Rejoinder

Rod Lingard

IN his critique of my *Agenda* note, Chris Eichbaum tries to anchor his views to the notion that labour law should promote 'equitable outcomes, while ensuring the necessary degree of flexibility and responsiveness required for labour-market efficiency' (p. 107). There is an analytical confusion in his attempt to conceptualise a labour market that is re-regulated to be both equitable and efficient at the same time: surely an example of having your cake and eating it. Eichbaum also claims that 'Those who stand to gain from the present arrangements, which is to say those who have a vested interest in them, have an obligation to declare that interest if the debate over the merits of the ECA is to have the necessary integrity' (p. 107). I agree. Obviously, as a director of a labour market consultancy (which the by-line of my note indicated), I have a 'vested interest', a fact I have never disguised.

Disappointingly, Eichbaum maintains this confused approach in his critique proper by claiming that, as an experiment in radical labour-market liberalisation, the Employment Contracts Act (ECA) has failed because it has not delivered the 'equitable outcomes' he believes it should have. Ignoring the mounting evidence I cited of improved labour-market efficiency (a matter Eichbaum claims to be as much concerned with as 'equitable outcomes'), he then goes on to state that the fundamental issue with the radical reforms is that the ECA's supporters espouse the standard libertarian view that labour is a tradable commodity. Quite apart from the false assumption that only labour markets involve human beings and their economic choices, or that a person's labour somehow substitutes for the person himself or herself, the biggest flaw in Eichbaum's argument is the converse implication that regulated labour markets deliver 'equitable outcomes'.

Exactly what Eichbaum means by 'equitable outcomes' is unclear. But if it has to do with the fact that differential wage increases have occurred under the ECA, as well as some real decreases, then presumably Eichbaum favours standardised national wage movements for all workers topped up with second-tier bargaining arrangements to satisfy exigent labour market demand factors: yet another example of having your cake and eating it. This raises the question: does Eichbaum seek so-called 'equitable outcomes' for *all* labour market participants, including employers, irrespective of the inherent contradictions of such a term, or is he interested only in a return to a regulated industrial-relations system based on collective bargaining?

Eichbaum answers this himself, and also exposes the fallacy of his argument, when he condemns the ECA for its impact on women workers. A study by Brosnan and Walsh (1996) of non-standard employment reports no significant differ-

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ences in the way women and men were employed under the ECA during the period 1991-95. Moreover, job growth statistics for the same period (Statistics New Zealand, 1991-96) show that total jobs for women workers increased at a slightly higher rate than those for men. No thinking labour market commentator would deny the existence of structural inequalities that constrain women workers. But in this instance Eichbaum is hard-pressed to show that the ECA is blameworthy, notwithstanding his unconvincing argument about gender segmentation affecting the wages of women workers. Pay differentials these days are much more likely to be symptomatic of industry segmentation (reflecting wider economic circumstances), enterprise segmentation (reflecting a firm's competitive advantage or lack thereof), or even individual variations (reflecting aspects of a worker's personal performance).

These diverging views nevertheless expose a significant problem. As I observed in my note, claims and counterclaims about the ECA are difficult to substantiate given the paucity of quality labour-market information. Much of the blame for this lies with labour-market academics. If they were not so obsessed with collective bargaining, and instead extended their research to encompass the remaining 80 per cent of the labour market that is governed by individual contracting, then comparative studies would arguably be more reliable and present fewer opportunities for academic obfuscation, particularly on contentious issues such as labour productivity.

Where we do have reasonably accurate data, however, is in the area of union membership density. Here, by misconstruing my comment about 'shrinking' union membership so as to imply that I suggested that unions are 'losing market share', Eichbaum does himself no credit at all with his very selective use of statistics. True, the collective bargaining data sub-set concerning employee representation shows that unions are holding their own in this area. But this ignores the overwhelming fact that, in terms of actual employee representation (not to mention potential coverage) across the total labour market, union coverage declined from 65 per cent in the 1960s and 1970s to 43.5 per cent in 1985; fell further to 41.5 per cent in 1991; and plummeted to 19 per cent in 1995. The 1.3m New Zealand workers who do not have direct representation amount to 80 per cent of the potential market in which unions now only enjoy 17 per cent coverage. Once again, higher-quality academic research on the experiences and preferences of these much-neglected individual workers would cast light on what is actually happening in the market for employee representation understood in its widest possible sense.

About the prospects of further labour market reform, there is less doubt. The new National-New Zealand First coalition government recently announced in its *Coalition Agreement and Policy Document* an industrial relations policy whose Statement of General Direction says that 'the industrial relations environment desired by the parties is one based on fairness, flexibility and neutrality, recognising that the environment plays an important part in achieving high sustainable economic growth rates in New Zealand'. Of the 13 key policy initiatives specified within the policy document, five in particular signal that the ECA will not only be retained with its labour-market efficiency and freedom-of-choice principles intact, but the changes may even enhance some of the existing structural arrangements.

These five policy initiatives are as follows:

1. Access rights for bargaining agents (including unions) will be strengthened on the basis of existing case law, but will also remain limited to the contract negotiation process, so denying unions a general right of access that would otherwise facilitate membership 'fishing expeditions'.
2. Multi-employer collective contracts will retain a no-strike/no-lockout prohibition, denying unions the opportunity to pursue industry-wide industrial campaigns.
3. 'Fair' bargaining, a new concept, will oblige contracting parties to respect each other's choice of bargaining agent and not to undermine the bargaining process. This is significantly less onerous than the prescriptive process of so-called 'good faith bargaining' favoured by the New Zealand Labour Party and the Alliance.
4. Employment Court decisions will be scrutinised for the purpose of 'minimising judicial activism' in the employment arena against parliament's express intentions. This could have major implications for the way employment institutions approach fixed-term contracts, redundancy settlements and contract termination arrangements in future.
5. The minimum adult wage will increase from NZ$6.37 an hour to $7.00 from 1 March 1997, and possibly to $7.50 an hour in March 1998, generating some concern that a 10 per cent increase may slow employment growth for youth and other marginalised workers.

Amended with such pro-business changes, the ECA will apparently continue to flout ILO Convention 98 concerning the promotion of collective bargaining. But the fact remains that the global trend is towards increasing liberalisation of all markets, including labour markets. In the process, New Zealand continues to lead the way in developing minimalist structural arrangements that prevent 'vested interests' from distorting or impeding an otherwise efficient and free labour market, while delegating to its politicians the proper role of legislating for a social safety net where appropriate.

In this respect, Australia still has some way to go in freeing its own labour market from structural rigidities, notwithstanding the recent passage of the Workplace Relations Act. Eichbaum also has some way to go in coming to grips with the labour market's dynamics of supply and demand. If he understood that the *price* of labour was a function of its *quality* rather than treating these two factors as separate market components, he would be less inclined to the view that driving up the price would necessarily improve the quality, let alone produce 'equitable outcomes'.

References

Brosnan, P. & P Walsh (1996), *Plus ca change...: The Employment Contracts Act and Non-standard Employment in New Zealand, 1991-1995*, Industrial Relations Centre, Victoria University of Wellington, Wellington (Working Paper No. 4/96).

Statistics New Zealand (1991-96), *Household Labour Force Survey* (quarterly), Wellington.