehabilitation: A Survey of the Report of the National Committee of Inquiry into Compensation and Rehabilitation in Australia and the National Compensation Bill 1974* (Melbourne: Butterworths, 1975), 5.

After the inquiry was completed in July 1974, Palmer, now a legal academic in Wellington, was retained as a consultant to the Australian government to draft and shepherd a bill based on the inquiry.[96] He "flew across the Tasman Sea from New Zealand to Australia 14 times in 18 months, campaigning for Whitlam's successful re-election in June 1974 while advising on the enactment of no-fault compensation."[97]

And here the policy transfer becomes more complicated. The Australian Cabinet agreed to a bill on 29 July 1974. In August Senator J. M. Wheeldon, Minister for Repatriation and Compensation (1974–75), tabled the Australian Woodhouse report, *Compensation and Rehabilitation in Australia: Report of the National Committee of Inquiry*; Lionel Bowen tabled the second volume on repatriation and compensation in September. A draft bill was included which proposed a scheme that went further than the New Zealand proposal, that is to cover all citizens who suffered physical or mental incapacity for whatever reason.[98] The scheme provided a person who was injured or sick with 85 per cent of her or his earnings up to a salary limit of $500 a week or $26,000 per annum. Non-earning people, including housewives, were able to claim 85 per cent of $50 per week. It was 24-hour cover and not restricted to working hours or travelling to and from work. Self-employed workers, who made up about 15 per cent of the population, were also included. The scheme only operated until a victim was aged 65 years when the national superannuation scheme would take over. A National Compensation Bill along these lines was introduced into the Australian Parliament in October 1974. It was estimated that, if implemented, the scheme would cost $395 million, $245 million less than the premiums collected to finance the compulsory workers compensation and third party insurance and would be partly financed by a petrol tax.[99] The bill passed the House of Representatives on 24 October but when it came before the Senate for its second reading, it was agreed to refer it to a Senate Committee on Constitutional and Legal Affairs for consideration.[100] Owing to the number of public submissions on the bill, the Senate Committee's report was delayed several times until 30 April 1975. Whitlam complained that insurance companies conducted a campaign against it, "aided and abetted" by "blood and bone" Labor lawyers with vested interests in the status quo.[101] The Chairman of the National Compensation Insurance Industry Committee, David Syme, described it as "back door nationalisation."[102] In July 1975 the senate committee rejected the bill. Palmer suggested a compromise to cover injury and not sickness and a new bill was subsequently drafted.

At the same time Palmer used the first Australian bill as an opportunity to urge the expansion of the New Zealand scheme to include illness in a memorandum in October 1974 to the ACC.[103] A year later the New Zealand Minister of Labour appointed Palmer to a committee to study extending accident compensation to illness,

96. Palmer, *Compensation for Incapacity*, 11.
97. Richards, *Palmer*, 72.
98. *Woodhouse Report*. Professor P. S. Atiyah had returned to Britain for personal reasons and so Woodhouse and Meares were the two signatories to the report. *Age*, July 11, 1974.
99. *Age*, July 11, 1974.
100. See also Australian Council of Social Services, *The Philosophy of the Bill: Compensation and Rehabilitation in Australia, compiled by Philippa Smith for the ACOSS Standing Committee on Economics and Social Welfare* (Sydney: Australian Council of Social Service, 1975).
101. Whitlam, *The Whitlam Government*, 640.
102. *Age*, June 13, 1974.
103. Geoffrey Palmer, memo to the Accident Compensation Commission, 10 October 1974, Woodhouse Papers, cited in Palmer, *Compensation for Incapacity.*

but the government lost the election in November 1975 and the new government disbanded it. Insurance and legal companies complained vigorously about huge decline in their business: the report estimated that life insurance companies could lose from 35 to 40 per cent of their general accident premium business. Meanwhile, on 11 November 1975, the Governor General dismissed the Whitlam government and the new bill, which was scheduled for reconsideration by the Senate on 12 November, was swept away.

