



UNIVERSITY  
OF WOLLONGONG  
AUSTRALIA

University of Wollongong  
**Research Online**

---

Faculty of Business - Economics Working Papers

Faculty of Business

---

1997

# The role of the state in trade union growth: the cases of north America and Australia

Roy Adams

*McMaster University*

Ray Markey

*University of Wollongong*

---

## Recommended Citation

Adams, Roy and Markey, Ray, The role of the state in trade union growth: the cases of north America and Australia, Department of Economics, University of Wollongong, Working Paper 97-4, 1997, 26.  
<http://ro.uow.edu.au/commwkpapers/255>

Research Online is the open access institutional repository for the University of Wollongong. For further information contact the UOW Library:  
[research-pubs@uow.edu.au](mailto:research-pubs@uow.edu.au)



University of Wollongong

**DEPARTMENT OF ECONOMICS  
WORKING PAPER SERIES  
1997**

**THE ROLE OF THE STATE IN  
TRADE UNION GROWTH: THE  
CASES OF NORTH AMERICA  
AND AUSTRALIA**

**Roy Adams  
and  
Ray Markey**

**WP 97-4**

**THE ROLE OF THE STATE IN TRADE  
UNION GROWTH: THE CASES OF NORTH  
AMERICA AND AUSTRALIA**

**Roy Adams**

*McMaster University, Ontario, Canada*

and

**Ray Markey**

*University of Wollongong, Australia*

Coordinated by Associate Professors C. Harvie & M.M. Metwally

Working Paper Production & Administration: Robert Hood

Department of Economics, University of Wollongong

Northfields Avenue, Wollongong NSW 2522 Australia

Department of Economics  
University of Wollongong  
Working Paper Series WP 97-4

ISSN 1321-9774

ISBN 0 86418 489 0



## **ABSTRACT**

The role of the state is traditionally considered to have been critical in assisting rapid trade union membership growth in Australia in the early 1900s and in the USA from 1935 to 1945, through the introduction of the compulsory state arbitration system in Australia and the enforcement provisions of the US 'Wagner' Act respectively. However, a closer examination of the evidence indicates that neither was the decisive factor in trade union growth, although other forms of state intervention sometimes were. We conclude that the role of the state is far more complex and problematical than is often assumed in industrial relations literature, and that it warrants a greater focus in our research agenda.

## INTRODUCTION

The analysis of the role of the state in industrial relations literature has been generally underdeveloped. Internationally, the attention directed towards the nature, structure and motivation of the state as an actor in the system has been limited. State action has usually been treated as an independent variable, and rarely as the phenomenon requiring explanation. In Australia, the state has perhaps received more attention than overseas, principally because of the central role of the arbitration system . However, even there the role of the state as actor in the system has largely been taken for granted, allowing for some variation depending upon which political party forms government.

The consensus regarding the role of the state in relation to trade union growth is a good example of these observations. The role of the state is generally considered to be critical in assisting rapid membership growth during the crucial 'take-off period' for trade union movements earlier this century in Australia and the United States of America. In Australia union density grew from less than 10% in 1901 to 28% in 1911, and 35% in 1914, and continued to grow to reach 51% in 1927. In the USA the unionised proportion of the non-agricultural workforce grew from 13% in 1935 to 30% in 1945, after which it grew only slightly before levelling out. These are remarkable growth rates in such a short time span by any standards. The virtually unanimous consensus of opinion in each country has directly attributed the union growth phenomenon to specific legislation: in Australia this was the introduction of compulsory state arbitration systems (federal and State) from 1901, and in the USA it was the National Labor Relations ('Wagner') Act of 1935. Each case is examined in critical detail below, before drawing general conclusions regarding the role of the state.

## NORTH AMERICA

American employers have been notorious for their hostility to unionism, which led to frequent violent confrontations in the first thirty years of the twentieth century. Employers were commonly supported by the courts which were usually willing to issue injunctions against unions. Under these circumstances, unionism was confined largely to the skilled blue collar workforce and miners, despite the efforts of the Knights of Labour and the Industrial Workers of the World to extend it further. Total union membership density in the USA remained comparatively low at about 10% of the non-agricultural paid workforce in 1929.

The labour policy associated with the 'Wagner model' is credited with breaking through this impasse. The Wagner Act contained two fundamental principles, which had been generally accepted throughout the Western world at that stage:

- that workers had the right to choose an agent to represent their employment interests free from interference by their employer; and
- that employers had a duty to recognise and negotiate with unions freely chosen by their employees.

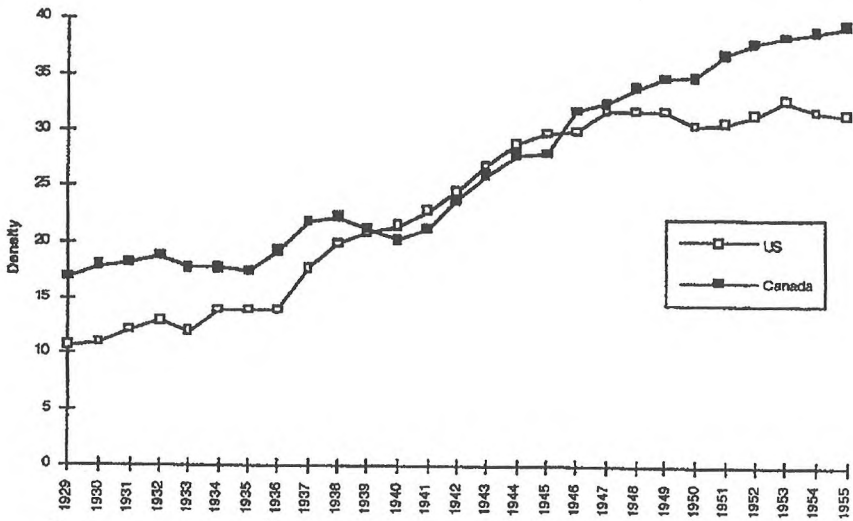
Neither of these principles was actually unique to the Wagner model. They had been introduced in the USA during World War I, and were reaffirmed in the 1926 Railway Labour Act, the 1932 Norris-Laguardia Act and the 1934 National Industry Recovery Act (Millis & Brown 1950). They also became part of Canadian policy in World War I, and were reiterated by most Canadian provinces in legislation during 1937-8 ( Taylor & Whitney 1987; Goldfield 1987; Cameron & Young 1960; Woods 1973; Coates 1973).

