

Globalisation and the Australian Labour Market: A long term perspective on Labour Market Reform

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Perhaps the most extraordinary figure in Chinese history is Admiral Zheng He, or Cheng Ho, who was born in Yunnan Province in 1371 and was captured by Ming Dynasty forces during their military cleansing of the remnants of the Yuan Dynasty (1279-1368) in Yunnan, around 1381. He was taken to Nanjing, where he was castrated and entered into imperial service. He was then sent to Beiping (present-day Beijing) to serve in the palace of Zhu Di, the Prince of Yan, fourth son of the founding emperor of the Ming Dynasty.

He proved to be a great military commander and was decisive in putting his patron, who became the Emperor Yong Le, on the imperial throne in 1403.

Shortly after Zhu Di ascended the throne as the Yong Le Emperor, he assigned Zheng He to the area of maritime affairs. Zheng He first conducted an exhaustive study of existing nautical charts, celestial navigation, eastern and western almanacs, astronomy and geography, marine sciences, piloting, and shipbuilding and repair.

The junks that were built in that period were five times the size of the ships in which the Europeans, a few decades later, began looking for a sea route to the Far East.

Between the third year of the Yong Le reign period (1405) and the eighth year of the Xuan De reign period (1433), Zheng He led seven great maritime expeditions, traversing the South China Sea and the Indian Ocean into the Persian Gulf and Red Sea, and reaching as far west as the east coast of Africa.

There is evidence of Zheng He's visits in over thirty Asian and African countries and regions. These seven voyages, unprecedented in size, organization, navigational technology, and range, demonstrated not only the power and wealth of the Ming Dynasty, but also Zheng He's extraordinary command ability.

The Emperor Yong Le died in 1425, and under the new emperor the forces of what we could call "Fortress China" began their ascendancy. The imperial bureaucracy sought to contain the expansionary ambitions of its sailors and the increasing power of its merchant class: Confucian ideology venerates authority and agrarian ways, not innovation and trade. "Barbarian" nations were thought to offer little of value to China. Other factors contributed: the renovation of the north-south Grand Canal, for one, facilitated grain transport and other internal commerce in gentle inland waters, obviating the need for an ocean route. And the tax burden of maintaining a big fleet was severe.

But the decision to scuttle the great ships was in large part political. With the death of Yong Le, the Emperor who had sent Zheng He on his voyages, the conservatives began their ascendancy. China suspended naval expeditions. By the end of the century, construction of any ship with more than two masts was deemed a capital offense. Oceangoing vessels were destroyed. Eventually, even records of Zheng He's journey were torched. China's heroic age was over; its open door had slammed shut. "The expeditions wasted tens of myriads of money and grain," a 15th century Minister of War complained.

In the early 15th century China was the greatest naval power in the world, the US if its time. But after shutting off the world and entrenching the bureaucratic state beloved by the mandarin, China declined into poverty and helplessness, such that by the 19th century, when the European powers came knocking on the door, they were helpless to resist the European demands for concessions of every kind.

What has all that got to do with a paper about Australia's industrial relations?

The answer is that we in Australia have had a very similar experience.

During the 19th century, Australia grew rapidly in population and wealth, and by the beginning of the 1890s we were the richest people, per capita, in the world. Then came the collapse in wool prices, the bank crash and the land-boom bust in Victoria, and then the Federation Drought, still regarded as the worst we have experienced since European settlement. Nonetheless we were still rich by world standards, and the gold discoveries in WA provided employment and good wages to men who flocked there from all over Australia and from abroad.

Why were we the most prosperous people in the world?

Apart from the natural resources of gold, silver, lead and copper, and the huge flocks of merino sheep, we inherited from Britain a legal system which supported economic growth. During the 19th century the great common law judges of England laid down principles of contract and tort which underpinned the extraordinary economic growth which took place in that century throughout the English-speaking world.. Tragically at the same time, colonial parliaments in Australia began to override the common law as it applied to the labour market, with the conceit that they knew better than the people, themselves, how their working lives should be organised. In this they were influenced by Marxist ideas of class struggle and the alleged powerlessness of employees. From the 1890s on, Australian colonial parliaments began to interfere more and more with employment contracts, and at the constitutional convention in 1898 the industrial relations power, Sec 51:xxxv, was accepted by 22 votes to 19. It was a tragic mistake and we have paid dearly for it.

Immediately after federation, then, we can see Australian equivalent of the destruction of the ocean going Chinese junks, and the retreat of the new nation into "Fortress Australia".

