Academic industrialisation: The formation of the Victorian Universities Academic Staff Conciliation and Arbitration Board [1]

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Introduction

The regulation of academic employment conditions has traditionally occurred in isolation from the formal conciliation and arbitration framework applying to the majority of the workforce in Australia. The formation in 1984 of the Victorian Academic Staff Conciliation and Arbitration Board heralded a major step in breaking down the virtually exclusive power of the Victorian universities to regulate their conditions of academic employment. Examination is made in this paper of the conditions under which the Victorian university staff associations were successful in applying to have such a Board established, and the implications the Board has for employer/employee relations on campus. Analysis of the arguments used by the universities to oppose the establishment of an arbitration board reveals that the twin ideologies of *autonomy* and *collegiality* within universities have, in the past, served to obfuscate the real power relations governing academic employer/employee relations.

Background

The power to determine employment conditions of academics was written into the founding Acts creating the universities. The Deakin and La Trobe Acts authorised the making of statutes generally with respect to staff, while the Melbourne Act gave 'full power to appoint and dismiss staff and to make statutes with respect to employment of staff . . . the Monash Act (was) more specific in granting Council power to make statutes for or with respect to the number, remuneration and manner of appointment and dismissal of professors and teaching staff'.[2] It is evident from the legislation that the autonomy of the universities to regulate employment has been paramount.

In October 1978 the Federation of Australian University Staff Associations (FAUSA) unsuccessfully petitioned the Hon. J.H. Ramsey, the Victorian Minister for Labour and Industry, to establish a Wages Board to cover all academic and senior non-academic staff in Victoria's four universities. The decision of the Victorian University Academic Staff Associations (VUASA) to push, through FAUSA, for a Wages Board was based on the argument that 'no formal industrial mechanism currently exists at either state or federal level to provide academic staff with the advantages of the conciliation and arbitration process'.[3] The establishment of a Wages Board would provide 'a much needed forum for the conduct of industrial negotiations and a means by which employment conditions can be subject to binding determinations'.[4]

Staff associations throughout Australia had been seeking registration with state industrial jurisdictions since 1974. At the time of the application for a Wages Board for Victorian universities, staff associations at the Universities of Adelaide, Flinders, South Australia, James Cook, Queensland, Western Australia and Murdoch were registered, and the staff associations at Griffith and the Australian National University were seeking registration. It was only in Victoria and Tasmania that registration moves had not occurred.[5]

The original rationale for seeking state registration 'was to protect the membership from poaching by other organisations'.[6] With the restrictions during the late 1970s on university funding the emphasis in seeking state registration shifted towards using state jurisdictions in order to gain employment agreements and awards which were binding on the universities.[7] By 1978 staff associations at the University of New South Wales and the University of Western Australia along with two South Australian staff associations were actively seeking industrial determinations.[8] The bid to establish a Wages Board for academics was one endeavour by FAUSA to take negotiations over employment conditions outside the confines of individual universities, and into the formal industrial conciliation and arbitration system. It was an attempt to weaken the hold the universities retained over employment conditions.

In his refusal to establish a Victorian Wages Board for academics, Ramsey failed to outline the reasons for his decision.[9] FAUSA later learnt that the applications had failed for two main reasons. One was that a number of objections had been received from various employer and employee groups in Victoria and outside of the university setting. A second, and possibly more complex reason was that in the view of some there was no 'true' or 'conventional' employer/employee relationship between universities and academic staff.[10] Although this 'latter point was legally incorrect, the decision to refuse the applications was a bureaucratic one neither made on legal grounds nor subject to any legal challenge'.[11]

Following this refusal, further decisions within FAUSA on the best course of action to take were temporarily shelved in the knowledge that a new *Industrial Relations Bill* was to be introduced into the Victorian State Parliament. Two issues emerged as a result of the application attempt. Firstly, it was agreed within VUASA that 'neither they nor FAUSA has been in complete possession of the facts concerning the technical side of pursuing a Wages Board application successfully' and that 'any further application should be more thoroughly researched to prevent a further failure on technical or tactical grounds'.[12] The expertise of FAUSA and VUASA in this industrial setting was limited, and the FAUSA Executive received a letter from the Melbourne University Staff Association criticising them on these grounds.[13] Such a lack of experience was in keeping with the fact that the move to establish a Wages Board was a part of the fledgling attempts by the staff associations to enter the formal industrial setting.

Secondly, not all academics had accepted that their staff associations should be entering the formal industrial arena outside of the university setting. According to VUASA notes, the decision to

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seek a Wages Board had been a controversial one within some staff associations, and resignations had occurred at Melbourne University over the issue.[14] This is typical of the problem associations face when they endeavour to take on industrial roles more traditionally assigned to trade unions. Staff associations occupy a peculiar position insofar as they are neither a professional grouping of academics within the same field of study, nor are they traditionally seen as trade unions having a collective political and industrial clout. The move to establish an industrial board for academics thus also needs to be seen as a move to bridge the gap between the traditional actions and concerns of academic staff associations, and the industrial pursuits of trade unions.

