A House Built on Sand

Recent developments in American Labour Law and what they mean for Australia

Thank you once again to the H.R. Nicholls Society for allowing me to present this paper at what is the Society's 33rd Conference. Who would have thought we'd have made it this far?!

In a large number of areas of law, Australians have a tendency to compare our laws and regulations to those in other parts of the world. Strangely though, few, if any, Australians – including the lawyers and politicians – have any awareness of comparative labour laws.

This paper therefore began life as a basic study in how the United States regulates the employer-employee relationships within its borders. The US is as good a place to start as any other, as its culture and institutions are very similar to ours, and we often follow trends that originated there. What I found in my research is that there are many good reasons for our ignorance of comparative labour law: in many respects, Australia is an 'island' with its unique system that makes comparison difficult; but in other ways, there is much that can be learned from our American cousins, few of which bode well for Australia's industrial future.

The Constitution

To understand the American system one first has to understand their Constitution. Section 8 enumerates the powers of the Congress, which broadly includes *"Commerce… among the several States"* though makes no specific mention of labour. Given that the Australian Constitution was in great part inspired by that of the United States, it is no surprise that the chronology of jurisprudential fashion in the United States is very similar to ours. For a long time the US Supreme Court accepted the doctrine of 'reserve powers' that belonged to the states, i.e. any powers not expressly provided to Washington remained with the states. This view was also adopted by the High Court of Australia (*Huddart Parker, 1909*).

Whilst this doctrine was progressively abandoned by our High Court in the *Engineers' Case* (1920), *Concrete Pipes* (1971) and the *Work Choices Case* (2006), it still lives on to some extent in the US. Consequently America still has a large degree of inter-state competition with respect to the regulation of labour. The southern states tend to be less union friendly and prescribe less minimum employment conditions than their north-eastern or western compatriots.

However President Franklin D. Roosevelt and the Supreme Court of the New Deal era attempted and succeeded (for the most part) in centralising the regulation of labour relations to Washington. To do so, they also needed to first demolish the reserve powers doctrine.

FDR and the New Deal

FDR was elected in 1932 on the promise for a 'New Deal' to fix the American economy. Despite the almost universal acclaim his memory receives today, FDR was actually a dreadfully bad leader of his people in the decade after his first election. The *Bloomberg* and *Wall Street Journal* contributor, Amity Shlaes, has produced a lot of material in recent years to revise this unwarranted nostalgia for the FDR years. In her 2007 bestseller *The Forgotten Man*, Shlaes showed how Hoover was a bad President but FDR was even worse still. What both had in common was an unshakable belief in the primacy and omnipotence of central government. They were Keynesians before they knew that the term applied to them.

Despite the mythology, unemployment in America actually peaked in 1936, four years after FDR was first elected. He tried to combat the deflation caused by endemic bank collapses

through a program of Keynesian spending programs and ceiling pricing. It seems extraordinary to us today, but FDR had farmers imprisoned for selling their chickens at too high a price for his liking.

FDR was America's version of Gough Whitlam. He was a man who grew up in privilege on Long Island and never worked a day in his life prior to entering politics, but he had a radical socialist bearing that many of his upbringing display even today, so when he came to office in the midst of such a deep crisis, he felt the conditions were right for him to experiment with some of these ideas.

He filled his cabinet and personal staff with similarly inexperienced ideological travellers from the Harvard and Columbia academia and they set a course to reshape America. His inner circle included Adolf Berle, the inventor of that great faddish nonsense 'Corporate Social Responsibility', and Harry Hopkins, who was later accused of passing nuclear secrets to the Soviet Union. Classy people.

National Industrial Recovery Act

One of the first legs of the New Deal was the *National Industrial Recovery Act* (NIRA) which was legislation that Adolf Hitler would have been immensely proud of. Signed by Roosevelt in June 1933, the NIRA was effectively aimed at addressing Roosevelt's theory (since debunked) that all the US economy needed was a good dose of inflation to get it restarted.

The NIRA created the National Recovery Administration (NRA) and authorised it to spend $13.4 billion ($135 billion in 2013 values) on the construction of roads, public buildings and artistic projects; legislated for the first time to recognise collective bargaining; set the first national minimum wage and maximum hours of work; and, most controversially, gave the President the power by regulation to regulate how commerce was to be conducted, including the setting of floor prices for tradable goods.

