'Deregulation' and Other Myths: Re-Reading Industrial Relations Policy

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Understanding the nature of change in industrial relations policy has never been a simple matter. Today it is more difficult than ever because the words and phrases commonly used to describe industrial relations are at best unhelpful and at worst disingenuous. Researchers have long argued that the common terminology is inadequate because it simply fails to describe the changes which have been made and the proposals with which we are now confronted. The main problem terms have been the words 'deregulation' and 'choice', along with a host of associated feel-good terms like 'flexibility', 'enterprise bargaining' and 'individualisation'. Most recently, the notion of a 'unitary system' has been added to this list. These terms seem clear enough but they are altogether misleading. This paper explains why these terms are inadequate, speculates about why they have become so prevalent and sets up some alternative words, phrases and frameworks which more accurately describe industrial relations processes and outcomes.

Policy then and now: the making and unmaking of arbitration

Before dealing with these contemporary terms, it is important to talk about the development of industrial relations policy in general and the making of the arbitration system in particular. Terminology is important in this context because the Commonwealth Government and others habitually cast recent and emerging policies as exciting breaks from the past. The proponents of the proposals released on 26 May this year (Andrews 2005) are right to assert that the Government's plans, alluringly sub-titled 'a plan for a modern workplace', constitute the most significant legislative change since the passing of the original Conciliation and Arbitration Act 101 years ago. But they at once overplay and underplay the importance of industrial relations policy and they oversimplify the links between the global economy, government action and the workplace.

As is well known, Australia's conciliation and arbitration system emerged in 1904 from a series of strikes and lockouts which had taken place more than a decade earlier. Its central aim was the 'prevention and settlement of industrial disputes'. That is to say, the system *was* about industrial relations. The legislation established tribunals to encourage 'goodwill in industry'. It regulated wages and recognised collective bargaining as means to this end. There was, however, much more to the policies of the day than this. Arbitration had been discussed in the very same forums which produced the Commonwealth of Australia itself and, in the first years of this new Commonwealth, industrial relations, collective bargaining and arbitration were linked with tariff and trade policies to encourage manufacturing. They were also linked with racial exclusion, the 'White Australia Policy', and an obsession with population policy which underpinned a rigid gender division of labour and unequal pay for women (Ellem 2005). Much of this is long gone and unlamented, although it might be noted in passing that confusion and inconsistencies abound in current policy about increased labour participation and family-friendly policies (Baird 2004). So, what of industrial relations itself?

The Commonwealth had emerged from a singularly inauspicious context of depression, drought and disputes. Nonetheless, it seems clear that for many if not most policy-makers, this word *commonwealth* had real purchase. Decent minimum standards at least for male employees (and their families) were central to this project of nationhood. Therefore, industrial relations was at core about the workplace, about resolving disputes, recognising the general power imbalance between employees and employers, sanctioning collective bargaining, and trying to build 'goodwill'. At the same time, it was inseparable from economic, trade, race, immigration and family policies.

Today, governments tend to speak of industrial relations *purely* as a means to an end – 'economic expansion and … productivity performance' (Andrews 2005) – and they leave, as we shall see, all other matters to the enterprise, to 'deregulation'. When discussing these other policy goals, changes in industrial relations are located in a seductive, but rarely explained, logic of globalisation. There is a set of compelling geographical arguments about global restructuring and local change which paints the global as all powerful – and new. In these arguments, global competition is described

as inevitable and individual representation at work as equally inevitable – and also thoroughly desirable (Sadler & Fagan 2004).

Is 'the global' really new? A century ago, Australian policy-makers and citizens faced economic crisis and change as they re-negotiated their relationship with what we would today call the global economy. The depression and the industrial disputes which had marked the 1890s were evidence of Australia's integration with other nations, not of physical or economic isolation. After all, the depression was triggered by international bank collapses and falling commodity prices; the disputes were in the sectors of the economy which linked the colonies to the global economy – transport, mining and shearing. For all the talk of the new economy, this economic underpinning and this complex, global relationship with other national economies seem all too familiar.