What distinguished the Wagner model from this earlier legislation was the establishment of agencies with powers to enforce the principles. The US National Labour Relations Board

(NLRB) had the ability to order employers to bargain in good faith with agents representing the majority of relevant employees. In order to exercise those powers, it developed a complex body of procedural rules for determining bargaining units, bargaining agents, independent unions and employee support. This unique 'administrative approach' of the Wagner model was also adopted in Canada in 1944 with P.C. 1003. The administrative approach, rather than the adoption of the general principles themselves, is traditionally credited with achieving the major impact in favour of union growth. The Norris-Laguardia Act and the Canadian 'little Wagner Acts' of 1937-8 have been universally dismissed as ineffective because they lacked enforcement mechanisms.

However, the evidence for the consensus argument is extremely weak. Figure 1 indicates the trajectory of union membership density in the USA and Canada from 1929 to 1955. Concentrating first on the USA, it may be seen that, consistent with the usual accounts, there was no major growth spurt following the introduction of Norris-Laguardia in 1932. On the other hand, there was no take-off in 1935/6 following the introduction of the Wagner Act either. The first major US growth spurt of the 1930s occurred in 1937, two years after the passage of the Act. This delay is usually explained by reference to the fact that the US Supreme Court found the Wagner Act to be constitutional in that year (Brody 1990). Before that decision, employers believed that the Act would be declared unconstitutional (as was the National Industrial Recovery Act), and thus, did not comply with it. This observation, in itself, would seem to be evidence contrary to the efficacy of the procedures embedded in the Act - procedures which became effective in 1935.

**Figure 1**  
**Union Density in Canada and the US, 1929-55**



Source: Bain & Price, *Profiles of Union Growth*, 1980

In fact, the capacity of the NLRB to compel an employer to bargain was not very great. A number of historians have illustrated the basic impotence of the Wagner Act procedures to remedy an employer policy of determined resistance to employee representation. Brody (1990, 146) noted in the Wilson case that 'clearly, "good faith" was not to be extracted from recalcitrant employers by government fiat'. Millis and Brown (1950, 119-20) generally concluded that :

If an employer was in fact illegally refusing to bargain, and chose to exercise his right to full hearing and to appeal to the courts for review of a Board order, the final order that he must bargain might come down from the circuit court or Supreme Court two or three years from the time of the first violation and the filing of the charge. Only rarely would a local union have survived as a

functioning organisation through this long period. [In such circumstances] there was no penalty upon the employer, only the order to bargain upon request.

Employers also failed to generally honour the prohibition against discrimination for union activity. Before the Supreme Court validated the Act many companies openly favoured company unions and openly discriminated against supporters of 'outside' unions (Wilcock 1961; Harris 1982). Even after the validation, discrimination continued to be common. For example, in 1937, 'in order to protect the men and their families from intimidation and retaliation - particularly from the Pinkerton detectives who, it was rumoured, had come to Washington to locate these men and to gun them down', the NLRB 'smuggled several Republic Steel employees into Washington to give testimony' (Gross 1981, 10). At Ford, the NLRB 'found "a rule of terror and repression", with unionisation being suppressed by an "utter ruthlessness" and by brutal assaults and beatings' (Gross 1981, 14).

Nor were the NLRB's powers of reinstatement as effective as one might assume from the text of the Act. Prior to the Taft-Hartley revision in 1947, the NLRB issued orders reinstating over 800,000 workers dismissed for union activity (Millis & Brown 1950). Those figures mean that for every 35 new union members at the end of the period at least one worker had been illegally dismissed during the period. Almost certainly there were many thousands more who were dismissed but filed no complaint. Moreover, orders of reinstatement, like orders to bargain, may be resisted. Even if rehired employees may be harassed until they leave voluntarily. Although the effectiveness of reinstatement during the 1930s and 1940s was not the subject of careful research at that time, there have been studies in later years. They suggest that, although the technique has been relatively successful where arbitrators reinstate employees into unionised companies,

NLRB reinstatements, often back to companies where union drives have not been successful, have not been very effective. Only about 10% of workers reinstated after discriminatory discharge in violation of the Wagner Act stay with the company for at least a year (Weiler 1990, 86). These observations cast doubt on the confident assertion that the Act 'freed workers from the fear of employer discrimination' (Brody 1990, 135).

By defying the Labor Board, Ford withheld general recognition from the UAW until 1941. In that year the UAW won a certification election at Ford's largest plant, River Rouge, but Ford extended recognition to the UAW as the appropriate representative of its employees at its other plants without requiring the union to undertake the certification process. It did so in part because the union had been able to successfully mount a series of strikes at some of these plants, but even more importantly because of direct intervention by the Roosevelt government. Just before the general recognition the government refused to grant Ford a major war contract because of its refusal to respect US labour policy (Bernstein 1970).

Direct government pressure also played a very significant role in the recognition of the United Steelworkers by several of the 'little steel' companies in 1942. In fact, it was common for Roosevelt administration officials to become personally involved in notable disputes and the President himself made it known, especially after the outbreak of World War 2, that he expected employers to recognise and deal with unions. During the earlier years of his administration many employers resisted government pressure in the hope that Roosevelt would be defeated by a more business-friendly president. FDR, however, was re-elected in 1936 (and again in 1940), prompting several employers to extend voluntary recognition, in anticipation of continuous pressure from government and unions. Even before the Supreme Court decision General Motors recognised the UAW



after a 44-day strike and the intervention of Roosevelt and the Governor of Michigan (Harris 1982). From 1936 until the passage of the Taft-Hartley Act in 1947 there was a growing conviction among American employers that their continued opposition to union recognition would bring mounting government intervention.

Taft-Hartley had the opposite effect. It gave unorganised employers hope that government would permit them to pursue labour exclusion within certain limits, the boundaries of which they would continually test over the next several decades. Under these circumstances, union growth levelled out from 1947.

In the Canadian case the pattern of union membership growth for 1937-40 is consistent with the received wisdom that the 'little Wagner Acts' were ineffective. So apparently was the introduction in 1939 of a clause in the Canadian Criminal code making it illegal for an employer to discriminate against union activism (Carrothers 1965). Union density declined in 1939-40. Without the assistance of Wagner-like administrative procedures, however, the Canadian unions grew at almost exactly the same rate as the US movement between 1941-3. In 1943 British Columbia and Ontario introduced Wagner-like legislation, but the federal government's wartime labour policy, whilst supportive of unions, depended largely on voluntarism (Woods 1973; Coates 1973; Stewart 1941; MacDowell 1978). Despite very respectable growth figures, Canadian unions continued to complain throughout the early 1940s about the ineffectiveness of the wartime labour policy to address the refusal of particular employers to bargain and negotiate in good faith (Coates 1973; MacDowell 1978). Finally in 1944 the federal government, pressured by union militancy and a strong electoral performance by the social democratic Co-operative Commonwealth Federation Party, agreed to import the Wagner model, in the form of P.C. 1003. However, there was no upsurge of unionism in 1944.



