

### Bob Day

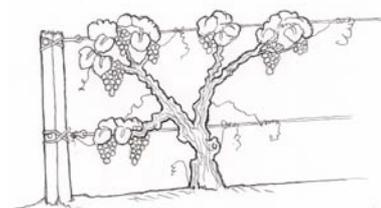
*A landowner went out early one morning to hire workers for his vineyard. He agreed to pay them the normal daily wage and sent them out to work.*

*At 9.00am he was passing through the local marketplace and saw some people standing around doing nothing. So he hired them also, telling them he would pay them whatever was right at the end of the day. At noon and again around 3.00pm he did the same thing. At 5.00pm he was in town again and saw some more people standing around. He asked them, 'Why haven't you been working today?' 'Because no one hired us,' they replied. The owner of the estate told them, 'Then go and join the others in my vineyard.'*

*That evening the landowner told the foreman to call the workers in and pay them, beginning with the last workers first. When those hired at 5.00pm were paid, each received a full day's wage. When those hired earlier came to get their pay, they assumed they would receive more. But they too, were paid a day's wage. When they received their pay, they protested saying, 'Those people worked only one hour and yet you've paid them just as much as you paid us who have worked all day in the scorching heat.'*

*He answered one of them, 'Friend, I haven't been unfair. Didn't you agree to work all day for the normal wage? Take it and go. I wanted to pay this last worker the same as you. Is it against the law for me to do what I want with my own money?'*

Matthew's Gospel, Chapter 20



Nearly a decade ago I delivered a speech in which I compared the obstacles preventing young Australians from participating in the labour market to Checkpoint Charlie – that infamous entry point through the Berlin Wall which was made up of miles of barbed wire, concrete barriers, land mines, fortifications and armed guards. The Berlin Wall separated the world of the free market from that economic wasteland that was the Communist East. When it came down in November 1989 everyone knew that Communism was dead. During its 40 year existence, apart from the military only a privileged few could pass to and fro through Checkpoint Charlie, and even they knew that if they did not return, the lives of their loved ones were in jeopardy.

Now I accept that I was perhaps overstating my case, but the fact remains that the barriers to entry into the Australian labour market, particularly for the low skilled, poorly educated or socially disadvantaged or for those who lack connections, self-confidence or even good looks, are serious indeed. For those excluded, especially teenagers and now older workers as well, the obstacles to getting a job are as formidable as getting through Checkpoint Charlie. We've built a huge wall across the road to employment and every rule, every regulation, every Award is just another brick in the wall, and all our job subsidies, training schemes and labour market programmes are just feeble attempts to scale the wall.

The traditional employee – employer relationship, has become so regulated that we have, in the words of Richard Epstein<sup>1</sup>,

*“.....created a legal edifice of stunning complexity. Protective laws abound on every conceivable aspect of the subject: health, safety, wages, superannuation, unionization, hiring, promotion, dismissal, annual leave, long service leave, retirement, discrimination, access and disability. The volumes of regulation, rulings, and cases on each of these bodies of law would take a treatise to summarize fully.”*

When I started in the home-building industry in the mid 1970s, Australia was building over 100,000 homes a year. Building apprentices' wages at that time were extremely low and were, for all intents and purposes “deregulated”. Apprentices were, quite rightly, regarded as “student” builders, not formal “employees.” As a result, just about

every tradesman had an apprentice and because the wages were so low (less than 15% of an adult wage), many (but not all) the lads came from lower socio-economic areas. Those lads have now long forgotten their lean times as apprentices and are doing extremely well. Australia is now building over 150,000 homes a year and there is a chronic skills shortage. In spite of this it is extremely difficult for a young person to get an apprenticeship. A first-year plumbing apprentice, for example costs an employer (with all the add-ons) over \$500 a week – 40% of an adult wage. A second-year apprentice costs \$620 a week. No tradesman could possibly pay wages like that. And they don't. So young people remain unemployed. There are of course parallels to this in every area of business.

