Few Choices under Work Choices

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This paper sets out the history of the philosophical understanding held by the major political parties towards the governance of the Australian industrial relations system. In so doing it notes there has been a long legacy of socialist and conservative political and ideological support for mediating industrial conflict through the institutional agencies provided by conciliation and arbitration tribunals. The discussion notes the erosion of this legacy under the recent ascendancy of neo-liberal political and neo-classical economic thought, an ascendancy that has seen a significant retreat of state responsibility for mediating relations between the two sides of industry in the name of improving business productivity and national economic outcomes. The passing of the Workplace Amendment (Work Choices) Bill 2005 is the latest legislative manifestation of this thinking. This paper challenges the labour market assumptions and expectations of the Bill by arguing that equality in bargaining power between the two sides of industry in the manner afforded by conciliation and arbitration tribunals is essential for any genuine and lasting prosperity to exist between labour and capital.

Field of research: industrial relations

1. Introduction

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. It is in this context that the present paper questions the rationales of the newly enacted Workplace Amendment (Work Choices) Bill 2005 (hereafter simply referred to as the Work Choices Act), which is aimed at reducing the power of industrial tribunals and trade unions in favour of implementing a radical new system of decentralised and de-collectivised bargaining. There has so far been ample commentary concerning the impact the Act is expected to have on the wages and conditions of workers and the productivity and profitability of employers (see, for example: Teicher et al. 2006; Briggs & Buchanan 2005, pp.182-91; Ford 2005, pp.211-22; Gray, 2005, pp.440-59; Williams, 2005, pp.498-510).

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Less has been written about its underlying economic philosophy as it pertains to party politics and the power relations that exist between labour and capital when bargaining over the spoils of industrial enterprise. Hence the purpose of this paper, which first sets out the differences in economic philosophy between the two main political parties (i.e. the Australian Labor Party and the Liberal Party) and how this has conditioned the way each has, both historically and contemporaneously, approached the regulation of industrial bargaining. This seems an important step to make sense of the rationales that are presently being used to justify and condemn the type of decentralised and de-collectivised bargaining that is being sought as a primary objective of the *Work Choices Act*. The closing sections of the paper go on to develop the argument that an (approximate) equality of power in industrial bargaining is essential if workplace relations are to be managed in an effective, efficient and ethical manner.

2. The view from the left: Social equality

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 understanding 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, of which the state has a major responsibility (Australian Labor Party, 2006, chapter 1). On this conception, one of the major sources of social inequality in capitalist societies is held to emanate from the unequal relationship that exists between waged labour and employers. The nature of this inequality flows from the fact that employers are distinctly separate from the factor input they bring to production, namely, their capital. By this it is meant that if things are not going well for employers they can choose to withdraw their capital from an enterprise; or they can sell their capital equipment if it is not profitable to operate; or they can hold on to capital stock if market conditions are unfavourable; or they can leave their money in the bank if they are sufficiently funded; or they can move it overseas in the form of investment. In short, because employers are physically separate from capital they have considerable ‘freedom of choice’ (i.e. power) as to where and when to invest (for a standard articulation of this view of employer power, see: Hyman, 1975, chapter 1).

Workers (or waged labour), on the other hand, 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.
They cannot easily hold on to their labour until market conditions get better. And they cannot easily 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 factor of production (i.e., labour). Employers thus have far greater power than employees when choosing who to employ, what to produce and where to invest. But more importantly, it is this relative freedom on the part of employers that gives them considerable leverage over individual employees in workplace bargaining processes (Hyman, 1975, chapter 1). It is for this reason that the Labor Party and the trade union movement more generally have tried to promote, so far as possible, a balance of power between the two sides of industry. Trade unions have sought this balance though organising workers so that they might present a united front to employers. The Labor Party has historically grappled with two approaches in accordance with its factional politics. The left wing of the Party has long believed the balance of power between labour and capital is best achieved through the public ownership of the so-called ‘commanding heights’ of the economy. By this it is meant that it has historically sought to maintain public ownership of health care, education, gas, electricity, transport, communications, and so on. The view here 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. The right wing, which has been the dominant faction inside the Labor Party for much of the past thirty 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 (Vromen & Gelber, 2005; John Faulkner & Stuart Macintyre, 2001).