Indeed, 1944-5 were relatively slow growth years in the 1940-7 period.

From 1947 Canadian and US density rates diverged. Canadian unions continued to organise a larger percent of the workforce each year until 1960 (Bain & Price 1980). In contrast, US union growth flattened out after 1947, and after a slight resurgence during the Korean War, it began a long decline. The main difference between Canada and the USA between 1947 and 1955 was the absence of a legislative initiative in Canada with the anti-union, anti-collective bargaining connotations of the Taft-Hartley Act.

It can be seen, therefore, that the administrative approach to industrial relations that was introduced into North America with the Wagner Act was not very important to the union growth that occurred from the 1930s to 1950s in Canada and the USA. Employees did not join unions in large numbers because they had been made confident that they would be protected from victimisation by their employers. Nor did the establishment of the NLRB exert a determining effect on union recognition. Most of the union-management bargaining relationships that were established during the period would very likely have occurred without a labour board. In the USA the typical representation election was a 'consent election' uncontested by the employer (Millis & Brown 1950). Contested elections became the norm only after the implementation of the Taft-Hartley Act (Friedman & Prosten 1993). In Canada collective bargaining expanded significantly between 1935-44 without the aid of Wagner Act procedures, and after the implementation of the administrative approach there was no significant change in the established trajectory of union growth.

This does not mean that government policy was unimportant to the expansion of unionism in this period. Not only legislation but also direct government intervention helped to create a climate

in which it was considered right for workers to be able to organise free from employer interference and appropriate for employers to recognise and bargain with employee representatives. Taft-Hartley in 1947 chilled that climate significantly even though the technical changes to the National Labor Relations Act were relatively minor with respect to union organising (Taylor & Whitney 1987).

## AUSTRALIA

The Australian compulsory arbitration system which developed from the beginning of the twentieth century consisted of a dual structure of national and State courts or tribunals. This occurred because of the federal nature of government and the constitution which limited national, or Commonwealth, industrial relations jurisdiction to interstate disputes. As we shall see, the terms of this constitutional power severely restricted the Commonwealth jurisdiction. The first compulsory arbitration legislation was enacted in Western Australia in 1900, but it did not become effective until some time afterwards. The first effective legislation was enacted in NSW in 1901. The Commonwealth Conciliation and Arbitration Court was established by federal legislation of 1904. Other State courts or tribunals were not established until some time afterwards; 1912 in the case of Queensland and South Australia, and 1981 in Victoria. Beginning with Victoria in 1896, States other than NSW and Western Australia adopted different wages board systems, whereby standing boards composed of equal numbers of employer and employee representatives, with a neutral chairman, determined wages and working conditions (Macintyre & Mitchell 1989).

Compulsory arbitration supposedly offered a number of benefits to unions which registered under the various Acts, including corporate identity, preference for union members, and a

monopoly of organisational coverage in designated industries. Most importantly, unions preferred arbitration to the wages board system adopted in most Australian States in the early 1900s, because it gave them a guaranteed role in industrial relations. Wages boards did not generally operate through union representation of employees. Arbitration, in contrast, seemed to guarantee the existence of registered unions, because employees could only be represented by a union in the case of a dispute, and it is only necessary for one party to activate the arbitration process by reference to a tribunal. This procedure effectively obliged employer recognition of unions, which had been denied in the great depression of the 1890s, when unions were decimated by a series of major strikes over 'freedom of contract' and wages. The impact of these strikes, the magnitude of which had never been experienced before in Australia, provided much of the momentum for the adoption of the compulsory arbitration system in the early 1900s. The Labor Party was born out of these strikes, to become the major exponent of state arbitration, and the public concern created by the industrial turmoil of the 1890s provided fertile ground for state intervention (Markey 1989; Macintyre 1989; Mitchell 1989).

However, the apparent advantages of arbitration were not always apparent in practice. Corporate identity could be obtained under the various Trade Union Acts of each State, which followed the model of the 1871 British Act, beginning with South Australia and NSW in 1876 and 1881 respectively. Yet, the level of union registrations under these Acts was relatively low. Preference to unionists in employment was not often granted in the early years of the century, and not at all in the Commonwealth sphere before 1910. Where preference was granted, it was always qualified, 'all other things being equal', and usually recognised a closed shop in practice (Wright 1983). Nor was the organisational monopoly granted unions for specific

groups of workers a boost to the level of unionisation as a whole, although it could be an important advantage for one union in relation to others where there was competition for particular groups by more than one organisation (Sheldon 1993.)

Australian trade union growth largely preceded the establishment of an effective or extensive arbitration system. It is worth noting that the initial take-off for Australian union growth occurred in the 1880s, such that union density in the two most populous and industrialised colonies (soon to be States), NSW and Victoria, was about 21% in 1890, prior to the devastating impact of the great 1890s depression (Markey 1988). This was perhaps the highest density in the world at that time. Although we lack precise statistics from the early period, it seems that trade union growth also took off again in the early 1900s, even prior to the impact of arbitration systems. We have noted that most States in fact adopted wages board systems initially, and did not adopt arbitration systems until after the first decade of union growth, or later. Western Australia's arbitration system also did not become effective until 1912. Its original 1900 Act 'was repealed within a year and re-enacted 'with amendments which proved abortive'. The 1902 version prevented review of Court awards until their expiry or withdrawal, and then, only if an actual industrial dispute could be proved (Mitchell 1989; Ryan 1984, 33). As late as 1913, after passage of a more effective Act in 1912, the total number of State awards under the Western Australian system totalled only 18. The 1902 Act was more supportive of industrial agreements, which totalled 82 in 1913, (Commonwealth Bureau of Census and Statistics, Labour & Industrial Report No. 6, 79) but these relied on the prior existence of unions and their acceptance by employers. The only State with an effective arbitration system from almost the beginning of the 1900s decade was NSW, from 1902. Yet, trade union growth occurred vigorously in all States in the early 1900s.

