

THE AUSTRALIAN

Devotional eulogies only entrench union thuggery

HENRY ERGAS THE AUSTRALIAN FEBRUARY 10, 2014 12:00AM

AFTER the 1983 election, when half the Australian workforce were union members, barely a third of the ALP's new MPs thanked the unions in their maiden speech. By the 2013 election, union membership had fallen below 20 per cent of the workforce; but more than 90 per cent of Labor's new MPs devoted part of their first speech to praising the union movement.

And the accolades were hardly understated. Craig Thomson had set a high bar in 2007 by claiming his elevation to parliament proved that “union is not a dirty word”. But Labor's 2013 intake rose to the challenge, with Bendigo's Lisa Chesters even managing a call-and-response ditty of “I say ‘united’, you say ‘voice’ “.

Yet these devotional eulogies are no laughing matter; rather, they reflect the complete inability of today's ALP to distinguish its interests from those of the unions. The result is not merely Bill Shorten's refusal to support a royal commission into union corruption; it is also Labor's rejection of reforms to provisions of the Fair Work Act that have allowed union thuggery to become endemic.

Those provisions were anything but an accident. The Cole royal commission uncovered a pattern of criminal behaviour by building industry unions. But just as the Hawke government brushed aside the Costigan royal commission's call for a new authority focused on eliminating union corruption, so Julia Gillard treated Cole's findings with contempt.

Nor was Gillard swayed by the fact that retired judge Murray Wilcox, asked by Labor in 2008 to examine the building industry, concluded that significant lawlessness remained; instead, Gillard eviscerated the measures Howard had introduced to bring the criminality to an end.

Gillard did not just abolish the Australian Building and Construction Commission. She also modified the definitions of lawless behaviour in the industrial relations laws to make it more difficult to prove, while dramatically reducing the ability of the workplace regulator to evidence illegal dealings.

The effect was to vastly expand the scope for, and return on, union malpractice. And to aggravate matters the Fair Work Act also sheltered the unions from competition while doing virtually nothing to police their internal governance. It is all very well for Shorten, in tones reminiscent of Casablanca's Captain Renault, to say he is “shocked, shocked” at the consequences; but they were entirely predictable, since the rents Gillard's legislation allows unions to extract would inevitably act as magnets for sleazebuckets.

And environments in which violence, extortion and misappropriation can flourish attract those whose comparative advantage lies not in selflessly pursuing members' interests but in illegally advancing their own.

Yet the case for reforming Labor's industrial relations laws goes well beyond the gangrene it has caused. For the rot is only the most extreme symptom of the laws' underlying flaws. At the heart of those flaws is what the industrial relations system seeks to do. It should serve to improve the functioning of the labour market by facilitating efficient contracting between employers and employees, thereby promoting trust and confidence in the workplace and encouraging the creation of secure, high-quality jobs.

Instead, under the guise of fairness, Gillard's legislation aimed at replacing market contracting by an administrative process, in which mandatory standards, awards and collective agreements would be the primary means for determining the conditions of employment.

And with that legislation guaranteeing the unions a privileged role in framing each of those instruments, she sought to entrench a degree of union power entirely unrelated to the unions' ability to attract and retain members.

In those objectives, Gillard's legislation succeeded all too well, allowing then ACTU secretary Dave Oliver to proclaim last year that the unions were "out there representing about 60 per cent of the workforce", although union membership was not even one-third that. Gillard's laws thus trampled on freedom of association, which entails the right not to be represented by a union, all the more so when it is run by racketeers.

Yet it is not only democracy that Gillard's laws undermine. Rather, it is Australia's ability to prosper. There are, after all, good reasons why even New Zealand, which led the world in introducing centralised wage setting, abandoned it in 1991: to believe, in a modern, open economy, that tribunals can efficiently determine "fair and reasonable" wages is no more sensible than to believe Soviet planners could efficiently determine "fair and reasonable" prices.

Little wonder, then, that Australia is now literally unique in clinging to that illusion. But as the investment phase of the mining boom draws to an end, its effects will come home to roost. Nor will it be the first time that happens.

Rather, in each cycle since federation, our industrial relations system has acted as a faulty amplifier, magnifying the costs of the fluctuations to which we are exposed. By reinstating that system just as the greatest terms of trade shock in Australia's history got into full swing, Gillard made a painful landing far more likely than it needed to be.

AWU leader Paul Howes is therefore right: the current situation is unsustainable. But, like the Marquis de Sade opining on the horrors of torture, his proposed cure - a new accord between government, business and the unions - perpetuates, rather than removes, the lash. The solution does not lie in yet more corporatism; rather, it must bring our IR laws into the 21st century.

The difficulties that raises are obvious. No doubt, they will give Tony Abbott plenty of opportunities to remember that, when asked whether the laws he established in Athens were the best, Solon replied: they were the best that the Athenians would accept. But one thing is certain: Australia cannot be the country where thugs relied upon by unions are treated as too big to jail. If Labor can't understand that, all the panegyrics to unions in the world won't save it.