Paul Ronfeldt and Ron McCallum (eds.), *Enterprise Bargaining, Trade Unions and the Law,* Federation Press, Annandale, 1995, pp.xxvi + 238

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At the turn of the century Australia adopted a collectivist system of industrial relations. While the parties were encouraged to resolve matters of contention themselves the respective commonwealth and state jurisdictions developed systems of industrial tribunals (or wages boards) to regulate the affairs of industry. In resolving disputes industrial tribunals were afforded powers to make awards which established minimum terms and conditions of employment. The operation of the system was contingent on the existence of unions to articulate the goals and desires of members／workers.

Depending on the legislative code in existence awards, in the early part of this century, were only applicable to unionised workers. With the passing years legislative changes and High Court decisions enabled the provisions of awards to cover non-unionised, as well as unionised, workers. A major implication of this change was that awards provided non-unionised workers, with limited bargaining power, terms and conditions of empolyment which they would have been hardpressed to achieve via individual bargaining. Awards generalised gains achieved by more strategically placed union members to non-unionists, thereby acting as a powerful collective device and being an important source of the sense of egalitarianism which is said to characterise the Australian way of life.

Since the mid-1980s there have been incessant attacks on the collective basis of Australian industrial relations and calls to develop a more individualistic enterprise based system of regulation. The so-called need to develop such a system has been linked to problems of the Australian economy, particularly globalisation and the rigours of international competition. Economic rationalist and New Right groups such as the H. R. Nicholls Society and the Business Council of Australia argue that the only way enterprises can compete on international markets is rid them of the need to compete in the labour market with institutions such as unions or to be subjected to the decisions o 'external' bodies such as industrial tribunals. Individualism, or rather so-called individualism, involves companies (including multi-national companies) with access to seemingly unlimited funds and armies of lawyers, human (sic) resource managers

and academic consultants only too eager to be paid for proselytising the dawn of another brave new world, 'bargaining' with workers one on one.

Governments at both the commonwealth and state level have become increasingly seduced by the allure of enterprise bargaining and individualism and have enacted legislation to smooth the path for its adoption. Since the early 1990s the Australian Labor Party government at the commonwealth level has introduced a number of pieces of legislation to this end, the most major being the *Industrial Relations Reform Act 1993* which became operative at the end of March 1994.

The passage of such legislation by a Labor Party may be a source of special interest given its traditional links with what is often called the Australian union movement. A Labor Party, so it might seem, would not enact legislation which would weaken industrial tribunals or reduce the ability of unions to pursue and represent the interests of workers. But as we all know since its assumption of power in March 1983 the Labor Party has never seen itself as a sectional party - it is a party for all Australians.

To the extent that it has been necessary to enact legislation to make workplace life easier for employers, fears concerning workers and union rights will be maintained and protected (if not enhanced) by appropriate legislative safeguards. Numerous provisions were included in the 1993 Reform Act to alleviate such fears. Moreover, the legislation was endorsed by the Australian Council of Trade Unions, the premier union organisation in the country which had negotiated so many Accords with the Labor Party since 1983.

On 7 April 1995 the Third Annual Labour Law Conference was held at Sydney University to consider the implications of the 1993 Reform Act for the employment conditions and rights of unions and workers. The proceedings of this conference have been brought together in this book of readings edited by Paul Ronfeldt and Ron McCallum. In the Introduction the editors point out that the respective contributors explored two interrelated themes:-

> 'First...whether the arrangements contained within these new laws will diminish or enhance the role of trade unions in Australian industrial relations. Secondly...how our enterprise bargaining laws may affect the rights and entitlements of Australian wage earners...Ultimately, the welfare of employees...depends upon the effectiveness of their representatives. Without proper representation workers will be in no position to protect themselves in decentralised bargaining. Also without proper representation workers will be less successful in accessing their statutory and award safety net entitlements' (p.xvi).

Enterprise Bargaining, Trade Unions and the Law, is organised into ten chapters. The opening chapter by the editors places the move to enterprise bargaining and individualism in an historical and ideological context , and provides details of the various legislative regimes

developed at commonwealth and state levels. The next chapter written by Vice President Iain Ross of the Australian Industrial Relations Commission provides a detailed presentation of the bargaining provisions contained in the 1993 Reform Act. The chapter is descriptive rather than analytical or critical.