A comparison of the rate of trade union growth in different States for the first 12 years of the century is instructive. Tables 1 and 2 below reveal the full contrast between the different States. A superficial glance suggests that compulsory arbitration did have an impact on unionisation, since the two nominally arbitration States initially demonstrated the greatest growth in unions and unionsists. Plowman (1989), for example, emphasises the difference between Victoria and the two arbitration States to argue that arbitration explained the difference. However, the statistics, such as they are, almost certainly distort the real comparative state of unionism between the States. The table suggests that there were only seven unions in Victoria in 1906, but this is inconceivable. It is important to realise that 1912 was the first year that the Commonwealth collected these statistics, based on returns from trade unions, which were asked to provide membership figures for the years prior to 1912 as well. However, it seems that unions were unable to provide adequate statistics for the earlier years, and Commonwealth Labour Reports were forced to supplement union data with 'particulars published by the State Registrars of Trade Unions' (Labour & Industrial Report No. 2, 13). Nor did the Commonwealth break its figures down on a State basis prior to 1912, no doubt because of the lack of accuracy. Hence, the only source for State union statistics prior to 1912 are the various State Yearbooks, but these do not consistently provide figures in some cases (hence the gaps in the tables), and the reliability is extremely questionable. The Commonwealth estimates for total union membership in the years 1906, 1908-10 are considerably higher than the total from all State sources for those years (provided in brackets in the Table). The point is that the statistics prior to 1912 are based on reports from the Registrar of Trade Unions or Industrial Registrar in each State, based upon the number of unions registered in that State. However, only NSW and Western Australia had arbitration

systems which registered unions. The other States did not register unions under their wages board systems. Unions in these States only registered under the Commonwealth system, which had limited coverage, or under the various Trade Union Acts, and in fact few unions took the latter option. Hence, the nature of the statistics themselves inevitably underestimate the extent of unionism in non-arbitration States.

The tables also show that the number of unions and unionists grew dramatically between 1910 and 1912, including for the non-arbitration States. This undoubtedly exaggerates the real growth in all States at that time, because it underestimates the level of unionisation prior to 1912, particularly for non-arbitration States. For example, once again, it is inconceivable that the number of Victorian unions grew from three to 151 in the space of two years. The greater accuracy in recording which is indicated with the increases for non-arbitration States in 1912 may be explained by a combination of the beginnings of systematic Commonwealth data collection in that year, the adoption of arbitration systems in all non-arbitration States except Victoria in 1911-12, and the registration of Victorian unions under the federal Act. The increases in 1912 for number of unions and unionists in South Australia, Queensland and Tasmania reflected the fact that unions could register under State arbitration systems for the first time, and appear to have been keen to take that opportunity. But the arbitration legislation in those States was too recent for it to have provided substantial assistance to union growth at that time, if it ever did. This leaves Victoria, which did not adopt an arbitral approach until 1981. Its union growth at this time, according to the statistics, was entirely due to registration under the federal Act. It is notable in this regard that agreements certified by the Commonwealth Court increased from 129 to 229 in Victoria between 1913 and 1915, but declined in every other State (Labour & Industrial Report No. 6, 79). However, as

agreements ratified by the Commonwealth Court, these did not indicate the role of arbitration in union growth, for they relied on employer recognition and willingness to bargain with unions.

**Table 1**  
**Trade Unions in Australia, by State, 1906-20**

Year	NSW	Vic.	Qld	SA	WA	Tas.	Aust.
1906	134	7	19	23	82	1	266
1908	150	5	32	27	116	1	331
1909	166	5	33	25	122	0	351
1910	171	3	37	24	130	0	365
1912	177	151	67	78	97	51	408
1913	201	162	94	86	107	60	432
1914	197	170	86	87	107	62	430
1915	203	161	89	87	104	66	415
1916	199	151	93	86	107	66	392
1917	220	156	96	93	108	71	389
1918	217	158	102	101	111	74	394
1919	211	160	106	101	112	77	394
1920	214	158	115	104	121	81	388



**Table 2**  
**Trade Unionists in Australia by State, 1906-20**

Year	NSW	Vic.	Qld	SA	WA	Tas.	Aust.
1906	87,435	8,820	8,332	5,106	12,031	53	175,529 (130,109)
1908	112,477	7,464	14,980	2,930	15,088	59	240,475 (152,998)
1909	127,402	8,096	16,423	1,692	17,282	0	273,461 (170,895)
1910	129,544	(130,806)	18,522	2,818	20,429	0	302,119 (171,313)
1912	192,626	116,557	44,768	37,336	33,282	8,655	433,224
1913	230,677	130,176	51,683	40,061	35,317	10,011	497,925
1914	240,023	138,810	55,580	40,956	38,106	9,149	523,271
1915	241,979	141,993	58,310	39,264	35,980	9,346	528,031
1916	244,074	147,614	66,807	42,537	33,900	10,263	546,556
1917	248,851	148,730	75,393	45,400	33,263	10,886	564,187
1918	243,176	152,063	87,737	51,559	33,761	11,900	581,755
1919	255,899	164,583	97,378	56,879	38,556	13,556	627,865
1920	277,519	187,100	103,784	55,958	44,054	15,220	684,450

Sources: various State *Yearbooks*, and Commonwealth Bureau of Census and Statistics, *Labour and Industrial Branch Report No. 2, Trade Unionism, Unemployment, Wages, Prices and Cost of Living in Australia, 1891-1912*, April 1913.

N.B. 'Aust.' column includes a small number of unions for the Northern Territory after 1913.



Finally, although all States indicate a marked increase in unionisation from 1912 to 1913, this increase is especially marked for NSW. It is unlikely that the arbitration system can be held responsible for this sharp rise, because it had been operating for over ten years by then. Two other factors may have been responsible. One was an amendment to the NSW Act in 1912, which restored the central role for unions in reference of disputes, after the 1908 Act had created wages boards within the arbitration framework, to which reference of disputes by employees need not originate from unions. However, whilst the unions strongly opposed the 1908 measure, it is unlikely to have effected the level of unionisation. The second factor which seems to have had a greater impact is the effect of a Labor government from 1910, which strongly supported unionisation in the public sector over which it had control. No other State enjoyed a labor government at this time.