The NIRA provisions that enabled the recognition of collective bargaining naturally resulted in their own consequential disputes, so Roosevelt created the National Labor Board (NLB) under the auspices of the NRA to administer this in August 1933. From the start, the NLB was organised on a tripartite model of a representative from each of employers, unions and government who could work together to settle disputes, or in the worst case, arbitrate them. This model more of less still exists in the modern National Labour Relations Board (NLRB).

The Unions' Best Friend

The NIRA proved a huge boon to the trade union movement. One of the first major industrial disputes of the New Deal was the Los Angeles Garment Workers strike that began on 12 October 1933. Whipped up by the union reps from the east coast who were looking to enforce a closed shop in the west through promises of a 35 hour work week and higher wages during a Depression, 3,000 striking workers physically assaulted co-workers who refused to join the picket line for 26 days until the employers acceded to the majority of their demands.

This dispute provided a template to the unions across the country, which by this time was becoming increasingly militant under the leadership of John L. Lewis. Lewis started his career in the United Mine Workers of America (UMW) and served as their President from 1920 until 1960. As the leader of such a large union, he had a national profile even though he was not the official leader of the American Federation of Labor (AFL). In a way, he was the Paul Howes of his day.

Lewis quietly donated $50m (in 2013 values) of UMW funds to FDR's 1932 campaign and in return he was rewarded with an inaugural position on the NLB. Initially vehemently anti-Communist, the Depression radicalised Lewis and by the time of Roosevelt's ascension he had aligned himself with the pro-Soviet forces inside his and other allied unions. His position of influence within the NLB also meant that the staff of the NLB became stacked with Communists.

The spring of 1934 proved to be a dark watershed in the history of American industrial relations. The rest of the world was starting to emerge from the Depression yet Americans went to war on each other.

The Auto-Lite Strike

The most infamous incident was the Auto-Lite strike in Toledo, Ohio which began in April. Electric Auto-Lite was, and still is today, a manufacturer of spark plugs (it is now a division of Honeywell). The AFL had been attempting to organise the automobile industry peacefully in Detroit for a number of years but was making slow progress, so in stepped Lewis's Marist allies in the American Workers Party who recognised the potential to break into Detroit by hitting their suppliers upstream.

The AWP's first act was to picket the Auto-Lite plant, effectively sealing off the premises and prevent 6,000 from attending for work. They declared they would not relent until the workers received a 20% pay rise.

The company sought and got an injunction from the local court which was duly ignored by the AWP. The Judge who issued the injunction had the picketers arrested daily but for some reason took a long time to do anything about it. Just as the judge prepared to try them for contempt, the company decided to try and break the strike by hiring 1,500 replacement workers protected by armed guards.

The Toledo police then decided to turn a blind eye to events out of sympathy with the unions' demands. Unsurprisingly, for five days the Auto-Lite plant turned into a mini battlefield in which two men were murdered and hundreds more injured. In the chaos, other unions saw an opportunity to jump on board the industrial terrorism wagon and called a Toledo-wide general strike for 9 June. Things had escalated to such a level that the Ohio Governor called in the National Guard and Roosevelt personally intervened by sending an emissary to see if he could twist the company's arms to accede to the union demands. No prizes for guessing what happened next.

Not one person involved in the dispute was ever convicted for their activities and in a mark of utter disrespect for the law and decency, the site of the plant which closed in the '60s is today known as the Union Memorial Park.

Shortly after the commencement of the Auto-Lite action, the Social Workers Party and Communist League started similar strikes in the Minneapolis branch of the Teamsters Union and San Francisco Longshoremen (dock workers) which similarly evolved to become *de facto* general strikes and also resulted in the death of numbers of workers and police.

The aftermath of all these disputes was importantly that the unions and their communist allies achieved their aims of creating a closed shops.

Schechter Poultry Corp v United States

For these and many other reasons, the NIRA was deeply unpopular in the business community and the opportunity to challenge it in the Supreme Court came in 1934 when the

Schechter brothers from New York were jailed for, amongst other things, selling chickens individually in contravention of the President's *Live Poultry Code*.

The Supreme Court unanimously struck down the entire Act, but it was sadly too late for Toledo Auto-Lite and the others who had already been smashed by the effect of the NIRA.

There were many reasons for the overwhelming result in *Schechter*, but at its core lay the jurisprudence of the Court that had been commonly accepted since the decision in *Lochner v New York* (1905) that the government had no power to interfere in private contracts.