At one level accident compensation remains a good example of the limits to policy transfer. "No fault" compensation "was in the air" but it took root in New Zealand albeit in a limited fashion compared.[104] Palmer emphasised the different political styles: New Zealand had a unicameral legislature with no constitutional limitations upon power; while Australia's federal system was much more complex, full of checks and balances and organised lobbies. The proposal was controversial in Australia: while the ACTU backed a scheme for compensation by early 1974 many unions did not support the prospect of opting out of litigation and the factionalised basis of the ALP afforded them clout.[105] And yet, while the legislation was not implemented in Australia – Lionel Bowen unsuccessfully presented the "Whitlam bill" as a private members Bill in 1976 – no fault accident systems exist in New Zealand and in Northern Territory of Australia with a second state, Victoria, having a blended system. No-fault workers compensation exists in New Zealand, Northern Territory and South Australia with a primarily no-fault system in the rest of Australia.

Australia refurbished its welfare state, moreover, first with a universal health system, Medicare, which New Zealand already had, and soon after with a compulsory superannuation system. Compulsory superannuation belies Palmer's explanation that significant welfare refurbishment involved such a degree of difficulty as to make it impossible in Australia. Superannuation, moreover, was a mirror policy transfer example to accident compensation; that is, a New Zealand Labour government supported it but it did not have bipartisan party-political support and a non-labour government replaced labour's short-lived contributory fund in the 1970s with a social welfare universal scheme. So Australia refurbished its welfare state with medical and superannuation insurance while New Zealand introduced accident compensation and the two countries moved apart in social policy. There were budgetary limits to refurbishment but one does not have to resort to Hackett's deep-seated foundational culture, political leadership and national values to explain the differences.

Why Little Interest in Late Twentieth Century Expansion of Welfare?

There are relatively few historical accounts about accident compensation for road and work-related accidents, certainly no social history of such accidents. Several reasons could be advanced. A massive education campaign was undertaken in both New Zealand and Australia and the extraordinarily high rates of road accidents gradually decreased from the 1970s. A massive array of health and safety legislation gave substance to the view that accidents were being "controlled," too. Of course over 2,000 Australians died from work related causes in the 1990s and nearly half a million were injured and, while road accidents decreased, more than 300 New

104. Franklin, "Replacing the Negligence Lottery"; Ison, *The Forensic Lottery*, 54–67.
105. *Australian*, March 19, 1974.

Zealanders and 1,400 Australians still died in car accidents annually. By the mid 1990s, workers' compensation costs had fallen by 20 per cent as a percentage of total labour costs, however, easing pressure for both reform and historical attention.[106]

The historiography that exists over-emphasises the elite's role in promoting accident compensation reform. Palmer and his biographer both suggest that accident compensation was an example of complex change initiated from the top of society and "never caught the popular imagination."[107] Palmer held "[f]irst, came the vision and determination of a few politicians who believed there was a better way to look after victims of misfortunate and who wanted to see that policies to that end were developed then came the practice and technical task to devising the policies and having them implemented." The "top down" thesis does not attract social history analysis.

The most salient reason for the neglect of accident compensation experiments, however, is the emphasis on neoliberalism from the 1970s and 1980s. Neoliberalism is the term given to the post-1970s economic liberalism that was experienced throughout the Western world in two phases, the 1980s and then from the mid-1990s. In New Zealand, for instance, it is often suggested that the values and ideology of the wage earners' welfare state dissolved in the face of neoliberalism. The Fourth Labour government introduced economic rationalism, floated the New Zealand dollar in 1984, reduced trade tariffs, reformed taxation including the introduction of a Goods and Services Tax (GST), privatised government services, and deregulated the banking system.[108] There was a bureaucratic revolution as the public service was slashed.[109] Just as the UK had "Thatcherism" and the USA had "Reaganism," so New Zealand had "Rogernomics," named after Roger Douglas, the Finance Minister. And the governments from 1990 to 1999 went further with labour market deregulation discarding the century-old centralised compulsory wage-fixing and introducing enterprise bargaining under the 1991 Employment Contracts Act. Welfare benefits were cut. The Shipley government (1998–99) tried to enact a new social contract. Under its "New Right Experiment," carried out by both major political parties, New Zealand moved extraordinarily quickly, from the most regulated country outside the Eastern block to the most de-regulated country.[110] The speed and the extent of policy changes introduced differed in degree but not direction between Australia and New Zealand.[111] There has been little work on social policy enhancements.