While in Australia we are pleased to have more than 10 million people in the workforce, we should also be deeply concerned that 20% of working age people, a total of 2.6 million, are reliant on welfare benefits as their primary source of income. Of this vast number, those on disability support pensions comprise about 33% while a further 20% are lone supporting parents. The move from welfare to work however is compounded by the extraordinary impediments to employment in our current labour market.

Even under the WorkChoices legislation, employment regulations governing the Australian workplace remain blunt instruments that do not, and cannot, take account of the full range of employment possibilities.

While these workplace regulations supposedly seek to 'protect' the interests of those in work they effectively block out many others. In particular, they are incapable of taking account of the relationship between the cost of labour and the value derived from the application of that labour. They are also unable, in any significant way, to take account of individual circumstances, location differences or the personal desires of employee and employer to reach an agreement that meets each of their needs. You don't need to be a rocket scientist to understand that where the cost of labour exceeds the value derived from the application of that labour, job opportunities are lost or incomes have to be subsidized from some other source.

In Australia, just as in the rest of the world, there is no shortage of work. There is, and always will be, a limitless amount of work to be done. The issue is not the availability of work but whether or not work is available at the arbitrarily pre-determined price.

With regulated wages at \$15 an hour (more than \$20 an hour by the time on-costs are applied) it is clear that many will be excluded from employment due to the lack of viability of enterprises at this price. The sad reality is that those excluded have no choice but to then live on the very much smaller amounts that welfare payments provide.

It's worth remembering also that when you are in employment there are opportunities to advance, opportunities for wages to increase and opportunities to acquire and develop valuable skills. No such opportunity for advancement exists in the welfare trench.

On a remote track in the Northwest Territories of Canada there is a large sign which reads, *"Be careful which rut you choose – you'll be in it for the next 50 miles."* Like that remote Canadian track, those caught in the welfare rut are stuck in it for many a long mile.

The fall in the general unemployment rate over recent years, as welcome as it is, has tended to mask in the public's mind the serious level of underemployment. The casualisation of work which has been very much on the rise, is the employers' way of dealing with the inflexibility of the regulatory environment, particularly as it relates to dismissals and restrictive work practices.

If Australia had the same proportion of its working age population in the labour force as the United States for example, we would have another 750,000 people in work<sup>2</sup>. Australia has performed poorly in moving people from welfare to work and in integrating low skilled workers into the labour force.

The hardship that results from unemployment, and underemployment, is incalculable. It diminishes people's lives and saps their will to keep looking for work. It is no secret that being excluded, whether from work or any other meaningful human activity, contributes to frustration, depression, addiction, domestic violence, civil disorder and even suicide.

The highly regulated, highly protected workplace we have grown so accustomed to in Australia might be cosy for those on the inside but it comes at a terrible price for the hundreds of thousands of people trapped on the outside. This price is paid especially by older workers who, if they didn't have a myriad of regulations to impede their path, would have a much greater chance of negotiating an arrangement that would enable them to remain in the workforce way beyond their traditional 'use by' date.

Labour market regulation is Australia's 'Checkpoint Charlie' and it continues to function as a barrier to getting a start - or a 'start again', in the labour market. While the Federal Government's WorkChoices legislation has removed some of the impediments, it has retained a number of non-negotiable provisions.

The insidious hand of labour market regulation that has been with us for more than a century is now under greater pressure than at any other time in Australia's history, yet there are many who are still to come to terms with the reality of economic life in a global economy. It is an immutable law that any policy, program or system not based on economic reality is doomed to failure. A system of government-determined price fixing of labour is such a policy. It was never going to work because, as has often been observed, labour market regulation is totally incompatible with the realities of the workplace and actual human behaviour. For more than 100 years we have carried this burden at great expense to our nation. The time has come to face economic reality head on and liberate the nation's great potential. As stated in Chapter 1, it is time to give back to people the ownership rights to their own labour.

The capacity to produce goods and provide services is no longer constrained by state and national boundaries. Many businesses now operate outside a 'national' paradigm and they are both willing and able to move wherever they need to in order to remain competitive. All businesses, no matter how small, are now 'global'. For example, the local deli or milk bar owner is up against global giants like BP shops and McDonalds.