The coverage of the federal arbitration system was also very limited in its first decade of operation after 1904. One indication of this may be gained from a simple examination of the volume of activity recorded. As late as 1909, when the Commonwealth Court's scope was essentially restricted to the maritime and pastoral industries, only seven cases came before it. Of these, employers obtained writs of prohibition in three cases, and two cases involving rival unions' applications for the others' deregistration were dismissed. Only two agreements were certified, and the total year's business occupied 100 pages of the *Commonwealth Arbitration Reports*. This low level of activity did not increase until after 1913, such that in 1916 'as many awards were made as had previously existed' (Plowman 1989, 152)

Because of the constitutional limitation of the Commonwealth Court's jurisdiction to interstate disputes, it was really only national or interstate unions which could seek federal awards, and most unions at the beginning of the century were State-based

organisations. National unions developed quite quickly, to total 72 in 1912, and 95 in 1919, accounting for over 80% of unionists, (*Commonwealth Labour Reports*, Nos. 9, 13; Markey 1994, 77), partly to take advantage of favourable decisions in the Commonwealth Court under the head of Justice Higgins, notably his 1907 harvester Judgment which established a basic wage. However, most of these organisations were really federations of State-based unions which conducted most union business and have remained the primary locus of union power ever since then. The State branches of these new interstate unions have usually remained registered under State arbitration systems, and as late as 1914 there were only 16 federal awards, compared with 242 in NSW. Even in 1920, after the considerable growth in federal arbitral activity, the Commonwealth Court was only responsible for 71 awards and 220 certified agreements, compared with the 359 awards and 107 agreements of the NSW Court, and in the next five years the number of Commonwealth awards and agreements actually declined dramatically, before continuing to grow again (*Commonwealth Labour Report* No. 14).

Even in NSW, however, much of the union growth which occurred in the early 1900s, did so initially outside the protection of the Arbitration Court. It took time for the new system to develop its own rules and procedures, and to extend to a significant proportion of the workforce on a case by case basis. As unions rapidly re-formed from 1900 and sought registration and awards of the court, a back-log of cases quickly developed. The Court was served initially by only one judge. Many of the early applications involved lengthy test cases, in which it was important to have legal representation, and the more legality involved, the more complexity and delay in proceedings. The situation was exacerbated in 1905, when the government took three months to replace the first judge of the court, and it simply ground to a halt for that time. Late in 1905 a deputy president of

the court was appointed to assist the new chief judge, but delays in proceedings remained a recurring complaint by unions over the whole period 1904-08. (Markey 1994, 134-5) Nevertheless, this period was one of tremendous trade union growth. As early as 1906, there were 129 unions covering 88,000 workers registered with the NSW court, but it does not seem that these workers were covered by awards very quickly after registration of their unions. For all of these reasons, therefore, we must conclude that much, even most, of the trade union growth which occurred on a national level before 1914, and some even afterwards, occurred outside the umbrella of compulsory state arbitration, even though, subsequently these unions registered under the various arbitration systems.

As in America, Australian employer resistance to the legislation through litigation and other means, considerably reduced its effectiveness in the short to medium term. In Australia opposition to arbitration was the main rallying point for the formation of the Employers' Federation of NSW in 1903 (after the previous Employers' Union became defunct in 1894), and the Central Council of Employers of Australia (CCEA) the following year. After failing in their lobbying attempts to prevent its enactment, the employers did their best to make the NSW Act inoperative. They threatened relocation in other States, and circumvented awards by installation of new technology and machinery, replacement of male with cheaper female labour, and by the introduction of sub-contracting. They formed and registered bogus unions, including a Tramway Templooyees' Union, rival seamen's and agricultural implement makers' unions, a Non-Political Union in Broken Hill, an Independent Workers' Federation, and a Machine Shearers' Union, all in competition with existing organisations (Plowman 1989). The last-named succeeded in forcing the largest Australian union of the time, the Australian Workers' Union (AWU, a general union, originally

with a rural workers' base) outside the State arbitration system and into the federal one.

Employers in NSW also deliberately lengthened procedures with delaying tactics and numerous appeals to the State Supreme Court and the High Court of Australia in the early 1900s. These efforts were particularly effective because of the experimental nature of the original legislation. For example, the coverage of awards of the Court was restricted to the workers immediately involved in a dispute by disallowing the establishment of 'common rules' covering all employees in an industry or occupation. This greatly circumscribed the Court's ability to co-ordinate industrial relations in any one industry, and considerably lengthened its proceedings 'because the president could not investigate one concern and apply his decisions to all concerns of a like character, but had to examine each firms's case separately'. (Plowman 1989, 150 speaking of the federal scene) Proceedings were made more expensive and difficult for unions, and non-unionists were placed beyond the jurisdiction of the Court, thus allowing employers to prefer employment of them to unionists who were covered by an award. The existence of an actual dispute was also deemed necessary in order for the Arbitration Court to have jurisdiction; and a union could not act as an agent for employees until a dispute existed, thereby denying employees the protection of their union during initial negotiations for an award (Ryan 1984; Markey 1989, 172). This meant that, far from gaining the support of the system in order to face employers, unions needed to already possess sufficient strength to undertake industrial action in order to participate in the arbitration system.

Even if employer-initiated appeals to the Supreme or High Courts were unsuccessful, they still delayed proceedings, and together with the use of legal counsel, greatly added to their expense. In its first year of operation in 1902, the NSW Court

disposed of only eleven out of 81 cases. Subsequently, 'congestion became progressively. By 1905, despite the determination of 25 awards covering 10,000 workers, the NSW Court was 'in a state of collapse' because of appeals and the delays they caused, such that there was a two-year wait for an appearance worse' (Ryan 1984, 30-2, 74; Markey 1994, 134-5). Under these circumstances, it is clear that even in NSW, the rapid growth of unions at this time could not have been dependent upon gaining recognition through a favourable award.

As the situation in NSW deteriorated from the unions' point of view, the Commonwealth Court seemed to offer better prospects, particularly because of the 1907 Harvester Judgment, but employer appeals also clogged up the Commonwealth Court and succeeded in constraining its effectiveness. The CCEA established a \$10,000 fund specifically for this purpose, and enjoyed considerable success in a series of appeals to 1913, because the balance of opinion on the High Court favoured a minimal role for the federal arbitration system. The High Court removed State government employees from federal jurisdiction in 1906, and in 1909 declared that any matter regulated by State law could not be included under federal jurisdiction. The latter decision meant that the federal arbitration system was effectively excluded from wages boards States, or at least from those major industries which had wages. The High Court also proved receptive to employer arguments for a narrow literal interpretation of the key constitutional terms enabling Commonwealth arbitration. Hence, it also disallowed the determination of common rules for the federal Court, with the same effect as this limitation in NSW. In 1910 in the first of three Bootmakers' Cases, the High Court ruled that the Commonwealth Arbitration Court could not make awards inconsistent with State awards applying to the parties to a dispute. Employers were less successful in the second Bootmakers' Case, where they sought a declaration that the

compulsory nature of federal awards was unconstitutional. However, in the third *Bootmakers' Case* and the *Sawmillers' Case*, the High Court ruled that disputes must be 'real and genuine and not fictitious and illusory', for the purpose of activating federal Court jurisdiction under the terms of the constitutional powers given the Commonwealth. As with a similar decision for NSW, this rejected the concept of a 'paper dispute' for this purpose. The High Court also declared in another case that disputes could not exist over matters already the subject of an agreement between the parties (Plowman 1989). In a number of cases the High Court set aside determinations of the Arbitration Court on the grounds that they were not proper interstate disputes.

