



# **The morality of workplace reform**

Quadrant / Institute of Public Affairs  
discussion evening

Contributions from  
Tony Abbott  
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Held on 10 October 2007



## Tony Abbott:

Some months back a parishioner approached me after Sunday mass with a dodger attacking the Government's Work Choices legislation. 'It's not personal,' he said, 'but what your Government is doing on workplace relations is unconscionable.'

As someone frequently regarded as 'too Catholic' on an issue such as abortion, it was more than a little galling to be 'not Catholic enough' on workplace relations. And my fellow parishioner was not saying that the Government's policy was unwise, imprudent or counterproductive, observations that might have prompted a discussion of its relative merits.

He was making the extraordinarily confronting claim that it was immoral. This was a dialogue-stopper. It could not have been anything other than a personal attack, because it was an accusation not of poor judgment but of bad faith.

Still, that has been the tenor of commentary on Work Choices, even from Christians pledged to understanding and goodwill. The leading critic, Parramatta Bishop Kevin Manning, has described Work Choices as 'spectacularly inadequate when tested against the principles of Catholic social teaching'.

His charge was not that Work Choices would cause wages to fall and unemployment to rise and was therefore immoral. It was that Work Choices was intrinsically immoral, even though it has been accompanied by wage rises and jobs growth. There have been no published second thoughts from Manning or his supporters despite 417,000 extra jobs since Work Choices' introduction and a 2.9 per cent real wage increase.

If an act is intrinsically immoral, consequences don't matter. The vast majority of political decisions, however, do not involve questions of fundamental right or wrong but matters for prudential judgment. Such decisions are right or wrong according to their consequences, not according to their intrinsic nature.

If Work Choices had banned unions or had allowed the removal of all conditions without any trade-offs it would indeed have been wrong (although not necessarily immoral, had it been spectacularly successful in creating employment).

In fact, Work Choices committed neither of these errors. Unions have every right to sign up members and to seek collective bargains. It's just that legislated minimum conditions rather than union-negotiated awards are the foundation of employment contracts.

Agreements can trade off conditions such as overtime but not minimum hourly rates or essentials such as holidays and sick leave, and only with fair compensation. The social gospel lobby's position boils down to this: that no one can (justly) be left worse off in order to leave others better off. This is quite an odd proposition. Why shouldn't sacrifices sometimes be required for the common good? If it could be just to take one coat from someone with two coats so that someone with no coat should at least have one (a proposition church activists would surely applaud), why could it not also be just to remove some conditions from one worker so that an unemployed person might gain a job?

But even this regrettable trade-off is not, as things turn out, what the Howard Government's workplace reforms have actually meant. Wages have increased and employment has increased because of the elimination of anachronistic conditions and disincentives to employment such as the unfair dismissal laws.

The problem for the social gospel lobby is explaining how 10.9 per cent unemployment under a more regulated labour market is fairer than 4.3 per cent unemployment under the policies of the Howard Government. Their problem is that there is no parable to the effect that there is more rejoicing in the kingdom of heaven over one man keeping his conditions than over 99 finding jobs. If anything, the opposite would be the better lesson to draw from the gospel.

It should not be necessary, the social gospel lobby would claim, to sacrifice hard-won conditions in order to drive unemployment down. In a perfect world that would be right. But as things stand, no amount of wishful thinking can alter the fact that the evidence is against them. The social gospel case for a reregulated labour market would not pass muster from an undergraduate student of moral philosophy. It is not improved simply because it comes from a Catholic bishop.

To believers, the priesthood gives men the power to change bread and wine into the body and blood of Christ. It does not give priests any unique power to convert a poor argument into a good one.

I am usually on my guard whenever the concept of social justice is invoked, including by churchmen. On examination, what's called social justice usually turns out to be socialism masquerading as justice. Certainly there is no commandment: 'Thou shalt not conduct wage negotiations without a union', and any churchman who pretends otherwise has, even if only temporarily, forgotten his calling.

B.A. Santamaria was my first political mentor. My Jesuit teachers and the priests whose advice I value to this day have been steeped in the tradition of Catholic social teaching. Unions certainly played an important role in civilising capitalism but the world has changed. Today's workers are much more capable of standing up for themselves. In this respect, at least, the world has moved on but the church has not.

