Industrial Relations and the Coalition's Fightback Package: An Assessment

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'... another aspect of policy [that] has not received the attention it deserves ... is the tendency to fragment. ... This is partially explicable by the desire to stimulate competition. ... However, there tends to be a marked tendency to ignore the costs of such a solution, a neglect of the importance of system, network, interdependencies and complementarities.'

Alec Nove, 'The Fragmentationist Disease', *Studies in Economics and Russia*, MacMillan, London, 1990 p. 164

Abstract

Proponents of voluntary exchange in labour markets place great reliance on the contract of employment as an appropriate vehicle for the practical implementation of their exchange model. This paper argues a contrary view and suggests that the contract of employment may not be an appropriate vehicle for the voluntary exchange of labour.

1. Introduction

Since the late 1980s the issue of industrial relations policy has increased in importance for the Federal Opposition. The leader of the Federal Liberal

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Party now regards it as central to the Coalition's economic policy (Hewson, 1992). In May 1992, the shadow minister for industrial relations, Mr John Howard, decribed the proposed industrial relations reforms as 'the centre-piece of economic policy' (Howard, 1992). For some time he has predicted that there will be a 'productivity breakout' if their program is implemented (Howard, 1990).

Given the importance of industrial relations to a future Coalition Government it is timely to analyse these reform proposals and assess their likely impact. Such a task requires consideration of four related issues. First, what reforms does the Coalition propose for industrial relations and what improvements does it believe will occur as a result? Second, are the proposals based on a sound conceptual and empirical analysis? Third what outcomes are likely to arise from these proposals? Finally, if the policy is inappropriate, how should industrial relations be reformed? This paper argues that the *Fightback's* industrial relations proposals have major conceptual and empirical failings. If implemented they would result in increased fragmentation of the industrial relations system. Such a development would exacerbate not rectify major inefficiencies and inequities in the labour market. Industrial relations reform can, however, contribute to economic and social development. This will only occur if such reforms result in improved co-ordination between all elements of the industrial relation system.

2. The *Fightback's* Industrial Relations Proposals

The *Fightback* document (Hewson and Fisher, 1991) is a comprehensive manifesto for reform. It is underpinned by a clearly articulated social philosophy, the ideology of economic liberalism. This philosophy links an assessment of the current situation (pp. 11-22), a conception of individual rights and national goals (pp. 23-26), a new framework for government (pp. 26-30), a specification of immediate challenges for an incoming government (pp. 30-36) and an integrated set of policies to meet these challenges (pp. 36-66).

Industrial relations issues receive only limited explicit attention in the *Fightback* package. It is assumed that desirable objectives such as equity and efficiency in Australian workplaces will be promoted by establishing a government apparatus that nurtures and facilitates competitive markets. In this context tax policy is central to the whole program. As the overview document proclaims the 'tax reforms will "oil" every other change we propose to make' (p. 49).

Key elements of *Fightback's* industrial relations proposals are:

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- a commitment to 'returning responsibility for good industrial relations to the workplace' and promoting the formation of enterprise unions
- promoting 'flexibility in employment conditions'
- the creation of two streams in the industrial relations system: one regulated by awards, the other regulated by 'the ordinary law of the land enforced by proper courts'
- ending compulsory unionism
- reducing the role of industrial tribunals (e.g. no more national wage cases and no role for them in enterprise bargaining) (pp. 38-39)

These proposals are not simply a wish list of ideas. They are consistent with the social philosphy that underpins the entire document. An essential feature of classical economic liberalism is that competition in freely operating markets will result in maximum social and economic welfare (Myrdal, 1929, Higgins, 1986). For this school of thought, the market for labour is no different to any other. This assumption informs almost every consideration of the labour market in the *Fightback* material. For example, the reader is informed that:

> Our policies to free the labour market ... will stimulate greater competion. Many of the markets now rigged, such as labour...will experience full competition for the first time (p. 59).

This preoccupation with competition underlies the document's denouncations of many current labour market practices. Indeed labour market and industrial relations issues are high on the *Fightback's* hit list of 'compulsory' practices which are singled out for particular attention:

> Labor's compulsory training levies, compulsory superannuation, compulsory arbitration, compulsory Accords and a refusal to act against compulsory unionism exemplify a philosophy of government which continually resorts to coercion and compulsion in order to achieve its aims (p. 28).