Since 1972 core New Zealand government expenditure, as a proportion of GDP, has not fluctuated as much as the neo-liberal ideology might suggest, however.

106. Victorian Workcover Authority, *Comparison of Workers' Compensation Arrangements in Australian Jurisdictions*, compiled for the Secretariat, Heads of Workers' Compensation Authorities (Melbourne: Heads of Workers' Compensation Authorities, 1995-2000) with comparisons with New Zealand; later Worksafe Victoria, *Workers' Compensation Arrangements in Australia and New Zealand* (Melbourne: Heads of Workplace Safety and Compensation Authorities, 2001) and Safe Work Australia, *The Comparison of Workers' Compensation Arrangements in Australia and New Zealand* (Melbourne: Heads of Workplace Safety and Compensation Authorities, 2002–).
107. Richards, *Palmer*, 66.
108. See, for instance, Dolores Janiewski and Paul Morris, *New Rights New Zealand: Myths, Moralities and Markets* (Auckland: Auckland University Press, 2005); and Bruce Jesson, Alannah Ryan and Paul Spoonley, *Revival of the Right: New Zealand Politics in 1980s* (Auckland: Heinemann Reed, 1988).
109. Jonathon Boston, J. Martin, J. Pallot and Pat Walsh, eds, *Reshaping the State: New Zealand's Bureaucratic Revolution* (Auckland: Oxford University Press, 1991).
110. Jane Kelsey, *At the Crossroads* (Wellington: Bridget Williams Books, 2002), especially the essay "The Third Way: A Road to Nowhere". S. Shepard, *Broken Circle: The Decline and Fall of the Fourth Labour Government* (Wellington: PSL Press, 1994), 4.
111. F. G. Castles, R. Gerritsen and Jack Vowles, eds, *The Great Experiment: Labour Parties and Public Policy Transformation in Australia and New Zealand* (Auckland: Auckland University Press, 1996).

Despite neoliberalism and "the death of the state intervention," spending on welfare rose in most countries from the 1970s to the 2000s. For all the New Right policies, governments in Australasia and elsewhere paid a record amount in benefits to residents.[112] It is one of the contradictions of neoliberalism that there were cuts to welfare budgets in some areas but that state transfer overall remain high.[113]

Significantly New Zealand's accident compensation system has survived for over four decades, despite monetarist policies and social welfare cuts. New Zealand accident compensation provisions were made up of three components: the earners' scheme which was funded from levies on employers and the self-employed; the motor vehicle accidents scheme which was funded from levies paid by the owners of motor vehicles; and a supplementary scheme for those not covered by the earners or the motor vehicles scheme, which was funded out of consolidated revenue. In the 1980s, in response to employers' objecting to accumulating reserves, levies were reduced, only to be raised again when funds ran down. At times, governments seemed sympathetic to calls to privatise the system. New rules tightened the scope of claims accepted by ACC in 1992 as a state cost-cutting measure. In 1998, National permitted private insurance companies to write workplace injury insurance for the scheme but, in 1999, Labour repealed this development. Despite the challenges by employers and the pressures on state accounts, the system endures.[114]

Inequality of Luck

In 2009, two 93-year-old men met in an office Sydney. They had been both been born in July 1916 on respective sides of the Tasman Sea. They first befriended each other 40 years earlier in Auckland. One had already written his memoirs; the other was engaged on them. One had been an activist judge who had played a central role in his country adopting a no-fault comprehensive accident compensation scheme; the other had tried but failed to implement his friend's scheme during his term as Prime Minister. Together, Woodhouse and Whitlam had tried hard to implement a universal, compulsory, no fault accident scheme to cover those who were invalided, injured or sick in both countries across the Tasman Sea.[115] But luck would not have it.

