

Fixing Disputes for a Century

Joe Isaac and Stuart Macintyre (eds), The New Province for Law and Order: 100 Years of Australian Industrial Conciliation and Arbitration, Cambridge University Press, Melbourne, 2004

Reviewed by Anne Daly

The centenary of the Conciliation and Arbitration Act of 1904 is a good time to review the successes and failures of the Australian system of labour market regulation and its impact on Australian life. This is also a timely book given the discussion of further reform of the industrial relations system following the Coalition victory in October 2004 and their control of the Senate from July 2005. These reforms are likely to further limit the role of the arbitration system by reducing the number of 'allowable matters' that can be included in awards and to make it more difficult for unions to organise workers (*Australian Financial Review* 16 December 2004).

The federal system of conciliation and arbitration was born out of the bitter strikes of the 1890s. In the words of Justice Higgins, the second president of the Court of Conciliation and Arbitration and a key figure in the early developments of the system, it was designed to substitute 'the crude and barbarous processes of strike and lockout' by 'conciliation, with arbitration in the background' (p. 14). In its lifetime the system of conciliation and arbitration has attracted strident criticism for its alleged negative effects on the operation of the labour market and on Australian economic growth and strong support from those who see it as an important part of the Australian way of life and a promoter of equity and fairness in the labour market. The institution has altered its form and its role as the social and economic circumstances of the country have changed, but it has continued to survive.

This book reviews the hundred years of the conciliation and arbitration system in Australia. It appears to be aimed at a general reader rather than specialists in the field of industrial relations or its modern equivalent, human resource management. A thematic approach to the history is adopted. The authors are academics and practitioners in the field. There are eight chapters covering the following areas: a broad political history by Tim Rowse, the practical operation of the system by Stuart Macintyre, a legal history by Michael Kirby and Breen Creighton, an economic and social impact assessment by Keith Hancock and Sue Richardson, the impact on women and Indigenous Australians by Gillian Whitehouse, the employers' perspective by David Plowman, the union perspective by Malcolm Rimmer and a concluding chapter on the effects on industrial conflict by Bill Hartley.

This is an important topic clearly deserving some serious analysis but many readers will be disappointed by the treatment in this book. For the reader unfamiliar with the system and hoping to understand how it has worked in the

past, there is little attempt to set out a beginner's guide. For example, the relationship between minimum rates and paid rates awards, how national wage case decisions have affected wages and how awards are enforced is not explained. A glossary of terms would be useful. Readers hoping to finish the book with some answers to questions on the impact of the arbitration system on the Australian economy and particular groups are also likely to be unsatisfied. Given the nature of the task, this situation is hard to avoid — it is extremely difficult to isolate the impact of one institution on an economy or society over a hundred-year period but the book is rather lacking in examples of instances where the arbitration system by itself appears to have had either a strong positive or negative effect on outcomes. The most striking exceptions to this are in Whitehouse's chapter on the impact of the equal pay decisions on women's pay in the early 1970s and the negative effect on Indigenous employment of their inclusion in the Cattle Station Industry Award in 1966. Even in these examples the implications of the centralised decisions were highly dependant on other factors; raising the wages of Indigenous employees in a declining industry undertaking major capital investment were different from raising the relative pay of women at a time when demand for labour in the service industries was growing strongly.

The choice of a thematic rather than chronological approach to the book has made it at times repetitive. For example, Higgins' famous Harvester judgement in 1907 — establishing a basic wage to enable a male worker and his family to live in frugal comfort as 'a human being in a civilized community' — is repeated in several chapters and the link with the papal encyclical of 1891, *Rerum Novarum*, is noted more than once. Similarly the use of penal powers and the jailing in 1969 of the secretary of the Australian Tramways and Motor Omnibus Employees Federation, Clarrie O'Shea, is discussed in several chapters. A chronological approach would have avoided these repetitions and allowed a deeper analysis of issues in each time period. Introductory and concluding chapters could have been used to draw out major themes.