The new industrial framework

The 1979 *Industrial Relations Act* of Victoria repealed the *Labour and Industry Act 1958*, and allowed for the establishment of Conciliation and Arbitration Boards in place of the former Wages Boards. The first Wages Board in Victoria was set up under the *Factories and Shops Act* of 1896 to regulate the lowest rates of pay in the 'sweated' industries — in particular clothing, furniture and bread making or manufacturing. The jurisdiction of the Wages Board, based on a tripartite system of regulation, was then extended both in number and in the range of matters it could consider. Dabscheck and Niland[15] claim that in practice the term 'Wages' Board became 'something of a misnomer: the powers associated with such boards extended well beyond wages, to include hours of work, terms and conditions of employment or non-employment, demarcation issues and the examination of "what is fair and right in relation to any industrial matter".'

The 1979 Act commenced operations in November 1981 and two hundred and eight Conciliation and Arbitration Boards have since been established.[16] Section 34 (1) of the Act allows these Boards to 'make an award relating to any industrial matter whatsoever'. These Boards have wider powers than the former Wages Boards, the Chairman being empowered to arbitrate industrial disputes.[17] A Board consists of equal numbers of employer and employee representatives and an independent Commissioner. The jurisdiction and issues they can determine are subject to Victorian Supreme Court decisions — including whether a matter is an employer or management prerogative as opposed to an industrial issue.[18] Either party may appeal against a Board decision to the Full Commission. Associated with the Boards are 'recognised associations' of employees and employers who can nominate representatives to the Board. The Board has to be notified by one or other party that an industrial dispute exists, and the matter can then be brought to the Board for hearing.[19] The Boards are intended to operate informally and section 37 (6) states that in every case they 'be guided by the real justice of the matter without regard to legal forms and solemnities'. They can determine awards in matters relating to pay, wages and rewards; privileges, rights and duties of employers and employees; the mode, terms and conditions of employment or non-employment; relations between employers and employees, industrial disputes, and 'questions of what is fair and right in relation to any industrial matter having regard to the interests of the person immediately concerned and of society as a whole'.[20] Of importance to FAUSA was that the establishing of a Board was no longer the decision of the Minister, but is decided through application and argument to the Industrial Relations Commission of Victoria.

The move to establish an Academic Staff Conciliation and Arbitration Board

During 1982 discussions on the best course to pursue regarding State registration took place among representatives of the four Victorian Staff Associations through the new body AVUSA — the Association of Victorian University Staff Associations, which replaced the former VUASA.[21] In December AVUSA discussed legal advice it had received on the steps required to establish a Board, and decided to take a proposal back to the staff associations that they apply for recognition before a Board.[22] Weight was lent to this action early in 1983 when AVUSA learnt that FAUSA had failed to gain Federal Registration.[23] AVUSA agreed that, in the light of this failure, State 'registration of Staff Associations in Victoria should be a high priority for 1983'.[24] Having a Board to regulate academic employment conditions and to deal with recognised staff associations, would give the staff associations a three-fold advantage. It would allow them to —

1. *Apply for agreements and awards.*
2. *Commence actions for reinstatement.*
3. *Bring the University to the negotiating table by notifying an industrial dispute.*[25]

Following resolutions passed at general meetings, the staff associations at the four Victorian universities applied to the Industrial Relations Commission for the establishment of a Universities Academic Staff Conciliation and Arbitration Board for persons employed in academic and related positions. Hearings commenced on 29 November, 1983 and were conducted over six days before a final decision was handed down in May 1984. The application was heard by the President of the Commission, K.D. Marshall, and the two Commissioners, L.J. Eggington and R.J. Garlick.

The case for establishing an Academic Industrial Board

Appearing on behalf of the staff associations, the FAUSA Industrial Officer set out the grounds for the establishment of the Board in the following terms:

> *At present there are approximately 3,000 persons employed in academic related positions in universities who have no access to any dispute settling mechanism. These people are finding that they are involved in an increasing number of disputes with their employers and have no access to any independent arbitrator. In our present Industrial Relations system it is quite unusual that such a large group of identifiable employees should be quite free from any form of industrial reformation.*[26]

It was pointed out to the Commission that the only possible body which could be seen to have some jurisdiction in the university setting, the Academic Salaries Tribunal (AST), was not a wage fixing authority except for Commonwealth tertiary institutions in the Territories. It was only by practice rather than by legal requirement that other tertiary institutions paid the levels recommended by the AST. Furthermore the jurisdiction of the AST did not cover the terms and conditions of employment of academics.[27]

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The FAUSA submission argued that whilst academic employment was award-free, it was certainly not dispute-free. FAUSA had been involved in a variety of disputes with Victorian universities. Such disputes had included the failure of universities to conform to rules and regulations regarding the granting of tenure; attempts to re-negotiate contracts for low pay; disbarring employees from re-applying for their positions on the expiration of their contracts; varying conditions relating to paying and granting long service leave; breaches of undertakings concerning the ongoing nature of employment; and threats to the tenure of employment of various academics.[28]

Resolution of such disputes had taken FAUSA into the civil courts, an action which was not only expensive and protracted, but often hinged 'on a finer point of contract or administrative law rather than a consideration of the real justice of the matter'.[29] It was suggested to Commissioners 'that it would be more efficient, less costly and more conducive to industrial harmony if such matters could be brought promptly before a Conciliation and Arbitration Board for determination'.[30]

Opposition to the establishment of an Academic Industrial Board

The Staff Administration Officer at Monash University appeared on behalf of the Victorian Vice-Chancellors Committee. The Vice-Chancellors vigorously opposed the formation of an Academic Industrial Board and their representative claimed that the application for a Board flew 'in the face of all powers of policy with respect to how they wish to conduct proceedings in universities'.[31] At least five separate arguments were presented against the establishment of a Board.

