

The Future of Solidarity Conference Abstracts

1. UNION SOLIDARITY UNDER THE WORKPLACE RELATIONS ACT 1996 (CTH)

Amanda Coulthard (School of Law, Bond University)

This paper looks at the legislative framework within which unions are required to operate, and the extent to which that framework can be said to threaten their legitimacy and that of collectivism generally. Over the past decade we have seen the progressive dismantling of the model of conciliation and arbitration and the creation of a decentralised model based on bargaining at the enterprise level. This has been accompanied by challenges to the traditional and central role played by unions. Although it could be said that collectivism has remained a fundamental aspect of the Australian system until recently, that can no longer be said. The Workplace Relations Act 1996 (Cth) represents, at a federal level, the most recent and determined step towards a decentralised model of industrial relations in which the primary responsibility for the determination of the terms of the employment relationship rests with employer and employee at the workplace level. A decollectivised model of industrial relations based on individual rights and freedoms has clearly emerged under this legislation. The 'non-union' option in bargaining is now given centre stage. Unions are no longer assured of a role in the bargaining process. New provisions dealing with freedom of association explicitly recognise and protect an employee's right not to join a union. Compulsory unionism is prohibited. The Commission no longer has the power to award preference in employment to union members and closed shop agreements are unenforceable. Further, the central role played by trade unions in the protection and enforcement of employee entitlements has also come under threat. The Act diminishes the role of unions in the settling of workplace grievances. The role of unions as an enforcement agent in the system is attenuated by limitations on the right to enter the workplace. The paper argues that, despite these limitations on union action, the new Act also provides unions with opportunities to defend themselves, and concludes that there might yet be a future for union solidarity.

2. RIGHT AGAINST RIGHT: ARE CURRENT LEGAL CONSTRAINTS ON TRADE UNIONS JUSTIFIED?

Associate Professor Ian Hunt (Flinders University of South Australia)

This paper looks at the limits imposed by current employment law on the scope of union action, and asks whether these limits are ethically justified. It distinguishes this question from the issue of whether employment law today is in accordance with fundamental legal principles. Current legal restrictions on union activity and industrial action agrees with the original thrust of the common law, which is that withholding labour is inherently unlawful. On the other hand, there is also room within legal principles to accommodate strike action, though judicial recognition of this would completely overturn past judicial policy toward the working class. The question that this paper is concerned with is whether current legal restrictions on trade union action are ethically justified. Ethical theory suggests that moral rights are always prima facie and that conflicting rights must be weighed to decide what conduct is acceptable in any given situation. The paper argues that, in the case of strike action, we must weigh the duty of employees to do what their contracts of employment require against their right to wage justice. English common law seems only to consider the duty of fidelity that employees owe to their employer. Current employment law allows only a circumscribed right to take industrial action when contracts of employment are negotiated. The paper argues that neither the common law nor current statute law gives due recognition to the interests of workers when conflicts with employers may lead to strike action. This does not mean that the primary focus of union defense and renewal should be reform of the law. The development of new forms of trade union solidarity rather than current legal restrictions on trade unions will be decisive in determining whether unions survive. The paper concludes that, nevertheless, since current legal restrictions are harsh and ethically unjustified,

attempts to forge new forms of solidarity among workers should be coupled with attempts at legal reform.

3. A TALE OF TWO UNIONS: THE THEORY AND PRACTICE OF AUSTRALIAN UNION STRATEGY NOW

Barbara Pocock (Centre for Labour Research, Dept of Social Inquiry, University of Adelaide).

This chapter reflects on the Australian union response to attacks over the past decade on institutional structures for solidarity among workers from conservative employers and the state. It draws on interviews with those involved, personal experience and recent discussion of union strategy in the United States. The chapter concentrates on the window of agency that unions have in determining their own destiny. Despite the difficulties of formulating union strategy when unions themselves have tended to be reactive organizations tied to institutional habits, a case is made for a more decisive approach by unionists to union strategy. In particular, the chapter argues for a set of strategies that arise from an examination of union fortunes in Australia and the United States today. The current crisis of unions should persuade unionists to take these issues of strategy seriously. The question of union strategy is approached by means of a fictional 'tale of two unions' that draws morals for strategic choices that unions face, whether they are alive, renascent, dead or dying. The chapter concludes that unions need to put the emphasis on mobilizing rather than servicing their members, pursuing claims in ways that rely on solidarity and action taken by members, manage their resources assertively, establish links with the broader community, and ensure that issues of strategy are consciously addressed.

4. DISLOCATED IDENTITIES? MODERN SOURCES OF SOCIAL DIFFERENTIATION AND TRADE UNION IDENTITIES: EVIDENCE FROM CANADA

Stephane Le Queux (School of Management, University of Newcastle)

Professor Gregor Murray (Laval University, Quebec)