The *Fightback* assumes the best framework for both a competitive labour market and sound relations at the workplace is provided by the minimalist state. This conception of government holds that the state's involvement in civil society should be kept to a minimum, leaving as much as possible to be regulated by the market. As the Coalition argues the 'main task of government is to provide a framework of law within which people can plan their own lives in freedom and with confidence.' (pp. 28-29) 'The failure of government to provide such a framework has been a central cause of Australia's recent decline' (p. 26). The Coalition proposes to deliver strong, not large government (p. 24).

This provides the context for the Coalition's proposals to submit indus-

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trial relations to the ordinary rule of law (p. 38). It is assumed that the common law is the ordinary rule of law and that statutory reforms associated with the operation of unions and the industrial tribunals are 'extraordinary'. As John Hewson noted in his address to the Chamber of Commerce and Industry of Western Australia in January 1992:

> The end result ought to be, I think, an industrial relations system built on the common law where employers and employees sit down on an equal common law footing. You pull on a strike, you can be held accountable under the law for the financial consequences of the strike. You dismiss somebody incorrectly you can be held accountable under the law for the consequences. Equal footing for employers and employees. (Hewson, 1992, p. 5)

If implemented, the *Fightback's* proposals would result in radical changes in Australian industrial relations. The Coalition argues that the benefits arising from the changes would include more jobs, better working conditions and improved economic performance. It predicts there will be a 5.68 percent increase in GDP when these reforms are implemented. This figure is derived from a Business Council of Australia assertion that labour productivity will rise by 25 percent with the introduction of an enterprise based bargaining system (p. 34).

3. Conceptual and Empirical Weaknesses in *Fightback's* Proposals

The *Fightback's* industrial relations reform proposals are underpinned by an analysis that has significant conceptual and empirical limitations.

The major weaknesses of the competitive model of the labour market arise from its assumption that the labour market is a market just like any other. Many labour economists and industrial relation researchers have questioned this propostion (e.g. Brown and Nolan, 1988). Labour is not a commodity - what is traded is a worker's ability to work, not the work itself. This potential service is complex and cannot be analysed in the same way as one analyses trade in simple, tangible commodities such as apples and pears. To begin with price does not perform a market clearing function in the labour market. Quantities of labour supplied and demanded are determined independently. Labour supply is primarily determined by demographic trends and social customs. The changing role of women and young people in the labour market are examples of how these factors influence labour supply. Labour demand is determined by expected demand for output. When employers expect to sell their output they will engage workers

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to produce such goods and services at the going rate of pay. The price of labour, ie the wage, is determined by the cost of reproducing labour as well as other social determinants relating to acceptable living standards. Conditions of supply and demand have some influence, but they are not the primary ones. Consequently adjustment in the labour market primarily occurs through changes in employment levels, not fluctuations in wages. (Chick, 1983; Schultz, 1985; Villa, 1986; Marsden, 1987; Kaufman, 1988; Kruger and Summers, 1988; Groschen, 1991).

If labour is not a commodity like any other, how then should the labour market be conceptualised?

The labour market is in fact highly structured and differentiated. Different segments of the workforce do not compete with each other for jobs. Instead the workforce is divided into a myriad of groups divided on the basis of industry, firm/organisation and occupational streams. The precise nature of segmentation in any one sector of the economy varies on the basis of 'product market conditions, industrial structure and technology in use', as well as the outcome of different strategies pursued by employers, employees and unions (Villa, 1986, pp. 1-3). Drawing on the insights of US labour researchers of the post war era and modern day segementation theory, Villa argues that 'economic and technological factors do not determine the content and structure of labour markets, rather they define the realm of possibilities' within which labour and management interact to determine the division of labour and labour market structure. (Villa, 1986, p. 2). Product market and technological conditions are critical as they define the problems that employers face in organising the production process. They also define the problems unions face in organising employees as an industrial force. Within these constraints employers and union negotiate the challenges of changing economic conditions and new technology. The changing 'realm of possibilities' along with the constant negotiation of change between the industrial parties makes labour market structuring an ongoing process. The end result of this process is 'the structure of jobs, employment conditions, career [paths] and patterns of mobility' as we witness them in any particular part of the economy (Villa, 1986, p. 2).

The laissez-faire conception of the labour market with its simple competitive model ignores these essential dynamics. Its policy prescriptions would simply result in enhancing the position of those with considerable power in the labour market and deny the weakest access to the resources of either collective organisation or state intervention necessary to redress the power imbalance. More significantly, by failing to grasp how labour markets actually work, reforms informed by the competitive model would result in intensifying the tendency of the labour market to segment. With no

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institution other than 'the market' providing a co-ordinating function employers would have little choice other than to nurture a core of skilled workers needed for production and draw on unskilled workers as demand fluctuated. The resulting fragmentation of the labour market would have detriminental implications for both efficiency and equity.

