THE MYSTIQUE OF SECRET BALLOTS: LABOUR RELATIONS PROGRESS v. INDUSTRIAL ANARCHY

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THE PROBLEM

Our folklore and our history are full of instances where a crowd of solid citizens has been whipped up to a state of frenzy by a small well-knit group of manipulators using the mob for their own ends. From Mark Anthony's famous speech in Shakespeare's "Julius Caesar", to the angry crowd of Parisiennes storming the Bastille, it is readily apparent that our legends and history are ripe with instances of skilful leaders encouraging passive crowds. Yet when such historical events have been analysed by later generations it has become clear that the "manipulation" theory is over-simplistic. For example, one can trace the causes of the French revolution back to the death of Louis XIV and beyond. Though the leaders of the French revolution must share the blame for much of the bloodshed, they were only one factor in a complex interplay of political, social, economic and personal circumstances and events.

In Australia over the last two years industrial tensions have increased and the effects of some strikes and work stoppages have been widely felt throughout the community. A number of persons and interested groups have advanced the hypothesis that the majority of salary earners involved in such disruptions are unwilling participants in a union movement which is controlled and manipulated by a group of well organized and hard-headed persons using the labour movement for their own purposes. This hypothesis is of course based on the premise that the rank and file are on balance less aggressive than their leaders. Many adherents of this theory have recommended as a solution first that compulsory strike ballots be held before any strike action is taken and, secondly that voting be made compulsory in all union elections. Thus it is hoped that such measures would alter the balance of power to enable the rank-and-file to curb the excesses of opportunist leaders and in a flash our industrial relations system would be back on course. For the sake of clarity I have stated this theory in its strongest terms; though it must be recognized that countless and more subtle variations can be played on this theme.

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It is my contention in this paper that the problems which beset out industrial relations are complex to say the least; that any theory based on the premise that unionists are victims of manipulation is too simplistic; and that all-embracing secret ballot solutions will do little to help us. I shall further contend that by proceeding slowly, thoughtfully and carefully, our industrial relations system can be improved. In order to delve deeper into this problem, it will be necessary to examine the laws related to strike ballots and election ballots which are presently in force and to ascertain their past and present effects upon the union movement. It may then be possible to postulate some possible solutions to our present problems.

UNION DEMOCRACY

At the outset it is important to make one preliminary point; though what I am about to say is obvious, it is worth stating now for the sake of clarity. Union democracy is dissimilar from political democracy as we now know it; it has its own traditions and framework[1] but for our purposes it will be sufficient to examine elections. When one thinks about union elections, one is tempted to draw an analogy with political elections, but it is a mistake to draw such an analogy for the following reasons. First, political elections are a contest between two well organized political parties each of which having a complex hierarchy or structure. Essentially such an election is a contest where the voters choose between two elites with firm plans and objectives. An election in a union however is usually a choice between competing members of the same elite who have all grown up in the one union structure. Secondly, in an ordinary political election (apart from some exceptions), both political parties are able to disseminate their policies throughout the news media and normally have access to sufficient finance for their purposes. On the other hand, in a union election it may be very difficult for a potential opposition to disseminate its views and to have access to finances; for usually the incumbent group will control the union journal; and as salaried officers of the union they will have the time and financial ability to mount a strong campaign. If one needs to draw an analogy at all, union elections can be more easily likened to the struggles, manoeuvrings and elections inside a political party.

FEDERAL CONTROLS[2]

When one examines federal controls on union democracy it is readily

[1] The literature on this topic is enormous but see generally, W. M. Leiserson, *American Trade Union Democracy* (Columbia University Press, New York, 1959), G. W. Brooks, *The Sources of Vitality in the American Labor Movement* (New York State School of Industrial and Labor Relations, Cornell University, Bulletin 41, 1960), W. A. Howard, "Democracy in Trade Unions" in J. E. Isaac and G. W. Ford (ed.), *Australian Labour Relations Readings* (Sunbooks Pty Ltd, Melbourne, 2nd ed., 1971) p. 264.