One argument concerned possible overlap between federal and state jurisdictions —

> *The universities oppose the application because they feel it is re-directing activities back into the State area where they have never been, or directing it into the State areas where they have never been handled before away from the Federal area.*[32]

It was argued that the nineteen universities in Australia had an Australia-wide rather than a state-wide outlook despite their establishment having occurred under state legislation. For the previous fifteen years the universities had looked to the federal sphere in determining academic salaries and working conditions. This Australia-wide outlook of universities was also evident in FAUSA's endeavours to seek federal registration under the Commonwealth Conciliation and Arbitration Act. Although the first attempt, which included an appeal to the High Court, had not been successful the 1983 High Court decision in the CYSS Social Workers Case has opened the way for FAUSA to again seek Federal registration and awards.[33] Despite the acknowledgement from the FAUSA representative that in any state/federal overlap of jurisdictions 'it is of course quite clear that the federal award would be paramount',[34] the universities were said to be concerned that a 'double-dipping' could occur.[35] By this it was meant that there could be two sets of employment conditions for academics, with staff having 'recourse to both National and State tribunals for conditions and salaries, the basis being, which award grants the better conditions'.[36]

In response to this argument the President of the Commission wondered why the vice-chancellors' representative still had difficulty in understanding that, from Section 109 of the Constitution, the federal law was paramount in any state/federal conflict and that this was 'a well established position with awards of the Australian Commission over State awards'.[37]

An argument mounted by the universities and associated with the above position, concerned university funding. Being federally funded, it was desirable that university salaries be adjusted through federal AST decisions which, it was claimed incorrectly,[38] were 'mandatory because under the provisions of the State Grants Act universities are required to pay the salaries recommended by the Academic Salaries Tribunal'.[39] The AST also made pronouncements on matters such as loadings, leave, and outside work and 'the universities by and large (had taken) very close heed of the pronouncements of the Academic Salaries Tribunal in these matters'.[40] It was further argued that an increasing percentage of university budgets were spent on academic conditions of employment and it was 'the universities' view that the Federal Government would not be kindly disposed to fund any cost factors that may be introduced by State Tribunals'.[41]

In response to these funding considerations the Commissioners saw no cause for alarm given the expectation that Board members would have an understanding of funding considerations involved in any case before them and, like the Chairman of the Board, could be expected to act in a responsible manner. Whilst the AST did make pronouncements on other non-funding matters, it was still a fact that no federal award existed for academics and that academic staff has 'never been involved in the Victorian industrial system (although some of their academic colleagues in other States have access to a State tribunal)'.[42]

The other three arguments presented by the universities against the establishment of an Academic Industrial Board hinged on a particular view of university life, the role of the university and its apparently unique place in society and therefore the industrial relations setting.

The *sui generis* nature of academic employment, it was argued, meant that it was inappropriate, especially at a state level, for awards to be made covering salaries and conditions:

> *The nature of academic work is so different to any other work in the community and the reason for that is academic staff are engaged in very special work. They are highly individualistic. They are expected to be innovative . . . the kind of atmosphere and environment that fosters the greatest intellectual achievement are conditions which are not particularly regulated. For instance, you would never set hours of work or attendance for academics because they can do just as much thinking at home or in bed or anywhere else. Certainly in our university and I think in quite a few others you would not ask them to record their attendances, their recreation leave or matters of that nature.*[43]

The universities believed that 'to enter into the realm of specific conditions the Commission is entering into unchartered territory'.[44] This argument was premised on the concept that academic work was unique and therefore unable to be regulated. It assumed that the industrial relations system in Australia was unable to cater to academic employment conditions and at the same time to cater for the peculiarities of academic work.

The Staff Associations' representative claimed that this argument was irrelevant to whether or not an Academic Industrial Board should be established. The concern about the unique nature of academic employment was a matter to be voiced when engaged in a codification of those conditions for an award before a Board.[45] The Industrial Relations Commission acknowledged the unique qualities of academic work but reasoned that merely because an occupation has special qualities should not exclude it from having access to an industrial tribunal. Other unique occupations such as professional scientists in hospitals, professional engineers, and non-government school teachers already had access to tribunals. A Board set up for academics would ensure that the special qualities of academic work were taken into account.[46] An added feature of the Victorian Industrial Boards was that they were designed to be less bureaucratic than others and there was emphasis in their mode of operations on flexibility 'to encompass the mutual problems of the employer and employees in the area concerned'.[47]

A fourth argument by the universities and one which centred on the uniqueness of academia was made in regard to decision-making and dispute-resolution on campus. With staff representation at departmental, faculty, university board and university council levels it was held that universities ran strongly on a *collegiate* basis, with staffing matters 'best determined and settled by consensus in the individual university without recourse to outside bodies'.[48] Having such a high staff involvement in the administrative processes of the universities was seen as being quite different to other employing institutions. The universities believed that any disputes should be settled within the confines of the university and that those which could not 'are so bristling with problems that it is doubtful whether their resolution would be greatly enhanced . . . if they were brought before an industrial tribunal'.[49] Creating a Board, with its only real role being the settling of disputes, would break down the concept of collegiate decision-making by more sharply bringing into focus definitions of employers and employees at universities.[50]

