

way towards recognising this, but until it moves beyond the notion of unions as businesses in a market, its legislative proposals will continue to make only limited progress towards a just and equitable system of industrial relations.

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The Labour Party's Policy on Industrial Relations: A Critique

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Introduction

This article offers a personal review of the policy on industrial relations released by the New Zealand Labour Party in September 1992 and elucidated in the paper by Labour's spokesperson on industrial relations (Clark, 1993). The first section evolves criteria for assessing contemporary labour market policy in a discussion which reviews the relevant local and international background. The second section applies these criteria to make a general assessment of Labour's policy and to comment on certain specifics. The article closes with brief conclusions.

Criteria and background

The development of appropriate criteria for evaluating labour market policy is no easy matter. A complex of changing political, social, technological and economic forces impacts on employment relationships. In the process of establishing such criteria, three sets of difficulties should be carefully considered.

First, there are a variety of interest groups affected by labour market policy. These are commonly recognised as employers (incorporating both owners and managers, but not necessarily treating their interests as identical), workers (both employed and unemployed, organised and unorganised) and the state (perhaps seen as holding a responsibility for the "public interest"). It is relatively easy to advocate the interests of one particular group (or quite commonly today, simply one subsection of a group) and labour market debates are full of such discourse. It is much more difficult to develop public policy which will enable most, if not all, groups to advance their interests in what they perceive as an equitable manner.

A good question to ask of any policy proposal, then, is: to what extent does it "accommodate" the interests of the various parties affected by it? Failure to adequately accommodate the legitimate concerns of any "strategic constituency" is a dangerous business. (One must acknowledge, of course, that those groups which constitute the "strategic constituencies" do vary somewhat over time.)

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In my earlier analyses of the fourth Labour Government's labour market policies, I have argued that insufficient attention was paid to the reasonable requests of employer groups for more procedural flexibility to respond to the greater product market pressure Labour deliberately unleashed (Boxall, 1990: 290-1; Boxall, 1993: 154-5). Labour's failure then to adequately incorporate reasonable employer concerns about bargaining structure made further reform inevitable and made it more likely to occur on terms unfavourable to the historical trade unions. In fairness, it must be said that I have also been critical of what I see as the inadequate accommodation of the interests of the more vulnerable groups of workers in National's Employment Contracts Act (Boxall, 1991: 305; Boxall, 1992: 6; Boxall, 1993: 162). This is a shortcoming which, along with National's benefit cuts, continues to fuel a sense of discontent and political instability in New Zealand. The present wage fixing regime will become more stable when the equity concerns of the more easily exploitable sections of the workforce are more adequately accommodated.

A second set of difficulties is associated with how we conceptualise the employment relationship itself. What sort of assumptions should we be working from when we write labour market policy? Here, we should acknowledge that the term "labour market" is something of a misnomer. As the Nobel laureate (economist), Robert Solow (1990) reminds us, the labour market is better thought of as a "social institution". We daren't think of labour markets as similar to "auction markets" (Easton, 1987). Rather, work is organised and paid for in (generally, long-term) relationships where power and information imbalances present opportunities for exploitation, where "performance" cannot be completely defined in advance, and, thus, where the level of trust between the parties will strongly influence the quality of co-operation achieved. In addition, the kind of job one holds exercises a major impact on social standing, networks and lifestyle possibilities. On top of this, joblessness is a major cross to bear - both materially and psychologically - in the kind of society we have now constructed.

A second useful question to ask of any labour market policy, then, is: to what extent is it based on realistic assumptions about the fundamental characteristics of the employment relationship? There are problems with labour statutes which assume that the interests of employers and workers are always identical just as there are problems with statutes which assume they are always divergent. The Employment Contracts Act has been roundly criticised for the former tendency, but the Labour Relations Act 1987 can be seen as seriously imbalanced - in the other direction.

It is wrong to see the Employment Contracts Act as completely unitarist, of course, because it does incorporate rights to strike, to activate a dispute of rights procedure and to take a personal grievance (for all workers, not just the organised). A truly unitarist statute would incorporate none of these. Nevertheless, the "balance of rights and powers" under the Act is skewed too far in favour of employers (Boxall, 1992: 5-6). Workers may have more "choice" but the more vulnerable ones have too little power to make it meaningful when their employers choose to override it. The credibility of the "choice" rhetoric has been undermined by a body of "take it or leave it" employers in the secondary labour market. There are also similar problems in the state sector where productivity increases are not adequately acknowledged in the "pseudo collective bargaining" both Labour and National have engineered since the State Sector Act 1988 (Boxall, 1993: 163). A sensible set of reforms would increase the rights and powers of workers without returning us to the outdated

compulsions of the Labour Relations Act 1987. Like Anderson (1991:140), I see the Employment Contracts Act as providing "a base from which reforms can be mounted".