National Labor Relations Act (Wagner Act)

Roosevelt was however unbowed by this setback. As we have seen, the two years in which the NIRA operated had proven very lucrative for the trade unions and he saw this as a positive development.

Senator Robert F. Wagner of New York (not the actor!) agreed to sponsor the *National Labor Relations Act of 1935* to re-legislate the labour relations provisions struck down by the overall failure of the NIRA. This was colloquially referred to as the 'Wagner Act' and incredibly remains in place to this day (compare this to the various iterations to IR legislation in the same time span in Australia).

The Wagner Act, signed by Roosevelt on 5 July 1935, actually went much further than the NIRA by folding the NLB into the new NLRB and empowering it to conduct secret ballots of a workplace where employees are requesting union representation.

At its core, the Wagner Act was (and remains) deeply flawed because it is aimed at addressing the 'inequality of bargaining power' fallacy. Section 1 of the Act states:

> "*The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract and employers who are organised in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce...*"

As Geoff Hogbin outlined in his excellent paper to this Society in 2004, there is no such thing as an imbalance of power in employment relationships whilst ever either party can voluntarily terminate their contract of employment,[1] yet strangely the Wagner Act suggests that some Americans do not have liberty of contract.

Ludwig von Mises noted that "collective bargaining" is a euphemism for "bargaining at the point of a gun point".

Did those who voted for the Bill seriously believe that some Americans in 1935 were still in bonded slavery? It's incredible that such nonsense has survived to this day.

More Supreme Court Challenges

The setback of *Schechter* caused Roosevelt to rethink his strategy to ensure his legislation would withstand the scrutiny of the Supreme Court as he knew employer groups would continue to challenge his novel interpretation of the Constitution.

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[1] Hogbin, G (2006) *Power in Employment Relationships: Is there an Imbalance?* http://www.hrnicholls.com.au/articles/hrn-hogbin1.pdf

He had made a number of appointments to the Court since his election in 1933 but there was still a conservative majority of appointees made his Republican predecessors Warren Harding, Calvin Coolidge and Herbert Hoover.

As Roosevelt was later to display when he disgracefully refused to honour the convention that Presidents do not serve more than two terms, he was no true democrat. So Roosevelt started to threaten publicly that he would 'flood' the Court with his appointees if he didn't get his way by expanding the bench by six justices to fifteen in total; thus guaranteeing him a majority.

Roosevelt finally got his way when on 29 March 1937 the Court voted 5-4 in *West Coast Hotel Co v Parrish* to uphold a Washington State minimum wage law. Justice Owen Roberts, a Hoover appointee, had suddenly switched his vote to the liberal minority on the bench and thereafter voted with them to approve the remainder of the New Deal legislation. This act was known in its day as 'the stitch in time that saved nine': suggesting that Roberts took one for the team.

Unsurprisingly, two weeks later the Court also upheld the Wagner Act by the same margin in *NLRB v Jones & Laughlin Steel Corp* (1937). Thus the commerce power and the reserve powers doctrines of the US constitution were effectively demolished and Roosevelt could now ram through his centralist state takeover of the lives of millions of Americans.

National Labor Relations Board

The NLRB is a quasi-judicial body with similar, though lesser, powers and functions than the Fair Work Commission (FWC). Its greatest similarity however is in the way it approaches matters through the prism of conciliation and deal making – the idea that originated with Justice H. B. Higgins a century ago that, to paraphrase him, *'if only we could all just get together and talk about our issues, we'd all be able to agree.'*

Ray Evans used the centenary of the Commonwealth *Conciliation & Arbitration Act* in 2004 to review its impact on modern Australian workplaces in a paper he delivered to this Society.[2] What Evans found was that the Higgins settlement had been inspired by a belief that class warfare was afoot and that only intelligent people like him could set it right with legislation that 'civilised' matters. It is from this belief that the uniquely Australian concept of conciliation and arbitration was born.

Even if Higgins was right in his day that class warfare was being waged (which is highly debatable) I think we'd all agree that it is not relevant today. Certainly, industrial legislation and the way the FWC works has evolved since then, but at its core our legislation remains inspired by the original Higgins ideal which is an anachronism. Given its structure and focus on conciliating disputes, it seems highly likely that the Wagner Act and NLRB were possibly inspired by what we had developed in 1904.

