

The Family, the State, the Church, and the Unions.

Remarks at the H R Nicholls Society XXVIII Conference

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“Two fellas and a cocker spaniel don’t make a family”

—Paul Keating

In May 2007, a tract entitled *Workplace Relations: a Catholic Perspective*, was published by the Australian Catholic Council for Employment Relations. Although not acknowledged within the publication as the author, it was written by Brian Lawrence, Chairman of the ACCER.

At the same time, a collection of letters written by B A Santamaria between 1938 and 1996 which was edited by Patrick Morgan, was published. It is an enthralling book and it led me to the Social Justice Statements of the Australian Catholic Bishops 1940-1986, particularly those which were drafted by Bob Santamaria from 1941 (when he was 26 years of age) on.

I should present some of my personal qualifications to comment on the issues which these documents bring to our attention. During the 1960s I became close friends with some of the Movement players involved in the Victorian Trades Hall Council, notably John Grenville, who became Asst Secretary of the THC for a brief period. In 1968 or 1969 I was nominated by the Movement forces for a position within the ACTU. Fortunately for me a union official from the Left, I think his name was Jack Deveraux, was urgently recalled from Moscow to attend an ACTU executive meeting in order to block my appointment. It was, I think, Divine Providence at work. I mention this to show that I had personal experience of how the Movement operated and I became a confidant of some of

the players when the Movement split between John Maynes and Bob Santamaria, leading ultimately to litigation and an out-of-court settlement.

In all of these documents we find continuing references to the family, to trade unions, and by implication to the State. The position and status of the Catholic Church is taken as a given. It is assumed in all of these documents that the State has the competence to regulate the labour market in great detail, and most importantly to set prices in the labour market, and that it is perfectly legitimate for the State to do so. Furthermore it is legitimate for the State to set prices which are dependent upon the family circumstances of one of the parties to an employment contract. The role of the Catholic church, it is assumed, is to use its influence within the political process to persuade the State to legislate accordingly.

Of the four institutions listed in the title to this paper the Family is by far the most ancient. The State, as an institution which transcended kinship and tribe, we can trace back to at least 2000 BC. The Greeks were the first to write about the state and the polis (the city) in terms we can understand about 2500 years ago. Indeed what they wrote then still defines our political discourse.

The Church, at least in the West, is 2,000 years old and Christianity has moulded and shaped Western civilisation. The words of Jesus “Render unto Caesar the things that are Caesar’s and unto God the things that are God’s” (Matthew 22:20) provide the basis for separation of church and state, something unknown in the Muslim world (except as in India where Muslim doctrine does not hold sway). St Paul’s words to the Galatians 3:23, *There is neither Jew nor Greek, there is neither slave nor free, there is neither male nor female, for you are all one in Christ Jesus.* proclaimed the universality of Christianity¹ and spelt the end of slavery, although it took the American Civil War to finally achieve realise that doctrine throughout the Protestant world. Slavery persisted in Brazil, for example, for two or three decades after.

¹ This is by no means the only text proclaiming universality. The missionary exhortation in Matthew 32:16, “go therefore and make disciples of all nations . . .” is another.

The unions are relatively modern institutions. There were guilds throughout the Middle Ages and into even the C19. These metamorphosed into friendly societies which were a feature of C19 British life, providing insurance cover for illness and death and unemployment for a limited period. But unions as we know them are a product of the late C19. Australian trade unions were founded by charismatic leaders (Billy Hughes being a good example) at the end of the C19, at a time when the sex imbalance was a serious problem and many men had no prospect of marriage or family life. Trade unions often took on the attributes of criminal bands and during the shearers' strike of the 1890s many acts of arson were committed, and violence against shearers who at first refused to join the union was commonplace.

In Australia trade unions became part of the machinery of the State with the 1904 C&A Act. The granting of legal privileges to registered trade unions under that legislation, and the introduction of monopoly rights of representation and de facto compulsory unionism (symbolized in the notice "No ticket No Start", prominently displayed until recently on building sites) turned trade unions into enforcers of labour market regulation. The regulators were the arbitral tribunals created by the State and staffed by ex-union officials and ex-employer organisation functionaries.