Whilst the universities held that an apparently democratic, consensus and collegiate process of decision-making occurred in universities, the staff associations did not agree. The fact that academics from all staff associations in Victoria had passed resolutions to apply for an Academic Industrial Board indicated their dissatisfaction with the current procedures for negotiating agreements in disputes at universities. This did not mean that all consultation within the universities would cease, but that the Board would exist for those disputes unable to be resolved on campus.[51] The Commission later took up this point, saying that the Universities' submission did not seem to —

> *fully appreciate the role of a Conciliation and Arbitration Board. Boards are empowered to make awards and to settle industrial disputes. But it by no means follows that a Board arbitrates on every dispute or on every provision in every award.*[52]

Parties were free to settle disputes through discussions and negotiations without recourse to the Board. It was also argued that the Victorian Board system operated to create a climate in which industrial disputes were prevented from occurring in the first place.

A final argument which can be identified in the universities' case against the establishment of an Academic Industrial Board really went to the heart of the problem for them. The establishment of a Board would be 'very much skating on the edge of university autonomy to regulate their own affairs'.[53] Each representative on the Board would have the 'power to commit the university and it would be a very big change in the way academic staff relationships have been determined in universities'.[54] Clearly a major concern of the universities was that they would lose the ability to make decisions on any issue as they wished, thereby breaking down their relatively autonomous position as employers within the labour market.

The decision

On 5 March 1984, the Industrial Relations Commission decided that it would establish a Board for academic staff to cover the four Victorian universities:

> *It is axiomatic that justice should appear to be done; some industrial situations may, by their very nature, require that a particular dispute or claim be determined otherwise than by a domestic process.*[55]

The Commission left for discussion and further submission the jurisdiction of the Board, its short title, and the number of representatives which would be appointed to it.

Subsequently, a decision on these issues was handed down on 8 May. The Commission decided in favour of the case put on behalf of the staff associations. The title of the Board became the Universities Academic Staff Conciliation and Arbitration Board and was to consist of a Chairman, four employee and four employer representatives. It was set up to cover the following positions at the four Victorian universities:

> *Professor, Reader, Associate Professor, Senior Lecturer, Principal Lecturer, Lecturer, Principal Tutor, Senior Tutor, Senior Tutor with Tenure, Tutor, Senior Demonstrator, Anatomy Demonstrator, Demonstrator, First Assistant, Clinical Supervisor, Prosector, Principal Research Fellow, Professorial Research Fellow, Senior Research Fellow, Research Fellow, Senior Research Assistant, Graduate Research Assistant, Research Assistant, Visiting Professor, Visiting Fellow, Visiting Distinguished Lecturer.*[56]

These classifications were decided upon as being within the jurisdiction of the Board on the basis that they were 'an integral part of university academic life and or having been treated as part of the teaching and research staff at the universities'.[57]

One of the problems in arbitrating on these classifications related to who may be regarded as an employer and as an employee at a University. This is an issue which was raised above. In the original application by the staff associations the position of dean was sought as part of the jurisdiction of the Board. This was later dropped by the Staff Associations, without prejudice for further application. Particularly for Monash University where the position of dean is a listed rather than rotating position, it was argued by the universities that deans should be regarded as being part of the executive staff at the university, having a role similar to that of an employer. Deans, according to the universities' representative, gave approvals for appointments, dismissals, conference leave and study leave, and recommendations in regard to promotions, staff establishments, financial imbursements, sick leave and recreational leave.[58] Other such executive staff at the universities includes the Vice-Chancellor, Deputy Vice-Chancellor, Pro-Vice-Chancellor, Registrar and Comptroller.[59]

Certainly one side issue which Commissioner Garlick saw as emerging from the discussion about whether or not deans performed employer functions and —

> *about which doubtless people are already writing theses, is that the dean being elected, for example, at Melbourne University, and having the range of powers over such things as sick leave, as you mentioned, could raise a question of whether or not the universities are in the vanguard of industrial democracy — I do not wish to test that.*[60]

Far from the universities being 'in the vanguard of industrial democracy' the universities' representative saw universities as having 'been very paternalistic in the past' and that defining who was an employee and an employer at universities was 'entering into completely new territory as far as universities are concerned.'[61]

Implications and considerations

There is no doubt that the establishment of the Victorian Academic Staff Conciliation and Arbitration Board heralds a potential change in interaction among academics, the university and the state.[62] The universities' representative claimed that with the establishment of an Academic Industrial Board and other measures which drew the university into the industrial relations system, the universities were on the threshold of a new era of industrial relations in universities — 'we are starting a new ball game, there are new rules and changed relationships'.[63] The staff associations shared this view. In announcing the establishment of the Board, the Melbourne University Staff Association *Newsletter* [64] claimed that the Board 'ushers in a new era of industrial relations in universities'. This new era includes registration of industrial agreements and awards, dispute settle-

ment relating to employment conditions of all staff and to salaries of staff not covered by the AST. The Board can also order re-employment if it finds that a dismissal was 'harsh, unjust or unreasonable'.