One interesting recurring theme of the book is the love/hate relationship of the arbitration system by both the employers and unions. The unions have favoured a centralised system in periods of high unemployment and low bargaining power but have rebelled against centralised control at other times; for example in the late 1960s and the final versions of the Prices and Incomes Accord between the Hawke/Keating Labor governments and the Australian Council of Trade Unions (ACTU). In both these instances unions were interested in pursuing claims outside the framework of the arbitration system; in the latter period many unions were encouraging the development of enterprise bargaining. The book illustrates many instances of the significant interdependence between the trade union movement and the arbitration system.

The employers have similarly had contrasting views about the arbitration system depending on the state of the business cycle. Plowman quotes one employer's colourful view in 1930 that arbitration was 'a greater curse than droughts, prickly-pear or any other curse in Australia' (p. 251) while another at a

more buoyant time in 1937 argued that the 'Arbitration system was a sound one and that it would be a permanent feature of the Australian system' (p. 253).

Another recurring theme is the relationship between federal and state institutions and the difficulties created by the co-existence of the two systems. The existence of closely related jurisdictions has created numerous opportunities for strategic game playing to maximise the benefits to competing groups. Many employers have had to deal with both state and federal arbitration tribunals. This has complicated matters and delayed the resolution of disputes. This inter-relationship between federal and state tribunals is discussed in a number of chapters, particularly the legal history by Kirby and Creighton.

While the arbitration system may have initially been established with the immediate aim of settling industrial disputes, it has played a key role in wider macroeconomic policy developments. This was particularly important in the 1970s and 1980s when incomes policies were discussed and implemented. As Hancock and Richardson explain, there has always been a social policy angle in the deliberations of the arbitration tribunals that began with Higgins' establishment of the basic wage. It continues to the present day in the minimums set under the safety net. The existence of these wider aims has introduced restrictions that place the operation of the Australian labour market outside a free market framework where wages and employment levels are determined solely by the interaction of demand and supply.

It is for this reason that opponents of the system have argued that it has had a negative effect on Australian workers by limiting employment, especially of disadvantaged workers whose productivity is below the minimum wage, and reducing growth in the economy. Others such as Hancock and Richardson have supported the system in the interests of these same vulnerable workers as they argue it offers them protection and more civilised outcomes. There is little evidence presented in this book to support either position of dire negative effects or strong positive ones. Hancock and Richardson in their assessment of social and economic impacts highlight the difficulty of isolating the effect of the arbitration system on inflation, employment and economic growth outcomes. There is some evidence that Australia's wage distribution was narrower in the 1970s and 1980s than in other countries but OECD data presented by Hancock and Richardson for the early 1990s places Australia in the middle of the 19 OECD countries compared on the basis of the earnings at the 10th percentile as a ratio of the earnings at the 90th percentile. Hartley argues on the basis of person days lost to industrial action per 1000 employees that the conciliation and arbitration system reduced strikes between 1910 and 2001. However he does not consider the other factors that might have affected the level of strike activity. These include the Great Depression, the Second World War and legislative intervention under the Workplace Relations Act 1996 which prevents strikes outside the bargaining period. International trends in declining strike activity suggest that there are forces beyond domestic institutions that have altered the cost-benefit analysis of strike activity and reduced its incidence.

It would be a more interesting book if it canvassed a greater variety of views, and some more controversy, as the system has certainly generated plenty of that. There is no chapter by someone known to be opposed to the system. It is a very Australian book looking at the system from an Australian perspective. It would have been interesting to have a view from an outsider. Certainly the concept of a legal tribunal determining wages and conditions is very unusual to people from other countries and it would have been interesting to have an additional, international, perspective.

The subject of this book is an important one for any student of Australian history but this book will leave many major questions unanswered. An opportunity to progress the debate on the role of the conciliation and arbitration system in the Australian economy has been missed. This is disappointing given that we are now moving into another phase of reform of the industrial relations system and a fuller analysis of the achievements and failures of the current system would have provided valuable input for policy makers

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