With the passing of time, the unions came to enjoy a status above the law, since the tribunals were unable to enforce their decisions on unions who chose to ignore them.

This extraordinary edifice, our uniquely Australian IR Club, was established by Alfred Deakin, Henry Bournes Higgins, and Billy Hughes. Deakin organised the coalition he needed to get protectionism in Australia by offering Billy Hughes a deal which brought over a group of Sydney Labor parliamentarians into the protectionist camp. Trade unionism was dying in Australia just when it

was transformed into an instrument of the State. As Gerry Gutman explained in his perceptive 1982 book *Retreat of the Dodo*²

“The political coalition of manufacturers and trade unions which during the first decade of this century hoisted the banner of tariff protection aloft, also nailed the manifesto of compulsory arbitration to the mast. Both have been with us ever since. And as today’s malaise in manufacturing industry stems from the atrophy of the protections system, so the malaise in industrial relations reflects the decay of compulsory arbitration.”

H B Higgins’ dream of harmony in the workplace under the benign rule of the judicial arbitrator was always a fantasy. The legal privileges enjoyed by the unions, and the arbitral system itself, encouraged disputation and conflict between employers and employees.

Higgins is still important in this debate because Catholic apologists for the IR system which he played a large part in establishing, including Brian Lawrence, still use him as an authority. The Harvester judgment was specifically declared as providing for a man, wife and three children - a protestant family wage. It raised the wage paid to an unskilled worker from 28 to 42 shillings per week, a huge increase when the Australian pound was still tied to the gold standard and inflation was unknown. Fortunately for unskilled workers at the time, Higgins' judgment was ruled unconstitutional by his brother judges on the High Court, who as far as one can ascertain these things, thought he was mad.³

²G O Gutman, *Retreat of the Dodo*, 1982, Brian Clouston, Canberra

³The founding judges of the High Court, Griffith, Barton and O’Connor, were accustomed to having lunch together. When Higgins and Isaacs were appointed by Alfred Deakin the original three could not abide the thought of having to share their lunch time with the new appointments so they gave up their joint lunches on the grounds that it would be inappropriate to be seen as a sort of judicial faction, lunching together.

The focus of this paper, however, is the May 2007 tract of the ACCER and its antecedents. I begin with the 1941 Social Justice Statement issued under the hand of Archbishop Simonds of Hobart, but prepared by B A Santamaria who was working for Archbishop Mannix.

At this time Australia was at war with Germany but Pearl Harbour (Dec 7) was still to come. The Great Depression had caused immense economic and social dislocation and the Left, particularly the Communist Left, had made considerable inroads into Australian political and intellectual life by claiming that capitalism was, as Marx had predicted, inherently unstable, and that Stalin's USSR was the economic model for the West.

The understanding that the US Congress, in passing Smoot-Hawley (which President Hoover declined to veto), thus causing huge disruption to international trade, and that the US Federal Reserve, in choking off the money supply and virtually shutting down the US banking system, were the primary culprits in causing the Depression, would take many years to emerge.

Santamaria had founded the Catholic Worker when he was a student at the University of Melbourne, and he found left-wing arguments against capitalism difficult to refute. So it is not surprising that he was searching for a specifically Catholic response to these crises.

The following is taken from the 1941 Social Justice Statement, signed off by the Episcopal Committee on Social Action.

Chapter 1
The Meaning of Social Justice.

7. It is necessary that the seriousness of the obligation imposed by Social Justice should be realised. When it is said that the right to a Family Wage is absolute in Social Justice, too few people realise how personal is the responsibility of an employer who flagrantly infringes that right.