Ironically the conditions under which the staff associations called for state intervention into their industrial relations, were in large part due to the intervention of the state into areas of tertiary education which had had a reverberating effect on academic employment conditions. These conditions, as Hall notes, included a —

> *worsening of the student staff ratio due to funding cuts to universities; reductions in and controls over study leave; an increasing number of fixed term appointments and threatened attacks on tenure.*[65]

It was under these conditions that academics realised that they were not an elite professional group in the work force with secure working conditions. A staff association activist confirmed these conditions in interview:

> *It was quite clear that in terms of wages and conditions we'd been successfully attacked, and there was a real push in FAUSA to sort difficulties out. We're a weak, white-collar union, unregistered. So I think that once we started to say, O.K., look at what's been happening in the last few years, how well have you done? Look at the wage levels of the rest of the community, look at our traditional comparatives — we've lost pace with them. Look at the conditions which have been watered down. Look at the situation of untenured staff, look at the situation of tutors, look what's happening to tutors in various parts of the country. And it flowed from that, then, O.K, we become industrial. Downgrade your professional activities, become industrial, register, get awards.*[66]

The university administration and executive were forced to administer the effects of such state intervention into academic life, and it was these conditions which brought the universities more sharply into conflict with the staff associations and defined the administration and executive as occupying the role of an employer.

It is also clear that a number of mechanisms and processes can be identified which have helped to maintain the peculiarly isolated industrial situation of universities until the establishment of the Board. These mechanisms and processes emerged in the five arguments used by the universities in opposing the establishment of the Board. Each of these arguments may be related back to the power relations within the universities and it is in this context that university opposition to the Boards needs to be understood. As Kouzmin argues, 'Power relationships themselves influence the selection of preferred structures, for dominant groups attempt to restrict the development of alternatives which might undermine their power based on a given distribution of control over resources'.[67] In line with this argument it can be seen that, for the universities, the establishment of an Academic Industrial Board would diminish their power to regulate relations within the university. Opposition to the establishment of the Board was an endeavour to restrict the development of an alternative structure to regulate industrial relations on campus.

Hence, the first two arguments they used — state/federal overlap, and funding issues — concerned the *external* power relationships in which they were engaged. Traditionally, for twenty years or so, the universities had dealt with the Federal bureaucracy, having little to do with state jurisdictions. The imposition of state awards on universities meant that they had to cope with their authority being potentially circumvented by this new source. Having a state industrial relations system would mean that the universities could be engaged in two different arenas, state and federal, in activities which they wished to pursue, thereby reducing their flexibility and authority.

The other three arguments which the universities used — that academic work was unique and therefore unable to be regulated, that decision-making and dispute-resolution occurred on a collegiate basis, and that university autonomy would be threatened — were premised on the fact that if a State Academic Industrial Board were established this would disrupt the *internal* power relations of the university. The intervention of the state into the regulation of academic life through conciliation and arbitration boards, would undercut the power and autonomy of the universities to regulate their own affairs. It would provide academic staff with machinery to produce legally enforceable rules and conditions of appointment and dismissal which would be binding on the universities.

The collegiate picture of university life was based on a consensus view of staff regulation. Clearly in a situation in which the withdrawal of labour has been almost unheard of [68] it has been possible for the universities to foster a consensual view of staff relations in which conflict is not publicly visible and hence is able to be down-played. This 'collegiate' ideology obscures the unilateral system of power relations and decision-making on campus. The surface relations the collegiate

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ideology engender contribute to a clouding of the concepts of employer and employee, obscuring the traditional class categories of labour and manager, employer and employee, labor and capital. In particular the ideology obscures the 'reserve army' of non-tenured and casualised academics, the 'seasonal' workers of the industry whose services are dispensed with outside teaching times, and the high concentration of women in these positions.[69] The establishment of a Board and the division of universities into employer/employee relationships dismantles this notion of academic consensus and exposes the areas in which power is predominantly exercised within the universities — i.e. in the upper executive and administrative ranks. The collegiate nature of university industrial relations has consisted of involving academics in decision-making through their membership on various committees. However the representation and *involvement* of academics in such committee structures should not be mistaken for a view of university power being *shared* throughout the campus. This does not take into account the select sites or committees on campus which are able to set the agendas, to delay or refuse to implement actions recommended by committees, to produce 'non-decisions'[70] on various issues, to side-track issues, and to exercise the power of veto over delegated decisions. The action of staff associations to seek state regulation and awards regarding employment, would indicate that the membership was unhappy with what amounted to an essentially token representation and participation within the existing power structure.

Furthermore, the defence by the universities of this power structure on the grounds that external state regulation would threaten the autonomy of the universities, indicates the way in which different ideological usages can be made of the concept of university autonomy, depending on the context in which it is used. In the education literature institutional autonomy of universities has generally been taken to mean autonomy or freedom over teaching and research. A typical statement can be found in Bessant

> *The freedom of the individual academic to pursue his or her teaching and research as he or she wishes is closely linked with the ability of the academic staff to influence university policies on teaching and research, just as the latter is dependent on the ability of the university to devise its own programmes of teaching and research without outside interference.*[71]

Levy argues that the balance between such autonomy, and the intervention of the state into university life has become 'the most salient question, cross-nationally, in the politics of higher education'.[72] State regulation is seen as an erosion of university autonomy and therefore a bad thing, something to be resisted.

