



Catholic Commission for Justice, Development and Peace

Melbourne Archdiocese

THE NEW CULTURE OF AUSTRALIAN INDUSTRIAL RELATIONS A COMMENTARY IN RELATION

The Workplace Relations and Other Legislation Amendment Bill 1996

The Catholic Commission for Justice, Development & Peace (Melbourne Archdiocese) is pleased to offer a commentary on the proposed new culture of industrial relations in Australia. This paper consists of the submission made by the Commission to the Senate Inquiry that is examining the *Workplace Relations and other Legislation Amendment Bill 1996*.

The paper looks to the strong tradition of Catholic Social Teaching that for over one hundred years has explored the relationship between capital and labour. This paper highlights the principles outlined by the Popes of the last century and how they have been applied and shaped the Australian context of industrial relations.

The discussion paper looks at the issues of concern in an industrial relations culture where individual enterprise contracts become the norm. The issues named as of concern are: the diminishing power and authority of many unions; the situation of employees in a vulnerable position; the atomising of the labour force; the place of the economy serving human society or does humanity serve the economy; institutional protection of workers; the right to strike; social participation of workers; the working poor as a new class; and ownership of property by all people or by the few.

The Commission hopes that this paper will help all people focus on the ethical framework for Australia's re-examination of industrial relations.

The Workplace Relations and Other Legislation Amendment Bill 1996 is a sophisticated and unprecedented endeavour to reconstruct industrial relations in Australia, and if successful will direct employer-employee relations into an entirely new direction. It seeks to promote flexibility in the workplace by employees and employers negotiating directly, with less involvement of unions. It hopes for higher productivity and wages, and growth of employment. Assessing the proposed legislation is not an easy task, but because of its possible enormous consequences it is important that it be earnestly considered and debated by all sections of the community.

The Catholic Commission for Justice, Development and Peace (Melbourne) takes particular interest in the legislation as the Catholic Church has been deeply concerned about ethics in industry and commerce. For over a century, a major preoccupation of the Church has been to defend the rights of working people in industrial societies, and to articulate moral values on which to establish just working conditions for both employers and employees, and a just society.

In 1891, Pope Leo XIII denounced the exploitation of workers and defended their rights to form unions. His statement, *On the conditions of the working class*, became the social bible of Catholic workers throughout the world, and particularly in Australia. Leo's critique of communism and Marxist forms of socialism has been remarkably confirmed by the collapse of Soviet communism. But the Church's developing critique of aspects capitalism is unfortunately still urgent.

Pope Leo and subsequent popes have also been particularly concerned about:

- * the defence of the right to property;
- * equity in the distribution of wealth;
- * developing structures of political and economic participation to protect the rights of employees.

On the right to property, the Church has opposed the concentration of ownership in the hands of a few, especially when it perpetrated an unjust class structure, and has defended the right to property of **all** people, including workers, believing that all should have access to a reasonable amount of property so that they could raise and educate their families, provide against sickness or death, and assure financial security in old age. As Pope John has reiterated, the right to property is not absolute, but 'is subordinated to the right to common use, to the fact that goods are meant for everyone' (*On human work*, par. 14).

In 1891 Pope Leo called for a fairer distribution of wealth, so that all had the resources to live decently. He condemned economic systems which forced people to work in oppressive conditions. To overcome these abuses, he supported the right of workers to form unions, and a greater role for the State to ensure that working conditions were just, and the right of workers to form unions. He recognised that employers have the resources which wealth commands: lawyers, influence, media and organisation. What chance did isolated individuals or small groups of workers have against such power? The great hope for workers lay in combination. Only if workers could act together were they in a position to negotiate with employers fairly. The Church judged that strong unions were necessary for a just society.

The popes have consistently condemned the Marxist doctrine of class war, but recognised that for centuries there has been a bitter class struggle where workers were cruelly exploited. To overcome this, the popes recommended not only that wages be raised to a civilised level, but that **working people be admitted to greater participation in the management, control and ownership of firms** in which they work. This was initially reflected in their support for co-operatives. More recently, Pope John Paul wrote that 'each person is fully entitled to consider himself a part-owner of the great work-bench at which he is working with everyone else' (*On human work*, par. 14).

The message of Pope Leo XIII was reinforced in Australia by Sydney's Cardinal Moran in his famous address in 1891 on 'The rights and duties of Labour'. His concern is directly relevant to the present legislation. Speaking after a period of strikes and lockouts, Moran said of freedom of contract that 'no other form of words has been so misused, perhaps, in modern times, till in the hands of designing men it has been turned into an engine of robbery, and the very name of liberty had become a mockery, a delusion and a snare.'