In 1902 the new Commonwealth Parliament passed the first Tariff Act and Australia-wide protectionism (previously confined to Victoria) began its slow, insidious but inexorable erosion of Australia prosperity.

In 1904, Deakin delivered on the deal he had made with Billy Hughes, and the Commonwealth Parliament passed the Conciliation and Arbitration Act. Henry Bournes Higgins was subsequently appointed, in 1906, conjointly as a justice of the High Court and President of the Arbitration Court. Higgins had successfully courted the Irish Catholic vote (although he was himself the son of an Irish Methodist clergyman), and the Irish in Australia took up trade unionism and all the spurious legalese associated with the various state and commonwealth arbitral tribunals (which they colonised as their power and influence grew with the passing decades), with great enthusiasm.

The great challenge to trade unionism in Australia, and indeed to the whole fabric of Australian society came in the 1930s as the Communist Party began to challenge the Irish Catholic influence within the trade union movement. Many of the most successful communist trade union officials were apostate Catholics. A high point of this struggle was the NSW coal miners' strike of 1947 which culminated in the Chifley Government's decision to break the strike using Australian troops as "scab labour".

The industrial turmoil of the post-war period helped Menzies win the 1949 election. The communist issue was, and remained, the most important issue on his agenda, and one of the tactics he used was to promote the ACTU under Albert Monk as the legitimate voice of Australian trade unionism, and to do whatever he could to ensure that the ACTU never fell under communist control. Bob Santamaria and the Movement was pivotal in this strategy.

Santamaria is important in this story of labour market regulation because his influence is still very much alive. Despite his close relationship with Colin Clarke, his economics remained wholly mercantilist and untouched by the most basic economic understandings of comparative advantage and the division of labour.

Australia under Menzies held to the anti-communist alliance and fought with the US in Korea and Vietnam. But the downside of all this institutionalisation of trade union privilege was the economic malaise which it brought in its train. Over the years the increasing burden of regulation imposed by arbitral tribunals on the working lives of Australians had taken a fearsome toll on our prosperity and international competitiveness. Australia in 1890 was the richest nation in the world in per capita terms. By the 1950s we had sunk to about 20th on the world ladder. Tariff protection and intrusive labour market regulation were the primary causes of this decline.

The intimate connection between freedom in the labour market; freedom which empowers the participants to work out for themselves the deals which suit them best, and the prosperity of the society as a whole, is simply this. Knowledge of economic life and circumstances is very widely diffused throughout society. Even people intimately involved in a business enterprise find themselves surprised from time to time at changes in their industry about which they thought they knew everything. The people best able to respond to these changing circumstances are, of course, the people closest to the action. If they have the freedom, as they did under the Common Law rules of property, contract and tort, to make adjustments as to how

they carry out the day-by-day business of an enterprise, then the likelihood of making the right decisions is far, far greater than decisions made by an arbitral tribunal in a far-away city.

When the state decides to regulate, in very great detail, how people are going to carry out their day-day work, then impoverishment inevitably follows.

This is the lesson which the socialist experiment, seen at its most brutal in Stalinist Russia and Maoist China, teaches us. The great analysts of socialism and communism, Ludwig von Mises and Friedrich Hayek, pointed out in the 1930s how centralised control of prices and production would lead to economic disaster. In 1989 the fall of the Berlin Wall proved the point. The Socialist era lasted 70 years. The cost in human lives was incalculable.

The labour market comprises about 70 percent of the entire economy. The Higgins era was an on-going attempt to run the labour market on socialist principles. The more it penetrated into the labour market, the worse was the economic outcome.

As Paul Keating reminds us from time to time, it was under Hawk and Keating that the difficult political task of breaking down the institutions and culture of protectionism, which had done so much damage to Australia over 80 years, was set in train. The Labor Government of that period was supported by the Coalition, particularly by John Howard, and in a sense we can describe it symbolically as rebuilding the great junks in which Admiral Zeng He explored the Indian Ocean.

This great change, however, constituted a mortal threat to the trade union movement. The 1904 C&A Act and all its successors, was part of the protectionist deal of the Deakin settlement. The manufacturers got protection, and the trade unions got their share of the protection money according to the decisions of the tribunals which the trade unions, ultimately, controlled..

As Gerry Gutman explained in his perceptive 1982 book *Retreat of the Dodo*¹

“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.”

The system needed the support of both parties for it to be sustained. Once the manufacturers were written out of the deal the whole structure was going to collapse.