Rather than adopting a blanket position on university autonomy *per se*, it would appear to be more useful to recognise that university autonomy is multi-dimensional and that a defence of all elements of this autonomy is not necessarily in the best industrial interests of academics.[73] The institutional autonomy of universities can be broken down into at least three different 'fronts' on which universities attempt to exercise power and control: (1) regulation of employment conditions; (2) freedom to conduct research in areas of their own choosing; and (3) freedom to teach courses without censure. The defence of academic autonomy is usually related to the latter two fronts since there is no inherent conflict necessarily arising between the university administration and academics on these matters. However, it is in the first category of autonomy, employment regulation, that conflict is more endemic especially in a climate of financial stringency in which the university executive is called upon to administer cut-backs. This may exacerbate divisions among academics. For instance, where universities have administered cut-backs by decreasing staff numbers and increasing the casualisation of labour, a noticeable gap between tenured and non-tenured academics results. Especially for non-tenured academics, defending the autonomy of the universities to regulate their employment conditions would not appear to be an attractive proposition.[74]

The final consideration which needs to be given to the establishment of the Board is what the role of the Board will be in its action and decisions. This role could follow a number of different models. As Dabscheck outlines with reference to federal tribunals, distinctions can be made between accommodative, administrative and judicial arbitration.[75] Whether the Board adopts a certain stance corresponding to these different roles will be a question for future research and monitoring. What is also of future interest is whether the universities will accept that the regulation of academic employment is no longer only in their hands. Certainly it is clear that the academic employers resented Board intervention into campus life.[76] Study will need to be made of the extent to which the universities accept arbitrated decisions of the Board, or attempt to circumvent or appeal against these decisions.[77] One early indication of such a continuing resistance by the universities has emerged in the case recently before the Board on behalf of Monash tutors who were seeking an Award for their employment conditions. One feature of their log of claims was that they should have the right to re-apply for their positions at the end of their normal expectation of contract. Until now, Monash University has refused to re-employ tutors who have been at Monash for more than five years. Although tutors were successful in gaining the right to re-apply for their positions, in evidence before the Board one witness for the universities stated that if tutors were granted this right, then at least one faculty would respond by moving to abolish tutorships.[78] Such means of attempting to circumvent Board decisions and actions will give a continuing indication of not only the acceptance by the universities of academic industrialisation, but also the role of the state and the decisions and actions it implements in the academic sphere.

Notes

1. I wish to thank Margaret Stewart and Richard Mitchell for comments on earlier drafts of this paper.
2. FAUSA, *File 61/5 (Conciliation and Arbitration Board Establishment).*
3. Ibid., P1410.
4. Ibid.
5. Ibid., P1316.
6. Ibid.
7. Ibid.
8. Ibid.
9. Ibid., Q978.
10. See below for a further discussion of this point.
11. VUASA, *File 5, Q1106.*
12. Ibid.
13. FAUSA, op.cit., 30
14. VUASA, op.cit.
15. B. Dabscheck and J. Niland, *Industrial Relations in Australia*, Sydney, Allen and Unwin, 1981, p.289.
16. Information obtained from the Victorian Industrial Relations Commission, February, 1986.
17. See C. Fox, 'Wages Boards in Victoria: Retreat from Voluntarism', *Journal of Industrial Relations*, 26., 1, 1984, pp. 25-43, on the differences between the former Wages Board and the Conciliation and Arbitration Boards.
18. The legal problems involved in distinguishing an industrial matter from a non-industrial matter in the context of university employment have been explored by W.J. Ford, 'The Future of Academic Unions: Implications of Recent Legal Cases', *Vestes*, 27, 8, 1984, p.11.
19. See Dabscheck and Niland, op. cit., pp. 289-291; and S. Deery and D. Plowman, *Australian Industrial Relations* (2nd edition), Sydney, McGraw-Hill, 1985, pp. 173-175.
20. Deery and Plowman, op. cit., p. 174; FAUSA, op. cit., U374; *Industrial Relations Act*, No. 9365 of 1979 S. 34(1).
21. See AVUSA, *Minutes*, 25/6/82, 8; 6/8/82, 6; 13/9/82, 6.
22. AVUSA, *Minutes*, 3/12/82.
23. FAUSA, through a body called AAUS (Association of Australian University Staff) was unsuccessful in seeking Federal registration in 1982. The courts held that the universities could not be regarded as an industry as interpreted under s. 51 (xxxv) of the Conciliation and Arbitration Act (see Ford, op. cit., pp. 7-10).
24. AVUSA *minutes*, 4/2/83, 12.
25. FAUSA, op. cit., U374.
26. Industrial Relations Commission (IRC) (Victoria), *Transcript of Proceedings*, 29/11/83, p.2.
27. The Academic Salaries Tribunal was established under Part III of the Commonwealth Remuneration Tribunals Act 1973. The decisions of the AST regarding salaries and their determinations are not binding. Legally, the AST can only make recommendations with respect to salary rates which can then be used as a basis to calculate recurrent expenditure on universities (see FAUSA, op. cit., P1410).
28. IRC, op. cit.,29/11/83, p.5.
29. Ibid.
30. Ibid.
31. Ibid., pp. 11-12.
32. Ibid., p. 33.
33. IRC, op. cit., 7/2/84, pp. 34-36. See Ford, op. cit., p. 10 for the implications of this case on the attempts by AAUS to gain Federal registration.
34. IRC, op. cit., 29/11/83, pp. 3-4.
35. IRC, op. cit., 7/2/84, pp. 39-40.
36. Ibid., pp. 37-38.
37. Ibid., p. 41. In their later decision the Commissioners also stated that through the constitutional provisions which existed, 'There can be no question of double-dipping' (IRC, *Decision No. 8/1984*, 5/3/84, p. 11).
38. Under the States Grants Act the universities cannot pay more than the AST recommendation, and universities run the risk of being fined if they do not comply.
39. IRC, *Transcript*, op. cit., 7/2/84, p. 34.
40. Ibid.
41. Ibid., pp. 35-36.
42. IRC, *Decision No. 8*, op. cit., p. 10.
43. IRC, *Transcript*, op. cit., 7/2/84, pp. 41-42.

