

NOTES

Employment Relations- MLL349

T2 2018 – HD

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Topic 1 – Theories and Concepts of Industrial Relations (IR)

LEARNING OBJECTIVES

1. What is industrial relations/employment relations (explain it)
 2. Why is it that industrial relations can result in so much conflict
 - The different frames of reference
 - “unitarist”, “pluralist” and “radical”
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Learning Objective 1.

What is industrial relations/employment relations (explain it)

What is Employment relations (ER)?

- No universal definitions
- Previously called “industrial relations”, now preferred name is “employment relations”

Definition:

- ER refer to the **interaction**, or **relations** between **employers and employees** within the workplace
- ER is about people at work, and those involved in it.
 - i.e. how parties involved in the employment relationship interact with each other
- **Preferred definition:**
 - ER describes all aspects of the **interactions** and **relations** between ERs (or managers) and employees, as individuals, as collectives (i.e. trade unions), at the workplace, industry, local, regional, nations (or even international) level, and considering the regulatory and institutional settings that oversee such relations (i.e. FWA ect).
 - **ER + EE + Trade Unions + EA + legislation**

Learning Objective 2.

3 IR/ER Frames of Reference

3 frames of reference are commonly identified in relation to people’s assumptions/values relating to work and employment:

1. Unitarism
2. Pluralism
3. Marxism/Radicalism



The 3 primary frames of reference are grouped views, formed to acknowledge that different people can see the same situation differently = forming the differed perspectives based on individual life experiences.

3 Frames in detail...

1. Unitarism Perspective

A perspective liked by manager and organisations
'the boss is the boss is the boss – one source of authority'

This perspective says:

- Workplace **conflict is NOT inevitable** / Perspective is **against workplace conflict**
- Organisation bring people together to work together harmoniously for a share objective.
- Manager and employees have shared interests

Assumptions/view about Industrial Conflict:

- This perspective sees conflict as not normal and should not occur
 - (as an aberration), and as destructive.
- See that conflict should be avoided
- Conflict comes as a result of management
 - They explain conflict as a result of poor management practice (i.e. hired the wrong person, or a breakdown of management)

Theories:

- **McGregor (1957)**
- **Human Relations Theory - Mayo (1933)**
- **Human Resource Management - Stone (2014)**
 - The basis underpinning this theory is that organisational tensions can be completely resolved by nurturing a psychological contract based on cooperation.
 - This theory believes it is managements task to establish workplace conditions that

2. Pluralism Perspective

Perspective where **conflict is inevitable**, trade unions are not a bad thing
(EEs like this perspective)

General info on pluralism

- **Currently most common approach/perspective in Australia re IR/ER**
- Pluralism believes that managers and employees hold different objectives
 - EEs – want higher wages, to have autonomy
 - vs
 - Managers/Org – want higher/maximum profits, to control the labour process.
- Assumption that workplace conflict is **inevitable**

3. Marxism/Radicalism Perspective

- Third commonly adopted framework – not as common as the other two
- **The inequality which exists in society is replicated in workplace, where there is natural conflict which occurs.**
 - Thus, the role of Unions is not just to fix the workplace, but to fix the society which the workplace exists within
- ER reflect wider class relations in society

Key IR/ER Concepts

1. The Employment Relationship

What is it?

- The **interactions** between an **employer** and their **employees** re work conditions
- The **relationship** between **2 sets of people** holding **different interests** over the **governance and terms and conditions of work**.

Timeline of the Employment Relationship

- Historically this relationship and how it is structured reflected the master/servant relationship, where you were born into wealth (a master) or into poor (servant).
- This relationship has changed over the years
- Now relationship is governed by the law (FWA)
 - People now enter into a contract of employment
 - Governs employment

2. Industrial Conflict

What is it?

- It is when the two parties don't agree with each other
- When they are in dispute with each other
- Definition: the 'total range of behaviours & attitudes that express opposition and divergent opinions between industrial owner and managers vs the working people.'

Why does conflict occur?

- Different perspectives
 - i.e, the collective 3 perspectives → They clash and cause conflict

What does conflict occur about?