The jurisprudence informing the *Fightback's* industrial relations proposals is also problematic. This is apparant in its assumptions about the role of the common law. *Prima facie*, the assertion that industrial relations should submit 'to the ordinary law of the land' (p. 38) appears reasonable. Appearances can, however, be deceptive and it is important to remember why statute law developed in the field of industrial relations. At common law unions are regarded as conspiracies - both civil and criminal (Smith and Rawson, 1985). In proposing 'an industrial relations system built on the common law' (Hewson, 1992, p. 5) it is necessary to ask whether the Coalition is proposing to expose unionists to the full force of nineteenth century legal doctrines. Under these rules union organisers were gaoled for years for simply meeting to plan a recruitment campaign. To prevent this limits need to be placed on the common law. In this context it is worth noting that the common law penalises unions for taking industrial action of a nature that is recognised as legitimate by the ILO (Green, 1989).

Moreover, the very notion of 'ordinary rules of law' is quite problematic. Legal principles appropriate for one setting (e.g. laws relating to commercial contracts) are not used when regulating practices in another (e.g. public law rights associated with judicial review of administrative action or the transfer of title in land) (Anderson, 1980, pp. 198-199, Samuel, 1983). Statutory interventions have often played an important role in clarifying these differences to ensure appropriate legal principles govern the regulation of different social practices. For example, common law principles do not provide the key concepts underpinning the operation of large commercial corporations. Most key sectors of the economy operate on the basis of legal principles derived from company codes which bequeath corporate status on large business organisations. Corporate personality limits the liability of the managers and owners of these ventures. Such statutory rights have allowed risks to be pooled and protected directors and managers from personal financial ruin in the event of business failure. These arrangements have been essential for the development of modern industries requiring large scale capital to develop. Application of the 'ordinary rule of the common law' to business people would have retarded economic development considerably. Similarly special principles provided by statute apply to other areas such as family law. Marriages and divorces are not conducted on the basis of contract law but on the basis of legal concepts appropriate to that aspect of social life.

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Special principles of labour law do not represent privileged treatment for industrial relations, putting it 'beyond the reach of normal legal principles.' Rather they represent special principles developed to regulate a distinct set of social institutions and practices, just as public companies and family law have their own distinct concepts. The application of the 'ordinary principles of law' would result in a totally inappropriate set of principles regulating a very complex set of social relations - relations between people at work.

The limitations of the *Fightback's* industrial relations proposals do not simply arise from its conceptual underpinnings. Factual deficiencies of the analysis informing the Coalition's industrial relations proposals are also serious. Prime among these is the assumption of a 25% productivity improvement in labour productivity should its industrial relations reforms be introduced. This figure is attributed to material prepared by the Business Council of Australia (p. 34). In its report, *Enterprise Based Bargaining Units: A Better Way of Working*, the Council's researchers asserted that if industrial relations bargaining arrangements became more enterprise based labour productivity would improve by 25 percent (BCA, 1989, pp. 25, 60). This assertion has been discussed by a number of industrial relations scholars, especially Frenkel and Peetz (1990). They argue that any close scrutiny of the data in the BCA's report reveals that there is no sound empirical basis of this assertion. The figure appears to have been plucked from the air, seemingly at random. The data behind this assertion remains to be published. In this context it is interesting to note that the latest publication from the BCA's research program prepared by the academically more rigorous National Institute of Labour Studies makes no attempt to reproduce or sustain such an unsupportable assertion (Drago, Wooden and Sloan, 1992).

The Coalition's consideration of workplace industrial relations issues also contains factual inaccuracies. For example, workplace restructuring at SPC in Victoria is portrayed as an example of the kind of approach to industrial relations supported by the Coalition (p. 38). Far from being an instance of enterprise bargaining outside the confines of the traditional system, the renegotiation of employment conditions at SPC's Shepparton plant involved unions (including the Victorian Trades Hall Council) and the employer in collective bargaining. Award conditions were maintained and adjustments were made to overaward entitlements in the light of the adverse economic circumstances of the firm (IRC, 1991). Overaward conditions and workplace collective bargaining have been on integral part of Australian industrial relations for decades. Far from being an 'image of the future' the SPC experience is an example of 'the dynamism of the present'. There are

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many examples of such flexibility in the current system of industrial relations (Callus, Morehead, Cully and Buchanan, 1991 pp. 196-7, 319). It appears that the Coalition has ignored what flexibility is already available and operating under current arrangements.

