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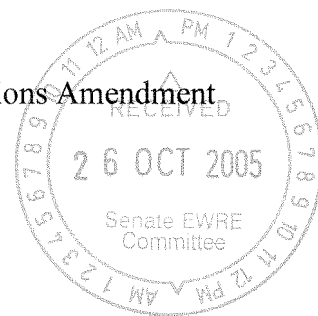
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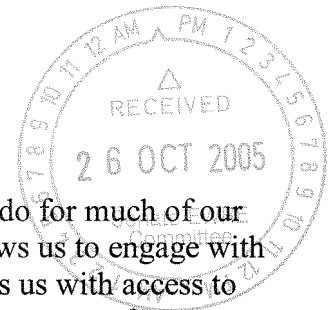
The Antecedents and Fallacies of WorkChoices as a Mode of Industrial Relations Regulation

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Introduction

Work is fundamental to the human condition. It determines what we do for much of our waking lives and it preoccupies much of what we think about. It allows us to engage with other people and it helps us to define our sense of identity. It provides us with access to the material necessities of life, as well as to the advantages and achievements of civilisation. Its organisation, management and reward are therefore of no small importance. How these are undertaken in gainful employment says much about the views and values a society holds. What levels of unemployment are deemed tolerable, what manner of work is undertaken and how disputes between capital and labour are resolved, for example, are all matters that are invariably shaped by prevailing cultural boundaries, economic circumstances and political understandings people hold towards their engagement with work (Thomas, 1999, p.v). People's views and opinions about work and its management have undergone significant change over the past couple of decades, with much of it being the product of an emerging national context that is being increasingly subject to global economic influences and neo-liberal policy agendas wedded to free market economics.

This paper questions the wisdom of the current policy intentions represented the Workplace Amendment (WorkChoices) Bill 2005, which, on the basis of most commentaries, is aimed at reducing the power of industrial tribunals and trade unions in favour of implementing a radical new system of decentralised industrial relations. In so doing it sets out the ideological differences between the two main political parties and how this has conditioned the way each has historically approached the regulation of industrial relations. This seems an important step to make sense of the political, economic and ideological rationales that have been used over the past decade to justify the decentralisation of collective bargaining. The discussion then goes on to challenges the assumptions upon which these rationales are based before concluding with some personal thoughts about what is needed to secure a more effective, efficient and ethical means of managing workplace relations.

The view from the left: Social equality and industrial relations regulation

To put it in the simplest possible terms the policy programmes of the Australian Labor Party, and much of the thinking of the trade union movement more generally, start from the philosophical notion that people are born equal, but that society serves to create inequality. As freedom can only exist in a society free of social inequality, the primary task of all ethical human endeavour is to promote freedom by manipulating the way social institutions are structured and governed, to which the state has a major responsibility (Aitkins & Jinks 1983). On this conception, one of the major sources of social inequality in capitalist societies is held to emanate from the unequal relationship that between waged labour and employers. The nature of this line of reasoning is as follows. Employers are distinctly separate from the factor of input they bring to production, namely, capital. By this it is meant that if things are not going well for employers and their businesses they can choose to withdraw capital from an enterprise. Alternatively, they can either sell their capital equipment if it is not profitable or they can hold on to capital stock if market conditions are unfavourable. Or, if they are sufficiently funded they can choose to leave their money in the bank or move it overseas in the form of investment. In short, because employers are physically separate from one of the most important factors of production, namely, their capital, they have considerable 'freedom of choice' as to where and when to invest.

Workers (or waged labour), in contrast, are not physically separate from the factor they bring to production, namely, their labour. As such, they cannot easily withdraw their labour if they

believe it is unprofitable without experiencing some form of deprivation, namely, the loss of wages. Nor can they easily hold on to their labour until market conditions get better. And it is certainly not easy for workers to invest their labour overseas without physically going with it. In short, workers have far less freedom of choice than employers in choosing where and when to deploy their labour. Accordingly, it is employers, and not workers, who have the greatest decision-making powers over employment, production and investment decisions. It is this relative freedom on the part of employers that gives them considerable leverage over individual employees in workplace relations. It is easy to imagine bargaining situations where there has been a downturn in a particular market. The employer, on simple commercial grounds, asking individual employees to work at half-time or on half-wages until conditions pick up; that if workers failed to do so then the company would go broke, whether this is the real position of the company or not. In such a scenario individual workers will typically have little or no ability to question the decision.