- Primarily about 'contested terrain', such as:
 - Wages vs Profit
 - EE want higher wages
 - Org wants higher profit
 - Equity vs efficiency
 - Employees want equity and fairness
 - Org/managers want efficiency
 - Managerial control vs Autonomy
 - Employee want autonomy and not to be constantly told what to do
 - Managers want control to control EE and outputs

3. IR Bargaining – Enterprise bargaining (negotiations)

What is it?

- Bargaining is a **way of resolving disputes**

Dimensions of bargaining in IR...

1. Levels of bargaining: → (from centralised to decentralised bargaining)

Theories of a Trade Union

1. Purpose (Martin 1989):

- Theory which tried to explain differences of trade unions throughout the world
- Theory looked at:
 - o What is the purpose of trade union?
 - o Who does the trade union represent?

2. Pluralist

Assumptions:

- o That workplace conflict is a natural feature of workplaces and democratic systems

From this perspective who do trade unions exist to represent?

- Unions exist to represent their members
- TO ensure EE's have a voice
- Representing the group of workers by a collective body

[^most common union perspective in Australia](#)

What are the key objectives of pluralist trade unions?

- o **Perlman (1949)** - Security of employment and job control, **this security and control coming through collective bargaining involving unions**
- o **Hayek (1960)** - Maximise wages rises, **these rises being a product of the balance of negotiating power between unions and employers**
- o **Clegg (1975)** - Participate in establishing the rules **that govern workplace conditions, this participation coming through union stewards**

3. Radicalism

Assumptions:

- o That the capitalism is unjust in the way it exploits workers

From this perspective who do trade unions exist to represent?

- Trade unions exist to represent not just a group of member but a **whole group** of exploited workers

What are the key objectives of radical trade unions?

- o Marx (1848) Lenin (1928) + Gramsci (1971) Hyman (1972)
 - **Short-term objective** of unions is to **unite workers**
 - **Long-term objective** is to **raise the political consciousness** of workers
- o Unions do not engage in campaigns for reformist workplace measures
- o Unions instead engage in campaigns to **support of revolutionary activity**, as directed the 'true' political party representing working class interests

4. Authoritarian

Assumptions:

- That the **state** (or political party) is the **embodiment** of the civil will of the nation
- A society where there is a ruling state

From this perspective who do trade unions exist to represent?

- The trade unions are controlled by the state
- Trade unions will have to follow what the state believe is best
- Unions function to ensure cooperation between Managers/ER and EEs, for the benefit of society

^very different perspective to the perspective of trade unions in Australia

Trade Unions: The Australian Story

Trade unions in Australia:

- Trade unions have been a part of Australian work-scape for over 150 years Very pluralist
 - Despite current membership declines, Unions are still considered a considerable power in pivotal sectors of the economy.
 - Unions are still integral in the settlement of terms and conditions of employment in labour contracts, i.e awards and enterprise agreements.
- Groups of workers who use strength in the form of numbers to give them more autonomy and say in the way work is done
- Formal definition:
 - A collective mechanism which allows employees to influence and contribute to their terms and conditions of employment and the enforcement of the rules that regulate the employment relationship (Bray et al 2014)

5 Types of trade unions

- 1. Craft unions:** Unions which represent those with craft or trade (anyone with an apprenticeship)
 - Eg of Union: Electrical Trades Union.
 - Eg: carpenters, plumbers, landscapers ect – anyone with a trade
 - Early trade unions
 - Represented workers who had qualified skills through an apprenticeship system
- 2. Occupational unions:** Unions which focus/represent on a specific occupation
 - Unions which represent a particular role in society, such as teacher or bankers
- 3. Industry unions:** Unions which focus/represent on a whole particular industry, irrespective of their occupation, trade or job performed.
 - Eg: the Finance Sector Union.
- 4. General unions:** Unions which will represent anyone who other unions don't want to represent
 - Eg: AWU, United Voice
- 5. Company (or Enterprise) unions:** Unions which represent the **interest of one company**, this is very difficult for this type of unions to gain representation. → **no relevant to Australia**
 - Eg: the Commonwealth Bank Officers Association (now defunct).