In the longer term, the degree of favourableness of the NSW and Commonwealth systems for unions was improved. The NSW system was gradually improved by Labor governments from 1912, to allow common rules and paper disputes. Federally, the improvements were less significant, largely because of the constitutional constraints. The national Labor government failed to overcome many of the limitations described above by referenda to amend the constitution in 1911 and 1913, when it lost government briefly. However, by then it had appointed judges to the High Court who were more favourable to extending the Commonwealth Court's jurisdiction. In 1914 the High Court accepted 'paper' disputes, and began to interpret the concept of an interstate dispute more broadly. However, a number of restrictions remained long afterwards, including the Court's inability to award common rules, and the exclusion from its jurisdiction of most professional and semi-professional white collar workers by a narrow interpretation of what constituted 'industrial' in an industrial dispute. Most importantly, during the actual take-off period of union growth in the first decade and a half of the century, the restrictions imposed upon the



Commonwealth Court by the High Court's interpretation of its constitutional jurisdiction prevented it from effectively assisting union organisation.

## CONCLUSIONS

The consensus regarding the role of the state in relation to trade union growth is a good example of the underdevelopment of its analysis in industrial relations and labour history. An examination of the evidence relating to the form of state intervention described here, the administrative approach (i.e. the Australian compulsory arbitration system and the enforcement provisions of the American Wagner Act), reveals that it was not in itself the critical factor in trade union growth, in Australia or America. In both cases, the timing of union growth surges and the impact of the legislation failed to fully coincide, and employer resistance to the legislation through litigation and other means, considerably reduced its effectiveness in the short to medium term. In the long term, the degree of favourableness of the systems for unions was considerably reduced, in Australia by the High Court and State Supreme Courts, and in America by the post-war Taft-Hartley Act. Furthermore, union growth was just as vigorous in Australian States without arbitration systems as those with. In the USA government policy during the Second World War seems to have been more decisive in encouraging unionisation than the Wagner Act per se, and in Australia Labor governments' encouragement of unionism also seems to have been critical. Canada offers a telling contrast to the USA, because it failed to adopt the enforcement provisions of the Wagner Act until 1944. Yet, Canadian union growth 'took off' in a similar pattern to the USA prior to 1944, after which it did not appear to be positively affected by the new provisions.

These observations do not deny the importance of the role of the state in industrial relations. However, they do challenge the accepted interpretations of that role in the cases analysed here. We conclude that the role of the state is far more complex and problematical than is often assumed in industrial relations literature, and that it warrants a greater focus in our research agenda.

## REFERENCES

- Adams, R.J. (1995), ' "The Administrative Approach" & Union Growth in Canada & the US, 1929-55', *Proceedings of XXXIst Conference of the Canadian Industrial Relations Association*, ed. A. Giles, A. Smith & K.Wetzel, Quebec, CIRA.
- Adams, R.J. (1992), 'The Role of the State in Industrial Relations', in D. Lewin, O. Mitchell & P. Sherer eds., *Research Frontiers in Industrial Relations and Human Resources*, IRRA, Madison, 489-523.
- Adams, R.J. (1994), 'Union Certification as an Instrument of Labor Policy: A Comparative Perspective', in S. Friedman, R. Hurd, R. Oswald, & R. Seeber eds., *Restoring the Promise of American Labor Law*, ILR Press, Ithaca, NY.
- Bain, G. S. & Price, R. (1980), *Profiles of Union Growth*, Blackwell, Oxford.
- Bernstein, I. (1970), *Turbulent Years*, Mifflin, Boston.
- Brody, D. (1990), 'The Emergence of Mass-Production Unionism', in M. Dubovsky & S. Burwood eds., *The Great Depression and the New Deal*, vol. 2, *Labor*, Garland, New York.



- Cameron, J.C. & Young, F.J. (1960), *The Status of Trade Unions in Canada*, Queen's University Dept. of Industrial Relations, Kingston, Ontario.
- Carrothers, A.W. (1965), *Collective Bargaining Law in Canada*, Butterworths, Toronto.
- Coates, D. (1973), 'Organised Labor & Politics in Canada: The Development of a National Labor Code', Ph.D. diss., Cornell University.
- Commonwealth Bureau of Census & Statistics (1913), *Labour & Industrial Branch Report No.2. Trade Unionism, Unemployment, Wages, Prices and Cost of Living in Australia, 1891-1912*, Melbourne.
- Commonwealth Bureau of Census & Statistics (1916), *Labour & Industrial Branch Report No.6. Prices, Purchasing-Power of Money, Wages, Trade Unions, Unemployment and General Industrial Conditions, 1914-15*, Melbourne.
- Commonwealth Labour Reports.*
- Friedman, S. & Prosten, R. (1993), 'How Come One Team Still Has to Play With Its Shoelaces Tied Together?', *Labor Law Journal*, vol. 44, no. 8, 477-85.
- Goldfield, M. (1987), *The Decline of Organised Labor in the United States*, University of Chicago Press, Chicago.
- Gross, J.A. (1981), *The Reshaping of the National Labor Relations Board*, State Univ. of NY Press, Albany.
- Hammond, M.B. (1914/15), 'Wages Boards in Australia', *Quarterly Journal of Economics*, Harvard, Nov. 1914 & Feb. & May 1915, pp. 99-148, 327-61, 563-630.

