

THE AUSTRALIAN

Heydon unions royal commission reveals IR wreck

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Australia's industrial relations system, Justice Henry Bournes Higgins famously declared in 1915, had conquered "a new province for law and order".

A century later, it is not law and order that prevails but "louts, thugs, bullies, thieves, perjurers, those who threaten violence, errant fiduciaries and organisers of boycotts".

For sure, many of the pathologies identified by the [Royal Commission into Trade Union Governance and Corruption](#) are longstanding. But while Australian unionism has always had its standover merchants, the widespread malfeasance the royal commission has exposed marks an undeniable deterioration.

Yes, there are parallels elsewhere, as is clear from the recently released report of the Charbonneau inquiry into Quebec's construction industry; nowhere, however, do the problems come close to being as far-reaching as they are in Australia.

In large part, that is due to the design of our industrial relations system. As the royal commission notes, the system grants unions a "privileged position", yet it does so without "proper legislative measures to safeguard the interests of those affected by those privileges and the general public interest".

That power without accountability would lead to corruption should come as no surprise. Nor should it be surprising that the gangrene would spread as opportunities for corruption invariably attract the violent and the venal, with whom the scrupulous and law-abiding will struggle to compete. And it is unsurprising too that once unions have been captured by crooks, they would become an "oligarchy" whose primary interest lies not in their members' wellbeing but in protecting their officials "as a self-perpetuating institution".

Yet those consequences were as avoidable as they were predictable. After all, the Heydon royal commission is merely the latest in a line of inquiries that stretches back to the early 1980s. On each occasion, it has been apparent that leaving the problems to fester only allows them to become more firmly entrenched; every inquiry therefore has advanced proposals that would prevent the privileges unions enjoy from being misused.

But there is, unfortunately, another constant too: time and again, the ALP has done whatever it can to prevent credible remedies from being put in place, and has moved to dismantle them whenever they have been imposed.

To say that is not to ignore the Hawke government's battle with Norman Gallagher's Builders Labourers Federation. However, far from demonstrating Labor's commitment to tackling union corruption, as Bob Hawke himself suggested in this paper last week, that episode highlights the limits of Labor's resolve.

In effect, the Fraser government had legislated structural safeguards on union conduct, including by creating an Industrial Relations Bureau to promote transparency, investigate allegations of unlawful behaviour and invoke penal provisions.

At the same time, it established a royal commission into the activities of the BLF while preparing the ground for deregistration proceedings.

Labor vehemently opposed those initiatives, vowing to reverse them on coming to office. And so it did, leaving the field entirely free of effective supervision. Instead, the Hawke government entered into a "good behaviour" agreement with the BLF whose core provisions the Federal Court described as "meaningless, unenforceable and unacceptable".

Of course, the BLF promptly exploited the leeway it had been given, escalating bitter demarcation disputes with the Australian Workers Union and the ironworkers' union; and it also sought to consolidate its position by strengthening the Socialist Left's influence over Victorian Labor politics.

As the tensions that caused mounted, Hawke and Victorian premier John Cain came under intense pressure from within their own ranks to bring Gallagher to heel. But they did not respond by reforming union governance, as the successive reviews had recommended; rather, they passed legislation narrowly targeted at the BLF, through the Victorian BLF De-Recognition Bill of July 1985 and the Building Industry Bill introduced into the federal parliament a month later.

The immediate signal that sent was bad enough: it was only when union misbehaviour got in the government's way that it would be sanctioned. Yet the long-term consequences were even worse, as Labor encouraged a wave of union amalgamations.

In 1986, the eight largest unions accounted for less than a third of union members; by 1996, over 70 per cent of union members were in just 12 unions, which typically spanned a wide range of industry groups.

The entities that emerged from this process were unwieldy conglomerates, which their members could scarcely monitor or control; the transition to enterprise bargaining then multiplied the opportunities for whoever ran them to cut secret deals at members' expense, with the absence of any real surveillance making those deals

all the more lucrative.

Little wonder the Cole royal commission, which set the stage for the Howard government's reforms, found a deep-seated culture of lawlessness in which characters such as Bruce Wilson and Ralph Blewitt could flourish; but once again, Labor, on recapturing power, reversed the Coalition's reforms.

However, Julia Gillard's Fair Work Act did far more than simply turn back the clock; rather, its provisions on greenfield agreements and on union rights of entry gave the extortionists a whole new set of threats with which to ply their trade. Labor's own review of the FWA highlighted the difficulties, yet Bill Shorten has adamantly opposed any amendments. And so has the ACTU, which also chose to ignore the royal commission's repeated requests for it to propose reforms that would ensure honesty and integrity in the union movement.

To call those decisions disappointing would be an error; disappointment presupposes the hope for better, but that ship sailed, and sank, long ago. What is certain is that by siding with the perpetrators instead of the victims, they are not merely political choices but moral ones too.

As our industrial relations system descends into their swamp, they leave of Higgins's grand vision only a wreck that, thanks to Dyson Heydon, now all can see.