He said that if a contract were not free and in accord with natural rights, 'it ceases to be binding. When comparative equality in bargaining was lacking in Europe, great injustices had been inflicted on workers. Too often, he said, freedom of contract came to mean 'liberty to plunder, to defraud, to oppress...'

Moran also supported mechanisms of conciliation and arbitration to avoid strikes and lockouts, and ensure just outcomes in disputes and negotiations.

Since Cardinal Moran and in part because of the policies he advocated, Australian living standards and the conditions of working people have improved greatly. Moreover, the Church's social teaching has been refined over a century to respond to changing circumstances, and vigorously developed by the present Pope, John Paul II, especially in three documents, *On human work* (1981), *On social concerns* (1987) and *Centesimus annus* (1991), commemorating the centenary of Pope Leo's *On the conditions of the working class*.

It is no secret that the present Pope's decisive intervention at critical moments in Eastern Europe hastened the collapse of communism in Eastern Europe. But less well known is his **strong criticism of a 'radical capitalist ideology' which would blindly entrust the solution of social problems to the unhindered development of market forces** (*Centesimus Annus*, par. 42). While the Church has consistently supported the freedoms of enterprise and initiative, along with the virtues needed for a sound business culture, it is deeply concerned about the excesses of capitalism and philosophical assumptions which can drive it to trample over other human rights and values. Pope John Paul called for a 'society of free work, of enterprise, and of participation', in which the market 'is appropriately controlled' to guarantee that the basic needs of all are met (par. 35). He insisted that the capitalist economic system is only just if it is subject to a strong juridical framework which places it at the service of human freedom and wider ethical values (par. 42).

Consequently, the Pope has repeatedly called for a renewed commitment to 'solidarity', to a determined effort by societies to promote the personal flourishing of all their citizens (*On social concerns*, par. 38-40). He urged that special attention be given to those who are poor or disadvantaged, so that all have a reasonable chance in life. In the Pope's view, social solidarity should act as a guide and motivating principle in all social and economic planning.

The Australian situation

With the recession of the 1980s and the excesses of many major companies, followed by protracted high levels of unemployment and major restructuring of industry, many of the gains of earlier decades in Australia are under threat. Many fear that high unemployment and growing inequality of incomes and wealth will lead Australia down the path of the United States, with increasing privatisation of welfare, the weakening of unions, lower wages and social fragmentation.

Unions in Australia have generally played a positive role in promoting security and equity, by helping to raise living standards and engaging in the manifold processes which foster and support wider participation by employees in the running of our society. It is hard to see how Australia could have become such a strong democracy without the vigorous involvement of unions.

But Australia is moving into a new situation in which the previous pattern of industrial relations has been called into question. *The Workplace Relations Legislation* attempts to preserve the gains made in the last hundred years, especially by setting a safety net of minimum wage conditions, having the Australian Industrial Relations Commission ensure equal pay for work of equal value, and that remuneration under the enterprise agreements must be no less than under existing awards. Special mechanisms are proposed to ensure compliance and that neither employers or employees are disadvantaged. Basically, the new legislation aims to move Australian industry away from a confrontational stance between capital and labour towards a more co-operative model which stresses the common interest of workers and employers.

However, the difficulty is to envisage how they will work in practice and what undesirable consequences may result.

The Catholic Commission for Justice, Development and Peace (Melbourne) therefore wishes to express its deep concern about certain aspects of the legislation.

1. While the new legislation does not deny that employees have a right to form unions, it will undoubtedly greatly diminish the power and authority of many unions to service their members and perform their duties. The Church recognises that unions have a duty to protect and represent the interests of their members, and believes that it is the role and duty of the State to protect that right. This does not mean, of course, that union structures are unchangeable if the positive tasks they perform can be more appropriately performed by other means and which can be firmly institutionalised so as to be resistant to government fiat and the pressure of dominant economic forces. The question is: without the institutionalised check which strong unions provide, how can the powers of special interest groups and the new dominant economic actors be made to serve the general welfare?

2. The legislation invokes 'freedom of choice' for employees, so they can decide to remain in a union or opt for an individual contract. This could conceivably work well for those with scarce skills or knowledge and who are thus in a strong bargaining position. However, it is hard to see how it can benefit those employees who are in a more vulnerable position. The rhetoric of 'freedom of choice' should not disguise the fact that individuals or groups of employees are at a great disadvantage in negotiating with most employers, since there is rarely equality in such a bargaining relationship. Is it not inevitable that over time their wages and conditions will decline, despite the declarations in the legislation?

