

The Evolution of the Idea of a Labour Law Subject in Australian Legal Scholarship

Richard Mitchell*

I Introduction

In his study *Judges in Industry* in 1954, the American scholar, Mark Perlman, observed that there was an absence of serious scholarship on the subject of industrial regulation of industry through labour arbitration in Australia.¹ He might equally have made a similar observation about labour law more generally. Other fields of relevance to labour, including trade union regulation, strike law, the contract of employment, workers' compensation and so on were also relatively neglected at this time, particularly in book-length studies which might have drawn together some or all of these into a conceptual whole, justifying the title 'Labour Law', 'Industrial Law', or, perhaps, 'Industrial Regulation'.

The purpose of this chapter is to examine the 'idea' of 'labour law' as it evolved in the shape of various texts designed for higher education study, particularly in the post-1960 period. For reasons of space, the coverage generally omits reference to those works which both preceded, and in some cases followed, Perlman's study of the Australian arbitration system noted above. Most of this earlier work, including that of HB Higgins,² Orwell Foenander³

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1 A similar observation is made in JH Portus, *Australian Compulsory Arbitration 1900-1970* (Hicks Smith & Sons, 1971). Perlman's brief account of the main literature on compulsory conciliation and arbitration in Australia can be found in M Perlman, *Judges in Industry: A Study of Labour Arbitration in Australia* (Melbourne University Press, 1954) 23-29.

2 HB Higgins, *A New Province for Law and Order* (Workers Educational Association, 1922).

3 Over a period from the 1930s to the 1970s Foenander published 11 books on various aspects of Australian industrial regulation. These included *Towards Industrial Peace in Australia* (Melbourne University Press, 1937); *Solving Labour Problems in Australia* (Melbourne University Press, 1941); *Industrial Regulation in Australia* (Melbourne

This is a preview. Not all pages are shown.