[2] The governments of the Australian states have passed laws controlling internal affairs of trade unions and such laws contain provisions relating to elections and secret ballots. These controls are beyond the scope of this paper.

apparent that such controls are ancillary to the main purpose of federal law which is to encourage and strengthen compulsory arbitration. When the first *Conciliation and Arbitration Act* was enacted in 1904[3] the main purpose of the legislation was to balance employee and employer power by strengthening the position of the single worker through the imposition of federal arbitration.[4] Commencing with the *Harvester* case[5] and beyond, the Australian Conciliation and Arbitration Commission[6] was to hand down minimum wage decisions to ensure a fair standard of living for a worker and his family in a civilized society.

In order for such a system to operate successfully the arbitration tribunal needed employer and employee mouthpieces to place before it their respective cases to enable the Commission to arbitrate; it was thus necessary to encourage employee and employer organizations to fulfil this purpose. The labour movement had been weakened by the strikes of the 1890s, and was unable to stand alone against employer pressure. Therefore the arbitration system had to give legal protection to these fledgeling organizations; for as the High Court stated in the *Jumbunna* case[7] the creation and fostering of federal organizations was a necessary precondition to federal arbitration. Therefore from the commencement of federal arbitration in 1904 trade unions and employer associations were registered as federal organizations, they were given security of tenure and a limited monopoly within the system, they were able to sue and be sued and hold property in their corporate name.[8] Upon registration federal unions became public organizations and not voluntary associations and were thus different bodies from their counterparts in Britain. The federal government (and Higgins J.) had thrown a protective cloak around the shoulders of the trade union movement and thus through federal regulation had curbed the excesses of nineteenth century employer power. Therefore whenever real or potential union power was likely to affect the federal arbitral system by upsetting the employee/employer balance of power, it

[3] Act No. 13 of 1904; see now *Commonwealth Conciliation and Arbitration Act 1904-1975*, hereinafter referred to as the "Act".

[4] See generally H. B. Higgins, *A New Province for Law & Order* (Constable & Co. Ltd, London, 1922; reprinted Dawsons, London, 1968).

[5] *Ex parte H. V. McKay* (1907) 2 C.A.R. 1.

[6] From 1904 until 1956 the Commonwealth Court of Conciliation and Arbitration carried out the arbitral and judicial functions of federal arbitration. After 1956 the arbitral functions were given to the Australian Conciliation and Arbitration Commission and the judicial functions were bestowed upon the Australian Industrial Court.

[7] *Jumbunna Coal Mine (No Liability)* v. *Victorian Coal Miners' Association* (1908) 6 C.L.R. 309. See also *Australian Tramways Employees Association* v. *Prahran and Malvern Tramways Trust and others* (1913) 17 C.L.R. 680.

[8] See ss. 132, 136, 142, 142A and 146 of the Act; for a discussion of federal registration see J. H. Portus, *The Development of Australian Trade Union Law* (Melbourne University Press, Melbourne, 1958) pp. 168-181; E. I. Sykes and H. J. Glasbeek, *Labour Law in Australia* (Butterworths, Sydney, 1972) pp. 701-737 and F. T. de Vyver, "Government Control of the Internal Affairs of Trade Unions; Australia and the United States" (1973) 15 J. of Ind. Rel. 296.

was only natural for the government to enact further and more complex regulations to nullify union excesses.

In the late 1920s the potential strength of the trade union movement and the possible abuse of its power had become known to the general public. There had been upheavals during and after the First World War; and it is submitted that the English General Strike of 1926 brought home to the Australian public the strength of the union movement. In 1928 the Bruce—Page government attempted to restrain union power by introducing secret ballots into federal law to ensure that union leaders were bound by the decisions of the rank and file membership. The *Commonwealth Conciliation and Arbitration Act* was amended by the enactment of ss. 56A-56G[9] which provided a scheme whereby secret ballots could be held on important union matters. First, any ten members of a union could demand that a ballot be held in relation to an election, or a resolution, or any question affecting the union or one of its branches. If the union did not comply with this demand then the court could order such a ballot. Secondly, where the court took jurisdiction over an industrial dispute it could order a secret ballot to ascertain the views of the membership on the dispute. In 1930 the Scullin labour government repealed the provisions which gave the individual unionists the right to demand a ballot;[10] but the court was still free to order a ballot during a dispute.