What *has* clearly changed is that the 'new settlement' which gave us tariff protection and high wages has been undone. It has become a commonplace that as the Australian economy has been opened up to the world, so labour market regulation must be transformed. Faced with a transformation in the gender division of labour, in immigration and in the nature of paid work, it is of course the case that the regulation of that work has changed and must change. The problem with the selling of much recent industrial relations policy is that it is less and less about industrial relations and more and more located in other kinds of arguments. In short, those arguments go like this: we have deregulated finance, banking and money markets and we have opened up import and export markets, does it not logically flow that the labour market must be deregulated?

We need to point out four things about the language of this argument. First, labour markets are not markets in which commodities are bought and sold. They are markets where the ability of employees, human beings, is traded. Second, it *was* 'we' who decided to make these other policy changes; it was not 'globalisation' itself. This means that these changes are a matter of politics, not just economics or, as globalisation is sometimes portrayed, a force of nature. Third, this means that governments remain central to these processes. Today, we are told, the state is leaving us all alone to run our lives as we see fit. This is an absurd misreading of policy

directions in general and in industrial relations in particular. Rather, as Bell and Head nicely say, what we have is 'state intervention in the name of market forces' (1994: 21). This, we shall see, is manifestly so in industrial relations, begging the question of who or what controls the 'market'. For now, it can simply be noted that it would be hard to think of a more interventionist government than the Howard Government has been, from the waterfront to construction, from the Employment Advocate to new agencies now proposed. Finally, we need to point out that that seductive term deregulation which appears to cover so many of these developments is entirely unhelpful. We begin our analysis of the keywords of policy with this one.

The impossibility of deregulation

The one word which is most commonly used – by supporters and detractors alike – to sum up the direction of change in industrial relations in recent years is deregulation. But how useful a term is this to explain what is really happening? Soon after the Labor Government, in co-operation with the Australian Council of Trade Unions, introduced a form of enterprise bargaining and decentralised wage-fixing, Buchanan and Callus (1993) published what remains the definitive article on the misuse of the term deregulation. They argued that deregulation was a misnomer because workplaces and industrial relations are necessarily regulated in some way or another. The question, then, is not one of more or less regulation, let alone the impossibility of 'unregulated' industrial relations. Rather, the questions are how and by whom regulation is undertaken.

To understand what is happening in the labour market and in workplaces, we should do as Buchanan and Callus did. We should draw on some very traditional industrial relations scholarship. As was the case when they wrote, so it is today. Most of the debate about the apparent need to 'deregulate' is constructed by people who say very little about how current forms of regulation actually work (Buchanan and Callus 1993: 519). They drew on the work of Flanders to explain that the subject matter we are really dealing with when looking at these questions is the making of the rules which govern work. There are two forms of these rules. Flanders distinguishes between internal and external regulation, arguing that the distinction between the two is 'of profound analytical importance' (1975: 90). Why? Because each addresses different sorts of issues and each is changed in different ways. External regulation is in some

way underwritten by 'society' and its norms and has been primarily driven by employees and their organisations seeking to develop common standards (1975: 90-91) but also as Buchanan and Callus point out by the state (OHS, EEO and the like) and indeed employers themselves from time to time (1993: 520). Internal regulation arises from workplace specific actions by employees and unions too but in this case the main driver has been management seeking to control labour through changes in work organisation and management strategy (Flanders, 1975: 91-92).

Having established that there are two forms of regulation, the critical issue for understanding changes in industrial relations policy and practice is whether rules 'can be changed without the consent of an external authority' (Flanders 1975: 90). This is what ultimately distinguishes the two forms of regulation. Building on this, Buchanan and Callus argue that there are also formal rules (say external awards or internal agreements) and informal rules (say external, tacit notions of a fair rate or internal workplace custom) governing work. They develop a matrix which remains analytically powerful for explaining changes in regulation (1993: 519-21).

What all this tells us, to reiterate, is that the idea of deregulation is nonsense. The only question is '*how* to regulate the labour market' (1993: 521, original emphasis). Using Buchanan and Callus's framework, it is plain that the outcome of policy change since 1987 and most markedly since 1996 has been a shift from formal, external regulation towards internal regulation. That is to say, towards enhanced managerial control. More specifically, this trajectory has been towards internal *and* informal arrangements. It can also be suggested that there has been a concerted attempt to alter norms – that is, external, informal rules – about fairness at work through the pressure brought to bear by the language of individualism, choice and so on, points to which we now turn.