Whitlam and Woodhouse were joined at their meeting on 29 July 2009 by Dr. Bronwyn Morkham, National Director of the Young People in Nursing Homes Alliance and proponent of the Whitlam-Woodhouse ideas she believed were still relevant 35 years later. Just how relevant the policy still was became clear to Woodhouse the night after he met up with Whitlam. John Walsh hosted a dinner in Woodhouse's honour. Walsh was a partner in the Health Actuarial and Advisory Practice of PriceWaterhouseCoopers and also part of the PricewaterhouseCoopers

112. *USA Today*, April 26, 2011, citing Bureau of Economic Analysis and Census bureau data.
113. David Rea, "Government Expenditure and Revenue in New Zealand: A Brief Overview," *Policy Quarterly* 5, no. 3 (August 2009): 58–67. In this article, Rea discusses components of core government expenditure as a proportion of GDP, 1972 to 2008,
114. D. Rennie, "Compensation for Work-Related Injury," in *Health and Safety in New Zealand Workplaces*, ed. C. Slappendel (Palmerston North: Dunmore Press, 1995), 124. Michael Quinlan and P. Bohle, *Managing Occupational Health and Safety*, 2nd ed. (Melbourne: Macmilllan Publishers Australia, 2000).
115. See also the "Third Woodhouse Report" which recommended an end to the disparities between the treatment of accident victims and those incapacitated by sickness or disease: "Personal Injury, Prevention and Recovery," *New Zealand Law Commission Report*, no. 4 (Wellington: New Zealand Law Commission, 1988). The "Third Woodhouse Report" was prepared by the Law Commission when Sir Owen Woodhouse was its president.

National Health practice, with consulting responsibilities in the industries of health, disability and accident compensation – particularly lifetime care and support. Walsh, a quadriplegia, was also a member of the Disability Investment Group which recommended a national lifetime care and support scheme based on an insurance model. The dinner had one goal – to bring together likeminded individuals across different fields to promote legislation in this area. Morkham attended, as did Bill Shorten, Federal Member for Maribyrnong and Parliamentary Secretary for Disabilities and Childrens Services. Five months later the Australian government announced a Productivity Commission enquiry into a national disability long term care and support scheme. Shorten was party to the announcement that Walsh would serve as Associate Commissioner to the Productivity Commission in its Inquiry. The Commission has since reported.[116]

Should the ALP's government's recommendations for a "no-fault National Injury Insurance Scheme" be fully implemented, with bipartisan support from the Opposition, a major social policy difference between New Zealand and Australia would be erased.[117] Of course, people who are injured would remain more generously treated by the state in both countries "than those who are sick, who suffer from incurable disease or have congenital deformities," contrary to Woodhouse's recommendations over the years.[118] Currently, moreover, New Zealand's National Coalition Government is looking to privatise the workers' compensation part of the ACC scheme at a time when there is a harmonisation process of Australian compensation laws. The argument that, because of its more simplified political system, introducing radical reforms, including workers compensation schemes, is easier in New Zealand than it is in Australia, can be turned on its head in conservative times. Such is the contingency of lesson-drawing, policy convergence, policy diffusion and policy transfer between even closely related countries involving costly and complicated change.[119]

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116. Australian Government, *Productivity Commission, Disability Care and Support: Productivity Commission Inquiry Report*, 2 vols (Melbourne: Productivity Commission, 2011).
117. T. Abbott, "Coalition Will Act with ALP on Disability Scheme," *The Australian*, March 30, 2012.
118. Woodhouse recommended sickness should be covered in the Australian national scheme in 1975 and in a Law Commission recommendation in New Zealand in 1988. Sir Geoffrey Palmer, "What Can New Zealand Learn from its 40 Years of Accident Compensation History?" (keynote address on the The Future of ACC, organised by the ACC Futures Coalition, 29 October 2012). I thank one of the anonymous readers for drawing my attention to this unpublished paper.
119. D. P. Dolowitz and David Marsh, "Who Learns What from Whom: A Review of the Policy Transfer Literature," *Political Studies* 44, no. 2 (June 1996): 343–57; and D. P. Dolowitz and David Marsh, "Learning from Abroad: The Role of Policy Transfer in Contemporary Policy Making," *Governance* 13, no. 1 (January 2000): 5–23.