In any event, the church's infallibility when making certain pronouncements on faith and morals does not extend to judgments about politics. Preachiness does not turn a dubious political argument into a compelling moral one. I am not saying that bishops should stay out of politics, just that their political judgments should be capable of withstanding scrutiny. There are many who regard bishops' statements on the way we live now as an impertinence. That the church's traditional social teaching is harder than ever to live by certainly does not make it irrelevant. Still, I suspect the church would be taken more seriously if it were more concerned to encourage virtue in people and less to demand virtue from governments. Indeed, what could be heroic virtue in people (such as turning the other cheek to one's enemies) might be the height of folly for a government.

As the great British Labour leader Tony Blair famously said, fairness begins with the chance of a job. The fact that the workplace relations policies of the Blair Labour government and the Howard Liberal Government closely resembled each other suggests that, whatever faults they might have, immorality is not among them. It's very hard to see a moral case against trading away overtime for 2c an hour in the case of Spotlight but not a moral case against surrendering overtime for 45c an hour in the case of Work Directions (owned by Kevin Rudd's wife Therese Rein). This is especially true now that there is a fairness test for Australian Workplace Agreements that the Government's critics are not proposing for common law contracts.

In the absence of equally fervent attacks on the Opposition's policy, the social gospel lobby's moral outrage looks suspiciously selective.

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## Ken Phillips:

One of the great heroes of our time must be the Somali Muslim woman Hirsi Ali. Ali lives under constant risk of assassination from Muslim fundamentalists because, in her writings and speeches, she dared to expose the oppression of women under Islam. But her message is not anti-Muslim. It is anti-tribalism—something that she describes as an obsessive, blinkered adherence to a creed in which only believers are valued, outsiders are hated and must be destroyed, and in which those caught inside the tribe's circle are to be coerced into compliance.

The problem of tribalism, of oppressive compliance to conformity and hatred of outsiders, is a common theme in the human struggle to become truly civilized.

It is this central theme which explains why workplace reform must move forward in Australian society. Workplace reform is currently at the cutting edge of our own struggle to find what it means to be a civilized society, so that we can overcome our own brand of institutionalized tribalism which we ourselves wove into our national fabric over one hundred years ago.

Workplace reform is not, at its heart, an economic quest. It is instead a searching for a change in the very nature of our relationships—both at work and in our broader social and civic life.

Let me be specific.

Shortly after we became a nation, our parliament decided that we were so immature as a people that we were incapable of managing our own working relationships. They established for us a structure that truly came from the text of Plato's *Republic*. Decisions about relationships at work were transferred from the common person to an elitist judiciary, the industrial relations commission. This national institutional arrangement inculcated a psychology of class division at work and non-communication between classes.

That psychology dwells at the root of our management and union thought processes. Many, it is true, have broken from the mould, but the dominant orthodoxy remains intact. This institutional arrangement facilitated a national management culture of underperformance and lack of accountability. It lives and breeds around us. And at its core lies a fear of direct human relationships.

This meant that by the time the 20th century closed, we had not only lost the capacity for civility in direct relationships at work, but were not even aware that civility at work could be achieved. This is the heritage of the industrial relations system.

It lives today. I can walk into any one of a number of major factories in our nation and find managers who refuse to walk onto the shop floor and engage in the simple and civil exercise of saying good morning to a shop floor worker. Human communication in these instances is administratively and culturally directed through a committee or union. Australia's first parliamentarians would find that, in terms of the way we behave today, we are not any more mature and adult than they assumed we were one hundred years ago.

About a decade ago, we did reach a point where we realized that these institutionalized structures were impeding our productive capacity as a people. On purely economic and competitive grounds, we re-jigged the system's focus towards engagement at the enterprise level instead of engagement at the purely industry and national levels. Thank you Mr Keating. But we could not do away with the idea that an elite judiciary must still exercise fundamental control. In other words, we created a hybrid.

Only recently have we taken the greater plunge of turning the focus on engagement and communication away from the collective and on to the individual level. Yes, the new focus has been messy, badly designed, badly implemented and done with little attempt to articulate the reasons for its introduction. But perhaps we are emulating what I understand Churchill had to say about America. He claimed that the USA would always do the right thing on the world stage—after trying everything else!