Enterprise bargaining, choice and the rise of individualism

How do employees end up with the type of regulatory instrument that they do in any one job? The Commonwealth government argues that this is a matter of 'choice about ... working arrangements' (Andrews 2005: 5) and that this is about 'greater flexibility in negotiating working conditions' (Andrews 2005: 3). Other papers in this series address the details of these claims so we can be brief here. There are just two key points to make here about the problems with the terminology itself. Based upon

what we have just argued, that the actual form that deregulation has taken has been enhanced managerial control, it would only seem logical to argue that flexibility must typically be on management's terms and that choice is therefore unlikely to be a genuine choice. There is one aspect of this problem which makes the limitations to choice crystal clear: as Briggs, Cooper and Ellem explain in another paper, that there is no national law recognising a right to collective bargaining *and* that it is lawful to require new employees to sign an Australian Workplace Agreement as a pre-condition of employment. Choice? Choice between no job and an individual contract.

The same problems surround the use of the word bargaining. Like flexibility and choice, bargaining is a feel-good word, grounded in assumptions of fair and more or less equal workplace relationships. It is by no means easy to see what is happening in the real world to bargaining structures and to know what enterprise bargaining really means and how widespread it is. No-one really knows what they – or others – mean by the term and no-one really knows how prevalent it is.

The best analysis of these problems comes from McDonald, Campbell and Burgess (2001). They ask how much actual bargaining is taking place (see also Campbell 2001). They remind us of something which may people are keen to hide away, that there have always been forms of enterprise bargaining in Australia, that the term has meant different things to different players and that, to paraphrase their argument slightly, the real thrust of recent policy has in fact been towards workplace agreement-making. They argue that informal enterprise bargaining has probably been in decline in recent years because of labour market changes and union weakness and that this would mean that there may well have been a *decline* in the amount of bargaining overall (2001: 5).

These authors go so far as to suggest that Australia 'has a few islands of single-employer collective bargaining in a sea of management unilateralism' (McDonald et al 2001: 10). Thus the impression that enterprise bargaining is rife is as unhelpful as saying that the Australian labour market has been or will be deregulated. For the purposes of this paper, the core issue remains the problem with term itself. To recap the debate: enterprise bargaining is held to be a self-evident good, delivering flexibility and productivity gains. Other papers in this collection assess the validity of

these claims. The problem with the term it self is that it is emptied of any meaning because it avoids all the hard – and vital questions – about how this form of agreement-making really works. To ask whether it is really workplace *or* enterprise bargaining, to ask whether it is union-based or not, to ask whether it is a formal or informal arrangement, is not, in the worst sense of the word, an academic an exercise. These are *the* issues that matter in understanding what has been happening. A term like enterprise bargaining – used as much as exhortation and cure-all as anything else – is imprecise, avoiding the core issues. It is essential to ask and answer these questions about who exactly bargains and how they do it in order to get to what really matters – to be able to say anything meaningful about process, outcomes, fairness, efficiency.

This brings us to the next keyword, individualisation, because much of the argument about enterprise bargaining has been constructed in terms which are located in arguments about the sovereignty of the employee; that the less that 'third parties' are involved, the better for 'the modern workplace'. Here choice and flexibility come together in an argument that suggests that employees, their employers and the national economy all gain from the individualisation of the employment relationship.

There are many flaws with this logic, the first of which is Hyman's demonstration that the current obsession with the individualisation of many kinds of social relations is neither generalised nor inevitable. Rather, it is spatially and temporally specific; it is a phenomenon largely specific to English-speaking nations and one at odds with the actual traditions and practices of work as a social activity (2001). Secondly, the word individualism is, like the other terms just explored, simply not a good descriptor of actual events. As Deery and Mitchell point out, there is an important distinction to be made between process and content. So-called individualism is really about individualising the *processes* of industrial relations through what might be called, rather ironically, 'pattern individual contracts'. There has been a significant increase in individualised processes in Australia but much less so in actual pay and working conditions (1999: 11-13). The third flaw in this line of argument is the most telling because, as with so many of these examples, it turns of the question of power. This is because individualisation is actually not individualisation at all.