Around the globe, free markets and free societies are in the ascendant, and the defenders of regulation and privilege are on the defensive. And while it is still true that

the price of liberty is eternal vigilance, it is also true that freedom today is growing around the world.

As a big idea, individual liberty within liberal democracies, underpinned by free markets, is now dominant. The idea of flexible and free labour markets has now become mainstream and the remnant strain of protectionism is struggling to come to terms with this reality.

But as has been seen with the changes wrought through the WorkChoices legislation, and now the Fair Work Act, change does not come easily. Those who stand to lose from change, fight much more earnestly than those who have something to gain, as evidenced in France as they sought to enact changes in the employment arrangements for young people. However, there is a solution that respects the interests of all parties while at the same time offering those who wish it, the freedom to make work arrangements that suit their purposes.

I am fond of metaphors. I adhere to the old adage that a picture is worth a thousand words.

### *The Workforce SuperHighway*

The workforce of the future that I see is far removed from Checkpoint Charlie and all the barriers and impediments to progress it represents. Instead, I see a three lane 'Workforce SuperHighway' with each lane signifying a different form of workplace relationship.



The first lane I will call the Traditional Employment Lane; the second the Employment Contracts lane; and the third the Independent Contractor lane.

This first lane is the one in which most Australian workers have travelled for the past century. In this lane an entire industry has been spawned comprising commissions, tribunals, lawyers, advisors, unions and employer organizations each of whom add their own unique piece of cost and confusion to what should be a simple arrangement between employee and employer.

Lane 1 is the lane of Enterprise Bargaining Agreements (EBAs), Australian Workplace Agreements (AWAs) and many hundreds, perhaps thousands of legally binding Awards.

The second lane I see on the Workforce SuperHighway is today reserved for the privileged few and it is rarely used. It is the Common Law Employment Contracts Lane and in this lane workers can avail themselves of the space and freedom to travel with far fewer impediments.

This lane tends to be reserved for the high income earners - senior executives, salaried lawyers and accountants, sporting stars, TV celebrities and so on. Many of these people operate in the global marketplace for their skills. Not for them the constraints and constrictions of traditional employment. Once upon a time however, everyone had access to a Common Law contract, but Higgins<sup>3</sup> and his successors put an end to that by roping in this industry, then that industry, until today we find very few people travelling in that middle lane. On the Workforce SuperHighway of the future the middle lane will provide employment relationships for employees and employers who want freedom and flexibility. In this lane, employment conditions will be determined solely by the parties themselves - no-one else. Hours of work, rates of pay, holidays, sick leave, long service leave, hiring and firing, will all be agreed between the parties and the rights to enter these freewill arrangements enshrined in a Federal Contracts of Employment Act. Those who enter contracts of this type will do so with their eyes wide open, understanding that any disputes which may arise will be handled through voluntary mediation or the regular civil courts system and not through employment commissions and the like.

Finally, there is the outside lane. The fast lane. The lane of Independent Contractors. This is the lane of small and micro business. More and more Australians are choosing this lane – nearly two million at the last count. I am very familiar with those who choose to travel in this lane because they are the back-bone of the housing industry in which I have worked for over 30 years.

Self-employed independent contractors are engaged by business, government and householders in countless ways. They mow our lawns, deliver our parcels, fix our computers, shear our sheep, paint our gutters – they even write much of what we read in our daily newspapers. When the car needs servicing, the drains need clearing or the kids want to learn to play the guitar, the likelihood is that we will call an independent contractor.

They are the most productive, creative workers in our economy. They negotiate a price and they wear the risk that they complete it on time and on budget. Just as you know what you want, so they know what they can provide and they get on with it. We also need to remind tax bureaucrats that those who wish to travel in the fast lane are doing

so because they want flexibility and fulfillment in their lives, not because they are seeking back door tax relief.

Independent contractors are small business operators. They accept the risks and rewards of business and they deeply resent being labelled employees.

In a recent study by economists at the University of Zurich<sup>4</sup>, it was found that the self-employed were happier with work than employees. The study, which surveyed 16,000 people in 23 countries, found that the self-employed placed a high value on their ability to control their own situations, destinies and choices and frequently, income was sacrificed to pursue these goals.