44. Ibid., p. 41.
45. Ibid., p. 47.
46. Ibid., p. 51; IRC, *Decision No. 8*, op. cit., 9-10.
47. IRC, *Transcript*, op. cit., 7/2/84, p. 52.
48. Ibid., 39-40.
49. Ibid., p. 41.
50. Ibid., pp. 39-40, 53.
51. Ibid., p. 48.
52. IRC, *Decision No. 8*, p. 8.
53. IRC, *Transcript*, op. cit., 7/2/84, p. 51.
54. Ibid.
55. IRC, *Decision No. 8*, op. cit., p. 12.
56. IRC, *Decision No. 28/1984*, 8/5/84, p. 5. Other specific classifications covered by the Board include the Chief Librarian at Deakin University; the Associate Librarian and Senior Librarian at the University of Melbourne; the Chief Librarian, Associate Librarian, Senior Librarian, Librarian, Assistant Librarian, Graduate Library Assistant, Probationary Assistant Librarian, and Language Teacher at La Trobe University; and the University Librarian, Deputy Librarian and Senior Librarian at Monash University (Ibid).
57. Ibid.
58. IRC *Transcript*, op. cit., 12/4/84, p. 113.
59. J.M. Hearn, 'Industrial Activity and Political Influence: Strengthening the Nexus in Academic Unions', *Vestes*, 27, 2, 1984, pp. 2-7.
60. IRC, *Transcript*, op. cit., 12/4/84, p. 114.
61. Ibid, pp. 112-114.
62. The word state with a small s is used here to refer to the theoretical concept of the state, covering both State and Federal Governments and bureaucracies. State with a capital s refers to areas such as Western Australia, Queensland, etc.
63. IRC, *Transcript*, op. cit., 12/4/84, p. 118; see also pp. 110-121.
64. May, 1984.
65. R. Hall, 'FAUSA and the ACTU: The Case for Affiliation', *Vestes*, 24, 1, 1981, pp. 31-33.
66. Interview by Author, 12/2/86.
67. A. Kouzmin, 'Control and Organization: Towards a Reflexive Analysis', in P. Boreham, P. and G. Dow, (Eds.), *Work and Inequality Volume 2: Ideology and Control in the Capitalist Labour Process*, Macmillan, Melbourne, 1980, pp. 130-162.
68. This situation has only just recently showed signs of changing. In January, 1986 university academics throughout the United Kingdom went on strike in support of better pay and conditions (*New Statesman*, 24/1/86, 11-12, *FAUSA News*, 4/2/86).
69. See G. Baldwin, *Women at Monash University*, Monash University, Melbourne, 1985, for an analysis of the position of academic women at Monash University.
70. P. Bachrach and M.S. Baratz, *Power and Poverty: Theory and Practice*, Oxford University Press, London, 1970.
71. B. Bessant, 'The Erosion of University Autonomy in Australia', *Vestes*, 25, 1, 1982, p. 32.
72. D. Levy, 'Accountability and Autonomy: A Cross-National Analysis of Recent Trends', *Vestes*, 23, 2, 1980, pp. 19-24.
73. See J.E. Lane, 'University Autonomy: A New Analysis', *Vestes*, 24, 1, 1981, pp. 17-27, who argues that university autonomy needs to be seen as encompassing a number of areas of academic life.
74. It is no coincidence that the first two cases brought before the Board were on behalf of two major non-tenured groups of academics — research assistants, and Monash University tutors.
75. Accommodative arbitration is where a tribunal 'acts as a rubber stamp in handing down decisions which approximate the relative power positions of the parties'. Administrative arbitration attaches an active role, sanctioned by the parties, for the tribunal. The parties, unable to resolve their problems themselves look to members of the tribunal for help and guidance . . . Judicial arbitration is where an arbitrator hears the competing claims of the parties, and on the basis of the evidence presented, hands down a binding decision! B. Dabscheck, 'Theories of Regulation and Australian Industrial Relations', *Journal of Industrial Relations*, 23, 4, 1981, p. 431.
76. Theoretically, the establishment of the Board means that employers can, if they wish, commence actions against employees. In practice, however, such actions are highly unlikely. As noted in FAUSA, 'under the present situation the University administrations have all the power they require to, if they so desire, slowly decrease the conditions of employment for academic staff' (FAUSA, op. cit., U374).
77. Study will also need to be made of the expertise the universities gain in dealing with the arbitration system. Hence, reflected in the resistance of the universities to the Board was their relative inexperience in participating in the industrial relations machinery of the 1980s. In much the same way that FAUSA had been inexperienced in its first application for a Wages Board, it was clear from the Commission hearing that the representative for the universities lacked a similar experience and knowledge of the way Boards are set up or operate. At a number of points the representative had to be instructed on various procedural matters relating to Boards, and confessed his ignorance and lack of skill in their establishment (see IRC, *Transcript*, op. cit., 7/2/84, p. 50; 12/4/84, p. 151). As universities are drawn into the arbitration system of industrial relations, universities themselves are being forced to employ industrial relations officers to ensure proper representation. The Australian Vice Chancellors' Committee is currently filling such a position (*Age*, 8/2/86). Also, at Monash University for example, the administrative section of the campus is in the process of being restructured so that a separate administrative branch will deal exclusively with industrial relations (*Sound*, 30/4/86).
78. IRC, *Universities Academic Staff Conciliation and Arbitration Board Transcript B850386*, 4/11/85, p. 191.