John Howard decided, in *Work Choices*, to replace the trade unions as labour market regulators, with Commonwealth bureaucrats. This was one of the silliest decisions of his prime ministership. The big decision he should have faced up to, was not who was going to regulate, but was regulation a good idea? John Howard obviously decided in favour of regulation, and

¹G O Gutman, *Retreat of the Dodo*, 1982, Brian Clouston, Canberra

having made that decision, he wanted to write the trade unions out of the regulating job they had been doing for nearly a century, and replace them with Canberra-based bureaucrats.

What a huge mistake! The unions, by and large, left small business alone. It wasn't worth their while to get involved. That changed with unfair dismissals, and if John Howard had confined his reform programme to getting rid of them, lock stock and barrel, and had been content in developing AWAs, he would have been fulfilling the campaign pledges of many elections, and at the same time "smoothing the dying pillow" of a movement that was in its terminal stages.

But the tragedy was that he decided to replace Henry Bournes Higgins with John Winston Howard, and we know the immediate consequences.

What does the election of the Rudd Government mean for Australian labour market regulation?

In my view any attempts to increase the regulatory burden on Australian workers and their employees will be short lived. The reason is simple enough. Australia is now a serious player in the international markets, and the only people shielded from the competitive forces which the international markets provide are teachers, the police, the military, the nurses and others in the health care industries, and of course the construction industry workers who are seeking the abolition of the ABCC. It is in those industries where we find trade unionism still flourishing.

A major talking point of the advocates of protectionism was that tariffs were necessary to protect Australian workers from the unfair competition of cheap labour. This became a mantra which I often recall when I go to Bunnings and see Australian workers buying power tools at prices which are, from an historical perspective, simply mind-boggling.

Bunnings is a useful symbol of globalisation which tells us that Australia is not going to go back to the Deakinite settlement. The Hawke-Keating reforms are not going to be wound back, at least for a long, long time, and the fact that our leading protectionist, Senator Kim Carr, is trying to prop up the Australian auto industry with green money, instead of with tariffs, is a sign of the times. And it is noteworthy that playing the green card in this context has not gone down too well. The most recent, delightful, vignette from this story is the concern now arising from the disposal of the nickel-hydride batteries which have to be replaced regularly.

Unless we re-build "Fortress Australia" the competitive pressures from abroad cannot be ignored. And that means that businesses that do not enjoy substantial degrees of natural protection have to conduct their employee relationships so that they get the best results from their employees. And that means, inexorably, a return to the 19th century world of common law employment contracts, which maximised the returns to both parties.

It is one thing, of course, to recognise the economic forces at work which drive the participants in the labour market to get the possible deal for themselves and their families. It is another to prescribe, in our current situation, what parliaments should do to provide the best possible legal framework which would facilitate the realisation of these ambitions.

The experience of the past twenty years, as Paul Keating, Peter Reith, John Howard, and other key political leaders grappled with this problem, has convinced me, contrary to all the conventional wisdom, that the most effective way forward now, is to reverse the tragic decision of 1898, and to take the Commonwealth Parliament out of the labour-market regulation game.

The Rudd Government will tinker with the Heath Robinson machinery that is now in place. But, as the economy suffers from the waves generated by the sub-prime scandal in the US, and there is more of that to come, the Government is already feeling the impact of reality.

To argue that labour market regulation should be left entirely to the States is not a doctrine which is popular in Canberra today. Under John Howard we had the most centralist prime minister since Gough Whitlam, and one consequence of that was Work Choices.

Business lobby groups, based in Canberra, Sydney or Melbourne, are similarly centralist. We forget that the best examples of labour market legislation we have had for a century was the Kennett Government's 1992 Act and the WA Court-Keirath Act of 1993. The former had been predicated on a Coalition win in 1993, and when that did not happen Premier Kennett gave up and handed it all back to the Commonwealth. The latter provided a sound basis for the mining boom. When Richard Court was defeated in 2001 the Gallup Government repealed the Act and the mining industry reluctantly moved into AWAs.

Returning power to the States is not popular within the Golden Triangle, and I was delighted to see former High Court Justice Ian Callinan, call for the abolition of the Federal Court in a speech given to the Samuel Griffith Society on Aug 22 last.

The creation of the Federal Court in 1976 is now seen by many observers as a blunder (to quote Justice Heydon). Ian Callinan observed "As both a barrister and a judge throughout the period creation and expansion of the Federal Court I have not seen the slightest evidence to suggest that its existence has in any way improved the performance of the of any other courts or vice versa."

The arguments he advanced concerning the Federal Court and our discontents with it are not the same as the arguments supporting the end of the Commonwealth's role in labour market regulation. But they are similar.