The fact that the NLRB is also such an anachronism is borne by the fact it is even parodied by left wing TV programs like *The Good Wife*, where in one recent episode an NLRB board member insisted on the parties before him presenting in casual clothes and addressing each other by first names whilst he made ludicrous attempts to appear like he was 'cutting the cake down the middle' when he was actually making a serious decision to the benefit of one party over the other.

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[2] Evans, R (2004) *The Tragic Consequences of Justice Higgins,* http://www.hrnicholls.com.au/archives/vol25/evans2004.pdf

As already described above, the authority of the government to enforce the Act is provided through the NLRB which was a successor to the NLB which had already been highly infested by communists. This problem reached its nadir just prior to the War when Roosevelt appointed Nathan Witt, an open member of the Communist Party of America, as the Secretary of the NLRB.

As a side note, it's worth recalling that Roosevelt was quite fond of communists. He was the President who recognised the Soviet Union in 1933 and his many ambassadors to Moscow were famous for cabling home about how wonderful the Soviet system was. His second ambassador, Joseph Davies, even used to attend Show Trials and rooted against the accused.

By the time of Witt's appointment however, Lewis had also been expelled from the AFL for his pro-Soviet activities and he had started his own breakaway organisation of unions with militant tendencies – the Congress of Industrial Organisations (CIO). The AFL therefore started to agitate for an investigation into the NLRB.

A conservative Democrat from Virginia, Howard W. Smith, chaired a Congressional Special Committee into the Board between 1939 and 1940 and reached many damning conclusions about it, recommending its abolition. But owing to the protection of Roosevelt and the onset of war, this fell into abeyance for many years.

Nonetheless, the findings of the Smith Committee formed the basis for the eventual Taft-Hartley Act of 1947, which to this day remains the only successful major amendment to the Act.

Unfair Labor Practices

Perhaps most importantly and controversially, under Section 10 of the Act, the NLRB is empowered to prevent "unfair labor practices", which is defined by Section 8 as:

- Interfering with union organising
- Discriminating against employees on the basis of their membership of a union (or otherwise)
- Discriminating against employees who file charges or testify
- Refusing to collectively bargain ('Good faith bargaining')
- Secondary boycotts
- Closed shops
- Organisational donations to political campaigns

Until the Taft-Hartley Act amended this section, these offences could only be committed by an employer. Between 1935 and 1947 sanctions could not be imposed upon unions.

The Remington Rand Strike

Needless to say, just as the NIRA had unleashed a wave of industrial action in 1933 and 1934, the Wagner Act similarly continued this pattern. The Remington Rand strike of 1936-37 became the first test case of what 'unfair labor practices' really meant.

Remington Rand, a sister entity of the company more famous today for making electric razors, was a manufacturer of typewriters with six plants and 6,500 employees located in Ohio, New York and Connecticut. Remington was once the world's leader in word processing machines – indeed it had invented the QWERTY keyboard.

In the vein of the Auto-Lite, Minneapolis Teamsters and other strikes from the preceding years, this also followed the similar pattern: ridiculous wage demands, pickets, escalating boycotts, physical violence and the like. The difference this time however was that the company fought back very aggressively with a team of strike breakers, private security forces and pre-emptive lockouts.

The union responded by complaining to the NLRB that this constituted unfair labor practices and Roosevelt arranged the passage of the Byrnes Act of 1936 which forbade the interstate transportation of strike breakers.

The end result was a disaster for the company. Nearly nine months after the strike began, in March 1937 the NLRB handed down a damning 120-page decision that ruled all of the company's tactics to be in contravention of the Wagner Act and two directors were charged for violating the Byrnes Act (though later acquitted). The company had to cave in and within years it was defunct.

Recent Controversies

Despite this industrial carnage, it's truly incredible that the Wagner Act has survived almost untouched to this day – nearly 80 years on.

Nonetheless, the NLRB does still create a controversy (or two) from time to time. It has been in the spotlight quite a bit actually in recent times for two main reasons: the Bush boycott, the Obama appointments and the Boeing decision.

For those who aren't aware of how the American political system works, the President has the authority to make administrative appointments, but unlike in Australia, his appointments require ratification by the Senate. This has most famously been tested with very important appointments to positions like ministries, ambassadorships and the Supreme Court.