8. *Even the workers whose interests are directly concerned in this matter of the Family Wage do not fully realise that an employer who pays a wage approximating to it is not doing anything more than he is bound to do.*

9. *In paying the Family Wage an employer is simply giving his workers what belongs to them. He is handling THEIR money, not his own. And just as a person has no right to retain money belonging to another, so no employer, where the industry can really afford to pay the Family Wage, is entitled to withhold it. (Capitals in the original)*

10. *By doing so he would be taking possession of money not his own, and his conduct would be equivalent to theft.*

11. *This is only an example, and it must not be supposed that Social justice or the right to a Family Wage is confined to one particular class. All men have the right to receive the Family Wage, irrespective of whether they be industrial workers or not.*

Chapter 5

The Family Wage is a First Charge on Industry

33. *Were industry in Australia and New Zealand to be operating on proper Christian lines, the following would seem to be the method of fixing the Family Wage.*

(1) The standard of the Basic Wage would be that of the single man. This would cover his essential needs of food, clothing and shelter; it would provide a modest amount of recreation and enable him to save for marriage.

(2) On his marriage, the worker would be given an increase in wages to provide now for his wife in addition to himself, and to provide also for

savings in anticipation of the birth of a child. He would also be given a bonus to enable him to purchase in part his house and his furniture.

(3) On the birth of each child, he would be given an added weekly payment to cover the cost of his dependent children.

(4) The money for these payments should come primarily for the industry concerned, which should establish an equalisation fund out of which the payments could be made. If the funds of the industry were not sufficient to enable these payments to be made, they should be supplemented from the public revenues.

Even in 1941 this was pretty radical stuff, but the bishops signed it and it was read out in Catholic churches on Social Justice Sunday.

Fast forward to May 2007 and we find the following in Chapter Three of “Workplace Relations: a Catholic Perspective”

THE RIGHT TO A JUST WAGE

113. CATHOLIC SOCIAL TEACHING ON MINIMUM WAGES IS SUMMARISED IN THE FOLLOWING PASSAGE FROM THE AUSTRALIAN CATHOLIC BISHOPS’ 1991 PASTORAL LETTER, *A CENTURY OF CATHOLIC SOCIAL TEACHING*.

WHEN PERSON IS EMPLOYED TO WORK FULL-TIME FOR WAGES, THE EMPLOYER, IN STRICT JUSTICE, WILL PAY FOR AN HONEST DAYS’ WORK, A WAGE SUFFICIENT TO ENABLE THE WORKER, EVEN IF UNSKILLED, TO HAVE THE BENEFITS OF SURVIVAL, GOOD HEALTH, SECURITY, AND MODEST COMFORT.

THE WAGE MUST ALSO ALLOW THE WORKER TO PROVIDE FOR THE FUTURE AND ACQUIRE PERSONAL PROPERTY NEEDED FOR THE SUPPORT OF A FAMILY. TO PRESSURE OR TRICK THE WORKER INTO TAKING LESS IS, THEREFORE, UNJUST.” .

114. THE MINIMUM WAGE NECESSARY TO SUPPORT THE WORKER MAY BE TERMED A LIVING WAGE OR A FAMILY WAGE. THE FAMILY WAGE IS A WAGE THAT PERMITS ONE OF THE PARENTS TO WORK IN THE HOME AND NOT UNDERTAKE PAID EMPLOYMENT AND, AT THE SAME TIME, ENABLES THE FAMILY TO ACHIEVE AN APPROPRIATE STANDARD OF LIVING. IT CALLS FOR THE FIXING OF A WAGE THAT IS BASED ON THE NEEDS OF A FAMILY, NOT ON THE NEEDS OF A SINGLE PERSON.

We have to conclude from that statement that not much has been learned in Catholic circles in 60 years of intense debate about Australia's position in the global economy, the role of markets in setting prices and directing investment decisions, and the role which centralised wage fixing and trade union privilege has played in our history.