In other words, the control over investment, production, employment, wages, and so forth, gives employers substantial bargaining power over individual workers. Unions have historically sought to countervail this imbalance. They have done so by trying to organise workers so that they might present a united front to employers. In so doing, the aim has been to try to make it difficult for employers to unilaterally and arbitrarily set wages and conditions of workers.

The Labor Party in Australia, and the trade union movement more generally, have traditionally sought to maintain the balance of power between the both sides of industry. The left wing of the Party has long advocated that this can only be done through the public ownership of the so-called 'commanding heights' of the economy. By this it is meant that it has frequently sought to maintain the public ownership of health care, education, gas, electricity, transport, communications, and so on. Their view is that providing the state with the means to actively and directly intervene into the operation of social institutions will dampen the impact of social inequalities generated by people's employment within privately owned enterprises. Accordingly, the left has long opposed, and continues to oppose, moves to privatise public utilities and functions, and it has been a consistent supporter of the country's industrial relations tribunals and centralised systems of wage fixing (Beilharz 1994). The right wing, which has been the dominant faction inside the Labor Party for much of the past twenty years, has been more comfortable with simply regulating key sections of the economy, rather than seeing it retained under public ownership. Its view towards industrial relations has accordingly differed from the left, in that it has been more inclined to contemplate the implementation of a decentralised system, but one that is still regulated by the country's industrial tribunals (Jaensch 1989).

Whatever the case, the point to be made is that the Labor Party, and the labour movement more generally, has long supported, and still does support, the existence of a tribunal system as a means of counteracting the imbalance of negotiating power that exists between waged labour and employers. The philosophical perception behind this thinking is that regulation of the employment relationship is synonymous with reducing the incidence of social inequality in the workplace, and that the reduction of inequality in this setting can only be to the benefit of individual freedom and the common good of the country.

The view from the right: Freedom of choice and industrial relations deregulation

Turning now to the Liberal Party, like the Labor Party, there are two strands to its guiding ideology. The first starts from the notion that people are born with differing potential and abilities. On this conception, the best society is the one that provides individuals with

freedoms which allow these capabilities to develop in the interests of all. It is not the role of governments to manipulate the way social institutions are structured and function, and certainly not in the name of greater social equality. Indeed, some inequality is seen as healthy, for it encourages individuals to make the most of themselves and their talents. The second strand of Liberal Party ideology holds that people, or more particularly the masses, are not to be trusted to do the right thing. Rules and conventions must therefore be preserved and enforced so as to ensure that an ordered social life is possible. Furthermore, such rules and conventions should only change slowly, and only when it is beyond question that a change would be beneficial. On this belief, government has, at the very least, a role to maintain rules and conventions that sustain social order.

The internal politics of the Liberal Party has wrestled with these competing notions since its inception in 1949. The question for Liberal politicians has always been: How many rules and conventions can be sponsored or maintained by government without stifling individual freedom and initiative? Until the early 1980s, most Liberal Governments were conspicuous in their devotion to the first side of this question, namely, that rules and conventions must be rigorously maintained. In so doing, they were essentially paternalistic, in that they frequently enacted policies designed to look after the disadvantaged in society (Jaensch 1994). They did this, however, not in the name of advancing social equality, but in the name of reducing sources of social tension that seemed likely to generate challenges to the existing rules and conventions. One prime example of this was the support provided by most post-war Liberal Governments for the maintenance of the Industrial Relations Commission. The Industrial Relations Commission was established as a response to the severe industrial upheavals of the 1890s, which provided a major challenge to the rules and conventions of social order at that time. Until the late 1970s all Liberal Governments carried on this legacy. Although less favourably disposed towards the IRC than the Labor Party most, nonetheless, saw its rules and conventions as a major mechanism for maintaining industrial order.