The Coalition's poor grasp of the specifics of the SPC case is matched by its poorly informed observations about workplace industrial relations in general. At page 19 of the *Fightback* document the Coalition asserts that 80 percent of Australian businesses are 'dominated by government and union control' and riddled with restrictive work practices'. This view does not accord well with that of general managers at the workplace. In 1989/90 in response to questionning about what, if any, efficiency changes they would like to make workplace manager gave the following replies: no change necessary (57%), increase technology or resources (19%), employee related matters (13%), management related changes (8%) and award related matters (6%) (Callus, Moorehead, Cully and Buchanan, 1991, p. 339). If there are major problems at the workplace they appear to involve issues of complacency, management structures and insufficient resources. Perpetuating myths about our industrial relations system only serves to distract attention from the critical issues facing Australian workplaces. A policy based on such errors must, by definition, miss the point.

4. Likely outcomes of *Fightback's* Industrial Relations Proposals

The Australian labour market has some major structural problems. The *Fightback* proposals are likely to exacerbate these by further fragmenting labour market and industrial relations arrangements.

One critical issue is that of relative pay. At a time of chronic balance of payment deficits it is ironic that labour market reward those who contribute least to addressing these problems. Top secondary students are attracted to the professions of medicine, law and accounting, all of which are sheltered from the rigours of international competition. At the same time Telecom has had difficulty recruiting engineers (Austrade, 1990) and highly skilled manufacturing trades workers leave their occupations for better paid, managerial jobs (DEET, 1989). This kind of structural imbalance is likely to get worse, not better as the labour market is deregulated. The experience of both the UK and the US indicates that decentralised systems do not rectify such relative pay anomalies. The problem of lawyers and other forms of unproductive labour is particulary accute in the US (Wolff, 1988).

Segmented labour markets are often characterised by significant differ-

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ences in earnings. Low wages are often associated with low skill jobs. A vicious cycle can develop where low wages subsidise inefficient, low productivity jobs giving management no incentive to increase competition on the basis of quality and overall firm level productivity. Some of the most troubling analysis of the UK experience indicates that this could one of the lasting legacies of the Conservatives' rule (Brosnan and Wilkinson, 1989). It has also been noted that, generally speaking, the greater the degree of decentralisation in a wages system the higher the level of wage dispersion (Rowthorn, 1990). Further decentralisation engineered by the Coalition could in fact nurture a low productivity sector.

A matter of particular importance at the moment is who bears the burden of structural change. With the reduction in barrier protection of industry and increased international competition there is considerable labour displacement. Currently the weaker segements of the labour market (ie the unskilled, women and minority groups) bear a disproportionate share of the burden of these changes (Victorian Social Justice Secretariat, 1992). Removal of award protection and the weakening of unions by breaking up their multi-employer basis of organisation will reduce the bargaining power of the weak and expose them to the vagaries of individual employers. Increased inequality and dislocation have emerged in the UK and the US as a result of *Fightback* like policies being implemented in the 1980s (Brosnan and Wilkinson, 1989, Bluestone and Harrison, 1990). There could also be adverse implications for vulnerable employers. Strong unions will be able to pick off employers who may not be well placed to hold the line against an inappropriate general wage increase. Settlements in such enterprises could trigger an inappropriate round of wage increases in related businesses.

Without doubt, however, the greatest labour market problem is that of unemployment. One of the real strengths of the *Fightback* document is its description of the extent of the problem. Unfortunately its analysis of causes and prescriptions for solution are wide of the mark. Unemployment in Australia, like elsewhere in the OECD, has been getting progressively worse since the mid-1970s. There are obviously deep structural problems in the economy because the underlying unemployment rate increases with each economic downturn. This is not a result of excess real wages or bargaining arrangements. Addressing a problem as large and as serious as this requires a strategy of co-ordinating various policy interventions, not hoping for the best as we lose the means of co-ordinating key aspects of wage policy and other aspects of industrial relations (Soskice, 1990).

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5. Redefining the Problem: the Need for Improved Co-ordination, Not Further Fragmentation

The industrial relations debate in Australia is often conducted as if the only two alternatives available are weakly regulated workplace bargaining or control by industrial tribunals. Such a conception of options ignores the flexibility and diversity that already operates. More importantly, preoccupation with enterprise bargaining has meant that the benefits of multi-employer co-ordination have often been overlooked. Recent research has identified that it is the informal co-ordination of general wage rounds in Japan and Switzerland by employers that is the real strength of their industrial relations systems, not the formal structures of decentralisation as such. Unco-ordinated decentralised bargaining such as in the UK delivers significantly worse results than either centralised systems or co-ordinated decentralised ones in terms of both inflation and unemployment (Soskice, 1989, 1990).