- Harris, H.J. (1982), *The Right to Manage*, Univ. of Wisconsin Press, Madison.
- Jamieson, S. (1973), *Industrial Relations in Canada*, 2nd edn., Macmillan, Toronto.
- Kochan, T., Katz, H., & McKersie, R. (1986), *The Transformation of American Industrial Relations*, Basic Books, New York.
- MacDowell, L.S. (1978), 'The Formation of the Canadian Industrial Relations System During World War Two', *Labour/Le Travailleur*, no. 3, 175-96.
- Macintyre, S. & Mitchell, R. (1989) eds, *Foundations of Arbitration. The Origins & Effects of State Compulsory Arbitration, 1890-1914*, Oxford Uni. Press, Melbourne.
- Macintyre, S. (1989), 'Neither capital nor labour: the politics of the establishment of arbitration', in *ibid.*, 178-202.
- Markey, R.A. (1994), *In Case of Oppression. The Life & Times of the Labor Council of NSW*, Pluto Press, Sydney.
- Markey, R.A. (1988), *The Making of the Labor Party in NSW, 1880-1900*, UNSW Press, Kensington.
- Millis, H.A. & Brown, E.C. (1950), *From the Wagner Act to Taft-Hartley*, Univ. of Chicago Press, Chicago.
- Mitchell, R. & Stern, E. (1989), 'The compulsory arbitration model of industrial dispute settlement: an outline of legal developments', in Macintyre & Mitchell, *Foundations of Arbitration*, 104-34.
- Plowman, D. (1989), 'Forced march: the employers and arbitration', in Macintyre & Mitchell, *Foundations of Arbitration*, 135-55.
- Ryan, E. (1984), *Two-thirds of a Man. Women & Arbitration in NSW, 1902-08*, Hale & Iremonger, Sydney.

- Sheldon, P. (1993), "'System and Strategy': The Changing Shape of Unionism among NSW Construction Labourers, 1910-19', *Labour History*, no. 65, November, 115-35.
- Stewart, B. (1941), 'Wartime Labour Problems and Policies in Canada', *The Canadian Journal of Economics & Political Science*, vol. 7, no. 3, 426-46.
- Weiler, P. (1990), *Governing the Workplace*, Harvard Univ. Press, Cambridge, Mass.
- Whitney, F. & Taylor, B.J. (1987), *Labour Relations Law*, 5th edn., Prentice-Hall, Englewood Cliffs, NJ.
- Wilcock, R.C. (1961), 'Industrial Management's Policies Towards Unionism', in M. Derber & E. Young eds., *Labor & the New Deal*, Univ. of Wisconsin Press, Madison, 275-315.
- Woods, H.D. (1973), *Labour Policy in Canada*, 2nd. edn., Macmillan, Toronto.
- Wright, M. (1983), 'Union Preference and the Closed Shop', in B. Ford & D. Plowman (eds.), *Australian Unions. An Industrial Relations Perspective*, Macmillan, Melbourne.

## PAPERS IN THE SERIES

- 90-1 C.H. Hanf and D.J. Thampapillai, *Optimal Taxation Policies for a Nonrenewable but Quasi-infinite Energy Resource: a Two-period Framework.*
- 90-2 C. Nyland, *Sexual Difference and Industrial Relations Research.*
- 90-3 J. Halevi, *Employment, Investment and Structural Maturity.*
- 90-4 A. Levy, *Repudiation, Retaliation, and the Secondary Market Price of Sovereign Debts.*
- 90-5 A. Chaturvedi, V.H. Tran and G. Shukla, *Performance of the Stein-rule Estimators when the Disturbances are Misspecified as Homoscedastic.*
- 90-6 C. Nyland, *John Locke and the Social Position of Women.*
- 90-7 E.J. Wilson, *Exchange Rate Variability. A Case of Non-Linear Rational Expectations.*
- 90-8 E. Pol, *Ray Scale Economies and Multiproduct Cost Functions.*
- 90-9 V.H. Tran and A. Chaturvedi, *Further Results on the Two-stage Hierarchical Information (2 SHI) Estimators in the Linear Regression Models.*
- 90-10 A. Levy and T. Romm, *Need Satisfaction Motivated Behaviour: Static and Dynamic Aspects.*
- 90-11 A.H. Vanags, *A Marshallian Model of Share Tenancy*
- 90-12 A. Levy, *An Analysis of the Potential Externalities Affecting the Borrowing Behaviour of Developing Countries.*
- 90-13 Tran Van Hoa, *System Estimation of Generalized Working Models: A Semiparametric Approach.*
- 90-14 A. Chatuverdi, Tran Van Hoa and R. Lal, *Improved Estimation of the Linear Regression Model with Autocorrelated Errors.*
- 91-1 C. Nyland, *Adam Smith, Stage Theory and the Status of Women.*
- 91-2 A. Levy and T. Romm, *Optimal Timing of Migration: Expected Returns Risk Aversion and Assimilation Costs.*

- 91-3 D.P. Chan and K.Y. Cheung, *Covered Interest Arbitrage Under the Linked Exchange Rate: Does it Exist? An Evidence from the Hong Kong Foreign Exchange Market.*
- 91-4 M. M. Metwally, *Role of Advertising in Oligopolistic Markets: Theory & Evidence.*
- 91-5 A. Levy and T. Romm, *The Consequences of Mutually Secured Debts: The Case of Israeli Moshavim.*
- 91-6 Tran Van Hoa, *Fundamentals of a new Macro-Modelling. Approach: With Application to Explaining and Forecasting Growth.*
- 91-7 Boon-Chye Lee, *A Sequential Bargaining Model of International Debt Renegotiation.*
- 91-8 A. Levy, K. Chowdhury, and E. Wilson, *Are the External Debts of Developing Countries A Symptom or a Cause of Economic Slowdown?*
- 91-9 Amnon Levy, *A Pareto Optimal Condition for Bankruptcy and the Role of Variations in Aggregate Variables.*
- 91-10 K. Y. Cheung, *On Testing the Joint Hypothesis of Short Term Interest Rate: A Single Extraction Approach.*
- 91-11 Tran Van Hoa, *How to Forecast Wage and Price Inflation with More Accuracy: The Australian Experience: 1945/50 to 1988/89.*
- 91-12 Amnon Levy, *Unemployment and Feedback Approach to the Management of Immigration by the Host Country.*
- 92-1 Ann Hodgkinson, *An Industry Policy Debate for the 1990s—What Lessons from the USA?*
- 92-2 Lino Briguglio, *Tourism Policies, Environmental Preservation and Sustainable Development on Small Islands: the Case of Malta.*
- 92-3 Amnon Levy and Khorshed Chowdhury, *An Integrative Analysis of External Debt, Capital Accumulation and Production in Latin America, Asia-Pacific and Sub-Saharan Africa.*
- 92-4 Tran Van Hoa, *Effects of Oil on Macroeconomic Activity in Developing Countries: A Cointegration Analysis.*