The wording of these strike ballot provisions has been altered from time to time, the latest amendments occurring in 1972,[11] and the provisions are now located in ss. 45, 45A and 46 of the Act. In brief these sections provide that a presidential member of the Commission may order a ballot to be conducted by the Industrial Registrar to ascertain the views of the unionists, if there is a threatened or actual industrial dispute, work-ban or stoppage. If a person is convicted of interfering with the taking of such a ballot he is liable to a $500 fine or imprisonment for six months.

After the last war union power again came to the notice of the general public and to the parliament. In fact there was industrial upheaval throughout the western world in the late forties and in Australia communist and Grouper anti-communist forces were battling to obtain control of a number of key unions.[12] This time it was the Chifley labour government which in 1949 enacted further legislation[13] to curb union power by again attempting

[9] Act No. 18 of 1928; see generally Portus, *op. cit.* at p. 185.
[10] Act No. 43 of 1930.
[11] Act No. 37 of 1972.
[12] See D. W. Rawson, "The A.L.P. Industrial Groups" in J. E. Isaac & G. W. Ford (ed.) *Australian Labour Relations Readings* (Sunbooks Pty Ltd, Melbourne, 2nd ed., 1971) p. 205; for an anti-labour view see J. R. McClelland, "Experiences of Australian Labour Movement under Government Control" in M. Harrington & P. Jacobs (ed.) *Labor in a Free Society* (University of California Press, Los Angeles, 1959) p. 139.
[13] Act No. 28 of 1949; see Portus *op. cit.* pp. 194-198; L. S. Merrifield, "Regulation of Union Elections in Australia" (1957) 10 Ind. & Lab. Rel. Rev. 252.

to ensure that union leaders were controlled by the rank and file. First, under what is now s. 133 it was provided that union rules must make provision for secret ballots in union elections and may provide that voting be compulsory.[14] Secondly, under what are now ss. 159-169B a member of a union can apply to the Industrial Registrar to ask the Industrial Court to enquire into any irregularities which may have occurred during an election. The Court may hold an enquiry and may declare an election or a step in an election to be invalid and of no effect. However under s. 165(4) the Court may only declare an election to be invalid where "having regard to the irregularity found, . . . the result of the election may have been affected, or may be affected, by irregularities". This provision prevents an election being set aside when some irregularities are found but where the presence of such irregularities would not have affected the outcome of the election. Where election malpractices could have affected the result of a ballot, the Court may ask the Industrial Registrar to hold a fresh election.[15] Thirdly, a union, and after 1951[16] a group of unionists, could apply under what is now s. 170 of the Act to the Industrial Registrar asking him to conduct a union election or elections. This provision allows an election to be conducted fairly and impartially by a disinterested government official.

There have been amendments to these provisions, the most recent being in 1973,[17] s. 133 was altered and it now requires union rules to make provision for the direct election by the rank-and-file by secret ballot of a wide range of committees and officers within the union structure. The Act was further amended in 1973 to make the federal government liable to pay all the expenses of an election conducted by the Industrial Registrar, thus providing an incentive for unions to have all their elections conducted by federal officials.[18] It must not be thought that these strike ballot and election ballot controls are the only federal laws regulating internal union procedures. All trade unions when registered must have rules which must be certified by the Industrial Registrar.[19] Under s. 140 of the Act the Industrial Court can declare a union rule to be invalid if it is contrary to an award, contrary to law or oppressive, unreasonable or unjust. Under s. 141, the Industrial Court can order union officials to act according to and observe all the provisions of their union rules. There are further provisions relating to the right to membership of, and the right to resign from a federally registered union.[20]

[14] See also *Commonwealth Conciliation and Arbitration Regulations*, Reg. 115.
[15] Section 165A of the Act.
[16] Act No. 18 of 1951; see also *Commonwealth Conciliation and Arbitration Regulations*, Reg. 139.
[17] Act No. 138 of 1973.
[18] See s. 170A(4) of the Act.
[19] Section 139 of the Act.
[20] Sections 144-145 of the Act. A detailed study of these controls is beyond the scope of this paper but for an analysis see C. B. Fox "Some Aspects of Union Regulation: The Implications for Union Democracy" (Unpublished M. Admin.