There is, it is claimed by these Australian Catholic writers, an unbroken line of doctrine and argument which usually begins with Leo XIII's *Rerum Novarum* (1891) and includes Pope John Paul's *Centesimus Annus* of 1991. In my view these encyclicals have been mined for quotes which were deemed to be helpful to the Irish Catholics in their Australian situation, and particularly to the Catholic trade union officials, both as union officials and as tribunal members, and that essential points of doctrine within these encyclicals that were not seen as helpful, were not mentioned or discussed. For example, in *Rerum Novarum* there is very clear opposition to compulsory unionism, and to monopoly rights

of representation. Leo XIII's position on liberty was spelt out even more emphatically in an encyclical entitled *Libertas*, published in 1888.

He began with these words:

Liberty, the highest of natural endowments, being the portion only of intellectual or rational natures, confers on man this dignity – that he is 'in the hand of his counsel' and has power over his actions. ... Man indeed, is free to obey his reason, to seek moral good, and to strive unswervingly after his last end. Yet he is free also to turn aside to all other things; and, in pursuing the empty semblance of good, to disturb rightful order and to fall headlong into the destruction which he has voluntarily chosen (§1).

Man can abuse his God-given liberty by pretending that he is subject to no higher law than man-made law, but to do so leads to ruin.

For when once man is firmly persuaded that he is subject to no one, it follows that the efficient cause of the unity of civil society is not to be sought in any principle external to man, or superior to him, but simply in the free will of individuals ... and that, just as every man's individual reason is his only rule of life, so the collective reason of the community should be the supreme guide in the management of all public affairs. Hence the doctrine of the supremacy of the greatest number, and that all right and duty reside in a majority (§15)...

With reference also to public affairs [if] authority is severed from the true and natural principle whence it derives all its efficacy for the common good ... and the law determining what is right to do and avoid doing is at the mercy of a majority ... this is simply a road leading to tyranny (§16)..

Another great statement in defense of liberty is found in *Pacem in Terris*, John XXIII (1963).

Man's personal dignity requires ... that he enjoy freedom and be able to make up his own mind when he acts. In his association with his fellows, therefore, there is every reason why his recognition of rights, observance of duties, and many-sided collaboration with other men, should be primarily a matter of his own personal decision. Each man should act on his own initiative, conviction, and sense of responsibility, not under the constant pressure of external coercion or enticement. There is nothing human about a society that is welded together by force (§34).

There is nothing of comfort here for any apologist for compulsory unionism, ballots legitimising strikes, or even for those who argue for restricting people's freedom to contract at their own volition in the labour market.

Opposition to compulsory unionism is found in every encyclical which discusses freedom of association or labour market issues, beginning with *Rerum Novarum*

Compulsory unionism and monopoly rights of representation were central to the Australian system. For historical reasons there were some industries or trades which had two unions fighting for coverage, e.g. the BWIU and the ASC&J, but the right not to belong to a union, although recognized at law in the same terms as conscientious objection for military service, was rarely defended by Catholic apologists for the system.

The other more fundamental issue, one which was never considered, was the deep contradiction between the view which the Australian Catholic bishops had of the State and of its relation to the family, and the reality of those institutions and that relationship. Today we can see more clearly that the interests of the State are often at odds with the interests of the family. This growing hostility, institutionally manifest in the so-called Family Court, is disguised to some degree by the rhetoric of current political leaders in Australia. This is a large topic, and I can only touch on it. But there is a never-ending struggle between the State and the family over resources, e.g. taxation (the GST was a high point in anti-family tax legislation) and the accelerating regulatory burden which imposes huge costs on families. When Joh Bjelke-Petersen abolished death duties in Queensland he struck a blow for the family, as all the other states had to follow suit.

In talking about taxation it should never be forgotten that governments have no money of their own. Every dollar they spend is much more than a dollar forgone by the taxpayers. Taxation generates administrative, compliance, avoidance and

rent-seeking costs, and the more progressive the taxation system is, the higher those costs become. There are many estimates of the deadweight costs of taxation but it is at least an extra 40 cents per dollar of revenue raised, and could be much higher.