Since this time the ideology of the Liberal Party has become more concerned with the second aspect of the question I posed earlier, namely, that the role of government should be confined to promoting individual freedom. At both State and Federal levels where the Liberal Party holds office, older conservative notions about the need to maintain existing rules and conventions, have been jettisoned in favour of a philosophy based on market liberalism. This particular brand of Liberalism holds individual freedom to be synonymous with economic freedom. Economic freedom, in turn, is seen as contingent upon the free exercise of individual choice in market transactions (Henderson 1998). Gone is the sense of paternalistic obligation to intervene in social and economic affairs as a means of quelling dissension towards prevailing rules and conventions. Instead, the dominant view now holds government to be far less effective than the market in delivering optimum social and economic outcomes. Indeed, the prevailing view is that governments in the past have been positively foolish in trying to buck the 'laws of the market' in their efforts to do so. On this present conception, then, if there is no place for government intervention in the conduct of transactions in the market-place, then there is also no place for third party intervention in the conduct of transactions in the workplace. In fact, interventions by government, trade unions and industrial tribunals are seen as an impediment to the optimum outcomes that can be afforded to workers and enterprises. Workers and employers should instead be left to determine their own affairs, on their own terms, and under whatever market conditions they collectively confront.

The rationale for this belief is that the market operates as the most effective and fair means for distributing and allocating resources. Freed from outside regulation, enterprises can adjust more readily to the needs of their product and service markets. Employment

agreements are thus allied to economic performance, such that the parties can freely adjust their relations in accordance with the needs of the enterprise. Put simply, it is the adoption of this new brand of market liberalism that is driving the current political rush for a radically decentralised industrial relations system. It has been supported by large employers and major employer associations. And there has been compelling evidence that rapidly changing economic conditions have required some measure of decentralisation be injected into the industrial relations system. Labor recognised this requirement when in office, and tried to 'manage' the decentralisation process under the guardianship of the existing tribunal system. The Liberals have now taken it further, and want, in the next round of proposed industrial relations legislation, to hasten the pace of decentralisation further by radically reducing the powers and prerogatives of IRC and trade unions more generally.

This, then, says something about party ideology and its links to the present shift in political thinking towards Australian industrial relations.

Are free markets fair?

I want to broach now a couple of questions on the back of this synopsis. First, is the assumption that allowing free markets to reign over economic and employment transactions truly good for all concerned? And second, what are the likely consequences of the current push to individualise employment contracts? In moving to answer the first of these questions I will begin by stating the obvious, in that it would be fair to say that the Coalition (Liberal-National) Government, both historically and ideologically, and despite its protestations towards representing the community in general, is strongly disposed towards serving the interests of business.

A key assumption behind the free market thesis is that if business prospers, everyone else and the country will also prosper. In providing political support for the interests of business, however, certain symbolic and ceremonial constraints need to be observed within the broad thrust of policy. Specifically, it is not acceptable in this country to say openly of any policy action that its purpose is to favour business only. Nor can one be outwardly against workers if a policy is for the avowed purpose of protecting the interests of business only. To be outspokenly hostile or even too obviously indifferent to workers interests would be political suicide. Accordingly, policies designed to promote the interests of business as opposed to the interests of workers must have a covering doctrine. This cover need not be taken seriously, but its role is widely recognised by those in the know as both verbal and symbolic. A disguise is nonetheless a disguise, even though it is recognised as such.

The covering doctrine I refer to, and the one that underpins the rationale of the proposed Workplace Amendments (Workchoices) Bill 2005, is one clearly grounded on the neo-classical assumptions of free market economics. Put simply, it is a doctrine which suggests that the labour market can only ever operate efficiently if it is subject to the disciplines of the free market.

So how does this doctrine deal with the issue of unemployment? In a theoretical sense, it holds that there can be no unemployment in a free market, or at least no long-term unemployment. Short-term unemployment can exist when there is an abundance of labour relative to the demand for labour. In such circumstances, the price of labour, that is the wages paid to labour, will fall, like any other commodity. This fall in wages will encourage firms to employ more labour than they otherwise would, until such time as there is no longer any unemployment. In the alternative scenario of a scarcity of labour relative to demand, the price of labour (or more specifically its wages) will rise. The demand for labour will diminish until such time as the scarcity of labour no longer exists. At present there is little

indication that the Liberal-National Coalition Government wants to tackle unemployment or underemployment in any pro-active or interventionist manner. So one can only assume it holds the implementation of a free labour market to be the primary mechanism to reduce unemployment.