If the States were entirely responsible for the framework in which their labour markets operated they would be much more careful about the legislation they enacted. State governments have this great advantage over the Commonwealth. They live cheek by jowl with many of those whom they legislate for.

The other great advantage from the citizens point of view is that the States have to compete with one another. Population movement from state to state is now a serious matter in Australia.

Summarising the long-term prognosis we can see the following.

1. The continuing integration of the Australian economy into the international economy, particularly as India and China grow in wealth and influence. The end of protectionism means that one of the partners in the Deakin settlement, the manufacturing sector, cannot continue with that arrangement.
2. The continuing decline of trade unionism as an institution with any legitimacy in Australia (except in those industries which are government monopolies or quasi-monopolies).
3. The continuing inability of federal governments to provide satisfactory legal frameworks for labour markets across an economy in which so many regional and climatic differences are manifest.
4. The irreconcilable tension between the desire for freedom in the labour market and the desire to be regulated, particularly the desire for others to be regulated, can best be managed by politicians who are close to the scene where their legislation impacts on the daily lives of their constituents.
5. In Australia this means abandoning, for ever, the Higgins fantasy of a “new province of law and order” and completing the process begun by the Hawke-Keating Governments in the 1980s when they set out to rebuild the great ocean going junks of the 19th century and phase out the protectionist rackets which had impoverished us for nearly a century.

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In the paper I very briefly relate the story of the 15th century Chinese Admiral, Cheng Ho, who has been rehabilitated under the current Chinese regime and is a symbol of Chinese engagement with the world, on terms of immense technological superiority.

The dilemma which Australian political leaders face is that on the one hand, they like to exercise power and influence at home, including regulating the labour market, but on the other hand they like to walk the international stage as the leaders of a wealthy and important nation. Prime Minister Rudd is no exception to this desire.

The prerequisite for wealth and international importance is, of course, money and military capability. This requires a productive and energetic nation, whose citizens are capable of competing successfully in all fields of life, not just in swimming, on the international stage. Large tax revenues require an efficient and resilient economy; and international competition is the only way in which business and industry can remain competitive.

The nation in which these attributes are most strongly manifest is, of course, the United States. And the question immediately arises is “why is the US, today, the only world’s hyperpower?”

And in thinking about that question it pays to go back to that great classic account of American society, Alexis de Tocqueville’s “Democracy in America”, and I am indebted to John Roskam’s leading article in the Sept. 2008, IPA Review, on de Tocqueville and his extraordinarily perceptive analysis of American life, written during the 1820s.

De Tocqueville wrote people are “constantly excited by two conflicting passions: they want to be led, and they wish to remain free”.

In his chapter entitled “What sort of despotism democratic nations have to fear? he argued that democratic despotism would not be of the Roman kind experienced under Caligula or Nero, but instead, “it would seem that if despotism were to be established among the democratic nations of our days, it might assume a different character: it would be more extensive and more mild; it would degrade men without tormenting them.”

De Tocqueville feared a government which, in the name of providing security ‘covers the surface of society with a network of small complicated rules, minute and uniform . . .’ He wrote

The will of man is not shattered, but softened, bent, and guided; men are seldom forced to act, but they are constantly restrained from acting. Such a power does not destroy, but it prevents existence; it does not tyrannise, but it compresses, enervates, extinguishes, and stupifies a people, till each nation is reduced to nothing better than a flock of timid and industrious animals, of which the government is the shepherd.”

So why is the US still the land of economic, scientific and technological leadership? Why have De Tocqueville’s fears not been realised in that nation?

Answering that question would take up a large book, but there is one feature of American political life which provides at least a partial explanation.

Although Australia’s federal constitution was in large part modelled on that of the US, we have, mainly through the appalling jurisprudence of the High Court, turned the states from the sovereign states which the founding fathers sought to preserve, into service providers in those areas which the Commonwealth has refrained from taking over.

Ian Callinan’s judgement in *Work Choices* is one of the best contemporary arguments in defense of federalism extant, and although it concentrates on the way in which the corporations power has been used against the States it is worthy of close study in the debate which we have to have about our constitution.

The point which is relevant in this context, is the way in which the States of the US are still jealous of their sovereign powers and exercise them with respect to the labour market. In the US in recent decades, the Southern states have boomed, and the rust-bucket states have declined; and a major factor in that change has been the capacity of the Southern states to legislate against trade union privilege.

In Australia we need to return to a situation in which the States are responsible for the labour market within their jurisdiction and the Commonwealth has no power in that regard. Repeal of Section 51: xxxv would be the most desirable outcome, but failing that, the repeal of every piece of commonwealth legislation concerning the labour market would be a good start.