A third set of difficulties is associated with the way economic problems evolve over time and render some regulatory approaches inadequate. What passed for satisfactory labour market regulation in the 1950s and 1960s (for example) won't be nearly good enough now. Regulatory approaches that catered for the relatively rigid job demarcations and excessively adversarial labour-management relations of the "mass production/full employment" era have passed their "use by" date (Marshall, 1992). Now we need to think much more carefully about the "industrial relations of skill formation" (Matthews, 1992) and about ways of fostering greater responsiveness to economic shocks, preferably through higher trust levels between management and labour (Lorenz, 1992).

Furthermore, any labour market policy must now be carefully evaluated in terms of its likely impact on inflation. The wage/price spirals of the 1970s and 1980s should have taught us that inflationary wage fixing regimes destroy good jobs by undermining the cost competitiveness of firms. The excessive, relativity-driven wage increases that occurred from 1984 to 1988 under the fourth Labour Government helped to undermine New Zealand manufacturing competitiveness. By 1988, we had lost 15% of the manufacturing employment base (Wells, 1990). By 1990, when Labour lost office, this had risen to 20% (Brosnan and Rea, 1992). Only in 1992 did we show signs of beginning to hold and enlarge our employment base in manufacturing (Boxall, 1992; Hall, 1993).

A third useful question to ask of any labour market policy, then, is: to what extent does it recognise the evolution in macroeconomic problems? The best contemporary policies help to sustain an environment of low inflation and low unemployment. The influential work of Calmfors and Drifill (1988) suggests this is most likely to be associated with either highly centralised or highly decentralised wage fixing institutions (see also Paloheimo (1990)). Our system of industrial relations has been trending towards greater decentralisation since the late 1960s (Boxall, 1990) but it wasn't until the Employment Contracts Act that we created the conditions for employers to move the system decisively towards high decentralisation (Boxall, 1993: 157-8; McAndrew, 1993: 166-8). Enterprise and workplace bargaining are now providing us with the kind of wage fixing structure in which relativity and productivity forces can be more appropriately balanced - at least, this is occurring in the private sector. Our best chances for low inflation and lower unemployment remain at the highly decentralised end of the wage fixing continuum because, realistically, we lack the conditions for effective centralisation (Boxall, 1992: 4-5).

In my view, a sensible labour market policy will retain the basic structure of highly decentralised wage fixing we have now created but adjust the balance of rights and powers to better protect the more vulnerable sections of the workforce (Boxall, 1992: 4-6). Even in this context, we are going to have to be highly creative and committed in our approaches to unemployment relief and skill formation for a large section of the New Zealand workforce which has been encouraged by the education and labour market policies of successive New Zealand governments to think that strong grounding in basic intellectual disciplines and advanced vocational qualifications don't really matter.

Assessment of Labour's policy

Overall, I give Labour's policy a very positive assessment because I do see it as expressing an intention to refine the model of highly decentralised wage fixation we have evolved by improving equity provisions and thus bringing about greater system stability. The following discussion assesses the policy against my three criteria:

Criterion one: Interest group accommodation

Present Labour party policy incorporates a more satisfactory understanding of the need to accommodate the reasonable concerns of both employers and workers than that expressed in the Labour Relations Act 1987. The need for employers to be able to shift the structure of bargaining in order to respond more adequately to liberalised product markets seems to have been fully accepted by Labour. There is no intention to return to the exclusive jurisdiction and blanket coverage provisions (Clark, 1993: 156) which fragmented and rigidified bargaining structures in a way that seriously constrained the ability of employers to seek bargaining reform.

It is important to try and think through how proposed legal reforms would actually affect the important aspects of contemporary industrial practice. I do not believe that Labour's intention to strengthen rights to collective bargaining would seriously alter the elements of the present system which employers most need. What I believe employers most need is the strong ability they now possess to relate any collective employment contract much more closely to the "needs of the business" and to work in an environment of competitive unit costs. I also think that Labour's proposals could work to the long-term interests of employers by improving the equity provisions of the system and thus its long-term stability. There are aspects of the present policy, however, which employers will strongly oppose. In order to gain acquiescence from the employer community, if not active support, Labour's leadership will need to ensure that grey areas in the present policy are not captured by the more left-wing elements in the Labour Party, or by the kind of "judicial activists" employers think are poorly informed about or unsympathetic to contemporary business problems.