Apart from the battle over resources, the basic problem which besets relationships between state, church and family is that people's loyalties are first focused on their families, and only after that do the State and the Church get a look-in. Sometimes, it seems, even football clubs come immediately after family loyalties.

Loyalty to the State is severely tested when taxation levels become insufferable. In recent years there has been a marked increase in migration to Australia from the UK, and there would be much more of it if we didn't make it so difficult for Brits to come here, and it has been driven at least in part by crippling and increasing levels of taxation in the UK, even though our taxation system is extremely uncompetitive by international standards.

Of much greater importance than the tensions between the State and the family in this debate is the intrinsic and inescapable hostility between trade unions and families.

There are very many stories which illustrate this hostility. One from the mining town of Kambalda will suffice.

Many years ago, when Stan Carter was IR Manager for WMC, and he had a good working relationship with the AWU, there was a strike at the nickel operations at Kambalda which was causing serious problems for the company. WMC had made a very good offer to the miners but they were not interested, and the strike went on and on.

So it was decided that a letter should be sent to the home of every employee setting out in clear language what it was that the miners were rejecting. Stan

Carter went one step further. He got the secretaries at WMC to hand-address the envelopes. He then added a drop of perfume onto each envelope. Then he posted the letters from Kalgoorlie.

The results were spectacular. The strike folded the next night. The wives were sick and tired of husbands who went off to the pub every day instead of going to work, and when they opened these letters, as they were bound to do, and found out exactly how much was on offer, their mood became icy indeed.

Generally speaking, men basically have two options in life. They can become members of gangs, living off the rewards of pillage, or they can become providers for families, with a very big stake in the continuity and preservation of civilisation. This social reality has been demonstrated with particular force in the US, where Lyndon Johnson's Great Society program enabled girls to become brides of the State and have children without being dependent on men for their support. The black community was particularly vulnerable to this form of entrapment, and black men found themselves thrown out of family life and became easy prey to the temptations of crime, particularly drug related crime.

Women are the great upholders of civilisation. They bring up families and maintain social and moral standards. They value religion when it defends the values which support family life but they will not support religious institutions which subvert family life. In that context it is worth noting that it took the early Christian leaders some time to realise that the anti-family sentiments found in St Paul and in some of Jesus' own words would have to be played down if the early Christian church was to have a future. One of the doctrines which helped in this regard was the unyielding hostility of the early Church to abortion and infanticide and to licentiousness more generally.

The Reformation was, amongst many other things, a reassertion of the family against the Church. There was huge resentment at the licentious behaviour of some priests and other religious, and the legal privileges they enjoyed through access to church courts where they enjoyed "the benefit of clergy". There was

also resentment at the way in which property was falling into the hands of the Church at the expense of families.

The Social Justice Statements are sound on the primacy of the family. But they are very unsound on how labour markets can contribute to the well-being of families. When regulators lock people out of the labour market through insistence on minimum wages or a family wage, whatever the label might be, they are infringing the most basic right which a person has; the right to contract his services for a reward which improves his position in the world. The American Declaration of Independence uses the following words

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain inalienable rights, that among these are life, liberty and the pursuit of happiness.

The words “life” and “liberty” are clear enough. The pursuit of happiness certainly includes the right to enter into a contract of employment which improves one’s position in life, a decision which is not a matter for outsiders to determine. Only the parties to the contract are in a position to decide whether to accept or decline. This is the right which the Social Justice Statement of 1941 and every subsequent Australian catholic document on labour markets seeks to deny to us.

When people are locked out of the labour market, the position of outcast which has been assigned to them undermines their self esteem, but it also affects their position within their families. If they are young, resilient, and their families support them and use their connections to find a place in the labour market for them, it is not so serious an issue. But if they are young people without family support, or if they are older men who find it difficult to adjust to changes in the labour market, then the consequences can be tragic indeed.

If people are left alone to find solutions to these problems, then it only takes the resourcefulness of a few entrepreneurs to come up with solutions and the market

very quickly spreads news of the new strategies. If the problem is left to Canberra, then it will take generations to fix.