When the legislature enacted strike ballots in 1928 and election controls in 1949, it was attempting to control union power by endeavouring to ensure that strong and resolute union leaders would not be able to manipulate the rank-and-file for their own purposes. The legislature acted on the assumption that without such restraint aggressive leaders would be able to control a docile and placid union movement. In order to test this assumption and to evaluate the effects of these controls it will be necessary to examine the effects of the strike ballot and election ballot controls.

STRIKE BALLOTS

In the 47 years since the strike ballot provisions were introduced into the Act, only 5 actions have come before the Commission relating to the use of such ballots. In 2 cases unionists have requested the Commission to hold a ballot; in two other matters the Commission ordered a ballot to be taken in order to settle an industrial dispute; and in the final case a presidential member stated that he might consider ordering a ballot, but on reconsidering declined so to do.

In 1929 in *Re Secret Ballot of the Australian Timber Workers' Union No. 1 (N.S.W.) and No. 2 (Victoria) Branches*[21] a group of unionists acting under s. 56C of the Act requested the court to order a secret ballot in the Victorian and New South Wales Branches of the Timber Workers' Union. Under the then s. 56C, ten or more unionists could request the court to hold a ballot upon any question affecting the organization or one of its branches; as we have seen this section was repealed in 1930.[22] In 1929 the court made an award and the unionists in Victoria and New South Wales struck protesting against this new award. A small group of members asked the court to hold a secret ballot of all the members of the two branches as they believed that a majority of workers would be prepared to work under the award. Luken J. ordered that a postal ballot be conducted by the Deputy Industrial Registrar and the unionists were asked whether they were prepared to work under the new award. A number of the leaders and many of the rank-and-file were hostile towards the ballot and public meetings of workers were held in Sydney. When the ballot papers were scrutinized, it was concluded that 302 papers had been marked by one person and that a further 120 papers had also been interfered with. There were 15,221 qualified voters and 6,093 ballot papers were received by the Deputy Registrar. 732 said they were prepared to work under the new award, 5,318 said no, and 43 votes were informal. As so many votes had

thesis, Monash University, 1975); R. C. McCallum "The Relationship Between an Individual and His Trade Union Within the Framework of Australian Compulsory Arbitration and Canadian Collective Bargaining" (Unpublished LL.M. thesis, Queen's University, Ontario, 1974).

[21] (1929) 27 C.A.R. 839.
[22] Act No. 43 of 1930.

been tampered with these figures were inconclusive and it cannot be truly said they represented the wishes of a majority of the unionists.

In 1962 in *Re Wool and Basil Workers' Award*,[23] the union executive asked the Commission to hold a secret ballot of its New South Wales members in order to ascertain whether they were prepared to resume work. Some employers had decided to absorb fresh marginal increases into existing over-award payments. The union struck and the employers obtained an order under the then s. 109 of the Act[24] enjoining the New South Wales Branch to obey the bans clause in the award. On 30th November a mass meeting of workers was held in Sydney where the executive recommended that the members vote in favour of a resumption of work. But one member of the executive spoke urging the men to disregard the views of the other officials and to remain out and the meeting agreed with the dissenting executive member. The union then asked the Commission to order a secret ballot and the Commission complied with the request making the ballot a pre-paid postal one to be conducted by the Registrar. It can be surmised that the union leaders took this action to protect themselves from s. 111 contempt proceedings as the union had remained on strike. The matter came before the Industrial Court[25] and the union was subsequently fined $400 the court holding that the secret ballot proceedings were irrelevant to the s. 111 proceedings. The men returned to work and arrangements for the ballot were cancelled.

