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Despite scandal, unions make Gillard strong

HENRY ERGAS THE AUSTRALIAN NOVEMBER 30, 2012 12:00AM

IT just won't go away. All week, Julia Gillard refused in parliament to answer detailed questions about her role in overcoming the West Australian regulator's concerns with the incorporation of the so-called AWU Workplace Reform Association. Now it is clear that she was pivotal in doing so.

Gillard says she was unaware of any illegality and has denied any wrongdoing. But there is simply no precedent for such issues to arise about an Australian prime minister. Nor can the events in which Gillard was connected all those years ago be put down to youthful naivety. At the time, Gillard was hardly struggling with adulthood: she was a salaried partner in a prominent law firm. That the decisions she made reflect on her judgment seems undeniable.

But they reflect every bit as importantly on her politics and her policies. For they go to Gillard's links to the unions and her attitudes to their governance.

After all, the most telling moment in her September 1995 interview with Slater & Gordon's then senior partner, Peter Gordon, is when she says that the association was actually a "a re-election fund, slush fund, whatever". That "whatever", with its connotation that these are quibbles scarcely worth mentioning, was not accidental; for those funds, she maintained, were "common practice, indeed every union has (one)".

It is, in other words, acceptable to claim entities are for one purpose when it appears they are really for another. Not only that, it now emerges, but it seems acceptable to do so in the context of the legal process of registration.

What her conduct betrays is a conviction that the standards that apply to union officials are different from those relevant elsewhere. And in that special world, conduct can be tolerated that seems reprehensible.

As matters turned out, Gillard's then client and boyfriend, union boss Bruce Wilson, was not merely operating a slush fund. He was participating in, and benefiting from, misappropriation and industrial corruption.

Unfortunately, those matters have never come to justice, as they might have done, had the police been fully informed at an earlier stage. But however that may be, one might have expected Gillard's experience with the association to make her especially sensitive to union illegality and determined to eliminate it. That is all the more the case as by the time she came to office, Wilson's alleged actions had been exposed, while the Cole royal commission had found evidence of widespread union criminality.

Far from it. Instead, on Labor obtaining power, Gillard emasculated the laws aimed at curtailing union misconduct, particularly in the sector in which Wilson operated, building and construction. The costs stoppages can impose on building firms make them vulnerable to standover tactics. But with the repeal of John Howard's building industry legislation, Gillard cut penalties for union intimidation and threats by two-thirds.

Even more importantly, her changes to the IR laws ensured agreements that might involve that conduct, once reached, were effectively sheltered from review: unlike the Howard legislation, the Fair Work Act provides that concluded agreements are presumed to comply with the industry code of practice; and the powers the previous industry watchdog had to compel evidence in cases of suspected misconduct were dramatically reduced.

The harm those changes inflict is anything but trivial. The Cole royal commission found that once union extortion gains a foothold in a market, it rapidly becomes pervasive and entrenched. Each firm, knowing its competitors have succumbed, rightly fears the concentrated punishment it will suffer should it resist. Moreover, as its competitors are themselves burdened with protection costs, it knows buying peace will not erode its relative position. Far better then to get along by going along.

All that hands extortionists large gains at consumers' expense; but by increasing returns to extortion, it inevitably attracts rivals into its supply. Luckily, Gillard's Fair Work Act shelters unions from competition, safeguarding their monopoly over the rents. That, of course, only makes seizing control of those unions all the more profitable, fuelling the kind of factional bloodbaths on display in the Health Services Union.

The costs that imposes are, in my view, obvious. Yet Gillard has boasted her IR laws are a case of "promises made, promises delivered". And "the promises made, promises delivered" go well beyond the IR laws. They extend to Anthony Albanese's reintroduction of restrictions on foreign vessels in the Australian coastal trade, the failure to address chronic problems of governance in the industry super funds and the proliferation of subsidies to highly unionised industries and activities.

The events that led to Gillard's departure from Slater & Gordon are therefore not merely ancient history. Rather, they are, I believe, fundamental to her current attitudes and policies. And they are at the heart of her government, the bargains it has struck and the interests it protects.

No wonder then that Gillard would prefer that all traces of those events and their legacy would vanish into the night and fog. No wonder too Gillard's office so actively seeks to manage reporting of those events, preferring pressure on the media to the full disclosure so many voices now call for.

But unwelcome facts, as Hannah Arendt once said, "possess an infuriating stubbornness nothing can move". So the awkward questions remain. And all the brow-beating in the world cannot and will not make them disappear.