3. The legislation risks atomising the labour market and effectively undermining the bargaining power of employees. Even if good employers want to maintain wage rates, how will they be able to compete with employers who insist on lower wages? The down-grading of the powers of the Australian Industrial Relations Commission and the uncertainty about the role of the Employment Advocate in settling disputes raise questions about how the rights of workers, especially the poorly paid, can be protected against recalcitrant employers.

4. The new legislation appears to assume that changes which may benefit the aggregate GNP, major businesses or some individuals will contribute to the general welfare. Such an assumption is not self-evident. What is missing from the legislation is consideration of likely outcomes to show who will benefit and who not, and the effect on society in general. A major task for governments is to make contemporary structures of economics more accountable to human and social values so that powerful economic actors do not unjustly impose their wishes on a confused community. This is precisely the danger of the current trend labelled 'economic rationalism'.

5. With communism largely defeated, the forces of international capital are reshaping the world, but in whose interests? Historically the union movement has acted as a check on the power of capital to ensure that the rights of workers and the community in general were respected. If unions are greatly weakened, what institutional mechanisms exist to protect workers? Will states themselves be able effectively to resist the power of international capital and markets? And is not the role of the Employment Advocate likely to be compromised by compliance to ministerial directives?

6. For a century the Church has recognised **the right of workers to strike**. Withdrawal of their labour is one of the last lines of defence by workers against injustices. It is true that on occasion this right has been abused, but it has also been necessary to protect the rights of unionists. It is the ultimate sanction available to workers against unfair wages or conditions.

The Church has insisted that to be justified a strike is subject to certain conditions: that the grievance is just and serious; that all other means of resolving the dispute have been tried and failed; and that the likely harm resulting from a strike is proportionate to the good to be achieved.

The proposed legislation recognises a right to strike only when bargaining for enterprise agreements, otherwise it will be unlawful and subject to heavy penalties. It is not unjust if employees enter into an agreement that they will not strike if employers satisfy certain conditions, provided there is no compulsion involved. A great deal hinges on the judgment of the Australian Industrial Relations Commission as arbiter in such disputes to ensure that the forgoing of the right to strike will not be used by employers to make unfair demands on their employees. The record of enterprise bargaining in the United States and the American tradition of union-busting, which is still alive and well, should give pause to Australian legislators.

Yet if the government's proposed dispute-settling mechanisms fail or are inadequate, it would seem that workers may be morally entitled to resort to the strike weapon in extreme circumstances. In this case they should not be subjected to personal sanctions in the criminal jurisdiction. The proposed legislation seems deficient in this regard.

7. Unions have provided **important mechanisms of social participation for working people** not only supporting wage claims and bargaining, but providing a wide range of services, education and skill formation which have contributed greatly to the political and social life of Australia. They thus provide intermediate social structures essential for the health of democracies. They have mediated social conflict, and provided a culture of reasoned debate and participation for working people. To weaken such structures at a time of unprecedented social change risks undermining some of the main pillars supporting the civil peace and consensus we have known in Australia.

8. Pope John Paul's call for the virtue of solidarity is particularly apt for us today if Australia is to sustain a society which honours the rights of all to a decent life with full social participation. The alternative is a society where the winners do very well, but the losers do poorly. The price to be paid for such an alternative is one of **increasing poverty for many, social fragmentation and possibly a more violent society**.

9. In one aspect, the Church would like to see the proposed legislation go much further to foster widespread co-partnership in industry, with employees sharing much more in the management, control and ownership of the firms in which they work. **The ultimate answer to class division is to allow all access to equitable ownership in productive property** (See *On human work*, par. 14). The co-operatives in Mondragon in Spain have demonstrated that such a goal need not be utopian in this highly competitive and technological age.

In conclusion, the current legislation has the potential radically to reshape the fabric of Australian society. While the Catholic Commission supports attempts by governments to make the Australian economy more efficient and able to meet the challenges of globalisation, such efficiency must not be judged solely in aggregate economic terms, but also in terms of equity, justice and social participation. Such radical experimentation should not without careful thought abandon social mechanisms which have stood the test of time and produced outcomes which have been the envy of many other countries. *The Workplace Relations Bill 1996* needs to determine more carefully the likely outcomes of its proposals, and establish that they will not undermine critical social values: a just wage for all working people; equity in the distribution of wealth and incomes; and full access for working people to firm institutional arrangements to guarantee and protect their rights.

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