President George W. Bush lost control of the Congress in 2006 and in December 2007 the terms of three of the five NLRB members expired, leaving just two members. Democrats initially refused to support some of Bush's nominees, so he simply gave up and left the NLRB inquorate. The two remaining members, Wilma Liebman (another union lawyer) and Peter Schaumber (a former Mitt Romney aide) decided they could continue to determine matters but knew they were on weak ground by refusing to hear cases which were controversial or on which they could not reach unanimous decision. The two issued almost 600 decisions between them from January 2008 to September 2009 (when the new Obama appointees commenced).

In June 2010 the Supreme Court ruled 5-4 in *New Process Steel v NLRB* that the Board was inquorate and therefore all decisions made by Liebman and Schaumber were invalid. So the Board – by this time stacked with Obama appointees – simply turned around the next day and re-issued all 600 decisions pursuant to their newly quorate status.

But the fun didn't stop there. The NLRB under Obama has become possibly the most openly pro-union it has been since the Taft-Hartley reforms and the Cold War drove the communists out of its ranks. Big Labour made significant donations to the Obama campaign and he rewarded them by stacking the NLRB in his 2009 appointments and he attempted (and failed) to pass the *Employee Free Choice Act* which would have, amongst other things, removed the requirement for secret ballots amongst employees seeking union representation.

The Democrats lost control of the Congress in 2010 and instead of facing another hostile nomination process, President Obama instead announced on 4 January 2012 that Sharon

Block, Terry Flynn and Richard Griffin had been appointed to the Board as 'recess appointments'. Recess appointments were traditionally supposed to be used for appointments necessary to keep the 'wheels' of government turning whilst Congress was not in session. All three nominees were former union lawyers.

These appointments were immediately challenged and in January this year the D.C. Circuit Court ruled unanimously in *Noel Canning v NLRB* that these appointments were unconstitutional. The Supreme Court has agreed to hear an appeal which, if rejected, would invalidate all decisions of the Board made in 2012 and 2013.

The day after the DC Circuit decision, the Chairman of the NLRB, Paul Pearce, another union lawyer, declared that the NLRB would be ignoring the decision.

The NLRB has certainly kept the courts busy lately. Yet another recent decision appears headed to the Supreme Court after the DC Circuit and South Carolina District courts gave conflicting decisions on the validity on an NLRB decision in 2012 that required all employers to post a 'notice of employee rights' in the workplace.

Obama further enraged the business community by appointing Lafe Solomon as the General Counsel to the NLRB. It is the role of the General Counsel to investigate and file charges against those who engage in "unfair labor practices" (read: union busting).

Mr Solomon famously brought charges against Boeing in 2011 for unfair labour practices, by reason that opening a factory to manufacture its 787 Dreamliners in South Carolina instead of Seattle was a practice intended to discriminate against unions. Boeing eventually settled the complaint by cutting a deal with their union to build new 737s in Seattle (with the 787s allowed to stay in South Carolina) but the implication that the NLRB and Big Labour can dictate where businesses must be located was a massive affront to many in the business community and the Republican Party.

All this uncertainty about the validity of the decisions of the NLRB cannot be pleasing for American businesses trying to plan around what they can or cannot do with their labour forces.

The Future for America and Australia

If there is one thing that this analysis shows more than anything else, it is that America and Australia have borrowed ideas from each other's systems.

The Australian courts in *Concrete Pipes* and *Work Choices* adopted similar arguments about the interpretation of the Constitution as the majority did in *West Coast Hotel*. It just took a few decades more for the jurisprudential ideas to infect the thinking of the Australian courts.

Roosevelt's Wagner Act was undoubtedly influenced by the fallacies and prejudices of Higgins and in the Obama era particularly, the political class has undoubtedly learned the power that a stacked and institutionally-biased NLRB has upon the fortunes of Big Labor. For every Boeing there are another hundred firms reconsidering the desire to move to states or countries where it is cheaper to do business, lest they are prosecuted for unfair labour practices.

This cross-pollination of ideas does not come as a great surprise when one considers that the ACTU has looked to the New World for many decades now. Unions NSW commenced its Harvard Trade Union Program in 1942: an intensive six week scholarship in organising. Alumni include Ralph Willis, Barrie Unsworth, Michael Costa and Peter Sams, now Deputy President of FWA. A recent example of the international link can be seen in the 2012 case of

Transport Workers Union v Toll Transport where the Commission became involved in a dispute that involved four Australian TWU officials who had joined with the Teamsters to picket Toll's port haulage yard in Los Angeles.[3] The company accused the Australian officials of wearing masks from the horror-movie *Scream* whilst physically threatening non-union employees.