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 an industrial tribunal system and a robust trade union movement 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. Hence, aside from the labour movement’s more functional grievances with the proclaimed expectations of the *Work Choices Act*, there are significant ideological differences with its underpinning rationales.
3. The view from the right: Freedom of Choice

Turning now to the Liberal Party, like the Labor Party, there are two strands to its guiding ideology. The first refers to classical liberal ideals that hold 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 (Liberal Party, 2006). It is thus 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 refers to conservative ideals that hold 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 (Brett, 2003).

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 Australian Industrial Relations Commission (AIRC) and its variants. The AIRC 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 AIRC than the Labor Party most, nonetheless, saw its rules and conventions as a major mechanism for maintaining industrial order (Henderson, 1998).

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. 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 (Brett, 2003). 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 (Liberal Party, 2006a).

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 (Australian Industry Group, 2006; Business Council of Australia 2005; Australian Chamber of Commerce and Industry, 2006). And there has been compelling evidence over the years 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 (Petzall, Abbott & Timo, 2003). The Liberals have now taken it further, and want, in the present round of industrial legislation, to hasten the pace of decentralisation further by radically reducing the powers and prerogatives of AIRC and trade unions more generally.

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

4. The ‘covering doctrine’ of the Work Choices Act

As a means of developing the argument about the need for an approximate balance of power in bargaining relationships between employers and
employees, it is now possible to broach a couple of questions on the back of the above synopsis. First, is the assumption that allowing free markets to reign over economic transactions truly good for all concerned? The argument that follows answers no. And second, if it is not truly good for all concerned, then what are the industrial bargaining consequences for those who are disadvantaged by the free reign of economic transactions? In answering these questions the aim is to demonstrate that freedom in economic transactions is rarely neutral in the accrual of benefits to various parties engaged in industrial enterprise, and that certain interests (i.e. capital) are typically attract more advantages than others (i.e. labour) when engaging in industrial bargaining.

A key assumption behind the free market thesis is that if business prospers everyone else and the country will also prosper. As stated in the preceding analysis this type of assertion has been proclaimed extensively in business and Government circles to justify the need for reforming legislation aimed at radically changing the pre-existing regulation of industrial relations. As part of this justification certain symbolic and ceremonial constraints need to be observed. Specifically, it is not acceptable to say openly of any policy action that its purpose is to favour business only. Indeed to be outspokenly hostile or 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.

The *Work Choices Act* is exemplary in this regard. Its covering doctrine holds to the notion that labour markets can only ever operate efficiently if they are subject to the disciplines of the free market, and that all will benefit when they are allowed to operate in this manner. Its operation is proclaimed as offering a great fillip to secure the employment of those who are weakest in the labour market, and is justified on the grounds that there can be no unemployment in a free market, or at least no long-term unemployment (*Work Choices Act 2005*, preamble). Furthermore its operation is proclaimed as encouraging firms to allocate internal resources in the most effective and efficient manner, and is justified on the grounds that wages and conditions negotiated without the intervention of third parties (i.e. trade unions and industrial tribunals) will allow firms and those they employ to strike a bargain that best suits their needs (*Work Choices Act 2005*, preamble). Other elements of this covering doctrine make reference to 'freedom of choice' and 'freedom of association', both of which justified on the grounds that everyone’s right to act as they see fit within the limits of the law needs to be protected.

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 inimicable to efficient economic outcomes. However its is widely recognised that workers in disadvantaged segments of the labour market are invariably impoverished by legislative measures that
seek to promote individual bargaining—which typically involve women, the disabled, ethnic minorities, the young and those employed in peripheral segments of the labour market (see for example: Wicks, 2005). Indeed free markets are more commonly seen to benefit the strongest – which typically involve the wealthy, large businesses and those employed in core segments of the labour market. 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. To the contrary, if real wages are lowered then this can only reduce aggregate consumer spending, and if there is lower aggregate consumer spending then this reduces 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 individualised forms of industry bargaining. Hence, to come back to a point made earlier, it is unacceptable to say openly of any policy action that its purpose is avowedly in favour of the interests of business only. This being the case, the freedom most likely to be conferred on disadvantaged segments of the labour market under the individual bargaining provisions contained in the Work Choices Act, will be a freedom to enter into bargaining negotiations individually with employers with little or no knowledge or understanding of the real position of the company. It will be a freedom to accept the deal offered by the employer or run the risk of intimidation, lost promotion opportunities or even unemployment. And it will be a freedom to strike a wage deal where the market price for labour is perennially diminished by perpetually high levels unemployment and under-employment.

