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In the ten minutes at my disposal I wish to discuss two statements.

The first is quite recent. In "The Australian" of 18 February, 2005, Michael Costello wrote an article subtitled "An anti-union wedge". Michael Costello has had a very distinguished career within DFAT, DIR, and elsewhere, and his remarks, therefore, carry with them some authority.

In the course of this article he wrote:

> On Tuesday this week the Business Council of Australia released its workplace relations action plan. Behind all the rhetoric, the BCA plan has three key ideas.
>
> First, it seeks to expose all Australian workers to the full force of employer power, while removing the support workers might have to bolster what is **intrinsically a hopelessly unequal bargaining situation**.

The key words are "intrinsically a hopeless bargaining situation"

If we go back to early May in 1987, Dr Breen Creighton wrote in the Melbourne Herald

> `a combination of common law and statutory law makes it virtually impossible for any group of workers, or their unions, to take any form of effective industrial action without running foul of either the civil or criminal law or both'.

And in his chapter in that marvellous book of the same year *The New Right's Australian Fantasy,* edited by Ken Coghill, we find that the argument put forward to justify his opposition to this state of the law is as follows:

> `The capitalist mode of production inevitably rests upon a fundamental imbalance of power between the individual unit of labour (worker) and the capitalist (employer). **This imbalance is of such a nature that it is impossible for the worker to deal with the employer on anything like an equal basis when it comes to negotiating the terms upon which the worker sells his labour.** Historically, the workers have sought to redress this imbalance by forming or joining trade unions which could then negotiate with employers on their behalf.

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> This strategy was based on the assumption that the power of the collectivity (the union) was greater than the sum of its parts (the members).'

In these two statements we have an excellent summary of the imbalance of power argument, and it is this argument which carries the whole Higgins structure of labour market regulation, with legally privileged trade unions and employer organisations; arbitral tribunals with law making powers; and the huge train of camp followers who spend their lives keeping alive, as best they can, the Higgins legacy.

However, this suspension problem, the tiny thread of faith in the imbalance of power, which holds up a regulatory colossus, goes beyond the Higgins structure of labour market regulation alone. Australian politics, ever since the fusion of the Alfred Deakin protectionists and the George Reid free-traders in 1909, has been based on a two-party system comprising the Labor Party, founded by the trade unions and bound by caucus solidarity and extra-parliamentary conference decisions on the one hand, and various anti-Labor coalitions on the other. What happens to this nearly 100 year-old political structure if the trade unions should lose their legal privileges?

My prediction is that we will see a massive re-arrangement of Australian political life, of the kind that happened in British politics after the Great War, when the British Liberal Party effectively disappeared from the political scene. This should come as no surprise. Political life must eventually reflect social reality, and trade unionism as a living doctrine has long since vanished, as the ever declining number of trade union members testifies. But many careers have been constructed on the present arrangement, and we should not be surprised, then, if a great deal of passion is invested in trying to keep alive a manifestly mythical doctrine, the imbalance of power between employer and employee.

The Breen Creighton statement I quoted above is useful in that it explicitly relies upon Marxian notions of class warfare, and of exploitation by capitalists, ie investors or business proprietors, of members of the working classes, ie their employees.

Only in universities do we find Marxism taken seriously anymore. Most of us accept the superiority of markets over the command and control arrangements of the communist planners of GOSPLAN. The labour market has its own characteristics, no doubt, but the basic rules of markets operate in this market as in other markets. If plumbers are in short supply, then their hourly rates go up. Likewise brickies, who are now charging $3 per brick. And, as in other markets, if a combination of suppliers can corner the market in their particular industry, then they will be able to take out monopoly rents. In Australia, trade unions can do that lawfully because their monopolies are exempt from the operation of the TPA. And that, in one sentence, is the story of the construction industry in Australia. With this important caveat, that the organised monopoly of labour supply in the construction industry is not a voluntary matter for those involved. As the Cole Royal Commission found, there is lots of intimidation, coercion and criminality, in that industry

There are two essential points about a contract of employment. The first is that the parties, A and B, need each other. If A is an employer, he needs B, an employee to make his business function. And B, who is looking for employment, needs A to provide him or her with a job, and all the benefits, part of which is financial reward, which go with having a job. The second is that both parties expect to be better off after entering into the contract. If these expectations turn out not to be fulfilled, then the employee can quit, usually “at will”, for good reason, bad reason, or no reason at all. Employees often quit to go to better jobs, and short of matching or bettering the offer from a competitor, the employer is powerless to prevent the quit, and the losses, such as firm-specific skills, consequent to it. In modern

economies such as Australia, employee quits outnumber employer dismissals by about two to one. These include the inevitable dismissals resulting from the Schumpeterian process of creative destruction, which has driven historically unprecedented improvements in living standards, in the developed world, over the past two centuries. The Australian employer, of course, is in a different situation to the employee, but that is not my topic for today.

Both parties, A and B, will share in the surplus generated by the contract. No doubt there will be debate between the two parties about dividing up the surplus, but once again, the labour market will generate information about that issue, and if the employee, particularly, feels disadvantaged, then other opportunities will be there to be seized. It is noteworthy that, according to the OECD data, the share of labour cost in total factor cost for Australia, averaged just 63 percent for the years 1985 to 2001 inclusive - on the bottom rung of the international ladder. The comparable figures for Canada, the US, the UK, and France are 76, 75, 72 and 70 percent respectively. These figures are, to be polite, contra-indicative to the claim that the Higgins apparatus has effectively countered the imbalance of power situation which its adherents claim as its legitimising doctrine.

The imbalance of power argument never withstood close, or even middle-distance, analysis. If the world was as Costello and Creighton described it, then the Marxian vision of an ever impoverished working class, and an ever wealthier capitalist class, leading ultimately to the collapse of capitalism, would have come upon us long ago. Employers do not compete with employees for a bigger share of wealth. Employers compete with employers for the best possible partners in the enterprise, and employees compete with employees for the best possible jobs. And the words “best possible” are words with intensely personal attributes. This is not a world of standard issue boiler-suits and regulation army boots. We live in a world where we choose our friends and our spouses; where, if we feel inclined to do so, we change our religious affiliation or our political allegiance; where we enter into commercial contracts if we believe we can improve our situation as a consequence; and where we shop for the necessities and luxuries of life in a market place where people do everything they can to help us, on a personal basis, to obtain what we need or would like.

On the HR Nicholls Society website - www.hrnicholls.com.au - you will find very recently posted, a new paper by Geoff Hogbin, entitled

Power in Employment Relationships:

Imbalance or Indispensable?,

which analyses at length, and with enviable scholarship, the whole gamut of the imbalance of power issue.

The imbalance of power was a Marxian myth. Using this doctrine as a foundation for regulatory structures has resulted in very damaging consequences, in Australia and elsewhere.

From my point of view the imbalance of power debate reminds me of the famous dead parrot sketch. As John Cleese declaimed

> Mr. Praline: 'E's not pinin'! 'E's passed on! This parrot is no more! He has ceased to be! 'E's expired and gone to meet 'is maker! 'E's a stiff! Bereft of life, 'e rests in peace! If you hadn't nailed 'im to the perch 'e'd be pushing up the daisies! 'Is metabolic processes are now 'istory! 'E's off the twig! 'E's kicked the bucket, 'e's shuffled off 'is mortal coil, run down the curtain and joined the bleedin' choir invisibile!! THIS IS AN EX-PARROT

The imbalance of power argument is dead, and with its demise, the whole Higgins structure is about to collapse.