ER Association – major players

Australian Chamber of Commerce and Industry: is the largest peak council comprising eight state and territory chambers and 29 national industry associations. It claims to speak on behalf of over 300,000 businesses

Australian Industry Group: A major employer association, claiming to represent 60,000 businesses

Business Council of Australia: A major employer association, but not a registered 'industrial organisation'; still important in representing around 120 of the country's largest corporations

National Farmers Federation: A major employer association, but not a registered 'industrial organisation'; still important for representing agricultural businesses

Topic 3 – The Legal Framework

LEARNING OBJECTIVES

- Understand the role of **'status' versus 'contract'** in the employment relationship
 - o Status = way employment relationship previous governed
 - Born into rich family w/land = Master
 - Born into poor family = servant
 - Outline the **main 5 'elements'** that must be present for an employment contract to exist
 - o Intention
 - o Offer
 - o Acceptance
 - o Consideration
 - o Other (capacity/legibility)
 - Differentiate between the **'Contract of Service'** and the **'Contract for Service'**
 - o Contract of service = employment relationship as an EE
 - EE has less responsibility
 - ER has more responsibility (i.e. vicarious liability, do ER tax admin)
 - o Contract for service = employment relationship as a Independent Contractor
 - IC has more responsibility (i.e. do own tax ect)
 - Explain the **3 sources of law** as they apply to the governance of Australian IR and the 'line of legal causation' under which the 'Contract of Service' is given the force of law
 - o Judge-made law
 - o Parliament-made law
 - o Constitution
 - Understand the **3 areas of judge-made law**
 - o Common law, Tort law, Equity
 - Identify the **common law obligations** of employers and employees
 - o ERs: need to pay wages, provide meaningful work, pay sick leave and other EE entitlements
 - o EEs: need to keep ER info confidential, not act for competing ERs, provide skills labour
 - Identify the **3 areas of IR** regulated by federal and state legislation
 - Explain the main **Constitutional provisions** relied upon by the Federal Parliament to legislate on IR matters
 - o Section 51, numerous subsections → **need to know for exam**
 - Outline **employee entitlements** based on their 'employment status'
 - o EE entitlements depend on their type of employment
 - permanent or fulltime EE = more entitlement
 - casual EEs = less entitlements
 - Outline the **employee entitlements** breached under 'wrongful dismissal', 'unfair dismissal' and 'unlawful termination' laws (WD = no notice, CL -- UD = not fair, stat – UT = unlawful reason by ER for termination, the reason for termination cannot be a protected reason)
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The Evolution of the Workplace Relationship?

Form Status to Contract

The workplace relationship has evolved over time...

There has been a shift from status to contract

1. Master-Servant Relationship → Status

The master-servant relationship was generally established through birth, and unchangeable

- Master = if you were born into a wealthy family, with lots of property
 - Mastered were expected to provide **protection** and **welfare** to their servants
- Servant = if you were born into a non-wealthy family
 - Servants were expected to provide **faithful service** to their master

2. Employer-employee relationship → Contract

- EE/ER relationship is governed by law
- Legitimised authority in the workplace
- Contract outlines the exchanges of **wages for effort**

Master-Servant Relationship

(status-based)



Employer-Employee (Employment)

Relationship (contract-based)

The Employment Contract (7 main elements)

'The work-wages bargain': When one person (EE) agree to work for another (ER) in exchange for something of value (wage) a Contract of Service comes into existence imposing legally enforceable rights and obligation on both parties. Both parties are bound by the agreements made in the contract.

Main 'elements' of a **contract of service** to come into existence:

1. Intention

- **Intention to create** a legally binding agreement between the two parties

2. Offer

- Business owner must offer someone a job of employment
- This involved one party **proposing the terms of the contract to another party (i.e. employment)**, the other party is free to either; accept, reject or offer a counter-offer (**accept or negotiate the terms of employment**).