The same principles apply to the level of the firm. Left to confront the rigours of the free market, the rationale of the Workplace Amendment (WorkChoices) Bill 2005 is that decentralising the industrial relations system will force firms to allocate internal resources in a more effective and efficient manner. Wages and the organisation of work will accordingly be set in a way that best accommodates these objectives. Taken to its logical conclusion, the self-correcting regulation of market forces has no role for trade unions, collective bargaining, the IRC, or the government. Indeed, interventions by these parties are held to frustrate the equilibrium of the market, and so also the possibility of the efficient allocation of resources at both the macro- and micro-economic level.

The trouble is that free markets work wonderfully well in theory

Ceteris paribus, all things being equal, it is easy to make mathematical or statistical sense of market economics, to make the figures balance and to accuse third party interventions as being inimitable to efficient economic outcomes. I am not going to challenge these assumptions on any theoretical level, for to do so here is beyond the scope of what I am hoping to achieve. But any thinking individual's intuition should tell them that if they were free to wander this world with the scant rule of law, then only the fittest and strongest would survive. And so it is in the real world of economics and labour relations. There is little dispute, for example, that the 'free' trading regimes demanded of the third world as a condition for receiving loans from the World Bank have been to their eternal impoverishment (Mayo, 2005). And there is little dispute that workers in disadvantaged sectors of the labour market are being impoverished by the current drive to decentralise and deregulate bargaining processes—which have typically involved women, the disabled, aboriginals and ethnic minorities (Wicks, 2005),.

Just as free markets are to the advantage of the strongest, so also are deregulated labour markets to the disadvantage of the weakest. Hence, I come back to my earlier point, namely, that it is unacceptable to say openly of any policy action that its purpose is avowedly in favour of the interests of business only. To be sure, the proposed Act contains the expected symbolic and ceremonial statements to suggest otherwise, such as the need to protect the 'freedom of choice' and the 'freedom of association'. But it is a freedom conferred on workers to enter into negotiations individually with their employers with little or no knowledge or understanding of the real position of the company. It is a freedom to accept the deal offered by the employer or run the risk of intimidation, lost promotion opportunities or even unemployment. And it is a freedom to strike a wage deal where the market price for labour is currently diminished by perpetually high levels underemployment.

Nor does this last so-called freedom seem likely to change. There is, in fact, no empirical evidence from any period in history, or from anywhere in the world, that confirms the thesis that wages set in the market place have the capacity to clear unemployment or underemployment. Common sense should suggest that if real wages are lowered, then this can only serve to reduce aggregate consumer spending. And that if there is lower aggregate consumer spending then this can only reduce the need for firms to employ labour. Nor is there any empirical evidence from any period in history, or from anywhere in the world, that confirms the thesis that fairness and equity in employment relations go hand-in-hand with deregulated industrial relations.

Despite this lack of reference to the evidence, or even because of it, business strategies are being adopted and adapted to make prevailing modes of production and organisation more flexible and more efficient, which has involved the diversification of productive output and the expansion of distribution and exchange networks. An important outcome of such strategies has been the changed conditions of employment. These are broadly recognisable in the growing incidence of casual, contract and part-time employment, in the decentralisation of authority structures, in the expanding use of outsourcing and the broadening spread of ordinary hours work, in the de-standardisation of labour contracts and work tasks, in the relaxation of attendance regulations and the dispersion of work sites through electronic networking, in the move from mass production in large scale factories to batch production in small-scale work-houses and service organisations, and in the transition from uniform, secure systems of life-long employment to more pluralised systems of precarious underemployment (Abbott & Kelly 2000)

These changes represent the emerging parameters of a new industrial context, but they also encapsulate two interrelated trends, one that applies to a *core* workforce, the other to a growing *peripheral* workforce (the terminology here draws on Atkinson, 1984, 1985). In the case of the former the dominance of scientific management techniques has given way to new organisational paradigms that seek to establish a psychological contract between employers and individual employees; for example, through human resource management practices, total quality management policies and quality of life techniques. This group of workers are now seen as an important source of competitive advantage, and are thus being remunerated, trained and included in managerial decision-making in accordance with this importance. The positions they hold are typically full-time, male dominated and stable, and the tasks performed are typically complex and interesting, requiring high levels of technical education and/or specialist expertise to perform (Marks, Hillman & Beavis, n.d.). In the case of the latter the dominance of scientific management techniques and authoritarian forms of labour control still prevail. For this group of workers the tenure and availability of employment is more precarious, their pay is typically poor and uncertain, their training, if any, is limited to their initial orientation, and the tasks they perform still require low levels of skill and remain simple and mundane (May, Campbell & Burgess, 2004).