As this discussion indicates, I see Labour's policy as accommodating more satisfactorily the needs of the more vulnerable sections of the workforce. Improving the minimum code (and with it, the resources of the labour inspectorate) is a much more efficient and realistic objective than resurrecting occupational awards. Improved union access (so workers can be made aware of rights and options), better union recognition provisions and the development of a good faith bargaining doctrine (particularly requirements for information disclosure and a requirement not to undermine any chosen union) will all be valuable reforms, if drafted carefully. The elimination of "partial lockouts" would also be a major advance in the eyes of many workers. The phenomenon of partial lockouts has probably done more than anything to discredit the Employment Contracts Act in the eyes of the workforce. I concede that the potential for partial lockouts existed in the former law but its use in the context of the Employment Contracts Act has breached important social norms of "fair play". National's publicity about the Act did not suggest that unilateral action by employers to cut worker incomes was being legitimated. Legal reform is obviously vital in this area. The objective

of the law should not be to uphold some notion of "symmetry" between the rights to strike and lockout, as some commentators seem to suggest, but to achieve an appropriate balance of powers between manifestly unequal contestants.

Still on the worker side of the employment relationship, comments should be made about the personal grievance procedure and about trade unions as institutions. National's extension of the personal grievance procedure to all employees (not just the organised) was an important improvement in employment protection (Anderson, 1991: 130; Boxall, 1992: 292) because most private sector workers are not members of trade unions. Labour's policy of retaining this improvement in individual rights but of finding some way to expedite the relevant processes when employees seek to activate them is only sensible. Having some relatively informal, low cost and speedy institution to review contested dismissals is a vital part of securing the legitimacy of present labour market arrangements in the eyes of the workforce generally. The implementation of the objectives of the Employment Contracts Act in this area has only been partially successful.

Labour's policy on trade unions is now much more consistent with contemporary democratic notions. Labour has, finally, moved away from a policy which preserves the rights of unions designed for an arbitration system long since discredited. The retention of the voluntarism and contestability aspects of the Employment Contracts Act (which lie at the heart of its union reforms) is not something that will please all union officials but which is vital if they are to have strong incentives to focus simultaneously on workforce and enterprise needs. To develop such a policy, Labour has obviously had to make compromises amongst its union supporters but the compromise represented in the policy is a realistic one.

Criterion two: Conceptualisation of the employment relationship

Present Labour policy, as much of the discussion so far indicates, is also based on a realistic set of assumptions about the employment relationship. The reality of power and information imbalances is recognised. The need to go further than the provisions of the Employment Contracts Act in protecting the more vulnerable sections of the workforce is the underlying motivational force behind much of the policy. The intention to call the reformed statute the "Employment Relations Act" is a symbolic but important recognition of the need to carefully conceptualise the employment relationship. As Clark (1993: 154) argues, the notion of contract is too narrow and too easily misinterpreted to do the job. The Employment Contracts Act itself does not work exclusively from contractual concepts as various commentators (for example, Walsh and Ryan, 1993) have pointed out.

Labour's emphasis on the promotion of collective bargaining is a classical method of seeking to redress the inherent power imbalance of the employment relationship and the potential for abuse arising from unfettered "management prerogative". It is the favoured method in the Anglo-American economies. I see the policy as appropriate given our historical background. Collective bargaining has obviously become our preferred method of expressing "employee voice" and has demonstrated its superiority over compulsory arbitration (Boxall, 1990).

Having said this, union-management relationships need to be encouraged to evolve in a way that incorporates an enlightened mix of a variety of approaches - including bargaining,

consultation and joint problem solving. Various unions and firms have moved to more co-operative styles in recent years because the intensity of product market competition has drawn them together. Labour wisely indicates an interest in the possibilities such approaches bring to improve both employee voice and productivity. We do need to look carefully at how trust levels can be raised through more participatory processes. There is a growing school of thought in Anglo-American industrial environments that we need to evolve beyond a simple reliance on collective bargaining to a mix of practices which may facilitate higher trust levels over time (for example, Lorenz, 1992). If elected, I hope Labour will treat this question more seriously than occurred under the fourth Labour Government. Although there was an enquiry into industrial democracy, the actual level of government interest in it and the resources allocated to it were pathetic. There was virtually no commitment to research or to facilitating joint developmental approaches by management and labour.