Chapter Three by Andrew Frazer examines the legal position of trade unions under arbitration and enterprise bargaining. He contrasts two approaches used by courts and industrial tribunals. They are the agency model which sees unions representing members and a group model which embodies unions existing in their own right and a generic role in representing workers whether they be unionists or not. The former model has potentially adverse consequences for unions and workers as employers can side-step unions by dismissing / pressuring workers who seek to utilise unions in pursuing their employment rights. Frazer is critical of the Australian Industrial Relations Commission in the 1995 *Aashi* case where it found that companies were not required to negotiate with unions where no employee was a union member. He speculates that the 1993 Reform Act has the potential, for employees, of producing 'a system of empty rights' (p.81.)

In the following chapter Richard Naughton also criticises the *Aashi* decision. The 1993 Reform Act contained provisions requiring parties involved in enterprise bargaining to bargain in 'good faith'. The notion of 'good faith' bargaining developed in 1935 in the United States of America with the passage of the Wagner Act. Naughton compares and contrasts the American and Australian approaches to this term. Naughton's criticism of *Aashi* is that the Australian Industrial Relations Commission in restraining itself from requiring the parties to actually bargain has robbed the provision of much of its content.

The next three chapters examine issues associated with protecting workers in vulnerable or weaker bargaining positions. One of the ways the 1993 Reform Act envisaged protecting such workers was via three year reviews of awards to ensure their relevance and security for workers. These, what have become known as, safety net provisions also incorporate a transfer of anti-discriminatory provisions into the mainstream industrial relations system. To facilitate this review procedure the Australian Industrial Relations Commission has adopted a pilot programme to examine a number of 'representative' awards. Therese MacDermott in her examination of these issues concludes that it is too early to reach any firm judgements concerning the success or otherwise of the review process. However, she doubts if these provisions will have any impact on the quest to eradicate workplace discrimination.

Chapter six by Laura Bennett and seven by Kylie Nomchong (of the Media, Entertainment and Arts Alliance) and Jim Nolan (a legal practitioner) respectively examine issues associated with enterprise flexibllity provisions enabling employers to 'bargain' with non-unionised

workers and thereby replacing or side-stepping award provisions. Both chapters demonstrate how this Labor Party legislation provides less protection for non-unionised workers than similar provisions enacted by conservative, Coalition state governments; such bargaining is a sham with conditions unilaterally determined by employers; unions have been forced to devote resources to contest the siiue of bargaining itself (a la recognition disputes) rather than actually bargain; and non-union deals can be used to undermine the wages and working conditions of unionised workers.

In chapter eight Phillipa Weeks discusses issues associated with union security and union recognition, building on her recently published work *Trade Union Security Law: A Study of Preference and Compulsory Unionism*, Federation Press, Annandale, 1995. She maintains that while recent legislative changes have only marginally weakened the position of unions they are symptomatic of a paradigm shift from collectivism. The penultimate chapter by Graham Smith, a legal practitioner who usually represents employers, argues changes in the 1993 Reform Act concerning bargaining and legislative immunity for damages involving industrial action of 72 hours duration have adverse implications for employers. Jennifer Hill in the final chapter argues that developments in corporate law have important implications for labour law. The hub of her argument is that directors have an obligation to other stakeholders involved with companies than just shareholders. Employees, for example, constitute one category for consideration. Possibly the most interesting point she raises is the potential of superannuation fund managers responsible for the retirement income of (other) workers acting to change the industrial relations decisions of companies in which they invest. While the chapter is innovative it constitutes nothing more than another forlorn attempt to resolve the problem of 'them and us' and rests on an almost Marxist notion of class. Will managers of superannuation funds be prepared to sacrifice the interests of those who they represent for workers in companies in which they invest?

This is an impressive volume of essays. The various authors have raised a number of stimulating issues associated with Australia's transition from collectivism to individualism in industrial relations. *Enterprise Bargaining, Trade Unions and the Law* will be remembered as the first major work of substance concerned with exploring the actual operation of various 'bargaining' features included in the *Industrial Relations Reform Act 1993*. At the beginning of the twentieth century Australia adopted collectivism in an attempt to blunt economic power. As the century closes legislators have embraced individualism to remove strictures on those who wield economic power. This book will constitute an important signpost documenting the death of the Australian experiment with egalitarianism.