In two wartime cases the court ordered the holding of secret ballots in an attempt to settle industrial disputes; both cases came before the court on a reference from the Industrial Registrar pursuant to his powers under the National Security Regulations. In *Australian Textile Workers' Union* v. *Aberfoyle Manufacturing Co. (Aust.) Pty. Ltd.*[26] a variation was made in the clothing trade award giving wartime wage increases. However there was a ground swell of discontent amongst the rank-and-file unionists as many members thought they were falling behind other wartime workers especially those in the aircraft and munition industries. Protest meetings were held and the Australian Textile Workers' Union struck in New South Wales and Victoria. After a series of conferences the employers offered some increased benefits in order to settle the dispute, and urged the court to hold a ballot to determine whether such a settlement was acceptable to a majority of the workers. A ballot was conducted by the union in the textile factories and a majority of the voters were in favour of the proposed settlement, which was eventually embodied in the award. It is difficult to ascertain whether the holding of the ballot was a catalyst in hastening a settlement. If a ballot had not been taken, it may have been that as the workers had received some increases and as there was pressure to resume

[23] (1962) 17 I.I.B. 1398.
[24] Section 109 was re-shaped in 1970. Act No. 53 of 1970.
[25] *Dourcy* v. *Wool and Basil Workers' Federation of Australia* (1962) 17 I.I.B. 1356.
[26] (1941) 45 C.A.R. 453.

production in order to aid the war effort, the executive and the rank-and-file would have speedily accepted the settlement terms.

In the *Australian Tramway and Motor Omnibus Employees' Association* v. *Commissioner for Road Transport and Tramways (N.S.W.)*[27] a mass meeting of unionists passed a resolution that the venue of the Randwick races be changed to Rosehill for the Easter week-end of 1945. Conciliation Commissioner Morrison recognizing the disruptive effects of any transport strike during wartime ordered the union to hold a secret ballot to ascertain whether a majority supported the stop work resolution. He also gave an assurance that a number of army personnel with tramways experience would be released into the civilian work force in order to alleviate the stresses of lengthy overtime work which had caused frustration within the union. When the ballot papers were counted, 2,772 were in favour of postponing the threatened stoppage and 2,266 were in favour of striking. This ballot showed a majority of members to be in favour of restraint, but it may have been that the promise of extra manpower within the industry alleviated the problems felt by the workers.

Finally it must be added as a postscript, that in 1973 in a dispute involving the State Electricity Commission of Victoria Aird J., a presidential member of the Commission intimated that he might consider the holding of a secret ballot; but after further consideration he declined to do so.[28] It is my understanding that on other occasions members of the Commission may have alluded to the possibility of the holding of a ballot, but they have made no direct pronouncement on the point.

It is difficult to draw meaningful inferences from these cases; but it is safe to assert that the following threads can be gleaned from the decisions. First, the Commission has used its strike ballot powers very sparingly only ordering four ballots; two at the behest of unions, one prompted by employers, and one on its own motion. The two union requests tell us very little; in the *Timber Workers'* case[29] the ballot proved to be futile; and in the *Wool and Basil Workers'* decision[30] the union executive used the ballot to protect themselves and their union from Industrial Court penal sanctions. The two wartime cases revealed less; in the *Textile Workers'* case[31] the ballot simply sealed a compromise settlement between union and management; and in the *Tramways* case[32] the dispute was non-industrial and matters reached a head largely as a result of wartime pressures and frustrations. It is unwise to place much weight upon these

[27] (1945) 54 C.A.R. 456.
[28] It is my understanding that Aird J. mentioned the possibility of conducting a secret ballot in a conference of the disputants which he was chairing. No transcript records are kept of these informal meetings. I am grateful to Mr J. McMahon of the Federal Department of Labour and Immigration for his valuable help in researching this case for me.
[29] (1929) 27 C.A.R. 839.
[30] (1962) 17 I.I.B. 1398.
[31] (1941) 45 C.A.R. 453.
[32] (1945) 54 C.A.R. 456.

wartime decisions as strain and war effort pressures played such a large part in them.