Criterion three: Industrial relations policy and contemporary macroeconomic problems

Again, much of the discussion so far indicates a positive assessment under this criterion. Labour seems to have accepted that highly decentralised wage fixing institutions are most consistent, in our particular circumstances and experience, with sustaining a low inflationary environment. There seems to be no intention to return us to a "halfway house" of semi-centralised wage fixing practices. Low inflationary growth is essential to holding and expanding jobs in the private sector and to generating the tax revenues for the social services we need.

What Labour's leadership means by a "negotiated economy", however, needs much closer scrutiny. (The term itself borders on tautology.) To be sure, a tripartite approach at national and industry levels to our chronic skill formation needs seems only sensible. Clearly, we do need the unions and employers to work more closely with government on an integrated plan for skill development. The role of unions in skill formation policy should be strengthened because they are the most representative voice for workers (whose needs extend well beyond the immediate requirements of their present employer). The unions are also increasingly organised along industry lines where they are more able to encourage progressive upskilling for a whole industry workforce. Outside the skill formation area, however, the notion of "comprehensive strategic plans at the industry level" needs much more careful scrutiny. Certainly, one can see a common interest in certain kinds of basic research and in planning for major infra-structure investments. Beyond this, firms will guard their commercial independence, and industry-level planning will be problematic for many of them.

Conclusions

This article employed three criteria for evaluating labour market policy. The first of these was the extent to which the policy accommodates the interests of the various groups, particularly the "strategic constituencies", affected by it. The second was the extent to which the policy is based on relatively realistic assumptions about the fundamental characteristics of employment relationships. The third was concerned with the likely relationship between the policy and contemporary macroeconomic problems. My concern was not to evaluate all

specifics of Labour policy but to assess its overall thrust in terms of these standards.

Labour's current policy stands up quite well on all three criteria. Under the first, I argued that Labour's present policy reflects a more realistic understanding of employer interests than was true of policy under the fourth Labour government. It also incorporates a better understanding of the need to accommodate the more vulnerable groups of workers than does National's present policy. My main argument is that employers should be encouraged to trade some prerogative for greater system stability. Should Labour gain office, however, care will need to be taken in ensuring that vague aspects of the policy are not drafted in ways that mainstream employers find commercially naive.

In respect of the second criterion, the policy seems to be based on realistic assumptions. Its emphasis on seeking to redress power imbalances through collective bargaining is appropriate given our experience with the shortcomings of arbitration. Nevertheless, we need to be open to more imaginative solutions which incorporate bargaining but evolve beyond a simple reliance on it. We need to look at how best to encourage "higher trust relations" in both unionised and non-unionised settings.

Finally, on the third criterion, Labour's present policy does not seem to be based on an intention to return us to the "halfway house" of semi-centralised wage fixation. There seems to be an acceptance that our present wage fixing structure offers the most feasible approach to supporting low inflationary economic growth and thus to supporting employment growth in the private sector. Beyond certain critical areas such as skill formation, however, the notion of a "negotiated economy" needs much closer scrutiny.

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The Culture of Tripartism: Can European Models be Adapted for New Zealand Use?

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The context of industrial relations policy

For nearly one hundred years, industrial relations systems in New Zealand have had two basic characteristics: they have been largely prescriptive, and they have been relatively self contained.

They have been prescriptive in that the institutions and the procedures that were set out in the law were designed around a fairly precise intended outcome, and it was clear how and when the system would deliver the intended result.

The system had its specific objectives - equity, industrial harmony, etc. - which were not exactly independent of what governments sought for the wider economy, but which were not integral to the direction of economic policy.

The Employment Contracts Act was far more permissive than the traditional pattern. It is clear that there was an intended outcome of the legislation, but because it did not set out the rights and roles of institutions, or define the way that they would interact, its results would be uneven and evolutionary, rather than uniform and predictable. It was also different in that labour market policy was seen to be a pivotal element of the wider economic strategy of the government.

The Labour Party industrial relations policy is similarly permissive, and potentially, if not overtly, a central component of wider economic strategy. Because it is unlike the past, it is easy to see it as being not too different from the present.

The challenge is to identify where permissive industrial relations systems differ, in a context where there is no historical comparative experience of permissive systems to draw on.

The origins of prescriptive systems

The 1894 Industrial Conciliation and Arbitration Act in many ways set the pattern for the century that followed it. It was essentially a response to perceived defects in the way the labour market was performing - generating too much industrial conflict on the one hand (for example, the 1890 maritime strike) and too little protection on the other hand (as reported by the sweating commission).

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