One of the most distinctive shifts of Anglo-Saxon political economy in the late 20th century is the dual process of decentralisation of industrial relations and the individualisation of the employment relationship. Recent reform of Australia's labour legislation shows that it too is catching the wave, and that we may expect from the Workplace Relation Act 1996 a further breach of the Australian collective landscape. Enterprise bargaining and Australian Workplace Agreements pave the way for an insularization of trade unionism. The former encourages a retreat to micro-corporatism. The latter allows "vulnerable" segments of the workforce to be taken from under the collective umbrella. While trade unions have not yet clearly and definitively shifted to an insular position, there is a tendency for that to happen which needs to be explained. Is it simply associated with a weak bargaining position? Does it rather manifest a failure of trade union representation and recruitment in new areas of employment? Does it reflect a rejection of traditional modes of trade union representation and action or, more fundamentally, a rejection of collectivism itself? Experience from Canada might help to answer such questions. This paper looks at evidence for a weakening of allegiance to unions and traditional modes of trade union action taken from a survey among Confederation of National Trade Unions (CNTU) union members in Quebec. A study of this evidence asks how much such a weakening of allegiance may be due to two factors. One is the problem that unions have of aggregating diverse interests across modern identity fault lines, such as the feminization, casualization and professionalization of the workforce. The other is the role of unions in regulating the substantive terms of the employment relationship. The study found that, firstly, there is not a substantial lessening of commitments among workers to the basic idea of unionism, although commitment to traditional modes of union action was much more variable. Secondly, it found that only such groups as women employees in the public sector consider that unions are not essential for defending their wages and conditions of employment. However,

social differentiation affects allegiance to traditional modes of union action much more. Not only women workers in the public sector, but also male workers in that sector, professional employees, the young, and casual employees show less support for strike action. Thirdly, the role of unions in regulating conditions of employment has a significant influence on allegiance to both the idea of unions and traditional modes of union action. Finally, if one were to identify a principal source of a weakening of union allegiance among wage-workers, it would be their perception of how democratically unions were run. Social differentiation does not in itself undermine support for unions but it does call for the development of new values and modes of collective action, which take into account the formation of new worker identities, and ensure the democratic participation of diverse groups of workers in union affairs. The paper concludes by discussing these results in the light of current changes to Australian industrial relations.

5. THE SHIFTING SANDS OF SOLIDARITY

Janis Bailey (Edith Cowan University)

This paper develops the theme that there is not a monolithic 'union solidarity' but a range of solidarities. It seeks to explore the overlap and the tensions between 'traditional' forms of union solidarity and tentative, emergent, fledgling, 'new solidarities'. Using the ideas of two European sociologists, Rainer Zoll and Ben Valkenburg, the paper examines the union campaign against the "Third Wave" union legislation in Western Australia. The paper employs a narrative of this dispute, based on personal involvement and interviews, to show how participants developed solidarity in an actual union campaign. The paper observes that the campaign called for solidarity and participation from unionist and non-unionist alike. The construction of a union "embassy" opposite the WA parliament drew in a range of community groups and employed a multiplicity of ways of working with others to further the campaign. The embassy activities also led to some tensions, for example, over symbols of family inclusion in the protest. The paper looks at how these were resolved in practice. It concludes that, although the unions failed to stop the "Third Wave" legislation and a consequent erosion of union membership in the public sector in WA, they effectively challenged its legitimacy and demonstrated the power of an "inclusive" solidarity that recognized differences among those united in the one campaign.

6. 'SOLIDARITY AND PUBLIC MORALITY IN THE 1998 WATERFRONT DISPUTE'

Mary Walsh (School of Management, Queensland University of Technology)

Mark Bahnisch (School of Management, Queensland University of Technology)

The 1998 Waterfront Dispute raises questions about the changing nature of solidarity and public morality in Australia. This paper seeks to elucidate these interlocking themes. The waterfront dispute is interesting because it discloses changes in the relationship between unions and the wider community. Drawing on recent philosophical literature on the nature of solidarity, we argue that the Maritime Union of Australia (MUA) sought to construct relational solidarity through an inclusive strategy rather than a conventional form of solidarity that relies for its force on cohesion between members of an identifiable group sharing certain particular interests. In contrast to previous Australian experience, the role of institutions of the state and the courts as adjudicators on questions of public morality was radically called into question. The MUA's construction of an inclusive solidarity was able to secure public demands for a just resolution of the dispute, awakening underlying discourses about the role of the state in securing public morality. The paper argues that the dispute highlights a perceptible shift from the government to the courts as the institutional guarantors of public morality and suggest that this shift has ongoing implications for the future of solidarity and governance in this country.

7. 'STRATEGIC UNIONISM: A NEW APPROACH TO THE CONCEPT OF SOLIDARITY'

Associate Professor Roy Green (Employment Studies Centre, University of Newcastle)

The concept of "solidarity" historically has been used to denote the collective principle underlying trade union organization. More generally, the challenge it poses to the principle of competitive individualism at the root of capitalist society has given rise to theories of "social solidarity" which emphasize the role of the state in co-ordinating the activity of economic organizations and promoting a unifying political and moral consciousness. A connection between these essentially different conceptions, one resting on independent trade unions, the other on the power of the state, was established in the 1960s and 1970s with the dominance of the "corporatist" policies of that period. However, the compatibility of the two was always questionable and the analogy with fascism for many writers was uncomfortably close. More recently, the collapse of "state socialism" in theory and practice has undermined the notion of "solidarity" associated with it. In Australia, the Accord between the trade unions and the Labor government elected in 1983 underwent profound alteration as a result of international and domestic pressures consistent with the above scenario. Central to the original conception was a national wage determination system denoted by the Swedish term "wage solidarity" or "solidarity bargaining". Paradoxically, however, trade union density continued to decline under this system. As it gave way to more decentralized arrangements from 1987 the challenge facing unions was to develop a new approach to organizing the workforce. The present paper examines data from the AWIRS 1990-5 showing that the presence of active local union delegates in the workplace promotes organization, or slows a declining trend. Such structures and activity were suppressed under the traditional arbitration system and are more compatible with decentralized collective bargaining. This should form the foundation of a new approach to "strategic unionism" consistent with the above scenario. However, the decentralization brings its own dangers of fragmentation of union influence. The real success of such an approach is therefore dependent upon a range of policies-largely absent under the Accords-implemented by a future Labor government embodying the principle of "solidarity" in a new form.