Secondly, in all the cases the ballots were only ordered in union branches; no national ballot has ever been ordered by the Commission. It may be surmised that as a vast majority of national strikes have been brief, the Commission may have felt it time-wasting to wait for the result of such a poll and therefore preferred to deal with the union executives. Perhaps the Commission felt more comfortable working with the articulate leadership.

Finally it is difficult to infer from the cases that the rank-and-file are more moderate than their leaders. The fact that the Commission has failed to order ballots in certainly 99% of the disputes which have come before it would seem to suggest that their Honours believe that the active rank-and-file accept the advice of their leadership. Otherwise, why if one could be always sure of a moderate response, not simply order ballots and use the results to pressure the leaders into a settlement?

One can often find instances in Australian industrial relations where the rank-and-file have been more extreme and less subtle than their leaders. At the time of writing, a dispute between Melbourne newspapers and the Printing and Kindred Industries Union was in existence. On Friday, the 15th August, union officials requested the rank-and-file on the picket line outside the Melbourne Herald office to let the trucks pass through. As one hot and bothered official explained, such a concession would aid union management negotiations and in the long run be of advatage to the men. However the pickets only understood the short term implications of their action and refused to obey their official. Of course instances going the other way could be cited; one only has to turn to the recent Amalgamated Metal Workers' dispute over wage indexation where the leadership softened its demands after disinterest and fragmentation within the rank-and-file. The point is that the evidence is inconclusive either way, and that it is unsafe to assume that the rank-and-file are merely puppets of the union leadership. It is safer to assume that the members and their leaders in general share the same aggressions and that their aims and aspirations are broadly similar.

Overseas experience projects the same results as our Australian research. No discussion on strike ballots would be complete without turning to the report of the Donovan Commission[33] which was set up by the English government in 1965 to examine industrial relations in Britain. The authors examined strike ballots and state

> "428. There is little justification in the available evidence for the view that workers are less likely to vote for strike action than their leaders;

[33] *Royal Commission on Trade Unions and Employers' Associations 1965-1968* (H.M.S.O., Cmnd. 3623, London, 1968).

and findings from our workshop relations survey, already cited, confirm this. Experience in the U.S.A. has been that strike ballots are overwhelmingly likely to go in favour of strike action. This is also the experience of Canada, where strike ballots are compulsory in the provinces of Alberta and British Columbia . . ."[34]

It may be useful to recount a little of the Canadian experience as the British Columbia story is interesting. The Canadian Province of British Columbia operates a collective bargaining system on the North American pattern.[35] Where a union receives the support of a majority of the workers in a factory, it is certified as their bargaining agent and can bargain with the employer over wages and working conditions, and eventually both parties will sign a binding collective agreement. Strikes are illegal during the currency of such an agreement, though during bargaining either side may resort to industrial action.

The conservative Social Credit government of Premier Bennett introduced strike ballots into the provincial labour legislation on the belief that this would prevent industrial disruptions. In August 1972 the New Democratic Party (Canada's equivalent to our Labor Party), swept into office ending Premier Bennett's 23-year long reign; and naturally enough the new government set about drafting a new labour code. As the party had a majority in the uni-cameral legislature the new code[36] had a quiet passage through the House in the Fall of 1973.[37] The code repealed many of the old laws including one which forbade unions from donating money to political parties. But under s. 81 of the new code, a union must hold a ballot embarking on strike action during bargaining. If the ballot is favourable to strike action, then the leaders can order a stoppage at any time in the three month period subsequent to the taking of the ballot. The union movement was unconcerned about this restriction, as experience had taught it that the leaders could normally expect support from the rank-and-file on a crucial bargaining issue.

From Australian and overseas experience it can be concluded that strike ballots have not by themselves prevented industrial disruptions; and further they have not shown that the active rank-and-file are being manipulated by the leadership. It is suggested that on such evidence, the introduction of compulsory strike ballots would not lead to a lessening of industrial stoppages; rather they could bring about bitterness and worst of all wild cat unofficial strike action thus enhancing the growing power of the shop floor movement.