Such circumstances are a simple fact of the emerging parameters of a new industrial context, one that now sees an unprecedented and increasing bifurcation of the labour market. One segment involves a core workforce, which is diminishing in numbers relative to the overall labour force. The other involves a growing peripheral workforce (the terminology used here draws on Atkinson, 1984, 1985). In so far as the first is concerned the former the dominance of scientific management techniques is giving 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.). For these workers individual bargaining contracts will be of little concern, since their relative scarcity in the labour market can only serve to aid them in bargaining the price of their labour up in any negotiation processes.
In the case of peripheral workers the dominance of scientific management techniques and authoritarian forms of labour control still prevail. For this group 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). For these workers individual bargaining contracts will be a major concern, since their relative abundance in the labour markets in which they operate can only dampen their ability to negotiate fair and reasonable wages and conditions.

The proliferation of individual bargaining in this emerging industrial context will have its costs and benefits. Its benefits will be realised in the way businesses will be able to organise working hours better to suit the level of production necessary to satisfy prevailing product market conditions. Thus, when conditions are good the number of peripheral workers will grow, and when poor their numbers will contract. It will also allow businesses to pass on an increasing level of entrepreneurial risk to the workforce in the form of flexibilised underemployment, which in turn will allow them to operate production arrangements longer, more intensively and more tightly. It will furthermore allow 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 business will most likely gain significantly as a result of the support for individualised bargaining being offered by the Work Choices Act.

The costs of these new bargaining arrangements will also be apparent. They will likely be represented in a growing peripheral workforce being visited by newer forms of unfavourable distributions of income (Wicks, 2005), poor career opportunities and low status within the organisations they work for (May, Campbell & Burgess, 2004). At the same time the growing numbers of casual, contract, part-time, outsourced, non-unionised workers employed at flexible times in decentralised work locations will enable businesses to save increasingly 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 will visit 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, 2005).

5. The nature of power and promises in industrial bargaining

For those disadvantaged in the labour market and who will be increasingly subject to processes of individual bargaining under the terms of the Work
Choices Act we come here to an implication of some importance. The system of employers and unions, of management and unionised work groups, jointly negotiating terms and conditions of employment, long depended for its health and stability upon neither side feeling that it is being overly subjected to coercive dictation by the other. This is best explained by elaborating certain aspects of industry bargaining 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 gun 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, or who are not part of the core labour market. Here the employee stands alone when concluding a contract with the employer. And for the reasons outlined earlier 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 will be greatly facilitated by the new provisions contained in the Work Choices Act. This will be especially so when it is applied to the growing numbers of peripheral workers, most of
who are operating in labour market segments that are subject to high levels of unemployment and underemployment.

6. Conclusion

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 an untramelled 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 (Webb & Webb, 1894).

There is a lesson to be learnt from this history. To the extent that the terms and conditions of the employment are bargained and settled, not by the coercive power of the employer, but by free and equitable negotiation between parties of roughly comparable strength, then employees can be fairly expected to offer honourable observance of the agreements that result (Fox, 1985). The message in this advocacy is that businesses should reflect on this observation before acting too hastily on the new opportunities being offered by the Work Choices Act. They should recognise that efficiency and profitability, and equity and fairness, are two sides of the same industrial coin, and that one side need not be at the expense of the other. At the level of politics similar reflection might be made with some reference to the older social democratic ideals of the left, or the conservative ideals of the right. For it was under these ideals that the art of industrial relations was conceived of as being 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 industrial bargaining. Managing this balance in the interests of all concerned is what industrial relations was 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.
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References


