ONE HUNDRED YEARS OF DYNAMIC WAGE REGULATION

A Comment

Comparing the evolution of minimum wages in three countries with different economies, political structures, legal possibilities and social norms is an ambitious task, and the authors are to be commended for undertaking it.

The minimum wage histories of Australia, the UK and the USA are all loosely anchored in a common concern—evident around the end of the 19th century and the beginning of the 20th—about low wages. The term 'sweating' was frequently applied to wages regarded as unacceptably low, though it was challenged by some, including Australia's Timothy Coghlan, who gave the term the more limited meaning of low piece rates paid to outworkers.[1] Advocates of state intervention commonly called for the enforcement of 'living' wages. Higgins, in Australia, initially resisted that usage in relation to the prescribed minimum wage. The 7 shillings of *Harvester* was, he said, midway between a living wage and a good one. [2] He soon abandoned that distinction and used 'living wage' as well as 'basic wage'. Some State tribunals were required by law to set living wages and generally saw no difference between 'living' and 'basic' wages. In other countries, including the USA and the UK, there was significant agitation in favour of living wages. The sources of that agitation were diverse and require much more extended examination than is possible here. It had some religious content. The encyclical *Rerum Novarum* was but one of the religious sources of support for just wages.

As the authors say, minimum wages are grounded in a perceived need to mitigate inequality of workplace power. With few exceptions, the employee and modern variants are subordinate to employer direction and have little effective say over the terms of their engagement. George Mackay, production manager at Sunshine Harvester, told Higgins in evidence that his policy was to get labour as cheaply as was legally possible. This was honest and unremarkable. In a non-unionised and unregulated labour market, the worker's sole protection from employer power is competition between employers for his or her services. Competition among employers for labour is matched by competition between employers in product markets, the latter tending to drive down the competitive wages of the workers. State intervention seeks to adjust the outcomes of these competitive pressures.

Despite the similarities of the intellectual and political origins of demands for enforceable minimum wages in the three countries, the short-term and long-term responses differed very much, as our authors make clear. Minimum wages were more deeply entrenched in Australia than in the other two countries. The causes of the differences, again, are complex. In my opinion, an important reason for Australia's distinctive path was the predominance of court-style adjudication over the conciliatory model of trades and wages boards. Of course, wages boards were for long an important component of the Australian industrial scene, but they operated within a context wherein arbitral tribunals established dominant standards that wages boards could not ignore and in some instances were legally required to follow. The effective power of the Commonwealth tribunal was very great. It was inevitable that the tribunal, possessing such power, would entertain considerations of broad policy, such as

[1] Coghlan said that there was no sweating in Australia.

[2] Higgins did not, in *Harvester*, specify any particular family for which a wage would be adequate. He later referred to an average family of 'about five'—a definition which excited some criticism because the average family supported by a wage-earner contained fewer than two dependants.

those implicit in a general basic wage. The Commonwealth Court of Conciliation and Arbitration reflected on its accrual of influence in its decision of September 1947 in the *Standard Hours* case:

> It is a commonplace of Australian industrial law that the limit of the constitutional power of the Court is to settle these disputes each within its ambit, and the ultimate judgment will in fact settle these particular disputes, and do no more. But we know, as a matter of practical fact, that it will in the long run lead to uniform standard hours throughout Australia. The responsibility of this onerous task does not properly belong to this Court. It is bound only to settle the dispute. It is something additional that State legislatures and State industrial tribunals make its decisions in these disputes the basis of industrial determinations.
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> The evolution of this Court from an industrial tribunal limited to the particular task in each case, to an institution having in effect wide legislative powers, is an interesting one which some one will one day explore. This legislative power is so great indeed as to occupy a field from which the federal Parliament is excluded; so paramount as to override in appropriate cases the State legislation, and so vital as to make the law for Australians in that realm which touches them most closely and intimately, viz, their industrial relations filling half the waking hours of their working days. It is a matter of striking comment that in a democracy so much responsibility and so much legislative power should be imposed on and entrusted to three men appointed for life and beyond the reach of the popular will.

If I understand the authors correctly, a reason why the trades board (later wages council) model persisted in the UK, providing only limited protection to wage earners, was the reluctance of unions to forgo collective bargaining. I agree with this. Why did the same deterrent to legal prescription not apply in Australia? There were, of course, numerous attempts by sections of the union movement to pursue wage and other outcomes 'in the field'. These culminated in the decision taken about 1990 to abandon the centralised system and to adopt enterprise bargaining instead. But much earlier in the story, notably in the interwar years, unions had less industrial power, and relied very much on the protections afforded by the award system. After World War II, unions were more powerful, but for the next half-century arbitral power (by then well established) and union power shared an often uneasy coexistence. The more militant unions saw arbitration and direct action as complementary methods of achieving their goals. Some arbitrators, such as Raymond Kelly, believed that the availability of arbitration obliterated the right to strike, but in the main tribunal members accepted the unrealism of that stance.

As the paper shows, legal intervention to enforce minimum wages in the United States was more sporadic and haphazard than in Australia or even the UK. The authors outline some of the political and constitutional factors responsible for the tardy American evolution of minimum wages. In a comparative analysis, more weight might perhaps be given to the role of political labour in countering the forces opposed to state intervention. In Australia, for example, the Labor Party was able to arouse sufficient public hostility to defeat both the Maritime Industries Bill of 1929 and John Howard's WorkChoices. In the UK, abolition of the wages councils required the electoral defeat of the Labour Party; and Labour's eventual return to office brought about the creation of the Low Pay Commission and regular prescription of minimum wages. In the United States, the union movement exerted some influence over policies of the Democrats, but this influence was generally less than that of Australian and British unions over political Labour and was more effectively countered by

the anti-Labour Republicans. The differences between States and cities in respect of minimum wages, described by our authors, are testimony to the importance of political control and influence. It remains to be seen whether the election of President Biden will elevate American minimum wages to a new plane.

The authors, quite properly, do not argue for or against minimum wages. Scholars of labour economics and industrial relations have, however, drawn heavily on the divergent experiences of the three countries to elucidate the relation between minimum wages and employment and the effects of wage prescription on income distribution and standards of living. Awareness of the comparative histories described in the paper can only assist those making such inquiries.

Keith Hancock

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