Can offer can include different conditions:

1. Condition Precedent: condition that has to be met **before** the contract is met

- i.e. a contract of employment being conditional on the party graduating before they get the job (you will need to complete your course before you get this employment)

2. Condition Subsequent: condition which must be met **after** the contract is in place

- i.e. a student being required to graduate within 12 months of taking the job

3. Acceptance

- The employee must accept the offer
- Once an agreement has been reached & **accepted** is when the contract becomes legally binding.

4. Consideration

- An exchange of something of value between parties, which underpins the agreement
- In a 'contract of employment' consideration = **employment (labour) for pay (wages)**

Contract 'of' Service

EE/ER relationship

A 'contract of service' is an agreement an EE holds with an ER to provide labour in exchange for a wage/salary.

- Duration can be either fixed-term or on-going → **more likely to be on-going**
- Informal (verbal) or formal (written agreement signed by both parties)
- EE is not responsible for providing the materials or equipment needed to do the job
- EE is not in a position to make a profit or loss

Implied legal obligations imposed onto ERs:

- ER is **vicariously liable** for the conduct of EEs in the performance of their duties
- ER must pay and **administer of EEs taxation**
- ER must pay for **recreational, sick and long service leaves**, as well as for EE **superannuation**
- ERs must fulfil **notice requirements** and provide **redundancy payments** upon termination

Contract 'for' Service

Independent Contractors, not EEs

An employment 'contract for service' (or 'non-employment relationship') is an agreement between an ER and an independent operator (i.e., contractor) who provides labour in exchange for a 'fee'

Main points

- **IC** has additional responsibility and liability
- **ER** has reduced responsibility and liability

Obligations...

- IC must
 - Have liability and risk for their own profit and loss
 - Complete tasks within a **fixed duration** or the duration taken to complete a specified task
 - Be responsible for their **own taxation obligations**
 - Be responsible for the **supply of materials, tools and equipment to do the job**
 - Is **free to delegate work to others** (sub-contractors) and have **relative freedom on the job**
- ERs
 - **Employers responsibilities are reduced**, conduct of contractors (vicarious liability)
 - EG:
 - Employers don't need to pay recreational, sick and long service leave, as well as for employee superannuation and redundancy
 - It absolves employers of the responsibility to provide notice requirements and redundancy payment upon termination

The Legal Framework of Australian Industrial Relations

Sources of Industrial Law

3 source of law which regulate the system of employment contracts and employment relation in general:

1. **Judge-made law**
 - Common law (Contracts and Equity)
 - Courts & Industrial Torts
2. **Parliament-made law**
 - Federal & State Statute law
3. **Constitution**

3 sources of law in detail...

1. Constitution – 3rd Source of law

The Aus constitution is the 3rd source of industrial relation law.

The Federal Government is restricted in the extent that they can make laws regarding IR, the restriction comes from the Constitution

What is the constitution?

- Is essentially the Rule book of Australia
- Introduced in 1901
- Defines the Federal Parliament's powers to intervene in the country's IR system

Key provisions which are relied upon by Federal Parliament to legislate on Workplace Relations matters:

Section 51 (vi): The '**defence powers**' allows the Federal Parliament to make laws that regulate directly the employment conditions of members of the armed forces, as well as for people employed in military research

- **Explain relevance of section to IR:**

Section 51 (xxxv): The '**conciliation and arbitration powers**' enable the Federal Parliament to make laws with respect to 'conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of one state'

- **Explain relevance of section to IR:** establish a federal industrial tribunal with powers to conciliate and arbitrate on industrial disputes

Section 51 (xxxix): The '**incidental powers**' gave the Federal Parliament to make laws on 'matters incidental to the execution of any power vested by the Constitution'

- **Explain relevance of section to IR:** This power allows the Fed Parliament to make laws to regulate the activities of industrial organisations (i.e. trade unions)

Section 51 (xxix): The '**external affairs powers**' gave the Federal Parliament the power makes laws with respect to 'the external affairs of the nation'

- **Explain relevance of section to IR:** Allows it to make laws with respect to industrial relations in fulfilment of the country's international treaty obligations

Section 52 (ii): The '**exclusive power**' allows the Federal Parliament to make laws on '**matters relating to any department of the public service**'