Simply put individualism is not really about the individual but rather it is about new sorts of collectives. It is about encouraging employee commitment to one kind of collective – and that is the company and, more particularly, the corporation – while reducing the role of another collective – and that is the union (Peetz forthcoming). The great paradox is that the language of individualism has been driven in the recent past by powerful collectives, 'collectives of capital', and their own representative bodies, the leading employer associations. The push to individualise the regulation of the employment relationship is central to industrial relations today but it is quite misleading to say that this means industrial relations now become inter-individual relationships. Rather there is a relationship between the individual employee and a very powerful collective, the corporation (Peetz forthcoming).

If we draw all these points together and rethink the terms deregulation, we can much better appreciate the nature of change by thinking in terms of the sources and types of regulation, by understanding how choice and flexibility vary from one setting to another and how real social forces and institutions drive so-called individualisation. We can the go back to our starting point and see it afresh. The main changes in industrial relations are best thought of in terms of the decentralisation of wages – a move away from national or industry standards – and the decollectivisation of worker representation (Cooper 2005). Neither of these processes is a matter of deregulation. Each has been driven by policy change, court decisions and labour market change. Neither is simply about choice and the individual.

A unified national system?

Finally, we come to the claim that all this deregulation and individualisation will both lead to and be delivered by a unified national system. The very purpose of policy since 1996 has been to encourage workplace specificity, not uniformity. The proposed take-over of the State jurisdictions is of course designed to facilitate this – to use one legal framework to drive greater fragmentation between workplaces and, therefore, between places within the Australian nation-state. The 'uniform system' would be localised and individualised, an argument originally found in the work of Flanders and his colleague Fox in the late 1960s. Faced with the rise of worker (not government) challenges to the 'British industrial relations system', the Donovan Commission had argued that there were two systems of industrial relations, a formal one and an

informal one (Royal Commission 1968: 12). Flanders and Fox, by contrast, claimed that there were not just two systems but many; furthermore, there were no 'integrating principles' of the so-called system and therefore it could not be *a* system. Instead, there was 'a proliferation of unrelated normative systems' (1975: 256). In this light, the Howard Government's claim that dispensing with the States' industrial relations powers leads to a unified system is simply nonsense (Baird et al 2005). On the contrary, what would emerge would be neither unified nor a system.

Conclusions

How has all this misleading language become so dominant? In large part, it is because the words themselves seem attractive and they denote ways of living that are fresh, new and, to use another vogue term, 'empowering'. In this worldview, the state leaves us all alone to express our individuality in work as in other areas, while the nation prospers from new global connections. At the same, as has been often said, there are crises of language, politics and belief on the left. It is also because of something more immediate, and no less problematic, namely the apparent logic of the link from one area of policy to another and the reduction of all relationships to market relationships. In industrial relations as in so many other areas, deregulation is particularly powerful word precisely because it does remove the primary and vital question of agency – who is doing the regulating – and how.

Trying to recast the debate about industrial relations will not of itself change the debate. However, other questions, words and phrases must be thrown forward to allow us to understand what is really taking place as policy changes. To talk of decentralism and decollectivism and of the sources and types of regulation is a necessary start. To engage in political argument speaking of unilateral management direction, of corporate power and the fragmenting of the Commonwealth is essential. We do not need – thought we may wish – to engage in debate about what motivates Government policy but we can point to these terms and others used in this paper as sure indicators of results thus far and results to come.

Finally, we should not forget the lessons from the making of arbitration a century ago. As we face the un-making of this policy and these traditions, we face therefore the un-making not just of industrial relations policy but of something core to the

Commonwealth itself. The policies of 1904 were located in the making of a particular view of nationhood, of a Commonwealth. There is much that had to change in the century since – race and gender exclusions in particular. Much of that necessary change occurred due to the work of those now labelled by the Government as self-serving and backward looking; unionists, social and political activists and critical researchers. Some of the traditions of 1904 should, however, remain: chiefly, the principles of fairness and the respect for collective action which the early Commonwealth recognised.

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