- 92-5 Amnon Levy, *The Role of Repudiation and Trade and Credit Sanctions in the Accumulation of Sovereign Debt, Production Capital and Reputation.*
- 92-6 Kui Yin Cheung, *On Testing the Hypothesis that Premium in US\$/A Forward Exchange Rate is Constant: A Signal Extraction Approach*
- 92-7 Khorshed Chowdhury, *On Trade and Economic Growth: Further Evidence*
- 92-8 Charlie Harvie, Chris Nyland and Stuart Svensen, *The Effects of Protective Legislation on Occupational Segregation in the United States and Australia.*
- 92-9 Amnon Levy, *Efficiency and Equity Considerations in Allocating Renumeration Under Uncertainty: The Case of Australian Universities.*
- 92-10 Amnon Levy, D.P. Chaudhri and Khorshed Chowdhury, *The Effects of Yield Variations, Price Expectations, Risk Aversion and Money Illusion on Farm-land Allocation in Punjab.*
- 93-1 Kui Yin Cheung and Lillian Cheung, *The Relative Effectiveness of Fiscal and Monetary Policy on Inflation and Unemployment: the Australian Experience.*
- 93-2 Daniel Po-ming Chan and Kui Yin Cheung, *One-Way Arbitrage with Transaction Costs: an Evidence from the Hong Kong Foreign Exchange Market.*
- 93-3 Amnon Levy, *Rescheduling a Sovereign Debt: a Theoretical Analysis.*
- 93-4 Charles Harvie and Tran Van Hoa, *Terms of trade volatility and macroeconomic adjustment in a resource exporting economy: the case of Australia.*
- 93-5 Amnon Levy and Khorshed Chowdhury, *Intercountry Income Inequality: World Levels And Decomposition Between And Within Developmental Clusters And Regions.*
- 93-6 Kyle Bruce and Chris Nyland, *Scientific Management and Market Stabilisation, 1914 - 1930.*
- 93-7 Charles Harvie, *Monetary Policy Effects in the Short and Long Run under Alternative Wealth Assumptions.*
- 93-8 Amnon Levy, *Rescheduling a Sovereign Debt: Expected Repayment, Risk and Time Preference.*

- 93-9 Amnon Levy and Khorshed Chowdhury, *Intercountry Income Inequality 1960-1990: World Levels and Decomposition Between and Within Geographical Clusters and Regions.*
- 93-10 Darren McKay, *An Input/Output Analysis of Overseas Students Studying at Australian Universities.*
- 93-11 Darren McKay and Donald E. Lewis, *Expenditures by International University Students.*
- 94-1 Ann Hodgkinson, *Dew on the Wires: the Australian Telecommunications Industry's Response to the Global Market Place—A Case Study in Corporate Organisational Change.*
- 94-2 Amnon Levy, *Continuation and Liquidation Timing: A Pareto Optimal Approach.*
- 94-3 Chris Nyland, *Beatrice Webb as Feminist.*
- 94-4 Tony Webber, *Some Popular Misconceptions about Small Country Pass-Through.*
- 95-1 Lillian Cheung, Khorshed Chowdhury, Charles Harvie & Amnon Levy, *Interindustry Linkages and Business Bankruptcy Rates: Evidence from Australia, 1973-1991.*
- 95-2 Frank Neri, *Heroin Prohibition and the Incentive for Collusion.*
- 95-3 Amnon Levy, *Repudiation, Retaliation and the Secondary Market Price of Sovereign Debts.*
- 95-4 Michael Organ and Stuart Svensen, *Research Assistants in the Clever Country.*
- 95-5 Amnon Levy, *Sovereign Debt and the Triple R Problem: Repudiation, Retaliation and Reputation.*
- 95-6 Amnon Levy, *Trade Union Membership Fees: Some Theoretical Considerations.*
- 96-1 Charles Harvie and Boon Chye Lee, *Financial Deregulation and Macroeconomic Adjustment: the Case of Australia*
- 96-2 Charles Harvie and Colm Kearney, *Public Infrastructure Capital and Private Investment*
- 96-3 Ray Markey, *The Relative Significance of the ACTU and the Labor Council of New South Wales*

- 96-4 John L. Rodgers and Joan R. Rodgers, *The Impact of Rural-to-Rural Migration on Economic Status*
- 96-5 Frank Neri, *The Optimal Price of Heroin: More or Less Prohibition?*
- 96-6 Anthony G. Webber, *Australian Commodity Export Pass-through and Feedback Causality from Commodity Prices to the Exchange Rate*
- 96-7 Ray Markey, *Colonial Forms of Labour Organisation in Nineteenth Century Australia*
- 96-8 Charles Harvie, *Economic Reform and Future Prospects of the Vietnamese Economy*
- 96-9 Amnon Levy and Khorshed Chowdhury, *Trends in Inter-Country Income Differences: World Levels and decomposition Between and Within Regions*
- 96-10 Charles Harvie, *Economic Transition and Macroeconomic Performance in the Czech Republic, Hungary and Poland: and Prospects for Membership of the European Union*
- 96-11 Ray Markey, *The Relevance of Labour History to Contemporary Labour Relations in Australia*
- 96-12 Anthony G. Webber and Warren B. Knight, *Union Density and Industry Output, Dynamic and Long Run Responses: The Case of the Australian Building and Construction Industry*
- 96-13 Ann Hodgkinson and Nelson Perera, *Why Aren't They Taking Economics? Attitudes Of First Year Students—University Of Wollongong: Case Study*
- 97-1 Charles Harvie, *Reforming China's State Owned Enterprises: What Can Be Learned from the Experiences of Other Economies in Transition?*
- 97-2 Ann Hodgkinson, *Productivity Measurement and Enterprise Bargaining in the Public Sector — The Local Government Perspective*
- 97-3 Ray Markey, *Social Democracy And The Agrarian Issue: Australia, 1870–1914*
- 97-4 Roy Adams and Ray Markey, *The Role of the State in Trade Union Growth: The Cases of North America and Australia*



Coordinated by Associate Professors C. Harvie and M.M. Metwally  
Working Paper Production and Administration: Robert Hood  
Department of Economics, University of Wollongong  
Northfields Avenue, Wollongong NSW 2522 Australia  
Phone: + 61 42 213666  
Fax: +61 42 213725  
Email: robert\_hood@uow.edu.au

WORKING PAPER 97-4  
ISSN 1321-9774  
ISBN 0 86418 489 0