The emerging bifurcation of internal work-forces in this manner has had its costs and benefits. Its benefits have been realised in the way businesses are now able to organise working hours to suit the level of production needed to satisfy prevailing product market conditions. Thus, when conditions are good the number of peripheral workers grows, and when poor their numbers contract. It has also allowed businesses to pass on a significant level of entrepreneurial risk to the workforce in the form of flexible underemployment, which in turn has allowed them to operate production arrangements longer, more intensively and more tightly. It has furthermore allowed businesses to use underemployment, task diversification and work-site dispersion to weaken the power of trade unions for the purpose of pushing through ever-more flexibilised work arrangements deemed necessary for corporate survival. As a consequence the productivity and profitability of Australian industry has improved dramatically and consistently over the past couple of decades.

The costs of these new employment arrangements are nonetheless apparent. They are represented in the growing peripheral workforce being visited by new forms of unfavourable distributions of income (Wicks, 2005), poor career opportunities and low status within the organisations they work for (May, Campbell & Burgess, 2004). It is also represented in the generation of new sources of insecurity as the risks of engaging in work become privatised and the costs of social protection previously afforded by public institutions are shifted onto the recipients themselves. At the same time the growing numbers of casual, contract, part-

time, outsourced, non-unionised workers employed at flexible times in decentralised work locations is enabling businesses to save on the costs of health and safety, superannuation and overtime, sick pay and holiday leave, building and tool expenses, and the like (May, Campbell & Burgess, 2004). And for those so employed, the flexibilisation of employment and on-going labour and product market uncertainties are visiting them with increasing doubt and scepticism about the protections provided by traditional institutions, whether they be political, legal, welfare or trade union related (Abbott & Kelly, 2000).

What about individual bargaining?

We come here to an implication of some importance, and which refers to the second question I posed earlier in relation to the individualisation of employment contracts.

And it is this.

The system of employers and unions, of management and unionised work groups, jointly negotiating terms and conditions of employment, depends for its stability and health upon neither side feeling that it is being overly subjected to coercive dictation by the other. This is best explained by elaborating certain aspects once noted by Alan Fox (1985), and which appear to be fundamental truths about the nature of power and promises.

If someone extracts a promise from you by holding a pistol to your head, neither a legal nor a moral judgement will regard that promise as binding in honour. As soon as the immediate threat is removed you would no doubt feel justified in ignoring the promise, since it was extracted under duress. And were the threat to be maintained continuously, however, you would of course continue to observe the required behaviour, but this observance would follow, not from your recognition of moral obligation but from expediency. The point to be made is that commitments and agreements which we feel have been extracted from us under compulsion as a result of our extreme weakness, do not normally evoke our sense of obligation so far as observance is concerned ...

So what kinds of commitments and agreements evoke such a sense of obligation? It is only those in which we feel ourselves to have enjoyed adequate freedom in undertaking the commitment or concluding the agreement. Indeed the sense of obligation can be said to be greater the more nearly we approach a position of complete equality with the other party. When we accept the terms and conditions of an undertaking, not from any sense of being pressured or coerced, but from a sense of voluntarily agreeing to obligations whose nature we fully understand, we are conscious of a moral obligation bearing upon us. To be sure, we may sometimes be tempted to evade it. But when others appeal to us that the obligation exists—and seek to keep us to the line of duty by threatening penalties if we default—we do not consider the moral appeal to be irrelevant, or the threatened penalties to be an offence against natural justice.