The benefits of multi-employer co-ordination have been identified by a number of industrial relations, labour market and industry development researchers. One of the most intensive projects on the subject involved an examination of German and French manufacturing. Twelve detailed case studies of matched plants in similar industries using similar technologies in the two countries formed the core of this analysis. The researchers identified how firms' practices were intimately related to the environment in which they operated, especially the education, training and wage determination systems. For instance, the strong vocational training system in Germany ensured that a steady supply of technically competent workers were available to employers. These workers could easily be deployed in changing work settings. France's generalist education system meant employers there had to rely on internal labour markets and closer supervision arrangements to ensure work was performed at an efficient level. The study clearly highlighted the importance of multi-employer arrangements for improving efficiency, something at variance with the *Fightback's* prescriptions (Maurice, Sellier and Silvestre, 1984, 1986, Marsden, 1990). Recent developments in the management literature have also highlighted the importance of linkages between enterprises as a factor contributing to competitive success (Pettigrew and Whipp, 1991, pp. 25-34)

Establishing appropriate multi-employer industrial relations and labour market arrangements could help address Australia's deep seated labour market problems. The provision of an adequate supply of workers with skills that are transferable requires, by definition, employers co-ordinating their training efforts. Better co-ordination between employers could also assist

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in a better distribution of the burden of structural adjustment. Multi-employer labour sharing arrangements are an important element of Japan's labour market arrangement which offer significant employment security to core employees (Cross, 1985). Significant co-ordination of some kind will also be necessary if the deep seated relative pay problems between the trade exposed skilled technical workers and sheltered professionals are to remedied. Finally, as the recent macroeconomic research has identified, reductions in unemployment appear to required effective mechanisms of co-ordination, not their destruction.

If co-ordination not fragmentation is required to improve labour market operations then far more attention needs to be devoted to identifying ways in which current co-ordination arrangements could be improved. On the basis of recent experience it would seem possible that general wage movements could be regulated by regular national wage cases. Training arrangements and many employment conditions are probably best regulated on an industry, occupational and/or regional level. Issues such as the span of working hours, on-the-job training arrangements and allocation of overtime are probably best handled at enterprise or worplace level. Some of this co-ordination already occurs in the industrial relations system. Current arrangements and practices have, however, developed in an ad hoc manner. By moving beyond the cult of enterprise bargaining the range of policy options receiving serious consideration could be increased.

Finally, the role of industrial relations reform must be kept in perspective. Far from being the 'centre-piece of economic policy' it more realistic to consider industrial relations as one element of wider policy mix designed to promote economic and social development. The academic debate on the causes and consequences of productivity growth over the last decade has been particularly instructive in this regard. In a recent comprehensive assessment and contribution to the this debate Baumol, Blackman and Wolff (1989) have identified the key factors contributing to improved producitivity performance. Chief amongst these are technological changes, investment in new plant and equipment and education. Placing undue attention the role industrial factors can play distracts attention from these vital variables.

6. Conclusion

As in the depression of the 1890s (and to a lesser extent that of the 1930s) the nature of relations between employers and employees is again firmly on the agenda (Gourevitch, 1986). The Coalition has clearly established that it

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is now committed to the total recasting of these relations. Unfortunately its policies are informed by partial and incorrect data. In addition, the concepts underpinning the analysis are inappropriate for a modern, advanced industrial nation of the 1990s. If implemented, they would probably make our current labour market problems worse, not better.

When considering how industrial relations may be able to help enhance our productivity performance it is important to grasp what it can achieve and the importance of other factors in enhancing our economic welfare. Industrial relations reforms, especially those involving the establishment of appropriate multi-employer bargaining arrangements, are sorely needed but they alone will not be enough. The flow of investment funds and techological innovation will be as, if not more, important.

The labour market is not like a commodity market. Nor is it an arena of social life that is appropriately regulated on the basis of common law principles. If industrial relations reform is to contribute to economic and social development it is essential that industrial relations policies are framed on the basis of an understanding of its dynamics. Without institutions to co-ordinate its operations the labour market it has a spontaneous tendency to fragment. Reforms directed at promoting an enterprise based bargaining system miss the point. The critical issue in industrial relations reform is not to increase fragmentation but to develop more dynamic and responsive mechanisms of co-ordination.

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