But if WorkChoices is a marketing and political train wreck for its designers, it must nonetheless be recognised as an attempt to enable individuals at work to communicate one to one, to break down the institutionalized class divide, and to give us the space to learn to be civil at work.

Wherever similar changes in work arrangements have been tried across the globe, the UK and New Zealand for instance, the experience has been that the shift in management culture needed to create the new work civility follows the legislative change by about 2 to 3 years. WorkChoices is too young for the management culture to have made the change in Australia. But while we wait for management to change, the enemies of individuality snap.

They claim that individuality is evil.

In his 2005 Boyer Lecture, the Anglican Archbishop of Sydney, Peter Jensen, asserted that individualism causes the decay of unions, clubs, voluntary associations and churches. He said that individualism was 'as great a danger to our true humanity as the collectivist spirit of Marxism proved to be.'

The official publication of the Catholic Bishops of Australia on WorkChoices proclaims their concerns about workplace reform '...because it emphasises the rights of the individual without their accompanying duty to act in solidarity...' The bishops claim that the social justice principles of the Catholic Church demand adherence to the collective over the individual. They say that, without unions as the institutional controllers of the worker collective, social justice is wrecked. They say that workers have a duty to put aside their individuality and bargain collectively.

They say these things because they believe that the act of work always involves class-based inequality of bargaining power. They believe this, one can only suppose, because they subscribe to the view that when humans acquire the legal or managerial status of employer, they become at best morally neutered and at worst morally perverted. I will explain this further shortly.

But it is on the basis of this fundamental belief about inequality of bargaining power that labour law in Australia had been institutionally converted from law into an excuse for tribalism. There is no greater example of this than here in NSW.

NSW is run as a tribal state. It is a disciplined system of insider believers who connect through a vast network of political, academic, legal, union and commercial power bases. Their co-ordination is highly developed, but by and large hidden from general public view. Those inside the tribe are nurtured if thought smart, intimidated if thought dumb and ejected if found defiant. Outsiders are attacked and oppressed if they challenge the tribe. It extracts its finances from the state itself and from anyone who seeks to do business within the tribe's sphere of influence. Its moral mask is painted by its academic, theological and legal partnerships. It sneers at the ineptitude of its alleged political replacement. It is morally corrupt, but manages corruption by creating law that turns immorality into legality. It's tied together by the State's industrial relations system which has legal reach into almost any aspect of NSW life it chooses. And it does this with impunity, unrestrained by the normal rule of law.

Forgive me for describing this picture of New South Wales in excessively broad terms but, as a tribal outsider and tribal critic, to do otherwise is to invite tribal attack through litigation.

But it is possible to look inside the tribe's collective mind by conducting a case study of the NSW Occupational Health and Safety legislation which, by its very design, is a truly immoral piece of legislation.

OHS prosecutions are criminal in nature. Yet the NSW OHS Act denies the people it prosecutes access to criminal justice. And it does this selectively, based on tribal considerations.

The central tenet of the tribal creed is as I described it before: if you are an employer or a manager, then you have no normal ethical sensibilities and you behave without moral principle. You do so, allegedly, because you are supposedly obligated to pursue profit and nothing but profit. Like all quasi-religious tenets, this is an article of faith, not a proposition that should be subjected to empirical validation.

How this cashes out can be seen in the realm of work safety. In NSW, the tribe believes that, because of the profit motive, managers have no interest in safety and must be made to fear the State to ensure that they are intimidated into behaving safely.

Consequently, the NSW OHS Act legislatively targets the manager/employer and by the very fact of an OHS incident occurring, imposes guilt on the manager/employer. Presumption of innocence is denied. Yet an employee who may have done something that actually caused the incident is presumed innocent. Remember—these are criminal prosecutions with jail a possible sanction under the Act.

The Act quite deliberately imposes fundamentally opposite criminal standards based on nothing more than the legal class into which a person happens to be at a given point in time. The potentially innocent are said to be guilty and the potentially guilty said to be innocent.