The point to be made here is that understanding these basic, and all too human sentiments, helps to cast light on those situations where employees are not collectively organised under the auspices of unions. Here the employee stands alone when concluding a contract with the employer. And for the reasons I earlier outlined the employer's superior economic power will, in most cases, confer him or her with a disproportionate ability to determine the terms and conditions of the contract. This was the predominant pattern over the first century of the industrial revolution, and it is a pattern that appears to be emerging with increasing vigour in the settlement of present-day wages and conditions.

It is instructive to note that during the early years of industrialisation the leading lights of the day were apt to defend the system of individual bargaining with the rather heroic assumption

that it represented the 'free' contract between master and servant, bargaining as equals in the labour market. Whether or not particular employees saw this situation as fair and equitable, the passage of time saw growing numbers of outside observers who regarded this degree of power disparity within business organisations as socially unjust, and of course the trade unions were at the forefront of propagating this message. They mobilised to address this disparity and collective bargaining developed accordingly, where both sides committed themselves to certain terms and conditions of employment, including procedures which defined the most appropriate methods of handling claims and grievances without resort to strikes, lockouts, or other forms of disruptive action.

The message to be taken from this ethics is this.

To the extent that the terms and conditions of the employment contract are seen as being settled, not by the coercive power of the employer, but by free and equitable negotiation between parties of roughly comparable strength, then employees can fairly be expected to offer honourable observance of the agreements that result (Fox 1985).

Thus, my appeal is that present policy-makers take stock of the current direction in which industrial relations is moving. They should note with some trepidation the prevalent push towards individualised contracts and decentralised bargaining systems. In so doing they should question the appropriateness for the community as a whole of a political agenda that would see the power of the country's industrial tribunals and trade unions greatly reduced. They should furthermore be aware that efficiency and profitability, and equity and fairness, are two sides of the same industrial coin, and that one side need not necessarily be at the expense of the other.

The art of industrial relations, as with most things in life, is about balance: (i) balance between the competing demands of labour and capital over the spoils of industrial enterprise; (ii) balance between what is fair and equitable on the part of workers, and efficient and profitable on the part of employers; and (iii) balance between the negotiating power of parties participating in employment contracts. Managing this balance in the interests of all concerned is what industrial relations all about, and contemporary policy makers and their business supporters could do no worse than to ponder the significance of this as a way of getting their head around the problems and prospects of governing workplace relations in future.

Bibliography

Abbott, K & Kelly, P. (2000), 'Theorising Industrial Relations in the "Risk Society"', in J. Burgess & Glenda Strachan (eds), *Research on Work, Employment and Industrial Relations 2000*, Proceedings of the 14th AIRAANZ Conference, vol.1, February 2000, Newcastle.

Aitkins, D. & Jinks, B., (1983) *Australian Political Institutions*, Pitman, Melbourne.

Beilharz, P. (1994) *Transforming Labor: Labour tradition and the Labor decade in Australia*, Cambridge University Press, Melbourne.

Fox, A. 1985, *Man Mismanagement*, 2nd edn, Hutchinson, Chippendale.

Galbraith, J. (1987), *The History of Economics: The Past as Present*, Hamish Hamilton, London.

- Henderson, G. (1998), *Menzies' Child: The Liberal Party of Australia*, revised edition, Harper Collins, Sydney.
- Jaensch, D. (1989), *The Hawke-Keating Hijack: The ALP in Transition*, Allen and Unwin, Sydney.
- Jaensch, D. (1994), *The Liberals*, Allen and Unwin, Sydney.
- Marks, G., Hillman, K. & Beavis, A. (n.d.) 'Dynamics of the Australian Youth Labour Market: The 1975 Cohort, 1996-2000', *LSAY Research Report 3*
- May, R., Campbell, I. & Burgess, J., (2004) 'The Rise and Rise of Casual Work in Australia: Who benefits, Who Loses?' Paper presented at seminar, Sydney University, June 20.
- Mayo, M. (2005), 'The World Will Never Be the Same Again'? Reflecting on the Experiences of Jubilee 2000, Mobilizing Globally for the Remission of Unpayable Debts', *Social Movement Studies*, vol. 4, no.2, pp.139-54.
- Thomas, K. (ed.), 1999, *The Oxford Book of Work*, Oxford University Press, Oxford
- Wicks, J. (2005), The Reality of Income Inequality in Australia, *Social Policy Issues Paper*, no.1, S Vincent de Pauls.