[34] Ibid. Para. 428 at p. 114.
[35] For a discussion of the history and the development of Canadian collective bargaining see A. W. R. Carrothers, *Collective Bargaining Law in Canada* (Butterworths, Toronto, 1965).
[36] *Labor Code of British Columbia Act* S.B.C. 1973 (Second Session) C.122.
[37] See H. W. Arthurs, "The Dullest Bill: Reflections on the Labour Code of British Columbia" (1974) 9 U.B.C.L. Rev. 280.

ELECTION BALLOTS

The provision relating to enquiries into election irregularities and to government controlled election ballots which were enacted in 1949 have had a greater measure of success than the strike ballot provisions. In a recent article Professor F. T. de Vyver[38] published some interesting research on the effects of these election controls on federal unions. As we have seen, individuals can apply to the Industrial Registrar for an enquiry by the Industrial Court into election irregularities; de Vyver shows that since 1949 approximately 35 cases have come before the Court.[39] It is also possible to attack election irregularities by an individual bringing an action under s. 141 demanding that officials comply with the union rules. Since 1949 some 45 cases[40] involving breaches of election rules have been brought to the Industrial Court under this section. Thus these laws have allowed individuals and minority groups to have redress against recalcitrant or negligent officials in relation to elections.

As we have seen under s. 170 of the Act, a union can ask the Industrial Registrar to conduct its elections. Since 1949 some 604 elections have been held in this manner by 43 out of Australia's 300 unions.[41]

From this information it is possible to conclude that the actual process of voting in elections is controlled by the law with the government playing a neutral role, leaving it up to individuals and groups of unionists to ensure official compliance with these regulations. The only other country with comparable election controls is the United States where in 1959 Congress passed the *Landrum-Griffin Act*.[42] This statute was primarily designed to prevent widespread financial malpractices in some American unions, but it does lay down an election procedure requiring fair elections by secret ballot. It is difficult to assess the effects of this legislation and to draw meaningful conclusions which have relevance for Australian labour relations; as the main thrust of the American legislation is aimed at financial malpractices and the problems of trusteeship of the local unions.[43]

It is suggested that the Australian controls, while effective on the surface naturally have limitations. The candidates for office will be limited to those in the union elite or elites as the case may be and usually the voters will have a choice between two or more earnest officials with similar values. Furthermore the power and persuasiveness of the incumbent elite may be too much for even a strong and dedicated opposition group.

38 F. T. de Vyver, "The Use of the Australian Machinery for Supervising Union Elections" (1975) 17 J. of Ind. Rel., 135.
39 Ibid. 144.
40 Ibid. 141.
41 Ibid. 139, 140.
42 72 Stat. 519 (1959).
43 For a brief discussion of the *Landrum-Griffin Act* see Benjamin J. Taylor and Fred Witney, *Labor Relations Law* (Prentice Hall, Inc., New Jersey, 1971) pp. 473-502; F. T. de Vyver, "Government Control of the Internal Affairs of Trade Unions: Australia and the United States" (1973) 15 J. of Ind. Rel. 296.

The recent Mitchell drama in the Hospital Employees Federation No. 1 Branch of Victoria is a pertinent example. From 1967 until May 1974, Mr Mitchell ran this union branch in an autocratic fashion almost like a military leader. He was successful in his work and achieved wage increases for the members. However an opposition group sprang up and eventually brought actions under s. 141 of the Act to enjoin Mr Mitchell to observe the union rules. In *McLure* v. *Mitchell*[44] the Industrial Court found against Mitchell. During the trial interesting facts came to light. It was adduced in evidence that Mitchell was receiving special Christmas payments, a holiday with spending money, insurance policies, extra long service leave plus special leave, a car and of course a $21,000 salary.[45] However after such wide publicity Mr Mitchell was re-elected as branch secretary in the following August polling 78% of the votes.[46] Subsequently he resigned, but his long time helper and formerly assistant secretary, Donald Joiner, was elected as Secretary on the 13th August of 1975 with a two to one majority over the reform group candidate.