To me, this amounts to an extraordinary and deliberate attack upon a core feature of criminal justice which sits at the foundation of civilized society. Yet the tribal players in NSW find this perfectly acceptable. I have discussed it with them. Academics and lawyers see nothing wrong with it. Unionists allege that I am an enemy for criticizing it. But I think they have, quite dangerously, suspended their own common sense and moral judgement. They are blinded by their obsession.

Their obsession takes them even further. The NSW OHS Act is used to conduct criminal prosecutions of managers / employers but without access to a jury, without trial in a criminal court and without rights of appeal to proper criminal jurisdictions. Further, unions (who are enforcers of the tribe's operations) conduct prosecutions and receive up to half of the fines imposed, as well as having their legal fees paid by the employer. It is a system designed to deny justice—and it does.

And like any system which has institutionalized immorality along tribal lines, it feels confident in breaking its own laws. I have written about the failure of NSW WorkCover either to investigate or prosecute a union-owned labour hire company which was the employer of three miners who died in the tragic Gretley incident. The same failure to prosecute occurred with a NSW government-owned mining company. Just recently, Transport Worker Union officials have alleged that they were instructed not to prosecute companies who were paying money to a secret TWU slush fund. These are not odd or unusual occurrences. These are examples of how the system operates. NSW's OHS laws do not operate on the normal basis of evidence and fairness, but on membership or non-membership of the tribe.

As I stated before, what holds this tribal edifice together is a central and obsessive belief in the creed. This creed is the same creed which the Catholic Church says underpins its social justice principles. Normally it is expressed by saying that employment always involves unequal bargaining power and that this alleged inequality justifies giving power to instruments of the state: that is, to unions and industrial commissions.

But when studied more deeply, the inequality of bargaining power proposition is, in fact, the claim that managers/employers are morally neutered and are only motivated by greed.

One academic explained it this way in relation to OHS, '...there is no reason to send the message that company officers can go back to their old ways and ignore the safety of employees, contractors and others in favour of increasing profits' And the Catholic Church explains it as an aspect of its broader social teaching which requires solidarity. It says '...what is hindering full development [of solidarity] is that desire for profit and that thirst for power...' It categorises this as 'attitudes and structures of sin.'

Yet, the facts of human existence tell us that this is a lie.

The truth of human behaviour is that every person has the capacity within them to be moral, amoral, immoral or criminal. The legal or financial status a person holds, or the job type they fill, does not determine morality or immorality. There is no difference in the capacity of people in this regard, whether they are an employee, employer, manager, union official, bishop, priest or whatever. But what is immoral is to argue that morality is predetermined by status. What is profoundly dangerous is to use that view as the basis for creating law and institutions for the purposes of enforcing that same view. This contorts human behaviour, prevents civility and assaults civilized society.

This is the legacy of our uniquely Australian industrial relations system. Rather than creating fairness, the system has institutionalized unfairness within our workplaces and denied us the capacity to learn workplace civility. Its other great workplace legacy is the restriction of management capacity. In NSW, in particular, it acts to oppress.

It is within this legacy that that our traditional system of workplace law must be considered.

And there are many sub-themes with a moral flavour under this central legacy.

For example, it is immoral to have 'unfair' dismissal laws applied to small businesses. People who operate small businesses are no different from employees other for the fact that they normally have their house mortgaged to fund the business. When the state allows an employee to take an unfair dismissal action against a small business person, the state is, in effect, sanctioning theft by one person against another—and does so entirely on the basis of legal status.

And another example! It is immoral for the state to impose collective bargaining on either employers or employees or to write into law a predetermined role for unions. This is state-created tribalism which imposes the tyranny of the collective over the rights of the individual. The only basis upon which workplace collective bargaining can be morally justified is through the voluntary participation of each individual, including voluntary employer participation.

Within this context, the Howard Government's workplace reforms can be seen in a different light. For all their troubles, they are an attempt to undo the immorality of the traditional system. The reforms have confronted the creed of the tribe. The reforms have not stood up well against the tribe's counter-attacks. The reforms are battered and bruised and may well contribute to a change of government.

But the reforms are, at their core, moral. The shift of emphasis to the individual in workplace relations is of great moral significance because it is the only pathway to civility in workplace relations and in our broader social and political undertakings.

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