The force of destiny: Industrial relations in Australian universities

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There is an atmosphere of the theatre about industrial relations in any arena, let alone universities. The participants will usually have at least one performer on each side who can readily burst into a passionate speech about the iniquities of the other side, at times the discussion enters a cut and thrust that appears as deadly as a stage sword fight but in reality is as harmless, occasionally a speaker forgets his lines and needs a loud prompt, while the whole drama moves in a predictable way to an inevitable conclusion like a Greek tragedy.

For twenty years now, I have been a performer in this art form, first in the UK and then in Australia. I was going to write 'on the universities' side', but one of the paradoxes of academic life is that we are all on the universities' side, so perhaps it would be better to describe my actions as being on management's side. Even that is a misnomer, for a significant proportion of both academic and general staff are basically in management.

This experience and the dramatic overtones of industrial relations leads me inevitably to think of my great love: opera. There the heroes and the heroines, the tenors and the prima donnas fight out their struggles in a world of suspended belief but in the final scene their ill-considered actions of the earlier acts lead to a show-down of tragic consequence.

The classic Italian opera of, say, Verdi is in three or four acts. In the first act the characters are introduced, there are indications of the drama about to unfold and early skirmishings between the characters take place; a curse may be enunciated. In the second act, the plot is developed, the revenge becomes apparent and the heroine moves into a nunnery. By the third act (usually of several scenes), the protagonists are confused by external events, a war or a famine, and it looks for a moment as if all may be resolved happily. It ends with a chorus of merriment and hope. But, in act four, retribution occurs, the curse is fulfilled and the surviving characters move off to resume their lives, with perhaps a faint hint that a better world lies around the corner. La Forza del Destino, the Force of Destiny is such an opera.

"The university system in Australia is unique in that a large proportion of its employees, namely the academic staff, have not until recently been subject to any award."

So let us take our seats for this four act saga of Australian universities' industrial relations. But before the curtain rises, we must have an overture, rehearsing some of the main themes of the opera.

The university system in Australia is unique in that a large proportion of its employees, namely the academic staff, have not until recently been subject to any award. Indeed, the first real academic award, covering research assistants, took place in 1986 in Victoria, quickly followed by a determination covering tutors at Monash University, again in Victoria. It is perhaps surprising that an educational enterprise, with recent expenditure totalling over $1000 million and over ten thousand academic staff should have been award-free for so long. I would suggest two reasons, themes that will be developed later.

First, there is the collegiate nature of universities. Academic staff are both employees and managers. Pro-Vice-Chancellors, deans, chairpersons appoint and assign duties to their colleagues. They have to decide how to spend their devolved budgets to best advantage, they are members of their staff associations and sit on governing bodies, the official employers of the staff. In the modern participatory structures of university government, many staff take part in deciding who to employ, how to allocate duties and who to promote. It is not easy to identify the wicked employer who should be taken to the Industrial Commission and forced to concede an award. Indeed, the normal concept of an award defining hours of work, recreation leave and protective clothing fits uneasily on academic shoulders.

Secondly, there have been structural difficulties preventing conventional industrial processes. Staff associations have had an identity problem in deciding whether they were professional organisations or trade unions, a dilemma that still faintly persists. The development of conventional industrial relations in universities was inhibited until recently by the narrow interpretation of what constituted an industry. Finally, until universities became large complex organisations with a bureaucracy of their own, there was not an overwhelming need for awards and negotiations.

So much for our overture: the lights are dimmed and the curtain rises on Act 1. We are in a calm peaceful setting dated about 1974. The old system is about to topple. The Federal Government has decided to fund fully the universities rather than rely on joint funding with the states. Instead of relaxed discussions between the vice-chancellor and a few senior staff about academic conditions or a chat between one of the registrar's department and co-operative member of the general staff association about an unfortunate minor incident, federal unions are becoming interested in universities.

Operatic first acts introduce the major characters, develop a little skirmishing between them and it ends with some dramatic incident, often a murder culminating in a splendid curse that will dominate the remaining action.

Let me introduce our principal characters. First, there are the universities as employers. Legally, the governing bodies (Councils, Senates etc.) are the employers of all staff, but they are too large a body to engage in industrial relations even within the institution, let alone nationally. The councils have traditionally invested the vice-chancellors with the responsibility of conducting discussions and negotiations with staff representatives, advised by a sub-committee who may recommend on policy, with council reserving the right to be kept informed and ultimately ratifying any agreements that may emerge. The vice-chancellor, then, is my hero, perhaps not surprisingly!