It is difficult to draw meaningful conclusions from this case, but it is safe to state the following. First, whatever the faults of Mitchell, he was popular amongst interested and voting union members. Secondly, his success as a union negotiator outweighed his failings as a democrat and as a selfless worker. Thirdly, it can be seen that an incumbent group can have enormous leverage over the union rank-and-file. Finally, this case also shows that the interested, as distinct from the apathetic, Hospital Employees Federation members are not in any sense less aggressive or more moderate than their leaders.

From the above it can be concluded that the secret ballot election procedures have been effective so far as the formal voting machinery is concerned; but it is suggested they have not affected the actions of union elites or the determined aspirations of the rank-and-file. It is further suggested that without more the introduction of compulsory voting into union elections would not affect the actions of unions or their leaders and would most likely lead to a large number of informal or donkey votes being cast, and owing to the increased amount of bureaucratization, further frustration within the union movement.

CONCLUSIONS

It has been asserted in this paper that the introduction of strike ballots and election ballots into federal arbitration law has been a governmental reaction against the surfacing of real or imaginary union power. It has also been asserted that strike ballots have been a failure, and that while election

[44] (1974) 29 I.I.B. 846.
[45] Ibid., 864, 865 *per* Joske, J.
[46] (1974) 16 A.I.L.R. Rep., Industrial Notes, 6 September, 1974.

ballots have achieved a great deal both measures have had little effect on union power. It is suggested these measures have largely failed owing to a false assumption on the part of the legislature that the union leaders have been manipulating the rank-and-file. It is preferable to work from the assumption that unionists simply reflect the aggressive values of our society; and that whilst their leaders may be more outspoken, they are in fact swimming along with the rank-and-file tide.

It is further suggested, relying upon my above assumption, that different means be used to quell industrial disputation. First, programmes of union education ought to be continued and widened;[47] for a broad based educated elite will in the long run improve our industrial relations. Through the acquisition of knowledge, such an elite is more likely to examine industrial problems objectively balancing short term and long term effects. In time such a group might become more moderate than the rank-and-file.

Secondly, if unions can be encouraged to employ professionals as administrators, this new blood may be better able to breach the gap between unions and management. It will be possible for unions to employ such persons only when they are large industry-wide organizations.[48] Three hundred unions in Australia is a luxury we can no longer afford; therefore union amalgamations should be encouraged by the legislator. At present our amalgamation laws are inadequate;[49] for under s. 158N of the Act a group of unions require 50% of their members to vote in a ballot before amalgamation is permitted. As union apathy is well known, such a high ballot response is a difficult task for an amalgamating group. New legislation with less stringent pre-conditions to amalgamation is urgently required. It is suggested that though these measures are not spectacular in the long run they may lead to a better and more balanced industrial relations system.

At present the international economic system together with our national economy are undergoing strain; irresponsible employee power and futile industrial wrangles will lead to governmental intervention. Any government of whatever political complexion would yield to public pressure and pass restrictive industrial relations laws which would weaken unions and lead to a general deterioration of our labour relations system. The 1974

[47] The recent enactment of the *Trade Union Training Authority Act 1975* (Commonwealth) Act No. 50 of 1975, by the federal government is a welcome step forward in this area.

[48] In order to encourage professional administrators into any field of endeavour and especially in trade unions, it is essential for such organizations to be stable and for such administrators to have security of tenure. The requirements in the Act and Regulations for frequent elections for trade union officials tend to militate against stability and security and make it difficult for professional administrators to regard trade unionism as a full time career. It is important to balance the needs of democracy on the one hand with the concommitent need for stability on the other.

[49] See ss. 158A-158U of the Act. These provisions were enacted by Act No. 37 of 1972.

amendments to the *Fuels Energy and Power Resources Act*[50] by the State parliament which gave the Western Australian government almost dictatorial powers in an emergency are an example of a blunt and inept beginning. If industrial disruption continues more subtle legislation may find its way on to Australian statute books.

[50] The *Fuels Energy and Power Resources Act* 1972-1974 Western Australia.