It is interesting to note the 2012 decision of the NLRB to mandate an employee information statement. That was an 'innovation' introduced by the Howard Government in 2006 when it was scrambling to fix *Work Choices* and was enshrined by Gillard in the *Fair Work Act* as a National Employment Standard.

When authoring the Fair Work Act, Julia Gillard made no secret of the fact that the concept of "good faith bargaining" came directly from the American experience. Everything that the Americans consider to be 'unfair labor practices' is not coincidentally now provided for in the Fair Work Act as either an outright offence or a breach of the bargaining provisions. Either way, it all strengthens the hand of the trade unions in negotiations.

Australians can expect to see nothing but union officials appointed to the FWC by a Labor government. This has already basically occurred in recent years, but I expect that once the initial shock of the affront has worn off, it will become the course *de rigueur*. Of course, Liberal governments will still attempt to achieve 'balance' in their appointments because they are rarely trained in the dark arts of industrial relations and don't understand the stakes.

Within a matter of years I predict the return of the bizarre and outrageous Commission decisions of the early 90s (who else remembers *Mohazab v Dick Smith* (1995)?!)[4] These will likely include all matter of novel decisions on what constitutes a breach of 'good faith' or 'discrimination' against union members, including offshoring being declared as illegal.

In the US, once the Democrats re-obtain control of the Congress and White House concurrently, I would expect to see them attempt to ratify the International Labour Organisation (ILO) Core Labor Standards 87 *Freedom of Association and Protection of the Right to Organise (1948*) and 98 *Right to Organise and Collective Bargain (1949).*

It isn't very well known, but the US is actually one of the worst ratifiers of ILO conventions globally. The only core conventions they have ever ratified relate to slavery and child labour. They don't like to ratify international conventions in general because they usually end up being used by countries like North Korea as a big stick by which to beat them, which is exactly what happened to the Howard Government all through its tenure for allowing Australian Workplace Agreements. The ILO had Australia up on allegations that were being investigated by committees comprised of representatives from Libya and Cuba, amongst others. I have no doubt the AFL-CIO would love to hogtie their nation in the same way.

I spend a lot of time in America, but I still can't quite fathom how the Wagner Act has survived for so long. Part of the reason is that the War and then the Taft-Hartley Act took a great deal of the political sting out of the legislation – even if the achievements of Taft-Hartley were relatively minor because they had to be modest enough to survive Truman's presidential veto.

Another major factor is that the States still have a greater degree of control over industrial laws than Australian states ever did, even before *Work Choices*. It is possible, though unlikely, that an American president would try to take total federal control of industrial legislation. Americans are still far too federalist to allow that.

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[3] [2012] FWA 4822

[4] 62 IR 2000

However, in my view, the biggest reason for the longevity of the Wagner Act is political. Despite the fact that it was actually a spectacular failure and made the Depression far worse than it needed to be, the New Deal has today taken on mythical qualities about its successes that have made rendered critical analysis of it as almost unpatriotic for Americans. It is the classic case of the winners writing history.

I detect that this may now be starting to change. As the unions and NLRB have started to overreach under Obama, Republicans are for the first time since Taft-Hartley starting to talk about whether there is a future for the Board. The need in a time of deep recession to stay competitive on a global stage is another factor pushing America in the direction of reform.

Bush nobbled the organisation by refusing to nominate anyone to it. The influential Cato Institute, a libertarian think-tank, commenced a campaign in 2011 to abolish the Wagner Act and in June 2012 Senator Lindsay Graham described the NLRB as the *"Grim Reaper of job creation"*.[5]

It would appear clear to me that a return of the Republicans to control of the Congress and White House could well lead to a complete overhaul of Roosevelt's baby (and not a day too soon!)

This is however where the American and Australia systems are likely to move in different directions over the coming years. Australia is very unlikely to significantly amend the *Fair Work Act* for a long time because the Liberals are too scared to touch it and it's an article of faith for Labor's union sponsors. So while America is likely to be liberalising and become more flexible, Australia is heading in the opposite direction – back to a time where mining unions in the Pilbara staged strikes over ice cream flavours.

R.I.P. Charles Copeman AO (1930-2013). A great Australian.

Kyle Kutasi
Perth, Australia

7 July 2013

[5] http://thehill.com/blogs/on-the-money/1007-other/232603-graham-nlrb-the-grim-reaper-of-job-creation