It seems that those who choose the path of self-reliance are somehow more content in living with the choices they make for themselves, notwithstanding that it may also have some downsides. They value freedom and independence ahead of leaving it to others to make the decisions for them.

The revolution in communications and information technology has provided the fleet of foot with enormous resources and access to information that was once only the preserve of major corporations.

We live in a Google world and just as freedom has undermined dictators abroad, so it has empowered millions of ordinary Australians. It has given even the smallest enterprise the opportunity to compete on the global stage. Our economy is a diverse, diffuse and dynamic entity and merit is now the absolute determinant of success.

Nevertheless, many people, probably a majority, prefer the security of traditional employment relationships notwithstanding its costs and burdens and the fact that some potential investors in Australia will go elsewhere to establish new plants and businesses.

I believe it is time for our political leaders to acknowledge the inevitable and create, enshrine and protect in legislation the extra lanes on the Workforce SuperHighway so

that employees and employers might have the freedom to determine what is in their common interest.

How we work, and with whom we associate, are fundamental rights. It is unthinkable that in Australia today government would attempt to tell us whether to have children or not. Nor would they dare attempt to limit our choices of holiday destinations, or in which suburb you may choose to buy a house. Why then should governments be allowed to determine how much time we devote to work, and the price we seek in exchange for this time?

### *The New World of Work*

Sometimes new statutes lead the way in defining a new state of play and new ground rules. More often though they simply reflect changes which are already a fact of economic and community life. The world of work as we knew it is gone. Independent contracting and streamlined employment contracts are with us. But let us not forget that they are not here because of the law, they are here because of the choices and actions of millions of Australians who can no longer remain captive to anachronistic workplace structures.

Just as the benefits from phasing out tariffs proved to be far, far greater than anyone had predicted during the 1960s and 1970s, it is impossible to predict just how great the benefits will be from giving people freedom to choose their own working arrangements. Mature age workers, the 'X', 'Y' and 'M' generations<sup>5</sup> who are in demand globally, might not want or need any or all of the protections that current workplace regulation provides. So why make them pay for them?

In the end, people want freedom of choice. Some will opt for the slower lanes for a variety of legitimate reasons. It comes down to respecting their choice. People do things for their reasons and it is not for outsiders to override those choices.

### *Your hands, your money*

Whilst the story of the vineyard owner was intended to be a parable about the relative merits of a person's contribution to God's gift of eternal life, neither are the scriptures intended to mislead us. The principle of ownership rights to a person's labour or money is self evident.

In the story of the vineyard owner, it wasn't against the law for the labourers to work for the vineyard owner for a rate they agreed to. Likewise it was not against the law for the vineyard owner to spend his money however he wished. In Australia today it is both against the law for a person to work for an amount below a certain rate (regardless of the circumstances) and against the law for an employer to pay that rate. On the Workforce SuperHighway of the future it wouldn't be.

We simply cannot continue to place obstacles in the path of those who choose to shift lanes and work differently. The nature of economic life and the labour market have changed - and so have the opportunities the global economy affords. Those who want to move out of the regulated 'Traditional Employment Lane' must be permitted to do so.

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- <sup>1</sup> Richard Epstein, *Simple Rules for a Complete World*, Harvard University Press, 1995
- <sup>2</sup> Des Moore, *Policy Magazine*, Centre for Independent Studies, 2000
- <sup>3</sup> The Hon Henry Bournes Higgins KC, Politician & Australian High Court Judge, appointed the first President of the Commonwealth Court of Conciliation and Arbitration & famous for the ‘Harvester Judgement’
- <sup>4</sup> Benz & Frey, *University of Zurich* 2004
- <sup>5</sup> Generation X , born 1965 – 1980. The term “Generation X” came from a book of the same name written in 1991 by Douglas Coupland. It is a fictional book about three strangers who decide to distance themselves from society to get a better sense of who they are. Generation Y, born 1980 – 1995 is the generation following Generation X. Generation M, born after 1995. ‘M’ stands for “multi activity” or CPA (Continuous Partial Attention). They watch TV, talk on the phone, send a text message, play a video game, download a music track and read a magazine all at the same time.