One of the most important issues we now face is the role of trade unions in contemporary Australia. Trade unionism in its C19 and C20 manifestation was essentially based on Marxist doctrines of class struggle and the inevitable exploitation of workers by the capitalist classes. The legal privileges which were bestowed upon them by the State were justified by this doctrine of exploitation which is now called the imbalance of power between the contracting parties. Under whatever name the doctrine is nonsense. In Australia the role of unions was also that of a key partner in upholding the protectionist rackets which undermined our economy for more than 80 years.

Now that protectionism is behind us the role of unions in maintaining it is a thing of the past. Unions survive in government monopolies such as the NSW electricity industry and in government service industries such as schools, hospitals and police forces. One of the great benefits of privatization has been the ending of these cosy arrangements between the unions and the management of these government monopolies, in which vast sums of money were transferred from the public to the workers in these industries, not in the form so much of financial rewards (although these were generous enough) but in the form of a sheltered workshop environment.

As soon as a trade union is granted legal privilege, it will inevitably seek to use that privilege as a means of extracting monopoly rents. Some unions have been more successful than others in this business. The construction unions have, in recent years, been so successful that a Royal Commission was established to investigate the industry and as a consequence the Australian Building and Construction Commission was set up to clean up that industry. The impact which the ABCC has had on costs in that industry has been very significant indeed.

Associations of people who work in a particular industry, or are members of professional or trade institutions are a very familiar thing in our economic and social life. No special legislation is required to make these organizations work. No legal privileges are necessary. If trade unions were to give up those privileges then no one would have grounds for complaint. But without those privileges it is very doubtful if trade unions would survive. And this is one of the key issues in the election campaign, although it is one on which neither side is prepared to come clean. Because both sides of politics believe in regulation and the only point of difference is who is able to deliver better regulatory outcomes to particular and usually different, groups of workers. In both cases, those people who are locked out of the labour market are ignored.

The case for freedom in the labour market is an overwhelming one. Freedom enables all the participants to use their widely diffused knowledge to their best advantage. Freedom enables constant innovation, without requiring the consent of the bureaucracy or the tribunal membership. People know best what they want for themselves.

Members of the H R Nicholls Society have been arguing that case for some years and it is now painfully clear that more years will have to pass before these arguments win the day.

But what is especially annoying is to find attempts to use Christian doctrine to justify the activities and doctrines of the regulators. The use of the phrase “preference for the poor” and in the same breath the defence of the use of power of the State to lock the poor out of the labour market is particularly obnoxious.

The activities of the State in regulating the labour market have without doubt hurt many families, especially those at the bottom of the social heap. This is a well worn theme and I do not propose to canvas it further. But there are two other vital areas in which government intervention has been extremely detrimental to family life, but which are not usually considered in this light. The first is housing, and the second is education.

Twenty-five to thirty years ago, the median price of a house in our capital cities was typically about 3 times the median annual income of a bread winner. House ownership was then within reach of at least 75 per cent of the population. Today the ratio is between 6 and 10, and housing is now beyond the reach of most families unless there are two incomes, and the couple have been saving for years. Child bearing is inevitably delayed with sometimes tragic consequences.

There is no iron law of nature in operation here. In Houston, Texas, in Atlanta, Georgia, and in many cities in the American mid-West, houses are still 3 times the annual median wage, and they are very nice houses indeed.

Why is it so? The answer, in two words, is Government regulation. Governments have squeezed the land supply through zoning restrictions, and also through onerous regulations with respect to services and who is to pay for them. Governments and governments alone are at fault.

The education story is slightly more complicated but the answer is the same. Education is very expensive (regardless of who picks up the tab) because government is deeply involved. It is also often of very low quality. Here the story is relevant to the work of the H R Nicholls Society because the teachers' unions are major players and until their influence is removed, there can be no chance of serious reform.

There are major challenges here, but that is a story for another day.